

Banner Basics

Birmingham Infragard

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Banners

- Network banners are electronic messages that provide notice of legal rights to users of computer networks
- Legally, banners have four primary functions

Legal Functions of Banners

- Eliminate 4th Ad. "reasonable expectation of privacy" users might otherwise retain in use of the network.
- Generate consent to real-time monitoring under Title III.
- Generate consent to retrieval of stored files and records pursuant to the SCA.
- Establish the network owner's common authority to consent to a LE search

Banners

- Does banner eliminate any Fourth Amendment "reasonable expectation of privacy" that users might otherwise retain in their use of the network?
 - Generate consent to real-time monitoring under Title III.

Banners

- Does banner generate consent to the retrieval of stored files and records pursuant to the Stored Communications Act?
 - Establish the network owner's common authority to consent to a law enforcement search

Basic Banner Language

- Does banner establish that a user of the network shall have no reasonable expectation of privacy in the network?
 - User who lacks a reasonable expectation of privacy in a network will not be able to claim that any search of the network violates his Fourth Amendment rights.

Basic Banner Language

- Does banner establish that use of the network constitutes consent to monitoring?
 - Helps establish the user's consent to real-time interception pursuant to 18 U.S.C. § 2511(2)(c) (monitoring by law enforcement agency) or § 2511(2)(d) (provider monitoring).

Basic Banner Language

- Does the banner state that use of the network constitutes consent to the retrieval and disclosure of information stored on the network?
 - Helps establish the user's consent to the retrieval and disclosure of such information and/or records pursuant to 18 U.S.C. §§ 2702(b)(3) and 2702(c)(2).

Basic Banner Language

- Does the banner make clear that the network system administrator(s) may consent to a law enforcement search?
 - Helps establish the system administrator's common authority to consent to a search

Basic Banner Language

- Does the banner contain express or implied limitations or authorizations relating to the purpose of any monitoring, who may conduct the monitoring, and what will be done with the fruits of any monitoring?
 - To establish knowledge of unauthorized use and therefore may aid prosecution under 18 U.S.C. § 1030.

Basic Banner Language

- Does the banner require users to "click through" or otherwise acknowledge the banner before using the network?
 - Establish that the network user actually received the notice that the banner is designed to provide.

Broad Language

- You are accessing a Company information system, which includes this computer, this computer network, all computers connected to this network, and all devices and storage media attached to this network or to a computer on this network.

Broad Language

- This information system is provided for Company authorized use only. Unauthorized or improper use of this system may result in disciplinary action, as well as civil and criminal penalties.

Broad Language

- By using this information system, you understand and consent to the following: you have no reasonable expectation of privacy regarding communications or data transiting or stored on this information system.

Broad Language

- At any time, and for any lawful purpose, the Company may monitor, intercept, search, and seize any communication or data transiting or stored on this information system.
- Any communications or data transiting or stored on this information system may be disclosed or used for any lawful purpose.

Narrow Language

- This computer network belongs to ABC Corporation and may be used only by ABC Corporation employees and only for work-related purposes. The ABC Corporation reserves the right to monitor use of this network to ensure network security and to respond to specific allegations of employee misuse.

Narrow Language

- Use of this network shall constitute consent to monitoring for such purposes. The ABC Corporation reserves the right to consent to a valid law enforcement request to search the network for evidence of a crime stored within the network



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