

Twenty-first century criminals increasingly rely on the Internet and advanced technologies to further their criminal operations. These criminals can easily leverage the Internet to carry out traditional crimes such as distributing illicit drugs and sex trafficking. In addition, they exploit the digital world to facilitate crimes that are often technology driven, including identity theft, payment card fraud, and intellectual property theft. Cybercrimes have economic, public health, and national security implications, among others. For over three decades, Congress has been concerned about cybercrime and its related threats. Today, these concerns often arise among a larger discussion surrounding the federal government's role in ensuring U.S. cyber security. Conceptualizing cybercrime involves a number of key elements and questions that include where do the criminal acts exist in the real and digital worlds (and what technologies are involved in carrying out the crimes), why are malicious activities initiated, and who is involved in carrying out the malicious acts? One way of viewing cybercrimes is that they may be digital versions of traditional, real world offenses. They could be considered traditional, or "real world," crimes if not for the incorporated element of virtual or cyberspace. In some instances, however, it may seem that law enforcement struggles to keep up with developments in the virtual world, which transform routine activities once driven by paper records in the real world. As a result, criminals are often prosecuted using laws intended to combat crimes in the real world. The distinction between cybercrime and other malicious acts in the virtual realm is the actor's motivation. Cyber criminals can exhibit a wide range of self interests, deriving profit, notoriety, and/or gratification from activities such as hacking, cyber stalking, and online child pornography. Without knowing the criminal intent or motivation, however, some activities of cyber criminals and other malicious actors may appear on the surface to be similar, causing confusion as to whether a particular action should be categorized as cybercrime or not. When referring to cybercrime incidents, terms such as cyber attack, cyber espionage, and cyber war are often loosely applied, and they may obscure the motives of the actors involved. Criminal attribution is a key delineating factor between cybercrime and other cyber threats. When investigating a given threat, law enforcement is challenged with tracing the action to its source and determining whether the actor is a criminal or whether the actor may be a terrorist or state actor posing a potentially greater national security threat. This is highlighted by examining the online collective known as Anonymous. Some refer to Anonymous as a group of online activists, others see the collective as a group of criminal actors, and still others have likened it to online insurgents. The U.S. government does not appear to have an official definition of cybercrime that distinguishes it from crimes committed in what is considered the real world. Similarly, there is not a definition of cybercrime that distinguishes it from other forms of cyber threats, and the term is often used interchangeably with other Internet- or technology-linked malicious acts. Federal law enforcement agencies often define cybercrime based on their jurisdiction and the crimes they are charged with investigating. And, just as there is no overarching definition for cybercrime, there is no single agency that has been designated as the lead investigative agency for combating cybercrime. Congress may question whether it is necessary to have a clear definition of what constitutes cybercrime (e.g., S. 2105, S. 3414) and what delineates it from other real world and cyber threats. On one hand, if the purpose of defining cybercrime is for investigating and prosecuting any of the various crimes under the broader cybercrime umbrella [...]

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