

The NetChoice Coalition

Promoting Convenience, Choice, and Commerce on The Net

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January 26, 2012

Representative Angus McKelvey
Chairman, Committee on Economic Revitalization and Business
House of Representatives
Hawaii State Capitol

RE: **Opposition to HB 2288, Data Retention Mandate**

Dear Chairman McKelvey:

NetChoice opposes HB 2288 which forces ISPs to create and retain an evidentiary trail for all Hawaiians who pay to access the Internet. This bill would enable government to investigate users' online activities – often without a warrant or court-ordered subpoena. This raises serious privacy concerns for customers of paid Internet services.

HB 2288 Creates a Real Threat to Hawaiian Privacy

Every time a Hawaiian accesses the Internet -- whether at home, in a hotel, in a coffee shop, or anywhere they use their smartphone – a unique IP address is assigned in order to connect that user to the web.

HB 2288 would require companies providing paid Internet access to retain a record of each IP address assigned for the last two years, and to link that IP address to webpages visited and the customer's identity.

Government Tracking of Honest Hawaiians

This bill would enable government to find out where a Hawaiian is located every time they check their email, go online with a smartphone, or pay to access the Internet in a hotel room or airport. HB 2288 would enable government to know which websites a Hawaiian has visited and where and when they traveled for the past two years. Forcing companies to store this for government use opposes the goals of the 4th and 5th Amendments to the Constitution: preventing the government from unlawful searches of citizens.

HB 2288

Creates Threat to American Privacy

- Government Tracking of Honest Hawaiians
- Misuse of Data in Lawsuits
- Misuse of Data by Criminals

Undermines Federal and Congressional Privacy Initiatives

ISPs Already Work with Law Enforcement to Protect Citizens

Misuse of Data in Lawsuits

The information that HB 2288 requires ISPs to collect could be misused in lawsuits. Attorneys could subpoena this information to build their cases. For example, an attorney in a divorce or child custody case could subpoena this data to discover someone's travels and the webpages they have visited. If a Hawaiian were researching medical information or seeking psychiatric help, that might be quite damaging in such a court proceeding.

Misuse of Data by Criminals

This repository of IP addresses with customer IDs creates a honey pot of consumer information that is susceptible to misuse. This misuse could occur through a data breach, employee theft, or a hacking episode. Data breaches are a real risk, so having all this user data stored in a few locations makes a very tempting target for criminals.

Undermines Federal and Business Privacy Initiatives

The Federal Trade Commission and the Department of Commerce have espoused the need for consumer choice in the tracking of their online activity. And each of these agencies expects to release privacy reports in the next few months.

Today, most Internet companies and web browsers already allow their customers to opt-out of having their web-surfing information tracked or stored. These policies recognize the consumer's right to maintain control over their information and are an important tool in securing user trust.

But HB 2288 would prevent these efforts to increase consumer choice by forcing ISPs to track their customers. By forcing ISPs to retain these IP addresses and the web pages accessed, the law would prohibit anonymous Internet browsing and undermine current government efforts to increase online privacy for Hawaiians.

ISPs Already Work with Law Enforcement to Protect Citizens

Existing efforts already achieve the goals of HB 2288. Current data preservation laws require all Internet services (both free and paid) to preserve all data pertaining to a customer when approached by law enforcement. This provides police with time to gather additional evidence and secure the necessary court orders to obtain the evidence preserved and retained by the ISP.

Moreover, when tracking illegal internet activity today, law enforcement is ten times more likely to ask ISPs for the person behind *an email address* or *chat name*, compared to requests for an IP address used to post something to a public website. ISPs already comply with all requests from law enforcement to preserve a specified user's IP connectivity logs. These processes more accurately reflect our justice system, where data is only collected on a potential criminal when they are *suspected* of a crime, rather than under HB 2288 where data is gathered on all Hawaiians *in case* they become a suspect in a crime.

Free and paid Internet services have a strong and effective working relationship with law enforcement. This existing working relationship obfuscates the need for additional laws that will complicate this working process even further.

Today, law enforcement appears not to have sufficient resources to keep up with the volume of evidence being provided to them by ISPs. So it may be that governments could do more to pursue online crime by adding resources to existing law enforcement efforts.

HB 2288 Threatens Hawaiian Privacy

HB 2288 will threaten the privacy of Hawaiians by potentially exposing their information to criminals and private attorneys. Moreover, HB 2288 places honest Hawaiians under the scrutiny of their government.

Thank you for considering our views, and please let me know if we can provide further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve DelBianco", with a long horizontal flourish extending to the right.

Steve DelBianco
Executive Director, NetChoice
cc: Members of Economic Revitalization & Business Committee

NetChoice is a coalition of trade associations and e-Commerce businesses who share the goal of promoting convenience, choice and commerce on the Net. More information about NetChoice can be found at www.netchoice.org