

FACT SCENARIO FOR PRIVACY SUBCOMMITTEE PRESENTATION ON EMPLOYEE PRIVACY RIGHTS IN THE EUROPEAN UNION AND CANADA

Cedrick's of Dollywood, located in Pigeon Forge, Tennessee, manufactures and sells ladies' lingerie. The business has grown from the small operation Cedrick Dweeb started in his tobacco barn to a company with sales of over \$200 million a year, and 188 stores in malls throughout the U.S. Sales have grown so quickly that Cedrick's has decided it is time go international, and open stores in Toronto, Paris, Berlin and Amsterdam.

Hedrick Dweeb, Cedrick's twin brother, is the company's human resources VP. With the assistance of Cedrick's other twin brother Dedrick, the company's information systems specialist, Hedrick has had a state of the art system installed which will instantly transmit payroll information for the European and Canadian stores' employees back to Pigeon Forge for processing. When processing is completed, Dedrick's system allows Pigeon Forge to wire the correct amount of money, in Euros or Canadian dollars, into each employee's bank account, and simultaneously email to each overseas store the final payroll data for its employees. At Hedrick's request, Dedrick added to his system an additional feature which allows all overseas personnel file information, including disciplinary and promotion records, as well as medical records of employees, to be instantly transmitted to or by Hedrick in Pigeon Forge upon his request.¹

To keep abreast of employee activities in the Canadian and European stores, and to assure that the overseas workplaces are free of harassment, Hedrick has purchased a software program called "Open Book". The software allows employers to randomly monitor employees' emails and internet site visits. When a search is requested, the software randomly pulls up emails and addresses of visited websites, and generates a report which is emailed back to Hedrick in the U.S. The report identifies by name the employees whose emails and internet visits have been retrieved. Under each employee's name is the text of each retrieved email and the addresses of the websites the employee has visited during the period covered by the requested search.

Hedrick has decided that the Canadian and European stores will use the same employee handbook utilized in the U.S. The handbook states as follows:

The Company's email and internet systems are intended for business use, and are not to be used for personal purposes. The Company reserves the right to monitor employee emails and internet usage to ensure compliance with this policy.

Each employee signs a tear-off page at the back of the handbook, stating:

¹ Hedrick has been contacted by an Indian data administration company which would like Hedrick to outsource to it the processing and administration of personnel and payroll data of the European Cedrick's stores. Hedrick has put this on his list of things to look into in the future.

I have received a copy of the Cedrick's of Dollywood Employee Handbook. I understand that I am to comply with the policies and procedures contained in the Handbook and that I am subject to disciplinary action for failure to do so.

Hedrick knows that the employees at each of the foreign stores are represented by some kind of union. However, because Hedrick has heard that unions in other countries don't get involved in the day-to-day operations of employers, he has not felt it necessary to talk to the Canadian or European unions about Cedrick's system for transmission of payroll and personnel information to and from the U.S., the "Open Book" software, or the handbook.

Everything has run smoothly during the first month after the grand openings of the overseas Cedrick's stores. The transmission of payroll, personnel and medical information back and forth from Pigeon Forge to Canada and Europe has worked flawlessly. Cedrick, Dedrick and Hedrick are celebrating over glasses of the best Tennessee whiskey when they are advised that anonymous phone calls have just come in from employees in Toronto and Berlin, complaining that unnamed Cedrick's employees are using company email to send to several female employees sexually offensive messages and links to pornographic websites.

Hedrick immediately orders an "Open Book" search of foreign emails and internet site visits. The random search of 15 days' emails and internet use produces reports in Toronto, Berlin, Amsterdam and Paris, each of which show legitimate emails and website visits by some employees, emails and website visits by others that are clearly for personal purposes, but not offensive, and some sexual and pornographic emails and website visits. Hedrick orders the European and Canadian store managers to fire the employees who sent the sexual/pornographic emails, and to issue final written warnings to those who used the system for personal purposes. The store managers do as instructed and fax copies of the signed disciplinary and discharge documents back to Hedrick in Pigeon Forge.