

May 1, 2008

Chairman Patrick J. Leahy
Ranking Member Arlen Specter
United States Senate
Committee on the Judiciary

Dear Chairman Leahy and Ranking Member Specter:

We are writing to urge the Senate Committee on the Judiciary to hold hearings on the Department of Homeland Security's practice of searching and seizing Americans' digital information and electronic devices at U.S. borders. We also urge you to consider legislation to prevent abusive search practices by border agents and protect all Americans against suspicionless digital border inspections. In a free country, the government cannot have unlimited power to read, seize, store and use all information on any electronic device carried by any traveler entering or leaving the nation.

This issue is particularly critical in light of the Ninth Circuit Court of Appeals' recent decision in *United States v. Arnold*, which permits customs officials to search laptop computers at the border without any suspicion or cause.¹ Despite reassurances that border patrol agents are well trained and supervised,² the public has been unable to learn through open government laws which policies and procedures Customs and Border Patrol (CBP) has in place to protect travelers against arbitrary or abusive searches. Therefore, Congress must exercise oversight to ensure that border searches are not overly invasive or discriminatory, and establish appropriate safeguards to protect any information collected and maintained by the government.

- **This concern is real.** The press has reported disturbing stories of travelers whose electronic devices were seized by the government as they crossed U.S. borders. Ellen Nakashima, *Clarity Sought on Electronic Searches*, WASHINGTON POST, Feb. 7, 2008, at A1. In each case, the traveler, a member of an ethnic minority, was detained, and his or her digital device taken by a government agent. In two cases, the digital devices were password-protected corporate laptops.
- **The government's "profiles" are arbitrary.** CBP has said that "suspicious" travelers include men traveling from Asia between the ages of 20 and 59, a

¹ *United States v. Arnold*, No. 06-50581, 2008 U.S. App. LEXIS 8590 (9th Cir. Apr. 21, 2008).

² "Customs keeps track of the border searches its agents conduct, including the reasons for the searches. This administrative process should help minimize concerns that gas tank searches might be undertaken in an abusive manner." *United States v. Flores-Montano*, 541 U.S. 149, 156 (2004) (Breyer, J., concurring).

category so broad as to be meaningless. *See* Editorial, *Looking into Laptops*, LOS ANGELES TIMES, Nov. 11, 2006.

- **The government will not tell the public what it is actually doing.** Numerous Freedom of Information Act requests have been filed to learn more about the government's policies and procedures for conducting electronic border searches. Unfortunately, agencies have been slow to respond and have refused to turn over a great deal of important information. This is particularly troubling when CBP is solely responsible for protecting travelers' civil liberties at the border.
- **Everyone's privacy and security are at stake.** Your information may be compromised even if you don't travel yourself. The Association of Corporate Travel Executives has warned its members to consider the implications of traveling with confidential corporate information such as personnel records. American law firms that represent companies with offices in other countries are also concerned about their clients' confidences. Any individual's laptop can hold vast amounts of personal information such as financial records, confidential information related to business dealings and client relationships, and communications with friends, family and business associates. Allowing the government unchecked access to such information not only violates privacy and security, but also chills free expression.

The Fourth Amendment protects us all against unreasonable government intrusions. But this guarantee means nothing if CBP can arbitrarily search and seize our digital information at the border and indefinitely store and reuse it. We urge the Committee to hold swift hearings on the Department of Homeland Security's border search practices and consider legislative action to ensure that Americans' electronic devices are not subject to abusive, arbitrary or suspicionless searches at the borders.

For additional information, please feel free to contact Electronic Frontier Foundation Senior Staff Attorney Lee Tien at (415) 436-9333 x. 102.

Sincerely,

9/11 Research Project	Citizen Outreach Project
American Association of University Professors	Defending Dissent Foundation
American Booksellers Foundation for Free Expression	Whitfield Diffie (Sun Microsystems, for informational purposes only)
American Civil Liberties Union	Electronic Frontier Foundation
American Immigration Lawyers Association	Electronic Privacy Information Center
Asian Law Caucus	EnviroJustice
Association of Corporate Travel Executives	Equal Justice Alliance
Professor Matt Blaze, University of Pennsylvania	Fairfax County Privacy Council
Business Travel Coalition	Feminists for Free Expression
Center for Democracy and Technology	Lauren Gelman, Executive Director, Stanford Law School Center for Internet and Society
	Identity Project

Center for Digital Democracy
Susan Landau (Sun Microsystems, for
informational purposes only)
Liberty Coalition
Minnesota Coalition on Government
Information
The Multiracial Activist
Muslim Advocates
National Association of Criminal Defense
Lawyers
National Center for Transgender Equality
National Coalition Against Censorship

PEN American Center
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Professor Ronald L. Rivest, MIT
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