

The Ethical Impact of the Federal Computer Fraud and Abuse Act

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Introduction

During the early years of the internet, hacking was committed based on curiosity and experimentation. However, hackers began to break into systems with malicious intent. As the rise of malicious hacking grew, Congress needed a response to combat cybercrimes. In 1986, Congress enacted the Computer Fraud and Abuse Act. The purpose was to criminalize unauthorized access to protected computers and protect the rights of people's sensitive data being protected. This provided a framework for addressing cybercrime. However, over time ethical concerns arose due to the nature of the cybersecurity policy. Many considered the language of the CFAA (Computer Fraud and Abuse Act) ambiguous. The term “unauthorized access” is not defined, which has led to overcriminalization, and challenges to the First Amendment.

Benefits

Several benefits arose from the Computer Fraud and Abuse Act. One benefit is the deterrence of cybercrime. The main goal of the CFAA is to criminalize cybercrimes and has done so with significant legal penalties. For example, the article “The Computer Fraud & Abuse Act: Failing to Evolve with the Digital Age” (W. Cagney McCormick) states a hacker who causes damages without authorization of a system faces criminal charges under section 1030(a)(5). This section in the CFAA lists actions such as recklessly and intentionally causing damage to computers. Another benefit is that it protects sensitive data and provides legal resources for people and organizations. This allows those who are victims of cyber-attacks to press charges against the cyber-attacks.

Protected and Addressing Rights

One of the rights protected by the CFAA is securing personal information. As previously stated, the main goal of the CFAA is to criminalize cybercrimes. This policy ensures that the confidentiality of sensitive data is protected. Another right protected is intellectual property. The article “Updating the Computer Fraud and Abuse Act” (Jonathan S. Keim) compares tort law (rules that address civil wrongdoings to a person or property) to computer intrusions being similar. Since tort law protects people’s property by forbidding intrusions, CFAA prohibits unauthorized computer access. This protects a computer owner’s exclusive possession. With these rights protected by the CFAA, the policy does address the rights of individuals and organizations. However, there are limitations to the rights the CFAA protects.

Limitations/Cost

Though there are benefits from the CFAA, several ethical dilemmas arose. One dilemma is against whistle-blowers. Since the CFAA prohibits unauthorized access to computers, those who access systems to expose wrongdoings for the benefit of society will be criminalized. In the court case *Sandvig v. Sessions*, academic researchers attempted to file a lawsuit against the CFAA for violating freedom of speech. The ruling was collecting data from websites is covered by freedom of speech, and is not enough to be considered a federal crime (Komal Patel). This is another ethical dilemma, as is the language of the CFAA. The term “unauthorized access” is vague and ambiguous. It does not define what and who is considered an unauthorized user. This makes it difficult to define clear distinctions between cyber criminals and engaging in regular online activities. As a result, the CFAA does lead to overcriminalization.

References

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