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When someone misuses official e-mail...

By Pavan Duggal, | 12 May, 2002, 12.21AM IST

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I am the chief executive officer of a software company. I have come to know that one of my employees is misusing the official email account to the company's detriment. He is using the email account to leak out important secrets of the company. The company's board has mandated me to take appropriate action. What action can I take in this regard? ABC

It is indeed a serious matter when a company discovers that one of its employees is misusing the official email account and is leaking out confidential data of the business. In such a case, it is absolutely imperative that the management must act the earliest. Early action is necessary so as to prevent further damage and loss of material and relevant information. I note that you have the requisite mandate from the board of your company to take appropriate steps. And so you need to preserve the relevant electronic evidence regarding employee's misuse of the official email account and his having leaked out confidential company information.

You can take effective action through both civil and criminal remedies. The first thing would be to effectively plan the termination of the employee so as to protect the company's interests. Further, such an act of the employee is clearly unauthorized and would warrant criminal prosecution. If you are able to prove hacking, a case of hacking can be proved under Section 66 of the IT Act.

In addition, the case provides a good ground for demanding statutory damages of up to Rs 1 crore. In addition, you also have the remedy of moving the appropriate civil court for seeking relief of ad interim injunction restraining the employee from disclosing or revealing the confidential information of the company to any other person.

You need to take these steps as they send out strong signals to the other employees of the company that the management will not take such incidents lying down and that the company will take legal against and prosecute any employee or ex-employee who seeks to indulge in such anti-company and unethical practices.

I wish to crack into the computer of a particular company to find out its security vulnerabilities. Can I do this without taking the company's permission? Would it amount to violation of any law?

XYZ

The question you have raised has numerous legal connotations attached to it. Trying to crack some computer system is an exercise fraught with a lot of legal problems. The first thing you need to know is that your act is likely to come within the ambit of the offence of hacking as is defined under Section 66 of the Information Technology 2000.

When you crack the website of any company, you obviously enter it without that company's permission or knowledge. It is presumed that you have legal knowledge of the fact that such an act of yours is likely to cause wrongful loss to the company.

Further, by cracking into the computer system of the company, even for the pious objective of identifying security vulnerabilities, it would be nonetheless detrimental and

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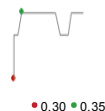


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diminishing to the value and utility of information resident in the computer system or network

In any case, the act of cracking would also amount to effecting the information injuriously by any means. Thus, your act is likely to come within the ambit of hacking under Section 66 of the Indian Cyberlaw.

If the company finds out about your action, it can lodge an FIR against you. And if you are convicted for hacking, you are liable to be punished with imprisonment which may extend to 3 years and fine which may extend to Rs 2 lakh or with both. Thus, it would be prudent for you to refrain from doing such a thing.

Also in case of ethical hacking, one should always be extremely careful. Even if the company invites you to do ethical hacking, you must have appropriate legal documentation in your favour from the competent authority/signatory of the company, authorising you to crack or hack into the company's computer, computer system or computer network and which clearly absolves you from any liability of any kind whatsoever.

Do companies have the right to intercept email of employees and conduct surveillance upon the same? I ask this question specifically in the context of Indian companies because I feel that the surveillance of email tantamounts to denial of the basic right of privacy of netizens. Kindly clarify.

Sharmila,

Delhi

Privacy is one of the most important concepts with an invaluable role in ensuring human dignity in life. That is the reason why the law of privacy in many countries, especially in the West, is very developed. However, in our country, we still do not have distinct laws on privacy.

The IT Act 2000 does not talk about privacy in the context of employers' surveillance of employees' email. It is true that the Supreme Court has held the right of privacy as an integral part of the fundamental right to life under Article 21 of the Constitution of India. But the limitation is that such a right is applicable only against state action and not against private corporate entities.

Thus, in reality, we are beginning to see many cases of routine company surveillance of employees' email in order to gain more control and knowledge over them and their activities. This is invariably done to ensure that the employees do not indulge in any activities, which are detrimental to the interests of the company.

As of now, there is no law which bars companies from indulging in such exercises. However, the worldwide scenario that is emerging from various decisions is that companies do not have the right to snoop over the employees' emails under normal circumstances.

However, in exceptional circumstances, companies are empowered to snoop over email, especially if there is substantial cause to do so. The law on this issue is getting developed.

However, it is pertinent to note that after the September 11 attacks, privacy somehow seems to have taken a back seat. Governments all across the world, have begun introducing various legislations and notifications in order to ensure surveillance and interception of electronic information and communication so as to protect the interests of the sovereignty, security and integrity of nation states.

In that context we are also beginning to see that there is now increased cooperation among people and law enforcement agencies in providing appropriate details so that cyber criminals can be duly apprehended. However, it remains to be seen as to how the law on this issue is likely to develop over a period of time.

What is cyber terrorism? How important is it in today's scenario?

Krishna Ramaiyya,

Mumbai

Cyber terrorism refers to the the use of the internet and its various facilities to plan and execute criminal designs aimed at creating terror among netizens, governments and entities in the actual world. Cyber terrorism is a relatively new phenomenon which emerged just a couple of years ago.



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Cyber terrorism is the worst kind of cyber crime against persons, properties and governments. It is the cheapest and most convenient way of spreading terror. Cyber terrorism, very recently, has seen terrorists using various sophisticated techniques and methodologies, including steganography, which refers to the process of embedding secret messages behind electronic messages or photographs so they cannot be detected.

Cyber Terrorism is on the rise and the September 11 attacks on the World Trade Centre is a classic example of how terrorist design was planned and executed on the internet. That incident has seen an increasing resolve among many nations to deal with cyber terrorism.

Thus, preserving and protecting the security, integrity and sovereignty of nation states has become a priority with various governments. The September 11 attacks have also propelled governments, previously indifferent to such threats, into swift action.

The United States, Canada and many other countries have already passed and are in the process of passing various legislations, all aimed at preventing cyber crime and cyber terrorism.

In the light of an increasing threat of cyber terrorism, governments all across the world have also started stepping up their effort at interception and surveillance of electronic communication and information.

The signing of the International Cyber Crime Treaty is an important landmark in the process of evolving international efforts aimed at building a consensus towards fighting all kind of cyber crimes, including cyber terrorism on a global scale.

It remains to be seen as to how cyber terrorism would be effectively tackled by the various governments over a period of time. Only time has an answer to this question.

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