

15.27 Intentional Damage to a Protected Computer (18 U.S.C. § 1030(a)(5)(A))

The defendant is charged in [Count _____ of] the indictment with transmitting [a program] [information] [a code] [a command] to a computer, intending to cause damage, in violation of Section 1030(a)(5) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly caused the transmission of [a program] [information] [a code] [a command] to a computer;

Second, as a result of the transmission, the defendant intentionally impaired without authorization the [integrity] [availability] of [data] [a program] [a system] [information]; and

Third, the computer was [exclusively for the use of a financial institution or the United States government] [not exclusively for the use of a financial institution or the United States government, but the defendant's transmission affected the computer's use by or for a financial institution or the United States government] [used in or affected interstate or foreign commerce or communication] [located outside the United States but was used in a manner that affects interstate or foreign commerce or communication of the United States].

Comment

18 U.S.C. § 1030(e) provides definitions of the terms “computer” and “financial institution.” While the term “protected computer” is defined in 18 U.S.C. § 1030, that term is not used in the elements of this introduction because that definition has been incorporated into the third element of the instruction. Accordingly, it is not necessary to provide a separate definition of “protected computer.” Similarly, the term “damage” is defined at 18 U.S.C. § 1030(e), but because the common usage of that term could be broader and therefore conducive to confusion, the definition has been incorporated into the second element.

In *United States v. Middleton*, 231 F.3d 1207, 1211-12 (9th Cir. 2000), the Ninth Circuit discussed the definitions of “protected computer” and “damage.” However, it is uncertain whether the conclusions drawn by the circuit are still applicable after amendments to § 1030 in USA PATRIOT Act, Pub. L. 107-56, Title V, § 506(a), Title VIII, § 814, 115 Stat. 366, 382 (2001) (codified as amended at 18 U.S.C. § 1030). See 18 U.S.C. § 1030(e) (“protected computer” and “damage”).

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