

AN ACT

relating to the use of a computer for an unauthorized purpose;
providing a civil penalty.

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

SECTION 1. Section 324.002, Business & Commerce Code, as effective April 1, 2009, is amended by adding Subdivisions (1-a) and (9) to read as follows:

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

(9) "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. Subsection (a), Section 324.003, Business & Commerce Code, as effective April 1, 2009, is amended to read as follows:

(a) Section 324.052, other than Subdivision (1) of that section, and Sections 324.053(4), ~~and~~ 324.054, and 324.055 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) a network or computer security purpose;

1 (2) diagnostics, technical support, or a repair
2 purpose;

3 (3) an authorized update of computer software or
4 system firmware;

5 (4) authorized remote system management; or

6 (5) detection or prevention of unauthorized use of or
7 fraudulent or other illegal activity in connection with a network,
8 service, or computer software, including scanning for and removing
9 software proscribed under this chapter.

10 SECTION 3. Section 324.005, Business & Commerce Code, as
11 effective April 1, 2009, is amended to read as follows:

12 Sec. 324.005. KNOWING VIOLATION. A person knowingly
13 violates Section 324.051, 324.052, [~~or~~] 324.053, or 324.055 if the
14 person:

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

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

19 SECTION 4. Subchapter B, Chapter 324, Business & Commerce
20 Code, as effective April 1, 2009, is amended by adding Section
21 324.055 to read as follows:

22 Sec. 324.055. UNAUTHORIZED CREATION OF, ACCESS TO, OR USE
23 OF ZOMBIES OR BOTNETS; PRIVATE ACTION. (a) In this section:

24 (1) "Internet service provider" means a person
25 providing connectivity to the Internet or another wide area
26 network.

27 (2) "Person" has the meaning assigned by Section

1 311.005, Government Code.

2 (b) A person who is not the owner or operator of the computer
3 may not knowingly cause or offer to cause a computer to become a
4 zombie or part of a botnet.

5 (c) A person may not knowingly create, have created, use, or
6 offer to use a zombie or botnet to:

7 (1) send an unsolicited commercial electronic mail
8 message, as defined by Section 321.001;

9 (2) send a signal to a computer system or network that
10 causes a loss of service to users;

11 (3) send data from a computer without authorization by
12 the owner or operator of the computer;

13 (4) forward computer software designed to damage or
14 disrupt another computer or system;

15 (5) collect personally identifiable information; or

16 (6) perform an act for another purpose not authorized
17 by the owner or operator of the computer.

18 (d) A person may not:

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

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

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

25 (1) a person who is acting as an Internet service
26 provider and whose network is used to commit a violation under this
27 section; or

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

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

6 (1) seek injunctive relief to restrain a violator from
7 continuing the violation;

8 (2) subject to Subsection (g), recover damages in an
9 amount equal to the greater of:

10 (A) actual damages arising from the violation; or

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

13 (3) obtain both injunctive relief and damages.

14 (g) The court may increase an award of damages, statutory or
15 otherwise, in an action brought under this section to an amount not
16 to exceed three times the applicable damages if the court finds that
17 the violations have occurred with such a frequency as to constitute
18 a pattern or practice.

19 (h) A plaintiff who prevails in an action brought under this
20 section is entitled to recover court costs and reasonable
21 attorney's fees, reasonable fees of experts, and other reasonable
22 costs of litigation.

23 (i) A remedy authorized by this section is not exclusive but
24 is in addition to any other procedure or remedy provided for by
25 other statutory or common law.

26 (j) Nothing in this section may be construed to impose
27 liability on the following persons with respect to a violation of

1 this section committed by another person:

2 (1) an Internet service provider;

3 (2) a provider of interactive computer service, as
4 defined by Section 230, Communications Act of 1934 (47 U.S.C.
5 Section 230);

6 (3) a telecommunications provider, as defined by
7 Section 51.002, Utilities Code; or

8 (4) a video service provider or cable service
9 provider, as defined by Section 66.002, Utilities Code.

10 SECTION 5. Subsection (a), Section 324.101, Business &
11 Commerce Code, as effective April 1, 2009, is amended to read as
12 follows:

13 (a) Any of the following persons, if adversely affected by
14 the violation, may bring a civil action against a person who
15 violates Section 324.051, 324.052, 324.053, or 324.054 [~~this~~
16 ~~chapter~~]:

17 (1) a provider of computer software;

18 (2) an owner of a web page or trademark;

19 (3) a telecommunications carrier;

20 (4) a cable operator; or

21 (5) an Internet service provider.

22 SECTION 6. The changes in law made by this Act apply only to
23 conduct that occurs on or after the effective date of this Act.
24 Conduct that occurs before the effective date of this Act is
25 governed by the law in effect at the time the conduct occurred, and
26 that law is continued in effect for that purpose.

27 SECTION 7. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 28 passed the Senate on April 14, 2009, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendments on May 28, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 28 passed the House, with amendments, on May 19, 2009, by the following vote: Yeas 143, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor