

NSA intimidation expanding surveillance state: Column

Bruce Schneier 1:40 p.m. EDT August 27, 2013

We need protection from intelligence-gathering run amok.



(Photo: Charles Dharapak, AP)

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If there's any confirmation that the U.S. government has [commandeered the Internet](https://www.schneier.com/essay-438.html) (<https://www.schneier.com/essay-438.html>) for worldwide surveillance, it is what happened with [Lavabit](http://www.usatoday.com/story/money/columnist/rieder/2013/08/12/reider-nsa-snooping-collateral-damage/2642557/) (<http://www.usatoday.com/story/money/columnist/rieder/2013/08/12/reider-nsa-snooping-collateral-damage/2642557/>) earlier this month.

[Lavabit](http://www.theguardian.com/technology/2013/aug/08/lavabit-email-shut-down-edward-snowden) (<http://www.theguardian.com/technology/2013/aug/08/lavabit-email-shut-down-edward-snowden>) is -- well, was -- an e-mail service that offered more privacy than the typical large-Internet-corporation services that most of us use. It was a small company, owned and operated by [Ladar Levison](http://www.usatoday.com/story/money/columnist/rieder/2013/08/12/reider-nsa-snooping-collateral-damage/2642557/) (<http://www.usatoday.com/story/money/columnist/rieder/2013/08/12/reider-nsa-snooping-collateral-damage/2642557/>), and it was popular among the tech-savvy. NSA whistleblower Edward Snowden among its [half-million users](http://www.slashgear.com/lavabits-founder-speaks-out-about-government-spurred-shutdown-13293653/). (<http://www.slashgear.com/lavabits-founder-speaks-out-about-government-spurred-shutdown-13293653/>)

Last month, Levison reportedly received [an order](http://boingboing.net/2013/08/08/lavabit-email-service-snowden.html) (<http://boingboing.net/2013/08/08/lavabit-email-service-snowden.html>) -- probably a National Security Letter -- to allow the NSA to eavesdrop on everyone's e-mail accounts on Lavabit. Rather than "[become complicit](http://lavabit.com/) (<http://lavabit.com/>) in crimes against the American people," he [turned](http://m.theatlantic.com/politics/archive/2013/08/the-hero-tech-entrepreneur-giving-up-everything-to-protect-user-privacy/278703/) (<http://m.theatlantic.com/politics/archive/2013/08/the-hero-tech-entrepreneur-giving-up-everything-to-protect-user-privacy/278703/>) the service off. Note that we don't know for sure that he received a NSL -- that's the order authorized by the [Patriot Act](https://www.eff.org/issues/patriot-act) (<https://www.eff.org/issues/patriot-act>) that doesn't require a judge's signature and prohibits the recipient from talking about it -- or what it covered, but Levison has said that [he had complied](http://rt.com/usa/lavabit-owner-fears-surveillance-arrest-595/) (<http://rt.com/usa/lavabit-owner-fears-surveillance-arrest-595/>) with requests for individual e-mail access in the past, but this was very different.

So far, we just have an extreme moral act in the face of government pressure. It's what happened next that is the most chilling. The government [threatened](http://investigations.nbcnews.com/_news/2013/08/13/20008036-lavabitcom-owner-i-could-be-arrested-for-resisting-surveillance-order?lite) (http://investigations.nbcnews.com/_news/2013/08/13/20008036-lavabitcom-owner-i-could-be-arrested-for-resisting-surveillance-order?lite) him with arrest, arguing that shutting down this e-mail service was a violation of the order.

There it is. If you run a business, and the FBI or NSA want to turn it into a mass surveillance tool, they believe they can do so, solely on their own initiative. [They](http://arstechnica.com/tech-policy/2013/08/how-might-the-feds-have-snooped-on-lavabit/) (<http://arstechnica.com/tech-policy/2013/08/how-might-the-feds-have-snooped-on-lavabit/>) can force you to modify your system. They can do it all in secret and then force your business to keep that secret. Once they do that, you no longer control that part of your business. You can't shut it down. You can't terminate part of your service. In a very real sense, it is not your business anymore. It is an arm of the vast U.S. surveillance apparatus, and if your interest conflicts with theirs then they win. Your business has been commandeered.

For most Internet companies, this isn't a problem. They are already engaging in massive surveillance of their customers and users -- collecting and using this data is the primary business model of the Internet -- so it's easy to comply with government demands and give the NSA complete access to everything. This is what we learned from Edward Snowden. Through programs like PRISM, BLARNEY and OAKSTAR, the NSA obtained bulk access to services like Gmail and Facebook, and to Internet backbone connections throughout the US and the rest of the world. But if it were a problem for those companies, presumably the government would not allow them to shut down.

To be fair, we don't know if the [government can](http://news.cnet.com/8301-13578_3-57595202-38/feds-put-heat-on-web-firms-for-master-encryption-keys/) (http://news.cnet.com/8301-13578_3-57595202-38/feds-put-heat-on-web-firms-for-master-encryption-keys/) actually convict someone of closing a business. It might just be part of their coercion tactics. Intimidation, and retaliation, is part of how the NSA does business.

Former Qwest CEO [Joseph Nacchio](http://www.businessinsider.com/the-story-of-joseph-nacchio-and-the-nsa-2013-6) (<http://www.businessinsider.com/the-story-of-joseph-nacchio-and-the-nsa-2013-6>) has a story of what happens to a large company that refuses to cooperate. In February 2001 -- before the 9/11 terrorist attacks -- the NSA approached the [four](http://usatoday30.usatoday.com/news/washington/2006-05-10-nsa_x.htm) (http://usatoday30.usatoday.com/news/washington/2006-05-10-nsa_x.htm) major US telecoms and asked for their cooperation in a secret data collection program, the one we now know to be the bulk metadata collection program exposed by Edward Snowden. [Qwest](http://www.businessinsider.com/the-story-of-joseph-nacchio-and-the-nsa-2013-6) (<http://www.businessinsider.com/the-story-of-joseph-nacchio-and-the-nsa-2013-6>) was the only telecom to refuse, leaving the NSA with a hole in its spying efforts. The NSA retaliated by [canceling](http://www.businessinsider.com/the-story-of-joseph-nacchio-and-the-nsa-2013-6) (<http://www.businessinsider.com/the-story-of-joseph-nacchio-and-the-nsa-2013-6>) a series of big government contracts with Qwest. The company has since been purchased by [CenturyLink](http://www.marketwatch.com/story/centurylink-buying-qwest-in-all-stock-22-bln-deal-2010-04-22). (<http://www.marketwatch.com/story/centurylink-buying-qwest-in-all-stock-22-bln-deal-2010-04-22>) which we presume is more cooperative with NSA demands.

That was before the Patriot Act and National Security Letters. Now, presumably, Nacchio would just comply. Protection rackets are easier when you

have the law backing you up.

As the Snowden whistleblowing documents continue to be made public, we're getting further glimpses into the [surveillance state](https://www.schneier.com/essay-418.html) (<https://www.schneier.com/essay-418.html>) that has been secretly growing around us. The [collusion](https://www.schneier.com/essay-436.html) (<https://www.schneier.com/essay-436.html>) of corporate and government surveillance interests is a big part of this, but so is the government's resorting to intimidation. Every Lavabit-like service that shuts down -- and [there](http://www.usatoday.com/story/money/columnist/rieder/2013/08/12/reider-nsa-snooping-collateral-damage/2642557/) (<http://www.usatoday.com/story/money/columnist/rieder/2013/08/12/reider-nsa-snooping-collateral-damage/2642557/>) have been several --- gives us consumers less choice, and pushes us into the large services that cooperate with the NSA. It's past time we demanded that Congress repeal National Security Letters, give us privacy rights in this new information age, and force meaningful oversight on this rogue agency.

Bruce Schneier (<http://www.schneier.com/>) writes about security and technology. His latest book is [Liars and Outliers: Enabling the Trust That Society Needs to Thrive](https://www.schneier.com/book-lo.html) (<https://www.schneier.com/book-lo.html>).

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