

BRYAN SCHRODER
United States Attorney

ADAM ALEXANDER
Assistant U.S. Attorney
Federal Building & U.S. Courthouse
222 West 7th Ave., #9, Rm. 253
Anchorage, AK 99513-7567
Phone: 907-271-5071
Email: adam.alexander@usdoj.gov

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) No. 3:18-cr-00154-TMB-MMS
)
 DAVID BUKOSKI,)
)
 Defendant.)
)
)
)
)
)
)

**MOTION FOR ALTERNATIVE
VICTIM NOTIFICATION UNDER 18 U.S.C. § 3771(d)(2)**

The United States of America respectfully moves this Court, pursuant to Title 18, United States Code, Section 3771(d)(2), for authorization to employ the victim notification procedures described below, in lieu of those prescribed by section 3771(a), (b) and (c), on the grounds that the number of potential victims and lack of identifying information in this

case makes it impracticable to accord all of the potential, unidentified crime victims the rights described in subsection 3771(a).

The Crimes Victims' Rights Act ("the Act"), codified at 18 U.S.C. § 3771, provides certain rights to victims in federal criminal proceedings. Among these rights is the right to "reasonable, accurate, and timely notice" of public court proceedings. 18 U.S.C. § 3771(a). The Act requires "[o]fficers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation and prosecution of crime make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection [3771](a)," 18 U.S.C. § 3771(c)(1), and it instructs the Court to "ensure that the crime victim is afforded" those rights. 18 U.S.C. § 3771(b). The Act defines a crime victim as "a person directly and proximately harmed as a result of the commission of a Federal offense . . ." 18 U.S.C. § 3771(e). Importantly, the Act recognizes that for crimes involving multiple victims, the Court has discretion to adopt procedures to accord victim rights without unduly interfering with the criminal proceedings. Thus, 18 U.S.C. §3771(d)(2) provides:

In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

The Act places no limitations on the alternative procedures which a Court may fashion other than that the procedures be reasonable to effectuate the Act and that they not unduly complicate or prolong the proceedings. *Id.*

Here, the defendant, David Bukoski, has pleaded guilty as charged to a single count of aiding and abetting computer intrusions in violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, and is currently pending sentencing before this court. The underlying conduct arises from his operation of a well-known “booter” or “stressor” service that allowed his clients to conduct comparatively low-scale but wide-ranging attacks on individual and corporate victim domains and networks. The nature of such online “booter” services is such that the attacks are often, but not always successful, and many victims may be unaware of the fact that any given service – purchased by an end user abetted by the defendant – was responsible for causing loss or damage.

The investigation to date has revealed hundreds, and potentially thousands, of victims who may have been proximately harmed by defendant’s illegal conduct, but those victims are most commonly identified by the IP address selected by the individuals using the defendant’s booter service rather than by personally identifying information.

Those IP addresses in turn may have been assigned dynamically from each respective Internet Service Provider (who are also potential victims), and as a result any given victim of the defendant’s criminal service may not be currently assigned the same IP address found in his database in the course of the investigation. Furthermore, identifying a victim through an IP address found in that database would require the United States to issue hundreds, if not thousands of subpoenas, and then conduct an equal number of interviews with individuals (or corporate representatives) to determine what loss was suffered.

Accordingly, the number of comparatively anonymous victims makes compliance with the notification requirements outlined in section 3771(a), (b) and (c) impracticable in this instance. Neither the government nor the Court has the resources to accord all of the victims in this case the notice required by subsection 3771(a), but wishes regardless to make best efforts to provide notice to potential victims by publication prior to any scheduled restitution hearing.

Therefore, due to the large number of victims in this case, the government intends to direct potential victims to the U.S. Attorney's Office website where a notice regarding a restitution hearing will be posted: <https://www.justice.gov/usao-ak/case-updates>. The government will also issue a press release within a reasonable amount of time after the Court grants this motion informing individuals who believe they may be victims to access the U.S. Attorney's Office website for more information. The United States also plans to notify – to the extent possible – those ISPs providing services to victim networks, who may be able to conduct additional notification of their own customers.

Unfortunately, the very nature of the criminal service provided by the Defendant in this case was intended to obscure the nature of the harm he aided and abetted, and his identity from victims who may not have known the source of the attack or the individuals responsible for any resulting loss or damage. The United States proposes this procedure, previously employed in part in other cybercrime investigations such as the disruption and remediation of the Kelihos botnet through operations conducted in the District of Alaska, in an attempt to make best efforts at victim notification under these unique circumstances.

CONCLUSION

Based on the foregoing, the government requests the Court grant the motion for alternative victim notification procedures.

RESPECTFULLY SUBMITTED this 3rd day of February, 2020, in Anchorage, Alaska.

BRYAN SCHRODER
United States Attorney

/s/ Adam Alexander
ADAM ALEXANDER
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served electronically on all counsel of record via the CM/ECF system.

/s/ Adam Alexander
Office of the U.S. Attorney