Laptop Searches/Border Search of Information

On July 16, 2008, CBP, in coordination with DHS, issued a comprehensive CBP policy, consolidating and updating customs and immigration policies and practices, to address the border search of information contained in documents and electronic devices.

Searches of laptops and other electronic media during secondary inspection are a targeted tool that CBP uses in limited circumstances to ensure that dangerous people and dangerous goods do not enter our country.

CBP Officers are trained to protect information under strict policies that restrict access to sensitive information, including guarding against the inappropriate handling and disclosure of privileged information such as attorney-client communications, or sensitive business information such as trade secrets.

CBP, ICE and DHS have responded to numerous Congressional inquiries for information on searches of electronic devices and have participated in Congressional briefings on this issue. These briefings addressed the border search examination process and authority with regard to searches of information contained in documents, laptops, and other electronic devices.

From 8/1/08 to 10/31/08, over 100.3 million name/vehicle queries were done on primary. Of those, 2.01 million secondary exams were done (2% of travelers). Of the secondary searches, 258 involved the search of a laptop computer, or 0.01%. A total of 20 laptops were detained, while 14 laptops were seized. These numbers represent laptop searches, detentions and seizures and not the range of media devices encountered by a CBP officer.

BACKGROUND

On July 16, 2008, CBP, in coordination with DHS, issued a comprehensive CBP policy, consolidating and updating customs and immigration policies and practices, to address the border search of information contained in documents and electronic devices. Updating and posting these policies reflects an effort to be more transparent. The decision of U.S. Customs and Border Protection to consolidate and update some of the standards in prior policies reflects the realities of the post-9/11 environment, the agency’s expanded mission and legal authorities, and developments in the law, including the Homeland Security Act of 2002. Although certain aspects of the policies have changed, officers have always had the constitutional authority to inspect information presented at the border without individualized suspicion.

Laptop searches have proven essential to detecting people and materials that should be blocked from entering the United States. Officers have discovered video clips of improvised explosive devices being detonated, a martyrdom video, and other violent jihadist materials, including instructions on how to create cell phone detonators for bombs. In addition, these searches have uncovered scores of instances of child pornography, including a home movie of children being

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sexually assaulted. In the 21st century, the most dangerous contraband is often contained in laptop computers or other electronic devices, not on paper. And the fact that a single laptop hard drive can contain volumes of information gives CBP a greater need, not a lesser need, to examine it to know what is passing across our sovereign borders.

CURRENT STATUS

CBP, ICE and DHS have responded to numerous Congressional inquiries for information on searches of electronic devices and have participated in Congressional briefings on this issue. These briefings addressed the border search examination process and authority with regard to searches of information contained in documents, laptops, and other electronic devices. In addition to briefings, CBP, ICE and DHS have provided guided tours at Washington Dulles International Airport to Congressional staff members to provide a better sense of CBP’s inspection process and when a laptop might actually be examined.

CBP is currently developing a comprehensive directive to elaborate upon and provide specific field instructions in implementation of the Border Search of Information Policy. This directive will provide more specific guidance to all CBP employees on the examination of documents and all types of electronic media.

CBP, ICE and DHS developed a Public Affairs Guide (PAG) for this issue which provides internal and external talking points. This PAG will allow for consistent information on this topic throughout CBP, ICE and DHS.

The examination of electronic devices by CBP occurs in an extremely small percentage of border crossings. For instance, from 8/1/08 to 10/31/08, over 100.3 million name/vehicle queries were done on primary. Of those, 2.01 million secondary exams were done (2% of travelers). Of the secondary searches, 258 involved the search of a laptop computer, or 0.01%. A total of 20 laptops were detained, while 14 laptops were seized. These numbers represent laptop searches, detentions and seizures and not the range of media devices encountered by a CBP officer.

Totals August 2008 to October 2008

Total Number of People or Vehicles Encountered
100,343,470
Number of Secondary Searches
2,019,026
Number of Laptop Searches
258
Number of Laptops Detained
20
Number of Laptops Seized
14

CBP identified a need for better and more consistent record keeping on the examination of documents and all electronic media. CBP is developing and refining its mechanisms for tracking these searches and providing statistics.
CHALLENGES

Several pieces of legislation have been introduced to limit CBP's ability to perform examinations on laptops and other electronic media by requiring higher levels of suspicion. Additionally, there have been several very negative news articles written on this topic.

CBP cannot abandon its responsibility to inspect what enters the U.S. just because the information is on an electronic device. To do so would open a dangerous window for terrorists and criminals to exploit our borders in new and unacceptable ways.

Any legislation locking in a particular standard for searches would have a dangerous, chilling effect as officers' often split-second assessments are second-guessed.

MILESTONES


POINTS OF CONTACT

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