



## Senator Calls For Surveillance Policy Shift

By Nigel Duara  
August 18, 2014

PORTLAND, Ore. (AP) — When it comes to searches by law enforcement, U.S. Sen. Ron Wyden believes people's online communication should have just as much protection as their homes and property.

In a speech Friday at a Portland tech conference, the Oregon Democrat called for updates to the rules by which intelligence agencies operate, and said he plans new legislation aimed at ending bulk electronic surveillance.

"If you would defend a society built on the principle of individual liberty, you need to recognize that you can no longer rely on the fact that mass surveillance is hard. Folks, in the 21st century, mass surveillance is easy," Wyden said.

The senator is challenging the so-called Third Party Doctrine. It holds that citizens' information in the hands of third parties, like phone companies, becomes business records and is not subject to the same rigorous search-warrant process as other personal effects.

Wyden said such information should be protected by the Fourth Amendment, which requires police to obtain warrants to search people's houses, papers, property and pockets.

Federal court rulings made long before Gmail and electronic bank transfers have held that phone calls, deposits and other exchanges that involve commercial transactions are business records, and not constitutionally protected.

But recent decisions have pointed to a new understanding among the judiciary of the shifting nature of electronic communication, including a U.S. Supreme Court ruling that said information contained in a cellphone is protected by the Fourth Amendment.

"The task before us is to figure out how to ensure these principles are upheld in the digital world," Wyden said. "The same protections that apply to your personal papers, conversations and correspondence in the physical world must, by default, protect your privacy in the online world."

As he has before, Wyden called for overhauling the rules for America's intelligence agencies, ending bulk warrantless surveillance, adding a public advocate to the court that oversees foreign surveillance, and allowing private companies to disclose more about the kinds of requests they get from intelligence agencies.

Wyden has been a vocal critic of the U.S. government's surveillance practices, some of which came to light last year in a series of disclosures by former National Security Administration systems analyst Edward Snowden. But he has had difficulty gaining traction on proposals to overhaul the system.

Julian Sanchez, senior fellow at the libertarian Cato Institute, said there is a sound legal argument for Wyden's proposal, but it departs enough from current practice to make it an uphill battle.

"The specific reforms are ideas that have been floating around for a while, and for which there's substantial political support," Sanchez said. "But if you're talking about the intel community or the executive voluntarily embracing a categorical warrant requirement for all types of third-party records . the chances of that are basically nil."

Electronic Frontier Foundation staff attorney Hanni Fakhoury said many of the changes Wyden wants, including revisions to the Third Party Doctrine, could happen immediately if Congress had the will to do so.

Fakhoury said recent federal appellate court decisions have shifted course from decisions in the 1970s, '80s and '90s to an understanding of the pervasiveness of electronic communication in daily life, and the need for its protection.

"It's encouraging to see this coalescing, growing movement getting judges, courts, senators starting to say, 'You know what? This is not working,'" Fakhoury said.