

Proposed Amendment to Rule 41
revised draft – April 21, 2014

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1 **(b) Authority to Issue a Warrant.** At the request of a
2 federal law enforcement officer or an attorney for the
3 government:

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5 (6) a magistrate judge with authority in any district
6 where activities related to a crime may have occurred has
7 authority to issue a warrant to use remote access to
8 search electronic storage media and to seize or copy
9 electronically stored information located within or
10 outside that district if:

11 (A) the district where the media or information
12 is located has been concealed through technological
13 means; or

14 (B) in an investigation of a violation of 18
15 U.S.C. § 1030(a)(5), the media are protected
16 computers that have been damaged without
17 authorization and are located in five or more districts.

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19 **(f) Executing and Returning the Warrant:**

20 **(1) Warrant to Search for and Seize a Person or**

use of technology such as anonymizing software.

Second, (b)(6)(B) allows a warrant to use remote access within or outside the district in an investigation of a violation of 18 U.S.C. § 1030(a)(5) if the media to be searched are protected computers that have been damaged without authorization, and they are located in many districts. Criminal activity under 18 U.S.C. § 1030(a)(5) (such as the creation and control of “botnets”) may target multiple computers in several districts. In investigations of this nature, the amendment would eliminate the burden of attempting to secure multiple warrants in numerous districts, and allow a single judge to oversee the investigation.

As used in this rule, the terms “protected computer” and “damage” have the meaning provided in 18 U.S.C. §1030(e)(2) & (8).

The amendment does not address constitutional questions, such as the specificity of description that the Fourth Amendment may require in a warrant for remotely searching electronic storage media or seizing or copying electronically stored information, leaving the application of this and other constitutional standards to ongoing case law development.

Subdivision (f)(1)(C). The amendment to Rule is intended to ensure that reasonable efforts are made to provide notice of the search, seizure or copying to the person whose information was seized or copied or whose property was searched.