



## FBI Loses National Security Letter Case Against Internet Archive

by Tom Burghardt

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When the [Internet Archive](#), a project founded in 1996 to create a digital library of the web, was served an illegal National Security Letter (NSL) by the FBI, Archive founder and Digital Librarian, Brewster Kahle, did what any self-respecting defender of free expression would do: he got pissed.

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But Kahle did more. He sued the FBI--and won. After a legal [challenge](#) from the American Civil Liberties Union (ACLU) and the Electronic Frontier Foundation (EFF) in federal district court in San Francisco, the Bureau was forced to withdraw the NSL and unseal the case, allowing the Archive's founder to speak out about his battle with autocratic Bushist agents.

The NSL was served on the Archive--a library recognized as such by the state of California--and Kahle's attorneys in November 2007. The Bureau demanded personal information about one of the library's patrons, including the individual's name, address, and any electronic communication records pertaining to the user.

A National Security Letter, an onerous tool deployed by the Bureau to root out suspected "terrorists" and other malefactors, is a covert means by which the state obtains access to personal customer records from Internet Service Providers, banks, other financial institutions and credit reporting agencies without the approval of a judge. In other words, under the guise of a "national security investigation," NSLs are very sharp hooks for government fishing expeditions.

Recipients are gagged from ever disclosing they have come under the Bureau's baneful gaze. And since the passage of the viral Patriot Act in 2001 by a servile Congress, the use of these illegal procedures have fed the FBI's seemingly insatiable demand for private records. *Wired* magazine reports that between 2003-2006 the Bureau has issued some 200,000 NSLs, often without a shred of legal justification for doing so, nor oversight to rein in their misuse. Ryan Singel [writes](#):

*Though FBI guidelines on using NSLs warned of overusing them, two Congressionally ordered audits revealed that the FBI had issued hundreds of illegal requests for student health records, telephone records and credit reports. The reports also found that the FBI had issued hundreds of thousands of NSLs since 2001, but failed to track their use. In a letter to Congress last week, the FBI admitted it can only estimate how many NSLs it has issued. (Ryan Singel, "FBI Targets Internet Archive with Secretive National Security Letter, Loses," *Wired*, May 7, 2008)*

Unfortunately for the Bureau, Kahle, who is also serves on the EFF's Board of Directors, decided to challenge the NSL because it exceeded the FBI's limited authority to target libraries during "espionage" or "terrorism" investigations.

According to a joint [press release](#) by the ACLU and EFF, Kahle said,

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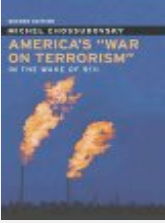
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*The free flow of information is at the heart of every library's work. That's why Congress passed a law limiting the FBI's power to issue NSLs to America's libraries. While it's never easy standing up to the government--particularly when I was barred from discussing it with anyone--I knew I had to challenge something that was clearly wrong. I'm grateful that I am able now to talk about what happened to me, so that other libraries can learn how they can fight back from these overreaching demands. ("FBI Withdraws Unconstitutional National Security Letter after ACLU and EFF Challenge," Press Release, Electronic Frontier Foundation, May 7, 2008)*

During a conference call with journalists on Wednesday, Kahle told reporters, "Not being able to talk about it with our board, with my wife, made it very difficult. I can imagine a hurried staffer sticking a gag into a hurried bill. But gags don't seem to be necessary, and now, what we've discovered in practice, gagging librarians is horrendous," [The Washington Post](#) reports.

Kahle said after the court ruling, "This is an unqualified success that will help other recipients understand that you can push back on these."

As I reported [last month](#), the Bureau actually *returned* documents they had already obtained in a 2005 terrorism-related case, after North Carolina State University refused to hand over educational records to FBI snoops who issued an illegal NSL against the University.

Why? Because it provided FBI Director Robert Mueller an opportunity to demand Congress grant the Bureau additional powers it wasn't entitled to, and despite having obtained the documents in question after a federal grand jury issued a subpoena--and University officials had already complied!

While the Internet Archive's victory against the FBI puts an end to the government's challenge in this case, the settlement prevents Kahle or his attorneys from discussing what the Bureau was so intent on perusing, even though the FBI was seeking public information--not "state secrets," nor "evidence" of a "terrorist plot."

But these days, as the post-Constitutional "New Order" continues to cast a tyrannical pall across the American landscape, even a small victory against those who "work...the dark side," has merit.

The partially redacted documents on the Internet Archive case are available [here](#).

For more information on NSLs click [here](#).

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