

ALA American Library Association

Position summary: The American Library Association urges decisionmakers to take NO ACTION on VOIP/CALEA until the issue and its impacts on libraries and other public access providers are understood.

Background

The Communications Assistance for Law Enforcement Act (CALEA) was passed in October 1994 to obligate telecommunications carriers to assist law enforcement in executing court authorized electronic surveillance. At the time, Congress was concerned about the privacy and regulatory implications of the Act with respect to emerging Internet applications and drew a bright line between public, circuit-switched telecommunications services (telephony, fax, and the like) and “information services.” Consequently, CALEA applies only to public, switched telecommunication services; it explicitly exempts information services such as Internet services.

This bright line – which has the broad consensus of Congress, the FCC, and the Executive Branch – is becoming increasingly hard to maintain with the advent and rapid growth of Voice Over Internet Protocol (VOIP) services. While the FCC has been loathe to regulate information services, federal law enforcement agencies have grown increasingly concerned about the rise of services to which they feel they should have access, including VOIP and broadband packet-switching services.

Extending CALEA to cover VOIP could have the following impacts on libraries:

- Libraries, library systems, consortia, and even state networks could be required to reengineer their systems and services to be “CALEA compliant.” Libraries and library networks could be required to bear the full cost of this reengineering with no reimbursement.
- No new Internet applications or services could be made available until the Attorney General determines that they are compliant with CALEA.
- Furthermore, depending on how “compliant with CALEA” is defined, libraries could be required to collect and retain more personally identifiable information about their Internet users.

Before implementing any sweeping changes to CALEA, several broad issues must be resolved:

- Legal and policy issues. To broaden the coverage of CALEA would clearly violate the intent and direct wording of the law as passed by Congress. Expanding CALEA would be a step toward regulating the Internet; and the expansion of CALEA would threaten the clear line drawn between regulated and unregulated services.
- Technological issues. The expansion of CALEA as proposed by law enforcement would inhibit the innovation of new Internet services, and could negatively impact the efficiency and security of existing applications. It would present a costly new burden on libraries, schools, and other public institutions at a time of budget constraints.
- Privacy issues. To the extent the re-engineering required under CALEA could require libraries to collect and retain more personally identifiable information about patron use, such data could be deemed business records and thus be exposed to requests under the USA PATRIOT Act.
- Timing: It would do so in a “rush to judgment” that would preclude careful deliberation and a balanced assessment of competing public interests and technological feasibility.

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