



For now, law enforcement has trouble monitoring Gmail communications in real time
Image courtesy Google

Despite the pervasiveness of law enforcement surveillance of digital communication, the FBI still has a difficult time monitoring Gmail, Google Voice, and Dropbox in real time. But that may change soon, because the bureau says it has made gaining more powers to wiretap all forms of Internet conversation and cloud storage a “top priority” this year.

Last week, during a talk for the [American Bar Association](#) in Washington, D.C., FBI general counsel Andrew Weissmann discussed some of the pressing surveillance and national security issues facing the bureau. He gave a few updates on the FBI’s efforts to address what it calls the “[going dark](#)” problem—how the rise in popularity of email and social networks has stifled its ability to monitor communications as they are being transmitted. It’s no secret that under the Electronic Communications Privacy Act, the feds can [easily obtain](#) archive copies of emails. When it comes to spying on emails or Gchat in *real time*, however, it’s a different story.

That’s because a 1994 surveillance law called the [Communications](#)

Assistance for Law Enforcement Act only allows the government to force Internet providers and phone companies to install surveillance equipment within their networks. But it doesn't cover email, cloud services, or online chat providers like Skype. Weissmann said that the FBI wants the power to mandate real-time surveillance of everything from Dropbox and online games ("the chat feature in Scrabble") to Gmail and Google Voice. "Those communications are being used for criminal conversations," he said.

While it is true that CALEA can only be used to compel Internet and phone providers to build in surveillance capabilities into their networks, the feds do have some existing powers to request surveillance of other services. Authorities can use a "Title III" order under the "Wiretap Act" to ask email and online chat providers furnish the government with "technical assistance necessary to accomplish the interception." However, the FBI claims this is not sufficient because mandating that providers help with "technical assistance" is not the same thing as forcing them to "effectuate" a wiretap. In 2011, then-FBI general counsel Valerie Caproni—Weissmann's predecessor—[stated](#) that Title III orders did not provide the bureau with an "effective lever" to "encourage providers" to set up live surveillance quickly and efficiently. In other words, the FBI believes it doesn't have enough power under current legislation to strong-arm companies into providing real-time wiretaps of communications.

Because Gmail is sent between a user's computer and Google's servers using [SSL encryption](#), for instance, the FBI can't intercept it as it is flowing across networks and relies on the company to provide it with access. Google spokesman Chris Gaither hinted that it is already possible for the company to set up live surveillance under some circumstances. "CALEA doesn't apply to Gmail but an order under the Wiretap Act may," Gaither told me in an email. "At some point we may expand our [transparency report](#) to cover this topic in more depth, but until then I'm not able to provide additional information."

Either way, the FBI is not happy with the current arrangement and is on a crusade for more surveillance authority. According to Weissmann, the bureau is working with "members of intelligence community" to craft a proposal for new Internet spy powers as "a top priority this year." Citing security concerns, he declined to reveal any specifics. "It's a very hard thing to talk about publicly," he said, though acknowledged that "it's something that there should be a public debate about."