

Obama's Controversial Call for New Snooping Powers

By *MAX FISHER* on July 30, 2010 8:53am

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The Obama administration is [seeking new surveillance powers](#) for the FBI, granting them the ability to monitor "electronic communication transactional records" without the approval of a judge. If granted the new power, the FBI would have nearly unrestricted authority to monitor when you send emails, who you send them to, and even your browsing history if the FBI deems that information relevant to a terrorism or intelligence investigation. The FBI can request this information

with a national security letter (NSL) to your Internet service provider, compelling them to turn it over. Unsurprisingly, many observers are fuming at this proposed new power. Here's what they're saying.

- **Return to Bush-era Abuses** The [New York Times editorial board](#) calls this "an unnecessary and disappointing step backward toward more intrusive surveillance from a president who promised something very different during the 2008 campaign. ... These national security letters are the same vehicles that the Bush administration used after the Sept. 11, 2001, attacks to demand that libraries turn over the names of books that people had checked out. ... President Obama campaigned for office on an explicit promise to rein in these abuses."
- **This Is About Protecting National Security and Obama's Job** Conservative blogger [Allahpundit says this is](#) "par for the course for Obama: As Eli Lake noted a few months ago, building on [Bush's war powers](#) has been his M.O. since day one and will almost certainly continue to be so, partly because aggregating power is part of the inertia of institutions like the executive branch and partly because Obama knows he'll suffer less politically from incremental encroachments like this than he would if a major attack happens on his watch." Allahpundit sympathizes with the administration's case that these email data requests would be just like digital phone records, which the FBI can currently obtain without a judge. "How are e-mail addresses and timestamps on messages any more revealing than phone numbers and listings of when calls were made?"
- **Troubling History of FBI Abuses** The Atlantic's [Marc Ambinder writes](#), "there's a good faith case to be made that the FBI ought to have this authority. After all, the bad guys don't use telephones to talk to each other any more. But the FBI has abused the NSL authority, essentially fabricating pretexts for sending NSLs to thousands of people. Since the NSL authority [was expanded](#) by the PATRIOT Act, three separate [OIG investigations](#) have found abuses that rise above the level of incidental misuse of power. The FBI has excuses: it's the databases. It's the urgency of terrorism investigations. It's the lack of clarity in the language."

- **Long Struggle Between Safety and Civil Liberties Continues** Conservative blogger [James Joyner](#) worries, "Prioritizing law enforcement over civil liberties is hardly something unique to the Obama administration or Democrats. This is merely another step down a road we've been traveling for a while. But it's time to walk this back." [Mother Jones' Kevin Drum](#) quips, "You know, if I'd wanted Dick Cheney as president I would have just voted for him."
- **Serious First Amendment Concerns** The American Prospect's [Julian Sanchez](#) explains:

Such broad authority would not only raise enormous privacy concerns but have profound implications for First Amendment speech and association interests. Consider, for instance, the implications of a [request for logs](#) revealing every visitor to a political site such as Indymedia. The constitutionally protected right to anonymous speech would be gutted for all but the most technically savvy users if chat-forum participants and blog authors could be identified at the discretion of the FBI, without the involvement of a judge.

... We increasingly live online. We flirt, shop, read, speak out, and organize in a virtual space where nearly every action leaves a digital trace -- and where those breadcrumb bits often track us through the physical world as well. If the Obama administration gets its way, an agency that has already proved itself utterly unable to respect the limits of its authority will have discretion to map our digital lives in potentially astonishing detail, with no judge looking over their shoulders.

The Debate

[Breaking Promises](#) *The Editors*, The New York Times

[Record of Abuses](#) *Marc Ambinder*, The Atlantic

[Keeping Us Safe](#) *Allahpundit*, Hot Air

[Step Too Far](#) *James Joyner*, Outside the Beltway

[Free Speech Concerns](#) *Julian Sanchez*, The American Prospect

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