

## What's the problem with PRISM?

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WASHINGTON (AP) —

When the federal government went looking for phone numbers tied to terrorists, it grabbed the records of just about everyone in America.

Why every phone number?

"Well, you have to start someplace," Director of National Intelligence James Clapper told NBC News on Monday.

That breadth, that willingness to sweep up enormous information on Americans with no ties to terrorists, is making it hard for the Obama administration to tamp down controversy over a separate program, called PRISM, to monitor Internet traffic.

In short, critics ask, if looking for terrorists means collecting every American's phone records, how can anyone believe the president when he says Americans aren't being monitored on the Internet?

"These things are very narrowly circumscribed," Obama said. "They're very focused."

The Internet program came to light last week in documents published by The Washington Post and Guardian newspapers. It allows the NSA to reach into the data streams of U.S. companies — Facebook, Yahoo, Microsoft, Google and others — and grab emails, video chats, pictures and more.

Just how much the government seizes is unclear. Clapper says it is narrowly focused on foreign targets, and technology companies say they turn over only information

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that's required by court order.

But after reading a leaked court document last week that allowed NSA to sweep up millions of American phone records, Trevor Timm of the Electronic Frontier Foundation said, "The question is how broad the orders are they're giving these companies."

PRISM was born late in George W. Bush's administration, but its bloodline can be traced to the frenzied aftermath of 9/11.

It used to be that, when the federal government wanted to read a foreigner's Yahoo or Microsoft emails, it needed a judge's approval. After the attacks, Bush secretly authorized the National Security Agency to get to skip that oversight and read U.S.-based email accounts in real time.

When the New York Times revealed the existence of that program, the Bush administration appealed to Congress, saying court approval was too arduous. There were too many emails to monitor. Getting warrants for each one took too long.

"In certain cases, this process of obtaining a court order slows, and in some cases may prevent, the government's efforts to conduct surveillance of communications that are potentially vital to the national security," Kenneth Wainstein, then the Justice Department's top national security prosecutor, testified in 2007.

Sometimes, the government would sweep up Americans' emails, but not intentionally.

"As a matter of due course, if you're targeting something foreign, you could inadvertently intercept an American," said Michael McConnell, the director of national intelligence at the time.

Congress agreed. No more warrants.

With that, PRISM was born.

Now, the government needs only explain to Congress and a secret court exactly how it intends to collect information like emails, Skype video conferences and Facebook messages. Once the court approves the collection rules, the government can grab anything it wants.

Judging from the documents released by the Post and Guardian, PRISM takes a lot of data and quickly. An NSA document said PRISM was the eavesdropping program "used most" by the agency.

The law says the government must limit its surveillance to people "reasonably believed to be located outside the United States."

But everything hinges words such as "targeting" and "collecting," which have unique meanings in the spy world.

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As the classified court order released last week shows, officials can grab phone logs from everybody and still say they haven't targeted or collected information on a single American. Only when an analyst reaches into the archives and looks at the information has something been collected.

Clapper uses a library analogy: The government can fill its shelves with books containing the phone numbers of Americans, who they're talking to, how long they talk and where they call from. That doesn't count as collection.

"To me, collection of U.S. person's data would mean taking the books off the shelf, opening it up and reading it," he said.

To which Timm replied: "Clapper has a different definition of 'collect' than most human beings."

At this point, the government has offered little assurance that PRISM isn't doing for Internet traffic what Clapper says the government does for phones: seizing vast amounts of data, including some belonging to Americans, and then selecting foreigners for specific scrutiny.

When Obama told Americans that PRISM was thoroughly reviewed by a secret court, that was little comfort to Timm.

"This is the same court that would approve the vacuuming up of all the call logs of American citizens," he said.

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