The U.S.A.P.A.T.R.I.O.T. Act

CJ341 – Cyberlaw & Cybercrime Lecture #28

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The Act

- **Act Text:**
  - [http://www.epic.org/privacy/terrorism/hr3162.html](http://www.epic.org/privacy/terrorism/hr3162.html)
- Federal law (Public Law 107-56)
- **Wide support for creation and passage of U.S.A.P.A.T.R.I.O.T. Act**
  - Passed HR 357 – 66
  - Passed Senate 98 – 1
- Signed by President G. W. Bush, Oct. 26, 2001, after 9/11


Topics

- Purpose
- Scope
- Provisions
- Issues
- ACLU Video & Discussion

FOR THOSE WRITING EXTRA-CREDIT PAPERS

Remember, you are not graded by whether your instructor agrees with your political stance: you are graded on the basis of the clarity of your exposition.

Purpose

- **“To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.” (H.R. 3162)**
- To combat terrorism
  - Detect
  - Investigate
  - Prosecute
- Defines & criminalizes domestic terrorism
**Scope (1)**

- Amends a significant number of federal statutes, including:
  - Banking Laws
    - Bank Secrecy Act
    - Right to Financial Privacy Act
    - Fair Credit Reporting Act
  - Immigrations Laws
    - Immigration and Nationality Act
  - Computer Fraud & Abuse Act
  - Foreign Intelligence Surveillance Act

**Scope (2)**

- Amends…
  - Victims of Crime Act
  - Electronic Communications and Privacy Act
  - Family Education Rights and Privacy Act
- Expands
  - Domestic Security
  - Surveillance Procedures
- Affects
  - Privacy

**List of Laws Amended by U.S.A.P.A.T.R.I.O.T. Act**

- Wiretap Statute (Title III):
- Electronic Communications Privacy Act
- Computer Fraud and Abuse Act
- Foreign Intelligence Surveillance Act
- Family Education Rights and Privacy Act
- Pen Register and Trap and Trace Statute
- Money Laundering Act
- Immigration and Nationality Act
- Money Laundering Control Act
- Bank Secrecy Act
- Right to Financial Privacy Act
- Fair Credit Reporting Act

*From ACLU summary: [http://epic.org/privacy/terrorism/usapatriot/](http://epic.org/privacy/terrorism/usapatriot/)*

**History**

- Swift passage triggered by 9/11
  - Many surveillance provisions originally proposed pre-9/11 but were met with resistance (EPIC)
  - Recognition of need for new legal tools
  - Attempt to beef up security
- Sunset Provision
  - Several key provisions were scheduled to terminate on Dec 31, 2005, unless extended
  - Renewed Mar 2, 2006 until 2011
  - Renewed May 26, 2011 until 2015
Provisions – HR 3162 (1)

- Title I: Enhancing Domestic Security and Terrorism
- Title II: Enhanced Surveillance Procedures
- Title III: International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001
- Title IV: Protecting the Border
- Title V: Removing Obstacles for Investigating Terrorism

Provisions (2)

- Title VI: Providing for Victims of Terrorism, Public Safety Officers, and their Families
- Title VII: Increased Information Sharing for Critical Infrastructure Protection
- Title VIII: Strengthening the Criminal Laws Against Terrorism
- Title IX: Improved Intelligence
- Title X: Miscellaneous

Surveillance & Communications (1)

Major Sources of Authority for surveillance & communications

- Title III – requires probable cause for real-time interception of voice/data communications (probable cause required) / contents of information
- ECPA – Government access to stored email and communications
  - Pen Register Statute – real time interception of dialed numbers or transmitted numbers (probable cause not required, government certifies to court need for information related to criminal investigation)
    - U.S.A.P.A.T.R.I.O.T. Act – Expands power to Internet
  - Expanded scope of what information service providers must provide to Government when requested

Surveillance & Communications (2)

Major Sources of Authority for surveillance & communications

- Foreign Intelligence Surveillance Act – FISA
  - Government can conduct electronic surveillance upon obtaining court order (probable cause)
- Sneak and Peek
  - Expansion of Searches
    - Good cause
    - Permits delayed notification of a search
  - Significant departure from 4th Amendment & developed law around search and seizure rights
- Expanded Jurisdiction of Search Warrants
Crime Fighting

- Expanded scope and access
  - Electronic Communications
  - Library Records
    - E.g., FBI can search library records of suspected terrorists without probable cause, but does need a warrant to do
    - Requires librarians to conceal search
- RICO (Racketeering statute)
  - U.S.A.P.A.T.R.I.O.T. Act permits greater application
    - Can now be now used for crimes where no monetary gain

Computer Fraud & Abuse Act

- U.S.A.P.A.T.R.I.O.T. Act
  - Expands government authority to prosecute computer-related crime
  - Increases criminal penalties
    - E.g., doubles jail time – first offense max. term now 20 yrs
  - Defines/clarifies “loss”

Highly Controversial

- Passage by legislators who admitted that did not read the bill before voting on it
- There was no debate about the bill before it was passed.
- Privacy
- Civil liberties
- Constitutionality

Overview (anti-bill)

- Electronic Privacy Information Center (EPIC)
  - http://epic.org/privacy/terrorism/usapatriot/
- Civil liberties organization
- Detailed analysis with references
Issues (1)

- Expansion of surveillance, wiretapping, criminal action
- Threat to constitutional rights
- Permits “secret searches”
- Power to conduct wide surveillance
  - Internet
  - Phone
  - Secret library-records searches
- Requires only “intelligence purposes” for criminal investigations
  - Elimination of and/or relaxation of probable cause

Issues (2)

- Permits jailing/detaining non-citizens on suspicion
  - Abrogation of *habeas corpus*
- Allows detaining of suspects without judicial oversight
  - *Extrajudicial* detentions in prison camps (Guantanamo)
  - Secret prisons overseas (rendition)

Practical Application

- Limited public knowledge about actual application of the Act
- Domestic spying concerns
  - President Bush’s “secret spying” without authorization
  - Executive Order
  - Eavesdropping & access to and viewing of communications
  - No Secret FISA warrants obtained
  - (more in lecture 29)

USA PATRIOT Act

**Cartooning and Free Speech in War Time**

> http://www.solidarity.com/hkcartoons/artshow/artshow.html

In the aftermath of September 11, freedom of speech has been under attack. Political cartoonists are not immune. In some cities cartoonists have been fired or lost freelance jobs because of cartoons critical of U.S. policy or for using “wrong” metaphors. Even nationally-known artists, such as Boondocks cartoonist Arron McGruder and Ted Rall have been censored or repudiated.

In response, cartoonists Gary Huck, Mike Konopacki, Matt Wuerker and writer Alec Dubro put together a show of cartoons from 41 editorial cartoonists from the U.S. and Mexico. This unique show premiered at the Institute for Policy Studies in Washington, DC. June 21, 2002.
ACLU VIDEOS

- BEYOND the PATRIOT Act
  - http://tinyurl.com/39bvkxj
  - 10 30-minute episodes
- We will now view introductory video
- DISCUSSION to follow in class
- RECOMMENDATION: Take notes while you watch – will help in discussion
- REMEMBER: You are NOT expected to agree with positions in the video. Articulate, civil disagreement can stimulate thought. All views may be expressed without fear.