

Wyden Amendment

On 01/17/03, Sen. WYDEN (for himself, Mrs. FEINSTEIN, Mr. REID, Mrs. BOXER, Mr. CORZINE, and Mr. LEAHY) submitted Amendment 59 (SA 59) intended to be proposed by him to the joint resolution H.J. Res. 2, making further continuing appropriations for the fiscal year 2003, as follows:

At the end of title I of division M, add the following:

SEC. 111. (a) LIMITATION ON USE OF FUNDS FOR RESEARCH AND DEVELOPMENT ON TOTAL INFORMATION AWARENESS PROGRAM.--Notwithstanding any other provision of law, commencing 60 days after the date of the enactment of this Act, no funds appropriated or otherwise made available to the Department of Defense, whether to an element of the Defense Advanced Research Projects Agency or any other element, or to any other department, agency, or element of the Federal Government, may be obligated or expended on research and development on the Total Information Awareness program unless--

(1) the report described in subsection (b) is submitted to Congress not later than 60 days after the date of the enactment of this Act; or

(2) the President certifies to Congress in writing, that--

(A) the submittal of the report to Congress within 60 days after the date of the enactment of this Act is not practicable; and

(B) the cessation of research and development on the Total Information Awareness program would endanger the national security of the United States.

(b) **REPORT.**--The report described in this subsection is a report, in writing, of the Secretary of Defense, the Attorney General, and the Director of Central Intelligence, acting jointly, that--

(1) contains--

(A) a detailed explanation of the actual and intended use of funds for each project and activity of the Total Information Awareness program, including an expenditure plan for the use of such funds;

(B) the schedule for proposed research and development on each project and activity of the Total Information Awareness program; and

(C) target dates for the deployment of each project and activity of the Total Information Awareness program;

(2) assesses the likely efficacy of systems such as the Total Information Awareness program in providing practically valuable predictive assessments of the plans, intentions, or capabilities of terrorists or terrorist groups;

(3) assesses the likely impact of the implementation of a system such as the Total Information Awareness program on privacy and civil liberties; and

(4) sets forth a list of the laws and regulations that govern the information to be collected by the Total Information Awareness program, and a description of any modifications of such laws that will be required to use the information in the manner proposed under such program;

(5) includes recommendations, endorsed by the Attorney General, for practices, procedures, regulations, or legislation on the deployment, implementation, or use of the Total Information Awareness program to eliminate or minimize adverse effects of such program on privacy and other civil liberties.

(c) LIMITATION ON DEPLOYMENT OF TOTAL INFORMATION AWARENESS PROGRAM.--(1) Notwithstanding any other provision of law and except as provided in paragraph (2), if and when research and development on the Total Information Awareness program, or any component of such program, permits the deployment or implementation of such program or component, no department, agency, or element of the Federal Government may deploy or implement such program or component, or transfer such program or component to another department, agency, or element of the Federal Government, until the Secretary of Defense--

(A) notifies Congress of that development, including a specific and detailed description of--

(i) each element of such program or component intended to be deployed or implemented; and

(ii) the method and scope of the intended deployment or implementation of such program or component (including the data or information to be accessed or used); and

(B) has received specific authorization by law from Congress for the deployment or implementation of such program or component, including--

(i) a specific authorization by law for the deployment or implementation of such program or component; and

(ii) a specific appropriation by law of funds for the deployment or implementation of such program or component.

(2) The limitation in paragraph (1) shall not apply with respect to the deployment or implementation of the Total Information Awareness program, or a component of such program, in support of the following:

(A) Lawful military operations of the United States conducted outside the United States.

(B) Lawful foreign intelligence activities conducted wholly overseas, or wholly against non-United States persons.

(d) **SENSE OF CONGRESS.**--It is the sense of Congress that--

(1) the Total Information Awareness program should not be used to develop technologies for use in conducting intelligence activities or law enforcement activities against United States persons without appropriate consultation with Congress or without clear adherence to principles to protect civil liberties and privacy; and

(2) the primary purpose of the Defense Advanced Research Projects Agency is to support the lawful activities of the Department of Defense and the national security programs conducted pursuant to the laws assembled for codification purposes in title 50, United States Code.

(e) **DEFINITIONS.**--In this section:

(1) **TOTAL INFORMATION AWARENESS PROGRAM.**--The term ``Total Information Awareness program"--

(A) means the computer hardware and software components of the program known as Total Information Awareness, any related information awareness program, or any successor program under the Defense Advanced Research Projects Agency or another element of the Department of Defense; and

(B) includes a program referred to in subparagraph (1), or a component of such program, that has been transferred from the Defense Advanced Research Projects Agency or another element of the Department of Defense to any other department, agency, or element of the Federal Government.

(2) **NON-UNITED STATES PERSON.**--The term ``non-United States person" means any person other than a United States person.

(3) **UNITED STATES PERSON.**--The term ``United States person" has the meaning given that term in section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(i)).

Grassley Amendment

On 01/17/03, Sen. GRASSLEY submitted as a proposed amendment to the joint resolution H.J. Res. 2, making further continuing appropriations for the fiscal year 2003, the following Amendment 53 (SA 53) which addresses privacy concerns associated with the Total Information Awareness program. (There was no action on this amendment on 01/17/2003. On 01/17/03, Sen. Grassley, during the debate on HJRes 2, spoke about his Amendment 53; see Cong. Rec. p.S1134 - Sen. Grassley's comments are attached below)

At the end of title I of division M, add the following:

SEC. 111. (a) LIMITATION ON AVAILABILITY OF FUNDS FOR RESEARCH AND DEVELOPMENT ON TOTAL INFORMATION AWARENESS PROGRAM.--Notwithstanding any other provision of law, funds appropriated or otherwise made available by this Act, or by any other

Act, may be obligated or expended by the Department of Defense, or by any contractor of the Department, for the purpose of research, development, test, or evaluation on any technology or component of the information collection program known as the Total Information Awareness program, or any program whose purpose is the collection of information on United States citizens in the United States, regardless of whether or not such program is to be transferred to another department, agency, or element of the Federal Government only if--

(1) such technology or component is to be used, and is used, only for foreign intelligence purposes; and

(2) such technology or component is not to be used, and is not used, for domestic intelligence or law enforcement purposes.

(b) **PROVISION IN CONTRACTS AND GRANTS.**--Any contract or grant instrument applicable to the Total Information Awareness program or other program referred to in subsection (a) shall include appropriate controls to facilitate the limitations in that subsection.

(c) **REPORT.**--Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense, the Attorney General, and the Director of Central Intelligence shall jointly submit to Congress a report on the Total Information Awareness program. The report shall set forth the following:

(1) A detailed explanation (including an expenditure plan) of the actual and intended use of the funds for all projects and activities of the Total Information Awareness program.

(2) A list of the departments and agencies of the Federal Government that have, or would have, an interest in utilizing the Total Information Awareness program, and for what purposes.

(3) A description of the ways information collected by the Total Information Awareness program may be used by law enforcement, intelligence, and other agencies of the Federal Government.

(4) A list of the current laws and regulations governing the information to be collected by the Total Information Awareness program, and a description

of any modifications in such laws that are required to use such information in the manner proposed under the program.

(5) Recommendations for additional research, technology development, or other measures necessary to ensure the protection of privacy and civil liberties of United States citizens during the operation of the Total Information Awareness program.

Comments of Sen. Grassley

From the Congressional Record, January 17, 2003:

Page S1134

**MAKING FURTHER CONTINUING APPROPRIATIONS FOR
FISCAL YEAR 2003--Continued -- (Senate - January 17, 2003)**

[Page: S1134]

Mr. GRASSLEY. Mr. President, I am pleased to have submitted an amendment dealing with the Total Information Awareness Program at the DOD. Many of my colleagues may know about this program designed to test technologies that collect information from public and private databases and try to find trends that could signal threats against the United States. Like many people, I have been concerned that this program could be used to invade the privacy of Americans by snooping around in our bank accounts, personal internet computers, phone records, and the like. In November of last year, I asked the DOD Inspector General to look into the purposes of TIA and to make sure that there are appropriate controls in place to ensure that it is used only for foreign intelligence purposes to protect us against terrorism and foreign threats, but not on Americans or for domestic crime fighting. I am told that the IG investigation is proceeding, and that the IG has ordered a formal audit of TIA.

This amendment limits the use of the TIA funds appropriated by Congress to foreign intelligence purposes. DOD will be required to tell Congress what it is doing regarding TIA, and keep us in the loop on developments. It also provides that TIA can't be used on U.S. citizens once it is up and running.

But the amendment allows development of TIA to continue for foreign terrorism purposes. So it is a great compromise in that it allows the development of TIA to help track international terrorism, but protects

against abuses that could violate the privacy of our own people. I encourage my colleagues to support this amendment.