MICROSOFT, GOOGLE, AS UNIMPRESSED AS I AM WITH I CON'S NEW DATA RELEASE PROMISE

I showed earlier that the Director of National Intelligence's promise to release certain information — much of which they're already obligated to release — wasn't all that impressive. As part of that, I noted that the DNI wasn't providing data specific to each provider.

> Moreover, the government doesn't, apparently plan to release the number Google and Yahoo would like it to release, numbers which likely show how much more enthusiastic the well-lubricated telecoms are about providing this material than the less-well lubricated Internet providers. That is, the government isn't going to (or hasn't yet agreed to) provide numbers that show corporations have some leeway on how much of our data they turn over to the government.

It turns out, Microsoft and Google agree with me that the promised new release is none too impressive.

More importantly, they view it as a refusal — after serial delays from the government — to release that provider specific and content type specific information they want to release.

> Yesterday, the Government announced that it would begin publishing the total number of national security requests for customer data for the past 12 months and do so going forward once a year. The Government's decision represents a good start. But the public deserves and the Constitution guarantees more than this

> first step.
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> For example, we believe it is vital to publish information that clearly shows the number of national security demands for user content, such as the text of an email. These figures should be published in a form that is distinct from the number of demands that capture only metadata such as the subscriber information associated with a particular email address. We believe it's possible to publish these figures in a manner that avoids putting security at risk. And unless this type of information is made public, any discussion of government practices and service provider obligations will remain incomplete.
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> Over the past several weeks Microsoft and Google have pursued these talks in consultation with others across the technology sector.

Better yet, they're going to sue to force the government to let them provide more data.

> With the failure of our recent negotiations, we will move forward with litigation in the hope that the courts will uphold our right to speak more freely.

I have said — somewhat contentiously — that Obama's Non-Tech Technical Committee on the NSA would benefit from an Internet provider (I proposed Google). I said that not just because Google treats many of the same problems NSA does, but weighs different issues and therefore may envision different technical solutions.

Just as importantly, the Internet companies — especially those with cloud storage services put at risk — are damaged by the dragnet as well (and in ways that — because they have dollar signs attached to them — someone like Cass

Sunstein might even understand).

In any case, the I Con transparency game doesn't seem to be placating these behemoths of industry.

Update: The Center for Democracy and Technology's Kevin Bankston is none too impressed with the government's attempt to gag Microsoft and Google, either.

> "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."