

PRIVACY ON THE LINE:



ILLEGAL CALL RECORDINGS AND CALIFORNIA'S INVASION OF PRIVACY ACT

A White Paper Presented by

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PRIVACY ON THE LINE:

Illegal Call Recordings And California's Invasion Of Privacy Act

In today's digital world, privacy is more at stake than ever before. Companies like Facebook and Google track our online activities and sell this data for marketing purposes. Countless cellphone apps request access to our contacts, location, history, photo gallery and more. Our images, social media profiles and postings are out there for anyone to access. And our own government secretly records the cellphone communications of private citizens.

Even though our privacy has become increasingly difficult to protect, that doesn't mean you should let your guard down — especially when the law is on your side.



WHAT THE LAW SAYS ABOUT RECORDING PHONE CALLS

California law recognizes that when it comes to recording phone calls, important privacy interests are on the line. We shouldn't have to worry about our conversations being recorded without our knowledge and permission. Yet it happens more often than most people realize.

The California Invasion of Privacy Act makes it illegal to record phone calls unless all parties to the conversation consent. There are two aspects to this protection:



1. **Section 632** of the law prohibits recording confidential conversations without the other person's consent.¹ To establish a violation, you must prove that your conversation was confidential — meaning you had an objectively reasonable expectation of privacy. This standard can be difficult to meet, especially if there were large-scale violations involving hundreds of consumers, since it requires examining the content of each individual conversation.

2. **Section 632.7** prohibits recording any cellphone or cordless phone communication without the other person's consent.² Because this provision is content neutral — meaning you don't have to prove that the conversation was confidential — violations are easier to establish. A pattern of violations involving numerous victims can potentially be addressed through class action claims.

As you can see, these provisions establish powerful protections for consumers. Violations don't require any malicious intent. In the case of cellphone or cordless phone conversations, it doesn't even matter what was discussed.

All that matters is whether the call was recorded without your consent.

**ESTABLISHING
A VIOLATION
OFTEN COMES
DOWN TO
A SIMPLE
QUESTION:**



Does the company have a policy of recording customer calls, and has it told customers about that policy in advance of recording any part of the conversation?

**THE CALIFORNIA INVASION OF PRIVACY ACT (CIPA) —
ELEMENTS OF A VIOLATION**

SECTION 632

1. Communication
2. Confidential
3. Recorded without consent

SECTION 632.7

1. Communication
2. On a cellphone or cordless phone
3. Recorded without consent

PENALTIES FOR VIOLATIONS

The law isn't without teeth. It gives victims of illegal recordings the right to compensation.³ Specifically, you may be entitled to:

WHICHEVER
IS GREATER { **\$5,000** for each violation, or
3x the amount of any actual damages you suffered

You don't have to prove that you suffered any consequences — financial or otherwise — as a result of the illegal recording. It's enough of an affront to your dignity that the conversation was recorded without your knowledge or permission.



WHO TYPICALLY VIOLATES THE LAW?

Anybody can run afoul of this law. However, the most common culprits are businesses, especially those that make frequent consumer-targeted phone calls as an integral part of their business such as:



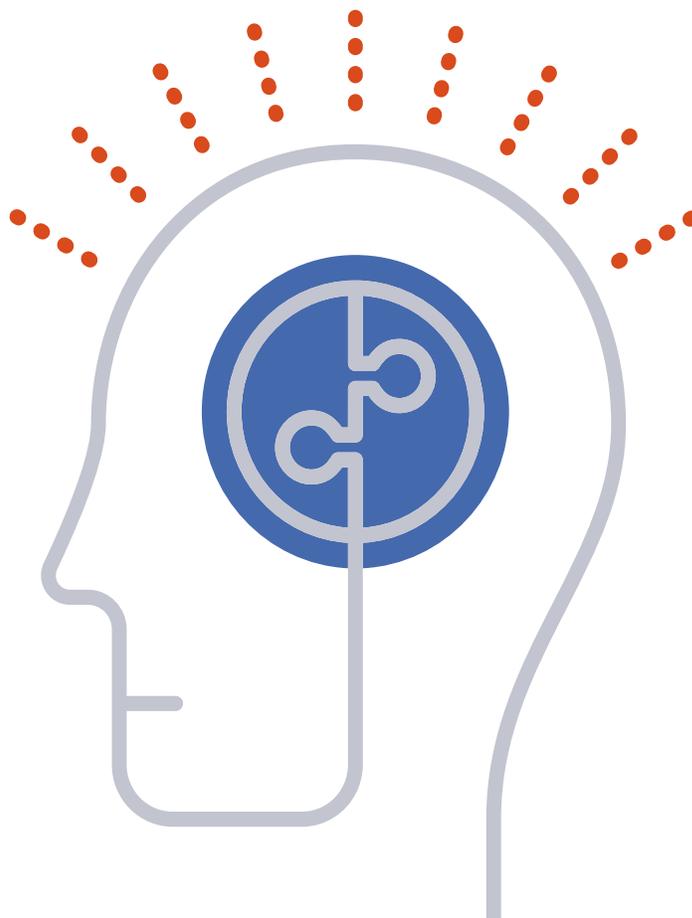
It doesn't matter where these companies (or their call centers) are located. So long as the victim of the illegal recording is in California, the law applies.



HOW DO YOU KNOW IF YOU'VE BEEN A VICTIM?

The vast majority of illegal call recordings **take place on outbound calls** — that is, calls you receive from the business. When you dial into a call center or customer service line, by contrast, you may sometimes hear an automated advisory that the call is being recorded.

Many violations happen when victims find out **partway through a call** that they're being recorded. The agent may have forgotten to mention it at the outset. Or, more likely, they may have been following a script that required confirming the consumer's identity (or gathering other personal information) before notifying them of the recording. In either case, if the advisory wasn't given at the outset of the call, you may have a claim for compensation.





***But what if you were never told that the call was being recorded?
How would you know?***

In this day and age, many businesses engage in call recording practices, including telemarketers, collection agencies, customer service lines, banks or creditors.

One can never assume that they are being recorded, because it is the companies' responsibility to disclose to you that they are recording you at the outset of a call.

However, it is important to be aware that such recording practices do exist and are prevalent. Asking whether you are being recorded is a good way to find out. If you have had substantive conversations with the representative prior to learning that you are being recorded, there is a chance that your privacy rights were invaded.

Sometimes, these violations only come to light when the company is under scrutiny for violations of federal law, such as the Fair Debt Collection Practices Act, the Telephone Consumer Protection Act or the Telemarketing Sales Rule. If a company is ignoring these laws by engaging in deceptive, abusive or harassing tactics, there's a good chance it may be ignoring the California Invasion of Privacy Act, too.

RED FLAGS THAT A CALL MIGHT HAVE BEEN RECORDED WITHOUT YOUR CONSENT:



You receive a call from a debt collector, telemarketer or creditor.



You're never told that the call is being recorded.



You are told that the call is recorded, but only after the conversation has already begun.



You hear beeping in the background.



You ask the agent at a later part of a call if you are being recorded and you are told "yes."

HOW TO HOLD VIOLATORS ACCOUNTABLE

So you suspect you've been a victim of illegal call recording. What now?

Often, the most effective way to hold violators accountable is through a class action claim. Chances are, if you've been the subject of illegal recordings, others have, too. You may have a strong case for compensation. A class action claim sends an unmistakable message that privacy rights matter. It gets offenders' attention by targeting them where it hurts — their finances and reputation. It's also an effective way to spur companies to change their policies and prevent further violations going forward.

By working with an attorney who's knowledgeable in this niche area of law, you can gain a better understanding of your options and find out whether you have a claim.

SOURCES

¹ Cal. Penal Code § 632(a)

² Cal. Penal Code § 632.7(a)

³ Cal. Penal Code § 637.2(a)

⁴ Raffin v. Mediacredit, Inc., No. CV 15-4912-GHK (PJWx) (C.D. Cal. Jan. 3, 2017).



ABOUT ATTORNEY TODD M. FRIEDMAN

FOUNDING PARTNER — THE LAW OFFICES OF TODD M. FRIEDMAN, P.C.
SUPER LAWYERS, 2016-2017

Many lawyers use the David-versus-Goliath metaphor to describe their practice. In the consumer protection field, that analogy is perhaps more apt than anywhere else. Standing up for consumers often requires battling large, powerful companies on a nationwide scale. As a champion for the underdog, I have successfully done just that.

I've built my career on protecting the rights of everyday people against unscrupulous businesses — particularly those that violate state privacy laws and federal laws, such as the Fair Debt Collection Practices Act and the Telephone Consumer Protection Act. Through consumer protection claims, including complex class actions on a nationwide scale, I have held companies accountable while securing compensation for those who have been wronged.

A prominent focus of my practice is the California Invasion of Privacy Act. As one of the first attorneys to successfully certify a class under section 632.7, I'm very familiar with the nuances and challenges of this niche area. I currently represent a class of consumers in a large-scale case against a debt collection company that illegally recorded cellphone calls with hundreds of debtors across California.⁴

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