

DE Electronic Crime Statutes

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§ 931. Definitions.

As used in this subpart:

(1) "Access" means to instruct, communicate with, store data in or retrieve data from a computer, computer system or computer network.

(2) "Computer" means a programmable, electronic device capable of accepting and processing data.

(3) "Computer network" means:

a. A set of related devices connected to a computer by communications facilities;

b. A complex of 2 or more computers, including related devices, connected by communications facilities; or

c. The communications transmission facilities and devices used to interconnect computational equipment, along with control mechanisms associated thereto.

(4) "Computer program" means a set of instructions, statements or related data that, in actual or modified form, is capable of causing a computer or computer system to perform specified functions.

(5) "Computer services" includes, but is not limited to, computer access, data processing and data storage.

(6) "Computer software" means 1 or more computer programs, existing in any form, or any associated operational procedures, manuals or other documentation.

(7) "Computer system" means a computer, its software, related equipment and communications facilities, if any, and includes computer networks.

(8) "Data" means information of any kind in any form, including computer software.

(9) "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association and any other legal or governmental entity, including any state or municipal entity or public official.

(10) "Private personal data" means data concerning a natural person which a reasonable person would want to keep private and which is protectable under law.

(11) "Property" means anything of value, including data.

(12) "Electronic mail" or "e-mail" means any message that is automatically passed from an originating address or account to a receiving address or account;

(13) "Originating address" or "originating account" means the string used to specify the source of any electronic mail message (e.g. company@sender.com);

(14) "Receiving address" or "receiving account" means the string used to specify the destination of any electronic mail message (e.g. person@receiver.com);

(15) "Electronic mail service provider" means any person who:

a. Is an intermediary in sending and receiving electronic mail; and

b. Provides to end-users of electronic mail services the ability to send or receive electronic mail.

(16) The "Internet" is a hierarchy of computer networks and systems that includes, but is not limited to, commercial (.com or .co), university (.ac or .edu) and other research networks (.org, .net) and military (.mil) networks and spans many different physical networks and systems around the world.

(17) "Commercial electronic mail" or "commercial e-mail" means any electronic mail message that is sent to a receiving address or account for the purposes of advertising, promoting, marketing or otherwise attempting to solicit interest in any good

service or enterprise. (64 Del. Laws, c. 438, § 1; 72 Del. Laws, c. 135, § 3.)

§ 932. Unauthorized access.

A person is guilty of the computer crime of unauthorized access to a computer system when, knowing that the person is not authorized to do so, the person accesses or causes to be accessed any computer system without authorization. (64 Del. Laws, c. 438, § 1; 70 Del. Laws, c. 186, § 1.)

§ 933. Theft of computer services.

A person is guilty of the computer crime of theft of computer services when the person accesses or causes to be accessed or otherwise uses or causes to be used a computer system with the intent to obtain unauthorized computer services, computer software or data. (64 Del. Laws, c. 438, § 1; 70 Del. Laws, c. 186, § 1.)

§ 934. Interruption of computer services.

A person is guilty of the computer crime of interruption of computer services when that person, without authorization, intentionally or recklessly disrupts or degrades or causes the disruption or degradation of computer services or denies or causes the denial of computer services to an authorized user of a computer system. (64 Del. Laws, c. 438, § 1.)

§ 935. Misuse of computer system information.

A person is guilty of the computer crime of misuse of computer system information when:

(1) As a result of accessing or causing to be accessed a computer system, the person intentionally makes or causes to be made an unauthorized display, use, disclosure or copy, in any form, of data residing in, communicated by or produced by a computer system;

(2) That person intentionally or recklessly and without authorization:

a. Alters, deletes, tampers with, damages, destroys or takes data intended for use by a computer system, whether residing within or external to a computer system; or

b. Interrupts or adds data to data residing within a computer system;

(3) That person knowingly receives or retains data obtained in violation of subdivision (1) or (2) of this section; or

(4) That person uses or discloses any data which that person knows or believes was obtained in violation of subdivision (1) or (2) of this section. (64 Del. Laws, c. 438, § 1; 70 Del. Laws, c. 186, § 1.)

§ 936. Destruction of computer equipment.

A person is guilty of the computer crime of destruction of computer equipment when that person, without authorization, intentionally or recklessly tampers with, takes, transfers, conceals, alters, damages or destroys any equipment used in a computer system or intentionally or recklessly causes any of the foregoing to occur. (64 Del. Laws, c. 438, § 1.)

§ 937. Unrequested or unauthorized electronic mail or use of network or software to cause same.

A person is guilty of the computer crime of unrequested or unauthorized electronic mail:

(1) When that person, without authorization, intentionally or recklessly distributes any unsolicited bulk commercial electronic mail (commercial E-mail) to any receiving address or account under the control of any authorized user of a computer system. This section shall not apply to electronic mail that is sent between human beings, or when the individual has requested said information. This section shall not apply to the transmission of electronic mail from an organization to its members or where there is a preexisting business relationship. No Internet/interactive service provider shall be liable for merely transmitting an unsolicited, bulk commercial electronic mail message in its network. No Internet/interactive service provider shall be held liable for any action voluntarily taken in good faith to block the receipt or transmission through its

service of any unsolicited, bulk electronic mail which it believes is, or will be, sent in violation to disconnect or terminate the service of any person that is in violation of this article; or

(2) When a person uses a computer or computer network without authority with the intent to: Falsify or forge electronic mail transmission information in any manner in connection with the transmission of unsolicited bulk electronic mail through or into the computer network of an electronic mail service provider or its subscribers; or

(3) When a person sells, gives or otherwise distributes or possesses with the intent to sell, give or distribute software which:

a. Is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information;

b. Has only limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information; or

c. Is marketed by that person or another acting in concert with that person's knowledge for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

(4) For the purposes of this section, conduct occurring outside of the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or if the receiving address or account was under the control of any authorized user of a computer system who was located in Delaware at the time he or she received the electronic mail or communication and the defendant was aware of circumstances which rendered the presence of such authorized user in Delaware a reasonable possibility. (72 Del. Laws, c. 135, § 1.)

§ 938. Failure to promptly cease electronic communication upon request.

(a) A person is guilty of the computer crime of failure to promptly cease electronic communication upon request when

that person intentionally, recklessly or negligently, fails to stop sending commercial electronic mail to any receiving address or account under the control of any authorized user of a computer system after being requested to do so. All commercial electronic mail sent to any receiving address within the State shall have information to the recipient on how to unsubscribe or stop further receipt of commercial electronic mail from the sender.

(b) For the purposes of this section, conduct occurring outside of the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or if the receiving address or account was under the control of any authorized user of a computer system who was located in Delaware at the time he or she received the electronic mail or communication and the defendant was aware of circumstances which rendered the presence of such authorized user in Delaware a reasonable possibility. (72 Del. Laws, c. 135, § 1.)

§ 939. Penalties.

(a) A person committing any of the crimes described in §§ 932-938 of this title is guilty in the first degree when the damage to or the value of the property or computer services affected exceeds \$10,000.

Computer crime in the first degree is a class D felony.

(b) A person committing any of the crimes described in §§ 932-938 of this title is guilty in the second degree when the damage to or the value of the property or computer services affected exceeds \$5,000.

Computer crime in the second degree is a class E felony.

(c) A person committing any of the crimes described in §§ 932-938 of this title is guilty in the third degree when:

(1) The damage to or the value of the property or computer services affected exceeds \$1,000; or

(2) That person engages in conduct which creates a risk of serious physical injury to another person.

Computer crime in the third degree is a class F felony.

(d) A person committing any of the crimes described in §§ 932-938 of this title is guilty in the fourth degree when the damage to or the value of the property or computer services affected exceeds \$500.

Computer crime in the fourth degree is a class G felony.

(e) A person committing any of the crimes described in §§ 932-938 of this title is guilty in the fifth degree when the damage to or the value of the property or computer services, if any, is \$500 or less.

Computer crime in the fifth degree is a class A misdemeanor.

(f) Any person gaining money, property services or other consideration through the commission of any offense under this subpart, upon conviction, in lieu of having a fine imposed, may be sentenced by the court to pay an amount, fixed by the court, not to exceed double the amount of the defendant's gain from the commission of such offense. In such case, the court shall make a finding as to the amount of the defendant's gain from the offense and, if the record does not contain sufficient evidence to support such a finding, the court may conduct a hearing upon the issue. For the purpose of this section, "gain" means the amount of money or the value of property or computer services or other consideration derived.

(g) Amounts included in violations of this subpart committed pursuant to 1 scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the degree of the crime.

(h) For the purposes of this subpart, the value of property or computer services shall be:

(1) The market value of the property or computer services at the time of the violation; or

(2) If the property or computer services are unrecoverable, damaged or destroyed as a result of a violation of this subpart, the cost of reproducing or replacing the property or computer services at the time of the violation.

When the value of the property or computer services or damage thereto cannot be satisfactorily ascertained, the value shall be deemed to be \$250.

(i) Notwithstanding this section, the value of private personal data shall be deemed to be \$500. (64 Del. Laws, c. 438, § 1; 67 Del. Laws, c. 130, § 8; 72 Del. Laws, c. 135, §§ 1, 2.)

§ 940. Venue.

(a) In any prosecution for any violation of §§ 932-938 of this title, the offense shall be deemed to have been committed in the place at which the act occurred or in which the computer system or part thereof involved in the violation was located.

(b) In any prosecution for any violation of §§ 932-938 of this title based upon more than 1 act in violation thereof, the offense shall be deemed to have been committed in any of the places at which any of the acts occurred or in which a computer system or part thereof involved in a violation was located.

(c) If any act performed in furtherance of the offenses set out in §§ 932-938 of this title occurs in this State or if any computer system or part thereof accessed in violation of §§ 932-936 of this title is located in this State, the offense shall be deemed to have occurred in this State. (64 Del. Laws, c. 438, § 1; 72 Del. Laws, c. 135, §§ 1, 2.)

§ 941. Remedies of aggrieved persons.

(a) Any aggrieved person who has reason to believe that any other person has been engaged, is engaged or is about to engage in an alleged violation of any provision of §§ 932-938 of this title may bring an action against such person and may apply to the Court of Chancery for: (i) An order temporarily or permanently restraining and enjoining the commencement or continuance of such act or acts; (ii) an order directing restitution; or (iii) an order directing the appointment of a receiver. Subject to making due provisions for the rights of innocent persons, a receiver shall have the power to sue for, collect, receive and take into possession any property which belongs to the person who is alleged to have violated any provision of this subpart and which may have been derived by, been used in or aided in any manner such alleged violation.

Such property shall include goods and chattels, rights and credits, moneys and effects, books, records, documents, papers, choses in action, bills, notes and property of every description including all computer system equipment and data, and including property with which such property has been commingled if it cannot be identified in kind because of such commingling. The receiver shall also have the power to sell, convey and assign all of the foregoing and hold and dispose of the proceeds thereof under the direction of the Court. Any person who has suffered damages as a result of an alleged violation of any provision of §§ 932-938 of this title, and submits proof to the satisfaction of the Court that the person has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent the person has sustained out-of-pocket losses. The Court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

(b) The Court may award the relief applied for or such other relief as it may deem appropriate in equity.

(c) Independent of or in conjunction with an action under subsection (a) of this section, any person who suffers any injury to person, business or property may bring an action for damages against a person who is alleged to have violated any provision of §§ 932-938 of this title. The aggrieved person shall recover actual damages and damages for unjust enrichment not taken into account in computing damages for actual loss and treble damages where there has been a showing of wilful and malicious conduct.

(d) Proof of pecuniary loss is not required to establish actual damages in connection with an alleged violation of § 935 of this title arising from misuse of private personal data.

(e) In any civil action brought under this section, the Court shall award to any aggrieved person who prevails reasonable costs and reasonable attorney's fees.

(f) The filing of a criminal action against a person is not a prerequisite to the bringing of a civil action under this section against such person.

(g) No civil action under this section may be brought but within 3 years from the date the alleged violation of §§ 932-938 of this title is discovered or should have been discovered by the exercise of reasonable diligence. (64 Del. Laws, c. 439, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 135, §§ 1, 2.)