

Report to the Nevada Technological Crimes Advisory Board (TCAB)
From
the Technical Privacy Subcommittee
By
Hal Berghel, Subcommittee Chair

1. Background: The Technical Privacy Subcommittee was created by TCAB on September 5, 2013, and the members were appointed by Attorney General Cortez Masto on October 18, 2013. The mission of the Subcommittee is “to (1) make recommendations to the Nevada Attorney General and Technological Crime Advisory Board; (2) to monitor changes in international, federal, and state policy and legislation regarding technical privacy protections; and (3) serve an advisory function to the Nevada Attorney General and Technological Crime Advisory Board regarding the protection of personal privacy as it relates to technology in Nevada including, but not limited to, medical data, financial information, location information, and communication.” The initial Subcommittee members were: Hal Berghel, Prof. of Computer Science, UNLV (chair); Stephen Bates, Assoc. Prof of Journalism, UNLV; Dennis Cobb, consultant and former Deputy Chief of LVMPD; James Earl, Cyber Counsel for the State of Nevada; James Elste, CEO Cognitive Extension, Inc.; Allen Leichtenstein, General Counsel, ACLU of Nevada; Ira Victor, Digital Forensic Examiner, Data Clone Labs. The assigned legal counsel is Brett Kandt, Special Deputy Attorney General and Executive Director of TCAB.
2. The first “organizational” meeting was convened by conference call December 6, 2013. At that time several strategic and tactical topics were brought before the Subcommittee for consideration including:
 - a. The latitude of states to expand constitutional privacy protections to citizens
 - b. Possible legislation that might expand the news shield privilege under NRS 49.275
 - c. Possible legislation to expand state racketeering statutes NRS 207.360-.400] to include (possibly amended versions of) NRS 205A.040 and/or NRS 205.473-513.
 - d. Possible revisions to the State of Nevada Online Privacy Policy
 - e. Possible legislation to expand the State encryption Policy
 - f. Possible legislation to prohibit Internet Service Providers from lowering the level of security/privacy without explicit customer notification
 - g. Possible legislation to prohibit sale of security/privacy software that has been hobbled to lower protections below the level advertised
 - h. Possible legislation to prohibit sale of software that has (a) known security limitations, or (b) back doors without complete disclosure in the end user license agreement (EULA)
 - i. Possible legislation to prohibit the operation of updating services (aka “drizzlers) for any purpose other than those disclosed to the end user
3. The second meeting was convened in-person via telecom facilities provided by the Attorney General’s office on February 21, 2014.
 - a. Of the initial topics considered at the December 6 meeting, the Subcommittee moved on items b. and parts of c. first.
 - i. Stephen Bates and Allen Leichtenstein proposed a revision of the Nevada Shield Law that was positively received by the Subcommittee. Bates and Leichtenstein will discuss their revision with the Nevada Press Association and report back to the Subcommittee at the next meeting April 17, 2014.

- ii. Hal Berghel offered an extensive “strawman” revision of NRS 205.473-513. Berghel requested some assistance from other members who have more experience drafting statutes. Jim Elste and Jim Earl both volunteered to help with the next draft to be discussed at the April meeting.
 - b. Jim Elste and Ira Victor discussed a proposed strategic framework for improving privacy right in Nevada based on similar work that Elste and others have done at the federal level for NIST/NSTIC. The Subcommittee will draw upon this framework in subsequent discussions.
 - c. Dennis Cobb discussed a 3-tiered Notional Informational Security Taxonomy that the Subcommittee might use to characterize security and privacy requirements for information flow between and among Nevada agencies.
 - d. Jim Earl and Hal Berghel agreed to compose a draft of a Joint Resolution on the expectations of Nevada residents with respect to privacy and security for consideration by the Subcommittee at their April meeting. Such a resolution might include digital surveillance, allowable uses of publicly and privately collected data, reasonable retention and sharing policies for data that might be placed on Nevada agencies, and so forth.
4. These are a partial listing of the current topics under review by the Subcommittee. Agendas and Minutes of the two meetings are available through Brett Kandt, Executive Director of TCAB. The Subcommittee Chair will keep TCAB informed of Subcommittee activities as they become actionable.