

Five years after Assange's UK imprisonment, his prosecution still threatens press freedom

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A New York Times headline, "Assange Indicted Under Espionage Act, Raising First Amendment Issues" appears over a picture of a bearded Julian Assange holding up two fingers.

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The U.S. government argues that WikiLeaks founder Julian Assange should be prosecuted because he's a "hacker" not a journalist. So why isn't it satisfied with punishing him like one? While awaiting extradition, Assange has now served five years in Belmarsh Prison in the U.K. — the statutory maximum sentence under U.S. law for conspiracy to commit computer intrusion.

This week marks five years since Julian Assange was imprisoned in the U.K., where he awaits extradition to the United States on charges related to WikiLeaks' publication of secret State and Defense Department documents that once made worldwide news.

The U.K. High Court recently granted Assange another hearing in his case, delaying at least temporarily his extradition to the U.S., although not ending the threat to press freedom that his extradition and prosecution pose.

American officials say that Assange's prosecution couldn't possibly harm press freedom because he's a "hacker," not a journalist. If they truly believe that, you'd think they'd be satisfied with punishing him like a hacker. But they're not.

When Assange was first remanded to British custody on April 11, 2019, he was accused of breaking a federal computer hacking law. The U.S. had indicted Assange on one count (PDF) of conspiracy to commit computer intrusion with whistleblower Chelsea Manning.

Many have disputed Assange's alleged guilt under that charge. But even if Assange were to be convicted, it carries a maximum sentence of five years in prison.

That means Assange has now served the maximum prison sentence for his alleged computer hacking crime, albeit in Belmarsh Prison in London. Yet the U.S. continues to pursue his extradition and prosecution on charges far more related to journalism than hacking.

After initially charging Assange under just the Computer Fraud and Abuse Act, the U.S. quickly amended the original indictment to add 17 counts under the Espionage Act. (The government later amended the complaint again to broaden the scope of the computer hacking charge against Assange, in ways that continue to draw criticism.)

Although officials continue to focus their public comments on Assange's alleged hacking, the Espionage Act charges are based on acts of journalism: speaking to sources, asking them questions, and seeking more information or documentation from them. Under the government's theory in the Assange case, even just publishing government secrets — something journalists do all the time — would violate the Espionage Act.

That's why news media outlets, press freedom and human groups, and law professors have all agreed that Assange's prosecution under the Espionage Act threatens press freedom. If Assange can be convicted for engaging in acts that journalists do every day, so could reporters at The New York Times, The Wall Street Journal, Fox News, or ABC — regardless of whether you consider Assange a journalist.

It's also why the Biden administration's insistence that the Assange prosecution is based on hacking, not journalism, falls flat. The Espionage Act charges show that prosecutors are in fact charging Assange based on journalistic acts.

Even the Biden administration's own spokespeople have acknowledged as much, at least in the past. In 2019, Matthew Miller — a former Department of Justice spokesperson under the Obama administration — explained that the Obama DOJ had declined to prosecute Assange under the Espionage Act because if Assange could be prosecuted, so could The New York Times. But in 2024, Miller, now the State Department spokesperson, responded to a question about Assange's prosecution by emphasizing that

hacking is not a legitimate journalistic activity.

Statements like that are meant to assure the public that the Biden administration would never prosecute a “legitimate” journalist. But promises not to prosecute conventional journalists are meaningless when the government is claiming the unchecked power to do so. If Assange is successfully convicted under the Espionage Act, those promises will do nothing to stop a future administration, or even this administration, from prosecuting whichever journalists it dislikes.

Even if those prosecutions don’t materialize, their possibility still surely chills journalism. Journalists often report on government secrets that can embarrass officials or even reveal their wrongdoing and crimes. It’s too risky for them to rely on prosecutors’ promises that they won’t go after journalists who gather and report the news “the right way” — at least in the eyes of the authorities. The threat of jail time will create an enormous incentive for news outlets and journalists not to publish.

Of course, the Biden administration could put an end to this threat to press freedom in an instant by dropping the case against Assange. If his prosecution is really about hacking, not journalism — as the government has so loudly and persistently proclaimed for the last five years — then it’s time for the U.S. to drop its attempt to extradite and prosecute Assange under the Espionage Act.

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