

Hack Attack and Halacha: The Halachos Of Hacking

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With each passing election, the spectre of cyber-crime looms larger and larger. This is in addition to computer hacking carried out in the corporate arena. A number of years ago, a shadowy group of computer hackers styling themselves the “Guardians of Peace”, believed to be agents of the North Korean government, breached the security of internal computer systems of Sony Pictures Entertainment, accessed a trove of confidential and sensitive material, including personally identifiable information about the company’s employees and their dependents (including social security numbers, bank and credit card information, compensation details, and HIPAA protected health information) and email between the company’s employees, and disseminated this information publicly, causing embarrassment and inconvenience to many individuals, and considerable financial harm to the company. While it is self-evident that such conduct is morally wrong, we consider here the question of the application of traditional *halachic* categories and precedent to this quintessentially modern scenario.

The *Cherem* Of Rabbeinu Gershom

There is a medieval tradition, generally attributed to *Rabbeinu Gershom Me’or Ha’Golah*,^[1] of a *cherem* [ban / anathema] against reading (or opening) a letter addressed to another.^[2] Some *poskim* take for granted that the *cherem* applies to eavesdropping and the interception of electronic communications as well,^[3] although others adopt a narrow, literal reading of the *cherem*, and limit its applicability to its explicit subject, written correspondence.^[4]

Related Prohibitions

The *acharonim* have additionally noted various *halachic* problems with reading others’ mail, either as rationales for the ban or as independent considerations:

- The utilization of another’s property without permission is forbidden.^[5]
- “Thou shalt love thy neighbor as thyself” – “that which is hateful to you, do not do unto your friend”.^[6]
- “Thou shalt not go up and down as a talebearer among thy people”.^[7]
- *Geneivas da’as* is prohibited.^[8] [The phrase generally refers to deception, i.e., the *planting* of a *false* idea *in* the mind of another, whereas our situation appears to be the exact opposite: the *extraction* of a *true* idea *from* the mind of another; I do not understand the analogy.^[9]]
- It is prohibited to cause harm to another, even indirectly (*grama be’nezikin asur*), and reading others’ correspondence usually causes harm, whether financial or otherwise.^[10]

Most of these concerns obviously apply to hacking in general (and to our situation in particular) and are indeed so applied by contemporary *poskim*.^[11] The question of the applicability of the prohibition against unsanctioned utilization of another’s property is an interesting one: R.

Avraham Sherman (discussing eavesdropping on a telephone call) apparently understands it as applying to the intangible entity of **information**,^[12] and should therefore certainly apply it to hacking, but R. Chaim Shlomo Rosenthal (discussing a similar case, the listening to a recording of a telephone call without the participants' permission) is unsure whether the prohibition applies to such situations.^[13] It can be argued that unauthorized **electronic access** of a computer system is tantamount to unauthorized **physical access** of that system, and is therefore prohibited by the prohibition against unauthorized utilization of another's (tangible) property, but this is a non-trivial assertion.

Hezek Re'iyah

One is forbidden to look from his window at his neighbor's yard "in order that he should not damage him with his looking",^[14] and even where there is no concern for "damage of the eye" (i.e., *ayin ha'ra*), it is nevertheless prohibited to look at the affairs of another when conducted in his home and property (i.e., where there is an expectation of privacy), "for perhaps he does not desire that they should know his actions and affairs".^[15] Although the scope of this prohibition obviously requires elucidation, it presumably extends to the forbidding of the unauthorized accessing and public dissemination of private information, and has indeed been invoked to this effect by contemporary *poskim*.^[16]

We conclude with the uncompromising position of R. Yaakov Avraham Cohen: "Those who break into computer codes or into any protected data store or similar, who are called "hackers" - their sin is severe."^[17]

[1] Shut. Benei Banim chelek 3 beginning of siman 17 and note 1 of Rakover's article (cited below).

[2] Shut. Maharam bar Baruch defus Prague siman 1022; Kol Bo end of siman 116; Shut. Maharam Mintz siman 102. For more or less comprehensive discussions of the *cherem*, see *Encyclopedia Talmudis* Vol. 17 end of entry *cherem de'Rabbeinu Gershom* os 18 cols. 452-54; Nahum Rakover, *Ha'Haganah Al Tzinat Ha'Prat - Cherem De'Rabbeinu Gershom Be'Davar Kerias Michtavim*; R. Avraham Naftali Zvi Roth, *Al Devar Ha'Cherem Al Kerias Igeres Shelo Be'Reshus*, *Ha'Maor* year 32 kuntres 3 (254) pp. 11-14; and R. Jacob J. Schacter, *Facing the Truths of History*, pp. 242-47 and notes 165-77 (pp. 269-71).

[3] *Piskei-Din Shel Batei Ha'Din Ha'Rabbani'im Be'Yisrael* Vol. 14 p. 292 s.v. *Barur she'ein hevdel ikroni* (R. Avraham Sherman); *Piskei-Din* ibid. p. 307 s.v. *U'Pashut Ha'Davar she'yesh le'harchiv ha'davar* (R. Chaim Shlomo Rosenthal); *Mishpetei Ha'Torah* chelek 1 siman 92 os 4 pp. 337-38; R. Yitzchok Zilberstein, cited in *Binas Ha'Shidduch perek 7 she'elah* 16 p. 379; *Emek Ha'Mishpat Hilchos Sh'chenim* siman 26 os 4.

[4] Shut. *Ve'Darashta Ve'Chakarta* chelek 1 yoreh de'ah siman 46 os 1 (in response to R. Tzvi Spitz, the author of *Mishpetei Torah*); *Shut. Shevet Ha'Kehasi* chelek 4 (*inyanim shonim*) siman 327 os 2.

[5] Shut. *Toras Chaim* (Maharchash) chelek 3 siman 4; Shut. *Kol Gadol* siman 102.

- [6] Shut. Chikkei Lev yoreh de'ah siman 49.
- [7] Shut. Halachos Ketanos chelek 1 siman 276; *Chikkei Lev ibid.*
- [8] *Chikkei Lev ibid.*
- [9] Rakover *ibid.* (note 15) defends the invocation of *geneivas da'as* in this sense and cites other instances of such usage.
- [10] *Toras Chaim ibid.*
- [11] *Shevet Ha'Kehasi ibid.* forbids the operation of "eavesdropping equipment that is called 'scanner'" due to, *inter alia*, the concern of the *Halachos Ketanos* for *rechilus*; *Ve'Darashta Ve'Chakarta ibid. os 6* forbids eavesdropping on telephone conversations due to the concerns of *ve'ahavta le're'acha kamocha*, *rechilus* and *geneivas da'as*.
- [12] *Piskei-Din ibid.* p. 292. An interesting parallel to the idea that the category of theft can apply to intangible information is the position of the Shut. Machaneh Chaim 2:CM:49 s.v. U'Le'da'ati that plagiarism of the Torah of another constitutes *geneivah* or *gezeilah*, in spite of the absence of any loss to the victim, which he proves from the Talmudic characterization of the study of Torah by a non-Jew as theft from the Jewish people.
- [13] *Piskei-Din ibid.* p. 307. See Rakover *ibid.* (note 17).
- [14] Rema *choshen mishpat* 154:7.
- [15] Shulchan Aruch Ha'Rav *choshen mishpat*, *hilchos nizkei mamon*, se'if 11.
- [16] *Shevet Ha'Kehasi ibid.*; R. Zilberstein *ibid.* p. 380.
- [17] *Emek Ha'Mishpat ibid.*