

104TH CONGRESS  
1ST SESSION

# S. 974

To prohibit certain acts involving the use of computers in the furtherance of crimes, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 27 (legislative day, JUNE 19), 1995

Mr. GRASSLEY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To prohibit certain acts involving the use of computers in the furtherance of crimes, and for other purposes.

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 “Anti-Electronic Rack-  
5 eetering Act of 1995”.

6 **SEC. 2. PROHIBITED ACTIVITIES.**

7 (a) DEFINITIONS.—Section 1961(1) of title 18,  
8 United States Code, is amended—

1 (1) by striking “1343 (relating to wire fraud)”  
2 and inserting “1343 (relating to wire and computer  
3 fraud)”;

4 (2) by striking “that title” and inserting “this  
5 title”;

6 (3) by striking “or (E)” and inserting “(E)”;  
7 and

8 (4) by inserting before the semicolon the follow-  
9 ing: “or (F) any act that is indictable under section  
10 1030, 1030A, or 1962(d)(2)”.

11 (b) USE OF COMPUTER TO FACILITATE RACKETEER-  
12 ING ENTERPRISE.—Section 1962 of title 18, United  
13 States Code, is amended—

14 (1) by redesignating subsection (d) as sub-  
15 section (e); and

16 (2) by inserting after subsection (c) the follow-  
17 ing new subsection:

18 “(d) It shall be unlawful for any person—

19 “(1) to use any computer or computer network  
20 in furtherance of a racketeering activity (as defined  
21 in section 1961(1)); or

22 “(2) to damage or threaten to damage elec-  
23 tronically or digitally stored data.”.

24 (c) CRIMINAL PENALTIES.—Section 1963(b) of title  
25 18, United States Code, is amended—

1 (1) by striking “and” at the end of paragraph  
2 (1);

3 (2) by striking the period at the end of para-  
4 graph (2) and inserting “; and”; and

5 (3) by adding at the end the following new  
6 paragraph:

7 “(3) electronically or digitally stored data.”.

8 (d) CIVIL REMEDIES.—Section 1964(c) of title 18,  
9 United States Code, is amended by striking “his property  
10 or business”.

11 (e) USE AS EVIDENCE OF INTERCEPTED WIRE OR  
12 ORAL COMMUNICATIONS.—Section 2515 of title 18,  
13 United States Code, is amended by inserting before the  
14 period at the end the following: “, unless the authority  
15 in possession of the intercepted communication attempted  
16 in good faith to comply with this chapter. If the United  
17 States or any State of the United States, or subdivision  
18 thereof, possesses a communication intercepted by a non-  
19 governmental actor, without the knowledge of the United  
20 States, that State, or that subdivision, the communication  
21 may be introduced into evidence”.

22 (f) AUTHORIZATION FOR INTERCEPTION OF WIRE,  
23 ORAL, OR ELECTRONIC COMMUNICATIONS.—Section  
24 2516(1) of title 18, United States Code, is amended—



1       uting the software knows or reasonably should know,  
2       is accessible to foreign nationals and foreign  
3       governments, regardless of whether such software  
4       has been designated as nonexportable;

5           “(3) to use a computer or computer network to  
6       transmit a communication intended to conceal or  
7       hide the origin of money or other assets, tangible or  
8       intangible, that were derived from racketeering ac-  
9       tivity; and

10          “(4) to operate a computer or computer net-  
11       work primarily to facilitate racketeering activity or  
12       primarily to engage in conduct prohibited by Federal  
13       or State law.

14          “(b) For purposes of this section, each act of distrib-  
15       uting software is considered a separate predicate act. Each  
16       instance in which nonexportable software is accessed by  
17       a foreign government, an agent of a foreign government,  
18       a foreign national, or an agent of a foreign national, shall  
19       be considered as a separate predicate act.

20          “(c) It shall be an affirmative defense to prosecution  
21       under this section that the software at issue used a univer-  
22       sal decoding device or program that was provided to the  
23       Department of Justice prior to the distribution.”.

24           (2) CLERICAL AMENDMENT.—The analysis at  
25       the beginning of chapter 47, United States Code, is

1 amended by adding at the end the following new  
2 item:

“1030A. Racketeering-related crimes involving computers.”.

3 (3) JURISDICTION AND VENUE.—Section 1030  
4 of title 18, United States Code, is amended by add-  
5 ing at the end the following new subsection:

6 “(g)(1)(A) Any act prohibited by this section that is  
7 committed using any computer, computer facility, or com-  
8 puter network that is physically located within the terri-  
9 torial jurisdiction of the United States shall be deemed  
10 to have been committed within the territorial jurisdiction  
11 of the United States.

12 “(B) Any action taken in furtherance of an act de-  
13 scribed in subparagraph (A) shall be deemed to have been  
14 committed in the territorial jurisdiction of the United  
15 States.

16 “(2) In any prosecution under this section involving  
17 acts deemed to be committed within the territorial juris-  
18 diction of the United States under this subsection, venue  
19 shall be proper where the computer, computer facility, or  
20 computer network was physically situated at the time at  
21 least one of the wrongful acts was committed.”.

22 (i) WIRE AND COMPUTER FRAUD.—Section 1343 of  
23 title 18, United States Code, is amended by striking “or  
24 television communication” and inserting “television com-  
25 munication, or computer network or facility”.

1 (j) PRIVACY PROTECTION ACT.—Section 101 of the  
2 Privacy Protection Act of 1980 (42 U.S.C. 2000aa) is  
3 amended—

4 (1) in subsection (a)—

5 (A) by striking “or” at the end of para-  
6 graph (1);

7 (B) by striking the period at the end of  
8 paragraph (2) and inserting “; or”; and

9 (C) by adding at the end the following new  
10 paragraph:

11 “(3) there is reason to believe that the imme-  
12 diate seizure of such materials is necessary to pre-  
13 vent the destruction or alteration of such docu-  
14 ments.”; and

15 (2) in subsection (b)—

16 (A) by striking “or” at the end of para-  
17 graph (3);

18 (B) by striking the period at the end of  
19 paragraph (4) and inserting “; or”; and

20 (C) by adding at the end the following new  
21 paragraph:

22 “(5) in the case of electronically stored data,  
23 the seizure is incidental to an otherwise valid sei-  
24 zure, and the government officer or employee—

1           “(A) was not aware that work product ma-  
2           terial was among the data seized;

3           “(B) upon actual discovery of the existence  
4           of work product materials, the government offi-  
5           cer or employee took reasonable steps to protect  
6           the privacy interests recognized by this section,  
7           including—

8                   “(i) using utility software to seek and  
9                   identify electronically stored data that may  
10                  be commingled or combined with non-work  
11                  product material; and

12                  “(ii) upon actual identification of such  
13                  material, taking reasonable steps to protect  
14                  the privacy of the material, including seek-  
15                  ing a search warrant.”.

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