

**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.

\* \* \* \* \*

18  
19           **(f) Executing and Returning the Warrant:**

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

21 **Property**

22 \* \* \* \*

23 **(C) Receipt.** The officer executing the warrant  
24 must give a copy of the warrant and a receipt for the  
25 property taken to the person from whom, or from  
26 whose premises, the property was taken or leave a  
27 copy of the warrant and receipt at the place where the  
28 officer took the property. For a warrant to use remote  
29 access to search electronic storage media and seize or  
30 copy electronically stored information, the officer  
31 must make reasonable efforts to serve a copy of the  
32 warrant on the person whose property was searched  
33 or whose information was seized or copied. Service  
34 may be accomplished by any means, including  
35 electronic means, reasonably calculated to reach that  
36 person.

#### COMMITTEE NOTE

**Subdivision (b)(6).** The amendment provides that in two specific circumstances a magistrate judge in a district where the activities related to a crime may have occurred has authority to issue a warrant to use remote access to search electronic storage media and seize or copy electronically stored information even when that media or information is or may be located outside of the district.

First, subparagraph (b)(6)(A) provides authority to issue a warrant to use remote access within or outside that district when the district in which the media or information is located is not known because of the

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.