

Reporters Committee for Freedom of the Press.txt  
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**COMMENTS OF  
THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS**

Although the act applies only to information submitted to the Department of Homeland Security, these proposals require other federal agencies to pass on information to the department for labeling, so that, essentially the rules extend the new law's CII provisions to other federal agencies. Congress rejected an amendment to the Homeland Security Act that similarly would

have addressed so-called critical infrastructure information in other agencies.

Also, we object to the proposal that the department will rely on the discretion of submitters to determine whether information they provide meets the definition of critical infrastructure information set out in the act. Because submitters enjoy advantages of secrecy including, in some cases, immunity from prosecution, they cannot be expected to make disinterested decisions as to whether information should be withheld as CII.

### **The Department cannot expand the reach of this law to all federal agencies**

The Homeland Security Act uniquely criminalizes the disclosure of certain unclassified information in the hands of the federal government. Congress does not give such protection lightly. Legislation that would criminalize the disclosure even of national security information has been both vetoed and subsequently rejected. The CII measure was controversial from the time that it was first introduced. Numerous bills to protect CII were rejected. Under these circumstances, there is no basis for the Department to presume that it can broaden the application of the law.

In Sec. 29.1 Purpose and Scope, the Department broadly expands the authority of the Act, which limited the protections of CII information to that submitted to the Department of Homeland Security, to apply government-wide.

The House of Representatives in the 107th Congress specifically considered and rejected the application of rules concerning CII information to all federal agencies in H.R. 5005 introduced by Rep. Tom Davis of Virginia.

Nonetheless, these rules would extend the protections afforded CII to similar information voluntarily submitted to *all* federal agencies that receive, care for, or store CII voluntarily submitted to the *Federal Government* pursuant to the CII Act of 2002. The Act pointedly does

not cover all such information submitted to the Federal Government and these rules to implement the Act cannot make that expansion.

In 29.2, these rules lay out procedures requiring other federal agencies to act on behalf of voluntary submitters to tag information through the Department of Homeland Security so that the Act will apply. This sleight-of-hand maneuver simply counters the intent of Congress to limit the application of the law to CII information voluntarily submitted to the Department of Homeland Security.

We greatly appreciate the Department's consideration of these comments.

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