



Written by [Joe Wolverton, II, J.D.](#) on May 2, 2013

FBI Wants Real-time Warrantless Access to Online Communication

The Obama administration is attacking the Fourth Amendment on every possible front. The latest assault would require Facebook, Twitter, Google, Apple, etc. to submit to real-time warrantless wiretaps on customer accounts. Tweets, Facebook posts and direct messages, e-mail, all conversations on messenger apps, and all other online communications would be subject to real-time federal monitoring without first obtaining a warrant to conduct the surveillance, as required by the Constitution.



Should any of these tech giants refuse to bend to the federal will, they will incur fines that could add up hundreds of thousands of dollars. If their resistance goes on for more than 90 days, the fines would then double every day until the company relents and gives the government access to client accounts and communications.

This is the story told by “current and former U.S. officials familiar with the effort” as first reported by the *Washington Post*. In the article dated April 28, the *Washington Post*’s Ellen Nakashima writes, “Driven by FBI concerns that it is unable to tap the Internet communications of terrorists and other criminals, the task force’s proposal would penalize companies that failed to heed wiretap orders — court authorizations for the government to intercept suspects’ communications.”

Typically, the government justifies its unconstitutional searches and seizures by trotting out the familiar bogeyman of terrorism. Since the ruse is working, the federal government will continue to cover domestic danger to our most fundamental, constitutionally-protected civil liberties behind a front of foreign threats to our freedom.

In [an essay published online Thursday, May 2](#), Judge Andrew Napolitano — constitutional scholar and consistent advocate of liberty — laid out the case against the president’s plan:

If enacted, the proposed legislation will punish those Internet service providers that fail to share secrets with the feds. The Obama administration hopes the legislation, if enacted, will enable the feds to set up a system that will let them tap into Internet service providers’ data directly *from FBI offices*, without having to serve the warrant or visit the Internet providers’ premises.

What a temptation for abuse that will become. It will compel data sharing between the government and Internet service providers that will eviscerate what little remains of personal email privacy. It will profoundly violate the Fourth Amendment by turning employees of Internet service providers into de facto unpaid federal agents. [Emphasis in original.]

The [Fourth Amendment guarantees](#) the “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” This fundamental freedom from government oppression is a sine qua non of personal liberty.



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Drafters of the amendments that became the Bill of Rights understood that requiring judges to look over the shoulder of federal agents was one way to prevent privation of the right of the people to be free from the constant surveillance of government.

In the new proposal, the FBI would give Internet companies a chance to develop their own plan to place the wiretaps on clients' online activity. There are limits to this "freedom," however.

If the company's solution fails to meet federal muster, the FBI would mandate the enforcement of its own surveillance standards and practices.

While this FBI proposal is new, it's not as if the government isn't already spying on citizens. In 2005, the Bush administration expanded the authority given the feds under the Communications Assistance for Law Enforcement Act (CALEA).

After those amendments were enacted, Internet service providers and Voice Over IP (VOIP) providers were required to grant the FBI real-time access to their customers' activity.

This latest expansion of the surveillance state would extend the boundaries of federal power over the Internet to include social networks, instant messenger apps, and online gaming, as well.

According to the *Washington Post* story, the president has yet to give his support to the proposal. However, the piece also quotes FBI general counsel Andrew Weissmann as saying that "the issue is the bureau's top legislative priority this year."

Regardless of corporate resistance to such federal fiddling with their customers' otherwise private communications, the government can be expected to encompass every word, act, or thought — whether real or virtual — within the walls of the federal [panopticon](#). Consider the statement of one former federal prosecutor as reported by the *Washington Post*: "Today, if you're a tech company that's created a new and popular way to communicate, it's only a matter of time before the FBI shows up with a court order to read or hear some conversation," said Michael Sussmann. "If the data can help solve crimes, the government will be interested."

The greatest threat, however, is the federal government's decade-long project to destroy the foundation of freedom and civil liberty upon which this Republic is built.

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