

A BILL

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled,

SEC. 1. SHORT TITLE. This Act may be cited as the “Enhancement of Privacy and Public Safety in Cyberspace Act”.

SEC. 2. COMPUTER CRIME AMENDMENTS.

(a) Section 1030 of title 18, United States Code, is amended--

(1) in subsection (a)(3), by striking “such a computer” and inserting “without or in excess of authorization a computer”;

(2) in subsection (a)(7), by striking “, firm, association, educational institution, financial institution, government entity, or other legal entity,”;

(3) in subsection (b), by adding before the period “as if such person had committed the completed offense”;

(4) in subsection (c)(1)(A) and (B), by striking “, or an attempt to commit an offense punishable under this subparagraph”;

(5) by rewriting subsection (c)(2)(A) to read as follows:

“except as provided in subsections (c)(2)(B) and (c)(2)(C), a fine under this title or imprisonment for not more than one year, or both, in the case of an offense under subsection (a)(2), (a)(3), (a)(5), or (a)(6) of this section which does not occur after a conviction for another offense under this section;”;

(6) in subsection (c)(2)(B), by inserting “and” after the semicolon at the end;

(7) by rewriting subsection (c)(2)(C) to read as follows:

“a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(5)(A) or (a)(5)(B) if the offense caused (or, in the case of an attempted offense, would, if completed, have caused)--

(i) loss to one or more persons during any one year period (including loss resulting from a related course of conduct affecting one or more other protected computers) aggregating at least \$5,000;

(ii) the modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of one or more individuals;

(iii) physical injury to any individual;

(iv) a threat to public health or safety; or

(v) damage affecting a computer system used by or for a government entity in furtherance of the administration of justice, national defense, or national security;”;

(8) in subsection (c)(3)--

(A) by redesignating subparagraph (A) as paragraph(3);

(B) by striking “,(a)(5)(A), (a)(5)(B),”;

(C) by inserting a semicolon after “section” the second place it appears and by striking “, or an attempt to commit an offense punishable under this subparagraph; and”; and

(D) by striking subparagraph (B) and inserting:

“(4) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), or (a)(7) of this section which occurs after a conviction for another offense under this section.”;

(9) in subsection (d)--

(A) by striking “subsections (a)(2)(A), (a)(2)(B), (a)(3), (a)(4), (a)(5), and (a)(6) of”; and

(B) by striking “which shall be entered into by” and inserting “between”;

(10) in subsection (e)(2)(B), by inserting before the semicolon “, including computers located outside the United States”;

(11) in subsection (e)(7), by striking “and” after the semicolon;

(12) in subsection (e)(8), by striking all after “information” and inserting a semicolon;

(13) in subsection (e)(9), by striking the period at the end and inserting a semicolon; and

(14) by inserting the following after subsection (e)(9):

“(10) the term ‘conviction for another offense under this section’ includes--

“(A) an adjudication of juvenile delinquency for a violation of this section; and

“(B) a State conviction for a crime punishable by imprisonment for more than 1 year, an element of which is unauthorized access, or exceeding authorized access, to a computer;

“(11) the term ‘loss’ means any reasonable cost to any victim, including

responding to the offense, conducting a damage assessment, restoring any data, program, system, or information to its condition before the offense, and any revenue lost or costs incurred because of interruption of service; and

“(12) the term ‘person’ includes any individual, firm, association, educational institution, financial institution, corporation, company, partnership, society, government entity, or other legal entity.”;

(15) by amending subsection (g) to read as follows:

“(g) Except as herein provided, any person who suffers damage or loss by reason of a violation of this section may maintain a civil action against the violator to obtain compensatory damages and injunctive or other equitable relief. A suit for a violation of subsection (a)(5) may be brought only if the conduct involves one or more of the factors enumerated in subsection (c)(2)(C). No action may be brought under this subsection unless such action is begun within 2 years of the date of the act complained of or the date of the discovery of the damage.”; and

(16) by adding the following subsection after subsection (h):

“(i)(1) The court, in imposing sentence on any person convicted of a violation of this section, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person forfeit to the United States--

“(A) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation;
and

“(B) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such

violation;

“(2) The criminal forfeiture of property under this subsection, any seizure and disposition thereof, and any administrative or judicial proceeding in relation thereto, shall be governed by the provisions of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), except subsection (d) of that section.

“(j)(1) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

“(A) any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this section; and

“(B) any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this section.

“(2) The provisions of chapter 46 of this title relating to civil forfeiture shall apply to any seizure or civil forfeiture under this subsection.”.

(b) Section 805 of the Antiterrorism and Effective Death Penalty Act of 1996 (P.L. 104-132) is amended by striking “shall amend the sentencing guidelines to ensure any individual convicted of a violation of paragraph (4) or (5)” and inserting “shall amend the sentencing guidelines to ensure any individual convicted of a violation of paragraph (4) or a felony violation of paragraph (5)(A)(but not of (5)(B) or (5)(C))”.

(c) Section 223 of the Communications Act of 1934, as amended (47 U.S.C. 223) is amended—

(1) in subsections (a)(1)(C) and (E), by inserting “or interactive computer service” after “telecommunications device”;

(2) in subsections (a)(1)(D) and (E), by striking “or” after the semicolon;

(3) by adding the following after subsection (a)(1)(E):

“(F) with the intent to cause the unavailability of a telecommunications device or interactive computer service, or to cause damage to a protected computer (as such terms are defined in section 1030 of title 18), causes or attempts to cause one or more other persons to initiate communication with such telecommunications device, interactive computer service, or protected computer; or”;

(4) in the section heading, by striking “telephone calls” and inserting “communications”.

SEC. 3. INTERCEPTION OF WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS AMENDMENTS.

Chapter 119 of title 18, United States Code, is amended--

(1) in section 2510(1), by striking “electronic storage” and inserting “interim storage”;

(2) in section 2510(10), by striking “153(h)” and inserting “153(10)”;

(3) in section 2510(14)--

(A) by striking “of electronic” and inserting “of wire or electronic”; and

(B) by striking “electronic storage” and inserting “interim storage”;

(4) in section 2510(17)--

(A) by striking “electronic storage” and inserting “interim storage”; and

(B) by inserting “by an electronic communication service” after “intermediate storage”;

(5) in section 2511(2)(a)(i) by striking “on officer” and inserting “an officer”;

(6) in section 2511(2)(f)--

(A) by striking “this chapter or chapter 121” and inserting “this chapter or chapters 121 or 206”; and

(B) by striking “wire and oral” and inserting “wire, oral, and electronic”;

(7) in section 2511(2)(g)--

(A) by striking “access an electronic” and inserting “access a wire or an electronic”;

(B) by inserting “(other than a radio communication)” after “electronic communication” the first place it appears;

(C) by striking “communication system” and inserting “communications system”; and

(D) by striking “such electronic communication” and inserting “such communication”;

(8) in subsection 2511(4), by striking paragraph (b) and redesignating paragraph (c) as (b);

(9) in section 2515--

(A) by striking “Whenever any wire or oral communication” and inserting “(a) Except as provided in subsection (b), whenever any wire, oral, or electronic communication”;

(B) by adding at the end the following:

“(b) Subsection (a) shall not apply to the disclosure, before a grand jury or in a criminal trial, hearing, or other criminal proceeding, of the contents of a

communication, or evidence derived therefrom, against a person alleged to have intercepted, used, or disclosed the communication in violation of this chapter, or participated in such violation.”; and

(C) in the section heading, by striking “wire or oral” and inserting “wire, oral, or electronic”;

(10) in section 2516(1), by striking “wire or oral” and inserting “wire, oral, or electronic”;

(11) in section 2516(1)(b), by inserting “threat,” after “robbery,”;

(12) in section 2516(1), by amending the first subsection (p) to read as follows:

“(p) a felony violation of section 1030 of this title (relating to computer fraud and abuse), a felony violation of section 223 of title 47 (relating to abusive communications in interstate or foreign commerce), or a violation of section 1362 of this title (relating to destruction of government communications facilities); or”;

(13) in section 2516(1), by redesignating the second subsection (p) as (q);

(14) in section 2516(3), by striking “electronic communications” and inserting “one-way pager communications”;

(15) in section 2517(1) and (2), by inserting “or under the circumstances described in section 2515(b)” after “by any means authorized by this chapter”;

(16) in section 2518(7), by striking “subsection (d)” and inserting “subsection (8)(d)”;

(17) in section 2518(10)(a)--

(A) by striking “wire or oral” the first place it appears and inserting “wire, oral, or electronic”;

(B) by striking the period at the end of subparagraph (iii) and inserting a semicolon;

(C) by inserting “except that no suppression may be ordered under the circumstances described in section 2515(b).” before “Such motion”; and

(D) by striking “intercepted wire or oral communication” and inserting “intercepted communication”;

(18) by striking section 2518(10)(c); and

(19) in section 2520(c)(2)--

(A) by striking “court may” and inserting “court shall”;

(B) by striking “greater” the first place it appears and inserting “greatest”;

(C) by striking “or” at the end of subparagraph (A);

(D) by striking “whichever is the greater of \$100 a day for each day of violation or \$10,000.” and inserting “\$500 a day for each day of violation; or”;

and

(E) by adding the following after subparagraph (B):

“(C) statutory damages of \$10,000.”.

SEC. 4. AMENDMENTS TO THE ELECTRONIC COMMUNICATIONS PRIVACY ACT.

(a) Section 2701 of title 18, United States Code, is amended--

(1) in subsection (a) by striking “electronic storage” and inserting “interim storage”;

(2) in subsection (b)(1)--

(A) by striking “purposes of” and inserting “a tortious or illegal purpose.”;

(B) in subparagraph (A) by striking “one year” and inserting “five years”;

and

(C) in subparagraph (B) by striking “two” and inserting “ten”; and

(3) by amending subsection (b)(2) to read as follows:

“(2) in any other case--

 “(A) a fine under this title or imprisonment for not more than one year, or both, in the case of a first offense under this subparagraph; and

 “(B) a fine under this title or imprisonment for not more than five years, or both, for any subsequent offense under this subparagraph.”;

(b) Section 2702 of title 18, United States Code, is amended--

(1) by amending the title to read as follows:

“Voluntary disclosure of customer communications or records”;

(2) in subsection (a)(1) by--

(A) striking “person or entity providing an” and inserting “provider of”;

(B) striking “electronic storage” and inserting “interim storage”; and

(C) striking “and” at the end;

(3) in subsection (a)(2) by--

(A) striking “person or entity providing” and inserting “provider of”; and

(B) striking the period at the end and inserting “; and”;

(4) in subsection (a) by adding the following paragraph after paragraph (2):

“(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a

subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2) of this section) to any governmental entity.”;

(5) in the title of subsection (b) by adding “for disclosure of communications” after “Exceptions”;

(6) in subsection (b) by striking “person or entity” and inserting “provider described in subsection (a)”;

(7) in subsection (b)(6) by—

(A) striking “crime; or” and inserting “crime;”;

(B) striking the period at the end and inserting “; or”; and

(C) adding the following subparagraph after subparagraph (B):

“(C) if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information.”; and

(8) by adding the following subsection after subsection (b):

“(c) Exceptions for disclosure of customer records.--A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2) of this section)--

“(1) as otherwise authorized in section 2703 of this title;

“(2) with the lawful consent of the customer or subscriber;

“(3) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

“(4) to a governmental entity, if the provider reasonably believes that an

emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information; or

“(5) to any person other than a governmental entity where not otherwise prohibited by law.”.

(c) Section 2703 of title 18, United States Code, is amended--

(1) by amending the title to read as follows:

“Required disclosure of customer communications or records”;

(2) in subsection (a) by striking “electronic storage” each place it appears and inserting “interim storage”;

(3) by amending subsection (b)(1)(B)(i) to read as follows:

“(i) uses a Federal or State grand jury or trial subpoena, or a subpoena or equivalent process authorized by a Federal or State statute; or”;

(4) in subsection (c) by--

(A) redesignating paragraph (2) as paragraph (3); and

(B) redesignating subparagraph (C) of paragraph (1) as paragraph (2);

(5) in subsection (c)(1) by--

(A) striking “(A) Except as provided in subparagraph (B),” and inserting “A governmental entity may require”;

(B) striking “may disclose” and inserting “to disclose”; and

(C) striking “to any person other than a governmental entity.”;

(D) striking “(B) A provider of” through “to a governmental entity”;

(E) redesignating subdivisions (i) through (iv) as subparagraphs (A) through (D);

(F) striking “or” at the end of subparagraph (C) as redesignated;

(G) striking the period at the end of subparagraph (D) as redesignated and inserting “; or”; and

(H) adding the following subparagraph after subparagraph (D) as redesignated:

“(E) seeks information pursuant to paragraph (2).”;

(6) in subsection (c)(2) as redesignated by--

(A) striking “an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena” and inserting “a Federal or State grand jury or trial subpoena, or a subpoena or equivalent process authorized by a Federal or State statute,”; and

(B) striking “subparagraph (B).” and inserting “paragraph (1).”; and

(7) in subsection (d) by--

(A) striking “(c)” and inserting “(c)(1)”; and

(B) striking “3127(2)(A)” and inserting “3127(2)”.

(d) Section 2705(a) of title 18, United States Code, is amended--

(1) in paragraph (1)(B) by striking “an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena” and inserting “a Federal or State grand jury or trial subpoena, or a subpoena or equivalent process authorized by a Federal or State statute”; and

(2) in paragraph (4) by striking all after “granted” and inserting “, upon application, if the court determines that there is reason to believe that notification of the existence of the court order or subpoena may have an adverse result described in

paragraph (2) of this subsection.”.

(e) Section 2707(e)(1) of title 18, United States Code, is amended by inserting “a request of a governmental entity under section 2703(f) of this chapter,” after “subpoena,”.

SEC. 5. AMENDMENTS REGARDING PEN REGISTERS AND TRAP AND TRACE DEVICES.

(a) Section 3121(c) of title 18, United States Code, is amended by--

(1) inserting “or trap and trace device” after “pen register”;

(2) inserting “, routing, addressing,” after “dialing”; and

(3) striking “call processing” and inserting “the processing and transmitting of wire and electronic communications”.

(b) Section 3122(b)(2) of title 18, United States Code, is amended by striking “certification by the applicant” and inserting “statement of facts showing”.

(c) Section 3123 of title 18, United States Code, is amended--

(1) by amending subsection (a) to read as follows:

“(a) In general.--

“(1) Upon an application made under section 3122(a)(1) of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device if the court finds, based on facts contained in the application, that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation. Such order shall, upon service of such order, apply to any entity providing wire or electronic communication service in the United States whose assistance may facilitate the

execution of the order.

“(2) Upon an application made under section 3122(a)(2) of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds, based on facts contained in the application, that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.”;

(2) in subsection (b)(1)(A) by inserting—

(A) “or other facility” after “line”; and

(B) “or applied” after “attached”;

(3) in subsection (b)(1)(C) by—

(A) striking “the number” and inserting “the attributes of the communications to which the order applies, such as the number or other identifier”;

(B) striking “physical”;

(C) inserting “or other facility” after “line”;

(D) inserting “or applied” after “attached”; and

(E) inserting “authorized under subsection (a)(2) of this section” after “device” the second time it appears; and

(4) in subsection (d)(2) by—

(A) inserting “or other facility” after “line”;

(B) inserting “or applied” after “attached”; and

(C) deleting “has been ordered by the court” and inserting “is obligated by

the order”.

(d) Section 3125(a)(1) of title 18, United States Code, is amended by--

(1) striking “or” at the end of subparagraph (A);

(2) striking the comma at the end of subparagraph (B) and inserting a semicolon;

and

(3) adding the following subparagraphs after subparagraph (B):

“(C) an immediate threat to a national security interest; or

“(D) an ongoing attack on the integrity or availability of a protected computer punishable pursuant to section 1030(c)(2)(C) of this title.”.

(e) Section 3127 of title 18, United States Code, is amended--

(1) by amending paragraph (2)(A) to read as follows:

“(A) any district court of the United States (including a magistrate judge of such a court) or United States Court of Appeals having jurisdiction over the offense being investigated; or”;

(2) in paragraph (3) by--

(A) striking “electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached” and inserting “dialing, routing, addressing, and signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted”; and

(B) inserting “or process” after “device” each place it appears;

(3) in paragraph (4) by--

(A) inserting “or process” after “device” the second time it appears; and

(B) striking “of an instrument or device from which a wire or electronic communication was transmitted” and inserting “or other dialing, routing, addressing, and signaling information relevant to identifying the source of a wire or electronic communication”;

(4) in paragraph (5) striking “and”;

(5) in paragraph (6) striking the period and inserting “; and”; and

(6) adding the following paragraph after paragraph (6):

“(7) the term ‘protected computer’ has the meaning set forth in section 1030 of this title.”.

SEC. 6. Section 5032 of title 18, United States Code, is amended by inserting “or is a violation of section 1030(a)(1), section 1030(a)(2)(B), section 1030(a)(3), or a felony violation of section 1030(a)(5) where such felony violation of section 1030(a)(5) is eligible for punishment under section 1030(c)(2)(C)(ii) through (v) of this title,” after “section 924(b), (g), or (h) of this title,” the first time it appears.

SEC. 7. Section 631 of the Communications Act of 1934 (47 U.S.C. 551) is amended—

(1) in subsection (c)(2)--

(A) in subparagraph (B) by striking “or”;

(B) in subparagraph (C) by striking the period at the end and inserting “; or”; and

(C) by adding the following subparagraph after subparagraph (C):

“(D) required under chapters 119, 121, or 206 of title 18, United States

Code. Such disclosure shall not include records revealing customer cable television viewing activity.”; and

(2) in subsection (h) by striking “A governmental entity” and inserting “Except as provided in subsection (c)(2)(D), a governmental entity”.

SEC. 8. TECHNICAL AMENDMENTS.

(a) The chapter analysis for chapter 119 of title 18, United States Code, is amended in the item relating to section 2515 by striking “wire or oral” and inserting “wire, oral, or electronic”.

(b) The chapter analysis for chapter 121 of title 18, United States Code, is amended by striking the items for sections 2702 and 2703 and inserting the following:

“2702. Voluntary disclosure of customer communications or records.

“2703. Required disclosure of customer communications or records.”.