Obama administration presses for law on Internet data retention

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The Department of Justice is advocating new legislation that would require Internet companies to retain data and records of user activity online. In doing so, the Obama administration is giving its support to measures advocated by the Bush administration that pose a grave threat to free speech and the freedom of the Internet.

Jason Weinstein, deputy assistant attorney general for the criminal division, provided testimony before the House Subcommittee on Crime, Terrorism and Homeland Security on January 25. Weinstein indicated that the administration was prepared to back sweeping legislation, referring in his testimony to cell phone service, Internet records, and email.

No specific legislation has been advanced. However, the new chairman of the House Judiciary Committee, Republican Lamar Smith, introduced legislation last year and will likely do so again some time this year. Weinstein's testimony makes clear that the legislation will have the support of the Obama administration.

Weinstein suggested that the data should be kept by companies for two years. This was also FBI Director Robert Mueller's suggestion in 2008.

Data retention legislation would jeopardize the privacy of millions of Americans who use the Internet. The Electronic Frontier Foundation (EFF) notes, "A legal obligation to log users' Internet use, paired with weak federal privacy laws that allow the government to easily obtain those records, would dangerously expand the government's ability to surveil its citizens, damage privacy, and chill freedom of expression."

There was general support among both Democrats and Republicans for a new law. Some representatives, such as Democrat John Conyers, expressed frustration that the administration did not yet have a clear proposal. "When are you going to get a specific proposal?" Conyers asked. "How many years is this going to take?"

Upset with the delay, Conyers declared, "I'm going to call [Attorney General] Eric Holder right after this hearing and see if we can get this moving… I don't think we need a whole lot of time."

John Douglass, chief of police for Overland Park, Kansas, testified on behalf of the International Association of Chiefs of Police, saying that data retention for "a minimum of six months would be advantageous, more like a year would be best." The IACP has been calling for this type of legislation since 2006, hoping to keep records of every Internet user's browsing history.

Representative F. James Sensenbrenner, Republican of Wisconsin, explicitly warned Kate Dean, executive director of the US Internet Service Provider Association, what the outcome would be if the industry doesn't adopt "voluntary" retention standards. "If you aren't a good rabbit and don't start eating the carrot, I'm afraid we're all going to be throwing the stick at you." Dean said the ISPA would be willing to meet and discuss the policy.

John Morris, general counsel at the Center for Democracy and Technology, warned that obligatory data retention could "harm Americans' privacy rights, aggravate the problem of identity theft, and jeopardize Americans' First Amendment right to speak anonymously on the Internet."

Pressure for a retention law is part of a series of measures implemented by the US government over the past decade to expand its powers to spy on the population—beginning with the passage of the USA Patriot Act, which was renewed last year by the Democratic Party-controlled Congress. The act increases the government's power to seize library,

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Internet, and other personal records of American citizens.

In April 2010 Google released a tool that allowed users to see the number of requests made by governments for the data that Google has on users. At the time the number of requests made by the United States in the six-month period from July to December of 2009 was 3,580, second only to Brazil with 3,663. (See “Google publishes figures on government requests for data”)

The most recent data, from January to July 2010, indicates that the number of US government requests has risen to 4,287, more than any other country.

In June of 2010, Senator Joseph Lieberman, Independent of Connecticut, introduced the “Protecting Cyberspace as a National Asset Act” with the goal of giving the US president increased powers, including the ability to order Internet providers to deny access to the Internet in the event of “cyber emergency.”

The US government is well aware that the Internet provides a forum for rapid communication and organization, as demonstrated by the events in Egypt this week. In an attempt to block communication within Egypt and with the external world, US-backed dictator Hosni Mubarak cut off the country's access to the Internet altogether.

Similarly, the fundamental goal of the US government in its attempts to gain control of the Internet and monitor user activity has nothing to do with the “war on terror” or prosecuting criminals. Under conditions of growing social inequality, government austerity, and expanding war abroad, the government anticipates the growth of social opposition in the United States.

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