

About the Congressional Internet Caucus Advisory Committee

The Advisory Committee works with Members of the Caucus to educate policymakers on Internet-related issues. With participation from Members of the Caucus and funding and logistical support from the Internet Education Foundation, the Advisory Committee hosts regular forums to discuss important Internet-related policy issues. Since its founding, the Advisory Committee has built a membership of over 190 organizations from a broad cross-section of the public interest community and the Internet industry. Advisory Committee members include:

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presents

The U.S. PATRIOT Act & E-Surveillance

Thursday, June 30, 2005
Room HC-5 of the U.S. Capitol Building
12:00 - 1:30

Hosted in conjunction with

the Internet Caucus and its Co-Chairs
Senator Burns **Senator Leahy**
Congressman Goodlatte **Congressman Boucher**

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About the Congressional Internet Caucus

The Caucus is a bipartisan group of over 170 members of the House and Senate working to educate their colleagues about the promise and potential of the Internet. The Caucus also encourages Members to utilize the Internet in communications with constituents and supports efforts to put more government documents online. Senators Conrad Burns and Patrick Leahy and Representatives Robert Goodlatte and Rick Boucher co-chair the Internet Caucus. Members include:

Caucus Co-Chairs:

Senator Conrad Burns
Senator Patrick Leahy
Rep. Robert Goodlatte
Rep. Rick Boucher

Caucus Members:

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Rep. David Wu
Senator Ron Wyden

The U.S. PATRIOT Act & E-Surveillance

Program

Moderator

Peter Swire, Moritz College of Law of the Ohio State University
peter@peterswire.net

Panelists

William Moschella, Department of Justice Legislative Affairs
202.514.2141

James X. Dempsey, Center for Democracy & Technology
jdempsey@cdt.org

Emily Sheketoff, American Library Association
esheketoff@alawash.org

Patrick Rowan, Department of Justice Criminal Division
patrick.rowan@usdoj.gov

<http://www.netcaucus.org/events/2005/patriot/>

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The U.S. PATRIOT Act & E-Surveillance

Investigative Tools and Standards for Use

Investigative Power	Judicial or US Attorney Discretion?	Gag Order?	Standard
Pen Register (<i>Intelligence</i>)	No (judge must issue)	Permanent	Government certifies information likely to be obtained is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities
Pen Register (<i>Criminal</i>)	No (judge must issue)	Yes, until lifted by court	Government certifies information likely to be obtained is relevant to an ongoing criminal investigation
Wiretap (<i>Intelligence</i>)	Yes	Permanent	Probable cause to believe that (1) target is a foreign power or agent of a foreign power and (2) each facility/place at which surveillance is directed is being used by, or is about to be used by, a foreign power or its agent
Wiretap (<i>Criminal</i>)	Yes	Notice After Investigation	Probable cause to believe (1) individual has committed, is committing or is about to commit a crime listed in the statute, (2) communications concerning that offense are likely to be obtained and (3) facility/place where communications will be intercepted are being/about to be used by target
Records Search (<i>Intelligence</i>) (Section 215 Order)	No (judge must issue)	Permanent	Government certifies that information is sought for an authorized investigation to protect against international terrorism or clandestine intelligence activities
Records Search (<i>Criminal</i>) (Grand Jury Subpoena)	Yes (US Attorney has discretion)	No	Information must be relevant to ongoing criminal investigation
Administrative Subpoena	No (no judge or US Attorney)	Yes	FBI certifies to itself that information is relevant to authorized investigation

The U.S. PATRIOT Act & E-Surveillance

The PATRIOT Act clarified or expanded the government's power to monitor online activities of Internet users, including Web surfing, e-mails, and peer-to-peer systems, in three areas:

1. Expands the government's ability to intercept communications of suspected hackers. (Section 217)
2. Expands emergency disclosures of e-mail. (Section 212)
3. Clarifies government authorities to collect information about the origin and destination of communications in addition to the content. (Section 214)

Background of the PATRIOT Act:

The U.S. PATRIOT Act was passed with overwhelming bipartisan support in the weeks following the attacks of 9/11. Title II of the Act expanded government powers to intercept communications for law enforcement and foreign intelligence purposes. Of over 150 provisions, 16 are set to "sunset," or expire, on December 31, 2005 unless reauthorized by Congress.

Among the more hotly debated PATRIOT provisions:

- Section 213: Authority to carry out search warrant without prior notice (also known as "Sneak and Peak"). (Not set to sunset)
- Section 215: Access to public records, such as business or library records, under the Foreign Intelligence Surveillance Act of 1978 (FISA).
- Section 206: Roving surveillance authority under FISA.
- Information sharing between domestic law enforcement and foreign intelligence agencies (i.e. "The Wall").
- Section 212: Emergency disclosure of email without a court order.
- Administrative subpoena powers under the Patriot Reauthorization Act, not in the PATRIOT Act but reported out of the Senate Intelligence Committee earlier this year.

Glossary of Commonly Used Terms

FISA: Federal Intelligence Surveillance Act. Authorizes the government to carry out physical searches and electronic surveillance against any person in the United States upon showing that a significant purpose is to gather foreign intelligence and that there is probable cause to believe that the target is a foreign power or the agent of a foreign power (including international terrorist groups).

Pen Registers / Trap and Trace Devices: Electronic device that records originating phone numbers of all incoming calls (trap and trace device) and destination numbers of outgoing calls (pen register) on a particular phone line.

ISP: Internet Service Provider

Roving Wiretaps: Wiretaps that allow FBI agents to intercept communications of a suspect who uses multiple phones or who attempts to elude authorities by continuously changing phones.

Administrative Subpoena: Document signed by an FBI agent that requires the recipient to disclose any documents. It is issued without prior judicial approval and, unlike a grand jury subpoena, without the involvement of a prosecutor. Failure to comply with an administrative subpoena could result in civil and criminal penalties.

Delayed Notification Searches (AKA "Sneak and Peak Searches"): Searches that allow law enforcement officers to conduct searches of areas where a reasonable expectation of privacy exists without giving any prior notice of the search. The Patriot Act allows delayed notification to the target of a search warrant if providing immediate notification would have an adverse result which is defined as any one of the following:

1. Endangering the life or safety of an individual;
2. Flight from prosecution;
3. Destruction of or tampering with evidence;
4. Intimidation of potential witnesses; or
5. Seriously jeopardizing an investigation or delaying a trial.

Criminal Investigations: In a federal criminal investigation, federal law enforcement agents use criminal search warrants and grand jury subpoenas to collect evidence relevant to a crime. Criminal investigations can and do include investigations of terrorists, including Al Qaeda. They can also include the investigation and prevention of what are called "inchoate" crimes, including conspiracy, attempt, and solicitation. The guidelines for conducting criminal investigations (including what level of suspicion is required for certain intrusive techniques) are public.

Foreign Intelligence Investigations: Foreign intelligence investigations are domestic investigations to obtain "foreign intelligence information." Investigators often use the Foreign Intelligence Surveillance Act to obtain information regarding matters that may involve criminal conduct, such as espionage or terrorism, but also gather information for foreign policy or other purposes on lawful activities. The guidelines for conducting foreign intelligence investigations (including what level of suspicion is required for certain intrusive techniques) are partly classified.