

ILLEGAL RECORDING

All PRSA members pledge adherence to the Society's Member Code of Ethics. As issues arise relating to the practice of public relations, the Board of Ethics and Professional Standards (BEPS) is charged with providing guidance on such issues within the framework of the Code provisions. The PRSA Board of Directors then announces these guidelines through this series of professional standards advisories. These guidelines are for informational purposes only and not for the purpose of providing legal advice. Please consult an attorney to obtain legal advice regarding your specific situation. The [PRSA Member Code of Ethics](#) can be found online at www.prsa.org.

ISSUE:

Recording conversations and interviews via audio and/or video is a tool long used by public relations professionals and the media to ensure accuracy in reporting and as a memory aid. However, you must first consider applicable state and federal laws that govern when you may legally record another individual. State laws vary; in addition, there are federal laws that may apply and perhaps supersede state laws. In either case, failure to adhere to recording laws can have serious criminal and civil consequences.

Recording telephone calls or in-person conversations without proper consent may expose you not only to the risk of criminal prosecution, but also potentially give an injured party a civil claim for monetary damages against the individual doing the recording.

Most state and federal statutes that address wiretapping and eavesdropping usually apply to electronic recording of conversations, including phone calls and in-person interviews. Eavesdropping is described as listening in on conversations of others without their knowledge.

As a rule of thumb, you must receive consent from at least one, if not all, of the parties participating in the conversation. It would be prudent to ask for permission prior to recording and repeat the fact you are recording after you have turned on the recording device. Federal law and many state wiretapping statutes permit recording if one party — who can be the recorder if he or she is a participant — consents to the recording of the conversation. Some states require consent from *all parties* to the communication.

However, it's often difficult to tell which law applies, especially if the communication is a phone call that involves individuals from different states. In situations including multiple callers from various states, the safest course of action is to communicate your intentions to record the conversation and get the consent of all parties who are participating in the call. Full disclosure to all participants is consistent with the [PRSA Code of Ethics](#).

BACKGROUND:

If the individuals involved in the recording are in the same state, you can review state laws to ensure that you are in adherence. Federal law allows recording of phone calls and other electronic communications with the consent of at least one party to the call. Thirty-eight states and the District of Columbia permit individuals to record conversations to which they are a party without informing others that they are recording the conversation. These laws are referred to as

“one-party consent” statutes, and as long as you are a party to the conversation, it is legal for you to record it.

Note: it is almost always illegal to record a conversation to which you are not participating, do not have consent from at least one of the parties involved to make a recording and could not naturally overhear the conversation.

A majority of the states and territories have adopted laws based on the federal standard. Twelve states, including California, require all parties to the call to consent to its recording, with certain exceptions. States requiring consent of all parties are California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, Pennsylvania and Washington. In Delaware, there are conflicting laws: the wiretapping statute permits an individual to intercept a communication where at least one party consents; however, a Delaware privacy law makes it illegal to intercept “without the consent of all parties” to conversation. Vermont does not have any statutes regarding wiretapping or eavesdropping on a communication; however, the Vermont Supreme Court has held that surreptitious recording in a person’s home is illegal.

For a state-by-state guide to laws on recording see the [Reporters Committee for Freedom of the Press guide](http://www.rcfp.org/taping/), www.rcfp.org/taping/.¹

It’s important to note that laws differ by state. The specific requirements of each state law can be nuanced, therefore, it is best to review the law or consult with an attorney before recording a conversation. What’s permissible in one state may be illegal in another.

For example, California has a two-party consent law. California law does not allow recording of telephone calls unless all parties to the conversation consent (California Penal Code 632), or they are notified of the recording by a distinct “beep tone” warning (CPUC General Order 107-B(II)(A)(5)).² There are exceptions to the recording requirements if an individual is being threatened with felonious behavior.

In Minnesota, it is legal for a person to record a wire, oral or electronic communication if that person is a party to the communication, or if one of the parties has consented to the recording — so long as no criminal intent accompanies the recording.

RELEVANT SECTIONS OF THE PRSA CODE: At least four Code provisions and three professional values relate to this issue. They are:

Code Provisions

Free Flow of Information. Preserve the integrity of the process of communication. Be honest and accurate in all communications.

Disclosure of Information. Be honest and accurate in all communications. Avoid deceptive practices.

Safeguarding Confidences. Client trust requires appropriate protection of confidential and private information.

¹ Reporters Committee for Freedom of the Press, *taping*. It is published at: <http://www.rcfp.org/taping/>

² Reporters Committee for Freedom of the Press. It is published at: <http://www.rcfp.org/taping/states/california.html>

Conflicts of Interest. Avoid actions and circumstances that may appear to compromise good business judgment or create a conflict between personal and professional interests.

Professional Values

Honesty. We adhere to the highest standards of accuracy and truth in advancing the interests of those we represent and in communicating with the public.

Expertise. We acquire and responsibly use specialized knowledge and experience. We advance the profession through continued professional development, research and education. We build mutual understanding, credibility and relationships among a wide array of institutions and audiences.

Fairness. We deal fairly with clients, employers, competitors, peers, vendors, the media and the general public. We respect all opinions and support the right of free expression.

EXAMPLES OF IMPROPER PRACTICES (Hypothetical examples provided to help you recognize illegal recording):

- You host a briefing with a reporter and the CEO of your client company. With the reporter located in California and the CEO calling from Washington, D.C., you record the conversation without informing either party of your intentions.
- You have a video camera pointed away from the activity, but recording of ambient audio continues, unknown to the parties having the conversation.
- You record a conversation between a reporter and an executive in Illinois, informing neither of your intentions to record the dialogue.

RECOMMENDED BEST PRACTICES:

1. Always inform all parties participating in the dialogue that a recording of the conversation is intended, allowing anyone who disapproves to refrain from participating.
2. After informing all parties that the conversation is being recorded, start the recording and repeat that the call is being recorded to ensure a record of the notification is captured.
3. Consult a local attorney familiar with state statutes if you are uncertain about the laws that apply to a planned recording.

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