

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 for the record of the hearing
before the U.S. House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Aviation**

17 March 2004

**"The Status of the Computer-Assisted
Passenger Prescreening System (CAPPS-II)"**

Dear Chairman Mica, Ranking Minority Member DeFazio,
and members of the Subcommittee:

As the leading industry expert and consumer advocate on CAPPS-II, I thank the Subcommittee for holding this hearing on "The Status Of The Computer-Assisted Passenger Prescreening System (CAPPS II)", and for the opportunity to submit this written testimony.

The recent GAO report on CAPPS-II has only begun to scratch the surface of the cost and implementation burden that will be imposed on tens of thousands of travel agencies (mostly small family businesses) as well as airlines, reservations services, and providers of reservation software.

The GAO report noted that. "According to the draft Business Case for CAPPS II, the system has an estimated life cycle cost of over \$380 million through fiscal year 2008," but noted that, "Life cycle costs do not include air carrier, reservation company, or passenger costs." The GAO was not charged with, and did not conduct, any further investigation of those future costs, which the travel industry will undoubtedly ask Congress to underwrite and/or reimburse.

According to the GAO report, the TSA has been relying entirely on assumptions about the content of airline reservations based on a sample of only 32 reservations, which is inadequate as a basis for any meaningful understanding or budgeting.

It's critically important for the Subcommittee to understand the cost and privacy implications of the changes in travel industry information technology infrastructure and business procedures that the TSA proposes to require -- *before* proceeding further with proposals that may be impossible or unaffordable to implement in the manner currently conceived by the TSA.

More than a year ago, in my comments on the first Privacy Act notice by the DOT for CAPPS-II, I estimated those costs to industry -- none of which have yet been included in the TSA's budget projections for CAPPS-II -- as likely to exceed US\$1 billion. I also discussed in detail the particular privacy and policy problems inherent in reliance on commercial reservation networks, and a chain of multiple intermediaries, to collect the additional data the TSA proposes to require for CAPPS-II.

Unfortunately, the second Privacy Act notice by the DHS for CAPPS-II not only expanded the data proposed to be required (contrary to the claims by the DHS and TSA to have "narrowed" the data to be used by CAPPS-II) but failed in its purported "analysis of comments" even to acknowledge, much less respond to, any of the comments objecting to the first CAPPS-II notice on the grounds that it is unconstitutional; that it violates the right to travel; that it exceeds the claimed statutory authority; that it failed to include the required economic and small business impact assessments; that it is incompatible with the privacy laws of major air transportation partners of the USA, including the European Union and Canada; and that it failed to satisfy the statutory notice and comment requirements (particularly in failing to identify the many categories of individuals other than passengers about whom airline reservations contain personal information, and failing to specify adequately either what data would be required of whom and when, or the penalties for not providing this).

At the heart of CAPPS-II is the data contained in airline reservations, and at the center of the privacy debate over CAPPS-II is how that reservation data is handled, both by commercial entities and government agencies. These issues have not yet been addressed, and should be.

More than a year after the close of the first comment period, and six months after the close of the second, the DHS still has not even made public the complete record of comments it received, despite conceding that it was the largest number of comments ever received by any agency on a Privacy Act notice.

More importantly, the DHS still has not acknowledged the issues raised by those comments; conducted the requisite economic, small business, and privacy impact assessments; or issued a notice satisfying the requirements of the Privacy Act.

Since the DHS has not dealt with these issues, and since many of them are outside the scope of the investigation the GAO was directed to conduct, it remains the responsibility of this Subcommittee, and the Congress, to conduct its own *de novo* investigation of the economic and privacy impacts of CAPPS-II.

Many of the cost and implementation questions concerning CAPPS-II which have been mentioned in the testimony of other witnesses were first raised in my investigative reporting and consumer advocacy, through my articles, newsletter, Web site, and blog, and in my comments on the CAPPS-II Privacy act notices.

Since those remain the key issues for the Subcommittee, and have not yet been dealt with by the DHS or TSA, I have attached my comments on the two CAPPS-II Privacy Act notices for inclusion in this record, and for the Subcommittee's use in evaluating the likely cost of CAPPS-II, its economic and privacy impact, the validity of the Privacy Act notices, and the desirability of continued testing, development, and deployment of CAPPS-II.

Sincerely,

Edward Hasbrouck

Enclosures:

Comments Re: Docket Number DHS/TSA-2003-1, Passenger and Aviation Security Screening Records (PASSR), 30 September 2003 (pp. 1-29)

Comments Re: Establishment and Exemption from the Privacy Act of Records System DOT/TSA 010, Aviation Security-Screening Records (ASSR), 23 February 2003 (pp. 30-54)