



Security in knowledge

Your Honor, It Was Self Defense *a mock hearing*

Honorable John M. Facciola

U.S. Magistrate Judge

U.S. District Court for the District of Columbia

Honorable Andrew J. Peck

U.S. Magistrate Judge

U.S. District Court for the Southern District of New York

Steven W. Teppler, *Esquire*

Kirk-Pinkerton, P.A.

Stephen S. Wu, *Esquire*

Cooke Kobrick & Wu LLP

Hoyt L. Kesterson II

Terra Verde Services

Serge Jorgensen

The Sylint Group

RSACONFERENCE2013

Session ID: Law-W21

Session Classification: Intermediate

Agenda for the mock hearing

We lay our scene

Call to order

Summary of additional facts
and testimony

Legal argument

Decision and commentary by
Judge Facciola

Merchant versus Merchant

- ▶ Telluria is a successful online merchant of clothing in the U.S.
 - ▶ In October 2012 sales drop 60%
 - ▶ Customers call them saying the website is slow or non-responsive.
 - ▶ Customers also tell them that it is difficult to call them.
 - ▶ The IT department notes that web pages have been deleted or altered and that they are inundated with incoming traffic.
 - ▶ Their third party support for the VOIP customer service network tells them that the configuration of the VOIP servers has been modified.
 - ▶ One month later sales are at 30%; the CIO brings in a security consulting company, Arisia .
- ▶ The Arisian consultant determines that the attacks are coming from Nevia, a very large international conglomerate.
 - ▶ He attempts to block the attacks but they continually morph.
 - ▶ He tries to block IPs but there are too many sources.

CIO versus CIO

- ▶ The holiday season is nigh; since 45% of annual revenues are realized during this period, management is aflutter.
- ▶ The CIO of Telluria reaches out to the CIO of Nevia and asks why they are attacking Telluria.
- ▶ “What attacks?” The Nevia CIO states that Nevia has no reason to be attacking Telluria and that:
 - ▶ things are fine here and that their online functions are performing as they usually do.
 - ▶ they had a PCI audit a few months ago and got a clean bill of health.
 - ▶ they wish they could help but that they are busy preparing for the holiday season.

In-house Counsel versus In-house Counsel

- ▶ The Telluria in-house counsel reaches out to the in-house counsel of Nevia. Both CIOs and Telluria's consultant are present during the conversation.
- ▶ Nevia counsel responds that his CIO says that nothing is wrong. Perhaps Telluria has misdiagnosed the problem.
- ▶ The Telluria counsel threatens to have the court issue a Temporary Restraining Order (TRO) against Nevia.
- ▶ The Nevia counsel responds that is certainly Telluria's prerogative; meanwhile they're busy with the upcoming holiday season.

Consultant versus Merchant

- ▶ Tellurian management is desperate and instructs the CIO to fix the problem.
- ▶ The CIO is panicked and tells the consultant to fix the problem.
- ▶ The consultant attempts a surgical strike against the compromised systems of Nevia.
 - ▶ Unfortunately he strikes an artery while removing a significant portion of the attacking malware.
 - ▶ Unfortunately that which remains tries to restart itself and in doing so continually crashes the many systems on which it is running.
- ▶ Those systems are the ones that manage inventory and fulfill customer's online orders.
- ▶ Disaster recovery is a disaster and so are the holidays.

Retained Counsel versus Retained Counsel

- ▶ In January Nivia files a lawsuit in federal court in the Northern District of California against Telluria claiming computer fraud, tortious interference, and related claims, citing damage to their computer systems, and a loss of \$200 million in sales revenue.
- ▶ Telluria files a counter-claim of negligence and tortious interference.
- ▶ The case goes before the court on a bench trial.

What has been discovered

- ▶ The systems of Nevia were indeed attacking Telluria.
- ▶ Nevia's systems had been taken over by a third party.
- ▶ An anonymous collective named EDDORE (Enraged Digital Dilettantes Opposed to Ruthless Employers) takes credit.
 - ▶ They claim that Telluria's suppliers use child labor.
 - ▶ They state that Nevia was easy to penetrate as long as they avoided the systems handling credit cards and other financial information.
 - ▶ As proof they point to files with encrypted content seeded throughout Nevia's enterprise and disclose the key.
 - ▶ Decryption reveals *good fences make good neighbors*.

Dramatis Personae

- ▶ United States Magistrate Judge John M. Facciola
 - ▶ Sitting by designation
- ▶ Steven W. Teppler, *Esquire*
 - ▶ Retained counsel for Telluria Inc.
- ▶ Serge Jorgensen
 - ▶ An employee of Arisia hired as consultant to Telluria Inc., a fact witness
- ▶ Stephen S. Wu, *Esquire*
 - ▶ Retained counsel for the Nevia Corporation
- ▶ Hoyt L. Kesterson II
 - ▶ CIO for the Nevia Corporation, a fact witness
- ▶ United States Magistrate Judge Andrew J. Peck
 - ▶ Greek Chorus

Oyez!

Oyez!

Oyez!



Post hearing discussion with Judge Facciola

- ▶ Discussion with the judge's law clerks—what should the instructions to the jury be?
- ▶ Judge Facciola's instructions

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