

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

PART I - CRIMES

CHAPTER 119 - WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

§ 2510. Definitions

As used in this chapter—

- (1) “wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce;
- (2) “oral communication” means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication;
- (3) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;
- (4) “intercept” means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.¹
- (5) “electronic, mechanical, or other device” means any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than—
 - (a) any telephone or telegraph instrument, equipment or facility, or any component thereof,
 - (i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or
 - (ii) being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;
 - (b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;
- (6) “person” means any employee, or agent of the United States or any State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation;
- (7) “Investigative or law enforcement officer” means any officer of the United States or of a State or political subdivision thereof, who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;
- (8) “contents”, when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication;
- (9) “Judge of competent jurisdiction” means—
 - (a) a judge of a United States district court or a United States court of appeals; and
 - (b) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing interceptions of wire, oral, or electronic communications;
- (10) “communication common carrier” has the meaning given that term in section 3 of the Communications Act of 1934;
- (11) “aggrieved person” means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed;

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- (12) “electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—
- (A) any wire or oral communication;
 - (B) any communication made through a tone-only paging device;
 - (C) any communication from a tracking device (as defined in section 3117 of this title); or
 - (D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds;
- (13) “user” means any person or entity who—
- (A) uses an electronic communication service; and
 - (B) is duly authorized by the provider of such service to engage in such use;
- (14) “electronic communications system” means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;
- (15) “electronic communication service” means any service which provides to users thereof the ability to send or receive wire or electronic communications;
- (16) “readily accessible to the general public” means, with respect to a radio communication, that such communication is not—
- (A) scrambled or encrypted;
 - (B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;
 - (C) carried on a subcarrier or other signal subsidiary to a radio transmission;
 - (D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or
 - (E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;
- (17) “electronic storage” means—
- (A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and
 - (B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication;
- (18) “aural transfer” means a transfer containing the human voice at any point between and including the point of origin and the point of reception;
- (19) “foreign intelligence information”, for purposes of section 2517 (6) of this title, means—
- (A) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against—
 - (i) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;
 - (ii) sabotage or international terrorism by a foreign power or an agent of a foreign power; or
 - (iii) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or
 - (B) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to—
 - (i) the national defense or the security of the United States; or

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- (ii) the conduct of the foreign affairs of the United States;
- (20) “protected computer” has the meaning set forth in section 1030; and
- (21) “computer trespasser”—
 - (A) means a person who accesses a protected computer without authorization and thus has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer; and
 - (B) does not include a person known by the owner or operator of the protected computer to have an existing contractual relationship with the owner or operator of the protected computer for access to all or part of the protected computer.

Footnotes

¹ So in original. The period probably should be a semicolon.

(Added Pub. L. 90–351, title III, § 802, June 19, 1968, 82 Stat. 212; amended Pub. L. 99–508, title I, § 101(a), (c)(1)(A), (4), Oct. 21, 1986, 100 Stat. 1848, 1851; Pub. L. 103–414, title II, §§ 202(a), 203, Oct. 25, 1994, 108 Stat. 4290, 4291; Pub. L. 104–132, title VII, § 731, Apr. 24, 1996, 110 Stat. 1303; Pub. L. 107–56, title II, §§ 203(b)(2), 209 (1), 217 (1), Oct. 26, 2001, 115 Stat. 280, 283, 290; Pub. L. 107–108, title III, § 314(b), Dec. 28, 2001, 115 Stat. 1402; Pub. L. 107–273, div. B, title IV, § 4002(e)(10), Nov. 2, 2002, 116 Stat. 1810.)

References in Text

Section 3 of the Communications Act of 1934, referred to in par. (10), is classified to section 153 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

Amendments

2002—Par. (10). Pub. L. 107–273 substituted “has the meaning given that term in section 3 of the Communications Act of 1934;” for “shall have the same meaning which is given the term ‘common carrier’ by section 153 (h) of title 47 of the United States Code;”.

2001—Par. (1). Pub. L. 107–56, § 209(1)(A), struck out “and such term includes any electronic storage of such communication” before semicolon at end.

Par. (14). Pub. L. 107–56, § 209(1)(B), inserted “wire or” after “transmission of”.

Par. (19). Pub. L. 107–108 inserted “, for purposes of section 2517 (6) of this title,” before “means” in introductory provisions.

Pub. L. 107–56, § 203(b)(2), added par. (19).

Pars. (20), (21). Pub. L. 107–56, § 217(1), added pars. (20) and (21).

1996—Par. (12)(D). Pub. L. 104–132, § 731(1), added subpar. (D).

Par. (16)(F). Pub. L. 104–132, § 731(2), struck out subpar. (F) which read as follows: “an electronic communication;”.

1994—Par. (1). Pub. L. 103–414, § 202(a)(1), struck out before semicolon at end “, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit”.

Par. (12). Pub. L. 103–414, § 202(a)(2), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A) which read as follows: “the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;”.

Par. (16)(F). Pub. L. 103–414, § 203, added subpar. (F).

1986—Par. (1). Pub. L. 99–508, § 101(a)(1), substituted “any aural transfer” for “any communication”, inserted “(including the use of such connection in a switching station)” after “reception”, struck out “as a common carrier” after “person engaged”, and inserted “or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit” before the semicolon at end.

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Par. (2). Pub. L. 99–508, § 101(a)(2), inserted “, but such term does not include any electronic communication” before the semicolon at end.

Par. (4). Pub. L. 99–508, § 101(a)(3), inserted “or other” after “aural” and “, electronic,” after “wire”.

Par. (5). Pub. L. 99–508, § 101(a)(4), (c)(1)(A), (4), substituted “wire, oral, or electronic” for “wire or oral” in introductory provisions, substituted “provider of wire or electronic communication service” for “communications common carrier” in subpars. (a)(i) and (ii), and inserted “or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business” before the semicolon in subpar. (a)(i).

Par. (8). Pub. L. 99–508, § 101(a)(5), (c)(1)(A), substituted “wire, oral, or electronic” for “wire or oral” and struck out “identity of the parties to such communication or the existence,” after “concerning the”.

Pars. (9)(b), (11). Pub. L. 99–508, § 101(c)(1)(A), substituted “wire, oral, or electronic” for “wire or oral”.

Pars. (12) to (18). Pub. L. 99–508, § 101(a)(6), added pars. (12) to (18).

Termination Date of 2001 Amendment

Pub. L. 107–56, title II, § 224, Oct. 26, 2001, 115 Stat. 295, as amended by Pub. L. 109–160, § 1, Dec. 30, 2005, 119 Stat. 2957; Pub. L. 109–170, § 1, Feb. 3, 2006, 120 Stat. 3, which provided that title II of Pub. L. 107–56 and the amendments made by that title would cease to have effect on Mar. 10, 2006, with certain exceptions, was repealed by Pub. L. 109–177, title I, § 102(a), Mar. 9, 2006, 120 Stat. 194.

Effective Date of 1986 Amendment

Section 111 of title I of Pub. L. 99–508 provided that:

“(a) In General.—Except as provided in subsection (b) or (c), this title and the amendments made by this title [enacting sections 2521 and 3117 of this title, amending this section and sections 2232, 2511 to 2513, and 2516 to 2520 of this title, and enacting provisions set out as notes under this section] shall take effect 90 days after the date of the enactment of this Act [Oct. 21, 1986] and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

“(b) Special Rule for State Authorizations of Interceptions.—Any interception pursuant to section 2516 (2) of title 18 of the United States Code which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such interception occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

“(1) the day before the date of the taking effect of State law conforming the applicable State statute with chapter 119 of title 18, United States Code, as so amended; or

“(2) the date two years after the date of the enactment of this Act [Oct. 21, 1986].

“(c) Effective Date for Certain Approvals by Justice Department Officials.—Section 104 of this Act [amending section 2516 of this title] shall take effect on the date of enactment of this Act [Oct. 21, 1986].”

Short Title of 1997 Amendment

Pub. L. 105–112, § 1, Nov. 21, 1997, 111 Stat. 2273, provided that: “This Act [amending section 2512 of this title] may be cited as the ‘Law Enforcement Technology Advertisement Clarification Act of 1997’.”

Short Title of 1986 Amendment

Section 1 of Pub. L. 99–508 provided that: “This Act [enacting sections 1367, 2521, 2701 to 2710, 3117, and 3121 to 3126 of this title, amending sections 2232, 2511 to 2513, and 2516 to 2520 of this title, and enacting provisions set out as notes under this section and sections 2701 and 3121 of this title] may be cited as the ‘Electronic Communications Privacy Act of 1986’.”

Intelligence Activities

Section 107 of Pub. L. 99–508 provided that:

“(a) In General.—Nothing in this Act or the amendments made by this Act [see Short Title of 1986 Amendment note above] constitutes authority for the conduct of any intelligence activity.

“(b) Certain Activities Under Procedures Approved by the Attorney General.—Nothing in chapter 119 or chapter 121 of title 18, United States Code, shall affect the conduct, by officers or employees of the United States Government in accordance with other applicable Federal law, under procedures approved by the Attorney General of activities intended to—

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“(1) intercept encrypted or other official communications of United States executive branch entities or United States Government contractors for communications security purposes;

“(2) intercept radio communications transmitted between or among foreign powers or agents of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1801 et seq.]; or

“(3) access an electronic communication system used exclusively by a foreign power or agent of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978.”

Congressional Findings

Section 801 of Pub. L. 90–351 provided that: “On the basis of its own investigations and of published studies, the Congress makes the following findings:

“(a) Wire communications are normally conducted through the use of facilities which form part of an interstate network. The same facilities are used for interstate and intrastate communications. There has been extensive wiretapping carried on without legal sanctions, and without the consent of any of the parties to the conversation. Electronic, mechanical, and other intercepting devices are being used to overhear oral conversations made in private, without the consent of any of the parties to such communications. The contents of these communications and evidence derived therefrom are being used by public and private parties as evidence in court and administrative proceedings, and by persons whose activities affect interstate commerce. The possession, manufacture, distribution, advertising, and use of these devices are facilitated by interstate commerce.

“(b) In order to protect effectively the privacy of wire and oral communications, to protect the integrity of court and administrative proceedings, and to prevent the obstruction of interstate commerce, it is necessary for Congress to define on a uniform basis the circumstances and conditions under which the interception of wire and oral communications may be authorized, to prohibit any unauthorized interception of such communications, and the use of the contents thereof in evidence in courts and administrative proceedings.

“(c) Organized criminals make extensive use of wire and oral communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

“(d) To safeguard the privacy of innocent persons, the interception of wire or oral communications where none of the parties to the communication has consented to the interception should be allowed only when authorized by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court. Interception of wire and oral communications should further be limited to certain major types of offenses and specific categories of crime with assurances that the interception is justified and that the information obtained thereby will not be misused.”

National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance

Section 804 of Pub. L. 90–351, as amended by Pub. L. 91–452, title XII, § 1212, Oct. 15, 1970, 84 Stat. 961; Pub. L. 91–644, title VI, § 20, Jan. 2, 1971, 84 Stat. 1892; Pub. L. 93–609, §§ 1–4, Jan. 2, 1975, 88 Stat. 1972, 1973; Pub. L. 94–176, Dec. 23, 1975, 89 Stat. 1031, established a National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance, provided for its membership, Chairman, powers and functions, compensation and allowances, required the Commission to study and review the operation of the provisions of this chapter to determine their effectiveness and to submit interim reports and a final report to the President and to the Congress of its findings and recommendations on or before Apr. 30, 1976, and also provided for its termination sixty days after submission of the final report.