

114TH CONGRESS
2D SESSION

S. 2931

To amend title 18, United States Code, to protect Americans from cybercrime.

IN THE SENATE OF THE UNITED STATES

MAY 16, 2016

Mr. GRAHAM (for himself, Mr. WHITEHOUSE, and Mr. BLUMENTHAL) 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 protect Americans from cybercrime.

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 “Botnet Prevention Act
5 of 2016”.

6 **SEC. 2. SHUTTING DOWN BOTNETS.**

7 (a) AMENDMENT.—Section 1345 of title 18, United
8 States Code, is amended—

9 (1) in the heading, by inserting “**and abuse**”
10 after “**fraud**”;

1 (2) in subsection (a)—

2 (A) in paragraph (1)—

3 (i) in subparagraph (B), by striking

4 “or” at the end;

5 (ii) in subparagraph (C), by inserting

6 “or” after the semicolon; and

7 (iii) by inserting after subparagraph

8 (C) the following:

9 “(D) violating or about to violate section
10 1030(a)(5) of this title where such conduct has
11 caused or would cause damage (as defined in section
12 1030) without authorization to 100 or more pro-
13 tected computers (as defined in section 1030) during
14 any 1-year period, including by—

15 “(i) impairing the availability or integrity
16 of the protected computers without authoriza-
17 tion; or

18 “(ii) installing or maintaining control over
19 malicious software on the protected computers
20 that, without authorization, has caused or
21 would cause damage to the protected com-
22 puters;”; and

23 (B) in paragraph (2), by inserting “, a vio-
24 lation described in subsection (a)(1)(D),” before
25 “or a Federal”; and

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

2 “(c) A restraining order, prohibition, or other action
3 described in subsection (b), if issued in circumstances de-
4 scribed in subsection (a)(1)(D), may, upon application of
5 the Attorney General—

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

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

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

“1345. Injunctions against fraud and abuse.”.

18 **SEC. 3. AGGRAVATED DAMAGE TO A CRITICAL INFRA-**
19 **STRUCTURE COMPUTER.**

20 (a) IN GENERAL.—Chapter 47 of title 18, United
21 States Code, is amended by inserting after section 1030
22 the following:

1 **“§ 1030A. Aggravated damage to a critical infrastruc-**
2 **ture computer**

3 “(a) OFFENSE.—It shall be unlawful, during and in
4 relation to a felony violation of section 1030, to knowingly
5 cause or attempt to cause damage to a critical infrastruc-
6 ture computer, if such damage results in (or, in the case
7 of an attempted offense, would, if completed, have resulted
8 in) the substantial impairment—

9 “(1) of the operation of the critical infrastruc-
10 ture computer; or

11 “(2) of the critical infrastructure associated
12 with such computer.

13 “(b) PENALTY.—Any person who violates subsection
14 (a) shall, in addition to the term of punishment provided
15 for the felony violation of section 1030, be fined under
16 this title, imprisoned for not more than 20 years, or both.

17 “(c) CONSECUTIVE SENTENCE.—Notwithstanding
18 any other provision of law—

19 “(1) a court shall not place any person con-
20 victed of a violation of this section on probation;

21 “(2) except as provided in paragraph (4), no
22 term of imprisonment imposed on a person under
23 this section shall run concurrently with any term of
24 imprisonment imposed on the person under any
25 other provision of law, including any term of impris-

1 onment imposed for the felony violation of section
2 1030;

3 “(3) in determining any term of imprisonment
4 to be imposed for the felony violation of section
5 1030, a court shall not in any way reduce the term
6 to be imposed for such violation to compensate for,
7 or otherwise take into account, any separate term of
8 imprisonment imposed or to be imposed for a viola-
9 tion of this section; and

10 “(4) a term of imprisonment imposed on a per-
11 son for a violation of this section may, in the discre-
12 tion of the court, run concurrently, in whole or in
13 part, only with another term of imprisonment that
14 is imposed by the court at the same time on that
15 person for an additional violation of this section, if
16 such discretion shall be exercised in accordance with
17 any applicable guidelines and policy statements
18 issued by the United States Sentencing Commission
19 pursuant to section 994 of title 28.

20 “(d) DEFINITIONS.—In this section—

21 “(1) the terms ‘computer’ and ‘damage’ have
22 the meanings given the terms in section 1030; and

23 “(2) the term ‘critical infrastructure’ means
24 systems and assets, whether physical or virtual, so
25 vital to the United States that the incapacity or de-

1 construction of such systems and assets would have cat-
 2 astrophic regional or national effects on public
 3 health or safety, economic security, or national secu-
 4 rity.”.

5 (b) TABLE OF SECTIONS.—The table of sections for
 6 chapter 47 of title 18, United States Code, is amended
 7 by inserting after the item relating to section 1030 the
 8 following:

“1030A. Aggravated damage to a critical infrastructure computer.”.

9 **SEC. 4. STOPPING TRAFFICKING IN BOTNETS.**

10 (a) IN GENERAL.—Section 1030 of title 18, United
 11 States Code, is amended—

12 (1) in subsection (a)—

13 (A) in paragraph (7), by adding “or” at
 14 the end; and

15 (B) by inserting after paragraph (7) the
 16 following:

17 “(8) intentionally traffics in the means of ac-
 18 cess to a protected computer, if—

19 “(A) the trafficker knows or has reason to
 20 know the protected computer has been damaged
 21 in a manner prohibited by this section; and

22 “(B) the promise or agreement to pay for
 23 the means of access is made by, or on behalf of,
 24 a person the trafficker knows or has reason to
 25 know intends to use the means of access to—

1 “(i) damage the protected computer in
2 a manner prohibited by this section; or

3 “(ii) violate section 1037 or 1343;”;

4 (2) in subsection (c)(3)—

5 (A) in subparagraph (A), by striking
6 “(a)(4) or (a)(7)” and inserting “(a)(4), (a)(7),
7 or (a)(8)”; and

8 (B) in subparagraph (B), by striking
9 “(a)(4), or (a)(7)” and inserting “(a)(4),
10 (a)(7), or (a)(8)”; and

11 (3) in subsection (e)—

12 (A) in paragraph (11), by striking “and”
13 at the end;

14 (B) in paragraph (12), by striking the pe-
15 riod at the end and inserting “; and”; and

16 (C) by adding at the end the following:

17 “(13) the term ‘traffic’, except as provided in
18 subsection (a)(6), means transfer, or otherwise dis-
19 pose of, to another as consideration for the receipt
20 of, or as consideration for a promise or agreement
21 to pay, anything of pecuniary value.”; and

22 (4) in subsection (g), in the first sentence, by
23 inserting “, except for a violation of subsection
24 (a)(8),” after “of this section”.

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