

Congress Authorizes Pentagon To Wage Internet War

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Congress has given the U.S. military a green light to conduct offensive [military activities in cyberspace](#).

“Congress affirms that the Department of Defense has the capability, and upon direction by the President may conduct offensive operations in cyberspace to defend our Nation, allies and interests,” said the FY 2012 defense authorization act that was adopted in conference this week ([section 954](#)).

The blanket authorization for offensive cyber operations is conditional on compliance with the law of armed conflict, and the War Powers Resolution, which mandated congressional consultation in decisions to go to war.

“The conferees recognize that because of the evolving nature of cyber warfare, there is a lack of historical precedent for what constitutes traditional military activities in relation to cyber operations and that it is necessary to affirm that such operations may be conducted pursuant to the same policy, principles, and legal regimes that pertain to kinetic capabilities,” the conference report on the defense authorization act [said](#).

“The conferees also recognize that in certain instances, the most effective way to deal with threats and protect U.S. and coalition forces is to undertake offensive military cyber activities, including where the role of the United States Government is not apparent or to be acknowledged.”

“The conferees stress that, as with any use of force, the War Powers Resolution may apply.”

This is an odd formulation which suggests that the War Powers Resolution may also not apply. In any case, the Resolution is a weak reed that has rarely been used by Congress to constrain executive action.

According to the [Congressional Research Service](#), “Debate continues on whether using the War Powers Resolution is effective as a means of assuring congressional participation in decisions that might get the United States involved in a significant military conflict.”

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