

Experts wary of expanded tap on e-mail

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By EMILY HEFFTER and KATHY CARLSON

Staff Writers

Local computer and legal experts said yesterday they were concerned about proposed federal legislation that would make it easier for the government to tap into e-mail communications.

Other observers raised concerns about parts of the proposed bill that deal with other forms of surveillance and with the detention of immigrants suspected of terrorism.

Matt Kenigson of Sheer Genius, a Nashville Web application development company, said investigators must tap telephones one by one, but access to e-mail is unlimited with the technology the federal government already has. As Americans use digital software more, access to e-mail could include other transactions, such as banking and online purchases.

Updated laws may be necessary but should be written carefully, said local attorney David Raybin. With Americans reeling from last month's terrorist attacks on the World Trade Center and the Pentagon, a law has the potential to go too far and endanger personal liberties, he said.

With a search warrant, the FBI can already use a program called Carnivore to "listen in" on e-mail conversations. Using Carnivore on the Internet is the equivalent of walking into a noisy room full of people and being able to listen to one conversation at a time, Kenigson said.

But Carnivore is fairly hit-and-miss, said Curtis Peterson of Newsouth Communications, an Internet service provider.

Under proposed laws, FBI agents would be able to ask Internet service providers about when and to whom e-mails were sent from specific accounts. Agents can currently get similar information from phone companies.

"We have no way to enforce the legislation as it's currently being discussed," Peterson said.

Just being able to see e-mail is not always enough.

Many people encrypt e-mail, a process that scrambles the message so it can't be read by anyone but its intended recipient.

"There will always be newer and better ways of encrypting information," Kenigson said.

U.S. intelligence authorities said Osama bin Laden's terrorist group has used encrypted e-mail to communicate, but would not comment on whether the group used encrypted e-mail to plan last month's attack, The Associated Press reported.

Current law is "very rigorous, it's very strict, there are a lot of limits put on it by Congress right now because it's such a huge invasion of privacy, but it's also a very good investigative tool to go into someone's e-mails," Raybin said.

Allowing roving wiretaps tied to a person rather than a particular phone or location also could help law enforcement gather better intelligence on terrorism.

The proposed statute would allow a person to be monitored even if he or she switched phones, without getting separate court orders allowing wiretaps for each phone number as required under current law.

Roving wiretaps could be "an excellent idea for purpose of anti-terrorism law because of the ability of terrorists to use different means of communication," Raybin said, but cautioned that the measure would need to be time-limited and narrowly tailored to law enforcement's legitimate need to gather information on terrorists.

The key to fighting terrorism, he said, is good intelligence -- finding out as much as possible about the enemy and then using that information to take the offensive instead of simply reacting in a defensive way.

But, he said, "with surveillance of citizens comes the possibility of abuse. The nation is balancing privacy rights vs. the need for security. The greatest tragedy of this entire thing is, of course, the loss of human life but the next would be the loss of our freedoms and our privacy and we don't want to become a police state over this."

Nashville immigration lawyer Linda Rose raised concerns about the grounds on which an immigrant could be detained without being charged as well as the length of detention.

The government had proposed indefinite detention, but the compromise bill provides for seven days' detention without being charged, where authorities had reason to believe an immigrant was engaged in terrorist activities, she said.

Under current law, a lawful permanent resident immigrant has the full gamut of due process rights, she said.

Those in the United States illegally have limited due process rights but can be deported without a hearing.

Before 1996, illegal immigrants had a right to a hearing before deportation.

How terrorism is defined also is crucial, Rose said, and the definition varies from federal statute to statute.

"I'm not taking the position that we shouldn't be taking security measures because we obviously need to. It's a time of national concern and with good reason, but we need to focus the efforts

in the right direction rather than casting a wide net and harming innocent people. We've all been harmed enough."

Hedy Weinberg, of the Tennessee office of the American Civil Liberties Union, also questioned the criteria for detaining immigrants, and pointed to the powers authorities have under existing law to detain and arrest people on probable cause they committed a crime.

"Compromises that balance national security and fairness to the accused are possible," she said.