



Written by [Bob Adelman](#) on May 30, 2012

Privacy-eliminating CISPA Awaits Its Fate in the Senate

Despite an increasingly noisy chorus of resistance to many of its provisions, the Cyber Intelligence Sharing and Protection Act (CISPA) [passed the House](#), 248-168, on April 26. Passage in the House was assured with more than 70 percent of those supported by the Tea Party voting for it. It moved to an uncertain future in the Senate.



That opposition noted that the bill's many flaws included precious little "protection" for rights guaranteed in the Bill of Rights, especially those guaranteed by the Fourth Amendment:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

In the zeal to "protect" the country against "cybersecurity threats," Internet providers and other communications companies would be allowed to share their customers' private information with agencies of the federal government, and vice versa. As *Techdirt's* Leigh Breadon explained,

[The] government would be able to search information it collects under CISPA for the purposes of investigating American citizens with complete immunity from all privacy protections as long as they can claim someone committed a "cybersecurity crime."

Basically it says the 4th Amendment does not apply online, at all.

Republican presidential candidate Ron Paul said virtually the same thing in his opposition to CISPA:

CISPA permits both the federal government and private companies to view your private online communications without judicial oversight [as required by the Fourth Amendment] provided that they do so of course in the name of cybersecurity.

The bill is another heavy-handed effort to expand government's surveillance of private citizens' communications without restraint. By using words such as "may" instead of "must" and "cybersecurity" without defining the term, the bill creates just the sort of opening through the Fourth Amendment that has, until now, largely protected such private communications from governmental view. As Juan Williams, a commentator at Fox News, [put it](#), CISPA gives "the government a whole new box of tools to fight terrorism ... free of any legal restraint."

Although the bill doesn't require telecommunications giants such as Facebook, Google, or Yahoo to share information with government agencies, it creates the opportunity for the government to pressure them into disclosing all personal communications. As Paul [noted](#),

CISPA encourages some of our most successful internet companies to act as government spies, sowing distrust of social media and chilling communications in one segment of the world economy



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where Americans still lead.

Even some liberal Democrats are gravely concerned about CISPA if it becomes law. Representative Jared Polis (D-Colo.), who sports a dismal Freedom Index rating of 11, said during the debate that “allowing the military and NSA [National Security Agency] to spy on Americans on American soil goes against every principle this country was founded on.” But he found himself in the minority.

One of the key passages of CISPA that concerns civil libertarians is the section that says, “Notwithstanding any other provision of law [companies may share information] with any other entity, including the federal government.” With that single word “notwithstanding,” the bill would sweep away all privacy protections built into the Fourth Amendment and all existing federal and state civil and criminal statutes. This would include Internet companies’ privacy protections, educational record laws, gun laws, census data, medical records, and *every other statute* that protects private information.

But the majority in the House weren’t listening, or weren’t interested. Instead they [bought the line](#) presented by one of the authors of the bill, Rep. Mike Rogers (R-Mich.):

In just the last few years, nation states like China have stolen enough intellectual property from just defense contractors, that would be equivalent to 50 times the print collection of the US Library of Congress. We have nation states who are literally stealing jobs and our future. We also have countries that are engaged in activities and have capabilities that have the ability to break networks, computer networks. Which means you can’t just reboot. It means your system is literally broken. Those kinds of disruptions can be catastrophic when you think about the financial sector, or the energy sector, or our command and control elements for all our national security apparatus.

You know, without our ideas, without our innovation that countries like China are stealing every single day; we will cease to be a great nation. They are slowly and silently and quickly stealing the value and prosperity of America. One credit card company said that they get attacked for your personal information 300,000 times a day, one company.

And so, for this “protection” the House sold out the privacy of American citizens.

But CISPA is far from becoming law. Built into the Constitution that the House is so willing to ravage is the path by which all bills, including odoriferous ones such as CISPA, must travel in order to become law. The path is arduous and tortuous and slow, and may spell the end, temporarily at least, of CISPA.

When the bill moves to the Senate, it could be voted up or down, and then move to the President’s desk for signing. But in this case, that is highly unlikely. First of all it is an election year, and the citizens whose privacy is being threatened are paying more attention than usual to Washington’s goings-on. Second, the White House, surprisingly, has come down against CISPA for many of these same reasons, and the President has promised to veto the bill if it arrives on his desk in its present form. Third, 34 Senators are up for reelection this year, many of them Democrats whose races are in serious doubt. So, passing CISPA in its present form would be, [according to Alex Wilhelm in his blog, www.thenextweb.com](#), “a fool’s errand.”

Besides, the bill is complex and lengthy and has suffered many revisions and amendments in order to get past the House. Those would have to be sorted out and approved before passage. Finally, there are two other so-called “cybersecurity” bills pending in the Senate already — the McCain bill and the Lierberman bill — neither of which is much better than CISPA but both of which would further complicate, and delay, final approval.



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Wilhelm is pessimistic about the Senate coming up with something much better than CISPA but offers hope that perhaps another bill, more respectful and protective of precious rights guaranteed by the Constitution, might be offered. At present there doesn't appear to be any such bill in the offing, but time will tell.

And that is the beauty of the Constitution and the wisdom of the Founders who created it. They well knew the federal government's propensity to try to control everything that moves, and that by slowing down the legislative process, and dividing it up between competing branches of the government, it would reduce the chances of such a travesty as CISPA from ever seeing the light of day.



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