U.S. v. Nosal
676 F.3d 854
C.A.9 (Cal.),2012.
April 10, 2012

We remain unpersuaded by the decisions of our sister circuits that interpret the CFAA broadly to cover violations of corporate computer use restrictions or violations of a duty of loyalty. *See* *United States v. Rodriguez,* 628 F.3d 1258 (11th Cir.2010); *United States v. John,* 597 F.3d 263 (5th Cir.2010); *Int'l Airport Ctrs., LLC v. Citrin,* 440 F.3d 418 (7th Cir.2006). These courts looked only at the culpable behavior of the defendants before them, and failed to consider the effect on millions of ordinary citizens caused by the statute's unitary definition of "exceeds authorized access."

Negative Citing References (U.S.A.)

Disagreement Recognized by

JBCHoldings NY, LLC v. Pakter, 931 F.Supp.2d 514 (S.D.N.Y. Mar 20, 2013) (NO. 12 CIV. 7555 PAE) ★★★★ **HN: 1 (F.3d)**

Dresser-Rand Co. v. Jones, 2013 WL 3810859, 36 IER Cases 740 (E.D.Pa. Jul 23, 2013) (NO. CIV.A. 10-2031) ★★★★ **HN: 1 (F.3d)**

Distinguished by

Oracle America, Inc. v. Service Key, LLC, 2012 WL 6019580 (N.D.Cal. Dec 03, 2012) (NO. C 12-00790 SBA) ★★★★ **HN: 1 (F.3d)**

Craigslist Inc. v. 3Taps Inc., 2013 WL 4447520 (N.D.Cal. Aug 16, 2013) (NO. CV 12-03816 CRB) ★★★★ **HN: 1,4 (F.3d)**

Oracle America, Inc. v. TERiX Computer Company, Inc., 2014 WL 31344 (N.D.Cal. Jan 03, 2014) (NO. 5:13-CV-03385-PSG) ★★★★ **HN: 1 (F.3d)**

[1] KeyCite Citing References for this Headnote

Phrase "exceeds authorized access" in Computer Fraud and Abuse Act (CFAA), defined as "to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter," embraces individuals who have only limited access to files or data and exceed restrictions on that access, not those who have unrestricted physical access to a computer but use information stored there for unauthorized purposes. 18 U.S.C.A. § 1030(e)(6).

[3] KeyCite Citing References for this Headnote

Under a standard principle of statutory construction, identical words and phrases within the same statute should normally be given the same meaning.

Dissent in *Nosal*

The majority holds that a person "exceeds authorized access" only when that person has permission to access a computer generally, but is *completely* prohibited from accessing a different portion of the computer (or different information on the computer). The majority's interpretation conflicts with the plain language of the statute. Furthermore, none of the circuits that have analyzed the meaning of "exceeds authorized access" as used in the Computer Fraud and Abuse Act read the statute the way the majority does. Both the Fifth and Eleventh Circuits have explicitly held that employees who knowingly violate clear company computer restrictions agreements "exceed authorized access" under the CFAA.

In *United States v. John,* 597 F.3d 263, 271–73 (5th Cir.2010), the Fifth Circuit held that an employee of Citigroup exceeded her authorized access in violation of § 1030(a)(2) when she accessed confidential customer information in violation of her employer's computer use restrictions and used that information to commit fraud. As the Fifth Circuit noted in *John,* "an employer may 'authorize' employees to utilize computers for any lawful purpose but not for unlawful purposes and only in furtherance of the employer's business. An employee would 'exceed[ ] authorized access' if he or she used that access to obtain or steal information as part of a criminal scheme." *Id.* at 271 (alteration in original). At the very least, when an employee "knows that the purpose for which she is accessing information in a computer is both in violation of an employer's policies and is part of[a criminally fraudulent] scheme, it would be 'proper' to conclude that such conduct 'exceeds authorized access.' " *Id.* at 273.

Similarly, the Eleventh Circuit held in *United States v. Rodriguez,* 628 F.3d 1258, 1263 (11th Cir.2010), that an employee of the Social Security Administration exceeded his authorized access under § 1030(a)(2) when he obtained personal information about former girlfriends and potential paramours and used that information to send the women flowers or to show up at their homes. The court rejected Rodriguez's argument that unlike the defendant in *John,* his use was "not criminal." The court held: "The problem with Rodriguez's argument is that his use of *866 information is irrelevant if he obtained the information without authorization or as a result of exceeding authorized access." *Id.; see also EF Cultural Travel BV v. Explorica, Inc.,* 274 F.3d 577, 583–84 (1st Cir.2001) (holding that an employee likely exceeded his authorized access when he used that access to disclose information in violation of a confidentiality agreement).

The Third Circuit has also implicitly adopted the Fifth and Eleventh circuit's reasoning. In *United States v. Teague,* 646 F.3d 1119, 1121–22 (8th Cir.2011), the court upheld a conviction under § 1030(a)(2) and (c)(2)(A) where an employee of a government contractor used his privileged access to a government database to obtain President Obama's private student loan records.