

KEEP AMERICA
SAFE AND FREE



ACLU

USA PATRIOT ACT BUSINESS FACT SHEET

How does the USA PATRIOT Act affect business? For some industries, new reporting and customer monitoring requirements boost the expense of doing business and expose companies to lawsuits over consumer privacy. Retail businesses, the telecommunications industry, and financial institutions are the hardest hit. A growing number of businesses are beginning to question the wisdom of indiscriminately fishing through the records of innocent consumers under the Patriot Act.

Provisions in the Patriot Act that directly implicate private industry

Section 215 of the Patriot Act enables federal law enforcement to subpoena a business for any "tangible thing," including customer records, library check-out lists, medical records, bank account information, etc. What makes this law so extraordinary is that Sec. 215 removes the normal requirement to meet the legal standard of "probable cause." The judge exercises no discretion and must issue the order upon receipt of the FBI application.

Sec. 215 supersedes any privacy guarantees between business and their customers. If your business is served with a Sec. 215 order, a provision in the law prohibits you from either contesting it or disclosing that you have received such an order.

Title III of the Patriot Act expands government access to personal financial information by requiring financial institutions to closely monitor daily financial transactions and share information with federal agencies, including foreign intelligence agencies such as the CIA. It defines 26 types of financial institutions including: insurance companies, real estate agencies, mortgage brokers, finance companies, travel agents, automobile, airplane, boat, and jewelry dealers. Suspicious activity reports are not limited to anti-terrorist activities or even money-laundering, but rather go to violations of any regulation. These reports are usually about wholly domestic transactions of people in the USA, and do not relate to foreign intelligence information. There is no judicial review and no notice to the person whom the records relate.

Impact on business, as reported in the news

"In the Name of Homeland Security, Telecom Firms are Deluged with Subpoenas" (*Newhouse News Service*, 2002)

...According to Albert Gidari, a Seattle-based telecommunications attorney whose clients include AT&T, AOL and Nextel, "The amount of subpoenas that carriers receive today is roughly doubling every month--we're talking about hundreds of thousands of subpoenas for customer records--stuff that used to require a judge's approval...Everything is an emergency now," Gidari said, though he believes "a lot of it is just fishing."

"USA Patriot Act Worries Real Estate Agents" (*Atlanta Business Chronicle*, September 8, 2003)

...The real estate industry is seeking an exclusion from anti-money laundering provisions of the USA Patriot Act...They are telling the U.S. Treasury Department that real estate businesses and their attorneys should not be required to set up programs, similar to those of banks, for checking their customer's backgrounds and sources of payment...

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"Demand for Data by Feds on Rise, Patriot Act: Businesses Feel Burden of Subpoenas, Court Orders about Patrons" (*Washington Bureau*, August 7, 2003)

... Last year before the Memorial Day weekend, the FBI requested customer information from scuba shops across the country...rather than burden their members before a peak weekend...the group sent the FBI a ZIP drive with the names, addresses and other personal information of about 2 million people—nearly every U.S. citizen who had learned to dive in the previous three years...

...Not complying with the new laws can be expensive. Western Union was fined \$8 million ...one of the first under Patriot Act provisions designed to detect terrorist financing. The company blamed an old computer system and difficulties in upgrading computers for the mishap.

"Patriot Act Could Lead to Privacy Issues" (*Mutual Fund Market News*, September 1, 2003)

...Some investors will undoubtedly be dissatisfied with the loss of certain privacy. Activity that is red flagged, or considered suspect, must be reported to federal authorities. The account holder is not alerted. The money is held and potentially seized. Something as simple as an account with a similar name or address to those on the terrorist lists can be cause for a red flag and carries the high potential for false alarms...Other areas of concern for firms and investors to keep in mind are the increased costs from gathering and processing the increased information.

"Can Car Dealers Fight Terrorism? The White House Seems to Think So"
(*American Banker*, May 16, 2003)

...With no public evidence of terrorists' use of jewels and precious metals to finance their activities, imposing Bank Secrecy compliance on artisans and jewelry dealers, most of which are small, family-owned businesses, is overkill...

...The consequences [of the Patriot Act] for financial institutions and their affiliates are substantial. The economic costs of compliance, enhanced enforcement, and liability risks, and the diversion of resources from customer operations will hurt revenue and performance.

Necessary sacrifices?

We all want the government to protect us from terrorism, but to do so in a rational and deliberative fashion. A growing body of evidence indicates that the U.S. Department of Justice is using powers under the Patriot Act to broadly monitor Americans' financial, consumer, and communications behavior without individualized suspicion of criminal activity. Such intelligence "fishing expeditions" not only violate civil liberties, but also threaten the performance of U.S. businesses.

The government can protect us from terrorism without sacrificing the principles and conditions that make America "a land of opportunity." *We can be both safe and free.*

Prepared by the ACLU of Utah - To find out what you can do to oppose the PATRIOT Act and stand up for FREEDOM visit www.acluutah.org

