

US to Expand Domestic Spying

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U.S. to Expand Domestic Use Of Spy Satellites

The Wall Street Journal

By ROBERT BLOCK August 15, 2007

The U.S.'s top intelligence official has greatly expanded the range of federal and local authorities who can get access to information from the nation's vast network of spy satellites in the U.S.

The decision, made three months ago by Director of National Intelligence Michael McConnell, places for the first time some of the U.S.'s most powerful intelligence-gathering tools at the disposal of domestic security officials. The move was authorized in a May 25 memo sent to Homeland Security Secretary Michael Chertoff asking his department to facilitate access to the spy network on behalf of civilian agencies and law enforcement.

Until now, only a handful of federal civilian agencies, such as the National Aeronautics and Space Administration and the U.S. Geological Survey, have had access to the most basic spy-satellite imagery, and only for the purpose of scientific and environmental study.

According to officials, one of the department's first objectives will be to use the network to enhance border security, determine how best to secure critical infrastructure and help emergency responders after natural disasters. Sometime next year, officials will examine how the satellites can aid federal and local law-enforcement agencies, covering both criminal and civil law. The department is still working on determining how it will engage law enforcement officials and what kind of support it will give them.

Access to the high-tech surveillance tools would, for the first time, allow Homeland Security and law-enforcement officials to see real-time, high-resolution images and data, which would allow them, for example, to identify smuggler staging areas, a gang safehouse, or possibly even a building being used by would-be terrorists to manufacture chemical weapons.

Overseas — the traditional realm of spy satellites — the system was used to monitor tank movements during the Cold War. Today, it's used to monitor suspected terrorist hideouts, smuggling routes for weapons in Iraq, nuclear tests and the movement of nuclear materials, as well as to make detailed maps for U.S. soldiers on the ground in Afghanistan and Iraq.

Plans to provide DHS with significantly expanded access have been on the drawing board for over two years. The idea was first talked about as a possibility by the Central Intelligence Agency after 9/11 as a way to help better secure the country. "It is an idea whose time has

arrived,” says Charles Allen, the DHS’s chief intelligence officer, who will be in charge of the new program. DHS officials say the program has been granted a budget by Congress and has the approval of the relevant committees in both chambers.

Wiretap Legislation

Coming on the back of legislation that upgraded the administration’s ability to wiretap terrorist suspects without warrants, the development is likely to heat up debate about the balance between civil liberties and national security.

Access to the satellite surveillance will be controlled by a new Homeland Security branch — the National Applications Office — which will be up and running in October. Homeland Security officials say the new office will build on the efforts of its predecessor, the Civil Applications Committee. Under the direction of the Geological Survey, the Civil Applications Committee vets requests from civilian agencies wanting spy data for environmental or scientific study. The Geological Survey has been one of the biggest domestic users of spy-satellite information, to make topographic maps.

Unlike electronic eavesdropping, which is subject to legislative and some judicial control, this use of spy satellites is largely uncharted territory. Although the courts have permitted warrantless aerial searches of private property by law-enforcement aircraft, there are no cases involving the use of satellite technology.

In recent years, some military experts have questioned whether domestic use of such satellites would violate the Posse Comitatus Act. The act bars the military from engaging in law-enforcement activity inside the U.S., and the satellites were predominantly built for and owned by the Defense Department.

According to Pentagon officials, the government has in the past been able to supply information from spy satellites to federal law-enforcement agencies, but that was done on a case-by-case basis and only with special permission from the president.

Even the architects of the current move are unclear about the legal boundaries. A 2005 study commissioned by the U.S. intelligence community, which recommended granting access to the spy satellites for Homeland Security, noted: “There is little if any policy, guidance or procedures regarding the collection, exploitation and dissemination of domestic MASINT.” MASINT stands for Measurement and Signatures Intelligence, a particular kind of information collected by spy satellites which would for the first time become available to civilian agencies.

According to defense experts, MASINT uses radar, lasers, infrared, electromagnetic data and other technologies to see through cloud cover, forest canopies and even concrete to create images or gather data.

Tracking Weapons

The spy satellites are considered by military experts to be more penetrating than civilian ones: They not only take color, as well as black-and-white photos, but can also use different parts of the light spectrum to track human activities, including, for example, traces left by chemical weapons or heat generated by people in a building.

Mr. Allen, the DHS intelligence chief, said the satellites have the ability to take a “multidimensional” look at ports and critical infrastructure from space to identify vulnerabilities. “There are certain technical abilities that will assist on land borders...to try to identify areas where narcotrafficantes or alien smugglers may be moving dangerous people or materials,” he said.

The full capabilities of these systems are unknown outside the intelligence community, because they are among the most closely held secrets in government.

Some civil-liberties activists worry that without proper oversight, only those inside the National Application Office will know what is being monitored from space.

“You are talking about enormous power,” said Gregory Nojeim, senior counsel and director of the Project on Freedom, Security and Technology for the Center for Democracy and Technology, a nonprofit group advocating privacy rights in the digital age. “Not only is the surveillance they are contemplating intrusive and omnipresent, it’s also invisible. And that’s what makes this so dangerous.”

Mr. Allen, the DHS intelligence chief, says the department is cognizant of the civil-rights and privacy concerns, which is why he plans to take time before providing law-enforcement agencies with access to the data. He says DHS will have a team of lawyers to review requests for access or use of the systems.

“This all has to be vetted through a legal process,” he says. “We have to get this right because we don’t want civil-rights and civil-liberties advocates to have concerns that this is being misused in ways which were not intended.”

DHS’s Mr. Allen says that while he can’t talk about the program’s capabilities in detail, there is a tendency to overestimate its powers. For instance, satellites in orbit are constantly moving and can’t settle over an area for long periods of time. The platforms also don’t show people in detail. “Contrary to what some people believe you cannot see if somebody needs a haircut from space,” he says.

James Devine, a senior adviser to the director of the Geological Survey, who is chairman of the committee now overseeing satellite-access requests, said traditional users of the spy-satellite data in the scientific community are concerned that their needs will be marginalized in favor of security concerns. Mr. Devine said DHS has promised him that won’t be the case, and also has promised to include a geological official on a new interagency executive oversight committee that will monitor the activities of the National Applications Office.

Mr. Devine says officials who vetted requests for the scientific community also are worried about the civil-liberties implications when DHS takes over the program. “We took very seriously our mission and made sure that there was no chance of inappropriate usage of the material,” Mr. Devine says. He says he hopes oversight of the new DHS program will be “rigorous,” but that he doesn’t know what would happen in cases of complaints about misuse.

-Andy Pasztor contributed to this article.

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Increased Domestic Role for Intelligence Foreseen

by Steven Aftergood

Federation of American Scientists Blogspot

Spy satellites and other classified intelligence technologies are poised to play a greater role in domestic homeland security and law enforcement missions, challenging long-standing legal and policy barriers against their domestic use.

The Wall Street Journal reported today that the Director of National Intelligence recently authorized access to intelligence satellite products by officials of the Department of Homeland Security to help support border security. See “U.S. to Expand Domestic Use of Spy Satellites” by Robert Block, Wall Street Journal, August 15, p.1.

A comprehensive 2005 government study (pdf) of the use of intelligence capabilities for domestic applications concluded that “significant change is needed in policy regimes regulating domestic use of IC [intelligence community] capabilities” in order to permit their full exploitation.

“The use of IC capabilities for domestic purposes should be... based on the premise that most uses of IC capabilities are lawful rather than treating any use as an exception to the rule requiring a case-by-case adjudication,” the study said.

“There is an urgent need for a top-down, Executive Branch review of all laws and policies affecting use of intelligence capabilities for domestic purposes,” the report said.

In particular, the 1981 Executive Order 12333 which governs intelligence activities “should be amended to permit as unfettered an operational environment for the collection, exploitation and dissemination [of domestic intelligence data] as is reasonably possible,” the report recommended.

The authors acknowledged that such “unfettered” operation would require increased oversight, but they suggested that it could be satisfactorily accomplished by the Privacy and Civil Liberties Oversight Board. The Board has been a minor, not notably influential player in recent intelligence policy disputes.

The report acknowledged in passing a problematic 2001 U.S. Supreme Court ruling in the case *Kyllo v. United States*, which concluded that the use of infrared sensors to scan a private residence for heat lamps used in marijuana cultivation constituted an unlawful warrantless search. The ruling appears to be significantly at odds with the new domestic intelligence thrust.

“This decision has placed in question the continued viability of past settled practice of the IC within the domestic domain,” the study delicately observed.

Nevertheless, “to date we are not aware of any clear authoritative guidance issued on the impact, if any, of this decision.”

The 2005 study was first reported by the Wall Street Journal today. A copy of the unclassified study, which was “produced solely for the use of the United States Government,” was obtained by Secrecy News. See “Civil Applications Committee (CAC) Blue

Ribbon Study," Independent Study Group Final Report, September 2005.

Intelligence support to domestic environmental monitoring and emergency response has been conducted since the 1970s under the supervision of the little-known interagency Civil Applications Committee. See this 2001 fact sheet describing the history and mission of the Committee.

http://www.fas.org/blog/secretcy/2007/08/increased_domestic_role_for_in.html

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