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# Privacy: An Abridged Overview of the Electronic Communications Privacy Act

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October 9, 2012

## Congressional Research Privacy: An Abridged Overview of the Electronic Communications Privacy Act Service

7-5700 www.crs.gov Privacy: An Abridged Overview of the Electronic Communications Privacy Act R41734

## CRS Report for Congress

*Prepared for Members and Committees of Congress*

### Summary

This report provides an overview of federal law governing wiretapping and electronic eavesdropping under the Electronic Communications Privacy Act (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 Privacy: An Abridged Overview of the Electronic Communications Privacy Act \$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 Privacy: An Abridged Overview of the Electronic Communications Privacy Act 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 Privacy: An Abridged Overview of the Electronic Communications Privacy Act mechanism to afford limited law enforcement access to private Privacy: An Abridged Overview of the Electronic Communications Privacy Act communications and communications records under conditions consistent with the dictates of the Privacy: An Abridged Overview of the Electronic Communications Privacy Act 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.

This report is an abridged version of CRS Report R41733, *Privacy: An Overview of the Electronic Communications Privacy Act*, by Charles Doyle, without the footnotes, quotations, attributions of authority, or appendixes found there. The longer report also serves as the first

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section of CRS Privacy: An Abridged Overview of the Electronic Communications Privacy Act Report 98-326, *Privacy: An Overview of Federal Statutes Governing Wiretapping and Electronic Eavesdropping*, by Gina Stevens and Charles Doyle, which examines both ECPA and the Foreign Intelligence Surveillance Act (FISA). It too is available in abridged form as CRS Report 98-327, *Privacy: An Abbreviated Outline of Federal Statutes Governing Wiretapping and Electronic Eavesdropping*, by Gina Stevens Privacy: An Abridged Overview of the Electronic Communications Privacy Act and Charles Doyle.

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## Introduction

This is an outline Privacy: An Abridged Overview of the Electronic Communications Privacy Act of the Electronic Communications Privacy Act (ECPA). ECPA consists of three parts. The first, sometimes referred to as Title III, outlaws the unauthorized interception of wire, oral, or electronic communications. It also establishes a judicial supervised procedure to permit such interceptions for law enforcement purposes. The second, the Stored Communications Act, focuses on the privacy of, and government access to, stored electronic communications. The third creates a procedure for governmental installation and use of pen registers as well as trap and trace devices. It also outlaws such installation or use except for law enforcement and foreign intelligence investigations.

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