

117TH CONGRESS
1ST SESSION

S. 2139

To amend title 18, United States Code, to prevent international cybercrime,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 21, 2021

Mr. WHITEHOUSE (for himself, Mr. GRAHAM, Mr. TILLIS, 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 prevent
international cybercrime, 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 “International Cyber-
5 crime Prevention Act”.

6 **SEC. 2. PREDICATE OFFENSES.**

7 Part I of title 18, United States Code, is amended—

8 (1) in section 1956(c)(7)(D)—

9 (A) by striking “or section 2339D” and in-

10 serting “section 2339D”; and

1 (B) by striking “of this title, section
 2 46502” and inserting “, or section 2512 (relat-
 3 ing to the manufacture, distribution, possession,
 4 and advertising of wire, oral, or electronic com-
 5 munication intercepting devices) of this title,
 6 section 46502”; and

7 (2) in section 1961(1), by inserting “section
 8 1030 (relating to fraud and related activity in con-
 9 nection with computers) if the act indictable under
 10 section 1030 is felonious,” before “section 1084”.

11 **SEC. 3. FORFEITURE.**

12 (a) IN GENERAL.—Section 2513 of title 18, United
 13 States Code, is amended to read as follows:

14 **“§ 2513. Confiscation of wire, oral, or electronic com-
 15 munication intercepting devices and
 16 other property**

17 **“(a) CRIMINAL FORFEITURE.—**

18 **“(1) IN GENERAL.—**The court, in imposing a
 19 sentence on any person convicted of a violation of
 20 section 2511 or 2512, or convicted of conspiracy to
 21 violate section 2511 or 2512, shall order, in addition
 22 to any other sentence imposed and irrespective of
 23 any provision of State law, that such person forfeit
 24 to the United States—

1 “(A) such person’s interest in any prop-
 2 erty, real or personal, that was used or intended
 3 to be used to commit or to facilitate the com-
 4 mission of such violation; and

5 “(B) any property, real or personal, consti-
 6 tuting or derived from any gross proceeds, or
 7 any property traceable to such property, that
 8 such person obtained or retained directly or in-
 9 directly as a result of such violation.

10 “(2) FORFEITURE PROCEDURES.—Pursuant to
 11 section 2461(c) of title 28, the provisions of section
 12 413 of the Controlled Substances Act (21 U.S.C.
 13 853), other than subsection (d) thereof, shall apply
 14 to criminal forfeitures under this subsection.

15 “(b) CIVIL FORFEITURE.—

16 “(1) IN GENERAL.—The following shall be sub-
 17 ject to forfeiture to the United States in accordance
 18 with provisions of chapter 46, and no property right
 19 shall exist in them:

20 “(A) Any property, real or personal, used
 21 or intended to be used, in any manner, to com-
 22 mit, or facilitate the commission of a violation
 23 of section 2511 or 2512, or a conspiracy to vio-
 24 late section 2511 or 2512.

“(2) FORFEITURE PROCEDURES.—Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46, relating to civil forfeitures, except that such duties as are imposed on the Secretary of the Treasury under the customs laws described in section 981(d) shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Secretary of Homeland Security or the Attorney General.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—
The table of sections for chapter 119 is amended by striking the item relating to section 2513 and inserting the following:

20 **SEC. 4. SHUTTING DOWN BOTNETS.**

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

23 (1) in the heading, by inserting “**and abuse**”
24 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
12 section 1030) without authorization to 100 or
13 more protected computers (as defined in section
14 1030) during any 1-year period, including by—

15 “(i) impairing the availability or in-
16 tegrity of the protected computers without
17 authorization; or

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

23 (B) in paragraph (2), in the matter pre-
24 ceding subparagraph (A), by inserting “, a vio-

1 lation described in subsection (a)(1)(D),” before
 2 “or a Federal”; and

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

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

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

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

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

“1345. Injunctions against fraud and abuse.”.

20 **SEC. 5. AGGRAVATED DAMAGE TO A CRITICAL INFRA-**
 21 **STRUCTURE COMPUTER.**

22 (a) IN GENERAL.—Chapter 47 of title 18, United
 23 States Code, is amended by inserting after section 1030
 24 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, including voter registration databases, voting
 5 machines, and other communications systems that
 6 manage the election process or report and display
 7 results on behalf of State and local governments.”.

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

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

12 **SEC. 6. STOPPING TRAFFICKING IN BOTNETS; FOR-**
 13 **FEITURE.**

14 Section 1030 of title 18, United States Code, is
 15 amended—

16 (1) in subsection (a)—

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

19 (B) by inserting after paragraph (7) the
 20 following:

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

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

1 “(B) the promise or agreement to pay for
 2 the means of access is made by, or on behalf of,
 3 a person the trafficker knows or has reason to
 4 know intends to use the means of access to—

5 “(i) damage a protected computer in
 6 a manner prohibited by this section; or

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

8 (2) in subsection (c)(3)—

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

12 (B) in subparagraph (B), by striking
 13 “(a)(4), or (a)(7)” and inserting “(a)(4),
 14 (a)(7), or (a)(8)”;
 15 (3) in subsection (e)—

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

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

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

21 “(15) the term ‘traffic’, except as provided in
 22 subsection (a)(6), means transfer, or otherwise dis-
 23 pose of, to another as consideration for the receipt
 24 of, or as consideration for a promise or agreement
 25 to pay, anything of pecuniary value.”;

1 (4) in subsection (g), in the first sentence, by
2 inserting “, except for a violation of subsection
3 (a)(8),” after “of this section”; and

4 (5) by striking subsections (i) and (j) and in-
5 serting the following:

6 “(i) CRIMINAL FORFEITURE.—

7 “(1) IN GENERAL.—The court, in imposing sen-
8 tence on any person convicted of a violation of this
9 section, or convicted of conspiracy to violate this sec-
10 tion, shall order, in addition to any other sentence
11 imposed and irrespective of any provision of State
12 law, that such person forfeit to the United States—

13 “(A) such person’s interest in any prop-
14 erty, real or personal, that was used or intended
15 to be used to commit or to facilitate the com-
16 mission of such violation; and

17 “(B) any property, real or personal, consti-
18 tuting or derived from any gross proceeds, or
19 any property traceable to such property, that
20 such person obtained, directly or indirectly, as
21 a result of such violation.

22 “(2) APPLICABLE PROVISIONS.—The criminal
23 forfeiture of property under this subsection, includ-
24 ing any seizure and disposition of the property, and
25 any related judicial or administrative proceeding,

1 shall be governed by the provisions of section 413 of
2 the Controlled Substances Act (21 U.S.C. 853), ex-
3 cept subsection (d) of that section.

4 “(j) CIVIL FORFEITURE OF PROPERTY USED IN THE
5 COMMISSION OF AN OFFENSE.—

6 “(1) IN GENERAL.—Any personal property, in-
7 cluding any Internet domain name or Internet Pro-
8 tocol address, that was used or intended to be used
9 to commit or to facilitate the commission of any vio-
10 lation of this section, or a conspiracy to violate this
11 section shall be subject to forfeiture to the United
12 States, and no property right shall exist in such
13 property.

14 “(2) APPLICABLE PROVISIONS.—Seizures and
15 forfeitures under this subsection shall be governed
16 by the provisions of chapter 46 relating to civil for-
17 feitures, except that such duties as are imposed on
18 the Secretary of the Treasury under the customs
19 laws described in section 981(d) shall be performed
20 by such officers, agents, and other persons as may
21 be designated for that purpose by the Secretary of
22 Homeland Security or the Attorney General.”.

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