

CALIFORNIA PRIVACY LAW WILL APPLY OUTSIDE OF STATE July 2006



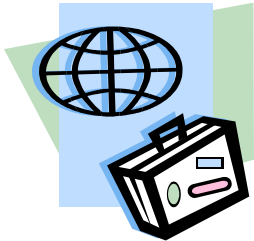
In a case just decided, the California Supreme court has now ruled that callers from outside the State are still held to the strict California laws protecting privacy if they call into the State and violate our laws...even if the laws of the other jurisdiction allow such actions.

The Law:

Kearney v Salmon Smith Barney, Inc, 06 C.D.O.S. 6226. In this landmark decision, the California Supreme Court ruled that consent of all callers on a telephone call is required when recording telephone conversations in California, even if the caller is phoning from a jurisdiction that allows taping based on a single person's permission. "California clearly has an interest...in protecting the privacy of telephone conversations of California residents while they are in California...sufficient to permit this state, as a constitutional matter, to exercise legislative jurisdiction over such activity," Chief Justice George wrote for a unanimous court. "This is not a case in which California would be applying its law in order to alter a defendant's conduct in another state vis a vis another state's residents."

Which means that the old trick of secretly recording a telephone conversation because the person taping it, or one of several people participating, consents, which is legal in such states as Georgia, will not be allowed if one of those persons is a California resident. This is based on California's forty year old Invasion of Right to Privacy Act which is similar to the law passed in only ten of the other fifty states.

Numerous civil sanctions, from fines to damages awarded to the other parties, may be imposed for violation of this statute and many business groups from other states are deeply concerned.



The Effect:

With much of business now interstate and, indeed, international, various business people are arguing that lack of a uniform policy for all the States can lead to confusion as to appropriate steps to take and what policies to adopt. Citigroup Smith Barney spokesman Alexander Samuelson stated, “The California Supreme Court’s decision is a new interpretation that extends California law beyond its border. We will review our procedures to comply with the court’s decision. “

The United States Chamber of Commerce was more dire in its prediction of the effect: “What the ruling will do is encourage private plaintiffs here and perhaps in other instances to export California’s hyper-regulatory environment around the country,” said their lawyer who had filed an amicus curiae brief in the case.

The California Supreme Court brushed such concerns aside, stating that allowing one-sided taping would make nonsense of the protection since a person in another State would eliminate the protection at will. Such action, “would significantly impair the privacy policy guaranteed by California law...If businesses could maintain a regular practice of secretly recording all telephone conversations with their California clients or customers in which the business employee is located outside of California, that practice would represent a significant inroad into the privacy interest that the statute was intended to protect. “



The Court did agree not to make the ruling retroactive, but cautioned sternly, “In light of our decision, of course, out-of-state companies that do business in California are now on notice that, with regard to future conduct, they are subject to California law with regard to the recording of telephone conversations made to or received from California and that the full range of civil sanctions by California law may be imposed for future violations.”

Thoughts:

This is yet one more example of the fact that business is seldom conducted within a single jurisdiction and, that with the web and sourcing, almost all business has some international aspect. It has become necessary even for a business located in Iowa to have either a working knowledge or at least access to the regulations and laws of any state or nation in which the business is connected. Our articles on international business thus become critical information for any business who sells or sources materials from outside the state or nation. A client put it well: “If I want the benefits of a bigger market, I guess I had better gain the skills necessary to go into that market.”

But the other side to the equation is that local laws may interfere with business so much that business is stymied. Few businesses have the time or energy to learn every jurisdiction’s laws and the usual situation is that the business is “caught” long after having committed the “wrong.”

Certainly before engaging in business in a new locale to any significant extent, it is wise to get local knowledge. For now, if you plan on taping a call...**MAKE SURE YOU GET CONSENT FROM ANY CALIFORNIA PERSON ON THE OTHER END!**