



Don't let Internet temptations turn into corporate liability

Service Calls

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By Lawrence Lessig, [CIO Insight](#)

If there were a Nobel Prize awarded for business innovation, I'd nominate the person who first thought of giving customers at convenience stores their purchases for free if the cashier didn't offer a receipt. Convenience stores are famously vulnerable to rogue cashiers who don't record sales. By drafting customers to police cashiers, convenience stores get an inexpensive but effective surveillance system.

Businesses should think about carrying this idea into the Electronic Age—not to police rogue cashiers in cyberspace, but instead to avoid an equally costly harm: The losses caused by the rogue agents who lurk in telephone-space.

Don't get me wrong. Customer service agents have an extraordinarily difficult job. The vast majority of them are amazingly good. When calls take an ugly turn, I'm quite sure that in most cases, it's the customer who is to blame. But every so often, you come across a customer service agent who is astonishingly and maliciously bad. Yet it's practically impossible to effectively complain about such rogues. The ability to distinguish bad customers from bad agents on the basis of a customer's complaint, alone, is very difficult.

I was reminded of this last month, while watching my wife deal with a United Airlines ticket agent on the phone. United is struggling to survive bankruptcy. I often see an awareness of this struggle in the extra effort that many United employees seem eager to give. But unfortunately, my wife wasn't dealing with one of those employees. My wife was dealing with a rogue. As I watched her suffer the agent on the other end of the line, I saw the goodwill that hundreds of United employees have worked to build disappear in minutes.

My wife was calling to get a ticket issued. She had had to change her reservation a couple of times, and so had left the reservation unticketed. On her previous change, she was told that the ticket had to be issued by midnight on the night she was calling. She was calling at about 8 p.m., while I sat impatiently waiting to go to dinner.

A few minutes into the call, it was obvious that something strange was going on. The agent had spent most of the call lecturing my wife, in schoolmarm mode, about what she "should have done"—the ticket should have been purchased earlier, my wife should have gone to the airport to pick it up, and so forth. At a certain point, in frustration, my wife asked the agent to stop lecturing her. An argument ensued, and then the agent suddenly changed her tune. She told my wife that contrary to what she had been told earlier, the fact was that the ticket didn't need to be issued that night at all. She could have it issued on the morning of her flight. Skeptical, my wife asked for confirmation — "Really?" she queried. "You mean I can just pick it up on the morning of the flight?" she asked, again. "Yes," the ticket agent said in calmer tones, "really."

Then the call spun into the truly bizarre. The agent told my wife that she should have been a better customer. "You were not professional," the agent scolded. "Professional? A professional what?" my wife asked. The answer: apparently, not a sufficiently professional customer. My wife, on the brink of tears at this latest twist in her 20-minute phone torture, then simply asked for a final confirmation that the ticket would be available on the morning of the flight. Told that it would be, she quickly got off the phone.

Two days later, two hours before her international flight, my wife discovered what, in retrospect, should have been obvious: The ticket had been cancelled on the evening she spoke to that rogue agent. She had no reservation at all. Fortunately, the airport agent who delivered this bad news to my wife was a miracle worker. She devoted extraordinary efforts to rebook the reservation. Forty-five minutes later, a different itinerary was completed.

United is struggling to survive. It doesn't need enemies from within. The problem, however, is that it is hard to find the enemy from within. It is costly to distinguish rogues from angels, and customers are not reliable distinguishers.

Technology could help. It doesn't cost a lot to digitally record telephone conversations these days. But if the company does the recording, then the company must pay to listen to the conversations. No doubt 99.9 percent of that listening would be a complete waste of time. The rogue thus knows that he or she can hide behind the law of long tapes.

But what if customers were able to document conversations on the phone easily? Then rogues would be much more certainly caught. Customers could activate the "record" button when things spun out of control. Complaints to management could then be validated easily—or discounted, depending on what was recorded. Rogues would fear retaliation for their behavior. They then would either give up the game, or move on to another job where nastiness could be practiced with less chance of detection.

Only trouble is, under current law, 40 percent of Americans live in jurisdictions where a telephone call can be recorded only with the express consent of everyone on the call. (See the very helpful summary at www.rcfp.org/taping/.) In these jurisdictions, to document your phone call without announcing you're recording it is a crime. For ordinary people—those who don't routinely answer their phone with a recording that warns that the call may be monitored—this means that monitoring phone calls is effectively out of the question. Announcing the practice upfront seems odd, and announcing it midway

through the conversation is likely to get the other party to simply hang up.

There's something very weird about these "privacy" laws. No doubt that in most cases it is reasonable to expect that personal calls will not be recorded. But why is there any such expectation with a business? What possible reason could there be for banning customers from documenting conversations with businesses? Every e-mail exchange I have with a company is documented; why don't I have the right to document phone calls?

In my view, the laws in states such as California, Illinois, Michigan and Pennsylvania that require the consent of all parties before a telephone call can be documented should be changed to exclude customers taping commercial conversations. In the meantime, companies themselves could effectively change these laws by their own actions, and draft their customers to help them track rogue agents. The simplest way would be for companies to waive any privacy interest they have in recordings ("In order to improve customer service, this conversation may be monitored, by us or by you"). If enough companies did this, then the market for technologies to document telephone calls would most likely grow. Rogues might increasingly fear the documented call.

Alternatively, companies could develop technology that would let customers initiate a recording at any time ("If you would like this conversation recorded, press 5 at any time during the call"). The technology could block that tone from the rogue, but then initiate a recording by the company's technology. A customer with a complaint would then simply report the time at which the recording was made. This solution would save companies from the embarrassment of hearing recordings of their rogues popping up on the Internet, but would require them to bear the cost of developing this documenting technology.

Under either plan, the cost would be worth it. The harm that a bad agent might inflict on a company, in a single call or over time, could be huge. The cost to the company to track rogue agents also could be huge. Using customers to monitor bad agents could lower both costs, if only the law and company policy would allow it.

Public policy could help by increasing the freedom to document commercial phone conversations. But while we wait for the lawmakers, companies struggling to secure customer loyalty should make that change now.

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