

Introduction

[thank moderator and introduce self unless moderator does so]

My name is Bonnie Parks, and I'm the serials and electronic resources cataloging librarian at the Valley Library. I've been at OSU for four years. I'm a member of both the Oregon Library Association and the American Library Association. I'm also a member of the OSU Faculty for Peace and Justice. I am truly honored to have been invited to speak at today's forum.

Let me clarify from the outset that my talk will address the section of the USA PATRIOT Act that deals specifically with libraries and bookstores, Section 215. I'll try to familiarize you with the contents of Section 215, discuss its impact, explain why most librarians and booksellers find it so troubling, and discuss how we're taking action at the local, regional and national level.

We've set aside time for questions after all members of the panel have spoken, so please, in consideration of the other speakers, hold your questions until then.

Signed by George W. Bush on October 26, 2001, the USA PATRIOT Act (full name: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act) changes immigration laws, tightens controls on money laundering and expands the legal use of electronic surveillance.

The expansion of electronic surveillance is a grave concern to librarians and booksellers. We believe that the USA PATRIOT Act jeopardizes your right to privacy as a library user, privacy that is spelled out in the First Amendment of the United States Constitution. Section 215 of the Patriot Act threatens these freedoms by making people afraid that the government may scrutinize their library records and usage.

The PATRIOT Act ensures that FBI agents do not need to prove they have "*probable cause*"¹ (that is, sufficient evidence to believe that an arrest or search of a suspect is justified) before searching library records: they can get access to the records of anyone whom they believe to have information that may be relevant to a terrorism investigation, including people who are not suspected of committing a crime or of having any knowledge of a crime. The request for an order authorizing the search is heard by a *secret* court in a *closed* proceeding, making it impossible for a librarian or bookseller to have the opportunity to object on First Amendment grounds prior to the execution of the order. And, because the order contains a gag provision forbidding a librarian or bookseller from alerting anyone to the fact that a search has occurred, it would be difficult to protest the search even after the fact.

Section 215 of the USA PATRIOT Act specifically addresses business records. Essentially, the provision is designed to get ISP (Internet Service Provider) records of user billing information. This provision expands the earlier Foreign Intelligence Surveillance Act (FISA). FISA was a law enacted in 1978 in response to extensive FBI surveillance of US citizens during the 1960's and 70's. It was intended to put a firewall between domestic and foreign intelligence gathering. The "business records" provision is an amendment of the FISA law that means that court proceedings are not open and are sealed.²

Specifically, section 215:

- gives the FBI authority to obtain a search warrant for "any tangible things (including books, records, papers, documents and other items) for an investigation to protect against international terrorism or clandestine intelligence activities. The ability to obtain a search warrant *is limited only by the need to show relevance*. (Relevance to what? I suppose almost anything could be considered "relevant.")

section 215:

- provides that an order pursuant to this section is to be obtained *ex parte* (that is, without an adversarial hearing) and the production of things pursuant to such an order and indeed the existence of the order itself may not be disclosed to anyone other than those persons necessary to produce the materials.

In conjunction with the passage of the USA PATRIOT Act, the U.S. Justice Department issued revised FBI guidelines in May 2002 that greatly increase the bureau's surveillance and data collection authority to access such information as an individual's Web surfing habits and search terms.³

Why should you care?

As a librarian, I was outraged when I first learned of the PATRIOT Act. And I'm still outraged. Reading is one of the greatest freedoms we enjoy as US citizens. Knowing that we have the freedom to read and write about anything we choose without the fear of being silenced or persecuted is invaluable. Exercising these rights is crucial to preserving the freedom and creativity that many of us take for granted. I have a responsibility to myself and to others to protect our right to read. Interestingly, in conversations with my friends and family, I've been known to bring up the subject of privacy and library records. Most of my friends and some of my family are regular library users. And even though they are library users, many had no idea that their library records are protected under law. A few times, I was met with a "so what?" or a blank stare. Who cares if my library records are confidential, right? I mean, okay, so the government might learn that I have a weakness for Harlequin Romances. I can learn to deal with it.

But what about this scenario: Have you ever gone into the library and signed up either by writing down your name or your library card number in order to “use the computer” – whether it be surfing the web, placing a hold on a book, getting articles from full-text databases, even placing a bid on eBay? Have you searched for articles or reserved books from home using the OSU proxy server? You know, where you log in with your OSU ID and password prior to searching? Think about it, *you’re leaving digital footprints all over the place -- not only just the library, but the Internet!* And Section 215 of the Patriot Act permits the government to follow you around and track your every move.⁴

Let’s take it one step further. Say you’re a public health student researching infectious diseases for a term paper, or a faculty member researching chemical warfare for an upcoming class lecture. What if you have a Middle Eastern name? Does this mean you’re a terrorist? Think about it. Your searches on anthrax or sarin might be raising a big red flag to law enforcement officers.

So what are we doing about it?

OSU Libraries:

Confidentiality of library records is a basic principle of librarianship, and I would like to point out that OSU Libraries have a long-standing tradition of not giving out patron information or records. Our staff do not give out information that reveals who has a particular book checked out. If a faculty member comes into the library and wants to find out which of his/her students has read materials placed on reserve, that information is not disclosed to the faculty person. (I guess if s/he really wants to know who read the reserve materials, s/he’ll have to give a pop quiz to find out!)

I feel it is important to emphasize that both the library and the state of Oregon historically have recognized the importance of patron privacy. Oregon Statutes state that, “the following public records are exempt from disclosure under ORS 192-410 to 192-505: ...

(22) The records of a library, including circulation records, showing use of specific library material by a named person or consisting of the name of a library patron together with the address or telephone number, or both, of the patron.”⁵

This means that libraries are explicitly barred under Oregon Law from disclosing patron information.

The statutes also protect the individual from unreasonable search and seizure. 181.575 maintains that,

"No law enforcement agency, as defined in ORS 181.010, may collect or maintain information about the political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business or partnership unless such information directly relates to an investigation of criminal activities, and there are

reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct;"⁶

Additionally, existing legislation of the state of Oregon affirms an individual's First and Fourth Amendment rights. Specifically,

The Oregon Constitution, Article 1, Section 8, addresses freedom of speech and press issues:

"No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this law." (First Amendment – freedom of speech/press)⁷

While Section 9 addresses unreasonable search and seizure:

"No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized."⁸

Incidentally, the library is not in the habit of keeping a patron's reading records. Once library materials are returned, any information that uniquely identifies the user is purged from the system. Of course the technologically savvy among us will argue that nothing is ever truly purged from a system. Well, you're right, but it's going to take someone even more savvy to re-construct that deleted patron information.

(Aside: And this causes me to wonder whether this urgent push to purge records indicates a fundamental flaw in the way the law is written. I'll leave that to legal scholars to ponder.)

Regardless, the PATRIOT Act has forced OSU Libraries to reaffirm our commitment to user privacy. We do not release information about our users. "Whether served with a subpoena or a search warrant," librarians and library staff, have been instructed to "not hand over information. Instead, we [have been] instructed to notify legal counsel that [we] are being asked to turn over records, drives, etc." If OSU Legal counsel is not available, staff are asked to "contact OSU Public Safety." Security will contact the University Librarian who then will address the situation.⁹

Many of the librarians at OSU (including myself) are members of the Oregon Library Association (OLA). OLA, too, is looking into ways at the state level to address the concerns related to Section 215.

OLA:

The Intellectual Freedom Committee (IFC) of OLA recently drafted a resolution concerning the USA PATRIOT Act and its provisions that relate to surveillance of library patrons and seizure of library records. The draft has been sent to OLA

members for comment. The organization's hope is to follow the lead of other state library organizations in taking an official stand on the Patriot Act.

The crucial issue here again, is that the PATRIOT Act *threatens the constitutional rights* of library users – not just here at OSU, but in libraries across the state, and across the country.

ALA:

The American Library Association recognized early on the threat the PATRIOT Act poses to individual civil liberties. Their Web site contains a wealth of information about the Patriot Act, privacy and privacy legislation.¹⁰

Legislation:

Librarians and booksellers are working together to change the law! Recently you may have heard about a new House Resolution, the Freedom to Read Protection Act (H.R. 1157)

Introduced in the U.S. House of Representatives on March 6, 2003 by Bernie Sanders (I-VT), H.R. 1157 strengthens protections for the privacy of bookstore and library records.¹¹ This legislation would *exempt libraries and bookstores from section 215 of the PATRIOT Act*, restoring library and bookstore patrons right to read and seek information without threat of government interference or loss of privacy.

Of course, law enforcement officials will still be able to subpoena bookstore and library records crucial to an investigation, *but* the courts will exercise their normal scrutiny in reviewing these requests.

H.R. 1157 is co-sponsored by 100 members (as of 5/20/03) of the House including Peter DeFazio, Dist. 5 representative and Darlene Hooley, Dist. 4 representative.

In Summary: Our society places the highest value on the ability to speak freely on any subject. But freedom of speech depends on the freedom to explore ideas privately. Free access to information is what libraries are all about. Library patrons must feel free to seek out books on health, religion, politics, the law, or any subject they choose, without fear that the government is looking over their shoulder. Without the assurance that our reading choices will remain private, we are unable to freely exercise our right to read. Of course we need law enforcement to track down criminals and terrorists, but at what expense? Our constitutional rights? If that is the case, then the terrorists have already won.

I've talked about what not only librarians, but library users locally and nationally are doing to protect their right to privacy. Now I'd like to give you a few suggestions as to **what you can do**.

First of all, please contact your Congressional representatives (Dist. 4: Peter DeFazio, Dist. 5: Darlene Hooley) and thank them for their co-sponsorship of H.R. 1157.

Second, pay attention. The provisions of the PATRIOT Act that apply to libraries expire in 2005; however, did you know that lawmakers are debating possible changes to the USA Patriot Act which would give law enforcement agents even more latitude in their intelligence gathering? Enter PATRIOT Act 2, the Domestic Security Enhancement Act. This legislation would grant additional powers to the government, eliminating or weakening remaining limits on government surveillance, wiretapping, detention and prosecution.

Finally, get involved. Study the issues. Take responsibility to ensure that your constitutional rights, those same liberties that form the cornerstone of our democracy, are not trampled under the guise of protection. I'll leave you with something Supreme Court Justice William O. Douglas said back in 1954 and still rings true today: *"Restriction of free thought and free speech is the most dangerous of all subversions. It is the one un-American act that could most easily defeat us."*

¹ <http://dictionary.law.com> "Probable cause: sufficient reason based upon known facts to believe a crime has been committed or that certain property is connected with a crime. Probable cause must exist for a law enforcement officer to make an arrest without a warrant, search without a warrant, or seize property in the belief the items were evidence of a crime. While some cases are easy (pistols and illicit drugs in plain sight, gunshots, a suspect running from a liquor store with a clerk screaming "help"), actions "typical" of drug dealers, burglars, prostitutes, thieves, or people with guilt "written across their faces," are more difficult to categorize. "Probable cause" is often subjective, but if the police officer's belief or even hunch was correct, finding stolen goods, the hidden weapon or drugs may be claimed as self-fulfilling proof of probable cause. Technically, probable cause has to exist prior to arrest, search or seizure.

² Minow, Mary. "The USA PATRIOT Act and Patron Privacy on Library Internet Terminals." [Http://www.llrx.com/features/usapatriotact.htm](http://www.llrx.com/features/usapatriotact.htm) (viewed 4/21/03)

³ U.S. Department of Justice, Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations, May 30, 2002, <http://www.usdoj.gov/olp/fbiundercover.pdf>. For analyses of the Guidelines, see Electronic Privacy Information Center, <http://www.epic.org/privacy/fbi>; ACLU, <http://archive.aclu.org/congress/1060602c.html>; and the Center for Democracy and Technology, <http://www.cdt.org/wiretap/020530guidelines.shtml>. See also: "In Defense of Freedom--Statement of Principles," and Letters to Congress on the Attorney General's Guidelines, June 4, 2002; <http://www.indefenseoffreedom.org>.

⁴ In the Information Commons in the Valley Library, users are asked to log in with their Onid ID and password. Users have the option to clear their Web cache and erase their surfing history at any time during their session. There also are four public Internet terminals at which users can sign in as guests. The history at these terminals is set to expire after 0 days. (Conversation with Bonnie Avery, reference librarian 5/20/03).

⁵ Or. Rev. Stat. §192.502 (¶22) (2001)

⁶ Or. Rev. Stat. §181.575 (2001)

⁷ Or. Const. Art. 1 §8 (2002)

⁸ Or. Const. Art. 1 §9 (2002)

⁹ Email from University Librarian Karyle Butcher to all library staff and faculty, Friday, Jan. 17, 2003.

¹⁰ See <http://www.ala.org/washoff/patriot.html>

¹¹ H.R.1157 (108th Cong.)