

USA PATRIOT Act and Privacy: Impact on Internet Service Providers

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Section	Nature of Amendment	What it means to ISPs
103	Increased funding to FBI.	<ul style="list-style-type: none"> •Potential increase in volume of requests from law enforcement.
202	Allows government to investigate hacking incidents at request of ISP without a court order.	<ul style="list-style-type: none"> •Expands ISP's ability to request government assistance with hacking/denial of service attacks and other instances of computer trespass. •No immunity provision; risk for ISPs in determining what constitutes unauthorized access.
203	Allows sharing of information, collected via wiretap and grand juries, among law enforcement agencies.	<ul style="list-style-type: none"> •Not known.
206	Roving wiretaps (interception of all suspect's wire/electronic communications regardless of location).	<ul style="list-style-type: none"> •Applies to e-mail communications as well as other electronic communications. •May present technical challenges for ISPs.
210	Increased scope of subpoenas (means/sources of payments, session times/durations, temp. network addresses).	<ul style="list-style-type: none"> •Clarifies what ISP records may be disclosed pursuant to subpoena.
212	Emergency disclosure of content by ISPs in <i>emergency</i> situations.	<ul style="list-style-type: none"> •No immunity provision, so disclosure involves liability risk. •Allows emergency disclosure but only when a danger is (a) immediate, and (b) involves reasonable threat of death or personal injury.

214	Expands FISA pen register and trap and trace authority to all information “ <i>relevant to an ongoing investigation.</i> ”	<ul style="list-style-type: none"> •Potential increase in volume of requests from law enforcement.
215	Expands types of items subject to FISA subpoena to include business records from <i>any person</i> (includes ISPs, banks, etc.).	<ul style="list-style-type: none"> •Potential increase in volume of requests from law enforcement.
216	<p>Roving surveillance orders.</p> <p>Extends trap and trace to “routing” and “addressing” (Internet traffic); excludes content.</p> <p>Provides for nationwide service of process for Pen Register and Trap and Trace orders.</p>	<ul style="list-style-type: none"> •ISP may not be specifically named in order; certification from investigator would have to be requested by ISP. •Type of assistance required from ISP may not be specifically defined. •Will require documentation by ISPs to establish ISP’s good faith. •Potential increase in volume of requests from law enforcement. •Carnivore may be employed unless ISP has alternative method for capturing information. •Difficult for ISPs to oppose or contest orders. •ISPs must take into account that amendment does <i>not</i> apply to state/local orders.
219	Allows issuance of nationwide search warrants (for terrorism) by federal judges.	<ul style="list-style-type: none"> •Potential increase in volume of requests from law enforcement.
220	Allows issuance a of single, nationwide search warrant for <i>stored data</i> (electronic evidence), valid anywhere in the U.S.	<ul style="list-style-type: none"> •Potential increase in volume of requests from law enforcement.
222	Confirms that service providers are entitled to reimbursement for expenditures incurred in providing assistance with government’s enhanced authority. Disavows additional “technical obligations or requirements.”	<ul style="list-style-type: none"> •Provides ISPs with justification for reimbursement requests, though some ISPs may not bother to seek reimbursement. •Provides ISPs basis for refusing to add or enhance existing network capabilities.
225	Immunity for entities complying with FISA wiretap orders.	<ul style="list-style-type: none"> •Provides immunity to ISPs from civil liability to subscribers, tenants, etc. when complying with FISA wiretap order
815	Expands defense for ISPs in civil actions alleging disclosure to governments.	<ul style="list-style-type: none"> •Provides additional protection to ISPs against civil liability under ECPA.