

MIKE ROGERS AIMS TO CRIMINALIZE ONE OF THE MAIN THINGS THAT AFFORDS JOURNALISTS PROTECTIONS: GETTING PAID

Remember DOJ's efforts to placate journalists (rather stunningly, in retrospect, rolled out a month after the first Edward Snowden leaks)?

As I noted at the time, DOJ's new protections for the press applied not to the act of journalism, but rather to members of the news media. DOJ's own Domestic Investigations and Operations Guide requires institutional affiliation before they'll treat someone as a journalist.

"News media" includes persons and organizations that gather, report or publish news, whether through traditional means (e.g., newspapers, radio, magazines, news service) or the on-line or wireless equivalent. A "member of the media" is a person who gathers, reports, or publishes news through the news media.

[snip]

As the term is used in the DIOG, "news media" is not intended to include persons and entities that simply make information available. Instead, it is intended to apply to a person or entity that gathers information of potential interest to a segment of the general public, uses editorial skills to turn raw materials into a distinct work, and distributes that work to an audience, as a journalism professional. [my emphasis]

According to the DOJ, then, you have to get paid (preferably by an institution recognized to be a press) to be afforded heightened First Amendment protection as a journalist.

Except now House Intelligence Chair Mike Rogers wants to criminalize that – one of the main things that warrants you protection by DOJ as a journalist, getting paid – by calling it “fencing stolen material.”

REP. ROGERS: You – there have been discussions about selling of access to this material to both newspaper outlets and other places. Mr. Comey, to the best of your knowledge, is fencing stolen material – is that a crime?

DIRECTOR JAMES COMEY: Yes, it is.

REP. ROGERS: And would be selling the access of classified material that is stolen from the United States government – would that be a crime?

DIR. COMEY: It would be. It’s an issue that can be complicated if it involves a news-gathering and news promulgation function, but in general, fencing or selling stolen property is a crime.

REP. ROGERS: So if I’m a newspaper reporter for – fill in the blank – and I sell stolen material, is that legal because I’m a newspaper reporter?

[snip]

REP. ROGERS: And if I’m hocking stolen classified material that I’m not legally in possession of for personal gain and profit, is that not a crime?

DIR. COMEY: I think that’s a harder question because it involves a news-gathering functions – could have First Amendment implications. It’s something that probably would be better answered by the Department of Justice.

REP. ROGERS: So entering into a commercial enterprise to sell stolen material is acceptable to a legitimate news organization?

DIR. COMEY: I'm not sure I'm able to answer that question in the abstract.

REP. ROGERS: It's something we ought to think about, is it not?

DIR. COMEY: Certainly.

So you're not a journalist (and get no protections) if you don't get paid. But if you do get paid, you're fencing stolen property.

I do hope the traditional press recognizes the danger in this stance.