

# Covert Electronic Surveillance by the Government

An Ethical analysis

# Background

- USA PATRIOT Act passed in 2001
- Title II deals with surveillance procedures
- Section 505 expands use of national security letters to obtain communication records
- Section 206 allows for roving wiretaps on unspecified targets
- Section 213 does not require the subject of search to be notified

# Pen and Trap and Trace Devices

- Allowed for use by the PATRIOT Act
- Supposed to capture routing information on the internet i.e. source, destination
- Excludes the content of communication from surveillance
- Originally meant for telephone networks but extended to computer networks
- Network packets contain a significant information in the header

# Communications Assistance for Law Enforcement Act

- Requires telecommunication carriers to modify and design their equipment to allow federal agencies to monitor the said equipment
- Expanded to cover VoIP and broadband packet switched networks
- Over 3000 percent growth in interception of internet data

# Precedents of abuse

## AT&T and NSA surveillance

- Fiber optic splitter placed in the network at SF which sent private data to NSA
- Lawsuit filed by EFF against NSA dismissed in 2009

## FBI NSL abuse

- FBI used NSLs to get around FISA (Foreign Information Surveillance Act) court approval

# Arguments for and against

## For

- Needed to combat terrorism
- Needed for counter intelligence

## Against

- Burdens the taxpayer with extra cost
- Makes communications less secure
- Infringes on civil liberties
- Leads to abuse of power

# Ethical Analysis

## Kantian Perspective

- If eavesdropping made universally acceptable for every citizen then nobody would have privacy
- Uses ordinary citizens as means to an end
- Therefore, unacceptable

# Act Utilitarianism

- Surveillance deemed acceptable based on how it eliminates risks to ordinary citizens
- Difficult to analyze due to secrecy of surveillance programs
- Seems to be effective given recent successes
- Examples include the killing of Osama Bin Laden, Arrest of Oklahoma bomber
- Therefore, somewhat acceptable

# Rule Utilitarianism

- Rule: surveillance should not violate constitutional rights
- If covert surveillance done according to law then it would be beneficial
- Majority of current laws exclude content of communication from the act of surveillance
- Therefore, acceptable

# Social Contract Theory

- The constitution can be interpreted as a contract between citizens and the government
- Fourth amendment protects against unreasonable searches and seizures
- Covert surveillance would outright violate the fourth amendment
- Therefore, unacceptable

# Ways to Stay Anonymous

## Anonymous P2P networking

- Currently Tor most popular
- Originated as a U.S. navy project, is decentralized
- Uses proxies combined with encryption to secure communications
- Works at TCP level, therefore can be used to secure almost all web services

# Invisible Internet Project

- Scalable, Self organizing packet switched anonymous network layer
- Uses different routes for handling inbound and outbound information from a node

# Conclusion

- Hard to determine the validity of covert government surveillance
- However, clearly needs to be regulated in accordance with constitution
- More checks and balances needed to protect the fourth amendment, especially in the PATRIOT ACT

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