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Attorneys for Plaintiffs
MICROSOFT CORPORATION,
FS-ISAC, INC. and NATIONAL AUTOMATED
CLEARING HOUSE ASSOCIATION

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

MICROSOFT CORP., FS-ISAC, INC., and
NATIONAL AUTOMATED CLEARING HOUSE
ASSOCIATION,

Plaintiffs

v.

JOHN DOES 1-39 D/B/A Slavik, Monstr, IOO,
Nu11, nvidiag, zebra7753, lexa_Mef, gss, iceIX,
Harderman, Gribodemon, Aqua, aquaSecond, it,
percent, cp01, hct, xman, Pepsi, miami, miamibc,
petr0vich, Mr. ICQ, Tank, tankist, Kusunagi,
Noname, Lucky, Bashorg, Indep, Mask, Enx,
Benny, Bentley, Denis Lubimov, MaDaGaSka,
Vkontake, rfcid, parik, reronic, Daniel, bx1, Daniel
Hamza, Danielbx1, jah, Jonni, jtk, D frank, duo,
Admin2010, h4x0rdz, Donsft, mary.J555,
susanneon, kainehave, virus_e_2003, spanishp,
sere.bro, muddem, mechan1zm, vlad.dimitrov,
jheto2002, sector.exploits AND JabberZeus Crew,
AND YEVHEN KULIBABA AND YURIY
KONOVALENKO, CONTROLLING COMPUTER
BOTNETS THEREBY INJURING PLAINTIFFS,
AND THEIR CUSTOMERS AND MEMBERS,

Defendants.

Hon. Sterling Johnson, Jr.

Case No. 12-cv-01335 (SJ/RLM)

STATUS REPORT

Plaintiffs Microsoft Corporation, FS-ISAC, Inc., and the National Automated Clearing House Association (collectively, "Plaintiffs"), by and through their undersigned counsel, submit this Status Report pursuant to the Orders of the Court dated April 4, 2012 (ECF No. 24) and April 23, 2012 (ECF No. 27) granting Plaintiffs' requests for expedited discovery in the above-captioned action.

Since issuance of the preliminary injunction in March 2012, through control of the botnet domains, plaintiffs have been able to identify the internet service providers providing connectivity for infected end-user computers attempting to connect to the domains. The internet service providers can assist their customers in cleaning botnet software from infected end-user computers. Plaintiffs have started notification and remediation efforts, and are actively working with the internet service providers to reduce the number of end-user computers on which defendants' malicious software is installed.

Plaintiffs have carried out discovery directed at identifying and obtaining further contact information in order to provide notice and to serve process upon the defendants. Plaintiffs have definitively identified two of the defendants. John Doe 22 has been identified as Yevhen Kulibaba. John Doe 23 and John Doe 24 have been identified to be the same person, Yuriy Konovalenko. These defendants currently reside in the United Kingdom. Concurrently with this status report, plaintiffs are filing an Amended Complaint to particularly name these defendants. Defendants Kulibaba and Konovalenko will be served by the Hague Convention process, pursuant to Federal Rule of Civil Procedure 4(f)(1). Prior experience indicates that service in this manner in the United Kingdom may take up to 90 days or more.

Discovery regarding the remaining defendants has, thus far, been insufficient to definitively identify these defendants by their real names and has not yielded any physical addresses at which to effect personal service. In most instances, the defendants have procured internet services using falsified information, stolen account credentials and/or stolen credit cards. Discovery has, however, led to additional email addresses used by many of these defendants. Plaintiffs are continuing to send copies of the Amended Complaint and summonses to the email

addresses that have been discovered as well as to the original email and instant messaging addresses of the defendants, in order to provide notice and to carry out service of process to these defendants pursuant to Federal Rule of Civil Procedure 4(f)(3).

Further investigation reveals that John Doe 19 and 20 are the same defendant (using overlapping nicknames and email addresses), but this Defendant's real identity and physical address are not definitively known. John Doe 19/20 received notice of this proceeding by electronic means, including the court approved notice language, copies of the pleadings attached to email and a link to all of the pleadings at zeuslegalnotice.com. John Doe 19/20 responded by instant messenger that the "Eastern District of New York is so far..." Counsel for plaintiffs engaged in several additional electronic communications with John Doe 19/20, but after the initial exchange in response to notification of the suit, this defendant stopped responding to communications. As noted above, plaintiffs will continue to provide the Amended Complaint and summonses to the electronic contact information of John Doe 19/20 pursuant to Federal Rule of Civil Procedure 4(f)(3). Plaintiffs will continue their attempts to definitively identify and physically locate John Doe 19/20.

John Doe 4 received notice of this proceeding by electronic means, including the court approved notice language and a link to all of the pleadings at zeuslegalnotice.com. John Doe 4 responded by instant messenger with a demand that plaintiffs stop contacting John Doe 4. Beyond the initial exchange, in response to notification of the suit, this defendant has stopped responding to communications. As noted above, plaintiffs will continue to provide the Amended Complaint and summonses to the electronic contact information of John Doe 4 pursuant to Federal Rule of Civil Procedure 4(f)(3). Plaintiffs will continue their attempts to definitively identify and physically locate John Doe 4.

John Does 1-3, 5-18, 21, 25-35, 37-39 have received notice by electronic means, but have not responded. As noted above, plaintiffs will continue to provide the Amended Complaint and summonses to the electronic contact information of these defendants pursuant to Federal Rule of Civil Procedure 4(f)(3). Plaintiffs will continue their attempts to definitively identify and

physically locate John Does 1-3, 5-18, 21, 25-35, 37-39.

Plaintiffs have resolved this matter with John Doe 36 and have filed, concurrently with this status report, a notice of dismissal of John Doe 36, with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).

To date, the defendants have not requested the return of their botnet domain names that are the subject of the Preliminary Injunction.

Plaintiffs propose that the court afford 90 days to initiate personal service of defendants Kulibaba and Konovalenko, and to continue efforts to more specifically identify the remaining defendants, if that is possible, and to continue efforts to effect service upon those defendants. Plaintiffs propose to submit a second status report at that time, concerning the status of service of process efforts and proposals regarding how this case may proceed.

Dated: June 29, 2012
New York, New York

Respectfully Submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

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