A little-remarked feature of pending legislation on domestic surveillance has provoked alarm among university and public librarians who say it could allow federal intelligence-gathering on library patrons without sufficient court oversight.

Draft House and Senate bills would allow the government to compel any "communications service provider" to provide access to e-mails and other electronic information within the United States as part of federal surveillance of non-U.S. citizens outside the country.

The Justice Department has previously said that "providers" may include libraries, causing three major university and library groups to worry that the government's ability to monitor people targeted for surveillance without a warrant would chill students' and faculty members' online research activities.

"It is fundamental that when a user enters the library, physically or electronically," said Jim Neal, the head librarian at Columbia University, "their use of the collections, print or electronic, their communications on library servers and computers, is not going to be subjected to surveillance unless the courts have authorized it."

Under the legislation, the government could monitor a non-U.S. citizen overseas participating in an online research project through a U.S. university library, and gain access to the communications of all the project participants with that surveillance target, said Al Gidari, a lawyer with the Perkins Coie firm who represents the Association of Research Libraries and the American Library Association.

The bills, which would replace a temporary law amending the Foreign Intelligence Surveillance Act, would not require the government to demonstrate "probable cause" that the foreign person targeted is a terrorist or a spy or to let the FISA court, which grants surveillance warrants, know that the tap will be on a library. Under the Senate bill, a general surveillance program may be authorized yearly by the attorney general and the director of national intelligence. The House's version would require the FISA court to authorize surveillance directed at people overseas.

The librarians said their concern about such monitoring is rooted in recent history.

In the summer of 2005, FBI agents handed an administrative subpoena called a national security letter (NSL) to a Connecticut librarian, and demanded subscriber, billing and other information on patrons who used a specific computer at a branch library. NSLs can be approved by certain FBI agents without court approval. The agents ordered the librarian to keep the demand secret. But he refused to produce the records, and his employer filed suit, challenging the gag order. A federal judge in September 2005 declared the gag order unconstitutional.

Librarians cried out over the issue and in March 2006 won language in the reauthorized USA Patriot Act that specified that libraries acting as book-lenders not be subject to NSLs. But FBI Director Robert...
S. Mueller III said, in written remarks to the Senate Judiciary Committee in May 2006, that "a library is only subject to an NSL if it provides electronic communication services."

Today, many universities -- and by extension their libraries -- can be considered Internet service providers, because they run private Internet networks allowing students and faculty to send e-mail, conduct online research and engage in online chats without touching the public system, experts said.

Many universities also have branches overseas, where users can log onto the school network and gain access to the library's server on U.S. soil. Moreover, university research -- especially in the scientific arena -- is frequently conducted online and in groups, often internationally, by accessing shared databases and advanced private Internet networks, librarians said.

"For me, the issue is if somebody is going to follow the research thread of a faculty or student, that may be something that needs to happen to protect all of us, but it needs to be done under judicial review and with a warrant," said Larry Alford, dean of libraries at Philadelphia's Temple University, which also has campuses in Rome and Tokyo. "The transactions that used to go on inside of a classroom and inside of a library building now can go on electronically and virtually."

For Neal, who has been a librarian for 34 years, the issue is not academic. He recalled his time working at Penn State University in the 1980s, at the height of the Cold War, when the FBI demanded information about the reading habits of international students. The staff refused, but the experience jolted Neal, who said he felt that library users' privacy rights had been "violated."

Greg Nojeim, senior counsel at the Center for Democracy and Technology, said: "The librarians have fingered an issue that is particularly problematic in the Senate legislation. When a group of Americans communicate with one targeted non-American abroad, everyone's privacy is at risk. We are not saying the government should have to seek a warrant for every overseas foreigner, but court oversight is essential."

The Association of Research Libraries, representing 123 institutions, the American Library Association, with more than 65,000 members, and the Association of American Universities, representing 60 U.S. institutions, each say they seek to amend the draft bills to make clear that the term "communications provider" does not include libraries. Although a report by the House Judiciary Committee states that libraries are not meant to be subject to the provision, it does not have the force of law, according to Prudence S. Adler, associate executive director of the research library group.

House intelligence committee Chairman Silvestre Reyes (D-Tex.) said the House bill, produced by Democrats, would protect Americans' constitutional rights. He noted that the measure would allow the FISA court to "review the targeting procedures to ensure that Americans aren't targeted."

Sen. Christopher S. Bond (R-Mo.), the intelligence committee vice chairman, who helped craft the bipartisan Senate bill, said librarians need not worry. The government, he said, would seek to monitor only "suspected terrorists." If a surveillance target communicates with a U.S. citizen or a resident who is not a target, the latter's communications would be "minimized" or blacked out, he said, and the bill would require a court to approve the minimization procedures.

"You know what happens if that [library exception] gets into the bill?" Bond said. "You would have your libraries filled with al-Qaeda operatives."

Justice Department spokesman Dean Boyd declined to specify which institutions might qualify as "electronic communications service providers," calling the question hypothetical. But he said the administration opposes exceptions for libraries or others, because they "could lead to an unworkable patchwork of legal authorities" and impede effective intelligence gathering.

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