

Aaron's Law: Changes to the Computer Fraud and Abuse Act
18 U.S.C. § 1030

(a) Whoever—

(1) having knowingly accessed a computer without authorization, and by means of such conduct having obtained information that has been determined by the United States Government pursuant to an Executive order or statute to require protection against unauthorized disclosure for reasons of national defense or foreign relations, or any restricted data, as defined in paragraph y. of section 11 of the Atomic Energy Act of 1954, with reason to believe that such information so obtained could be used to the injury of the United States, or to the advantage of any foreign nation willfully communicates, delivers, transmits, or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it;

(2) intentionally accesses a computer without authorization and thereby obtains—

(A) information contained in a financial record of a financial institution, or of a card issuer as defined in section 1602 (n) of title 15, or contained in a file of a consumer reporting agency on a consumer, as such terms are defined in the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);

(B) information from any department or agency of the United States; or

(C) information from any protected computer;

(53)

(A) knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization, to a protected computer;

(B) intentionally accesses a protected computer without authorization, and as a result of such conduct, recklessly causes damage; or

(C) intentionally accesses a protected computer without authorization, and as a result of such conduct, causes damage and loss;

(64) knowingly and with intent to defraud traffics (as defined in section 1029) in any password or similar information through which a computer may be accessed without authorization, if—

(A) such trafficking affects interstate or foreign commerce; or

(B) such computer is used by or for the Government of the United States; or

(75) with intent to extort from any person any money or other thing of value, transmits in interstate or foreign commerce any communication containing any—

(A) threat to cause damage to a protected computer;

(B) threat to obtain information from a protected computer without authorization or to impair the confidentiality of information obtained from a protected computer without authorization; or

Cindy Cohn 1/23/13 11:16 AM

Comment [1]: "Cut or exceeding authorized access" per new definition below. Note this change is made throughout the statute.

Cindy Cohn 1/21/13 3:41 PM

Comment [2]: Previous (a)(3) and (a)(4) removed per Orin Kerr's suggestion as redundant. This caused renumbering throughout.

Kurt Opsahl 1/17/13 12:44 PM

Comment [3]: Typo fix

Kurt Opsahl 1/17/13 12:44 PM

Comment [4]: Typo fix

Cindy Cohn 1/23/13 11:15 AM

Comment [5]: Cut "in excess of authorization" to match above

(C) demand or request for money or other thing of value in relation to damage to a protected computer, where such damage was caused to facilitate the extortion; shall be punished as provided in subsection (c) of this section.

(b) Whoever conspires to commit or attempts to commit an offense under subsection (a) of this section shall be punished as provided in subsection (c) of this section.

(c) The punishment for an offense under subsection (a) or (b) of this section is—

(1)

(A) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(1) of this section which does not occur after a subsequent offense under this subparagraph or an attempt to commit such an offense punishable under this subparagraph; and

(B) a fine under this title or imprisonment for not more than twenty years, or both, in the case of an offense under subsection (a)(1) of this section which occurs after a subsequent offense under this subparagraph or an attempt to commit such an offense punishable under this subparagraph;

(2)

(A) except as provided in subparagraph (B), a fine under this title or imprisonment for not more than one year, or both, in the case of an offense under subsection (a)(2) or (a)(64) of this section which does not occur after a subsequent offense under this subparagraph or an attempt to commit such an offense punishable under this subparagraph;

(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under subsection (a)(2), or an attempt to commit an offense punishable under this subparagraph, if—

(i) the offense was committed for purposes of the offender's commercial advantage or private financial gain and the fair market value of the commercial advantage or private gain obtained exceeds \$10,000; or

(ii) the offense was committed in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or of any State punishable by a term of imprisonment greater than one year, provided the criminal act being furthered is not based on the same conduct underlying the offense; or and

(iii) the value of the information obtained exceeds \$5,000; and

(C) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(2) or (a)(64) of this section which occurs after a subsequent offense under this subparagraph or an attempt to commit such an offense punishable under this subparagraph;

(3)

(A) a fine under this title or imprisonment for not more than five years, or both, in the case of an offense under subsection (a)(4) or (a)(75) of this section which does not occur after

Cindy Cohn 1/21/13 3:41 PM

Comment [6]: This is based on language in *Deal v. United States*, 508 U.S. 129 (1993). Same change throughout to stop merger problem.

Peter Holm 1/22/13 9:57 AM

Comment [7]: Fixed section numbering

a subsequent offense under this subparagraph or an attempt to commit such an offense punishable under this subparagraph; and

(B) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(4) or (a)(7) of this section which occurs after a subsequent offense under this subparagraph or an attempt to commit such an offense punishable under this subparagraph;

(4)

(A) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 5 years, or both, in the case of—

(i) an offense under subsection (a)(3)(B), which does not occur after a conviction for a subsequent offense under this subparagraph, if the offense caused (or, in the case of an attempted offense, would, if completed, have caused)—

(I) loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting from a related course of conduct affecting 1 or more other protected computers) aggregating at least \$510,000 in value, if the offense was committed for purposes of commercial advantage or private financial gain;

(II) the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of 1 or more individuals;

(III) physical injury to any person;

(IV) a threat to public health or safety;

(V) damage affecting a computer used by or for an entity of the United States Government in furtherance of the administration of justice, national defense, or national security; or

(ii) an attempt to commit an offense punishable under this subparagraph;

(B) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 10 years, or both, in the case of—

(i) an offense under subsection (a)(3)(A), which does not occur after a conviction for a subsequent offense under this subparagraph, if the offense caused (or, in the case of an attempted offense, would, if completed, have caused) a harm provided in subclauses (I) through (V) of subparagraph (A)(i); or

(ii) an attempt to commit an offense punishable under this subparagraph;

(C) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 20 years, or both, in the case of—

(i) an offense or an attempt to commit an offense under subparagraphs (A) or (B) of subsection (a)(3) which occurs after a subsequent offense under this subparagraph; or

(ii) an attempt to commit an offense punishable under this subparagraph;

Peter Holm 1/22/13 9:59 AM

Comment [8]: Fixed section numbering

Cindy Cohn 1/22/13 3:56 PM

Comment [9]: Cut per Orin Kerr's suggestion: (VI) damage affecting 100 or more protected computers during any 1-year period, if the offense was committed for purposes of commercial advantage or private financial gain;

(D) a fine under this title, imprisonment for not more than 10 years, or both, in the case of—

(i) an offense or an attempt to commit an offense under subsection (a)(5)(C) that occurs after a **which occurs after a subsequent offense** under this subparagraph; or

(ii) an attempt to commit an offense punishable under this subparagraph;

(E) if the offender attempts to cause or knowingly or recklessly causes serious bodily injury from conduct in violation of subsection (a)(5)(A), a fine under this title, imprisonment for not more than 20 years, or both;

(F) if the offender attempts to cause or knowingly or recklessly causes death from conduct in violation of subsection (a)(5)(A), a fine under this title, imprisonment for any term of years or for life, or both; or

(G) a fine under this title, imprisonment for not more than 1 year, or both, for—

(i) any other offense under subsection (a)(5); or

(ii) an attempt to commit an offense punishable under this subparagraph.

(d)

(1) The United States Secret Service shall, in addition to any other agency having such authority, have the authority to investigate offenses under this section.

(2) The Federal Bureau of Investigation shall have primary authority to investigate offenses under subsection (a)(1) for any cases involving espionage, foreign counterintelligence, information protected against unauthorized disclosure for reasons of national defense or foreign relations, or Restricted Data (as that term is defined in section 11y of the Atomic Energy Act of 1954 (42 U.S.C. 2014 (y))), except for offenses affecting the duties of the United States Secret Service pursuant to section 3056 (a) of this title.

(3) Such authority shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

(e) As used in this section—

(1) the term “computer” means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device;

(2) the term “protected computer” means a computer—

(BA) which is used in interstate or foreign commerce or communication, including a computer located outside the United States that is used **in** interstate or foreign commerce or communication of the United States;

(3) the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and any other commonwealth, possession or territory of the United States;

Cindy Cohn 1/21/13 3:42 PM

Comment [10]: (A) removed because it's redundant, per Orin Kerr.

Cindy Cohn 1/21/13 3:42 PM

Comment [11]: Just used “in” interstate commerce, not “affecting” since removes ambiguity without really changing the very broad reach of the statute.

(4) the term “financial institution” means—

- (A) an institution, with deposits insured by the Federal Deposit Insurance Corporation;
- (B) the Federal Reserve or a member of the Federal Reserve including any Federal Reserve Bank;
- (C) a credit union with accounts insured by the National Credit Union Administration;
- (D) a member of the Federal home loan bank system and any home loan bank;
- (E) any institution of the Farm Credit System under the Farm Credit Act of 1971;
- (F) a broker–dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934;
- (G) the Securities Investor Protection Corporation;
- (H) a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978); and
- (I) an organization operating under section 25 or section 25(a) of the Federal Reserve Act;

(5) the term “financial record” means information derived from any record held by a financial institution pertaining to a customer’s relationship with the financial institution;

(6) **The term “access without authorization” means to circumvent technological access barriers to a computer, file, or data without the express or implied permission of the owner or operator of the computer to access the computer, file, or data, but does not include circumventing a technological measure that does not effectively control access to a computer, file, or data.**

The term “without the express or implied permission” does not include access in violation of a duty, agreement, or contractual obligation, such as an acceptable use policy or terms of service agreement, with an Internet service provider, Internet website, or employer.

(7) the term “department of the United States” means the legislative or judicial branch of the Government or one of the executive departments enumerated in section 101 of title 5;

(8) the term “damage” means any impairment to the integrity or availability of data, a program, a system, or information;

(9) the term “government entity” includes the Government of the United States, any State or political subdivision of the United States, any foreign country, and any state, province, municipality, or other political subdivision of a foreign country;

(10) the term “conviction” shall include a conviction under the law of any State for a crime punishable by imprisonment for more than 1 year, an element of which is unauthorized access to a computer;

Cindy Cohn 1/22/13 12:57 PM

Comment [12]: Language rephrased from before, but import should be the same.

(11) the term “loss” means any reasonably foreseeable fair market value of any out of pocket cost incurred by any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense; and

(12) the term “person” means any individual, firm, corporation, educational institution, financial institution, governmental entity, or legal or other entity.

Cindy Cohn 1/21/13 12:34 PM

Comment [13]: Removed cost to recover from loss, per Orin Kerr’s suggestion.

(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

Cindy Cohn 1/21/13 12:35 PM

Comment [14]: Deleted civil liability per Orin Kerr’s suggestion and because it is generally duplicative of other civil claims like breach of contract.

(hg) The Attorney General and the Secretary of the Treasury shall report to the Congress annually, during the first 3 years following the date of the enactment of this subsection, concerning investigations and prosecutions under subsection (a)(3).

(ih)

(1) The court, in imposing sentence on any person convicted of a violation of this section, or convicted of conspiracy to violate this section, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person forfeit to the United States—

(A) such person’s interest in any personal property that was used or intended to be used to commit or to facilitate the commission of such violation; and

(B) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(2) The criminal forfeiture of property under this subsection, any seizure and disposition thereof, and any judicial proceeding in relation thereto, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except subsection (d) of that section.

(ji) For purposes of subsection (i), the following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) Any personal property used or intended to be used to commit or to facilitate the commission of any violation of this section, or a conspiracy to violate this section.

(2) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this section, or a conspiracy to violate this section