

THE 2011 DISCLOSURES

This post simply breaks out the dates in the October 3, 2011 John Bates opinion, adding the claims the government made at the time. It provides a somewhat better idea of the circumstances surrounding the manual review of upstream collection NSA did.

April 11, 2011: AG approves amendments to prior dockets

April 13, 2011: DNI approves amendments to prior dockets

April 20, 2011: One submission

April 22, 2011: Two more submissions

May 2, 2011: Clarification letter first admits MCT problem

May 5, 2011: Government asks for extension until July 22, 2011

May 9, 2011: Court grants extension, issues briefing order

June 1, 2011: Government submits response to briefing order

Upstream collection accomplished by acquiring Internet transactions (15)

Transactions are a complement of packets (28)

All "about" transactions acquired through upstream collection (17)

NSA is unable to exclude certain transactions from upstream collection (30)

NSA's upstream collection devices have technological limitations that affect scope of collection (30)

NSA's upstream collection devices unable to distinguish between SCT and MCT (31; not this is probable source, but not

definite)

Service providers constantly changing protocols and services, giving users ability to customize (32; probable source, not definite)

Internet communications transmitted through multiple legs, so only needs to identify IP at end of that leg (34)

NSA also receives USP transactions that are not about selector and transactions that reference it, even if not in category (36)

June 17, 2011: Court presents follow-up questions

June 28, 2011: Government response to follow-up questions

Government still in process of developing procedures for searching US person data (23)

Some MCTs in which active user non-target likely to contain non-target communications of or concerning US persons (39)

June 30, 2011: For month of June 2011, upstream collection makes up 11% of volume (see notice letter to Congress)

July 8, 2011: Court (John Bates) meets with senior DOJ people, tells them he has serious concerns

July 14, 2011: Government files another extension; court grants extension to September 20, 2011

August 16, 2011: Government files supplement, presenting results of "manual review of statistically representative sample" for 6 months

NSA acquires 250M Internet

communications a year, but the vast majority are obtained from Internet companies using PRISM (29)

NSA acquired more than 13.25 million Internet transactions through upstream collection from January 1, 2011 through June 30, 2011 (30)

Upstream collection acquires 9% of total Internet communications acquired by NSA under Section 702, based on manual review (23; 30)

NSA acquires SCTs and MCTs (28)

In addition to upstream collection NSA also acquires discrete communications from Internet service providers; it calls this PRISM collection (29)

NSA does not acquire Internet transactions through PRISM collection (29)

Description of manual review of 50,440 transactions out of 13.25 million total (33)

Of 13.25 million transactions, between 996 and 4,965 are MCTs containing wholly domestic communications (33)

Once NSA determined a transaction contained a single discrete communication, no further analysis was done (34)

NSA found 10 MCTs with wholly domestic communications among the 5,081 reviewed (.197%) (34)

NSA unable to determine location of 224 MCTs (35)

Approximately 90% of transactions reviewed were SCTs, or 11,925,000, yielding 23,000 wholly domestic "about" SCTs (34)

Difficult to determine how many MCTs

concerning USP, because review focused on domestic location (36)

NSA acquired between 168,853 and 206,922 MCTs where active user was target (38)

10 MCTs w/active user in US and 1 wholly domestic communication, 7 MCTs w/active user in US, amounts to 7,740-8,340 annualized (39)

2,668 of 5,081 MCTs reviewed ha non-target active user believed to be outside US (40)

August 22, 2011: Meeting between Court and government

August 30, 2011: Government makes another submission

US person identifiers will not be used to query upstream collection data (23)

In addition to upstream collection NSA also acquires discrete communications from Internet service providers; it calls this PRISM collection (29)

NSA asserts reasonable to assume 224 MCTs not domestic but admits it doesn't know (35)

NSA urges court to assume identity unknown MCTs wouldn't include wholly domestic communications (40)

September 7, 2011: Court has hearing

All "about" transactions acquired through upstream collection (17)

FBI and CIA do not receive unminimized upstream collection data (18)

In addition to upstream collection NSA also acquires discrete communications from Internet service providers; it calls this PRISM collection (29)

NSA's manual review focused on MCTs, not SCTs (34)

September 9, 2011: Government files additional submission

NSA acquires 250M Internet communications a year, but the vast majority are obtained from Internet companies (29)

NSA acquired more than 13.25 million Internet transactions through upstream collection from January 1, 2011 through June 30, 2011 (30)

Upstream collection acquires 9% of total Internet communications acquired by NSA under Section 702 (30)

NSA conducted further reviews of possibility of wholly domestic SCTs (34)

NSA still unable to determine content for 224 MCTs (35)

September 13, 2011: Government files additional submission

NSA did not provide Court with estimate of wholly domestic "about" SCTs, having concluded that the probable should be smaller—and certainly no greater— than wholly domestic MCTs. (34)

September 14, 2011: Court extends deadline to October 10, 2011