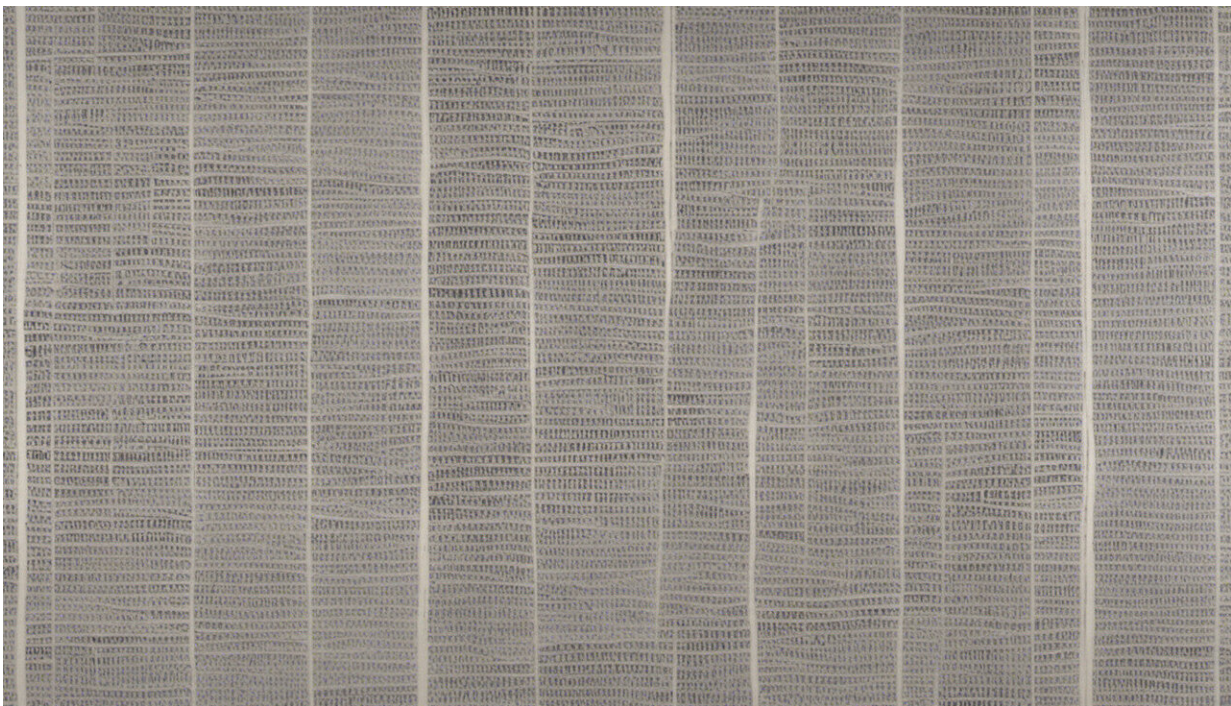


A question of trust: should bosses be able to spy on workers, even when they work from home?

June 16 2020, by Val Hooper, Gordon Anderson and Stephen Blumenfeld



Credit: AI-generated image ([disclaimer](#))

Anyone familiar with George Orwell's novel 1984 will relate to the menace of Big Brother watching their every keystroke and mouse click. For a growing share of the workforce that dystopian reality arrived while most of us were hunkering down in our "bubbles".

With employees working from home during the COVID-19 pandemic, more companies felt the need to track them remotely. US-based Hubstaff, which develops and markets [employee](#) time-tracking software, [boasted](#) a three-fold increase in New Zealand sales during the first month of lockdown alone.

Now, with [some organisations](#) thinking of continuing work-from-home flexibility beyond the pandemic restrictions, that scrutiny should cut both ways.

Employers have long used swipe cards and video surveillance for safety and security, and monitoring staff email during [work hours](#) is nothing new. But the latest generation of employee surveillance software has transformed the modern workplace into a digital panopticon.

While newer tools aimed at tracking [employee productivity](#), such as computer-usage monitors, have increased the management arsenal, most focus on specific activities. What is now proposed are mechanisms that monitor employees 24/7, including apps that can be loaded onto mobile phones.

One such [product](#) advertises its ability to "catch disgruntled employees and protect business intellectual property". It can "monitor all [social media](#) and networking apps by accessing conversations, passwords and media shared through the apps".

More trust means better productivity

The uncomfortable reality is that many employers feel entitled to monitor employee activity. If I'm paying their salaries, they argue, they should be doing my work. Their time is mine.

The problem with effectively intimidating employees into being

productive is that it strongly suggests an organisational culture of mistrust—yet [research](#) shows that mistrust undermines productivity.

Spyware that is introduced outside the collective bargaining process concerns trade unions, who argue workers' privacy may be unfairly invaded in the name of performance measurement.

In the year to June 2019, only 5% of collective agreements in New Zealand included a specific clause (or referred to a document outside the agreement) dealing with internet or telephone monitoring. That amounts to only 1.1% of employees on such agreements.

The prevalence of agreements that mention work being electronically monitored varies considerably across the labour market. But far more employees are on collective agreements that make no mention of it, despite their work being regularly monitored.

Those who make up the 80% of the New Zealand workforce covered by individual agreements have few choices. The obligation to install and use monitoring software derives from the duty of employees to obey the reasonable orders of their employer, and contractual obligations to comply with employer policies.

The law is getting left behind

The standard against which actions are judged is that of the "reasonable employer"—not a neutral party, let alone a reasonable employee. The result is that employees have very limited protection from intrusions into their privacy and [personal life](#).

Compounding the problem, monitoring software is evolving so rapidly the law has no time to respond. Other than in the most egregious circumstances, the courts are unlikely to hold that using already widely

adopted tools constitutes the action of an unreasonable employer.

Under the principles of the [Privacy Act 1993](#), people should be made aware of any information being collected about them and why. They are entitled to know how it will be used and stored, who will have access to it and whether anyone can be modify it.

The information should not be kept longer than necessary, and it is essential to know how it will eventually be disposed of and by whom. Above all, such information should not be collected if it intrudes "to an unreasonable extent on the personal affairs of the individual concerned".

Naturally, people should be entitled to access that information. However, as with employment law, privacy law tends to give greater weight to the right to manage than to intrusions into employee privacy.

Privacy is a health and safety issue too

The law reflects an underlying assumption that time spent on a job equates with higher-quality work. But this is not necessarily correct.

In many industries, including IT, the focus is very much on the task. Employees are often dotted all over the world in different time zones. They contribute at times of day that work for them.

Monitoring attendance, productivity and hours worked—in other words, checking up on employees to ensure they're not "skiving off"—leaves them feeling mistrusted and that their privacy has been invaded. Stress and sick days increase, morale drops and staff turnover rises.

As yet, the health and safety implications of intense monitoring have received little attention in the courts from workplace health and safety regulator Worksafe.

Allowing staff to work at home requires trust and the openness to have honest, frank and supportive discussions if substandard performance is noticed. Employers seriously considering monitoring employees working at home should be very clear about their reasons before jumping on the post-COVID work-from-home bandwagon.

The devices that allow the monitoring of home workers should be used carefully and not exploited. Otherwise, the trust inherent in good workplace culture will quickly erode, along with the productivity that goes with it.

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