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Laptop Inspections Legal, Rare, Essential

08/11/2008

I'd like to address some questions and some misinformation that are circulating with regard to CBP's long-standing policy on searches of electronic media.

First, it's important to note that for more than 200 years, the federal government has been granted the authority to prevent dangerous people and things from entering the United States. Our security measures at the border are rooted in this fundamental fact, and our ability to achieve our border mission would be hampered if we did not apply the same search authorities to electronic media that we have long-applied to physical objects—including documents, photographs, film and other graphic material. Indeed, there are numerous laws that apply to such material at the border including laws regarding intellectual property rights, technical data that can be imported or exported only under state department license and child pornography.

In the 21st century, terrorists and criminals increasingly use laptops and other electronic media to transport illicit materials that were traditionally concealed in bags, containers, notebooks and paper documents. Making full use of our search authorities with respect to items like notebooks and backpacks, while failing to do so with respect to laptops and other devices, would ensure that terrorists and criminals receive less scrutiny at our borders just as their use of technology is becoming more sophisticated.

This result would be ironic given that this same technology actually enables terrorists and criminals to move large amounts of information across the border via laptops and other electronic devices. At the end of the day, we have a responsibility to search items — electronic or otherwise — that are being transported across our borders and that could potentially be used to harm our nation's citizens or that are otherwise contrary to law.

Second, this is not a new policy. We've been searching laptops of those who warrant a closer inspection for years. In fact, we've taken the unprecedented step of posting online a policy that would typically be reserved for internal purposes. This information is not new and has been publicly debated countless times. Indeed, the 9th Circuit Court of Appeals recently confirmed the constitutionality of suspicionless laptop searches at the border.

(U.S. Customs and Border Protection Policy Regarding Border Search of Information (pdf - 161 KB.))
(Circuit Court Ruling)

This brings me to my third point, which is that travelers whose laptops are searched represent a very small number of people. As Secretary Chertoff noted in a recent op-ed, "Of the approximately 400 million travelers who entered the country last year, only a tiny percentage were referred to secondary baggage inspection...[and] of those, only a fraction had electronic devices that may have been checked." (Searches are Legal, Essential)

And finally, to allay any concerns the business community or others may have that their personal or trade information might be put at risk by traveling with their laptops, I urge you to look at our track record. Every day, thousands of commercial entry documents, shipping manifests, container content lists, and detailed pieces of company information are transmitted to CBP so we can effectively process entries and screen cargo shipments bound for the United States. This information is closely guarded and governed by strict privacy procedures. Information from passenger laptops or other electronic devices is treated no

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differently.

Our Customs and Border Protection officers are trained professionals with a defined mission, and they have neither the time nor the desire to search travelers' personal belongings for any reason other than to ensure compliance with our customs and related laws and to protect the United States. As the policy's provisions make abundantly clear, officers are subject to numerous policy restrictions regarding the retention, sharing, and scrutiny of travelers' documents and information.

I hope this has helped answer some of your questions. One of the lessons 9/11 taught us was that we must adapt to 21st century risks and anticipate rather than react to new threats. Our CBP officers are on the front lines every day ensuring that these lessons are heeded. We trust that travelers understand the need for these sensible security measures.

Jayson Ahern
Deputy Commissioner, U.S. Customs and Border Protection

see also:

on cbp.gov:

U.S. Customs and Border Protection Policy Regarding Border Search of Information
(pdf - 161 KB.)

on the web:

Circuit Court Ruling
Searches are Legal, Essential