

Employer Found Not Liable For Employees Misuse of Company Internet

Although many questions still remain regarding an employer's liability for an employee's misuse of company computers, a December 2006 appellate court ruling in Delfino v. Agilent Technologies reduced the scope of such liability by granting an employer immunity under the Communications Decency Act of 1996 (CDA).

Michelangelo Delfino and Mary E. Day complained to law enforcement after receiving several anonymous messages including threatening e-mails and sexually explicit material.

The FBI became involved, and the offensive content was ultimately traced to Cameron Moore, an employee of Agilent. Later, the FBI determined that Moore had used an Agilent computer to send some material.

Agilent took immediate action. It issued a stern warning to Moore and it obtained a letter written by him to the United States Attorney promising not to engage in any further similar conduct. Agilent's Support Consultant then reminded Moore of Agilent's Standards of Business Conduct and warned him that he should not be using the company's computer system for personal matters.

The FBI later arrested Moore, but the arrest was not related to information sent on Agilent computers.

However, two months later, Moore contradicted his earlier statements and admitted that some of the e-mails in question were sent by logging onto the Internet while at work.

Agilent immediately informed Moore that it was placing him on administrative leave to determine what discipline was appropriate. It terminated him a week later for violating the Standards of Business Conduct.

The email recipients filed a lawsuit against Agilent alleging that it had been negligent in failing to discharge Moore sooner and that the company was liable for the wrongful acts of its employee.

In defense of the lawsuit, Agilent claimed immunity under the Communications Decency Act of 1996 (CDA).

In order to claim immunity under the CDA, a defendant must demonstrate that: (1) it is a provider of an interactive computer service, (2) it is being sued as a publisher or speaker of information, and (3) the indecent information is provided by another content provider.

Employer Was A Provider of an Interactive Computer Service

Although the court acknowledged that no California case has ever held that a corporate employer is a provider of a computer service for the purposes of CDA immunity, it ruled that the Internet is much more important to corporations today than it was when the act was passed ten years ago, and that Agilent provides its employees with a "computer service" within the meaning of the CDA.

Employer Was Publisher or Speaker of Information

Because the plaintiffs alleged that Agilent was liable for Moore's cyber threats, the court determined that it was the plaintiffs' intention to treat Agilent as a "publisher or speaker" of those messages and found that the company did in fact publish Moore's e-mails.

Indecent Information Provided by Another Content Provider

Since the evidence demonstrated that Moore was the sole author of the offensive messages, it was obvious that the indecent information was "provided by another content provider" as defined in the CDA.

Thus, all three elements were met. Agilent was immune from liability.

The court noted that even if Agilent had not been immune from liability under the CDA, the company was not negligent because it terminated Moore as soon as it was certain that he wrote the offensive messages from work computers. Moreover, the messages were unrelated to the scope of Moore's employment at Agilent.

Although the court's decision that an employer is a provider of a computer system and can be immune from tort liability under the CDA is a victory for employers, the ruling is very narrow. Agilent was virtually faultless in that it terminated Moore as soon as it was aware that he was using the company's computer system to send offensive content in violation of its Standards of Business Conduct.

Even with immunity under the CDA, employee misuse of corporate computers is still an issue rife with potential liability for employers. Employers may still be liable for numerous acts committed by employees using company computers including defamation, invasion of privacy, and wrongful dissemination of trade secrets and other intellectual property. Employers should take all possible precautions to prevent employee abuse of corporate computer systems such as informing all employees of acceptable Internet usage policies and taking immediate and appropriate action when these policies are violated.