

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