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## FBI INTERNET SURVEILLANCE: THE NEED FOR A NATURAL RIGHTS APPLICATION OF THE FOURTH AMENDMENT TO INSURE INTERNET PRIVACY

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### Abstract

Last year, the Federal Bureau of Investigation ("FBI") acknowledged that it used an Internet electronic surveillance system called Carnivore to investigate and prosecute criminal suspects in more than two dozen cases. Carnivore is a software program developed by the FBI that can be installed on the network of an Internet Service Provider ("ISP"), such as America Online, to monitor, intercept and collect e-mail messages and other Internet activity made and received by individuals suspected of criminal activity. To date, the full capability of Carnivore remains a secret—the FBI refuses to disclose the source code (computer language) that would reveal how Carnivore operates, noting that disclosure of the source code would compromise the utility of the system to prosecute criminal activity on the Internet. The FBI's use of Carnivore has raised concerns that it violates privacy rights, including the right to be free of unreasonable searches and seizures guaranteed by the Fourth Amendment to the U.S. Constitution.

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Although the Fourth Amendment was ratified in 1791, the Supreme Court's first in-depth interpretation of what constitutes a Fourth Amendment search did not arise until the 1886 case *United States v. Boyd*.<sup>29</sup> In *Boyd*, the government obtained a court order for the Boyds to provide an invoice of goods they imported which the government planned to use against them in. To protect, that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment.<sup>35</sup> The FBI had attached an electronic eavesdropping device to the outside of the telephone booth in which Katz made calls and offered evidence of these calls against Katz at his prosecution.