

Appeals court revives challenge to NSA surveillance practice

May 23 2017, by Alanna Durkin Richer

A challenge to the government's practice of collecting certain internet communications can move forward, a federal appeals court ruled Tuesday.

A three-judge panel of the 4th U.S. Circuit Court ruled the Wikimedia Foundation has standing to sue the National Security Agency over its "upstream" surveillance practice, reversing a lower-court decision tossing the group's case.

An attorney for the American Civil Liberties Union, which brought the case, called the decision an "important victory for the rule of law."

"The NSA has secretly spied on Americans' internet communications for years, but now this surveillance will finally face badly needed scrutiny in our public courts," Patrick Toomey said in a statement. "We look forward to arguing this case on the merits," he said.

This ACLU argues that the "upstream" surveillance of the internet's "backbone" of digital networks violates constitutional protections of free speech and privacy.

The NSA recently announced it will no longer permit intelligence officials to collect emails, texts and other communications between two people who mention a target by name, but are not themselves targets of surveillance. The agency said it will limit such collection to internet communications sent directly to or from a foreign target.

But Toomey said he doesn't believe the agency's decision to scale back its surveillance will have an impact on the case.

While the NSA has suspended a controversial piece of its "upstream" surveillance, it still continues, Toomey said. Furthermore, the NSA hasn't said it won't go back to its broader collection practice in the future, he said.

"That makes it very important that we continue to press ahead with this challenge," Toomey said.

The 4th Circuit's decision only revives Wikimedia's claim; the court said other groups that brought the initial lawsuit in 2015—including Amnesty International USA and the National Association of Criminal Defense Lawyers—don't have legal standing.

The 4th Circuit said Wikimedia's allegations are enough to "make the plausible conclusion" that NSA has intercepted and reviewed some of its communications. Wikimedia can sue under the First Amendment because it has "self-censored its speech and sometimes forgone electronic communications" because of the NSA's surveillance, the court said.

"Indeed, there's nothing speculative about it—the interception of Wikimedia's communications is an actual injury that has already occurred," Judge Albert Diaz wrote.

The government can ask the full 4th Circuit to hear the case.

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