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SPSIS 010.3
(29/6/44)

HEADQUARTERS ARLINGTON HALL STATION
OFFICE OF THE COMMANDING OFFICER
ARLINGTON VA

102 941

29 June 1944

1 2 in 2021
Gen. Patrick
* Mr. Schuman

Mr. Patrick
3509

Subject: Draft of Proposed Legislation.

To: Lieut. Commander Duke M. Patrick, USNR
Room 2546, Navy Building
Washington, D. C.

1. Draft of proposed legislation, copy of which is transmitted herewith, has been submitted to the several branches of this installation for criticism.

2. A second version of the draft of proposed legislation representing the result of criticisms received is also enclosed herewith.

3. The following criticisms have been submitted:

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~~The~~ The constitutionality of legislation by Congress of the type proposed has been questioned on the ground that it does not come within one of the enumerated powers granted to Congress by Article I, Section 8 of the Constitution, since the statute is intended to operate in time of peace when the Congressional power to provide for the common defense of the United States would be strictly interpreted. It is suggested that for this reason the purpose of the Act be defined so as to come within that specific power. This could be accomplished in the title of the Act.

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who have furnished names and confidential cryptographic and cryptanalytic apparatus

(b) [It is submitted that the proposed draft as received does not cover disclosure of information by persons not employed by the United States or serving in the armed forces. For this reason the qualifying clause has been omitted and the Act broadened to include all persons. This would afford protection against contractors and subcontractors as well as representatives of the press and persons obtaining knowledge through unauthorized sources.

(c) [Considerable expansion in the types of information protected by the proposed draft was ^{would be} necessary in order to protect all activities coming within the purview of this agency, such as radio countermeasures techniques, the use of secret inks, and of microscopic and photographic writing, cryptophonic and facsimile privacy devices and radio intercept

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This raises the problem of securing a general definition of "cryptographic" which will include the above without disclosing their existence.]

(d) A more explicit wording of (5) has been suggested in order to make clear that the disclosure of the subject matter as well as technical details is within the prohibition of the statute.

(e) The words "or by knowledge of" have been inserted at the beginning of the statute in two places following "or access to" in both instances.

A (f) It ~~has been~~ ^{is} suggested that ^{in the proposed draft} the use of the term "or any foreign government" in combination with ~~the~~ ^{the} paragraph 2 which defines "foreign government" is misleading because it obscures our intention to protect information regarding our success in dealing with foreign cryptographic systems and appears to be directed toward protection of foreign cryptographic systems.] It is considered, however, that a clarification of this point would over-complicate the wording of the proposed draft.

For the Commandin, Officer:

Floyd W. Tomkins, Jr.
1st Lt., Signal Corps
Legal Assistance Officer

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