



Julia Milewski
(202) 624-2514
JMilewski@crowell.com

October 14, 2020

VIA COURIER

Clerk
U.S. District Court for the Eastern District of Virginia
Albert V. Bryan U.S. Courthouse
401 Courthouse Square
Alexandria, VA 22314

Re: *Microsoft and FS-ISAC, Inc. v. John Does 1-2*, Civil Action No. 1:20-cv-1171
(E.D. Va.)

FILED UNDER SEAL PURSUANT TO LOCAL RULE 5

Dear Sir or Madam,

We have enclosed three copies of our filings today with two copies for this Court and a third copy for our records.

- Microsoft and FS-ISAC's *Ex Parte* Motion to Supplement the Temporary Restraining Order
- Brief in Support of Microsoft and FS-ISAC's *Ex Parte* Motion to Supplement the Temporary Restraining Order
- Declaration of Jason Lyons
- Proposed Supplemental Temporary Restraining Order
- Notice of Request for Ruling on *Ex Parte* Motion to Supplement the Temporary Restraining Order on the Papers

We have enclosed a pre-paid envelope for you to return the third file stamped copy to us and greatly appreciate your help.

Please do not hesitate to reach out if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "JMilewski".

Julia Milewski



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Julia Milewski

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

MICROSOFT CORPORATION, a)
Washington corporation, and FS-ISAC, INC.,)
a Delaware corporation,)

Plaintiffs,)

v.)

JOHN DOES 1-2, CONTROLLING A)
COMPUTER BOTNET AND THEREBY)
INJURING PLAINTIFFS, AND THEIR)
CUSTOMERS AND MEMBERS,)

Defendants.)

Civil Action No: 1:20-cv-1171

FILED UNDER SEAL

**MICROSOFT AND FS-ISAC, INC.’S *EX PARTE* MOTION TO SUPPLEMENT THE
TEMPORARY RESTRAINING ORDER**

Plaintiffs Microsoft Corporation (“Microsoft”) and FS-ISAC, INC., (“FS-ISAC”) seek an *Ex Parte* Supplemental Temporary Restraining Order to address Defendants’ efforts to regain control of the Trickbot botnet and to continue their illegal activities. Through the steps resulting from the Temporary Restraining Order, Microsoft and FS-ISAC have identified several additional IP addresses being used by Defendants to attempt to regain control of the Trickbot botnet and to infect user computers with malicious software, including dangerous ransomware, used for illegal activities. That infrastructure is set forth in **Appendix A** to the proposed Supplemental Temporary Restraining Order.

Microsoft and FS-ISAC respectfully request that the Court grant this Motion.

Dated: October 14, 2020

Respectfully submitted,

/s/ Julia R. Milewski

Julia Rebecca Milewski (VA Bar No. 82426)
CROWELL & MORING LLP
1001 Pennsylvania Avenue NW
Washington DC 20004-2595
Telephone: (202) 624-2500
Fax: (202) 628-5116
jmilewski@crowell.com

Gabriel M. Ramsey (*pro hac vice* pending)
Kayvan M. Ghaffari (*pro hac vice* pending)
Jacob Canter (*pro hac vice* pending)
CROWELL & MORING LLP
3 Embarcadero Center, 26th Floor
San Francisco, CA 94111
Telephone: (415) 986-2800
Fax: (415) 986-2827
gramsey@crowell.com
kghaffari@crowell.com
jcanter@crowell.com

Richard Domingues Boscovich (*pro hac vice* pending)
MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399
Telephone: (425) 704-0867
Fax: (425) 936-7329
rbosco@microsoft.com

Attorneys for Plaintiffs Microsoft Corp. and FS-ISAC, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

MICROSOFT CORPORATION, a)
Washington corporation, and FS-ISAC, INC.,)
a Delaware corporation,)

Plaintiffs,)

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JOHN DOES 1-2, CONTROLLING A)
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Defendants.)

Civil Action No: 1:20-cv-1171

FILED UNDER SEAL

**BRIEF IN SUPPORT OF MICROSOFT AND FS-ISAC, INC.’S *EX PARTE* MOTION TO
SUPPLEMENT THE TEMPORARY RESTRAINING ORDER**

Plaintiffs Microsoft Corporation (“Microsoft”) and FS-ISAC, INC., (“FS-ISAC”) seek an *Ex Parte* Supplemental Temporary Restraining Order to address Defendants’ continuing efforts to rebuild the command and control infrastructure and continue their illegal activities. Through the steps resulting from the Temporary Restraining Order, Microsoft and FS-ISAC have identified IP addresses that Defendants are attempting to use to rebuild the botnet, in order to infect user computers with malicious software, including dangerous ransomware, used for illegal activities. Those IP addresses are set forth in **Appendix A** to the proposed Supplemental Temporary Restraining Order. Microsoft and FS-ISAC expresses their appreciation for the continued attention of the Court to this ongoing cybersecurity matter.

Microsoft and FS-ISAC incorporate by reference herein the arguments and evidence set forth in their Brief In Support Of Microsoft and FS-ISAC’s Application for an *Ex Parte*

Temporary Restraining Order and Order To Show Cause Re Preliminary Injunction (“TRO Application”). The IP addresses listed in **Appendix A** to the proposed Supplemental Temporary Restraining Order are used by Defendants for the same illegal purposes as already set forth by Microsoft and FS-ISAC. The most effective way to disable Defendants’ operation is to disable the IP addresses in **Appendix A** to the proposed Supplemental Temporary Restraining Order.

I. BACKGROUND

On October 6, 2020, the Court granted an Emergency *Ex Parte* Temporary Restraining Order (“TRO”) tailored to halt Defendants’ attack, infecting user computers with malicious software, including dangerous ransomware, used for illegal activities. To manage and direct Trickbot, Defendants have established and operate a network of IP addresses and computers on the Internet, which they use to target their victims, compromise their online accounts, infect their computing devices, disable the security of the devices, and steal from them sensitive information, including bank credentials. To disable this command and control infrastructure, on October 6, 2020, this Court ordered the disablement of the Trickbot command and control infrastructure to cut communications between Defendants and the infected user computers, thereby halting the criminal activity that is harming Plaintiffs, their customers, and the public.

Executing the Court’s TRO, Microsoft and FS-ISAC cut communications between Defendants’ existing command and control infrastructure and the IP addresses and computers from which Defendants attempted to steal information. October 14, 2020 Declaration of Jason B. Lyons In Support Of Microsoft and FS-ISAC’s *Ex Parte* Motion to Supplement Temporary Restraining Order (“Lyons Decl.”) ¶ 3 (Ex. 1). This effectively disrupted Defendants’ efforts to exploit the computers and networks they had targeted.

Through the steps resulting from the TRO, Microsoft and FS-ISAC have identified

several additional IP addresses being used by Defendants to attempt to regain control over the botnet and to infect user computers with malicious software, including dangerous ransomware, used for illegal activities. Following the execution of the TRO, Microsoft and FS-ISAC have identified related infrastructure that would enable Defendants to rebuild their command and control infrastructure by adding new IP addresses and to continue attacks. *Id.* ¶¶ 3-4. Consequently, Microsoft and FS-ISAC are asking the Court to disable the IP addresses. *Id.* ¶¶ 4-9. This will disrupt Defendants' recent illegal activity and prevent Defendants from regaining control of the botnet. A list of the new IP addresses used by Defendants is provided in **Appendix A** to the proposed Supplemental Temporary Restraining Order.

II. ARGUMENT

A. There Is Good Cause to Supplement the Temporary Restraining Order

Microsoft and FS-ISAC seek to supplement the Temporary Restraining Order by adding the IP addresses in **Appendix A** to the Proposed Supplemental Temporary Restraining Order which will allow Microsoft and FS-ISAC to disrupt Defendants more recent illegal activity, prevent them from regaining control of the botnet and mitigating injury to Microsoft and FS-ISAC. Such supplemental relief has been granted in prior cases in this Court when defendants' use of new botnet infrastructure emerged after the court granted a temporary restraining order. *See Microsoft Corp. v. John Does 1-8*, Case No. 1:14-cv-00811-LOG-TCB (E.D. Va. 2014) (O'Grady, J.) at Dkt. No. 32 (disabling the "Shylock" botnet).

Here, absent the requested relief, irreparable harm will continue to Microsoft and FS-ISAC for the reasons detailed in Microsoft and FS-ISAC's prior submissions. Microsoft and FS-ISAC are likely to succeed on the merits, because the IP addresses at issue in this motion are used for the same unlawful purposes set forth in Microsoft and FS-ISAC's previous motion for

TRO and Preliminary Injunction. Thus, pursuant to Federal Rule of Civil Procedure 65, disabling the IP addresses is necessary to prevent harm to Microsoft and FS-ISAC.

With respect to supplementing the Temporary Restraining Order, *ex parte* relief is essential. If notice is given prior to issuance of the requested relief, it is likely that Defendants will be able to quickly mount further, more scaled alternate command and control structure, to avoid mitigation altogether, because Defendants have the technical sophistication and ability to move their malicious infrastructure. Lyons Decl. ¶¶ 3-9. Thus, providing notice of the requested *ex parte* relief would facilitate efforts by Defendants to continue their malicious operations. Rule 65 of the Federal Rules of Civil Procedure permits *ex parte* injunctive relief where the moving party sets forth facts that show an immediate and irreparable injury and why notice should not be required. Fed. R. Civ. P. 65(b)(1); see *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70*, 415 U.S. 423, 438-39 (1974) (“*Ex parte* temporary restraining orders are no doubt necessary in certain circumstances....”). It is well established that *ex parte* relief is appropriate under circumstances such as the instant case, where notice would render the requested relief ineffective. See, e.g., *Council on Am.-Islamic Relations v. Gaubatz*, 667 F. Supp. 2d 67, 73–74 (D.D.C. 2009) (granting *ex parte* TRO); *In re BAE Sys. PLC Derivative Litig.*, No. 07-1646, 2008 WL 458575, at *1 (D.D.C. Feb. 5, 2008) (granting *ex parte* TRO to enjoin party from selling U.S.-based assets allegedly acquired with bribe payments); *AT&T Broadband v. Tech Commc’ns, Inc.* 381 F.3d 1309, 1319-1320 (11th Cir. 2004) (affirming *ex parte* search and seizure order to seize contraband technical equipment, given evidence that in the past defendants and persons similarly situated had secreted evidence once notice was given); *Allscripts Misys, LLC v. Am. Dig. Networks, LLC*, 1:10-cv-00111, 2010 U.S. Dist. LEXIS 4450, at *2 (D. Md. Jan. 20, 2010) (granting *ex parte* TRO where “Defendant

may dissipate the funds and/or take action to render it difficult to recover funds”); *Crosby v. Petromed, Inc.*, No. CV-09-5055, 2009 WL 2432322, at *2 (E.D. Wash. Aug. 6, 2009) (granting *ex parte* TRO as “notice to Defendants of this TRO request could result in further injury or damage to Plaintiffs....”); *Little Tor Auto Ctr. v. Exxon Co., U.S.A.*, 822 F. Supp. 141, 143 (S.D.N.Y. 1993) (*ex parte* TRO appropriate where contraband “may be destroyed as soon as notice is given”).

Immediately upon execution of the Supplemental Temporary Restraining Order and disablement of the IP addresses in the attached proposed order, Microsoft and FS-ISAC will provide robust notice to the Defendants. Microsoft and FS-ISAC will provide Defendants the documents associated with this motion and the Court’s order, by sending them to Defendants through their infrastructure providers (including hosting companies) and to all of Defendants’ contact information associated with the subject infrastructure, thus providing notice and an opportunity to appear and contest the requested relief, if defendants so choose.

III. CONCLUSION

For the reasons set forth in this brief, the Lyons Declaration submitted with this brief and based on the evidence submitted with the prior Application for TRO and Preliminary Injunction, Microsoft and FS-ISAC respectfully requests that the Court grant Microsoft and FS-ISAC’s Motion To Supplement the Temporary Restraining Order.

Dated: October 14, 2020

Respectfully submitted,

/s/ Julia R. Milewski

Julia Rebecca Milewski (VA Bar No. 82426)
CROWELL & MORING LLP
1001 Pennsylvania Avenue NW
Washington DC 20004-2595
Telephone: (202) 624-2500
Fax: (202) 628-5116
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San Francisco, CA 94111
Telephone: (415) 986-2800
Fax: (415) 986-2827
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jcanter@crowell.com

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MICROSOFT CORPORATION
One Microsoft Way
Redmond, WA 98052-6399
Telephone: (425) 704-0867
Fax: (425) 936-7329
rbosco@microsoft.com

Attorneys for Plaintiffs Microsoft Corp. and FS-ISAC, Inc.

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

MICROSOFT CORPORATION, a
Washington corporation, and FS-ISAC, INC.,
a Delaware corporation,

Plaintiffs,

v.

JOHN DOES 1-2, CONTROLLING A
COMPUTER BOTNET AND THEREBY
INJURING PLAINTIFFS, AND THEIR
CUSTOMERS AND MEMBERS,

Defendants.

Civil Action No: 1:20-cv-1171

FILED UNDER SEAL

**DECLARATION OF JASON B. LYONS IN SUPPORT OF MICROSOFT AND FS-ISAC, INC.'S
EX PARTE MOTION TO SUPPLEMENT THE TEMPORARY RESTRAINING ORDER**

I, Jason Lyons, declare as follows:

1. I am a Senior Manager of Investigations in Microsoft Corporation's Digital Crimes Unit ("DCU") Malware & Cloud Crimes Team. I make this declaration in support of Microsoft's Application for An Emergency Temporary Restraining Order and Order To Show Cause Re Preliminary Injunction. I make this declaration of my own personal knowledge or on information and belief where indicated. If called as a witness, I could and would testify competently to the truth of the matters set forth herein.

2. I provided a declaration in support of Microsoft Corporation's ("Microsoft") and FS-ISAC, Inc.'s ("FS-ISAC") *Ex Parte* Supplemental Temporary Restraining Order and hereby incorporate herein all information and facts set forth in my October 5, 2020 declaration in support of this application.

3. Executing the Court's Temporary Restraining Order commenced on October 9, 2020. Microsoft and FS-ISAC cut communications between Defendants' existing command and control infrastructure and the IP addresses and computers from which Defendants attempted to

install malicious software and steal information.

4. Defendants have started attempting to rebuild their command and control infrastructure by adding IP addresses which act as the command and control infrastructure. Since the issuance of the Temporary Restraining Order, Microsoft and FS-ISAC have identified several IP addresses that Defendants are utilizing that follow the same patterns and are used by defendants to carry out attacks against Microsoft and FS-ISAC in the same manner as set forth in my prior declaration. The IP addresses are reflected in **Appendix A** to this declaration.

5. Defendants continue to target Microsoft and FS-ISAC.

6. Defendants' techniques are designed to resist technical mitigation efforts, eliminating easy technical means to curb the injury being caused. Microsoft was able to disrupt an enormous part of the command and control infrastructure through actions to date. It is important to address the new command and control infrastructure in a rapid manner, before Defendants are able to use it regain a foothold in the botnet. Thus, providing notice to Defendants in advance of disablement of the IP addresses at issue would render attempts to disable the infrastructure futile. Based on my experience observing the operation of numerous intrusions such as those carried out by defendants, I believe that defendants would take swift preemptive action to avoid disablement of the botnet and to conceal the extent of the victimization of Microsoft and FS-ISAC and to defend their infrastructure, if they were to learn of Microsoft's and FS-ISAC's impending action and request for relief.

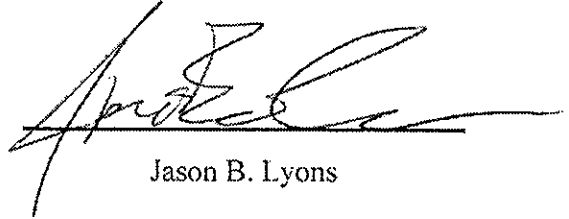
7. I believe that the most effective way to suspend the injury caused to Microsoft and FS-ISAC is to take the steps described in the Supplemental Injunction Order. This relief will significantly hinder defendants' ability to regain a foothold in the botnet, to target additional accounts and identify new potential victims. In the absence of such action, defendants will be able to continue using this infrastructure to rebuild the botnet and target new accounts, exposing potential new victims to defendants' malicious activities. This can already be seen by effect of the Court's prior order in this case.

8. I believe that the only way to mitigate injury and disrupt the most recent, active

infrastructure, is to disable the IP addresses at issue prior to providing notice to the defendants.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 13 day of October, 2020.



Jason B. Lyons

APPENDIX A

LIST OF IP ADDRESSES AND HOSTING COMPANIES ASSOCIATED
WITH TRICKBOT'S COMMAND AND CONTROL SERVERS

IP Addresses of Command and Control Servers	Hosting Companies/Data Centers Where Defendants Have Placed the Command and Control Servers
184.164.137.163	Secured Servers LLC 2353 W. University Dr., Bldg A. Tempe, AZ 85281
192.243.102.123	Cloud Equity Group LLC 14 Wall Street, FL20 New York, NY 10005 Conseev LLC 14 Wall Street, FL20 New York, NY 10005 Conseev LLC 848 N Rainbow Blvd Las Vegas, NV 89107-1103
107.155.137.19 107.155.137.28 107.155.137.7 162.216.0.163 23.239.84.132 23.239.84.136	Trunkspace Hosting 925 de Maisonneuve Ouest, Suite 150 Montreal, QC H3A0A5 c/o Nodes Direct Holdings, LLC 1650 Margaret St Suite 302-351 Jacksonville, FL 32204 Nodes Direct Holdings, LLC 4495 Roosevelt Blvd, Suite 304-241) Jacksonville, FL 32210 Nodes Direct Holdings LLC Cologix, Inc. 421 W. Church St., Suite 429 Jacksonville, FL 32202

**IN THE UNITED STATES DISTRICT COURT
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MICROSOFT CORPORATION, a)
Washington corporation, and FS-ISAC, INC.,)
a Delaware corporation,)

Plaintiffs,)

v.)

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INJURING PLAINTIFFS, AND THEIR)
CUSTOMERS AND MEMBERS,)

Defendants.)

Civil Action No: 1:20-cv-1171

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[PROPOSED] SUPPLEMENTAL TEMPORARY RESTRAINING ORDER

The Court, having considered the pleadings and declaration in support of Plaintiffs Microsoft Corporation (“Microsoft”) and FS-ISAC, INC., (“FS-ISAC”)’s Motion to Supplement Temporary Restraining Order, hereby orders that the terms of the Temporary Restraining Order issued on October 6, 2020 (“Temporary Restraining Order”) shall apply to the IP addresses set forth in **Appendix A** to this order. As set forth below, by continuing to operate these IP addresses the Defendants have violated the Temporary Restraining Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the papers, declarations, exhibits, memorandum, and all other pleadings and papers relevant to Microsoft and FS-ISAC’s Motion to Supplement the Temporary Restraining Order and Microsoft and FS-ISAC’s original motion for Temporary Restraining Order and Preliminary Injunction, the Court hereby makes the following findings of fact and conclusions of law:

I. The Defendants have continued to engage in the conduct enjoined by the Temporary Restraining Order, and therefore continue to violate the Temporary Restraining Order. In particular, Defendants have intentionally and without authorization, continued and attempted to access and send malicious software, code, and instructions to protected computers and operating systems of Microsoft and FS-ISAC, and their customers and members, attacking such computers and systems, using the identified IP addresses.

II. There is good cause to believe that Defendants are likely to continue the foregoing conduct and to engage in the illegal conduct and purposes enjoined by the Temporary Restraining Order, unless further relief is ordered to expeditiously prevent Defendants from maintaining control over or using the IP addresses set forth in **Appendix A** for such prohibited and unlawful purposes.

III. There is good cause to believe that, unless further relief is ordered to expeditiously prevent Defendants from maintaining control over or using the IP addresses set forth in **Appendix A** for purposes enjoined by the Temporary Restraining Order, immediate and irreparable harm will result to Microsoft and FS-ISAC, from the Defendants' ongoing violations.

IV. Therefore, in accordance with Fed. R. Civ. P. 65(b), 15 U.S.C. § 1116(a) and 28 U.S.C. § 1651(a) and the Court's inherent equitable authority, good cause and the interests of justice require that this Order be Granted.

SUPPLEMENTAL TEMPORARY RESTRAINING ORDER

IT IS THEREFORE ORDERED that, the terms of the Temporary Restraining Order shall be supplemented and shall be enforced against Defendants, Defendants' representatives, and persons who are in active concert or participation with Defendants, as follows:

All terms of the Temporary Restraining Order shall apply to the additional IP addresses set forth in **Appendix A**.

IT IS SO ORDERED

Entered this ___ day of _____, 2020

United States District Judge

APPENDIX A

LIST OF IP ADDRESSES AND HOSTING COMPANIES ASSOCIATED
WITH TRICKBOT'S COMMAND AND CONTROL SERVERS

IP Addresses of Command and Control Servers	Hosting Companies/Data Centers Where Defendants Have Placed the Command and Control Servers
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**NOTICE OF REQUEST FOR RULING ON MICROSOFT AND FS-ISAC'S *EX PARTE*
MOTION TO SUPPLEMENT THE TEMPORARY RESTRAINING ORDER ON THE
PAPERS**

PLEASE TAKE NOTICE that Plaintiffs Microsoft Corporation ("Microsoft") and FS-ISAC, Inc. ("FS-ISAC") respectfully submit that their *Ex Parte* Motion to Supplement the Preliminary Injunction Order can be decided without oral argument and would request that this Court rule on the papers. Should the Court require oral argument, Microsoft and FS-ISAC respectfully request oral argument be set for October 14, 2020 or as soon as the matter may be heard.

Dated: October 14, 2020

Respectfully submitted,

/s/ Julia R. Milewski

Julia Rebecca Milewski (VA Bar No. 82426)
CROWELL & MORING LLP
1001 Pennsylvania Avenue NW
Washington DC 20004-2595
Telephone: (202) 624-2500
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Fax: (415) 986-2827
gramsey@crowell.com
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Telephone: (425) 704-0867
Fax: (425) 936-7329
rbosco@microsoft.com

Attorneys for Plaintiffs Microsoft Corp. and FS-ISAC, Inc.