



Ann Cavoukian's Commentary

We Must Have Both Privacy AND Security — Not One, to the Exclusion of the Other

As Glenn Greenwald so eloquently put it, “nobody opposes targeted surveillance.” There is no question that some targeted surveillance is needed, and at times, vitally necessary. But I cannot accept, like Mr. Greenwald and Mr. Ohanian, the zero-sum views of massive state surveillance expounded by General Hayden and Mr. Dershowitz, that effectively sacrifice privacy in the name of security. This false “trade-off” is invariably destructive in free and open societies. It is not only ineffective, it is also unnecessary and completely without justification.

Both Mr. Dershowitz and General Hayden's viewpoints appear to be based on dogma, not on fact. In Friday's debate, both implied that it was a fact that the NSA's tactics had prevented terrorism attacks on numerous occasions! Since 9/11, the NSA has been collecting incalculable amounts of data on everyone. After repeatedly exaggerating the alleged security payoff, another former head of the NSA, General Keith Alexander, finally acknowledged that “only one, or perhaps two” minor plots had been discovered as a direct result of the NSA's

programs. How can such tenuous claims justify invading the privacy and liberty of millions of people? The simple answer is — they cannot. Two Presidential review boards have examined the NSA’s mass telephone metadata surveillance programs and reached the same conclusions: 1) these programs were not effective in catching terrorists, 2) there were significant harms associated with innocent people being incorrectly marked as terrorist threats (false positives), and 3) the bulk collection of data should be stopped, now. While progress may be slow in bringing about much-needed changes to these programs, I applaud our neighbours to the south for publicly addressing these issues.

As we clearly witnessed in Friday’s debate, the many points of view on this issue must be aired publicly, including here in Canada. Yet, there has been a total wall of silence from the federal government and the Communications Security Establishment (CSEC) — we know disturbingly little about how this agency conducts its mass metadata surveillance programs. Our government has yet to answer pivotal questions about privacy and security. Meanwhile, not only is it becoming increasingly clear that CSEC works very closely with the NSA, but we now know that we are apparently the “envy” of the NSA (who believe a surveillance state is necessary)! General Hayden was quoted in the *Globe and Mail* as praising the “agility” of CSEC and its “ability to push through secret surveillance programs without generating any pushback from politicians or judges.” As a Canadian, not only do I find this extremely troubling, but also deeply embarrassing.

What is at the bottom of this so-called “agility” in Canada is a lack of privacy protection, transparency requirements and accountability measures. Indeed,

CSEC operations rely on ministerial approval with secret privacy “protections” and little, if any, transparency and in turn, accountability. To obtain authorization for any type of data collection or surveillance, CSEC goes straight to the Minister of National Defence, with no judicial oversight whatsoever. CSEC’s only form of public accountability rests on a single annual review undertaken by the CSEC Commissioner and his small staff. This report is only submitted to Parliament after being reviewed by the Minister of National Defence. Meanwhile, year after year, the Commissioner’s reports have quietly alluded to inadequate and missing information, excessive delays in getting the answers, and an inability to reach definitive conclusions about the lawfulness of CSEC activities.

This kind of “trust me” model advanced by General Hayden, Mr. Dershowitz, and CSEC is wearing thin. The need for operational secrecy must not stand in the way of public accountability. Canadians deserve to have a legal framework that both allows for necessary, warranted surveillance and provides for strong privacy protections, transparency and oversight. In a free and open society, we must have both.

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