

ETHICAL CI

*What is legal and ethical,
and what is not, in terms of collecting
Competitive Intelligence*

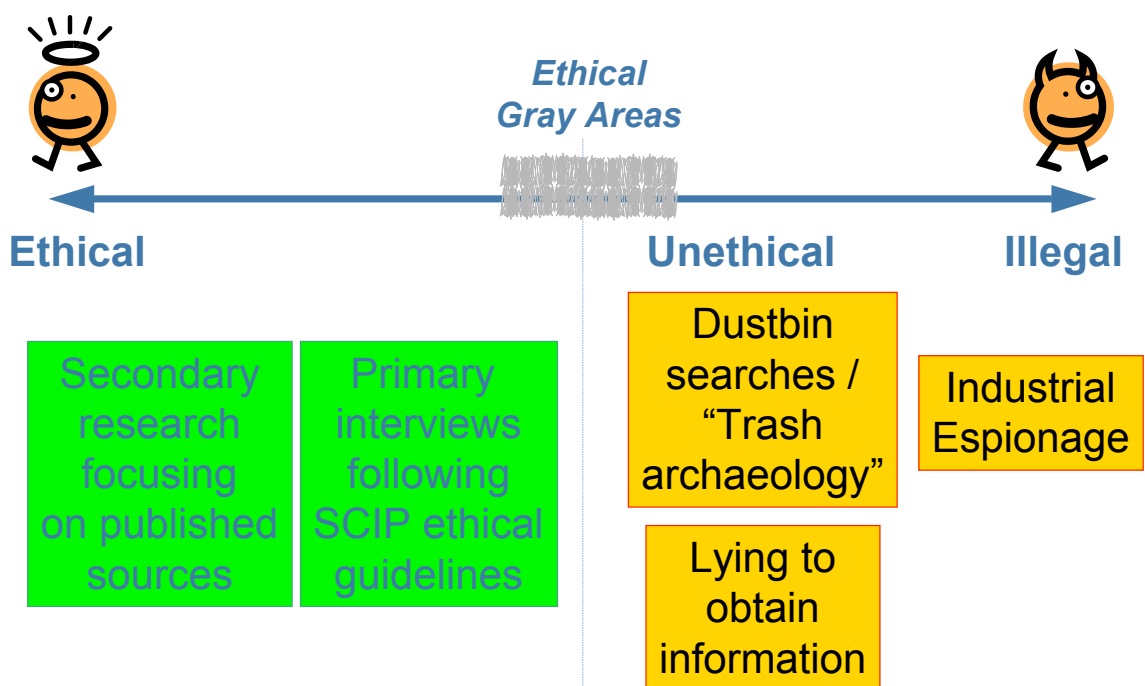
Arthur Weiss

AWARE

<http://www.competitive-intelligence.co.uk>

Tel: +44 20 8954 9121

Ethical CI



Ethical & Unethical practices

Ethical

- Gathering published material and public documents
- Acquiring and analysing competitor products
- Conducting market surveys & studies
- Gathering information at trade shows and conferences
- Interviews where you state who you are and who you work for
- Interviews where you respect requests for confidentiality and/or warn that information conveyed may be passed to a competitor

Unethical / Illegal

- Trespassing on competitor's property
- Planting an agent on competitor's payroll
- Bugging & electronic eavesdropping
- Posing as a student, journalist or head-hunter or other misrepresentation
- Hiring an employee away to gain their knowledge
- Conducting fake job interviews

A model for CI Ethics

Assume the following elements

- G = Potential gain
- R = Risk of getting caught (Range from 0% to 100% for always caught)
- P = Penalty if caught (Range from 0 for no penalty to 1 for imprisonment and total loss of business)
- L = Potential loss if caught - i.e. the risk factor ($L = R \times P$)

If there is 0% risk of getting caught or no penalty then the potential gain from behaving unethically is 100%.

If the chance of getting caught is high with a punitive penalty then the potential gain from unethical behaviour is minimal.

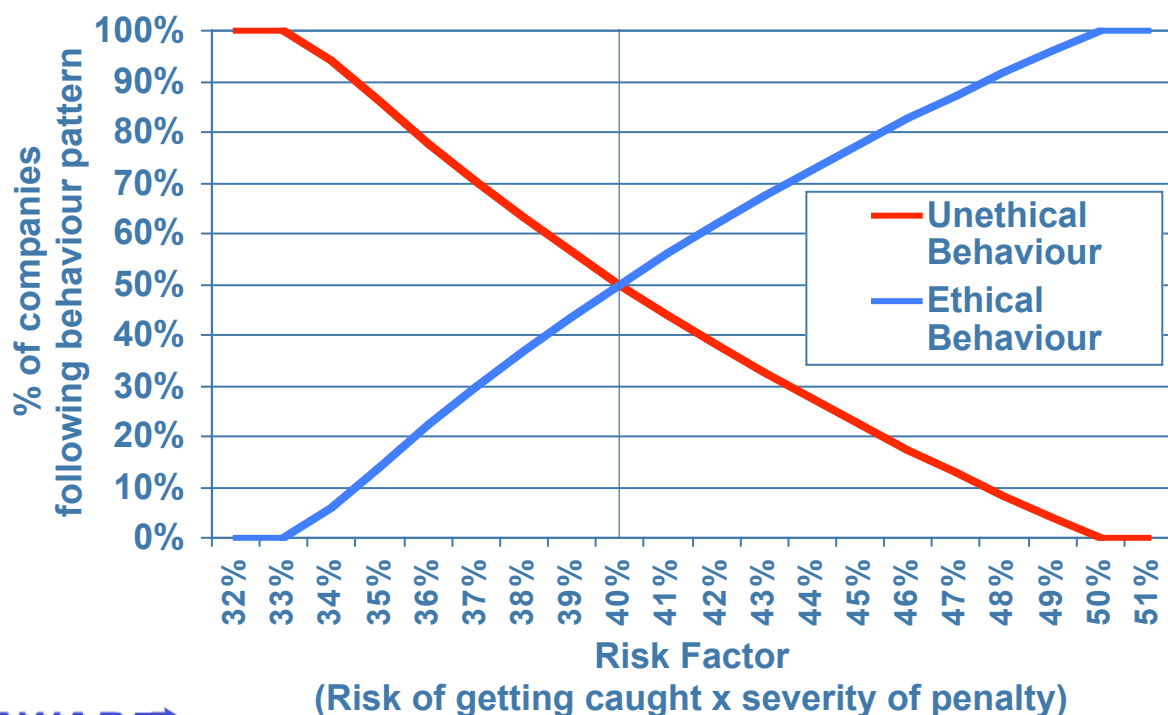
A model for CI Ethics

This leads to 4 outcomes:

- Ethical vs. Ethical : Total average gain = $G/2$
- Ethical vs. Unethical : Gain = $G \times L$
 - I.e. Ethical companies will gain by an amount reduced by the risk factor. If L is 1 (high penalty and certainty of capture) then Ethical companies will receive the total gain, and vice versa.
- Unethical vs. Ethical : Gain = $G \times (1-L)$
 - This is the opposite of the Ethical / Unethical case
- Unethical vs. Unethical: Average Gain = $G/2 \times (1-L)$

Overall there will be an equilibrium position which will depend on the value of L

A model for CI Ethics



Legal remedies

- ◆ **USA:** Economic Espionage Act, 1996
- ◆ **France:** Article 418 of French penal code creates offence of violating trade secrets abroad! Otherwise law of theft - but no real law.
- ◆ **Germany:** Act Against Unfair Competition, 1909
- ◆ **Italy:** Distinguishes “industrial secrets” concerning processes and “trade secrets” relating to admin issues. Divulging the former is a criminal offence.
- ◆ **UK:** 1997 Law Commission proposal to criminalize disclosure of trade secrets - but currently shelved. Theft laws may apply however.

The Economic Espionage Act, 1996

- ◆ **Two parts**
 - Economic espionage by foreign governments or NGOs
 - Theft of trade secrets:
 - Obtaining information believed by the defendant to have been a trade secret and that is a trade secret so as to gain commercial advantage over its owner
 - Does not require proof that information actually is a trade secret
 - Penalty for up to 10 years imprisonment and \$250,000 fine; organizations can be fined up to \$5m
 - Includes theft by non-US companies acting against US companies

Prosecutions

- ◆ **37 Prosecutions to date (excluding ongoing investigations)**
 - Several prison sentences - up to 5 years. Fines / forfeitures up to \$7.6m
 - 15 prosecutions involved ex-employees, 16 insider information and 8 include third-parties
 - Often combined with other offences e.g. conspiracy, mail fraud, electronic fraud...
 - Cases include thefts of
 - Genetic screening discoveries
 - Drug delivery system formulae
 - Ultrasound machine blueprints
 - Cell Lines and formulae (which included the indictment of a non-US resident)

Ethical information sources

- ◆ **Sources openly in the public domain**
 - Published
 - Freely available and distributed
 - Common knowledge
- ◆ **Independent third-parties where you have declared your identity**
- ◆ **Company stakeholders (where an ethics policy exists and is adhered to)**
 - Sales staff
 - Customers
 - Suppliers, etc.

Ethical interviewing

- ◆ State your identity and the purpose of the interview.
- ◆ Do not pressure your interviewee into revealing confidential information.
- ◆ Do not bribe or promise inducements for conveying information.
- ◆ Respect any request for confidentiality.
- ◆ Ensure that any third parties you use for conducting research also follow the same ethical guidelines.

Ethics are not black and white!



- ◆ If something makes you feel uncomfortable:
 - Don't do it!
- ◆ If you are asked to do something you feel is wrong
 - Refuse!
 - Report it to a superior if your refusal is not accepted!

Typical grey areas

- ◆ **Failure to convey the whole picture during an interview**
 - Your contact misunderstands who you are or your role. Should you clarify this?
- ◆ **Use of photography and hidden observation**
- ◆ **Use of “front” companies**
- ◆ **You obtain confidential information from your competitor. For example:**
 - You overhear a conversation. Should you identify yourself?
 - A disgruntled employee sends you your competitors latest plans. Should you return them?
 - A new employee recruited from a competitor tries to impress you with their knowledge of their previous employer. What should you do?
 - You are visiting a supplier, and notice that they are working on a new product development for a competitor. What should you do?

Why be ethical?

- ◆ **So we don't get caught?**
- ◆ **So we enhance our reputation as one of the “good guys”?**
- ◆ **So our employees are not forced to make decisions that contravene their own ethical values?**
- ◆ **Because a world without ethical values is**
 - a world in chaos
 - a world of bullies and victims
 - a world where a high proportion of profits are spent defending against attack
 - a world where, ultimately nobody benefits and almost everybody suffers.

Arthur Weiss

Arthur Weiss is the managing partner of AWARE - a UK based consultancy specialising in competitive intelligence and marketing analysis.

Contact Details:

Web Sites: www.marketing-intelligence.co.uk

E-mail: a.weiss@marketing-intelligence.co.uk

Telephone: +44 20 8954 9121 **Fax:** +44 20 8954 2102

