

110TH CONGRESS
1ST SESSION

S. 2213

To amend title 18, United States Code, to improve prevention, investigation, and prosecution of cyber-crime, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 22, 2007

Mr. HATCH (for himself and Mr. BIDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to improve prevention, investigation, and prosecution of cyber-crime, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Cyber-Crime Act of
5 2007”.

6 **SEC. 2. CONSPIRACY TO COMMIT CYBER-CRIMES.**

7 Section 1030 of title 18, United States Code, is
8 amended—

1 (1) in subsection (a)(5)(B), by inserting “or a
2 conspiracy to commit an offense,” after “offense,”;
3 and

4 (2) in subsection (b), by inserting “conspires to
5 commit or” after “Whoever”.

6 **SEC. 3. FIXING LOOPHOLES WITH CYBER-EXTORTION.**

7 Section 1030(a)(7) of title 18, United States Code,
8 is amended to read as follows:

9 “(7) with intent to extort from any person any
10 money or other thing of value, transmits in inter-
11 state or foreign commerce any communication con-
12 taining any—

13 “(A) threat to cause damage to a protected
14 computer;

15 “(B) threat to obtain information or im-
16 pair the confidentiality of information obtained
17 from a protected computer without authorized
18 access or by exceeding authorized access; or

19 “(C) demand or request for money or
20 other thing of value in relation to damage to a
21 protected computer, where such damage was
22 caused to facilitate the extortion;”.

23 **SEC. 4. DAMAGE TO PROTECTED COMPUTERS.**

24 (a) IN GENERAL.—Section 1030(a)(5)(B) of title 18,
25 United States Code, is amended—

1 (1) in clause (iv), by striking “or” at the end;

2 (2) in clause (v), by inserting “or” at the end;

3 and

4 (3) by adding at the end the following:

5 “(vi) damage affecting 10 or more
6 protected computers during any 1-year pe-
7 riod.”.

8 (b) **TERRORISM.**—Section 2332b(g)(5)(B)(i) of title
9 18, United States Code, is amended by striking
10 “1030(a)(5)(A)(ii) through (v) (relating to protection of
11 computers)” and inserting “1030(a)(5)(A)(ii) through (vi)
12 (relating to the protection of computers)”.

13 **SEC. 5. RICO PREDICATES.**

14 Section 1961(1)(B) of title 18, United States Code,
15 is amended by inserting “section 1030 (relating to fraud
16 and related activity in connection with computers),” before
17 “section 1084,”.

18 **SEC. 6. USE OF FULL INTERSTATE AND FOREIGN COM-**

19 **MERCE POWER FOR CRIMINAL PENALTIES.**

20 (a) **ELIMINATION OF REQUIREMENT OF AN INTER-**
21 **STATE OR FOREIGN COMMUNICATION FOR CERTAIN OF-**
22 **FENSES INVOLVING PROTECTED COMPUTERS.**—Section
23 1030(a)(2)(C) of title 18, United States Code, is amended
24 by striking “if the conduct involved an interstate or for-
25 eign communication”.

1 (b) BROADENING OF SCOPE.—Section 1030(e)(2)(B)
 2 of title 18, United States Code, is amended by inserting
 3 “or affecting” after “which is used in”.

4 **SEC. 7. CIVIL FORFEITURE FOR SECTION 1030 VIOLATIONS.**

5 Section 1030 of title 18, United States Code, is
 6 amended by adding at the end the following:

7 “(i) FORFEITURE.—

8 “(1) CIVIL.—

9 “(A) IN GENERAL.—The court, in impos-
 10 ing sentence for an offense under this section,
 11 shall, in addition to any other sentence imposed
 12 and irrespective of any provision of State law,
 13 order that the person forfeit to the United
 14 States—

15 “(i) the person’s interest in any per-
 16 sonal property that was used or intended
 17 to be used to commit or to facilitate the
 18 commission of such violation; and

19 “(ii) any property, real or personal,
 20 constituting or derived from, any proceeds
 21 the person obtained, directly or indirectly,
 22 as a result of such violation.

23 “(B) APPLICABLE PROCEDURES.—Seizures
 24 and forfeitures under this paragraph shall be
 25 governed by the provisions of chapter 46 of title

1 18, United States Code, relating to civil forfeit-
2 ures, except that such duties as are imposed on
3 the Secretary of the Treasury under the cus-
4 toms laws described in section 981(d) of title
5 18 shall be performed by such officers, agents
6 and other persons as may be designated for
7 that purpose by the Secretary of Homeland Se-
8 curity.

9 “(2) CRIMINAL.—Pursuant to section 2461(c)
10 of title 28, United States Code, the criminal for-
11 feiture of property under this section, any seizure
12 and disposition thereof, and any administrative or
13 judicial proceeding in relation thereto, shall be gov-
14 erned by the provisions of section 413 of the Com-
15 prehensive Drug Abuse and Prevention Control Act
16 of 1970 (21 U.S.C. 853), except subsection (d) of
17 that section.

18 “(3) PROPERTY SUBJECT TO FORFEITURE.—
19 Any real or personal property of a violator of this
20 section or a person acting in concert with such a vio-
21 lator that is used to commit or facilitate the commis-
22 sion of a violation of this section, the gross proceeds
23 of such violation, and any property traceable to such
24 property or proceeds, shall be subject to forfeiture.”.

1 **SEC. 8. DIRECTIVE TO SENTENCING COMMISSION.**

2 (a) DIRECTIVE.—Pursuant to its authority under
3 section 994(p) of title 28, United States Code, and in ac-
4 cordance with this section, the United States Sentencing
5 Commission shall review its guidelines and policy state-
6 ments applicable to persons convicted of offenses under
7 sections 1028, 1028A, 1030, 2511, and 2701 of title 18,
8 United States Code and any other relevant provisions of
9 law, in order to reflect the intent of Congress that such
10 penalties be increased in comparison to those currently
11 provided by such guidelines and policy statements.

12 (b) REQUIREMENTS.—In determining its guidelines
13 and policy statements on the appropriate sentence for the
14 crimes enumerated in subsection (a), the Commission shall
15 consider the extent to which the guidelines and policy
16 statements may or may not account for the following fac-
17 tors in order to create an effective deterrent to computer
18 crime and the theft or misuse of personally identifiable
19 data:

20 (1) The level of sophistication and planning in-
21 volved in such offense.

22 (2) Whether such offense was committed for
23 purpose of commercial advantage or private financial
24 benefit.

25 (3) The potential and actual loss resulting from
26 the offense including—

1 (A) the value of information obtained from
2 a protected computer, regardless of whether the
3 owner was deprived of use of the information;
4 and

5 (B) where the information obtained con-
6 stitutes a trade secret or other proprietary in-
7 formation, the cost the victim incurred devel-
8 oping or compiling the information.

9 (4) Whether the defendant acted with intent to
10 cause either physical or property harm in commit-
11 ting the offense.

12 (5) The extent to which the offense violated the
13 privacy rights of individuals.

14 (6) The effect of the offense upon the oper-
15 ations of an agency of the United States Govern-
16 ment, or of a State or local government.

17 (7) Whether the offense involved a computer
18 used by the United States Government, a State, or
19 a local government in furtherance of national de-
20 fense, national security, or the administration of jus-
21 tice.

22 (8) Whether the offense was intended to, or had
23 the effect of significantly interfering with or dis-
24 rupting a critical infrastructure.

1 (9) Whether the offense was intended to, or had
2 the effect of creating a threat to public health or
3 safety, causing injury to any person, or causing
4 death.

5 (10) Whether the defendant purposefully in-
6 volved a juvenile in the commission of the offense.

7 (11) Whether the defendant’s intent to cause
8 damage or intent to obtain personal information
9 should be disaggregated and considered separately
10 from the other factors set forth in USSG
11 2B1.1(b)(14).

12 (12) Whether the term “victim,” as used in
13 USSG 2B1.1, should include individuals whose pri-
14 vacy was violated as a result of the offense in addi-
15 tion to individuals who suffered monetary harm as
16 a result of the offense.

17 (13) Whether the defendant disclosed personal
18 information obtained during the commission of the
19 offense.

20 (c) **ADDITIONAL REQUIREMENTS.**—In carrying out
21 this section, the Commission shall—

22 (1) assure reasonable consistency with other
23 relevant directives and with other sentencing guide-
24 lines;

1 (2) account for any additional aggravating or
2 mitigating circumstances that might justify excep-
3 tions to the generally applicable sentencing ranges;

4 (3) make any conforming changes to the sen-
5 tencing guidelines; and

6 (4) assure that the guidelines adequately meet
7 the purposes of sentencing as set forth in section
8 3553(a)(2) of title 18, United States Code.

9 **SEC. 9. ADDITIONAL FUNDING FOR RESOURCES TO INVES-**
10 **TIGATE AND PROSECUTE CRIMINAL ACTIV-**
11 **ITY INVOLVING COMPUTERS.**

12 (a) **ADDITIONAL FUNDING FOR RESOURCES.**—In ad-
13 dition to amounts otherwise authorized for resources to
14 investigate and prosecute criminal activity involving com-
15 puters, there are authorized to be appropriated for each
16 of the fiscal years 2008 through 2012—

17 (1) \$10,000,000 to the Director of the United
18 States Secret Service and \$10,000,000 to the Direc-
19 tor of the Federal Bureau of Investigation to hire
20 and train law enforcement officers to investigate
21 crimes committed through the use of computers and
22 other information technology, including through the
23 use of the Internet, and assist in the prosecution of
24 such crimes and procure advanced tools of forensic
25 science to investigate and study such crimes; and

1 (2) \$10,000,000 to the Attorney General for
2 the prosecution of such crimes.

3 (b) AVAILABILITY.—Any amounts appropriated
4 under subsection (a) shall remain available until expended.

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