

**THE CIVIL ASPECTS OF CONNECTICUT'S
COMPUTER CRIME LAW**

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- I. Connecticut Computer Crime Law (P.A. 84-206).
- A. Connecticut asserts criminal jurisdiction over the entire internet because bits and pieces of it are in Connecticut, §53a-260. Presumably the scope of Connecticut civil jurisdiction is co-extensive.
- B. There is a civil action for each violation, or *anticipated violation*,¹ of the Connecticut Computer Crime Law² (§52-570b and §53a-251 *et seq.*). The remedies are:
1. Temporary injunction, §52-570b(a)(1).
 2. Permanent injunction, §52-570b(a)(1).
 3. Restitution, §52-570b(a)(2).
 4. Appointment of a receiver, §52-570b(3). It is unclear if this is *pendente lite*, but it may very well be because the statute refers to an order.
 5. Actual damages, §52-570b(c).
 6. Damages for unjust enrichment, §52-570b(c).
 7. Treble damages for willful and malicious conduct, §52-570b(c).

¹ ie: The aggrieved person has reason to believe the defendant is about to engage in an alleged violation of the Connecticut Computer Crime Law.

² A prior criminal conviction is not a prerequisite to commencing a civil action, §52-570b(f).

8. Reasonable costs, §52-570b(e).
 9. Reasonable attorneys fees, §52-570b(e).
 10. Any equitable relief the court finds appropriate, §52-570b(b).
 11. There is an alternative fine of twice the gain in criminal cases, §53a-257.
- C. The powers of a receiver §52-570b(a):
1. Cannot affect the rights of innocent parties.
 2. Can sue for, collect, receive and take into his possession property that:
 - a. belongs to the defendant and
 - b. was derived from the computer crime or used in the computer crime (such as money or the computer equipment).
 3. Can reach commingled property, which is contrary to the common law (ie: there is no tracing rule).
 4. Sell any of foregoing.
 5. hold the sale proceeds pursuant to the Court's direction.
- D. The measure of damages, §53a-259.
1. The value of the property or computer services involved in a computer crime are the same in a civil and criminal case.
 2. Value is determined by the market value at the time of the computer crime, §53a-259(a)(1).
 3. If the property is unrecoverable, damaged or destroyed, the value is the cost of reproducing or replacing the property, §53a-259(a)(2).

4. If the value cannot be determined, the value shall be \$250.00, §53a-259(b).
5. The value of private personal data is \$1,500.00 §53a-259(c). This appears to be neither a floor nor a ceiling figure. Apparently, the law simply assigns a valuation rather than telling the courts attempt to value private personal data.

E. Degrees of offenses.

1. Exceeds \$10,00.00-Class B felony, §53a-252.³
2. Exceeds \$5,000.00-Class C felony, §53a-253.⁴
3. Exceeds \$1,00.00-Class D felony, §53a-254(a) (1).⁵
4. Recklessly engages in conduct which creates a risk of serious physical injury to another-Class D felony, §53a-254(a) (2).
5. Exceeds \$500.00-Class A misdemeanor, §53a-255(a).⁶
6. \$500.00 or less-Class B misdemeanor, §53a-256(a).⁷

F. There is a three year statute of limitations, §52-570b(h). This period begins to run from the date the computer crime was discovered or should have been discovered.

G. The standard of proof for a computer crime civil action is a preponderance of the evidence.⁸ It is not

³ Not less than one year nor more than twenty years.

⁴ Not less than one year nor more than ten years.

⁵ Not less than one year nor more than five years.

⁶ Not to exceed one year.

⁷ Not to exceed six months.

⁸ *S&S Tobacco & Candy v. Stop & Shop* 815 F.Supp. 65 (1992).

necessary to prove the facts beyond a reasonable doubt or by clear and convincing evidence.

- H. The definitions are the same better the civil and criminal causes of action, §53a-250:
1. "Access" means to instruct, communicate with, store data in or retrieve data from a computer, computer system or computer network.
 2. "Computer" means a programmable, electronic device capable of accepting and processing data.
 3. "Computer network" means:
 - a. a set of related devices connected to a computer by communications facilities, or
 - b. a complex of two or more computers, including related devices, connected by communications facilities.
 4. "Computer program" means a set of instructions, statements or related data that, in actual or modified form, is capable of causing a computer or computer system to perform specified functions.
 5. "Computer services" includes, but is not limited to, computer access, data processing and data storage.
 6. "Computer software" means one or more computer programs, existing in any form, or any associated operational procedures, manuals or other documentation.
 7. "Computer system" means a computer, its software, related equipment, communications facilities, if any, and includes computer networks.
 8. "Data" means information of any kind in any form, including computer software.
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9. "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association and any other legal or governmental entity, including any state or municipal entity or public official.
 10. "Private personal data" means data concerning a natural person which a reasonable person would want to keep private and which is protectable under law.
 11. "Property" means anything of value, including data.
- G. The following are computer crimes:
- a. Unauthorized access to a computer system.
 1. A person is guilty of the computer crime of unauthorized access to a computer system when, knowing that he is not authorized to do so, he accesses or causes to be accessed any computer system without authorization.
 2. It shall be an affirmative defense to a prosecution for unauthorized access to a computer system that:
 - a. the person reasonably believed that the owner of the computer system, or a person empowered to license access thereto, had authorized him to access;
 - b. the person reasonably believed that the owner of the computer system, or a person empowered to license access thereto, would have authorized him to access without payment of any consideration; or
 - c. the person reasonably could not have known that his access was unauthorized.
 - b. Theft of computer services.

A person is guilty of the computer crime of theft of computer services when he accesses or causes to be accessed or otherwise uses or causes to be used a computer system with the intent to obtain unauthorized computer services.

c. Interruption of computer services.

A person is guilty of the computer crime of theft of computer services when he accesses or causes to be accessed or otherwise uses or causes to be used a computer system with the intent to obtain unauthorized computer services.

d. Misuse of computer system information.

A person is guilty of the computer crime of misuse of computer system information when:

1. as a result of his accessing or causing to be accessed a computer system, he intentionally makes or causes to be made an unauthorized display, use, disclosure or copy, in any form, of data residing in, communicated by or produced by a computer system; or
2. he intentionally or recklessly and without authorization
 - a. alters, deletes, tampers with, damages, destroys or takes data intended for use by a computer system, whether residing within or external to a computer system, or
 - b. intercepts or adds data to data residing within a computer system; or
3. he knowingly receives or retains data obtained in violation of subdivision (1) or (2) of this subsection; or
4. he uses or discloses any data he knows or believes was obtained in violation of subdivision (1) or (2) of this subsection.

E. Destruction of computer equipment

A person is guilty of the computer crime of destruction of computer equipment when he, without authorization, intentionally or recklessly tampers with, takes, transfers, conceals, alters, damages or destroys any equipment used in a computer system or intentionally or recklessly causes any of the foregoing to occur.

II. Connecticut Evidence Code.

- A. This is a Connecticut product which codifies existing Connecticut law. It is not simply a restatement of the Model Rules of Evidence or the Federal Rules of Evidence, §102(a) and related commentary.
- B. The Code is not intended to prevent to growth of evidentiary rules not otherwise codified, §102(b).
- C. The Code is effective as of January 1, 2000. It was adopted by the Superior Court judges on June 28, 1999.
- D. The Code applies to proceedings in the Superior Court §101(b) Therefore, it does not govern administrative nor probate proceedings.
- E. Putting a business record into evidence requires: (§804(a), based upon §52-180).
1. There must be a writing or a record.⁹
 2. made in the regular course of the business
 3. it was the regular course of the business to make such a record.
 4. the record was made at the time of the fact

⁹ Computerized records seem to be a "writing or record". There is no policy reason to hold otherwise. All courts seem to have assumed computer records are subject to the hearsay rule and this exception.

memorialized (or within a reasonable time thereafter).

5. Business is read expansively to include every business, profession, occupation and calling.
6. The informant must have a business duty¹⁰ (which is a lesser standard than a legal duty) to furnish the information (see comments to §804).

F. There is no requirement that:

1. The person who made the business entry be available, §804(b).¹¹
2. The person who made the business entry is unavailable (or proved to be unavailable), §803(b).
3. The person who had personal knowledge of the event be available, §804(b).
4. The person who had personal knowledge of the event is unavailable (or proved to be unavailable), §803(b).
5. No specific chain of custody needs to be proven.¹²
6. The witness need not have any first hand knowledge about the making of the record.¹³

¹⁰ *State v. Sharpe* 195 Conn. 651 (1985) and *State v. Cosgrove* 181 Conn. 562 (1980).

¹¹ *SKW Real Estate v. Gallicchio* 49 Conn. App. 563, certification denied 247 Conn. 926 (1998).

¹² *New England Savings Bank v. Bedford Realty* 246 Conn. 594 (1998).

¹³ *American Oil v. Valenti* 179 Conn. 349 (1979).

7. The accuracy of the business record need not have been audited or verified by the authenticating witness.
- G. What needs to be proven about the computer system?¹⁴
1. When computers were less common, the old rule required a more elaborate foundation.
 - a. The witness must be able to be cross-examined about the functioning of the computer.
 - b. hardware issues.
 - c. software issues.
 2. The new rule seems to require less.¹⁵ The business must just rely upon the record. The lack of specificity affects the weight of the evidence, not its admissibility.
- H. The best evidence rule requires "the original" must be produced in court, §1001.
1. Which is the original:
 - a. What is stored in RAM?
 - b. What is stored on disk (or other permanent media)?
 - c. The print out?
 2. This rule does not try to limit the growing reliance on modern technologies for the recording and storing of information, §1001 Commentary.

¹⁴ *Willow Funding v. Grencom Associates* 246 Conn. 615, 622 (1998).

¹⁵ *New England Savings Bank v. Bedford Realty* 246 Conn. 594 (1998) and *Willow Funding v. Grencom Associates* 246 Conn. 615 (1998).

3. The purpose behind the rule is to get the best evidence of the COMTEMPTS of the record. Computer generated copies are perfect copies.
4. A duplicate original means the parties intend the copy to have the same effect as an original, §1001 commentary.
5. A copy is admissible to the same extent as an original UNLESS (§1002).
 - a. the authenticity of the original is questioned.
 - b. the accuracy of the copy is questioned.
 - c. it would be unfair to admit the copy instead of the original.
6. Copies made in the ordinary course of business are admissible, whether or not the original is destroyed, §52-180(c).