

**ADVISORY COMMITTEE  
ON  
CRIMINAL RULES**

**Seattle, WA  
September 28-29, 2015**

1 **Rule 41. Search and Seizure**

2 \* \* \* \* \*

3 (b) ~~Authority to Issue a Warrant~~ Venue for a Warrant

4 Application. At the request of a federal law  
5 enforcement officer or an attorney for the  
6 government:

7 \* \* \* \* \*

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

15 (A) the district where the media or information  
16 is located has been concealed through  
17 technological means; or

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18 (B) in an investigation of a violation of  
19 18 U.S.C. § 1030(a)(5), the media are  
20 protected computers that have been  
21 damaged without authorization and are  
22 located in five or more districts.

23 \* \* \* \* \*

24 **(f) Executing and Returning the Warrant.**

25 **(1) *Warrant to Search for and Seize a Person or***  
26 ***Property.***

27 \* \* \* \* \*

28 (C) *Receipt.* The officer executing the warrant  
29 must give a copy of the warrant and a  
30 receipt for the property taken to the person  
31 from whom, or from whose premises, the  
32 property was taken or leave a copy of the  
33 warrant and receipt at the place where the  
34 officer took the property. For a warrant to

35                   use remote access to search electronic  
36                   storage media and seize or copy  
37                   electronically stored information, the  
38                   officer must make reasonable efforts to  
39                   serve a copy of the warrant and receipt on  
40                   the person whose property was searched or  
41                   who possessed the information that was  
42                   seized or copied. Service may be  
43                   accomplished by any means, including  
44                   electronic means, reasonably calculated to  
45                   reach that person.

46                   \* \* \* \* \*

#### **Committee Note**

**Subdivision (b).** The revision to the caption is not substantive. Adding the word “venue” makes clear that Rule 41(b) identifies the courts that may consider an application for a warrant, not the constitutional requirements for the issuance of a warrant, which must still be met.

**Subdivision (b)(6).** The amendment provides that in two specific circumstances a magistrate judge in a district where 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 is intended to ensure that reasonable efforts are made to provide notice of the search, seizure, or copying, as well as a receipt for any information that was seized or copied, to the person whose property was searched or who possessed the information that was seized or copied. Rule 41(f)(3) allows delayed notice only “if the delay is authorized by statute.” See 18 U.S.C. § 3103a (authorizing delayed notice in limited circumstances).