

**Now What?:  
Canadian Privacy and Surveillance Law in the  
Post-Snowden Environment**

professor michael geist  
university of ottawa, faculty of law







~~Bill  
C-51~~

**Bill C-51 Is An  
Attack on Democracy!**



# Citing Paris Attack, CIA Director Criticizes Surveillance Reform Efforts

BY JOHN HUDSON

NOVEMBER 16, 2015 - 12:25 PM

✉ JOHN.HUDSON

@JOHN\_HUDSON



February 16, 2016

# A Message to Our Customers

The United States government has demanded that Apple take an unprecedented step which threatens the security of our customers. We oppose this order, which has implications far beyond the legal case at hand.

This moment calls for public discussion, and we want our customers and people around the country to understand what is at stake.

[Answers to your questions about privacy and security >](#)





# NSA collecting phone records of millions of Verizon customers daily

Exclusive: Top secret court order requiring Verizon to hand over all call data shows scale of domestic surveillance under Obama

- [Read the Verizon court order in full here](#)
- [Obama administration justifies surveillance](#)

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**Glenn Greenwald**

The Guardian, Thursday 6 June 2013

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Under the terms of the order, the numbers of both parties on a call are handed over, as is location data and the time and duration of all calls. Photograph: Matt Rourke/AP

# U.S., British intelligence mining data from nine U.S. Internet companies in broad secret program



**Video:** The U.S. government is accessing top Internet companies' servers to track foreign targets. Reporter Barton Gellman talks about the source who revealed this top-secret information and how he believes his whistleblowing was worth whatever consequences are ahead.

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By Barton Gellman and Laura Poitras, Published: June 6 | Updated: Friday, June 7, 10:51 AM  
[E-mail the writer](#) ↗

# NSA collected US email records in bulk for more than two years under Obama

- Secret program launched by Bush continued 'until 2011'
- Fisa court renewed collection order every 90 days
- **Current NSA programs still mine US internet metadata**

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**Glenn Greenwald and Spencer Ackerman**

The Guardian, Thursday 27 June 2013 16.20 BST

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The internet metadata collection program was halted in 2011 for 'operational and resource reasons'. Photograph: Pablo Martinez Monsivais/AP

Canada



## Data-collection program got green light from MacKay in 2011 +

**COLIN FREEZE**

The Globe and Mail

Published Monday, Jun. 10 2013, 6:00 AM EDT

Last updated Monday, Jun. 10 2013, 1:24 PM EDT

315 comments



1K



1K



173



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60



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Defence Minister Peter MacKay approved a secret electronic eavesdropping program that scours global telephone records and Internet data trails – including those of Canadians – for patterns of suspicious activity.

Mr. MacKay signed a ministerial directive formally renewing the government's "metadata" surveillance program on Nov. 21, 2011, according to records obtained by The Globe and Mail. The program had been placed on a lengthy hiatus, according to the documents, after a federal watchdog agency raised concerns that it could lead to warrantless surveillance of Canadians.



## How Canada's shadowy metadata-gathering program went awry +

**COLIN FREEZE**

The Globe and Mail

Published Saturday, Jun. 15 2013, 8:00 AM EDT

Last updated Saturday, Jun. 15 2013, 8:10 PM EDT

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A week ago, most Canadians were unlikely to have heard of Communications Security Establishment Canada (CSEC) and its program gathering "metadata" on untold numbers of global phone calls and online messages. But on Monday, The Globe and Mail reported that the agency's operations, meant to collect foreign intelligence, also at least "incidentally" intercept the communications of Canadians. Many people were left to wonder: Is Ottawa invading our privacy?

# Brazil summons Canadian envoy over spy claims



Brazil's Foreign minister, Luiz Alberto Figueiredo, said he was 'indignant'

**Brazil has summoned the Canadian ambassador for explanations over the latest electronic spying accusations leaked by the former US intelligence contractor, Edward Snowden.**

Canadian intelligence monitored communications of the mines and energy ministry, Brazilian TV Globo reported.

President Dilma Rousseff wrote on Twitter the US and its allies "must stop spying activities immediately."

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**Paul Owen**

theguardian.com, Thursday 28 November 2013 14.21 GMT

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Heads of state and world leaders walk to the 2010 G8 summit in Ontario, Canada, in June 2010. Photograph: Saul Loeb/AFP/Getty Images



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# EXCLUSIVE | Snowden document shows Canada set up spy posts for NSA

CSEC conducted espionage activities for U.S. in 20 countries, according to top-secret briefing note

By Greg Weston, Glenn Greenwald, Ryan Gallagher, CBC News | Posted: Dec 09, 2013 9:03 PM ET | Last Updated: Dec 10, 2013 3:59 PM ET



Canada spying for the NSA 4:09

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by **Evan Solomon** Dec. 17, 2013 4:48 PM

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By Greg Weston, Glenn Greenwald, Ryan Gallagher, CBC News | Posted: Jan 30, 2014 8:59 PM ET | Last Updated: Jan 31, 2014 8:38 PM ET



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Global sites for sharing movies, photos, music targeted in mass anti-terror surveillance

By Amber Hildebrandt, Michael Pereira and Dave Segins, CBC News | Posted: Jan 27, 2015 3:12 PM ET | Last Updated: Jan 28, 2015 12:01 PM ET



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# EXCLUSIVE | CSE monitors millions of Canadian emails to government

Critics question how long data is stored and what it's used for

By Amber Hildebrandt, Michael Pereira and Dave Seglins, CBC News | Posted: Feb 25, 2015 5:00 AM ET | Last Updated: Feb 25, 2015 11:31 AM ET



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# EXCLUSIVE | Spy agencies target mobile phones, app stores to implant spyware

Users of millions of smartphones put at risk by certain mobile browser gaps, Snowden file shows

By Amber Hildebrandt and Dave Seglina, CBC News | Posted: May 21, 2015 5:00 AM ET | Last Updated: May 21, 2015 10:55 PM ET



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Now What?

Oversight



ANN CAVOUKIAN

## The silence over privacy puts our freedoms at risk

**ANN CAVOUKIAN**

Contributed to The Globe and Mail

Published Monday, Jan. 27 2014, 7:21 AM EST

Last updated Monday, Jan. 27 2014, 7:25 AM EST

6 comments



439



340



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24



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Technology allows our every move to be tracked, collected and catalogued by our governments. U.S. President Barack Obama's announcement of reforms to the National Security Agency (NSA) demonstrates that free and open societies need a candid discourse on the surveillance powers of intelligence agencies. Yet, while our U.S. neighbours are debating the future of phone and Internet surveillance programs, our government is maintaining a wall of silence around the activities of the Communications Security Establishment Canada (CSEC). This silence is putting our freedoms at risk.



# NDP wants parliamentary oversight of government's intelligence and security activities



2013 10 29

## NDP wants parliamentary oversight of government's intelligence and security activities

In the wake of disturbing revelations about the activities of the Communications Security Establishment Canada (CSEC) – Canada's equivalent to the United States' NSA – NDP Defence critic Jack Harris (St. John's-East) wants greater Parliamentary oversight of the agency.

"Recent events have raised concern about CSEC's activities," said Harris. "As the former head of CSEC has said, there must be more parliamentary oversight for this agency and clear answers for Canadians about its activities."

Harris sought unanimous consent for a motion to create a parliamentary committee to determine the appropriate method of oversight for Canada's security and intelligence community. His motion was ultimately defeated.

"It's not just CSEC that's at issue," Harris noted. "New Democrats are proposing to improve transparency and strengthen parliamentary oversight of all the security and intelligence activities of government."



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# Private bill would increase oversight of Canada's electronic spy service



The new Communications Security Establishment Canada (CSEC) complex is pictured in Ottawa on October 15, 2013. (Sean Kilpatrick / THE CANADIAN PRESS)

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# Is it time for parliamentary oversight of CSEC?

The House is seized with new allegations

Aaron Wherry

January 31, 2014

Question Period this morning was seized with CBC's **report** of last night that the Communications Security Establishment Canada obtained information via the wi-fi network at a Canadian airport and used it to track passengers.

Just four days, Ontario's privacy commissioner **lamented** in an op-ed that there was insufficient parliamentary oversight of CSEC. Liberal MP Wayne Easter has **tabled** a bill that would establish a "National Security Committee" and last fall NDP MP Jack Harris put a **motion** before the House. Conservative Senator Hugh Segal has also **expressed** his concerns and the former head of CSEC has **suggested** a parliamentary committee could be useful. (Note: **It's not quite a new idea.**)



## Opposition concerned about oversight of Canada's spy agency

The Harper government's controversial Bill C-51 continues to draw fire from the opposition, with NDP leader Thomas Mulcair wondering in the House of Commons if Canada's spy agency CSIS has the proper oversight needed to back up the government's tough new anti-terror measures.

# Harper's scary new terror bill needs oversight

In this opinion piece, the author argues that the extended powers Harper seeks through Bill C-51 are ripe for abuse.

Andrew Lodge | Feb 20th, 2015

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Not Just Oversight

# Metadata

## **Statement by CSE Commissioner the Honourable Jean-Pierre Plouffe re: January 30 CBC story**

OTTAWA – January 31, 2014 - In light of the most recent unauthorized disclosure of classified information of the Communications Security Establishment (CSE), I can state that I am aware of the metadata activities referred to.

The law prohibits CSE from directing its activities at Canadians. In accordance with its mandate, CSE is only allowed to use metadata to understand the global information infrastructure, for the purpose of providing intelligence on foreign entities located outside Canada and to protect computer systems of importance to the government of Canada. If I believe activities of CSE may be unlawful, I am obliged to report that to the Minister of National Defence and to the Attorney General of Canada.

Past commissioners have reviewed CSE metadata activities and have found them to be in compliance with the law and to be subject to comprehensive and satisfactory measures to protect the privacy of Canadians. CSE is providing full cooperation to my office in the conduct of another ongoing in-depth review of these activities, which was formally approved in the fall of 2012.

In June 2013, my predecessor issued a [statement](#) referring to CSE metadata activities. Many reviews of CSE activities conducted by the Commissioner's office include examination of CSE use of metadata. For example, we verify how metadata is used by CSE to target the communications of foreign entities located outside Canada, and we verify how metadata is used by CSE to limit its assistance to federal law enforcement and security agencies to what is authorized by a court order or warrant.

As Commissioner, I am independent of the government and of CSE, and as such do not take direction from any minister of the crown or from CSE.



## **June 13, 2013 - Statement by CSE Commissioner the Honourable Robert Décary**

**OTTAWA** — June 13, 2013 — The Honourable Robert Décary, Q.C., Communications Security Establishment Commissioner, believes that public discussion would benefit from additional information about how he verifies whether CSE complies with the law and protects the privacy of Canadians in the conduct of its activities.

As Communications Security Establishment Commissioner, a position established under the *National Defence Act*, I strive to strike a balance between — on the one hand — the government's need for foreign signals intelligence and IT security services, and — on the other hand — the need to ensure compliance with the law and the protection of the privacy of Canadians. Through the public annual reports, I also strive to provide assurance to Canadians with respect to their privacy.

Since my appointment, I have sought to clarify and explain more fully what my office and I do and how we do it, to help ensure that public discussion is based on fact. While it is not for me to disclose operational information of the Communications Security Establishment (CSE), I do encourage the government to be as transparent as possible. Every reasonable person recognizes, however, there are very real constraints imposed by national security and the *Security of Information Act*.

I am completely independent and operate at arms-length from the government. I have all the powers of a Commissioner under Part II of the *Inquiries Act*, including the power of subpoena, to access and review any information held by CSE. We have secure offices on-site at CSE. My employees have unobstructed access to CSE systems, observe CSE analysts first hand to verify how they conduct their work, interview them, and test information obtained against the contents of CSE's databases.

# 'Difficult to determine' scope of privacy breach in Five Eyes data sharing

Lack of information about metadata sharing 'unconscionable' and 'irresponsible,' privacy advocate says

By Ashley Burke, CBC News | Posted: Feb 23, 2016 9:51 AM ET | Last Updated: Feb 23, 2016 11:09 AM ET



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# Jurisdiction

# Hunting for Hackers, N.S.A. Secretly Expands Internet Spying at U.S. Border

By CHARLIE SAVAGE, JULIA ANGWIN, JEFF LARSON and HENRIK MOLTKE JUNE 4, 2015

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WASHINGTON — Without public notice or debate, the Obama administration has expanded the National Security Agency's warrantless surveillance of Americans' international Internet traffic to search for evidence of malicious computer hacking, according to classified N.S.A. documents.

In mid-2012, Justice Department lawyers wrote two secret memos permitting the spy agency to begin hunting on Internet cables, without a warrant and on American soil, for data linked to computer intrusions originating abroad — including traffic that flows to suspicious Internet addresses or contains malware, the documents show.

The Justice Department allowed the agency to monitor only addresses and "cybersignatures" — patterns associated with computer intrusions — that it could tie to foreign governments. But the documents also note that the N.S.A. sought permission to target hackers even when it could not establish any links to foreign powers.



The National Security Agency's Utah Data Center in Bluffdale in 2013. Rick Dowse/Associated Press

# Domestic Protections



## Feds tap telecoms for customer data at 'staggering' rate

**COLIN FREEZE**

The Globe and Mail

Published Wednesday, Apr. 30, 2014 10:29AM EDT

Last updated Wednesday, Apr. 30, 2014 12:43PM EDT

30 Comments



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Government agencies obtained customer data from Canadian telecommunications companies nearly 800,000 times in a single year, newly disclosed material shows, with at least one companies installing a "mirror" on its networks to more easily route data to authorities.

The new disclosure underscores the sheer volume of government requests for access to information about customers of phone and Internet service providers, and how easily those requests are fulfilled.



### **LIFE AFTER PRIVACY**

Privacy or national security: Have spy agencies gone too far?

It flows from questions that the Office of the Privacy Commissioner of Canada put to leading Canadian telecommunications companies three years ago. The records were disclosed this week following an access to information request from University of Ottawa Law professor Michael Geist.

"The magnitude of the number of requests is

## Internet users' privacy upheld by Canada's top court

Internet providers can't provide customer names and addresses to police without a warrant

CBC News

Posted: Jun 13, 2014 5:00 AM ET

Last Updated: Jun 13, 2014 7:07 PM ET



The Supreme Court says it's reasonable for internet users to expect their online activities to be anonymous and for their subscriber information to be private. Associated Press

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Canadians have the right to be anonymous on the internet, and police must obtain a warrant to uncover their identities, Canada's top court has ruled.

# Privacy Commissioner proposes updates for 'antiquated' Privacy Act

CBC News | Posted: Mar 10, 2016 2:22 PM ET | Last Updated: Mar 10, 2016 2:22 PM ET



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# U.S. Protections

# Our data, our laws



LISA M. AUSTIN, HEATHER BLACK, MICHAEL GEIST, AVNER LEVIN AND IAN KERR, NATIONAL POST | December 12, 2013 12:01 AM ET

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Canadians are increasingly using U.S.-based computer servers for work and pleasure. But none of that private data is protected by our laws.

DIEGO TUSON/AFP/Getty Images

# EU court rules US privacy protection inadequate



*Max Schrems stands in front of the office of the Irish Data Protection Commissioner, where he filed complaints against Facebook. Credit: europe-v-facebook.org*

# House Votes to Give Privacy Rights to Foreigners

Lawmakers are trying to quell the international backlash over NSA spying.



# Encryption

# *Paris Attackers Communicated With ISIS, Officials Say*

By KATRIN BENNHOLD and MICHAEL S. SCHMIDT NOV. 25, 2015



Police officers in the Molenbeek area of Brussels on Saturday. Olivier Huellet/European Pressphoto Agency



NEWS ■ Technology

## NYT Quietly Pulls Article Blaming Encryption in Paris Attacks

Posted to [Technology](#) November 16, 2015 by [Giuseppe Macri](#)

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Questions about how the terrorists behind Friday's attacks in Paris managed to evade electronic

surveillance have fueled worrisome speculation in Europe and in the U.S. from intelligence experts, lawmakers and the press — including the New York Times, which on Sunday quietly pulled from its website a story alleging the attackers used encrypted technology.

On Sunday, the Times published a story citing unidentified "European officials" who told the outlet the attackers coordinated their assault on the French capital via unspecified "encryption technology."

February 16, 2016

# A Message to Our Customers

The United States government has demanded that Apple take an unprecedented step which threatens the security of our customers. We oppose this order, which has implications far beyond the legal case at hand.

This moment calls for public discussion, and we want our customers and people around the country to understand what is at stake.

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The Privacy – Security Balance?

# The Security – Security Balance

@mgeist