

SHELL GAMES: HOW TO KEEP DOING INTERNET DATA MINING AND AVOID THE COURTS

As I noted, the WaPo makes it clear one of the most sensitive parts of the government's surveillance programs is the collection of Internet metadata.

But the thing is, it doesn't come out and explain whether and if so how it continues to go on.

This passage, written in the present tense, sure seems to suggest it continues.

MARINA and the collection tools that feed it are probably the least known of the NSA's domestic operations, even among experts who follow the subject closely. Yet they probably capture information about more American citizens than any other, because the volume of e-mail, chats and other Internet communications far exceeds the volume of standard telephone calls.

The NSA calls Internet metadata "digital network information." Sophisticated analysis of those records can reveal unknown associates of known terrorism suspects. Depending on the methods applied, it can also expose medical conditions, political or religious affiliations, confidential business negotiations and extramarital affairs.

What permits the former and prevents the latter is a complex set of policies that the public is not permitted to see. "You could do analyses that give you more information, but the law and procedures don't allow that," a senior U.S. intelligence lawyer said.

Yet buried in the last paragraphs of the story, WaPo's sources suggest "the NSA is no longer doing it." Or – as elaborated – doing "it" under the guise of and with the oversight of the FISA court.

As for bulk collection of Internet metadata, the question that triggered the crisis of 2004, another official said the NSA is no longer doing it. When pressed on that question, he said he was speaking only of collections under authority of the surveillance court.

"I'm not going to say we're not collecting any Internet metadata," he added. "We're not using this program and these kinds of accesses to collect Internet metadata in bulk."

I keep saying this: sources on this story are trying hard to get us to focus on a few programs managed by FBI and NSA under two particular provisions of law that happen to have (secret, limited) court oversight, Section 215 of the PATRIOT Act and the FISA Amendments Act. But that leaves out several other likely candidates to conduct such intelligence analysis, notably the NCTC. And it leaves out other potential sources of collection, such as cybersecurity in the name of self-defense.