

EFF's Preliminary Suggestions for Changes to Aaron's Law
v. 1.2

The current language of 18 U.S.C. §§ 1030 and 1343 is in regular text.

The changes proposed by the Lofgren Bill are in italics.

The changes proposed by EFF are in bold.

Note that this proposal draft does not include suggestions for the damages/penalty portion of the law, which will be forthcoming. Also, this proposal is endorsed only by EFF given the short timing, but we have been consulting with other civil liberties groups as they have developed.



18 U.S.C. § 1030(e)(6)

Current Language:

the term "exceeds authorized access" means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter;

Changes Made by Lofgren Bill:

the term "exceeds authorized access" means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter, *but does not include access in violation of an agreement or contractual obligation, such as an acceptable use policy or terms of service agreement, with an Internet service provider, Internet website, or employer, if such violation constitutes the sole basis for determining that access to a protected computer is unauthorized;*

EFF's Markup of Lofgren Bill:

the term "exceeds authorized access" means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not **otherwise** entitled ~~so~~ to obtain or alter. **Access to a computer in violation of an express or implied agreement, duty, contractual obligation, acceptable use policy, terms of service agreement or other non-code based restriction does not in itself constitute fraud or otherwise violate this section.**

Efforts to mask or hide an Internet or computer user's real name, personally identifiable information or device identifier(s) do not in themselves constitute false or fraudulent pretenses, or otherwise violate this section or 18 U.S.C. §§ 1343/1030.

18 U.S.C. § 1343

Current Language:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

Changes Made by Lofgren Bill:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. *A violation of an agreement or contractual obligation regarding Internet or computer use, such as an acceptable use policy or terms of service agreement, with an Internet service provider, Internet website, or employer is not in itself a violation of this section.* If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

EFF's Markup of Lofgren Bill:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of

wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than **10** years, or both. **Access to a computer in violation of an express or implied agreement, duty, contractual obligation, acceptable use policy, terms of service agreement or other non-code based restriction does not in itself constitute fraud or otherwise violate this section.** If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5122)), or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

Efforts to mask or hide an Internet or computer user's real name, personally identifiable information or device identifier(s) do not in themselves constitute false or fraudulent pretenses, or otherwise violate this section or 18 U.S.C. §§ 1343/1030.