

When Computer Crimes Are Used to Silence Journalists



Glenn Greenwald's prosecution is an attempt to use computer crime law to silence an investigative reporter who exposed deep-seated government corruption. (Photo: Gage Skidmore/[Flickr](#))

By [Rainey Reitman](#) | [Common Dreams](#)

This week, prosecutors in Brazil [filed a criminal complaint against Glenn Greenwald](#), an internationally lauded journalist best known for publishing leaked documents detailing the NSA's mass surveillance. Greenwald's prosecution is an attempt to use computer crime law to silence an investigative reporter who exposed deep-seated government corruption. Sadly, this isn't the first such effort and, unless we stop this drift to criminalizing journalism, it likely won't be the last.

Legal prosecution and character attacks are familiar tools used to silence investigative journalists who expose corruption. The use of cybercrime laws to do so, however, is

relatively new. Greenwald has faced a prolonged and complicated legal standoff in Brazil since he [published documents showing that a federal judge in Brazil colluded with prosecutors](#) to convict former leftist president Lula da Silva. That conviction was crucial to preventing da Silva from running in the last election, which was instrumental in Brazil's far-right president Jair Bolsonaro successfully ascending to power. Greenwald [published](#) private chat conversations, audio recordings, videos, photos, court proceedings, and other documentation provided by an anonymous source showing, among other things, the collusion between prosecutors and the judge, who has since been appointed as Brazil's top judicial minister.

Since those articles were published, Greenwald and his family have dealt with legal threats (including a statement from President Bolsonaro that Greenwald could "[do jail time](#)"), death threats, and homophobic persecution.

Unfortunately, legal prosecution and character attacks are familiar tools used to silence investigative journalists who expose corruption. The use of cybercrime laws to do so, however, is relatively new. This case is garnering special international attention in part because the current charges fly in the face of a decision by the Supreme Court of Brazil last year, in which the Court preemptively halted investigations against Greenwald. That decision upheld the rights of journalists to communicate directly with their sources and stated that Greenwald's acts deserved constitutional protection—regardless of the content published, or its impact on government interests.

In an apparent attempt to circumvent the ruling, the charges now include "intruding computer devices."

Around the world, cybercrime laws are notoriously hazy. This is in part because it's challenging to write good cybercrime laws: technology evolves quickly, our language for describing certain digital actions may be imprecise, and lawmakers may not always imagine how laws will later be interpreted. And

while the laws are hazy, the penalties are often severe, which makes them a dangerously big stick in the hands of prosecutors. Prosecutors can and do take advantage of this disconnection, abusing laws designed to target criminals who break into computers for extortion or theft to prosecute those engaged in harmless activities, or research—or, in this case, journalists communicating with their sources.

In 2018, EFF published an [extensive report](#) on the use of computer crime law to criminalize security research across the Americas. We offered guidance on how cybercrime laws could better adhere to human rights standards. That includes ensuring that malicious intent is baked into laws from the beginning (“Criminal laws should clarify the definition of *malicious intent* or *mens rea*, and avoid turning general behaviors into strict liability crimes.”). Our analysis of numerous computer crime laws in North and South America made clear that many of the current laws were dangerously vague, subject to misuse and over-prosecution of harmless acts, and could have a chilling effect on security research.

With the prosecution of Greenwald, we see how the misapplication of computer crime law can also have a chilling effect on journalism and harm the public’s right to know. Coupling the vague law with the severe penalties it contains, charging journalists as hackers may become a uniquely powerful tool for silencing those who seek to keep the rest of us informed.

While we don’t yet know all the details of the case against Greenwald, [we see no actions detailed in the criminal complaint that violate Brazilian law](#). Journalists routinely communicate at length with sources, and in fact, must do so to ascertain the veracity of any documents. Furthermore, a Brazilian Supreme Court Justice has [already declared](#) that Greenwald’s publication of leaked messages was protected under the Brazilian Constitution.

It's a mark of tyranny to prosecute reporters who truthfully report on government corruption. Investigative reporters are supposed to reveal corruption and wrongdoing, even when doing so draws the ire of those in power. Few journalists in our lifetime can match Greenwald's record for fearless reporting about government abuses of power. A free society can not only tolerate the confrontational reporting of talented journalists but will thrive when articles that reveal and challenge those in power are regularly provided to the public. It's a mark of tyranny to prosecute reporters who truthfully report on government corruption.

EFF [stands with dozens of other civil society organizations in Brazil and across the world](#) in calling on Brazil to uphold the rule of law and drop this political prosecution of Glenn Greenwald.

Note: Both Greenwald and I serve on the board of the [Freedom of the Press Foundation](#), and EFF serves as counsel to the organization. Greenwald was also the [recipient](#) of EFF's Pioneer Award in 2013.

[coalition-letter-greenwald-charges.pdf](#)



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