

Va. Code Ann. § 18.2-152.12

Current through 2024 Acts effective April 1, 2024

Code of Virginia 1950 > Title 18.2. Crimes and Offenses Generally. (Chs. 1 — 13) > Chapter 5. Crimes Against Property. (Arts. 1 — 8) > Article 7.1. Computer Crimes. (§§ 18.2-152.1 — 18.2-152.16)

§ 18.2-152.12. Civil relief; damages.

A. Any person whose property or person is injured by reason of a violation of any provision of this article or by any act of computer trespass set forth in subdivisions A 1 through A 8 of § 18.2-152.4 regardless of whether such act is committed with malicious intent may sue therefor and recover for any damages sustained and the costs of suit. Without limiting the generality of the term, “damages” shall include loss of profits.

B. If the injury under this article arises from the transmission of spam in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider where the defendant has knowledge of the authority or policies of the EMSP or where the authority or policies of the EMSP are available on the electronic mail service provider’s website, the injured person, other than an electronic mail service provider, may also recover attorneys’ fees and costs, and may elect, in lieu of actual damages, to recover the lesser of \$10 for each and every spam message transmitted in violation of this article, or \$25,000 per day. The injured person shall not have a cause of action against the electronic mail service provider that merely transmits the spam over its computer network. Transmission of electronic mail from an organization to its members shall not be deemed to be spam.

C. If the injury under this article arises from the transmission of spam in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider where the defendant has knowledge of the authority or policies of the EMSP or where the authority or policies of the EMSP are available on the electronic mail service provider’s website, an injured electronic mail service provider may also recover attorneys’ fees and costs, and may elect, in lieu of actual damages, to recover \$1 for each and every intended recipient of a spam message where the intended recipient is an end user of the EMSP or \$25,000 for each day an attempt is made to transmit a spam message to an end user of the EMSP. In calculating the statutory damages under this provision, the court may adjust the amount awarded as necessary, but in doing so shall take into account the number of complaints to the EMSP generated by the defendant’s messages, the defendant’s degree of culpability, the defendant’s prior history of such conduct, and the extent of economic gain resulting from the conduct. Transmission of electronic mail from an organization to its members shall not be deemed to be spam.

D. At the request of any party to an action brought pursuant to this section, the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program and computer software involved

in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any party and in such a way as to protect the privacy of nonparties who complain about violations of this section.

E. The provisions of this article shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

F. A civil action under this section must be commenced before expiration of the time period prescribed in § 8.01-40.1. In actions alleging injury arising from the transmission of spam, personal jurisdiction may be exercised pursuant to § 8.01-328.1.

History

1984, c. 751; 1985, c. 92; 1999, cc. 886, 904, 905; 2003, cc. 987, 1016; 2005, cc. 746, 761, 827; 2010, cc. 489, 529.

Code of Virginia 1950

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