

OPTIMATICS

INTRODUCTION

Employers have the means to monitor data related to all kinds of employee activity at work. Sometimes employees are aware of the surveillance capabilities of companies and the data they collect and sometimes they are not. Should a company be transparent about the kinds of employee activities they monitor and why? Or should they withhold this information from employees to make it easier to detect misconduct and criminal activity?

BACKGROUND

Optimatics, Inc. is a publicly-traded company that provides engineering services to companies and governmental organizations involved in cutting-edge technological innovation, research, and product development in a variety of industries ranging from automotive design and manufacturing to space science. This multi-national company has over 4,500 employees in three countries and generates more than \$700 million in annual revenues. Optimatics is a defense contractor and conducts research on many classified projects.

The Corporate Security Department at Optimatics monitors employees to detect illegal and unethical activity and to ensure the security of intellectual property. They monitor employee arrival and departure times, internet activity such as websites visited and the length of time spent in work and non-work related browsing activity, incoming and outgoing email, access to documents at various security levels, and use of personal devices at work to access company networks. Email and telephone traffic are monitored through software that was redeployed from similar applications used by the Central Intelligence Agency and other national security groups.

The company is also piloting a new employee identification badge that electronically monitors conversations and interactions that relate to productivity and connectivity between employees and among units. This sophisticated technology consists of a digital device that tracks tone of voice, posture, body language, and detects who employees are interacting with. The badge does not record conversations, and a third-party provider only provides data back to Optimatics in aggregated form. The company hopes to use the data to make changes in the context of work, such as the timing of coffee breaks, the development of social networks, and the physical space where work is conducted to enhance productivity and efficiency. Employees have the opportunity to opt out of the badge program.

Human Resources handles most employee relations issues, but often relies on Corporate Security to investigate matters involving computer forensics, intellectual property, and employee safety. Human Resources also takes the lead on employee engagement metrics and corporate culture issues related to trust and employee satisfaction.

THE CASE

Sam

Sam works as a research analyst in the Engineering Division and has been with the company for 14 years. He has been called to meet with Bill in Corporate Security, but was not told the purpose of the meeting. He is anxious and uncomfortable. Nobody likes being summoned to the Security Department without knowing the purpose of the meeting. In the meantime, he watches the movement of the minute hand on the clock on the wall just above the potted plastic plant, dreading the meeting he knows will happen, but hoping that the outcome is not negative. Suddenly Bill appears at the door. "Hi Sam. Thanks for coming to meet with me. Let's step into my office."

Bill

Bill is an investigator in Corporate Security and joined Optimatics about a year ago. Corporate Security reports directly to the Chief Executive Officer. Bill previously had a successful career with the Federal Bureau of Investigations. He specialized in white-collar crime and computer forensics. When he joined Optimatics, Bill was excited to make the transition to the private sector. It was apparent that his investigative background and expertise were needed to protect the interests and assets of the company. He is eager to demonstrate the value of his knowledge and skills in his new position.

Ivy

Ivy is an Employee Relations representative and seasoned HR professional. Employee Relations reports directly to the Senior Vice President of Human Resources. She has been with Optimatics for several years. Employees see her as independent and objective, representing both the interests of management and employees without overly advocating for either. Her reputation among employees is important to her.

The Day after Sam's Meeting with Bill

Bill and Ivy are discussing an employee relations matter involving the alleged mishandling of corporate information by Sam. Sam previously reported to Randy, a former VP, no longer with the company. A week or so ago, Randy called Sam to ask that he send him a document related to a particular process in the company. Sam was initially conflicted and reluctant to comply with Randy's request, but ended up electronically sending him what appeared to be a confidential document through the company server. The transmission of the document was blocked since it was labeled "confidential." Telephone calls originating to and from Sam and Randy were found to have occurred immediately prior to and after attempted transmission of the document.

When Sam was interviewed by Bill, he admitted sending the document to Randy. It turned out, however, that the document had been mislabeled as confidential. Sam's manager, Marta, wants to terminate Sam's employment anyway. Although Sam has not had similar problems in the past and is a good performer, Marta feels that she has lost confidence in his ability to handle sensitive and proprietary information. "We handle a lot of classified and confidential information in our shop," she tells Ivy. "How can I trust Sam in the future when I know he has made this kind of mistake, regardless of whether the document was labeled correctly or not?"

Ivy has advocated for a probationary period instead of termination since the company had mislabeled the document in question. She also believes that probationary periods have been applied in similar situations where the company has made some kind of mistake that has clouded an issue. She is considering elevating her concerns to the next level of management, but realizes that this may damage her working relationship with

Marta. Bill is not recommending a course of action since his role was only to investigate the incident. Privately, he leans toward termination of employment since Sam believed the document to be confidential in nature, but still ended up sending it to Randy. Bill and Ivy's conversation quickly turns to a discussion about the different philosophies of Corporate Security and Human Resources about investigative processes and techniques.

"Bill, I'm concerned that some of the techniques you use are seen by employees as over-reaching. We don't want employees to feel like we are spying on them. Don't you think that somehow we should let employees know that we monitor documents that are being sent from or received by the company and that anyone sending something labeled as confidential may result in termination of employment?" Bill is defensive. "My job is to protect the company, Ivy. That's what I was hired to do."

In fact, Bill's temperament could be seen as based on a commitment to duty and responsibility, respect for others, and making sure people obey the rules. That's one of the things that helped him build a successful career with the FBI and stand out as a strong contributor in Corporate Security.

Ivy goes on to tell Bill that Human Resources agrees with the need to use computer forensics, data monitoring, and other cutting edge strategies to detect and prevent criminal conduct and other violations of company standards. However, she is concerned that if employees get the feeling that they are being "spied on" by the company, the trust they have worked so hard to build will be eroded. Ivy tells Bill that the goal of Human Resources is to prevent wrongdoing, but when discovered, it should be dealt with swiftly and in a way that protects both the interests and rights of the company and those of the employee involved. "I think we should be more forthcoming about what we monitor and when employees cross the line in a way that could result in discipline or termination."

Ivy's temperament tilts more toward idealism and a focus on people. She always tries to act in accord with her conscience and commitment to ethics. Just like Bill, Ivy's qualities have contributed to her long-term success in Human Resources.

Bill strongly disagrees with Ivy. He believes that the company must be secretive as far as surveillance capabilities go. "Employees who have bad intentions will find a way to get around our controls if they know what we are looking at and the tools we have at our disposal."

He reminds Ivy that the Federal Sentencing Guidelines say that companies should take measures to detect and prevent criminal conduct. "The guidelines don't say we should tell employees about our surveillance capabilities, so we don't hurt their feelings or make them feel paranoid." If employees know what is being monitored and how, bad actors will be empowered to evade detection of illegal and unethical actions.

Besides, Bill reminds Ivy that, according to corporate policy, employees are advised that they have no expectation of privacy when using company equipment and resources, including, but not limited to, telephones, computers, and other company issued devices. Bill asserts that Corporate Security always treats employees with respect, but they intend to use every legal means, interview technique, and technology at their disposal to identify violations of the law or company standards when they happen.

In the meantime, Sam has been placed on administrative leave pending the outcome of the investigation. He is concerned that he may be fired for sending the document to Randy. Randy was not just his boss, but also a good friend, and he was asking for a document related to a project he had worked on while employed at

Optimatics and contributed a great deal to, as well. Perhaps sending the document to Randy was not the best decision. Sam always tries to do the right thing, but everyone makes mistakes.

Sam also was not aware how the company was monitoring his activities so closely. He's heard about the new identification badge that the company is piloting and was willing to participate in the new program, but now he is having second thoughts. He feels like "Big Brother" is watching everything thing he does — every keystroke, every email, every movement, every conversation. Even if Sam is not terminated for attempting to send the document to Randy, he is beginning to wonder if Optimatics is the kind of place where he wants to work. He bets that other people would feel the same way if they knew how closely the company was watching them. "It all comes down to trust," he thinks to himself as he watches the minute hand of the kitchen clock tick slowly forward and waits for the call from Optimatics that could come at any time.

THE ASSIGNMENT

- Consider the facts. With respect to transparency about the investigative activities and surveillance capabilities of the company, where does the balance lie between creating a safe and trusting work environment where the interests of the employee are central, and one where the rights and assets of the company and its clients are paramount? Is there a middle ground and, if so, where?
- Consider the people. What is the right thing to do in Sam's case? Should his employment be terminated or should Ivy elevate her concerns and advocate for leniency? What are the key considerations for each course of action? What discipline, if any, would you recommend? Bill and Ivy have different temperaments that make each successful in their respective roles. How can they work together more effectively to solve ethical issues given that they both see and experience the world differently?
- Consider the situation. What are reasonable expectations of privacy when it comes to the workplace? Should employees be made aware of exactly how they are being monitored?

This case was prepared for the Daniels Fund by Earnie Broughton, Senior Advisor, Ethics Research Center (ERC), the research arm of the Ethics & Compliance Initiative (ECI).

OPTIMATICS

INSTRUCTOR/FACILITATOR NOTES

CASE SUMMARY

Today, companies have vast amounts of data at their disposal that can be analyzed and used for many purposes, including the improvement of corporate and employee performance. One application of data analytics is to monitor employee activity for the purposes of detecting and preventing misconduct and criminal acts. At the same time, employees are becoming more sensitive to privacy issues related to this kind of activity. This case deals with the issue of how transparent companies should be about the kinds of employee activities they monitor and how they use data gathered in the process.

LEARNING OBJECTIVES

The learning objectives of this case study are as follows:

- Understand the different stakeholder views and interests in surveillance activities and capabilities that are intended to detect and deter violation of company standards and criminal conduct
- Consider issues related to workplace surveillance in the application of employee discipline
- Explore the ethical boundaries of workplace privacy with respect to the kinds of data collected and accessed by employers
- Understand that well-intentioned people have different temperaments that inform how they manage ethics issues

ISSUES

How Transparent Should Companies be about the Kinds of Employee Behaviors They Monitor and about Their Surveillance Capabilities?

As noted in the case, the Federal Sentencing Guidelines (FSG) encourage companies to implement programs to detect and prevent criminal conduct. The FSG were initially developed to bring a greater degree of equity in sanctions applied by judges in a wide range of criminal cases. Over the years, the guidelines have come to be used to encourage companies to take a robust and meaningful approach to ethics and compliance by using both “carrots” and “sticks.” “Carrots” enable judges to reduce sanctions and fines resulting from criminal wrongdoing if companies demonstrate a strong commitment to the structure and administration of their ethics and compliance programs. “Sticks” permit judges to apply a multiplier factor on fines and sanctions where effective compliance programs are found not to exist.

Does transparency around surveillance capabilities enhance or erode the ability of companies to detect and prevent criminal conduct? Following Bill’s logic in the case, one could argue they do not. However, the FSG also emphasize the importance of establishing a strong culture that supports ethical conduct. What are consequences to culture if employees believe the company is intrusive, secretive, and over-reaching in terms of their surveillance capabilities? In the words of F. Scott Fitzgerald, “the test of a first-rate intelligence is the ability to hold two opposed ideas in mind at the same time and still retain the ability to function.” Resolution

of this case likely rests in our ability to find a middle ground between two seemingly incompatible positions — one advocating for transparency and the other not.

Daniels Fund Ethics Initiative Principles involved: Trust, Transparency, Fairness, Respect, and Rule of Law

How Do We Determine Discipline in Particular Situations?

The principals in this case (Marta, Ivy, and Bill) disagree on the discipline to be applied in Sam's situation. Factors used to decide what action should be taken in Sam's case include, but are not limited to, standard company policy and practice, prior performance or disciplinary issues of the employee, discipline applied in similar situations or circumstances, and actual damage created by the infraction itself. Leaders must always assume that their decisions in any particular case could become public at some point and be prepared to justify the level of discipline applied. Although Bill references the Federal Sentencing Guidelines in his discussion with Ivy, they do not apply as strongly in Sam's case since no criminal activity was involved.

Daniels Fund Ethics Initiative Principles involved: Fairness, Respect, and Rule of Law

What Reasonable Expectations of Privacy Should Employees Expect in the Workplace?

Privacy is an important value to one degree or another in every part of the world and to every individual. Optimatics is considering the use of an advanced technology to collect data that would possibly enhance productivity and efficiency. One question in this context is whether the end justifies the risk in collecting certain kinds of data. A second question is the nature of controls a company builds around the kind of data collected, who has access to it, and how it is used. Optimatics is using a third party to aggregate the data to protect the privacy of individual employees. They also are giving employees the opportunity to opt out of the new identification badge program. Are these actions sufficient to address any privacy concerns employees might have? What additional questions might employees at Optimatics have about this initiative?

Daniels Fund Ethics Initiative Principles involved: Trust, Transparency, Fairness, Respect, and Rule of Law

How Can People with Different Temperaments Solve Ethics Issues Together?

People tend to fall into different types of temperaments. The Kiersey type indicator, for example, identifies four basic temperaments: **Guardians** focus on duty and rules; **Idealists** most value people, relationships, and ethics; **Artisans** are competitive, creative, realistic, and inclined to bend the rules if necessary to find a workable solution; and **Rationals** are pragmatic, value efficiency, and are prepared to bypass rules that prevent them from coming up with innovative solutions. Bill and Ivy are more likely to resolve their differences in a mutually satisfactory way if they acknowledge and value the strengths of their different perspectives, seek to find common ground, and engage others who view the situation differently to open them to new ways of thinking about and acting through their respective roles.

Daniels Fund Ethics Initiative Principles involved: Trust, Fairness, and Respect

This case was prepared for the Daniels Fund by Earnie Broughton, Senior Advisor, Ethics Research Center (ERC), the research arm of the Ethics & Compliance Initiative (ECI).