



How Speech Analytics Helps You Take Charge Of Compliance And Liability

Author: Dick Bucci is
Principal of Pelorus
Associates

Forward

If you are a contact center or enterprise business facing compliance measures, you know who you are. More than likely, you have established a compliance process to ensure business integrity, resolve disputes or comply with industry regulations on phone-based transactions.

The question is...do you really know what your employees are saying or doing that might be putting your business at risk?

If the answer is "no" or "I don't know", this white paper is for you. In the following pages author Dick Bucci, Principal of Pelorus Associates, does an excellent job of leading us through the more predominant compliance and liability issues affecting contact centers. Most importantly, he provides insight as to how speech analytics can turn a random compliance effort into a targeted and effective process for identifying compliance concerns so you can make the adjustments required to mitigate risk and protect your business.

As with all of our authored and sponsored papers, we hope it provides a clear path to a better way of doing business.

~ The Calabrio Team

Introduction

The contact center is often in the center of the storm on compliance issues. This is especially true for outbound telesales but also for inbound contact centers where one of the missions is to increase revenue by converting service callers into customers for new or enhanced products or services. Perhaps even more important to the contact center and the broader enterprise is the question of liability.

The two aims of this paper are to alert readers to the federal level regulations and liability exposures that most directly impact the activities of modern contact centers and explain how speech analytics can help monitor compliance and reduce the risk of liability exposures. **We should caution that the content of this white paper does not represent formal legal guidance. For that you should rely on your compliance office or legal counsel.**

Scope

There are thousands of federal, state, and local regulations that can affect contact center practices. We will discuss only the statutes and standards that – in the author's view – most directly affect contact centers. Further, the scope focuses on regulations within the United States.

Legal Compliance

The primary federal body that regulates interstate commerce and is most directly involved with contact center activities is the Federal Trade Commission (FTC). Intrastate commerce is regulated by state laws and authorities. Most states will have laws on the books that parallel federal laws and in a few cases are actually more restrictive than federal laws. Contact centers should also be aware of their own intrastate regulations and apply concepts here accordingly.

A major target for federal regulation has been telemarketing, which the FTC defines as “a plan, program, or campaign” to induce the purchase of goods or services or donations to a charitable contribution.” Until the Telephone Consumer Protection Act of 1991 was enacted there were virtually no restrictions on who could be called, when they could be called, or even what was said during these calls. In response to thousands of consumer complaints the FTC issued a number of regulations to curb abuses. The best known of these is the Telemarketing Sales Rule (TSR) which was issued in 2003. The rule was further amended in 2004 with the popular “Do Not Call” provision and in 2012 with the enactment of restrictions on so-called “robocalls.” While the TSR is largely targeted to outbound sales calls it also covers inbound calls if the agent attempts to upsell an existing customer to new or additional products or services.

The Consumer Credit Protection Act and its subsequent amendments, (which include the Truth in Lending Act (TILA) and Credit Card Accountability Responsibility and Disclosure Act) are aimed at financial services companies and provide explicit guidance about disclosures that must be made to consumers who wish to enter into a credit risk relationship with a bank or credit union. The Health Insurance Portability and Protection Act (HIPPA) addresses privacy issues and the handling of private medical information among health service providers. The Fair Debt Collections Practices Act (FDCPA) is aimed almost exclusively at third-party collection agencies.

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While each piece of federal legislation has its particular focus, there are four common threads that run through all of the identified Acts

Respect for individual privacy
Complete and accurate disclosure
Express informed consent
Honesty, courtesy, respect for others

Protecting privacy

Much of the furor over telemarketing stems from consumer complaints about the invasion of privacy. Regulations developed by the Federal Trade Commission now restrict the hours during which individuals can be called and, with some exceptions, for opting out of the call list used by telemarketers. The Health Insurance Portability and Protection Act Privacy Rule establishes a foundation of federal protection for personal health information. The Rule generally prohibits a covered entity (healthcare provider or subcontractor) from using or disclosing "protected health information" unless authorized by patients, or where this would result in unnecessary interference with access to quality health care or with certain other important public benefits or national priorities. The Fair Debt Collections Practices Act is primarily designed to eliminate abusive, deceptive, and unfair debt collection practices by third-party collection agencies. The Act also includes several provisions to protect the debtor's identity. The law specifically defines what hours of the day individuals may be called and restricts what can be said to third parties when attempting to locate debtors.

Complete and accurate disclosure

It is very important that when contact center employees are engaging in transactional conversations, such as outbound selling, order-taking, or up selling to inbound callers, that they always recite mandated disclosures.

Mandatory Disclosures - Telemarketing Sales Rule

Cost and Quantity	Telemarketers must disclose the total cost to purchase, receive, or use the offered goods. If the purchase price is to be paid over time via installments, then the total cost must be revealed including any finance charges. Special rules apply for negative option or contingency sales.
Material Restrictions, Limitations, or Conditions	A material restriction, limitation, or condition is one that, if known to the consumer, would likely affect the decision to purchase the goods or services offered; to purchase them at the offered price; to purchase them from that particular seller; or to make a charitable contribution.
No Refund Policy	If the seller's policy is that all sales are final then sellers must make consumers aware of this restriction before they accept payment for the goods or services.
Prize Promotions	A seller or telemarketer that offers a prize promotion must reveal any conditions or limitations of the promotion such as the odds of winning.
Negative Option Features	The TSR defines a negative option as a sales offer in which the seller interprets the prospect's silence or failure to reject the seller's proposal as evidence of the customer's decision to accept the offer. An example would be acceptance of a free trial. In that case, the seller must make clear that (1) the customer's account will be charged unless an affirmative action is taken to cancel the sale (2) the date on which the charges will be submitted for payment, and (3) the specific steps the customer must take to avoid charges.
Debt relief services	The Rule prohibits sellers and telemarketers from misrepresenting any material aspect of a debt relief service such as the amount of money or the percentage of the debt someone may save by using the service and the amount of time necessary to get the results.
Telefundraisers	The Rule prohibits telefundraisers from misrepresenting the nature, purpose, or mission of any entity on whose behalf a charitable contribution is being solicited.

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The Truth in Lending Act (TILA) provides very explicit guidelines regarding the specific financial information that must be provided when soliciting credit card customers. Examples are finance charges, the term of any introductory rate, the annual percentage rate, late payment fees, right to return goods for credit, and billing cycles.

Representatives of third-party collection services attempting to collect a debt by telephone must disclose in the initial communication that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. The "Mini-Miranda" statement should be scripted and verified through call recording technology.

Express informed consent

It is a violation of the TSR to cause billing information to be submitted for payment without the express informed consent of the customer or donor. The consumer's consent must be clear and unambiguous. Consent is an affirmative statement that the consumer agrees to purchase the goods or services or make a contribution and is aware that the charges will be billed to a particular account. It is always good practice to record the consumer's consent. Some organizations transfer or conference in a supervisor to independently confirm that consent has been provided. While in general the TSR does not specify the means by which information is captured and stored, there is one instance where an audio recording is mandatory. That is when the seller already has account information from the customer and is promoting a free-to-pay conversion offer, otherwise known as a "free trial." To prevent unauthorized charges the TSR requires that the seller obtain the last four digits of the account number from the customer, that they obtain the customer's express agreement to be charged for the goods or services using the identified account number, and that the seller make and maintain an audio recording of the entire telemarketing transaction. The rule applies even to third parties that are collecting payment on the seller's behalf.

Honesty, courtesy, respect for others

It goes without saying that contact center personnel should also always be honest and courteous to callers. The Fair Debt Collections Practices Act specifically states that "A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt." The Do Not Call provision of the TSR specifically prohibits calling outside permissible hours, abandoning outbound telephone calls, causing a telephone to ring repeatedly, or using threats, intimidations, or profane or obscene language.

Legalities aside, every contact center should have a list of do's and don'ts to help assure consistency and integrity when dealing with outside callers. Many contact centers require a consistent greeting when answering a call. Some encourage frequent use of the caller's name. There may also be requirements to alert all callers of a special promotion that is underway. And with today's heavy emphasis on improving first call resolution rates, contact centers often require agents to ask if their query has been completely satisfied before concluding the call.

Not just the contact center

While the contact center may be the primary point of telephone interactions with customers and other constituents, it is hardly the only one. Consider that by law, the human resources department must avoid questions during telephone interviews of candidates that might later leave the organization open to potential discrimination suits. Sales departments employ both inside sales and outside sales personnel. These individuals are just as responsible for complying with the telemarketing sales rule as contact center agents. As well, the enterprise must be confident that erroneous or misleading statements are not made about product performance, warranty, or pricing. Large publicly traded companies often have an individual or department dedicated to investor relations. IR professionals spend a lot of time on the phone with current or potential investors and financial analysts. They must be very careful about what they say to avoid conflicts with securities laws regarding the disclosure of nonpublic material information.

Liability exposure

In an actual case a contractor placed a telephone order to a concrete company for a full truckload of ready to spread concrete. When the truck arrived, the contractor at the site refused to accept the delivery. The cement firm had no recourse other than to dump the concrete as it could only remain in the mixer for a short period of time. After that incident, the concrete company invested in a recording system and recorded all telephone orders. This provided the proof needed to establish that the order was placed and should be billed, whether or not the contractor accepts delivery.

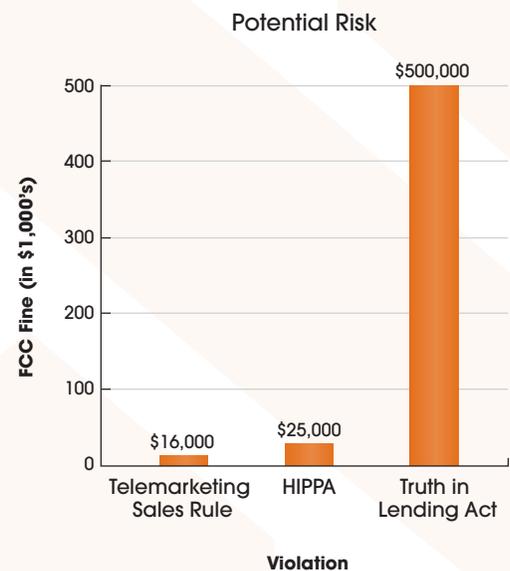
The Dodd Frank Wall Street Reform and Consumer Protection Act clarifies oversight responsibility for the kinds of complex derivatives that many experts felt were a major cause of systemic failure in our financial systems. While many of the rules are still being developed it is clear that there will be much tighter regulation of firms that engage in swaps and other derivative trades. The Act applies to any "financial entity" which includes swap dealers, major swap participants, commodity pools, private funds (as defined in the Investment Advisers Act of 1940), employee benefit plans, and persons predominantly engaged in activities that are in the business of banking or in activities that are financial in nature, but excludes certain captive finance affiliates. The Act directs the applicable regulators to consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions.

While large trading floors always record and archive 100% of telephone transactions to protect against possible charges of mishandling customer orders, in view of Dodd Frank, it would be prudent for local investment offices, mortgage brokers, and others that execute trades or extend credit to also record telephone conversations for compliance purposes and for their own ability to monitor accuracy and call quality.

Violations can be costly

Because you subscribe to high ethical standards and understand the value of customer relationships, in all likelihood your business rules and training procedures are already in compliance with federal laws and regulations. However, that does not mean that there won't be individual transgressions. Individual agents, under pressure to meet productivity goals or inattention to training sessions, may inadvertently fail to make necessary disclosures or reveal protected private information. Violations can be costly. The FCC may assess a fine of up to \$16,000 per violation of the Telemarketing Sales Rule. Violations of the privacy requirements of HIPAA can result in fines of up to at \$25,000 for each calendar year for each identical requirement or prohibition that is violated. Lenders that violate the Truth in Lending Act can be subject to penalties of up to \$500,000 per member of the class or one percent of the creditor's net worth, whichever is less. The largest assessed penalty to date for violation of the Fair Debt Collections Practices Act was against debt collector LTD Financial Services which agreed to pay \$1.3 million in civil penalties for charges that it misled, threatened, and harassed consumers. Beyond financial penalties damaged corporate reputations may result in longer lasting harm.

Among the many provisions of Dodd-Frank is the formation of the Consumer Financial Protection Bureau (CFPB). The CFPB becomes a superagency that consolidates oversight and administration of many consumer laws that previously were enforced by separate arms of the federal government. Examples include The Home Mortgage Disclosure Act, Truth In Lending Act, Real Estate Settlement Procedures Act, Fair Credit Reporting Act, Fair Debt Collections Practices Act, and Gramm Leach Bliley Act. All of these regulations have disclosure requirements. The CFPB is an independent agency that resides within the Federal Reserve. The organization has broad rulemaking power and is not accountable to Congress. Consumers now have a smoother pathway to report grievances and seek redress for many laws we discussed in this paper. This greatly increases the exposure risk if violations are surfaced.



Call capture

The challenge isn't just being in compliance but being able to establish that you are in compliance. Pelorus Associates has been studying the contact center interaction recording market for 10 years. We continue to see a trend from recording a small sample of calls for quality monitoring purposes to recording 100% of audio and even screen interactions. Reviewing just a sample of calls is obviously hit or miss. The recording system must be able to capture all interactions and have an indexing capability that allows searches by specified parameters such as agent name, date, time of day, and length of call. The screen recording tool must function in unison with the voice recording to assure that retrieved calls show simultaneous voice and data activity.

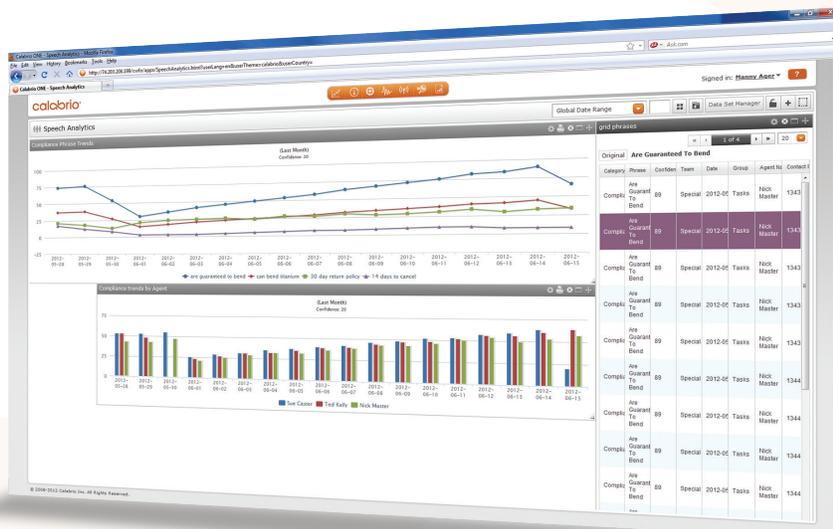
Interaction recording systems are usually paid for from the contact center's budget. Today it is also very important to invest in recording solutions that can function equally well in both contact center and general enterprise environments. For example, it may be advisable for both compliance and liability purposes to allow sales personnel, subject matter experts, and executives to record calls on an ad hoc basis. A sales manager may want to review the prospecting calls of new sales reps. The human resource manager may want to check if telephone interviews with prospective employees are completely compliant with equal opportunity employment laws. A purchasing agent may wish to record pricing and delivery date promises negotiated by phone.

Speech Analytics

Retrieving audio and screen files is relatively easy with today's modern recording systems. Comprehensive indexing coupled with user-friendly controls makes it quick and easy to retrieve specific calls or call types. Analysis is more difficult. Lacking a mechanized system, the only alternative is for employees to spend hours listening to agent recordings. The advent of speech analytics makes it both feasible and economical to electronically mine vast databases of recordings. While initially slow to take off, speech analytics has now matured and is rapidly working its way into the mainstream of contact center and corporate operations.

Calabrio Speech Analytics uses a phoneme-based approach that is especially powerful for recognizing uncommon words such as names, places, or acronyms. Another great advantage of the Calabrio phonetics engine is its ability to adapt to changing needs, such as adding new phrases.

Phoneme-based searches are well suited for monitoring compliance where the intent is to identify specific words phrases. The Calabrio Web 2.0 user interface makes it very easy for contact center personnel and others to run searches.



Let's assume that your business is banking and you are offering new clients free checking for six months plus a \$25 deposit by the bank, provided that the new customer deposits a minimum of \$500 and applies for a bank credit card. The promotion is publicized in both print and electronic media and generates a high volume of calls to the bank's toll-free number. Your task as a manager is to make sure that your people are providing disclosures stipulated by the Truth In Lending Act, CARD Act, and Telemarketing Sales Rule. As well, you will want to check for misrepresentations which could end up in costly litigation. You will establish a category to capture all calls related to this promotion and set the speech search engine to detect certain words or phrases and the absence of such words and phrases for 100% of calls that were in response to the promotion. This process will identify calls that may represent potential violations. You will then listen to these calls to identify specific issues. The results will be used as training tools to help assure that agents are completely familiar with requirements, fine-tune scripts so they are easier to recite over the phone, and program your e-learning system to provide prompts to help assure that agents provide the required disclosures.

Words to the wise

According to the Compliance Authority, an information exchange forum for compliance and security officials, there are now 192,000 regulations that can impact business and the cost per employee for meeting federal regulations ranges between \$5200 to \$7600 depending on the size of the organization. Because of their unique position contact center management and staff have to be especially sensitive to legal requirements and proactive in assuring compliance. Following are a few tips that you may wish to keep in mind when formulating your individual compliance plans.

Thirteen Tips for Compliance and Liability

1. Record 100% of contact center interactions
2. Extend recording capability to executives and SMEs within the enterprise
3. Index calls by call type to speed retrieval of potentially problematic calls
4. Deploy speech analytics to swiftly sift through recordings to confirm compliance and reduce liability exposure
5. Periodically review all scripts to assure accuracy of mandatory disclosures
6. Adjust data retention rules to meet requirements
7. Confer with human resources to determine your latitude for monitoring employee personal communications
8. Monitor outsourcers as well
9. Carefully control employee access to consumer's private information
10. Assign one person or one department for handling all employee reference inquiries
11. Stay on top of regulatory changes through trade associations and periodicals
12. Include basic compliance requirements in agent training

Most importantly, work closely with legal and IT experts to make sure you have the right procedures and technology to satisfy the current regulatory environment and accommodate changes in the future. Larger enterprises will have a formal compliance department or at least an individual that has primary responsibility. In smaller organizations you may need to rely on legal counsel. Keeping active in trade associations and reading industry publications are good ways to stay on top of the ever-changing compliance environment.

About the Author

Dick Bucci is Principal of Pelorus Associates (www.pelorusassoc.com) where he specializes in contact center technologies. He has authored eleven in-depth reports on workforce optimization applications and numerous articles and white papers. Prior to founding Pelorus Associates, Dick was a senior sales and marketing executive with leading telecommunications vendors and value added resellers. He has over 30 years of experience in the telecommunications industry and is one of the most widely quoted analysts serving the contact center industry. Dick has authored several papers on legal and regulatory matters as they affect contact centers.

About Calabrio, Inc.

Calabrio, Inc. develops and markets Calabrio ONE®, a comprehensive suite of contact center workforce optimization software that's easy to implement, use and maintain. Calabrio ONE includes call recording, quality assurance, workforce management, speech analytics and performance-based dashboards and reporting. Calabrio ONE is flexible – providing product bundles and add-ons that make it easy for customers to begin with the right set of applications and features for their business today, then build on their success with new applications and features as their business matures and their needs evolve. The Calabrio ONE is built on a modern Web 2.0-based architecture that allows the contact center to integrate new applications easily, as well as personalize and optimize the desktop toolset for each user – agents, supervisors, managers, knowledge workers, and executives. Calabrio is a member of the Cisco Developer Network (CDN), and a gold member of the Avaya DevConnect program. Find news and information at www.calabrio.com.



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763.592.4600 • www.calabrio.com

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