

Encryption Top Priority in Export Control Hearing

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Rep. Howard Berman, D-Calif., chairman of the House Foreign Affairs Committee, plans to introduce in March a bill to overhaul federal export-control law, and encryption is a significant issue that the legislation will deal with, a committee aide said. There's "a constant escalation in market requirement[s]" for encryption, and "encryption of a greater strength is going to become essential in Internet communications and satellite-based communications," he said in an interview Friday at a committee hearing on export regulation at Stanford University. The current law gives the government no guidance on complying with the requirements, the aide said.

"Encryption is an important defense for individuals, companies and governments against cyberwarfare and cybercrime, while at the same time shielding communications among terrorists from interception by law enforcement authorities," Berman said. Overall, the law is outdated down to references to the Soviet Union, and the hearing was the committee's first on the subject in seven years, he said. The president needs a great deal of flexibility, because of uncertainties about 'what the situation may be in five years or 10 years' regarding technology and military threats to the U.S. A list soon "becomes outmoded," the aide said. At least two more hearings will be held in Washington before the bill is filed, he said.

The effort dovetails with an administration review of policy being done through the National Security Council by a five-member committee including Defense Secretary Robert Gates and Commerce Secretary Gary Locke, the aide said. That committee's members can be expected to give momentum to Berman's bill, and this prospect "greatly increases the chances that legislation can be passed," he said.

Rep. Dana Rohrabacher, R-Calif., a committee member, provided the most fireworks at the hearing, calling U.S. companies that sell China technology unpatriotic. He said China's recent successful test of an anti-missile system probably traces back to technology transfers, including in Chinese launches of U.S. satellites in the mid-1990s. Many complexities of export controls would be solved through tough restrictions on trade with hostile dictatorships and free trade with friendly democracies, he said. But witnesses -- including John Hennessy, Stanford's president and co-chair of a National Academies' committee that released a report on export controls a year ago -- balked at Rohrabacher's proposal as simplistic. Rohrabacher heaped praise on Google as a 'moral giant' among 'moral pygmies' in U.S. business for standing up to China.

The other representatives at the hearing were Silicon Valley Democrats Anna Eshoo and Zoe Lofgren, neither a member of the committee. Making encryption technology more widely available will help protect information and make the U.S. more competitive economically, Eshoo said. Controls on sales of satellite technology are being handled through a separate measure, Berman told us. His HR-2410 would declare satellites for communications and imagery not to be munitions for purposes of the controls, the aide said. Berman wouldn't discuss where the thinking on handling encryption in the bill is headed.