

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

January 24, 2006

The Honorable Alberto Gonzales
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Gonzales:

Friday's Washington Post reported that, in August 2005, the Department of Justice issued subpoenas for records to four major Internet companies -- Google, Inc., America Online, Inc., Microsoft Network, and Yahoo, Inc. -- seeking data about what millions of Americans search for on the Internet's leading search engines. According to this and other recent press reports, the Justice Department issued these subpoenas as part of an ongoing effort to measure the effectiveness of the protections provided for under the Child Online Protection Act ("COPA"), as compared with existing technologies such as filtering software.

The COPA passed Congress in 1998, when it was included, without debate, in an omnibus appropriations bill. I opposed this effort to regulate Internet speech, noting that there are better ways to protect children that have less impact on constitutionally protected speech, including the use of blocking and filtering tools. I predicted that the COPA would fail in the courts because these less restrictive means exist, and because Congress had not shown otherwise. My concerns were echoed at that time by the Justice Department, which also cautioned that enforcing the COPA's criminal prohibitions "could require an undesirable diversion of critical investigative and prosecutorial resources that the Department currently invests in combating traffickers in hard-core child pornography, in thwarting child predators, and in prosecuting large-scale and multidistrict commercial distributors of obscene materials."

I inquire about the Department's efforts to obtain and use commercial web-browsing data against the backdrop of strong public concern over the government's monitoring of Internet communications and warrantless eavesdropping on the telephone conversations of American citizens. The collection and use by government law enforcement agencies of such commercial transactional data on law-abiding Americans poses unique concerns, including the specter of excessive government surveillance that may intrude upon important privacy interests and chill the exercise of First Amendment-protected speech and associational rights. Accordingly, I am interested in learning more about the extent to which the Department of Justice is relying upon data mining of the Internet search queries made by law-abiding American citizens to support its efforts under the COPA

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and how the Department is addressing the privacy and civil liberties concerns raised by the collection, storage and use of such data.

Specifically, I ask for and would appreciate your responses to the following questions:

1. According to press reports, the Department of Justice issued subpoenas for records to Google, Inc, America Online, Inc., Microsoft Network, and Yahoo, Inc. (collective, the "Internet Companies") in connection with ongoing civil litigation involving the legality of the COPA. Please state whether any, or all, of the Department's subpoenas to the Internet companies were issued in connection with this, or any other, civil or criminal litigation or investigation.
2. Please identify the type(s) of information and/or data that the Department requested in its subpoenas for records issued to the Internet companies -- including whether the Department requested, or obtained, any personal identifying information and/or data in connection with the subpoenas -- and state how the Department intends to use this commercial information and/or data.
3. Please state what, if any, safeguards are in place within the Department of Justice to protect the privacy of the millions of American people who conduct searches on the Internet in light of the Department's requests for this commercial information and/or data?
4. Please state whether the Department will issue any additional subpoenas to the Internet Companies and, if so, state whether any such subpoenas will seek personally identifiable information.
5. Please provide any documentation that relates to, or supports, the answers to these questions.

Thank you in advance for your consideration. I look forward to your prompt response to this letter.

Sincerely,



PATRICK LEAHY
Ranking Member