



TELECOMMUNICATIONS

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“Hacking” – Has the True Meaning Been Distorted?

The [Computer Fraud and Abuse Act](#) (“CFAA”) was intended to be used to prosecute cases of malicious hacking. In particular, it was meant mainly to cover “[protected computers](#)” which means computers associated with financial institutions and the Government. “[Hacking](#)” generally refers to situations where an individual or group breaks into a protected computing system and either copies or destroys data. However, because the CFAA was written in a vague and broad manner, courts continue to expand the CFAA’s meaning beyond what many believe was originally intended.

For example, in [Pulte Homes, Inc v. Laborers’ International Union of North America](#), the [United States Sixth Circuit Court of Appeals](#) recently ruled that a labor union could be held liable for violating the CFAA because it hired an auto dialing service to inundate Pulte Homes with calls and asked labor union members to call and email Pulte Homes. Overall, there were thousands of calls and e-mails. The union did this to protest what it believed was the wrongful termination of seven union members. Many have questions regarding whether these actions rise to the level of “hacking” or if it was instead covered by tort law or even anti-spamming law.

However, in the view of the Sixth Circuit Court of Appeals, “the e-mails wreaked more havoc: they overloaded Pulte Home’s system, which limits the number of e-mails in an inbox; and this, in turn, stalled normal business operations because Pulte Home’s

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employees could not access business-related e-mails or send e-mails to customers and vendors.”

Yet, if anything it appears that the union could be held at least partially liable under the [CAN-SPAM Act](#), which covers unsolicited commercial e-mails and messages sent to wireless phones. However, one must stop to wonder if many of these messages, even in large quantities rise to the level of “spam.” The labor union hired an auto-dialing service which *might* be considered a commercial spam service under that law. In addition, some of the labor union members left obscene and threatening messages, which might rise to the level of criminal or civil harassment.

Yet, the court noted that it was not the content of the calls and e-mails that damaged Pulte, instead, it was the *volume*. The court stated that the sheer volume of calls and e-mails made it impossible for Pulte to carry on its business operations because customers and vendors could not reach them. However, there are remedies available to aggrieved parties for this sort of intentional interference with business operations in [tort law](#).

Yet, the court broadly concluded that “a transmission that weakens a sound computer system – or, similarly, one that diminishes a plaintiff’s ability to use data or a system – causes damage [under the CFAA].” One could say that the court’s conclusion was proper because the CFAA never explicitly defines “hacking.” On the other hand, the CFAA seems to make it clear that the computer intruder must have “knowingly accessed the computer or exceed[ed] authorized access” *and* “caused damage.”

However, the court noted that the labor union did not dispute the “accessing” element of the claim, nor did it dispute that it had accessed “protected computers.” Instead, the court said that the only issue to address was whether the labor union “intended” to access the protected computers. Therefore, it leaves one to wonder whether this case amounts more to bad lawyering than anything else.

As the court said, the actions of the labor union probably did “cause damage,” but, the labor union never “exceed authorized access” nor did it even “enter” the computer systems at all. Moreover, under the CFAA it appears that the individuals need to act with the “intent” to access the computers, perhaps the labor union simply “intended” to gain attention from their employer to further their cause and make their voices heard.

What do you think? Is there a difference between hacking and spamming? Where does one begin and the other end or are they even related at all? We welcome your thoughts! Please feel free to comment at our interactive [blog](#)!

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