
A BILL FOR AN ACT

RELATING TO COMPUTERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to title 36 to be appropriately designated
3 and to read as follows:

4 "CHAPTER

5 USE OF COMPUTERS FOR UNAUTHORIZED PURPOSES

6 § -1 Definitions. As used in this part, unless the
7 context otherwise requires:

8 "Access" means to gain entry to, instruct, communicate
9 with, store data in, retrieve data from, or otherwise make use
10 of any resources of a computer, computer system, or computer
11 network.

12 "Botnet" means a collection of two or more zombies.

13 "Commercial electronic mail message" means an electronic
14 mail message that advertises, offers for sale or lease, or
15 promotes any goods, services, business opportunity, property, or
16 other article, commodity, or thing of value.

17 "Computer" means any electronic, magnetic, optical,
18 electrochemical, or other high-speed data processing device



1 performing logical, arithmetic, or storage functions, and
2 includes all computer equipment connected or related to such a
3 device in a computer system or computer network, but shall not
4 include an automated typewriter or typesetter, a portable hand-
5 held calculator, or other similar device.

6 "Computer equipment" means any equipment or devices,
7 including all input, output, processing, storage, software, or
8 communications facilities, intended to interface with the
9 computer.

10 "Computer network" means two or more computers or computer
11 systems, interconnected by communication lines, including
12 microwave, electronic, or any other form of communication.

13 "Computer services" includes but is not limited to the use
14 of a computer system, computer network, computer program, data
15 prepared for computer use, and data contained within a computer
16 system or computer network.

17 "Computer software" or "program" means a set of computer-
18 readable instructions or statements and related data that, when
19 executed by a computer system, causes the computer system or the
20 computer network to which it is connected to perform computer
21 services.



1 "Computer system" means a set of interconnected computer
2 equipment intended to operate as a cohesive system.

3 "Data" means information, facts, concepts, software, or
4 instructions prepared for use in a computer, computer system, or
5 computer network.

6 "Internet service provider" means a person providing
7 connectivity to the Internet or another wide area network.

8 "Person" means an individual, corporation, government or
9 governmental subdivision or agency, business trust, estate,
10 trust, partnership, association, or any other legal entity.

11 "Without authorization" means without the permission of or
12 in excess of the permission of an owner, lessor, or rightful
13 user or someone licensed or privileged by an owner, lessor, or
14 rightful user to grant the permission.

15 "Zombie" means a computer that, without the knowledge and
16 consent of the computer's owner or operator, has been
17 compromised to give access or control to a program or person
18 other than the computer's owner or operator.

19 § -2 **Unauthorized creation of, access to, or use of**
20 **zombies or botnets; private action.** (a) A person who is not
21 the owner or operator of the computer may not knowingly cause or



1 offer to cause a computer to become a zombie or part of a
2 botnet.

3 (b) A person may not knowingly create, have created, use,
4 or offer to use a zombie or botnet to:

5 (1) Send an unsolicited commercial electronic mail
6 message;

7 (2) Send a signal to a computer system or network that
8 causes a loss of service to users;

9 (3) Send data from a computer without authorization by the
10 owner or operator of the computer;

11 (4) Forward computer software designed to damage or
12 disrupt another computer or system;

13 (5) Collect personally identifiable information; or

14 (6) Perform an act for another purpose not authorized by
15 the owner or operator of the computer.

16 (c) A person may not:

17 (1) Purchase, rent, or otherwise knowingly gain control of
18 a zombie or botnet created by another person; or

19 (2) Sell, lease, offer for sale or lease, or otherwise
20 knowingly provide to another person access to or use
21 of a zombie or botnet.



1 (d) The following persons may bring a civil action against
2 a person who violates this section:

3 (1) A person who is acting as an internet service provider
4 and whose network is used to commit a violation under
5 this section; or

6 (2) A person who has incurred a loss or disruption of the
7 conduct of the person's business, including for-profit
8 or not-for-profit activities, as a result of the
9 violation.

10 (e) A person bringing an action under this section, for
11 each violation may:

12 (1) Seek injunctive relief to restrain a violator from
13 continuing the violation;

14 (2) Subject to subsection (f), recover damages in an
15 amount equal to the greater of:

16 (A) Actual damages arising from the violation; or

17 (B) \$100,000 for each zombie used to commit the
18 violation; or

19 (3) Obtain both injunctive relief and damages.

20 (f) The court may increase an award of damages, statutory
21 or otherwise, in an action brought under this section to an
22 amount not to exceed three times the applicable damages if the



1 court finds that the violations have occurred with such a
2 frequency as to constitute a pattern or practice.

3 (g) A plaintiff who prevails in an action brought under
4 this section is entitled to recover court costs and reasonable
5 attorney's fees, reasonable fees of experts, and other
6 reasonable costs of litigation.

7 (h) A remedy authorized by this section is not exclusive
8 but is in addition to any other procedure or remedy provided for
9 by other statutory or common law.

10 (i) Nothing in this section may be construed to impose
11 liability on the following persons with respect to a violation
12 of this section committed by another person:

- 13 (1) An internet service provider;
- 14 (2) A telecommunication service provider;
- 15 (3) A cable operator; or
- 16 (4) A provider of interactive computer service, as defined
17 by Title 47 United States Code section 230."

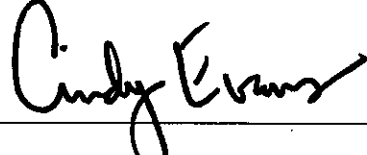
18 SECTION 2. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.



1 SECTION 3. This Act shall take effect upon its approval.

2

INTRODUCED BY:



JAN 21 2011



Report Title:

Use of Computers for Unauthorized Purposes; Civil Penalty

Description:

Establishes a civil remedy for damages caused by the creation or use of botnets or zombies. Provides definitions for the terms "botnet" and "zombie".

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

