

WHAT IS THE US PATRIOT ACT AND HOW COULD IT AFFECT MY BUSINESS?

The American Patriot Act was passed in the wake of September 11, 2001 to provide US law enforcement agencies with more access to information and expanded surveillance activity without the need for administrative paperwork such as a subpoena.

The provisions of this US Act are intended to simplify US government's access to business records for intelligence gathering, in essence permitting quicker, easier access to otherwise confidential records and other information without the need to demonstrate probable cause or for an administrative subpoena (both of which were previously required to gain such access).

This means that for Canadian information physically located on US soil – information that under Canadian laws (PIPEDA) would be required to be kept confidential – it is now exposed to disclosure to, or seizure by, US government officials. This information is subject to compulsory disclosure to American law enforcement officials on demand, with no opportunity for our government or the affected Canadian organization or individual to have any notice or input into such disclosure. The Patriot Act explicitly prohibits disclosure of the specifics of the order for such disclosure; therefore, it is unlikely that the affected organization or individual within Canada would even be aware that disclosure of its confidential information has taken place.

The Canadian legal community and certain government agencies are considering recommendations to address the concerns summarized above, however at this time it is uncertain whether any of these recommendations will be implemented or if these would succeed in securing the confidentiality of Canadian information located on US soil.

It is important for Canadian organizations, when assessing the implications of hosting databases on foreign soil, to examine the provisions of the US Patriot Act or other applicable foreign disclosure legislation as against Canadian (and applicable provincial) privacy legislation confidentiality obligations. Such disclosure in the US may place the Canadian organization offside Canadian and/or provincial privacy legislation, potentially exposing the organization to penalties under local laws.

The above is an expression of the writer's opinion, based on a summary review of the legislation, and is intended only as a brief review of the potential impact of the US Patriot Act on US hosted Canadian databases. The information above is not intended to be and shall not be treated as legal advice, is not exhaustive of the subject matter, nor is it regularly updated. Readers are strongly urged to review the applicable legislation directly to assess its potential effect on their business operations. TAE: Feb/06