



IT Security



Supply Chain



OT Security



Insider Threat



Physical Security



Interoperable Communications

NINE ELEMENTS AND AN EXAMPLE FOR NOTICE AND CONSENT BANNERS

State Local Tribal Territorial



DEFEND TODAY,
SECURE TOMORROW

INTRODUCTION

This document identifies elements present in certain notice and consent banners that are used in computing systems, and provides one example banner that incorporates those elements. This document does not include legal advice and the information it contains is not guaranteed to be accurate or complete. Anyone reviewing or developing a notice and consent banner should consider consulting an attorney and should note that the law can change rapidly, differs from jurisdiction to jurisdiction, and can be subject to various interpretations by various entities. Further, notice and consent banners can require tailoring based on the specific circumstances and legal jurisdiction at issue. Not all of the elements or the example included here are necessarily appropriate for every entity or situation. Indeed, the elements or the examples may be inadvisable depending on the entity or situation. Applicable laws include the Fourth Amendment to the U.S. Constitution, any similar provisions in State Constitutions, and relevant federal and state-level statutes.



Nine Elements for a Notice and Consent Banner

1. It expressly covers monitoring of data and communications in transit, rather than just accessing data at rest.
 - Example: “You consent to the unrestricted monitoring, interception, recording, and searching of all communications and data transiting, traveling to or from, or stored on this system.”
2. It provides that information in transit or stored on the system may be disclosed to any entity, including to government entities.
 - Example: “You consent, without restriction, to all communications and data transiting, traveling to or from, or stored on this system being disclosed to any entity, including to government entities.”
3. It states that monitoring will be for any purpose.
 - Example: “...at any time and for any purpose.”
4. It states that monitoring may be done by the entity or any person or entity authorized by the entity.
 - Example: “...monitoring or disclosure to any entity authorized by [ENTITY].”
5. It explains to users that they have “no reasonable expectation of privacy” regarding communications or data in transit or stored on the system.
 - Example: “You are acknowledging that you have no reasonable expectation of privacy regarding your use of this system.”
6. It clarifies that the given consent covers personal use of the system (such as personal emails or websites, or use on breaks or after hours) as well as official or work-related use.
 - Example: “... including work-related use and personal use without exception ...”
7. It is definitive about the fact of monitoring, rather than being conditional or speculative.
 - Example: “... will be monitored ...”

8. It expressly obtains consent from the user and does not merely provide notification.
 - Note: Click-through banners can be best because they force the user to interact with the language.
 - Note: Supporting processes should generally also preserve/provide evidence of the user's agreement to the terms.
 - Example: "By using this system, you are acknowledging and consenting to..."
 - Example: "By clicking [ACCEPT] below ... you consent to ..."
9. Nothing in the remainder of the banner or associated policies, agreements, training, etc. is inconsistent with, or otherwise undercuts, the elements of the banner.

AN EXAMPLE BANNER INCORPORATING THE ELEMENTS

By clicking [ACCEPT] below you acknowledge and consent to the following:

All communications and data transiting, traveling to or from, or stored on this system will be monitored. You consent to the unrestricted monitoring, interception, recording, and searching of all communications and data transiting, traveling to or from, or stored on this system at any time and for any purpose by [the ENTITY] and by any person or entity, including government entities, authorized by [the ENTITY]. You also consent to the unrestricted disclosure of all communications and data transiting, traveling to or from, or stored on this system at any time and for any purpose to any person or entity, including government entities, authorized by [the ENTITY]. You are acknowledging that you have no reasonable expectation of privacy regarding your use of this system. These acknowledgments and consents cover all use of the system, including work-related use and personal use without exception.