

CFAA Actions/ Trade Secret  
Criminal Prosecutions  
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Computer Fraud and Abuse Act  
18 USC 1030

- Criminal statute with a civil remedy for anyone who suffers loss from a violation
- Intended to regulate computer hacking
- Applicable in two ways in employee mobility cases
  - Unauthorized access (1030a4)
  - Unauthorized damage (1030a5)

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Benefits from Including a CFAA Claim  
in an Employee Mobility Suit

- Federal court jurisdiction over claims against non-diverse defendant
- Greater ability to focus in on adversary's computer misuse
- Benefit from asserting violation of statute with criminal components

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### Requirements Common to 1030a4 and 1030a5

- Protected computer- used in or affecting interstate or foreign commerce
- Loss of \$5,000 to any one or more persons during any one year period

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### Elements of Unauthorized Access Claim Under 1030a4

- Access to protected computer
- Without authorization or exceeding authorization that was granted
- Knowing action with intent to defraud
- As a result, furtherance of the fraud and obtaining anything of value
- Losses to victim in excess of \$5,000 in any one-year period

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### Issues Under 1030a4

- When does a disloyal employee's computer access become unauthorized?
  - 1<sup>st</sup> /7<sup>th</sup> Circuits- as soon as employee begins to violate duties to employer
  - 3<sup>rd</sup> Circuit- if employee still may access computer, no 1030a4 violation even if use not authorized
  - 9<sup>th</sup> Circuit- ?

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**Steps to Protect Employer Rights Under 1030a4**

- Define any unauthorized use as unauthorized access- e.g., transferring files to personal computer, taking trade secret information, deleting files from work computer
- Obtain employee acknowledgements on limits to access

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**Elements of Unauthorized Damage Claim Under 1030a5**

- Knowingly causing transmittal that intentionally causes damage without authorization
- Intentionally accessing protected computer without authorization and recklessly causing damage
- Intentionally accessing protected computer without authorization and causing damage and loss

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**What are "Damage" and "Loss"**

- Both are essential to 1030a5 claim
- Damage- Any impairment to the integrity and availability of data/program/system
- Loss- Response costs, cost of damage assessment, restoring data/program/system, or revenue lost because of interruptions in service

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### What is damage “without authorization”?

- The term “without authorization” does not require a rule prohibiting deletions (compare 1030a4)
- In any CFAA claim, employer must quantify losses of at least \$5000 from any violation of the Act

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### Criminal Prosecutions for Trade Secret Theft

- Economic Espionage Act
- Mail /Wire Fraud laws
- Transporting stolen goods
- CFAA

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### Economic Espionage Act

- Courts have generally though not always rejected vagueness challenges
- Knowledge that something of value is being taken is sufficient- no need to know that items are trade secrets

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