AMENDMENT NO._____   Calendar No._____

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

IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.

S. 356

To improve the provisions relating to the privacy of electronic communications.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. GRAHAM (for himself, Mr. WHITEHOUSE, and Mr. BLUMENTHAL)

Viz:

1   At the appropriate place, insert the following:

2 **SEC. _____. BOTNET PREVENTION.**

3   (a) SHORT TITLE.—This section may be cited as the

4 ''Botnet Prevention Act of 2016''.

5   (b) SHUTTING DOWN BOTNETS.—

6   (1) AMENDMENT.—Section 1345 of title 18,

7   United States Code, is amended—

8   (A) in the heading, by inserting ''**and**

9   **abuse**'' after ''**fraud**'';

10   (B) in subsection (a)—

11   (i) in paragraph (1)—

1   (I) in subparagraph (B), by

2   striking "or" at the end;

3   (II) in subparagraph (C), by in-

4   serting "or" after the semicolon; and

5   (III) by inserting after subpara-

6   graph (C) the following:

7   "(D) violating or about to violate section

8 1030(a)(5) of this title where such conduct has

9 caused or would cause damage (as defined in section

10 1030) without authorization to 100 or more pro-

11 tected computers (as defined in section 1030) during

12 any 1-year period, including by—

13   "(i) impairing the availability or integrity

14   of the protected computers without authoriza-

15   tion; or

16   "(ii) installing or maintaining control over

17   malicious software on the protected computers

18   that, without authorization, has caused or

19   would cause damage to the protected com-

20   puters;"; and

21   (ii) in paragraph (2), by inserting ",

22   a violation described in subsection

23   (a)(1)(D)," before "or a Federal"; and

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

3

1   "(c) A restraining order, prohibition, or other action

2 described in subsection (b), if issued in circumstances de-

3 scribed in subsection (a)(1)(D), may, upon application of

4 the Attorney General—

5   "(1) specify that no cause of action shall lie in

6   any court against a person for complying with the

7   restraining order, prohibition, or other action; and

8   "(2) provide that the United States shall pay to

9   such person a fee for reimbursement for such costs

10   as are reasonably necessary and which have been di-

11   rectly incurred in complying with the restraining

12   order, prohibition, or other action.".

13   (2) TECHNICAL AND CONFORMING AMEND-

14   MENT.—The table of sections for chapter 63 of title

15   18, United States Code, is amended by striking the

16   item relating to section 1345 and inserting the fol-

17   lowing:

"1345. Injunctions against fraud and abuse.".

18   (c) AGGRAVATED DAMAGE TO A CRITICAL INFRA-

19 STRUCTURE COMPUTER.—

20   (1) IN GENERAL.—Chapter 47 of title 18,

21   United States Code, is amended by inserting after

22   section 1030 the following:

4

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-

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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-

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1   struction 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   (2) TABLE OF SECTIONS.—The table of sections

6   for chapter 47 of title 18, United States Code, is

7   amended by inserting after the item relating to sec-

8   tion 1030 the following:

"1030A. Aggravated damage to a critical infrastructure computer.''.

9   (d) STOPPING TRAFFICKING IN BOTNETS.—Section

10   1030 of title 18, United States Code, is amended—

11   (1) in subsection (a)—

12   (A) in paragraph (7), by adding ''or'' at

13   the end; and

14   (B) by inserting after paragraph (7) the

15   following:

16   ''(8) intentionally traffics in the means of ac-

17   cess to a protected computer, if—

18   ''(A) the trafficker knows or has reason to

19   know the protected computer has been damaged

20   in a manner prohibited by this section; and

21   ''(B) the promise or agreement to pay for

22   the means of access is made by, or on behalf of,

23   a person the trafficker knows or has reason to

24   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)'';

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''.