



**Phone:** +27 (0)21 528 3420

**Fax:** +27 (0)21 552 2848

**Website:** [www.bulksms.com](http://www.bulksms.com)

4th Floor South Lobby  
Boulevard Place Heron Crescent  
Century City 7441 South Africa

## **PRESS RELEASE – SOUTH AFRICA**

**BULKSMS.COM**

August 2010

### **SMS and the law**

By: Dr Pieter Streicher, MD at BulkSMS.com

The high-profile Glenn Agliotti case has once again highlighted the role cell phones and SMS play in the law. Unsurprisingly, because cell phones are such an essential part of our everyday lives, and track just about all of our movements and communications.

In the Agliotti case, Clinton Nassif's cell phone records were subpoenaed by the court from Vodacom and the times of calls and messages were used to show that the former security consultant had lied in previous testimony about his communication with Agliotti. Later, in the same trial, MTN was wrapped over the knuckles for not waiting to receive a Section 205 subpoena before releasing Agliotti's cell phone records.

Pieter Streicher, managing director of BulkSMS.com, takes a look at SMS's role in preventing crime, enforcing the law and its legal standing.

### **Preventing crime**

From a crime prevention point of view, SMS is immensely powerful thanks to its ability to allow anonymous tip-offs. The Primedia Crime Line service, which was launched in June 2007 and offers an SMS tip-off line, has resulted in 941 arrests, and the recovery of more than R35.7 million's worth of stolen property, drugs and counterfeit goods.

SMS also has the capacity to quickly and easily reach a large number of people on the move and is used effectively by the police force to co-ordinate and receive information from mobile volunteers, and also by neighbourhood watch schemes.

### **Law enforcement**

When it comes to law enforcement, SMS's are considered to be written documents according to the Electronic Communications and Transactions Act (ECT) and are admissible as evidence in both a criminal and civil court case. Just like an ordinary document would be assessed by the court to determine its integrity and evidential weight – for instance an original copy of a document with signatures would count more than a poor photocopy – SMS's are assessed based on their electronic details including when they were created, sent, modified or delivered.

As with any other evidence, and as seen in the Agliotti trial, a subpoena is needed to access an individual's cell phone records. The regulation of Interception of Communications and Provision of Communication-related Information Act (more popularly known as RICA) has been put in to place specifically to make it easier to connect a cell phone account with a specific individual.



From a practical point of view, SMS can also be very helpful in making the courts run smoothly. Simply by texting a witness the details of their court appearance and any delays can make the courts run more efficiently. Likewise lawyers can use SMS to keep their clients up to date with lengthy legal processes.

### **SMS's legal standing**

As mentioned above, SMS's are legally equivalent to written documents and so written contracts may be legally concluded via an SMS. Saved SMS's are also adequate proof that a contract has been entered into. SMS's can therefore be immensely useful in confirming and keeping a record of verbal agreements.

Although spoofing - where a message appears to come from someone it doesn't - is possible, by comparing the network logs with the billing logs, courts can establish whether or not a message was sent from a specific cell phone account.

In light of the fact that SMS's can serve as written contracts, companies need to consider how they archive the SMS's their employees send. King III specifically requires company directors to manage foreseeable risks arising from the use of information and communications technologies. In addition, other legislation specifies that certain records be archived for a minimum amount of time. Companies should consider using a desktop SMS application that backs-up sent and received SMS's rather than having their employees use their handsets, in order to comply with the law.

But, company cell phones fall into the same category as any other company electronic equipment. As long as the employer can show they have informed the employee about the company policy with regards to monitoring electronic communications, and that the employee has accepted, the employer may access employee communications.

The cell phone's inherent features make it a useful tool in tracking communications allowing it to aid in law enforcement and crime prevention. An SMS may only be 160 characters long, but legally it has the same clout as far lengthier communications and should be handled accordingly.