

Summary of Aaron's Law *Legislation introduced by Senator Wyden*

The Computer Fraud and Abuse Act (CFAA) is a sweeping anti-hacking law that criminalizes many forms of common Internet use and allows breathtaking levels of prosecutorial discretion that invites serious overuse and abuse.

The law is written so vaguely as to make it a federal crime to access a computer without authorization or in a way that exceeds authorization, however, Congress never clearly described what this really means. As a result, prosecutors take the view that a person who violates a web site's terms-of-service should face jail time. So lying about one's age on Facebook, one's looks on Craigslist, or letting one's friend log into their Pandora account could buy them a ticket into the slammer. Millions of Americans -- whether they are of the generation that is digitally native or those less lucky -- routinely submit to terms and agreements every time they use the Internet. Few have the time or the ability to read and completely understand these terms of service commitments which are, of course, non-negotiable and written and routinely changed by corporations.

Due to redundant provisions in the law, the CFAA enables a person to be punished multiple times for the same crime. These charges can be stacked one on top of another, resulting in higher cumulative fines and jail time for the exact same violation. What's more, the available penalties under CFAA do not correspond to the crime.

When a person commits a computer crime where there is substantial harm caused, the person should be subject to substantial sanctions. But, under the CFAA, a computer crime that results in little or no economic or other harm, could still lead to a felony conviction and substantial jail time.

Aaron's Law

Aaron's Law would address the fundamental problems with CFAA by doing the following:

1. Establish that mere breach of terms of service, employment agreements, or contracts are not automatic violations of the CFAA. By using legislative language based closely on recent important 9th and 4th Circuit Court opinions, Aaron's Law would instead define 'access without authorization' under the CFAA as gaining unauthorized access to information by circumventing technological or physical controls -- such as password requirements, encryption, or locked office doors. Notwithstanding this change, hack attacks such as phishing, injection of malware or keystroke loggers, denial-of-service attacks, and viruses would continue to be fully prosecutable under strong CFAA provisions that Aaron's Law does not modify. The law must separate its treatment of everyday Internet activity from criminals intent on causing serious damage to financial, social, civic, or security institutions. Aaron's Law attempts to accomplish this.
2. Aaron's Law also brings balance back to the CFAA by eliminating a redundant provision of the law that subject an individual for multiple sanctions for the same CFAA violation.
3. Finally, Aaron's Law would bring greater proportionality to CFAA penalties. Currently, the CFAA's penalties are tiered, and prosecutors have wide discretion to ratchet up the severity of the penalties in several circumstances, leaving little room for non-felony charges under CFAA (i.e., charges with penalties carrying less than a year in prison). For example, under current law a prosecutor can seek to inflate potential sentences by stacking new charges atop previous violations of state laws. Aaron's Law would reform the penalty for a violation to ensure prosecutors cannot seek to inflate sentences by stacking multiple charges under CFAA, including state law equivalents of CFAA, and torts (non-criminal violations of law).

Critics may argue that Aaron's Law reforms may remove one specific scenario from CFAA: an authorized individual using their own authorization (such as password credentials) to access and use information in unauthorized ways. However, numerous laws like the Privacy Act, the Stored Communications Act, the Wire Act already criminalize misuse of information. Furthermore, the Copyright Act, the Patent Act, and the Trademark Act, and the Economic Espionage Act criminalize theft of intellectual property.