

Backgrounder: 2011 Cybersecurity Legislative Proposals

Since 9/11, our government has taken extensive action to secure our nation's physical infrastructure, such as bridges and airports. Now, Congress is turning its attention towards securing the Internet and critical infrastructure that is dependent on or accessible through the Internet such as our nation's electrical grids, financial institutions, and communications providers. Enacting cybersecurity legislation is a priority for Congress. In pursuing that priority, Congress may give the executive branch sweeping new authorities as soon as this fall. Any legislation must preserve traditional standards for free speech and privacy rights guaranteed to Americans under the 1st and 4th Amendments to the Constitution.

- **Congress must protect our privacy laws and prohibit companies from turning over our sensitive information to the Department of Homeland Security.**
 - The administration has proposed an information-sharing scheme that would permit companies to turn over our sensitive electronic communications and data without court oversight and without suspecting a person of doing anything wrong, all in the name of 'cybersecurity.'
 - Our laws already allow companies to share cybersecurity information with the government in true emergencies in defense of their own networks.

The government has so far failed to describe what type of sensitive information it expects to receive under this new collection scheme or explain why current authorities are insufficient. Before passing any far-reaching legislation that will further erode Americans' right to privacy, Congress must evaluate current and future information-sharing programs and laws and then tailor cybersecurity legislation in the narrowest fashion to protect the rights of innocent Americans.

- **Legislation must exclude new emergency authorities such as an "Internet kill switch."**
 - Senators Lieberman and Collins have offered legislation that gives the President undefined emergency power over the Internet for up to four months at a time, without judicial review and without Congressional intervention. This authority has been popularly dubbed 'the kill switch' because it includes the legal authority to 'shut down' parts of the Internet. By definition, this power is not narrowly tailored to address a specific threat and thus threatens rights of law-abiding Americans to exercise their rights to free speech and association.
 - The administration testified before Congress that it does not believe that new emergency authorities are necessary because it already has tools for dealing with crisis situations. The administration, however, has refused to publicly disclose what those emergency or war time authorities are. Before passing any far-reaching cybersecurity legislation, Congress must demand that the Administration provide it with a clear

explanation of exactly what cybersecurity authorities it believes it already has, as well as why those authorities are insufficient and what new authorities it needs to adequately protect our nation's critical infrastructure from a cyber attack.