

CALL RECORDING eBOOK

Call Recording Laws Around the World



The Legal Landscape of Call Recording

Call recording software is a powerful tool for any business, enabling you to train and monitor staff, ensure the quality of customer service, acquire valuable customer data, resolve disputes, and so much more.

But any organization that employs call recording software must be aware of the legal requirements that govern the use of call recording in different geographic jurisdictions. Failure to comply with these legal restrictions could result in severe penalties, both financial as well as reputational.

This brief ebook will discuss some of the different laws in various countries (and states) related to the use of call recording software. And if there's one thing to bear in mind, it's this:

Many countries around the world honor the right of privacy inherent in a telephone conversation between two or more parties.

Following is a summary of call recording laws in:

- United States
- United Kingdom
- India
- Denmark
- Germany
- Canada
- Finland
- Romania
- Australia



NOTE: OrecX is not a legal firm and this ebook is not intended to provide legal advice. To ensure proper compliance in your region, please consult a lawyer.

Call Recording in the U.S.: Protected by Federal Privacy Laws



As most U.S. citizens are likely aware, laws in the U.S. are very stringent with respect to under what circumstances civilian calls can be recorded.

In general, telephone recordings in the U.S. are governed by the following Federal law (with further refinements by individual states):

U.S. Federal law requires that at least one party taking part in a call be notified of the recording. (18 U.S.C. §2511(2)(d)).

Under this law, for example, it is illegal to record, without notification, the phone calls of people who come into a place of business and ask to use the telephone.

Acceptable Forms for Notification about Call Recording

The U.S. Federal Communications Commission (FCC) defines accepted forms of notification for telephone recording as:

1. Verbal (oral) notification before the recording is made. Note that this is the most commonly used type of notification. In most cases, this is covered by a “This call may be monitored for training and quality control purposes” disclaimer during customer service calls.
2. Prior verbal (oral) or written notification of all parties to the telephone conversation.
3. An audible beep tone repeated at regular intervals during the call.

U.S. State Laws also Govern Call Recording



In addition to Federal privacy laws, all U.S. states have state laws protecting civilians from their calls being recorded.

The following states require that ALL parties on a call grant permission for the call to be recorded:

- California
- Connecticut
- Florida
- Hawaii (in general a one-party state, but requires two-party consent if the recording device is installed in a private place)
- Illinois
- Maryland
- Massachusetts
- Montana
- New Hampshire
- Pennsylvania
- Washington

All other states (and the District of Columbia) not listed on the left as all-party consent states require only ONE-PARTY consent.

There are a few finer points:

- **Illinois:** Illinois courts have ruled that "eavesdropping" only applies to conversations that the party otherwise would not have been able to hear, thereby effectively making it a one-party consent state.
- **Michigan:** Michigan courts have ruled that eavesdropping only applies to: "a third party not otherwise involved in the conversation being eavesdropped on." Michigan law is sometimes misinterpreted as requiring the consent of all parties to a conversation.
- **California:** The California Supreme Court ruled in 2006 that if a caller in a one-party state records a conversation with someone in California, that one-party state caller is subject to the stricter of the laws and must have consent from all callers (cf. *Kearney v. Salomon Smith Barney Inc.*, 39 Cal. 4th 95.) However, non-disclosure recordings by one of the parties can legally be made if the other party is threatening kidnapping, extortion, bribery, or other felony violence. (California Penal Code § 633.5).

Call Recording in the United Kingdom



Call recording laws in the U.K. (which includes England, Scotland, Wales and Northern Ireland) differ from those in the U.S.:

- ❖ The Regulation of Investigatory Powers Act 2000 (“RIPA”) prohibits interception of communications by a third party, with exceptions related to government agencies.
- ❖ A recording made by one party to a phone call without notifying the other is not prohibited, provided that the recording is for their own use.
- ❖ Recording without notification is prohibited where contents of the communication are made available to a third party.

Relevant laws in the U.K. with respect to call recording include:

- Regulation of Investigatory Powers Act 2000 (“RIPA”). Under RIPA, unlawful recording or monitoring of communications is a tort, allowing civil action in court.
- Data Protection Act 1998
- Telecommunications (Data Protection and Privacy) Regulations 1999
- Human Rights Act 1998

In the U.K., businesses may record with the knowledge of their employees, but without notifying the other party, to:

- (1) provide evidence of a business transaction
- (2) ensure that a business complies with regulatory procedures
- (3) see that quality standards or targets are being met
- (4) protect national security
- (5) prevent or detect crime
- (6) investigate the unauthorized use of a telecommunications system
- (7) secure the effective operation of the telecommunications system

A Special Requirement in the U.K. Financial Services Industry

Mobile Phones!

In some cases in the U.K., call recording is mandatory, especially in cases where business transactions are carried out by telephone, in order to provide a verbal “paper trail.”

For example, beginning in March 2009, rules of the Financial Services Authority required companies to record all telephone conversations and electronic communications relating to client orders and the conclusion of transactions in the equity, bond and derivatives markets.

In November 2011, this was extended to cover the recording of **mobile phone conversations** that related to client orders and transactions by regulated firms.



<http://www.orecx.com/products-orekamr.php>

OrecX
Open Source Recording

Brief Sampling of other Call Recording Laws Around the World

It's impossible to describe all of the call recording laws in effect around the world. Here's a sampling of laws in a handful of countries... please consult your business or legal advisor for additional details:

Canada *Yes Record, with Consent*

- Canadian Personal Information Protection and Electronic Documents Act mandates: Individuals must be informed that the conversation is being recorded at the beginning of the call. If the caller objects to the recording, the organization should provide the caller with meaningful alternatives (e.g. visiting a retail outlet; writing a letter; or, conducting the transaction over the Internet).
- The individual must be advised of the purposes of the call.

India *Yes, Law is Unclear*

- The ability to legally record telephone calls is not clear, although their use in court proceedings has been granted.
- Recording telephone calls can cross the line into privacy issues, especially if consent is not granted by both parties.
- However, there is no absolute mandate on recording calls in general.

Germany *Yes, with Consent*

- Telephone recording without the consent of the two or, when applicable, more, parties is a criminal offense according to Sec. 201 of the German Criminal Code and is considered a violation of the confidentiality of the spoken word.

Australia *No, Can't Record*

- The federal *Telecommunications (Interception and Access) Act 1979* and State and Territory listening devices laws may both apply to monitoring or recording of telephone conversations. The general rule is that the call may not be recorded.
- If a call is to be recorded or monitored, an organization must tell you at the beginning of the conversation so that you have the chance either to end the call, or to ask to be transferred to another line where monitoring or recording does not take place.

A brief sampling of other call recording laws around the world

Romania ***Yes, No Consent***

- Intercepting communications falls under the provisions of the Penal Code and, in the case of electronic communications, under the Telecommunications Act (676/2001). The recording of a conversation by a private member to that conversation is specifically permitted. Nevertheless, while such recordings are legal, making use of them may fall subject to further civil or criminal law. Their admissibility as evidence also depends on the circumstances.

Finland ***Yes, No Consent***

- In the case of private persons, calls and conversations may be recorded by any active participant. There is no requirement to make other parties aware of the recording, but the use of recordings, depending on their content, may be subject to various laws, such as data protection (privacy) legislation, libel laws, etc.
- Recording of calls by a company or an employer is subject to data protection legislation and requires informing the participants prior to recording.

Belgium ***Yes, if Participant of the Call***

- While it is legal under Belgian law to record a conversation as a participant, even if the other participants are not aware of it, it is illegal under Article 314bis of the Criminal Code to record conversations without the consent of all participants if the recorder is not a participant in the conversation. (allenovery.com)

France ***Yes, Only of Employees***

- Public and private companies can monitor and/or record their employees' incoming and outgoing telephone calls in the workplace but must comply with a number of requirements.
- Purpose of the call must be employee training or performance review, or the improvement of service quality.
- Only periodic monitoring/recording of employee phone calls is authorized (as opposed to permanent or systematic monitoring/recording);
- Recordings may be retained for a maximum of six months

Sources

- <http://www.iuscomp.org/gla/statutes/StGB.htm#201>
- <http://news.rediff.com/report/2010/apr/26/phone-tapping-what-1997-supreme-court-verdict-says.htm>
- <http://www.legislation.gov.uk/ukpga/2000/23/contents>
- <http://www.fsa.gov.uk/library/communication/pr/2008/017.shtml>
- <http://complianceandprivacy.com/News-Dechert-Telephone-Monitoring.html>
- <https://www.law.cornell.edu/uscode/text/18/2511>
- <https://www.fcc.gov/guides/recording-telephone-conversations>
- <http://www.fixyourthinking.com/2004/01/recording-phone-call-laws-by-state.html>
- <http://www.rcfp.org/reporters-recording-guide>
- http://en.wikipedia.org/wiki/Telephone_recording_laws
- <http://www.dmlp.org/legal-guide/recording-phone-calls-and-conversations>

OrecX

Open Source Recording



#1 Call Recording Vendor
on the List

To learn more about OrecX call recording software, please visit:

<http://www.orecx.com/products.php>

You can also reach OrecX directly at 312-945-7622 or sales@orecx.com.

