



Committee: Committee on Economic Revitalization and Business
Hearing Date/Time: Thursday, January 26, 2012, 8:30 a.m.
Place: Room 312
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 2288, Relating to Recordkeeping

Dear Chair McKelvey and Members of the Committee on Economic Revitalization and Business:

The American Civil Liberties Union of Hawaii writes in opposition to H.B. 2288. Any data retention mandate is a direct assault on bedrock privacy principles.

H.B. 2288 would impose sweeping new requirements on companies that provide internet access, forcing them for the first time to keep large volumes of records on their customers — impacting most of Hawaii’s residents. The scope of this new requirement is very broad and there is nothing in the bill that would limit the use of these records. In fact, the records would involve all internet users everywhere and they could be made available to anyone for any purpose.

This new mandate is a direct assault on the privacy of internet users. Temporarily assigned network addresses, also known as IP addresses, are the direct link between individuals and their online activity. In many ways, an IP address is similar to an individual’s name or other identifier online. Access to this information can allow anyone to determine the websites users visit and, consequently, what their interests are, where they bank, and what online accounts they have.

For more than 40 years it has been a core privacy principle that records should only be created for a specific purpose and deleted as soon as that purpose is complete. But the data retention mandate of H.B. 2288 moves in exactly the opposite direction and creates a true slippery slope.

If individuals are faced with the tempting prospect of access to such a vast treasure trove of private online records, they will be hard-pressed not to desire more retention of those records. And who could blame them? Some internet records – such as identifiers for email and other services – could be useful in criminal investigations – or they could more easily be irrelevant to any criminal investigation. Location information from cell phones could certainly provide help to law enforcement in many cases – but the vast majority of such data has no bearing on any crime. While any record could in theory be useful in investigating some crime somewhere the vast majority are simply the records on innocent Americans.

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Rep. McKelvey, Chair, ERB Committee
and Members Thereof
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We live in an age where our devices and the way we use the internet are constantly generating records – what we read, where we go, who our friends are. If those records must always be saved for future use, they become a persistent and pervasive assault on our privacy and an irresistible temptation to law enforcement. That is why best practices in privacy demand the deletion of records as soon as they are no longer necessary – exactly the opposite of the mandate of H.B. 2288.

For all of these reasons, we urge this committee to hold H.B. 2288 and all other data retention mandates.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Sincerely,

Laurie A. Temple
Staff Attorney

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org