1/30/11

The Honorable Robert Herkes

Consumer Protection and Commerce Committee

Room 325 2:00pm

Re: Opposition to HB617

Mr. Chairman and Members of the Committee:

I am an individual in opposition to wording in HB617, specifically in regards to subsection 2(e) of the new, proposed Chapter, USE OF COMPUTERS FOR UNNAUTHORIZED PURPOSES, in HRS Title 36:

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

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

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

(A) Actual damages arising from the violation; or

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

(3) Obtain both injunctive relief and damages.

I believe 'zombie' should be changed to 'botnet' in subsection (B). The amount of zombies in a botnet are already factored into any damage caused. As an example, if I threw a pebble at a window the damage (if any) would be negligible. However, if a took a bucket full of pebbles and threw the entire bucket at the window it would break. It is the weight of all the pebbles working in concert that caused the damage.

A botnet of zombies is what causes the actual damage to a system just as it takes a bucket of pebbles to break a window. However, I do not mind a charge for each violation of a botnet if used for different purposes; such as denial of service attacks in addition to destruction of data (wall of pebbles to block customers as well as broken windows.)

If wording is changed, I will be in support of this Bill as long as recoverable damages are reflective of the actual damage caused and not overly excessive.

Thank you for this opportunity to testify in opposition to HB617.

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