

The U.S.A. Patriot Act

*Uniting and Strengthening America
by
Providing Appropriate Tools Required to
Intercept and Obstruct Terrorism
Act of 2001*

**LAW ENFORCEMENT
PERSPECTIVE**

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The U.S.A. Patriot Act

Major provisions of the U.S.A. Patriot Act:

- Relaxes restrictions on information sharing about suspected terrorists between U.S. law enforcement and intelligence officers
 - Makes it illegal to knowingly harbor a terrorist
- Authorizes "roving wiretaps,"
 - Wiretaps available to LEA for any phone a suspected terrorist might use
 - responds to advent of cellular/disposable phones)
- LEA allowed greater subpoena power for e-mail records of terrorist suspects
- Expands measures against money laundering
 - additional record keeping and reports for certain transactions
 - requires identification of account holders

The U.S.A. Patriot Act

Major provisions (continued):

- Allows the federal government to detain non-U.S. citizens suspected of terrorism for up to seven days without specific charges.
- Tripling the number of Border Patrol, Customs Service Inspectors and Immigration and Naturalization Service inspectors at northern border of the United States
 - \$100 million to improve technology and equipment
- Eliminates statute of limitations for prosecuting the most egregious terrorist acts
 - maintained on most crimes at five to eight years.

Find this article at: <http://www.cnn.com/2002/LAW/08/23/patriot.act.explainer>

Wiretaps

- Act/instance of tapping a telephone or telegraph line to get information
- Title III, 18 USC §§2510-22
- Subject to 4th Amendment rights
 - Contents of communications protected
- Federal Protection reduced under FISA

Wiretaps

(related to Patriot Act)

- Increased authority to intercept communications
 - Terrorist offenses
 - Chemical warfare
- Expansion of multipoint authority
 - Roving wiretaps
 - Single court order/multiple devices
 - FISA governed
 - Unnamed parties required to assist

Pen Register/Trap and Trace

- Mechanical/electronic device attached to a telephone line
- Captures outgoing numbers dialed from that line
- Incoming communication date, time and duration
- Captures incoming electronic/other signals to identify originating number
- Title III, 18 USC §§2510-22

Pen Register/Trap and Trace (related to Patriot Act)

- Expands jurisdictional authority
 - Anywhere in US if government application
 - Courts jurisdiction if state LEO applies
- Expands to electronic communications
 - Dialing, routing, addressing, signaling information
 - All Internet traffic (email addresses, URLs, IP addresses, URLs of web pages)
 - Not contents from a “line or other facility”

Enhanced Surveillance

- Deletes statutory requirement that target agent is an agent of a foreign power
- Permits entities not named in court order to request certification
- Delayed notification of monitoring activities
 - “Reasonable time”
 - Extensions to one year
 - Production of evidence not required

Enhanced Surveillance (continued)

- Generic orders can be presented at any time
- Recipient compelled to provide all cooperation
 - Installation of monitoring device
 - Information from records
 - Cannot disclose that monitoring is occurring
- Libraries providing access to the Internet may be a recipient of monitoring order

Law enforcement search warrants

- Single-jurisdiction search warrants for terrorism and for electronic evidence.[4]
- The Fourth Amendment to the Constitution requires that before the government conducts an invasive search to find evidence of crime, it must prove to a judicial officer that it has probable cause of crime. This requirement helps ensure that search warrants are applied only to those likely to be involved in criminal activity, and not to others. [7]

- USAPA Section 218 (10/25/2001) turns this concept upside down. It permits the FBI to conduct a secret search for the purpose of investigating crime even though the FBI does not have probable cause of crime. The section authorizes unconstitutional activity – searches in non-emergency circumstances- for criminal activity with no showing of probable cause of crime. [7]

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- “Sneak-and-peek” warrants greatly expanded.
 - Previously, agents were required at the time of the search or soon thereafter to notify person whose premises were searched that search occurred, usually by leaving copy of warrant which is a key component of Fourth Amendment. [4]

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- USAPA makes it easier to obtain surreptitious or “sneak-and-peek” warrants under which notice can be delayed. [4]

Law enforcement subpoenas (and some court orders) for stored information

- The Electronic Communications Privacy Act (ECPA) sets out the provisions for access, use, disclosure, interception and privacy protections of electronic communications. The law was enacted in 1986 and covers various forms of wire and electronic communications. The law prevents government entities from requiring disclosure of electronic communications from a provider without proper procedure.

[5]

- USAPA sec. 210 amends Electronic Communications Privacy Act (ECPA).
- Expands records that can be sought without a court order to include: records of session times and durations, temporarily assigned network addresses; means and source of payments, including any credit card or bank account number. [4]
- Allows disclosure of customer records by the service provider on the same basis that it currently allows content. [4]

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- USAPA sec. 211. Reduction of Privacy for Cable Records.
 - Previously, the Cable Act had mandated strong privacy protection for customer records of cable providers.

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- USAPA overrides these protections for customer records related to telecommunications services. This is a major change because several courts have already held that these privacy protections don't apply for telecommunications services. [4]

Money Laundering

What is it, why is it a problem:

- Conceals the origin of money earned by criminal means.
- Allows “dirty” money to get spent without LEO’s noticing.
- Can be used to fund terrorist activity.
- Can be used to fund criminal activity.
- Criminals that can’t spend their ill-gotten gains are sad.

Money Laundering

What the Patriot Act requires of “financial institutions”:

- More reporting of transactions > \$10k cash.
- Records identifying owners of all accounts.
- Prompt, secret reporting of suspicious transactions.
- Development of internal policies, procedures and controls.
- Designation of a “compliance officer”.
- Ongoing employee compliance training.

Money Laundering

What are these "financial institutions"?

- Obvious things:
 - Banks, credit unions, currency exchangers.
- Less obvious things:
 - Insurance agencies, real estate, casinos.
- Surprising things:
 - Travel agencies, vehicle sellers.
- You belong to us:
 - Anything declared to be like any of the above.
 - Anything transferring money that is deemed interesting for criminal, tax or regulatory reasons.

Money Laundering

What good might this do?

- Huge number of possible leads.
 - Data mining
- Huge breadth of criminal targets.
 - Terrorists
 - Drug traffickers
 - Bribes, shady dealings
 - Pretty much anything big needs to launder the money
- Significantly raises the bar for laundering money.
- Reliable informants.
 - Trained employees required by the Act.
 - A guinea pig required by the Act.

Immigration

Why is it a problem?

- Illegal aliens are bad.
- All of the 9/11 hijackers were aliens.
 - They all got in legally
 - Some overstayed visas or otherwise became illegal

Immigration

What does the Patriot Act do?

- Allows imprisonment of aliens without charge.
- Establishes a program to monitor foreign students.
- Certain information for INS from criminal records of people applying for visas or to entry country.
- Calls for enhanced, harder to duplicate passports.
- Calls for integrated entry and exit data system.
- Prevents consulate shopping.
- Triples the number of customs and INS staff on Canadian border.

Immigration

What's that about imprisonment?

- The Attorney General is required to imprison any alien that he/she has reasonable grounds to suspect is bad.
 - Must be freed or deported within 7 days, or...
 - If home country refuses to accept, must remain in jail
- No charges need be filed.
- Limited judicial oversight.
- Obviously this is very useful for LEOs.
 - Easy to detain aliens while looking for ways to charge em
- Not the same thing as all the other imprisonments without trial currently in effect.

Immigration

Why spy on students?

- The 9/11 hijackers went to school to learn to fly.
- The Act is only expanding on the types of schools spying is targeted at.
 - Adds flight schools
 - Adds language schools
 - Adds vocational schools

Immigration

The other changes:

- Not dramatic.
 - Incremental improvements to procedure and technology
- Makes it harder for 9/11 types to get in legally.
 - Perhaps they'll go illegal next time

Conclusion

- New powers, new laws.
 - You can rest assured that these powers will be used
- Lots of information gathering.
- Information is not evidence.
 - Are the LEOs capable of getting evidence from that data?

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Any Questions?

