

Privacy Laws and Notice Requirements for Electronic Recording of Telephone Conversations

The information herein is public domain general information concerning electronic recording of telephone conversations.

Re-Invent Telecom, LLC. is not dispensing any legal advice nor does it profess the accuracy of the information provided. If you have questions concerning legal implications of the following information, specific issues related to taping, how these issues apply in particular states or the legal ramifications of the use of this service, you should contact an attorney for advice.

Re-Invent Telecom, LLC. is not legally responsible for any misinterpretation, lack of understanding or lack of knowledge regarding the use of electronic recordings or the use of its services by a purchaser or other party whether legal or illegal. It is your responsibility to acquaint yourself with the proper knowledge for legal use of these services. Please see warranties language below.

There are both federal and state statutes governing the use of electronic, mechanical or other device recordings. The unlawful use of such equipment can give rise not only to a civil suit by the "injured" party, but also criminal prosecution. Accordingly, it is critical that you know the statutes that apply and what the rights and responsibilities are when recording and disclosing communications.

Call recording laws vary from state to state. These laws pertain to obtaining either single party (only you, the caller need to provide consent) or multi-party consent (all parties on the call need to provide consent) before a call can be recorded. If you are calling from or to a multi-party consent state, then the consent of all parties on the phone is required to record the call. If you are calling from and to a single party consent state, then additional consent is not required. The following links are provided as a guide on federal and state call recording laws but by no means is this information the ultimate source on the subject and is included for informational purposes only:

1. Consent
2. Federal and State Laws
3. State Statutes
4. Business Telephone Exception
5. Evidentiary Issues
6. Recording Telephone Calls with Parties in Different Jurisdictions
7. The Role of FCC
8. References

1. Consent

US Federal laws only require a single party to consent to recording a telephone conversation. However, individual states have laws that require multiple parties to a call to provide consent. Federal and many state laws do not protect recording of calls for criminal or tortuous purposes.

2. Federal and State Laws

Federal Statute: Electronic Communications Privacy Act of 1986 ("ECPA"), 18 U.S.C. §§ 2510-2522.

There are two exceptions to the prohibition against call monitoring:

Consent of at least one party to the call
Ordinary course of business exception

The ordinary course of business exception applies where the call recording concerns the legitimate operation of and during "ordinary course of business".

<http://uscode.house.gov/download/pls/18C119.txt>

The Federal Communications Commission (FCC) (48 C.F.R. Sec. 64.501) requires at least one of the following measures be taken when recording an interstate phone call:

1. Both parties consent to the recording; or
2. The recording party must give verbal notification before recording; or
3. There must be a regular electronic beep tone during recording.

3. State Statutes

While the U.S. federal law only requires one-party consent, many states have drafted different statutes. In some states, all parties must give their consent or at least be notified that the call is about to be recorded (with necessary opt-out option: if you don't like them to record the call, you can ask them to stop recording). A 1950s Supreme Court case affirmed that the federal law does not supersede state authority/statutes unless the call or the tap crosses state lines - which is why each state has established their own laws.

States Requiring Single Party Notification

Alabama	Louisiana	Oregon
Alaska	Maine	Ohio
Arizona	Minnesota	Rhode Island
Arkansas	Mississippi	South Carolina
Colorado	Missouri	South Dakota
District Of Columbia	Nebraska	Tennessee
Georgia	New Jersey	Vermont
Hawaii	New Mexico	Virginia
Idaho	New York	West Virginia
Illinois	North Carolina	Wisconsin
Indiana	North Dakota	Wyoming
Iowa	Oklahoma	
Kansas	Texas	
Kentucky	Utah	

States Requiring Two (or Multi-) Party Notification

California	Massachusetts	New Hampshire
Connecticut	Maryland	Nevada
Delaware	Michigan	Pennsylvania
Florida	Montana	Washington

Individual State laws can be found at <http://www.rcfp.org/taping/taping.html>

4. "Business telephone" exception

The "business telephone" exception, which generally allows monitoring of calls and taping over an extension phone which is both provided to a subscriber in the ordinary course of a telephone company's business and is being used by that subscriber in the ordinary course of its business. This provision generally permits businesses to monitor the conversations of their employees, including personal conversations.

Penalties: The federal statutes provide criminal penalties for unlawful interception of telephone conversations, including up to five years' imprisonment or a maximum of \$10,000 in fines. They also allow for civil remedies, by which private parties are entitled to recover actual and punitive damages, together with fees and costs.

5. Evidentiary Issues

Individuals and businesses that make surreptitious recordings often do so with the expectation that the recordings will be useful as evidence. Such recordings are subject to significant barriers to use as evidence. First, if made in violation of either federal or state law, the recordings will almost certainly be inadmissible. Second, even if lawfully recorded, the tapes will be exempt from the hearsay rule and will not, in most jurisdictions, be usable for impeachment. Anyone contemplating an evidentiary use of surreptitious recordings should consult with an attorney prior to making the recording.

6. Recording Telephone Calls with Parties in Different Jurisdictions

Federal law may apply when the conversation is between parties who are in different states, although it is unsettled whether a court will hold in a given case that federal law "pre-empts" state law, but either state may choose to enforce its own laws. Therefore it is better to err on the side of caution when recording an interstate telephone call.

7. The Role of FCC

The FCC's role in assisting consumers who believe their telephone conversations were unlawfully recorded is generally limited to ensuring that telephone companies enforce their tariff provisions regarding recording of telephone conversations. The only penalty that can be enforced by the local carrier is revocation of telephone service. (In the Matter of Use of Electronic recordings in Connection with Telephone Service.)

The FCC protects the privacy of telephone conversations by requiring notification before a electronic recording is used to record interstate or foreign telephone conversations. These types of conversations may not be recorded unless the use of a electronic recording is:

Preceded by verbal or written consent of all parties to the telephone conversation; or
Preceded by verbal notification which is recorded at the beginning, and as part of the call, by the recording party; or
Accompanied by an automatic tone warning device, sometimes called a beep tone, which automatically produces a distinct signal that is repeated at regular intervals during the course of the telephone conversation when the electronic recording is in use.

Also, no electronic recording may be used unless it can be physically connected to and disconnected from the telephone line or switched on and off.

The above FCC rule requirements apply to telephone common carriers. Similar requirements are imposed on consumers through the carriers' tariffs.

8. References

Electronic Communications Privacy Act of 1986 ("ECPA"), 18 U.S.C. §§ 2510-2522 <http://uscode.house.gov/download/pls/18C119.txt>

The Reporters Committee for Freedom of the Press: A Practical Guide to Taping Phone Calls and In-Person

Conversations in the 50 States and D.C. <http://www.rcfp.org/taping/>

FCC Consumer Information Bureau <http://www.fcc.gov/cib/>

"Recording Telephone Conversations" http://www.fcc.gov/Bureaus/Common_Carrier/Factsheets/record.html

"Interception And Divulgence Of Radio Communications" http://www.fcc.gov/Bureaus/Common_Carrier/Factsheets/investigation.html

U.S. Department of Justice <http://www.usdoj.gov/>

USA Bulletin, September 1997 Vol. 45, No. 5, 6. Electronic Investigative Techniques I, II:

http://www.usdoj.gov/usao/eousa/foia_reading_room/usab4505.pdf

http://www.usdoj.gov/usao/eousa/foia_reading_room/usab4506.pdf

Telephone Tape Recording Law. Ralph Thomas. National Association Of Investigative Specialists <http://www.pimall.com/nais/n.tel.tape.law.html>