



Written by [Joe Wolverton, II, J.D.](#) on February 13, 2013

## Obama Bypasses Congress, Issues Cybersecurity Executive Order

While Americans watched [the last stand and possible death of Christopher Dorner](#), President Obama continued along the tyrannical tack and issued an executive order granting the intelligence agencies in his administration expansive and unconstitutional control over the flow of Internet traffic and the personal data of millions of users.



President Obama telegraphed the issuance of the order during Tuesday night's [State of the Union address](#). He cited the "growing threat from cyber-attacks" as the impetus for seizing control of the nation's internet infrastructure.

"We know hackers steal people's identities and infiltrate private e-mail," he said. "We know foreign countries and companies swipe our corporate secrets. Now our enemies are also seeking the ability to sabotage our power grid, our financial institutions, and our air traffic control systems."

"We cannot look back years from now and wonder why we did nothing in the face of real threats to our security and our economy," he added.

According to the text of the edict, titled "[Improving Critical Infrastructure Cybersecurity](#)," its broader purpose is to "enhance the security and resilience of the Nation's critical infrastructure."

Although it appeared a bit earlier than anticipated (*The New American* and other news organizations had predicted it would be signed on Wednesday), the cybersecurity executive order has been accurately predicted for some time.

The executive order comes in the vacuum of congressional cybersecurity legislation. Although measures have passed the House of Representatives, no bill has ever made it past the Senate and onto the president's desk.

There is new movement in Congress toward controlling the Internet, however. The measure that will be offered in the House of Representatives on Wednesday will be nothing less than a resurrection of the Cyber Intelligence Sharing and Protection Act (CISPA), that was passed by the House in April of last year.

[According to The Hill](#), House Intelligence Committee Chairman Mike Rogers (R-Mich.) and ranking member Representative Dutch Ruppersberger (D-Md.) will re-introduce an unamended CISPA during a speech at the Center for Strategic and International Studies in Washington, D.C.

The original CISPA bill, [H.R. 3523](#), established an exemption to all privacy laws allowing companies to transmit private user/subscriber information with other companies and with the government for the purpose of protecting cybersecurity. In exchange for their compliance with the "voluntary" delivery of



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users' private data to the NSA and Department of Homeland Security (DHS), the federal government will shield participating companies for any liability stemming from challenges to the government's use of the electronic communication of its customers.

In a statement released Wednesday morning, lawmakers expressed doubt at the ability of the president to accomplish in an executive order what they had failed to do with legislation.

In the [joint statement](#), Republican Senators John McCain (Ariz.), Saxby Chambliss (Ga.) and John Thune (S.D.) said only congressional legislation would be able to "achieve the balanced approach" to privacy and cybersecurity.

"The Senate should follow regular order and craft legislation that will have an immediate impact on our nation's cybersecurity without adding or prompting regulations that could discourage innovation and negatively impact our struggling economy," the statement read.

On Wednesday, Representative Rogers echoed his congressional colleagues' sentiment. "We agree that our biggest barriers to bolster our cyber defenses can be fixed only with legislation," he said.

As for the apparatus established in the executive order for controlling the Internet, it is much as expected. The order places the secretary of the Department of Homeland Security and the director of national intelligence in charge of monitoring all Internet traffic for the purpose of anticipating or identifying potential threats to the stability of the nation's Internet infrastructure.

Internet companies (known in the order as "critical infrastructure entities") will be enlisted in this new army of surveillance, as well.

Section 4(c) of the order, for example, creates a "voluntary information sharing program" between these Internet companies and DHS and the Pentagon. DHS will select "appropriate personnel employed by critical infrastructure owners and operators" to be the spy agency's eyes and ears inside corporations.

These liaisons will have the necessary classified security clearances expedited so that the surveillance can begin within 120 days of the issuance of the order.

With so much of the financial and personal information of Americans stored and transmitted online, many worry that government agents will use the authority created by this executive order to abrogate the Fourth Amendment's prohibition of "unlawful searches and seizures."

Never fear. The executive order explicitly protects the privacy of Internet users by requiring a Department of Homeland Security deputy secretary to make sure the Department of Homeland Security doesn't violate civil liberties. Per Section 5(b) of the order:

The Chief Privacy Officer and the Officer for Civil Rights and Civil Liberties of the Department of Homeland Security (DHS) shall assess the privacy and civil liberties risks of the functions and programs undertaken by DHS as called for in this order and shall recommend to the Secretary ways to minimize or mitigate such risks.

There are some former foes of government meddling in cybersecurity who are applauding President Obama's "privacy-neutral" executive order.

The American Civil Liberties Union (ACLU) fought passage of CIPA and similar legislation, but now embraces the president's latest consolidation of power.

In [a blog post](#), the ACLU described the executive order as "a win for privacy and civil liberties" and



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reassured those concerned about their personal data being passed around among companies and the federal government that “an executive order by definition cannot take away the privacy protections granted by current statutes.”

That’s little comfort to those whose every electronic banking, communications, and transportation transactions will now be watched — without a warrant.

Then there is the irrefutable constitutional fact that the president, despite what he claims in the first line of this latest fiat, cannot pass laws. Although Barack Obama has evidently embraced the “stroke of the pen, law of the land” mentality, Article I of the Constitution grants “all legislative power” to Congress.

Unfortunately, in this as in so many other areas, Congress has meekly abdicated its lawmaking authority to a president who is determined to assume all power — executive, legislative, and judicial — unto himself, placing his will beyond question, beyond debate, beyond vote, and beyond the reach of the American people.

*Photo of President Barack Obama speaking during State of the Union address: AP Images*

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