

“American Big Data Companies’ Compliance and Enforcement of the Patriot Act”

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Abstract

The purpose of the paper is to prove that the American corporations do not violate the Fourth Amendment of the U.S. Constitution while complying with the Patriot Act passed in 2001 by the President George W. Bush and, therefore, do not violate ethics and rights. According to the Patriot Act, American businesses are obliged to report the U.S. government the private information of their customers. Big data companies protect business ethics because complying with the Patriot Act and cooperating with government is contributing to national security of America. The Patriot Act is not in violation of the Fourth Amendment because of the Supreme Court’s doctrine of “third-party.”

Introduction

“Change is the law of life” - John F. Kennedy, June 25, 1963

America is very different than it was before due to various reasons. The first reason is the so-called big data and big data technologies. Current data, as the name indicates, is of tremendous amount, and is therefore big.

In 2010 alone, all data produced by all global companies was more than seven exabytes, six more was produced by all consumers. Eleven exabytes of data parallel data of "more than 60,000 US Libraries of Congress." (15, McKinsey Global Institute June 2011).

Better global "spread" of Internet and better technological data storage processing capabilities are the primary factors of the cause and acceleration of big data and technologies.

Social media technologies such as Facebook, YouTube are grand sources of big data because there are hundreds of millions of active users. Therefore, a tremendous amount of new data a day is a normal practice in modern life. There are "600 million active users" of Facebook and 490 million of YouTube. (21, McKinsey Global Institute June 2011).

Facebook, YouTube are "soft" big data technologies because there are also "hard" (physical and tangible) technologies such as personal computers and laptops and, especially, smartphones. Hard technologies have grand data storage and processing capacities, therefore, Facebook, YouTube are in all modern smartphones and computers. Therefore, it is safe to say that soft big data technologies fall under the category of "hard big data technologies". However, computers and smartphones are not the only examples of hard big data technologies. Due to the clear trend of connecting more physical objects to the Internet which adds up to big data, "More objects are becoming embedded with sensors and gaining the ability to communicate."

As it was mentioned previously, Facebook, YouTube, notebooks, smartphones, health devices are just some examples of big data technologies. Moreover, as people get more and more connected globally through the Internet and due to data storage and analysis technological improvements, global society will be further integrated with big data and technologies.

The tendency is inevitable as it follows the so called theory of "creative destruction" of Joseph Schumpeter, according to which, new and better technologies will always be created and will always "creatively destruct" older and worse technologies, because the process of "creative destruction" is the process of seeking competitive advantage (Schumpeter 1976, p.83).

Without the theory, no big data and technologies (Facebook, YouTube, smartphones etc.) would ever appear. The primary reason is because companies are "driven" by market value. Without big data and technologies, people would never be connected to each other to big extent. "Communication" with third-parties, banks,

hospitals, hotels, among others, is an example of social technological connection. Big data and technologies have made public communication with third-parties much easier and much more “functional”.

Summing up: big data and technologies are an important feature of modern America. Better and wider Internet-connection plus better data storage and processing capacities have caused and accelerated big data and technologies. There are various sources of big data, Facebook, YouTube, accessed from notebooks and, particularly, smartphones, are very popular. There is a clear tendency of connecting many physical devices to Internet, a tendency which adds more big data. In the end, millions of people receive multiple social benefits.

Therefore, the market value of big data and technologies is the highest factor, "making" companies constantly offer new and better services and products. In short, both companies and people, as consumers, benefit from mutual collaboration. Third-parties (e.g. banks), as a second category of consumers, also greatly benefit from big data and technologies, because now their services and products are offered online and have many more options than before. It causes deeper "communication" and integration of people with third-parties. In short, big data and technologies are a phenomenon, absent before.

A second distinct feature of modern America is (a) international terrorism and (b) foreign espionage. Insert two short quotes. It's clear that international terrorism and foreign espionage pose a grand danger to national security of America. In 2001, Bush urged Congress to pass the Patriot Act ("Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism"), which has been a key tool of national security. The Act's Section 215 *Access to Records and Other Items under the Foreign Intelligence Surveillance Act* forces all American companies (especially big data) to disclose all tangible data on all clients on demand, if it may be relevant to “an authorized investigation.”

It's clear that Section 215 of the Patriot Act inevitable "invites" American society to debate the Patriot Act's Fourth Amendment constitutionality. Fourth Amendment guarantees privacy rights to all people against all "unreasonable searches," where by

"unreasonable searches" are understood searches without "probable" cause that specific persons has trespassed the written laws.

The following several questions are fundamental within the social debate. Does the Patriot Act violate Fourth Amendment? Another question is: do big data companies (which comply with the Act) also violate ethics? To make the question more complete, it shall be noted that companies (in addition to complying with the Acts) actively cooperate with government through supplying big data technologies with better data storage and processing capacities. Therefore, is such cooperation violation of ethics?

Government's theses:

- The Patriot Act isn't violation of Fourth Amendment because of the Supreme Court's doctrine of "third-party." The meaning of it is that a voluntary disclosure of data to companies (third-parties) with subsequent disclosure of it to government isn't a "search" (or violation) of Fourth Amendment.
- Therefore, big data companies protect business ethics because complying with the Patriot Act and large cooperating with government is contributing to national security of America.

Critics' theses:

- The third-party doctrine has lost its power due to the grand technological change (big data and big data companies), which has happened in America since the introduction of the doctrine;
- Therefore, the Patriot Act "breaches" Fourth Amendment;
- If so, big data companies also breach business ethics.

The author's theses:

- The third-party doctrine isn't constitutional in the epoch of big data and the Patriot Act is a breach of Fourth Amendment;
- At the same time, although the Patriot Act violates Fourth Amendment, it shall not be repealed (instead: Fourth Amendment shall be revisited). The Act is necessary to protect America from international terrorism and foreign intelligence, the two grand dangers to the single most important value of America-national security;

- Big data companies protect business ethics (complying with the Act and cooperating with government-supplying new technologies necessary to implement the Patriot Act).

The theses (presented in the above sequence) give a clue to the overall plan of the conference paper. **But before a short overview of the Patriot Act will be given.**

Discussion

'Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism' (USA PATRIOT ACT) of 2001

Section 215 ("Access to Records and Other Items under the Foreign Intelligence Surveillance Act") will be discussed in large as it raises the biggest constitutional debate. As the Sections' name indicates, government has obtained the right of access to all tangible data on all persons, the only requirement is that it be relevant and beneficial to an authorized investigation. Therefore, no probable and reasonable proof that people have connection to terrorism or foreign espionage isn't required. (<https://www.gpo.gov/fdsys/pkg/BILLS-107hr3162enr/pdf/BILLS-107hr3162enr.pdf>)

A specific provision of Section 215 is the so called "telephony metadata" program.

"Metadata includes information about a phone call—who, where, when, and how long—but not the content of the conversation." (985-986, Joseph D. Mornin, 2014).

It's clear that third-parties' (companies') compliance with the Patriot Act is a critical factor to government, because third-parties have to disclose private data to government. Because the main idea behind the Patriot Act is protection America's national security from international terrorism and foreign espionage, in the opinion of government, third-parties (companies) don't violate ethics.

To repeat: Section 215 of the Patriot Act enables (a) government access to all tangible company data on clients; (b) access to all telephony metadata; (c)

access to all tangible data without proof of probable and reasonable connection of clients to international terrorism or clandestine foreign intelligence services; the only requirement is to show data disclosure may be relevant to "an authorized investigation conducted to protect against international terrorism or clandestine intelligence activities." Finally, in the view of government, third-parties' (companies') compliance with the Act isn't violation of ethics, because it adds up to protecting national security.

After providing a short overview of the Patriot Act and a brief statement that companies (without their compliance, the Patriot Act is pointless) don't violate ethics, government's defense of the Patriot Act (in reference to Fourth Amendment) will be discussed. The defense, as mentioned, lies in the Supreme Court's "third-party" doctrine: "...the Court has concluded, any information that a person voluntarily discloses to a business or other entity loses all Fourth Amendment protection. This rule, referred to as the "third-party doctrine," means that when government agents obtain records about person that are held by a telephone company, bank, or other institution, that does not qualify as a search under the Constitution." (PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD, 103, 2014)

In this light, Supreme Court key cases (holding relevance to the topic) will be discussed: (a) *Katz v. United States* (1967); (b) *Miller v. United States* (1976); (c) *Smith v. Maryland* (1979).

***Katz v. United States* (1967)**

The syllabus: Katz was suspected by government of illegal gambling practices, as a result while he was in the public phone booth, the F.B.I. officers attached an eavesdropping device to the outside of it. It led to confirming the F.B.I. suspicion of Katz' criminal conduct. Katz sued the F.B.I. on the ground of violating the privacy when Katz was in the phone booth. The F.B.I.'s defense was in indicating that no physical intrusion of the booth was. The Supreme Court, although it agreed, ruled that the privacy of Katz was violated. Katz closed the door of the phone booth, reasoned the Court, therefore Katz had a reasonable expectation of

privacy, which was also reasonable in society's views. In this case, a novel two-part test of privacy was created: in both private and public place, the Fourth Amendment protects a man's privacy from both physical and non-physical forms of intrusion if a man (a) has a reasonable expectation of privacy (he makes all reasonable efforts to protect his privacy) and (b) society confirms it as reasonable. Put it differently, Fourth Amendment protects "people, not places." The relevance of Katz to the "third-party" doctrine, clearly formulated in Miller and Smith cases, will now be shown.

United States v. Miller (1976)

The syllabus: Miller was suspected by the government of avoiding paying whiskey taxes on a large scale. The officers demanded from the two banks that they disclose all relevant data on Miller. It helped government convict Miller, who later on accused government of violating his privacy by accessing his bank records. The Supreme Court ruled that Miller had no reasonable expectation of privacy because he voluntarily disclosed the data to the "third-parties" (the two banks). The Court's ruling was partly based on a "reasonable expectation of privacy" test, first formulated in Katz because, as pointed above, in the opinion of the Court, Miller had no reasonable expectation of privacy because he voluntarily disclosed the data to the "third-parties" (the two banks). But the difference of Miller case from Katz was in clear and precedential formulation of the "third-party" doctrine. It's argued here that the doctrine would be formulated earlier (in Katz), To repeat: there was no involvement of a third-party in Katz.

Smith v. Maryland (1979)

The syllabus: Smith was suspected by the police for robbing the woman, who made a description of Smith's car, which was later noticed by the police. The plate numbers of the car helped the police associate the car with Smith. The police went to the phone company and demanded that it apply a "pen register," a device for recording the dialed phone numbers. It helped the police know that Smith made several calls to the robbed woman's home with threats not to tell

police. With warrant, the police searched Smith's home, where it found the phone book with the woman's phone numbers page, "highlighted." As a result, Smith was found guilty for robbery. Smith sued the police for violating the privacy when it demanded that the phone company "track" all phone calls from Smith's home. The Supreme Court ruled Smith had no reasonable expectation of privacy because he voluntarily disclosed the phone company his data (he did it to start using the services of the company), although he knew the phone company would record his calls for billing and other purpose.

Summing up, the Supreme Court has created the doctrine of third-party as a constitutional instrument, therefore government sees it as a valid justification of the Patriot Act. It also means government, referring to the doctrine, justifies compliance of companies as protection of ethics.

After discussing the theses of government, the critique of them will be given: There is violation of Fourth Amendment because the doctrine of "third-party" (the major source of government's justification of the Patriot Act) has lost all its constitutional meaning and force during the epoch of Big data and Big data companies. Put it differently, the doctrine is not well adapted to modern technological realities. Therefore, the critique is grounded on "broad" interpretation of Fourth Amendment. There is a grand technological difference between modern America and America during the "third-party" doctrine Supreme Court cases, discussed above, i.e. during the 1970s. There were no Big data and Big data technologies in the 1970s. Now, thanks to them, American society is deeply interconnected, therefore now people are much more connected with companies. Modern companies offer a much bigger scale of services and products to people that it would be a form of social "self-destruction" to disconnect from communication with companies. On the other hand, people have no choice but to disclose data to third-parties (companies), it's inevitable. To repeat, according to the third-party doctrine, voluntary disclosure isn't reasonable expectation of privacy, therefore it's not protected by Fourth Amendment. But, as said, modern Americans have no choice but to voluntarily disclosure their data to third-parties

in order to be part of society, deeply interconnected by the Big data and Big data companies. Therefore, government shall comply with Fourth Amendment, in which government is denied access to private data, except there is reasonable and probable (both highlighted) cause of a specific (highlighted) person's connection to international terrorism and foreign espionage. To repeat, Section 215 of the Patriot Act has enabled government access all tangible data on all (highlighted) persons on the ground that it may (highlighted) be beneficial to an investigation. Therefore, the Act has abandoned the data access requirements of "reasonability," "probability," and "specificity." Finally, in line with the critique, third-parties (companies) violate ethics when they comply with the Patriot Act.

Now the author's view on the critique of government's theses will be given.

The view that the doctrine is unconstitutional (therefore, the Patriot Act violates Fourth Amendment) is reasonable. There is no need to expand on the "why" because all important words are in the previous critique, with which the author totally agrees. But the author only agrees on the issue of the constitutionality of the doctrine and the Patriot Act (regarding Fourth Amendment) during the epoch of Big data and Big data companies. The author doesn't agree with the criticizing side that the doctrine and the Patriot Act be abandoned. There's no contradiction in the author's position. Because even the Supreme law (Constitution) can be ill adapted to technological changes. It's therefore natural that under the "umbrella" of the Supreme law, every legislative act (despite it's well adapted to change) "falling out from the umbrella" is unconstitutional. It's also clear that admitting such a legislative act is unconstitutional, at the same time, the act shall not be repealed, can't be wrong and contradictory. Under such a situation, any part of the Supreme law (ill adapted to technological change) shall be amended by Congress. Amendment Five of Constitution provides this right, "admitting" that the Constitution isn't ideal at all times. If Fourth Amendment shall be revisited, because it isn't relevant to modern America, whereas the Act

and the doctrine are, and they shall not be repealed, the author's view is that companies don't violate ethics, despite they violate Fourth Amendment.

The authors will now discuss more extensively why the Patriot Act is of so great significance to protecting America's national security (from terrorism and foreign espionage) that it shall not be repealed; instead, Fourth Amendment shall be revisited by Congress.

The plan is as follows: it will be proved that international terrorism and foreign espionage are really grand threats to national security and survival of America; and it will also be proved that the Patriot Act is a "right" instrument to challenge the threats. If it's not, what's the point to support the Patriot Act? (even if terrorism and foreign espionage are unique threats to America's survival).

It will also be proved that government won't turn to Orwellian "Big brother." It's an important issue since political tyranny isn't a dreadful and abstract concept. In theory, everything is always possible.

According to the plan, proving that the Patriot Act shall not be repealed, despite it violates Fourth Amendment, depends first on proving that international terrorism and foreign espionage are grand threats to national security and survival of America.

National security is the supreme value of America, therefore even Constitution shall be subject to it. Thomas Jefferson, a famous advocate of the Bill of Rights, wrote a letter to John B. Colvin:

"A strict observance of the written law is doubtless one of the highest duties of a good citizen, but it is not the highest. The laws of necessity, of self- preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the ends to the means.... It is incumbent on those only who accept of greatest charges, to risk

themselves on great occasion, when the safety of the nation, or some of its very high interests are at stake." (Mackubin Owens, 2009, p.6).

America faces two grand threats to its national security- international terrorism and foreign espionage. **International terrorism will be mentioned first.** September 11 is the moment, when America started a broad and decisive counter-terrorist campaign on a global scale. Recently, Boston Marathon Bombing has only proved that the inaugurated campaign was correct. Islamic fundamentalism has been the biggest challenge to America, because American long-standing military presence in Islamic states such as Afghanistan, Iraq (against Al-Qaeda), now in Syria (against ISIL) is a clear proof. America's foreign military policy has proved beneficial, because under Obama administration, there are now less troops in several Islamic states. But it doesn't mean international terrorism has been significantly weakened. It adapts, it mutates. ISIL is now the most discussed terrorist structure in global Mass Media. In addition, Al-Qaeda is not yet "dead." Moreover: these aren't the only terrorist structures in the Islamic regions. The Islamic Movement of Uzbekistan, Hizbut-Tahrir in Kyrgyzstan are some of the examples.

Various factors lead to international terrorist structures, corruption, unemployment, high prices are some of the factors, which make people (especially young) be dissatisfied with their government policies and seek additional sources to change their lives. As a result, many "flee" to international terrorist structures.

“An array of terrorist threats has gained traction in areas of instability, limited opportunity, and broken governance. Our adversaries are not confined to a distinct country or region. Instead, they range from South Asia through the Middle East and into Africa.” (The White House, p.9, 2015)

Therefore international terrorism can't be stopped or seriously weakened without improving overall stability in the Islamic regions. Because instability gives international terrorism an opportunity to adapt and mutate. The problem of overall instability won't be solved in a couple of generations, because the problem is to

deep and challenging that it has remained for whole generations, despite developed states (especially the United States) have helped problematic states.

Therefore, international terrorism will remain a grand threat to national security of America for decades. No one can foresee how long. National security is the supreme value of America, therefore even Constitution shall be subject to it. If so, Fourth Amendment shall be revisited, because it hinders national security. Therefore, the doctrine of third-party and the Patriot Act (despite they are unconstitutional) shall not be repealed.

Foreign espionage is a second grand threat to America, because foreign espionage is a part of a global geopolitical warfare. Each state seeks control over different parts of the globe, Eurasia is of special treatment.

According to former national security adviser Zbigniew Brzezinski, “for America, the chief geopolitical prize is Eurasia. For half a millennium, world affairs were dominated by Eurasian powers and peoples who fought with one another for regional domination and reached out for global power. Now a non-Eurasian power is preeminent in Eurasia -- and America's global primacy is directly dependent on how long and how effectively its preponderance on the Eurasian continent is sustained.” (30) He also said that “Eurasia is... the chessboard on which the struggle for global primacy continues to be played.” (ibid, 31)

America's "global primacy" is grounded on "the Eurasian continent." How national security of America is linked with global primacy over (especially) the Eurasian continent? And what's the role of foreign espionage? Globalization makes all states depend on each other to certain extent, America isn't an exception. It's well-being is connected with foreign states' resources. Eurasia is the continent, where rapidly developing states (such as Russia, India, and, of course, China) are situated. The population size of Eurasia is also its strength. There's connection between economic status and influence. Therefore, recollecting the quote by Brzezinski, America is involved in a geopolitical warfare with different states (China, Russia, India first of all) for control over Eurasia in order to secure its overall well-being and national security as a result.

What's the role of foreign espionage in geopolitical confrontation? Foreign espionage is a tool of "stealing" competitive assets by one state of another. Geopolitical confrontation is a costly endeavor, because only rapidly developing and developed states are among major geopolitical enemies to America. America's economic strength lies in its intellectual property, it's undoubtless, because as President Obama said, "...in a global economy, the key to our prosperity... will be... maintaining our role as the world's engine of scientific discovery and technological innovation."(The White House: Office of the Press Secretary, Nov.17, 2010).

Therefore, spying over and stealing intellectual property of America is a necessary precondition for success in geopolitical confrontation. America suffers from foreign espionage to significant extent, and it has to protect its property. "The scale of international theft of American intellectual property (IP) is unprecedented—hundreds of billions of dollars per year, on the order of the size of U.S. exports to Asia." (The National Bureau of Asian Research, 2013, Executive Summary,1) China's contribution (highlighted) to "the scale of international theft of American intellectual property" is dominant because "China has been the principal focus of U.S. intellectual property rights (IPR) policy for many years." (ibid) And "national industrial policy goals in China encourage IP theft, and an extraordinary number of Chinese in business and government entities are engaged in this practice." (ibid, p.3)

It's clear why China is the biggest violator of American IP, the reason is China's second economy (in terms of GDP) to American. To repeat, geopolitical confrontation is a costly endeavor (foreign espionage is a part of it). To repeat more, America is involved in grand geopolitical confrontation over different continents, especially Eurasia, because America's well-being and national security are dependant on continents. America's intellectual property is a primary factor of its national economic strength; also, intellectual property is a primary factor of geopolitical success, because geopolitical confrontation demands national economic strength.

As in the case with international terrorism, foreign espionage won't stop or decrease in coming decades, because there are already powerful rapidly

(highlighted) developing states with China on the lead. No one can foresee future geopolitical cases. One is for sure: geopolitical confrontation won't stop or decrease in coming decades; foreign espionage over America's intellectual property (a grand threat to national security of America, the supreme value) won't as well.

Therefore, the Patriot Act, an efficient measure against foreign espionage, shall not be repealed, despite it is unconstitutional and violates Fourth Amendment. The doctrine of third-party shall not be repealed as well, because without it, government won't have access to all tangible data of all persons. To repeat, besides foreign espionage, international terrorism is a grand threat to America' national security and survival, which only adds up to the need of protecting the Patriot Act (and the doctrine of third-party as the foundation of it), despite they violate Fourth Amendment; Fourth Amendment shall be revisited, because it no longer meets the realities of modern America.

Now, according to the plan, it will be proved that the Patriot Act is effective in combating international terrorism and foreign espionage. It must be discussed because it's impossible to prove that the Patriot Act shall not be repealed (in spite of its unconstitutionality), if the Act is totally ineffective. The Patriot Act has been effective since 2001 because "at least 30 terrorist plots against the U.S. have been foiled." In 2009 alone, government prevented "at least six plots." (*Caravan and Zuckerman, 2010*). But does it really indicate that without the Patriot Act, the terrorist plots would not be foiled? According to the Heritage Foundation, "the tools...have been vital in thwarting many of the 30 plots..." In light of a high frequency of terrorist plots and the effectiveness of the Patriot Act, the Heritage Foundation's offer is to "make key provisions of the Patriot Act permanent."

It's natural to know the specifics of these terrorist plots, therefore several plots out of thirty will be briefed.

1. Iyman Faris, May 2003, a Pakistani U.S. citizen, planned to bomb the Brooklyn Bridge.

2. Dhiren Barot, August 2004, Barot and the terrorist cell, which he headed, planned to bomb "the New York Stock Exchange and other financial institutions

in New York, Washington, and Newark, New Jersey." The idea of the terrorists was to create "a memorable black day of terror."

3. James Elshafay, Shahawar Matin Siraj, August 2004, planned to collapse "a subway station near Madison Square Garden in New York before the Republican National Convention."

4. Levar Haley Washington, Gregory Vernon Patterson, Hammad Riaz Samana, Kevin James, August 2005, planned terrorist plots against "National Guard facilities, synagogues, and other targets in the Los Angeles area."

5. Michael C. Reynolds, December 2005, planned to bomb "a Wyoming natural gas refinery; the Transcontinental Pipeline, a natural pipeline from the Gulf Coast to New York and New Jersey; and a Standard Oil refinery in New Jersey."

6. Syed Haris Ahmed, Ehsanul Islam Sadequee, April 2006, "met with Islamic extremists in the U.S. and gathered videotape surveillance of potential targets in the Washington, D.C., area, including the U.S. Capitol and the World Bank Headquarters, and sent the videos to a London Islamist group."

7. Narseal Batiste, Patrick Abraham, Stanley Grant Phanor, Naudimar Herrera, Burson Augustin, Lyglenson Lemorin, Rotschild Augustine, June 2006, planned to bomb "the Sears Tower in Chicago, FBI offices, and other government buildings around the country."

8. Assem Hammoud, July 2006, planned to collapse "underground transit links between New York and New Jersey."

9. JFK Airport Plot, June 2007, Russell Defreitas, Abdul Kadir, Kareem Ibrahim, Abdel Nur planned to bomb "aviation fuel tanks and pipelines at the John F. Kennedy International Airport in New York City." (Caravan and Zuckerman, 2010).

Finally, it shall be discussed why the Patriot Act is so effective. Various factors come into "play" (for example, effective coordination of federal agencies). Despite it, the author will brief only two factors, which make the Act so effective. As mentioned, Section 215 enables government to demand that a third-party disclose all tangible data on all clients, even if there is no probable and

reasonable cause that specific clients have connection to international terrorism and clandestine intelligence foreign services. Section 215 implies that searching terrorism and foreign espionage "footprints" is similar to searching a "needle in a haystack." Therefore, if a needle is unknown, a whole haystack is needed.

Therefore, restricting government "access" to a particular "haystack" subset of data of one whole "haystack" set of data, shall greatly diminish probability of finding the "needle."

Second factor is coordination of government and Big data companies' joint efforts. Big data, although it has grand social benefits, has complicated the task of finding international terrorism and foreign espionage "footprints" (finding a "needle" in a "haystack"). It's inevitable that "haystack" is big under Big data (it tends to be even bigger). According to Eric Schmidt, CEO of Google in 2010, "every two days, as much information is created as has been in existence since the dawn of civilization up until 2003." (Siegler, 2010).

It's clear that (under such situation) government is dependant upon new technologies with better data storage capacities for how can Section 215 be implemented, if government has no technological opportunity to store data? Another issue to mention is that government needs new technologies with better data processing capacities, because the more data "flows in," the harder processing it is. Section 215 of the Patriot Act is useless, if government can't find patterns (including hidden) among Big data.

It shall be noted that data processing is a big issue not only in terms of ever increasing data, it's also in terms of "quality" of data. Facebook, YouTube, among other Big data technologies, produce "tons" of unstructured data a day, which is (unlike structured data found in traditional computer databases) is the biggest form of all Big data.

Therefore traditional analytics technologies can't help government, except Big data analytics, because "emerging technologies that address big data enable

enterprises to analyze new types of information that hadn't been feasible to analyze before. What are these technologies? IBM Big Insights, IBM InfoSphere Data Explorer.

In short, Big data companies help government supplying it new technologies so that Section 215 of the Patriot Act is always effective in combating international terrorism and foreign espionage.

Summing up, the author argues that the Patriot Act shall not be repealed because America faces two grand threats to its national security and survival- international terrorism and foreign espionage. The Patriot Act is an indispensable and effective tool to protect America from the threats. It helped government prevent at least 30 major terrorist plots since 2001. The Patriot Act would never be so helpful without several factors- government access to all tangible data on all clients and the supply of technologies (with necessary data storage and processing capacities) to government by Big data companies.

Although these facts are serious, **it's still not yet COMPLETELY proved that the Patriot Act shall not be repealed (despite it's unconstitutional)**. One last question has to be addressed: **Won't government use the Patriot Act (as a major tool to combat foreign enemies-international terrorism and espionage) as a means of turning to "Big brother" in Orwellian sense?**

“If Tyranny and Oppression come to this land, it will come in the guise of fighting a foreign enemy.”

It's an important question to address, because there is always probability that government will use data as a political tool to abuse and suppress people. All politicians are humans; all humans aren't ideal. The syllogism is effective in all countries and in all times. According to James Madison, "what's government itself but the greatest of all reflections on human nature?" (Selected Quotes of James Madison).

In theory, therefore, the Patriot Act (under the pretext of fighting foreign enemy) can be used as tool of turning government to Orwellian "Big brother." Another factor why it's theoretically reasonable is because the Patriot Act is tied in with Big data technologies which allow government to access all tangible data of all people. George Orwell's 1984 is technological, therefore "Big brother watches all" thanks to technologies. "The flat was seven flights up, and Winston, who was thirty-nine... went slowly, resting several times on the way. On each landing, opposite the lift-shaft, the poster with the enormous face gazed from the wall. It was one of those pictures which are so contrived that the eyes follow you about when you move. BIG BROTHER IS WATCHING YOU, the caption beneath it ran". (1, 1984, George Orwell, 1949,

Although American "Big brother" is possible in theory, it's not in practice. The primary reason can be found in the American political system of "checks and balances." The idea of the system, as the name indicates, is to protect America from tyranny on both federal and state levels. Section 1 ("The Legislature") of Article 1 ("The Legislative Branch") grants all legislative powers to Congress, Section 1 ("The President") of Article 2 ("The Executive Branch") grants all executive powers to the Executive Office, Section 1 ("Judicial Powers") of Article 3 ("The Judicial Branch") grants all judicial powers to the Supreme Court and inferior courts.

The Bill of Rights protects states and people from federal government's tyranny. Amendment 10 ("The powers of the states and people") grants all rights and powers to the states and people, not delegated to federal government nor prohibited to the states and people.

(UNITED STATES GOVERNMENT PRINTING OFFICE, 2007)

This is just an overview of how Constitution protects America from tyranny on federal and state levels. There are other more specific, but still important, protective mechanisms in Constitution.

The most important "thing" is that the "checks and balances" system has worked effectively since adopting Constitution. It's the primary reason why

modern America leads all world states in terms of democracy, it's a well-known fact. Therefore, there is no probability government (using the Patriot Act) will turn to Orwellian "Big brother." But America needs the Patriot Act to defend its national security from international terrorism and foreign espionage, two grand threats to America.

After all major points have been provided in an extended discussion, intended to prove that the Patriot Act (and the doctrine as the single basis of it) shall not be repealed, despite both violate Fourth Amendment, **it's possible to make several inferences. Inference first** is that Fourth Amendment shall be revisited, because it no longer meets the requirements of modern American life. **Inference second,** Big data companies don't violate ethics (as critics say they do) when companies comply with the Patriot Act and supply government with Big data technologies to enforce the Act. Companies contribute to national security and survival of America.

Conclusion

An interrelationship of Big data, Big data technologies, business ethics, international terrorism, foreign espionage, the Patriot Act to Fourth Amendment have been the core issue of discussion. In short, two fundamental questions have been the most basic:

Does the Patriot Act violate Fourth Amendment?

Do Big data companies violate ethics?

Government's theses have been:

- The Patriot Act isn't violation of Fourth Amendment because of the Supreme Court's doctrine of "third-party."
- Therefore, Big data companies protect business ethics because complying with the Patriot Act and large cooperating with government is contributing to national security of America.

Critics' theses have been:

- The third-party doctrine has lost its power due to the grand technological change (Big data and Big data companies), which has happened in America since the introduction of the doctrine;
- Therefore, the Patriot Act “breaches” Fourth Amendment;
- If so, Big data companies also breach business ethics.

The author’s theses have been:

- The third-party doctrine isn’t constitutional in the epoch of Big data and the Patriot Act is a breach of Fourth Amendment;
- At the same time, although the Patriot Act violates Fourth Amendment, it shall not be repealed (instead: Fourth Amendment shall be revisited). The Act is necessary to protect America from international terrorism and foreign intelligence, the two grand dangers to the single most important value of America-national security;
- Big data companies protect business ethics (complying with the Act and cooperating with government-supplying new technologies necessary to implement the Patriot Act).

We still need to prove that the Patriot Act is effective against foreign espionage (only terrorism has been covered so far). In addition (this will be much more important in terms of novelty and interest) I need to answer the question: Will Big data technologies or Artificial Intelligence (AI) rise against humanity? It must be noted that AI isn't just robotics. Therefore, Big data technologies and AI aren't totally different. Second, the Patriot Act and Big data technologies (AI) are connected, because AI stores and analyzes incoming data. Put it differently, **the Patriot Act stimulates Big data companies to cooperate with government and constantly innovate AI**. Next: Will AI rise against humanity? Gates, Hawking, Musk warn that it may. Therefore, the question is purely academic, not something from pseudo-science. In short, if I manage to reasonably answer the question, particularly proving that the Patriot Act won't contribute to AI's improvement and final rise against humanity, it will be a good argument in favor of protecting the Patriot Act. In addition, it will be a novel (in terms of linking the Act and AI) and interesting to conference participants.

Reference:

The White House: Office of the Press Secretary (Nov.17, 2010). *Remarks by the President in Presenting National Medals of Science and National Medals of Technology and Innovation*. Retrieved from <https://www.whitehouse.gov/the-press-office/2010/11/17/remarks-president-presenting-national-medals-science-and-national-medals>).

Joseph, Schumpeter (1976). *Capitalism, Socialism & Democracy*. p.83. Retrieved from <http://digamo.free.fr/capisoc.pdf>

Big data: The next frontier for innovation, competition, and productivity McKinsey Global Institute June 2011 http://www.mckinsey.com/insights/business_technology/big_data_the_next_frontier_for_innovation

Disruptive technologies: Advances that will transform life, business, and the global economy McKinsey Global Institute May 2013 http://www.mckinsey.com/insights/business_technology/disruptive_technologies

BIG DATA: SEIZING OPPORTUNITIES, PRESERVING VALUES Executive Office of the President MAY 2014 https://www.whitehouse.gov/sites/default/files/docs/big_data_privacy_report_may_1_2014.pdf

Article 1, Section 1, <https://www.law.cornell.edu/constitution/article1>

Corporate Avatars and the Erosion of the Populist Fourth Amendment Avidan Y. Cover, IOWA LAW REVIEW Vol. 100 2015 http://ilr.law.uiowa.edu/files/ilr.law.uiowa.edu/files/ILR_100-4_Cover.pdf

LEAKER TRAITOR WHISTLEBLOWER SPY: NATIONAL SECURITY LEAKS AND THE FIRST AMENDMENT

MARY-ROSE PAPANDREA BOSTON UNIVERSITY LAW REVIEW [Vol. 94 2014
<http://www.bu.edu/bulawreview/files/2014/05/PAPANDREA.pdf>

The IP Commission Report: The Report of the Commission on the Theft of American Intellectual Property On behalf of The Commission on the Theft of American Intellectual Property by The National Bureau of Asian Research. 2013 http://www.ipcommission.org/report/ip_commission_report_052213.pdf

World Bank (2014). *Gross domestic product 2014*. Retrieved from <http://databank.worldbank.org/data/download/GDP.pdf>

The Legality of the National Security Agency's Bulk Data Surveillance Programs JOHN YOO I/S: A JOURNAL OF LAW AND POLICY FOR THE INFORMATION SOCIETY Vol.10 2014 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2369192

FOREIGN POLICY RESEARCH INSTITUTE Abraham Lincoln: Leadership and Democratic Statesmanship in Wartime by Mackubin Thomas Owens 2009 <https://www.fpri.org/docs/media/owens.lincolnleadershipstatesmanshipwartime.pdf>

<https://www.law.cornell.edu/supremecourt/text/249/47>

<http://caselaw.findlaw.com/us-supreme-court/444/507.html>

WORKING DRAFT: Benkler, A Free Irresponsible Press, forthcoming Harvard Civil Rights-Civil Liberties Law Review

A FREE IRRESPONSIBLE PRESS: WIKILEAKS AND THE BATTLE OVER THE SOUL OF THE NETWORKED FOURTH ESTATE Yochai Benkler 2011 <https://dash.harvard.edu/bitstream/handle/1/10900863/Benkler.pdf?sequence=1>

University of Chicago Law School Chicago Unbound Journal 2009 Free Speech and National Security Geoffrey R. Stone http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2975&context=journal_articles

Justice Black, 1971 https://www.law.cornell.edu/supremecourt/text/403/713#writing-USSC_CR_0403_0713_ZC Concurring Opinion New York Times v. United States

(Address in the Assembly Hall at the PaulsKirche in Frankfurt. June 25, 1963, <http://www.presidency.ucsb.edu/ws/?pid=9303>)

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD Report on the Telephone Records Program Conducted under Section 215 of the USA PATRIOT Act and on the Operations of the Foreign Intelligence Surveillance Court JANUARY 23, 2014 <https://fas.org/irp/offdocs/pclob-215.pdf>

THE CONSTITUTION OF THE UNITED STATES OF AMERICA As Amended UNITED STATES GOVERNMENT PRINTING OFFICE WASHINGTON: 2007 <https://www.gpo.gov/fdsys/pkg/CDOC-11ohdoc50/pdf/CDOC-11ohdoc50.pdf>