

Cybersnoops

G-men fear technology will outpace their spying smarts

by Harvey Silverglate and John Murphy

The electronic global village is here — and our government is scared to death.

No revolutionary ever had a printing press in his basement as powerful as a personal computer equipped with a modem. Today anyone can collect, receive, and send enormous amounts of information across vast distances in seconds — via the phone lines — simply by pressing a keyboard.

But, like the Luddites of early-19th-century England, who smashed newly developed textile machinery in a vain attempt to save their jobs, the Federal Bureau of Investigation (FBI) and the National Security Agency (NSA) are trying to hold back progress by banning any phone conversation, or fax or computer transmission, that they can't intercept and decipher — and they're enlisting Congress in their quest to keep the lines open to their snooping.

Governments looking to consolidate their power know there is no way to control the lives of people armed with modern telecommunications technology. For instance, the Soviet and Eastern European governments required a license to possess a computer or a fax machine, much as they had always controlled typewriters and photocopiers; when a law professor from Harvard some four years ago visited Jewish communities in Poland and Czechoslovakia and asked what they most needed, they placed fax machines and personal computers higher on the list than food and prayer books. The Chinese government's post-Tiananmen Square crackdown included the confiscation of fax machines.

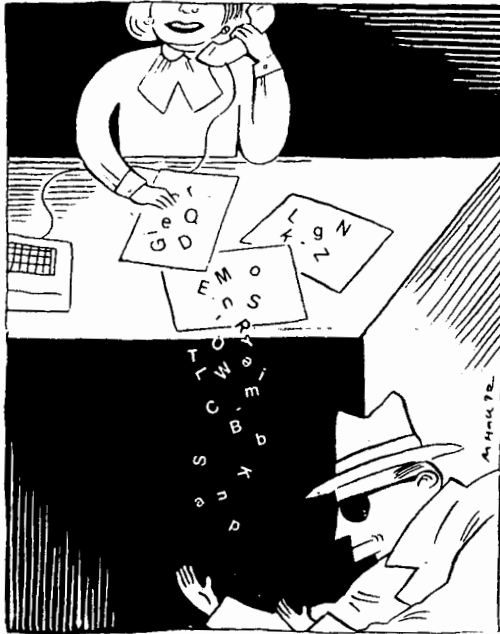
An individual now has the power to disseminate his or her views to millions of people, at least in theory, without the expenditure of the millions of dollars it takes to start up a newspaper or television network. For pennies, such messages can be zapped into "cyberspace" — the huge, un-mappable electronic network that connects the computer users of the world. And unless our government and others can impede the march of technological progress, government will have less and less control over, and even knowledge of, what citizens say to one another.

Legislation pushed by the FBI and the NSA would force telecommunications companies to introduce no technology until these two federal agencies, with the companies' assistance, have developed methods for tapping phone conversations, computers or fax transmissions carried

country developing telecommunications technologies. Are we to let the rest of the world get ahead of us in this vital area of research and manufacturing merely because our secret-police agencies are — to put it delicately — a bit on the slow side?

The big question that has to be answered is this: should there be such a thing as a conversation between two or more American citizens that is immune from government overhearing?

The more immediate, subsidiary, ques-



MARCELLUS HALL

tion is whether technological progress in telecommunications should be limited by the government's ability to eavesdrop.

Given the mixture of philosophical issues and technical/economic/scientific/competitive questions involved, the debate is bound to be hard-fought, long, and messy. It is also destined to make strange bedfellows. Indeed, civil libertarians are already allied with some major telecommunications companies, one of the more interesting odd-couple alliances of recent years.

Both the FBI and the NSA have testified before Congress, with FBI officials saying they want to be able to listen to drug dealers and mobsters, and the NSA contending that, without the legislation, it will be harder to monitor calls from overseas — and thereby gather military and economic intelligence.

The administration's initiative has drawn considerable opposition not just from members of Congress, but from the telecommunications industry as well. After all, telecommunications and its sister field of computer technology are among the few areas in which the United States still maintains parity with, if not a competitive edge over, Europe and Japan.

Bull. Sessions



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zapped into "cyberspace" — the huge, unmappable electronic network that connects the computer users of the world. And unless our government and others can impede the march of technological progress, government will have less and less control over, and even knowledge of, what citizens say to one another.

Legislation pushed by the FBI and the NSA would force telecommunications companies to introduce no technology until these two federal agencies, with the companies' assistance, have developed methods for tapping phone conversations, or computer or fax transmissions, carried on new high-tech phone devices.

In other words, if the government has its way, progress in telecommunications will not be allowed to outstrip progress in government eavesdropping.

Talk about the tail wagging the dog.

Besides, think about the futility of the FBI and the NSA's effort to retard progress. The United States isn't the only

ing that, without the legislation, it will be harder to monitor calls from overseas — and thereby gather military and economic intelligence.

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Bull, Sessions

Stung by the hostile reception his initiative received, FBI Director William Sessions wrote a *New York Times* op-ed piece on March 27 in which he argued that "advances in telecommunications technology promise to deprive Federal, state and local law-enforcement officers and the public of the incalculable benefits
See FREEDOM, page 28

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Freedom

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that can be obtained only by court-authorized wire-tapping."

Sessions added that "the proposed legislation does not expand the authority of the FBI or any other criminal-justice agency. It simply preserves what Congress authorized in 1968 — nothing more."

Nothing more, huh? We're talking about "nothing more" than was authorized nearly 25 years ago when that great civil libertarian Richard Nixon was president. When Congress passed Nixon's wiretapping legislation (Tricky Dick always did have a penchant for recording other people's conversations, but toppled when he made the mistake of recording his own), telecommunications and interception were much simpler arts. We're in a different world now. It's as though the government wanted to outlaw compact discs and force us back to vinyl records and turntables.

With the current analog technology, in which a single wire carries a single phone conversation or computer or fax transmission, all the FBI has to do is find the appropriate line, either outside a person's home or at the phone company's switching center, and plug in a reception device.

But with digital technology, many different conversations and transmissions are sent across the same wire; they are transformed at their source into a type of computer binary code, scrambled in with other transmissions, and decoded at the receiving end. The FBI would have to plant its tap at either the sending or the receiving end, because if agents were to tap into the middle, as analog enables them to do (with the phone company's help), they would just get so much indecipherable computer noise.

The legislation would allow the Federal Communications Commission to "establish standards and specifications for telecommunications equipment and technology . . . as may be necessary to maintain the ability of the government to lawfully intercept communications," and would provide that already existing and installed advanced technology "shall not be expanded

so as to further impede" that ability.

If the FBI is upset that it might be unable to tap into phone lines, then the NSA — that shadowy organization that collects information under the guise of protecting us from unspecified menaces overseas — must be beside itself.

These people, who have joined the FBI in testifying in support of the telecommunications initiative, must surely go mad with the idea of personal computers creating a global village in cyberspace, where ideas and information can be swapped via modem between continents, without easy interference or monitoring by the government.

This is not the NSA's first attempt to slow the march of technological progress. The NSA has taken an interest, going back a number of years, in limiting the development and effectiveness of private-sector computer-security encryption systems.

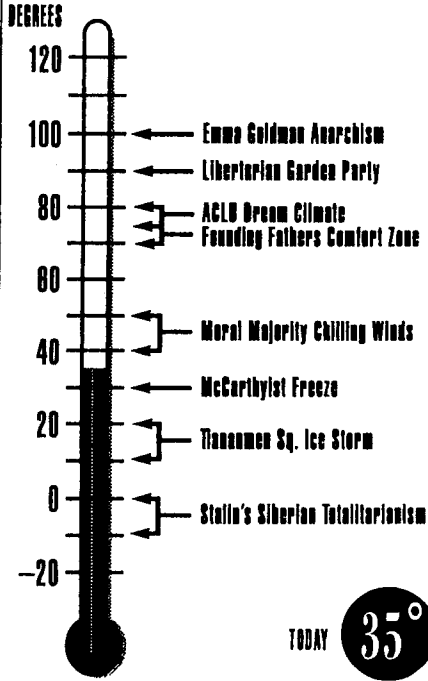
The computer industry, in cooperation with the federal government, has been trying to develop an encryption-system standard, which could then be used to send and receive messages to and from non-governmental computers. Information would be scrambled (encrypted) at the sending end and then decoded at the receiving end. Thus, anyone intercepting such messages in midstream would have a jumbled mass of indecipherable computer signals.

Why not the best?

The NSA is worried that an encryption standard could be adopted that is unduly difficult to break. This explains why for years now the NSA has been lobbying industry and university mathematicians and cryptographers, as well as the National Institute for Standards and Technology (formerly the National Bureau of Standards), for the adoption of what is generally considered to be the second-most-secure encryption system.

The most-secure system, the NSA says, might prove stubbornly resistant to the agency's own interception-and-code-breaking activities, even though it would be industry's best guarantee against such problems as industrial espionage by competitors, or computer hackers who break into computer systems to wreak havoc by

LIBERTY MERCURY



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erasing or altering data.

If the NSA has its way, not only will the development of modern telephone technology slow down long enough for government wiretapping efforts to keep pace, but citizens who want to protect the privacy of their computer transmissions by using encryption technology would have to use the second-best-system available to accommo-

date government snoopers. An appropriate analogy here is that of a government official asking you not to lock the doors of your house because he doesn't have a key and may want to stop by without your knowing.

The government's efforts have stirred up opposition from both the civil-liberties community and business interests. The FBI and NSA, happily, have their hands full.

The FBI and the NSA are surely doomed to failure, much as the Luddites could not hold their jobs by destroying the mechanical loom. In the global village, if American companies don't develop a new product, someone else will — in Japan, Europe, or the Pacific Rim. The United States will be relegated to the backwater.

There is no way James Madison could have known when he drafted the Virginia Resolutions of 1798, which protested the passage of the Sedition Act, that he would touch on First Amendment issues that would be of crucial importance to the debate being played out today.

Madison's treatise argued for the ability as well as the right of people to criticize their government through the means of "free communication among the people

which has ever been justly deemed the only effectual guardian of every other right."

Today, such communication includes access to censorship-free and snoop-free technology for everyone, not just the federal government. The preservation of this access is necessary for the preservation of our rights. □

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