

## COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (“CALEA”) AND PRIVATE NETWORKS IN ACADEMIA<sup>1</sup>

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### INTRODUCTION

There has been a lot of traffic on various lists regarding whether academic institutions must comply with CALEA and if so, how. The discussion tends to center on whether universities and colleges are private networks and therefore exempt from CALEA, and if private, whether some form of user authentication is needed to remain exempt. This discussion is intended to help clarify the issues and inform the discussion.

### TEST FOR CALEA COMPLIANCE

The test for whether an academic institution must comply with CALEA actually boils down to a technical question: how the institution connects to the Internet. The starting point for the discussion is whether the academic institution connects users to the Internet. If it does, it has CALEA obligations. What those obligations are depends on how it connects. Conversely, the only entities without obligations are private networks that have absolutely no connection to the public Internet like a multi-campus wide area network or a network of universities and colleges that use non-public facilities to exchange traffic between schools such as Internet2.

There are three interconnection cases of concern to the academic institution: (1) access is completely provided by a third party; (2) access is provided by a third party but the university/college manages a router to direct campus traffic to the ISP; or (3) the university/college provides direct Internet access to the public at large.

In the first case, if an institution gets its connection from a commercial ISP that both provides the pipe to the Internet and the router on campus that directs traffic to it, then the compliance obligation is on the ISP. Essentially, the academic institution is like a retail establishment (e.g., hotel, coffee shop hotspot) that gets its access from another provider. The underlying provider has the obligation, not the retail outlet.

In the second case, if an institution manages the router to take campus traffic out to the Internet via the commercial ISP, the FCC has said that the facilities that connect a private network to the Internet must be compliant. In briefing to the Court of Appeals, the FCC and the Department of Justice explained that this means that if a university or college is a private network, and it provides a router at the gateway between the campus and the commercial

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<sup>1</sup> By Albert Gidari. The views in this paper should not be ascribed to any particular client represented by Perkins Coie, including the American Library Association, Association of Research Libraries, specific colleges or universities, or the Coalition of Advanced Research and Education Networks such as CENIC, Pacific Northwest Gigapop or other providers.

ISP, the school must ensure the border router is compliant, but the underlying campus network, which is private, has no obligation. The requirements for border routers have not been established.

In the third case, if the university or college provides Internet access to the public at large, then it could have the full CALEA obligation. In this case, the institution provides facilities-based broadband access to the Internet and is therefore no different than a commercial ISP under CALEA. This situation could arise if the institution provides Internet access to the surrounding city or county as a part of its community relations or outreach mission.

### **HOW DOES PUBLIC ACCESS AFFECT WHAT A COVERED INSTITUTION HAS TO DO?**

Once covered because the institution provides access to the Internet, the question becomes what is the impact of public access? To limit a university's or college's obligations under CALEA, it seems clear that wholly outsourced Internet service will shift the obligation entirely to the third party provider. If the institution wants to provide its own facilities to manage access, however, a university or college can limit its obligations if it is a private network. According to the FCC, a private network enables members of an organization or community to communicate with one another and/or to retrieve information from shared databases not available to the general public. Thus, the campus infrastructure that carries traffic between students, faculty and other authorized users in the academic community is private and exempt. If the university or college allows some of that traffic to go to the public Internet and manages the router that directs it to the commercial ISP, that router must be CALEA compliant, but not the campus infrastructure. An institution that connects directly to the Internet unmediated by border routers must be fully compliant.

Some have suggested that a system of user authentication is now mandated and no unauthenticated access by any member of the public can be permitted. There is nothing in the opinion or regulations to suggest that this is the case. A university or college that has a policy that limits access to campus facilities, whether the track and field house or Internet access terminals or Wi-Fi in the student union building, will meet the definition. The same is true when the academic institution authorizes access to visitors, conference attendees, or others involved in campus life or the academic community. Maintaining alumni email addresses or email forwarding services, or providing guest access to alumni when they visit campus or attend activities, would not trigger CALEA obligations either. One need not prove it is a private network by requiring only identified or identifiable access to the Internet. Nothing in CALEA, in the FCC Order or the court decision defines a private user community, nor does anything require that a community of users be specifically identified through assignment of user IDs or another authentication system.

Finally, the FCC exempted libraries that connect through a third party (like a commercial ISP, university or college network, or regional or local nonprofit network) at the

outset of these proceedings. Thus, the discussion on some academic lists about the possible impact of public access in academic libraries on the university private network status is misplaced. An exempt library permitting access to the Internet via a campus network will not cause the university or college to lose its private network status because the institution already is connected to the Internet in one of the three above scenarios and has whatever obligations that flow from that status as described above.<sup>2</sup>

In summary, once covered due to the technical connection to the Internet, an institution that manages its own facilities can limit its obligations if it limits access to a defined academic community of users (e.g., students, faculty, conference attendees, visitors related to the education mission or business, etc.) User authentication is not mandated by CALEA to prove the private network limitation. If, however, an institution provides general public access or an extended network to the surrounding community, it likely will have full CALEA obligations.

## **CONCLUSION**

This discussion is intended to help illuminate the complicated CALEA questions revolving around academia's compliance with CALEA. It is not intended as specific legal advice to any institution.

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<sup>2</sup> For more information, see: <http://www.ala.org/ala/washoff/WOissues/techinttele/calea/calea.htm> or <http://www.arl.org/info/frn/tr/calea/obligations.html>