

Seventh Circuit Allows Federal Computer Fraud Claim to Proceed

By Garth T. Yearick

The U.S. Court of Appeals for the Seventh Circuit has held that a former employee's installation and use of a secure-erase program to delete files on his employer-issued laptop prior to leaving that job was sufficient for the employer to state a claim under the Computer Fraud and Abuse Act (CFAA) for a knowing transmission of data intended to damage a computer system protected under the Act.¹ The court's construction of the statute could expand federal jurisdiction over employment disputes that involve allegations of misconduct relating to employer-owned computers.

In *Citrin*, the Seventh Circuit reversed a district court order granting the defendant employee's motion to dismiss his employer's lawsuit under CFAA. The employee argued that erasing a file from a computer is not a transmission within the meaning of the statute. Although the court recognized that simply pressing a delete key may not amount to a transmission, it found that the defendant employee could be liable for intentionally downloading (and, thus, transmitting) the secure-erase program to the laptop computer, which his employer owned and issued to him for company business. The court found no distinction between a transmission made via floppy disk and one made via a computer network or the Internet.

In addition, the Seventh Circuit determined that the employee could also be liable if he intentionally accessed his employer-provided laptop to damage data stored on it after he decided to resign. The court held that although the employee was authorized to use the laptop, his right to do so terminated once he resolved to quit, establish his own business, and destroy any incriminating data on that computer.

The court reached this conclusion despite language in the parties' employment contract stating that the employee was authorized to return or destroy data in the laptop when he left the company. The court reasoned that it was unlikely that the provision was intended to authorize the employee to destroy data that he knew was not available anywhere else and that could potentially incriminate him.

Diane A. Seltzer, Washington, DC, Cochair of the Section of Litigation's Employment and Labor Relations Law Committee, believes this decision shows that employees need to be advised on how to keep clear the distinctions between their personal computers and company-owned computers. She notes that although the Seventh Circuit was presented with facts involving deliberate misconduct, employers could now allege that innocuous transmissions having damaging effects on an employer's computer system were made intentionally.

Seltzer warns employees not to erase data or information from company computers without authorization and to be very careful in using computer systems owned by their employers. "Company-owned computers are subject to monitoring by the employer, and employees have no expectation of privacy in those computers," she notes. According to Seltzer, the Seventh Circuit's decision gives employers pursuing various claims against a former employee "a federal law to sue as a new tool to get into federal court."

Steven F. Ritardi, Morristown, NJ, Cochair of the Section's Employment and Labor Relations Law Committee, agrees that "to the extent an employer wants to be in the federal courts, it is a very powerful decision since it expands the application of 'transmission' under the Act." He adds that the decision "does not focus on the nature of the information to be damaged or deleted." Ritardi cautions, however, that these types of cases "all rise and fall on their own set of facts. The question is whether other jurisdictions will follow the Seventh Circuit's decision." ■

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Endnote

1. *Int'l Airport Ctrs., LLC v. Citrin*, 440 F.3d 418 (7th Cir. 2006); 18 U.S.C. § 1030.

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