The Good That Warrant Canaries Do

A warrant canary is a notice published on a website (or anywhere else) that says that the federal government has not requested private information along with a gag order. Under various laws, the federal government can request personal information and require an internet service provider or other business to never tell their customer.

A warrant canary is a pro-business open source civil disobedience response to the problem. The problem is a lack of oversight that is so extreme that Judge Victor Marrero of the Southern District of New York (a federal court) found the PATRIOT Act unconstitutional, [writing](https://casetext.com/case/doe-v-ashcroft), "the Court concludes that the compulsory, secret, and unreviewable production of information required by the FBI's application of 18 U.S.C. § 2709 violates the Fourth Amendment, and that the non-disclosure provision of 18 U.S.C. § 2709(c) violates the First Amendment."

The Fourth Amendment is the right to privacy -- the right to be free of unreasonable search and seizure. The First Amendment is free speech. Both are threatened by the PATRIOT Act.

Both are threatened by a process that is "compulsory, secret, and unreviewable." Companies using warrant canaries do not object to surveillance. They object to surveillance run amok without oversight.

A warrant canary does not solve the problem. It merely increases the burden on the government. In the United States, First Amendment law makes it more difficult for the government to make people lie ("forced speech") than to make them not speak ("prior restraint").

## Civil Disobedience

Because of the lack of oversight, there is no ongoing conversation about the facts of surveillance. Even our politicians don't know what's going on. (*See* [NSA releases 12 years of damaging oversight reports on Christmas Eve](http://www.pbs.org/newshour/rundown/nsa-releases-12-years-surveillance-oversight-reports-christmas-eve/), PBS, Dec. 25, 2014.) The purpose of civil disobedience is to make people aware of a problem and to start a conversation. We hope that the United States will finally have a conversation about the unconstitutional laws that were passed after 9/11. It's time to reclaim the freedoms that we never knew we lost.

## Pro-Business

But what if you don't care about the Constitution? Perhaps you care about business? A [report from 2013](http://www.washingtonpost.com/blogs/the-switch/wp/2013/08/07/nsa-snooping-could-cost-u-s-tech-companies-35-billion-over-three-years/) that said that the unconstrained privacy violations described in the Snowden documents could cost cloud computing tech businesses $35 billion during the three year period from 2013 to 2016. Given the growth of cloud computing, that report seems conservative. In response to foreign concerns, IBM alone [has spent](http://www.nytimes.com/2014/03/22/business/fallout-from-snowden-hurting-bottom-line-of-tech-companies.html?_r=0) a billion dollars building data centers outside of the United States "to reassure foreign customers that their information is safe from prying eyes in the United States government."

## Open Source

Warrant canaries are highly visible. They are not secret. Their proliferation shows the commitment of America's tech community to the Constitution.

## The Future

Congress is [considering repealing the PATRIOT Act](http://www.huffingtonpost.com/2015/03/24/surveillance-state-repeal-act_n_6935632.html), and the bill to do so has bipartisan support, but Congress is not known for acting.

Meanwhile, countries that lack our tradition of protecting free speech are already acting. I'm not talking about Iran: [Australia](https://www.schneier.com/blog/archives/2015/03/australia_outla.html) has just outlawed warrant canaries. [Canada](https://www.techdirt.com/articles/20150202/09293729882/canadas-new-anti-terrorism-legislation-echoes-patriot-act-expands-spying-powers-government-reach.shtml) is working on its own version of the PATRIOT Act: one that appears to lack even the ineffectual protections of liberty contained in the U.S. law.

Twitter is already [fighting this battle in court](https://gigaom.com/2014/10/10/are-warrant-canaries-legal-twitter-wants-to-save-techs-warning-signal-of-government-spying/), but it's fighting a prior restraint battle, not a forced speech battle.