

Side-By-Side Analysis of: Title I (Intelligence Gathering) in HR 2975 , the PATRIOT Act, and Title II (Enhanced Surveillance Procedures) of the "Uniting and Strengthening America Act of 2001"

<p><i>Analysis</i></p>	<p><i>Title I (Intelligence Gathering: Electronic Surveillance) in HR 2957: "Provide Appropriate Tools required to Intercept and Obstruct Terrorism Act of 2001" (PATRIOT)</i></p> <p><i>Sponsor: Sensenbrenner (R-WI)</i></p>	<p><i>Title II (Enhanced Surveillance Procedures) in the "Uniting and Strengthening America Act of 2001 (USA)</i></p> <p><i>Sponsor: Leahy (D-VT)</i></p>
<p><i>Increased authority to intercept communications under the wiretap statute</i></p>		<p>Sec. 201</p> <p>Adds terrorist offenses (as defined within the title 18 "terrorist" crimes statutes, sections 2332, 2332a, 2332b, 2332d, 2339A, and 2339B) as well as chemical warfare (section 229) as a predicate crimes suspicion of which would permit law enforcement to obtain a wiretap of the suspect.</p>
<p><i>Interception of communications relating to computer fraud and abuse</i></p>	<p>Sec. 105</p> <p>Permits "the owner or operator" of a "protected computer" (which includes any computer "used in interstate or foreign commerce or communication") to authorize law enforcement to intercept "the wire or electronic communications of a computer trespasser" (defined as "a person who accesses a protected computer without authorization."). The law enforcement interception is limited to communications transmitted to or from the computer</p>	<p>Sec. 219</p> <p>Permits "the owner or operator" of a "protected computer" (which includes any computer "used in interstate or foreign commerce or communication") to authorize law enforcement to intercept "the wire or electronic communications of a computer trespasser" (defined as "a person who accesses a protected computer without authorization," but not "a person known by the owner or operator of the protected computer to have an existing contractual</p>

	trespasser.	relationship ... for access to all or part of the protected computer."). The law enforcement interception is limited to communications transmitted to or from the computer trespasser.
<i>Authorized disclosure of intercepted communications</i>	<p>Sec. 103</p> <p>Permits disclosure of intercepted communications relating to "foreign intelligence information as defined in 50 USC 1801(e)" with "any Federal law enforcement, intelligence, national security, national defense, protective, immigration personnel, or the President or Vice President of the United States... for performance of official duties.'" There is no provision limiting use or re-disclosure of such shared information.</p> <p>Sec. 154</p> <p>Permits foreign intelligence information obtained as part of a criminal investigation to be provided to "any Federal law enforcement, intelligence, national security, national defense, protective, immigration personnel, or the President or Vice President of the United States ... for performance of official duties."</p>	<p>Sec. 203</p> <p>Permits sharing of grand jury information or intercepted communications when "the matters involve foreign intelligence or counterintelligence .. or foreign intelligence information" with "any Federal law enforcement, intelligence, protective, immigration, national defense or other national security official." Use of the information by the person who has received it pursuant to the provision is limited to "as necessary in the conduct of that person's official duties subject to any limitations applicable to that official's retention and dissemination of information of that type." Provides civil remedies for misuse or wrongful disclosure.</p>
<i>Authority for use of pen register/trap and trace devices</i> <i>Jurisdictional Expansion</i>	<p>Sec. 101</p> <p>(b) Expands jurisdictional authority so that</p>	<p>Sec. 218</p> <p>(b) Expands jurisdictional authority so that</p>

<p><i>Expansion of Pen Register Application</i></p>	<p>a judicial order to install a trap and trace device applies anywhere in the United States if a government attorney makes the application for the government. Where a state law enforcement officer makes the application, the court order applies only to the court's jurisdiction. Permits any entity not explicitly named in the order to request certification from the government attorney.</p> <p>(c) Expands use of pen register/trap and trace devices to electronic communications, by permitting recording of "dialing, routing, addressing, or signaling information (but not including contents of such communication)" from a "line or other facility."</p>	<p>a judicial order to install a trap and trace device applies anywhere in the United States if a government attorney makes the application for the government. Where a state law enforcement officer makes the application, the court order applies only to the court's jurisdiction.</p> <p>(a)(1)(3) Expands use of pen register/trap and trace devices to electronic communications, by permitting recording of "the attributes of the communications to which the order applies, including the number or other identifier," from a "line or other facility." Prohibits collection of "the contents of any wire or electronic communication."</p> <p>(d) makes explicit that these changes do not require technical obligation on communications providers to modify their services in order to comply with law enforcement, and that such service providers will be reasonably compensated for their assistance.</p>
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<p><i>Intelligence exceptions from limitations on interceptions and disclosures of communications</i></p> <p><i>Amendment to the Cable Act</i></p>	<p>Sec. 109</p> <p>Permits voluntary or obligatory disclosure by a cable company of information that doesn't reveal "customer cable viewing activity" non cable viewing activity" to law enforcement officers under the provisions of Title III, Pen Register and Trap and Trace, and Stored Communications Access Acts.</p>	<p>Sec. 212</p> <p>Same.</p>
<p><i>Expansion of Scope of Subpoenas for Records of Electronic Communications</i></p>	<p>Sec. 107</p> <p>Expands the obligatory disclosure of customer information by a service provider under a subpoena to include records of session times and duration; any temporarily assigned network address; and any means or source of payment.</p>	<p>Sec. 211</p> <p>Same</p>
<p><i>Nationwide Application of Surveillance Orders</i></p>	<p>Sec.'s 101 and 108</p> <p>Expands the jurisdictional authority of a court to authorize the installation of a surveillance device anywhere in the United States.</p>	<p>Sec.'s 218, 220, 221</p> <p>Expands the jurisdictional authority of a court to authorize the installation of a surveillance device anywhere in the United States.</p> <p>Permits a federal magistrate "in any district</p>

		in which activities relating to the terrorism may have occurred" to authorize a search warrant "in an investigation of domestic or international terrorism."
<i>Expansion of Multi-Point ("Roving Wiretap") Authority</i>	<p>Sec.152</p> <p>Requires unnamed parties to provide assistance necessary to accomplish government surveillance under the Foreign Intelligence Surveillance Act ("FISA") roving wiretap authority, where "the actions of the target ... may have the effect of thwarting the identification of a specified person."</p>	<p>Sec. 206</p> <p>Identical language.</p>
<i>Lowered Standard for Foreign Intelligence Surveillance</i>	<p>Sec. 153</p> <p>Expands the application of FISA to those situations where foreign intelligence gathering is "a significant purpose" of the investigation, rather than, as current law provides, the sole or primary purpose.</p>	<p>Sec. 220</p> <p>Identical language</p>

<p><i>Liberalized Use of Pen Register/Trap and Trace Devices under FISA</i></p>	<p>Sec. 155</p> <p>Deletes the existing statutory requirement that the government prove the surveillance target is “an agent of a foreign power” before obtaining a pen register/trap and trace order.</p>	<p>Sec. 215</p> <p>Prohibits installation of a FISA pen register where the activities of the suspect giving rise to the surveillance are protected by the First Amendment.</p> <p>Deletes the existing statutory requirement that the government prove the surveillance target is “an agent of a foreign power” before obtaining a pen register/trap and trace order.</p> <p>Expands pen register/trap and trace authority equivalently to Sec. 218 (above).</p>
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