An Analysis of Service Provider Transparency Reports on Government Requests for Data

Law enforcement requests in the U.S. compared with reported requests of other governments do not reveal great disparity

by

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Introduction

The United States is portrayed by some as unique in the world in its government's desire for and access to personal data held by service providers.[1] In particular, the scope and scale of national security access to personal data continues to be a topic of international discussion in the wake of the Snowden revelations.[2] The declassification of certain National Security Agency ("NSA") reports and opinions of the Foreign Intelligence Surveillance Court in the United States is shedding some light on the quantity and types of records requested for national security purposes. A

comparison between the U.S. and other countries' national security access to data is made difficult by the even more secretive and opaque framework for access in other countries.[3] Service providers subject to such requests for data by the NSA are pushing for the ability to report with transparency on the nature and number of national security requests for information.[4]

Certain online service providers publish "transparency reports" that disclose principally law enforcement authorities' requests for information held by the providers. The figures for government information requests in these reports do not include U.S. national security-related requests, given the current legal restrictions on providers' disclosure of precise numbers related to such requests. Thus, the reports concern official government requests for information during the course of law enforcement investigations.[5]

Given the focus on government access to data held by third parties, it is timely to compare the available statistics as revealed in the transparency reports.

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[1] *See, e.g.*, Georgina Prodhan & Claire Davenport, *US Surveillance Revelations Deepen European Fear*, REUTERS, June 7, 2013, *available at* http://reuters.com/article/2013/06/07/europe-surveillance-prism-idUSL5N0EJ31S20130607, Viviane Reding, *Protecting Europe's Privacy*, N.Y. TIMES, June 17, 2013, *available at* http://nytimes.com/2013/06/18/opinion/global/viviane-reding-protecting-europes-privacy.html.

[2] An earlier Hogan Lovells White Paper compares national security access to data in the cloud from the perspective of procedural protections that would enable analysis of the degree of government access. *See* Winston Maxwell & Christopher Wolf, *A Sober Look at National Security Access to Data in the Cloud: Analyzing the Extravagant Claims about U.S. Access That Ignore Access by Foreign Jurisdictions* (2013)*, available at* http://hldataprotection.com/2013/05/articles/international-eu-privacy/white-paper-cloud-national-security.

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[3] For example, unlike requirements under the U.S. FISA Amendments Act of 2008, the Communications Security Establishment of Canada is not required to obtain judicial approval before intercepting communications related to foreign intelligence, *see* Jane Bailey, *Systematic government access to private-sector data in Canada,* 2 INT'L DATA PRIVACY L. 207, 213 (2012); France's 1991 law enacted to provide institutional safeguards related to interceptions of national security communication nonetheless provides leeway for the government to conduct broad, untargeted, random monitoring of radio traffic for "defense of national interests" without authorization, *see* Article L 241-2, Internal Security Code; and the United Kingdom's Regulation of Investigatory Powers Act 2000 enables the Foreign Secretary to issue interception warrants relating to foreign intelligence without allowing courts a role in the authorization or review of these interceptions, *see* Ian Brown, *Systematic government access to private-sector data in the United Kingdom,* 2 INT'L DATA PRIVACY L. 230, 235 (2012).

[4] *See, e.g.*, Google Motion for Declaratory Judgment, Jun. 18, 2013, *available at* http://assets.nationaljournal.com/img/MOTION.pdf (seeking declaratory judgment from the Foreign Intelligence Surveillance Court of its right to publish aggregate information about FISA orders).

[5] In the United States, companies generally require a subpoena for non-content information requests, like IP address and other basic subscriber information, and a warrant or order for content information, like the substance of e-mail messages. *See, e.g.,* Microsoft 2012 Law Enforcement Requests Report FAQs, https://microsoft.com/about/corporatecitizenship/en-us/reporting/transparency/#FAQs1 [hereinafter *Microsoft FAQs*], Google Transparency Report, *Legal Process*, http://google.com/transparencyreport/userdatarequests/legalprocess [hereinafter *Google Legal Process*], Twitter Transparency Report, *United States Information Requests*, https://transparency.twitter.com/information-requests/2012/jul-dec/us [hereinafter *Twitter Transparency Report*].

When the data contained in the reports are adjusted for population sizes of and the number of Internet users in each respective country, they reveal that the U.S. government requests information from these providers at a rate comparable to – and sometimes lower than – that of several other countries, including many European Union member states.

In fact, in 2012 it was reported that the rate at which European governments seek access to private data is at an "all-time high,"[6] having increased more than the rate of U.S. government requests during the same period.

Thus, as the national security access debate continues, the issue of whether the U.S. is an outlier when it comes to law enforcement access to data held by others can be resolved. In that regard, U.S. requests to service providers are not fundamentally different in quantity than requests by law enforcement authorities in other countries.[7]

Methodology

This White Paper analyzes government requests for information across several countries for at least a full year. We have used data from the transparency reports of Google Inc.,[8] Microsoft Corporation,[9] Skype Communications S.A.[10] (acquired by Microsoft in 2011), Twitter, Inc.,[11] and LinkedIn Corporation[12] because they are the only such

reports that provide data on government information requests across multiple countries.

While some companies recently have obtained U.S. permission to disclose the aggregated number of national security and law-enforcement-related information requests they receive, they are authorized to release these numbers only in ranges of thousands of requests.[13] Further, released reports do not include comparable figures for non-U.S. national security requests. Therefore, as these data do not enable meaningful statistical comparison across countries, they are outside the scope of this White Paper.

To maximize the timeframe represented in our calculations, we examined all such data available from each company: three years of data available from Google (2010 to 2012),[14] one-and-a-half years of data available from Twitter (2012 to June 2013)[15] and LinkedIn (July 2011 to 2012), and one year of data available from Microsoft and Skype (2012).

Rather than simply compare the *raw numbers* of requests for information by governments, this White Paper analyzes the total number of reported local and national government data requests *per capita* and *per Internet user* in each in-scope country.[16] This is because countries with larger

[6] *See* Privacy International, *Google Transparency Report for Second Half of 2012 Shows European Government Attempts to Access Private Data at an All-Time High*, https://privacyinternational.org/press-releases/google-transparency-report-for-second-half-of-2012-shows-european-government-attempts (Jan. 24, 2013) [hereinafter Privacy International, *European Government Access to Private Data*].
[7] A comparison of the numbers of requests of course does not address the *types* of requests, whether through a subpoena, warrant or merely an "informal" request (not permitted in the United States, but practiced in other jurisdictions). *See* Winston Maxwell & Christopher Wolf, *A Global Reality: Government Access to Data in the Cloud* (2012), *available at* http://hldataprotection.com/2012/05/articles/international-eu-privacy/hogan-lovells-white-paper-on-governmental-access-to-data-in-the-cloud-debunks-faulty-assumption-that-us-access-is-unique. A consensus is growing in the United States that data now available through subpoenas should be restricted to the more stringent warrant process, and that the Electronic Communications Privacy Act (ECPA) should be amended. *See, e.g.*, http://digitaldueprocess.org (website of Digital Due Process coalition).
[8] Google Transparency Report, http://google.com/transparencyreport/removals/government [hereinafter *Google Transparency Report*].
[9] Microsoft 2012 Law Enforcement Requests Report (including Skype data), https://microsoft.com/about/corporatecitizenship/en-us/reporting/transparency [hereinafter *Microsoft and Skype Transparency Report*].
[10] *Id.*
[11] *Twitter Transparency Report*.
[12] LinkedIn Government Data Request Statistics, http://help.linkedin.com/app/answers/detail/a_id/21733/kw/linkedi

n%20government%20data%20request%20statistics [hereinafter *LinkedIn Transparency Report*].
[13] *See* Ted Ullyot, *Facebook Releases Data Including All National Security* Requests, Facebook Newsroom, June 14, 2013, *available at* https://newsroom.fb.com/News/636/Facebook-Releases-Data-Including-All-National-Security-Requests, John Frank, *Microsoft's U.S. Law Enforcement and National Security Requests for Last Half of 2012*, Microsoft on the Issues, June 14, 2013, *available at* http://blogs.technet.com/b/microsoft_on_the_issues/archive/2013/06/14/microsoft-s-u-s-law-enforcement-and-national-security-requests-for-last-half-of-2012.aspx, *Apple's Commitment to Customer Privacy*, Apple.com, June 16, 2013, http://apple.com/apples-commitment-to-customer-privacy [hereinafter *Apple's Commitment to Customer Privacy*], Vindu Goel, *Government, Led by U.S., Seek More Data About Twitter Users*, N.Y. TIMES, July 31, 2013, *available at* http://bits.blogs.nytimes.com/2013/07/31/governments-led-by-u-s-seek-more-data-about-twitter-users.
[14] At present, the Google Transparency Report provides three-and-a-half years of data, beginning with July 2009. However, as the July to December 2009 data excludes information from certain countries like Hong Kong, we have narrowed the date range to the three years beginning with January 2010 to maximize the inclusion of countries in our analysis.
[15] As Twitter listed the number of government information requests from countries with fewer than ten requests as "<10," for the purposes of our calculations we used a value of five.
[16] To calculate these figures, we used population statistics for each country from the World Bank, available at http://data.worldbank.org/indicator/SP.POP.TOTL, with the exception of Taiwan, which was not available on the World Bank website and instead was available from Index Mundi at http://indexmundi.com/g/g.aspx?c=tw&v=21. We calculated the number of Internet users by multiplying the population statistics by country by year with the percentage of Internet users as reported by the International Telecommunication Union, available at

populations and greater numbers of Internet users have more opportunities to monitor Internet traffic in legally authorized circumstances. Thus, the per-capita and per-Internet-user information request rate is a better indicator of a government's activism in seeking private information about individuals than is the raw number of information requests.[17]

To calculate these figures, we used the total number of information requests included in the transparency reports, rather than number of users/accounts affected or number of requests fulfilled, because the latter two statistics are not consistently reported in pre-2012 datasets.[18] Moreover, these data provide a more useful illustration of each reported government's willingness to approach service providers for electronic information.

Findings

The data reveal that the information requests that U.S. local, state, and federal government entities made to service providers are on par with those of developed democracies for which data are available.

Google

Since 2010, U.S. authorities have made information requests to Google an average of 40 times per year for every million residents and 51 times per year for every

million Internet users. Three countries had more per-capita requests – the United Kingdom (43), Hong Kong (43), and France (41) – while two other countries had higher per-Internet-user numbers: Hong Kong (59) and Singapore (55.2), with comparable numbers for France (50), the United Kingdom (50), Italy (48), Portugal (46), and Australia (46).

Google Data Requests, by Country[19]		
Country	*Average annual information requests per million population (2010-2012)*	*Average annual information requests per million Internet users (2010-2012)*
United Kingdom	43.13	49.97
Hong Kong	42.79	59.05
France	40.73	50.24
United States	40.13	51.30
Singapore	39.69	55.20
Australia	36.52	45.71
Germany	28.55	34.31
Italy	27.19	48.38
Portugal	27.06	45.54
Spain	18.46	26.89
Brazil	15.80	35.87

Microsoft

For Microsoft, U.S. government authorities requested information approximately 35 times per million people and 44 times per million Internet users. These both were lower than numbers for at least eleven other countries, including Taiwan, Turkey, the United Kingdom, Hong Kong, France, Luxembourg, Germany, Australia, Belgium, Portugal, and Spain.

Microsoft Data Requests, by Country[20]		
Country	*Information requests per million population (2012)*	*Information requests per million Internet users (2012)*
Taiwan	188.55	248.13
Turkey	154.52	342.39
United Kingdom	145.92	167.69
Hong Kong	145.50	199.86
France	130.95	157.77
Luxembourg	103.49	112.49
Germany	102.81	122.39
Australia	98.66	119.81
Belgium	65.25	79.57
Portugal	52.06	81.34
Spain	42.86	59.53
United States	35.27	43.53

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http://itu.int/en/ITU-D/Statistics/Documents/statistics/2013/Individuals_Internet_2000-2012.xls.

[17] In a recent posting, the Electronic Frontier Foundation discussed the per-capita approach, acknowledging that "the population (and particularly the online population) of the U.S. is much higher than in Brazil so, per capita, the Brazilian [information] requests might be higher." Katitza Rodriguez & Rebecca Bowe, Electronic Frontier Foundation, *Google Transparency Report Shows Rising Trend of Government Surveillance*, https://eff.org/deeplinks/2012/11/google-transparency-report-shows-rising-trend-government-surveillance (Nov. 15, 2012). We include both per-capita rates and per-Internet-user rates because both sets of numbers have advantages over the other; specifically, per-capita rates might artificially deflate rates in countries with fewer users of online services, while per-Internet-user rates might artificially inflate the numbers from companies that offer non-Internet-based products, most notably Microsoft.

[18] In addition, statistics on the total number of information requests received provide better insight into how actively a government seeks information from service providers than do statistics on the number of information requests fulfilled. Statistics on fulfilled requests encompass many variables, such as what legal mechanisms are available in the local country to challenge government requests, how vigilantly companies fight government requests, and how often governments make requests that are overbroad or otherwise unlawful. In fact, several European countries had less than half of their information requests to Google fulfilled in the last half of 2012, suggesting they may have been overly broad or otherwise unlawful. *See* Privacy International, *European Government Access to Private Data*.

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[19] *See Google Transparency Report*.

[20] *See Microsoft and Skype Transparency Report*.

Skype

Similarly, U.S. government entities made about four information requests per million people and five requests per million Internet users to Skype in 2012, compared to higher numbers for Luxembourg, the United Kingdom, Taiwan, Switzerland, Australia, Germany, and France. In the cases of Luxembourg and the United Kingdom, the per-capita information request rate was vastly higher than that of the United States.

Skype Data Requests, by Country[21]		
Country	*Information requests per million population (2012)*	*Information requests per million Internet users (2012)*
Luxembourg	184.40	200.44
United Kingdom	20.05	23.05
Taiwan	13.60	17.90
Switzerland	9.25	10.86
Australia	8.60	10.44
Germany	8.38	9.97
France	6.12	7.37
United States	3.68	4.54
Belgium	3.50	4.27
Singapore	0.75	1.01

Twitter and LinkedIn

The data show that the U.S. government made more requests to Twitter and LinkedIn than did other governments – about five requests per million people and six requests per million Internet users to Twitter, compared to about two per-capita and per-Internet-user requests from the next-highest country, Qatar. The U.S. also made about 0.4 requests per million people and 0.5 requests per million Internet users to LinkedIn, compared to about 0.05 per-capita and 0.06 per-Internet-user requests from the next-highest country, the United Kingdom. However, both Twitter and LinkedIn received considerably fewer government information requests overall than did Google, Microsoft, or Skype. Total information requests by governments in 2012 amounted to approximately 115 for LinkedIn[22] and 1,942 for Twitter,[23] compared to 4,713 for Skype,[24] 42,327 for Google,[25] and 70,665 for Microsoft.[26]

Twitter Data Requests, by Country[27]		
Country	*Average annual information requests per million population (2012-June 2013)*	*Average annual information requests per million Internet users (2012-June 2013)*
United States	5.09	6.28
Qatar	1.63	1.85
Ireland	1.45	1.84
Japan	1.29	1.63
Switzerland	1.25	1.47
Kuwait	1.03	1.29
Greece	0.89	1.58
Canada	0.73	0.84
United Kingdom	0.65	0.75
Singapore	0.63	0.85

LinkedIn Data Requests, by Country[28]		
Country	*Average annual information requests per million population (July 2011-2012)*	*Average annual information requests per million Internet users (July 2011-2012)*
United States	0.37	0.46
United Kingdom	0.05	0.06
Spain	0.03	0.04
France	0.02	0.03
Germany	0.01	0.01
India	0.002	0.02

Combined Figures

When we combine the per-capita and per-Internet-user data requests for Google, Microsoft, Skype, Twitter, and LinkedIn in 2012 – the only common year for which each of those providers released data – eliminating any countries for which data do not exist across companies,[29] the U.S. again fails to stand out. The U.S. government requests totaled approximately 96 per capita and 119 per Internet user to these five companies in 2012, compared to values *over twice as high* for Taiwan, the United Kingdom, and

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[21] *See Microsoft and Skype Transparency Report*.

[22] *LinkedIn Transparency Report*.

[23] *Twitter Transparency Report*.

[24] *Microsoft and Skype Transparency Report.*

[25] Google Transparency Report, *Overview*, http://google.com/transparencyreport/userdatarequests.

[26] *Microsoft and Skype Transparency Report.*

[27] *Twitter Transparency Report*. As 2013 population statistics are not yet available from the World Bank, we used only 2012 population statistics to calculate the average annual information requests per million individuals and Internet users for Twitter.

[28] *LinkedIn Transparency Report*.

[29] As Twitter and LinkedIn transparency reports include only countries that requested data from these companies, countries not included in the datasets represent "0" values, and there was no need to eliminate these countries from the aggregate data chart. However, it is not clear that exclusion of certain countries (like Luxembourg) from all or part of the Google, Microsoft, and Skype reports indicate "0" values. Therefore, we excluded countries from the aggregate chart for which 2012 data did not exist across Google, Microsoft, and Skype reports.

Hong Kong, and greater values for France, Australia, and Germany.

Google, Microsoft, Skype, Twitter, and LinkedIn Combined Data Requests, by Country[30]		
Country	*Information requests per million population (2012)*	*Information requests per million Internet users (2012)*
Taiwan	226.29	297.80
United Kingdom	212.17	243.83
Hong Kong	207.98	285.68
France	186.63	224.86
Australia	156.50	190.04
Germany	148.97	177.34
United States	96.33	118.88
Belgium	89.12	108.68
Portugal	89.10	139.23
Singapore	69.28	93.36

As usage of online services increases every year, governments have been increasing their information requests to providers. Over the past three years, the frequency of information requests to Google from EU member states included in Google's report has risen 100%.[31] During the same period, the U.S. government's request rate has risen 85%.[32]

These data suggest that the number of information requests the U.S. makes to service providers is not out of the ordinary. In fact, in some circumstances the U.S. request rates are significantly lower than that of several other countries.

One reason Microsoft receives more requests from non-U.S. countries than does Google is its physical presence in over 100 countries,[33] compared to Google's limited physical presence outside the United States. As Eva Galperin from the Electronic Frontier Foundation explains:

> 'You can get very different [transparency report] numbers if the person filing requests is more familiar with Microsoft's policies than Google's or the other way around. . . . Microsoft has been around for much longer, and they probably have

longer standing relations with governments. That means people in law enforcement are better trained to do this.'[34]

Microsoft itself notes that its physical presence in many countries "makes it easier for law enforcement authorities and/or courts to contact local Microsoft offices with requests for customer data."[35]

We also note that while none of the transparency reports break down the purposes for each information request, American companies have reported that many such requests are made for uncontroversial purposes, such as locating missing or exploited children.[36] Apple, for example, recently reported that of the 4,000 to 5,000 total information requests it received from the U.S. government between December 1, 2012 and May 31, 2013, "[t]he most common form of request comes from police investigating robberies and other crimes, searching for missing children, trying to locate a patient with Alzheimer's disease, or hoping to prevent a suicide," rather than from government agencies for national security purposes.[37]

Finally, the number of information requests reported in the transparency reports reflects only formal, lawful access requests to the providers' information. However, some governments access private information from providers without using formal legal process or being transparent about this access. For example, Germany allows its Federal Office of Criminal Investigation, the *Bundeskriminalamt* (BKA), to use a computer virus to search IT systems, monitor ongoing communications, and collect communication traffic data without alerting service providers or data subjects.[38] Although such access requires a court order, it would not be reported in a transparency report, as providers never become aware of it.

China's filtering and censorship of Tom-Skype, and its ninety-six million users in China, provides another example

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[30] *Google Transparency Report, Microsoft and Skype Transparency Report, Twitter Transparency Report*, *LinkedIn Transparency Report*.

[31] Privacy International, *European Government Access to Private Data*.

[32] According to the Google Transparency Report, U.S. government entities made 8,888 information requests to Google in 2010 (4,287 in the first half of the year and 4,601 in the second half) and 16,407 requests in 2012 (7,969 in the first half and 8,438 in the second). This represents an 85% increase over three years. *Google Transparency Report*.

[33] *See Microsoft and Skype Transparency Report*.

[34] Andy Greenberg, *Microsoft Gives Users Data to the U.S. Government Less Often than Google, but to Foreign Governments Far More,* FORBES, Mar. 21, 2013, *available at* http://forbes.com/sites/andygreenberg/2013/03/21/microsoft-gives-user-data-to-the-u-s-government-less-often-than-google-but-to-foreign-governments-far-more.

[35] *Microsoft FAQs*.

[36] *See, e.g., Apple's Commitment to Customer Privacy*, *Microsoft FAQs* (discussing reporting of images that exploit children to the United States' National Center for Missing and Exploited Children).

[37] *Apple's Commitment to Customer Privacy*. We have not included statistics related to government information requests from Apple in this analysis because Apple's disclosure provides numbers for U.S. requests in ranges of one thousand and does not include data for non-U.S. countries.

[38] John Leyden, *German states defend use of 'Federal Trojan'*, THE REGISTER, Oct. 12, 2011, *available at* http://theregister.co.uk/2011/10/12/bundestrojaner.

of government access that would not be reported in transparency reports. Tom-Skype has been linked to a "huge surveillance system in China that monitors and archives certain Internet text conversations that include politically charged words." [39] Microsoft itself is likely alluding to this type of behind-the-curtain access when it notes that "while we may not receive law enforcement requests from some countries . . . we nevertheless understand some users of our services may be subject to government monitoring or the suppression of ideas and speech," and warns users that "end points of a communication are vulnerable to access by third parties such as criminals or governments."[40] Transparency report numbers concerning governments that employ such tactics necessarily are artificially lower than numbers for governments that make formal data requests to service providers.

Conclusion

In summary, when adjusted to account for population sizes and numbers of Internet users, the recent Google, Microsoft, Skype, Twitter, and LinkedIn transparency reports provide a clearer picture of government practices for requesting information from service providers. They suggest that the U.S. government's information request rates are comparable to, and in many cases lower than, those of several other democracies, including many European Union member states.

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[39] *See* John Markoff, *Surveillance of Skype Messages Found in China*, N.Y. TIMES, Oct. 1, 2008, *available at* http://nytimes.com/2008/10/02/technology/internet/02skype.html, Vernon Silver, *Cracking China's Skype Surveillance Software*, BLOOMBERG BUSINESSWEEK, Mar. 8, 2013, *available at* http://businessweek.com/articles/2013-03-08/skypes-been-hijacked-in-china-and-microsoft-is-o-dot-k-dot-with-it.
[40] *Microsoft FAQs*.