

Legislation for Recommendation 4.5.3

Strengthen the U.S. Government's Ability to Take Down Botnets

Staff Introduction to Proposal. This proposal seeks to implement the Commission's recommendation for Congress to enact Section 4 of the "International Cybercrime Prevention Act." This legislation provides courts with broader authority to address illegal botnets. This proposal does not recommend any changes to Section 4's language, and does not seek to enact any other sections of the "International Cybercrime Prevention Act."

SEC. 201. SHUTTING DOWN BOTNETS.

(a) Section 1345 of title 18, United States Code, is amended—

(1) in the heading, by inserting "and abuse" after "fraud";

(2) in subsection (a)—

(A) in paragraph (1)—

(i) in subparagraph (B), by striking "or" at the end;

(ii) in subparagraph (C), by inserting "or" after the semicolon; and

(iii) by inserting after subparagraph (C) the following:

"(D) violating section 1030(a)(5) of this title where such conduct has caused or would cause damage (as defined in section 1030) without authorization to 100 or more protected computers (as defined in section 1030) during any 1-year period, including by—

"(i) impairing the availability or integrity of the protected computers without authorization; or

"(ii) installing or maintaining control over malicious software on the protected computers that, without authorization, has caused or would cause damage to the protected computers;" and

(B) in paragraph (2), in the matter preceding subparagraph (A) by inserting ", a violation described in subsection (a)(1)(D)," before "or a Federal"; and by adding at the end the following:

"(c) A restraining order, prohibition, or other action described in subsection (b), if issued in circumstances described in subsection (a)(1)(D), may, upon application of the Attorney General—

“(1) specify that no cause of action shall lie in any court against a person for complying with the restraining order, prohibition, or other action; and

“(2) provide that the United States shall pay to such person a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in complying with the restraining order, prohibition, or other action.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 63 of title 18, United States Code, is amended by striking the item relating to section 1345 and inserting the following:

“1345. Injunctions against fraud and abuse.”.

Legend. Section 4 amends existing legislation (18 U.S.C. 1345). The language below shows the effect of Section 4’s “line in line out” changes, which are highlighted with new words underlined and deleted words with ~~strikethroughs~~.

§ 1345. Injunctions against fraud and abuse

(a)

(1) If a person is—

(A) violating or about to violate this chapter or section 287, 371 (insofar as such violation involves a conspiracy to defraud the United States or any agency thereof), or 1001 of this title;

(B) committing or about to commit a banking law violation (as defined in section 3322(d) of this title); ~~or~~

(C) committing or about to commit a Federal health care offense; or

(D) violating or about to violate section 1030(a)(5) of this title where such conduct has caused or would cause damage (as defined in section 1030) without authorization to 100 or more protected computers (as defined in section 1030) during any 1-year period, including by—

(i) impairing the availability or integrity of the protected computers without authorization; or

(ii) installing or maintaining control over malicious software on the protected computers that, without authorization, has caused or would cause damage to the protected computers:

the Attorney General may commence a civil action in any Federal court to enjoin such violation.

(2) If a person is alienating or disposing of property, or intends to alienate or dispose of property, obtained as a result of a banking law violation (as defined in section 3322(d) of this title), a violation described in subsection (a)(1)(D), or a Federal health care offense or property which is traceable to such violation, the Attorney General may commence a civil action in any Federal court—

(A) to enjoin such alienation or disposition of property; or

(B) for a restraining order to—

(i) prohibit any person from withdrawing, transferring, removing, dissipating, or disposing of any such property or property of equivalent value; and

(ii) appoint a temporary receiver to administer such restraining order.

(3) A permanent or temporary injunction or restraining order shall be granted without bond.

(b) The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

(c) A restraining order, prohibition, or other action described in subsection (b), if issued in circumstances described in subsection (a)(1)(D), may, upon application of the Attorney General—

(1) specify that no cause of action shall lie in any court against a person for complying with the restraining order, prohibition, or other action; and

(2) provide that the United States shall pay to such person a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in complying with the restraining order, prohibition, or other action.