

# Government Databases and Cloud Computing

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# European Digital Rights (EDRi)

- established 2002
- “umbrella” organization for European NGOs
- 28 member orgs, + observers
- permanent Brussels office
- broad scope of digital/Internet policy issues
  - Data Protection Directive
  - Data Retention Directive
  - website blocking
  - ACTA, copyright/patents, behavioural ads, etc.

# “warrantless wiretapping” 2005-2008

- Tapping into the Internet “backbone”
  - [AT&T technician](#) discovered much US Internet traffic being tapped, triaged, diverted to National Security Agency
  - FISA 1978 required “minimization” of intrusion on US persons
  - [To and fro saga](#) of US Administration officials [being kept in dark](#), refusing to re-authorize “Terrorist Surveillance” programs
- FISA Court had rejected major authorization circa 2005: [President of Court withheld facts from other judges \(!\)](#)
  - substance of argument about [how hard NSA had to work to prevent collection of data of “U.S. persons”](#)
  - [Protect America Act](#) 2007 changed to doctrine of minimize-use-not-collection. FISA Court now “approves” policy of ODNI

# Foreign Intelligence Surveillance Amendment Act 2008 **1881(a)**

“Procedures for targeting certain persons **outside the United States** other than United States persons”

- “**foreign intelligence information**” (concerning **non-US persons**)
  - information with respect to a **foreign power** or **foreign territory** that **relates** to the conduct of the **foreign affairs** of the United States
  - (i.e. criminality, sabotage, national security etc. not a NECESSARY criterion)
- “**foreign power**”
  - a **foreign-based political organization**, not substantially composed of United States persons
- “**remote computing services**”
  - provision to the public of **computer storage or processing services** by means of an **electronic communications** system

Cloud providers within US jurisdiction may be coerced into wiretapping their own datacentres (inside or outside US) to conduct **purely political surveillance of Cloud Computing** of non-US persons outside the US.

(before the hype over Cloud had even really got started !)

# Conclusions

- unrealistic to segregate “consumer privacy” from mass-surveillance by governments
- 1970s concept of “free-flow of data” protected by law affords no meaningful control over the Cloud
- systemic surveillance of Cloud Computing has already been legislated in US (FISAA 1881a)
- one of most intractable issues in EU DP reform
- orthogonal to and much more severe than concerns over PATRIOT (for non-US persons)