

From: Peter Coroneos
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To: Legal and Constitutional, Committee (SEN)

Subject: IIA Submission on the Telecommunications (Interception and Access) Amendment Bill 2007

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

BY EMAIL

17 July 2007

Inquiry into the Telecommunications (Interception and Access) Amendment Bill 2007

INTERNET INDUSTRY ASSOCIATION SUBMISSION

Dear Sir/Madam

While we are grateful for concessions made on the imposition of an Australian standard for telecommunications interception (see attached letter from Attorney-General to the IIA dated 21 March 2007), we have recently become aware of additional elements within the Telecommunications (Interception and Access) Amendment Bill 2007 ("the Bill") with which we have some remaining concerns.

We ask the Committee to consider the technical feasibility and/or practicality of giving effect the following requirements:

- proposed new criminal-LEA and ASIO powers to obtain 'prospective' telecommunications data from Carriage Service Providers ("CSPs") for up to 45 days into the future (90 for ASIO) without breaching the prohibition on interception provisions of the Act

(These new provisions are part of the so-called replacement for Telecommunications Act s282 certificates - such certificates will cease

to exist and be replaced by 'notifications' of 'authorisations' under the TIA Act).

We agree with the view expressed by others that giving effect to 'prospective' authorisations without engaging in illegal interception appears to be not possible, or at the least not technically practical.

For example, in relation to email, CSPs appear to be required to give criminal LEAs and ASIO data such as To and From fields, date and probably path/IP address/es, in "near real time" according to the Explanatory Memorandum, for up to 45/90 days from the date of notification of authorisation.

This requirement has to be considered in the light of the the Stored Communications amendments passed last year which changed the definition of 'passing over a telecommunications system' such that an email is still passing over a telecommunications system until it becomes accessible to the intended recipient - effectively until it is in the intended recipient's mail box able to be downloaded.

This raises the question of how CSPs will be expected to copy the data from the headers without breaching the prohibition on interception during passage over a telecommunications system.

Arguably if a CSP makes a recording (copy) of data from the headers as the email is 'passing through' the mail server that would be illegal interception because at the time the email is not accessible to the intended recipient.

This could require ISPs to run an automated 'script' on the intended recipient's mail box, second by second, to copy data/extract relevant headers hopefully before the intended recipient downloads it. This surely cannot be the Government's intention. Yet in the absence of clarification, this may be the only way that compliance with the requirement could be achieved without breaking the law.

There is nothing that we can ascertain within the Bill that makes complying with an authorisation' an exception to the offence of intercepting a communication.

We respectfully submit that the Committee must make a recommendation to address this apparent unintended consequence.

We are happy to consider an alternate formulation which might achieve the underlying purpose of the Bill, but would need to consult further with relevant members to provide a definitive view on what is

practicable and reasonable.

Yours sincerely,

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The Internet Industry Association is Australia's national Internet industry organisation. Members include telecommunications carriers; content creators and publishers; web developers; e-commerce traders and solutions providers; hardware vendors; systems integrators; insurance underwriters; Internet law firms, ISPs; educational and training institutions; Internet research analysts; and a range of other businesses providing professional and technical support services. On behalf of its members, the IIA provides policy input to government and advocacy on a range of business and regulatory issues, to promote laws and initiatives which enhance access, equity, reliability and growth of the medium within Australia.