



Opinion: Meaningful surveillance reform must prioritize civil liberties

The Surveillance State Repeal Act would roll back some of the worst constitutional abuses that have resulted from the US government's widespread spying practices. While it has received backing across the political spectrum, the act needs broad public support to become a reality.

By Sascha Meinrath

March 24, 2015

Now is the time for meaningful surveillance reform. Across the political spectrum, from the progressive left to libertarian right, there is widespread agreement that mass surveillance has exceeded the bounds of legality, morality, and efficacy. Today, the key ingredients for a successful surveillance reform agenda can be found in the boldly titled Surveillance State Repeal Act.

Among its bold provisions, it repeals the [Patriot Act](#) and the excesses of the 2008 amendment to the Foreign Intelligence Surveillance Act. It would also restore our civil liberties by clearing out legislation that even the Patriot Act's main author, [Rep. Jim Sensenbrenner](#) (R) of Wisconsin, has stated is extremely troubling.

[The Surveillance State Repeal Act](#) begins with the right questions: What parts of these laws, which have proven to be the catalysts for widespread civil liberties violations, should we even keep? What kinds of surveillance actually work?

While many have made light of Benjamin Franklin's quote, "Those who would give up essential liberty, to purchase a little temporary safety, deserve neither liberty nor safety," few have trivialized the conditions undergirding his missive – namely, that interpretations of law were often "“of an extraordinary nature,’ without informing us wherein that extraordinary nature consisted,” and rejected participatory democracy for “disagreeing with new discovered meanings, and forced constructions of a clause in the proprietary [secret] commission.”

The parallels to the current surveillance state that the proposed repeal act aims to address couldn't be clearer.

Previous reform efforts have floundered because they compromised – attempting to lessen the diminution of our freedoms, rather than prioritizing our inherent and inalienable right to “the preservation of life, liberty and the pursuit of happiness.”

Surveillance reform needs grassroots support – same as the millions of people who killed the Stop Online Privacy Act in 2012 by overloading congressional phone lines – in order to pass, and Americans of all stripes are only mobilized by unambiguous and forceful legislation to protect their rights.

The Surveillance repeal act is clear, concise, and accessible (the latest version is less than 10 pages long), and rolls back some of the worst constitutional abuses with a hard reset of the US government's surveillance powers.

The proposal enables a much-needed debate about how to effectively stop terrorism, ensure national security, and preserve the civil liberties that are the heart of American democracy. As Alexis de Tocqueville wrote over 150 years ago, “What good does it do me, after all, if an ever-watchful authority keeps an eye out to ensure that my pleasures will be tranquil and races ahead of me to ward off all danger, sparing me the need even to think about such things, if that authority, even as it removes the smallest thorns from my path, is also absolute master of my liberty.”

Even while the repeal act is being debated, surveillance reformers have the opportunity to strictly limit the scope of the Patriot Act by refusing "clean" reauthorization of Section 215 of the bill, which has been interpreted to authorize the National Security Agency's mass surveillance of telephone records, and, as Sen. Ron Wyden (D) of Oregon recently revealed, even more surveillance than is publicly known.

FreedomWorks policy analyst Jason Pye argues that sunseting 215 is also crucial for the US tech industry, which is being shut out of business abroad in light of weak protections for data stored in the US. Informed decisions would be greatly aided by the public release of the mandatory Department of Justice report on how Section 215 is being used, which, despite a mandate to create twice-yearly reports, the last public release was nine years ago. As government surveillance expert and watchdog, Marcy Wheeler, points out, we shouldn't reauthorize an invasive surveillance law if even the most minimal oversight procedures aren't currently being followed.

Legislative fixes are essential, but insufficient to rein in mass surveillance. To restore civil liberties we need to address the use of Executive Order 12333, which has been interpreted by the intelligence community to authorize many of their programs. The good news is that the Obama administration, with the flick of a pen, has the authority to unilaterally revoke this facet surveillance regime; we just need a bold administration that leads by example.

The problems of our current mass surveillance regime extend into the judiciary as well – with the rubber-stamping of key activities by secret courts initially intended to oversee the intelligence community. As recently declassified documents have shown, the secret FISA Court has issued rulings that are almost always in favor of the intelligence community, even while acknowledging

that that same intelligence community has been systematically misleading the FISA Court. And since the FISA Court issues rulings in secret – the kind of activity rightfully condemned when used by regimes like Iran and North Korea –we often don't learn about the myriad abuses that are occurring (and certainly, even today, only know a subset of the abuses that may be ongoing).

While a “collect-it-all” mentality may seem wise upon first blush, as Pat Eddington at the Cato Institute has noted, retrospective analyses have repeatedly confirmed that the Intelligence Community missed known connections that predicted terrorist attacks within the US. In essence, systematically violating our civil liberties in the name of security has undermined the former without accomplishing the latter.

The Internet is global, and as a global leader, the US helps set the standards for acceptable behavior. Mass domestic and foreign spying legitimates the same behavior by other regimes while simultaneously creating a perverse incentive to create a more fractured global communications system. In the long run, international rules and agreements are needed to prevent a 21st century cybersiege where the information and communications of US citizens is actively vacuumed up by dozens of nations all around the globe.

It's time for the US to start acting like the ethical Internet steward that it once was. The Surveillance State Repeal Act makes a giant step toward protecting our civil liberties and restoring global trust.