

THE SUPERSEDING ASSANGE INDICTMENT TIDIES UP CFAA CHARGES

Yesterday, the government released a second superseding indictment against Julian Assange. The EDVA press release explains that no new counts were added, but the language describing the computer hacking conspiracy was expanded.

The new indictment does not add additional counts to the prior 18-count superseding indictment returned against Assange in May 2019. It does, however, broaden the scope of the conspiracy surrounding alleged computer intrusions with which Assange was previously charged. According to the charging document, Assange and others at WikiLeaks recruited and agreed with hackers to commit computer intrusions to benefit WikiLeaks.

It is true the description of the hacking charge has been dramatically expanded, incorporating a bunch of hacks that WikiLeaks was associated with.

But there are a few details of the charges that changed as well. The CFAA charge has actually been reworked, focused on four different kinds of hacks:

- Accessing a computer and exceeding access to obtain information classified Secret
- Accessing a computer and exceeding access to obtain information from protected computers at a department or

agency of the United States
committed in furtherance of
criminal acts

- Knowingly transmitting code
that can cause damage,
 - Greater than \$5000
 - Used by an entity of
the US in furtherance
of the administration
of justice, national
defense, and national
security
 - Affecting more than 10
or more protected
computers in a given
year
- Intentionally accessing
protecting computers without
authorization to recklessly
cause damage,
 - Greater than \$5000
 - Used by an entity of
the US in furtherance
of the administration
of justice, national
defense, and national
security
 - Affecting more than 10
or more protected
computers in a given
year

This is a grab bag of hacking charges, and it
could easily cover (and I expect one day it will
cover) actions not described in this indictment.
While adding this grab bag of charges, the
indictment takes out a specific reference to the
Espionage Act, probably to ensure at least one

charge against Assange can in no way be claimed to be a political crime. It also takes out 18 U.S.C. § 641, possibly because the thinking of its applicability to leaking classified information has gotten more controversial.

The indictment also changes the dates on several of the counts. The timeline on the three counts addressing leaking of informants' identities (something that is criminalized in the UK in ways it is not here, but also the counts that most aggressively charge Assange for the publication of information) now extends to April 2019. The timeline on the hacking charges extends (for reasons I'll explain below), to 2015. And the overall timeline of Assange's behavior extends back to 2007, a date that post-dates the earliest WikiLeaks activity and so raises interesting questions about what actions it was chosen to include.

As to the 2015 date, the indictment gets there by discussing WikiLeaks' role in helping Edward Snowden flee China and the ways WikiLeaks used Snowden's case to encourage other leakers and hackers. It describes:

- Sarah Harrison's trip to Hong Kong in June 2013
- The presentation Harrison, Jake Appelbaum, and Assange gave in December 2013 encouraging potential leakers to, "go and join the CIA. Go in there, go into the ballpark and get the ball and bring it out," and claiming that, "Edward Snowden did not save himself ... Harrison took actions to protect him"
- A conference on May 6, 2014 when Harrison recruited

others to obtain classified or stolen information to share with WikiLeaks

- A May 15, 2015 Most Wanted Leaks pitch that linked back to the 2009 list that Chelsea Manning partly responded to
- Comments Assange made on May 25, 2015 claiming to have created distractions to facilitate Snowden's flight
- Appelbaum and Harrison's efforts to recruit more leakers at a June 18, 2015 event
- The continued advertisement for Most Wanted Leaks until at least June 2015, still linking back to the 2009 file

I'll explain in a follow-up where this is going. Obviously, though, the government could easily supersede this indictment to add later leakers, most notably but in no way limited to Joshua Schulte, who first started moving towards leaking all of CIA's hacking tools to Wikileaks in 2015.

I argued, in December, that the government appeared to be moving towards a continuing conspiracy charge, one that later hackers and leakers (as well as Appelbaum and Harrison) could easily be added to. Doing so as they've done here would in no way violate UK's extradition rules. And fleshing out the CFAA charge makes this airtight from an extradition standpoint; some of the crimes alleged involving Anonymous have already been successfully prosecuted in the UK.

This doesn't mitigate the harm of the strictly publishing counts. But it does allege Assange's personal involvement in a number of hacks and leaks that others – both in the US and UK – have already been prosecuted for, making the basic extradition question much less risky for the US.

Update: I think this allegation in the new indictment is important:

In September 2010, ASSANGE directed [Siggil] to hack into the computer of an individual former associated with WikiLeaks and delete chat logs containing statements of ASSANGE. When Teenager asked how that could be done, ASSANGE wrote that the former WikiLeaks associate could "be fooled into downloading a trojan," referring to malicious software, and then asked Teenager what operating system the former-WikiLeaks associate used.

I've heard allegations from the entire period of WikiLeaks' prominence of Assange asking to spy on one or another partner or former partner, including protected entities. One relatively recent allegation I know of targeted a former WikiLeaks associate in 2016, after a break on election-related issues. I have no idea whether these allegations are credible (and I know of none who would involve law enforcement). But allegations that Assange considered – or did – spy on his allies undercuts his claim to being a journalist as much as anything else he does. It also raises questions about what WikiLeaks did with the unpublished Vault 7 files.

Update: Dell Cameron, who is the expert on the Stratfor hack, lays out some apparently big holes in the parts of the indictment that pertain to that.