

# THE “VOLUNTARY” COOPERATION THAT COMES FROM COERCION OF LICENSING AGREEMENTS?

The Guardian today describes how hard GCHQ worked to prevent its intercepts from being discoverable in trials. It did so for two reasons: to prevent a political firestorm about the extent of the collection.

A briefing memo prepared for the board of GCHQ shortly before the decision was made public revealed that one reason the agency was keen to quash the proposals was the fear that even passing references to its wide-reaching surveillance powers could start a “damaging” public debate.

Referring to the decision to publish the report on intercept as evidence without classification, it noted: “Our main concern is that references to agency practices (ie the scale of interception and deletion) could lead to damaging public debate which might lead to legal challenges against the current regime.”

And to protect the telecoms, some of whose cooperation (I’m guessing British Telecom and Vodaphone, based on other reporting, but that is a wildarsed guess) goes beyond the requirements of the law.

In an extended excerpt of “the classified version” of a review prepared for the Privy Council, a formal body of advisors made up of current and former cabinet ministers, the document sets out

the real nature of the relationship between telecoms firms and the UK government.

“Under RIPA [the Regulation of Investigatory Powers Act 2000], CSPs in the UK may be required to provide, at public expense, an adequate interception capability on their networks,” it states. “In practice all significant providers do provide such a capability. But in many cases their assistance – while in conformity with the law – goes well beyond what it requires.

The story references back to its earlier coverage on Tempora, the UK collection of cables, largely to note how different this description of the telecoms’ cooperation is from what they claimed back in June.

But given this description of their extensive cooperation, this detail from the original Tempora story sure looks more interesting.

The papers seen by the Guardian suggest some companies have been paid for the cost of their co-operation and GCHQ went to great lengths to keep their names secret. They were assigned “sensitive relationship teams” and staff were urged in one internal guidance paper to disguise the origin of “special source” material in their reports for fear that the role of the companies as intercept partners would cause “high-level political fallout”.

The source with knowledge of intelligence said on Friday the companies were obliged to co-operate in this operation. They are forbidden from revealing the existence of warrants compelling them to allow GCHQ access to the cables.

“There’s an overarching condition of the licensing of the companies that they

have to co-operate in this. Should they decline, we can compel them to do so. They have no choice.”

Back in June, an anonymous source said the telecoms cooperate because their licensing depends on it. Now we learn that the government considers their cooperation voluntary, some of it beyond what is required.

I don't know whether telecom law operates in the UK like in the US, but if the government premises licensing based on cooperation, it might get to the question I raised here, when I noted how the government reserved getting Department of Commerce involved in cases where companies didn't provide the “voluntary” cooperation with cyberdefense the government demanded.

I think it's quite possible the government (possibly both the US and UK) is/are demanding “voluntary” cooperation from the companies they license (on threat of losing their licenses). But remember, on a lot of this stuff, the government has held that companies can “voluntarily” turn over data (especially stuff facetiously called “foreign” based on false claims about the transit of data) without process if they want to.

So coerce the telecoms (and possibly, broadband) to cooperate under threat of licensing problems, then claim that this “voluntary” cooperation permits data sharing that otherwise would require legal process.

And in doing so, conduct a dragnet so vast that no judge would ever approve it.

Is that how it works?