

It's All About Authorization Under The CFAA

By [Ben Sandlin](#) & [John R. Mitchell](#), Thompson Hine

On June 3, 2021, the Supreme Court issued its opinion in *Van Buren v. United States*, Case No. 19-783. Van Buren is a former police sergeant from Georgia. Relevant to the case, Van Buren accepted money to use his patrol car computer to access a database and retrieve information about a license plate. He was indicted and convicted for violating the Computer Fraud and Abuse Act of 1986, or the "CFAA." His appeal eventually reached the United States Supreme Court who reversed his conviction and held that the government read the CFAA too expansively to convict Van Buren. Resultingly, the Court restricted the CFAA's scope of liability which could make computer crimes more difficult to prosecute or pursue civilly unless database owners take steps to preserve required evidence.

The Facts

Van Buren is an ex-sergeant in a Georgia police department. The FBI began investigating Van Buren after receiving a recorded conversation where Van Buren "shook down" an undercover informant for cash. The FBI initiated an undercover operation to, as the Court put it, "see how far Van Buren would go for money."

The FBI directed the informant, while wired, to ask Van Buren to

search a law enforcement database for a license plate that the informant wanted information about in exchange for \$5,000. The story was the informant met the woman who owned the plate at a strip club, and he needed to know that she was not an undercover officer.

Van Buren complied by using his patrol car computer. Van Buren's department policy did not permit any such searches for anything but a legitimate law enforcement purpose. The Government's theory was the breach of department policy exceeded Van Buren's authorization under the CFAA and Van Buren was charged and convicted of violating the CFAA.

On appeal, the Eleventh Circuit affirmed, criminalizing Van Buren's access for an "inappropriate reason." The Supreme Court granted certiorari to resolve a circuit split concerning the scope of liability under the CFAA's "exceeds authorized access" clause.

The History of the CFAA

The CFAA was borne out of necessity. As Justice Barret recited in the Court's opinion, trespass and similar actions
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<http://lawlibrary.hamilton-co.org>

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Tech Tip: Accessing and using ebooks as a subscriber by Julie Koehne, Systems Librarian

We have a nice collection of ebooks available for our subscribers to use from the comfort of your own device.

To access, first log in to our website, which will redirect you to the Law Library remote access page.


Scroll down to the OverDrive – Lexis Digital Library section, then click on “click here to go to database.”

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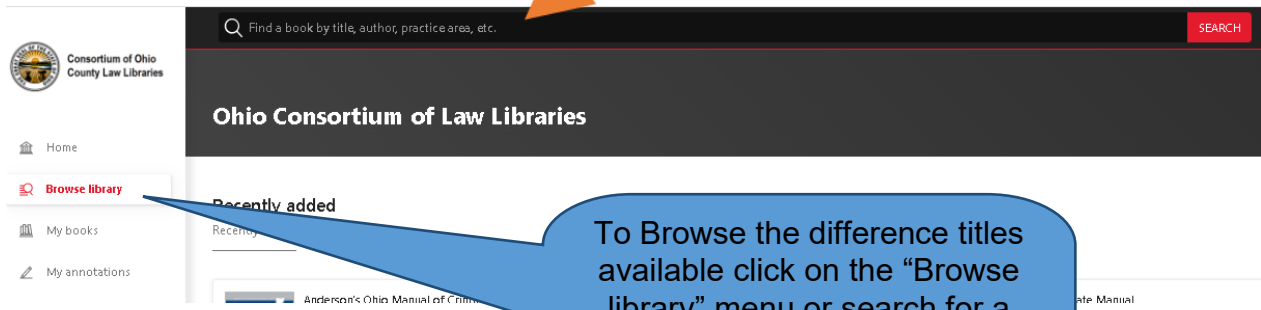


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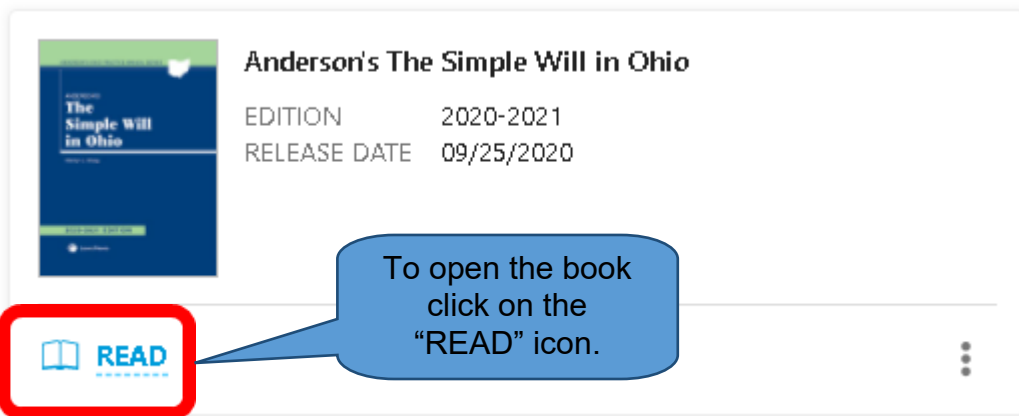
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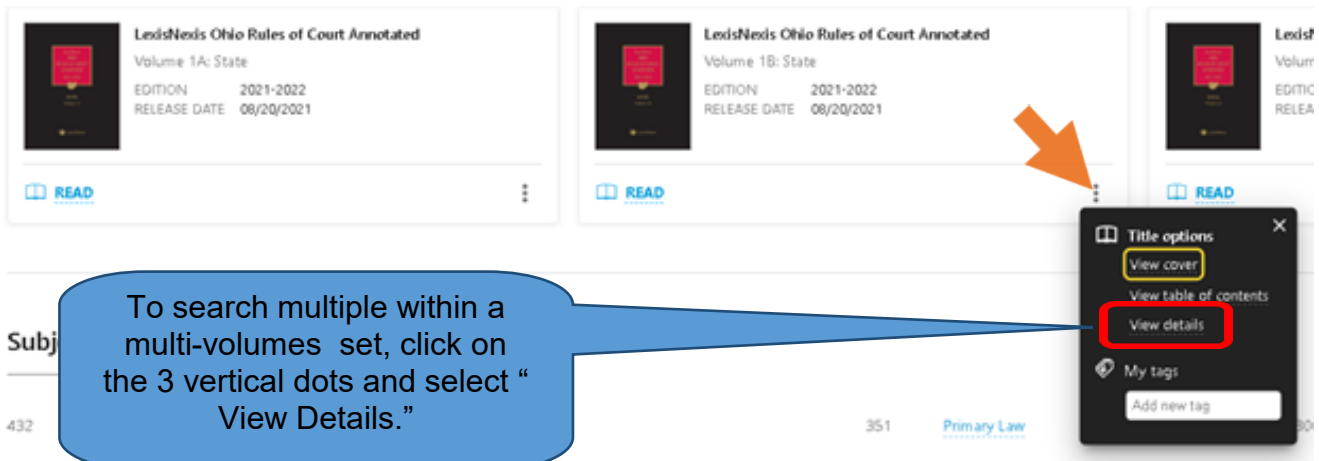
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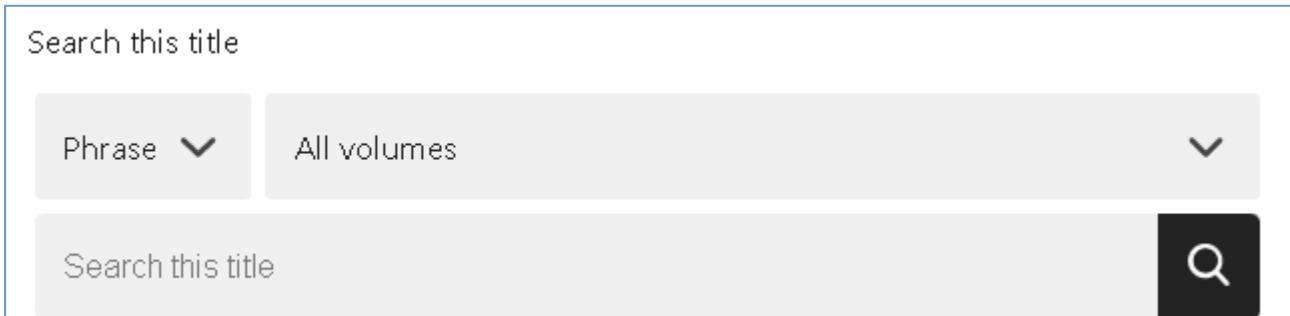
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failed to capture internet crimes and hacking during the 1980's technology boom.

The CFAA creates criminal liability for "intentionally access[ing] a computer without authorization or exceed[ing] authorized access" and obtaining information as a result. Over time, amendments expanded the scope of information subject to protection from initially only financial information to anything "used in or affecting interstate or foreign commerce or communication." Therefore, in the Court's words, the CFAA protects "all information from all computers that connect to the internet."

The CFAA created civil and criminal responsibility for violators. On the civil side, persons suffering "damage" or "loss" from a CFAA violation may sue for money damages and equitable relief. Prosecutions may result in punishments ranging from misdemeanor sentences and fines to a potential of up to ten years in prison for more egregious violations of the statute.

The Supreme Court's Analysis and Holding

The Court's analysis began by analyzing the text of the statute. The CFAA defines "exceeds authorized access" as "to access a computer with authorization and to use such access to obtain . . . information in the computer that the accesser is not entitled so to obtain." There was no dispute Van Buren accessed the information; rather the question before the Court was whether he was "entitled so to obtain" that license plate information.

The Court engaged in a lengthy determination of what the word "so" means in "entitled *so* to obtain." Van Buren argued it meant "the same manner as has been stated" or "the way or manner described" previously in the statute. Thus, in Van Buren's construction, "so" means "whether one has the right, in 'the same manner as has been stated [in the statute], to obtain the" license plate information. In practice, Van Buren read the statute to mean that the CFAA criminalizes accessing information one is not allowed to obtain on a computer that one is authorized to access. The Government argued "so" means more and that the

CFAA should criminalize accessing information that is not permitted to be obtained in the particular method or manner in which it was obtained, *i.e.*, as a product of a bribe. The Court agreed with Van Buren's interpretation and read "is not entitled so to obtain" to "refer to information that a person is not entitled to obtain by using a computer that he is authorized to access."

To drive this point home, the Court rejected all of the Government's counterarguments. Importantly, the Court held that the Government's untenable reading would result in prosecutions where an employee accesses a company computer which imposes a "business use only" restriction. Under the Government's reading, an employee who uses a company computer to read the news or send a personal email could be subject to criminal liability. The Court's opinion limited the statute's reach and, now, "an individual 'exceeds authorized access' when he accesses a computer with authorization but then obtains information located in particular areas of the computer – such as files, folders, or databases – that are off limits to him." Because Van Buren was authorized to use his patrol car computer and obtain license plate information, he could not be convicted for violating the CFAA.

This article was reprinted with permission from the Thompson Hine [blog: Does Crime Pay? Tales from the White Collar Criminal Defense Trenches](#)



Holiday Open House

New for 2021 – we're bringing back our Holiday Open House, but in a slightly modified format. Stay tuned for details and plan to stop by during the week of December 13-17 for some holiday cheer!

Subscriber Renewals for 2022

We will mail subscriber renewal invoices in late November. Prices for 2022 remain the same. We will be in touch with firms before sending invoices to verify any attorneys who have left or joined the firm this year. We're also able to accept credit cards for subscriber payments and renewals for your convenience. There is no fee for attorneys in their first year of practice after passing the bar exam, so please share that good news with the new attorneys in your circles of influence. The library board and staff believe that the value of law library services and resources far exceeds the annual fee. We hope that accurately reflects your own experience.

Stop in, call or email us for reference assistance 5 days a week!

While the Law Library is happy to serve you on-site 5 days a week, we know that sometimes you may need assistance from your home or office. As a benefit of your subscription, please don't hesitate to email us your reference questions at reference@cms.hamilton-co.org or call us at 513-946-5300.

We're more than happy to assist with research, including sending cases, statutes, forms and other materials, as well as to help you sign up for classes or schedule meeting rooms. Please just let us know how we can help!

Book Club

The Hamilton County Law Library Book Club is meeting via Zoom, at 12:00 on Friday, December 17, 2021.

This month's selection is the 2021 novel *Everyone Knows Your Mother is a Witch*, by Rivkah Galchen. It's a fictionalized account of an actual witch trial in 1619 Germany, during a plague.

We are very excited to be able to bring you this opportunity.

And, we look forward to seeing you on the 17th!

2022 Library Board Meetings

The Hamilton County Law Library Resources Board has established its regular quarterly meeting schedule for 2022. The Board will meet at 12pm on January 12, April 13, July 13 and October 12 in the Law Library Boardroom. Meetings are open to the public. Minutes of previous meetings are on the [Governance webpage](#). Any changes to the schedule are announced on the digital display, on the library's webpage, and in the newsletter as well if there is sufficient notice.



Topical Updates

We are excited to announce the new design of the Topical Updates for 2021. If you have not signed up before and would like to start receiving substantive bi-weekly updates in one or more practice areas, please visit the topical updates page on our website to sign up. You can select from the following areas of law:

- Criminal
- Employment
- Estates and Trusts
- Family Law
- Intellectual Property
- Pension Benefits
- Real Estate
- Tax
- The Supreme Court & Con Law
- Torts

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to six weeks at a time

Access to extensive legal information databases from the Law Library, including Westlaw, Wolters Kluwer Cheetah™, Overdrive e-books, HeinOnline, and Loislaw treatises

Wireless network throughout the Law Library

Polycom videoconferencing

Eight meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

CLE seminars throughout the year, on legal research and substantive topics

Subscribers' lounge, magazines, daily newspapers, and coffee

Bi-weekly news alerts by practice area

Discounted rates for photocopying

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/LOISLaw treatises, HeinOnline (for under 50 attorney firms), EBSCOhost, and Wolters Kluwer Cheetah™

Upcoming CLEs—Live Interactive Webinars

Monday, November 29, 2021, 12-1 PM

We Don't Know We Don't Know: Future Pandemics and Dynamic Decision Taking

Presenter: Attorney Bradley Hoyt

1.0 General credit in OH and KY

Wednesday, December 22, 2021, 12-1 PM

Mindfulness for Professionalism and Civility

Presenter: Attorney Gary Powell

1.0 Professional Conduct credit applied in OH, 1.0 general credit granted in KY

CLEs on Demand

The Hamilton County Law Library is proud to announce that the following self study CLEs are available in our on-demand library:

Elder Abuse Awareness (1.0 general hour in OH)

Medicaid Planning (1.0 general hour in OH)

Complex Appeals in Ohio (1.0 general hour in OH)

Fastcase 7 (1.0 general hour in OH)

Mediation (1.0 general hour in OH)

2020 Employment Cases in the US Supreme Court (1.0 general hour in OH)

Trademark & Copyright Law in 60 Minutes (1.0 general hour in OH)

CHANGE Court (1.0 general hour in OH)

Legal Issues & COVID-19 (1.5 general hours in OH)

What Does Stress Have to Do With it? (2.5 hours professional conduct in OH)

The Law of Boxing (1.0 hour in KY, and 1 hour in Ohio applied)

Criminal Law Resources

Law Library subscribers have access to a variety of Criminal Law Resources, including those listed below. If you have questions about these resources, contact the reference staff at reference@cms.hamilton-co.org or 513.946.5300.

Anderson's Ohio criminal practice and procedure

KFO 561 .A951

The art of prosecution: trial advocacy fundamentals from case preparation through summation

KF9656 .B84 2004

Baldwin Ohio criminal law

KFO561 .A3 B 1969

Baldwin's criminal law, practice and forms: a complete Ohio criminal law manual

KFO561 .A19 1954

Baldwin's Kentucky lawyer's handbook, with forms

KFK1730 .B34

Constitutional law for criminal justice professionals

KF4550 .K58

Constitutional rights of the accused

KF9619 .C64

The criminal law

KF9219 .H38

Criminal law handbook

KFO561 .A53 M54 1991

Forensic evidence: science and the criminal law

KF8961 .K54 2006

Indiana criminal and motor vehicle laws

KFI3561 .A29 I53 2003-

Jones on evidence, civil and criminal

KF8935 .J62

Katz & Giannelli Ohio criminal laws and rules

KFO561 .K3

Online Resources

EBSCO

Criminal Law Handbook

HeinOnline

Criminal Justice Journals Database

Overdrive

Anderson's Ohio Criminal Practice and Procedure

Kentucky Instructions to Juries—Criminal Ohio Criminal Law Handbook

Understanding Criminal Law

Understanding Criminal Procedure

Westlaw

Criminal Law—Baldwin's Ohio Practice

Criminal Practice and Procedure—Kentucky Practice Series

Criminal Procedure—Pretrial—Indiana Practice Series

Ohio Arrest, Search and Seizure

Ohio Driving Under the influence law

Ohio Official Jury Instructions: Criminal

Ohio State Journal of Criminal Law

Substantive Criminal Law—Kentucky Practice

Upcoming Events:

Tuesday, November 2, 2021: Library Closes at 12:30 PM for Election Day

Thursday, November 11, 2021: Library Closed for Veterans Day

Thursday, November 25, 2021: Library Closed for Thanksgiving

Friday, November 26, 2021: Library Closed for Thanksgiving

Monday, November 29, 2021, 12-1: CLE: We Don't Know We Don't Know: Future Pandemics and Dynamic Decision Taking



November 2021 Law Library Newsletter

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- Board Meetings
- Criminal Law Resources

INSIDE THIS MONTH

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