



# WARREN'S Washington Internet Daily

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## Today's News

**BUSH'S IT BOARD** told govt. isn't providing needed funding for cybersecurity R&D. PITAC hears from new group responsible for long-term research. (P. 1)

**SPAM ENFORCEMENT** hampered by U.S. obstruction of worldwide MOU proposal at WSIS, says leader of IETF's Anti-Spam Research Group. (P. 2)

**BROADCAST FLAG** licensing provisions could create monopolies for technology owners, anti-trust group says. Nonassertion provisions cited. Baseball, NFL worried about TiVo, RealNetworks. (P. 3)

**AGENCIES:** 'Growth hormone' spammer shut down by FTC... NTIA announces website for right-of-way clearance. (P. 4)

**E-VOTING:** Miami-Dade loses record of 2002 gubernatorial primary. (P. 4)

**INTERNATIONAL:** Cyberguard will secure Saudi Arabian Monetary Agency. (P. 5)

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## White House IT Advisors Told Govt. Cybersecurity R&D Funding Falls Short

A White House-appointed IT advisory panel was told Thurs. that govt. funding of cybersecurity R&D is insufficient. The Cybersecurity R&D Act of 2002 authorized "just short of \$1 billion" over 5 years to spur academic research, said Information Technology Assn. of America Harris Miller at a public meeting of the President's IT Advisory Committee (PITAC) cybersecurity subcommittee. "The amount that's been appropriated since then? Zero." But PITAC also heard from the chairman of a new cybersecurity research group created by the 2002 Act, and Joel Birnbaum said the new group is already scouring the country to see where the \$900 million, if appropriated, could be spent.

"Is there sufficient government focus and funding" for cybersecurity, Harris asked: "The short answer is no." "Government has to step up to the plate," Miller told the subcommittee, which held its meeting in conjunction with the Govt. Security Expo & Conference (GovSec). Private-sector R&D is focused on quarterly returns, he said, and academia is a logical place for cybersecurity research to occur. But he said those researchers need federal seed money, which will start the research and allow them to reach out for private-sector partners later on.

Birnbaum said his new group of 17 members — comprised of IT professionals, lawyers, financial institution representatives and others with a stake in cybersecurity — is focused on the "R" in R&D. Development involves "problems many others are working on," he said, while the Committee on Improving Cybersecurity in the U.S. will look at long-term research not just on improved IT solutions but on how they can be paired with better physical security and increased cybersecurity awareness. Birnbaum spent about 20 years as head of research at Hewlett-Packard; companies such as Cisco, Microsoft and Symantec have executives as members, he said.

Miller also emphasized the importance of increased awareness. "Almost every company has a cognizance of the importance of this issue," he said, but frequently it's "number 11 on a 10-item list of things a company has to do." Miller also cautioned that while looking for cybersecurity solutions is important, IT experts are in an "arms race" with those looking for vulnerabilities: "I cannot imagine a time when people will not be concerned with cybersecurity."

The new committee first met in person this week, 2 years after passage of the 2002 Act that called for its creation. Birnbaum said the statute calls for it to work with the National Institute of Standards & Technology, the National Science Foundation, and the Defense Advanced Research Projects Agency. The committee is housed with the National Research Council. Birnbaum said it's also working closely with the U.S. Computer Emergency Response Team (US-CERT) at the Dept. of Homeland Security. The committee will make recommendations to its statutory agencies and Congress. The committee aims to develop ideas that business will want to adopt "for reasons of avarice," namely that improved cybersecurity will improve the company's bottom line. But he said "we're not interested in producing another academic study... that sits on a bookshelf."

The PITAC Cybersecurity Subcommittee is collecting information for a report it hopes to release in Jan. 2005. Subcommittee Chmn. Thomson Leighton of Akamai Technologies said the goal is to have a draft of the report available at its next public meeting, in Oct. At this public meeting, Miller and Birnbaum were invited to speak. Only 2 people approached the microphone during the public comment portion. One directed the subcommittee to a Dartmouth U. study aimed at helping local law enforcement fight cybercrime, while the other gave a lengthy diatribe against outsourcing and underfunded IT education training, among other topics. — *Patrick Ross*

### Law vs. Technology

## **U.S. Must Get Agencies on Same Page on Spam Cooperation, Says IETF Leader**

MILLBRAE, Cal. — The State Dept. has obstructed international cooperation needed to fight spam, putting it at cross-purposes with FTC enforcement, said co-chair John Levine of the Internet Research Task Force's (IETF) Anti-Spam Research Group. Less developed countries at the World Symposium on the Information Society (WSIS) in Geneva supported a global memorandum of understanding to promote enforcement of existing laws, but wealthier countries were less enthusiastic and the U.S. delegation was "completely unhelpful," Levine said Thurs. The position demonstrated lack of coordination across U.S. agencies, he said at a conference here organized by the Institute for Spam & Internet Public Policy.

The CAN-SPAM Act is "pathetic" compared to EU law, Levine said. Much spam comes from U.S. companies "that should know better," whereas except for a little U.K. spam, no unwanted commercial e-mail comes from legitimate European firms, he said. Weak U.S. enforcement is improving, but "the current Congress has an allergy to anything like a private right of action," Levine said.

Jean-Christophe Le Toquin, a European lawyer for Microsoft, stressed the need for a European database of consumers' spam complaints. These are critical because European law protects individuals but doesn't enable prosecutions on behalf of ISPs, and users — cynical about prospects for denting spam — have little incentive to complain, he said. Microsoft started campaigning at an OECD meeting in Brussels last year for complaint databases for each European nation, but ran into cost objections, Le Toquin said. The company switched to advocating a regional database because a larger information pool would be more cost effective, he said. But over time, such a database shouldn't be broadened beyond Europe, he said. Generating consumer complaints is important in influencing the thinking of everyone from users and spammers themselves to businesses, law enforcement and judges — as well as for enabling legal action, he said. Microsoft's European efforts have shown enforcement to be an effective deterrent against spammers, who are generally smaller and less specialized than U.S. counterparts, Le Toquin said.

In a survey of 100 businesses, 76% in the U.S. and 63% elsewhere said technology will be more effective than laws in stopping spam, said Michael Osterman of Osterman Research, which did the study. But only 45% of U.S. companies and 25% of other firms thought technology would solve almost the entire problem, he said: "The best anti-spam legislation can stop no more than five percent of spam. The worst spam-blocking technology stops at least 80% of spam." The U.S. govt. has the main responsibility for stopping spam, according to 44% of foreign respondents, but only 27% of American companies surveyed. The U.S. and EU should be jointly responsible, said 41% of U.S. respondents and 59% of those elsewhere.

In the debate over spam laws vs. technical solutions, "my general viewpoint is you need both," Levine said. "You need technologies to make laws more enforceable." But the "vast majority of spam is just plain fraudulent"

under existing laws in all countries, he said. Still, the WSIS meeting showed “people are kind of floundering” in the spam fight, he said.

So the top priority should be improving international enforcement cooperation — which in the case of less-developed countries often would require a great deal of technical education of ISPs, enforcement authorities and courts, Levine said: “They really don’t know how to deal with it.” It wouldn’t be a stretch for the ITU’s development arm to attack educational and standardization, he said. A meeting of IETF next week will indicate how promising are the prospects of the group’s collaboration with ITU against spam, Levine said. ITU would be a potent ally, because if it incorporated IETF standards it could get govts. to adopt them, he said.

Fortunately, at least the motivation for action has increased in less developed countries, Levine said. Instead of regarding spam as a way of leveling the playing field in competition against big foreign enterprises — if they expressed a view on spam at all — these countries now think “spam is awful; spam is killing us,” Levine said. Internet users “pay by the bit” for Internet access, so users are shelling out to be spammed, he said. Unwanted e-mail is deterring development of e-govt. and the Internet generally, he said. In countries like Russia, Romania and Ukraine — with a volatile mix of bad economies and many highly skilled people — writing bad code needs to become less attractive financially compared to other opportunities through a combination of economic development and law enforcement, Levine said. Countries like China and to a lesser extent Brazil present the challenges of ineffective govt. regulation confronting high levels of Internet activity, he said.

A recent memorandum of understanding among the U.S., U.K. and Australia on spam enforcement is a step toward coordination and standardization of terms, Levine said. Smooth communication and logistics is key to effective enforcement against spammers because they can mean the difference between swift prosecution and violators slipping away, he said. Spam laws can’t be uniform across all countries because, for instance, French and German anti-Nazi laws don’t jibe with the First Amendment, Levine said. But model laws can promote common definitions of concepts such as forged e-mail, which “would make it much easier to serve subpoenas back and forth” across borders, he said. This is another area where the international standards bodies can be effective, Levine said. — *Louis Trager*

## **NFL, Baseball Worried**

### **Antitrust Group Says Broadcast Flag Licensing Could Lead to Monopolies**

The FCC shouldn’t give “a perpetual position of market power” to owners of broadcast flag patents in its broadcast flag proceeding, the American Antitrust Institute (AAI) said in a study filed with the Commission. The study was part of a wave of presentations to the FCC in advance of next week’s expected broadcast flag action (CD July 29 p5). Meanwhile, Major League Baseball (MLB) and the NFL said the FCC shouldn’t approve proposals to use TiVo, RealNetworks and others to distribute programming via the Internet without adequate proximity controls.

The competitive issues are raised by several provisions of the agreements that companies would have to sign to use the broadcast flag technology, notably the nonassertion provisions, according to Jonathan Rubin. He wrote the report for Washington-based AAI, which calls itself independent, nonprofit, and an alternative to conservative think tanks. The nonassertion provisions mean a person buying the broadcast flag technology license couldn’t benefit from any of its own patents, even if it later determined that they were improperly included in the broadcast flag technology itself, Rubin said. Licensees also wouldn’t be able to benefit financially from improvements they make to the broadcast flag technology. Patent-holders say the nonassertion provisions are needed to prevent licensees and others from improperly blocking use of the flag, but the AAI said the provisions “go far beyond what is necessary.”

Several provisions of the content protection licenses are “anticompetitive, and in fact, are aberrant and atypical,” the AAI said in an ex parte filing. It said they may violate the Sherman Antitrust Act, and the “monopoly” owners of the flag technology could “use their market power to stifle competition.”

Antitrust protections for broadcast flag “can be feasibly adopted” as a precondition to approving the flag technology, AAI said, and “the potential anticompetitive harm from failing to do so greatly outweighs the cost of any

delay that may arise.” It said the FCC “has a public interest duty to perform a competitive analysis” of the content protection market.

But the FCC “may not have the expertise to decide the competitive effect” of the nonassertion provisions, Rubin told us. At the same time, the FTC and Justice Dept. are working on policies involving the relationship between intellectual property and antitrust, he said; the FCC could be effectively preempting that long-delayed study by ruling on the broadcast flag. The bottom line, Rubin said, is that the govt. needs to do a competitive analysis of the flag: “We don’t care who does it.”

The analysis doesn’t have to significantly delay the broadcast flag, Rubin said. He said FCC options might include: (1) Approving the flag with the condition that the nonassertion provisions get further antitrust approval. (2) Including a provision sunsetting the nonassertion provisions after a year or so. (3) Delaying the flag approval briefly pending the competitive review.

The NFL and MLB said they support the broadcast flag but object to proposals by TiVo and others that would allow TiVo owners to use the Internet to distribute TV shows to up to 19 other persons. NFL Comr. Paul Tagliabue called the TiVo plan a “very important issue” that would endanger the current system of only providing game broadcasts to specific regions: “We could even be forced to rethink our strong preference for keeping most of our games on free broadcast television.”

TiVo-based redistribution of TV programs is different from mass redistribution such as that of iCraveTV, Tagliabue acknowledged, but he said “hundreds or thousands of TiVo subscribers making content available to up to 19 people each... would add up to widespread, and we believe ‘indiscriminate,’ redistribution very quickly,” resulting in “widespread copyright infringement schemes.”

Sports bars and others could use the Internet redistribution to get free access to programming they’re not otherwise entitled to, without paying regular fees, MLB said in its ex parte filing. MLB and the NFL said the problems could be largely solved by requiring “proximity controls,” which would use credit card or other authorizations to assure that programming isn’t being distributed outside the region it’s meant for. — *Michael Feazel*

## Agencies

A Chicago federal court issued an order halting spamming by Creaghan Harry, who the FTC said sold bogus “human growth hormone” products over the Internet. The FTC said Harry sent as many as a million spam messages and consumers forwarded about 40,000 complaints linked to him to the FTC from Jan. to May of this year.

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Anyone seeking a right-of-way (ROW) on federal lands or waterways can now go to an NTIA-managed website for information. Many federal agencies have jurisdiction over lands and waterways, and NTIA has sought to streamline ROW permitting. The site — [www.ntia.doc.gov/frowsite/index.html](http://www.ntia.doc.gov/frowsite/index.html) — was announced Thurs. and described in an NTIA statement as part of President Bush’s effort to promote broadband. Administration officials Wed. listed federal ROW streamlining as one of several administration initiatives. They cited an agreement to coordinate on ROW that NTIA crafted with federal agencies this spring. That NTIA effort was followed by a Presidential directive instructing agencies to comply. NTIA Dir. Michael Gallagher called the website “the first step in a government-wide effort to simplify and streamline rights-of-way processes at the federal, state and local level.” The NTIA initiative has focused on federal ROW. State and local organizations have expressed strong resistance at federal efforts to curtail local ROW authority. The site was one of the recommendations from the Federal Rights-of-Way working group, and a referral page from the FirstGov.gov site will be created, NTIA said.

## E-Voting

The records for the 2002 Democratic gubernatorial primary in Miami are missing, a situation that was discovered only after the citizen’s group Miami-Dade Election Reform Coalition (MDERC) sought the re-

cords as part of its campaign to create awareness of what they call the unreliability of electronic voting machines. The 2002 primary, a close one in which former U.S. Attorney Gen. Janet Reno lost and briefly considered asking for a recount, was the first in Fla. to use the new electronic machines that were installed in large part because of the controversy that arose from the 2000 presidential-election. “This is so incredibly crucial,” said Lida Rodriguez-Taseff, counsel for MDERC. “The Secretary of State and Governor are saying ‘we know the election data is O.K.’ but the only proof is the [missing] audit logs and that proof is now gone. How many times can we say ‘oops’ in Florida?” Most striking, Rodriguez-Taseff said, is the coincidental nature of the crashes that caused the records to disappear. The Miami-Dade Dept. of Elections has refused to release specific dates or causes of the crashes. “What’s fishy is that two separate crashes coincide with the discovery of problems in prior elections,” Rodriguez-Taseff said, indicating that legal action is possible if election officials don’t make the information public. “Everyone seems to have access to these computers except for the voters,” she said. Miami-Dade elections officials wouldn’t comment. — *IM*

## International

Security firm CyberGuard won the rights to provide firewall security for the Saudi Arabian Monetary Agency, which serves as the kingdom’s central bank and banking supervisor, it said. The software will protect transactions for bill payment and ATM machines. CyberGuard has provided security for Saudi Telecom since 2002.

## Copyright

Comparing RealNetworks to a hacker, Apple Computer issued a scathing response to the software company’s move to unlock Apple’s proprietary technology and make it possible for people to listen to music in RealNetworks’ digital file format on iPod devices. RealNetworks — rebuffed in efforts to license Apple’s FairPlay copy protection software — adopted “the tactics and ethics of a hacker” with the release earlier this week of its Harmony software, Apple said. Harmony allows songs sold through RealNetworks’ online store to be played on a variety of portable devices, including Apple’s iPod and Microsoft-compatible rivals. Apple threatened to block access to the iPod using Harmony the next time it updates the software used to run the device. Apple last week unveiled the 4th-generation of its iPod digital music player. “It is highly likely that Real’s Harmony technology will cease to work with current and future iPods,” Apple said in its statement. Apple said it’s investigating the implications of Real’s software strategy under the Digital Millennium Copyright Act (DMCA) and other laws. The DMCA broadly restricts bypassing of copy-protection technologies used in DVDs and in some music CDs and software programs. RealNetworks has been selling songs from its digital song store since Jan., but the files previously could be played only on a few portable devices. Apple has refused to provide licenses to companies seeking iPod compatibility, and RealNetworks didn’t seek permission before releasing the software.

## Domain Names

Agencies owning a .gov domain will face an increased one-year renewal rate of \$125 effective Sat., the GSA said. The rate will also apply to new registrations. GSA said the .gov registry, Internet Domain Registry, was increasing the fee because demand has exceeded initial expectations. GSA a little more than a year ago opened up .gov to state and local govts. and Indian tribes, said GSA Deputy Assoc. Administrator-E-Govt. Mary Mitchell in a statement. She said such domains now make up “almost 60% of the active 3,400 public entities” using .gov. Commercial registries advertise one-year registration for .com, .org, .us, .biz and .info domains for as little as \$5.95 annually. But GSA said those registries needn’t adhere to “the costly, stringent, federal authentication standards, and they can sell advertising space and other commercial Web-hosting services to defray costs.”

## Industry Notes

Two standards bodies have agreed to collaborate on mobile Web standards. The World Wide Web Consortium (W3C) and the Open Mobile Alliance (OMA) Thurs. announced a memorandum of understanding (MoU) aimed at development, adoption and standardization of new features for mobile devices connecting to the Web. W3C Interaction Domain Leader Philipp Hoschka said in a statement that the MoU would lead to increased compatibility and aid repurposing of Web content. W3C has created common protocols for Web use, while OMA focuses on wireless standards.

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DSL providers will maintain their lead over cable operators in gaining high-speed data (HSD) subscribers, as the “winback of UNE-P could fuel even higher DSL growth rates,” UBS said in a report. It said the carriers that had released their 2nd-quarter financials so far represented more than 75% of the industry’s net additions, and it estimated DSL providers would add about 54% of the industry’s HSD subscribers, up from 51% in the first quarter and 42% a year ago. It estimated that DSL providers added about 930,000 HSD subscribers in the 2nd quarter, which it said was down 20% sequentially, but up 47% annually. That compares to estimated 800,000 cable modem additions in the quarter, which it said was a 29% sequential and 11% annual decline. “We continue to believe the Bells are extremely focused on DSL penetration, which stood at 18% of primary residential lines at SBC, 15% at BellSouth and 11% at Verizon,” UBS said: “We believe the Bells are positioned well to keep the momentum going, and expect the net data additions of the 2nd half to surpass the first half.”

## Internet People

Comr. of Trademarks **Anne Chasser** resigns, effective Sept. 1... **Ben Scott**, ex-Bell Atlantic, joins 724 Solutions board... The National Academy of Recording Arts & Sciences promoted **Wayne Zahner** to CFO.

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