

PATRIOT ACT SUNSETS

May 7, 2004

1634 I Street, NW Suite 1100
Washington, DC 20006
202.637.9800
fax 202.637.0968
<http://www.cdt.org>

The PATRIOT Act itself does not sunset – of more than 150 provisions in the Act, only 16 provisions are due to sunset. Some of those covered by the sunset are uncontroversial, while some of the most controversial provisions in the Act are not slated to sunset. The sunset date is December 31, 2005, more than a year after the election, under a new Congress. The sunset does not apply to pending investigations.

Of the provisions that sunset, only three are relevant to information sharing and the so-called “Wall” between intelligence and law enforcement: Sections 203(b), 203(d), and 218.

Here’s what the sunset covers – **bold** indicates those that are not controversial in CDT’s view:

Sec. 201 – certain terrorism crimes as wiretap predicates

Sec. 202 – computer fraud as wiretap predicate

Sec. 203(b) – sharing criminal wiretap information with intelligence agencies

Sec. 203(d) – sharing foreign intelligence information obtained in criminal investigations

Sec. 204 – technical clarification of no conflict between Title III and FISA

Sec. 206 – roving taps under FISA

Sec. 207 – extending duration of FISA taps of non-U.S. persons

Sec. 209 – seizure of voice mail pursuant to warrant

Sec. 212 – emergency disclosures of email without a court order

Sec. 214 – lowering standard for pen registers and trap and trace devices under FISA

Sec. 215 – access to business records under FISA (the “library records” provision)

Sec. 217 – interception of computer trespasser communications without a court order

Sec. 218 – the “significant purpose” provision

Sec. 220 – nationwide service of search warrant for electronic evidence

Sec. 223 – civil liability for unauthorized disclosures of wiretap info

Sec. 224 – the sunset provision itself

Sec. 225 – immunity for compliance with FISA wiretap

A number of highly controversial PATRIOT provisions are not covered by the sunset, including:

Sec 203(a) – sharing grand jury information

Sec. 213 – sneak and peek searches

Sec. 216 – pen registers for the Internet

Sec. 358 – exceptions to the financial privacy laws

Sec. 505 – “National Security Letter” exceptions to privacy laws

Sec. 802 – definition of domestic terrorism

Many of even the controversial provisions that are due to sunset should not expire entirely. Instead, the sunset debate should focus on amending the Act to include the checks and balances that were left out in the haste to enact the law. Keep the tools, but make sure they are under control.