

**Patriot Act I and II Overview**  
**April 14, 2003**

**Patriot I**

**Full name:** Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001

**Legislative History**

- ?? 9/20/2001 - Administration draft first circulated.
- ?? 9/24 - House Judiciary Committee holds its only hearing, with only one witness, AG Ashcroft.
- ?? 10/2 – Reps. Sensenbrenner and Conyers introduce HR 2975.
- ?? 10/3 – House Judiciary Committee markup – bipartisan support.
- ?? 10/8 – Speaker refuses to move on House Judiciary Comm bill.
- ?? In Senate, full Judiciary Committee holds no hearings. Constitution Subcommittee holds one hearing. No Subcommittee or full Committee mark-up in Senate.
- ?? 10/11 - Senate passes bill on October 11, One Senator offers 4 amendments – tabled.
- ?? 10/12 – 5:45 AM new bill issued by House Leg Counsel.
- ?? 10/12 – House passes HR 3108.
- ?? 10/23 – final action in House – HR 3126
- ?? 10/ 25 – final action in Senate
- ?? 10/ 26 – signed by Pres - Public Law 107-56.

**Main provisions**

- ?? **Sneak and peak searches:** Allows law enforcement agencies to search homes and offices without notifying the owner for days or weeks after, not only in terrorism cases, but in all cases. Requires search warrant. Standard: whenever there is reasonable cause to believe that notice at time of search may result in flight from prosecution, destruction of evidence intimidation of potential witnesses or otherwise seriously jeopardize an investigation or unduly delay a trial. (Sec. 213)
- ?? **Definition of domestic terrorism:** Defines domestic terrorism as acts dangerous to human life that violate any state or federal criminal law and appear to be intended to

intimidate civilians or influence government policy. 18 USC 2331(5). (Sec. 802)

Consequences:

- Seizure of assets (Sec. 806)
- Disclosure of educational records (Secs. 507 and 508)
- Nationwide search warrants (Sec. 219)
- Access to taxpayer info w/o traditional warrant
- Many consequences in Patriot II

?? **FISA in criminal cases – the “primary purpose” change:** Allows FBI to conduct wiretaps and secret searches in criminal cases using the lower standards previously used only for the purpose of collecting foreign intelligence. FISA’s main problem in criminal cases: no notice of surveillance ever, unless a trial; and at trial, limited ability to challenge grounds for surveillance – defendant never sees application or transcripts. (Sec. 218)

?? **Roving taps:** Authorizes roving taps in intelligence investigations, without the protections applicable to roving taps in criminal investigation. In particular, no “ascertainment” requirement – no requirement to determine that suspect was actually using the tapped phone line or Internet account. (Sec. 206) Was supposed to allow the gov’t to follow a particular person under investigation, without having to specify in advance the place or phone line or email account where the intercept was to be carried out. Further amended in Intell Authorization Act – now says that gov’t can get order for unknown person at unknown location.

?? **Monitoring “computer trespassers:”** Allows Internet Service Providers, universities, network administrators to authorize government surveillance of "computer trespassers" without a judicial order – no notice to the person monitored, no report to a judge after the fact, no suppression remedy, no statistical report, immunity for service provider. (Sec. 217)

?? **Business records provision:** Allows FBI to compel disclosure of any kind of records, upon the mere claim that they are connected with an intelligence investigation. Previously, FBI had authority to obtain bank records, credit records and certain other records upon a showing they related to a suspected member of a terrorist group. Patriot Act expanded FBI’s authority in two ways: Gave the FBI authority to seize any records of any entity. Includes libraries and bookstores. Second, dropped the prior law’s requirement that the FBI actually have some evidence leading it to suspect that the person whose records it sought was a member of a terrorist group or otherwise involved in terrorism. New provision allows the FBI to obtain whole databases of information, including records of people not suspected of any wrongdoing. FBI must get a court order, but judges *must* approve every request submitted by the government. FBI does not have to give any evidence to support its request. Gag order applies. (Sec. 215)

- ?? **Pen registers for the Internet:** Allows government agents to collect information about Web browsing and e-mail (but not content) without meaningful judicial review. Main problem – the existing pen register/trap and trace standard requires judges to approve every gov't request with no showing of evidence, no showing of relevance – court must accept gov't assertions. (Sec. 214)
- ?? **Information sharing:** Allows FBI to share with the CIA, without judicial approval, information collected by grand juries and criminal wiretaps, thereby giving the CIA the domestic subpoena powers it was never supposed to have. (Sec. 203)
- ?? **National Security Letters:** Lowers standard for FBI access to bank records, telephone toll records and credit records, removes requirement of particular suspicion. (Sec. 505)
- ?? **Money laundering:** major expansion of anti-money laundering laws, not limited to terrorism cases. Requires all financial institutions to maintain anti-money laundering compliance programs. Expanded definition of financial institution. Requires enhanced verification of identity of customers. (Sec. 326) Facilitates the sharing of information between the government and financial institutions, and among financial institutions themselves. (Title III)
- ?? **Immigration:** major revisions to immigration laws. (Title IV)

The text of the legislation and analyses by CDT, DOJ and others are online at <http://www.cdt.org/security/010911response.shtml>

## Sunset

Some of the surveillance provisions expire, or "sunset," on Dec 31, 2005 unless renewed by Congress. The sunset provision does not apply to the sharing of grand jury information with the CIA, giving the CIA permanent benefit of the grand jury powers. Nor does it apply to the provisions for sneak and peek searches or the provision extending application of the pen register and trap and trace law to the Internet. The sunset also does not apply to ongoing investigations. Since intelligence investigations often run for years, even decades, all the authorities will continue to be used even if they are not formally extended in 2005.

## II. Amendments to AG Guidelines

On May 30, 2002, Attorney General John Ashcroft issued revised Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations ("FBI Guidelines"), without any prior consultation with the relevant Committees of Congress.

**The Misleading Justifications for the Revisions:** The revisions to the FBI Guidelines are predicated on misleading claims and unexamined justifications:

- ?? Preventative mission. Since first issued in 1976, FBI Guidelines clearly stated that preventative intelligence investigations were an FBI priority both for domestic and foreign terrorism.
- ?? International terrorism. Ashcroft changed the domestic terrorism guidelines. , Organizations such as al Qaeda are investigated under separate foreign intelligence guidelines that were not revised by Attorney General Ashcroft. The revised FBI Guidelines apply to domestic groups.

### **Three Major Concerns with the Changes:**

- ?? New authority for the FBI to attend public meetings and events of domestic groups, without any scintilla of suspicion of criminal or terrorist activity, with poor guidance on what can be recorded and no time limits on the retention of data;
- ?? Encourages routine "mining" of vast commercial databases containing personal information about citizens and organizations, again without a scintilla of suspicion, no guidelines on how inferences will be drawn from such data, no limits on the actions that may be taken based on such marketing data, no limits on FBI warehousing or sharing of such information, and no time limits on retention.
- ?? Decreases internal supervision and coordination, in particular expanding the scope and duration of preliminary inquiries (by definition, these are cases that do *not* involve the reasonable indication of criminal or terrorist conduct), allowing investigations to go on for longer periods without producing results and without internal or external review.

### **III. Patriot II**

Available in leaked draft form at CDT web site

Major provisions:

- ?? grants FBI agents the power to issue subpoenas for any records or other tangible things (Sec. 128);
- ?? allows the government to obtain telephone toll records, bank records and credit records without judicial approval in domestic terrorism cases (Sec. 129);
- ?? allow wiretaps without a court order for up to 15 days following a terrorist attack (Sec. 103);
- ?? terminates court approved limits on local police spying on religious and political activity (Sec. 312);
- ?? authorizes secret arrests in terrorism cases (Sec. 201);
- ?? expands the implications of the definition of domestic terrorism so that it is a predicate for wiretapping (Sec. 122) and civil asset forfeiture (Secs. 427, 428);
- ?? expands the government's power to strip people of their US citizenship (sec. 501);
- ?? makes it a crime to encrypt any communication related to a Federal felony, even without intent to conceal (Sec. 404);

?? further curtails rights of even lawful immigrants to a fair deportation hearing and further limits federal court review of immigration decisions (Secs. 503, 504).

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