Privacy, Cybersecurity & Surveillance

Legislative Update - June 2011

ALA’s extensive First Amendment and privacy policies guide the association’s work in the federal legislative arena to protect personal privacy in debates on the USA PATRIOT Act, the Electronic Computer Privacy Act (EPCA) and the Computer Assistance for Law Enforcement Act (CALEA). Advancing the library community’s principles to protect personal privacy and patron confidentiality requires major grassroots work from the library community to promote library priorities in the congressional environment.

USA PATRIOT Act Reauthorization

The most notable development in recent months is the reauthorization of the three expiring sections of the U.S.A. PATRIOT Act for four more years – unfortunately, without any reforms. Congress reauthorized Section 215 on business records (often referred to as the “library provision”), lone wolf and roving wiretap sections that would have expired at 12:01 a.m. May 27 without reauthorization. By establishing the next sunset deadline of June 1, 2015, Congress has kicked the ball out of bounds rather than effectively address the troubling issues in the USA PATRIOT Act.

ALA continued its efforts for USA PATRIOT Act reforms during the last two years as Congress kept extending a previous sunset deadline. ALA worked with the American Civil Liberties Union, the Association of Research Libraries, the Coalition for Reader Privacy and others pushing for amendments, especially to Section 215. Prior to the Senate votes, ALA supported Senators Patrick Leahy, Rand Paul, Ron Wyden and others who continued to seek the opportunity to submit amendments, including ones targeting improved reader privacy protections. Senator Paul was allowed one amendment on gun ownership checks and records, which failed at the time of the final Senate vote. The final Senate vote was 72 to 23. Three other Republicans voted with Paul, and 19 Democrats voted against the four-year extension. Those voting “aye” on the extension included 31 Democrats and 41 Republicans.

On the House side, 54 Democrats and 196 Republicans voted “aye.” 31 Republicans and 122 Democrats voted against the extension. 29 members did not vote. President Obama “signed” the bill from France by authorizing his electronic signature.

New Reforms Already Proposed:

Not to be thwarted, Senators Leahy, Akaka, Bingaman, Boxer, Cardin, Coons, Durbin, Franken, Gillibrand, Harkin and Wyden introduced the USA PATRIOT ACT Improvements Act of 2011 (S. 1125). It is unclear at this writing whether this bill will go beyond the committee process, but their new proposal is a welcomed sign. PATRIOT will be back in four years. In the meantime, grassroots supporters, get ready for a fight over the FISA Amendments Act, which sunsets next year.
Electronic Communications Privacy Act (ECPA)

Senator Patrick Leahy introduced the Electronic Communications Privacy Act Amendments Act of 2011 (S. 1011) in May. The original 1986 statute established rules for government access to email and other Internet communications, but the law has not been significantly revised since it was enacted, despite major changes in technology and the Internet. The new bill would require the government to obtain a court warrant to access a person’s email and to track individuals via their cell phones in real time. One ALA objection to S. 1011 is a provision that would allow the government to obtain, without a warrant, older tracking records of individuals.

ALA is a member of the Digital Due Process (DDP) coalition whose primary goal is “to balance the law enforcement interests of the government, the privacy interests of users, and the interests of communications service providers in certainty, efficiency and public confidence.” As ECPA reauthorization proceeds, ALA, with DDP and others will work to protect the large amount of personal information generated in today’s digital world with the needs of law enforcement and service providers. The bill has been referred to the Senate Judiciary Committee. Currently, no comparable bill has been introduced in the House. [For additional information about the bill: http://thomas.loc.gov/cgi-bin/bdquery/D?d112:1:./temp/~bdziPK.@@@L&summ2=m&/home/LegislativeData.php]

Communications Assistance for Law Enforcement Act (CALEA)

Currently, CALEA regulations do not apply to libraries unless a library is part of a larger institution or organization that must comply with CALEA. This has proved a challenge for some academic libraries, in particular as part of higher education institutions. CALEA is a wiretapping law first passed in 1994 to assure that law enforcement would be able to conduct surveillance on telephones, VoIP and broadband as digital switching systems became more prevalent. CALEA requires telecommunications providers and equipment manufacturers to design their systems and equipment so that law enforcement can access these services to conduct surveillance in the digital age. CALEA is due to be reauthorized in this Congress. [Congressional Research Service report at: http://www.fas.org/sgp/crs/intel/RL30677.pdf]

However, in the fall of 2010, two news items appeared in the New York Times reporting that the FBI intended to drastically expand CALEA authorities by expanding the number and types of organizations being required to install the “black box” technology as well as the scope of personal information that law enforcement could obtain from such electronic communications. No specific language from the FBI, the White House or Congress is available at this writing. Meanwhile, the White House indicated it will be making specific proposals on a wide range of cybersecurity issues, which could be where CALEA proposals may be made.

Related Issues

ALA monitors many other issues in this broad arena including proposals to protect people from geospatial tracking and policies addressing data breaches and data sharing. [For additional information about ALA’s legislative work and privacy policies and resources see: http://www.ala.org/ala/aboutala/offices/ogr/issuebriefs/surveillance_privacy.pdf and American Library Association Privacy Policies and Statements, Privacy and Confidentiality, Privacy Tool Kit, Privacy: An Interpretation of the Library Bill of Rights, and a Q&A on privacy and confidentiality]