

NSA'S LAWYERS MISSED "VIRTUALLY EVERY RECORD" OVER 25 REVIEWS

As I've written before, the Internet dragnet did not get through the its first 90 day Primary Order before it violated the rules laid out by the FISA Court. In an effort to convince Judge Kollar-Kotelly they could conduct the dragnet according to her orders, NSA's Office of General Counsel agreed to do spot checks of the data twice every 90-day authorization. That requirement stayed in place for the rest of the dragnet.

Which means between 2004 and 2009, OGC should have conducted over 25 spot checks of the data NSA obtained under the program.

And yet, in that entire time, OGC somehow never noticed that "virtually every record" NSA was taking in included data that it was not authorized to collect.

That's one of the two crazy things about the Internet dragnet that this month's document dump made clear. I explain them in this piece at The Week. The other is that, in an end-to-end report conducted from roughly March through September of 2009, NSA also didn't find that virtually every record they had collected had broken the law.

Exhibit A is a [comprehensive end-to-end report](#) that the NSA conducted in late summer or early fall of 2009, which focused on the work the agency did in metadata collection and analysis to try and identify people emailing terrorist suspects.

The report described a number of violations that the NSA had cleaned up since the beginning of that year –

including using automatic alerts that had not been authorized and giving the FBI and CIA direct access to a database of query results. It concluded the internet dragnet was in pretty good shape. “NSA has taken significant steps designed to eliminate the possibility of any future compliance issues,” the last line of the report read, “and to ensure that mechanisms are in place to detect and respond quickly if any were to occur.”

But just weeks later, the Department of Justice [informed](#) the FISA Court, which oversees the NSA program, that the NSA had been collecting impermissible categories of data – potentially including content – for all five years of the program’s existence.

[snip]

Judge John Bates, then head of FISC, emphasized that the NSA had missed the unauthorized data in its comprehensive report. He [noted](#) “the extraordinary fact that NSA’s end-to-end review overlooked unauthorized acquisitions that were documented in virtually every record of what was acquired.” Bates went on, “[I]t must be added that those responsible for conducting oversight at NSA failed to do so effectively.”

Nevertheless, Bates went on to vastly expand the program.

No wonder James Clapper’s office made those documents so hard to read. There is no way to read them and believe the NSA can be trusted to stay within the law.