





# The Scary Cross-Roads Between the CCPA and the TCPA

The Issue that Finally Made Eric Do a Webinar

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- They sound the same but... they're pretty different.
- TCPA governs outreach. Protects “privacy” in the sense that it keeps people from calling your phone without consent. Extremely vague statute that applies to regulated equipment in the absence of consent.
  - Very very dense area of law. Extremely fast moving. And extremely high penalties for failing to comply-- \$500.00 *per phone call*.
- CCPA— protects private information in the possession of businesses.
  - Creates Six Basic “Rights” and a handful of Corresponding obligations
  - Should be pretty easy for normal businesses to comply with, once you get the hang of it. (Czar’s prediction anyway.)
  - No real private right of action for most of it but the AG’s office may cause mischief
  - **Private right of action for data breaches.**
- **PURPOSE OF THIS PRESENTATION:** Help folks understand where TCPA and CCPA issues converge and where compliance with one might make compliance with the other more difficult. **THIS IS NOT A COMPREHENSIVE WEBINAR ON EITHER SUBJECT.**

- Consumer has a right to know what you've got on them.
- At consumer request, business must provide within 45 days:
  - **Individualized report** disclosing (12 month look-back) the categories of PI &:
    - the categories of sources;
    - the business or commercial purpose for collection;
    - the categories of third parties to whom the information is disclosed/sold; and
    - the business or commercial purpose for which it sold or disclosed
  - **Specific pieces** (12 month look-back) of PI including:
    - Records of consent obtained;
    - Call recordings;
    - Account information stored within a servicing or collection system;
    - Lead information in CRM system
- **May deny if:**
  - Cannot verify identity / Substantial, articulable, and unreasonable risk to the security
  - Conflict with state or federal law
  - Never disclose:
    - SSN, DL/gov.-issued ID number, financial account number, any health insurance or medical ID number, an account password, or security Qs & As

- Obviously need to be able to produce consent records, and map at a high level data for phone calls
- Don't have to produce call logs or serving notes (probably)
- **Make sure not to forget to mention consents, DNC requests, inbound call records, etc.**
  - Probably not “PI” to begin with but failing to disclose the possession of this material might lead attorneys to conclude you don't have it and sue you.
  - The sharks will be swimming
- What about lead/source data in the possession of third parties?

- At consumer's request must permanently & completely erase within 45 days:
  - May delay deletion of archived or back-up data until next accessed/used
  - May offer to erase part BUT **option to erase ALL must be available**
  - Inform vendors (so that they erase the PI as a well)
- **May deny request if:**
  - Cannot verify identity, BUT must **treat the request as a request to opt-out of sale**
  - De-identify or aggregate the PI
  - Exemption applies (partial list):
    - Complete transaction / provide a good or service / perform a contract w/ consumer.
    - **Security**, protect against/prosecute **fraudulent/illegal activity**.
    - Debug to identify and **repair errors** that impair existing intended functionality.
    - Exercise **free speech / another right** provided for by law.
    - **Research in the public interest** if the consumer provided informed consent.
    - Solely **internal uses** reasonably aligned with the expectations of the consumer.
    - Comply with a **legal obligation**.
    - **Use internally in a lawful manner** that is compatible with the context in which the consumer provided the information.

- Yeah go ahead and don't delete those consent records just yet...
- Remember we have so many fun exemptions to play with here:
  - Ongoing transaction
  - Provide a good or service requested by the consumer
  - Ongoing contract fulfillment
  - Defense of a legal claim
  - Compliance with federal law
- Applies to Service Providers

## Right No. 3: Right to Opt-Out of Sold Data

- Sale = Sharing with business or third party for “valuable consideration”
- If selling:
  - Must offer right to opt-out PRIOR TO selling (consumer = 16 or older)
  - Must obtain **OPT-IN consent FOR MINORS** (consumer = under 16)
    - <13: consent from parent
    - 13-15: consent from minor
- The following is NOT a “sale”:
  - Sharing at consumer’s request
  - Disclosures to “service providers” that comply with certain requirements
  - Corporate transactions (e.g., M&A deals) if the use of the PI does not change
  - Sharing to operationalize opt-outs
- Under the CA AG proposed rules IF Collecting ONLINE must:
  - **Treat user-enabled privacy controls** (e.g., browser plugin, privacy setting, or other mechanism) as valid requests to opt-out for that browser or device, or, **if known, for the consumer.**

## Right No. 3: TCPA Issues



- Where are your leads going to come from now? Clear link “Do Not Sell My Personal Information.” (Cali only?)
- How does this work when a consumer is signing up to get information from a third party—do you have to give them the option of not allowing you to sell the data?
- Reg says: “business does not sell personal information when: [a] consumer uses or directs the business to intentionally disclose personal information or uses the business to intentionally interact with a third party...”
- What about transferring portfolios?

- Shall **not discriminate** against a consumer for exercising their rights under CCPA BUT
  - May charge different price/rate OR provide different level or quality of goods or services IF the difference ***“is reasonably related to the value provided to the business by the consumer’s data.”***
- ***If offering financial incentives for the collection or sale of PI:***
  - *Must be an opt-in program*
  - *Must notify consumer (notification to include a calculation of the value of the data)*
  - *Must obtain consent*
  - *Must allow consumer to revoke consent*
  - *Practices shall not be “unjust, unreasonable, coercive, or usurious in nature”*

## Right No. 4: TCPA Issues



- Sound familiar? Just like with prior express written consent you can't deny good or service for refusing to allow you to sell or retain the data.
- *But you can pay for it. Awesome. Wish we could do that with the FCC.*

# Obligation No. 1: Obligation to Inform

- **Privacy Policy (always):**
  - Must be made available
  - Very detailed disclosures
- **Notice at Collection (if collecting directly)**
  - Provided **at or before collection**
  - Cannot collect PI without notice and cannot use for non-notified purpose
  - If not collecting directly need not provide **BUT before selling:**
    - **Contact the consumer** to provide notice + right to opt-out, OR
    - **Contact the source** of the PI to confirm notice was provided
      - Obtain a signed attestation describing how notice was given and an example of the notice
      - Retain attestations for **at least 2 years + make available to the consumer upon request**
- **Opt-out Notice (if selling):**
  - Must be provided **before the PI is sold**
- **Financial Incentives (if offering):**
  - Must be provided before consumer opt-in for the incentive
  - Summary of incentive + categories of PI affected + right to withdraw and process

- How should call centers that collect consumer information on the phone comply?
  - Create and make available a Privacy Notice
  - Create scripts for agents to read/pre-recorded scripts that can be played while caller is waiting that include:
    - Information required for Notice at Collection
    - Information required for Notice to opt-out (if selling)
    - Information required for Financial Incentives (if offering)
  - Keep records of the fact that you offered the notices above.
- Can I use my CCPA Privacy Policy as my Notice at collection/Opt-out notice?
  - YES, but it will be a rather long document for any agent to read over the phone.
- Is my current US Privacy Notice CCPA compliant?
  - NO, CCPA is very prescriptive.
- What if I choose to not be fully compliant?
  - You will be in good company

## ▪ Record Keeping

- Over 4M records sold/disclosed for commercial purposes
  - Establish, document, and comply with a training policy (if over)
- Even if not required:
  - Ensure your personnel is sufficiently informed to respond to requests

## ▪ Train employees responsible for handling

- CCPA compliance
- Consumer request

## ▪ Contracts

- **with “service providers”:**
  - Limit unauthorized use of PI;
  - Prohibit the sale of PI;
  - Prohibit use of PI for a commercial purpose; and
  - Assist with deletion requests (arguably)
  - Certification (in some cases)
- **Other contracts:**
  - Business partners
  - Vendors that are “businesses”
- **Register as a data broker**
  - Business
  - Sells data
  - Does not have a direct relationship with the consumer.
  - January 1<sup>st</sup>, 2021
  - Database to be created by California AG Office

# Enforcement

Civil Penalties &  
Private Right of Action  
for Data Breaches



## ■ Private right of action

- Breach affecting specific PI elements when non-encrypted and non-redacted an individual's **first name or first initial and last name** in combination with:
  - Social security number.
  - DL number, California ID card number, tax ID number, passport number, military identification number, or other gov. issued ID number used to verify identity.
  - Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.
  - Medical information / Health insurance information.
  - Unique **biometric data** (e.g. fingerprint, retina, or iris image, used to authenticate a specific individual). Does not include a physical or digital photograph, unless used or stored for facial recognition purposes.
  - Data collected through the use or operation of an **automated license plate recognition system**
- Resulting from a failure to implement and maintain “***reasonable security procedures***”
- Consumer must provide 30 days prior notice of violation an the business may “cure”

## ■ Statutory damages

- \$100 to \$750/person or actual damages, whichever is greater

- **Consider Validation Rules for Right to Know**
  - Only two pieces of information needed to confirm identity
  - Seems easily hacked...
  - Will Right to Know request by third-party result in private right of action?
- **TCPAWorld dwellers know a thing or two about manufactured lawsuits**
- **Czar Says: This is the single most overlooked and dangerous provision of CCPA.**

- **B&P Code Section 17200**
  - As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice...
  - "Generally, violation of almost any law may serve as a basis for a UCL claim...." *Jordan v. Paul Fin., LLC*, 745 F. Supp. 2d 1084, 1098 (N.D. Cal. 2010)
  - "[t]o forestall an action under the unfair competition law, another provision must actually `bar' the action. . . ." *Cel-Tech*, 20 Cal. 4th at 183.
- **1798.150(c)**
  - Nothing in this title shall be interpreted to serve as the basis for a private right of action under any other law.
  - Similar to: "These rules are not intended to create new civil causes of action."

- CCPA Civil penalties:
  - Amount:
    - No more than \$2,500 for each non-intentional violation
    - No more than \$7,500 for each intentional violation
  - How do you count violations:
    - Per day?
    - Per consumer?
    - Per record?
- 30 day cure period:
  - A business is in violation if it “fails to cure” within 30 days of being notified of non compliance
- The role of the CA AG:
  - CCPA will be enforced by the California AG
  - Rulemaking authority on CCPA is granted on the California AG

- TCPA Civil penalties:
  - Amount:
    - No more than \$500 for each non-intentional violation
    - No more than \$1,500 for each intentional violation
  - How do you count violations:
    - Per phone call (and sometimes one phone call can violate two sections at once)
- No cure period:
  - A business is in violation right now.
  - Plus the law sometimes changes and makes you retroactively liable.

### The role of the CAAG:

- Involved, but other agencies and state AGs remain a much bigger deal.



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### CLE:

After the program, you will receive an email with the CLE affidavit to complete.

Please complete and PDF a copy of the signed form to Robin Hallagan at [robin.hallagan@squirepb.com](mailto:robin.hallagan@squirepb.com)

Code: CCPAF107

# TCPA and CallerID Reputation Solutions



Avoid TCPA Litigator Sharks



TCPA Re-Assigned Solution



Right Party Consent & Fraud Verification



TrustCall  
Solve for Spam Likely and Blocked Calls.  
Increase Contact Rates and Monitor CallerID



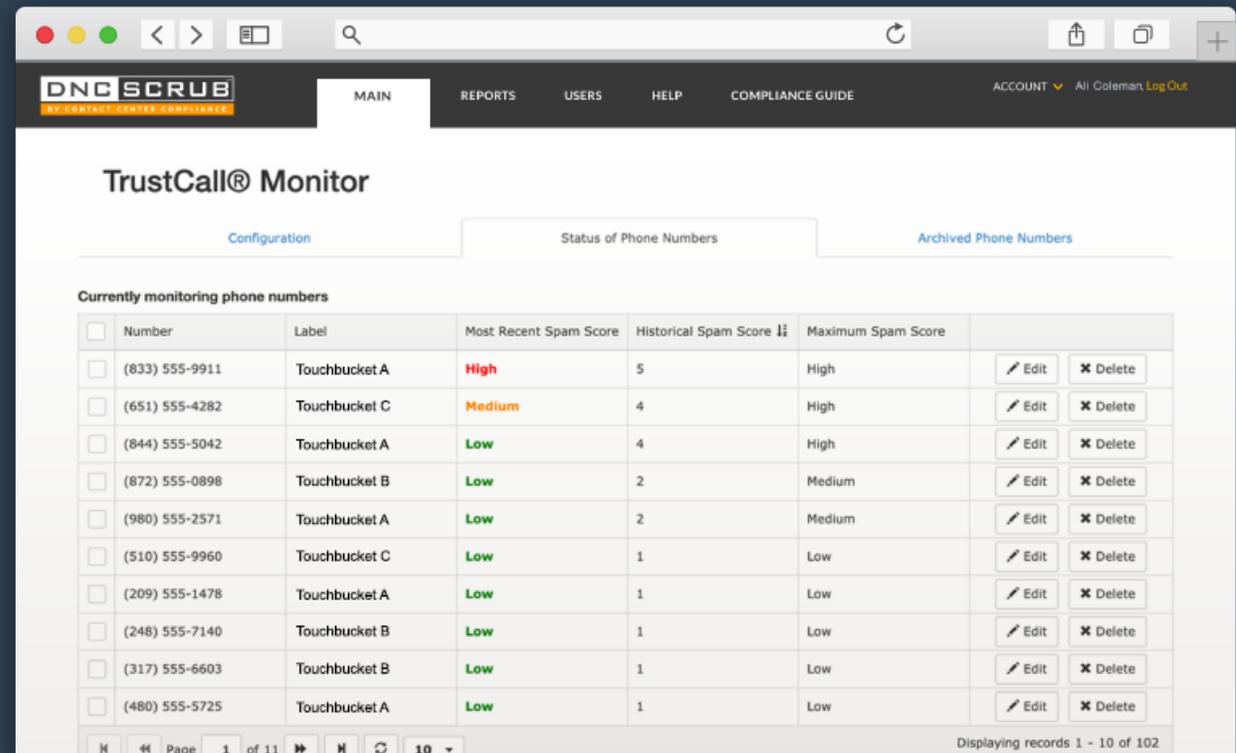
# TrustCall®

Stop unwanted caller ID blocking and labeling.

TrustCall® is a real-time monitoring and alerts dashboard that provides actionable intelligence to help you address unwanted call labeling and blocking issues. Proactively monitor the trust reputation of your outposted ANI numbers and get email notifications when it could directly impact your call deliverability.

## KEY FEATURES OF TRUSTCALL®

- Maximize call deliverability by identifying the "scam likely" or "spam likely" score of your ANI numbers
- Easily manage all your numbers in one place with the TrustCall® management dashboard.
- Daily and real-time alerts when the trust reputation of your outposted numbers changes.



The screenshot shows the TrustCall Monitor dashboard. At the top, there is a navigation bar with the DNC SCRUB logo and menu items: MAIN, REPORTS, USERS, HELP, COMPLIANCE GUIDE. The user is logged in as All Coleman. The dashboard title is "TrustCall® Monitor" and it has three tabs: Configuration, Status of Phone Numbers (selected), and Archived Phone Numbers. Below the tabs, there is a section titled "Currently monitoring phone numbers" which contains a table with the following data:

<input type="checkbox"/>	Number	Label	Most Recent Spam Score	Historical Spam Score	Maximum Spam Score	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	(833) 555-9911	Touchbucket A	High	5	High	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	(651) 555-4282	Touchbucket C	Medium	4	High	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	(844) 555-5042	Touchbucket A	Low	4	High	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	(872) 555-0898	Touchbucket B	Low	2	Medium	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	(980) 555-2571	Touchbucket A	Low	2	Medium	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	(510) 555-9960	Touchbucket C	Low	1	Low	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	(209) 555-1478	Touchbucket A	Low	1	Low	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	(248) 555-7140	Touchbucket B	Low	1	Low	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	(317) 555-6603	Touchbucket B	Low	1	Low	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	(480) 555-5725	Touchbucket A	Low	1	Low	<input type="checkbox"/>	<input type="checkbox"/>

At the bottom of the table, there is a pagination control showing "Page 1 of 11" and "Displaying records 1 - 10 of 102".

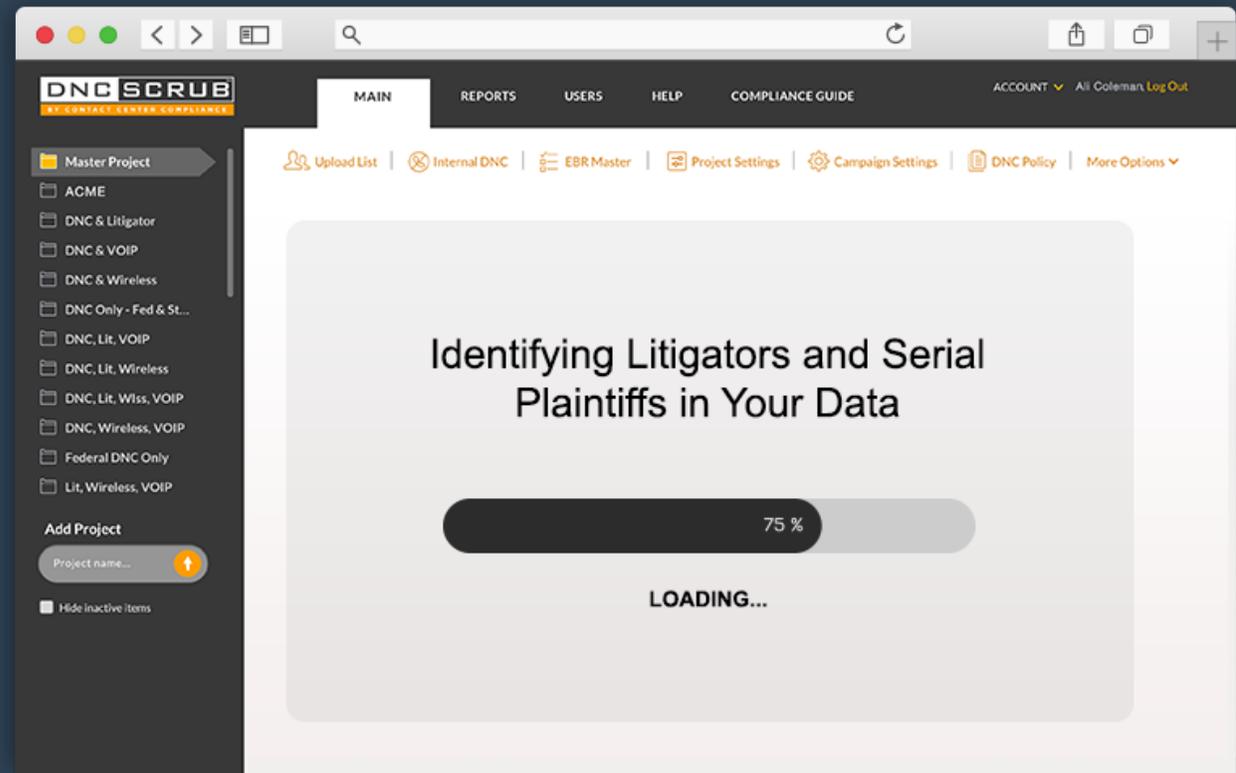
# Litigator Scrub®

The industry's most reliable and cost-effective defense against serial TCPA litigators and professional plaintiffs.

Any company that uses an autodialing system or automated text platform is at risk. All it takes is a single call or text to support a TCPA case. This has spawned a multi-million dollar litigation industry with record-breaking judgements.

## KEY FEATURES OF LITIGATOR SCRUB®

- Identify litigators in real-time on both inbound and outbound campaigns with our robust API or one of our many convenient CRM integrations.
- Built from the ground up by real industry experts.
- Every phone number is matched against a real case file, so you can minimize your risk while maximizing the phone numbers you can keep in your data.



# TCPA and DNCScrub®

Efficiently adhere to the latest Telephone Consumer Protection Act (TCPA) and Do Not Call List (DNC) regulations at both the state and Federal level.

Maximize the number of telephone numbers retained in your data by applying relevant exemptions while maintaining compliance with complex federal and state laws.

## KEY FEATURES OF DNCSCRUB®

- Scrub up to 200,000 records per minute
- Multi-user and multi-location support
- Identify wireless, VoIP and disconnected phone numbers.
- Perform retroactive scrubs and location-based scrubs.
- Manage your internal DNC list and DNC policy
- Actively monitor your Established Business Relationships
- TCPA and DNC training for direct marketers

The screenshot displays the DNC Scrub web application interface. The top navigation bar includes 'MAIN', 'REPORTS', 'USERS', 'HELP', and 'COMPLIANCE GUIDE'. The main content area shows the 'Master Project > Default Campaign' page. A 'QuickScrub' input field is visible. The 'Scrub Sessions' section highlights a completed session for 'Nevada-List.csv' with the following statistics:

Category	Value
Billable Phone Numbers	543,692
Malformed Records	3
VoIP	24,425
Clean	83,519
Invalid	31
Blocked	32
EBR	0
Wireless	70,573
Do Not Call	365,112

The session is marked as 'Completed' with a green checkmark. A 'DOWNLOAD OUTPUT FILE' button is available, showing a file size of 7.1MB. The interface also includes a sidebar with project management options and a top navigation menu with various settings and user options.



# 2019 Annual Florida TCPA Compliance Summit

December 10<sup>th</sup>, 2019

Vinoy Renaissance St. Petersburg

## Speakers

Eric Troutman, Attorney, Squire Patton Boggs (US) LLP

Eric aka the Czar of TCPAworld, has served as lead defense counsel in more than 50 national TCPA class actions and has litigated nearly a thousand individual TCPA cases.

Mark Brennan, Partner, Hogan Lovells (US) LLP

Mark specializes in privacy, communications, and consumer protection issues and is well-known for his victories on TCPA issues.



## Location

This year's summit will be held at the award-winning Vinoy Renaissance St. Petersburg Resort & Golf Club. The hotel is situated in the city's vibrant downtown district, just a short distance from attractions including Tropicana Field and the Dali Museum, as well as the Florida Aquarium and miles of pristine beaches.



# Free Caller ID Reputation and Litigator Check

## Questions?

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