

CALIFORNIA

Sections 17529, 17529.1 through 17529.9, and 17538.45 of the *California Business & Professions Code* govern the transmission of unsolicited commercial electronic mail. Those code sections:

- Apply to email sent from California or to a California resident;
- Require a sender to provide a mechanism by which a recipient can ask not to be contacted;
- Ban the "harvesting" of email addresses for the purpose of sending unsolicited commercial email;
- Generally require a sender to comply with his or her service provider's conditions of use relating to advertising; and
- Forbid a person to use another's domain name without permission, to falsify the header of an email, or to put misleading information in its subject line;
- Entitle a recipient or a service provider to sue a violator for damages, attorney's fees, and costs; and
- Authorize the Attorney General to sue a violator for damages, attorney's fees, and costs.

Additionally, Section 502 of the *California Penal Code* bans the unauthorized use of another person's domain name in connection with electronic mail. That code section:

- Classifies a violation as a crime if it results in damage to a computer;
- Imposes criminal penalties, including forfeiture of the violator's computer; and
- Entitles a victim to sue an offender for damages, attorney's fees, and an injunction against future violations, and authorizes an award of punitive damages if certain aggravating circumstances exist.

Cal. Bus & Prof. Code

§17529. Legislative Declaration

The Legislature hereby finds and declares all of the following:

(a) Roughly 40 percent of all e-mail traffic in the United States is comprised of unsolicited commercial e-mail advertisements (hereafter spam) and industry experts predict that by the end of 2003 half of all e-mail traffic will be comprised of spam.

(b) The increase in spam is not only an annoyance but is also an increasing drain on corporate budgets and possibly a threat to the continued usefulness of the most successful tool of the computer age.

(c) Complaints from irate business and home-computer users regarding spam have skyrocketed, and polls have reported that 74 percent of respondents favor making mass spamming illegal and only 12 percent are opposed, and that 80 percent of respondents consider spam very annoying.

(d) According to Ferris Research, Inc., a San Francisco consulting group, spam will cost United States organizations more than \$10 billion this year, including lost productivity and the additional equipment, software, and manpower needed to combat the problem. California is 12 percent of the United States population with an

emphasis on technology business, and it is therefore estimated that spam costs California organizations well over \$1.2 billion.

(e) Like junk faxes, spam imposes a cost on users, using up valuable storage space in e-mail inboxes, as well as costly computer band width, and on networks and the computer servers that power them, and discourages people from using e-mail.

(f) Spam filters have not proven effective.

(g) Like traditional paper "junk" mail, spam can be annoying and waste time, but it also causes many additional problems because it is easy and inexpensive to create, but difficult and costly to eliminate.

(h) The "cost shifting" from deceptive spammers to Internet business and e-mail users has been likened to sending junk mail with postage due or making telemarketing calls to someone's pay-per-minute cellular phone.

(i) Many spammers have become so adept at masking their tracks that they are rarely found, and are so technologically sophisticated that they can adjust their systems to counter special filters and other barriers against spam and can even electronically commandeer unprotected computers, turning them into spam-launching weapons of mass production.

(j) There is a need to regulate the advertisers who use spam, as well as the actual spammers, because the actual spammers can be difficult to track down due to some return addresses that show up on the display as "unknown" and many others being obvious fakes and they are often located offshore.

(k) The true beneficiaries of spam are the advertisers who benefit from the marketing derived from the advertisements.

(l) In addition, spam is responsible for virus proliferation that can cause tremendous damage both to individual computers and to business systems.

(m) Because of the above problems, it is necessary that spam be prohibited and that commercial advertising e-mails be regulated as set forth in this article [§§17529-17529.9].

Created by Chapter 487, §1, Statutes of 2003, effective January 1, 2004.

§17529.1. Definitions Pertaining to Unsolicited Commercial Electronic Mail

For the purpose of this article, the following definitions apply:

(a) "Advertiser" means a person or entity that advertises through the use of commercial e-mail advertisements.

(b) "California electronic mail address" or "California e-mail address" means any of the following:

(b)(1) An e-mail address furnished by an electronic mail service provider that sends bills for furnishing and maintaining that e-mail address to a mailing address in this state.

(b)(2) An e-mail address ordinarily accessed from a computer located in this

state.

(b)(3) An e-mail address furnished to a resident of this state.

(c) "Commercial e-mail advertisement" means any electronic mail message initiated for the purpose of advertising or promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services, or extension of credit.

(d) "Direct consent" means that the recipient has expressly consented to receive e-mail advertisements from the advertiser, either in response to a clear and conspicuous request for the consent or at the recipient's own initiative.

(e) "Domain name" means any alphanumeric designation that is registered with or assigned by any domain name registrar as part of an electronic address on the Internet.

(f) "Electronic mail" or "e-mail" means an electronic message that is sent to an e-mail address and transmitted between two or more telecommunications devices, computers, or electronic devices capable of receiving electronic messages, whether or not the message is converted to hard copy format after receipt, viewed upon transmission or stored for later retrieval. "Electronic mail" or "e-mail" includes electronic messages that are transmitted through a local, regional, or global computer network.

(g) "Electronic mail address" or "e-mail address" means a destination, commonly expressed as a string of characters, to which electronic mail can be sent or delivered. An "electronic mail address" or "e-mail address" consists of a user name or mailbox and a reference to an Internet domain.

(h) "Electronic mail service provider" means any person, including an Internet service provider, that is an intermediary in sending or receiving electronic mail or that provides to end users of the electronic mail service the ability to send or receive electronic mail.

(i) "Initiate" means to transmit or cause to be transmitted a commercial e-mail advertisement or assist in the transmission of a commercial e-mail advertisement by providing electronic mail addresses where the advertisement may be sent, but does not include the routine transmission of the advertisement through the network or system of a telecommunications utility or an electronic mail service provider through its network or system.

(j) "Incident" means a single transmission or delivery to a single recipient or to multiple recipients of an unsolicited commercial e-mail advertisement containing substantially similar content.

(k) "Internet" has the meaning set forth in §17538(e)(6).

(l) "Preexisting or current business relationship," as used in connection with the sending of a commercial e-mail advertisement, means that the recipient has made an inquiry and has provided his or her e-mail address, or has made an application, purchase, or transaction, with or without consideration, regarding products or services offered by the advertiser.

Commercial e-mail advertisements sent pursuant to the exemption provided for a preexisting or current business relationship shall provide the recipient of the

commercial e-mail advertisement with the ability to "opt-out" from receiving further commercial e-mail advertisements by calling a toll-free telephone number or by sending an "unsubscribe" e-mail to the advertiser offering the products or services in the commercial e-mail advertisement. This opt-out provision does not apply to recipients who are receiving free e-mail service with regard to commercial e-mail advertisements sent by the provider of the e-mail service.

(m) "Recipient" means the addressee of an unsolicited commercial e-mail advertisement. If an addressee of an unsolicited commercial e-mail advertisement has one or more e-mail addresses to which an unsolicited commercial e-mail advertisement is sent, the addressee shall be deemed to be a separate recipient for each e-mail address to which the e-mail advertisement is sent.

(n) "Routine transmission" means the transmission, routing, relaying, handling, or storing of an electronic mail message through an automatic technical process. "Routine transmission" shall not include the sending, or the knowing participation in the sending, of unsolicited commercial e-mail advertisements.

(o) "Unsolicited commercial e-mail advertisement" means a commercial e-mail advertisement sent to a recipient who meets both of the following criteria:

(o)(1) The recipient has not provided direct consent to receive advertisements from the advertiser.

(o)(2) The recipient does not have a preexisting or current business relationship, as defined in subdivision (l), with the advertiser promoting the lease, sale, rental, gift offer, or other disposition of any property, goods, services, or extension of credit.

Created by Chapter 487, §1, Statutes of 2003, effective January 1, 2004. Amended by Chapter 183, §14, Statutes of 2004, effective January 1, 2005.

§17529.2. Prohibited Acts Involving Unsolicited Commercial Electronic Mail

Notwithstanding any other provision of law, a person or entity may not do any of the following:

(a) Initiate or advertise in an unsolicited commercial e-mail advertisement from California or advertise in an unsolicited commercial e-mail advertisement sent from California.

(b) Initiate or advertise in an unsolicited commercial e-mail advertisement to a California electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to a California electronic mail address.

(c) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect any other provision or application that can be given effect without the invalid provision or application.

Created by Chapter 487, §1, Statutes of 2003, effective January 1, 2004.

§17529.3. Service Provider's Rights

Nothing in this article shall be construed to limit or restrict the adoption, implementation, or enforcement by a provider of Internet access service of a policy of declining to transmit,

receive, route, relay, handle, or store certain types of electronic mail messages.
Created by Chapter 487, §1, Statutes of 2003, effective January 1, 2004.

§17529.4. Unlawful Harvesting of Electronic Mail Addresses

(a) It is unlawful for any person or entity to collect electronic mail addresses posted on the Internet if the purpose of the collection is for the electronic mail addresses to be used to do either of the following:

(a)(1) Initiate or advertise in an unsolicited commercial e-mail advertisement from California, or advertise in an unsolicited commercial e-mail advertisement sent from California.

(a)(2) Initiate or advertise in an unsolicited commercial e-mail advertisement to a California electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to California electronic mail address.

(b) It is unlawful for any person or entity to use an electronic mail address obtained by using automated means based on a combination of names, letters, or numbers to do either of the following:

(b)(1) Initiate or advertise in an unsolicited commercial e-mail advertisement from California, or advertise in an unsolicited commercial e-mail advertisement sent from California.

(b)(2) Initiate or advertise in an unsolicited commercial e-mail advertisement to a California electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to a California electronic mail address.

(c) It is unlawful for any person to use scripts or other automated means to register for multiple electronic mail accounts from which to do, or to enable another person to do, either of the following:

(c)(1) Initiate or advertise in an unsolicited commercial e-mail advertisement from California, or advertise in an unsolicited commercial e-mail advertisement sent from California.

(c)(2) Initiate or advertise in an unsolicited commercial e-mail advertisement to a California electronic mail address, or advertise in an unsolicited commercial e-mail advertisement sent to a California electronic mail address.

Created by Chapter 487, §1, Statutes of 2003, effective January 1, 2004.

§17529.5. Electronic Mail Containing False or Fraudulent Information

(a) It is unlawful for any person or entity to advertise in a commercial e-mail advertisement either sent from California or sent to a California electronic mail address under any of the following circumstances:

(a)(1) The e-mail advertisement contains or is accompanied by a third-party's domain name without the permission of the third party.

(a)(2) The e-mail advertisement contains or is accompanied by falsified, misrepresented, or forged header information. This paragraph does not apply to truthful information used by a third party who has been lawfully authorized by the advertiser to use that information.

(a)(3) The e-mail advertisement has a subject line that a person knows would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

(b)(1)(A) In addition to any other remedies provided by any other provision of law, the following may bring an action against a person or entity that violates any provision of this section:

(b)(1)(A)(I) The Attorney General.

(b)(1)(A)(ii) An electronic mail service provider.

(b)(1)(A)(iii) A recipient of an unsolicited commercial e-mail advertisement, as defined in §17529.1.

(b)(1)(B) A person or entity bringing an action pursuant to subparagraph

(b)(1)(A) may recover either or both of the following:

(b)(1)(B)(I) Actual damages.

(b)(1)(B)(ii) Liquidated damages of \$1,000 for each unsolicited commercial e-mail advertisement transmitted in violation of this section, up to \$1,000,000 per incident.

(b)(1)(C) The recipient, an electronic mail service provider, or the Attorney General, if the prevailing plaintiff, may also recover reasonable attorney's fees and costs.

(b)(1)(D) However, there shall not be a cause of action under this section against an electronic mail service provider that is only involved in the routine transmission of the e-mail advertisement over its computer network.

(b)(2) If the court finds that the defendant established and implemented, with due care, practices and procedures reasonably designed to effectively prevent unsolicited commercial e-mail advertisements that are in violation of this section, the court shall reduce the liquidated damages under paragraph (b)(1) to a maximum of \$100 for each unsolicited commercial e-mail advertisement, or a maximum of \$100,000 per incident.

(b)(3)(A) A person who has brought an action against a party under this section shall not bring an action against that party under §17529.8 or §17538.45 for the same commercial e-mail advertisement, as defined in §17529.1(c).

(b)(3)(B) A person who has brought an action against a party under §17529.8 or §17538.45 shall not bring an action against that party under this section for the same commercial e-mail advertisement, as defined in §17529.1(c).

(c) A violation of this section is a misdemeanor, punishable by a fine of not more than \$1,000, imprisonment in a county jail for not more than six months, or both that fine and imprisonment.

Created by Chapter 487, §1, Statutes of 2003, effective January 1, 2004. Amended by Chapter 571, §1, Statutes of 2004, effective January 1, 2005; and Chapter 247, §1, Statutes of 2005, effective January 1, 2006.

§17529.8. Civil Lawsuit Against Violator

(a)(1) In addition to any other remedies provided by this article or by any other provisions of law, a recipient of an unsolicited commercial e-mail advertisement transmitted in violation of this article, an electronic mail service provider, or the Attorney General may bring an action against an entity that violates any provision of this article to recover either or both of the following:

(a)(1)(A) Actual damages.

(a)(1)(B) Liquidated damages of \$1,000 for each unsolicited commercial e-mail advertisement transmitted in violation of §17529.2, up to \$1,000,000 per incident.

(a)(2) The recipient, an electronic mail service provider, or the Attorney General, if the prevailing plaintiff, may also recover reasonable attorney's fees and costs.

(a)(3) However, there shall not be a cause of action against an electronic mail

service provider that is only involved in the routine transmission of the unsolicited commercial e-mail advertisement over its computer network.

(b) If the court finds that the defendant established and implemented, with due care, practices and procedures reasonably designed to effectively prevent unsolicited commercial e-mail advertisements that are in violation of this article, the court shall reduce the liquidated damages recoverable under subdivision (a) to a maximum of \$100 for each unsolicited commercial e-mail advertisement, or a maximum of \$100,000 per incident.

Created by Chapter 487, §1, Statutes of 2003, effective January 1, 2004.

§17529.9. Severability Provision

The provisions of this article are severable. If any provision of this article or its application is held invalid, that invalidity shall not affect any other provision or application that can be given effect without the invalid provision or application.

Created by Chapter 487, §1, Statutes of 2003, effective January 1, 2004.

§17538.45. Unsolicited Commercial Electronic Mail

(a) For purposes of this section, the following words have the following meanings:

(a)(1) "Electronic mail advertisement" means any electronic mail message, the principal purpose of which is to promote, directly or indirectly, the sale or other distribution of goods or services to the recipient.

(a)(2) "Unsolicited electronic mail advertisement" means any electronic mail advertisement that meets both of the following requirements:

(a)(2)(A) It is addressed to a recipient with whom the initiator does not have an existing business or personal relationship.

(a)(2)(B) It is not sent at the request of or with the express consent of the recipient.

(a)(3) "Electronic mail service provider" means any business or organization qualified to do business in California that provides registered users the ability to send or receive electronic mail through equipment located in this state and that is an intermediary in sending or receiving electronic mail.

(a)(4) "Initiation" of an unsolicited electronic mail advertisement refers to the action by the initial sender of the electronic mail advertisement. It does not refer to the actions of any intervening electronic mail service provider that may handle or retransmit the electronic message.

(a)(5) "Registered user" means any individual, corporation, or other entity that maintains an electronic mail address with an electronic mail service provider.

(b) No registered user of an electronic mail service provider shall use or cause to be used that electronic mail service provider's equipment located in this state in violation of that electronic mail service provider's policy prohibiting or restricting the use of its service or equipment for the initiation of unsolicited electronic mail advertisements.

(c) No individual, corporation, or other entity shall use or cause to be used, by initiating an unsolicited electronic mail advertisement, an electronic mail service provider's equipment located in this state in violation of that electronic mail service provider's policy prohibiting or restricting the use of its equipment to deliver unsolicited electronic mail advertisements to its registered users.

(d) An electronic mail service provider shall not be required to create a policy prohibiting or restricting the use of its equipment for the initiation or delivery of unsolicited electronic mail advertisements.

(e) Nothing in this section shall be construed to limit or restrict the rights of an electronic mail service provider under Title 47, §230(c)(1) of the United States Code [*which immunizes Internet service providers from suit involving the blocking of objectionable material*], any decision of an electronic mail service provider to permit or to restrict access to or use of its system, or any exercise of its editorial function.

(f)(1) In addition to any other action available under law, any electronic mail service provider whose policy on unsolicited electronic mail advertisements is violated as provided in this section may bring a civil action to recover the actual monetary loss suffered by that provider by reason of that violation, or liquidated damages of \$50 for each electronic mail message initiated or delivered in violation of this section, up to a maximum of \$25,000 per day, whichever amount is greater.

(f)(2) In any action brought pursuant to paragraph (f)(1), the court may award reasonable attorney's fees to a prevailing party.

(f)(3)(A) In any action brought pursuant to paragraph (f)(1), the electronic mail service provider shall be required to establish as an element of its cause of action that prior to the alleged violation, the defendant had actual notice of both of the following:

(f)(3)(A)(I) The electronic mail service provider's policy on unsolicited electronic mail advertising.

(f)(3)(A)(ii) The fact that the defendant's unsolicited electronic mail advertisements would use or cause to be used the electronic mail service provider's equipment located in this state.

(f)(3)(B) In this regard, the Legislature finds that with rapid advances in Internet technology, and electronic mail technology in particular, Internet service providers are already experimenting with embedding policy statements directly into the software running on the computers used to provide electronic mail services in a manner that displays the policy statements every time an electronic mail delivery is requested. While the state of the technology does not support this finding at present, the Legislature believes that, in a given case at some future date, a showing that notice was supplied via electronic means between the sending and receiving computers could be held to constitute actual notice to the sender for purposes of this paragraph.

(f)(4)(A) An electronic mail service provider who has brought an action against a party for a violation under §17529.8 shall not bring an action against that party under this section for the same unsolicited commercial electronic mail advertisement.

(f)(4)(B) An electronic mail service provider who has brought an action against a party for a violation of this section shall not bring an action against that party under §17529.8 for the same unsolicited commercial electronic mail advertisement.

Created by Chapter 683, §2, Statutes of 1998, effective January 1, 1999. Amended by Chapter 487, §3, Statutes of 2003, effective January 1, 2004; and Chapter 183, §15, Statutes of 2004, effective January 1, 2005.

Cal. Penal Code

§502. Criminal Trespass to a Computer

(a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial institutions, business concerns, governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

(b) For the purposes of this section, the following terms have the following meanings:

(b)(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(b)(2) "Computer network" means any system that provides communications between one or more computer systems and input/output devices including, but not limited to, display terminals and printers connected by telecommunication facilities.

(b)(3) "Computer program or software" means a set of instructions or statements, and related data, that when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

(b)(4) "Computer services" includes, but is not limited to, computer time, data processing, or storage functions, or other uses of a computer, computer system, or computer network.

(b)(5) "Computer system" means a device or collection of devices, including support devices and excluding calculators that are not programmable and capable of being used in conjunction with external files, one or more of which contain computer programs, electronic instructions, input data, and output data, that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control.

(b)(6) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. Data may be in any form, in storage media, or as stored in the memory of the computer or in transit or presented on a display device.

(b)(7) "Supporting documentation" includes, but is not limited to, all information, in any form, pertaining to the design, construction, classification, implementation, use, or modification of a computer, computer system, computer network, computer program, or computer software, which information is not generally available to the public and is necessary for the operation of a computer, computer system, computer network, computer program, or computer software.

(b)(8) "Injury" means any alteration, deletion, damage, or destruction of a computer system, computer network, computer program, or data caused by the access.

(b)(9) "Victim expenditure" means any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, deleted, damaged, or destroyed by the access.

(b)(10) "Computer contaminant" means any set of computer instructions that are designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, that are self-replicating or self-propagating and are designed to contaminate other computer programs or

computer data, consume computer resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

(b)(11) "Internet domain name" means a globally unique, hierarchical reference to an Internet host or service, assigned through centralized Internet naming authorities, comprising a series of character strings separated by periods, with the rightmost character string specifying the top of the hierarchy.

(c) Except as provided in subdivision (h), any person who commits any of the following acts is guilty of a public offense:

(c)(1) Knowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network in order to either (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data.

(c)(2) Knowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network.

(c)(3) Knowingly and without permission uses or causes to be used computer services.

(c)(4) Knowingly accesses and without permission adds, alters, damages, deletes, or destroys any data, computer software, or computer programs which reside or exist internal or external to a computer, computer system, or computer network.

(c)(5) Knowingly and without permission disrupts or causes the disruption of computer services or denies or causes the denial of computer services to an authorized user of a computer, computer system, or computer network.

(c)(6) Knowingly and without permission provides or assists in providing a means of accessing a computer, computer system, or computer network in violation of this section.

(c)(7) Knowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network.

(c)(8) Knowingly introduces any computer contaminant into any computer, computer system, or computer network.

(c)(9) Knowingly and without permission uses the Internet domain name of another individual, corporation, or entity in connection with the sending of one or more electronic mail messages, and thereby damages or causes damage to a computer, computer system, or computer network.

(d)(1) Any person who violates any of the provisions of paragraph (c)(1), (c)(2), (c)(4), or (c)(5) is punishable by a fine not exceeding \$10,000, or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding \$5,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(d)(2) Any person who violates paragraph (c)(3) is punishable as follows:

(d)(2)(A) For the first violation that does not result in injury, and where the value of the computer services used does not exceed \$400, by a fine not exceeding \$5,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(d)(2)(B) For any violation that results in a victim expenditure in an amount greater than \$5,000 or in an injury, or if the value of the computer services used exceeds \$400, or for any second or subsequent violation, by a fine not exceeding \$10,000, or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not

exceeding \$5,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(d)(3) Any person who violates paragraph (c)(6), (c)(7), or (c)(8) is punishable as follows:

(d)(3)(A) For a first violation that does not result in injury, an infraction punishable by a fine not exceeding \$250.

(d)(3)(B) For any violation that results in a victim expenditure in an amount not greater than \$5,000, or for a second or subsequent violation, by a fine not exceeding \$5,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(d)(3)(C) For any violation that results in a victim expenditure in an amount greater than \$5,000, by a fine not exceeding \$10,000, or by imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment, or by a fine not exceeding \$5,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(d)(4) Any person who violates paragraph (c)(9) is punishable as follows:

(d)(4)(A) For a first violation that does not result in injury, an infraction punishable by a fine not exceeding \$250.

(d)(4)(B) For any violation that results in injury, or for a second or subsequent violation, by a fine not exceeding \$5,000, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(e)(1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data may bring a civil action against any person convicted under this section for compensatory damages, including any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to the provisions of §1714.1 of the Civil Code [*which makes the parent or legal guardian of a minor civilly liable for intentional torts committed by the minor*].

(e)(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees to a prevailing party.

(e)(3) A community college, state university, or academic institution accredited in this state is required to include computer-related crimes as a specific violation of college or university student conduct policies and regulations that may subject a student to disciplinary sanctions up to and including dismissal from the academic institution. This paragraph shall not apply to the University of California unless the Board of Regents adopts a resolution to that effect.

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

(g) Any computer, computer system, computer network, or any software or data, owned by the defendant, that is used during the commission of any public offense described in subdivision (c) or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of subdivision (c) shall be subject to forfeiture, as specified in §502.01 [*which governs forfeiture*].

(h)(1) Subdivision (c) does not apply to any person who accesses his or her employer's

computer system, computer network, computer program, or data when acting within the scope of his or her lawful employment.

(h)(2) Paragraph (c)(3) does not apply to any employee who accesses or uses his or her employer's computer system, computer network, computer program, or data when acting outside the scope of his or her lawful employment, so long as the employee's activities do not cause an injury, as defined in paragraph (b)(8), to the employer or another, or so long as the value of supplies and computer services, as defined in paragraph (b)(4), which are used do not exceed an accumulated total of \$100.

(i) No activity exempted from prosecution under paragraph (h)(2) which incidentally violates paragraph (c)(2), (c)(4), or (c)(7) shall be prosecuted under those paragraphs.

(j) For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

(k) In determining the terms and conditions applicable to a person convicted of a violation of this section the court shall consider the following:

(k)(1) The court shall consider prohibitions on access to and use of computers.

(k)(2) Except as otherwise required by law, the court shall consider alternate sentencing, including community service, if the defendant shows remorse and recognition of the wrongdoing, and an inclination not to repeat the offense.

Created by Chapter 1499, §3, Statutes of 1987. Amended by Chapter 1076, §1, Statutes of 1989; Chapter 1110, §1, Statutes of 1989; Chapter 1357, §1.3, Statutes of 1989; Chapter 863, §3, Statutes of 1998; Chapter 254, §3, Statutes of 1999; and Chapter 634, §1, and Chapter 635, §2, Statutes of 2000, effective January 1, 2001.