



## BUSINESS

**Internet industry wary of wiretap plan; Critics fear online interception requirements would be stifling.**

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SAN JOSE, Calif. -- Before 8x8 Inc. launched an Internet phone service in late 2002, it drafted a business plan, set up its equipment, posted a Web site, and began taking orders from customers. As with most online ventures, U.S. government approval was not needed.

That would change if the Department of Justice succeeds in persuading federal regulators to require new online communications services - such as Internet calling - to comply with wiretapping laws.

Critics, including some online businesses that are working with authorities to make their services wiretap-capable, say the Justice Department proposal is not just unprecedented and overzealous, it is also dangerously impractical.

It would chill innovation, they say, invade privacy, and drive businesses out of the United States.

"No one in the Internet world is going to support this," said Bryan Martin, chief executive officer of 8x8, which sells the Packet8 phone service. "It's counter to everything we've done to date in terms of building the Internet as a free, anonymous and creative place."

The Justice Department, the FBI and the Drug Enforcement Administration are seeking what they call a clarification to a wiretap law called the Communications Assistance to Law Enforcement Act.

The 1994 law requires telecommunications carriers to ensure equipment is capable of being tapped when there is a lawful order. It did not expand wiretap authority but tried to ensure that new technologies are capable of intercepting calls on par with the regular phone network.

The Justice Department says that, as the nature of telecommunications changes, it is simply not working.

Without citing examples, the agency's lawyers say some providers of new communications services are not complying and, as a result, surveillance targets are being lost and investigations hindered.

"These problems are real, not hypothetical, and their impact on the ability of . . . law enforcement to protect the public is growing with each passing day," according to a petition sent to the Federal Communications Commission recently signed by Deputy Assistant Attorney General John G. Malcolm and colleagues from the FBI and the DEA.

The petition seeks a rule stating that providers of high-speed Internet access are covered by the wiretap law - as well as communications services that displace traditional phone companies.

It argues, in effect, for establishing a government approval process that would be required before any new communications services launch.

"If the FBI had this power all along, would we even have the Internet today?" said Lee Tien, senior staff lawyer at the Electronic Frontier Foundation.

At the crux of the debate is the fact that communications technologies once tied to telephone carriers' circuit-switched networks are no longer necessarily so.

Critics say the petition violates the spirit of the original law by seeking to broaden the definition of "communications carriers" to include what amount to information-service providers.

The law thus could apply not only to Internet phone systems but also to voice-enabled instant messaging, e-mail and even gaming consoles - anything that could replace old-fashioned phone calls.

Currently, the debate is centered on Voice over Internet Protocol (VoIP) services, an increasingly popular technology that converts voice calls into data packets and streams them over the Internet.

In some cases, wiretapping simply is not possible. In others, it appears to be but has not been fully tested. In all cases, companies say they do not want to trot out new services through the federal bureaucracy before releasing them.

"Let's just say if I had to get prior approval from this government, I probably would have taken my services to other governments," said Jeff Pulver, founder of Free World Dialup. "If I have an idea, I go for it, I build it up, and I do it. Getting permission - I stopped doing that a long time ago."

Pulver's service, which amounts to a directory service that links callers but does not carry the stream of bits from conversations, does not support wiretaps. But such calls could be captured by a caller's Internet-service provider, he said.

When he gets valid subpoenas or court orders, Pulver said he supplies information to authorities. But companies outside the United States would not have to cooperate.

He mentioned Skype, a peer-to-peer-based telephony service with offices in Estonia and Sweden. Unlike major U.S. providers, Skype scrambles conversations, making it nearly impossible to decipher conversations quickly. Skype spokeswoman Kat James, reached via e-mail, declined to comment.

Justice Department officials declined to comment beyond the filing, which requested and appears to have received expedited review by the FCC.

Critics say a dangerous precedent would be set by broadening the law so that it keeps up with future technologies before they are created. "I think you'll start to see applications which have voice components but are not traditionally voice-replacement telephone services," Pulver said. "Does the FBI really want Xbox Live to be tapped?"

PHOTO | PAUL SAKUMA / Associated Press "No one in the Internet world is going to support this," said Bryan Martin, chief executive officer of 8x8, of a petition that providers of high-speed Internet access be required to adhere to wiretap laws.

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