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3 Recent Computer Fraud and Abuse Act Cases Worth Noting

Three recent Computer Fraud and Abuse Act ("CFAA") cases decided over the last couple of months are worth looking at because they show the following points, respectively: (1) the CFAA in its current form does not give consumers an adequate remedy for privacy related data breach issues; (2) the CFAA's focus on "access" is more akin to trespassing on a computer system than using a computer to commit a traditional "fraud"; and (3) the way a judge "walks through" the evidence vis-a-vis the elements of a basic civil claim under the Computer Fraud and Abuse Act.

Why the Computer Fraud and Abuse Act in its current form does not give consumers an adequate remedy to address privacy related data breach issues?

This is demonstrated by *La Court v. Specific Media, Inc.*, 2011 WL 2473399 (C.D. Cal. Apr. 28, 2011) in which the court granted the defendant's Motion to Dismiss because the plaintiffs in a class-action case, even in the aggregate, could not demonstrate the requisite $5000 "loss" required to maintain a civil claim for violation of the Computer Fraud and Abuse Act where the only "loss" they sustained was the value of personal data.

The case arose from the alleged use of Adobe Flash cookies that tracked the plaintiffs' use of the Internet without their knowledge or consent. The plaintiffs brought a claim for violating the CFAA, among other things, alleging "that they sought to maintain the secrecy and confidentiality of the information obtained by Defendant through use of the" flash cookies and that their personal information has discernible value of which they were deprived but defendants use of it for their own economic benefit. The court dismissed the CFAA claim finding that the plaintiffs personal information, in essence, had no value– or at least not enough value to collectively meet the $5000 threshold.

You will recall that I blogged about this impediment when Apple was sued in the iTracking cases. If not, take a look at these posts where I delve a little deeper into this "loss" issue:

Apple iTracking Case: will Apple be WINNING on Computer Fraud and Abuse Act claim?

Apple Should Win the Computer Fraud and Abuse Act Claims …

iTracking II: Apple Sued Again for Violating Computer Fraud and Abuse Act

From what I can tell, nothing has changed.

Now, there is talk around the "data privacy" neighborhood that things could be changing a bit and courts may be starting to ascribe some value to people's own personal data but I've not yet seen anything that has confirmed this is going to happen ….

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