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The Coronavirus Pandemic Has Set Off A Massive Expansion Of Government Surveillance. Civil Libertarians Aren't Sure What To Do.

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The coronavirus pandemic, which has grown to over 740,000 cases and 35,000 deaths around the world, has been so singular an event that even some staunch advocates for civil liberties say they're willing to accept previously unthinkable surveillance measures.

"I'm very concerned" about civil liberties, writer Glenn Greenwald, cofounder of the Intercept, who built his career as a critic of government surveillance, told BuzzFeed News. "But at the same time, I'm also much more receptive to proposals that in my entire life I never expected I would be, because of the gravity of the threat."

Greenwald won a Pulitzer Prize in 2014 for his reporting on the disclosures by NSA contractor Edward Snowden, who revealed a vast secret infrastructure of US government surveillance. But like others who have spent years raising concerns about government overreach, he now accepts the idea that surveilling people who have contracted the coronavirus could be better than harsher measures to save lives.

"The kind of digital surveillance that I spent a lot of years — even before Snowden, and then obviously, the two or three years during Snowden — advocating against is now something I think could be warranted principally to stave off the more brute solutions that were used in China," Greenwald said.

Greenwald said he was still trying to understand how to balance his own views on privacy against the current unprecedented situation. "We have to be very careful not to get into that impulse either where we say, 'Hey, because your actions affect the society collectively, we have the right now to restrict it in every single way.' We're in this early stage where our survival instincts are guiding our thinking, and that can be really dangerous. And I'm trying myself to calibrate that."

And he is far from the only prominent civil libertarian and opponent of surveillance trying to calibrate their response as governments around the world are planning or have already implemented location-tracking programs to monitor coronavirus transmission, and have ordered wide-scale shutdowns closing businesses and keeping people indoors. Broad expansions of

surveillance power that would have been unimaginable in February are being presented as fait accompli in March.

That has split an international community that would have otherwise been staunchly opposed to such measures. Is the coronavirus the kind of emergency that requires setting aside otherwise sacrosanct commitments to privacy and civil liberties? Or like the 9/11 attacks before it, does it mark a moment in which panicked Americans will accept new erosions on their freedoms, only to regret it when the immediate danger recedes?

“Under these circumstances? Yeah, go for it, Facebook. You know, go for it, Google,” Gary Johnson, the former governor of New Mexico and 2016 Libertarian Party presidential candidate, told BuzzFeed News. “But then, when the crisis goes away, how is that going to apply given that it's in place? I mean, these are the obvious questions, and no, that would not be a good thing.”

"My fear is that, historically, in any moment of crisis, people who always want massive surveillance powers will finally have an avenue and an excuse to get them," Matthew Guariglia, an analyst at the Electronic Frontier Foundation, told BuzzFeed News.

Marc Rotenberg, president and executive director of the Electronic Privacy Information Center (EPIC), told BuzzFeed News that it's possible to find a solution that protects privacy and prevents the spread of the virus.

“People like to say, 'well, we need to strike a balance between protecting public health and safeguarding privacy' — but that is genuinely the wrong way to think about it,” Rotenberg said. “You really want both. And if you're not getting both, there's a problem with the policy proposal.”

Beyond the sick and dead, the most immediate effects that the pandemic has visited upon the United States have been broad constraints that state and local governments have imposed on day-to-day movement. Those are in keeping with public health experts' recommendations to practice social distancing to mitigate the spread of COVID-19, the disease caused by the novel coronavirus.

While the US hasn't announced a nationwide stay-at-home order like France and Italy have, large parts of the US are under some degree of lockdown, with nonessential businesses shuttered and nonessential activities outside the home either banned or discouraged. And while President Trump and his allies have focused on the economic devastation wrought by this shutdown, some libertarians have raised concerns about the damage those decrees have done to people's freedoms.

Appearing on libertarian former Texas lawmaker and two-time Republican presidential candidate Ron Paul's YouTube show on March 19, Kentucky Rep. Thomas Massie pointed to a Kentucky man who, after testing positive for the coronavirus, refused to self-isolate, and whom sheriff's deputies forced to stay home. (Massie later came under bipartisan criticism for attempting to hold up the coronavirus stimulus bill in the House.)

“What would they do if that man walked out and got in his car? Would they shoot him? Would they suit up in hazmat uniforms and drag him off?” Massie said. “Those are the images we saw in China two months ago and everybody was appalled at those images. And now we’re literally, we could be five minutes away from that happening in the United States, here in Kentucky.”

“It’s crazy, and what concerns me the most is that once people start accepting that, in our own country, the fact that somebody could immobilize you without due process, that when this virus is over people will have a more paternalistic view of government and more tolerance for ignoring the Constitution,” Massie said.

Last Monday, Paul's son, Kentucky Sen. Rand Paul, announced that he had tested positive for the disease, only a few days after Ron Paul wrote in his online column that the pandemic could be a “big hoax” pushed by “fearmongers” to put more power in government hands.

But the elder Paul's concerns are not shared among some of his fellow former Libertarian Party nominees for president.

Johnson said measures to encourage people to stay in their homes and temporarily shutter businesses taken by states like New York were appropriate. “I really have to believe that they're dealing with [this] in the best way that they possibly can,” he told BuzzFeed News. “And I think it's also telling that most of them are following the same route.”

Johnson added that although it was easy to raise criticisms, as a former governor, he saw few other options.

“You're just not hearing it: What are the alternatives?” Johnson said. “I don't know, not having [currently] sat at the table as governor, what the options were. And given that every state appears to be doing the same thing, I have to believe that everything is based on the best available information.”

Gaming out the role of intense surveillance during a pandemic isn’t just a theoretical political debate on YouTube. Surveillance at previously politically unimaginable scales has reached countries around the world.

Imagine opening an app, scanning a QR code, and creating a profile that’s instantly linked with information about your health and where you've been. The app tells you if you’ve been in close contact with someone sick with the coronavirus.

This software already exists in China. Developed by the Electronics Technology Group Corporation and the Chinese government, it works by tapping into massive troves of data collected by the private sector and the Chinese government. In South Korea, the government is mapping the movements of COVID-19 patients using data from mobile carriers, credit card companies, and the Institute of Public Health and Environment. In Israel, Prime Minister Benjamin Netanyahu ordered the country's internal security agency to tap into a previously undisclosed cache of cellphone data to trace the movements of infected persons in that country

and in the West Bank. And in the Indian state of Karnataka, the government is requiring people in lockdown to send it selfies every hour to prove they are staying home.

No such tools currently exist in the United States — but some in the tech community who might have been expected to oppose such capacities have found themselves favoring these previously unthinkable steps.

Maciej Cegłowski, the founder of Pinboard and a frequent critic of tech companies' intrusions into privacy, wrote a blog post arguing for a “massive surveillance program” to fight the virus.

“My frustration is that we have this giant surveillance network deployed and working,” Cegłowski told BuzzFeed News. “We have location tracking. We have people carrying tracking devices on them all the time. But we’re using it to sell skin cream — you know, advertising. And we’re using it to try to persuade investors to put more money into companies. Since that exists and we have this crisis right now, let’s put it to use to save lives.”

This position is a major departure for Cegłowski, who has warned of how tech companies have invaded our “ambient privacy” and argued that tech giants’ reach into our lives is as pernicious a force as government surveillance.

“We put up with the fire department breaking down our door if there’s a fire at our neighbor’s house or in our house because we know that in normal times our houses are sacrosanct,” Cegłowski said. “I think similarly if we can have a sense that we’ll have real privacy regulation, then in emergency situations like this we can decide, hey, we’re going to change some things.”

Those doors are already being broken down. The COVID-19 Mobility Data Network — a collaboration between Facebook, Camber Systems, Cuebiq, and health researchers from 13 universities — will use corporate location data from mobile devices to give local officials “consolidated daily situation reports” about “social distancing interventions.”

Representatives from the COVID-19 Mobility Data Network did not respond to requests for comment.

Lots of companies claim that they have the technology to save people’s lives. But critics worry that they are taking advantage of a vulnerable time in American society to sign contracts that won't easily be backed out of when the threat passes.

“Sometimes people have an almost sacrificial sense about their privacy,” Rotenberg told BuzzFeed News. “They say things like, ‘Well, if it’ll help save lives for me to disclose my data, of course, I should do that.’ But that's actually not the right way to solve a problem. Particularly if asking people to sacrifice their privacy is not part of an effective plan to save lives.”

In response to the pandemic, some data analytics and facial recognition companies have offered new uses for existing services. Representatives from data analytics company have reportedly been working with the CDC on collecting and integrating data about COVID-19,

while Clearview AI has reportedly been in talks with state agencies to track patients infected by the virus.

Neither Palantir nor Clearview AI responded to requests for comment, but the appearance of these controversial companies has raised alarms among those in the privacy community.

“The deployment of face recognition, as a way of preventing the spread of virus, is something that does not pass the sniff test at all,” Guariglia said. “Even the companies themselves, I don’t think, can put out a logical explanation as to how face recognition, especially Clearview, would help.”

The leaders of other technology companies that design tools for law enforcement have tried to offer tools to combat COVID-19 as well. Banjo, which combines social media and satellite data with public information, like CCTV camera footage, 911 calls, and vehicle location, to detect criminal or suspicious activity, will be releasing a tool designed to respond to the outbreak.

“We are working with our partners to finalize a new tool that would provide public health agencies and hospitals with HIPAA-compliant information that helps identify potential outbreaks and more efficiently apply resources to prevention and treatment,” a spokesperson told BuzzFeed News.

Those efforts cause concerns for people like Evan Greer, the deputy director of digital rights activist group Fight for the Future, who told BuzzFeed News that such tools, once deployed, would inevitably be used for more purposes than to fight the pandemic.

“We have so much history that shows us that mass surveillance generally isn’t very effective, and mission creep is inevitable,” she said. “It’s not necessarily a question of if data that was handed over to the government because of this crisis would be repurposed. It’s a matter of when.”

In addition to those companies, many camera makers have been making a bold claim: Using just an infrared sensor, they can detect fevers, helping venues filter out the sick from the healthy. These firms include Dahua Technology in Israel, Guide Infrared in China, Diycam in India, Rapid-Tech Equipment in Australia, and Athena Security in the US.

In late February, Guide Infrared announced that it had donated about \$144,000 worth of equipment that could “warn users when fever is detected” to Japan. The company said its devices would be used in Japanese “hospitals and epidemic prevention stations.”

Although Guide Infrared claimed that its “temperature measurement solutions” have helped in emergencies including SARS, H1N1, and Ebola, the Chinese army and government authorities are “some of its major customers,” according to the South China Morning Post. It’s been used in railway stations and airports in major Chinese regions. It’s also partnered with Hikvision, a Chinese company blacklisted by the US over its work outfitting Chinese detention centers with surveillance cameras.

Australian company Rapid-Tech Equipment claims that its fever-detection cameras can be used in "minimizing the spread [of] coronavirus infections." Its cameras are being used in Algeria, France, Egypt, Greece, Morocco, Saudi Arabia, Turkey, and "many more" countries, according to its website. UK camera maker Westminster International said that it has a "supply range of Fever Detection Systems for Coronavirus, Ebola & Flu."

US company Testo Thermal Imaging sells two cameras with a "FeverDetection assistant." A section of its website titled "Why fever detection?" argues that managers of high-traffic venues have a responsibility to filter for fevers: "Whether ebola, SARS or coronavirus: no-one wants to imagine the consequences of an epidemic or even a pandemic."

A Testo spokesperson told BuzzFeed News that the company has seen a "massive increase in demand" for its products in response to the coronavirus and that its cameras are being used "worldwide." The spokesperson declined to provide specific examples or name specific countries.

While the appetite for fever-detecting cameras is clearly there, civil liberties advocates have concerns. Guariglia said that, regardless of their thermal imaging capabilities, surveillance cameras are surveillance cameras.

"More surveillance cameras always have dubious implications for civil liberties. Even if their contract with thermal imaging ends at the end of six months," Guariglia said, "I bet those cameras are gonna stay up."

Julian Sanchez, an analyst with the Cato Institute and commentator on digital surveillance and privacy issues, told BuzzFeed News he was willing to accept measures he might otherwise have concerns about to limit the spread of the virus.

"I'm about as staunch a privacy guy as it gets," Sanchez said. "In the middle of an epidemic outbreak, there are a number of things I'm willing to countenance that I would normally object to, on the premise that they are temporary and will save a lot of lives."

But he still questioned the efficacy of some of the current proposals: There's "a ton of snake oil being pitched by surveillance vendors," he said.

More than that, he had concerns about what would happen to civil liberties after the pandemic passed, but the measure put in place to combat it did not.

"I think a lot of civil liberties advocates would say, 'Well, if this is very tightly restricted, and only for this purpose, and it's temporary, then, you know, maybe that's all right. Maybe we're able to accept that, if we're confident it's for this purpose, and then it ends,'" Sanchez said. "The question is whether that's the case."

Sanchez worried that the coronavirus, like the war on terror, is an open-ended threat with no clear end — inviting opportunities for those surveillance measures to be abused long after the threat has passed.

In the same week that he spoke, the US Senate voted to extend until June the FBI's expanded powers under the Foreign Intelligence Surveillance Act, originally passed in the wake of the 9/11 terrorist attacks 19 years ago. ●