

Sharing is Not Caring

By Reg P. Wydeven
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When I was in high school, our lockers were organized alphabetically. Needless to say, when your name is 'Wydeven,' you don't get the prime real estate of the hallway; my locker was in the back corner of the school. It was so far off the beaten path, if I swung by my locker after first period, I wouldn't make it back in time for lunch.

Thankfully I had some great buddies who would let me share their lockers with them. To get in, however, my pals had to share their lock combinations with me. In those days, no one had cell phones or \$100 sunglasses, so there really wasn't anything worth stealing in our lockers. So sharing combinations really wasn't a big deal. But if friends share passwords these days, it could be an extremely big deal.

Take David Nosal, for example. In 2004, Nosal left his job at Korn Ferry International, an executive search firm, to start his own competing business. After he left, his computer credentials at Korn were revoked. Nosal then used a former coworker's login to download huge amounts of confidential information and data from Korn's computer system.

Earlier this month a majority of the 9th Circuit U.S. Court of Appeals judges decided that Nosal violated the Computer Fraud and Abuse Act. The judges ruled that accessing a website or computer network using someone else's password "without authorization" is a violation of the CFAA. Widespread panic ensued, as many people interpreted this decision to mean that using a friend's password to log on to services like Netflix, Amazon Prime or HBO GO would be considered a federal crime. Because even if your friend willingly gave you the password, it would still be illegal without the consent of the company.

However, in the majority's decision, Circuit Judge M. Margaret McKeown was quick to point out that, "This appeal is not about password sharing." In his dissenting opinion, though, Circuit Judge Stephen Reinhardt disagreed, unequivocally saying that, "This case is about password sharing." Judge Reinhardt wrote that, "People frequently share their passwords, notwithstanding the fact that websites and employers have policies prohibiting it." He believes the majority's opinion could set a precedent where anyone who shared a password would be violating the CFAA.

Judge Reinhardt argued that certain situations were not intended to be governed by the CFAA and that, "The majority is wrong to conclude that a person necessarily accesses a computer account 'without authorization' if he does so without the permission of the system owner."

He cited harmless examples that would arguably be illegal under the Court's ruling, such as "an office worker asking a friend to log onto his email in order to print a boarding pass," or "the case of one spouse asking the other to log into a bank website to pay a bill, in violation of the bank's password sharing prohibition." Both scenarios would violate the system owner's access policy and, therefore, violate the CFAA.

Thankfully service providers don't seem too concerned about the issue. At the Consumer Electronics Show earlier this year, Netflix CEO Reed Hastings said password sharing "really hasn't been a problem." Likewise, HBO Chairman and Chief Executive Richard Plepler told CNNMoney in 2015 that, "Right now password sharing is just simply not a big number."

I think it's safer to share Netflix the old-fashioned way: I'll just watch TV through my neighbors' windows.

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