

July 30, 2013

Dear Members of the Senate Judiciary Committee,

We welcome the Senate Judiciary Committee's review of NSA surveillance programs and the impact of these programs on privacy and civil liberties. The undersigned organizations are submitting this coalition letter to emphasize our organizations' agreement on some overall concerns and recommendations.

While additional information is necessary to fully understand the secret legal authorities being used by the government, recent disclosures regarding NSA programs under Section 215 of the Patriot Act and under Section 702 of the FISA Amendments Act raise serious legal and constitutional concerns about the scope of government surveillance. For example, it is difficult to understand how collection of the phone records of millions of Americans who are not suspected of any connection to terrorism could be authorized under the plain terms of Section 215. More significantly, the vast scope of the reported surveillance under Section 215 and Section 702 threatens Americans' First Amendment rights of free association and Fourth Amendment rights. The lack of full information about the scope of such secret national security surveillance increases our concern.

We understand that the NSA's collection of phone records under Section 215 includes metadata and not the content of phone conversations. Although traditionally, courts have not treated such information as being protected by the Fourth Amendment, rapid changes in technology have made metadata more revealing of an individual's private life and courts are taking note. Last year, in *United States v. Jones*, the Supreme Court began to recognize that continuous electronic surveillance for an extended period of time implicates the Fourth Amendment. Although the case involved GPS tracking of a car on public roads and the majority decided the case on relatively narrow grounds, five Justices acknowledged the intrusiveness of powerful electronic surveillance technologies and that continuous use of such technologies over extensive periods of time can impinge on reasonable expectations of privacy. The data collected in the Section 215 program show what numbers are calling each other, when the calls are made, the duration of the calls, and the frequency with which particular numbers call each other. This information, like the pattern of the car's movements in the *Jones* case, can be highly revealing, including demonstrating the patterns of individuals' daily activities and their associations with others. And all of this information is being collected on millions of Americans who are not even suspected of any connection to terrorism. Extensive collection of such non-content meta-data about individuals threatens both First Amendment rights of free association and Fourth Amendment rights to be free from unreasonable searches and seizures.

Similarly, the reportedly broad surveillance of communications content under Section 702 of the FISA Amendments Act threatens First and Fourth Amendment rights. Even though Section 702 surveillance must “target” non-U.S. persons reasonably believed to be abroad, recent disclosures indicate that this surveillance is collecting vast amounts of communications in which U.S. persons (citizens and permanent legal residents) and people located within the United States are on one end of the communication. As the Section 702 surveillance is conducted inside the United States and is deliberately collecting the content of communications of people with recognized Fourth Amendment rights, the limited review conducted by the FISA court under existing law is not adequate to protect these constitutional rights.

We urge Congress to evaluate these surveillance authorities and the risks to civil liberties. In doing so, we urge you to review how other authorities, for example national security letter authorities, overlap, expand or complement the specific authorities under sections 215 and 702. Based upon this review, Congress should enact critical reforms to ensure that government surveillance programs include robust safeguards for constitutional rights. We believe that such reforms should include tightening the standards for collection and use of information, including communications metadata; increasing meaningful judicial authorization and review of such programs, and limiting the secrecy of such programs.

At a minimum, they should include:

1. Enacting legislation to prohibit bulk collection of Americans’ communications metadata under Section 215 or any other authority, and to bar use of Section 215 for prospective surveillance. Passing S. 1215, the bipartisan FISA Accountability and Privacy Protection Act of 2013 co- sponsored by Chairman Leahy and Senators Blumenthal and Lee, would be an important step in this direction.
2. Determining the scope of existing repositories of bulk metadata on U.S. persons and the authorities under which these data were collected and seeking public disclosure of this information, to determine whether or how the government should be permitted to use the bulk metadata already collected.
3. Enacting legislation to provide more rigorous safeguards in Section 702 to restrict the warrantless collection of the content of communications by and metadata concerning U.S. persons or people inside the United States.
4. Pressing for public disclosure of opinions by the Foreign Intelligence Surveillance Court (FISC) containing legal interpretations of the government’s surveillance authorities, redacted as necessary, as well as additional information necessary for public understanding of the scope of surveillance authorities, safeguards for privacy rights and civil liberties, and the historical development of the law since

2001. Passing S. 1130, the bipartisan End Secret Law Act co-sponsored by Senators Merkley and Lee, would be an important step in this direction.

Thank you for your attention to these important issues.

Sincerely,

Advocacy for Principled Action in Government
American-Arab Anti-Discrimination Committee
American Association of Law Libraries
American Booksellers Foundation for Free Expression
American Civil Liberties Union
American Library Association
Amicus
Arab American Institute
Association of Research Libraries
Bill of Rights Defense Committee
Hon. Bob Barr
Center for Democracy & Technology
Center for Financial Privacy and Human Rights
Center for Media and Democracy
Center for National Security Studies
Citizens for Responsibility and Ethics in Washington
Competitive Enterprise Institute
The Constitution Project
Council on American-Islamic Relations
Cyber Privacy Project
Defending Dissent Foundation
Demand Progress
DownsizeDC.org, Inc.
Drum Majors for Truth
Entertainment Consumers Association
Equal Justice Alliance
Firedoglake
Floor64
Foundation for Innovation and Internet Freedom
Free Press Action Fund
Freedom of the Press Foundation
Government Accountability Project
iSolon.org
Liberty Coalition
Media Alliance
Montgomery County Civil Rights Coalition

Mozilla
National Association of Criminal Defense Lawyers
National Coalition Against Censorship
National Forum On Judicial Accountability
National Judicial Conduct and Disability Law Project, Inc.
National Whistleblower Center
OpenMedia International
OpenTheGovernment.org
Organizations Associating for the Kind of Change America Really Needs
PEN American Center
The Plea For Justice Program
PolitiHacks
Power Over Poverty Under Laws of America Restored
Privacy Camp
Project on Government Oversight
Public Knowledge
Reddit
Reporters Without Borders
Rights Working Group
RootsAction.org
Rutherford Institute
Society of Professional Journalists
Students for Sensible Drug Policy
TechFreedom

CC: Members of the Senate