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# United States Senate

COMMITTEE ON ARMED SERVICES

WASHINGTON, DC 20510-6050

July 20, 2011

RICHARD D. DeBOBES, STAFF DIRECTOR  
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The Honorable Leon Panetta  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Secretary Panetta:

Last month you testified before the Senate Armed Services Committee that “the next Pearl Harbor we confront could very well be a cyber-attack.” You may know that Section 934 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 required the Secretary of Defense to report to Congress by March 1, 2011, on the cyber warfare policy of the Department of Defense.

Despite the release last week of the “Department of Defense Strategy for Operating in Cyberspace,” the requirements of Section 934, as amplified by the language in the Senate Report (S. Rept. 101-201) accompanying the Senate version of the Act (S. 3454), remain unmet. The continued failure to address and define the policies and legal authorities necessary for the Pentagon to operate in the cyberspace domain remains a significant gap in our national security that must be addressed.

During the Committee’s examination of the proposal to establish U.S. Cyber Command as a sub-unified command under U.S. Strategic Command, it became evident that a number of critical questions with respect to legal authorities and policy would need to be resolved, including the relationship between military operations in cyberspace and kinetic operations; the development of a declaratory deterrence posture for cyberspace; the necessity of preserving the President’s freedom of action in crises and confrontations in the face of severe vulnerabilities in the Nation’s critical infrastructure; the rules of engagement for commanders; the definition of what would constitute an act of war in cyberspace; and what constitutes the use of force for the purpose of complying with the War Powers Act. Senior DOD leaders, including the Vice Chairman of the Joint Chiefs of Staff and the Principal Deputy Under Secretary of Defense for Policy, informed the Committee that your predecessor would present this report to the Committee by the end of 2010; however, that commitment remains unfulfilled.

The Committee continues to place great importance in the fulfillment of this obligation and urges the Department to promptly comply with the legislative provision. If the policy process has not been able to address or resolve the matters that the Committee has identified, or others that you deem significant, we request that you note them and explain why they need to be deferred or remain unresolved, and when you expect some resolution. As Congress proceeds to develop comprehensive government-wide cybersecurity legislation, providing the appropriate authorities to prevent a “cyber-Pearl Harbor” must be among our highest national security priorities.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John McCain". The signature is fluid and cursive, with the first name being more prominent.

John McCain  
Ranking Member

A handwritten signature in black ink, appearing to read "Carl Levin". The signature is fluid and cursive, with the first name being more prominent.

Carl Levin  
Chairman