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Senators propose granting president emergency Internet power

by [Declan McCullagh](#)

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A new U.S. Senate bill would grant the president far-reaching emergency powers to seize control of or even shut down portions of the Internet.

The legislation announced Thursday says that companies such as broadband providers, search engines, or software firms that the government selects "shall immediately comply with any emergency measure or action developed" by the Department of Homeland Security. Anyone failing to comply would be fined.

That emergency authority would allow the federal government to "preserve those networks and assets and our country and protect our people," Joe Lieberman, the primary sponsor of the measure and the [chairman](#) of the Homeland Security committee, told reporters on Thursday. Lieberman is an independent senator from Connecticut who caucuses with the Democrats.



Because there are few limits on the president's emergency power, which can be renewed indefinitely, the densely worded 197-page bill ([PDF](#)) is likely to encounter stiff opposition.

TechAmerica, probably the largest U.S. technology lobby group, said it was concerned about "unintended consequences that would result from the legislation's regulatory approach" and "the potential for absolute power." And the Center for Democracy and Technology publicly worried that the Lieberman bill's emergency powers "include authority to shut down or limit Internet traffic on private systems."

The idea of an Internet "kill switch" that the president could flip is not new. A draft Senate proposal that CNET [obtained](#) in August allowed the White House to "declare a cybersecurity emergency," and [another](#) from Sens. Jay Rockefeller (D-W.V.) and Olympia

Snowe (R-Maine) would have explicitly given the government the power to "order the disconnection" of certain networks or Web sites.

On Thursday, both senators lauded Lieberman's bill, which is formally titled the Protecting Cyberspace as a National Asset Act, or PCNAA. Rockefeller said "I commend" the drafters of the PCNAA. Collins went further, signing up as a co-sponsor and saying at a press conference that "we cannot afford to wait for a cyber 9/11 before our government realizes the importance of protecting our cyber resources."

Under PCNAA, the federal government's power to force private companies to comply with emergency decrees would become unusually broad. Any company on a list created by Homeland Security that also "relies on" the Internet, the telephone system, or any other component of the U.S. "information infrastructure" would be subject to command by a new National Center for Cybersecurity and Communications (NCCC) that would be created inside Homeland Security.

The only obvious limitation on the NCCC's emergency power is one paragraph in the Lieberman bill that appears to have grown out of the Bush-era flap over warrantless wiretapping. That limitation says that the NCCC cannot order broadband providers or other companies to "conduct surveillance" of Americans unless it's otherwise legally authorized.

Lieberman said Thursday that enactment of his bill needed to be a top congressional priority. "For all of its 'user-friendly' allure, the Internet can also be a dangerous place with electronic pipelines that run directly into everything from our personal bank accounts to key infrastructure to government and industrial secrets," he said. "Our economic security, national security and public safety are now all at risk from new kinds of enemies--cyber-warriors, cyber-spies, cyber-terrorists and cyber-criminals."

A new cybersecurity bureaucracy

Lieberman's proposal would form a powerful and extensive new Homeland Security bureaucracy around the NCCC, including "no less" than two deputy directors, and liaison officers to the Defense Department, Justice Department, Commerce Department, and the Director of National Intelligence. (How much the NCCC director's duties would overlap with those of the existing assistant secretary for infrastructure protection is not clear.)

The NCCC also would be granted the power to monitor the "security status" of private sector Web sites, broadband providers, and other Internet components. Lieberman's legislation requires the NCCC to provide "situational awareness of the security status" of the portions of

the Internet that are inside the United States -- and also those portions in other countries that, if disrupted, could cause significant harm.

Selected private companies would be required to participate in "information sharing" with the Feds. They must "certify in writing to the director" of the NCCC whether they have "developed and implemented" federally approved security measures, which could be anything from encryption to physical security mechanisms, or programming techniques that have been "approved by the director." The NCCC director can "issue an order" in cases of noncompliance.

The prospect of a vast new cybersecurity bureaucracy with power to command the private sector worries some privacy advocates. "This is a plan for an auto-immune reaction," says Jim Harper, director of information studies at the libertarian [Cato Institute](#). "When something goes wrong, the government will attack our infrastructure and make society weaker."

To sweeten the deal for industry groups, Lieberman has included a tantalizing offer absent from earlier drafts: immunity from civil lawsuits. If a software company's programming error costs customers billions, or a broadband provider intentionally cuts off its customers in response to a federal command, neither would be liable.

If there's an "incident related to a cyber vulnerability" after the president has declared an emergency and the affected company has followed federal standards, plaintiffs' lawyers cannot collect damages for economic harm. And if the harm is caused by an emergency order from the Feds, not only does the possibility of damages virtually disappear, but the U.S. Treasury will even pick up the private company's tab.

Another sweetener: A new White House office would be charged with forcing federal agencies to take cybersecurity more seriously, with the power to jeopardize their budgets if they fail to comply. The likely effect would be to increase government agencies' demand for security products.

[Tom Gann](#), McAfee's vice president for government relations, stopped short of criticizing the Lieberman bill, calling it a "very important piece of legislation."

McAfee is paying attention to "a number of provisions of the bill that could use work," Gann said, and "we've certainly put some focus on the emergency provisions."

Last updated at 9:14 p.m. PT.



[Declan McCullagh](#) has covered the intersection of politics and technology for over a decade. [E-mail Declan](#).

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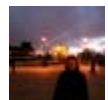
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