# Stand up for your rights (through your ISP?)

Monica A. Senor Carlo Blengino

Nessun despota dell'antichità, nessun monarca assoluto dell'età moderna, pur circondato da mille spie, è mai riuscito ad avere sui suoi sudditi tutte quelle informazioni che il più democratico dei governi può attingere dall'uso dei cervelli elettronici"

### Di cosa parleremo?

- Delle richieste di accesso ai dati degli utenti da parte delle law enforcement ai grandi provider americani
- Di come i provider rispondono
- Dei problemi di diritto trasnazionale
- Delle iniziative di contrasto a protezione degli utenti assunte dai provider stessi
- Del ruolo che i provider possono e potranno giocare nell'ecosistema della tutela dei nostri dati

#### TOP SECRET//SI//NOFORN

#### UNITED STATES

#### FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

IN RE APPLICATION OF THE
FEDERAL BUREAU OF INVESTIGATION
FOR AN ORDER REQUIRING THE
PRODUCTION OF TANGIBLE THINGS
FROM VERIZON BUSINESS NETWORK SERVICES,
INC. ON BEHALF OF MCI COMMUNICATION
SERVICES, INC. D/B/A VERIZON
BUSINESS SERVICES.

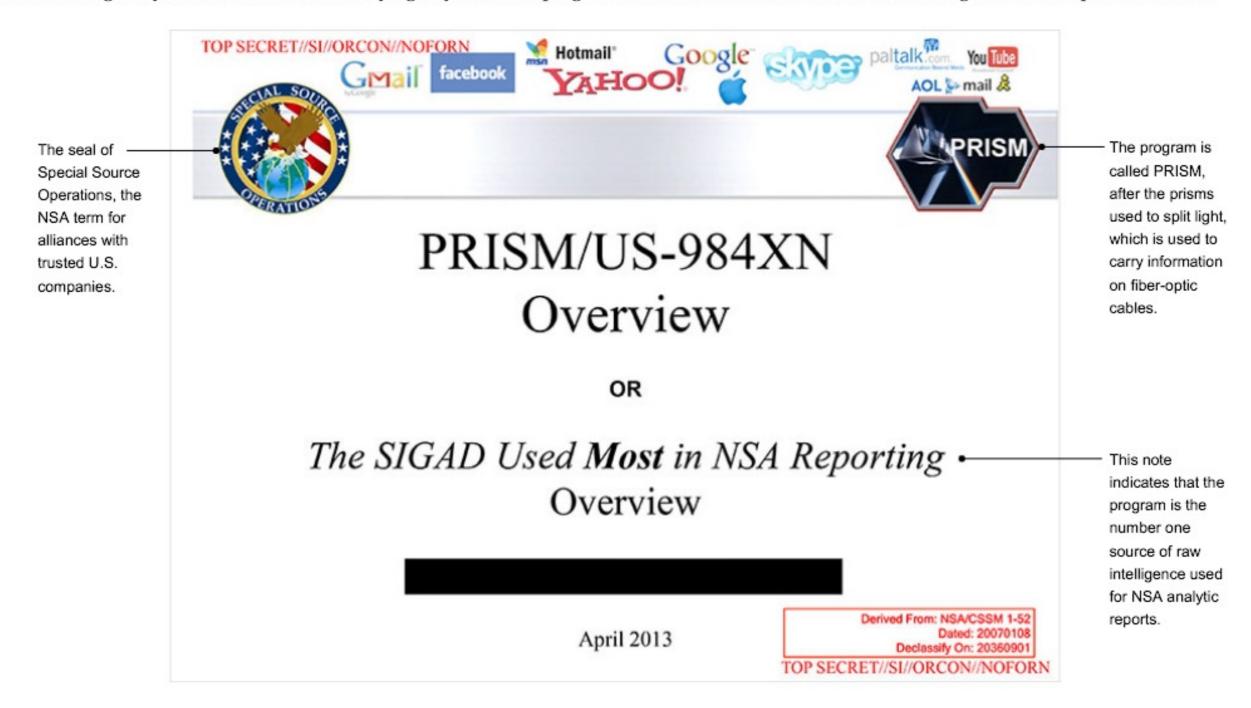
Docket Number: BR

13-80

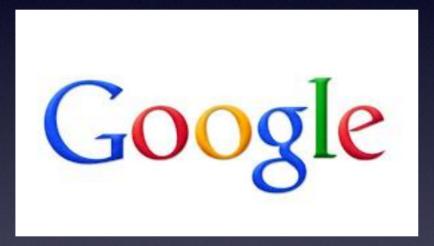
http://www.aclu.org/blog/national-security/nsasurveillance-order-explained-aclu

#### Introducing the program

A slide briefing analysts at the National Security Agency about the program touts its effectiveness and features the logos of the companies involved.



### Trasparency reports









## Tipologia delle richieste di acceso ai dati

- Non-content data: includono nome utente, indirizzo, telefono, IP di registrazione dell'account, durata e tipi di servizi utilizzati, dati carta di credito, meta-dati di traffico telefonico
- Content data: includono file, e-mail, immagini, calendari

## Google

2012	Requests	Pertcentage info produced	Users/ account specified 68.249	
Total	42.327	66%		
Italy	1.687	34%	2.105	

## Twitter

2° sem. 2012	Requests	Pertcentage info produced	Users/account specified  1.433	
Total	1.009	57%		
Italy	< 10	0%	< 10	

### Microsoft

2012	Requests	No data found	Non- content data	Content data	Rejected
Total	70.665	11.852 (16,8%)	56.388 (79,8%)	1.558 (2,2%)	866 (1,2%)
Italy	1.519	258 (17%)	1.261 (83%)	0	O

## Skype

2012	Requests	Accounts/ identifiers	Content data	
Total	4.713	15.409	0	
Italy	96	648	O	

## Come acquisisco dati personali e contenuti in Italia?

- Per ottenere dati anagrafici degli utenti o meta-dati di connessione da un ISP occorre un ordine di esibizione emesso con decreto da un P.M.
- Per i dati di contenuto occorre un'ordinanza del G.I.P. solo se si tratta di intercettazioni (quindi in tempo reale) sia telefoniche che telematiche
- I dati di contenuto storici (ad es. testo di una e-mail), in genere, si ottengono con l'analisi forense che viene effettuata a seguito del sequestro del device

# Come acquisisco i dati negli U.S.A.?

- subpoena
- court order
- search warrant
- NSLs (National Security Letters)

#### subpoena (duces tecum)

È una citazione a giudizio, materialmente redatta da un avvocato (della Procura o della difesa), ma formalmente emessa dal tribunale

Può avere ad oggetto una testimonianza o l'esibizione di documenti (*duces tecum*), anche informatici

Può essere opposta con un'azione di annullamento (motion to quash)



#### court order

È un'ingiunzione emessa da un tribunale a fronte di "articulable facts showing that there are reasonable grounds to believe that ... information sought are relevant and material to an ongoing criminal investigation"

18 USC § 2703

ORDER TO DISCLOSE TELEPHONE OR INTERNET RECORDS JOR-142 Rev. 1707 C.G.S. § 54-47ax, P.A. 077 Sec. 98 See section If her Request to Delay Notification of Ex Parts Order.  NAME AND ADDRESS OF CORPORATION Business Insider, 119 Fifth Avenue, 7th Floor, New York, NY 10003 1APPLICATION FOR EX PARTE ORDER TO COMPEL DISCLOSURE OF TELEPHONE OR INTERNET RECORDS TO: A Judge of the Superior Court The undersigned hereby applies for an order compelling the above named corporation to disclose the below described telephone or internet records. The articulated reasonable suspicion that a crime has been or /s being committed, or that exigent circumstances exist is indicated below:    Name OF AGENCY	100,00							
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C.G.S. § 54-47as. P.A. Of 4 Sec. 98  See section III for Request to Delay Notification of Ex Parte Order.  MAME AND ADDRESS OF CORPORATION  Business Insider, 119 Fifth Avenue, 7th Floor, New York, NY 10003  1. APPLICATION FOR EX PARTE ORDER TO COMPEL DISCLOSURE OF TELEPHONE OR INTERNET RECORDS  TO: A Judge of the Superior Court  The undersigned hereby applies for an order compelling the above named corporation to disclose the below described telephone or internet records. The articulated reasonable suspicion that a crime has been or is being committed, or that exigent circumstances exist is indicated below:    NAME OF AGENCY			- 1	www.jud.ctgov	AG			
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#### search warrant

Equivale al nostro decreto di perquisizione

Consente alla polizia giudiziaria di cercare prove di un crimine o l'identità del presunto responsabile di un crimine su persone, locali e veicoli

Discende dal 4° Emendamento e riguarda luoghi fisici



#### NSLs

- Sono semplici lettere firmate dal direttore dell'FBI o da un senior official con cui vengono chiesti agli ISP i dati dei loro utenti
- Il Patriot Act del 2001 ha esteso la loro applicazione a tutti i cittadini americani per indagini di terrorismo o antispionaggio
- Sono coperti da gag order, cioè un ordine di segretezza che vieta agli ISP, per ragioni di sicurezza nazionale, di rivelare a terzi la richiesta di accesso ai dati da parte del Bureau

## Come ottiene l'Italia i dati dagli ISP americani?

- Se si tratta di dati non di contenuto viene trasmesso (in genere via posta elettronica dalla P.G.) al provider il decreto del P.M. ed il provider risponde direttamente alla stessa P.G. richiedente
- Se si tratta di dati di contenuto, si seguono le procedure di mutua assistenza giudiziaria che comportano l'intervento del DOJ americano il quale, attraverso il procuratore competente (in genere della California), applica il diritto U.S.A. idoneo al caso di specie (subpoena, order o warrant) per ottenere i dati dal provider



Il caso Twitter/Occupy Wall Street

- Il 26 gennaio 2012 il NY County District Attorney invia a Twitter un subpoena chiedendo i dati dell'account @destructuremal (Malcolm Harris) ed i suoi tweet (già cancellati) per provare che aveva partecipato alla marcia sul ponte di Brooklyn
- Il 30 gennaio Twitter informa Harris del subpoena
- Il 16 marzo Harris propone una motion to quash avverso il subpoena
- Il 20 aprile la Criminal Court di NY respinge il ricorso
- II 7 maggio Twitter impugna il subpoena confermato dalla Corte
- Il 30 giugno la Criminal Court rigetta il ricorso di Twitter
- Il 27 agosto Twitter appella l'ordine alla Corte Suprema di New York
- Il 14 settembre Twitter è costretta a consegnare comunque i dati
- II 12 dicembre Harris viene condannato per "disorderly conduct" sulla base di due tweet: "We took the bridge", "they tried to stop us"

La Criminal Court di New York ha rigettato la richiesta di annullamento del subpoena sostenendo che:

- 1. I tweet sono pubblici
- 2. Anche se la Corte Suprema ha riconosciuto in passato una "reasonable expectation of privacy" sui dati memorizzati dagli ISP (United States v. Warshak), la decisione riguardava e-mail inviate a determinati soggetti non tweet che si rivolgono ad un numero indeterminato di persone
- 3. I tweet non sono coperti dal 4° Emendamento che garantisce protezione solo ai luoghi fisici ed Internet non è un luogo fisico ("that "home is a block of ones and zeros stored somewhere on someone's computer")

#### Nel suo appello Twitter ha sostenuto che:

- 1. I tweet sono coperti dal 1º Emendamento che protegge la libertà di espressione
- 2. I tweet sono coperti anche dal 4° Emendamento perché il Governo stesso ha ammesso, col subpoena, che non erano pubblicamente accessibili (erano stati cancellati) e dunque l'utente, che stando ai termini del servizio ne è proprietario, ha una ragionevole aspettativa di privacy su di essi



## Il caso Google/NSLs

- Google, seguita a ruota da Microsoft, quest'anno nel suo Trasparency Report ha per la prima volta pubblicato (sebbene in forma aggregata) il numero delle NSLs ricevute
- Il 29 marzo 2013 Google ha sollevato una questione di incostituzionalità delle sezioni 2709 e 3511 del Titolo 18 dello USC che disciplina l'obbligo di segretezza delle lettere
- La causa è stata assegnata al giudice Susan Ilston che sempre lo scorso marzo aveva dichiarato incostituzionali gli stessi articoli per violazione del 1º Emendamento in un'azione promossa dalla EFF, un'associazione per i diritti civili (decisione peraltro appellata dal Governo americano)
- A fine maggio il ricorso di Google è stato respinto, ma il giudice si è riservato su 2 delle 19 lettere impugnate



Updating the Electronic Communications Privacy Act

## Il digital due process

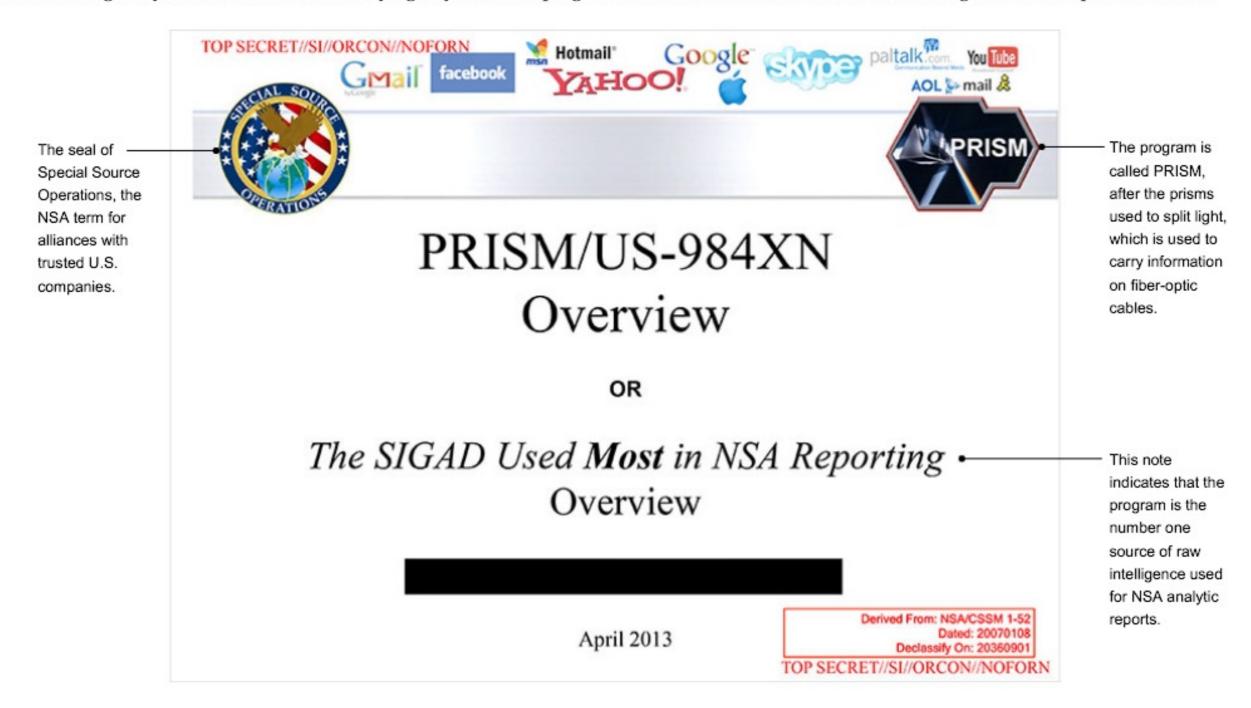
- È una campagna promossa da associazioni, avvocati, accademici, studenti, start-ups e major ICT tesa all'aggiornamento dell'ECPA (Electronic Communications Privacy Act)
- L'ECPA, che disciplina le modalità di accesso delle law enforcement ai dati elettronici, è infatti considerato obsoleto
- L'ECPA viene definito un "patchwork of confusing standards" che i tribunali interpretano in modo incoerente, generando incertezza sia nei provider che nelle forze dell'ordine

#### Le modifiche richieste riguardano:

- Comunicazioni e documenti elettronici: si chiede che il Governo si munisca di un search warrant per ottenere da un ISP il contenuto di e-mail, instant messages, file, foto, Internet search queries e chat sui social network di un utente, archiviati online (in quanto protetti dal 4° Emendamento esattamente come le telefonate e tutto ciò che è conservato nelle private dimore). Google applica già questa procedura sulla base della sentenza (unica) del 2010 del Sesto Circuito, United States v. Warshak
- Mobile location: si chiede parimenti un search warrant per la richiesta agli ISP di dati di localizzazione (cellulare, GPS e WiFi) sia in tempo reale che archiviati

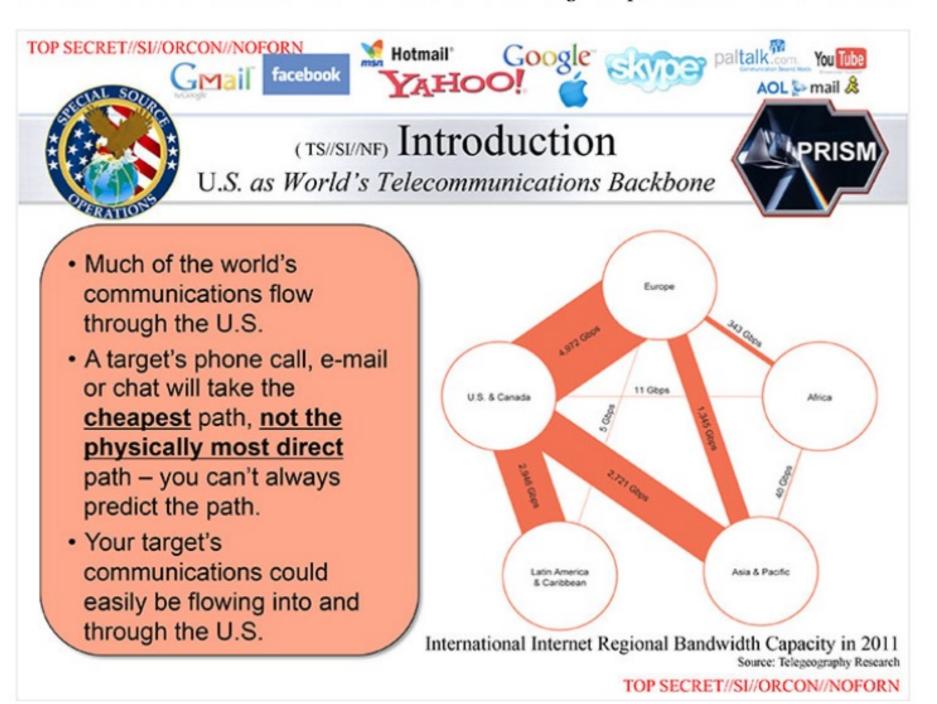
#### Introducing the program

A slide briefing analysts at the National Security Agency about the program touts its effectiveness and features the logos of the companies involved.



#### Monitoring a target's communication

This diagram shows how the bulk of the world's electronic communications move through companies based in the United States.

















Current Providers

What Will You Receive in Collection (Surveillance and Stored Comms)? It varies by provider. In general:

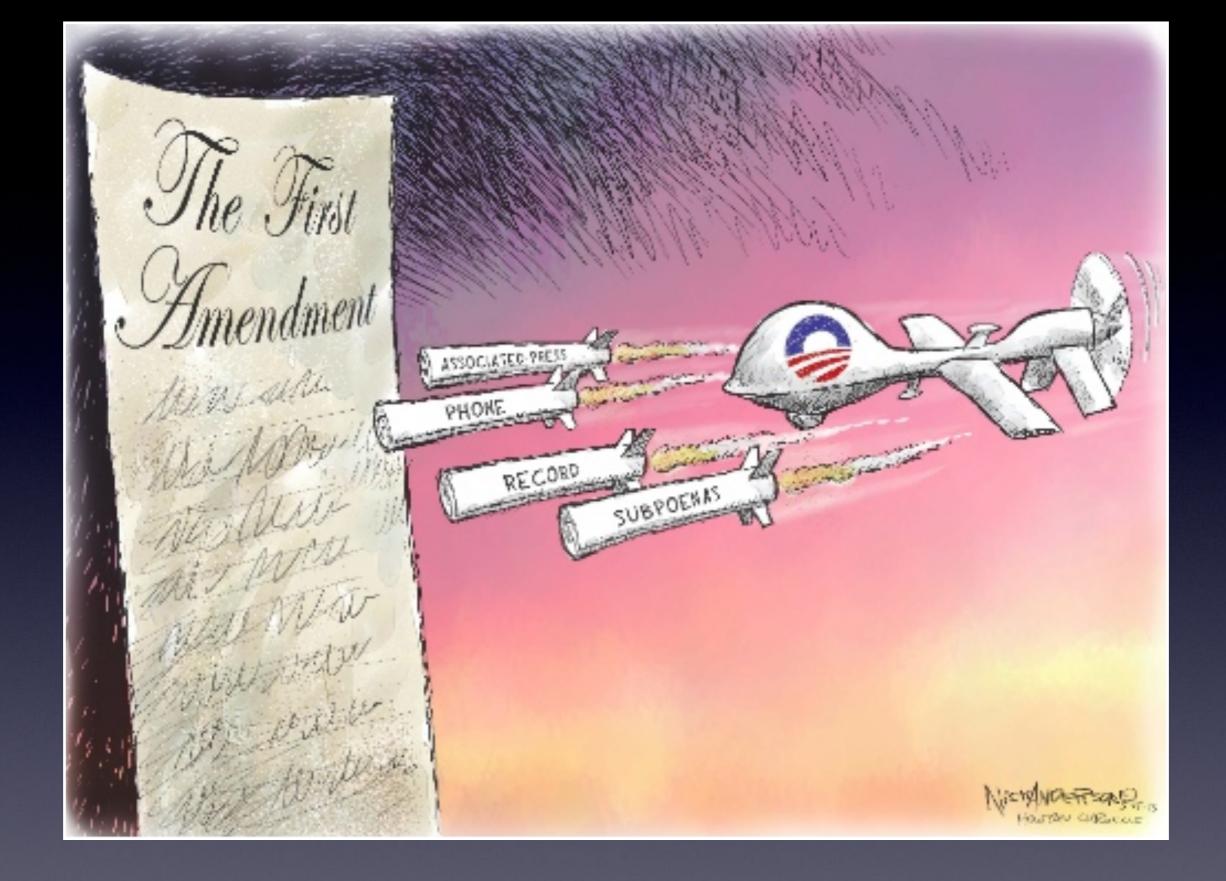
- · Microsoft (Hotmail, etc.)
- Google
- · Yahoo!
- · Facebook
- PalTalk
- YouTube
- Skype
- · AOL
- Apple

- · E-mail
- · Chat video, voice
- Videos
- · Photos
- · Stored data
- VoIP
- · File transfers
- · Video Conferencing
- · Notifications of target activity logins, etc.
- Online Social Networking details
- **Special Requests**

Complete list and details on PRISM web page:

Go PRISMFAA

TOP SECRET//SI//ORCON//NOFORN



#### Q&A

#### Grazie!

Monica A. Senor - Carlo Blengino www.penalistiassociati.it @MASenor - @CBlengio

Tutto è in C.C. 3.0 IT