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News Item

The Justice Department's New Media Protections Are (Mostly) a Promise, Not Yet a Reality | Knight First Amendment Institute

By Anna Diakun and Jameel Jaffer
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> Last week, Attorney General Merrick Garland announced broad new limitations on federal prosecutors' use of compulsory legal process—including subpoenas, warrants, and court orders—to obtain journalists' records. This change in policy, spurred by revelations that the Justice Department had sought phone and email records of New York Times, Washington Post, and CNN reporters in the waning days of the Trump administration, is, as others have observed, a remarkable victory for press freedom. What's most important, though, is not what Garland has already done, but what he acknowledges must be done next. As Garland himself has suggested, the long-term significance of the Justice Department's policy change will turn on precisely how the policy is translated into regulation, and on whether and how Congress codifies it in statute.
> The DOJ's regulations relating to media subpoenas, originally promulgated in 1970, are intended to limit the government's use of law enforcement tools that can sometimes impair newsgathering activities. They are meant to strike a balance between the freedom of the press on one hand, and national security, public safety, and effective law enforcement on the other.
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