

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

CJ341 – Cyberlaw & Cybercrime Lecture #28

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Topics

- Purpose
- Scope
- Provisions
- Issues

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.

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The Act

- Unitng and Strengthenng America by Providng Appropriate Tools Required to Intercept and Obstruct Terrorism Act (U.S.A.P.A.T.R.I.O.T. Act)
- Act Text:
<http://www.epic.org/privacy/terrorism/hr3162.html>
- Federal law (Public Law 107-56)
- Wide support for creation and passage of USAPATRIOT Act
 - ☐ Passed HR 357 – 66
 - ☐ Passed Senate 98 – 1
- Signed by President G. W. Bush, Oct. 26, 2001, after 9/11

Neutral resource:

<http://thomas.loc.gov/cgi-bin/bdquery/z?d107:HR03162:@@L&summ2=m&>

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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

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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

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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

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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

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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*

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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*

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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

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Surveillance & Communications (2)

Major Sources of Authority for surveillance & communications

- Foreign Intelligence Surveillance Act – FISA
 - ❑ U.S.A.P.A.T.R.I.O.T. Act lowers standards for foreign intelligence surveillance
 - ❑ 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

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Crime Fighting

- Records & information
 - ❑ 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

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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”

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Controversy



- Highly controversial
 - ❑ Passage by legislators who *did not read the law before voting on it*
 - ❑ Privacy
 - ❑ Civil liberties
 - ❑ Constitutionality
- Congress renewed Act in March 2006
 - ❑ Signed again by President Bush
 - ❑ Suspension of *habeas corpus*

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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

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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
 - ❑ Secret prisons

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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)

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DISCUSSION



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