



TERMS OF SERVICE: A LITIGATOR'S PERSPECTIVE

Jason S. Boulette
Boulette Golden & Marin L.L.P

1



([PROMPT]:1.5), (INSANELY
DETAILED:1.5), (HIGHEST QUALITY,
CONCEPT ART), (HIGH SHARPNESS),
(DIGITAL PAINTING:1.1), MASTERPIECE,
(HIGHLY DETAILED PHOTO:1.1), 8K,
PHOTOREALISTIC

V1-5-PRUNED-EMAONLY.CKPT
SAMPLING METHOD: EULER A
SAMPLING STEPS: 20
SIZE: 784W X 512H
CFG SCALE: 7
SEED: -1

2



3

CFAA

“Whoever ... intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains ... information from any protected computer ... shall be punished”

18 U.S.C. § 1030(a)(2)(C)

A close-up profile of a dark, metallic robot head. The robot has a glowing red eye and is sitting at a computer workstation. The background is a blurred server room. A small number "4" is visible in the bottom right corner of the image.

4



CFAA

“[T]he term ‘exceeds authorized access’ means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter.”

18 U.S.C. § 1030(a)(2)(C)

5

5

Van Buren (2021)

“*Van Buren’s* account of subsection (a)(2) makes sense of the statutory structure because it treats the ‘without authorization’ and ‘exceeds authorized access’ clauses consistently. ... [L]iability under both clauses stems from a gates-up-or-down inquiry—one either can or cannot access a computer system, and one either can or cannot access certain areas within the system.”

Van Buren v. US, 141 S.Ct. 1648 (2021)



6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Terms of Service: A Litigators Perspective

Also available as part of the eCourse

[2023 Technology Law eConference](#)

First appeared as part of the conference materials for the
36th Annual Technology Law Conference session

"Terms of Service: A Litigator's Perspective"