



INTERACTION RECORDING FOR REGULATORY COMPLIANCE

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INTRODUCTION

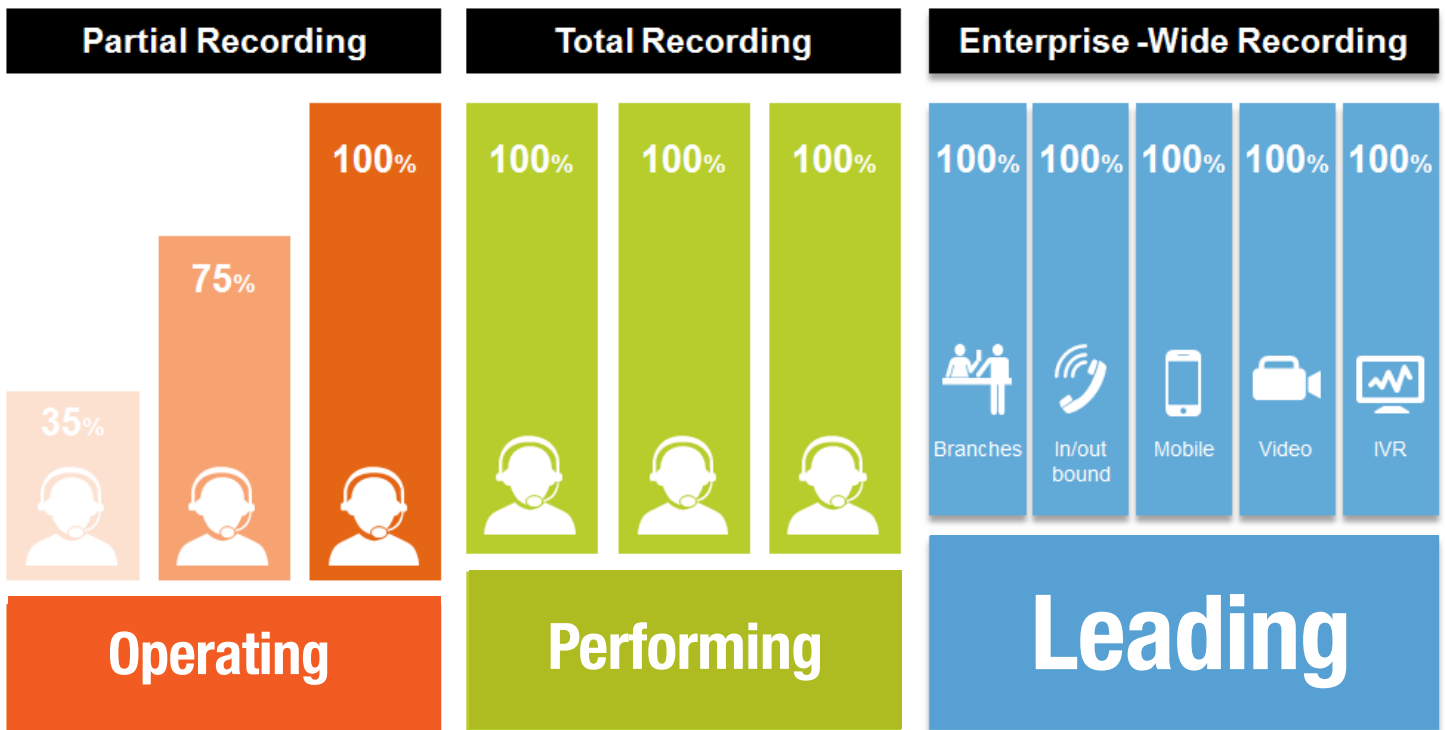
Recording is an important tool to create and maintain a robust Compliance Management System (CMS) in a large or complex organization with contact centers that service customers across business lines and departments. Non-compliance within contact centers can severely impact the enterprise along all areas of its risk management structure with legal, reputational, operational and compliance risk. The contact center operations can be a crucial barometer for the overall posture of the consumer compliance risk that is inherent within the enterprise. The intelligence that can be gathered and analyzed from the contact center data can be a valuable tool to provide a 360 degree feedback loop to continually enhance and optimize your compliance management systems.

Financial organizations are situated along various maturity models for recording, ranging from:

Partial Recording - where some contact centers employ 100% recording while others do not. These are organizations that are lagging the broader trend.

Total Recording - where all contact centers across the enterprise have moved to a 100% recording model. These are organizations that are performing or approaching the current benchmarked standard.

Enterprise-Wide Recording - the best-in-class model, where all customer interactions within the organization regardless of channels, business lines, forms of interactions are fully recorded.



RECORDING WILL STRENGTHEN THE COMPLIANCE MANAGEMENT SYSTEM OF YOUR ORGANIZATION

No matter where your organization is currently situated on the recording maturity model, your CMS can benefit from recording for compliance. The CFPB has reiterated the following processes as being very important for a sound CMS, and recording can be a powerful tool to support your CMS in every one of these processes:

Training

Recording allows you to provide relevant and timely training to your contact center employees based on exceptions or observations of less than optimal interactions with consumers. Recall and analyses of recorded interactions can provide contact center managers with the ability to provide the right training and coaching and also highlight or benchmark model interactions to increase the effectiveness of the training. Recording also allows you to review the future interactions of agents who received additional training in order to analyze rates of recidivism and optimize training methods and delivery. Recording and tracking data of training sessions will also allow you to evidence the delivery of training in an automated manner for HR, compliance and regulatory purposes.

Consumer complaint response

Consumer complaints can pose tremendous risks from legal, compliance, and reputational franchise perspectives. Responsible organizations will create a seamless complaint handling process whereby complaints or customer dissatisfaction can be identified, escalated and corrected to mitigate the risk of a harmful climax – such as a public enforcement action, adverse legal settlement or reputational harm to the firm by causing organizational deficiencies to be discussed in public forums. Analyzing recorded data from interactions can provide an effective tool to pre-identify high risk policies, products and interactions. The ability to retrieve past interactions is also important for properly investigating a known complaint. The tone and tenor of the interaction can provide the corporate investigator or litigator with valuable information as to the potential liabilities and defenses in the underlying customer allegation. Recording and retention of the interactions can provide a powerful defense in showing the adjudicator that the organization should not be held liable. The ability to recall recorded information can also be used to quickly identify and evidence frivolous claims.

Independent testing & audit

Recording provides an organization with valuable data points to sample and analyze in conducting self-policing and for independent auditors. Risk-based sampling of interactions is invaluable in creating a robust testing program for the contact center. The results of the audits can be used to incorporate necessary adjustment and

remediation of the CMS. Increasingly, we see regulatory examiners asking to see the methodology of data sampling and the reports of internal/independent auditors.

Third-party providers oversight

Recent enforcement cases brought by the CFPB, OCC and other regulators, relating to deficiencies in consumer protection at large financial institutions, have demonstrated a regulatory gap when highly regulated financial firms outsource their processes to a third party. Recording all interactions at the third-party vendor's contact centers, followed up by a risk-based sampling and analysis of the interactions collected, would allow the banks greater oversight over these outsourced processes. Organizational oversight over vendors is an important development resulting from the new consumer-related enforcement actions. Regulators have made it clear that outsourcing does not shield the banks' primary responsibility to the consumer.

Systems and policies

Recording can be used as a tool to make sure that the systems and policies that are part of the control environment are working adequately to mitigate the business risk.

Recordkeeping

Some interactions that are recorded should be retained for longer periods than the normal retention policy would dictate. Some examples that necessitate a longer hold include interactions that may be part of a litigation hold, within examination scope or in high-risk businesses where you have an active plaintiff's bar. Retaining flexibility in recording and retention coverage is a necessary tool in the contact center solution.

Marketing practices

Recording for marketing practices can be used to evidence consumer compliance in the sale of products or services. Recordings can also be retrieved as a defense against claims of mis-selling, evidence of client consent and proof of appropriate disclosures.

Senior management oversight

Recording of data is crucial to be able to retain the large amounts of interaction data that can be used to run customized reports, provide appropriate escalations, and allow targeted look-backs in order to test the adequacy of the CMS for senior manager oversight.

RECORDING WILL STRENGTHEN THE RISK ASSESSMENTS OF YOUR CONTACT CENTER

Risk-assessments are used to analyze internal and external risk and feeds into shaping the organizational control environment which is your CMS. Contact centers are being increasingly identified as repositories of internal risk within an organization primarily because their main purpose is to engage in client contact and service clients across products and business lines of an organization. Client complaints are first heard at the contact centers, and the contact center is also instrumental for listening in on the voice of the consumer.

The public reputation of the firm is highly correlated to the level of customer satisfaction that is being delivered through these client interactions. Contact center risk assessments can be conducted to discover the hidden high-risk practices, such as sub-optimal work processes, which can result in various deficiencies, including complaints that are not properly identified or escalated and poor client satisfaction scores. Recordings of the contact center can be sorted, and aggregated reports can be generated by impacted policy type or business function etc., and further analyzed to discover any hidden business risks or compliance deficiencies. The risk assessment should be conducted at least annually, and most regulators recommend that an off-cycle risk assessment be performed whenever there is a major expansion of business, significant system implementation, or during the implementation of major regulatory initiatives. Data analytics from contact center recordings can play a vital role in conducting targeted risk assessments, allowing for risk visibility across business lines and organizational departments, and optimizing your control environment.

RECORDING FOR REGULATORY COMPLIANCE

UDAAP & CFPB

The Federal Trade Commission (FTC) Act of 1914 created the FTC to protect consumers against monopolies and gave it anti-trust enforcement powers under Section 5 of the FTC Act. Subsequently, the enforcement powers of the FTC were expanded to include fraud and deceptive advertising perpetrated against the consumer. The legal standard under which the FTC has traditionally enforced its consumer protection claims is commonly referred to as the Unfair Deceptive Act or Practices (UDAP) standard.

Virtually all states have a version of the UDAP standard which differs slightly from the federal standard. The primary responsibility for consumer protection shifted from the FTC to the Consumer Financial Protection Bureau (CFPB), a newly created agency,

under the 2010 Dodd-Frank Act (Dodd-Frank). The CFPB under Dodd-Frank has broad consumer protection responsibility with full power to regulate, investigate, and take enforcement actions against Unfair, Deceptive, and Abusive Acts or Practices (UDAAP) related to consumer financial products or services. The “Abusive” standard was added as a result of Section 1031 of the Dodd-Frank Act and gave the CFPB the legislative mandate to take enforcement actions under UDAAP against any covered person or service provider engaged in the offering or transaction of a consumer financial product or service with a consumer.

The UDAAP standard has recently emerged as a powerful legal tool for regulators and the plaintiff’s bar in bringing enforcement actions and civil litigation against banks and non-banks engaged in selling to consumers. UDAAP standards are fairly broad and can encompass any selling activity where the consumer is harmed by the seller as a result of inadequate disclosures, deceptive behavior, taking unfair advantage of the consumer, or just the inability of the consumer to understand a material term or condition of the covered activity.

State and Federal UDAAP laws are important tools for regulators and the courts in their efforts to shape the future of consumer protection. UDAAP is an amorphous legal standard enforcing fairness to customers and does not require unlawful intent. Contact centers are truly the devil’s playground for finding UDAAP violations where you have overburdened work-processes and under-trained contact center agents in loosely controlled workflow environments. The CFPB has already concluded many public multimillion dollar enforcement actions under UDAAP. These include some of the largest banks in the financial industry, such as Capital One, Discover, American Express, and Chase. These enforcement actions have cost the firms in excess of a billion dollars in disgorgements and civil penalties.

In addition to multimillion dollar fines, these enforcement actions have two common refrains – deficiencies in contact center activity and UDAAP violations. On November 6, 2013, Bloomberg Businessweek reported that Bank of America is negotiating the settlement of an action with the CFPB on allegations that the bank deceived customers when selling credit card products. The importance of recording as a compliance feature of contact centers cannot be minimized. Contact centers need to be self-policed not just for operational efficiency but for the express purpose of driving consumer protection and compliance awareness throughout the customer interaction. The entire CMS of the contact center depends on the proper utilization and analysis of recorded data. Record for compliance!

RECORDING AS PART OF THE CFPB'S RESPONSIBLE BUSINESS CONDUCT GUIDANCE

The CFPB provided specific guidance in its June 25, 2013 bulletin (CFPB Bulletin # 2013-06), highlighting the CFPB's regulatory discretion to provide affirmative credit if it was determined that the target organization was engaging in a responsible manner during the course of an enforcement action. The CFPB stated that affirmative credit may be applied to an organization that could evidence cooperation during an enforcement proceeding that was substantially higher than what is required by law. The CFPB clarified that affirmative credit could range from a decision to resolve the enforcement proceeding without choosing to make a public enforcement action, treat the conduct as a lower violation, reduce the number of violations in an enforcement action, or reduce the severity of the sanctions sought in an enforcement action.

How can recording help to gain affirmative credit?

The record is clear that, during the very high profile enforcement actions by the CFPB in 2012 and 2013, the targeted firms had various levels of difficulty in producing the calls and documents requested by the regulatory examiners. In some of the firms, the recordings were at a third party, and production of requested documents were tedious and overly time consuming. This sort of delay can frustrate the regulatory actions of the enforcement or examination staff and cost the organization valuable goodwill by the exam management team that can directly result in higher penalties and violations

The CFPB has identified self-policing as one of the factors that may be used to decide whether a target firm involved in an enforcement proceeding is eligible for an affirmative credit. The CFPB defines self-policing as self-auditing or self-monitoring and states that it is the "proactive commitment by a party to use resources for the prevention and early detection of potential violations of the consumer financial law." Evidence of regular risk assessments, continuous compliance assurance through self-policing, policy enforcement, training and coaching records, remediation of deficiencies, and continuous improvement of customer service can be a reality when you are utilizing your recording data to optimize your CMS.

A concrete example of a firm that did not engage in responsible business conduct was in the Cash America International (CMI) enforcement action that was made public on November 21, 2013. CMI had the dubious distinction of being the target of the first enforcement action against a payday lender by the CFPB. CMI agreed to pay a \$19 million settlement fee, of which \$5 million was a penalty for failing to preserve phone records when notified of a pending CFPB investigation. Recording, retention and the ability to index and retrieve the requested information efficiently allows you to enhance and optimize your compliance obligation and engage in responsible business conduct when faced with a regulatory examination. It will also assist your organization during any enforcement proceeding, which in turn will mitigate the organization's reputational and regulatory risk.



RECORDING AND THE FDCPA

Fair Debt Collection Practices Act (FDCPA) regulation and the legal standard under UDAAP mandates debt collection interactions between debt collectors and debtors. The FDCPA restricts debt collectors on: i) how and when they may call potential debtors; ii) prohibiting UDAAP in debt collection efforts; iii) being responsive with debtors if they dispute the debt amount, claim that they have been wrongly identified or ask the debt collector to stop calling them; iv) and most importantly, under most circumstances, not revealing the existence of the debt to an unauthorized third party. Sanctions and enforcement actions under FDCPA and UDAAP are becoming increasingly prevalent, and so is the rising costs of non-compliance. Along with the rise in public scrutiny and focus on consumer compliance, it's clear that the fines and penalties associated with FDCPA violations are growing. On July 9, 2013, the FTC settled a record-breaking enforcement action with Expert Global Solutions (EGS), the largest debt collector in the world, for a total \$3.2 million dollar civil penalty. The consent order mandated that EGS and its subsidiaries would cease and desist in further violations of the FDCPA and UDAAP, and would record at least 75% of their calls for six years from the date of the Order and retain those recordings for 90 days.

Recording for compliance is crucial to provide your organization with a documentary defense to customer complaints, enforcement proceedings, and civil litigation trials pursuant to potential UDAAP violations or FDCPA claims. The ability to successfully defend a legitimate debt collection effort and show that the organization was compliant is going to be entirely dependent on whether you can evidence compliance to the opposing party. Your organization needs to record and retain the calls and be able to retrieve them quickly to make sure that your legitimate business interests are not stymied by regulatory and legal roadblocks.

Consumer protection laws are here to stay and so is the increasing need to evidence compliance in all of your interactions.

RECORDING FOR COMPLIANCE BEST PRACTICES

Generally, recording for compliance solutions should contain the following capabilities to fully unleash the potential for enhancing your enterprise-wide compliance management system:



BUSINESS CONTINUITY

Helping your business continuity plan in getting your contact centers and data up and running after a disruption. Ensure your crucial interaction management infrastructure is resilient across data centers and for all core solution components.



MONITORING

Dashboard metrics that will provide statistics on your recording coverage and archiving capabilities, provide alarms when you have exceptions/failures and also provide reports that may be broken down by configuration of archiving rules, lines of businesses and other customizable and actionable data.



FAST AND EASY INTERACTION RETRIEVAL

This capability will allow you to respond to regulatory exam requests in a timely fashion and also help you to easily manage independent and internal audits of your contact center processes.



FLEXIBLE RETENTION MANAGEMENT

Gives the firm the capability to risk assess and maintain customized retention periods for specific interactions based on changes in regulatory or firm policy.



SECURITY

End-to-end media encryption of recorded interactions allows the firm to make sure that sensitive information is encrypted at the point of capture and remains encrypted throughout its lifetime – storage, transfer and archival.



PERIODIC HEALTH ASSESSMENTS

Gives the firm the ability to continuously align operational and support solutions with the business objectives.

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NICE Systems (NASDAQ: NICE), is the worldwide leader of intent-based solutions that capture and analyze interactions and transactions, realize intent, and extract and leverage insights to deliver impact in real time.

Driven by cross-channel and multi-sensor analytics, NICE solutions enable organizations to improve business performance, increase operational efficiency, prevent financial crime, ensure compliance, and enhance safety and security.

NICE serves over 25,000 organizations in the enterprise and security sectors, representing a variety of sizes and industries in more than 150 countries, and including over 80 of the Fortune 100 companies. www.nice.com.

