



Surveillance and Privacy June 2009

USA PATRIOT Act

Section 215 of the USA PATRIOT Act is scheduled to be reauthorized by the end of the year along with two other sections: the lone wolf and roving wiretap provisions. Section 215, the business records section (more often referred to as the "library provision" even though the word libraries is never mentioned), has been an extremely troublesome provision for the library community since the Act was passed in 2001 and reauthorized in 2006. In anticipation of reauthorization debates expected to start this summer, new as well as returning members of Congress should know why the library community continues to seek reform to Section 215 and other surveillance laws.

The USA PATRIOT Act was introduced and passed quickly after Sept. 11, 2001. (USA PATRIOT stands for "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism.") The PATRIOT reauthorization act was signed into law in March 2006. It differs somewhat from the original legislation and includes a sunset of Dec. 31, 2009, for Section 215 but essentially made no other changes to this section.

Section 215 gives the FBI expansive authority to search business records, including library records. The FBI may request the records secretly and is not required to prove that there is "probable cause" to believe the person whose records are being sought has committed a crime or is in contact with a terrorist. A librarian who receives an order is prohibited from revealing it to anyone except those whose help is needed to produce the records.

There are at least three cases where the FBI has issued a subpoena or an NSL to libraries. In 2004, the FBI issued a subpoena to a library in rural Washington state demanding a list of patrons who had checked out a biography of Osama bin Laden. It sent NSLs to libraries seeking Internet records in 2005 and 2007. The most notable case is the "Connecticut Four" who were successful at getting the gag order removed by a court. In these more public cases, the FBI withdrew the orders after they were challenged by librarians.

Library Concerns for Patron Confidentiality

Privacy is essential to the exercise of free speech, free thought, and free association. In a library, the subject of users' interests should not be examined or scrutinized by others. This long-standing principle committed to patron privacy is reflected in library confidentiality laws in 48 states and the District of Columbia. There are Attorneys General letters that cover confidentiality in the other states.

Libraries clearly function under the rule-of-law and cooperate with law enforcement when presented a lawful court order to obtain specific information about specific patrons under their respective state laws. Certainly, librarians are as committed to following the federal laws as well and are also concerned about keeping our nation safe.

But librarians have also been leaders in the fight to advocate for changes in the PATRIOT Act and related laws to protect civil liberties. ALA remains concerned that Section 215 goes beyond the traditional methods of seeking information from libraries and should be modified during its pending reauthorization. ALA does not oppose the extension of Section 215 if greater legal protections are included such as higher legal standards for individualized suspicion to obtain 215 orders, a realistic system for appeals and due process, and changes to the stringent gag rule that accompany such orders.

Rep. Jerry Nadler (D-NY) reintroduced the National Security Letters Reform Act (H.R. 1800) on March 31; Sen. Russ Feingold (D-WI) is expected to introduce a bill in the coming weeks. Several House Republicans introduced legislation for a 10-year extension to the three sections due to sunset in December. FBI Director Robert Mueller has called for extension of the three provisions although it is unknown if he and/or the White House might agree to modifications. But at this writing, there is no new comprehensive bill.

Action Needed:

Library advocates should urge Congress to balance the protection of civil liberties and privacy rights while assuring national security. Congress must understand the privacy principles that guide the library community and voice concerns about the PATRIOT Act, national security letters, and other laws and policies that threaten civil liberties. Before proceeding on Section 215 this year, Congress should:

- Conduct a comprehensive review of all surveillance laws and tools, including Section 215 and NSL laws, and investigate abuses with their implementation;
- Reconsider warrantless subpoenas, increase court review, assure congressional oversight and establish measures and guidelines to prevent abuses;
- Reform these surveillance laws to ensure the critical balance between protecting our nation's security and preserving our civil liberties.