

Radio Act of 1912 [Public-No 364 - 62d Congress] [S 6412] Aug 13, 1912

An Act to Regulate Radio Communication

1 p 7 " President of the United States in time of war or public peril or disaster may cause the closing of any station for radio communication ... or may authorize the use or control of any such station or apparatus by any department of the gov Government, upon just compensation to the owners."

2 p 8 " No person or persons engaged in or having knowledge of the operation of any station or stations shall divulge or publish the contents of any messages transmitted or received by such station, except to the person or persons to whom the same may be directed, or their authorized agent, or to another station employed to forward such message to its destination, unless legally required so to do by the court of competent jurisdiction or other competent authority."

penalty not more than 250.00 or 3 months or both

p 9 "That a person, company, or corporation within the jurisdiction of the United States shall not knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent distress signal, or call, or false or ~~fraud~~ fraudulent signal, call, or other radiogram of any kind "

\$2500.00 or 5 years or both

No radio reception

[Public Resolution - No. 38 - 65th Congress] [H J Res 309] Jul 16, 1918

Resolved, ... in Congress assembled, that the President during the continuance of the present war is authorized & empowered, whenever he shall deem it necessary for the national security or defense, to suspend or take possession of, & assume control of any telegraph, telephone, wireless cable, or radio system or systems, or any part thereof, and to operate the same in such manner as may be needful or desirable for the duration of the war, which ... shall not extend beyond the date of the proclamation by the President of the exchange or ratifications of the treaty of peace

[Public Resolution - No 98 - 66th Congress] [S. Res 170] JUN 5, 1920

Section 3. That all stations owned and operated by the Government, except as herein provided, shall be used and operated in accordance with the provisions of the Act of Congress entitled "An Act to Regulate Radio Communication" approved August 13, 1912.

[Public No 632-69th Congress] [H R 9911]

Feb. 23, 1927

An Act For the regulation of radio communications, and for other purposes.

1. Established the Federal Radio Commission

p 272 Sec. 6 Radio stations belonging to & operated by the U.S. are not subject to sections 1, 4, 5 of this act. (nothing too weird)

222 3 Sec. 6 - Delegation of war, peril powers to the President - also in order to preserve the neutrality of the United States, ...

p 29 Sec 27 - "No person receiving or assisting in receiving any radio communication shall divulge or publish the contents, substance, purport, effect, or meaning thereof except through authorized channels of transmission or reception to any person other than the addressee, his agent, or attorney, or to a telephone, telegraph, cable, or radio station employed or authorized to forward such radio communication to its destination, or to proper accounting or disbanding officers of the various communication centers over which the communication may be passed, or to the master of a ship under which he is serving, or in response to a subpoena issued

* by a court of competent jurisdiction, or on demand of other lawful authority; and no person not being authorized by the sender shall intercept any message and divulge or publish the contents, substance, purport, effect, or meaning of such intercepted message to any person; and no person not being entitled thereto shall receive or assist in receiving any radio communication and use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto; and no person having received such intercepted radio communication or having become acquainted with [p 30] the contents, substance, purport, effect, or meaning of the same or any part thereof, knowing that such information was so obtained, shall divulge or publish the contents, for his own benefit or for the benefit of another not entitled thereto.

1927

30 Sec 28 same provision about false, fraudulent calls

~~Section of provisions~~ ^B ~~Section~~

31 Sec 32 Violating restrictions of FRC or int'l treaty etc \$500.00 fine

Sec 33 Violating the provisions of the Act itself = \$5000.00 or 5 years or both.

Sec 35 The Act shall not apply to Philippines or Canal Zone. In international radio matters they need to be represented by the Sec of State.

32 Sec 37. Repeals

1 Radio Act of 1912

2 Joint Resolution Jun 5, 1920

[Public - No 793 - 70th Congress] [S 5550] Feb 21, 1929

An Act to authorize the purchase by the Secretary of Commerce
of a site, and the construction and equipment of a building thereon,
for use as a constant frequency monitoring radio station, and
for other purposes

a constant frequency monitoring radio station.

[Public - No. 416 - 73^d Congress] [S. 3285] Communications Act June 19, 1934

An Act To provide for the regulation of interstate and foreign communication by wire or radio, and for other purposes.

1. Established the Federal Communications Commission

p. 49 2. Section 2 (a) Provisions of the Act apply to all communication originating or received in US & to all persons ~~in~~ engaged within US in such communication; but does not apply

p. 50 sec. 3 f. ~~to persons~~ persons in the Philippines or Canal Zone.
foreign communication = communication or transmission from or to any place in the US to or from a foreign country, or between a station in the US and a mobile station located outside the U.S.

g. US = States & territories & District of Columbia & possessions of US - but does not include Philippines or Canal Zone.

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P. 69 Sec 305 Radio stations belonging to & operated by US are
not subject to Sections 301 & 305 of this act Same as 1927

P 78 Sec. 325

⊗ false signals now limited to false or fraudulent
distress signals or communication relating thereto.

P. 89 Violation of provisions of this act ^{\$} 10,000.00 or 2 yrs or both
" " FCC rules ^{\$} 500.00 fine.

P 90 Radio act of 1927 repealed Sec. 602
(as amended)

p 92

Communications Act (#2)

1934

Sec 605 Unauthorised publication of communication



Specifically the same as 1927 Radio Law
intercept

Sec 606 p. 93 War Emergency - Powers of the President
Same prohibitions as previously enacted

[Public - No. 97 - 75th Congress] [Chapter 229 - 1st Session] [S. 598] May 20, 1937

An Act To amend the Communications Act of 1934, approved June 19, 1934, for the purpose of promoting safety of life and property at sea through the use of wire and radio communications, to make more effective the International Convention for the Safety of Life at Sea, 1928, and for other purposes.

p. 101 Sec 5. Paragraph (m) of Sec 303 amended as follows:

(D)... or has knowingly transmitted —

(1) false or deceptive signals or communications, or
(etc)

[Public - No 659 - 76th Congress] [Chapter 422 - 3d Session] [S 3018] June 25, 1940

An Act To amend section 210 of the Communication Act of 1934 -
 so as to permit communication utilities to contribute free services
 to the national defense

p. 119 Sec 210 (b) Nothing in this Act or in any other provision of law
 shall be construed so prohibit common carriers from rendering
 to any agency of the Government free service in connection
 with the preparation for the national defense; Provided, that
 such free service may be rendered only in accordance
 with such rules and regulations as the Commission
 may prescribe therefor."

[Public Law 413- 77th Congress] [Chapter 18- 2^d Session] [H.R. 6263] Jan 26, 1942

An Act To amend Section 606 of ^{the} Communications Act of 1934 for the purpose of granting to the President, in time of war or threatened war, certain powers with respect to communications by wire.

subsection(d)

p. 123

President proclaims a state or threat of war, & deems it necessary in the interest of national security & defense, may during a period ending not later than six months after the termination of such state or threat of war and not later than such earlier date as the Congress by concurrent resolution may designate, (1) suspend or amend the rules and regulations applicable to any or all facilities or stations for wire communication within the jurisdiction of the United States as prescribed by the Commission, (2) cause the closing of any facility or station for wire communication & the removal therefrom of its apparatus & equipment, or (3) authorize the use or control of any such facility or station & its apparatus & equipment by any department of the Government under such regulations as he may prescribe, upon just compensation →

to the owners

P 123 (g) "Nothing in subsection (c) & (d) shall be construed to authorize the President to make any amendment to the rules and regulations of the Commission which the Commission would not be authorized by law to make, & nothing in subsection (d) shall be construed to authorize the President to take any action the force & effect of which shall continue beyond the date after which taking of such action would not have been authorized."

Supreme Court of the U.S. No. 190- October Term, 1937

Frank Carmine Nardone, et al., Petitioners vs. The United States of America
 [Dec. 20, 1937] Mr. Justice Roberts delivered opinion of court.

p.1. "The importance of the question involved - whether, in view of the provisions of section 605 of the Communications Act of 1934, evidence procured by a federal officer tapping telephone wires and intercepting messages is admissible in a criminal trial in a United States District Court, - moved us to grant the writ of certiorari.

p.2. Witnesses gained evidence by intercepting messages by tapping telephone wires. Lower court admitted the evidence and defendants convicted.

p.2. S. Court then reviewed section 605 of C.A. of 1934

p.2. "Taken at face value the phrase 'no person' comprehends federal agents, and the ban on communication to 'any person' bars testimony as to the content of an intercepted message. Such an application of the section is supported

by comparison of the clause concerning intercepted messages with that relating to those known to employees of the carrier. The former may not be divulged to any person, the latter may be divulged in answer to a lawful subpoena.

P 2. The S.C. ~~sup~~ reviews gov't case - 1) Congress did not intend to prohibit tapping wires to procure evidence, 2) S.C. in *Olmstead v U.S.*, 277 U.S. 438, held such evidence admissible at common law despite the fact that a state law made wire-tapping a crime, § 3); that since the *Olmstead* case dep't of the federal gov't, w/ knowledge of Congress, have permitted agents to tap wires in aid of detection & conviction of criminals. 4) it is shown that in spite of its knowledge of the practice, Congress refrained from legislation outlawing it, and bills, so providing, have been introduced 5) the C.A. of 1934, it is claimed, was passed only for the purpose of reenacting the provisions of the Radio Act of 1927 so as to

#2

S.C. Decision 1937

make it applicable to wire messages & to transfer jurisdiction over radio & wire communications to FCC &:: phrasing ought not to be construed as changing the practically identical provision on the subject which was part of the 1927 RA when *Almohad* case decided.

p.2.

"We nevertheless face the fact that the plain words of section 605 forbid anyone, unless authorized by the sender, to intercept a telephone message, and direct in equally clear language that 'no person' shall divulge or publish the message or its substance to 'any person.'" "To recite the contents of the message in testimony before a court is to divulge the message. The conclusion that the act forbids such testimony seems to us warranted by the government's arguments.

p.3.

S.C. agreed to govt's arguments #3, 4, & 5 "But these circumstances are, in our opinion, insufficient to overbear the plain mandate of the statute."

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p 3 SC in response to argumentth 1. The answer is that the question is one of policy. Congress may have thought it less important that some spenders go free than that Nixon should resort to methods deemed inconsistent w/ ethical standards of destructiveness of personal liberty. Some considerations may well have ^{moved} ~~prompted~~ Congress to adopt Section 605 as evolved the guarantee against practices & procedures violative of privacy, embodied in 4th & 5th Amendments to the Constitution.

The canon that the general words of a statute do not include the gov't or affect its rights unless the construction be clear and indisputable upon the text of the act does not aid the respondent. The cases in which it has been applied fall into two classes. The first is where an act, if not so limited, would deprive the sovereign of a recognized or established prerogative, title or interest. A classic ~~example~~ ^{instance} is the exemption of the state from the operation of [p 4] general statutes of limitation. The rule

~~4~~ 3

S.C. Decision 1937

A exclusion of the sovereign is less stringently applied when the operation of the law is upon the agents or servants of the government rather than on the sovereign itself.

The second class - that where public officers are implicitly excluded from language embracing all persons, - is where a reading which would include such officers would work obvious absurdity (speed law to cop or fireman)

For years controversy has raged w/ respect to the morality of the practice of law's depriving of officers to obtain evidence. It has been the view of many that the practice involves a grave wrong. In light of these circumstances we think another well recognized principle leads to the application of the statute as it is written so as to include within its sweep federal officers as well as others. That principle is that the sovereign is embraced by general words of a statute intended to prevent injury or wrong.

The judgment must be reversed & the case remanded to the district court for further proceedings in conformity with this opinion.

So Ordered.

MEMO:

28 Feb. 1949

To: The Chief, Army Security Agency

FM: W.F.F.

Subj: Legislation desired by the Armed Forces

1. Legislation needed to cover 2 fields of concern to armed forces
- 1- obtaining greater security protection for classified cryptologic info
 - 2- legalizing the obtaining, interception, & utilization of international telegrams of interest in connection with ensuring national security
2. Several attempts have been made in recent years to obtain both types of legislation - none was successful
3. S 277 identical to predecessor S 268 of 80th Cong, 2 sessions. Area of protection classified cryptographic & cryptologic information. Singles and cryptographic & cryptologic activities for special treatment.

P2 4. A bill presented as offspring of S 2833 WAF then says - in fact the latter (~~2833~~ 2833) may receive even rougher treatment since it deals "solely with the extremely controversial matter of tampering with Section 605 of the Communications Act of 1934. It would therefore be subjected to the keenest scrutiny on that account alone."

P2 5. However, amendment of Section 605 to eliminate a restriction which operates in peacetime to impede the collection of intelligence required in the interest of national security, was definitely recommended by the Joint Congressional Committee on the Investigation of the Pearl Harbor Attack.

Freedman 1949

p 3 Principal reason why previous attempts to amend Section 605 have failed is that they have been regarded purely & simply as attempts to legalize 1) wire-tapping 2) use of ~~the~~ results of wire-tapping as evidence in prosecutions, both of which are deemed by the public, the Cong as constituting attempts at abridgement of 1st Amendment (freedom of speech.)

p 3 "The Armed Services are not interested in wire-tapping or penetration of us the use of the results thereof in peacetime. They are interested in and vitally concerned w/ obtaining in peacetime from the communications companies copies of certain classes of international communications, and they are also desirous of legalizing peacetime radio intercept of the use of the results thereof in connection w/ the production of signal intelligence of vital importance to the national security.

p 3 S 277 introduced 18 Jun 1949 & referred to Committee on Judiciary not out when WFF wrote this

p.3 New bill to replace S 2833 has not yet cleared Bureau of Budget.

p.4 Conclusions: (among others)

- 2a. Any bills sponsored by the Armed Forces should specifically ~~any~~ eliminate any wording which may imply that they wish to engage in interstate or interstate wire tapping in order to obtain copies of purely domestic communications or to use them in any way whatsoever in peacetime.
- b. Let FBI and/or Justice have ones of fostering such bills (A-D)
- 3- Avoid using words: cryptographic & cryptanalytic in any proposed bills.

Fredman
Fredman proposed a bill.

1949

provided for protection of crypto information

+

amends Section 605 of CA of 1934

See it into International Telecommunication

Treaties Madrid, Paris 1932 & 30.

Subsequent to *Nardone*, the S.C. held that electronically collected evidence was inadmissible where wire was involved, but not otherwise.

[*Silverman v. U.S.*, 365 U.S. 505 (1961); *Berger v. New York*, 388, U.S. 41 (1967).

see also: *Katz v. U.S.* 389 US 347; 88 Sup. Ct. 507; 19 L. Ed. 2d 576 (1967)