

NOTE: new words *italicized*; deleted words ~~struck through~~; changes made by the Crime Commission at its November 17 meeting in *bold italics*; and recommended changes are **bold underlined**.

1 **§ 18.2-152.2. Definitions .**

2 For purposes of this article:

3 ~~"Computer" means an electronic, magnetic, optical, hydraulic or organic device or group of~~
4 ~~devices which, pursuant to a computer program, to human instruction, or to permanent~~
5 ~~instructions contained in the device or group of devices, can automatically perform computer~~
6 ~~operations with or on computer data and can communicate the results to another computer or to a~~
7 ~~person. The term "computer" includes any connected or directly related device, equipment, or~~
8 ~~facility which enables the computer to store, retrieve or communicate computer programs,~~
9 ~~computer data or the results of computer operations to or from a person, another computer or~~
10 ~~another device. *device that accepts information in digital or similar form and manipulates it for*~~
11 ~~*a result based on a sequence of instructions.*~~

12 *Such term does not include a device whose **predominant** purpose is not the storage and*
13 *manipulation of user-inputted computer information, such as automated typewriters, simple*
14 *handheld calculators, digital cameras, **fax machines** or pagers.*

15 **PROPOSED - Such term does not include simple calculators, automated typewriters,**
16 **facsimile machines or any other specialized computing devices that are preprogrammed to**
17 **perform a narrow range of functions with minimal end user or operator intervention, are**
18 **not independently programmable by the user, and are dedicated to a specific task.**

19 ~~"Computer data" means any representation of information, knowledge, facts, concepts, or~~
20 ~~instructions which is being prepared or has been prepared and is intended to be processed, is~~
21 ~~being processed, or has been processed in a computer or computer network. "Computer data"~~
22 ~~may be in any form, whether readable only by a computer or only by a human or by either,~~
23 ~~including, but not limited to, computer printouts, magnetic storage media, punched cards, or~~
24 ~~stored internally in the memory of the computer.~~

25 *"Computer information" means information in any form that is obtained from or through the use*
26 *of a computer or that is in a form capable of being processed by a computer.*

27 ~~"Computer network" means two or more computers connected by a network.~~

28 ~~"Computer operation" means arithmetic, logical, monitoring, storage or retrieval functions and~~
29 ~~any combination thereof, and includes, but is not limited to, communication with, storage of data~~
30 ~~to, or retrieval of data from any device or human hand manipulation of electronic or magnetic~~
31 ~~impulses. A "computer operation" for a particular computer may also be any function for which~~
32 ~~that computer was generally designed. *an operation that a computer is designed and built to*~~
33 ~~*perform.*~~

34 ~~"Computer program" means an ordered set of data representing coded instructions or statements~~
35 ~~that, when executed by a computer, causes the computer to perform one or more computer~~
36 ~~operations.~~

37 "Computer services" means ~~computer time or services,~~ *the use of a computer,* including *but not*
38 *limited to, computer time,* data processing services, Internet services, electronic mail services,
39 electronic message services, or information or data stored in connection therewith.

40 "Computer software" or "computer program" means a set of ~~computer programs, procedures~~
41 ~~and associated documentation concerned with computer data or with the operation of a computer,~~
42 ~~computer program, or computer network.~~ *statements or instructions to be used directly or*
43 *indirectly in a computer to bring about a certain result.*

44 "Electronic mail service provider" (EMSP) means any person who (i) is an intermediary in
45 sending or receiving electronic mail and (ii) provides to end-users of electronic mail services the
46 ability to send or receive electronic mail.

47 "Financial instrument" includes, but is not limited to, any check, draft, warrant, money order,
48 note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction
49 authorization mechanism, marketable security, *financial asset as that term is defined in § 8.8A-*
50 *102,* or any computerized representation thereof.

51 ~~"Network" means any combination of digital transmission facilities and packet switches, routers,~~
52 ~~and similar equipment interconnected to enable the exchange of computer data.~~

53 ~~"Owner" means~~ *The term "owner" shall include* an owner or lessee of a computer ~~or a computer~~
54 ~~network~~ or an owner, lessee, or licensee of computer *data information,* ~~computer programs,~~
55 *computer services,* or computer software.

56 ~~"Person"~~ *The term "person" shall include any individual, partnership, association, corporation or*
57 ~~joint venture.~~ *have the same meaning as provided in § 1-13.19.*

58 ~~"Property" shall include:~~

59 1. ~~Real property;~~

60 2. ~~Computers and computer networks;~~

61 3. ~~Financial instruments, computer data, computer programs, computer software and all other~~
62 ~~personal property regardless of whether they are:~~

63 a. ~~Tangible or intangible;~~

64 b. ~~In a format readable by humans or by a computer;~~

65 ~~e. In transit between computers or within a computer network or between any devices which~~
66 ~~comprise a computer; or~~

67 ~~d. Located on any paper or in any device on which it is stored by a computer or by a human; and~~

68 ~~4. Computer services. "Property" means anything of value, and includes any interest therein,~~
69 ~~including any benefit, privilege, claim or right with respect to anything of value, whether real or~~
70 ~~persona, tangible or intangible. "Property" includes, but is not limited to, computers, financial~~
71 ~~instruments, computer information, computer software, and computer services.~~

72 ~~A person "uses" a computer or computer network when he attempts to cause or causes:~~

73 ~~1. A computer or computer network to perform or to stop performing computer operations;~~

74 ~~2. The withholding or denial of the use of a computer, computer network, computer program,~~
75 ~~computer data or computer software to another user; or~~

76 ~~3. A person to put false information into a computer.~~

77 A person is "without authority" when he *knows or reasonably should know that he* has no right
78 or permission ~~of the owner to use a computer~~ or computer network or ~~he uses a computer~~ or
79 computer network acts in a manner exceeding such right or permission.

80 **§ 18.2-152.3. Computer fraud.**

81 Any person who ~~uses a computer~~ or computer network without authority and ~~with the intent~~
82 ~~to:~~

83 1. Obtains property or services by false pretenses;

84 2. Embezzles or commit larceny; or

85 3. Converts the property of another

86 *through the use of a computer*, is guilty of the crime of computer fraud.

87 If the value of the property or services obtained is \$200 or more, the crime of computer fraud
88 shall be punishable as a Class 5 felony. Where the value of the property or services obtained is
89 less than \$200, the crime of computer fraud shall be punishable as a Class 1 misdemeanor.

90 **§ 18.2-152.3:1. Transmission of unsolicited bulk electronic mail (spam); penalty.**

91 A. Any person who:

92 1. Uses a computer ~~or computer network~~ with the intent to falsify or forge electronic mail
93 transmission information or other routing information in any manner in connection with the

94 transmission of unsolicited bulk electronic mail through or into the computer network of an
95 electronic mail service provider or its subscribers; or

96 2. Knowingly sells, gives, or otherwise distributes or possesses with the intent to sell, give, or
97 distribute software that (i) is primarily designed or produced for the purpose of facilitating or
98 enabling the falsification of electronic mail transmission information or other routing
99 information; (ii) has only limited commercially significant purpose or use other than to facilitate
100 or enable the falsification of electronic mail transmission information or other routing
101 information; or (iii) is marketed by that person acting alone or with another for use in facilitating
102 or enabling the falsification of electronic mail transmission information or other routing
103 information is guilty of a Class 1 misdemeanor.

104 B. A person is guilty of a Class 6 felony if he commits a violation of subsection A and:

105 1. The volume of UBE transmitted exceeded 10,000 attempted recipients in any 24-hour period,
106 100,000 attempted recipients in any 30-day time period, or one million attempted recipients in
107 any one-year time period; or

108 2. The revenue generated from a specific UBE transmission exceeded \$1,000 or the total revenue
109 generated from all UBE transmitted to any EMSP exceeded \$50,000.

110 C. A person is guilty of a Class 6 felony if he knowingly hires, employs, uses, or permits any
111 minor to assist in the transmission of UBE in violation of subdivision B 1 or subdivision B 2.

112 **§ 18.2-152.4. Computer trespass; penalty.**

113 A. It shall be unlawful for any person, *with malicious intent*, to ~~use, directly or indirectly, a~~
114 ~~computer or computer network~~ without authority and ~~with the intent to maliciously~~:

115 1. Temporarily or permanently remove, halt, or otherwise disable any computer ~~data information,~~
116 ~~computer programs,~~ or computer software from a computer ~~or computer network~~;

117 2. Cause a computer to malfunction, regardless of how long the malfunction persists;

118 3. Alter, *damage, destroy, disable* or erase any computer ~~data information-computer programs,~~ or
119 computer software;

120 4. Effect the creation or alteration of a financial instrument or of an electronic transfer of funds;

121 5. Cause physical injury to the property of another; ~~or~~

122 6. Make or cause to be made an unauthorized copy, in any form, including, but not limited to,
123 any printed or electronic form of computer ~~data, computer programs, information~~ or computer
124 software residing in, communicated by, or produced by a computer ~~or computer network~~;

125 7. [Repealed].

126 8. *Install computer software on the computer of another, without the authorization of the owner;*

127 9. *Disable or disrupt the ability of a computer to share or transmit its computer information to*
128 *other computers or to any related computer equipment or devices, including, but not limited to,*
129 *printers, scanners, or fax machines*

130 ***through the direct or indirect use of a computer.***

131 B. *It shall be unlawful for any person to directly use a computer with the intent to maliciously*
132 *obtain any computer information without authority.*

133 C. Any person who violates this section shall be guilty of computer trespass, which offense
134 shall be punishable as a Class 1 misdemeanor. If there is damage to the property of another
135 valued at ~~\$2,500~~ \$1,000 or more caused by such person's ~~malicious~~ act in violation of this
136 section, the offense shall be punishable as a Class 6 felony.

137 D. Nothing in this section shall be construed to interfere with or prohibit terms or conditions in a
138 contract or license related to computers, computer ~~data information, computer networks,~~
139 computer operations, ~~computer programs,~~ computer services, or computer software or to create
140 any liability by reason of terms or conditions adopted by, or technical measures implemented by,
141 a Virginia-based electronic mail service provider to prevent the transmission of unsolicited
142 electronic mail in violation of this article. Nothing in this section shall be construed to prohibit
143 the monitoring of computer usage of, the otherwise lawful copying of data of, or the denial of
144 computer or Internet access to a minor by a parent or legal guardian of the minor.

145 **§ 18.2-152.5. Computer invasion of privacy.**

146 A. A person is guilty of the crime of computer invasion of privacy when he uses a computer ~~or~~
147 ~~computer network~~ and intentionally examines without authority any employment, salary, credit,
148 ~~or any other~~ financial or ~~personal~~ identifying information, *as defined in subdivisions (iii) through*
149 *(xiii) of subsection C of § 18.2-186.3*, relating to any other person. "Examination" under this
150 section requires the offender to review the information relating to any other person after the time
151 at which the offender knows or should know that he is without authority to view the information
152 displayed.

153 B. The crime of computer invasion of privacy shall be punishable as a Class 1 misdemeanor.

154 C. *Any person who violates this section after having been previously convicted of a violation of*
155 *this section or any substantially similar laws of any other state or of the United States shall be*
156 *guilty of a Class 6 felony.*

157 D. *Any person who violates this section and sells or distributes such information to another*
158 *shall be guilty of a Class 6 felony.*

159 E. *Any person who violates this section and uses such information in the commission of another*
160 *crime shall be guilty of a Class 6 felony.*

161 *F. This section shall not apply to any person collecting information that is reasonably needed to*
162 *(1) protect the security of a computer, computer service, or computer business, or to facilitate*
163 *diagnostics or repair in connection with such computer, computer service, or computer business,*
164 *or (2) determine whether the computer use is licensed or authorized to use specific computer*
165 *software or a specific computer service.*

166 **§ 18.2-152.5:1. Using a computer to gather identifying information.**

167 *A. It shall be unlawful for any person to use a computer ~~with the intent~~ to fraudulently obtain,*
168 *fraudulently access, or fraudulently record identifying information, as defined in subdivisions*
169 *(iii) through (xiii) of subsection C of § 18.2-186.3. Any person who violates this section shall be*
170 *guilty of a Class 6 felony.*

171
172 *B. Any person who violates this section and sells or distributes such information to another shall*
173 *be guilty of a Class 5 felony.*

174
175 *C. Any person who violates this section and uses such information in the commission of another*
176 *crime shall be guilty of a Class 5 felony.*

177
178 **§ 18.2-152.6. Theft of computer services.**

179 Any person who willfully ~~uses a computer or computer network, with intent to~~ obtains
180 computer services without authority, shall be guilty of the crime of theft of computer services,
181 which shall be punishable as a Class 1 misdemeanor. If the theft of computer services is valued
182 at \$2,500 or more, he is guilty of a Class 6 felony.

183 **§ 18.2-152.6:1. Use of a computer to circumvent computer security measures.**

184
185 *A. Any person who uses a computer ~~with the intent~~ to circumvent a security measure that*
186 *controls access to a computer, including but not limited to passwords, firewalls, or access codes,*
187 *and does so without the authorization of the owner of such computer, is guilty of a Class 1*
188 *misdemeanor.*

189
190 *B. Any person who violates this section after having been previously convicted of a violation of*
191 *this section or any substantially similar laws of any other state or of the United States shall be*
192 *guilty of a Class 6 felony.*

193
194 *C. Any person who violates this section in the commission of a felony shall be guilty of a Class 6*
195 *felony.*

196
197 **§ 18.2-152.7. Personal trespass by computer.**

198 *A. A person is guilty of the crime of personal trespass by computer when he uses a computer or*
199 *computer network without authority and ~~with the intent~~ to cause physical injury to an individual.*

200 B. If committed maliciously, the crime of personal trespass by computer shall be punishable as a
201 Class 3 felony. If such act is done unlawfully but not maliciously, the crime of personal trespass
202 by computer shall be punishable as a Class 6 felony.

203 **§ 18.2-152.7:1. Harassment by computer; penalty.**

204 If any person, with the intent to coerce, intimidate, or harass any person, shall use a computer ~~or~~
205 ~~computer network~~ to communicate obscene, vulgar, profane, lewd, lascivious, or indecent
206 language, or make any suggestion or proposal of an obscene nature, or threaten any illegal or
207 immoral act, he shall be guilty of a Class 1 misdemeanor.

208 **§ 18.2-152.8. Property subject to embezzlement or larceny.**

209 For purposes of §§ 18.2-95, 18.2-96, 18.2-108 and 18.2-111, personal property subject to
210 embezzlement shall include:

211 1. Computers ~~and computer networks~~;

212 2. Financial instruments, computer ~~data~~ *information*, computer programs, computer software and
213 all other personal property regardless of whether they are:

214 a. Tangible or intangible;

215 b. In a format readable by humans or by a computer;

216 c. In transit between computers or within a computer network or between any devices which
217 comprise a computer; or

218 d. Located on any paper or in any device on which it is stored by a computer or by a human; and

219 3. Computer services.

220 **§ 18.2-152.9. Limitation of prosecution.**

221 This section is being repealed; the language will be inserted into Title 19.2, in the existing §
222 19.2-250.

223 **§ 18.2-152.10. Venue for prosecution.**

224 This section is being repealed; the language will be inserted into Title 19.2 as a new statute, §
225 19.2-250.

226 **§ 18.2-152.14. Computer as instrument of forgery.**

227 The creation, alteration, or deletion of any computer ~~data~~ *information* contained in any computer
228 ~~or computer network~~, which if done on a tangible document or instrument would constitute

229 forgery under Article 1 (§ [18.2-168](#) et seq.) of Chapter 6 of this Title, will also be deemed to be
230 forgery. The absence of a tangible writing directly created or altered by the offender shall not be
231 a defense to any crime set forth in Article 1 (§ [18.2-168](#) et seq.) of Chapter 6 of this Title if a
232 creation, alteration, or deletion of computer ~~data~~ *information* was involved in lieu of a tangible
233 document or instrument.

234 **§ 18.2-152.16. Additional penalties.**

235 *In addition to any other penalties specified by statute, any person convicted of a felony under*
236 *this Act shall be punished by a mandatory minimum fine of \$1,000.*