

For immediate release:
November 16, 2005



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PATRIOT Reforms Fall Short, Fail to Protect Civil Liberties

"Congress missed a golden opportunity and failed to strike the right balance on powers that can intrude on the privacy of innocent Americans," said Jim Dempsey, Executive Director of the Center for Democracy and Technology, in response to the announcement of a deal on renewing powers in the law passed hastily after the 9/11 attacks. "No one wanted the PATRIOT Act to sunset, but there was a lot of support among the public for meaningful checks and balances. In Congress, the support for fixing the PATRIOT Act was bi-partisan, but at the last minute the reforms got watered down.

"Congress is going to have to return to these issues soon and develop some genuine limits on the PATRIOT Act and other surveillance powers, especially because changing technology is exposing more personal information to government access."

The conference report does require the Administration to provide more information, some of it publicly, on its use of PATRIOT powers. "One good thing is that there will be more sunshine cast on the government's domestic surveillance," said Dempsey. "That will help Congress, the press and the public monitor how these powers are being used, without compromising their effectiveness."

Especially worrisome was the failure of the Congress to tighten the standard for issuing national security letters. Under the conference report, they are still issued without a judge's approval and there is no requirement that the information sought be connected to a suspected terrorist. Failure to rein in these NSLs is particularly disturbing in light of recent revelations in the Washington Post that 30,000 of these letters are issued by FBI agents every year. If anything, the conference report worsens matters on national security letters. Under this conference report, those NSLs carry contempt (for failure to comply) and criminal penalties (for disclosing their existence), making it even less likely businesses will resist them.

The right to appeal these secret orders is not very useful, since most recipients are businesses that have no incentive to spend money challenging the order to protect someone else's privacy, especially when the whole process is secret.

"Under this conference report, the FBI still gets unfettered access to sensitive financial records, credit reports, and logs of all your telephone calls and Internet surfing," said Dempsey.

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