**15.22 Obtaining Information by Computer—Injurious to United**

**States or Advantageous to Foreign Nation (18 U.S.C. § 1030(a)(1))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with obtaining and transmitting injurious information by computer in violation of Section 1030(a)(1) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly [accessed without authorization] [exceeded authorized access to] a computer;

Second, by [accessing without authorization] [exceeding authorized access to] a computer, the defendant obtained [information that had been determined by the United States government to require protection against disclosure for reasons of national defense or foreign relations] [data regarding the design, manufacture, or use of atomic weapons];

Third, the defendant had reason to believe that the [information] [data] obtained could be used to the injury of the United States or to the benefit of a foreign nation; and

[Fourth, the defendant willfully [caused to be] [[communicated] [delivered] [transmitted]] the [information] [data] to any person not entitled to receive it.]

*or*

[Fourth, the defendant willfully [caused to be] retained and failed to deliver the information or data to an officer or employee of the United States entitled to receive it.]

**Comment**

18 U.S.C. § 1030(e) provides definitions of the terms “computer,” “exceeds authorized access,” and “person.” As to “knowingly,” *see* Instruction 4.8 (Knowingly), and as to “willfully,” *see* Comment in Instruction 4.6 (Willfully).

The Ninth Circuit has held that the phrase “exceeds [or exceeded] authorized access” is limited to violations of restrictions on *access* to information and not restrictions on the *use* of information that is permissibly accessed. *United States v. Nosal*, 676 F.3d 854, 864 (9th Cir. 2012); *see also United States v. Christensen*, 828 F.3d 763, 786-87 (9th Cir. 2015), *as amended on denial of reh’g* (2016).

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