

Ethics Jeopardy

Keeping a Proper Ethical “Lookout”

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Claude E. Ducloux

- 42-year seasoned attorney
- Board Certified in Civil Trial Law and Civil Appellate Law – Texas Board of Legal Specialization
- Former President, Austin Bar Assoc.
- Received Gene Cavin Award for Lifetime Achievement in Teaching Continuing Education



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PART 1

Send it.
My Password is Strong!

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4 Sending Bob-O's Secret Recipe

- Bob-O makes the best pizza dough anywhere, and Bomino's wants to buy the secret recipe. Bob'O's attorney, Gary Gluten, tells Bob-O, "Just send it to me in an email, because I need it today for the closing."
- Bob-O says, "Will the email be safe? I don't want to lose the recipe to hacking."
- Gary replies, "I use a commercial grade ISP, and I have never been hacked. Plus I use a strong password."
- Bob-O wants your opinion of his chances to sue Gary if the recipe is disclosed by an email error or hack.

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5 What is the standard of care for transmitting sensitive information over the internet?

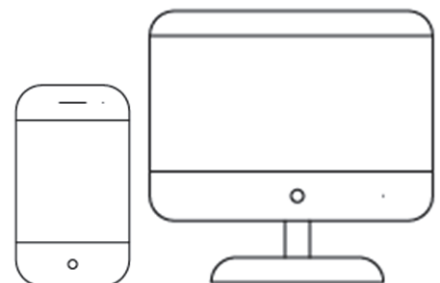
- a. Gary does not need to consider special safeguards to receive information over the internet.
- b. Gary should never send highly confidential information over the internet unless his system is encrypted and requires dual authentication.
- c. Gary can accept the highly confidential information by having Bob-O sign a waiver of damages.
- d. Gary has a duty to discuss the safeguards and alternatives whenever highly sensitive info is transmitted.

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6 "Best" Answer: D

On May 22, 2017, the ABA Ethics Committee issued [Formal Opinion 477R](#) discussing a lawyer's ethical obligations to protect confidential client information when transmitting information relating to the representation over the internet.

Opinion 477R updates Formal Opinion 99-413, *Protecting the Confidentiality of Unencrypted E-Mail* (1999), and takes a fresh look at advances in technology and ever-increasing cybersecurity threats, and provides guidance as to when enhanced security measures are appropriate.



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