



## 3 Key Takeaways About Texas' Unauthorized Access Law

The Dallas Court of Appeals recently decided a civil case involving claims under Texas' unauthorized access of computer law that provides some helpful guidance for this relatively new law that has very little case law construing it. The 3 takeaways that follow are the key legal principles that apply to this law as set forth in the case [Miller v. Talley Dunn Gallery, LLC](#), 2016 WL 836775 (Tex. App.-Dallas, Mar. 3, 2016).

Texas' unauthorized access of computers law is titled *Breach of Computer Security*, Chapter 77, Section 33.02 of the *Texas Penal Code*, a criminal law that has a civil cause of action if the conduct constituting the violation was committed knowingly or intentionally, Chapter 143 of the *Texas Civil Practice and Remedies Code*, titled *Harmful Access by Computer Act (HACA)*. This law was amended effective September 1, 2015 (See [Texas Broadens Unauthorized Access of Computer Law to Specifically Address Insider Misuse](#)).

The [Miller](#), case is one of the few civil cases construing either the amended version of the law, or its predecessor. Here are the 3 key legal principles to take from this case:

### 3 Key Legal Principles for Texas' Unauthorized Access Law (HACA)

- 1. A cell phone is a "computer" for purposes of HACA ("In reality, 'a modern cell phone is a computer ....").**
- 2. Examining a phone log and text messages from a cell phone necessarily requires retrieving the data on the phone which constitutes an "access" of a computer under HACA.**
- 3. The often repeated yet misguided belief**

**that one spouse's cell phone constitutes "community property" and, therefore, the other spouse has "effective consent" to access the data on the cell phone is false.**

Regarding this last point, the court explained:

Nothing in chapter 33 of the penal code incorporates community property law for the purpose of establishing ownership of the computer. Rather, the statute defines 'owner' as a person who: (1) has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor; (2) has the right to restrict access to the property; or (3) is the licensee of data or computer software.

Because both spouses agreed that the phone belonged to one spouse, she used it on a daily basis, it was the only way to reach her, she had the right to place a password on the phone, and had at various times restricted access to it by the password, and the other spouse accessed the phone at night when she was asleep and not using it, the evidence showed she had a greater right to possession of the phone.

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