

March 2012

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Georgia State University Law Review

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Recommended Citation

Georgia State University Law Review, *CRIMES AND OFFENSES Forgery and Fraudulent Practices: Prohibit Misleading Identification of Data Transmitted Over Networks*, 13 GA. ST. U. L. REV. (2012).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol13/iss1/32>

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CRIMES AND OFFENSES

Forgery and Fraudulent Practices: Prohibit Misleading Identification of Data Transmitted Over Networks

CODE SECTION: O.C.G.A. § 16-9-93.1 (new)
BILL NUMBER: HB 1630
ACT NUMBER: 1029
GEORGIA LAWS: 1996 Ga. Laws 1505
SUMMARY: The Act prohibits knowingly transmitting certain misleading data on computer or telephone networks. The Act prevents the use of any false name, trademark, seal, or symbol for the purpose of identification if used to mislead any other person. The prohibited data is either data that falsely identifies or data that falsely states or implies permission or authorization when the owner of such data has not given permission. The Act exempts any telecommunications company or Internet access provider from liability if the prohibited information is provided by one of its customers. Another exclusion is made for any member of the Georgia General Assembly who uses the Georgia seal or flag on his or her home page on the Internet.

EFFECTIVE DATE: July 1, 1996

History

With the increasingly widespread use of personal computers, home modems, and centralized computer systems, information and data are transmitted across the country through telephone and computer networks more and more often.¹ However, computer security and control systems have not been able to keep up with technological development.² This security problem, coupled with a lack of supervision, has resulted in the rise of computer abuse through theft of trade secrets and criminal espionage.³ In response, many states, including Georgia, have enacted computer crime statutes.⁴ In 1981, the

1. Fredric W. Tokars & John C. Yates, *Legal Remedies for Computer Abuse*, 21 GA. ST. B.J. 100 (1985).

2. *Id.*

3. *Id.*

4. John C. Yates & Michael W. Mattox, *Annual Survey of Georgia Law*, 42

Georgia General Assembly passed the "Georgia Computer Systems Protection Act,"⁵ which prohibited a wide range of computer abuse.⁶ Representative Don Parsons introduced HB 1630 to expand the reach of the Computer Systems Protection Act because there was no legislation relating to misrepresentation on the Internet that would prevent people from falsely representing themselves on an Internet home page as another person or organization.⁷ Further, Representative Parsons wanted to identify and prevent the transmission of certain types of information, such as trade names and logos, that would provide a source for misrepresentation and fraud for a user who intended to mislead a visitor to his or her home page, or a reader of his or her e-mail message.⁸

HB 1630

The Act amends the Computer Systems Protection Act by expanding the prohibition on computer crime with new Code section 16-9-93.1.⁹ The Act prohibits a person or representative of an organization from knowingly transmitting false and misleading information to any electronic information storage bank or the Internet.¹⁰ The bill was introduced by Representatives Parsons, John Scoggins, and Lynda Coker, then amended, using language from the House Committee on Industry's substitute to HB 1630.¹¹ This substitute clarified the prohibited transmissions, including the use of trade information or any false identification that would purposefully suggest that the person transmitting the information was permitted to use the trade information.¹² The substitute also exempted telecommunications companies from the statute for simply transmitting misleading

MERCER L. REV. 295, 336 (1990).

5. 1981 Ga. Laws 947 (formerly found at O.C.G.A. §§ 16-9-90 to -95 (1988 & Supp. 1990)). The Act was amended in 1991. See 1991 Ga. Laws 1045 (codified at O.C.G.A. §§ 16-9-90 to -94 (1996)).

6. Yates & Mattox, *supra* note 4.

7. Telephone Interview with Rep. Don Parsons, House District No. 40 (May 30, 1996) [hereinafter Parsons Interview]; see also Letter from Rep. Don Parsons to Jeff Kuester (Apr. 18, 1996) [hereinafter Parsons Letter] (available in Georgia State University College of Law Library). Kuester is an Atlanta intellectual property attorney who has extensively criticized HB 1630. See WWW.KUESTERLAW.COM at Georgia Law Resources.

8. Parsons Letter, *supra* note 7.

9. Compare O.C.G.A. § 16-9-93.1 (1996) with 1991 Ga. Laws 1045, § 1, at 1048-50 (codified at O.C.G.A. § 16-9-93 (1996)). Previously, there was no legislation relating to misrepresentation on the Internet. Parsons Interview, *supra* note 7.

10. O.C.G.A. § 16-9-93.1(a) (1996); Parsons Interview, *supra* note 7.

11. Compare HB 1630, as introduced, 1996 Ga. Gen. Assem. with HB 1630 (HCS), 1996 Ga. Gen. Assem.

12. O.C.G.A. § 16-9-93.1(a) (1996); HB 1630 (HCS), 1996 Ga. Gen. Assem.

information for one of its customers.¹³ According to Representative Parsons, it was understood that the writers of the law did not intend to punish such transmitting companies; however, lobbyists asked for this clarification to be included.¹⁴ Finally, the Act added one other substantive section that exempts members of the Georgia General Assembly from the statute for the use of the state flag or seal on the member's home Internet page.¹⁵ Although the Senate suggested amendments to HB 1630, the amendments were withdrawn,¹⁶ and the bill was signed by the Governor in the form passed by the House of Representatives.¹⁷

The Act has garnered much opposition since its enactment. One of the most vocal opponents of the Act, and apparently one of the few legislators who voiced opposition before the bill's passage, is Representative Mitchell Kaye of the 37th District.¹⁸ Representative Kaye and others are concerned that the Act is an unconstitutional restraint on freedom of speech.¹⁹ Representative Kaye is one of fourteen plaintiffs who, on September 24, 1996, filed a suit in the U.S. District Court for the Northern District of Georgia, which challenges the constitutionality of this law.²⁰ The plaintiffs are concerned that the law is vague, overly broad, and prohibits on-line users from using pseudonyms or communicating anonymously over the Internet.²¹ Additionally, they believe the law restricts the use of "links" on the

13. O.C.G.A. § 16-9-93.1(a) (1996); HB 1630 (HCS), 1996 Ga. Gen. Assem.

14. Parsons Interview, *supra* note 7. Representative Parsons explained that this amendment was primarily requested for Internet access providers, such as Mindspring. *Id.*

15. 1996 Ga. Laws 1505, § 2.

16. "Internet Police" Bill Passes, WWW.KUESTERLAW.COM at Georgia Law Resources (1996). Opposers of the Act accuse Representative Parsons of pressuring this withdrawal of amendments, and using his position as a legislator to pass this law which will benefit his employer, BellSouth. *Id.*

17. O.C.G.A. § 16-9-93.1 (1996).

18. Telephone Interview with Rep. Mitchell Kaye, House District No. 37 (June 3, 1996) [hereinafter Kaye Interview]. Electronic Frontiers Georgia, a Georgia-based cyber-liberties organization, as well as a representative from an internet service provider, also lobbied against the bill before its passage. Telephone Interview with Rep. Mitchell Kaye, House District No. 37 (Nov. 1, 1996). According to Kaye, the majority of legislators did not understand the extent of the bill before it was passed. *Id.*

19. *Id.* According to Kaye, the U.S. Supreme Court's decision in *McIntyre v. Ohio Elections Commission*, 115 S. Ct. 1511 (1995), would make this Act unconstitutional because *McIntyre* upheld the right to anonymous speech. Kaye Interview, *supra* note 18. For an extensive showing of opposition to the Act, see WWW.KUESTERLAW.COM at Georgia Resources.

20. Letter from Rep. Mitchell Kaye to *Georgia State University Law Review* (Oct. 24, 1996) [hereinafter Kaye Letter] (available in Georgia State University College of Law Library).

21. *Id.*

World Wide Web, a function that allows Internet users to connect automatically to other sites.²² Representative Kaye also believes state regulation of the Internet violates the Commerce Clause of the U.S. Constitution.²³

In response to opposition to the Act, Representative Parsons explains that he was not confronted by any of the adverse arguments before the bill was passed.²⁴ He emphasizes that this Act was passed to protect innocent people, and is “pro-business, pro-consumer legislation approved overwhelmingly by both houses of the General Assembly and signed by the Governor.”²⁵

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22. *Id.* The complaint alleges that the law may prohibit web “links,” because it prohibits the “use” of trade names, logos, or other symbols without regard to the nature of the use, and because it does not contain the definition of what “use” constitutes on a computer network. *Id.*

23. *Id.*

24. Parsons Interview, *supra* note 7.

25. Parsons Letter, *supra* note 7; Parsons Interview, *supra* note 7.