

# Surveillance threatens US business climate, democracy, researchers say

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Credit: AI-generated image ([disclaimer](#))

Mass surveillance by U.S. intelligence agencies is jeopardizing America's reputation as a safe place to do business, according to a Stanford scholar.

"We are no longer seen as a safe business climate," said Aleecia M.

McDonald, director of privacy at Stanford's Center for Internet and Society. "It is difficult to convey the intensity of international outrage over the U.S.'s conduct," as revealed by document leaker Edward Snowden.

Snowden, a former National Security Agency (NSA) contractor, released voluminous documents describing a massive U.S. surveillance effort, both domestically and abroad.

As McDonald points out, the NSA tapped into German Chancellor Angela Merkel's cell phone and news reports indicate that the agency eavesdropped on more than 35 international politicians, including heads of state and senior officials in the European Union. This has economic repercussions, she said.

"U.S. companies are frustrated that the NSA is also collecting the user data they collect themselves," she said. "There is no longer a clear-cut distinction between government and corporate tracking within the U.S."

McDonald, whose research focuses on Internet privacy, behavioral economics and online privacy, said that the NSA's actions have hurt American interests worldwide.

In particular, the Snowden affair revealed that the "breadth and depth of surveillance is far more intense than imagined," McDonald said. The NSA every day is monitoring millions of phone calls, email messages, instant messages and address books.

"This puts U.S. businesses in a difficult bind," said McDonald. Despite knowing their Internet browser cookies may be used for NSA tracking, companies are not planning to make changes to their lucrative advertising networks.

"The difficulty businesses face is that massive data collection about their users is the underlying business model for most Internet companies," she said.

McDonald recently joined hundreds of other higher education scholars from around the world to sign a [petition](#) calling for an end to the surveillance. "This has to stop. ... Without privacy, people cannot freely express their opinions or seek and receive information," the petition states.

## **Surveillance law still evolving**

In the courts, the issue is uncharted territory – no government has ever before had the technological power or the economic ability to eavesdrop on such a massive scale. Then the question arises: How is [mass surveillance](#) threatening the rule of law and democracy?

Bruce M. Owen, director of Stanford's Public Policy Program and a senior fellow at the Stanford Institute for Economic Policy Research, says that the Founding Fathers like Thomas Jefferson believed that "we, the people" were the only legitimate source of political power.

"Protecting liberty required constraints on potentially tyrannical central government," Owen said.

Of course, government has legitimate functions, he noted, and as a result, a tradeoff exists between the ability of the government to protect the people from crime or foreign threats while maintaining individual liberty. However, technology often evolves well ahead of the justice system.

"Current laws reflect this tradeoff, but may not take account of new technologies that make it easier for the government to invade the private

domain," said Owen, whose research focuses on the economic analysis of law, especially in the areas of telecommunications and mass media.

It will take new civil protections to simply maintain the degree of privacy that Americans have experienced in the past, he said. International treaties can help protect the fundamental rights of people against mass surveillance by governments.

"To the extent that current technology permits U.S. citizens' liberty to be invaded by foreign governments, and vice versa, countervailing treaties are an appropriate remedy," he said.

The U.S. government is not great at policing itself, he said. "We, the people, have to put some effort into preserving our liberties. One can see Snowden as a martyr in this cause. Of course, martyrs by definition must pay a price for their words or actions."

As for Snowden's role in the release of NSA documents, Owen said, "Just because you can do something ... doesn't automatically make the doing of it right or just."

## **Legal process: 'slow'**

Jonathan Mayer, a doctoral student in computer science and Cybersecurity Fellow at the Center for International Security and Cooperation, said that the law is still evolving in our highly digital world – and right now, it does not go far enough in safeguarding privacy.

"The NSA's mass surveillance programs are not unlimited. They are bound by legal rules. But our computer science research suggests that those legal rules fail to protect Americans' privacy," Mayer said in an email during a trip to Cambodia.

Mayer noted that the NSA can legally compel an American company to divulge records about foreigners, with no individualized judicial review and little transparency.

"The legal process is slower and more cumbersome than technical surveillance, to be sure, but still leaves much of the globe at risk," Mayer co-wrote in a 2013 article with Edward Felten of Princeton University. "As long as companies collect and retain tracking data, there will be a risk of disclosure through legal process, and users, especially those overseas, will be wary."

As for the NSA's claim last year that it was only collecting nameless phone numbers on Americans in its mass surveillance efforts, Mayer and another colleague, Patrick Mutchler, conducted an experiment of their own last year. They randomly sampled 5,000 phone numbers from a data set known as MetaPhone and attempted to match those with entries in Yelp, Google Places and Facebook. They matched 1,356 (27 percent) of the numbers.

"If a few academic researchers can get this far this quickly, it's difficult to believe the NSA would have any trouble identifying the overwhelming majority of American phone numbers," Mayer wrote in a blog post.

## **Chilling effect on speech, behavior**

Richard Forno, a junior affiliate scholar with the Center for Internet and Society, warns that mass surveillance can create conformity in social thought and interactions.

"If a person believes they are constantly being watched, they will, over time, conform to what they think those watching them will deem as 'expected' norms of conduct and communication," he said.

In a liberal Western society like the United States, that can lead to self-censorship of thought, word and behavior, he suggested. Such an effect is not conducive to democratic ideals.

Even more unsettling to Forno is the fact that the NSA surveillance illustrates how "government actions are concealed by secret interpretations of otherwise public law," such as the Patriot Act – legislation, he said, that was rushed through Congress without a solid understanding or vetting.

Forno urged more independent-minded legislative and executive oversight of U.S. intelligence agencies: "We need critical and objectively informed overseers who do not simply take the carefully prepared statements and testimony of the intelligence community as absolute, unassailable facts when deliberating their conduct or need for certain activities."

However, some in Congress are too concerned about appearing to be soft on security or lacking in patriotism, he said. And so, there is no true public accountability of the intelligence community when the hard questions cannot be asked because of all the secrets.

"It's hard to watch the watcher," Forno said, "and foster meaningful transparency or accountability in a democratic system when the watchers themselves control what you see, along with how, when and where you can see it."

Provided by Stanford University

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