



## 18 U.S.C. §1030 (a)(1): COMPUTER ESPIONAGE PROHIBITION

### ELEMENTS

- \* An Access to Data that is Unauthorized or Exceeds Authorization;
- \* Data that is protected from disclosure by Presidential order or statute;
- \* A reason by defendant to believe that such communication can hurt the U.S. or be used to the advantage of a foreign nation;
- \* Defendant willfully communicates, transmits, or delivers the information to a person not authorized to receive it, or willfully causes or attempts it to be done;

### PENALTIES

**FELONY:** 10 yrs for 1st Conviction  
20 yrs for 2nd or subsequent Conviction

18 U.S.C. §1030 (a)(2): PRIVACY PROTECTION

ELEMENTS

- \* An intentional access to a computer without authority or exceeds authorization;
- \* Defendant **OBTAINED** information (includes merely viewing the information);
- \* Information was one of the enumerated types:
  - \* Information in Financial institution records (e.g. bank records, credit card issuer records, & credit information from a consumer reporting agency)
  - \* Information from any department or agency of the U.S.
  - \* Information from a protected computer (e.g. computer of a bank; computer of, or used by, the U.S. Government; or a computer used in or affecting interstate or foreign commerce)

PENALTIES

**MISDEMEANOR: 1 yr for 1st Conviction**

**FELONY: 5 yrs when 1st conviction (for private financial gain; for tortious and criminal purposes; or value of information is \$5,000.00 or more)**

**FELONY: 10 yrs for 2nd or subsequent Conviction**

**FEDERAL GUIDELINES:**

(A) 2B1.1(b)(16), intent to obtain personal information increases guideline

- (B) 2B1.1(b)(17), intrusion increases punishment if the offense involved a computer system that is critical infrastructure or used by government in furtherance of administration of justice, defense or national security; or was an offense involving transmission forces; or caused substantial disruption of critical infrastructure
- (C) Upward departure when monetary loss fails to capture harmfulness of the offense or if offense was part of a broader criminal purpose

18 U.S.C. §1030 (a)(3): HACKING GOVERNMENT COMPUTERS

ELEMENTS

- \* Intentional Unauthorized access to a nonpublic computer of the U.S.(applies to non-sensitive information that is not public)

PENALTIES

MISDEMEANOR: 1 yr for 1st Conviction

FELONY: 10 yrs for 2nd or subsequent Conviction

FEDERAL GUIDELINES:

- (A) 2B1.1(b)(16), intent to obtain personal information increases guideline
- (B) 2B1.1(b)(17), intrusion increases punishment if the offense involved a computer system that is critical infrastructure or used by government in furtherance of administration of justice, defense or national security; or was an offense involving transmission forces; or caused substantial disruption of critical infrastructure
- (C) Upward departure when monetary loss fails to capture harmfulness of the offense or if offense was part of a broader criminal purpose

18 U.S.C. §1030 (a)(4): COMPUTER FRAUD

ELEMENTS

- \* An access to a computer without authority or exceeds authorization
- \* Acted knowingly and with the intent to defraud
- \* Furthers intended fraud by computer access
- \* Obtains anything of value, except computer time valued at less than \$5,000.00

PENALTIES

FELONY: 5 yrs 1st conviction

FELONY: 10 yrs for 2nd or subsequent Conviction

FEDERAL GUIDELINES:

- (A) 2B1.1(b)(16), intent to obtain personal information increases guideline
- (B) 2B1.1(b)(17), intrusion increases punishment if the offense involved a computer system that is critical infrastructure or used by government in furtherance of administration of justice, defense or national security; or was an offense involving transmission forces; or caused substantial disruption of critical infrastructure

(C) Upward departure when monetary loss fails to capture harmfulness of the offense or if offense was part of a broader criminal purpose

18 U.S.C. §1030 (a)(5)(a): DAMAGE PROVISIONS

PURPOSES

For prosecuting computer virus, worm, and time-bomb purveyors and for prosecuting industrial and other saboteurs

ELEMENTS

- \* Knowingly transmits computer code, programing, information, or commands; or causes the transmission of such computer code, programing, information, or commands;
- \* Intentionally causes damage to a protected computer without authorization
  - \* Damage is defined as:
    - \* Impairment to the integrity & availability of the data, programming, information or the system;
    - \* Impairment or modification of medical exam data, treatment, or care of one or more persons;
    - \* Causes physical injury to another or threatens public health and safety;

PENALTIES

MISDEMEANOR: 1 yr if no harm caused by damage

FELONY: 10 yrs 1st conviction (if \$5,000 loss to 1 more persons or \$5,000 loss in a related course of conduct affecting 1 or more computers for prosecution / causes modification on impairment of medical exam date treatment or care of one

or more persons / causes physical injury to another or threatens public health and safety / damage affects computer used by U.S. Government entity in furtherance of administering justice, national defense or security / damage affects 10 or more protected computer in a 1 yr period.

FELONY: 20 yrs for 2nd or subsequent Conviction, or offender attempted or recklessly caused serious bodily injury

FELONY: Life imprisonment - if offender attempts and caused or recklessly causes death

FEDERAL GUIDELINES:

- (A) 2B1.1(b)(16), intent to obtain personal information increases guideline
- (B) 2B1.1(b)(17), intrusion increases punishment if the offense involved a computer system that is critical infrastructure or used by government in furtherance of administration of justice, defense or national security; or was an offense involving transmission forces; or caused substantial disruption of critical infrastructure
- (C) Upward departure when monetary loss fails to capture harmfulness of the offense or if offense was part of a broader criminal purpose

18 U.S.C. §1030 (a)(5)(b): DAMAGE PROVISIONS

PURPOSES

For prosecuting a hacker who recklessly damages a system

ELEMENTS

- \* Intentional access to a protected computer without authorization;
- \* Recklessly causes damage to a protected computer
  - \* Damage is defined as:
    - \* Impairment to the integrity & availability of the data, programming, information or the system;

PENALTIES

**FELONY:** 5 yrs 1st conviction 1st conviction (if \$5,000 loss to 1 more persons or \$5,000 loss in a related course of conduct affecting 1 or more computers for prosecution / causes modification on impairment of medical exam date treatment or care of one or more persons / causes physical injury to another or threatens public health and safety / damage affects computer used by U.S. Government entity in furtherance of administering justice, national defense or security / damage affects 10 or more protected computer in a 1 yr period.

**FELONY:** 10 yrs for 2nd or subsequent Conviction

**FEDERAL GUIDELINES:**

- (A) 2B1.1(b)(16), intent to obtain personal information increases guideline

- (B) 2B1.1(b)(17), intrusion increases punishment if the offense involved a computer system that is critical infrastructure or used by government in furtherance of administration of justice, defense or national security; or was an offense involving transmission forces; or caused substantial disruption of critical infrastructure
- (C) Upward departure when monetary loss fails to capture harmfulness of the offense or if offense was part of a broader criminal purpose

18 U.S.C. §1030 (a)(5)(c): DAMAGE PROVISIONS

PURPOSES

For prosecuting a hacker who merely damages the system

ELEMENTS

- \* Intentional access to a protected computer without authorization
- \* Causes damage to a protected computer
  - \* Damage is defined as:
    - \* Impairment to the integrity & availability of the data, programming, information or the system

PENALTIES

MISDEMEANOR: 1 yrs 1st conviction

FELONY: 10 yrs for 2nd or subsequent Conviction

FEDERAL GUIDELINES:

- (A) 2B1.1(b)(16), intent to obtain personal information increases guideline
- (B) 2B1.1(b)(17), intrusion increases punishment if the offense involved a computer system that is critical infrastructure or used by government in furtherance of administration of justice, defense or national security; or was an offense involving transmission forces; or caused substantial disruption of critical infrastructure

(C) Upward departure when monetary loss fails to capture harmfulness of the offense or if offense was part of a broader criminal purpose

18 U.S.C. §1030 (a)(5): DAMAGE PROVISIONS

MISSING PURPOSES & PROVISIONS

For prosecuting a hacker who merely accesses computer that is not a protected computer and does not cause any damage at all **there is no federal criminal provision. Intrastate hacking or computer trespass itself is not criminalized by this statute.**

WE CANNOT DO THESE CASES. They are state criminal law matters.

18 U.S.C. §1030 (a)(6): PASSWORD PROTECTION

PURPOSES

Criminalize the transfer of computer passwords among hackers

ELEMENTS

- \* Knowingly and with the intent to defraud trafficks in passwords and similar information by which a computer can be accessed without authorization.
- \* "Trafficks" is defined in 18 U.S.C. §1029 as transferring, or otherwise disposing of passwords, to another, or obtaining control of the passwords with the intent to transfer or dispose of them
- \* Trafficking must affect interstate commerce or computer must be a government computer;

PENALTIES

MISDEMEANOR: 1 yrs 1st conviction

FELONY: 10 yrs for 2nd or subsequent Conviction

18 U.S.C. §1030 (a)(7): EXTORTION & COMPUTERS

PURPOSES

Criminalize the interstate use of computer communication for purposes of extortion

ELEMENTS

- \* Defendant transmits in interstate or foreign commerce any threat to cause damage to a protected computer; to obtain information from a protected computer without authorization or in excess of authorization, to impair confidentiality of information obtained without authorization or in excess thereof; demand or request money or other thing of value in relation to damage to a protected computer; damage was caused to bate extortion.
  
- \* The threat was sent with the intent to extort money or other thing of value from any person, firm, financial institution, association, government agency or other legal entity;

PENALTIES

**FELONY: 5 yrs 1st conviction**

**FELONY: 10 yrs for 2nd or subsequent Conviction**