

Tech Note - 14

Surveillance Systems that Work!™



Audio Recording

Audio Surveillance

The act of audio surveillance is an area of the surveillance industry that requires delicate handling. There are many Federal and local laws that dictate what is, and is not, legal. Audio surveillance is some of the most powerful evidence available to investigators. It is an undeniable proof of statement that can be a powerful ally. However, while federal legislation on the subject is applicable nation-wide, state and local laws vary considerably. Therefore, **we strongly suggest, before** you make any attempt to record a conversation with a Phone Recorder or with any other device, you speak with a Lawyer as well as consulting all applicable local and Federal laws.

Following is a brief article published in *Pro AV Magazine*, June 1, 2007

By Linda Seid Frembes

Legal Issues In AV

The latest trends in video and audio surveillance affect the pro AV industry in the post-9/11 world. Here's how.

Ever have the feeling you're being watched? In today's technology age, you probably are. Take a look at popular national newscasts such as CNN's "Anderson Cooper 360," which features the "Shot of the Day," often taken from surveillance video footage. Sure, the crook that broke a restaurant's plate glass window to steal the tip jar only to attempt to exit the room via the unbroken window is completely hilarious, but what about the hours of video that were captured before and after that incident?

The proliferation of surveillance systems has skyrocketed, driven by the argument for deterring crime and terrorism in a post-9/11 world and the availability of affordable cameras, switchers, and hard-disk recorders. Systems integrators that are installing these systems need to pause and think about the ramifications: Are they undermining privacy rights, or outright breaking the law? Could they be held liable?

*In the popular, two-part article "Surveillance Nation," published in *Technology Review* in April and May 2003, authors Dan Farmer and Charles Mann say there are 26 million surveillance cameras installed worldwide — 11 million in the United States alone. And the federal government is doing its part to drive adoption of surveillance systems. According to the Government Accountability Office, the U.S. Park Police installed a \$2 million video surveillance system to monitor the District of Columbia.*

“The biggest shift has been cultural,” says Steve Posner, an attorney in Evergreen, Colo., who is author of the legal treatise, “Privacy Law and the USA PATRIOT Act.” (LexisNexis/Matthew Bender Publishing, April 2006)

Christopher Calabrese, counsel for the American Civil Liberties Union's Technology & Liberty Project in New York, agrees. “The law hasn't changed much for private parties that install surveillance systems,” he says. “On a federal level, we are seeing increased and/or illegal surveillance by the government. Culturally, security is a higher priority for our society since 9/11.” And privacy barriers are coming down. “There should be no expectation of privacy in a public setting,” says P.J. Lynch, CEO of VistaScape Security Systems, a wholly owned subsidiary of Siemens Building Technologies in Atlanta that provides technical infrastructure for security, comfort, and efficiency in buildings. “The Fourth Amendment has become the standard used for privacy protection. The laws have not changed, but people's expectations are moderating.”

Audio Recordings

Laws have tried to keep pace with the fast-changing world of AV technology. Audio recordings are governed by the Electronic Communications Privacy Act of 1986 (16 U.S.C. Section 2510), which was an amendment to Title III of the Omnibus Crime Control and Safe Streets Act of 1968. The ECPA limits the ability to intercept and record information from telephone lines and computers. Law enforcement must get a warrant to covertly collect information, but video recordings out in public (without audio) do not require such approval.

“If you are walking down the street in public, you're putting yourself out there to be seen, and the assumption is that a video recording is acceptable,” says Calabrese. “But an audio recording of a conversation you are having as you walk down the street is still considered private.” The same idea applies to store owners or building managers who want to install some type of audio recording or monitoring system inside buildings. “You cannot put up a sign that is a blanket statement for notification that audio is being recorded,” says Calabrese.

“Many of the overarching federal issues deal with audio recording, since it is illegal to intercept oral communication; there are not many exceptions to the rule. You can [record] video all you want, but you have to be careful with audio. It is better to err on the side of caution with audio recordings.”

Audio Surveillance and The Law

Prospective clients often ask about the legality of recording someone's cell phone conversations, telephone conversations or bugging a room to hear what others say. This type of activity is almost always illegal. For those who would like to see the law, read below:

United States Codes, Title 18, Section 2510 (2) states:

“Oral communication means any ‘oral communication’ uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.”

By definition of this code section, a person does not have an expectation of privacy, nor can he or she expect that communication will not be intercepted or recorded, if there are public signs posted which state that the communication will be intercepted or monitored.

So, if you want a room bugged, you must put up a large public sign that says that's what you are doing! Not likely to work as well as you had hoped, but have at it. This holds true for public places like stores and government buildings as well as private homes and property.

The First Amendment of the Constitution provides that any conversation between individuals is private, unless otherwise notified.

In more basic terms, this means that any overhearing or recording of a conversation is illegal...unless both parties are aware that it is being done. (i.e. you overhear the person seated next to you at a restaurant as they are speaking and they can plainly see that you are present and within earshot.)

For businesses, in order to comply with the law, many companies notify all customers that a disclaimer stating, "AUDIO MONITORING ON THESE PREMISES." Such a disclaimer must be affixed, in plain view, to all areas where microphones are installed. This includes inside a private home or other non-public location where an unknowing third party may be.

Some state laws may vary for the federal statute and it is further suggested that you consult with your local attorney, and become fully aware of the local laws in this regard. Nonetheless, the Federal law still applies.

Note:

Some of the above information is based on the opinions and interpretation of the author and is for general informational purposes. This is NOT legal advice.

Do not rely on any of this information without verifying same with your attorney.

Signs: <http://www.victorystore.com/security/index.htm>



GuardDog Surveillance Systems, Inc.
N3183 State Road 16-26
Juneau, WI 53039
(920) 342-0703
WEB: www.guarddogvideo.com