

**Comments received to DHS/TSA-2003-1,
CAPPS II System of Records Interim Final Notice**

Through August 20, 2003

Received July 31, 2003

TSA's request for further comments regarding CAPPS II sidesteps the issue of inaccuracies in the private-sector databases that will be used to authenticate passengers' identities. It is all very well to assert generally that "the CAPPS II system must allow for and compensate for such inaccuracies" in commercial databases (pages 4-5), but the effectiveness of these allowances and compensations will depend on the ability of individuals to examine and to correct potentially inaccurate information. The request for further comments specifies a method by which individuals can examine and correct records maintained by the TSA; however, most of the information used in making CAPPS II's threat assessments will reside not in TSA's records but rather in the commercial databases that TSA consults. TSA should therefore establish a policy that CAPPS II will not make use of any databases that do not allow individuals to view and to correct any and all records pertaining to them. Furthermore, a complete list of the databases used by CAPPS II should be published, and this publication should be regularly updated.

The request for further comments admits that "in a small percentage of cases, passengers may be found to present an... 'unknown risk' of terrorism" (page 6). Because authentication will rely on the presence of passengers' identifying information in commercial databases, the people identified as "unknown risks" will likely include those people who particularly value their privacy and have therefore purposefully kept their information out of such databases -- for example, people like me who refuse to hold credit cards. This system of identification risks creating a permanent underclass of travellers who will receive intrusive scrutiny every time they travel, even if they travel very frequently on business.

The elimination of the fifty-year period of data retention for United States persons is an improvement. The same courtesy should be extended to international visitors, or at least to visitors from low-risk countries such as those countries that participate in the Visa Waiver Program. I have family in Europe and I don't want them getting stuck in some shadowy database for half a century simply because they came to visit the United States once.

Matthew Belmonte
[personal address deleted]

Received August 1, 2003

Support this approach 100 percent. I disagree with the privacy advocates who are restraining the system in any way. Profiling and X-Rays should be used.

Jerome Pikulinski
[personal address deleted]

Received August 2, 2003

1 August 2003

To: Privacy Office
U.S. Department of Homeland Security
Washington, DC 20528
privacy@dhs.gov

Re: docket number DHS/TSA-2003-1: Privacy Act of 1974: System of Records,"Notice of Status of System of Records; Interim Final Notice; and Request for Further Comments", Passenger and Aviation Security Screening Records (PASSR) system, system of records DHS/TSA 010, 68 Federal Register 45265-45269 (1 August 2003),
<http://www.dhs.gov/dhspublic/interweb/assetlibrary/CAPPSII_PRIVACY_ACT_NOTICE.pdf>

PRELIMINARY COMMENTS OF EDWARD HASBROUCK

The Notice cites 49 U.S.C. 114, 44901, and 44903 as authority for creation and maintenance of the proposed PASSR system of records.

As I pointed out in my comments on the Department of Transportation's previous proposal for the ASSR system of records, 49 U.S.C. 44901 (h) (2) provides that the Under Secretary (of Transportation) "shall advise Congress of a regulation to be prescribed under this section at least 30 days before the effective date of the regulation, unless the Under Secretary decides an emergency exists requiring the regulation to become effective in fewer than 30 days and notifies Congress of that decision." (Proposed system of records DOT/TSA 010, "Aviation Security Screening Records"; docket number OST-1996-1437; my comments are at docket number OST-1996-1437-81; also available at
<http://hasbrouck.org/articles/Hasbrouck_DOT_comments-23FEB2003.pdf>)

To the extent that, as in this Notice, the DHS asserts regulatory authority inherited from the DOT and derived from this section, this statutory Congressional notice requirement applies to the DHS/TSA, just as it did to the DOT.

The Notice published in the Federal Register contains no evidence that prior notice has been provided to Congress. Assuming, arguendo, that the publication of this Notice on 1 August 2003 constitutes in and of itself the requisite notice to Congress, the effective date of the Notice must be postponed until no earlier than 30 days after the date of publication, which would be 31 August 2003.

The claims in the Notice that it is effective immediately as of the date of publication, and that it authorizes the immediate creation and use for testing or any other purpose of the system of records it describes, are, on their face, directly contrary to the plain language of 49 U.S.C. 44901, the statute claimed as authority for the Notice.

Accordingly, the Notice must be withdrawn, and may not be used as authority for the creation or use of the PASSR system of records.

If any changes are made to the Notice, they must be republished, with an effective date no less than 30 days after their publication in final form and notification to Congress; or the Notice must be modified to remove all those portions for which statutory authority is claimed under 49 U.S.C. 44901.

The failure of the DHS and TSA to observe the statutory requirement for 30 days' notice to Congress, and the issuance of a facially invalid Notice for this system of records, are particularly significant in light of the current status of Congressional oversight of the CAPPs-II program for which the PASSR is designed. Multiple measures -- any one of which, if approved, would prohibit or postpone CAPPs-II testing and/or deployment until additional reporting or other criteria are satisfied -- are pending in both the House and Senate. One such measure has already advanced as far as inclusion in the House-Senate conference committee recommendation on a pending bill. There is substantial evidence that, given the statutorily mandated 30 days' notice, Congress might exercise its authority to take action during that time that would alter or remove the DHS and TSA authority to proceed with the creation or use of this system of records.

Should the Notice not be withdrawn, I reserve the right to submit further comments, within the specified public comment period, concerning other aspects of the Notice of the proposed PASSR system of records.

According to the DHS public statement announcing the publication of the Notice, "DHS will make the comments available online at www.dhs.gov." <<http://www.dhs.gov/dhspublic/display?content=1115>>

I look forward to seeing these and all other comments on this docket made

available promptly at that address.

Respectfully submitted,

Edward Hasbrouck

Received August 2, 2003

1 August 2003

To: Privacy Office
U.S. Department of Homeland Security
Washington, DC 20528
privacy@dhs.gov

Re: docket number DHS/TSA-2003-1:
Privacy Act of 1974: System of Records, "Notice of Status
of System
of Records; Interim Final Notice; and Request for Further
Comments",
Passenger and Aviation Security Screening Records (PASSR)
system,
system of records DHS/TSA 010,
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<[http://www.dhs.gov/dhspublic/interweb/assetlibrary/CAPPSII PRIVACY ACT NOT
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records it describes, are, on their face, directly contrary to the plain language of 49 U.S.C. 44901, the statute claimed as authority for the Notice.

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Should the Notice not be withdrawn, revised, or re-published, I reserve the right to submit further comments, within the specified public comment period, concerning other aspects of the Notice of the proposed PASSR system of records.

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I look forward to seeing these and all other comments on this docket made available promptly at that address.

Respectfully submitted,

Edward Hasbrouck
[personal information deleted]

Received August 2, 2003

Dear Sirs:

I spent 35 years working for United Airlines. I was in the Operations Control Center on 9/11 and I helped put the airline on the ground.

I think the CAPPS II idea is very good. I will volunteer my personal information so you can use it for whatever test purposes you want.

[personal information deleted]

If I can help in anyway please let me know. My night flying trip will on August 28, 2003. My wife and I will be flying from Ft. Lauderdale to Chicago on United.

Thank you.

Best Regards,

Robert Ader

Received August 5, 2003

Sirs

Any intrusion upon the privacy of American citizens is of huge concern to any thinking member of that citizenry. I am hopeful that for those who choose NOT to be computer

screened that there will be available the standard "frisk and wand" process, regardless of how long the line may be.

Ted Coulter

Received August 6, 2003

"They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.... "

-Benjamin Franklin

The CAPPs II plan is so massively faulted that I don't know where to begin. Have you ever requested your credit report? Have you seen the inaccuracies and mistakes that plague each one? This is the best product that commercial data collection has to offer, and it is ridiculously poor.

That the TSA would rely on such information, or even use it in any way, for the protection of the American public is simply unbelievable. This is a profoundly stupid thing to do. (But what can the American people expect from an agency that will use Microsoft products in its computers... Products that any teenager with enough moxy can break into -- let alone a well-funded terrorist network... But I digress.)

Second, the appeals and correction process is woefully poor. First of all, the citizen is never permitted to see his entire file. Only the name, address, phone number, and "some itinerary information" that the TSA will maintain. How will he know what to object to? Next, the "appeal" process attempts to short-circuit due process protections by only allowing appeal to the DHS privacy office (never mind the farcical connotations there). If it stays the same, this will most likely fall in federal court, but why waste the time and money? Just do it right now.

In sum, the entire TSA as an organization and the DHS as a concept and organization is utterly depressing. The managers of these offices are disastrously incompetent, the ideas that we see would be laughable if they weren't so embarrassing to the American people as individuals and as a nation. You should eliminate the entire CAPPs II program because it is useless at best and destructive to civil rights and wasteful of taxpayer money. As I write this, I'm shaking my head.

The poorness of this plan is simply surreal.

Sincerely,
Joshua Furman
Long Beach, California

Received August 8, 2003

ATTN: DHS, TSA

RE: CAPPS II

This email is in response to the request for comments regarding the CAPPS II program.

InfoUSA is in full support of the CAPPS II program and verifying a traveling individuals name, address, phone number and date of birth. In fact, our database can provide just that information.

InfoUSA (NASDAQ: IUSA) is the leading provider of both business and consumer data in both the US and Canada. Our comprehensive business file holds over 14 million records while the consumer file houses over 250 million individuals. We maintain up to 70 data elements on each of these entities. Some of our data elements include name, address, phone, fax, email, geo-coded data, SIC, NAICs, number of employees, sales volume, (est) home value and income, etc.

Our user-friendly database can be queried by a specific company/persons name or by a set of defining characteristics (ie. list all businesses in the construction business with less than 100 employees, less than \$3 mill in sales in the DC Metro area). Our information can be imported into a simple excel spreadsheet or integrated into your complex internal systems and can return a match-rate/grade. Our data collection methods are unique and set us apart from any competitor.

Thank you for your time.

Respectfully,

Jennifer Schaus

InfoUSA Government Division

Received August 8, 2003

To: The Department of Homeland Security
Re: CAPPS-II
Public Comment

The Computer-Assisted Passenger Pre-Screening System (CAPPS-II) is one of the most appalling and revolting programs yet to be generated by this administration. The program tramples on civil liberties, the right to privacy, and every freedom of the American people to travel where, when, and how they will without secret monitoring by their government.

As a U.S. citizen, I ask you how you dare attempt to strip away my constitutional rights in order to amass ever greater power for yourselves. The departments of justice and homeland security have become so corrupted by men who hate America's and her citizens' freedoms that they will use any means to turn our republic into a fascist state controlled, both openly and in secret, by them and their cohorts.

Have you ever heard of or read the United States Constitution and the Declaration of Independence? I recommend them highly. They are the documents on which our nation and our freedoms are founded. You would destroy them unread, uncomprehended. Have you no shame?

I oppose the CAPPS-II program as strongly as I have opposed Terrorist (TOTAL) Information Awareness, a 'futures market' on terrorism, and all other attempts by MY government in MY nation to limit or expunge MY rights.

Andrew Reed
[personal information deleted]

Received August 9, 2003

Dear Sirs:

I may be a complete dummy, but I do not see how this screening would work. The supposed purpose is to compare passengers to a list of known terrorists.

I would think that a terrorist would not travel using his real name. Am I missing something, or am I just out to lunch?

Also what would be the purpose amassing all this incredible amount of data and opening it to almost guaranteed creeping "routine uses" if it is not of more interest than the stated purpose?

Is there no longer a right to travel in an anonymous manner. Hypothetically, what if I wanted to travel with a woman who was not my wife, but wished to use the "Mrs" designation on her ticket? What business is it of the government where or with whom I go if it does not present a realistic present danger to the public?

Very truly yours,

Curtis Maroney

Received August 18, 2003

I am writing to you to get some more information about the CAPPS II program, and to express my concerns as an American citizen.

I am deeply concerned that this program will create a permanent blacklist of Americans who cannot travel freely, and hinder the security at our nation's airports.

I know at least one completely innocent person that has already been stopped and banned from flying because their name appeared on government "no fly" lists -- and has been unable to clear his name in the federal bureaucracy. He is John Gilmore, one of the early employees of Sun Microsystems and the founder of the Cygnus corporation (now RedHat Inc.). His problem started when he wished to know which federal law required him to present his drivers license at the airport in order to fly. For his refusal to present this identification, and for some unspecified and unknown reason he is now forbidden to fly, placed on just such a list, for which there is no appeal and no recourse.

This new national system would only increase the delays and blacklist even more innocent Americans - regular people traveling for work or vacations.

Terrorists will learn how to circumvent the system. Identity thieves could easily sidestep this check by presenting a false driver's license or passport, undercutting the system's entire mission. And the constant false alarms might divert the attention of airport security officers from legitimate threats to security.

If adopted, the most intrusive and dangerous element of the program - the construction of an infrastructure for conducting background checks and maintaining dossiers on people who fly - would depend on shadowy intelligence/law enforcement databases. The use of these secret databases would remove meaningful public oversight and control over these un-American background checks.

I vigorously oppose this invasive and untrustworthy system. I look forward to hearing from you on this important matter.

Henry Minsky
Laszlo Systems Inc.

BS, SM MIT '84 EECS

**Received August 19 and August 20, 2003 as of 3:30 pm August 20:
Approximately 5,800 emails identical to the following or in substantially the
following form:**

Lewis Detwiler
[address deleted]

August 19, 2003

Privacy Office
U.S. Department of Homeland Security
Washington, DC 20528

Privacy Office:

I am writing to urge you to stop the CAPPS II program. I am deeply concerned that this program will put the government on a path toward ever-more intrusive background checks, and hinder the security at our nation's airports.

I have read that innocent people have already been stopped and banned from flying because their name appeared on government "no fly" lists -- and have been unable to clear their names in the federal bureaucracy. This national system would only increase the delays and blacklist even more innocent Americans - regular people traveling for work or vacations.

Terrorists will learn how to circumvent the system. Identity thieves could easily sidestep this check by presenting a false driver's license or passport, undercutting the system's entire mission. And the constant false alarms might divert the attention of airport security officers from legitimate threats to security.

I have also read that, if adopted, the most intrusive and dangerous element of the program - the construction of an infrastructure for conducting background checks on people who fly - would depend on shadowy intelligence/law enforcement databases of questionable reliability. The use of these secret databases would remove meaningful public oversight and

control over these un-American background checks.

Once again, I urge you to stop this invasive and untrustworthy system.

Sincerely,

Lewis Detwiler