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Active Defense: An Overview of the Debate and a Way Forward

Mercatus Working Paper

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A new paper for the Technology Policy Program at the Mercatus Center at George Mason University demonstrates it is more efficient for businesses to engage in active defense—also called “hacking back” or “counterhacking”—than to rely on the government to solve the problem. Businesses should be free to use the technological resources at their disposal to protect themselves and their consumers, while being subject to strict liability in the event of unreasonable countermeasures against an innocent party unrelated to the attacker.

With the growth of information technology, major businesses face an increased risk of hacking and data breach. In recent years Target, Home Depot, JPMorgan Chase, and Sony, to name only a few, have suffered attacks at the hands of nefarious technology intruders. While businesses may protect their own networks from intrusion, there are questionable legal implications involving “active defense” or fighting back by disrupting or destroying the attacker’s network or server.

Related People



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