

# Competitive Intelligence and Corporate Espionage – The Sword and the Shield:

A Primer on What is and is not Permissible Information Gathering and How To Protect Your Company's Intellectual Property and Trade Secrets from Attack

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**Sponsored by Duane Morris**

**Sandra A. Jeskie**  
Partner, Duane Morris

**Jon Olson**

Division Counsel, Alcatel-Lucent

**Eugene Weitz**

Global Technology Lawyer, Alcatel-Lucent

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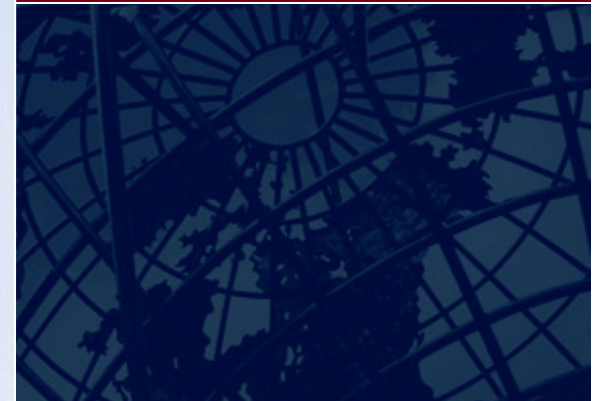
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# Uniform Trade Secrets Acts (“UTSA”)

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“Trade Secret” defined as:

- information, including a formula, pattern, compilation, program device, method, technique, or process, that:
  - (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
  - (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

UTSA §1.

## Security Statistics

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- Over 70 million security breaches
    - 4% - Lost backup tapes
    - 7% - Unauthorized access to documents
    - 19% - Human Error
    - 25% - Hacking
    - 45% - Stolen/lost computer or portable devices
- Privacy Rights Clearinghouse

## The Threat Within

- Inadvertent disclosures
- Use of unapproved devices
- Carelessness
- Lack of training
- Theft



## Recent Thefts of Trade Secrets

- Coca-Cola
- Morgan Stanley
- Boeing
- Duracell



# Disposal of Corporate Information



# Dumpster Diving

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# Laptops

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# Flash/Thumb/USB Keychain Drives

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# iPhone/ iPod/ MP3



# PDA's

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# Cameras

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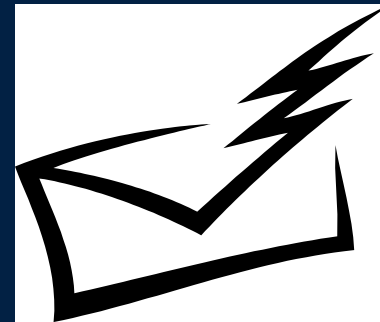
- PDAs
- Pen Cameras
- Wristwatch cameras



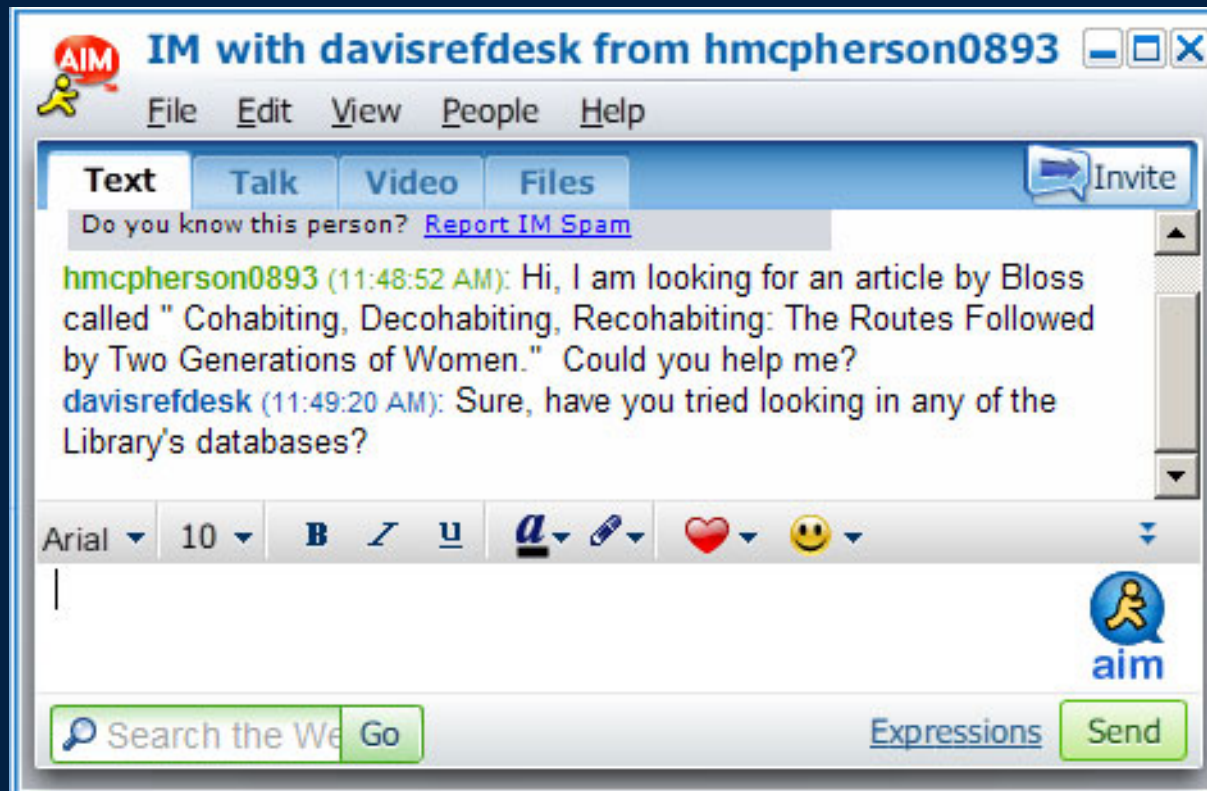
## E-Mail and File Storage

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- E-mail sent to personal accounts or put on personal lap tops
- Work files stored on personal devices or web backups
- Inadvertent disclosures by e-mail
  - the Eli Lilly example



# Instant Messaging




## P2P software

- P2P Software is installed at least once in 77% of companies



# Blogging

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FastServers.net

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- › Daylight Savings Time - Fix for Windows 2000 Servers
- › The new D-Day
- › Hey DJ, Keep Playing That Song
- › FireFox, Google, BLOGS, and RSS Readers
- › Now Serving TWiki
- › CEO Says: Not Our Support
- › HostingCon 2007 - The Chicago Think Tank
- › Bandwidth Chronicles
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Managed Dedicated Server BLOG | FastServers.Net

March 6, 2007

The iceman cometh...with a hacker in tow.




Cedar Falls hit with an ice storm...our customers hit with a MailEnable exploit.

Continue reading "The iceman cometh...with a hacker in tow." »

Posted by Steven Anderson at 2:50 PM | [Read the post](#)

March 5, 2007

Daylight Savings Time - Fix for Windows 2000 Servers



As my [compadre](#) TL mentioned last week on this blog, a change in DST ([Daylight Savings Time](#)) for the nation has resulted in the need for an update of timezone data for all servers within our network. While for most machines, this can be resolved with a simple vendor-supplied patch, users supporting their own OSes that are no longer covered by vendor support (IE, Windows 2000) appear to be left out in the cold regarding this change. Fortunately, by using commonly available tools, Windows 2000 users are able to modify the timezone data on their local machine to reflect this new change. Read on for more information!

# Wikipedia

Delaware - Wikipedia, the free encyclopedia - Microsoft Internet Explorer provided by Duane Morris LLP

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Ten things you didn't know about Wikipedia

## Delaware

From Wikipedia, the free encyclopedia

Coordinates: 39° N 75.5° W


*This article is about the U.S. State of Delaware. For other uses, see [Delaware \(disambiguation\)](#).*

**Delaware** (IPA: /ˈdeɪ.leɪ.weɪ/) is a [state](#) located on the [Atlantic Coast](#) in the [Mid-Atlantic](#) and [Southern](#) regions of the [United States](#).<sup>[3]</sup> The state is named after [Delaware Bay](#) and [River](#), which were named for [Thomas West, 3rd Baron De La Warr](#) (1577–1618).<sup>[4]</sup> Population estimates by the Census Bureau for 2005 place the population of Delaware at 843,524. Despite being the 45th most populous state, it is the seventh most densely populated state, with a population density of 320 more people per square mile than the national average, ranking ahead of states such as Florida, California, and Texas.<sup>[5]</sup>

**Contents** [hide]


- State nicknames
- Geography
  - Topography
  - Climate
- History
  - Native Americans
  - Colonial Delaware
  - American Revolution
  - Slavery and race
- Demographics
  - Languages
  - Religion
- Economy
- Transportation

**State of Delaware**



DECEMBER 7, 1787


Flag of Delaware



Seal

*Nickname(s):* *The First State, The Small Wonder, Blue Hen State*

*Motto(s):* *Liberty and Independence*



<b>Capital</b>	Dover
<b>Largest city</b>	Wilmington
<b>Area</b>	Ranked 49 <sup>th</sup>
- Total	2,491 sq mi (6,452 km²)
- Width	30 miles (48 km)

**Navigation**

- Main page
- Contents
- Featured content
- Current events
- Random article

**Interaction**

- About Wikipedia
- Community portal
- Recent changes
- Contact Wikipedia
- Donate to Wikipedia
- Help

**Search**

Go Search

**Toolbox**

- What links here
- Related changes
- Upload file
- Special pages
- Printable version

Done Internet

# Social Networking Sites – Facebook/My Space

The screenshot shows the MySpace website interface within a Microsoft Internet Explorer browser window. The browser's address bar displays "http://www.myspace.com/". The website header includes the MySpace logo with the tagline "a place for friends" and navigation links such as "Home", "Browse", "Search", "Invite", "Film", "Mail", "Blog", "Favorites", "Forum", "Groups", "Events", "Videos", "Music", "Comedy", and "Classifieds". A search bar is located in the top right corner.

The main content area is divided into several sections:

- Cool New Videos:** A section titled "Cool New Videos" with a sub-header "54,572 uploaded today!". It features four video thumbnails: "Weights Vs. Aquarium" by Tony, "Meet The Walkers" by WickedAwesomeFilms, "Elephant Seal Surprise" by Siberspace, and "Fat Guy Yo Dance" by SidenSide.
- Member Login:** A login form with fields for "E-Mail" and "Password", a "Remember Me" checkbox, and "LOGIN" and "SIGN UP!" buttons. A link for "Forgot your password?" is also present.
- Cool New People:** A section titled "Cool New People" featuring three profile thumbnails for "Lisa", "Louise", and "Sarah".
- MySpace Music:** A section titled "MySpace Music" with a "[more music]" link. It features a profile for "Dropkick Murphys", a Punk / Acoustic / Folk Rock band from Boston, MA. The profile includes a photo of the band and a description of their sixth studio album, *The Meanest of Times*.
- Videos:** A section titled "Videos" with a "[more videos]" link. It features a video thumbnail for "The Shock Doctrine: The Rise of Disaster Capitalism." by Naomi Klein, with a description of the book and its author.

The browser's status bar at the bottom shows "Done" and "Internet".

# Wireless Security

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## Best Practices - The Use of Technology

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- Identify trade secrets and proprietary information
- Conduct a risk assessment
- Develop a Technology Compliance Plan
- Train employees
- Audit regularly



## Outsourcing and International Risks

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- Proving ownership of intangible trade secrets is difficult
- Foreign countries do not always recognize or offer protection for trade secrets in a similar manner
- Foreign countries may not enforce laws

## Outsourcing

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- “A company that is subject to U.S. laws is responsible for the use and maintenance of consumer information in accordance with those laws. . . . Simply because a company chooses to outsource some of its data processing to a domestic or off-shore provider does not allow that company to escape liability for any failure to safeguard information adequately.”

Timothy J. Muris, Chairman, FTC

## Best Practices in Outsourcing

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- Due diligence in outsourcing firms
  - Background checks
  - Review company's history
- Monitor technologies used
- Train partners
- At termination, remove data

# The Threat Outside - Competitive Intelligence and Business Espionage

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- Business Espionage/
- Economic Espionage
- Industrial or Commercial Spying





## Economic Espionage

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- The U.S. Attorney General defined economic espionage as:

“the unlawful or clandestine targeting or acquisition of sensitive financial, trade, or economic policy information, proprietary economic information, or critical technologies.”

*Economic Espionage and Industrial Spying 2005*

# Competitive Intelligence

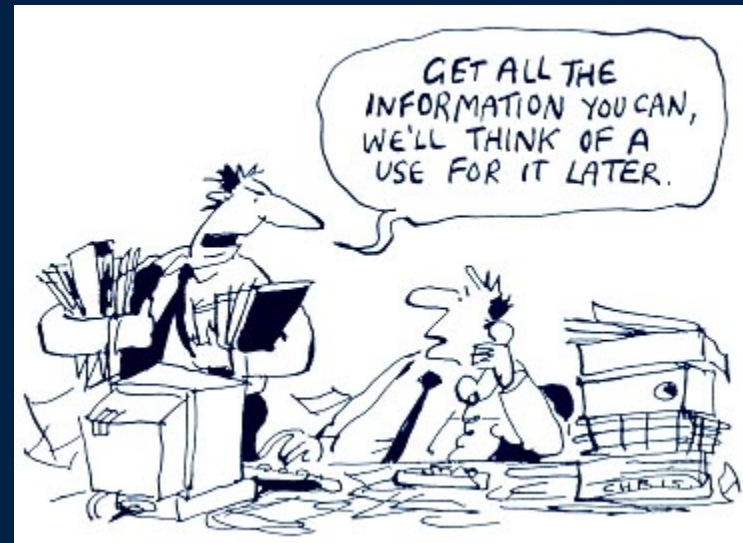
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- Competitive Intelligence is defined as:  
“a systematic and ethical program for gathering, analyzing and managing information that can affect a corporation’s plans, decisions and operations.”

*Nasheri, Economic Espionage and Industrial Spying*

# Examples of Business Espionage

- Maytag “Front Loader”
- Ringling Brothers
- Oracle
- SAP
- HP



# Competitive Intelligence

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- 90% of large companies have CI staff and many large U.S. businesses spend more than a \$1 million annually on CI.

*Economic Espionage and Industrial Spying 2005 (citing Business Week 2002)*

# Legal Collection of Competitive Intelligence

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- Public records (on-line databases, industry periodicals, competitors' promotional documents or a review of annual reports, patent filings)
- Trade shows
- Attendance at conferences and seminars
- Analysis of competitor's products
- Customer surveys
- Visual observation of a competitor's site
- Dumpster diving?

## Restatement of Torts (1939)

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- “The privilege to compete with others includes a privilege to adopt their business methods, ideas, or processes of manufacture. Were it otherwise, the first person in the field with a process or idea would have a monopoly which would tend to prevent competition.”
- “It is the employment of improper means to procure the trade secret, rather than the mere copying or use, which is the basis of the liability. . . .” Section 757, cmt a.

# Economic Espionage Act of 1996

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## Prohibits

- theft of trade secrets or
- knowing possession or use of a misappropriated trade secret

10 years and/or \$500,000 maximum

18 U.S.C. 1832

# Uniform Trade Secrets Act

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## Prohibits

- misappropriation of trade secrets through “theft, bribery, misrepresentation, breach or inducement of a breach of duty to maintain secrecy, or espionage”
- knowing acquisition, disclosure or use of a misappropriated trade secret

## Federal Trade Commission Act, 15 U.S.C. § 45

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Prohibits unfair or deceptive trade practices

FTC actions concerning pretexting and other deceptive practices

## Other Statutes

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- Federal Wiretap
- Computer Fraud and Abuse Act
- Gramm Leach Bliley
- Telco Privacy Act
- State trade secret laws
- New FCC rules to protect privacy of consumers phone records

# Legal Duty to Provide Information Security

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- Sarbanes Oxley, Section 404
  - “internal controls”
- Gramm-Leach Bliley
  - “safeguards rules”
- HIPAA
  - “privacy rule”
- FTC Fair Practices Standards

## Best Practices

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- Identify sensitive business information and trade secrets
- Conduct a risk assessment

## Best Practices - continued

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- Develop a Trade Secret Compliance plan and Business Ethics guidelines
  - put employees/contractors on notice
  - include confidentiality provision in contracts and other documents
  - require non-disclosure agreements
  - protect trade secrets with passwords, encryption, visitation procedures, locks on file cabinets etc.
  - identify and protect trade secrets in *any form*
  - limit access on a need to know basis

## Best Practices – continued

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- Develop a Document Retention Policy
  - Good litigation preparedness tool – e-discovery!
  - Ensures that documents are properly destroyed when no longer needed
  - Addresses documents in *all forms*

## Best Practices - continued

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- Develop a Data Security Plan and Incident Response Plan
  - comprehensive approach for your most valuable assets
  - protects the company from significant financial loss and damage
  - protects customers from loss of confidential information
  - contain any intrusions, restore systems and provide assistance to customers (if necessary)
  - **approach the plan from “when”, not “if”**

## Best Practices - continued

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Develop and Enforce CI Gathering policy prohibitions:

- Collecting or using the confidential information of another improperly (e.g. misappropriation, breach of NDA)
- Exploiting new employees for confidential information
- Asking/Receiving confidential information from a supplier or customer unless you know the supplier or customer is authorized to disclose

## Best Practices - continued

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### Usually Acceptable Methods of Gathering CI

- Gathering information at trade shows (wearing badge)
- Public Domain
  - Internet (with caveats)
  - Newspapers, magazines, technical journals
  - Court and Governmental Records
  - Press releases
- Reverse Engineering (if no prohibitions)
- Consultants

## Best Practices - continued

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### Tougher Calls:

- Customers/Suppliers passing on information about competitors
- Consultant's material used for others
- Information found in a non-public place (e.g., customer's office)
- Information found in a public place
- Conversations overheard in a public place

## Best Practices - continued

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- Apply all policies and procedures to outside consultants, as well as employees
- Train employees
- Conduct regular audits



# Questions?

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## WHERE TO LEARN MORE

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- Society for Competitive Intelligence Professionals  
<http://www.scip.org/>
- Department of Justice Website  
<http://www.usdoj.gov/criminal/cybercrime>

# THANK YOU !!!

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Sandra A. Jeskie  
Partner  
Duane Morris LLP  
30 South 17th Street  
Philadelphia, PA 19103-4196  
215.979.1395  
[jeskie@duanemorris.com](mailto:jeskie@duanemorris.com)

Eugene Weitz  
Global Technology Attorney  
Room 3A-517  
Murray Hill, N.J. 07974  
908-582-4820  
[weitz@alcatel-lucent.com](mailto:weitz@alcatel-lucent.com)

Jon W. Olson  
Division Counsel  
Room 3A-515  
Murray Hill, N.J. 07974  
908-582-0420  
[jwolson@alcatel-lucent.com](mailto:jwolson@alcatel-lucent.com)