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In the company of spies: When competitive intelligence gathering becomes industrial espionage☆

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Abstract At what point does legitimate competitive intelligence gathering cross the line into industrial espionage, and what is it about certain intelligence gathering practices that makes them open to criticism? In order to shed light on current developments in the competitive intelligence gathering 'industry' and the ethical issues that are typically raised, this paper looks at three recent cases of industrial espionage, involving major multinationals, such as Procter & Gamble, Unilever, Canal Plus, and Ericsson. The argument is made that, from an ethical point of view, industrial espionage can be assessed according to three main considerations: the tactics used in the acquisition of information, the privacy of the information concerned, and the consequences for the public interest as a result of the deployment of the information by the intelligence gatherer.

1. Of spies and intrigue

Espionage is a word that brings to mind James Bond movies or the spy stories of John Le Carre, but espionage has also long been associated with business practice, too. Industrial espionage is essentially a form of commercial intelligence gathering, usually, but not exclusively, on the part of industry competitors. With global competition intensifying, finding out about rivals' products and processes has become big business, and competitive intelligence gathering is seen as an important and largely acceptable form of market research. Although industry representatives, such as the Society for Competitive Intelligence Professionals (SCIP) argue that industrial espionage, or spying, is both unethical and illegal, there is sometimes a fine line between the 'legitimate' tactics of competitive intelligence gathering and the 'illegitimate' practice of industrial espionage.

In this paper, we shall look at some high-profile cases where allegations of industrial espionage involving some of the world's top companies have hit the headlines, and in doing so, explore some

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of the gray areas between acceptable and unacceptable intelligence gathering practices. We begin with a brief outline of the nature of industrial espionage and competitive intelligence gathering, before outlining our three cases, and then present a set of ethical tests that should shed light on how to determine the acceptability or otherwise of the practices concerned. We conclude with a discussion of the nature and boundaries of industrial espionage in the contemporary business environment.

2. Industrial espionage and competitive intelligence gathering

All organizations collect and make use of some kind of information about their competitors and other organizations, whether through market scanning, industry profiling, or simply debriefing of managers recruited from competitors. Indeed, such intelligence gathering activities are very much a standard aspect of conventional market research and competitor benchmarking, and make for effective competitive behavior. It could be argued, therefore, that any means of gathering information is acceptable in a competitive context. After all, competitors are typically seen as being in an ongoing, zero-sum battle with each other for customers, resources, and other rewards. Why should organizations accord their competitors any specific ethical claim when these are the very businesses that they are vying with for such rewards? What rights, for example, could General Motors possibly have in its competition for car customers with Ford?

This is not actually as simple or redundant a question as it might at first seem. In addition to a number of *legal rights* to private property, trade secrets, etc., General Motors can also be said to have some form of *moral rights* that go beyond those codified in law; for example, a right to privacy, or a right to 'fair play'. Certainly, it is open to debate whether the mere existence of a competitive situation bestows upon an organization carte blanche to act in whatever way is necessary to beat their competitors, including lying, deception, providing false information about competitors to consumers, poaching staff, and other such questionable practices.

Therefore, whichever way we look at it, there seems to be a reasonable case for suggesting that there are limits to acceptable forms of intelligence gathering, beyond which the practice might be considered unethical. Ordinarily, we might expect the law to determine the boundary between acceptable and unacceptable practice, but with the rapid advancement in information and communication technologies, as well as the increasing professionalization of the competitive intelligence industry, legal limits are not always as clear-cut as one might hope. Indeed, ethical issues in business typically come into play when the law is unable or unwilling to set such limits. For this reason, we shall refrain from adopting the typical but somewhat simplistic distinction between *legal* competitive intelligence gathering and *illegal* industrial espionage, although this is not to deny that the lines of illegality may well at times be crossed.

Despite the redundancy of a legalistic definition, it is clear that industry professionals and commentators certainly do ascribe a pejorative meaning to the term industrial espionage, preferring instead the more neutral terms of competitive or corporate intelligence. In fact, the industry association SCIP specifically defines competitive intelligence as an 'unequivocally ethical' practice. This suggests that there is, or there is seen to be, a normative difference between espionage and intelligence gathering, regardless of whether they are actually legal or not. Therefore, it would seem to be reasonable to distinguish espionage as intelligence practices of *questionable ethics*.

Our task then is to determine at what point industrial espionage constitutes a potential ethical transgression. In order to answer this question, let us now look at some examples where accusations of industrial espionage have been leveled against intelligence gatherers.

3. Three cases of industrial espionage

Perhaps unsurprisingly, the world of industrial espionage only rarely seems to make it into the public eye, and there is little incentive either for errant companies or those that have been the victim of intelligence breaches to make their problems public. Perhaps the most widely publicized incident is that of British Airways against Virgin Atlantic during the early part of the 1990s. The 'dirty tricks' campaign, which ultimately resulted in BA chairman Lord King issuing a public apology to Virgin in court, was alleged to have involved a number of espionage practices, such as the accessing of confidential Virgin passenger information, theft of documents, and impersonating Virgin staff. These events, though, are now more than a decade old. Let us look at some more