

FILED

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

2015 FEB 20 A 9:20

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

MICROSOFT CORPORATION, a  
Washington corporation, and FS-ISAC, INC.,  
a Delaware corporation,

Plaintiffs,

v.

JOHN DOES 1-3, CONTROLLING A  
COMPUTER BOTNET THEREBY  
INJURING PLAINTIFFS AND THEIR  
CUSTOMERS AND MEMBERS,

Defendants.

Civil Action No: 1:15 CV 240 LMB/IDD

FILED UNDER SEAL PURSUANT TO  
LOCAL CIVIL RULE 5

**DECLARATION OF JACOB M. HEATH IN SUPPORT OF  
MOTION FOR PROTECTIVE ORDER TEMPORARILY SEALING DOCUMENTS**

I, Jacob Heath, declare as follow:

1. I am an attorney admitted to practice in the State of California. I am an associate at the law firm of Orrick, Herrington & Sutcliffe LLP, ("Orrick") counsel of record for Plaintiffs. I make this declaration in support of Plaintiffs' Motion for a Protective Order Temporarily Sealing Documents. I have personal knowledge of the facts set forth in this declaration and, if called to testify as a witness, could and would testify to the following under oath.

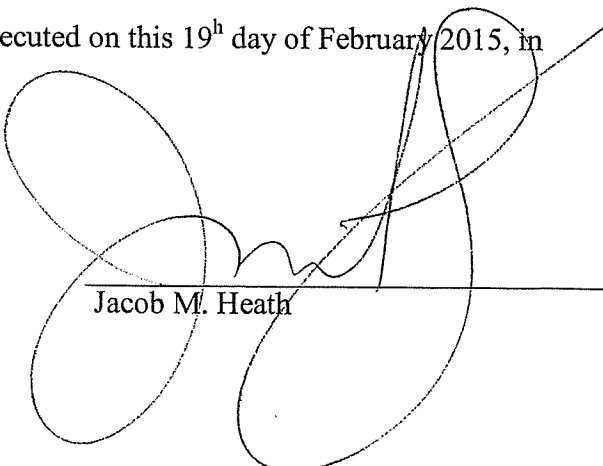
2. This case arises out of the harmful and malicious Internet activities of Defendants John Does 1 through 3 (collectively "Defendants"). Defendants are sophisticated cybercriminals that currently propagate and control a network of infected computers known as the Ramnit botnet. I am informed and believe that Defendants use the Ramnit botnet to steal users' of infected computers online login credentials and personal identifying information to then steal

money from those users' accounts.

3. I am informed and believe that, for reasons explained in detail in the declarations of Jacob M. Heath, Vikram Thakur, Jason Lyons, Eric Guerrino, Tim Liu, and Karthik Selvaraj in support of Plaintiffs' Application for Temporary Restraining Order, and Order to Show Cause ("TRO Application"), permitting Defendants to learn of these proceedings prior to execution of the temporary *ex parte* relief sought in the TRO Application will significantly impede, if not preclude, Plaintiffs' ability to obtain effective relief against Defendants. This is so because Defendants are highly-sophisticated cybercriminals capable of quickly adapting the Ramnit command and control infrastructure that Defendants use to perpetrate their unlawful conduct in order to overcome Plaintiffs' remediation efforts.

4. I am informed and believe that, absent a sealing order, there is a substantial risk that Defendants will learn of these proceedings before the temporary *ex parte* relief sought in the TRO Application can be effected and will take steps to evade the relief sought. Over the past four years, Orrick has prosecuted over a half-dozen cases such as this instant action on behalf of Microsoft. These cases all involved similar litigation strategies and claims. Thus, it is my belief that even disclosing that Orrick and Plaintiffs have initiated this case risks informing Defendants of the relief sought in the TRO Application. For this reason, Plaintiffs respectfully request that all documents filed in this case be sealed until the Court has an opportunity to rule on the merits of Microsoft's TRO Application.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed on this 19<sup>th</sup> day of February 2015, in Washington, D.C.



Jacob M. Heath