



Tech giants named in PRISM want to see an NSA “transparency report”

Pressure is on from tech and from Congress to limit spying and disclose more.

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July 18, 2013

A high-powered coalition of civil liberties groups and tech titans—including all but one of the companies involved in the National Security Agency’s PRISM program—is demanding greater transparency about covert government surveillance programs, as well as the growing body of secret law that authorizes them.

In a letter released Thursday that was spearheaded by the Center for Democracy and Technology, 63 technology companies and advocacy groups asked the government to allow online service providers to publish general statistics about the use of secret intelligence tools, including orders under the Patriot Act’s Section 215—the authority at the heart of NSA’s controversial bulk metadata collection program—and Section 702 of the FISA Amendments Act, which provides the legal basis for PRISM surveillance of international communications on services like Facebook and Google. As CDT senior counsel Kevin Bankston, who orchestrated the letter, has explained, the request covers “the same type of general numerical information that has been published about law enforcement surveillance for years.”

The letter also calls for the government itself to issue a regular “Transparency Report” on surveillance, similar to the ones several major tech firms have recently begun releasing. And they’re asking Congress to require the secret Foreign Intelligence Surveillance Court to begin publishing declassified versions of significant legal opinions—like the one that reinterpreted Section 215 to allow indiscriminate collection of entire call record databases.

The move comes at a time when Congressional criticism over spying has heated up. The first discussions in Congress about the NSA leaks were condemnations of the leaker, Edward Snowden, rather than serious inquiries into what the NSA was doing. But at hearings yesterday, the tone had changed. Several Congressional representatives indicated that the Obama Administration had overstepped its bounds with regard to surveillance and that some programs may not be renewed.

“Unless you realize you’ve got a problem, that is not going to be renewed,” said Rep. Jim Sensenbrenner (R-WI), speaking to a Department of Justice lawyer. No one in Congress believed they had authorized universal collection of Americans’ phone records, he added.

Notably, the signatories include all but one of the companies publicly reported to be providing the NSA with access to user communications under PRISM: Microsoft (which owns Skype), Yahoo, Google (which owns YouTube), Facebook, AOL, and Apple. The lone exception is PalTalk, a chat service popular in the Middle East, though relatively little known within the United States.

The letter comes as the companies have struggled to reassure users that they are diligent in protecting their customers' privacy—an effort hobbled by gag orders that typically prohibit companies from even acknowledging that they have received such requests, let alone discussing how they go about responding to them. “The commercial issue is whether people around the world are going to trust American Internet companies with their data,” Digg CEO Andrew McLaughlin told the *New York Times*, explaining his company’s decision to sign on.

Companies have already had limited success in casting some daylight into the shadows of national security surveillance. After extensive negotiations, the Justice Department recently allowed some companies to release extremely general aggregate information about some categories of intelligence requests. Courts have exerted pressure as well: In March, a district judge found the broad gag orders associated with National Security Letters unconstitutional, though that ruling has been stayed pending appellate review. And just this week, the Foreign Intelligence Surveillance Court agreed to declassify the legal opinions requiring Yahoo to participate in PRISM. On the whole, however, the practical legal constraints on intelligence surveillance—and the reasoning behind them—remain hidden from both congress and the general public.

The Center for Democracy and Technology is simultaneously launching a White House petition, allowing members of the public to join the call for greater transparency.