

**Workplace Privacy**

CIS 381

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<http://www.privacyrights.org/fs/fs7-work.htm>

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**Overview**

- **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.**

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## Workplace Monitoring

	1997	1998	1999	2000	2001
Recording & review of telephone conversations	10.4%	11.2%	10.6%	11.5%	11.9%
Storage & review of voice mail messages	5.3%	5.3%	5.8%	6.8%	7.8%
Storage & review of computer files	13.7%	19.6%	21.4%	30.8%	36.1%
Storage & review of e-mail messages	14.9%	20.2%	27.0%	38.1%	46.5%
Monitoring Internet connections				54.1%	62.8%
Video recording of employee job performance	15.7%	15.6%	16.1%	14.6%	15.2%

American Management Association

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## Monitoring Rationale

- Legal Compliance.**  
In regulated industries, taping telemarketing activities gives both the company and the consumer some degree of legal protection. Also, electronic recording and storage may be considered part of a company's "due diligence" in keeping adequate records and files.
- Legal Liability.**  
Employees who are unwittingly exposed to offensive graphic material on colleagues' computer screens may charge a hostile workplace environment.
- Performance Review.**  
Customer service and consumer relations personnel are frequently taped as they field calls, and tapes are reviewed with supervisors to evaluate and improve job performance.
- Productivity Measures.**  
Net-surfing, personal use of office e-mail, and/or dialing up 900 numbers expend time and assets on non-business related activities.
- Security Concerns.**  
Protecting the value of proprietary corporate information is a primary concern in an age when e-mail and internet connections continue to expand.

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## Getting Serious

- To motivate employee compliance, companies increasingly are putting teeth in technology policies. Fully 26% have fired workers for misusing the Internet. Another 25% have terminated employees for e-mail misuse.

American Management Association 2005 Survey

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## Ramifications

	Misuse or Personal Use of:		
	Telephone	E-mail	Internet
<b>Dismissal</b>	10.4 %	18.6 %	20.3 %
<b>Formal Reprimand</b>	34.0 %	38.7 %	33.6 %
<b>Informal Reprimand</b>	31.5 %	24.8 %	23.0 %

American Management Association 2001 Survey

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## New Technology (1/2)

- Employers have established policies governing personal e-mail use (84%); personal Internet use (81%); personal instant messenger (IM) use (42%); operation of personal Websites on company time (34%); personal postings on corporate blogs (23%); and operation of personal blogs on company time (20%).

American Management Association 2005 Survey

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## New Technology (2/2)

- Employers have been slow to adopt emerging monitoring/surveillance technologies to help track employee productivity and movement. Employers who use Assisted Global Positioning or Global Positioning Systems satellite technology are in the minority, with only 5% using GPS to monitor cell phones; 8% using GPS to track company vehicles; and 8% using GPS to monitor employee ID/ Smartcards.

American Management Association 2005 Survey

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**Phone Call Privacy**

- **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.

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.

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**Phone Records**

- **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.

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**CRT Privacy**

- **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.

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## Big Brother Watching?

- 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.

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## eMail Privacy

- 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. The same holds true for voice mail systems. Several workplace privacy court cases have been decided in the employer's favor. (See for example, Bourke v. Nissan, Shoars v. Epsom, and Smyth v. Pillsbury)

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- 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.)

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### Privacy Policy Enforcement

- **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

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### Workplace Privacy Laws

- **Are there any laws that deal with workplace privacy?**

Currently there are very few laws regulating employee monitoring.

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- **Several workplace privacy court cases have been decided in the employer's favor.**

- **See for example:**
  - Bourke v. Nissan, [www.louandy.com/CASES/Bourke\\_v\\_Nissan.html](http://www.louandy.com/CASES/Bourke_v_Nissan.html)
  - Smyth v. Pillsbury, [www.louandy.com/CASES/Smyth\\_v\\_Pillsbury.html](http://www.louandy.com/CASES/Smyth_v_Pillsbury.html)
  - Shoars v. Epson, [www.law.seattleu.edu/fachome/chronm/Cases/shoars.html](http://www.law.seattleu.edu/fachome/chronm/Cases/shoars.html)

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**Smyth v. Pillsbury (1/3)**

- Defendant (Pillsbury) maintained an electronic mail communication system ("e-mail") in order to promote internal corporate communications between its employees.
- Defendant repeatedly assured its employees, including plaintiff, that all e-mail communications would remain confidential and privileged.
- Defendant further assured its employees, including plaintiff, that e-mail communications could not be intercepted and used by defendant against its employees as grounds for termination or reprimand.

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**Smyth v. Pillsbury (2/3)**

- In October 1994, plaintiff (Smyth) received certain e-mail communications from his supervisor over defendant's e-mail system on his computer at home.
- In reliance on defendant's assurances regarding defendant's e-mail system, plaintiff responded and exchanged e-mails with his supervisor.
- At some later date, contrary to the assurances of confidentiality made by defendant, defendant, acting through its agents, servants and employees, intercepted plaintiff's private e-mail messages made in October 1994.
- On January 17, 1995, defendant notified plaintiff that it was terminating his employment effective February 1, 1995, for transmitting what it deemed to be inappropriate and unprofessional comments over defendant's e-mail system in October, 1994.

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**Smyth v. Pillsbury (3/3)**

- the company's interest in preventing inappropriate and unprofessional comments or even illegal activity over its e-mail system outweighs any privacy interest the employee may have in those comments.

UNITED STATES DISTRICT COURT FOR THE  
 EASTERN DISTRICT OF PENNSYLVANIA  
 January 18, 1996, Decided

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