

# LEGAL STRATEGIES

## Case limits state computer trespass law

DAN KOLBER



If you suspect your spouse is cheating on you, can you go into her e-mails without her consent and print out incriminating e-mails to use in your divorce case against her? The answer is no. Not only are the e-mails not admissible in court, but you would be committing a serious crime that could get you up to 15 years in the slammer.

Family law attorneys told me it makes no difference if you happen to walk by the computer and the spouse's e-mail screen is already open. Without your spouse's consent, you cannot access that e-mail. Yet, in a stunning case decided earlier this fall by the Georgia Court of Appeals, computer access conduct that is illegal if done between spouses is deemed to be legal if done between an employer and a misbehaving employee.

This judicial double standard arises from the recent case of *Sitton v. Print Direction*

Inc., in which the Georgia Court of Appeals strains in order to come up with the dubious conclusion that an employee who was ripping off his employer had no expectations of privacy in his personal e-mail account.

Before we get into the sordid details of the *Sitton* case, here's some background on Georgia's computer laws. In 1991, the Georgia legislature enacted a bundle of powerful anti-computer trespassing statutes called the Georgia Computer Systems Protection Act. The heart of the Act, O.C.G.A. 16-9-93, defines the criminal offenses of computer theft, computer trespass, and computer invasion of privacy. It is one of those rare statutes that specifically provides for criminal as well as for civil penalties. A person convicted of computer theft, computer trespass or computer invasions of privacy can be fined \$50,000 and imprisoned for 15 years.

In the *Sitton* case, the president of a commercial printing company, PDI, hired Larry Sitton as an exclusive outside salesperson. In violation of PDI's employee manual, which prohibited outside jobs, Sitton was sending print jobs to a competing business. PDI provided Sitton with a laptop computer but he didn't use it. Instead he brought to his office at PDI his own computer that he connected to PDI's system network and used for work.

When the president caught wind that Sitton was competing with PDI, he entered Sitton's office and starting clicking on Sitton's personal e-mail account. The president printed out e-mails showing wrongful conduct and fired Sitton. Sitton sued his employer for computer trespass. Both the trial court and the Court of Appeals ruled in favor of the employer stating the employer did not do an unreasonable intrusion.

I have no sympathy for an employee who bites the hand that feeds him. However, the decision that the employer was entitled to access the errant employee's personal e-mail on his personal computer throws the meaning of Georgia's computer trespass statute in doubt. Up to this point, most lawyers had a fairly clear understanding of what the statute meant. The *Sitton* case changes that by suggesting that if an employee wrongs an employer, the employer may have wider leeway in invading his privacy than in other computer intrusion cases.

### Kolber's Tips

1. Many, if not most, employees get their employee manuals during orientation and never look at them again. The courts in *Sitton* gave great weight to the fact that the employee manual gave the employer the right to access personal

computers in certain instances. Employers should develop clear policies concerning computers, periodically train employees and document the retraining.

2. If you are a victim of computer trespass you have the right to seek criminal prosecution. But be very careful about threatening to take criminal action as that could be extortion. As a tactical matter if you are going to punch someone in the nose, it is better not to let him know in advance.

3. The ends do not justify the means regarding illegally obtained evidence. Illegally obtained evidence is not admissible in court regardless if it is a whistle-blowing case, divorce proceedings or criminal prosecution.

4. Lawyers, doctors, accountants and other professionals need to be careful when a client provides to them e-mails which were illegally obtained. You may be aiding and abetting a crime if you distribute the e-mails.

5. If you are victimized by computer trespassing, in light of the *Sitton* case, you may want to bring your case in federal court under the federal computer trespassing statutes, called the Electronic Communications Privacy Act.

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## Be proactive about transferring knowledge

By Tonya Layman  
CONTRIBUTING WRITER

Rather than chasing a former employee to the parking garage just after their going-away party in order to find out what they know about your company's processes or practices, there are better ways to handle knowledge management, and more specifically knowledge transfer, as the worker exits the organization.

Many companies are dedicating more resources to internal knowledge management efforts, and part of this fairly new business discipline deals with knowledge transfer — the process of sharing tacit knowledge or facilitating the learning of explicit knowledge between one person and another — especially when someone is leaving the company.

Sub Samaddar, a faculty member in the Department of Managerial Sciences of the



**Samaddar**  
J. Mack Robinson  
College of Business

**J. Mack Robinson**  
College of Business at Georgia State University, said knowledge management and transfer became a big issue in the mid-'90s.

"It was then that people started to understand that knowledge is no longer free goods," he said. "It has to be

managed like any other asset. I have been doing some work in terms of data mining for a number of years to determine how to we capture and qualify knowledge in recipes and rules and keep it for use by others."

Samaddar's research focuses on managing operations, information technology and knowledge systems for enhancing organizational effectiveness. He is an international expert in management of complex productions and supply chain/network systems and information technology infra-

structure and knowledge support systems.

"Business owners recognize if there are innovations in their company but they lose their key people to the competition, they take what they know with them. They can re-create what they were doing for you for them. Today, many believe knowledge is the only sustainable source of competitive advantage so you have to make productive use of that knowledge," Samaddar said.

Karen Hendrix, a retiree who has worked with a large Atlanta-based corporation and led the team responsible for talent management, learning and development for the company's U.S. business unit, suggests building a bench for key roles as part of ongoing talent management.

Companies can do this by tapping into common career development and talent management practices such as mentoring by senior leaders, retired executives or external coaches; job swapping and rotational assignments; special project assignments; active roles in industry, professional and volunteer/nonprofit organizations; and cross-organizational/cross-functional team projects that work on challenging company problems.

By doing these things "companies can build specific bench strength in key areas as well as provide motivating experiences for key individuals," she said. "This process works best when there is a specific focus on a limited set of critical roles and is managed through a formal process run by leadership, with help from HR, and is included in periodic management routines similar to those leaders have to review financials."

Leaders must discuss key roles and positions, review talent considered to be succession candidates — including their development needs and career goals — and then sponsor development plans to build bench skills of specific individuals in advance of openings in key positions, she said.



**Berg**  
Society for Human Resource Management Atlanta

Alex Berg, a board member of the Society for Human Resource Management Atlanta and a human resource generalist, agrees that advance planning is key. Another aspect to success in transferring knowledge is involving those individuals in the process by rewarding

them with whatever motivates them to participate in the plan.

"At the end of the day, employers need to do whatever they can to meet the objectives they have determined for their company. Determine what are the outcomes you are looking for in managing your workforce and is knowledge transfer an important characteristic of that," he said.

Employers need to identify who those people are, what knowledge they want transferred and create a way to measure engagement in knowledge transfer.

"Then reward them by making it a tangible part of how they are rewarded and acknowledged," Berg said. "People do what you pay them to do in general. A portion of their bonus may be related to the degree of disseminating information. But keep in mind, it is not always about money. Reward people in the way they want to be rewarded. For some people it is recognition or simply having a pleasant work experience."

He added knowledge transfer issues are more at the forefront as the workforce ages. But interestingly, knowledge transfers are not necessarily being sought from those workers reaching retirement.

Instead it is often younger workers who are ready to move up into potential retiree's positions, but become impatient as baby boomers continue working and move on to greener pastures, thus taking what they know with them.

Despite this, Berg is seeing an uptick in companies thinking more critically about talent management challenges for end-of-career employees.

## HOW TO

### TRANSFER KNOWLEDGE

#### Top tips

1. Learn about the knowledge transfer process. Determine how the knowledge will be transferred and then transfer it. Test the effectiveness by observing its recall and use.

2. Use reference materials, such as "First 90 Days" by Michael Watkins, recommended by Karen Hendrix, to learn.

3. Create a new relationship with the transferring employee. Move from a strictly employment relationship to a business relationship. Utilize that person and their knowledge on a consultant level or in another capacity within the organization.

4. Be creative in how you manage end-of-career employees. Move them within the organization or limit their hours so the company can retain their knowledge and the worker can ease into retirement.

5. Create a knowledge map for the company that identifies who knows what within the organization.