

US Internet Service Providers Association.txt
Subject: US Internet Service Provider Association's Comments on DHS 6CFR Part 29
NPRM
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Attached are US ISPA's comments to DHS 6 CFR Part 29.

If you have any questions or problems with the document, please feel free to call me at 202 778 3576.

Regards,

Ron Teixeira

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**Before the
The Department of Homeland Security Notice of Proposed Rulemaking
“Procedures for Handling Critical Infrastructure Information” 6 C.F.R. Part 29**

June 16, 2002

Comments of US Internet Service Provider Association

INTRODUCTION

The US Internet Service Provider Association (“US ISPA”) appreciates the opportunity to submit these comments on the Department of Homeland Security (DHS) Notice of Proposed Rulemaking (NPRM) to establish procedures for handling Critical Infrastructure Information (CII).¹ US ISPA is a national trade association whose members are among the largest providers of Internet service in this country, including AOL Time Warner, Cable & Wireless, Earthlink, eBay, MCI, SBC, and Verizon Online. A principal purpose of US ISPA is to represent its members before Federal agencies, courts, and Congress in matters of common concern.

We commend the DHS on its thoughtful NPRM, and its goals for developing rules to help facilitate the exchange of much needed CII from the private sector to the DHS to help protect our Nation’s critical infrastructure. This is an important step towards developing the “Public Private Partnership” highlighted in the National Strategy to Secure Cyberspace. While it will take time to continue developing collective experiences that highlight the importance of

¹ Department of Homeland Security, Notice of Proposed Rulemaking, Procedures for Handling Critical Infrastructure Information, 6 CFR Part 29 (68 Fed. Reg. 18524, Apr. 15, 2003) at (I) (hereinafter “CIIA NPRM”).

information sharing and the benefits to both industry and government, the Critical Infrastructure Information Act is a sound foundation for further information sharing.

US ISPA files these comments to request that DHS re-examine the proposed regulations and policies for disclosing CII to foreign governments without the prior written consent of the companies voluntarily submitting proprietary and confidential network information.

I. DHS Regulations should not allow the release of proprietary and confidential information to foreign governments without written consent

The Department's rulemaking should not allow disclosure of Protected Critical Infrastructure Information (PCII) to foreign governments in the "furtherance of an investigation of the prosecution of a criminal act." DHS 6 C.F.R. Section 29.8 (j). This proposed rule goes beyond the intent of Congress in allowing the release of PCII without the provider's written consent. U.S. statutory and treaty law already provides a variety of methods (*e.g.*, Letters Rogatory and Mutual Legal Assistance Treaties) by which foreign governments may obtain information in furtherance of foreign criminal investigations. Bypassing such methods and processes gives the CII Manager too much discretion on the amount of information given to foreign governments. Once disclosed, there are no restrictions on how such information can be used within the foreign jurisdiction, which could lead to disclosure of the source, and perhaps even litigation against the source in a foreign jurisdiction.

CONCLUSION

Section 29.8(j) will thus have a chilling effect on voluntary disclosure of PCII. Because it is not grounded in the Homeland Security Act, it should be omitted from the final regulation.

Dated: June 16, 2003

Respectfully submitted,

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