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EDITORIAL

Laptop searches go too far

Customs agents should not be allowed to arbitrarily scroll through citizens' laptop computers.

September 29, 2008

Should U.S. citizens returning from abroad be forced to surrender their laptop computers to the prying eyes of customs agents, even when there is no reasonable suspicion that a crime has been committed? Two federal appeals courts say yes. If the Supreme Court doesn't rule otherwise, Congress should act to curb this exponential invasion of privacy.

Since the 9/11 attacks, air travelers have reconciled themselves to more prolonged and intrusive searches. But while the laptops of travelers on domestic flights are only X-rayed for signs of a concealed weapon or explosives, those carried by U.S. citizens returning from abroad can be seized and their contents scrutinized for evidence of a crime.

Earlier this year, the U.S. 9th Circuit Court of Appeals upheld two [customs agents' search](#) of the contents of the laptop of Michael Timothy Arnold after he arrived at LAX from the Philippines. With no reasonable suspicion that he had committed a crime, the agents clicked on icons titled "Kodak Pictures" and "Kodak Memories" and, according to their report, found an image of two nude women. They continued their search and turned up what they said was child pornography.

A federal district judge ruled that the evidence should be suppressed. The 9th Circuit, following the lead of another federal appeals court in Virginia, reversed the ruling.

The appeals court noted that customs agents have searched briefcases, wallets and purses without reasonable suspicion, so why not laptops? The answer is that computers contain vastly more personal and business information than any briefcase could accommodate. So great is the intrusion on privacy that laptop searches would seem to run afoul of a principle [endorsed by the Supreme Court](#): "that some searches of property are so destructive as to require" some reasonable suspicion of a crime.

Rep. Loretta Sanchez (D-Garden Grove) has introduced legislation that would require customs and the Border Patrol to protect the confidentiality of information, place limits on how long it could be retained and inform the owners if data are copied or shared. The Sanchez bill is welcome, but if the Supreme Court rules in favor of customs, Congress also should pass a proposal by Rep. Zoe Lofgren (D-San Jose) that would outlaw computer searches.

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As we have [argued before](#), there is a difference between screening a laptop for explosives and combing its contents on the hunch that they might incriminate its owner. Indeed, that difference is so vast as to be of constitutional magnitude.

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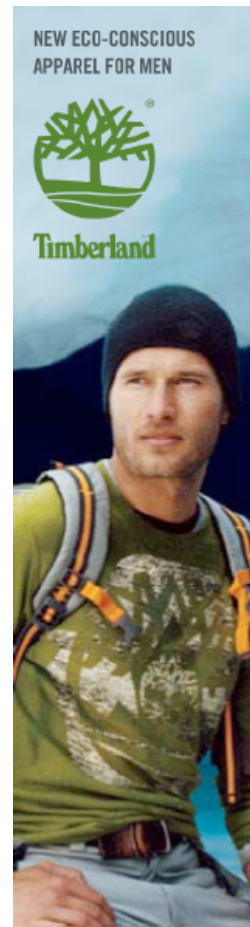
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