

THE PRACTICAL NOMAD

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The Practical Nomad: How to Travel Around the World (3rd edition, 2004)
The Practical Nomad Guide to the Online Travel Marketplace (2001)
<http://www.practicalnomad.com>

**Testimony to the USA Department of Homeland Security,
Data Privacy and Integrity Advisory Committee
San Francisco, CA, USA
7 June 2006**

Unlike the members of this Committee and of today's panels, my background and expertise are in the travel industry, travel technology, and advocacy for travellers.

There are two sorts of "expectations of privacy": those that people actually have, and those that the law presumes us to have. But by either measure, expectations of privacy in public spaces are not just about our right to be in those places, but about our right to move through them.

"To assemble" is not just to be together but to come together. When we assembled here today from throughout the country, by various means of travel, our journeys were acts of assembly directly protected by the First Amendment.

Freedom to assemble is an inalienable human right, not a privilege to which citizens have to prove our entitlement. We expect that our privacy includes the right to move through public places, on public rights-of-way and by common carriers, without let or hindrance and without demands for government-mandated credentials.

Orders restricting the right to travel should be issued only on the basis of a judicial finding, subject to adversarial challenge and due process. That's what's required -- thousands of times every day -- when someone in imminent danger of domestic violence

seeks an order restraining the right to use the public right-of-way adjacent to their home by someone they believe poses them a danger. No lesser standard should be applied in the case of people alleged to pose a danger in other places.

We also expect that, while our movements may be observed, the government will not "keep a file" on us without due cause.

But given the ease of data mining, and the ease of government access to commercial data, there is no longer a meaningful distinction between event logging and the construction of personal dossiers, or between logs held by private entities and those accessible to the government. To allow unregulated commercial logging of events, especially those identifiable with a time, a location, and an individual (travel reservations being the canonical example), is in effect to allow the operation of a continuous system of universal suspicionless surveillance, in flagrant violation of our expectations of privacy.

Perhaps the most egregious invasion of travellers' privacy comes when we are compelled by the government to provide information to commercial entities, as a condition of the exercise of our right to assemble by common carrier, without any constraint whatsoever on the ability of those commercial entities to retain, use, or sell that data.

I urge this Committee to recognize the centrality of travel to the privacy impact of DHS activities, and to focus your work on the specific issues of the right to assemble, the mandate for travel credentials, the basis and procedures for government orders restricting travel by specific individuals, the retention and use of reservation logs, government mandates for the provision of information to non-governmental entities, and the need for a Federal privacy law applicable to commercial travel data.

I look forward to assisting the Committee in these endeavors.

Sincerely,

Edward Hasbrouck
San Francisco, CA, USA
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