

Computer Crimes Seminar (Law 493)
FALL 2019 Syllabus

Professors

Steve Hutchens
shutche@gmu.edu

Kellen Dwyer
kdwyer8@gmu.edu

Office hours

Immediately following class or by appointment

Required Text

Orin Kerr, *Computer Crime Law* (4th Ed 2018) (hereinafter “Text”)

Grading

Your grade will be based on a paper addressing an approved topic related to the class (75% of the grade), your presentation to the class regarding your paper (15% of the grade), and class participation (10%).

Part I: Charging Cybercrime

August 26 - Overview of Cyber Crime and Security

Presentation on principles of information security

Text 30-77

September 2 – Labor Day

No class

September 9 -- Computer Fraud and Abuse Act

Text 77-141

Bradly Saacks, *Hedge funds are watching a key lawsuit involving LinkedIn to see if they can spend billions on web-scraped data*, Business Insider (March 14, 2019),
<https://www.businessinsider.com/hedge-funds-watching-linkedin-lawsuit-on-web-scraped-data-2019-3>

U.S. judge says LinkedIn cannot block startup from public profile data, Reuters (Aug. 14, 2017)
<https://www.reuters.com/article/us-microsoft-linkedin-ruling/u-s-judge-says-linkedin-cannot-block-startup-from-public-profile-data-idUSKCN1AU2BV>

September 16 – Protecting Computer Code and PII

Text 145-182 Transporting stolen property, economic espionage, identity theft

Orin Kerr, *Are We Overprotecting Code? Thoughts on First-Generation Internet Law* 57 Washington and Lee Law Review 1287 (2000)

Junger v. Daley, 209 F.3d 481 (6th Cir. 2000) and *Bernstein v. U.S. Dep't of Justice*, 176 F.3d 1132 (9th Cir. 1999) (on attempt by Clinton administration to prohibit the publication of source code used for encryption)

Nicole Perlroth and Scott Shane *In Baltimore and Beyond, a Stolen N.S.A. Tool Wreaks Havoc*, N.Y. Times (May 25, 2019), <https://www.nytimes.com/2019/05/25/us/nsa-hacking-tool-baltimore.html>

September 23 – Copyright

Text 182-197 (introduction to copyright, fair use, and willfulness)

Text 210-214 (Warez Groups)

Universal City Studios, Inc. v. Corley, 273 F.3d 429 (2d Cir. 2001) (on constitutionality of law prohibiting publication of code that can circumvent anti-copyright infringement technology)

September 30: Conspiracy and Aiding and Abetting Online and Prosecuting Foreign-Based Cybercrime

U.S. v. Ulbricht, 31 F.Supp.3d 540 (S.D.N.Y. 2014) (Silk Road case).

Janus Kopfstein, *How the eBay of Illegal Drugs Came Undone* (October 3, 2013) <https://www.newyorker.com/tech/annals-of-technology/how-the-ebay-of-illegal-drugs-came-undone>

Kevin Paulson, *FBI Arrests Hacker Who Hacked No One*, *Daily Beast* (Mar. 31, 2017), <https://www.thedailybeast.com/fbi-arrests-hacker-who-hacked-no-one>

Text 774-84 (extraterritorial application of the Computer Fraud and Abuse Act)

October 7: Threats and Harassment

Text 214-248

Andy Greenberg, *The simple way Apple and Google let domestic abusers stalk victims*, *Wired* (July 2, 2019), <https://www.wired.com/story/common-apps-domestic-abusers-stalk-victims/>

Part II: Investigating Cybercrime

Tuesday, October 15 – Statutory Regime and Constitutional Triggers

***Note the Tuesday class

621-626 overview of statutory regime

675-703 Stored Communications Act/Electronic Communications Privacy Act (skim)

401-431: defining 4th Amendment “search” in online context

434-439: 4th Amendment protection of email?

October 21 – Third Party Doctrine/*Carpenter*

United States v. Carpenter (2018)

https://www.supremecourt.gov/opinions/17pdf/16-402_h315.pdf

October 28 – *Riley* and when “computers are special”

454-467 *Riley v. California*

477-518 Consent and border searches

Orin Kerr, *An Equilibrium Adjustment Theory of the 4th Amendment*, Harv. L. Rev. (2011),

https://harvardlawreview.org/wp-content/uploads/pdfs/vol125_kerr.pdf

Nov. 4 – Obtaining Electronic Evidence from Abroad, By Private Parties, or Through Network Investigative Tools

Text 551-53 “Network Investigative Tools”

Briefing on Motion to Suppress and Order, *U.S. v. Bondars*, 16-cr-228 (E.D.V.A. 2018) (Dkt. numbers 78, 88, and 116) (addressing warrantless searches of computers seized abroad)

Text 792-807 Fourth Amendment abroad

Text 807-34 Cooperation via treaty

Text 390-401 Private Search Doctrine

Nov. 11 – Encryption and Going Dark

Text 596-613 Compelling defendants to unlock smart phones

Text 613-19 Compelling private companies to assist in breaking encryption

Ellen Nakashima, *Apple vows to resist FBI demand to crack iPhone linked to San Bernardino attacks*. The Washington Post (Feb. 18, 2016),

https://www.washingtonpost.com/world/national-security/us-wants-apple-to-help-unlock-iphone-used-by-san-bernardino-shooter/2016/02/16/69b903ee-d4d9-11e5-9823-02b905009f99_story.html?noredirect=on&utm_term=.091f4bb03428

<https://www.justsecurity.org/wp-content/uploads/2016/03/FBI-Apple-CDCA-Apple-Reply.pdf>
(Apple brief in San Bernardino case)
<https://www.justice.gov/usao-cdca/file/832166/download> (government brief in San Bernardino case))

Deputy Attorney General Rod J. Rosenstein, *Remarks on Encryption at the United States Naval Academy* (Oct. 10, 2017), <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-j-rosenstein-delivers-remarks-encryption-united-states-naval>

Berkman Center for Internet & Society, *Don't Panic: Making Progress on the "Going Dark" Debate* (Feb. 1, 2016), https://cyber.harvard.edu/pubrelease/dont-panic/Dont_Panic_Making_Progress_on_Going_Dark_Debate.pdf.

Nov. 18 – Cyber Warfare

David Sanger, *Obama Order Sped Up Wave of Cyberattacks Against Iran*, N.Y. Times (June 1, 2012), https://www.nytimes.com/2012/06/01/world/middleeast/obama-ordered-wave-of-cyberattacks-against-iran.html?pagewanted=4&_r=1&hp

David Sanger and Nicole Perlroth, *U.S. Escalates Online Attacks on Russia's Power Grid*, N.Y. Times (June 15, 2019), <https://www.nytimes.com/2019/06/15/us/politics/trump-cyber-russia-grid.html>

Robert Chesney, *U.S. Cyber Command and the Russian Grid: Proportional Countermeasures, Statutory Authorities and Presidential Notification*, Lawfare (June 17, 2019), <https://www.lawfareblog.com/us-cyber-command-and-russian-grid-proportional-countermeasures-statutory-authorities-and>

U.S. Carried Out Cyber Attacks on Iran, N.Y. Times (June 22, 2019), <https://www.nytimes.com/2019/06/22/us/politics/us-iran-cyber-attacks.html>

Robert Chesney, *The Legal Context for CYBERCOM's Reported Operations Against Iran*, LawFare (June 24, 2019), <https://www.lawfareblog.com/legal-context-cybercoms-reported-operations-against-iran>

Ashley Deeks, *Does the U.S. Currently Have a Right of Self-Defense Against Iran?*, LawFare (June 19, 2019), <https://www.lawfareblog.com/does-us-currently-have-right-self-defense-against-iran>

Robert Chesney, *Crossing a Cyber Rubicon? Overreactions to the IDF's Strike on the Hamas Cyber Facility*, LawFare May 6, 2019, <https://www.lawfareblog.com/crossing-cyber-rubicon-overreactions-idfs-strike-hamas-cyber-facility>

Nov. 25

Review/Catchup

Paper Workshop