

PRISM Futures: Time For An Ultimatum To America ? Or: We Love You Guys... But Enough Is Enough!

Activism , Best of Gerd Leonhard , Big Data , Insights , Politics, Public Policy, Government , Politics, Public Policy, Government , Privacy & Publicity



Image above by Gizmodo

Neelie Kroes, European Commissioner for digital matters: 'If I were an American cloud provider, I would be quite frustrated with my government right now'

President Obama in 2005: "A lack of oversight in a proposal to reauthorize the Patriot Act seriously jeopardizes the rights of all Americans and the ideals America stands for"

DISCLAIMER: before I dive into the substance of this post I want to make one thing perfectly clear: this is not an attack on the U.S. and my message is not anti-American. I have lived in the U.S., on and off, for a total of 12 years, I went to college in Boston (Berkeley), my kids are both U.S. citizens as well as German citizens, and all of us all have a deep love and admiration for many American things, traits, people and

places.



Nevertheless, ever since 9/11, the U.S. government seems to have gone on a path of increasingly bizarre behavior that is now bordering on some kind of digital totalitarianism, paranoia and first and foremost utter disrespect for other countries' mindsets and cultures. This situation cannot be ignored or tolerated, in my view, as it damages the fragile fabric of the [new global ecosystem](#) that we will sorely need to jointly and collectively address the urgent global issues such as energy, pollution, food, climate change, (cyber-)terrorism and inequality.

DISCLAIMER #2: yes, I know, this is not just happening in the United States. Apart from the so-called [5Eyes](#) apparently agreeing to do this together (USA, UK, Canada, AUS, NZ), [France](#), Germany and Holland seem to have similar programs. And in many ways one could argue that a lot of the European protest against PRISM is slightly hypocritical given that many EU leaders have apparently been [silently consenting](#) to U.S. demands on 'more data, all the time, everywhere' all-along. But nevertheless, in terms of worldview and technological leadership I think we can safely say that the U.S. government is the driving force behind this; therefore please bear with me as I single them out in this post.

So, sparks are flying. Clearly, the past few weeks have been game-changing for the U.S. – Europe relationship (be sure read my 2 previous posts on [Prism](#) and the [coming data wars to find out more](#)) as a) the EU has already voted to review the current practice of automatic data exchange with the U.S. for the purpose of secure air-travel (PNR) b) the EU commission president, Neelie Kroes, is [already talking openly about the need to move cloud-computing centers to Europe](#) so that they could operate under European law, c) as all the details about the NSA's mass surveillance activities are coming to light, it is also becoming clear that at least the other members of UKUSA i.e. '5 Eyes' group (USA, UK, NZ, AUS, Canada) are pretty much doing the same thing.

The utter disrespect with which U.S. law enforcement agencies have violated the most basic international agreements on data security and basic citizens' rights, the Vienna Convention on diplomatic relations (by [spying on European commission offi-](#)

cial) and the 4th amendment, generally, is greatly worrisome and in my view it behooves us to now rethink our relationship with 'all things USA', whether it's the government, telecoms, technology companies or media.

To me, it is particularly disappointing to observe President Obama preside over this Orwellian affair without even trying to take a meaningful stand for citizen rights that would be even remotely similar to what he pointed out with great vigor in 2005 and 2007 when he was still just a senator – [watch these videos](#) collected by the NYTimes to get more than your daily dose of reality shock.

Some key quotes: “As a senator, Mr. Obama said that lack of oversight in a proposal to reauthorize the Patriot Act “seriously jeopardizes the rights of all Americans and the ideals America stands for” (2005) “The Bush administration....puts forward a false choice between the liberties we cherish and the security we provide,” Mr. Obama, a presidential candidate, said in an August 2007 speech. He also vowed to end the “illegal wiretapping of American citizens.” (2007).

So what happened to those believes in the last 8 years? This video presents Obama's 'evolution' in a pretty hard-hitting remix:

Ok, so let's just assume that President Obama changed his mind on these pretty fundamental issues, and that this is what he and the U.S. congress really wants America to look and feel like. Even if we accepted this as a rather stirring conclusion I think that an American shift towards state-sanctioned data totalitarianism will have significant impact on all U.S.-based companies that are in technology, media, cloud computing, social networking, telecommunications, e-commerce, 'big data' etc, for they cannot really do anything else than to comply with the laws as they are now (i.e. the Patriot Act, FISA courts etc) or – even worse – as they are being interpreted by eager law enforcement officials that act without a warrant but with their secret FISA blessings.

As a result, maybe some 50-75% of the worlds largest digital communications and technology enterprises are now facing a seriously wicked and potentially detrimental dilemma because they are forced to comply with even the most bizarre and far-reaching U.S. government orders which also apply to users that are not even under U.S. jurisdiction. This means we Europeans have no protection, no recourse, no oversight... no power. Totally and utterly unacceptable.

If this dilemma is not resolved ASAP non-US internet users will be left with very few options apart from a 'strike' i.e. the explicit non-participation in those platforms and services that are subject to totalitarian readings of already far-reaching laws such as the U.S. PATRIOT act.

For the likes of Google, Apple, Microsoft (Skype), Amazon and Facebook their only way forward without a doubt is to take strong action and get the U.S. government to remedy this issue, immediately – in my view, the future of US-based technology companies is at stake here, because...

“There are more instance of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations.” — James Madison, 1788

So here is the ultimatum that I think we may see stipulated in various ways during the coming weeks:

Unless the technology, internet, telecom and 'big data' companies based in the U.S. seriously consider:

1. Taking strong and unequivocal sides with their users i.e. assure us, NOW, that they will indeed fight tooth and nail on our behalf, and not just stand by helplessly while we are becoming victims of needless, groundless and irreversible mass surveillance just by using their cool platforms, software and services. If you don't defend us who will? We are your content, your show, your lifeblood, your customers – now do something for us!
2. Mounting an immediate, public and forceful campaign to urge President Obama and the U.S. Congress to put the boot on these horrific mass surveillance schemes, immediately, and put appropriate approval, remedy and redress mechanisms in place that still allow U.S. enforcement agencies to do their real job (i.e. to prevent and solve crimes and terrorism by those people who are probably too smart to be caught in their current email and phone-spying, dragnet schemes, anyway) rather than to go after 100s of Millions of ordinary citizens who have 'nothing to hide' because it helps to sharpen their profiling algorithms.
3. Urging the U.S. government to release all details that pertain to the alleged mass-surveillance practice to-date, and shed light on everything that needs to be discussed in public, immediately – only utter transparency can give rise to new

credibility, going forward. We also need U.S. tech companies to proactively support what we in Europe consider sufficient control mechanisms as far as our data is concerned – this may be a good time to set up satellite companies in the EU.

4. Petition and urge the government to give a fair and public trial to Edward Snowden (this probably means supervision by the European Union, maybe via the EU court in The Hague, see below) that will need to first establish which party was acting 'criminally' (i.e. whether the NSA, or Snowden, or both) and whether Snowden should therefore be subject to criminal investigation, or not.

And **unless the U.S. government seriously considers:**

1. To acknowledge the mistakes and systematic violations that have occurred as far as the surveillance of EU citizens are concerned, and to admit all such instances by making further details publicly available so that transparency and some form of trust can be reinstalled
2. To immediately discontinue the practice of spying on EU citizens without individual warrants and only in strict congruence with EU laws and regulations, and with regular verification undertaken by EU officials
3. To guarantee a fair, public and open trial of Edward Snowden that does not victimize him in the same way than Bradley Manning (as much different as that case may be, it does serve as a benchmark), preferably in Europe, maybe at the International Court of Justice in The Hague, and that considers the fact that it is currently quite unclear who acted criminally and who did not (which means the difference between Snowden as a leaker or as a whistleblower)
4. To start the process of revising the PATRIOT act as well as FISA to ensure that such abuses of power and carte-blanche readings of laws dealing with citizens' data and privacy can no longer happen, especially in regards to non-US citizens

Unless these things happen I think we (i.e. the EU parliament and EU commission, and us, as citizens, anywhere) must consider taking serious and possibly quite dramatic action to safeguard against this 'totalitarian surveillance creep' instigated by the U.S. government (and by extension those U.S. based technology companies that are forced to collaborate) that has come to light in the past few weeks.

Some possible actions could include:

1. Review and temporarily halt the EU-US data exchange programs for travelers

- (PNR and TFTP), which could potentially lead to a significant disruption of commercial air traffic between the U.S. and Europe
2. Cut or significantly **reduce ties** with U.S.-based Internet service providers and **shift business to providers** based in Europe that are subject to European laws and explicit supervision (i.e. that can guarantee that appropriate processes and safeguards are in place)
 3. Slow down or even halt the upcoming **Trans-Atlantic Free Trade Agreement discussions** (Yes, I know, this could be quite painful for some EU countries but ... would you rather be 'collateral damage' now than take collective action to address longterm issues?)
 4. Build (or rather, unlock and make widely available) vast **cloud computing facilities in Europe** (this seems like a perfect business case for Switzerland -now my 2nd home-country- or **Luxembourg**), and switch all data from US-based centers to new facilities
 5. As consumers, we may need to stop using all US-based services that won't voluntarily comply with EU data protection requirements (which seems impossible, at this point), or provide EU 'versions' of their services
 6. Offer an EU-supervised trial location to Edward Snowden (i.e. at least some temporary asylum)

On my end, I am certainly thinking of taking action along these lines – stay tuned. Thanks for reading!



Some related quotes and links for your edification:

“If businesses or governments think they might be spied on, they will have less reason to trust cloud, and it will be cloud providers who ultimately miss out,’ Neelie Kroes, Vice President of the European Commission [said](#).

[RT.com](#): “Neelie Kroes, Vice President of the European Commission, said that US providers of ‘cloud services,’ a technology that permits clients to store data on remote servers, could suffer steep losses if users fear the security of their material is at risk of being compromised. “If businesses or governments think they might be spied on, they will have less reason to trust cloud, and it will be cloud providers who ultimately miss out,” Kroes said. “Why would you pay someone else to hold your commercial or other secrets if you suspect or know they are being shared against your wishes? It is often American providers that will miss out, because they are often the leaders in cloud services. If European cloud customers cannot trust the United States government, then maybe they won’t trust US cloud providers either. If I am right, there are multibillion-euro consequences for American companies. If I were an American cloud provider, I would be quite frustrated with my government right now. Accord-

ing to Der Spiegel, the US surveillance system spied on some 500 million telephone and internet recordings in Germany each month, ramping up fears that the United States was not simply collecting data to prevent against acts of terrorism, but was involved in full-scale industrial espionage.

[Kim Dotcom in the Guardian](#) (now this is someone who I would not quote much, usually:) “We should heed warnings from Snowden because the prospect of an Orwellian society outweighs whatever security benefits we derive from Prism or Five Eyes. Viewed through the long lens of human history, concerns over government tyranny are always legitimate. It is those concerns that underpin the constitutions of most developed countries, and inform international principles of human rights and the rule of law. Prism and its related practices should be discontinued immediately, and the Utah Data Center should be leased to cloud storage companies with encryption capabilities”

“We need our own capacities, European cloud computing, EU strategic independence,” said Michel Barnier, the French politician and European commissioner for the single market. (via [The Guardian](#))

[TheGuardian](#): “Germany’s justice minister, Sabine Leutheusser-Schnarrenberger, called for an explanation from the US authorities. “If the media reports are true, it is reminiscent of the actions of enemies during the cold war,” she was quoted as saying in the German newspaper Bild. “It is beyond imagination that our friends in the US view Europeans as the enemy.” France later also asked the US authorities for an explanation. France’s foreign minister, Laurent Fabius, said: “These acts, if confirmed, would be completely unacceptable”

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