

## Administration Continues to Disappoint on Transparency Around NSA Surveillance

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Kevin Bankston, Senior Counsel and Director of CDT's Free Expression Project

Just one day after announcing the release of new data about how many surveillance demands it issues, it has become clear that the Obama Administration is taking steps to prevent Microsoft and Google from issuing their own transparency reports about national security surveillance. CDT appreciates any new information from the government about the extent of the NSA's surveillance activities, but is extremely disappointed by the Administration's continued opposition to meaningful transparency reporting by U.S. Internet companies.

Today, Microsoft [announced](#) [1] that it and Google's negotiations with the Justice Department, over whether the companies could publish basic numeric information about how many Foreign Intelligence Surveillance Act (FISA) surveillance orders they receive, have ended without a resolution. The negotiations were prompted by the companies' motions to the secret FISA Court seeking permission to publish their FISA numbers, motions that CDT and a coalition of free speech organizations supported last month with a [friend-of-the-court](#) [2] brief arguing in favor of the companies' First Amendment rights.

Perhaps hoping to preempt criticism for its continued opposition to transparency reporting in the FISA court, the Director of National Intelligence last night [announced plans](#) [3] for the government to issue its own annual transparency report providing some new information about the number of surveillance orders and data requests that US companies receive from the government. Unfortunately, that new reporting falls far short of the level of detail demanded in a recent [joint letter](#) [4] organized by CDT and signed by a wide range of Internet companies, trade associations, investors and privacy advocates.

"The Administration shouldn't be offering more transparency with one hand while taking it away with the other. The new data that the government plans to publish is not nearly enough to justify the government's continued attempts to gag companies like Google and Microsoft and prevent them from engaging in meaningful transparency reporting of their own," said Kevin Bankston, CDT's Director of Free Expression. "The new report from the government will mostly include information that it is already statutorily required to publish. The rest of it threatens to be misleading, based on the fact the government will only report information about how many people it 'targeted' rather than how many people have had their data and communications swept up by the NSA. This level of transparency is too little, too late, and is no replacement for hearing directly from Internet companies about how they and their users have been impacted by the NSA's programs."

"We're thankful to Google and Microsoft for continuing to fight in court for their First Amendment right to inform their users, and for refusing to accept the Administration's transparency half-measures," Bankston continued. "The past day's events make clear that Congress should move forward immediately with the transparency reporting legislation introduced earlier this month in both the House and the Senate, rather than waiting to see if the Administration will deliver meaningful transparency on its own."

*NOTE: This release was updated at 5:11PM. It previously stated that the Justice Department would be filing its opposition brief in the FISA Court today, but at the time of the update at the end of the day,*



*a brief had not yet been published on the FISA court's public website.*

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**Links:**

[1] [http://blogs.technet.com/b/microsoft\\_on\\_the\\_issues/archive/2013/08/30/standing-together-for-greater-transparency.aspx](http://blogs.technet.com/b/microsoft_on_the_issues/archive/2013/08/30/standing-together-for-greater-transparency.aspx)

[2] <http://www.cdt.org/file/amicus-brief-fisc-supporting-companies-demands-transparency>

[3] <http://icontherecord.tumblr.com/post/59719173750/dni-clapper-directs-annual-release-of-information>

[4] <http://www.cdt.org/weneedtoknow>