

Internship Class Week #4 Homework (9/20-9/26)

Due: Tuesday, September 27th

Assignment #1:

Observe the following websites for about 20-30 minutes each to become more familiar with organizations that assist employees regarding privacy in the workplace:

- 1) National Work Rights Institute:

www.workrights.org

- 2) 9 to 5 The National Association of Working Women:

www.9to5.org

- 3) Workplace Fairness:

www.workplacefairness.org

- 4) American Civil Liberties Union:

www.aclu.org

Write a half a page summary for each website to discuss your findings. How does this website assist employees regarding privacy in the workplace? Did you like this website? Why or why not? Was the website helpful? Do you think the information the website presented can be beneficial to you when you begin working?

Employee Monitoring: Is There Privacy in the Workplace?

1. Introduction

Employers want to be sure their employees are doing a good job, but employees don't want their every sneeze or trip to the water cooler logged. That's the essential conflict of workplace monitoring.

New technologies make it possible for employers to monitor many aspects of their employees' jobs, especially on telephones, computer terminals, through electronic and voice mail, and when employees are using the Internet. Such monitoring is virtually unregulated. Therefore, unless company policy specifically states otherwise (and even this is not assured), your employer may listen, watch and read most of your workplace communications. Recent surveys have found that a majority of employers monitor their employees. They are motivated by concern over litigation and the increasing role that electronic evidence plays in lawsuits and government agency investigations.

A 2005 survey by the American Management Association found that three-fourths of employers monitor their employees' web site visits in order to prevent inappropriate surfing. And 65% use software to block connections to web sites deemed off limits for employees. About a third track keystrokes and time spent at the keyboard. Just over half of employers review and retain electronic mail messages.

Over 80% of employers disclose their monitoring practices to employees. And most employers have established policies governing Internet use, including e-mail use (84%) and personal Internet use (81%). For additional findings from the AMA's 2005 survey, visit www.amanet.org/research/pdfs/EMS_summary05.pdf.

2. Telephone Monitoring

Can my employer listen to my phone calls at work?

In most instances, yes. For example, employers may monitor calls with clients or customers for reasons of quality control. However, when the parties to the call are all in California, state law requires that they be informed that the conversation is recorded or monitored by either putting a beep tone on the line or playing a recorded message. (California Public Utilities Commission General Order 107-B, www.cpuc.ca.gov/Published/Graphics/567.pdf) Not every business is aware of this requirement, so your calls might still be monitored without a warning. Federal law, which regulates phone calls with persons outside the state, does allow unannounced monitoring for business-related calls. (See Electronic Communications Privacy Act, 18 USC 2510, et. seq., www.law.cornell.edu/uscode.) An important exception is made for personal calls. Under federal case law, when an employer realizes the call is personal, he or she must immediately stop monitoring the call. (*Watkins v. L.M. Berry & Co.*, 704 F.2d 577, 583 (11th Cir. 1983)) However, when employees are told not to make personal calls from specified business phones, the employee then takes the risk that calls on those phones may be monitored.

Privacy Tip: The best way to ensure the privacy of your personal calls made at work is to use your own mobile phone, a pay phone, or a separate phone designated by your employer for personal calls.

If I wear a headset, are my conversations with co-workers subject to monitoring?

Yes. The conversations you have with co-workers are subject to monitoring by your employer in the same way that your conversations with clients or customers are. If you wear a headset, you should use the same care you would if you were talking to a customer or client on the phone. Some headsets have "mute" buttons which allow you to turn off the transmitter when you are not using the telephone.

Can my employer obtain a record of my phone calls?

Yes. Telephone numbers dialed from phone extensions can be recorded by a device called a pen register. It allows the employer to see a list of phone numbers dialed by your extension and the length of each call. This information may be used to evaluate the amount of time spent by employees with clients.

Employers often use pen registers to monitor employees with jobs in which telephones are used extensively. Frequently, employees are concerned that the information gathered from the pen register is unfairly used to evaluate their efficiency with clients without consideration of the quality of service.

3. Computer Monitoring

If you have a computer terminal at your job, it may be your employer's window into your workspace. There are several types of computer monitoring.

1. Employers can use computer software that enables them to see what is on the screen or stored in the employees' computer terminals and hard disks. Employers can monitor Internet usage such as web-surfing and electronic mail.
People involved in intensive word-processing and data entry jobs may be subject to keystroke monitoring. Such systems tell the manager how many keystrokes per hour each employee is performing. It also may inform employees if they are above or below the standard number of keystrokes expected. Keystroke monitoring has been linked with health problems including stress disabilities and physical problems like carpal tunnel syndrome.
2. Another computer monitoring technique allows employers to keep track of the amount of time an employee spends away from the computer or idle time at the terminal.

Is my employer allowed to see what is on my terminal while I am working?

Generally, yes. Since the employer owns the computer network and the terminals, he or she is free to use them to monitor employees. Employees are given some protection from computer and other forms of electronic monitoring under certain circumstances. Union contracts, for example, may limit the employer's right to monitor. Also, public sector employees may have some minimal rights under the United States Constitution, in particular the Fourth Amendment which safeguards against unreasonable search and seizure.

There may be some additional rights for employees in California given specific statutes of that state. See the paper by Los Angeles attorneys John Caragozian and Donald Warner, Jr., titled "Privacy Rights of Employees Using Workplace Computers in California," published in 2000.

How can I tell if I am being monitored at my terminal?

Most computer monitoring equipment allows employers to monitor without the employees' knowledge. However, some employers do notify employees that monitoring takes place. This information may be communicated in memos, employee handbooks, union contracts, at meetings or on a sticker attached to the computer. In most cases, employees find out about computer monitoring during a performance evaluation when the information collected is used to evaluate the employee's work.

4. Electronic Mail and Voice Mail

Is electronic mail private? What about voice mail?

In most cases, no. If an electronic mail (e-mail) system is used at a company, the employer owns it and is allowed to review its contents. Messages sent within the company as well as those that are sent from your terminal to another company or from another company to you can be subject to monitoring by your employer. This includes web-based email accounts such as Yahoo and Hotmail as well as instant messages. The same holds true for voice mail systems. In general, employees should not assume that these activities are not being monitored and are private. Several workplace privacy court cases have been decided in the employer's favor. See for example:

- o Bourke v. Nissan, www.loundy.com/CASES/Bourke_v_Nissan.html
- o Smyth v. Pillsbury, www.loundy.com/CASES/Smyth_v_Pillsbury.html
- o Shoars v. Epson, www.law.seattleu.edu/fachome/chonm/Cases/shoars.html

When I delete messages from my terminal, are they still in the system?

Yes. Electronic and voice mail systems retain messages in memory even after they have been deleted. Although it appears they are erased, they are often permanently "backed up" on magnetic tape, along with other important data from the computer system.

My employer's electronic mail system has an option for marking messages as "private." Are those messages protected?

In most cases, no. Many electronic mail systems have this option, but it does not guarantee your messages are kept confidential. An exception is when an employer's written electronic mail policy states that messages marked "private" are kept confidential. Even in this situation, however, there may be exceptions. (See *Smyth v. Pillsbury*.)

Is there ever a circumstance in which my messages are private?

Some employers use encryption to protect the privacy of their employees' electronic mail. Encryption involves scrambling the message at the sender's terminal, then unscrambling the message at the terminal of the receiver. This ensures the message is read only by the sender and his or her intended recipient. While this system prevents co-workers and industrial "spies" from reading your electronic mail, your employer may still have access to the unscrambled messages.

Are my text messages on an employer-provided cell phone private?

In an opinion issued on June 18, 2008, the 9th U.S. Circuit Court of Appeals ruled that employers must have either a warrant or the employee's permission to see cell phone text messages that are not stored by the employer or by someone the employer pays for storage. While e-mail typically is stored on a company's own servers, text messages usually are stored by cell phone companies and the employer does not directly pay for their storage. That distinction formed the basis for the court's decision. (*Quon v. Arch Wireless, et al.* (No. 07-55282, DC No. CV-03-00199-SGL) www.ca9.uscourts.gov/coa/newopinions.nsf/D2CDDDB4098D7AFB28825746C0048ED24/)

Workplace Privacy Protections

What about my employer's promises regarding e-mail and other workplace privacy issues. Are they legally binding?

Not necessarily. Usually, when an employer states a policy regarding any issue in the workplace, including privacy issues, that policy is legally binding. Policies can be communicated in various ways: through employee handbooks, via memos, and in union contracts. For example, if an employer explicitly states that employees will be notified when telephone monitoring takes place, the employer generally must honor that policy. There are usually exceptions for investigations of wrong-doing. If you are not already aware of your employer's workplace privacy policies, it is a good idea to become informed.

In *Smyth v. Pillsbury*, the employee's termination was upheld by the court, even though the company had a policy of allowing e-mail use for personal communications. In this case, the employee had sent messages to co-workers that were deemed highly inappropriate for workplace communications. (*Smyth v. Pillsbury*, C.A. NO. 95-5712, U.S. District Court for the Eastern District of Pennsylvania, Jan.18, 1996, Decided, Jan. 23, 1996, Filed. www.Loundy.com/CASES/Smyth_v_Pillsbury.html)

Are there any laws that deal with workplace privacy?

Currently there are very few laws regulating employee monitoring. If you are concerned about this issue, contact your federal legislators, especially the members of the House and Senate Labor committees in Congress. (See PRC Fact Sheet 18 "Privacy in Cyberspace," www.privacyrights.org/fs/fs18-cyb.htm.)

Are there organizations that assist employees regarding workplace privacy?

Yes. There are several groups that are actively involved in workplace monitoring issues and that advocate stronger government regulation of employee monitoring activities.

- **National Work Rights Institute**
166 Wall St.
Princeton, NJ 08540
(609) 683-0313
Web: www.workrights.org
- **9 to 5 The National Association of Working Women**
231 W. Wisconsin Ave. No. 900
Milwaukee, WI 53203
(414) 274-0925
Hotline (800) 522-0925
Web: www.9to5.org
- **Workplace Fairness**
www.workplacefairness.org
Affiliated with the National Employment Lawyers Association, www.nela.org
- **American Civil Liberties Union**
125 Broad Street, 18th Floor
New York, NY 10004-2400
(212) 549-2500
Publications Ordering: 1-800-775-ACLU (2258)
Web: www.aclu.org

The American Civil Liberties Union (ACLU) also has information related to workplace privacy issues that are not discussed in this fact sheet. Some of the issues of growing concern involve psychological testing, drug testing, polygraph or lie-detector testing and off-the-job surveillance of employees. Visit the ACLU's Web site at www.aclu.org.

Labor groups are taking a stronger interest in workplace monitoring. If your union represents employees' interests regarding workplace monitoring, please contact the Privacy Rights Clearinghouse so we can include information in this publication. Contact Us: www.privacyrights.org/inquiryform.htm