USA PATRIOT ACT

Is a law granting law enforcement more powers to prevent terrorist attack

Section 215 of the Patriot Act violates the constitution in several ways;

1.It violates the fourth amendment, which says the government cannot conduct a search without obtaining a warrant and showing probable cause to believe that the person has committed or will commit a crime

2.Violates the first amendment's guarantee of free speech by prohibiting the recipients of search orders from telling others about those orders, even where there is no real need for secrecy

3.It violates the first amendment by effectively authorizing the FBI to launch investigation of American citizens in part for exercising their freedom of speech

4.It violates the fourth Amendment by failing to provide notice even after the fact to persons whose privacy has been compromised notice Is also a key element of due process which is guaranteed by the fifth amendment

For centuries, common law has required that the government can’t go into your property without telling you, and must therefore give you notice before it executes a search. That “knock and announce” principle has long been recognized as a part of the Fourth Amendment to the Constitution.

The Patriot Act, however, unconstitutionally amends the Federal Rules of

Criminal Procedure to allow the government to conduct searches without notifying the subjects, at least until long after the search has been executed. This means that the government can enter a house, apartment or office with a search warrant when the occupants are away, search through their property, take photographs, and in some cases even seize property – and not tell them until later.

Notice is a crucial check on the government’s power because it forces the authorities to operate in the open, and allows the subject of searches to protect their Fourth Amendment rights. For example, it allows them to point out irregularities in a warrant, such as the fact that the police are at the wrong address, or that the scope of the warrant is being exceeded (for example, by rifling through dresser drawers in a search for a stolen car). Search warrants often contain limits on what may be searched, but when the searching officers have complete and unsupervised discretion over a search, a property owner cannot defend his or her rights.

Finally, this new “sneak and peek” power can be applied as part of normal criminal investigations; it has nothing to do with fighting terrorism or collecting foreign intelligence.

3. Expansion of the intelligence exception in wiretap law

Under the Patriot Act, the FBI can secretly conduct a physical search or wiretap on American citizens to obtain evidence of crime without proving probable cause, as the Fourth Amendment explicitly requires.

A 1978 law called the Foreign Intelligence Surveillance Act (FISA) created an exception to the Fourth Amendment’s requirement for probable cause when the purpose of a wiretap or search was to gather foreign intelligence. The rationale was that since the search was not conducted for the purpose of gathering evidence to put someone on trial, the standards could be loosened. In a stark demonstration of why it can be dangerous to create exceptions to fundamental rights, however, the Patriot Act expanded this once-narrow exception to cover wiretaps and searches that DO collect evidence for regular domestic criminal cases. FISA previously allowed searches only if the primary purpose was to gather foreign intelligence. But the Patriot Act changes the law to allow searches when “a significant purpose” is intelligence. That lets the government circumvent the Constitution’s probable cause requirement even when its main goal is ordinary law enforcement.

The eagerness of many in law enforcement to dispense with the requirements of the Fourth Amendment was revealed in August 2002 by the secret court that oversees domestic intelligence spying (the “FISA Court”). Making public one of its opinions for the first time in history, the court revealed that it had rejected an attempt by the Bush Administration to allow criminal prosecutors to use intelligence warrants to evade the Fourth Amendment entirely. The court also noted that agents applying for warrants had regularly filed false and misleading information. That opinion is now on appeal. [link to FISA page]

4. Expansion of the “pen register” exception in wiretap law

Another exception to the normal requirement for probable cause in wiretap law is also expanded by the Patriot Act. Years ago, when the law governing telephone wiretaps was written, a distinction was created between two types of surveillance. The first allows surveillance of the content or meaning of a communication, and the second only allows monitoring of the transactional or addressing information attached to a communication. It is like the difference between reading the address printed on the outside of a letter, and reading the letter inside, or listening to a phone conversation and merely recording the phone numbers dialed and received.

Wiretaps limited to transactional or addressing information are known as “Pen register/trap and trace” searches (for the devices that were used on telephones to collect telephone numbers). The requirements for getting a PR/TT warrant are essentially non-existent: the FBI need not show probable cause or even reasonable suspicion of criminal activity. It must only certify to a judge – without having to prove it – that such a warrant would be “relevant” to an ongoing criminal investigation. And the judge does not even have the authority to reject the application.

The Patriot Act broadens the pen register exception in two ways:

**“Nationwide” pen register warrants**  
**Under the Patriot Act PR/TT orders issued by a judge are no longer valid only in that judge’s jurisdiction, but can be made valid anywhere in the United States. This “nationwide service” further marginalizes the role of the judiciary, because a judge cannot meaningfully monitor the extent to which his or her order is being used. In addition, this provision authorizes the equivalent of a blank warrant: the court issues the order, and the law enforcement agent fills in the places to be searched. That is a direct violation of the Fourth Amendment’s explicit requirement that warrants be written “particularly describing the place to be searched.”**

**Pen register searches applied to the Internet**  
**The Patriot Act applies the distinction between transactional and content-oriented wiretaps to the Internet. The problem is that it takes the weak standards for access to transactional data and applies them to communications that are far more than addresses. On an e-mail message, for example, law enforcement has interpreted the “header” of a message to be transactional information accessible with a PR/TT warrant. But in addition to routing information, e-mail headers include the subject line, which is part of the substance of a communication – on a letter, for example, it would clearly be inside the envelope.**

The government also argues that the transactional data for Web surfing is a list of the URLs or Web site addresses that a person visits. For example, it might record the fact that they visited “[www.aclu.org](https://www.aclu.org/)” at 1:15 in the afternoon, and then skipped over to “[www.fbi.gov](http://www.fbi.gov/)” at 1:30. This claim that URLs are just addressing data breaks down in two different ways:

* Web addresses are rich and revealing content. The URLs or “addresses” of the Web pages we read are not really addresses, they are the titles of documents that we download from the Internet. When we “visit” a Web page what we are really doing is downloading that page from the Internet onto our computer, where it is displayed. Therefore, the list of URLs that we visit during a Web session is really a list of the documents we have downloaded – no different from a list of electronic books we might have purchased online. That is much richer information than a simple list of the people we have communicated with; it is intimate information that reveals who we are and what we are thinking about – much more like the content of a phone call than the number dialed. After all, it is often said that reading is a “conversation” with the author.
* Web addresses contain communications sent by a surfer. URLs themselves often have content embedded within them. A search on the Google search engine, for example, creates a page with a custom-generated URL that contains material that is clearly private content, such as:

Similarly, if I fill out an online form – to purchase goods or register my preferences, for example – those products and preferences will often be identified in the resulting URL.

The erosion of accountability

Attempts to find out how the new surveillance powers created by the Patriot Act were implemented during their first year were in vain. In June 2002 the House Judiciary Committee demanded that the Department of Justice answer questions about how it was using its new authority. The Bush/Ashcroft Justice Department essentially refused to describe how it was implementing the law; it left numerous substantial questions unanswered, and classified others without justification. In short, not only has the Bush Administration undermined judicial oversight of government spying on citizens by pushing the Patriot Act into law, but it is also undermining another crucial check and balance on surveillance powers: accountability to Congress and the public.

Non-surveillance provisions

Although this fact sheet focuses on the direct surveillance provisions of the Patriot Act, citizens should be aware that the act also contains a number of other provisions. The Act:

* Puts CIA back in business of spying on Americans. The Patriot Act gives the Director of Central Intelligence the power to identify domestic intelligence requirements. That opens the door to the same abuses that took place in the 1970s and before, when the CIA engaged in widespread spying on protest groups and other Americans.
* Creates a new crime of “domestic terrorism.” The Patriot Act transforms protesters into terrorists if they engage in conduct that “involves acts dangerous to human life” to “influence the policy of a government by intimidation or coercion.” How long will it be before an ambitious or politically motivated prosecutor uses the statute to charge members of controversial activist groups like Operation Rescue or Greenpeace with terrorism? Under the Patriot Act, providing lodging or assistance to such “terrorists” exposes a person to surveillance or prosecution. Furthermore, the law gives the attorney general and the secretary of state the power to detain or deport any non-citizen who belongs to or donates money to one of these broadly defined “domestic terrorist” groups.
* Allows for the indefinite detention of non-citizens. The Patriot Act gives the attorney general unprecedented new power to determine the fate of immigrants. The attorney general can order detention based on a certification that he or she has “reasonable grounds to believe” a non-citizen endangers national security. Worse, if the foreigner does not have a country that will accept them, they can be detained indefinitely without trial.

**In conclusion I don’t concur the USA patriot Act is a small price to pay for security**