

107TH CONGRESS
1ST SESSION

H. R. 2915

To amend title 18, United States Code, with respect to the interception of communications, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2001

Mr. SMITH of Texas introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, with respect to the interception of communications, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Safety and
5 Cyber Security Enhancement Act of 2001”.

6 **SEC. 2. INTERCEPTION OF COMMUNICATIONS.**

7 (a) DEFINITIONS.—Section 2510(18) of title 18,
8 United States Code, is amended—

9 (1) by striking the period and inserting a semi-
10 colon; and

1 (2) by adding at the end the following:

2 “(19) ‘protected computer’ has the meaning set
3 forth in section 1030 of this title; and

4 “(20) ‘computer trespasser’ means a person
5 who is accessing a protected computer without au-
6 thorization and thus has no reasonable expectation
7 of privacy in any communication transmitted to,
8 through, or from the protected computer.”.

9 (b) EXCEPTIONS TO PROHIBITIONS.—

10 (1) ADDITIONAL EXCEPTION.—Section
11 2511(2)(a) of title 18, United States Code, is
12 amended by adding at the end the following:

13 “(iii) It shall not be unlawful under this chapter for
14 a person acting under color of law to intercept the wire
15 or electronic communications of a computer trespasser,
16 provided that—

17 “(A) the owner or operator of the protected
18 computer expressly authorizes the interception of the
19 computer trespasser’s communications on the pro-
20 tected computer;

21 “(B) the person acting under color of law is
22 lawfully engaged in an ongoing investigation;

23 “(C) the person acting under color of law has
24 reasonable grounds to believe that the contents of

1 the computer trespasser's communications will be
2 relevant to the ongoing investigation; and

3 “(D) such interception does not acquire com-
4 munications other than those transmitted to or from
5 the computer trespasser.”.

6 (2) FOREIGN INTELLIGENCE EXCEPTION.—Sec-
7 tion 2511(2)(f) of title 18, United States Code, is
8 amended—

9 (A) by striking “this chapter or chapter
10 121” and inserting “this chapter, chapter 121,
11 or chapter 206”; and

12 (B) by striking “wire and oral” and insert-
13 ing “wire, oral, and electronic”.

14 (3) RELATION TO OTHER LAW.—Section
15 2511(2) of title 18, United States Code, is amended
16 by adding at the end the following:

17 “(i) Nothing in section 631 of the Communications
18 Act of 1934 (47 U.S.C. 551) shall be construed to restrict
19 voluntary or obligatory disclosures of information under
20 this chapter, chapter 121, or chapter 206, except that
21 such disclosures shall not reveal customer cable television
22 viewing activity.”.

23 **SEC. 3. PEN REGISTERS AND TRAP AND TRACE DEVICES.**

24 (a) PROHIBITION.—Section 3121(c) of title 18,
25 United States Code, is amended—

1 (1) by inserting “or trap and trace device”
2 after “use a pen register”;

3 (2) by inserting “, routing, addressing,” after
4 “to the dialing”; and

5 (3) by striking “utilized in call processing.” and
6 inserting “utilized in the processing and transmit-
7 ting of wire and electronic communications.”.

8 (b) ISSUANCE OF ORDER.—

9 (1) Section 3123(a) of title 18, United States
10 Code, is amended to read as follows:

11 “(a) IN GENERAL.—

12 “(1) Upon an application made under section
13 3122(a)(1) of this title, the court shall enter an ex
14 parte order authorizing the installation and use of a
15 pen register or a trap and trace device if the court
16 finds that the attorney for the Government has cer-
17 tified to the court that the information likely to be
18 obtained by such installation and use is relevant to
19 an ongoing criminal investigation. Such order shall,
20 upon service of such order, apply to any entity pro-
21 viding wire or electronic communication service in
22 the United States whose assistance may facilitate
23 the execution of the order.

24 “(2) Upon an application made under section
25 3122(a)(2) of this title, the court shall enter an ex

1 parte order authorizing the installation and use of a
2 pen register or a trap and trace device within the ju-
3 risdiction of the court if the court finds that the
4 State law enforcement or investigative officer has
5 certified to the court that the information likely to
6 be obtained by such installation and use is relevant
7 to an ongoing criminal investigation.”.

8 (2) Section 3123(b)(1) of title 18, United
9 States Code, is amended—

10 (A) in subparagraph (A)—

11 (i) by inserting “or other facility”
12 after “telephone line”; and

13 (ii) by inserting “or applied” before
14 the semicolon; and

15 (B) in subparagraph (C)—

16 (i) by striking “the number and,” and
17 inserting “the attributes of the commu-
18 nications to which the order applies, such
19 as the number or other identifier and,”;

20 (ii) by striking “physical” after “, if
21 known,”;

22 (iii) by inserting “or other facility”
23 after “the telephone line”;

24 (iv) by inserting “or applied” after
25 “device is to be attached”; and

1 (v) by striking “and, in the case of a
2 trap and trace device,” and inserting “,
3 and in the case of a trap and trace device
4 authorized under paragraph (a)(2) of this
5 section,”.

6 (3) Section 3123(d)(2) of title 18, United
7 States Code, is amended—

8 (A) by inserting “or other facility” after
9 “or leasing the line”; and

10 (B) by striking “attached, or who has been
11 ordered by the court” and inserting “attached
12 or applied, or who is obligated by the order”.

13 (c) EMERGENCY PEN REGISTERS AND TRAP AND
14 TRACE DEVICES.—Section 3125(a) of title 18, United
15 States Code, is amended—

16 (1) by inserting “any United States Attorney,
17 or any acting United States Attorney,” after “Dep-
18 uty Assistant Attorney General,”; and

19 (2) in paragraph (1)—

20 (A) in subparagraph (B), by striking the
21 comma and inserting a semicolon; and

22 (B) inserting after subparagraph (B) the
23 following:

24 “(C) immediate threat to a national secu-
25 rity interest; or

1 “(D) an ongoing attack on a protected
2 computer that constitutes a crime punishable by
3 a term of imprisonment greater than one
4 year.”.

5 (d) DEFINITIONS.—

6 (1) Section 3127(2)(A) of title 18, United
7 States Code, is amended to read as follows:

8 “(A) any district court of the United
9 States (including a magistrate judge of such a
10 court) or United States Court of Appeals hav-
11 ing jurisdiction over the offense being inves-
12 tigated; or”.

13 (2) Section 3127(3) of title 18, United States
14 Code, is amended to read as follows:

15 “(3) the term ‘pen register’ means a device or
16 process which records or decodes dialing, routing,
17 addressing, and signaling information transmitted
18 by an instrument or facility from which a wire or
19 electronic communication is transmitted, but such
20 term does not include any device or process used by
21 a provider or customer of a wire or electronic com-
22 munication service for billing, or recording as an in-
23 cident to billing, for communications services pro-
24 vided by such provider or any device or process used
25 by a provider or customer of a wire communication

1 service for cost accounting or other like purposes in
2 the ordinary course of its business;”.

3 (3) Section 3127(4) of title 18, United States Code,
4 is amended—

5 (A) by inserting “or process” after “means a
6 device”; and

7 (B) by striking “of an instrument or device”
8 and all that follows through the semicolon and in-
9 serting “or other dialing, routing, addressing, and
10 signaling information relevant to identifying the
11 source or a wire or electronic communication;”.

12 (4) Section 3127 of title 18, United States Code, is
13 amended—

14 (A) by striking the period in paragraph (6) and
15 inserting “; and”; and

16 (B) by adding at the end the following:

17 “(7) the term ‘protected computer’ has the
18 meaning set forth in section 1030 of this title.”.

○