

# Chapter VI

## The Impact of the USA Patriot Act on Social Diversity in Cyberspace

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### ABSTRACT

*The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001 has increased the surveillance and investigative powers of law enforcement in the United States. While the Patriot Act serves to protect American society and interests abroad, critics suggest that it does not provide sufficient checks and balances to safeguard the civil liberties of U.S. citizens. This chapter assesses both of these claims: how the USA Patriot Act protects U.S. national security and through self-censorship over privacy concerns may affect sociopolitical and cultural diversity in cyberspace.*

### INTRODUCTION

The development of the Internet from a Cold War military communications protocol (Advanced Research Projects Agency Network - ARPAN) designed to withstand the force of potential Soviet nuclear attacks in the 1960s, to its current global form has been surrounded by utopian and dystopian views on its perceived social potential. Utopian views of the Internet see it as a powerful politically democratizing influence that is

foundational to 21<sup>st</sup> century community and diaspora building and gives a voice to marginalized groups in society. Others view the rise of the Internet, or the information society in general, more somberly, and fear that its growing social importance contributes to an unbridgeable digital divide (Abbate, 1999; Castells, 2001); perpetuates the marginalization of socially oppressed groups (Chow-White, 2006); or point at governments' attempts to control and censor online content by using spyware<sup>1</sup>, for example, in the Middle East

(<http://www.opennetinitiative.com>, 2006) or Asia (Gomez, 2002; Rodan, 1998).

In the United States, electronic privacy monitoring organizations, such as the Electronic Privacy Information Center (EPIC), have expressed concerns that the democratizing potential of the Internet may be threatened by the communication surveillance act H.R. 3162 (USA PATRIOT Act, 2001), better known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act). This chapter will not prove or disprove the validity of the aforementioned utopian and dystopian perspectives on the Internet. Rather, it assumes that like most new technologies, the Internet has both social advantages and disadvantages. It does have two objectives: to evaluate how (1) the USA PATRIOT Act works and (2) could affect Internet users' free speech and privacy rights, threatening sociopolitical and culture diversity in cyberspace.

In the aftermath of the terrorist attacks on September 11<sup>th</sup>, 2001, the USA PATRIOT Act was developed to protect U.S. citizens and American interests abroad against future attacks. The Act regulates how and when "suspicious" electronic communications and financial data can be monitored, intercepted, and used within the United States. To prevent misuse of these regulations, the USA PATRIOT Act provides several legal provisions that protect U.S. Internet users' constitutional First (free speech) and Fourth (privacy) Amendment rights. Yet critics have claimed that these provisions are too fragile and are concerned that the lack of judicial precedent involving free speech and privacy rights in cyberspace facilitates misinterpretations of the USA PATRIOT Act's regulations, and misuse of the intercepted communications and financial data. This chapter examines how these potential weaknesses, and the secrecy surrounding the legal use and types of data collected under the USA PATRIOT Act could deter some Internet users from freely expressing their political views in cyberspace. The first part

of this chapter briefly examines the history of and controversies surrounding electronic communication surveillance laws in the United States since the late 1960s. Next, it discusses the social roles of the Internet within utopian and dystopian perspectives. Lastly, this chapter evaluates how the USA PATRIOT Act could threaten sociopolitical and cultural diversity in cyberspace.

## **BACKGROUND**

With the abundance of political and scholarly attention lavished on to the USA PATRIOT Act since 2001, one could easily assume that government surveillance of communications and financial data is a distinctly 21<sup>st</sup> Century phenomenon. Western nations, however, have been intercepting communications data since the late 19<sup>th</sup> century (Hills, 2006). In 1875, 17 countries came together to discuss and develop the St. Petersburg Convention, with the intention of regulating the interception of telegraph communications data for national security purposes (McDowell, 1998). The Convention's Article 7 authorized all signatory parties to hold the transmission of any private telegram they believed to pose a national security threat. Additionally, Article 8 allowed for the indefinite suspension of all incoming and outgoing telegraph services if this was deemed fundamental to the protection of a nation's social and moral order (International Telegraph Convention, 1875). The United States was one of the few western nations that did not adopt the Convention; in the nineteenth century, most U.S. telegraph companies were privately owned and therefore outside of the federal government's control (McDowell, 1998). In fact, it was not until 1968 that the Omnibus Crime Control and Safe Streets Act's Title III, as part of President Johnson's attempt to eliminate crime from America's streets, authorized law enforcement to intercept any electronic communications data it considered a threat to the stability of U.S. society.

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