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Snooping in the guise of child protection

By Christopher Moraff

The House Judiciary Committee recently voted to greatly expand the government's right to invade the private lives of citizens with little or no judicial oversight. House Bill 1981, now up for consideration by the full House, would require Internet service providers to store customer data for a year and give it to investigators - with no search warrant required - in the name of combating child pornography.

The title of the legislation, the "Protecting Children From Internet Pornographers Act," seems tailored to exploit hysteria and stifle dissent. This is standard procedure for politicians trying to sell something that would otherwise raise a forest of red flags. After all, who can oppose protecting kids?

The problem is that the bill casts a very wide net in its ostensible fight against exploitation. It requires the retention of data that can reveal what sites you've surfed and what you looked at and posted on them. That includes e-mail, social networking, online purchases, and personal finances.

And authorities wouldn't have to jump through many hoops. The bill merely requires that any snooping be authorized by an "administrative subpoena" - not a warrant or subpoena signed by a judge. (The national security letters used to monitor citizens' phone conversations so cavalierly during the Bush administration were administrative subpoenas.) Police would be able to see your passwords, account balances, and transactions with nothing more than a boss' signature.

That would be bad enough if they were limited to looking for evidence of child exploitation. But there's nothing in the bill to suggest that.

Not surprisingly, H.B. 1981 has privacy advocates in a tizzy. Julian Sanchez of the Cato Institute has said that fighting child pornography is "a fig leaf for true purpose: a sweeping data retention requirement meant to turn Internet service providers and online companies into surrogate snoops for the government's convenience." The day before the committee vote last month, a coalition of 29 groups, ranging from the American Library Association to the Muslim Public Affairs Council, signed a letter to bill sponsor and committee Chairman Lamar Alexander (R., Tenn.) calling it a "direct assault on the privacy of Internet users."

Tellingly, the legislation exempts Internet service providers from civil liability if investigators mess up - which they most certainly will. After all, prosecutors don't have the best track record when it comes to policing child pornography.

In 2009, for example, Anthony and Lisa Demaree left some film at an Arizona Wal-Mart for developing. A store employee decided his or her sensibilities were offended by photos of the couple's toddlers in a bathtub and alerted authorities. It took the Demarees four weeks to get their kids back, and even longer to get their names off the state's sex offender registry. If H.B. 1981 becomes law, every picture posted on Facebook, Flickr, and other sites will become fair game for such official misinterpretation.

You don't have to look far to find other cases of egregious misapplication of child-protection laws. In 2009, a spate of "sexting" cases subjected nearly a dozen Pennsylvania students to overzealous prosecution for sending topless pictures of themselves to a few friends. Do you want such prosecutors digging around in your e-mail?

Americans must weigh their appropriate revulsion at child pornography against their right to be protected from government prying. This balancing act is complicated by the absence of any truly independent assessment of the scope of the child pornography problem. The laws are so strict that it's not even possible to research the topic; journalists have gone to jail for trying.

I do not relish the idea of giving government officials sweeping authority over my online life so they can address a problem that only they can legally measure.

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