

Voice Recording/Monitoring Guidelines

Any person considering interception, recording or monitoring of telephone calls is advised to seek independent legal advice and should not rely on the general information provided below. Oak Telecom accepts no liability or reliance by any person on the following information. The latest regulation for monitoring or recording telephone calls can be found in full in the following publications:

- Regulation of Investigatory Powers Act 2000
- Telecommunications (Lawful Business Practice)(Interception of Communications) Regulations 2000
- Data Protection Act 1998
- Telecommunications (Data Protection and Privacy) Regulations 1999
- Human Rights Act 1998

A summary of this information is given here as a guideline:

Informing Relevant Parties of Recording/Monitoring

It is not necessary to gain consent from participants in a telephone call before commencing recording, monitoring or intercepting. However, all reasonable efforts must be taken to inform all parties of the intent to record or monitor. This is generally achieved via information contained in advertisements, letterheads or within terms and conditions. It is also acknowledged that in certain circumstances it may not be appropriate to publicise the existence of recording equipment externally (i.e. monitoring a switchboard for bomb threats) and provision is made for this within the guidelines.

What Can Be Monitored

It is now acceptable to monitor or record without consent for the following purposes:

- Establishing the existence of facts
- Ascertaining compliance with regulatory or self-regulatory practices or procedures
- Ascertaining or demonstrating standards which are achieved or ought to be achieved by persons using the system
- Preventing or detecting crime
- Investigating or detecting unauthorised use of the business's telecoms system
- Ensuring the effective operation of the system

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In addition Public Authorities are permitted to monitor or record in the interests of national security. With the shift in all market sectors towards ever improving levels of customer service the guidelines have recently been relaxed to encompass recording for CRM purposes such as staff training and quality control. Businesses are now allowed to intercept without consent in order to ascertain or demonstrate the standards which ought to be achieved by persons using their systems. It is also now permissible to intercept communications without consent in order to investigate or detect unauthorised use of telecoms equipment.

Employee Rights

Employers are naturally permitted to intercept communications for keeping a record for all the areas mentioned above in the What Can Be Monitored section. It is also acceptable to monitor (but not record) phone calls that have been received to see whether they are relevant to the business. However, the recent European Convention on Human Rights judgement based on the principle that "everyone has the right to respect for his private and family life, his home and his correspondence" must be borne in mind. It may, therefore, not be sufficient to warn employees that their calls may be monitored because it is not reasonable to assume that people at work will never make or receive calls touching on personal and or domestic matters. This means there must be some way for employees to make and receive personal calls that will not be monitored or recorded in the workplace. As with external party's employers have an obligation to make all reasonable efforts to make internal employees aware that calls may be monitored or recorded. If this is regularly carried out it can be taken as implied consent and removes the expectation of privacy. Although not a strict legal requirement, it is certainly good practice to make staff aware of **why** their calls may be recorded. This will offer a higher degree of protection in case of a legal challenge. Further Information can be found by following the link below

www.dti.gov.uk/industries/ecomunications/annexc.html

Sources

Lawful Business Practice Regulations available from www.dti.gov.uk

Oftel information available from www.oftel.gov.uk

Personnel Today from www.personneltoday.co.uk

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