

By: Zaffirini

S.B. No. 1009

A BILL TO BE ENTITLED

AN ACT

relating to the use of a computer for an unauthorized purpose.

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

SECTION 1. Section 48.002, Business & Commerce Code, as added by Chapter 298, Acts of the 79th Legislature, Regular Session, 2005, is amended by adding Subdivisions (1-a) and (10) to read as follows:

(1-a) "Botnet" means a collection of zombies.

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

SECTION 2. Section 48.054, Business & Commerce Code, as added by Chapter 298, Acts of the 79th Legislature, Regular Session, 2005, is amended to read as follows:

Sec. 48.054. KNOWING VIOLATION. A person knowingly violates Section 48.051, 48.052, ~~[or]~~ 48.053, or 48.057 if the person:

(1) acts with actual knowledge of the facts that constitute the violation; or

(2) consciously avoids information that would establish actual knowledge of those facts.

SECTION 3. Subchapter B, Chapter 48, Business & Commerce Code, as added by Chapter 298, Acts of the 79th Legislature, Regular

1 Session, 2005, is amended by adding Section 48.057 to read as
2 follows:

3 Sec. 48.057. UNAUTHORIZED CREATION OR USE OF ZOMBIES OR
4 BOTNETS. (a) If a person is not the owner or operator of the
5 computer, the person may not knowingly cause or offer to cause the
6 computer to become a zombie or part of a botnet.

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

9 (1) to send an unsolicited commercial electronic mail
10 message, as defined by Section 46.001;

11 (2) for an attack on a computer system or network that
12 causes a loss of service to users;

13 (3) to artificially add increments to a click counter
14 by automatically clicking on an advertisement on an Internet
15 website;

16 (4) to forward computer software designed to damage or
17 disrupt another computer or system;

18 (5) to collect personally identifiable information;

19 (6) to manipulate online polls or games; or

20 (7) for another purpose not authorized by the owner or
21 operator of the computer.

22 (c) A person may not:

23 (1) purchase, rent, or otherwise gain control of a
24 zombie or botnet created by another person; or

25 (2) sell, lease, offer for sale or lease, or otherwise
26 provide to another person access to or use of a zombie or botnet.

27 (d) A person may not provide substantial assistance or

1 support to another person knowing that the other person is engaged
2 in an act or practice that violates this section.

3 (e) The following persons may bring a civil action against a
4 person who violates this section:

5 (1) a person in business as an Internet service
6 provider that is adversely affected by the violation;

7 (2) a business organization that has incurred a loss
8 or disruption of its business activities as a result of the
9 violation; or

10 (3) the attorney general.

11 (f) A person bringing an action under this section may:

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

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

16 (A) actual damages arising from the violation;

17 (B) \$500,000 for each violation consisting of the
18 same course of conduct or action, regardless of the number of times
19 the conduct or act occurred; or

20 (C) \$100,000 for each zombie used to commit the
21 violation; or

22 (3) both seek injunctive relief and recover damages as
23 provided by this subsection.

24 (g) The court may increase an award of damages, statutory or
25 otherwise, in an action brought under this section to an amount not
26 to exceed three times the applicable damages if the court finds that
27 the violations have occurred with a frequency as to constitute a

1 pattern or practice.

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

6 (i) The remedies authorized by this section are not
7 exclusive but are in addition to any other procedure or remedy
8 provided for by other statutory or common law.

9 SECTION 4. Subsection (a), Section 48.101, Business &
10 Commerce Code, as added by Chapter 298, Acts of the 79th
11 Legislature, Regular Session, 2005, is amended to read as follows:

12 (a) The following persons, if adversely affected by the
13 violation, may bring a civil action against a person who violates
14 this chapter other than Section 48.057:

- 15 (1) a provider of computer software;
- 16 (2) an owner of a web page or trademark;
- 17 (3) a telecommunications carrier;
- 18 (4) a cable operator; or
- 19 (5) an Internet service provider.

20 SECTION 5. The changes in law made by this Act apply only to
21 conduct that occurs on or after the effective date of this Act.
22 Conduct that occurs before the effective date of this Act is
23 governed by the law in effect at the time the conduct occurred, and
24 that law is continued in effect for that purpose.

25 SECTION 6. This Act takes effect September 1, 2007.

COMMITTEE AMENDMENT NO. 1

Amend S.B. No. 1009 (Senate engrossment) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS accordingly:

SECTION ____ . Subsection (a), Section 48.003, Business & Commerce Code, as added by Chapter 298, Acts of the 79th Legislature, Regular Session, 2005, is amended to read as follows:

(a) Section 48.052, other than Subdivision (1) of that section, and Sections 48.053(4), ~~[and]~~ 48.055, and 48.057 do not apply to a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service or interactive computer service that monitors or has interaction with a subscriber's Internet or other network connection or service or a protected computer for:

- (1) network or computer security purposes;
- (2) diagnostics, technical support, or repair purposes;
- (3) authorized updates of computer software or system firmware;
- (4) authorized remote system management; or
- (5) detection or prevention of unauthorized use of or fraudulent or other illegal activities in connection with a network, service, or computer software, including scanning for and removing software proscribed under this chapter.

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COMMITTEE AMENDMENT NO. 2

Amend S.B. No. 1009 (senate engrossment) in SECTION 3 of the

S.B. No. 1009

1 bill, in proposed Paragraph (B), Subdivision (2), Subsection (f),
2 Section 48.057, Business & Commerce Code (page 3, line 17), strike
3 "\$500,000" and substitute "\$100,000".

4 80R19312 CLG-F

Darby