

Assignment 3 – Essay Question

Gunnar Yonker

Issue:

The issue in this case is whether the Defendant violated the Computer Fraud and Abuse Act (CFAA) section (a) (2) by accessing JSTOR's database without authorization and exceeding their authorized access.

Rule:

The CFAA section (a) (2) is as stated:

intentionally access a computer without authorization or exceeds authorized access, 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) [1] 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;

This makes it illegal to intentionally access a computer without authorization or exceed authorized access and thereby obtain information from any protected computer. The term "protected computer" refers to a computer that is used in or affects interstate or foreign commerce or communication. The term "exceeds authorized access" means accessing a computer with authorization and then using that access to obtain information that the user is not entitled to obtain.

Analysis:

In this case, the issue is whether the Defendant's actions in accessing and copying JSTOR's database constitute a violation of the Computer Fraud and Abuse Act (CFAA). The relevant provision of the CFAA is 18 U.S.C. § 1030(a)(2)(C), which prohibits intentionally accessing a computer without authorization or exceeding authorized access, and thereby obtaining information from any protected computer.

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1) Was the database accessed without authorization or exceeds authorized access? Yes, In this case, the Defendant accessed JSTOR's database without authorization and exceeded his authorized access by using a program called "keepgrabbing" to circumvent JSTOR's limits on how many articles a person could download.

2) Did the Defendant circumvent JSTOR database limits to access the database without authorization? Yes, the Defendant also changed his IP and MAC addresses to continue accessing JSTOR's database after being banned. Moreover, the Defendant used a program to fake a new MAC address and connected directly to MIT's server to download a major portion of JSTOR's database.

These actions show that the Defendant intentionally accessed JSTOR's database without authorization and exceeded his authorized access. It appears that the Defendant intentionally accessed a protected computer (JSTOR's database) without authorization or by exceeding authorized access and obtaining information from that computer.

Conclusion:

Based on the facts of the case and the analysis of the CFAA section (a) (2), it can be concluded that the Defendant violated the CFAA section (a) (2) by intentionally accessing JSTOR's database without authorization and exceeding his authorized access. The Defendant's actions of circumventing JSTOR's limits, changing IP and MAC addresses, and connecting directly to MIT's server were all unauthorized and exceeded his authorized access. Therefore, the Defendant's actions were illegal and violated the CFAA section (a) (2).

Extra Credit Question:

Section 1201 of DMCA prohibits the circumvention of technological measures that control access to copyrighted works. This means that it is illegal to bypass digital locks, encryption, or other measures that restrict access to copyrighted content. The DMCA also prohibits the manufacturing, distribution, and trafficking of technologies or tools that are primarily designed to circumvent these technological measures. Any violations of Section 1201 can result in civil and criminal penalties such as fines and imprisonment.

In the scenario case described, it seems that the Defendant may have violated Section 1201 of the DMCA by using the “keepgrabbing” program to bypass JSTOR’s limits on the number of articles that could be downloaded, the Defendant circumvented a technological measure that controls access to JSTOR’s copyrighted database. Additionally, the Defendant’s action of accessing JSTOR’s database without proper authorization and then copying its contents may also constitute a violation of the DMCA’s prohibition on the unauthorized reproduction or distribution of copyrighted works. Based on this analysis I do think the Defendant violated section 1201 of DMCA.

It would be possible for the government to bring a criminal prosecution against the Defendant under Section 1201 of the DMCA, as this section provides for both civil and criminal violations as previously mentioned. This is because of the use of the “keepgrabbing” program that was used to bypass the measures that restricted access to the copyrighted content in the JSTOR database. The Defendant claims that they did not know that papers through JSTOR were not available for free but later argued that there was an obligation to make academic papers available to all. I think that it may be possible for the government to pursue criminal charges, but I don’t think it would be clean cut as they would need to prove “the purpose of commercial advantage or private financial gain”. It is unknown to us from the scenario if the defendant was selling these articles for personal financial gain, or if the Defendant did this with the purpose of commercial advantage other than arguing that all academic papers should be free.