

Kate Gosselin Sues Jon Gosselin for Violating the Computer Fraud and Abuse Act—Did She Adequately Plead a “Loss”?

When I do presentations on the [Computer Fraud and Abuse Act](#), one of the issues I speak about is how we see CFAA issues arise in many unexpected cases such as those in the family law context. We now have another great example of this type of family law usage of the CFAA and a potential case study on pleading a “loss” under the CFAA.

On August 26, 2013, Kate Gosselin sued her former husband, Jon Gosselin, and others for, among other things, violating the Computer Fraud and Abuse Act, 18 U.S.C. 1030. Here is the [Complaint](#). As most readers already know, Kate and Jon are “celebrities” and they went through a rather nasty high profile divorce following their separation in 2009.

The genesis of the CFAA claim are the following allegations: Following their separation, Jon illegally hacked into Kate’s e-mail account, telephone, and bank accounts, as well as stole a hard drive from her computer that contain confidential information. Jon then gave that surreptitiously acquired information to a tabloid reporter named Robert Hoffman who used the information to publish a defamatory book about Kate called “Kate Gosselin: How She Fooled The World.” Hoffman, as well as numerous Doe parties are also Defendants.

The Unauthorized Access Allegations

Specifically, the Complaint alleges that following unauthorized accesses occurred after their separation: (1) Jon accessed Kate’s password-protected e-mail account without her authorization, (2) accessed her password-protected online banking accounts without her authorization, (3) accessed her password-protected cell phone without her authorization, and (4) stole a hard drive from her home (though it does not allege he actually accessed the hard drive, only took possession of it). The Complaint asserts a claim pursuant to section 1030(a)(2) which is the broadest, most easily pleaded (and proven) claim under the CFAA and these allegations will likely get this claim past the motion to dismiss stage.

But is There a Loss?

The major problem that I see, however, is their efforts to plead the required “loss”, without which the Complaint will be subject to mandatory dismissal. Specifically, the effort to plead the “loss” states:

“Defendants accessed Kate Gosselin’s computer and computer services without authority to do so and in doing so, caused in excess of \$5,000 worth of damage.”

As readers of this blog know, I have stated many times

that the “loss” issue is one of the top two most misunderstood issues dealing with the Computer Fraud and Abuse Act and one that confuses lawyers and judges alike. In fact, I discussed this at length in my recent presentation to the *Privacy, Data Security, and eCommerce Committee of the State Bar of Texas* — here are the [slides to the presentation](#), the relevant slides are 32 – 38.

Causing damage is typically not considered to be a “loss” unless there is an interruption of service allegation, which is not there. A loss is typically a “cost” incurred and this description does not get there. I anticipate that this issue could cause some problems for this claim. If you want to brush up on what I am talking about, here are some of my previous posts discussing the “loss” requirement:

[Plaintiff’s CFAA Claim Dismissed Because of Simple Pleading Error](#)

[District Court of Colorado Dismisses CFAA Claim for Failing to Adequately Plead Cause of Action and Loss](#)

[Is a \\$5k loss required for each defendant under Computer Fraud and Abuse Act?](#)

[comScore Lawsuit and that Pesky Loss Requirement of the Computer Fraud and Abuse Act](#)

[Ninth Circuit: Speculative “Loss” Insufficient for Computer Fraud and Abuse Act](#)

[Barter Services and Attorney Fees May Qualify As “Loss” Under Computer Fraud and Abuse Act](#)

[Apple iTracking Case: will Apple be WINNING on Computer Fraud and Abuse Act claim?](#)

[New “Employment” Computer Fraud and Abuse Act case ... but with a twist!](#)

[Taking of Confidential Info Alone Not “Loss” Under CFAA](#)

[Texas Lawyer: Computer Fraud and Abuse Act 101](#)

Should you or anyone you know need assistance in dealing with possible claims under the Computer Fraud and Abuse Act or just want to talk about the law in general, please feel free to give me a call or email me and I will be more than happy to discuss it with you.

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