PRESIDENT OBAMA DECLARES THE THREAT TO CRAPPY SONY MOVIES A NATIONAL EMERGENCY

President Obama just issued an Executive Order that directs Department of Treasury to impose sanctions on people who engage in "significant malicious cyber-enabled activities." The move has been reported as a means to use the same kind of sanctions against significant hackers as we currently used against terrorists, proliferators, drug cartels, and other organized crime.

Regardless of whether you think this will do any good to combat hacking, I have several concerns about this.

First, at one level, the EO targets those who "harm[], or otherwise significantly compromis[e] the provision of services by, a computer or network of computers that support one or more entities in a critical infrastructure sector." But remember, our definition of critical infrastructure is absurdly broad, including things like a Commercial Facilities sector that includes things like motion picture studios — which is how Sony Pictures came to be regarded as critical infrastructure — and even things like campgrounds.

And it's actually not just critical infrastructure. It also targets people who "caus[e] a significant disruption to the availability of a computer" and those who "caus[e] a significant misappropriation of funds or economic resources, trade secrets, personal identifiers, or financial information for commercial or competitive advantage or private financial gain." I can envision how this EO might be ripe for abuse.

But it gets worse. The EO targets not just the hackers themselves, but also those who benefit from or materially support hacks. The targeting of those who are "responsible for or complicit in … the receipt or use for commercial or competitive advantage … by a commercial entity, outside the United States of trade secrets misappropriated through cyber-enabled means, … where the misappropriation of such trade secrets is reasonably likely to result in, or has materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States" could be used to target journalism abroad. Does WikiLeaks' publication of secret Trans-Pacific Partnership negotiations qualify? Does Guardian's publication of contractors' involvement in NSA hacking?

And the EO creates a "material support" category similar to the one that, in the terrorism context, has been ripe for abuse. Its targets include those who have "provided … material, or technological support for, or goods or services in support of" such significant hacks. Does that include encryption providers? Does it include other privacy protections?

Finally, I'm generally concerned about this EO because of the way National Emergencies have served as the justification for a lot of secret spying decisions. Just about every application to the FISC for some crazy interpretation of surveillance laws in the name of counterterrorism founds their justification neither in the September 17, 2001 Finding authorizing covert actions against al Qaeda nor the September 18, 2001 AUMF, but instead in President Bush's declaration of a National Emergency on September 14, 2001. I'm not sure precisely why, but that's what the Executive has long used to convince FISC that it should rubber stamp expansive interpretations of surveillance law. So I assume this declaration could be too.

In other words, the sanctions regime may well be the least of this EO.