



### Cybersecurity and Civil Liberties: Keep Domestic Cybersecurity Efforts in Civilian Hands

Congress is considering legislation that would allow companies to share Americans' internet information with the government for cybersecurity purposes. One of the major unresolved issues is which government agencies will be allowed to directly collect this new wealth of cybersecurity data. Some proposals would allow companies that hold our very sensitive information to share it with not only civilian agencies, but military ones like the National Security Agency (NSA).

- Congress must ensure that information collection is done only by a civilian agency. It is a long held American value that the military is not permitted to spy on Americans and their communications. Authorizing the NSA to turn its powerful spying apparatus on Americans would pose a significant threat to Americans' privacy and would represent a major departure from American values about the role of the military on US soil. Even in the wake of the September 11 attacks and the many rewrites of our surveillance laws over the last decade, Congress never turned the NSA loose on the internet without even minimal court and congressional oversight, yet that is being considered now.
- Even the Administration believes that cybersecurity programs should be run by civilian agencies, and has made efforts over the last several years to ensure that current programs are not run by the military. Creating a legal route for companies to frustrate those existing processes and protections and go straight to the NSA would be a step backwards for privacy.
  - The White House released a legislative proposal on cybersecurity in May 2011 that made the Department of Homeland Security the lead agency to coordinate government cybersecurity and related information sharing efforts. This proposal was the result of an extensive interagency process, and was approved by officials within the Department of Defense, the National Security Agency, the Department of Justice, and the Department of Homeland Security.
  - DHS Secretary Napolitano testified before the Senate Committee on Homeland Security and Government Affairs that the administration supports legislation that designates a civilian government agency such as DHS as the lead agency in the government's cybersecurity efforts.

- DHS already has access to the cybersecurity capabilities and assistance that the NSA can provide, pursuant to the Memorandum of Agreement that both agencies signed in 2010. Under this agreement, the NSA is authorized to provide DHS any assistance or access to its capabilities that DHS requires in order to carry out its cybersecurity responsibilities.
- A January 2012 Privacy Impact Assessment of the Defense Industrial Base (DIB) Exploratory Cybersecurity Initiative (DIB Opt-In Pilot) stated that DoD has transferred control over the program to DHS as it expands into the Joint Cybersecurity Services Pilot (JCSP). The program involves the federal government sharing cybersecurity information, including classified signatures, with defense contractors in the DIB. In February 2012, Secretary Napolitano testified before the Senate Committee on Homeland Security and Government Affairs that the Administration transferred control of the DIB Pilot to DHS because as a civilian agency, the laws and authorities in place made it better situated than DoD to coordinate this type of information sharing program with the private sector. If a civilian agency such as DHS is best suited to effectively administer an information sharing program that focuses on sharing classified data with the defense contractors that are responsible for building military weapons systems, subsystems, components, or parts for DoD, then it is also best suited to coordinate the cybersecurity and information sharing efforts of the federal government on domestic, civilian networks.
- Current and former high ranking officials from the Department of Defense have stated publicly that DHS, and not DoD, should be the lead agency directing government cybersecurity efforts.
  - Eric Rosenbach, deputy assistant secretary of Defense for Cyber Policy in the Department of Defense, said at the annual RSA Security Conference in February, that a civilian agency and not an agency within DoD should be responsible for securing the domestic, civilian internet. He said, “it’s almost certainly not the right approach for the United States of America to have a foreign intelligence focus on domestic networks, doing something that throughout history has been a domestic function...But that doesn’t mean that DoD and NSA don’t play in the game...We’re more the supporting effort.”
  - Former CIA and NSA Director Michael Hayden, who has been an outspoken proponent for appointing the NSA as the government’s lead agency for cybersecurity, has acknowledged that the NSA could assist in the cybersecurity effort under DHS leadership.