

15.29 Damage to a Protected Computer Causing Loss (18 U.S.C. § 1030(a)(5)(C))

The defendant is charged in [Count _____ of] the indictment with accessing a computer which resulted in its 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 intentionally accessed a computer without authorization;

Second, as a result of the defendant's access, the defendant caused the impairment of the [integrity] [availability] of [data] [a program] [a system] [information];

Third, as a result of the defendant's access, the defendant caused a loss; and

Fourth, the computer was [exclusively for the use of a financial institution or the United States government] [not exclusively for the use by or for 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,” “financial institution” and “loss.” While the term “protected computer” is defined in 18 U.S.C. § 1030(e), that term is not used in the elements of this instruction 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 as the common usage of that term could be broader and therefore conducive to confusion, the definition has been incorporated into the second elements.

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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