



## USING THE COMPUTER FRAUD AND ABUSE ACT TO PROTECT YOUR SECRETS

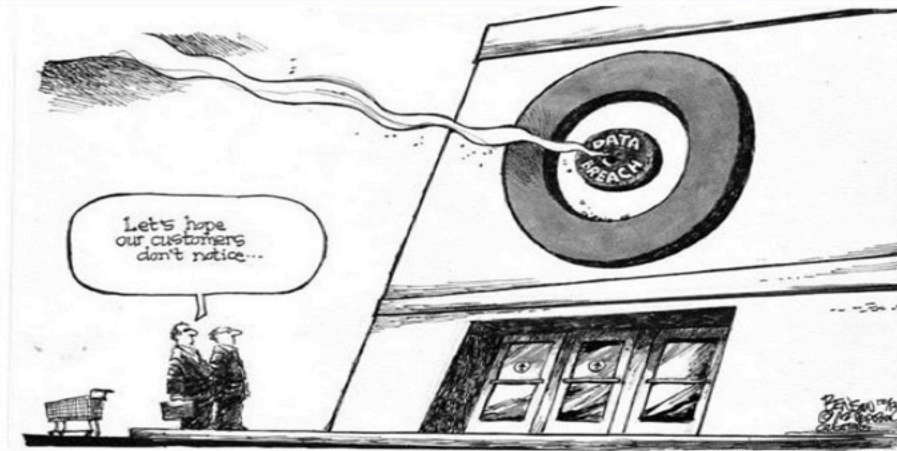
Joe Ortego  
Nixon Peabody (New York, NY)  
212.940.3045 | [jortego@nixonpeabody.com](mailto:jortego@nixonpeabody.com)

# PRIVACY, DATA BREACHES, AND THE COMPUTER FRAUD AND ABUSE ACT



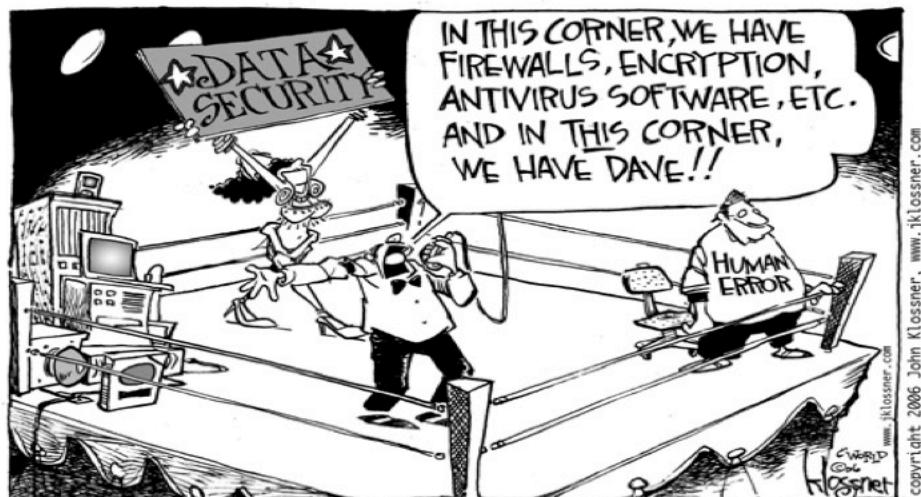
**JOSEPH ORTEGO**  
437 MADISON AVENUE  
NEW YORK, NY 10022-7039  
PHONE: (212) 940-3000  
[JORTEGO@NIXONPEABODY.COM](mailto:JORTEGO@NIXONPEABODY.COM)

## WHAT IS A DATA BREACH?



- BIG DATA BREACHES
- FORMER & CURRENT EMPLOYEE BREACHES

## STEPS AFTER BREACH



## STEPS AFTER A BREACH – SUMMARY

- CONTAIN THE BREACH
- DETERMINE IF BREACH COVERED BY INSURANCE
- INDEMNIFICATION
- DETERMINE LIABLE PARTY – INTERNAL OR EXTERNAL?
- DETERMINE LEGAL IMPLICATIONS

## LEGAL OPTIONS TO PROTECT YOUR COMPANY



## WHAT IS THE COMPUTER FRAUD AND ABUSE ACT?



## RELEVANT BEHAVIOR COVERED BY THE STATUTE

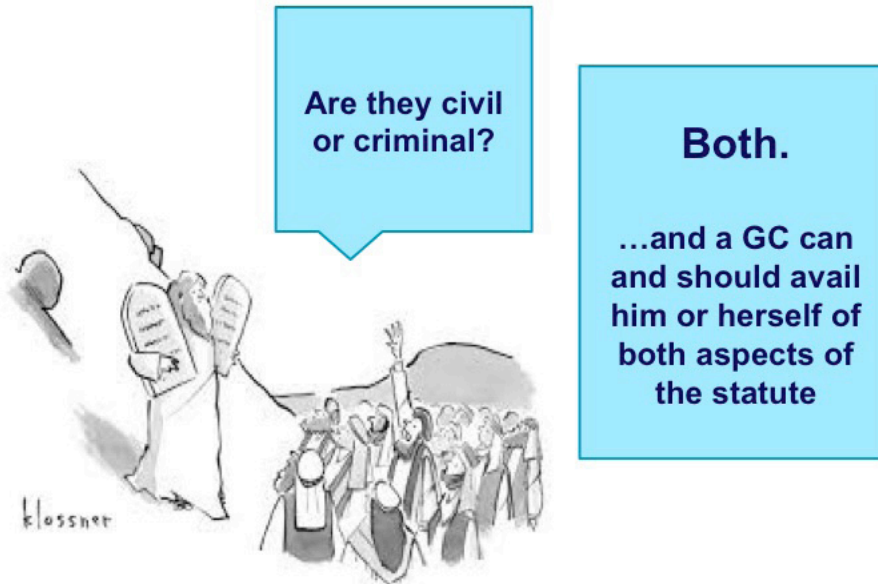


*"You know, you can do this just as easily online."*

- **A**ccessing a computer without authorization
- **E**xceeding authorized access on a computer
- **C**ausing damage or loss by accessing a computer without authorization or in excess of authorization



## CIVIL AND CRIMINAL ENFORCEMENT



## SIGNIFICANCE FOR CORPORATE COUNSEL

- KNOWLEDGE OF THE LAW HERE ALLOWS CORPORATE COUNSEL TO SUE, IN CIVIL COURT, THOSE WHO HARM A COMPANY'S COMPUTERS
- USING THE LAW TO HELP STRUCTURE POLICIES WILL HELP IN THE CASE OF ANY FUTURE BREACH
- BRINGING IN FEDERAL PROSECUTORS FOR THE STATUTE'S CRIMINAL ASPECTS

## PLAYING OFFENSE



## CIRCUIT SPLIT



Broad View	Narrow View
1st Circuit 5th Circuit 7th Circuit 11th Circuit	4th Circuit 9th Circuit

## EXAMPLES OF OFFENSIVE USE OF STATUTE

- A. *International Airport Centers, L.L.C. v. Citrin*, 440 F.3d 418 (7th Cir. 2006)
- B. *EF Cultural Travel BV v. Explorica, Inc.*, 274 F.3d 577 (1st Cir. 2001)
- C. *International Sec. Management Group, Inc. v. Sawyer*, 2006 WL 16385737 (M.D. Tenn. 2006)

## DEFENSIVE USES OF STATUTE





## WORKING WITH STATE AND FEDERAL PROSECUTORS



## WHAT CAN YOU DO?

1. AWARENESS IS YOUR BEST DEFENSE – AND OFFENSE!
2. POLICES ARE IMPORTANT
3. COMPLIANCE.....WHO IS ACCOUNTABLE
4. ASK QUESTIONS!



## FACULTY BIOGRAPHY

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### **Joseph Ortego**

**Partner; Practice Group Co-Leader, Comm. Litigation; NP Trial® Leader  
Nixon Peabody (New York, NY)**

**212.940.3045 | [jortego@nixonpeabody.com](mailto:jortego@nixonpeabody.com)  
[http://www.nixonpeabody.com/joseph\\_j\\_ortego](http://www.nixonpeabody.com/joseph_j_ortego)**

Joseph Ortego is the Practice Group Co-Leader of Nixon Peabody's Commercial Litigation Practice, as well as the chair of NP Trial®, an international team of the firm's most successful and experienced trial lawyers. He represents major private and publicly traded companies and their executives, having tried over 100 cases to verdict in both federal and state courts throughout the country and has successfully represented clients before arbitration tribunals around the world.

My clients' legal needs are as diverse as the industries they operate in. They want a lawyer who is familiar with all legal aspects of their industry. My clients call on me to defend them in complex litigation and class actions involving a broad range of issues, such as securities, shareholders' and contract disputes, labor and employment and intellectual property, as well as handle regulatory and compliance issues particular to certain industries such as aviation, financial services, life sciences, pharmaceuticals, food and beverage and insurance.

Recently, my team secured a unanimous jury verdict in El Paso, Texas, state court for global aviation manufacturer Eurocopter, S.A.S. and its Texas-based distributor, American Eurocopter Corporation. After a three-week trial, the twelve-member jury rejected the plaintiffs' product defect theories against our clients and fully exonerated the Eurocopter product. [Click here to read the full story.](#)

I regularly represent clients in health effects litigation and recent successes include matters involving toxic tort, food and beverage, environmental, medical device and pharmaceutical litigation.

### **Services**

- Complex Commercial Litigation
- Products: Class Action, Trade & Industry Representation
- NP Trial®
- Aviation Product Liability
- Insurance
- Life Sciences
- Health Effects - Toxic & Complex Torts
- Environmental Litigation
- NP Second Opinion®
- Food, Beverage & Agriculture
- Arbitration
- Class Actions & Aggregate Litigation
- Labor & Employment
- Consumer Products
- Global Disputes
- Financial Services Litigation
- Securities & Corporate Governance Litigation

### **Education**

- Boston University School of Law, J.D.
- Syracuse University, B.A., with honors