

4.7 Maliciously

Comment

There is no uniform definition of the term “maliciously.” When a statute provides a definition of a term, that definition controls. However, when a statute does not define a term, the term will generally be interpreted “by employing the ordinary, contemporary, and common meaning of the words that Congress used.” *United States v. Kelly*, 676 F.3d 912, 917 (9th Cir. 2012) (quoting *United States v. Iverson*, 162 F.3d 1015, 1022 (9th Cir. 1988)). Furthermore, when a term “ha[s] accumulated settled meaning under . . . the common law . . . a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of [the term].” *Id.* at 917 (quotation marks and citation omitted) (in prosecution under 18 U.S.C. § 1363, government was not required to prove that defendant harbored any “malevolence or ill-will”). One acts “maliciously” when he or she has the intent to do the prohibited act and has no justification or excuse. *Id.* at 918.

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