

White House Unveils Program to Authorize Private-Sector Cyber Surveillance and Disruption Operations, *Lawfare*

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Partner Aaron Cooper and Associate Philip Chertoff authored an article for *Lawfare* analyzing the August 12 presidential memorandum directing the Departments of Justice (DOJ) and Homeland Security, as part of a new program, to vet and authorize private US companies to conduct cyber surveillance and disruption operations against foreign cyber-enabled criminal organizations.

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Aaron and Philip explain that the framework supports more traditional defense contracting for cyber offensive operations, rather than private sector “hack back,” with every operation requiring federal supervision and written approval. They note the program relies on an untested reading of the Computer Fraud and Abuse Act’s law enforcement exemption and leaves unresolved questions on state and foreign law exposure, tort liability, insurance, and indemnification, which organizations will want to resolve before participating. Jenner continues to track implementation of the new program.

Aaron, a former DOJ cybercrime prosecutor, is Co-Chair of Jenner’s Critical and Emerging Technologies and Data Privacy and Cybersecurity practices. Philip is a member of the firm’s Critical and Emerging Technologies and National Security and Crisis practices, advising clients at the intersection of emerging technologies and national security.

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