Recording and Monitoring Call Center Transactions
A VoiceLog White Paper

The purpose of this white paper is to offer the reader a perspective on the benefits and disadvantages of call recording and monitoring in the call center. We look at these issues from three perspectives:

- Current practice among call centers. Our assumption here is that evidence of widespread use of recording and monitoring suggests that there is significant utility in the practice. In addition, if call center recording and monitoring are growing, it suggests increasing acceptance of that utility.
- Operations. We review the benefits and disadvantages as described by participants in the industry. We use trade journal articles, studies and the comments of industry participants.
- Legal. We review the legal requirements surrounding recording, the potential legal risks associated with recording and the potential legal benefits. Please note that we are not lawyers and this document is not intended to provide legal advice. We recommend that you engage a competent attorney for legal advice you intend to rely on.

Because we are in the business of recording and monitoring, we rely heavily on outside resources for a more objective perspective. The use of these resources does not imply their endorsement of VoiceLog or VoiceLog products and services in any way.

Current Call Center Practice

Because there are so many call centers in the US, ranging from as few as 5-10 seats to as many as several thousand, it is impossible to know exactly how many or what percentage of call centers use recording and monitoring. However, it is clear that most larger call centers and the call centers of larger companies use recording and monitoring and that that usage is growing significantly.

A 2001 study of over 100 larger call centers showed that about 54% of those centers use “call logging” systems and just over 50% use quality monitoring systems. At the same time, the use of recording and monitoring for smaller call centers is much lower – probably under 10%. A 2002 study by Frost & Sullivan projects compound annual growth in unit sales for quality monitoring of 26% from 2001-2008. Their estimate for unit sales of call monitoring software was almost 365,000 licenses, just in North America. Clearly, recording and quality monitoring is widely accepted and this acceptance is growing.

Recording and monitoring is especially prevalent in specific industries. The Frost & Sullivan report cites outsourcers (call center service bureaus), financial services, insurance, travel and hospitality, and retail as key users. VoiceLog’s own experience suggests that telecommunications firms, including MCI, AT&T, Sprint and the former regional Bell holding companies (Verizon, SBC, BellSouth and Qwest) all do considerable levels of monitoring and recording as well. We also believe that utilities, especially electric and natural gas companies, do extensive levels of recording. Despite the concentration in specific industries, we believe there are users of call monitoring and recording in almost every industry with call centers.

Many experts in the area of call center management recommend call center monitoring and recording for all call centers. For example, Charles Day, in his book: Call Center Operations, Profiting from Teleservices, says : “It is generally recommended that organizations who conduct business primarily by telephone have a facility to monitor calls by employees, their solicitations and the manner in which they are providing customer service over the telephone.” The American Teleservices Association agrees, saying: “The ATA strongly supports monitoring as a tool for assuring the quality of calls and improving individual performance through ongoing training and development.”

Benefits and Disadvantages of Monitoring and Recording

Most consultants and writers in the field of call center management agree that monitoring of some type is critical in good operations. For example, Keith Dawson writes in his Call Center Handbook:

> "Monitoring is a critical part of the process of teaching a new rep how to deal with customers, how to handle difficult situations, even simply how to follow a script and read a screen full of complex information... Monitoring agents is still the best way to ensure that you achieve quality from both standpoints. If handled with sensitivity, monitoring can be a benefit to agents because it helps them define and reach career goals, assess strengths and weaknesses, and mark their progress according to realistic standards."

In another source, benefits of monitoring are listed as: customer satisfaction, increased efficiency, improvements in scripts and processes, better training programs and uncovering customer complaints and concerns.

In general, three types of monitoring are identified:

- Service-observe or silent monitoring
- Call recording
- Side-by-side monitoring

In service-observe monitoring, the monitor is listening to the call in real-time, without the knowledge of the agent or the customer. Generally, this is done either through a port on the PBX or a dedicated tap on the call center trunks.

Call recording creates an audio recording of the call using a recording device designed for the purpose. Calls can then be selected – depending on the technology used – by date, time, station or agent, telephone number dialed, DNIS or other means. The call is listened to after it is completed, sometimes much later.

Side-by-side monitoring involves the monitor sitting with the representative and listening to the call on a second phone or monitoring headset.

Because we are focused on monitoring AND recording, we'll discuss the advantages and disadvantages of the "call recording" method of monitoring.

In the literature, the advantages of call recording listed are:

- It's generally well-accepted. The relatively ubiquitous use of recording and monitoring by large banks, airlines, telephone calls and utilities ("your call may be recorded or monitored for quality purposes") make for widespread acceptance.
- For some agents, recording is less intrusive than side-by-side monitoring, which may make the agent nervous and hurt their performance;
- Agents can listen to the recording themselves, which allows them to hear first-hand how they handled the call;
- With the recording to review, the agent can directly link the feedback from the evaluator to their performance on the call;
- Multiple people can listen to the same recording. This allows for "calibration" – a process in which scoring methods and personnel are compared to insure uniformity of approach. This makes recording an important factor in promoting objectivity and the appearance of objectivity in monitoring;
- Agents can appeal an adverse rating of a call. With the call available for the agent and higher levels of management to review, a poor score can be appealed;
- Especially if all calls are recorded, "post-hoc" research is enabled. That is, if a supervisor uncovers a potential issue, more recordings for a given agent, program or other element can then be researched to quickly determine if more training, for example, is required;

- Operational benefits, such as the ability to schedule recording at specific time periods and avoid "dead time" waiting for calls;
- Ensuring orders taken are genuine;
- Other benefits, such as documenting what was said on the call, in case a customer alleges a complaint about the call's handling or disputes a transaction.

The suggested disadvantages of call recording are:

- Potential delay in feedback. Supervisors may wait to review a call, resulting in slow feedback;
- Agents or customers may object to being recorded. In one study, about 7% of agents openly opposed monitoring, while another quarter had mixed feelings. We have not found any data quantifying the number of customers objecting to recording;
- Agent concerns about who has access to or will listen to recordings;
- To avoid legal concerns, schedules for maintenance and erasure of recordings should be set and adhered to;
- Expense. Recording requires specialized equipment that is often expensive.

Legal Issues in Recording and Monitoring

There are a number of legal issues raised in recording and monitoring. These issues fall within five categories:

- Wiretapping law
- Privacy law
- Employment law
- Transaction verification
- Liability issues

In some cases, the existence of recording provides mostly benefits, rather than risks in these categories. In other categories, there is a balance of risk and benefit that should be considered.

<u>Wiretapping Law</u>

Under federal and state wiretapping laws, call centers who record will generally be protected from claims of wiretapping if they (1) notify their employees of, and - especially - obtain their employees' written consent to, recording and (2) make an announcement at the beginning of each call that the call may be recorded or monitored. Wiretapping laws apply only if one or both parties on the call do not consent to monitoring or recording and consent can be obtained either explicitly -as in a signed consent from the employee - or implicitly – as when an announcement is made regarding recording and the caller does not object.

In most states and under federal law, only one party on the call must give consent to the recording, so an employee's consent is sufficient. That said, some of the states that require both parties' consent include California, Florida, Michigan and Pennsylvania – among the largest states in the US. Whether interstate calls must comply with individual state requirements has never been definitively determined in the courts, so the most conservative approach is to comply with both federal and state laws. Most corporations that record appear to rely on implied consent from the customer, using the announcement approach.

Federal law prohibits the willful interception of telephone communication without an applicable exemption. There are two principal exceptions:

- Consent: Under federal law, it is permissible to intercept and record a telephone conversation if at least one of the parties to the call consents.

- "Business telephone" exception: This exemption generally allows monitoring and recording of calls over an extension phone which is both provided by the telephone company and used by a subscriber in the ordinary course of a company's business. This means that businesses can monitor the conversations of their employees, as long as they do so in the ordinary course of business using equipment that is part of the telephone system. Our review of the literature suggests that this exception is limited unless the recording equipment is provided by the telephone company or is "part" of the telephone system. We don't recommend relying on this exception for call center recording.

All states also prohibit wiretapping. Thirty-nine states and the District of Columbia have statues that require at least one party to consent to the monitoring or recording of the call, while eleven states require that both parties give consent. At least one source we've reviewed claims that California recognizes implied consent if there's an announcement of the recording at the beginning of the call and the other party has provided express consent. In our review of the case law and the literature, we have not found a single case where a call center using express consent by employees and implied consent for customers (using the announcement approach) has been found to be wiretapping.

The best source we found for state and federal recording laws is on the website for the Reporters Committee for the Freedom of the Press. Although their focus is reporters recording, the same basic legal issues apply. Go to http://www.rcfp.org/taping/ for more information.

Privacy Law

Beyond wiretapping laws is an emerging area of privacy law, most of which appears to be developing in the court system. Our review of the literature suggests that employers are sufficiently protected when they (1) notify employees of their monitoring and recording practices and require employees to acknowledge receiving the notification, (2) provide employees with telephone lines that can be used for personal calls and which are not monitored or recorded. If the employer has a policy limiting personal calls, we don't believe recording needs to affect that policy in any way.

To the extent that this area of the law is developing in the courts, it will vary by state, so call centers may wish to consult with an attorney to feel comfortable that they are avoiding any legal liability.

Employment Law

To the extent that recordings and monitoring are used for employment-related decisions (e.g. promotions, discipline, firing), it is important to be protected from charges of discrimination or unlawful employment practices generally.

A comprehensive review of state employment law is beyond the scope of this paper, but we note that in most states, employers have broad latitude to make employment-related decisions that they can justify for business purposes and that they apply consistently and objectively. In this regard, we believe that recording can be an asset to the call center's quality control processes, as long as policies are administered consistently and fairly.

Recordings provide evidence that employers can use to document the basis for their employment decisions. When sampling methods and evaluation procedures are applied consistently and with good business justification, recordings are a defense against charges of discrimination, harassment or arbitrary decision-making. In addition, recordings provide for calibration, which helps the call center ensure that scoring procedures are conducted as consistently as possible.

Transaction Verification

The use of recordings to document or verify transactions is growing. Although the idea of a verbal contract has been accepted for many years, recent regulatory and legislative changes are beginning to require recording of certain transactions under a variety of circumstances.

At the regulatory level, the Federal Communications Commission and many state public utility commissions now require that Third Party Verifications be recorded. (Third party verification is a process in which an "independent third party" confirms a customer's decision to select a telephone company, or in some cases an electric utility or natural gas provider.) In a very few states, the entire telephone transaction for telephone company selections must also be recorded. Recently, as part of its Telephone Sales Rule, the Federal Trade Commission required that under certain circumstances a portion of a telephone sales call could be recorded to provide "express verifiable authorization." Under certain other circumstances, the FTC required that the entire telephone sales call be recorded. We are also aware of SEC settlements in which a brokerage company agreed to record all of its transactions to resolve disputes.

At the legislative level, the most important development in this area is the Electronic Signatures in Global and National Commerce or "E-Sign" Act, passed in 2000. The E-Sign Act allows parties to an agreement to use "electronic signatures" for "electronic agreements" and permits a wide variety of elements to be used as electronic signatures, including sounds. Under the E-Sign Act, therefore, a call center could potentially obtain a customer's recorded agreement to a contract and have that agreement treated as though it were a signed contract. (Note that there are a variety of conditions required by the E-Sign Act; VoiceLog has developed a method for using the E-Sign Act as a viable means of concluding electronic agreements over the telephone – contact us for more details.)

Liability Issues

A recording provides a useful defense against claims of fraud, regulatory non-compliance or other misbehavior. In addition, the fact that the call center records and uses the recordings for monitoring and insuring compliance may be useful in convincing regulators and judges that the company is guilty – at most – of isolated instances of misbehavior, rather than broader "patterns of practice".

As the authors of the Frost & Sullivan study wrote:

> In the contact center space, laws and regulations like the privacy provisions of the Health Insurance Portability and Accounting Act, the Bank Secrecy Act, the Truth and Lending Act and other rules and regulations strongly imply a need for full recording, although it may not be specifically mandated.

Recording allows a company to know what its employees are saying to customers, to document those conversations and to take corrective action in the case of problems. However, a company that records and fails to correct issues may be subjecting itself to claims that it "should have known" about problems. A call center with real issues of legal misbehavior should be careful to use its recording capabilities to take all reasonable steps to correct such issues.

Sources:

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Call Center Best Practices Special Technology Edition, Procsi, 2001
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"Electronic Call Monitoring Systems: Tools to Enhance Coaching and Quality, Call Center Management Review, Kathleen Peterson*
How to Conduct a Call Center Performance Audit: A to Z, Anton and Phelps, The Anton Press, 2003
North American Agent Peformance Optimization Software Markets, Frost & Sullivan, 2002
Quality Monitoring for Contact Centers, Prosci, 2003
"Six Ways to Leverage Your Monitoring Program", Call Center Management Review, Brad Cleveland*
"Understanding and Applying the 'Big Three' Monitoring Methods", Call Center Management Review, Joanne Herrman*
"Understanding and Overcoming Agent Resistance to Monitoring", Call Center Management Review, Laurie Solomon*
World Agent Performance Optimization Markets, Frost & Sullivan, 2003

*Reprinted in Call Center Sample Monitoring Forms, Call Center Press, 2001

Appendix – Industry Guidelines for Recording and Monitoring

Monitoring Guidelines of the American Teleservices Association (from the ATA website http://www.ataconnect.org/ethics.htm):

The ATA strongly supports monitoring as a tool for assuring the quality of calls and improving individual performance through ongoing training and development. It allows employers to observe and evaluate on-line performance and the telemarketing program and provides immediate feedback on both. It also protects consumers and customers against unethical practices by individuals and protects the employer's rights to supervise and regulate the quality of work being performed. Some suggested guidelines for monitoring in the workplace are:

- Make applicants aware of the company's monitoring policy before they accept the job. This is as easy as adding a statement to the bottom of the job application or attaching an addendum.
- Give to new hires, and post in all areas a written work policy that addresses all employee concerns. This policy should include how and why monitoring is done and how soon afterward a review will take place. (As a rule, feedback should be given immediately after the call is monitored, or as soon as possible.)
- While the ATA strongly supports the position that monitoring work-related calls is not a violation of "personal privacy," we do advocate the employee's right to privacy during personal conversations. Therefore, each call center should have separate phones that are never monitored available for their employees' personal calls.

Ethical Guidelines of the Direct Marketing Association (from the DMA website: http://www.the-dma.org/guidelines/ethicalguidelines.shtml):

Article #41

Taping of telephone conversations by telephone marketers should only be conducted with notice to or consent of all parties, or the use of a beeping device, as required by applicable federal and state laws and regulations.

Monitoring Practices Recommendations adapted from "Monitoring Practices Recommended by Incoming Calls Management Institute and Call Center Management Review" (Note: this is an adaptation of the original with both additional material and condensation of some items. While we are indebted to the ICMI original, we are solely responsible for the resulting document.)

1. Inform job candidates and employees of monitoring and recording practices. Obtain employee's written acknowledgement of the call center's practices.
2. Inform agents regarding time of monitoring or recording and the lines that are monitored or recorded. Provide unmonitored lines for personal calls and let agents know which lines are available for those calls.
3. Provide access to monitoring or recording equipment only to qualified personnel with a legitimate business purpose. Adopt a policy that monitoring, recording and playback is for legitimate business purposes only (e.g. training, quality control, transaction verification, etc.) Provide the results of monitoring only to personnel with a legitimate business purpose.

4. Individually identifiable recording or monitoring results should be made public (within the call center) only with the subject agent's affirmative consent and only for positive purposes (e.g. as an example for emulation.)
5. Use objective and standardized measures that are consistently applied for evaluation and scoring of monitored or recorded calls. If disciplinary or corrective action is taken based on results, ensure that such action is applied consistently, based on the results of consistent evaluations.
6. Frequency of monitoring, recording and evaluation should also be conducted using legitimate business purposes consistently applied. For example, if specific agents are monitored more than others, there should be a legitimate business purpose (e.g., the agent is new, recent evaluations suggest need for improvement, the agent is strong and their interactions provide an opportunity for learning, selection is random and the result is a statistical coincidence.) If using sampling, use valid statistical sampling techniques.
7. Where possible, monitor all agents periodically to insure uniformity of treatment and comprehensive results.

About VoiceLog LLC

VoiceLog LLC is the world's leading provider of recording services. With over 250 corporate clients in North America and Europe, VoiceLog records almost 9 million calls every year, with a special emphasis on recording for sales verification and regulatory compliance.

Started in 1996, VoiceLog has appeared on the INC 500 list two years in a row. The company maintains offices in Gaithersburg, MD, Charlotte, NC, and Broomfield , CO and employs (including contract and part-time personnel) almost 200 people across eight states and three continents.