



Facts About Audio & The Law

State Laws On Consent

36 states and Washington D.C. employ “one-party” consent laws. If you are a party to the conversation, then you are able to record it. If not, then you will need the consent of one party in the conversation to record it.

15 states employ “all-party” consent laws. This requires all parties involved in the conversation to consent to recording.

Questions surrounding the legality and best practices for audio monitoring are some of the most common inquiries we receive from our customers. Here’s what you need to know.

Title 18, United States Code, Chapter 119, Section 2511(2)(III)(D) states:

“It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception...”



Overview

Federal and state laws differ as to the legality of recording phone calls and conversations. Determining which jurisdiction's law controls in cases involving recording devices or parties in multiple states can be complex, so it is likely best to adhere to the strictest applicable law when in doubt, and/or get the clear consent of all parties before recording.

Federal Law

Federal law (18 U.S.C. § 2511) requires one-party consent, which means you can record a phone call or conversation so long as you are a party to the conversation. If you are not a party to the conversation, you can record a conversation or phone call only if at least one-party consents and has full knowledge that the communication will be recorded. The statute also prohibits recording conversations with criminal or tortious intent.

State Law

Most states have enacted laws that are similar to the federal statute, meaning that they generally require one-party consent (click each state to see the details below).

One-Party Consent States

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

All-Party Consent States

- | | | |
|---------------|-----------------|-----------------|
| • California | • Maryland | • New Hampshire |
| • Connecticut | • Massachusetts | • Oregon |
| • Delaware | • Michigan | • Pennsylvania |
| • Florida | • Montana | • Vermont |
| • Illinois | • Nevada | • Washington |

Note that in many states, consent requirements only apply in situations where the parties have a reasonable expectation of privacy (e.g. not in a public place). Further, what constitutes "consent" in a given jurisdiction can vary in terms of whether it must be express or can be implied based on the circumstances.