

# SimpleSignal Call Recording Regulations

## Call Recording Laws

### Recommendations for Buying or Installing a Call Recording System

Those interested in purchasing and/or installing a call recording system should familiarize themselves with their local, national, and international call recording laws. Call recording is an incredible business tool when integrated into a business practice. Especially for phone-based employee training, to prove compliance with industry regulations, billing support, dispute resolution and insurance claims. Ultimately, it is the responsibility of the call recording initiator to understand and adapt to the consent regulations involved with call recording.

### The Legalities of Call Recording

Because call recording regulations are complicated—and the penalties for infringement strict—it's vitally important for organizations considering call recording to arm themselves with the knowledge and resources to legally protect their interests. The federal government, state governments, and the FCC all have different regulations that generally include wiretapping and eavesdropping legislation to determine call recording legality. The most common determinant of legality for all three entities, however, is the presence of consent.

### Who Determines Call Recording Jurisdictions?

Because there are three separate entities (i.e., the federal government, state governments, and the FCC) that determine call recording regulations, it's important to understand the jurisdictions of each:

- **The Federal Government** - The federal government does not define a large amount of specific legislation for call recording. It does, however, require one-party consent.
- **State Governments** - State governments generally have more well-defined call recording laws and penalties. With the exception of calls involving felonies or threats, only 13 states require all-party consent.
- **The FCC** - The FCC requires that all parties in a recorded interstate call be notified either verbally or through an intermittent beep of the recording. Lawsuits involving interstate telephone calls have been judged in both the originating state and in the receiving state, so it's recommended that the stricter state guidelines are followed when recording interstate calls.

### What about International Laws?

International call recording regulations vary widely, and the local government's telecommunications authority should be consulted prior to initiating a call recording system. Many countries do not have specific laws covering telecommunication issues, and thus operate on a case-by-case basis. In some countries, a corporate literature declaration of call recording is considered sufficient consent.

### What is Call Recording Consent?

**One-Party and All-Party States**- All states have their own laws regarding call recording. The key differentiator being that in some states one person on the call has to provide informed consent to the recording. In other states all parties on the call must consent to the recording. Most states are one-party states; however, there are 12 states that remain all-party states. Those jurisdictions are **California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, Pennsylvania and Washington**. Be aware that you will sometimes hear these referred to inaccurately as "two-party consent" laws. If there are more than two people involved in the conversation, all must consent to the taping. It is illegal in all states to record a conversation to which you are not a party, do not have consent to tape, and could not naturally overhear.

- **One-Party Consent**- One-party consent implies that at least one person within the conversation is aware of the call recording—even if that person is the one actually conducting the recording. Thirty-eight states and the District of Columbia permit individuals to record conversations to which they are a party without informing the other parties that they are doing so.
- **All-Party Consent**- In all-party consent, everyone within the conversation must be informed of the call recording either by verbal notification or with an intermittent beep. Therefore, if two people are conducting a conversation and a third person joins in, the third person must be notified of the call recording to comply with regulation.

These laws are referred to as "one-party consent" statutes, and as long as you are a party to the conversation, it may be legal for you to record it. (Nevada also has a one-party consent statute, but the state Supreme Court has interpreted it as an all-party rule.)

Federal law and most state laws also make it illegal to disclose the contents of an illegally intercepted call or communication. And undercover recording in a private place can prompt civil lawsuits for invasion of privacy.

**Consent and its Limits** - Generally, you may record, film, broadcast or amplify any conversation where all the parties to it consent. It is always legal to tape or film a face-to-face interview when your recorder or camera is in plain view. The consent of all parties is presumed in these instances.

The use of hidden recorders is covered by the wiretap and eavesdropping laws. You should check with an attorney regarding the laws of your state or states, as well as federal laws.

**Criminal Purpose** - When thinking about taping a conversation: consent requirements under state and federal laws must always be met, and taping can be illegal if it is done in furtherance of a crime.

**Trespass** - A party, whose conversation is surreptitiously recorded, with a tape recorder, may also raise such claims as trespass and intrusion, examining the issue of the scope of a party's consent.

**Expectations of Privacy** - When using this recording software there may be a potential issue with whether or not the party had a reasonable expectation of privacy with regards to the use of the taped conversation.

For additional information you can go to: The Reporters Committee for Freedom of the Press @ [rcfp.org/taping/states.html](http://rcfp.org/taping/states.html) Wikipedia.org/wiki/telephon\_tapping

**So what happens when a one-party state calls an all-party state?**

For example, someone in Illinois (a one-party state) calls someone in Michigan (an all-party state). If the call is not recorded it may be under federal legislation. All interstate calls, (state-to-state calls) are subject to federal law. In this case it is best to evaluate the federal laws as well as the laws for both states.

## Obtaining Consent/ Caller Notification

There are many different ways to obtain consent from both employees and callers to record a call. The most common way to inform employees is a signed document that informs them that their calls may be monitored. As for callers, most are informed by a recorded voice at the beginning of the call. We have all heard it before, "This call may be monitored or recorded." This is best used after any touch-tone or voice prompting before the caller is connected to an agent. Beep tones can also be used. These are specific beeps that are heard for the duration of the call and must be within 1260-1540 Hertz, and last .17-.25 seconds. These beeps must go off every 15 minutes for the entirety of the call.

## Inbound vs. Outbound Calls

It is very easy to inform inbound calls of the recording with the "this call will be recorded" message at the beginning of the call. Outbound calls; however, are a little more tricky. Having a recorded message play "this call will be recorded" before the call is connected is an option, but not a very good one since people generally will not wait until the call connects. Another option is to have your agent announce the recording..."Hello, this is Shelley with SimpleSignal calling on a recorded line." Although, this method is not issue-free either because if the phone switches hands mid-call, the recording must be announced again since every person on the phone must be informed of the recording. If you do not want to open your call with a recorded notification, SimpleSignal recommends you do not record outbound calls to all-party states. SimpleSignal is here to help provide the ultimate call recording solution to fit your businesses needs. But remember, Ultimately, it is the responsibility of the business to familiarize with these regulations and adhere to them in their day-to-day business practices.

**Additional Resources** For more information on the laws governing call recording, please explore these resources:

<http://www.fcc.gov/cgb/consumerfacts/recordcalls.html>

<http://www.rcfp.org/taping/> <http://telecom.hellodirect.com/docs/reviews/CallRecorders.1.050201.asp>

<http://www.telephonerecordersdirect.com/legalcallrecording.asp>

\*Disclaimer: SimpleSignal cannot accept any liability for legal information provided for your convenience. Any individual or organization considering telephone call recording should seek legal advice from a local attorney.

## Other Call Recording Regulations

**Insurance Claims and Healthcare** - Insurance claims should be recorded to provide clear evidence of what is agreed to and discussed in a claim. This eliminates he-said-she-said disputes and holds both parties to the fact of the

discussion that took place on the phone. This can protect and save your company money in the case of untrue claims.

**Phone-Based Employees** - When training a new phone-based employee, pre-recorded calls are generally preferred to live customer interaction as examples to train the employee. The same recordings that are used for regulation purposes have potential for use in dispute resolution. Any company providing sales and service support on the phone can benefit by using recorded calls for a myriad of purposes.

**Billing Support** - When goods or services are purchased by phone, the law requires that all disclaimers, terms and conditions of the purchase be clearly explained to the buyer. A recording not only proves that all disclaimers, terms and conditions were clearly explained but can be used as proof that the agent followed the company processes.

**To Prove Compliance with Industry Regulations** - There are a great deal of industries that have regulations upon them that make it necessary to record all calls for a variety of reasons. While many industry regulations, such as the Telemarketing Sales Rule (TSR), do not clearly require that calls be recorded, a recorded call can be used to settle a claim against a company's behavior in relation to the act, reducing liability and exposure. While the seeming need for this recording is subjective, the benefit from being able to effectively resolve or settle this type of dispute is obvious.

### Federal and Industrial Regulations Compliance

- Sarbanes-Oxley Act: The Sarbanes-Oxley Act of 2002 is the public company accounting reform and investor protection act.
- Gramm-Leach-Bliley Act (GLBA): Requires financial institutions to design, implement, and maintain safeguards to protect customer information.
- PCI Data Security Standard: Outlines best practices for credit card data that is stored, processed, or transmitted. All merchants, banks, and service providers that store, process, or transmit cardholder data must comply with the PCI Data Security Standard.
- Truth in Lending Act (TILA): Ensures that borrowers are completely aware of the terms and costs of credit so they have the ability to make an educated decision about the loan they agree too.
- Telemarketing Sales Rule (TSR): The rule requires telemarketers to make certain disclosures and prohibits lies.
- Fair Debt Collection Practices Act (FDCPA): This act provides guidelines for collection agencies that are seeking to collect legitimate debts, while providing protections and remedies for debtors. The rule requires telemarketers to make certain disclosures and prohibits lies.

## Telemarketing Sales Rule (TSR)

If you are a call center or a company engaged with phone-based sales people, you understand the importance of adhering to Telemarketing Sales Rule (TSR) regulations, reducing liability, and maintaining records of compliance. SimpleSignal understands, too. That's why our Call Recording solution is built with your needs in mind.

### What is the Telemarketing Sales Rule (TSR)?

Companies use call recording to prove their compliance with the TSR. TSR covers telemarketing - including any plan, program, or campaign to sell goods or services through interstate telephone calls. The rule requires telemarketers to make certain disclosures and is designed to prevent lies. It gives state law enforcement officers the authority to prosecute fraudulent telemarketers who operate across state lines, and it gives consumers instructions on how to stop unwanted calls. Just say, "Put me on your DO-NOT-CALL list."

### Who Must Comply with the Amended TSR?

The amended TSR regulates "telemarketing" — defined in the Rule as "a plan, program, or campaign... to induce the purchase of goods or services or a charitable contribution" involving more than one interstate telephone call. (The FCC regulates both intrastate and interstate calling. More information is available from [www.fcc.gov](http://www.fcc.gov).) With some important exceptions, all businesses and individuals that take part in "telemarketing" must comply with the Rule. This is true whether, as "telemarketers," they initiate or receive telephone calls to or from consumers, or as "sellers," they provide, offer to provide, or arrange to provide goods or services to consumers in exchange for payment. It makes no difference whether a company makes or receives calls using low-tech equipment or the newest technology — such as voice response units (VRUs) and other automated systems. Similarly, it makes no difference whether the calls are made from outside the United States; so long as they are made to consumers in the United States, those making the calls, unless otherwise exempt, must comply with the TSR's provisions. If the calls are made to induce the purchase of goods, services, or a charitable contribution, the company is engaging in "telemarketing."

Any retail business that conducts any business over the phone can be subject to the TSR Rule: even if the initial transaction is exempt because it is an unsolicited call from a consumer, a response to a general media advertisement or certain direct mail solicitations, or an outbound non-sales call (say, a customer service call), any upsell following the initial transaction is subject to all relevant provisions of the Rule.

## Other Key Provisions

Requires disclosure of specific information

Prohibit misrepresenting calls that deliver purely "Informational" Prerecorded Messages

Limits when telemarketers can call consumers

Requires transmission of caller ID information

Prohibits abandoned outbound calls, subject to a safe harbor

Prohibits unauthorized billing

Sets payment restrictions for the sale of certain goods and services

Requires that specific business records be kept for two years

**How does SimpleSignal Call Recording help your business stay compliant?** By easily keeping precise records of all call communication! A call recording does not lie. You will have solid proof of activities such as sales calls, orders and conversations that took place over the phone.

Multiple product permission settings to ensure call recording security

Powerful encryption of each call to protect confidential information

Intuitive user interface that helps users find recorded information quickly and easily- anywhere, anytime

Efficient playback features that can be activated based on different search parameters

Flexible recording options that enable program administrators to specify unique program configurations

What happens if you fail to comply? "Failure to provide any of the required information in a "clear and conspicuous" manner, before the consumer pays for the goods or services offered, is a deceptive telemarketing act or practice that violates the rule, and subjects a seller or telemarketer to a \$10,000 fine for each violation."

## Example of Fine

Court Orders Cross-Border Telemarketers to Pay Nearly \$5 Million: Canadian Defendants Fraudulently Pitched Advance-Fee Credit Cards and "Free" Gifts "The FTC's complaint charged the defendants with using outbound telemarketing to call United States consumers. For an advance fee of \$319, which they electronically debited from the consumers' bank accounts, the defendants promised that they could deliver Visa or MasterCard credit cards, along with free gifts such as cell phones. No consumers who paid the money received either credit cards or "complimentary" gifts. Accordingly, the court found the defendants violated Section 5 of the FTC Act and the TSR and ordered them to pay \$4,997,695.60."

Example - Shipping information that was updated on the sales call. When you take orders by telephone, you may choose to provide prospective customers with updated shipment information. This may differ from what you said or implied about the shipment time in your advertising. The updated shipment information you provide on the telephone supersedes any shipment representation you made in the advertising. You also must have a reasonable basis for the updated shipment representation. SimpleSignal's call recording can prove you're compliance in these instances, 100%. Recordkeeping is crucial in a telephone-based employee business: It is key to have adequate records kept of the key events in each individual transaction.

Example - A consumer calls a department store to inquire about the price of a microwave oven. Because the call is not the result of a solicitation by the seller, the initial inquiry is exempt from the Rule. If the seller tries to upsell a refrigerator during the same call, the upsell transaction is subject to the Rule.

## REFERENCES:

<http://www.ftc.gov/bcp/edu/pubs/business/adv/bus02.shtm>

<http://www.ftc.gov/opa/2008/05/pacliberty.shtm>

<http://www.ftc.gov/bcp/consumer.shtm>.