

Failing to Invest in Cybersecurity Could Lead to FTC Action

Poor cybersecurity is not only bad for business, but it may also be a violation of the Federal Trade Commission Act, according to a federal Court of Appeals. The opinion, filed in August 2015, held that the Federal Trade Commission (FTC) has the authority to regulate cybersecurity, and it enabled the FTC to pursue Wyndham Hotels for failing to maintain minimal cybersecurity practices. **This opinion should serve as a warning to businesses of all sizes, which now may be subject to FTC claims, if the FTC finds that a business' cybersecurity is not minimally adequate to protect customers and their data.**

The FTC cited several deficiencies in the

cybersecurity practices of Wyndham Hotels. The company allegedly allowed its hotels to store payment card information in clear, readable text and use overtly easy passwords to access computer management systems. It did not use firewalls, had inadequate security procedures to access the computer network, and let vendors access its servers. Also, the business could not detect or prevent unauthorized access to its computer network, nor did it follow proper incident response procedures after hacks occurred.



The lack of cybersecurity resulted in three separate hacking attacks over two years that were not discovered for months and ultimately compromised credit card information of 619,000 Wyndham customers, with fraud loss of at least \$10.6 million.

The FTC also alleged that Wyndham violated the FTC Act by falsely claiming on its website that it had adequate cybersecurity practices in place. The court held that a total lack of security measures to guard personal

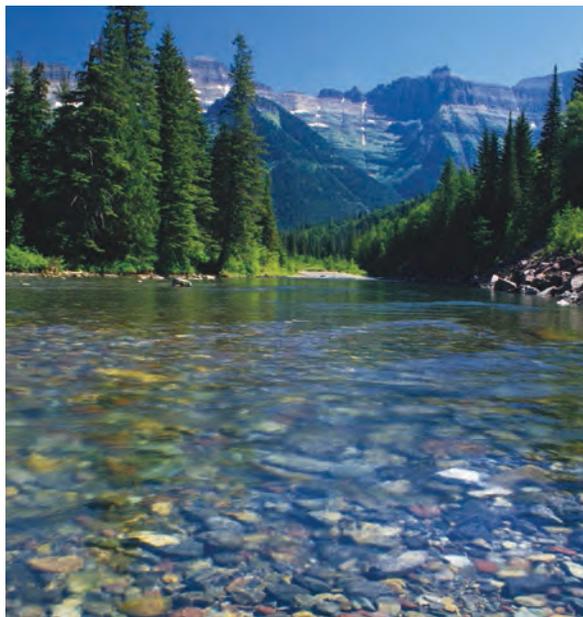
SEE CYBERSECURITY ON NEXT PAGE

EPA's Proposed New Rule Under Clean Water Act Halted in Arizona and 12 Other States

The federal Clean Water Act deals with the nation's surface waters. The act allows for regulation of the discharge of any pollutants—including dirt and sand—into “navigable waters,” defined as “the waters of the United States.” The interpretation of those words is key to the breadth of the act.

The Environmental Protection Agency (EPA) recently proposed a change in the definition of “waters of the United States” to include small and intermittent streams, ponds and wetlands that may be tributaries to larger, navigable bodies of water—the so-called “Clean Water Rule.”

Some farmers, landowners and development business interests contend that the rule goes beyond the scope of



the act and earlier court decisions, requiring them to comply with the act's costly and time-consuming regulations and restrictions on nearly every stream and ditch.

In Arizona, the rule could apply to dry washes and ephemeral streams that rarely flow, including a small feature such as a man-made drainage ditch, increasing the costs associated with obtaining permits for development in areas seemingly remote from navigable waters.

The EPA states that the rule merely clarifies which smaller waterways fall under federal protection in light of the court rulings and better protects the nation's surface waters from the hazards from run-off and pollutants.

SEE EPA ON NEXT PAGE

PERSONAL NOTES



Christina M. Noyes spoke before a national franchisee group in Las Vegas, Nevada. She presented on significant franchise policy changes within the industry.

Chas W. Wirken was selected for inclusion in AZ Business magazine's Top 100 Lawyers in Arizona for litigation in the areas of practice law, appellate law, commercial law, franchise law and real estate litigation. Chas was also inducted into the Maricopa County Bar Association's Hall of Fame in October.

Christopher M. McNichol volunteers as a Big Brother with the Big Brothers Big Sisters of Central Arizona.

For the State Bar of Arizona, Chris has updated the chapter in the Arizona Civil Remedies Manual on real property lien enforcement.

Richard H. Whitney has been elected to the board of the Phoenix Chamber Music Society, a 50-year-old society bringing the world's finest chamber groups to Arizona. He and Mrs. Whitney established a scholarship program at the society providing for eight middle and high school students, their teachers and their parents to attend eight performances each year.

Timothy A. Stratton was appointed by the National Association of Bond Lawyers as an editor of the Federal Securities Laws of Municipal Bonds, published by Lexis-Nexis. Tim has previously served as a contributing author for the fifth and sixth editions of the publication. The deskbook is used by bond professionals nationally.

James W. Kaucher, Kelli K. Williams, and Danielle J.K. Constant presented a seminar on vulnerable abuse and financial exploitation for the Pima County and Graham County Public Fiduciaries in April.

Scott A. Malm recently argued a real estate case before the Arizona Supreme Court. He also spoke at a National Business Institute seminar on Boundary Issues and Easement Law.

James W. Kaucher finished his annual update to the employment law chapters of the Arizona Business Law Deskbook. For the last three years, Jim has authored the chapters analyzing the following topics: 1. Employers, Employees and Independent Contractors; 2. Employment-at-will and Employment Contracts; 3. Discrimination and Sexual Harassment; and 4. Miscellaneous Employment Law Issues.

Jim was also part of a seminar panel on "Vulnerable Adult Abuse Litigation," which was presented by the Pima County Bar Association in March. He also gave a presentation to the Tucson Defense Bar in September titled "Escaping Neverland: Defending Pressure Ulcer Cases."

Barbara U. Rodriguez-Pashkowski presented at the Arizona State Bar Convention in June on "Environmental Law Fundamentals, Water Quality, UST/LUST Regulations." In August, Barbara spoke at the Government Attorneys CLE Series on "Protecting Development from What Lies Beneath – WQARF and Superfund Sites."

Barbara also spoke at the Arizona Hydrological Society Symposium in September on "The History and Demise of the State Assurance Fund."

Thomas M. Murphy and wife **Chris Murphy** hosted the U.S. Air Force Chief of Staff, General Mark A. Welsh III, at their home during his visit to Tucson last March. Gen. Welsh is the highest ranking officer in the USAF. He was visiting Davis-Monthan Air Force Base and Tucson.

Tom is a member and past president of the DM50, a community support group for Davis-Monthan Air Force Base. The DM50 arranged a dinner with the Mayor of Tucson, members of the City Council, the Pima County Board of Supervisors and other area leaders, to show local support for Davis-Monthan to Gen. Welsh.

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Best Lawyers in America® Names Gust Rosenfeld and Attorneys

The Best Lawyers in America® has selected the entire Gust Rosenfeld firm and fifteen attorneys for its 22nd edition.

Tom Chauncey II was recognized for his work in Corporate Law.

Mark Collins was selected for his work in the practice areas of Litigation (Real Estate) and Real Estate Law.

Peter Collins, Jr. received recognition for his work in Commercial Litigation, Insurance Law and Litigation (Plaintiffs).

Robert D. Haws received recognition for his work in Education Law, Employment Law (Management) and Litigation (Labor and Employment).

John L. Hay was recognized for his Franchise Law practice.

Gerald L. Jacobs has been selected for his Real Estate Law.

James W. Kaucher has been selected for his work in Professional Malpractice Law (Defendants).

Jennifer MacLennan received recognition for her Education Law practice.

Christina M. Noyes was recognized for the practice area of Franchise Law.

Séan P. O'Brien has been recognized for his work in Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law.

Gerard R. O'Meara was recognized for his Litigation (Banking and Finance) practice.

Fred H. Rosenfeld earned recognition for his work in Corporate Law, Municipal Law and Public Finance Law.

Scott Ruby has received recognition for his Corporate Law and Public Finance Law practices.

Richard H. Whitney has been selected for his work in Trusts and Estates.

Chas W. Wirken was recognized for the practice areas of Appellate Practice and Franchise Law. Chas was also recognized as Best Lawyers' 2016 Franchise Law "Lawyer of the Year" for Phoenix.

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