



Privacy: An Overview of the Electronic Communications Privacy Act

Charles Doyle

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This report provides an overview of federal law governing wiretapping and electronic eavesdropping under the Electronic Communications Privacy Act (ECPA). It also appends citations to state law in the area and the text of ECPA. It is a federal crime to wiretap or to use a machine to capture the communications of others without court approval, unless one of the parties has given his prior consent. It is likewise a federal crime to use or disclose any information acquired by illegal wiretapping or electronic eavesdropping. Violations can result in imprisonment for not more than five years; fines up to \$250,000 (up to \$500,000 for organizations); civil liability for damages, attorneys' fees and possibly punitive damages; disciplinary action against any attorneys involved; and suppression of any derivative evidence. Congress has created separate, but comparable, protective schemes for electronic communications (e.g., email) and against the surreptitious use of telephone call monitoring practices such as pen registers and trap and trace devices. Each of these protective schemes comes with a procedural mechanism to afford limited law enforcement access to private communications and communications records under conditions consistent with the dictates of the Fourth Amendment. The government has been given narrowly confined authority to engage in electronic surveillance, conduct physical searches, and install and use pen registers and trap and trace devices for law enforcement purposes under ECPA and for purposes of foreign intelligence gathering under the Foreign Intelligence Surveillance Act.

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