

David Alexander Sugar
Chief Facilitator
GNU Telephony

Monday, October 4th, 2010

Attention: The President and the **people** of the United States of America

Why civil liberties matter - an open letter to the Obama administration

"They made us many promises, more than I can remember, but they kept only one; they promised to take our land, and they did" - Maꞓíya Lúta

In a recent Rolling Stone magazine interview, you spoke of this administration's commitment to civil rights while simultaneously insulting the intelligence of those who are concerned with civil liberties. It is this administration's actual record on civil liberties, a record that is in fact worse than the preceding one, that is both clearly inexcusable and dangerously irresponsible.

The civil rights movement that you spoke about, and as we recognize today, would not have been possible without civil liberties. While laws were clearly misused to try suppressing that movement, those efforts failed largely because the United States at the time was institutionally committed to essential core legal principles that included privacy, the freedom of speech and association, due process, and the presumption of innocence. Although each of these fundamental legal principles had been challenged on a reversible basis by the Bush administration, it is your justice department that has worked tirelessly to make those temporary transgressions become a permanent and enduring part of the institutional law of the United States.

Perhaps most people think of your administration's more dramatic statements on civil liberties made like asserting the right to target for assassination American citizens abroad on the whim and statement of a government official alone. This is not the most important, and certainly not by far the only, threat to civil liberties today your administration has engaged in. Other important actions include efforts by the United States Department of Justice to explicitly use state secrets to dismiss lawsuits of those seeking redress from the unlawful practice of rendition and torture at the hands of private contractors, and to establish state secrets as an institutional protection for those carrying out unlawful actions on behalf of the United States government in general, including telecom companies that had facilitated widespread illegal domestic intercept in the past.

Other actions by this administration make it explicit it wishes to reverse the institutional practice of presumption of innocence and replace it with presumption of guilt. One clear example of this is the assertion of the right of the United States government to automatically blacklist websites merely "accused" of copyright infringement in some manner, with neither court oversight nor due process. Related to this is the effort to create a new copyright treaty entirely in secret (ACTA) that seeks the ability to punish individuals directly for alleged crimes with no due process recourse. As these examples illustrates, in a society based on presumption of guilt, one can be punished for crimes that have not only not been proven, but that do not even have evidence presented that can be challenged. It is very clear to see, and history proves, how such tools can be misused to silence or censor independent and critical sources of speech on the public Internet.

Equally troubling are the recent raids on the homes of domestic dissidents and peace activists. As already reported by your own justice department, many of these investigations of domestic dissidents were improperly initiated without any actual evidence whatsoever, and often using knowingly false statements. Yet, this fact did not stop the FBI from engaging in "terrorism raids" on peace activists across the country or asserting "state secret" privilege when challenged afterward to actually justify these actions.

Perhaps the most disconcerting departure into a society based on the presumption of guilt is the effort of this administration to seek a new law to mandate that government backdoors exist in all communication services and software. This effort wishes to both expand upon and fully institutionalize the illegal use of domestic surveillance as practiced by the Bush administration.

Back in the Clinton years, a law was created called CALEA (the Communications Assistance for Law Enforcement Act). This law required that all telephone systems sold and deployed by commercial carriers in the United States include backdoors to enable government intercept of voice communications. While the United States government and local police only engage in about 1000 lawfully initiated wiretap investigations nationwide in any given year, this law mandated the capability to simultaneously spy on millions of people at once be created. At the time it was "promised" that such widespread abuse would "never" actually happen. Yet we have learned that as early as the spring of 2001 the Bush administration had already used presidential directives authorizing private telecom carriers to use CALEA backdoors to engage in large scale domestic surveillance, presumably, given the date, entirely for domestic political purposes. This administration not only refuses to repudiate these past secret and illegal acts, but both defends and explicitly wishes to re-make into fully institutionally legal ones.

When we speak of introducing backdoors into communication systems, such back-doors rarely remain secret and often present themselves to abuse not only by national governments, but also by private corporations and even individuals. Such mandates do not make a society more secure, but in fact less. Perhaps most terrifying is adding backdoors to operating systems such as Microsoft Windows, already known to be insecure and defective by design, which simply further increases their vulnerability and the dangers inherent in their continued use.

This is a very real danger, one that can be lethal. Whether we speak of a compromised airline alarm system that resulted in an plane crash in Spain, a battleship rendered dead in the water, or an alarm system failing on an oil rig in part contributing to a catastrophic oil spill in the Gulf of Mexico, innocent people are put to great risk by enactment of this policy. While these accidents resulted in part from the shoddy workmanship of an already poorly designed operating system being used in inappropriate places, imagine the further possibilities for deliberate mischief by exploitation of any such guaranteed and mandated backdoor facility.

In the United States the 4th amendment did not come about simply because it was impractical to directly spy on everyone on such a large scale. Nor does it end simply because it may now be technically feasible to do so. Communication privacy furthermore is essential to the normal functioning of free societies, whether speaking of whistle-blowers, journalists who have to protect their sources, human rights and peace activists engaging in legitimate political dissent, workers engaged in union organizing, or lawyers who must protect the confidentiality of their privileged communications with clients. Privacy is ultimately about liberty while surveillance is always about control.

To this end, back in 2006, and at the time in response to the illegitimate actions of the prior administration, I created a project whose purpose was explicitly to create and deliver peer-to-peer cryptographically secure communication software directly to the general public. This software was licensed as free (as in freedom) software explicitly to facilitate people to verify that no backdoors are present and to enable them to legally modify and redistribute the software to others as they see fit. If a new law is created that tries to legally mandate the inclusion of backdoors in such software, we will openly refuse to comply.

What is most troubling of all about the expansion of illegal domestic surveillance is how this will reshape the institutional nature of society. To fully appreciate the effect of such surveillance on human societies, imagine being among several hundred million people who wake up each day having to prove they are not "terrorists", however that may be whimsically defined at the moment, compounded by the impossible task of doing so without being accorded the right to face their accusers in summary 'proceedings' or even to be informed of the alleged 'evidence' produced by whatever arbitrary, secretive methods such agents of repression use, and where their prosecution is carried out under the shroud of "state secrets" that all such police states use to abuse their own citizens. Such is a society whose foundation is built on the premise of everyone being guilty until proven innocent and where due process does not exist; a society where the ends justifies the means. It is the imposition of such a illegitimate society that we choose to openly oppose, and to do so in this manner.

Thank you for your time and attention,

David Alexander Sugar
Chief Facilitator
GNU Telephony Project