

## Updated Administration Proposal: Law Enforcement Provisions

**[Changes to existing law are in shown in italics, bold, and strikethrough format]**

### SEC. 101. Prosecuting Organized Crime Groups That Utilize Cyber Attacks

#### 18 U.S.C. § 1961(1).

(1) “racketeering activity” means ... (B) any act which is indictable under any of the following provisions of title 18, United States Code: ... section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), *section 1030 (relating to fraud and related activity in connection with computers) if the act indictable under section 1030 is felonious*, section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), ...

### SEC. 102. Deterring the Development and Sale of Computer and Cell Phone Spying Devices

(a)

#### 18 U.S.C. § 1956. Laundering of monetary instruments

...

(c) As used in this section—

...

(7) the term “specified unlawful activity” means—

...

(D) ..., or section 2339D (relating to receiving military-type training from a foreign terrorist organization) of this title, *section 2512 (relating to the manufacture, distribution, possession, and advertising of wire, oral, or electronic communication intercepting devices)*, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling),

...

(b)

#### 18 U.S.C. § 2513. Confiscation of wire, oral or electronic communication intercepting devices, and other property

~~Any electronic, mechanical, or other device used, sent, carried, manufactured,~~

~~assembled, possessed, sold, or advertised in violation of section 2511 or section 2512 of this chapter may be seized and forfeited to the United States. All provisions of law relating to~~

~~(1) the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violations of the customs laws contained in title 19 of the United States Code,~~

~~(2) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof,~~

~~(3) the remission or mitigation of such forfeiture,~~

~~(4) the compromise of claims, and~~

~~(5) the award of compensation to informers in respect of such forfeitures, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section; except that such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the provisions of the customs laws contained in title 19 of the United States Code shall be performed with respect to seizure and forfeiture of electronic, mechanical, or other intercepting devices under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.~~

**(a) *Criminal Forfeiture***

***(1) The court, in imposing sentence on any person convicted of a violation of section 2511 or section 2512 of this chapter, or convicted of conspiracy to violate that section, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person forfeit to the United States—***

***(A) Such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and***

***(B) Any property, real or personal, constituting or derived from any gross proceeds, or any property traceable to such property, that such person obtained or retained directly or indirectly as a result of such violation***

***(2) Pursuant to section 2461(c) of title 28, United States Code, the provisions of section 413 of the Controlled Substances Act (21 U.S.C. 853) other than subsection (d) thereof shall apply to criminal forfeitures under this subsection.***

**(b) Civil Forfeiture**

**(1) *The following shall be subject to forfeiture to the United States in accordance with provisions of chapter 46 of title 18, United States Code, and no property right shall exist in them:***

**(A) *Any property, real or personal, used or intended to be used, in any manner, to commit or facilitate the commission of a violation of section 2511 or section 2512 of this chapter, or a conspiracy to violate that section.***

**(B) *Any property, real or personal, constituting or traceable to the gross proceeds taken, obtained, or retained in connection with or as a result of a violation of section 2511 or section 2512 of this chapter, or a conspiracy to violate that section.***

**(2) *Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18, United States Code, 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) of title 18 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.***

**SEC. 103. Modernizing the Computer Fraud and Abuse Act**

**18 U.S.C. § 1030. Fraud and Related Activity in Connection with Computers**

(a) Whoever —

...

(2)

(A) intentionally accesses a *protected* computer without authorization or exceeds authorized access, and thereby obtains -

~~(A) information contained in a financial record of a financial institution, or of a card issuer as defined in section 1602(n) of title 15, or contained in a file of a consumer reporting agency on a consumer, as such terms are defined in the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);~~

~~(B) information from any department or agency of the United States; or~~

~~(C) information from any *such* protected computer; or~~

**(B) *intentionally exceeds authorized access to a protected computer, and thereby obtains information from such computer, and***

- (i) *the value of the information obtained exceeds \$5,000;*
- (ii) *the offense was committed in furtherance of any felony violation of the laws of the United States or of any State, unless such violation would be based solely on obtaining the information without authorization or in excess of authorization; or*
- (iii) *the protected computer is owned or operated by or on behalf of a governmental entity;*

...

(6) knowingly and ~~with intent to defraud~~ **willfully** traffics (as defined in section 1029) in any password or similar information, **or any other means of access, knowing or having reason to know that a protected computer would be accessed or damaged without authorization in a manner prohibited by this section as the result of such trafficking;** ~~if—~~

- ~~(A) such trafficking affects interstate or foreign commerce; or~~
- ~~(B) such computer is used by or for the Government of the United States;~~

...

(b) Whoever conspires to commit or attempts to commit an offense under subsection (a) of this section shall be punished as provided **for the completed offense**, in subsection (c) of this section.

(c)

(1)

~~(A) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(1) of this section which does not occur after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph; and~~

~~(B) a fine under this title or imprisonment for not more than twenty years, or both, in the case of an offense under subsection **paragraph** (a)(1) of this section which occurs after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;~~

(2)

(A) except as provided in subparagraph (B), a fine under this title or imprisonment for not more than ~~one~~ **three** years, or both, in the case of an offense under subsection **paragraph** (a)(2), ~~(a)(3), or (a)(6)~~ of this section

~~which does not occur after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;~~

~~(B) a fine under this title or imprisonment for not more than 5 *ten* years, or both, in the case of an offense under subsection *paragraph* (a)(2) of this section, or an attempt to commit an offense punishable under this subparagraph, if—~~

~~(i) the offense was committed for purposes of commercial advantage or private financial gain;~~

~~(ii) the offense was committed in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or of any State; or~~

~~(iii) the value of the information obtained exceeds \$5,000; and~~

~~(C) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(2), (a)(3) or (a)(6) of this section which occurs after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;~~

(3)

~~(A) a fine under this title or imprisonment for not more than five years, or both, in the case of an offense under subsection (a)(4) or (a)(7) of this section which does not occur after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph; and~~

~~(B) a fine under this title or imprisonment for not more than ten twenty years, or both, in the case of an offense under subsection (a)(4), or (a)(7) of this section which occurs after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph;~~

~~*a fine under this title or imprisonment for not more than one year, or both, in the case of an offense under paragraph (a)(3) of this section;*~~

(4)

~~(A) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 5 years, or both, in the case of—~~

~~(i) an offense under subsection (a)(5)(B), which does not occur after a conviction for another offense under this section, if the offense caused (or, in the case of an attempted offense, would, if~~

completed, have caused) —

~~(I) loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting from a related course of conduct affecting 1 or more other protected computers) aggregating at least \$5,000 in value;~~

~~(II) the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of 1 or more individuals;~~

~~(III) physical injury to any person;~~

~~(IV) a threat to public health or safety;~~

~~(V) damage affecting a computer used by or for an entity of the United States Government in furtherance of the administration of justice, national defense, or national security; or~~

~~(VI) damage affecting 10 or more protected computers during any 1-year period; or~~

~~(ii) an attempt to commit an offense punishable under this subparagraph;~~

~~(B) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 10 years, or both, in the case of —~~

~~(i) an offense under subsection (a)(5)(A), which does not occur after a conviction for another offense under this section, if the offense caused (or, in the case of an attempted offense, would, if completed, have caused) a harm provided in subclauses (I) through (VI) of subparagraph (A)(i); or~~

~~(ii) an attempt to commit an offense punishable under this subparagraph;~~

~~(C) except as provided in subparagraphs (E) and (F), a fine under this title, imprisonment for not more than 20 years, or both, in the case of —~~

~~(i) an offense or an attempt to commit an offense under subparagraphs (A) or (B) of subsection (a)(5) that occurs after a conviction for another offense under this section; or~~

~~(ii) an attempt to commit an offense punishable under this subparagraph;~~

~~(D) a fine under this title, imprisonment for not more than 10 years, or~~

both, in the case of—

~~(i) an offense or an attempt to commit an offense under subsection (a)(5)(C) that occurs after a conviction for another offense under this section; or~~

~~(ii) an attempt to commit an offense punishable under this subparagraph;~~

~~(E) if the offender attempts to cause or knowingly or recklessly causes serious bodily injury from conduct in violation of subsection (a)(5)(A), a fine under this title, imprisonment for not more than 20 years, or both;~~

~~(F) if the offender attempts to cause or knowingly or recklessly causes death from conduct in violation of subsection (a)(5)(A), a fine under this title, imprisonment for any term of years or for life, or both; or~~

~~(G) a fine under this title, imprisonment for not more than 1 year, or both, for—~~

~~(i) any other offense under subsection (a)(5); or~~

~~(ii) an attempt to commit an offense punishable under this subparagraph.~~

*a fine under this title or imprisonment for not more than twenty years, or both, in the case of an offense under paragraph (a)(4) of this section;*

(5)

*(A) Except as provided in subparagraph (D), a fine under this title, imprisonment for not more than twenty years, or both, in the case of an offense under subparagraph (a)(5)(A) of this section, if the offense caused—*

*(i) loss to 1 or more persons during any 1-year period (and, for purposes of an investigation, prosecution, or other proceeding brought by the United States only, loss resulting from a related course of conduct affecting 1 or more other protected computers) aggregating at least \$5,000 in value;*

*(ii) the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of one or more individuals;*

*(iii) physical injury to any person;*

*(iv) a threat to public health or safety;*

*(v) damage affecting a computer used by or for an entity of the United States Government in furtherance of the administration of justice, national defense, or national security; or*

*(vi) damage affecting ten or more protected computers during any one-year period; or*

*(B) a fine under this title, imprisonment for not more than ten years, or both, in the case of an offense under subparagraph (a)(5)(B), if the offense caused a harm provided in (i) through (vi) of subparagraph (A) of this subsection; or*

*(C) if the offender attempts to cause or knowingly or recklessly causes death from conduct in violation of subparagraph (a)(5)(A), a fine under this title, imprisonment for any term of years or for life, or both; or*

*(D) a fine under this title, imprisonment for not more than one year, or both, for any other offense under paragraph (a)(5);*

*(6) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under paragraph (a)(6) of this section;*

*(7) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under paragraph (a)(7) of this section.*

...

(e)

...

(6) “exceeds authorized access” means to access a computer with authorization and to use such access to obtain or alter information in ~~the~~ *such* computer—

*(A) that the accesser is not entitled to obtain or alter; or*

*(B) for a purpose that the accesser knows is not authorized by the computer owner;*

...

(11) the term “loss” means any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service; ~~and~~

(12) the term “person” means any individual, firm, corporation, educational



institution, financial institution, government entity, or legal or other entity; *and*

*(13) the term “willfully” means intentionally to undertake an act that the person knows to be wrongful;*

...

(i) *Criminal Forfeiture*

(1) The court, in imposing sentence on any person convicted of a violation of this section, or convicted of conspiracy to violate this section, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person forfeit to the United States—

(A) such person's interest in any ~~personal~~ property, *real or personal*, that was used or intended to be used to commit or to facilitate the commission of such violation; and

(B) any property, real or personal, constituting or derived from, any *gross* proceeds, *or any property traceable to such property*, that such person obtained, directly or indirectly, as a result of such violation.

(2) The criminal forfeiture of property under this subsection, *including* any seizure and disposition *of the property thereof*, and any *related* judicial *or administrative* proceeding ~~in relation thereto~~, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except subsection (d) of that section.

(j) *Civil Forfeiture*

~~(1) For purposes of subsection (i),~~ The following shall be subject to forfeiture to the United States and no property right shall exist in them:

~~(1A)~~ Any ~~personal~~ property, *real or personal*, that was used or intended to be used to commit or to facilitate the commission of any violation of this section, or a conspiracy to violate this section.

~~(2B)~~ Any property, real or personal, ~~which constitutes~~ *constituting* or is derived from *any gross* proceeds *obtained directly or indirectly, or any property traceable to such property, as a result of the commission of* any violation of this section, or a conspiracy to violate this section.

*(2) Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18, United States Code, 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) of title 18 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.*

**SEC. 104.** Ensuring Authority for Courts to Shut Down Botnets

(a)

**18 U.S.C. § 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 of this title where such conduct would affect 100 or more protected computers during any 1-year period, such as (but not limited to) by denying access to or operation of the computers, installing unwanted software on the computers, using the computers without authorization, or obtaining information from the computers without authorization;***

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) or a Federal health care offense; ***a violation described in subparagraph (a)(1)(D)***; 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), when issued in circumstances described in subparagraph (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) Fee Authority.

There are authorized to be appropriated to the Departments of Justice, Homeland Security, and Treasury such sums as are necessary to implement this Section, including the payments to be made by the United States of a fee for reimbursement.