

**18 U.S.C.**

United States Code, 2010 Edition

Title 18 - CRIMES AND CRIMINAL PROCEDURE

PART I - CRIMES

CHAPTER 121 - STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

**CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS**

**§2701. Unlawful access to stored communications**

(a) Offense.—Except as provided in subsection (c) of this section whoever—

(1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or

(2) intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

(b) Punishment.—The punishment for an offense under subsection (a) of this section is—

[Omitted. The punishment varies by intent and prior violation.]

(c) Exceptions.—Subsection (a) of this section does not apply with respect to conduct authorized—

(1) by the person or entity providing a wire or electronic communications service;

(2) by a user of that service with respect to a communication of or intended for that user; or

(3) in section 2703 [compelled stored communication disclosure to the government], 2704 [compelled backup in association with compelled stored communication disclosure to the government] or 2518 [compelled communication interception by the government] of this title.

**§2702. Voluntary disclosure of customer communications or records**

(a) Prohibitions.—Except as provided in subsection (b) or (c)—

(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service;

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing; and

(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity.

(b) Exceptions for disclosure of communications.—A provider described in subsection (a) may divulge the contents of a communication—

(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

(2) as otherwise authorized in . . . this title;

(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

(4) to a person employed or authorized or whose facilities are used to forward such communication to its destination;

(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

(6) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto . . . ;

(7) to a law enforcement agency—

(A) if the contents—

(i) were inadvertently obtained by the service provider; and

(ii) appear to pertain to the commission of a crime; or  
(8) to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency.

(c) Exceptions for Disclosure of Customer Records.—A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))—

- (1) as otherwise authorized [to the government];
- (2) with the lawful consent of the customer or subscriber;
- (3) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;
- (4) to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency;
- (5) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto . . . ; or
- (6) to any person other than a governmental entity.

(d) Reporting of Emergency Disclosures.—On an annual basis, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report containing—

- (1) the number of accounts from which the Department of Justice has received voluntary disclosures under subsection (b)(8); and
- (2) a summary of the basis for disclosure in those instances where—
  - (A) voluntary disclosures under subsection (b)(8) were made to the Department of Justice; and
  - (B) the investigation pertaining to those disclosures was closed without the filing of criminal charges.

## §2707. Civil action

(a) Cause of Action.—Except [when complying with valid government legal process], any provider of electronic communication service, subscriber, or other person aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate.

(b) Relief.—In a civil action under this section, appropriate relief includes—

- (1) such preliminary and other equitable or declaratory relief as may be appropriate;
- (2) damages under subsection (c); and
- (3) a reasonable attorney's fee and other litigation costs reasonably incurred.

(c) Damages.—The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of \$1,000. If the violation is willful or intentional, the court may assess punitive damages. In the case of a successful action to enforce liability under this section, the court may assess the costs of the action, together with reasonable attorney fees determined by the court.

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(e) Defense.—A good faith reliance on [legal process or an emergency investigative request, or] a good faith determination that section 2511(3) of this title permitted the conduct complained of . . . is a complete defense to any civil or criminal action brought under this chapter or any other law.

(f) Limitation.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

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**§2711. Definitions for chapter**

As used in this chapter—

(1) the terms defined in section 2510 of this title have, respectively, the definitions given such terms in that section;

(2) the term “remote computing service” means the provision to the public of computer storage or processing services by means of an electronic communications system;

\* \* \*

(4) the term “governmental entity” means a department or agency of the United States or any State or political subdivision thereof.