



world compliance

The U.S. Patriot Act



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The U.S. Patriot Act was passed by congress in the aftermath of September 11. The act provides federal authorities greater authority to monitor and record communications, either for law enforcement and foreign intelligence purposes. Through the act, the Secretary of the Treasury has regulatory powers to fight corruption within the United States. financial system for foreign money laundering purposes. The act's aim is also to restrict the entry of foreign terrorists into the country while detaining and removing those already present.

The act also created identified new crimes and created new penalties and procedures to improve the efficiency with which to combat domestic and international terrorists.

Criminal Investigations: Tracking and Gathering Communications

The federal communications privacy law consists of a three layered system, designed with the dual objective of safeguarding confidentiality in respect to face to face conversation, telephone and online communications while providing authorities the ability to track and intercept criminal communications.

The first level is supplied by the Title 3 of the Omnibus Crime Control and Safe Streets Act of 1968.

Title 3 makes it illegal to conduct electronic eavesdropping of face to face conversations, phone conversations, online communication or any other form of electronic communication. Authorities do however have a narrowly defined guideline for conducting electronic surveillance which can be used in the pursuit of serious criminal cases. Law enforcement officers can request a court order from the Justice Department that authorizes them to secretly monitor conversations that constitute an offense (what are called predicate offenses).

Title 3 also outlines the guidelines under which the surveillance can be conducted including its duration and scope. In addition, it also outlines what type of conversations may be monitored as well as the requirement to notify parties of the conversations that were seized under said order once it expires.



The next layer covers the protection of telephone records, email archived in third party storage unit and similar material. The acts allows law enforcement officers via a warrant, court order or subpoena, the use of pen registers and trap and trace devices to identify the source and destination of calls. Orders can be obtained based on government certification instead of through a court finding, where information that is important to an investigation is usually discovered.

Act modifications to the procedures within the three layers:

- Provides the use of trace orders and pen register for electronic communications
- Provides nationwide authorization for the implementation of court orders concerning trap and trace devices, pen registers as well as access to archived email or paper based communication records
- Archived voice mail is treated the same as stored email
- Authorities are permitted to intercept (with the permission of the systems owner) a trespassers communications within a computer system
- Computer and terrorist crimes were added to Title 3 predicate offense list
- Provides greater protection for persons aiding in the execution of Title 3
- Promotes cooperation between foreign intelligence officials and U.S. law enforcement
- Provides for claims against the United States for violations of certain communication privacy violations conducted by government personnel
- Provides for the termination of authority which is found in several of the provisions as well as of the foreign intelligence amendments contained within a sunset provision



Foreign Intelligence Investigations

The Act relaxes a few of the restrictions placed on gathering foreign intelligence within the U.S.A. and provides the intelligence community with broader access to information that is gathered in the course of a criminal investigation. It also provides and expands the safeguards against official abuse.

Specifically it:

- Allows for roving surveillance of court orders when these omit the identification of the tool, facility or location where the surveillance is to take place. This is permissible on those occasions where the court feels the target is apt to foil identification with particularity.
- Provides for an increase in judges from 7 to 11 that are allocated to the Foreign Intelligence Act (FISA)
- Permits the submission for a search order or FISA surveillance order when gathering foreign intelligence is a significant reason rather than the reason for the application
- Permits trap and trace device and pen register orders concerning emails in addition to phone conversations
- Permits court ordered access to materials other than exclusively business records from lodging, locker rentals and auto rental businesses
- Has a sunset provision
- Provides for claims against the United States for violations of certain communication privacy violations by government personnel
- Broadens the prohibition against FISA orders when these are based exclusively on an American exercise of a person's First Amendment rights



Money Laundering

Money laundering is defined as the transfer of cash and valuables that are the product of and / or intended for the facilitation and execution of a crime. The act strengthens federal efforts against money laundering in the areas of regulations, criminal sanctions and forfeiture.

Regulation: The act broadens the Secretary of the Treasury's authority to regulate the activities of the institutions that function within the United States financial system. This is especially true in reference to foreign entities. The act provides the position to promote regulations:

- Securities brokers, commodity merchants, dealers, pool operators and advisors must file (SARs) suspicious activity reports
- Businesses are required to report cash transactions that involve sums that are greater than \$10,000 to the IRS in addition to filing a SAR
- Additional "special measures" and "due diligence" requirements to combat foreign money laundering
- Financial institutions are prohibited from maintaining a correspondent account for foreign shell banks
- Financial institutions are prohibited from permitting their customers to hide their financial activities by leveraging the institutions concentration account processes
- Introducing new customer identification (CIP) standards in addition to recordkeeping, as well as recommending effective processes to verify the identity of foreign customers
- Exhorting financial institutions as well as law enforcement in sharing information concerning suspected terrorist activity and money laundering
- Instituting the requirement that financial institutions maintain anti money laundering programs, compliance personnel, employee training programs, internal policies, procedures and controls as well as an independent audit feature



Crimes: The act introduced a series of new money laundering crimes and amendments, in addition to increasing the penalties for previous offenses. Among these it:

- Prohibits laundering (in the United States) the proceeds from foreign crimes and or political corruption
- Prohibits laundering the proceeds for supporting terrorist organizations as well as for cybercrimes
- An increase in the penalty for counterfeiting
- Sought to override a supreme court decision indicating that the confiscation of over \$300,000 (for attempting to leave the country without reporting the funds to customs) was an unconstitutionally exorbitant fine
- Allows for the authority to prosecute fraud committed overseas involving U.S. based credit cards
- Promotes the prosecution of money laundering in the location where the offense occurred

Forfeiture: The act created two types of forfeitures in addition to modifying several confiscations - related procedures. The act allows the confiscation of an individual or entities property who either plans in or participates in an act of international or domestic terrorism. The act also allows for the confiscation of property that is derived from or used to facilitate international or domestic terrorism. Under the constitutions due process, double jeopardy and the ex post facto clauses, the scope of these provisions may be limited.

From a procedural perspective the act:

- Provides mechanisms to extend jurisdiction in cases concerning forfeiture proceedings over individuals and entities
- Provides for property confiscation in the United States for a broader range of crimes committed in violation of foreign law
- Allows the United States enforcement of foreign forfeiture orders



- Permits the seizure of foreign correspondent accounts that are held in United States financial institutions for foreign banks who in turn hold forfeitable assets overseas
- Under the act, corporate entities are denied the right to contest a confiscation if their principal shareholder is a fugitive

Alien Terrorists and Victims

There are a number of provisions that were designed to prevent alien terrorists from entering the U.S., especially from Canada. The objective is to enable authorities to detain and deport alien terrorists and their supporters, as well as to provide humanitarian immigration relief for foreign victims of the attacks that occurred on 9/11.

Other Crimes, Penalties, & Procedures

New crimes: New federal crimes for terrorist attacks on mass transportation facilities were created. This included biological weapons offenses, harboring terrorists, affording terrorist material support. Also included was misconduct associated with money laundering, conducting the affairs of an enterprise that affects interstate or foreign commerce through the patterned commission of terrorist offenses and also for fraudulent charitable solicitation. These new federal crimes supplemented existing laws by covering gaps and increasing penalties.

New Penalties: Penalties for acts of terrorism and for crimes which terrorists might commit were increased. The act specifically establishes an alternative maximum penalty for acts of terrorism raises the penalties for conspiracy to commit certain terrorist offenses and provides sentencing terrorists to life-long parole. It also increases the penalties for cybercrime, charity fraud and counterfeiting.



Other Procedural Adjustments: Other procedural adjustments that were designed to facilitate criminal investigations:

- Rewards were increased for information in terrorism cases
- The Posse Comitatus Act exceptions were expanded
- “Sneak and peak” search warrants were authorized
- Nationwide and in some cases worldwide execution of warrants in terrorism cases were authorized
- Relaxes government access to confidential information
- Authorizes the Attorney General to collect DNA samples from persons who are convicted of a federal crime involving violence and or terrorism
- The statute of limitations which are applicable to terrorism crimes was lengthened
- The federal criminal laws applicable on American installations and in residences of U.S. government personnel overseas were clarified
- •The federal victims compensation and assistance programs were adjusted



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