

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

MICROSOFT CORPORATION, a	)	
Washington corporation, and FS-	)	
ISAC, INC., a Delaware corporation,	)	
	)	
Plaintiffs,	)	Civil Action No: 1:15cv240
	)	LMB/IDD
v.	)	
	)	
JOHN DOES 1-3, CONTROLLING	)	
A COMPUTER BOTNET THEREBY	)	
INJURING PLAINTIFFS AND	)	
THEIR CUSTOMERS AND	)	
MEMBERS,	)	
	)	
	)	
Defendants.	)	

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**PLAINTIFFS’ MOTION AND SUPPORTING MEMORANDUM FOR THIRTY-DAY  
EXTENSION OF TIME TO CONDUCT ADDITIONAL DOE DISCOVERY**

By this motion, Plaintiffs Microsoft Corp. (“Microsoft”) and FS-ISAC, Inc. (“FS-ISAC”) (collectively “Plaintiffs”) respectfully request an order extending the time in which to complete discovery aimed at identifying the Doe Defendants.

On February 20, 2015, the Court granted an emergency *ex parte* temporary restraining order (“TRO”), and on March 4, 2015, the Court granted a preliminary injunction to halt the operation and growth of the Ramnit botnet—a network of compromised user computers infected with Ramnit malware—that John Doe Defendants control. (Dkt. No. 43.)<sup>1</sup>

On March 4, 2015, the Court entered an order authorizing Plaintiffs to conduct discovery necessary to identify and serve John Does 1-3. The Court’s March 4 discovery order authorized

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<sup>1</sup> The Ramnit botnet was capable of infecting the computers of Microsoft’s customers, hijacking their web browsers, deceiving them by misuse of Microsoft’s and FS-ISAC member organizations’ trademarks, stealing computer users’ online login credentials and other personal identifying information, and stealing funds from individuals’ financial accounts. This activity has caused extreme and irreparable injury to Plaintiffs, their customers and member organizations, and the public. (Dkt. Nos. 16 & 43.)

120 days of discovery; this discovery period ends on July 2, 2015. Plaintiffs have diligently pursued discovery over the past several months. Among other things, Plaintiffs have issued nine subpoenas in multiple rounds to third party registrars and email service providers, whose services were used by the Doe defendants. The responses to those subpoenas have provided Plaintiffs with new leads in the United States, the United Kingdom, Russia, Japan and Israel, which Plaintiffs are pursuing with the aim of determining a more precise identification of Defendants. Through their diligent efforts, Plaintiffs have, to date, generated more promising leads than they have been able to completely investigate. Plaintiffs believe that, by completing their investigation of all of the leads, a more precise identification of the Defendants may be possible.

Plaintiffs are in discussions with a several non-U.S. service providers who may have information in their possession that more readily identifies the Defendants including Internet service providers in the United Kingdom, and payment processors and domain registrars in Russia and Israel. At the least, this process will likely lead to additional email addresses and physical addresses at which Defendants may be provided notice of this action. However, this process is taking time. Accordingly, an additional thirty days of discovery will provide sufficient time for Plaintiffs to either identify more specifically one or more of John Does 1-3 or, and at the least will result in additional contact information through which Defendants, as currently identified, may be provided notice and service of the pleadings in this case.

## **I. ARGUMENT**

District courts have discretion to authorize discovery necessary to identify unknown defendants. *See, e.g., Gordon v. Leeke*, 574 F.2d 1147, 1152 (4th Cir. 1978) (authorizing Doe discovery); *Arista Records LLC v. Does 1-14*, 2008 U.S. Dist. LEXIS 102974 (W.D. Va. 2008) (granting discovery to identify John Does based on IP addresses); *Virgin Records America, Inc. v. John Doe*, 2009 U.S. Dist. LEXIS 21701 (E.D.N.C. 2009) (same); *Microsoft v. John Does 1-27*, Case No. 1:10-cv-00156 (E.D. Va. 2010) (Brinkema, J). Plaintiffs respectfully submit that the same good cause that supported this Court's March 4, 2015 discovery order supports the extension requested herein. Evidence developed during discovery supports Plaintiffs' showing

of good cause to conduct further Doe discovery, as Plaintiffs are currently pursuing leads that they believe may result in more specific identification of one or more Doe Defendants. The process of attempting to identify anonymous Defendants operating on the Internet, who are believed to reside outside of the United States, who have relied extensively on service providers based in other countries, and who have used multiple layers of false information to disguise their true identities, is a relatively slow and difficult process. The additional extension sought will permit plaintiff to exhaust all reasonably available sources of information.

Plaintiffs' discovery efforts to date have uncovered additional IP addresses, email addresses, names, and payment information used in connection with operation of the infrastructure for the Ramnit botnet. Declaration of Jacob M. Heath ("Heath Decl.") ¶¶ 2-3. Unfortunately, certain of the names and payment information uncovered in discovery appear to have been falsified by Defendants. *Id.* ¶ 4. Nevertheless, Plaintiffs' discovery efforts have resulted in a number of potentially fruitful leads. *Id.* For example, Plaintiffs are currently interviewing and corresponding with certain service providers, located outside of the United States, and who have been identified in response to Plaintiffs' subpoenas. Based on the current state of these discovery efforts, Plaintiffs believe that one or more of these service providers may be able to provide information that will assist in identifying certain Defendants or at least provide additional electronic or physical contact information at which Defendants can be notified of this action. *Id.*

Plaintiffs require an additional thirty days of Doe discovery in order to have sufficient time to issue follow up subpoenas and take action, where required, to enforce certain outstanding subpoenas, and to continue what appear to be promising negotiations with non-U.S. entities that provided Internet, e-mail, or payment services to Defendants. *Id.* ¶ 5. If granted, the thirty-day extension Plaintiffs request may lead to identification of one or more John Doe Defendants, which may in turn permit Plaintiffs to personally serve such individuals with the complaint, summons, and injunction in this case in accordance with the federal rules.

At a minimum, the extension Plaintiffs request will permit Plaintiffs to uncover electronic

contact information, associated with additional infrastructure used to operate the Ramnit botnet. Such contact information can be used to better effectuate notice and service upon John Does 1-3. The extension that Plaintiffs request is in all parties' interests—including Defendants'—as more discovery will increase the chance of providing each Defendant with notice and opportunity to be heard.

## **II. CONCLUSION**

For the reasons set forth herein, Plaintiffs respectfully request an additional thirty days to conduct discovery tailored to identify the Doe Defendants and to obtain further contact information at which Defendants may be served. A proposed order is attached for the Court's signature.

Dated: June 29, 2015

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

*/s/ David B. Smith*

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