

Phishing, Pharming and Other Internet Fraud

Should States Follow Utah's Approach?

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Phishing, pharming and other Internet scams have been around as long as the Internet itself. Despite the adoption of various federal and state laws addressing Internet fraud, effectively regulating this behavior remains a daunting task. Recognizing that existing laws can fall short, the State of Utah has just passed legislation aimed at various types of Internet scams.

We've all been there -- you get an email message claiming to be from your bank asking you to verify your login, password and other personally identifiable information. It may look authentic but is most likely a "phishing" or "pharming" scheme that did not come from the bank but was, instead, sent by someone looking to commit identity theft with your sensitive information. Sometimes these schemes also involve the surreptitious installation of "spyware" on the victim's computer.

Another common form of Internet fraud is "cybersquatting," or the bad faith registration of a domain name that another has legitimate rights in, such as a trademark, and to which the registrant has no legitimate rights. Acts of fraud are illegal under federal law and the laws of every state. Nevertheless, legislation has been specifically directed against fraud taking place on the Internet. The federal Anticybersquatting Consumer Protection Act ("ACPA") was passed in 1999. According to Utah's Governor, Gary Herbert, the ACPA is "outdated and must be reviewed." Rather than waiting for Congress to act, however, Utah has enacted the "Utah E-Commerce Integrity Act." The Utah law is ambitiously directed at prohibiting acts of phishing, pharming, the installation of spyware, cybersquatting and copyright infringement. The law establishes civil and criminal penalties for its violation.

The difficulty with Utah, or any other single state, enacting a comprehensive law regulating Internet fraud is that the scope of the law is limited to that state's citizens and those organizations doing business in that state. While other states may enact similar laws, federal legislation, that would apply nationwide and set uniform standards, would be the best approach.

For more information about legislation or litigation involving technology, intellectual property protection of information technology assets or any other Information Technology law issue, contact your Miller Canfield attorney.