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The Internet Kill Switch

According to a recent article in the *Washington Post*, Senate Majority Leader Harry Reid has introduced legislation entitled “The Cyber Security and American Cyber Competitiveness Act of 2011.” This legislation is essentially a placeholder for a bill that could become the Internet Kill Switch law. First introduced in the last Congress by Senator Susan Collins, the Republican ranking member of the Homeland Security and Governmental Affairs Committee, the bill would protect against cyber threats that might cause damage to the Internet. Recent events in Egypt had led to increasing awareness of the power of governments to control access to media outlets.

The American Civil Liberties Union and the American Library Association, among other groups, have filed letters of protest with Congress over this issue. This has become a sort of hot button topic on the Internet with people either seeing this proposed legislation as a threat to their freedom to read or a very real threat against American society that must be protected against. The bill according to Senator Collins would attempt to work with the current Internet commercial providers in shutting down the system in the event of an emergency. The Federal government of course already has the ability to shut down its own computer networks if needed. What they want to do is to control commercial Internet providers such as the existing land line and wireless service providers. Some individuals believe that the government already has this ability using existing legislation and the

administrative authority of the Federal Communications Act and the Interstate Commerce Act. Of course the Alien and Sedition Acts of 1798 are still on the books, but few attempts are made to enforce them.

Some individuals argue that shutting down the net is actually counterproductive in that the net is the very engine that enables the country to function in a modern society. An earlier bill introduced in the last session of Congress would have enabled the President to create a National Center for Cybersecurity and Communications (NCCC) tasked with insuring the reliable operation of the Internet in times of national emergency. The NCCC would have the ability to determine what “owners and operators” of “covered critical infrastructure” would be under their control. Detractors of the bill have suggested that the NCC better define what elements of society would actually be under their jurisdiction. Under the bill the NCCC could compel these unspecified “owners and operators” to take “undefined actions” for a renewable thirty day period. Concern is also expressed over the bill regarding First Amendment rights. Hopefully future legislation would more narrowly restrict these actions to those which the government has a compelling national security interest and would be the most restrictive possible on that infringement. The proposed bill would also require “owners and operators” to share “incident” information with the Department of Homeland Security and the law enforcement and intelligence community.

To refute critics of the bill the Committee on Homeland Security and Governmental Affairs, chaired by Joseph Lieberman, issued a white paper on 23 June 2010 that attempted to dispel some common myths about the Protecting Cyberspace as a National Asset Act of 2010. The paper claims that the bill “rather than granting a ‘kill switch’ makes it less likely for a President to use the board authority he already has in current law.” It was further noted that the bill “expressly prohibits the Secretary [of Homeland Security] from identifying systems or assets as covered critical infrastructure ‘based solely on activities protected by the first amendment of the United States Constitution.’” The paper goes on to deny the fact that the President would have additional authority to conduct surveillance or to further regulate the Internet outside of a private/public “partnership.”

Clearly from the rhetoric expressed there is considerable disagreement over just exactly what the 2011 bill would allow. As mentioned earlier, the President probably already has sufficient authority to control the critical flow of information on the Internet under present legislation. The critical task will be to construct a bill that limits the existing authority in such a way that promotes Internet security and at the same time protects First Amendment rights. As always we will need to be vigilant to protect these essential rights. Recent events in Egypt have shown what a regime set on controlling a society can do.