

AMERICANS FOR COMPUTER PRIVACY

SUBJ: PROPOSED AMENDMENT TO CHAIRMAN'S MARK (House Judiciary Committee) REGARDING THE EXTENSION OF TRAP/PEN AUTHORITY TO INTERNET COMMUNICATIONS (Section 101)

DATE: OCTOBER 2, 2001

Americans for Computer Privacy (ACP) is a broad-based coalition of more than 100 companies, 40 associations and 7,000 individuals. We share the Government's concerns about future physical and cyber attacks. We support giving our Government the resources and appropriate authority needed to investigate and prosecute such attacks.

The Chairman's mark (Section 101) reflects the Administration's desire to extend existing "trap and trace" and "pen register" authorities to Internet communications. ACP recognizes the need to do so. However, there are hard practical questions and there must be limitations.

Trap/pen authority permits law enforcement to get the phone numbers dialed to/from someone if the government certifies the information is relevant to an on-going investigation. However, if the government wants to capture the substance of a conversation (content) it must get a search warrant from a judge who agrees that there is probable cause to believe a crime is being committed.

The Chairman's mark is an improvement over the original Administration proposal because it states that trap/pen orders do not apply to the contents of a communication. However, the Committee should explicitly provide that:

- **the government should use technology reasonably available to it not to collect content information** (by including a conforming prohibition on the collection of content information in 18 USC 3121(c))
- **there are no technology mandates on providers of information services** (by amending 18 USC 3124(f) to state that nothing in Title 18 or CALEA requires the design or deployment of new technology or services to comply with a trap/pen order)
- **"content" includes the subject line of emails and URLs when web surfing** (URLs have location and content inextricably linked – next time just look at the detailed information -- so a probable cause warrant should be required)
- **pen/trap orders are limited to the "origin" or "destination" of communications** (in the definitions in 18 USC 3127)

- **pen/trap orders apply to dialing and signaling information, not the more general and undefined “routing” and “addressing” information (definitions).**