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'Hactivist' prosecutions have limited effect

Friday, April 19 2013

A US district judge in Los Angeles today sentenced LulzSec hacker Cody Kretsinger to one year's imprisonment and 1,000 hours of community service for his involvement in cyber attacks against Sony Pictures Entertainment in 2011. Investigating hacking attacks and holding 'hactivists' to account present authorities with significant difficulties. Individual members of the group involved may be spread across jurisdictions, and the (often compromised) computers and networks they use may also be situated in multiple countries: in the distributed denial of service (DDoS) attacks against Georgia in 2008, over 3,000 computers in 62 countries were involved. In cases of patriotic hacktivism, affected businesses can often have no expectation of prosecution or recompense, since some governments use such hactivists for political purposes. However, progress is being made in holding ideological hactivists to account.

What next

The often diffuse and transnational nature of hacktivism hinders defence against attacks, their investigation, and the prosecution of those responsible. Businesses will continue to be unable to recover the often considerable financial losses suffered in attacks. Instead, they will need to consider their own defences, establish response procedures, and take hacktivism issues into greater account when developing corporate risk management strategies.

Analysis

Progress is being made in investigating and prosecuting ideological hactivists who have caused significant damage to businesses or embarrassment to government organisations (see INTERNATIONAL: 'Hacktivism' poses lasting threat - February 15, 2013). Patriotic hacktivism, for which businesses and government institutions are targets (see NORTH KOREA: Hacking offers Pyongyang low-risk weapon - April 11, 2013), is considerably more difficult to investigate and confront:

- The attacks potentially have support or toleration from the home government.
- Attackers often operate from inside a state with which outside relations are strained.
- Some states covertly encourage patriotic hacktivism, rendering futile attempts to extradite or have prosecuted those involved.

Inter-state coordination

Although the ability to investigate such attacks is limited by jurisdictional issues, greater cooperation between investigators from different countries facilitates prosecution. The FBI in the United States and London's Metropolitan Police ran parallel investigations into the small but prominent transnational sub-groups LulzSec and Antisec (related to hactivist group Anonymous) in mid-2011. Shared information led to the prosecution of several members in the United States, the United Kingdom and Ireland. The groups had hacked into several government organisations and businesses, with LulzSec stealing email addresses and passwords from the US Senate's website and the personal details of Sony Pictures website users.

Impact

- Cyber-citizens can now more actively and directly engage in international disputes, complicating international relations.
- Jurisdictional problems with hactivist prosecution will remain given the lack of international legal cooperation.
- Ideological activism will become increasingly transnational as citizen involvement in other states' internal protests increases.
- Trials of high-profile hactivists have the potential to provoke revenge attacks.

Authorities have mostly focused on prosecuting 'ideological' hactivists

The US authorities charged five men (one US, two Irish, and two UK citizens) with involvement. Given the parallel investigations, US authorities agreed not to seek the extradition of the UK citizens if they were tried for the same charges in the United Kingdom: conspiracy to commit computer hacking and access device fraud. In this way, the prosecution avoided extradition hurdles. However, close cooperation is the exception rather the norm: the United States is still seeking the extradition of the two Irish nationals charged with those attacks.

Sentencing proportionality

The lack of coordinated responses on prosecutions is reflected in the charges and sentencing of hactivists. Some states have applied criminal charges to the cyber domain, but the sentences have raised questions about proportionality. In August 2011, the US government indicted Hector Xavier Monsegur -- the apparent leader, coordinator, and most technically skilled member of LulzSec -- on 12 charges relating to computer hacking carrying a maximum prison term of over 124 years. The scale of the sentence faced appears to have compelled Monsegur to become an FBI informant.

In the United Kingdom, proportionality concerns were illustrated in the case of Gary McKinnon, whose Asperger's Syndrome diagnosis did not stop US extradition efforts. He was accused of hacking into US military and space programme computers, and could have faced 70 years in prison. Overly harsh sentences are likely to antagonise online communities, especially given that only a small proportion of those involved in hactivism are likely to be identified and prosecuted.

Harsh penalties on hactivists could lead to increasingly more extreme cyber attacks

Legitimate protest

The lack of any definitions distinguishing malicious online behaviour and legitimate forms of online protest is complicating efforts to address hactivist activity. As an evolution of activism, hactivism can be considered a legitimate form of protest. A large number of citizens voluntarily engaging in online protest are arguably manifesting democratic principles of free political expression. In January 2012, online protests with wide-ranging support, including that of Anonymous, led to the derailing of the anti-piracy bills Stop Online Piracy Act (SOPA) and PROTECT IP Act (PIPA) in the United States.

Involvement in politics

Similarly, hactivism as a developing political force is not a purely negative new element in international relations. A dispute between Malaysia and the Philippines over Borneo in early March 2013 saw violent clashes in the Malaysian state of Sabah, along with low-level hactivist attacks from both sides promoting their causes. In response, external hactivists claiming allegiance with Anonymous posted a statement urging restraint and dialogue between the groups.

Hactivist engagement

The hactivist threat could be managed through engagement with the hactivist demographic. Those involved are mostly young people with inchoate political opinions, and a sense of persecution may extend their disaffection beyond its natural lifespan. Governments can engage hactivists in the political process by:

- moderating the rhetoric used against them;
- supporting constructive, legal online dissent; and

- engaging with their key issues, such as internet freedom.

Internet freedom, the main preoccupation of ideological hactivists, is supported in principle by the EU and aligns with US foreign policy stances. Just as hactivists are developing new ways to aid protesters if their governments attempt to restrict internet access, the US government is investing in projects with similar aims: a 2 million dollar grant was given to the 'Internet in a Suitcase' mesh network project, which aims to circumvent such an eventuality.

Business effect

Prosecution and sentencing offer a deterrent, but they directly affect only a small proportion of hactivists. Instead, businesses can mitigate the threat in several ways, including:

- understanding which cyber actors (ideological, environmental or patriotic hactivists) present a particular threat to them;
- establishing response procedures in advance, including preparing to operate in a degraded cyber environment, along with education and training of staff to reduce personnel-based vulnerabilities; and
- avoiding the use of so-called 'strike-back' services -- these are legally dubious, the number of attackers involved makes them impractical, and such an antagonistic approach is likely to cause escalation.

Disruption by hactivists will continue to pose a challenge for law enforcement, to traditional approaches to political activism and to international relations -- as well as to businesses affected by their attacks. The issue of proportionality will remain controversial, and could exacerbate hactivism unless balanced regulation is established.

Word Count (approx): 1162

For businesses, prosecuting individual hactivists is of limited value