

## **The Summer of Surveillance**

**News summary for the period July 12 to August 28, 2013**

The revelations about the National Security Agency's global spying activities and what has come to be known as the Snowden Affair continued to dominate the international news throughout the summer. More documents leaked by whistle blower Edward Snowden were published almost weekly by The Guardian, The Washington Post and the Brazilian newspaper O Globo, unravelling the apparently never ending reach, massive scale and questionable legality of the NSA's snooping operations.

Basically, the U.S. can spy on nearly everything on the Internet through a program called the XKeyscore program whose "widest-reaching" system covers "nearly everything a typical user does on the Internet" according to NSA training material. A top secret NSA slideshow from 2008, posted by The Guardian on its website, showed that the program allowed analysts to access databases that collect and index online activity around the world, including searching for e-mail addresses, extracted files, phone numbers or chat activity. The slideshow said XKeyscore program spans "approximately 150 sites" and "over 700 servers" around the world. Through another program named UPSTREAM, the agency also gets direct access to fiber-optic cables and the supporting infrastructure that carries nearly all the Internet and telephone traffic in the country. Since approximately 98% of global Internet communications transit through the U.S., it potentially spies and gathers data on virtually every citizen of the planet who uses a communication device.

Documents previously released by Edward Snowden show that the NSA runs another large-scale program to gather the telephone records of every Verizon customer, including local calls, and presumably a similar agreement with AT&T and other companies. These are records of who called whom and when, not of the content of the conversations, although the NSA has, by other methods, access to the content of conversations as well. But the NSA has access to virtually everyone's phone records, whether cell or landline, and can store, data-mine, and keep them indefinitely. Snowden's documents describing the PRISM program show that the agency is also accessing the Internet data of the nine major Internet companies in the US, including Google and Yahoo.

Revelations that U.S. intelligence agencies were collecting data on communications of American and foreign citizens sparked an uproar not only in the U.S., but also throughout Latin America and Europe, especially in the U.K. and Germany. The outrage reached a new level following further revelations of U.S. spying on the communications of Latin American countries (including those of the Brazilian and Mexican presidents as revealed earlier this week), and U.N. diplomats. Brazil, Mexico and the European Union are now pressing the U.S. for "explanations". The issue also dominated the talks during a visit to Colombia by Secretary of State John Kerry in the middle of August.

In a court motion filed by the American Civil Liberties Union on August 26, the ACLU said that the NSA's mass tracking and collection of Americans' phone call data violates the constitution, has a chilling effect on first amendment rights and should be halted. The motion is part of a lawsuit filed by the ACLU in June. Nearly two dozen political and religious groups from across the ideological spectrum, including the Electronic Frontier Foundation, Greenpeace and Human Rights Watch, also sued the NSA, challenging the constitutionality of the agency's authority to harvest and store phone records.

In the Europe, Privacy International initiated a legal action against the British Government for accessing wide-ranging intelligence information from the US and conducting mass surveillance on citizens across the UK. Privacy International claims that the expansive spying regime is seemingly operated outside of the rule of law, lacks any accountability, and is neither necessary nor proportionate.

On August 18, the partner of The Guardian journalist Glenn Greenwald who received leaks from Edward Snowden was detained for nearly nine hours under U.K.'s anti-terror legislation at Heathrow Airport, triggering claims that authorities are trying to interfere with reporting on the issue. David Miranda, Greenwald's partner, was held for nearly the maximum time authorities are allowed to detain under the Terrorism Act's Schedule 7, which authorizes security agencies to stop and question people at borders. Miranda's cellphone, laptops and memory sticks were confiscated.

Two days later, the editor of The Guardian revealed that weeks before David Miranda was detained, agents from GCHQ, the NSA's British counterpart, entered the offices of the newspaper and oversaw the destruction of several hard drives which contained disclosures made by Snowden. According to The Guardian, the raid was authorized at the highest levels of the UK government. Included on those drives were documents detailing GCHQ's massive domestic spying program called "Tempora." Threats by U.K. officials that The Guardian must hand back or destroy the Snowden material have drawn outrage in the world's press, which has denounced the intimidation as having a chilling effect on press freedom. It prompted the World Association of Newspapers and News Publishers (WAN-IFRA) and the World Editors Forum, which represent 18,000 publications and 15,000 online sites in over 120 countries, to write a letter of protest to Prime Minister David Cameron. In an unusual warning, the Council of Europe declared that Britain's reaction to the exposure of the United States' vast surveillance program had potentially troubling consequences for free expression.

Meanwhile, Snowden's passport has been revoked and he has been charged under the U.S. Espionage Act. He was granted asylum in Russia which has refused to extradite him.

### ***Canada***

In Canada, the Communications Security Establishment (Canada's super-secret electronic spy agency and NSA counterpart) may also have illegally targeted Canadians over the

past year. In a report tabled by retired judge Robert Decary in Parliament on August 21, the CSE watchdog said he discovered the potentially illicit spying during a routine review of the electronic surveillance agency's activities over the past year. But Decary said he was unable to determine conclusively whether the snooping was legal or not because "a number of CSEC records relating to these activities were unclear or incomplete."

Decary has also completed a study into whether CSEC has pressed its American, British, Australian and New Zealand spy agency counterparts to respect long-standing promises not to snoop on Canadians. That could shed light on what Canadian authorities knew about PRISM, the NSA's massive telephone and Internet surveillance program in the U.S.. Decary indicated he planned to release his study of CSEC's relationship with its foreign counterparts before he officially steps down within the next three months.

Consistently, since the adoption of the *Anti-Terrorism Act*, the annual reports tabled by successive Commissioners (Antonio Lemaire, Charles Gonthier and Robert Decary) have warned that they were unable to reach a conclusion because of lack of details in the ministerial authorizations reviewed. Furthermore, they consistently point to a conflict of interpretation between the Commissioner's legal team and the government's lawyers concerning the legality of certain operations, especially with regards to how CSE may collaborate with CSIS or other security agencies. Yet, Parliament has never once discussed any of these reports, and the questionable activities of the CSE were largely ignored during the parliamentary review of the Anti-Terrorism Act in 2005.

## **In other news**

### ***Afghan War***

- Many Americans say the Afghan war isn't worth fighting. Only 28 percent say the war has been worth fighting, the lowest number on record and clearly below the least-popular stretches of the Iraq war, according to a recent Washington Post-ABC News poll. Overall support for U.S. military operations in Afghanistan has dropped 11 percentage points since March, a precipitous fall during a period marked by tension between U.S. officials and Afghan President Hamid Karzai, a spring and summer resurgence in Taliban attacks, and the failure of ballyhooed peace talks with insurgents to get off the ground.

### ***Drone warfare***

- U.S. military drone surveillance is expanding to hot spots beyond declared combat zones. As the Obama administration dials back the number of drone attacks in Afghanistan, Pakistan and Yemen, the U.S. military is shifting its huge fleet of unmanned aircraft to other hot spots around the world. This next phase of drone warfare is focused more on spying than killing and will extend the

Pentagon's robust surveillance networks far beyond traditional, declared combat zones. Over the past decade, the Pentagon has amassed more than 400 Predators, Reapers, Hunters, Gray Eagles and other high-altitude drones that have revolutionized counterterrorism operations. Some of the unmanned aircraft will return home with U.S. troops when they leave Afghanistan. But many of the drones will redeploy to fresh frontiers, where they will spy on a melange of armed groups, drug runners, pirates and other targets that worry U.S. officials.

### ***Chelsea Manning***

- In a split decision, former U.S. intelligence analyst Chelsea Manning was acquitted in July of aiding the enemy — the most serious charge she faced — but was convicted of espionage, theft and nearly every other count for giving secrets to WikiLeaks. The judge, army Col. Denise Lind, deliberated over three days before delivering a decision that denied the government a precedent that freedom of press advocates had warned could have broad implications for leak cases and investigative journalism about national security issues. Manning was sentenced to 35 years in jail.

### ***Criminalization of dissent***

- Canada's spy agency kept close watch on rapidly growing First Nations protest movement. A federal department and the country's spy agency closely monitored the activities of the aboriginal "Idle No More" movement in late 2012 and early 2013, with the intelligence agency claiming it was doing so not over fear of protests getting out of hand, but to protect the activists from potential violence by others. A series of "weekly situational awareness reports" from Aboriginal Affairs and Northern Development Canada reveals a rigorous cataloguing of Idle No More's activities. Each report begins: "This is a weekly report that provides current information and the status of activities that threaten public safety in relation to issues affecting Aboriginal Peoples in Canada." The reports were produced between December 2012 and February 2013. They contain long lists of the dates and locations of planned Idle No More demonstrations.
- In the U.S., a federal judge ruled to allow Chevron, through a subpoena to Microsoft, to collect the IP usage records and identity information for email accounts owned by over 100 environmental activists, journalists and attorneys who spoke out against the company's devastating actions in Ecuador. The oil giant is demanding the records in an attempt to cull together a lawsuit which alleges that the company was the victim of a conspiracy in the \$18.2 billion judgment against it for dumping 18.5 billion gallons of oil waste in the Ecuadorean Amazon, causing untold damage to the rainforest. The "sweeping" subpoena was one of three issued to Google, Yahoo! and Microsoft. The Electronic Frontier Foundation, along with environmental rights group

EarthRights International (ERI), had filed a motion last fall to "quash" the subpoenas. According to ERI, the subpoena demands the personal information about each account holder as well as the IP addresses associated with every login to each account over a nine-year period. "This could allow Chevron to determine the countries, states, cities or even buildings where the account-holders were checking their email," they write, "so as to 'infer the movements of the users over the relevant period and might permit Chevron to make inferences about some of the user's professional and personal relationships.'"

### ***Cross border policing***

- On July 31 the Canadian Press reported that the United States wants its police officers to be exempt from Canadian law if they agree to take part in a highly touted cross-border policing initiative, according to an internal RCMP memo. The debate over whose laws would apply to U.S. officers working in Canada raises important questions of sovereignty and police accountability, says the briefing note prepared for RCMP Commissioner Bob Paulson. "Canadians would likely have serious concerns with cross-designated officers from the U.S. not being accountable for their actions in Canada." The planned pilot project — part of a sweeping Canada-U.S. perimeter security pact — would see the two countries build on joint border-policing efforts by creating integrated teams in areas such as intelligence and criminal investigations.

### ***Listing of 'Terrorist entities'***

- The European Union agreed on July 22 to put the armed wing of Hezbollah on its terrorism blacklist, a move driven by concerns over the Lebanese militant group's involvement in a deadly bus bombing in Bulgaria and the Syrian war. Until now, many EU capitals had resisted lobbying from Washington and Israel to blacklist the group, warning such a move could fuel instability in Lebanon and in the Middle East. Canada declared Hezbollah a terrorist entity in 2002. Canadian diplomats mounted a behind-the-scenes push to convince European countries to outlaw the Lebanese Shi'ite group Hezbollah as a terrorist organization, a Canadian government official said in an interview. For the past year, the blacklisting of Hezbollah on the continent has been a Department of Foreign Affairs priority — one that apparently paid off this week when the European Union agreed to ban the military wing of the so-called Party of God. The diplomatic effort began last July, after a bus carrying Israeli tourists was bombed in Bulgaria by suspected Hezbollah operatives. Following a discussion with Hillary Clinton, then the U.S. Secretary of State, Foreign Affairs Minister John Baird instructed his officials to persuade the EU to proscribe Hezbollah.

### ***New minister of Public Safety***

- In the July cabinet shuffle, Prime Minister Harper appointed Steven Blaney, MP for Lévis-Bellechasse, as minister of Public Safety and Emergency Preparedness in replacement of Vic Toews who retired from politics. Steven Blaney was first elected to the House of Commons in 2006 and re-elected in 2008 and 2011. Previously, he was appointed Minister of Veterans Affairs in May 2011, and to the additional position of Minister for La Francophonie in February 2013. The new minister has no prior experience in law, policing or public safety. After graduating from the Université de Sherbrooke, he became a civil engineer in 1988 and then obtained a Master of Business Administration in 2002 in Lévis. After his studies, he worked as a consultant, an entrepreneur and an advisor for urban infrastructure and environmental technologies.

### ***Omar Khadr***

- Omar Khadr's lawyer wants his client moved out of a federal maximum security prison in Edmonton. In the first week of August, Dennis Edney filed an application in court to have the 26-year-old transferred out of the maximum-security Edmonton Institution, arguing that Khadr was sentenced for crimes committed as a teenager and should be in another facility, such as a provincial jail.

### ***Security certificate***

- Mohamed Harkat is no longer bound by GPS bracelet and other restrictions. On July 17, the 44-year-old Algerian had a GPS tracking bracelet unstrapped from his right ankle by a Canada Border Services Agency (CBSA) officer. The Federal Court of Canada, in a decision made public on July 18, also gave him permission to own a basic cellphone with a capacity for incoming and outgoing calls and text messaging, an Internet-enabled desktop computer and permission to travel within Canada. Mr. Harkat's challenge of the security certificate regime will be heard by the Supreme Court of Canada in early October. ICLMG will participate as an intervener in the case.

### ***Torture***

- On July 29, the Canadian Press reported that the Harper government had quietly given Canada's eavesdropping agency the OK to exchange information with foreign partners despite risk of torture. The policy is intended to guide the Communications Security Establishment (CSE) when seeking or sharing information puts someone in foreign custody at serious risk of being tortured. Human rights advocates and opposition MPs have roundly criticized the policy, saying it effectively sanctions torture and violates Canada's international

commitments. Records released through the access-to-information law have shown that several agencies - including the Canadian Security Intelligence Service, RCMP and Canadian Border Services Agency - were directed to follow the policy.

- Aaron Yoon, a Canadian citizen accused of terror links in Mauritania for his ties with 2 other Canadians involved in the deadly attack on an Algerian gas plant earlier this year, returned home from the North African country on July 26. He arrived at Toronto's Pearson Airport aboard an Air Canada flight from Paris and was escorted off the plane by RCMP officers. He was detained for a brief time, then released. Yoon was arrested in the North African country in December of 2011, sentenced to 18 months in jail, and he claims he was tortured while in detention. He was released from prison there on July 23.

### ***RCMP***

- On August 15, Canadian Press reported that the RCMP had put production of a reality TV show documenting the work of the force in Canada's North on hold, after concerns were raised about the project. U.S.-based production company True Entertainment is in the Yukon working on the program, which has already drawn the ire of community groups who are worried about the privacy of people filmed on the program and how it will portray the area.
- According to Canada's information watchdog, the police force is violating the rights of some Canadians trying to access RCMP documents. Access to Information Commissioner Suzanne Legault said over the past months her office began receiving complaints from individuals saying they were not hearing back from the RCMP after filing access to information requests. "This past year at some point, they just completely stopped responding," Legault said of the RCMP. The commissioner plans to reveal details about this in her next annual report, scheduled for release Sept. 16.