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Tech titans' muted response on NSA data mining

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Another leak from Edward Snowden. Another flood of denials from the tech titans required to assist the NSA. And another round of statements, from Silicon Valley and beyond, that sidestep the real issue at hand.

Google, Microsoft, Facebook and Yahoo are veritable warehouses for some of the data the National Security Agency desires as it investigates foreign terror suspects, but they've not come out swinging publicly on Capitol Hill for specific limits on what the agency can collect — even as those companies have deployed their big-bucks lobbying and legal shops in a bid for more transparency.

The contrast again was evident Tuesday, a day after Snowden's documents helped The Washington Post determine the NSA is snapping up Web users' contact lists. Google, Facebook, Microsoft and Yahoo said they had no knowledge of the program, but each still stopped short again of asking for any substantial changes to federal law.

And, when asked by POLITICO on Tuesday, those tech giants again didn't name any new restrictions they'd back on the NSA's collection practices — a muted response that speaks volumes at a time when Congress is at the drawing board on surveillance reform.

Tech and telecom companies are at the center of the Snowden saga as each successive new leak has illuminated the NSA's deep tentacles into the Internet's very backbone. Taken together, the revelations have told the story of an agency easily able to obtain email records, order phone logs in bulk, circumvent digital encryption and — in the case of the latest revelation this week — pluck one's entire address book and Web contacts as the data transit the Internet.

For its part, the Obama administration has emphasized the necessity of these programs for national security, all the while maintaining it seeks only foreign suspects' communications with appropriate checks in place to protect Americans. Those assurances hardly have satisfied civil-liberties leaders, however, many of whom on Capitol Hill are beginning to think anew about sweeping NSA reforms.

For now, Google, Microsoft, Facebook and Yahoo barely can discuss NSA's surveillance activities because the programs remain heavily classified. It's led many tech companies to challenge the government before its own surveillance court, seeking at least the ability to

produce aggregate numbers about the requests they receive.

But when it comes to addressing the heart of the problem — the very laws that allow the NSA to collect company data or tap the Internet's backbone — tech companies have been far quieter.

Google, Microsoft, Facebook and Yahoo have touted two bills on Capitol Hill, for example, that would shine new light on surveillance requests. But they've been silent on proposals promised by the likes of Sen. Ron Wyden (D-Ore.), who would curtail the NSA's ability to seek phone call logs while taking steps to raise the legal bar the government would have to clear to get those and other digital records.

Nor has Silicon Valley rushed to react publicly much at all to ideas floated by Rep. Jim Sensenbrenner (R-Wis.), an original PATRIOT Act author; Sen. Patrick Leahy (D-Vt.), chairman of the Judiciary Committee, or Sen. Dianne Feinstein (D-Calif.), the leader of the Intelligence Committee, which soon will mark up a bill.

Leaders like Facebook's Mark Zuckerberg, meanwhile, have bashed the NSA back in California for its overreach. But Zuckerberg didn't touch on surveillance while he toured Capitol Hill last month, sources previously told POLITICO. He mostly touted immigration reform.

It's a source of consternation for activists, who want the tech set to play a more aggressive offense. "I think the companies absolutely have a responsibility to advocate for greater transparency and greater protections for their users, whether in court or in Congress," said Mark Rumold, a staff attorney at the Electronic Frontier Foundation.

Certainly, resources aren't the issue: Google, Microsoft, Facebook and Yahoo together spent more than \$8 million to lobby in Washington just from April to June on a host of issues — including tax and immigration reform. Yet there's barely any mention in their reports of the Foreign Intelligence Surveillance Act and the PATRIOT Act, the two primary statutes from which the NSA derives its surveillance authorities.

The next slate of reports, which reflect lobbying activity from July to September, aren't due until later this month. The few forms that have been filed, however, confirm little has changed even as new Snowden leaks have come to light. Two of the firms working for Google spent a total of \$110,000, a fraction of what the search giant spent in total, and only one barely mentions FISA in passing. Five of Microsoft's outside lobbying hires, representing more than \$200,000, didn't touch on the issue, either. Only one of its outside hires last quarter registered any mention of surveillance issues in its filing.

Google did not comment for this story but pointed to a July statement from its chief legal officer, David Drummond, who pledged the search giant would be "willing to push back if something is overly broad." A Microsoft spokesperson, meanwhile, said "additional reforms will be needed" beyond transparency fixes, but the company did not elaborate. Microsoft signaled Monday it would have "significant concerns" if the Post's address-book

reports “are true.”

Yahoo didn’t comment beyond its earlier statement announcing it would soon encrypt email by default. And a Facebook spokeswoman only said the company would “continue to be aggressive advocates for greater disclosure,” while “exploring legislative fixes” and talking to congressional staffers. All of the companies, though, maintain they had no idea the NSA had found a way to collect address books.

Nor has the Internet Association, a key trade group for the industry’s biggest brands, waded into the thorny NSA fiasco. The association, which also counts Amazon, eBay, Yahoo and others as members, did not comment for this story.

Tech companies aren’t totally absent from the debate: All four of those NSA critics have played a vocal role in calling for changes to other federal laws that determine how law enforcement can access digital records in criminal investigations, for example. They’ve also been fairly active before the so-called FISA court seeking legal changes. By contrast, telecom companies like AT&T and Verizon haven’t challenged in court the government’s ability to obtain call records in bulk, according to recently declassified documents.

Julian Sanchez, a research fellow at the Cato Institute, said he too prefers the tech companies were “more prepared to push back” — but he stressed they face significant restraints. There’s the risk of being “dragged to a hearing” or shamed on Capitol Hill, he said, and they can’t so easily make the case against programs they’re technically not even allowed to acknowledge.

The enormity of the latest disclosure, though, could spring the industry to action — and, at the very least, may rattle the debate again far beyond the confines of Washington.

“Earlier disclosures made people think twice about who they called,” said Greg Nojeim, director of the Project on Freedom, Security and Technology at the Center for Democracy and Technology. “Now, they will have to wonder whether entering someone’s contact information in their address book may also bring unwanted scrutiny. There seems to be no end to NSA’s appetite for our social connections.”