Critical Analysis Paper

Caring and Doing

Tricia Cervenan
Professor Steven Walker
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Ethical Problem: Consent in Monitoring

My company makes software we sell to organizations to help their salespeople (reps) use marketing content more effectively. We've recently moved into also providing software that helps to train those reps on processes and methodologies. Our next move is to offer more tools that help companies train those reps and more reliably measure their effectiveness.

On the surface, this seems like reasonable functionality to provide. In a society that is somewhat obsessed with measuring effectiveness and optimizing ourselves to be better, it feels in line with the personal desires of reps to analyze their progress as they progress in their sales careers. Salespeople are often competitive, if not with others, at least with themselves, and respond well to incentives and reward systems, particularly financially driven ones. Therefore, allowing reps to analyze how well they are doing relative to others and their previous performance, and find tangible ways to improve, are tools they should enjoy.

However, while the traits I described above are valid when generalized across an entire population, they are not necessarily true for each person in the population. Additionally, there is absolutely a spectrum of acceptability that reps will place themselves on.

In the future, the software my company plans to release to help with training could easily be categorized as monitoring software. This software will help organizations and managers track rep behavior and gain insight into what they are saying when talking to prospects. People are very used to hearing "this call is being recorded for quality and training purposes". Therefore, while there is no reasonable expectation of privacy for

salespeople, in my opinion, the level of monitoring companies like mine are building

goes beyond what is necessary for quality and training purposes.

However, that is not the dilemma I wish to discuss. What is more of an issue for

me is the question of consent. Both Cox (2005) and Moore (2000) state that consent to

this type of monitoring comes from employees taking the job; therefore, they consent

to whatever monitoring comes with it. Moore distinguishes this as "thin consent."

Moore says that "thick consent" is present when jobs are easy to find, and people

choose to work there anyway. In both of these articles and in organizations, there

seems to be a belief that if someone works at a company, they have knowingly

consented to monitoring. There is often not enough consideration that simply showing

up and agreeing to one arrangement is not an acceptable form of consent to additional

arrangements in other areas of our lives.

The Characters and Their Positions

In this dilemma, the people involved are companies (my company, our customers,

their prospect/customers) and employees (of my company, our customers, and our

customers' prospects/customers).

Companies (my employer and others) have made claims for years that they need

to monitor employees due to behavior they would like to diminish, such as genuinely

illegal behavior; harassment, as Cox (2005) cites in examples; or incorrect execution of

processes and policies. Companies have been held fiscally responsible for negative

behavior that has taken place by their employees, and as such, the market has found

ways to help mitigate that risk. Many regulations exist to help ensure that individuals,

whether they be customers of companies or employees, are protected from poor

behavior by employees of companies. Consumer protection laws, Title VII of the Civil Rights Act, and the Sarbanes-Oxley Act are all meant to ensure that individual employees of organizations make good decisions and that corporations are held responsible if their employees do not make good decisions. Some of these regulations, like Sarbanes-Oxley, even require specific amounts of record keeping. Given that we are conducting business globally on computers, it seems reasonable to expect digital record-keeping. Additionally, since employees wishing to commit illegal and unethical acts will likely stay silent, particularly to regulators, monitoring with heavily controlled access and employment-based consent also could be argued as necessary and feel reasonable.

Yet, the argument that companies need to protect themselves from bad actors puts every employee in the same buckets of likelihood to commit a crime, conduct unethical behavior, or simply being unskilled at their job. Therefore, they are monitoring everyone equally to protect against the behaviors of a few.

Employees are individuals in our society who work for others. Moore (2005) states, "An employee who doesn't have to work, but agrees to anyway, has given the right kind of consent - assuming of course they have been notified of the different types of monitoring that will occur." If this is true, the only people who could give the "right kind of consent" are people with a stockpile of disposable assets. Unfortunately, most people have to work to survive and provide essential services to themselves. Particularly in the U.S., where we do not have vital social programs, most adults must be employed. However, Moore, like others who argue a "right-to-work," then puts the majority of workers in that bucket of people, stating that if they don't like it, they can go

work somewhere else. This argument fails to consider that most companies are monitoring employees, that there are switching costs to finding another job, and that there is a lack of perfect information in the job switching process that results in an imbalance of power for employees. Not to mention that some of the protections in place for employees put a heavy burden on those individuals to prove corporate malfeasance. Therefore, most employees are not truly able to provide thick consent and are stuck providing thin consent to earn money to survive in our global economy and capitalistic society.

By my company selling a monitoring product to other companies, the companies are consenting to monitoring for their employees. My company is not building into the software a way for the individual employee within our customer organizations to consent to be monitored using our software. We are also not allowing that employee to ask their prospect for consent. We are also not transparent with our customer's employees about how their employer and we are tracking their activity. Finally, we are not allowing those employees to choose the situations when they will provide consent and when they will deny consent. Therefore, customer employees will need to agree to monitoring or quit. I can't imagine quitting is a realistic option for most employees.

If I consider only my specific situation, as the sole provider for my family, simply leaving my company is not an option. As someone who is female, getting older, and works in technology, the ability to find a new job is becoming harder and harder. When I applied at my company, I certainly figured there was some monitoring software in place, primarily because I work in technology and am aware of the trends of organizations towards monitoring. However, I was not aware the company had as

much monitoring as it does. I was also not aware of the product we are hoping to release in the future. Given the secretive nature of the build, I am not expecting that they would have told me had I asked. Either way, going back to the first statement, as the sole provider for my family, my options for income are limited to the type of work I do. I do not have the luxury not to work. Therefore, I need to find a way to either become okay with my company's choices or change the leadership's mind to value asking for consent and being okay with not monitoring if denied consent.

The Negotiation

I hope to take an integrative approach using the Principled Negotiation Model to begin the negotiation with my organization. The first step is to separate the people from the problem. While I have discussed consent several times with my colleagues, I am not convinced that the concern has reached the right decision-makers. I hope to communicate to my senior leaders my concerns as well as listen to their challenges.

I assume their interests are the already stated interests of most companies. They want to maximize company value and help other companies maximize their value and reduce risk. However, I want to be as open as possible to learning something new about what they are trying to achieve.

As we begin to talk about options, if they are willing to discuss that with me, I'm hopeful that we can find a mutually beneficial solution. The key for me is not necessarily to find a personally beneficial solution, rather something that genuinely addresses the issue of continuously gathering consent. We have a set of guiding principles that, on the surface, feel right. As Dr. Edgar Schein (Mike, 2014) discusses, sometimes the espoused culture is not the same as the actual culture of the

organization. Our organization has grown very fast in the last year. Because of that, the dwelling place and community of memory have been hit very hard. Leaders talk in company-wide meetings about "retaining our culture." Yet, the guiding principles often aren't followed daily as new voices join in the conversation. However, the leaders I hope to talk to will likely imagine that our culture is that way. So I hope to help them see that continuously gathering consent will enforce the espoused values and enforce our organization's "sense of uniqueness," which separates us from our competitors (Arnett, 2017).

The other important aspect of this negotiation is to enforce that this request is not about my needs or my opinion about privacy. This topic is about helping our organization to grow into an ethically transformed organization. Because we are growing so quickly, it will be easy for all employees to lose sight of the company's values and create norms that don't align with our guiding principles. By using ethical language and encouraging trust, showing protection for individual rights, showing concern for stakeholders, society, and the global environment (Johnson, 2019), I believe I will be able to participate in an ethical conversation about this dilemma and come to an objective outcome.

Conclusion

Our society has transformed itself into one that has willingly given up its right to privacy, willingly let corporations tell individuals that there is no expectation of privacy, and has convinced employees that working for anyone other than themselves is at-will and can only happen under the rules of the employer. In an attempt to de-risk receiving fines and being sued, corporations have enacted monitoring of their employees. My

company is participating in that trend, and I hope to convince them that doing so as

currently defined is not in the best interest of our team, nor is it in the best interest of

our customers and their prospects, despite the trend in implementing this type of

software. Allowing all parties being monitored to consent or deny consent to being

monitored will build our company into one that is ethically healthy.

References

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