

By: Zaffirini

S.B. No. 28

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 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 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. Section 324.003(a), 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;

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

(3) an authorized update of computer software or

1 system firmware;

2 (4) authorized remote system management; or

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

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

9 Sec. 324.005. KNOWING VIOLATION. A person knowingly
10 violates Section 324.051, 324.052, [~~or~~] 324.053, or 324.055 if the
11 person:

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

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

16 SECTION 4. Subchapter B, Chapter 324, Business & Commerce
17 Code, as effective April 1, 2009, is amended by adding Section
18 324.055 to read as follows:

19 Sec. 324.055. UNAUTHORIZED CREATION, ACCESS TO, OR USE OF
20 ZOMBIES OR BOTNETS; PRIVATE ACTION. (a) A person other than the
21 owner or operator of the computer may not knowingly cause or offer
22 to cause a computer to become a zombie or part of a botnet.

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

25 (1) to send an unsolicited commercial electronic mail
26 message, as defined by Section 321.001;

27 (2) for an attack on a computer system or network that

1 causes a loss of service to users;

2 (3) to artificially add increments to a click counter
3 by automatically clicking on an advertisement on an Internet
4 website;

5 (4) to forward computer software designed to damage or
6 disrupt another computer or system;

7 (5) to collect personally identifiable information;

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

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

11 (c) A person may not:

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

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

16 (d) A person may not provide substantial assistance or
17 support to another person knowing that the other person is engaged
18 in an act or practice that violates this section.

19 (e) Any of the following persons may bring a civil action
20 against a person who violates this section:

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

23 (2) a business organization that has incurred a loss
24 or disruption of its business activities as a result of the
25 violation; or

26 (3) the attorney general.

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

1 obtain:

2 (1) injunctive relief that restrains the violator from
3 continuing the violation;

4 (2) subject to Subsection (g), damages in an amount
5 equal to the greater of:

6 (A) actual damages arising from the violation;

7 (B) \$100,000 for each violation consisting of the
8 same course of conduct or action, regardless of the number of times
9 the conduct or act occurred; or

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

12 (3) both injunctive relief and damages.

13 (g) The court may increase an award of damages, statutory or
14 otherwise, in an action brought under this section to an amount not
15 to exceed three times the applicable damages if the court finds that
16 the violation has reoccurred with sufficient frequency to
17 constitute a pattern or practice.

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

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

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

27 (a) Any of the following persons, if adversely affected by

1 the violation, may bring a civil action against a person who
2 violates a provision of this chapter other than Section 324.055:

- 3 (1) a provider of computer software;
- 4 (2) an owner of a web page or trademark;
- 5 (3) a telecommunications carrier;
- 6 (4) a cable operator; or
- 7 (5) an Internet service provider.

8 SECTION 6. The changes in law made by this Act apply only to
9 conduct that occurs on or after the effective date of this Act.
10 Conduct that occurs before the effective date of this Act is
11 governed by the law in effect at the time the conduct occurred, and
12 that law is continued in effect for that purpose.

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