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Is 'The Five Eyes Alliance' Conspiring to Spy on You?

By Conor Friedersdorf

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Did you know that the United States, Canada, Britain, Australia, and New Zealand participate together in an electronic eavesdropping cooperative called "The Five Eyes Alliance"? Or that Britain "has secretly gained access to the network of cables which carry the world's phone calls and internet traffic and has started to process vast streams of sensitive personal information which it is sharing with its American partner, the National Security Agency"? That's big news, right!

It's also four days old. Maybe some of you caught it, but you know what: The surveillance news is coming so fast these days that it's nearly impossible to process it all. One day, the scandal is

that big Internet companies secretly share data with the U.S. government. A few more days pass, and then this drops:

One key innovation has been GCHQ's ability to tap into and store huge volumes of data drawn from fibre-optic cables for up to 30 days so that it can be sifted and analysed. That operation, codenamed Tempora, has been running for some 18 months. GCHQ and the NSA are consequently able to access and process vast quantities of communications between entirely innocent people, as well as targeted suspects. This includes recordings of phone calls, the content of email messages, entries on Facebook and the history of any internet user's access to websites - all of which is deemed legal, even though the warrant system was supposed to limit interception to a specified range of targets.

And this:

By May last year 300 analysts from GCHQ, and 250 from the NSA, had been assigned to sift through the flood of data. The Americans were given guidelines for its use, but were told in legal briefings by GCHQ lawyers: "We have a light oversight regime compared with the US". When it came to judging the necessity and proportionality of what they were allowed to look for, would-be American users were told it was "your call".

What this portends is terrifying.

Say you're the NSA. By law, there are certain sorts of spying you're not lawfully allowed to do on Americans. (And agency rules constraining you too.) But wait. Allied countries have different laws and surveillance rules. If there are times when America's spy agency has an easier time spying on Brits, and times when Britain's spying agency has an easier time spying on Americans, it's easy to see where the incentives lead. Put bluntly, intelligence agencies have an incentive to make themselves complicit in foreign governments spying on their own citizens.

Reuters raised this concern:

NSA spokeswoman Judith Emmel rejected any suggestion the U.S. agency used the British to do things the NSA cannot do legally. Under U.S. law, the NSA must get authorization from a secret federal court to collect information either in bulk or on specific people. "Any allegation that NSA relies on its foreign partners to circumvent U.S. law is absolutely false. NSA does not ask its foreign partners to undertake any intelligence activity that the U.S. government would be legally prohibited from undertaking itself," Emmel said.

What about when foreign partners aren't "asked," per se, to collect information the NSA isn't allowed to gather ... but just happen to have it because, you know, they collect basically everything?

The NSA has been misleading Americans at every opportunity lately, so I'm loath to take their word for anything, but even if this sort of cooperation isn't happening now -- which I would not assume -- it seems like it's inevitably going to happen if Congress doesn't preempt it, right? The alarming scenarios could fill a whole series of international thrillers. If all this had existed back

in the aughts, would George W. Bush's NSA have been tempted to share surveillance with Tony Blair on his political opponents, to keep an Iraq War ally in power? How many of Senator Ron Wyden's private communications can the British government access? Do we ever have to worry about the Anglosphere's executives and spy agencies allying with one another against their respective legislatures? So much to ponder. (Oh, for an update of Mother Earth, Mother Board.)

Meanwhile, a suggested question for the White House press corps: "President Obama, how often do foreign governments let the U.S. government access information collected from U.S. citizens who aren't suspected of any crime?"