



2010 Is Not 1984: *Stengart v. Loving Care Agency, Inc.* and Cyber Privacy in the Workplace

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"There was of course no way of knowing whether you were being watched at any given moment," explained Winston Smith, the protagonist of George Orwell's masterpiece, *1984*. Smith and his fellow employees worked and lived under the assumption that every sound they made was overheard, every utterance recorded, and every movement scrutinized by their employer, a government agency. As an ever-increasing number of employers provide their employees with work-issued computers and Internet access, life appears to be imitating art. While computers, the Internet and e-mail have resulted in unprecedented efficiencies and greater ease of communication, computers record voluminous information about how they are used. This means when employees use work-issued computers for personal matters, and employers find the records of this use, employees can feel as though 2010 has become *1984*.

But looks can be deceiving, as demonstrated by one widely followed appellate decision, *Stengart v. Loving Care Agency, Inc.*¹ Awaiting a decision on further appeal to the New Jersey Supreme Court, *Stengart* involves an employee's use of a work-issued computer to access her Internet-based, password-protected personal e-mail account to communicate with her attorney about her upcoming lawsuit against her employer. This article discusses how the intermediate appellate court in *Stengart* neglected to explain and address the role of one of the computer's ordinary, default operations – the production of .html files when a web page is viewed on the computer – in recording the content of the e-mails between the employee and her attorney.

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Attachments

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