

114TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

Mr. GRAHAM (for himself, Mr. WHITEHOUSE, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Botnet Prevention Act  
5 of 2016”.

6 **SEC. 2. SHUTTING DOWN BOTNETS.**

7 (a) AMENDMENT.—Section 1345 of title 18, United  
8 States Code, is amended—

9 (1) in the heading, by inserting “**and abuse**”  
10 after “**fraud**”;

1 (2) in subsection (a)—

2 (A) in paragraph (1)—

3 (i) in subparagraph (B), by striking

4 “or” at the end;

5 (ii) in subparagraph (C), by inserting

6 “or” after the semicolon; and

7 (iii) by inserting after subparagraph

8 (C) the following:

9 “(D) violating or about to violate section  
10 1030(a)(5) of this title where such conduct has  
11 caused or would cause damage (as defined in section  
12 1030) without authorization to 100 or more pro-  
13 tected computers (as defined in section 1030) during  
14 any 1-year period, including by—

15 “(i) impairing the availability or integrity  
16 of the protected computers without authoriza-  
17 tion; or

18 “(ii) installing or maintaining control over  
19 malicious software on the protected computers  
20 that, without authorization, has caused or  
21 would cause damage to the protected com-  
22 puters;” and

23 (B) in paragraph (2), by inserting “, a vio-  
24 lation described in subsection (a)(1)(D),” before  
25 “or a Federal”; and

1 (3) by adding at the end the following:

2 “(c) A restraining order, prohibition, or other action  
3 described in subsection (b), if issued in circumstances de-  
4 scribed in subsection (a)(1)(D), may, upon application of  
5 the Attorney General—

6 “(1) specify that no cause of action shall lie in  
7 any court against a person for complying with the  
8 restraining order, prohibition, or other action; and

9 “(2) provide that the United States shall pay to  
10 such person a fee for reimbursement for such costs  
11 as are reasonably necessary and which have been di-  
12 rectly incurred in complying with the restraining  
13 order, prohibition, or other action.”.

14 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
15 The table of sections for chapter 63 of title 18, United  
16 States Code, is amended by striking the item relating to  
17 section 1345 and inserting the following:

“1345. Injunctions against fraud and abuse.”.

18 **SEC. 3. AGGRAVATED DAMAGE TO A CRITICAL INFRA-**  
19 **STRUCTURE COMPUTER.**

20 (a) IN GENERAL.—Chapter 47 of title 18, United  
21 States Code, is amended by inserting after section 1030  
22 the following:

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-

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-

1 construction 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 (b) TABLE OF SECTIONS.—The table of sections for  
6 chapter 47 of title 18, United States Code, is amended  
7 by inserting after the item relating to section 1030 the  
8 following:

“1030A. Aggravated damage to a critical infrastructure computer.”.

9 **SEC. 4. STOPPING TRAFFICKING IN BOTNETS.**

10 (a) IN GENERAL.—Section 1030 of title 18, United  
11 States Code, is amended—

12 (1) in subsection (a)—

13 (A) in paragraph (7), by adding “or” at  
14 the end; and

15 (B) by inserting after paragraph (7) the  
16 following:

17 “(8) intentionally traffics in the means of ac-  
18 cess to a protected computer, if—

19 “(A) the trafficker knows or has reason to  
20 know the protected computer has been damaged  
21 in a manner prohibited by this section; and

22 “(B) the promise or agreement to pay for  
23 the means of access is made by, or on behalf of,  
24 a person the trafficker knows or has reason to  
25 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)”; and

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”.