

LATE

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY



THE HONORABLE CAROL FUKUNAGA, CHAIR
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY
Twenty-sixth State Legislature
Regular Session of 2012
State of Hawai'i

February 15, 2012

RE: S.B. 3047; RELATING TO CRIME.

Chair Fukunaga, Vice Chair Wakai and members of the Senate Committee on Economic Development and Technology, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony in support of Senate Bill 3407, and in opposition to the Proposed S.D. 1.

The purpose of S.B. 3047 is to update Hawai'i's computer fraud statutes by adding language from Hawai'i's identity theft statutes, which have already proven useful and effective. These amendments would better address the realities of modern cybercrime, and serve as a more effective tool for enforcement and prosecution of computer fraud offenses. The Proposed S.D. 1, however, would remove any attempts to update computer fraud statutes, and create a criminal offense of cybersquatting, borrowing language from (civil) provisions in the Anticybersquatting Consumer Protection Act ("ACPA"), 15 U.S.C. § 1125(d).

As currently written, S.B. 3047 would provide much-needed updates to Hawai'i's computer fraud statutes, which are too narrow to address the majority of activities that would typically be thought of as "computer fraud." For example, computer fraud in the first degree requires proof that the offender accessed a computer without authorization to obtain or exert control over the property of another. However, the vast majority of (would-be) computer fraud offenders use their own computer (ie with authorization) to carry out offenses, such as online auction fraud, advance fee scams, counterfeit check scams, phishing and e-mail scams. We believe that the proposed amendments in S.B. 3047 would fill this gap in the law.

In addition, we note that second-degree computer fraud is currently limited to the misuse of passwords – and that's it. This definition is far too narrow to be useful in terms of preventing or prosecuting computer fraud, as it does not reflect the current patterns and schemes used by

online fraudsters. The proposed amendments in S.B. 3047, regarding second- and third-degree computer fraud, would also reflect the realities of modern-day cybercrime. However, S.B. 3047, Proposed S.D. 1, would not.

Although cybersquatting may seem comparable to trespassing-type offenses, it is actually akin to trademark or servicemark infringement, which is a civil—rather than criminal—matter. In fact, there is well-established and voluminous civil caselaw regarding copyrights, trademarks, servicemarks and similar types of intellectual property infringements and their remedies; for purposes of cybersquatting this may include suing in federal court under the ACPA, or pursuing administrative proceedings with the Internet Corporation for Assigned Names and Numbers (ICANN). Creating a parallel criminal statute would not only be unprecedented (to our knowledge), but also creates a serious risk of abuse via "leveraging" in pending or future civil matters.

For the reasons noted above, the Department of the Prosecuting Attorney of the City and County of Honolulu supports S.B. 3407, and opposes the Proposed S.D. 1. Thank for you the opportunity to testify on this matter.