

A thumbs-up for NSA Internet spying on foreigners (Update 3)

July 2 2014, by Ken Dilanian



This Thursday, June 6, 2013, file photo, shows a sign outside the National Security Administration (NSA) campus in Fort Meade, Md. The latest study of the the bipartisan Privacy and Civil Liberties Oversight Board takes the opposite view of a different set of National Security Agency surveillance programs revealed last year by former NSA systems administrator Edward Snowden. The board which was to vote on the report on Wednesday, July 2, 2014, found that the NSA's collection of Internet data within the United States passes constitutional muster and employs "reasonable" safeguards designed to protect the rights of Americans. Last January, the first time the board dissected an NSA surveillance program, it found fundamental flaws. (AP Photo/Patrick Semansky, File)

Endorsement of the NSA's Internet surveillance programs by a bipartisan privacy board deeply disappointed civil liberties activists Wednesday while providing a measure of vindication for beleaguered U.S. intelligence officials.

James Clapper, director of national intelligence, welcomed the conclusion by the independent Privacy and Civil Liberties Oversight Board that the National Security Agency's Internet spying on foreign targets in the U.S. has been legal, effective and subject to rigorous oversight to protect the rights of Americans.

Activist groups panned the report as a dud.

It was a dizzying turnabout for a privacy board that in January drew criticism in the other direction for branding the NSA's collection of domestic calling records unconstitutional.

As they unanimously adopted their 190-page report on Wednesday, the five board members—all appointed by President Barack Obama—sought to explain their largely favorable conclusions about surveillance programs that have provoked worldwide outrage since former NSA systems administrator Edward Snowden revealed them last year.

At issue is a spying regime, first definitively disclosed in Snowden documents last year, under which the NSA is using court orders to obtain foreign customers' emails, chats, videos and texts from Google, Facebook and other U.S. tech companies under a program known as PRISM. The documents also showed that the agency is intercepting foreign data as it transits fiber optic lines in the U.S.

Yahoo, Apple, Microsoft, Twitter and Facebook did not immediately respond to requests for comment. Google and LinkedIn declined to comment.

The reputations of American technology companies have suffered abroad over the perception that they cannot protect customer data from U.S. spy agencies. Last week, the German government said it would end a contract with Verizon over concerns about network security.

European and other foreign intelligence agencies routinely demand cooperation from their national companies, U.S. officials say, but those operations have not been leaked to the news media.



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The targets of the surveillance the U.S. privacy board was looking at this time must be foreigners living abroad, but the NSA also collects some American communications —either by mistake, or because the Americans were talking to or about foreign targets. The programs come under Section 702 of the FISA Amendments Act of 2008, which legalized programs launched after the Sept. 11, 2001, attacks. Last week, the Obama administration disclosed for the first time that it targeted nearly 90,000 people or groups under the programs last year. There are 2.4 billion Internet users worldwide.

In January, the privacy board criticized a different program authorized under Section 215 of the Patriot Act, through which the NSA had been collecting billions of American telephone records and searching through them in terrorism investigations. Obama has since called for ending NSA's collection of those records.

For the Section 702 probe, board members noted that they spent hours in classified briefings with intelligence officials, learning the details of how the NSA programs operate. And they came away convinced that the public debate about the programs had been rife with misconceptions.

For example, said board chairman David Medine, a former government privacy lawyer, the Internet surveillance "is not a bulk collection program" but instead targets specific foreigners living abroad for terrorism or intelligence purposes. And, he said, contrary to media

reports, it is not true that the NSA will monitor a person if the evidence shows just a 51 percent probability that he or she is a foreigner living abroad. The agency is barred from targeting an American without a warrant.

"We had the benefit of going into the CIA and the NSA and the FBI and the Justice Department and meeting with the key people who run the program and seeing demonstrations of how it works," Medine said.

"We concluded that the program is legal, valuable and subject to intense oversight," said board member Elisebeth Collins Cook, a former Republican staff member of the Senate Judiciary Committee.

Some activists strongly disagreed.

"The board's recommendations would leave in place the government's ability to spy on its citizens—along with their friends, family members and business partners overseas—without any suspicion of wrongdoing," complained Elizabeth Goitein of the Brennan Center for Justice in New York.

The report appears to lengthen the already-long odds against lawmakers who want to put restrictions of the Section 702 programs. The House recently passed legislation seeking to cut off funding for searching 702 data connected to Americans, but key senators oppose any changes to the program.

The board did propose some modest rule tightening in order to further protect the rights of Americans, members said.

Critics, including Sen. Ron Wyden, have accused the government of using 702 data for "back door" warrantless searches of Americans. Two board members, Medine and Patricia Wald, a retired federal judge,

wanted the board to recommend a requirement that a judge approve queries tied to Americans. They also wanted Americans' information to be purged more regularly.

But the other three board members did not agree.

"We have seen no evidence of a back door," Cook said.

Board member James Dempsey, Vice President for Public Policy at the Center for Democracy & Technology —whose own organization called the report a "tremendous disappointment"—added, "Trying to limit discovery of data (already) in the hands of the government is not the right way to go here."

Wald cautioned that within the large volume of communications the NSA collects, "there will be much private and confidential information" about Americans which criminal investigators would need a warrant to obtain. While the information could not be used in a criminal case, it is subject to searching by the NSA, CIA and FBI, and could be used, for example, to put someone on a no-fly list.

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