

May 12, 2015

RE: H.R. 2048, the USA Freedom Act of 2015

Dear Members of the House:

Section 215 of the Patriot Act expanded the reach of the intelligence agencies in unprecedented ways and is the basis for collecting and retaining records on millions of innocent Americans. The ACLU opposed Section 215 when it was introduced, has fought it at each successive reauthorization, and urges Congress to let it sunset on June 1st.

This week, the House of Representatives is scheduled to vote on H.R. 2048, the USA Freedom Act of 2015, which proposes modest reforms to Section 215, Section 214 (the pen register and trap and trace device provision, PR/TT), and national security letter authorities. The bill also seeks to increase transparency over government surveillance activities but could be construed to codify a new surveillance regime of more limited, yet still massive scope.

Last week, the Second Circuit unequivocally ruled metadata program violated the law.¹ In light of this decision, it is clear that more robust surveillance reform is needed. Though an improvement over the status quo in some respects, the USA Freedom Act does not go far enough to rein in NSA abuses and contains several concerning provisions. Accordingly, we support allowing Patriot Act Section 215 surveillance authorities to expire by operation of law on June 1st. Notwithstanding the foregoing, the ACLU is not taking a position in support of or opposition to H.R. 2048.

We urge the following changes to strengthen the bill:

1.

area or entire service provider (i.e. gmail).

be construed to permit the type of bulk collection that the act was designed to prohibit. For

government to collect the information of hundreds of people who share an IP address, all hotel records within a given area, or an entire company. These concerns are particularly acute, given that the bill could be construed as legislative authorization for overbroad surveillance under Section 215 and PR/TT authorities.

The definition of SST would be strengthened by, among other things, including language clarifying that the relevance standard must be met for the collection; including an exhaustive list of SSTs for Section 215 tangible things and PR/TT authorities; limiting the definition of person to exclude entire corporations; and striking the

operated under Section 702, Section 215, and PR/TT surveillance programs. In addition, it enables companies who receive national security informational requests to inform customers more fully about the extent to which the government is collecting their data. These provisions are an improvement over the status quo.

However, these transparency provisions alone will not provide a full picture of the surveillance programs operated by the government. Specifically, the FBI is exempt from reporting the searching of the Section 702 database for U.S. person information, and the bill does not require the government to fully disclose the number of U.S. persons and accounts impacted by Section 702 surveillance authorities. Additionally, the government is only required to report on the collection of communications and not other records collected under Section 215. Section 602 should be amended to close these Section 702 and Section 215 reporting loopholes.

4. Strengthen the amicus provision to require the appointing of an advocate, with the

international call records of all Americans in bulk, purportedly under existing administrative subpoena statutes.⁴

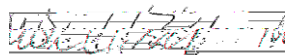
The ACLU has long opposed such administrative subpoena authority due to concerns that such authority is vulnerable to abuse and contrary to constitutional standards. Failure to repeal or, at a minimum, amend such statutes to ensure that they cannot be construed to authorize bulk collection raises the concern that existing nationwide bulk collection programs can continue. Accordingly, the USA Freedom Act should repeal, or at a minimum, amend such authorities to prevent abuse

9. Decrease the reauthorization time period for the three expiring provisions.

Prior versions of the USA Freedom Act proposed extending the expiring Patriot Act provisions, as modified by the bill, for two years and aligning them with the expiration of Section 702. However, the current bill would instead extend these provisions, as modified by the bill, for four years. Section 215 was never intended to be permanent, and Congress should quickly assess the extent to which any modifications provide sufficient protection for privacy and civil liberties. Thus, the bill would be strengthened by decreasing the reauthorization to two years, and aligning the sunset with the expiration of Section 702 in 2017.

Though the ACLU is not taking a position on this bill, we urge you to consider the substantial yet reasonable improvements offered herein. If you have any questions, feel free to contact Legislative Counsel Neema Singh Guliani at 202-675-2322 or nguliani@aclu.org.

Sincerely,



Michael W. Macleod-Ball
Acting Director



Neema Singh Guliani
Legislative Counsel

⁴ Brad Heath, *U.S. Secretly Tracked Billions of Calls for Decades*, USA TODAY (Apr. 8, 2015, 10:36 AM), <http://www.usatoday.com/story/news/2015/04/07/dea-bulk-telephone-surveillance-operation/70808616/>