



ACIF G517:2004

AUSTRALIAN COMMUNICATIONS INDUSTRY FORUM

INDUSTRY GUIDELINE

**MONITORING OF VOICE
COMMUNICATIONS FOR NETWORK
OPERATION AND MAINTENANCE**

Industry Guideline– *Monitoring of Voice Communications for Network Operation and Maintenance*

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**INDUSTRY
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1 INTRODUCTION

- 1.1.1 This Guideline was developed to assist Carriers and Carriage Service Providers (CSPs) by setting down procedures that may be followed where it is necessary to Monitor Voice Communications for the purpose of installing, operating or maintaining a Telecommunications Network. The procedures in this Guideline apply where the Monitoring activity falls within the exceptions to the general prohibition against Interception in subparagraphs 7(2)(a)(i) and 7(2)(a)(ii) and paragraph 7(2)(aa) of the *Telecommunications (Interception) Act 1979* (TIA), which is explained in the next section of this document. The procedures aim to ensure such Monitoring complies with or exceeds privacy requirements under the *Telecommunications Act 1997* (TA) and the *Privacy Act 1988* (PA).
- 1.1.2 This Guideline was first published in July 1998. The Guideline has been revised following the amendments to the PA and seeks to provide guidance on the practical application of interception and privacy legislation to the Carriers and CSPs' Monitoring of Voice Communications for network operation and maintenance.
- 1.1.3 The Guideline has been written in a form which can be utilised by both Carriers and CSPs in the telecommunications industry.
- 1.1.4 It is intended that this Guideline assists both industry and consumers in their understanding of the application of relevant legislation.
- 1.1.5 The revision of this Guideline has been facilitated by the Australian Communications Industry Forum (ACIF) through a Working Committee comprised of representatives from the telecommunications industry, Government, regulatory agencies, privacy advocates and consumer groups.
- 1.1.6 This Guideline should be read together with ACIF G516:2004 ***Participant Monitoring of Voice Communications*** Industry Guideline.
- 1.1.7 This Guideline should be read in conjunction with related legislation, including the TIA, the TA and the PA.
- 1.1.8 In the future, ACIF intends to further review the Guideline to consider how relevant legislation applies to electronic non-Voice Communications as compared with Voice Communications. This will potentially result either in a revised version of this guideline or a separate document.

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2 SCOPE AND OBJECTIVES

2.1 Scope

- 2.1.1 This Guideline covers the Monitoring of Voice Communications for network operation and maintenance. Monitoring includes Listening to and/or Recording a communication.
- 2.1.2 This Guideline only deals with Voice Communications.
- 2.1.3 This Guideline is applicable to:
- (a) Carriers;
 - (b) CSPs; and
 - (c) employees and contractors of Carriers and CSPs.
- 2.1.4 The TIA contains a general prohibition against the Interception of communications passing over a Telecommunications System without the knowledge of the person making the communication. This general prohibition operates subject to a number of exceptions, including an exception allowing for the lawful Interception of communications by law enforcement and other agencies under a warrant. The TIA also contains exceptions allowing a communication to be intercepted by an employee of a Carrier or CSP in the course of installing a line or equipment, or operating or maintaining a Telecommunications System; or by any person for the purposes of installing, connecting or maintaining telecommunications equipment or a telecommunications line. These exceptions are contained in subparagraphs 7(2)(a)(i) and 7(2)(a)(ii) and paragraph 7(2)(aa) of the TIA.
- 2.1.5 The exception in subparagraph 7(2)(a)(i) of the TIA applies to any act or thing done by an employee of a Carrier or CSP in the course of his or her duties, provided that the act or thing is:
- (a) reasonably necessary in order for the employee to perform those duties effectively, and
 - (b) carried out in connection with the installation of any line or equipment used or intended for use in connection with a telecommunications service.
- 2.1.6 The exception in subparagraph 7(2)(a)(ii) of the TIA applies to any act or thing done by an employee of a Carrier or CSP in the course of his or her duties, provided that the act or thing is:
- (a) reasonably necessary in order for the employee to perform those duties effectively, and
 - (b) carried out in connection with the operation or maintenance of a Telecommunications System.
- 2.1.7 The exception in paragraph 7(2)(aa) of the TIA applies to an Interception that is:
- (a) carried out by a person lawfully engaged in duties relating to the installation, connection or maintenance of equipment or a line, and
 - (b) reasonably necessary in order for the person to perform those duties effectively.
- 2.1.8 The terms “equipment” and “line” are defined in section 5 of the TIA. Equipment means any apparatus or equipment used, or intended for use, in or

in connection with a Telecommunications Network, but does not include a line. Line is defined by reference to the corresponding definition in the TA, namely a wire, cable, optical fibre, tube, conduit, waveguide or other physical medium used, or for use, as a continuous artificial guide for or in connection with carrying communications by means of guided electromagnetic energy. The definition of these terms means that the exception in paragraph 7(2)(aa) of the TIA will not attach to activities that do not relate to equipment or a line.

2.1.9 This document sets out procedures to be followed by persons engaged in intercepting communications where that Interception is lawful by virtue of the exceptions in subparagraph 7(2)(a)(i) or 7(2)(a)(ii) or paragraph 7(2)(aa) of the TIA. The Interception must satisfy all the conduct elements set out in subparagraph 7(2)(a)(i) or 7(2)(a)(ii) or paragraph 7(2)(aa), which are reproduced at 2.1.5, 2.1.6 and 2.1.7 above. Compliance with the procedures outlined in this document will not of itself bring an otherwise unlawful Interception within the exceptions in paragraph 7(2)(a) or 7(2)(aa) of the TIA.

2.1.10 This Guideline does not cover

- (a) Interception carried out under telecommunications Interception warrants;
- (b) the Interception of communications in emergency circumstances in accordance with exceptions specified in the TIA;
- (c) participant monitoring or recording (see ACIF G516:2004 *Participant Monitoring of Voice Communications* Industry Guideline);
- (d) the use of call-associated data. This includes, for example, the calling and called numbers, call time and duration, or call routing or order in order to check the accuracy of the Carrier or CSPs call charging and billing or for service assurance; or
- (e) Interception for the identifying or tracing of any person who has contravened, or is suspected of having contravened or being likely to contravene, a provision of Part VIIB of the *Crimes Act 1914* (Cth) which Part contains offences relating to telecommunications.

3 ACRONYMS, DEFINITIONS AND INTERPRETATIONS

3.1 Acronyms

For the purposes of this Industry Guideline, the following acronyms apply:

CSP	Carriage Service Provider
PA	<i>Privacy Act 1988 (Cth)</i>
TA	<i>Telecommunications Act 1997 (Cth)</i>
TIA	<i>Telecommunications (Interception) Act 1979 (Cth)</i>

3.2 Definitions

For the purposes of this Industry Guideline, the following definitions apply:

Carriage Service Provider

has the meaning given by section 87 of the TA.

Carrier

has the meaning given by section 7 of the TA.

Extended Listening

means Listening for a period exceeding twenty seconds.

Interception

means the Listening to or Recording of Voice Communications during the course of its passage over a Telecommunications System.

Listening

to Voice Communications does not include Recording of the Voice Communications or any part of the Voice Communications.

Monitoring

means Listening to and/or Recording Voice Communications, regardless of the transmission technology used.

Personal Information

means information or an opinion that is Recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

For the purposes of this Guideline, Recordings of Voice Communications should be assumed to be Personal Information even in cases where no names are mentioned, as it will generally be possible to attribute a voice to at least one party from call charge and other records.

Recording

means the recording of any content of a Voice Communications on any medium.

Telecommunications Network

means a system, or series of systems, for carrying communications by means of guided or unguided electromagnetic energy or both, but does not include a system, or series of systems, for carrying communications solely by means of radiocommunications.

Telecommunications System

means

- (a) a Telecommunications Network that is within Australia; or
- (b) a Telecommunications Network that is partly within Australia, but only to the extent that the network is within Australia;

and includes equipment, a line or other facility that is connected to such a network and is within Australia.

Voice Communications

includes conversation and a message, and any part of a communication or message in the form of speech, music or other sounds passing over a Telecommunication System.

4 REFERENCES

Publication	Title
Industry Guidelines	
ACIF C516:2004	<i>Participant Monitoring of Voice Communications</i> Industry Guideline
Legislation	
The <i>Crimes Act 1914</i> (Cth)	
The <i>Telecommunications Act 1997</i> (Cth)	
The <i>Telecommunications (Interception) Act 1979</i> (Cth)	
The <i>Privacy Act 1988</i> (Cth)	

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5 GUIDELINES FOR MONITORING

5.1 Conduct of Interception

The Monitoring of Voice Communications for the purposes of installation, operation or maintenance of a network should be conducted in accordance with this guideline and should have appropriate regard to:

- (a) the confidentiality of the Voice Communications;
- (b) the privacy of any individuals concerned; and
- (c) any internal privacy procedures or applicable industry codes and standards.

5.2 Organisation to develop internal authorisation procedures

Organisations should establish and implement internal procedures to ensure that the Monitoring of Voice Communications is only undertaken with the authorisation of a designated senior member of staff or his/her delegate

5.3 Listening to Voice Communications

Listening, apart from Extended Listening, to Voice Communications can be undertaken in the following circumstances:

- (a) to check the status of a line in the course of the installation, operation or maintenance of the network;
- (b) to ensure that connection of or to a telecommunication service has been made or maintained;
- (c) to investigate or monitor the service quality of a telecommunication service, including an international telecommunications service;
- (d) where it occurs in the investigation of a customer complaint;
- (e) to investigate or monitor network performance; or
- (f) otherwise where it occurs incidentally in the operation, installation and maintenance of the network or in the connection of equipment or a service or a system.

5.4 Extended Listening to Voice Communications

5.4.1 Where the customer is readily identifiable, Extended Listening to Voice Communications may be undertaken, when:

- (a) subject to clause 5.6.3, the customer has provided their consent;
- (b) this consent can be evidenced by the Carrier/CSP; and
- (c) the organisation's internal procedures for Monitoring have been complied with.

5.4.2 If the customer is not readily identifiable, Extended Listening to Voice Communications should only be undertaken where prior authorisation has been given in accordance with the organisation's internal procedures for Monitoring.

5.5 Voice Recording

- 5.5.1 Recording of Voice Communications where the customer is readily identifiable may be undertaken to assist in the diagnosis or substantiation of faults provided the customer's consent has been obtained (except in the circumstance described in clause 5.6.3) and the Recording is conducted in accordance with the organisation's internal procedures for Monitoring.
- 5.5.2 Recording of Voice Communications is not permissible where the customer cannot be readily identified.
- 5.5.3 In the event of the Recording of Voice Communications, an organisation's internal procedures for Monitoring should comply with National Privacy Principles 1 and 10 in the PA on the collection of Personal Information.

5.6 Customer consent

- 5.6.1 Where the customer's consent should be obtained under this Guideline, the carrier or CSP should obtain the customer's consent prior to any Monitoring taking place and retain evidence of that consent.

NOTE:

A customer's consent could be evidenced by, for example, a copy of the customer's written consent, a recording or notation of the customer's verbal consent or a record of a consent provided by the customer electronically.

- 5.6.2 The customer should be given sufficient information about the proposed Monitoring to enable the customer to understand why the Monitoring is necessary, whether Listening or Recording is involved and how any information collected during the course of the Monitoring may be used.
- 5.6.3 Notwithstanding clauses 5.4.1 and 5.5.1, but subject to requirements of the PA, particularly National Privacy Principle 10 and the TA, the customer's consent is not required where:
 - (a) obtaining that consent may unreasonably delay, prejudice or hinder the detection or prevention of fraudulent use of the carrier's or CSP's networks for which Monitoring is to be performed; and
 - (b) the organisation's internal procedures for Monitoring have been complied with.

5.7 Use or disclosure of information

- 5.7.1 Information obtained as a result of an Monitoring of Voice Communications should only be used or disclosed as permitted under:
 - (a) the TIA;
 - (b) the TA;
 - (c) the PA; and
 - (d) any internal policies or privacy codes, applicable industry codes and standards.
- 5.7.2 Part 13 of the TA prohibits the use or disclosure of information that relates to the contents or substance of a communication or the affairs or personal particulars of another person and which comes to that person's knowledge in the course of their business and employment, apart from for authorised purposes.

- 5.7.3 Under National Privacy Principle 2 of the PA, organisations must not use or disclose Personal Information about an individual for a purpose other than the primary purpose of collection except in limited circumstances, including where the organisation has gained the consent of the individual. Where Monitoring is undertaken, tapes and permanent records should only be used for the purpose for which they are Recorded in the first place, or as otherwise authorised or required by law.

5.8 Retention and disposal of recordings

Once the purpose for which the Recordings were made has been satisfied, any Recordings should be erased unless:

- (a) the customer has requested that the information be retained;
- (b) the organization receives legal advice that the information should be retained for reasons directly related to the purpose for which the recordings were made; or
- (c) retention is otherwise required by law.

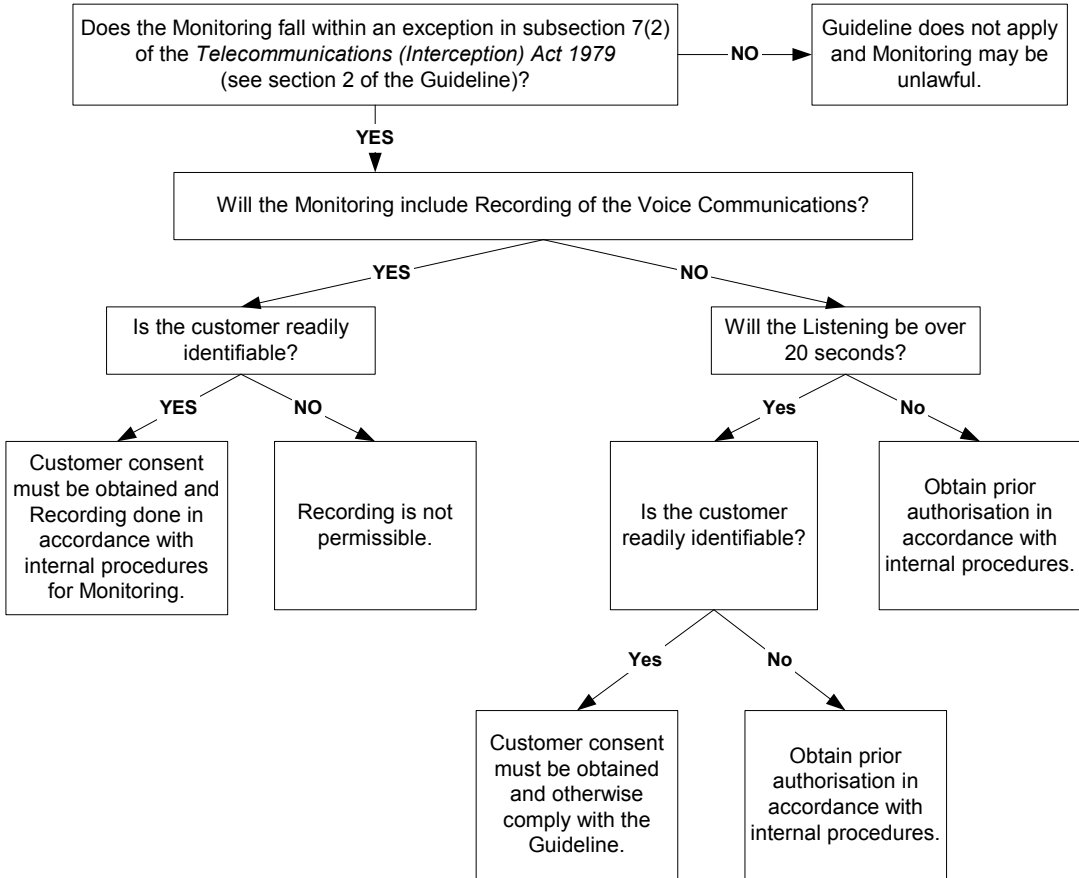
5.9 Access controls and physical security

- 5.9.1 Appropriate logical access controls and physical security measures should be implemented in relation both to Interception equipment and recorded data.
- 5.9.2 These controls and measures should be documented and include auditable access trails where appropriate.

APPENDIX A

Procedures for Monitoring of Voice Communications for the Purpose of Installation, Operation or Maintenance of a Network

Any information obtained as a result of Monitoring of Voice Communications should only be used or disclosed in accordance with Clause 5.7 of the Guideline. If the Voice Communication is recorded, it should only be retained in accordance with Clauses 5.8 and 5.9 of the Guideline.



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- widespread compliance; and
- the provision of facilitation, coordination and implementation services to enable the cooperative resolution of strategic and operational industry issues.

ACIF comprises a Board, an Advisory Assembly, standing Reference Panels, task specific Working Committees, Industry Facilitation/Coordination Groups, Consumer Advisory Bodies and a small Executive. Its members include carriers, carriage/content service providers, business and residential consumer groups, industry associations and individual companies.

The ACIF Standards and Codes development process involves the ACIF Board, Reference Panels, Working Committees and the ACIF Executive. The roles and responsibilities of all these parties and the applicable operating procedures are specified in the ACIF Operating Manual.

These procedures are based upon ACIF's openness, consensus, representation and consultation imperatives and have been designed to ensure that all sectors of Australian society are reasonably able to influence the development of Standards and Codes. Reference Panels and Working Committees must be representative of parties interested in the subject matter of the body of work being undertaken. All draft Codes/Standards are also released for public comment prior to publication to ensure outputs reflect the needs and concerns of all stakeholders.

Care should be taken to ensure that material used is from the current version of the Standard or Industry Code and that it is updated whenever the Standard or Code is amended or revised. The number and date of the Standard or Code should therefore be clearly identified. If in doubt please contact ACIF.



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