
Ethical considerations in monitoring employee Internet usage

By Stephanie Gallagher, Esq.

Internet monitoring in the workplace presents an interesting dilemma to both employers and employees. As I'm sure we are all well aware, especially if you work in corporate America, many employees spend some portion of the workday using company resources, such as computers, telephone, and Internet, for non-business related matters. While it is well established that employers have the legal right to monitor employee usage of such resources, this monitoring presents an ethical question. With competing interests at odds,



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how can an employer balance an employee's expectation of privacy while ensuring that employees are productive and refrain from inappropriate or illegal behavior?

With new technology arising every day, employers have ample opportunity to secretly monitor employee usage of Internet resources. A software product, aptly named "LittleBrother," provides employers with the ability to monitor an employee's Internet usage, and generate reports labeling the Internet activity as "productive," "unproductive," or "neutral," and provides a rating for each employee.¹ This is an easy way for an employer to track employees' usage of company resources. In addition to programs such as LittleBrother, employers have carte blanche to search

employee emails and hard drives, and it has been well established that, legally, employees do not have an expectation of privacy when it comes to company-owned resources.²

A legal perspective

The new reality is that the workplace has become decentralized with the widespread adoption of technology and work-from-home policies. This is advantageous to the employer/employee relationship because it allows employees to be more efficient, and adhere less strictly to a specific time schedule. The downside to this phenomenon is the blurred line between work-related and non-work-related activities. Where does the employee's expectation of privacy come into play? Does an employee even have an expectation of privacy? The law has long allowed employers to diminish their employees' expectation of privacy, due in part to the fact that employees have very little power in terms of bargaining, and are generally subject to the employment-at-will doctrine.³ The evolution of the legal precedent in this area leans in favor of the employer's right to monitor, where the notice of monitoring of the resources has been clearly communicated to employees through internal policies, extinguishing the reasonable expectation of privacy.⁴

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Assuming a business has clearly communicated its Internet privacy policy with employees, it can legally freely monitor the use of such company resources. At what point does this monitoring go too far? Is it even possible to go too far?

The employer's perspective

There are many clear reasons why an employer would want to monitor an employee's use of its Internet resources. The first, and probably the most obvious, reason for an employer to monitor an employee is that the employer has an expectation that an employee will be productive at work, earning their salary, and contributing to the success of the business. Secondly, employers need to ensure that employees are not utilizing company resources for illegal or unethical conduct. Which brings us to the question: Does this monitoring ever overstep ethical bounds? Ethically, an employer may determine that this monitoring is perfectly acceptable because it is ensuring that the employees are not abusing company resources, and are refraining from unlawful conduct with the use of company property. If the employer has made a clear policy, specifically outlining an employee's expectation of privacy (or lack thereof), an employer may determine that such monitoring has not crossed any ethical boundaries. But what about the employee's perspective?

The employee's perspective

As an employee, it is well established that there is no real expectation of privacy with respect to the use of company email, Internet, and computer resources.⁵ When presented with the question, most of us would probably agree that an employer has the right to monitor these resources, and to ensure that they are being used for business purposes, especially if there is a policy in place. But what if the scenario is a bit different? Before the technological boom, we only had pens and paper to correspond, or perhaps a typewriter. What if an employee drafted a personal letter, sealed it, and deposited it in the mailbox? Does an employer have the right to read the correspondence because it was drafted on company time, with company resources (the pen and paper)?⁶ In this situation, I believe we might think differently. Most of us would likely find the act of the employer reading the employee's letter an invasion of privacy, and unethical. So why does the opinion differ when the correspondence is electronic?

Another interesting conundrum arises when employees use company resources to conduct privileged communication, such as with an attorney. And what if an employee is conducting research about a medical issue, triggering HIPAA? Even if an employer has spelled out a policy for monitoring computer usage, this still raises the question of whether this monitoring is ethical.

What can be done to reconcile the competing interests?

Although employers are fully within their *legal* rights to monitor an employee's use of electronic resources, there are many *ethical* considerations to take into account. In addition to the above discussion, monitoring of employee communications may decrease morale, and instill a sense of distrust. Employees may feel like they are being spied on, or feel like their privacy has been invaded. Conversely, employers have many legitimate reasons to monitor employee communications. Not only does it allow employers to monitor productivity, but it protects employers from liability if an employee is using the resources for unlawful or unethical conduct.

Given the fact that employers are allowed to monitor electronic resources, certain ethical considerations should be weighed. A clear policy is an obvious necessity; however, perhaps an employer should only monitor select communications if they have reason to believe an employee may be engaging in some undesirable conduct. This leads the employer away from the "Big Brother" mentality, and would give employees the sense that they are trusted, at least somewhat. This can lead to increased morale, and, hopefully, increased productivity. □

Endnotes

- 1 Miriam Schulman: "Little brother is watching you" *Santa Clara University*, Spring 1998. <http://bit.ly/1gHjWCZ>
- 2 Miriam Schulman: "Little brother is watching you" *Santa Clara University*, Spring 1998. <http://bit.ly/1gHjWCZ>
- 3 Michael Z. Green, Against Employer Dumpster-Diving for Email, *South Carolina Law Review*, Winter 2012. <http://bit.ly/1cOiOK8>
- 4 Daniel Harmon, Law Technology News, *Lawyer's PC*, Nov. 2002.
- 5 Michael Z. Green, Against Employer Dumpster-Diving for Email, *South Carolina Law Review*, Winter 2012. <http://bit.ly/1cOiOK8>
- 6 Miriam Schulman: "Little brother is watching you" *Santa Clara University*, Spring 1998. <http://bit.ly/1gHjWCZ>