

## Update: Recent Computer Fraud and Abuse Act Cases

By necessity, for this update I am trying to change my format for blogging updates for recent cases involving the [Computer Fraud and Abuse Act](#) (“CFAA”). Instead of providing a relatively thorough analysis of each individual case, I must cover several in one update and just briefly touch on each of them. If you find that you like this format better, let me know or, if you don’t, let me know that too!

### Ok, on to the cases ...

***Yoder & Frey Auctioneers, Inc. v. Equipmentfacts, LLC, 2011 WL 2433504 (N.D. Ohio June 14, 2011).***

A copy of the opinion is available [HERE](#).

The *Yoder* case is a case in which the court denied the defendant’s motion to dismiss the Computer Fraud and Abuse Act claim and provides a nice break from the usual employer-employee in fact scenario we see in CFAA cases. More importantly, it involves an application of the rarely used “interruption of service” aspect of a “loss” under the Computer Fraud and Abuse Act.

Yoder, the plaintiff, is a heavy equipment auction company that, while performing in person auctions, uses a website that provides online services to its buyers and sellers associated with the auction. Equipmentfacts, the defendant, was under a contract with Yoder to run the online bidding services for Yoder until 2010 when its services were terminated. Following the termination of the services, Equipmentfacts obtained unauthorized access to Yoder’s website by two different methods: (1) using an administrative identification and password from its prior relationship; and (2) creating a fictitious login using the name of a Yoder customer who was registered for the auction. Equipmentfacts used its access to post negative comments about Yoder and to place bids in excess of \$1 million for equipment that it then failed to pay.

Yoder sought consequential damages due to lost commissions from the failed auction on items for which Equipmentfacts submitted winning bids that were not ultimately purchased. Equipmentfacts filed a motion to dismiss on the basis of Yoder’s allegation of “loss” under the CFAA—there was no challenge to the “access” issue. As mentioned above, this case raises a rare question involving the “interruption of service” language of the CFAA’s loss definition:

“any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or *other consequential damages incurred because of interruption of service.*” 18 U.S.C. § 1030(e)(11) (emphasis added).

The question is whether Equipmentfacts’ interference with the bid process invokes the “interruption of service” language. Equipmentfacts contends that language only applies to large scale sabotage such as crashing a website where a computer. Yoder contends ....

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