

Computer Crime Legislation

Grabosky cites a criminologist (Sieber) who has identified 6 waves in the evolution of computer crime legislation.

Wave 1: began in 1970's; focused on privacy [See Electronic Communications Privacy Act.];

Wave 2: arose in 1980's; focused on economic costs of computer crime [See Computer Fraud and Abuse Act and Federal Wire Fraud Act];

Wave 3: also in 1980's; focused on protection of intellectual property [See Copyright Act];

Wave 4: focused on regulation of offensive content [See Child Pornography Prevention Act of 1996];

Wave 5: focused on criminal procedure in cases of computer crime;

Wave 6: focused on security law [See USA PATRIOT Act].

Electronic Communications Privacy Act (1986)

The **Electronic Communications Privacy Act ("ECPA")** was passed in 1986 to expand and revise federal wiretapping and electronic eavesdropping provisions. It was enacted to create and promote " the privacy expectations of citizens and the legitimate needs of law enforcement." Congress also sought to support the creation of new technologies by assuring consumers that their personal information would remain safe.

ECPA includes provisions that protect a person's wire and electronic communications from being intercepted by another private individual. In general, the statute bars wiretapping and electronic eavesdropping, possession of wiretapping or electronic eavesdropping equipment, and the use or disclosure of information unlawfully obtained through wiretapping or electronic eavesdropping. The **Wiretap Act** prohibits any person from intentionally intercepting or attempting to intercept a wire, oral or electronic communication by using any electronic, mechanical or other device. To be clear, an electronic device must be used to perform the surveillance; mere eavesdropping with the unaided ear is not illegal under ECPA.

Victims are also entitled to bring civil suits and recover actual damages, in addition to punitive damages and attorney's fees, for violations. The United States itself cannot be sued under ECPA, but evidence that is gathered illegally cannot be introduced in court.

There are exceptions to this blanket prohibition, such as if the interception is authorized by statute for law enforcement purposes or consent of at least one of the parties is given. Although some states prohibit the recording of conversations unless all parties consent, ECPA requires only one party consent; an individual can record his own conversation without violating federal law. In the workplace, an employer would likely not violate ECPA by listening to an employee's communications if, for example, blanket consent was given as part of the employee's contract.

Source: <https://epic.org/privacy/ecpa/>

Computer Fraud and Abuse Act (1986)

The **Computer Fraud and Abuse Act (CFAA)** was enacted in 1986, as an amendment to the first federal computer fraud law, to address hacking. Over the years, it has been amended several times, most recently in 2008, to cover a broad range of conduct far beyond its original intent. The CFAA prohibits intentionally accessing a computer without authorization or in excess of authorization, but fails to define what “without authorization” means. With harsh penalty schemes and malleable provisions, it has become a tool ripe for abuse and use against nearly every aspect of computer activity.

The bill includes a provision to penalize the theft of property via computer that occurs as a part of a scheme to defraud. Congress also added a provision to penalize those who intentionally alter, damage, or destroy data belonging to others. This latter provision was designed to cover such activities as the distribution of malicious code and denial of service attacks. Finally, Congress also included in the CFAA a provision criminalizing trafficking in passwords and similar items.

Source: <https://www.nacdl.org/Landing/ComputerFraudandAbuseAct>

Federal Wire Fraud Act (1952)

The federal statute on wire fraud was passed in 1952 as part of the Communications Act Amendment. The law against mail fraud was already on the books at that point, but Congress wanted to extend the mail fraud provisions to cover new technology.

Like the mail fraud statute, the law against wire fraud prohibits any scheme or artifice to defraud that uses wire, radio, or television communication in interstate commerce. Later in 1956, Congress broadened the scope of the wire fraud statute to include transmissions in foreign commerce.

The elements of wire fraud are the same as mail fraud. In order to convict the defendant, federal prosecutions have to prove all of the following beyond a reasonable doubt:

- 1) A scheme to defraud or obtain money or property by fraudulent pretenses.
- 2) Intent.
- 3) The making of materially false representations.
- 4) Transmission by wire, radio, or television communication in interstate or foreign commerce.

Source: <https://www.federalcriminallawyer.us/2011/02/09/a-summary-of-federal-wire-fraud/>

Copyright Act (1976)

The *Copyright Act of 1976* forms the basis of copyright law in the United States today. It took effect on January 1, 1978, implementing fundamental and sweeping changes in many aspects of copyright law.

Copyright protection extends to all “original works of authorship” to take into account new kinds of media.

Congress adopted this expansive language to avoid having constantly to amend copyright laws to account for the development of new technologies and means of expression, such as still photography, motion pictures, or recordings.

Foremost among the changes introduced in 1976 was the creation of federal copyright protection for every work as soon as it is created — that is, when it is first fixed in a tangible medium of expression.

To make U.S. copyright laws conform more with those of the rest of the world, Congress made the duration of copyright based on the life of the creator plus a term of years, rather than a uniform term of years.

The 1976 statute incorporated the concept of fair use for the first time in such a law. Creators of works were given a nontransferable, nonwaivable right to recapture their copyrights 35 years after their transfer.

Specific First Amendment protections were built into the act.

For example, the fair use provision allowed for uses of copyrighted works in news, commentary, reviews, criticism, or parody.

In using the phrase “works of authorship” in Section 102 of the law, Congress specifically meant to protect only the precise way in which authors express their ideas, not the ideas themselves: “In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such a work.”

Source: <https://www.mtsu.edu/first-amendment/article/1072/copyright-act-of-1976>

Child Pornography Prevention Act of 1996

The *Child Pornography Prevention Act of 1996 (CPPA)* was a United States federal law to restrict child pornography on the internet, including virtual child pornography.

Before 1996, Congress defined child pornography with reference to the *Ferber* standard. In *New York v. Ferber*, 458 U.S. 747 (1982), the Supreme Court held that the government could restrict the distribution of child pornography to protect children from the child sexual abuse harm inherent in making it. In *Osborne v. Ohio*, 495 U.S. 103 (1990), the *Ferber* proscription was extended by the Court to the mere possession of child pornography. The Child Pornography Prevention Act added two categories of speech to the definition of child pornography. The first prohibited "any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture" that "is, or appears to be, of a minor engaging in sexually explicit conduct." In *Ashcroft* case (see below), the Court observed that this provision "captures a range of depictions, sometimes called 'virtual child pornography,' which include computer-generated images, as well as images produced by more traditional means."

The second prohibited "any sexually explicit image that was advertised, promoted, presented, described, or distributed in such a manner that conveys the impression it depicts a minor engaging in sexually explicit conduct." The Supreme Court struck down CPPA in 2002 in *Ashcroft v. Free Speech Coalition* as a violation of the First Amendment for being too broad.

Source:https://en.wikipedia.org/wiki/Child_Pornography_Prevention_Act_of_1996

The *PROTECT Act of 2003* (Pub.L. 108–21, 117 Stat. 650, S. 151, enacted April 30, 2003) is a United States law with the stated intent of preventing child abuse as well as investigating and prosecuting violent crimes against children. "PROTECT" is a contrived acronym which stands for "**P**rosecutorial **R**emedies and **O**ther **T**ools to end the **E**xploitation of **C**hildren **T**oday".

Source: https://en.wikipedia.org/wiki/PROTECT_Act_of_2003

USA Patriot Act (2003)

The official title of the *USA PATRIOT Act* is "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001." To view this law in its entirety, click on the USA PATRIOT Act link below.

USA PATRIOT Act

The purpose of the USA PATRIOT Act is to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and other purposes, some of which include:

- 1) To strengthen U.S. measures to prevent, detect and prosecute international money laundering and financing of terrorism;
- 2) To subject to special scrutiny foreign jurisdictions, foreign financial institutions, and classes of international transactions or types of accounts that are susceptible to criminal abuse;
- 3) To require all appropriate elements of the financial services industry to report potential money laundering;
- 4) To strengthen measures to prevent use of the U.S. financial system for personal gain by corrupt foreign officials and facilitate repatriation of stolen assets to the citizens of countries to whom such assets belong.

Source: <https://www.fincen.gov/resources/statutes-regulations/usa-patriot-act>