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President Obama's Cybersecurity Executive Order Scores Much Better Than CISPA On Privacy

By: [Andy Greenberg](#) – February 12, 2013

With the reintroduction of the much-maligned Cyber Intelligence Sharing and Protection Act scheduled for the day after the State of the Union, the House of Representatives may have hoped the President's own cybersecurity initiative would divert some of the attention away from the controversial legislation known as CISPA. Instead, the White House's long-awaited executive order on cybersecurity is actually scoring points with the privacy advocates—and putting CISPA in a worse light than ever.

President Obama released a long-awaited cybersecurity executive order Tuesday night along with his fifth State of the Union address, outlining new policies aimed at stemming the tide of cyberespionage attacks on American companies and government agencies, as well as shoring up the defenses for American critical infrastructure vulnerable to cyberattacks.

“We know hackers steal people's identities and infiltrate private e-mail. We know foreign countries and companies swipe our corporate secrets. Now our enemies are also seeking the ability to sabotage our power grid, our financial institutions, and our air traffic control systems,” Obama said. “We cannot look back years from now and wonder why we did nothing in the face of real threats to our security and our economy.

Much of the executive order focuses on enabling government agencies to share information about cybersecurity threats with the private sector. That means the Department of Homeland Security and the Director of National Intelligence will share unclassified threat data with companies that might be vulnerable to attackers, and also share classified information with operators of critical infrastructure—what the order defines as “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact” on the nation's security, economy, health or safety.

But while the order allows the sharing of government data with the private sector, the data sharing doesn't flow back the other way. That means the order, unlike CISPA, doesn't raise the hackles of privacy groups that have protested that CISPA could grant immunity to private sector firms who want to share their user's personal information with the government. “The president's executive order rightly focuses on cybersecurity solutions that don't negatively impact civil liberties,” reads a statement on the executive order from the American Civil Liberties Union, which has opposed CISPA. “For example, greasing the wheels of information sharing from the

government to the private sector is a privacy-neutral way to distribute critical cyber information.”

CISPA, which passed the House last year but never reached a vote in the Senate, has drawn fire for a provision that would allow companies to hand over cybersecurity threat information to government agencies that include the National Security Agency and Department of Defense, even granting them immunity from existing laws and regulations that would prevent the sharing of some sensitive information. “The definition of cybersecurity threat hasn’t been pinned down, and we’ve been concerned that the combination of that vague definition and legal immunity would allow an end run around privacy regulations,” says Lee Tien of the Electronic Frontier Foundation. “This [executive order] is only about outflows of information from the government.”

In fact, the executive order takes pains to require the Department of Homeland Security to consider the privacy implications of its cybersecurity efforts. It calls for the DHS’s Chief Privacy Officer to publicly release a report on privacy and digital civil liberty effects of its actions within a year.

The executive order also focuses on defining and protecting critical infrastructure, a priority the White House first voiced in support of the failed Lieberman-Collins bill put before the Senate last year. That same priority was mentioned in Obama’s letter arguing the inadequacies of CISPA and threatening to veto the bill last year.

But Obama’s executive order isn’t exactly a substitute for legislation, says the EFF’s Tien, and doesn’t carry the same weight to compel companies and agencies to follow new regulations. And Obama himself called in his State of the Union Address for Congress to follow his lead. “Now congress must act as well, by passing legislation to give our government a greater capacity to secure our networks and deter attacks,” Obama said.

“We definitely like the executive order better than CISPA,” adds Tien. “But they do fairly different things. The executive order can’t change any federal rules. It just changes the way the executive branch chooses to do things.”

One element Tien would like to see in new legislation is stricter standards for federally-procured software to require that it be more securely coded, he says. Demanding fewer bugs in government-bought software could reduce the vulnerabilities that have allowed hackers to breach agencies and companies without requiring any new monitoring or information sharing system that might affect privacy. “The political debate tends to skew away from the admittedly hard problem of making systems more secure,” says Tien. “That costs nothing from a privacy and civil liberties perspective and it doesn’t get much attention.”

CISPA, on the other hand, represents exactly the sort of new monitoring of the private sector that has spooked the privacy community. That monitoring would be voluntary, a distinction that has meant private firms including IBM, Microsoft, Facebook, AT&T and Verizon have all supported the bill. But watchdog groups ranging from the Cato Institute to Reporters Without Borders to a group of more than 50 professors and entrepreneurs have spoken out against CISPA.

The House’s bill is expected to be reintroduced in the same form Wednesday. Following on the heels of a more popular approach from the president, it’s not likely to find new friends.