

CALEA appeals court ruling and libraries

On June 9, a DC circuit court of appeals ruled against ALA, ARL, ACRL and a coalition of universities, public interest groups, and businesses to oppose an August 2005 ruling by the Federal Communications Commission (FCC). In that ruling, the FCC extended the 1994 Communications Assistance for Law Enforcement Act (CALEA) to the Internet.

What is CALEA?

Passed by Congress in 1994, CALEA requires telecommunications carriers to ensure that their communications equipment, facilities and services are capable of conducting real-time electronic surveillance. Carriers have to be able to intercept the content of communications, acquire related call-identifying information and deliver both to law enforcement premises without the knowledge of the target of the surveillance. Under the FCC order, CALEA requirements now also apply to broadband Internet access and voice over Internet Protocol (VoIP) services.

Are libraries covered by the FCC Order?

The FCC found it not to be in the public interest *at this time* to extend CALEA to libraries that procure broadband Internet directly through a commercial Internet Service Provider. However, many libraries obtain Internet access through local and regional library networks, or other private networks. The FCC cryptically stated that to the extent these networks are interconnected with a public network like the Internet, providers of the facilities that support the connection of the private network to a public network are subject to CALEA. Thus, it is possible that libraries or their private network connections still could be subject to CALEA obligations. The FCC's Order does not address specifically the exact interconnection point in the network that would be subject to compliance.

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What exactly is required if libraries must comply?

The precise technical requirements have not been determined. Library groups are concerned that routers and other equipment that support broadband connection to the Internet would have to be upgraded to provide wiretap capabilities at the library's own cost. In addition, entities that are covered must provide 24/7 security personnel to receive and implement wiretap orders. Wiretaps must be performed with the affirmative intervention of service provider staff so it can fairly be concluded that libraries will have to train personnel on the receipt of surveillance orders and their implementation. To the extent that library network operators are covered, similar upgrades and administrative procedures would have to be implemented.

What comes next?

In a statement, ALA President-elect Leslie Burger said that the library groups "will evaluate our options for appeal and reconsideration. While libraries are pleased with the fact that CALEA does not extend to their operations today, we continue to be concerned with the logic and reasoning of the court upholding the FCC's order and its implications for library Internet-based services tomorrow."

Where can these CALEA orders and other information be found?

For more information on CALEA and libraries, visit the ALA CALEA page at www.ala.org/ala/washoff/WOissues/techinttele/calea/calea.htm. A collection of FCC orders and law enforcement filings are online at www.askcalea.net, and all comments and FCC orders filed in this matter can be found on the FCC Web site at www.fcc.gov/cgb/ecfs/. Select search for filed comments, and enter the proceeding number 04-295 in the search form template. The comments, documents and FCC orders will be returned in chronological order. ✍