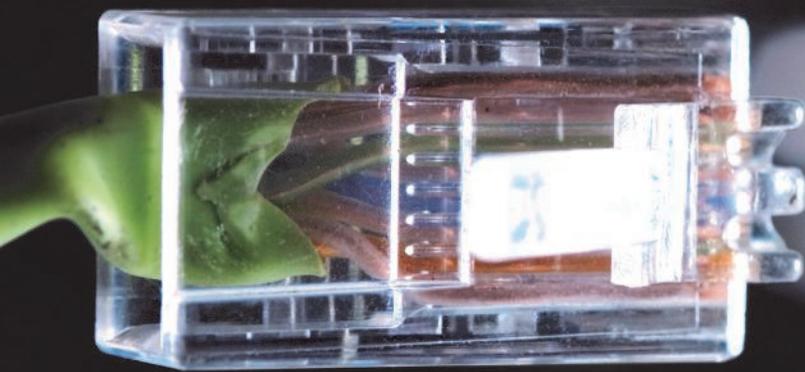


# Enterprise User Compliance





## Overview

Enterprise users of information and communications technology encounter unique compliance issues when deploying technology to support their business operations. Advising our clients on those issues is a key part of LB3's practice.

The need – and therefore our approach – varies across services and jurisdictions. We advise clients on federal and state statutes and regulations, FCC and FTC decisions and orders, and foreign requirements.

We are also well versed in relevant self-regulatory regimes, and assist clients in ensuring that their businesses comply with applicable industry standards, even when that means flowing obligations through to service providers.

## Contact Center Regulatory Compliance

Whether a contact center focuses on inbound customer service inquiries or outbound telemarketing, federal and state laws and regulations apply, most notably the federal Telephone Consumer Protection Act and the rules and orders of the FCC and FTC interpreting that Act, as well as the FTC's Telemarketing Sales Rule. LB3's lawyers represented enterprise users in the proceedings that adopted and then amended many of these rules, and we are fluent in their provisions and nuances.

Clients often seek to improve their ability to meet customer needs by monitoring or recording calls to and from their contact centers. In the U.S., such conduct must comply with the Omnibus Crime Control and Safe Streets Act, as amended by the Electronic Communications Privacy Act, and multiple state analogs. We help clients understand the requirements of these laws and help them to achieve their business objectives while complying with those requirements, and we work with an extensive network of foreign telecom, technology and privacy counsel to facilitate compliance with corresponding foreign laws.

## Employer Rights to Monitor Employee Email

Occasionally employers need to monitor employee use of company email to detect inappropriate or unlawful conduct. Such monitoring may be subject to the Electronic Communications Privacy Act and/or Stored Communications Act in the U.S., and to similar privacy laws outside the U.S. Most employers respect their employees' privacy and want to avoid unlawful intrusions, and we help them (with foreign counsel when necessary) determine what the law permits and what conduct could expose them to legal and reputational risk.

## Handling Personally Identifiable and Highly Sensitive Information; Encryption Abroad

In the U.S. financial services and health care providers are subject to heightened data protection obligations under the Financial Services Modernization Act of 1999 (“Gramm-Leach-Bliley”) or the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). While businesses directly regulated by those regimes generally understand their requirements, service providers – who may be entrusted with protected information – may not share that familiarity. LB3’s role is to understand the applicable law; educate service providers regarding their roles in facilitating client compliance; and craft contract language that encourages compliant behavior and provides appropriate remedies for non-compliance.

LB3’s clients across all industries are interested in protecting their own and their clients’ data, and most use high level encryption to do so. In many countries, including the U.S., encryption of sensitive data is encouraged; but in other countries, encryption is heavily regulated and may be prohibited. Working with our network of foreign counsel, we help clients understand the risks of encryption in various jurisdictions and navigate the attendant hurdles, and negotiate contract language with service providers to reduce the risk of encrypting data abroad.

## Handling Consumer Payment Card Information

Any company that accepts credit or debit cards should be familiar with the PCI Data Security Standard (“PCI DSS”) adopted by the Payment Card Security Standards Council and enforced by the major payment cards. Non-compliance with the PCI DSS can be costly and disruptive to a merchant’s business and reputation and puts sensitive payment card data at risk. As with Gramm-Leach-Bliley and HIPAA, third parties who do business with clients may not be aware of the nuances of the PCI DSS, and LB3 is often called on to help clients structure contractual relationships that facilitate compliance with the PCI DSS.

## Electronic Marketing via Email, Fax, and Text Messages

Email, faxing and now text messaging are efficient and inexpensive ways to communicate with customers. But federal laws (the TCPA and the CAN-Spam Act) as well as industry standards such as those of the Mobile Marketing Association and CTIA regulate the use of these channels, even where a prior business relationship exists. Consumer

lawsuits under both statutory schemes are common, and the exposure can be substantial. LB3 is familiar with the do’s and don’ts of electronic marketing, and has helped clients negotiate contracts with providers in each step in the messaging chain.

## E911 Access to Emergency Services and Workplace Safety

Businesses that operate large networks face a series of complex legal and technical issues relating to E911. The rapid deployment of new technologies and services, including VoIP, SIP Trunking, and soft phones, has complicated the process of ensuring that 911 calls connect with local emergency services and are accompanied by required location and call-back information. That forces businesses to address 911 issues in contract negotiations with their vendors and adopt policies to transmit accurate location and call-back information. LB3 has developed several end-user best practices for managing E911-related liability within the enterprise and negotiating a fair allocation of E911-related responsibilities in vendor contracts.

In addition to E911 concerns, building owners and managers may be subject to public safety communications ordinances. After the 9-11 tragedy, many municipalities enacted building and fire codes designed to enhance the ability of first responders to use wireless devices when responding to emergencies. Jurisdictions such as Phoenix and San Antonio require newly constructed or modified buildings to support adequate radio coverage for police, fire, and public works departments. LB3 helps enterprise clients determine the applicable requirements and contract for the required technology.

## Providing Communications Services to Affiliates, Partners, and Customers without Triggering Regulation

Enterprises purchase communications and information services not only for internal needs but to communicate with affiliates, business partners, and customers. The way an enterprise makes its network services available to third parties, and the nature of the services provided, determine whether a service is regulated common carriage (triggering reporting and financial obligations) or an unregulated communications or information service. Structuring the relationships between the primary customer and other users requires in-depth knowledge of regulatory requirements that can be triggered by surprisingly small differences in pricing, conduct, or contract structure. LB3 and its network of foreign counsel assist clients in weighing the risks and finding the path of least regulation.

## Deployment of New Technologies

New information and communications technologies such as unified communications (UC), virtual private network services and VOIP promise cost savings and productivity improvements, but they also challenge traditional legal categories and requirements. These challenges are particularly acute for multinational companies that employ shared services or third-party managed services when integrating, operating and managing UC platforms, Internet services, MPLS networks, SIP trunking, and interconnected VoIP as part of global enterprise networks.

Many countries outside the U.S. are sensitive to the deployment of technologies that divert traffic from public networks. Reporting and registration requirements, and regulations intended for public telecom providers, may apply to enterprise users unless they take care when designing and configuring systems, determining the composition of user groups, and procuring network services.

LB3 assesses how the benefits of new technologies can be leveraged while complying with applicable law; advises clients on strategies for achieving these objectives; and negotiates contract clauses with service providers to reduce the attendant legal and financial risks.

## Data in the Cloud

Enterprises are rapidly adopting public cloud computing, which offers rapid resource provisioning, resource elasticity, usage-based pricing, access to current technology, and the ability to avoid large capital outlays. To achieve these benefits, enterprises cede physical possession and control of the storage devices that house their information.

To take advantage of redundancy and 24/7 management, cloud vendors may ship enterprise data around the globe or grant access to that data to employees or subcontractors residing in foreign countries, and such cross-border data flows often trigger obligations under the laws of several jurisdictions.

Moreover, the loss of control does not relieve companies of data stewardship obligations. For example, data stored in the cloud that is relevant to a company's financials is subject to examination to ensure the existence of appropriate internal controls. And organizations involved in or contemplating litigation are required to preserve and produce electronically stored information, regardless of where it is stored.

LB3 advises enterprises on how best to address and mitigate the risks that arise when they move sensitive data to the cloud and become dependent on their vendors to remain compliant with relevant laws and regulations.



## Interested in What LB3 and TC2 have to Say?

**LB3 and TC2 assist enterprise customers with network service and IT procurements, benchmarking, compliance management, regulatory issues and disputes. Learn more about industry developments and the challenges facing enterprise users:**



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