



## **Fact Sheet: The USA FREEDOM Act of 2015 (S. 1123)**

*The USA FREEDOM Act of 2015 will give the Intelligence Community an updated legal framework to strengthen national security while also protecting the privacy rights of Americans. This legislation will end the bulk collection program that has allowed the government to collect hundreds of millions of Americans' private records on a daily basis, provide the Intelligence Community with the authority it needs to collect phone records in a targeted manner, and require more transparency about government surveillance activities. It has broad, bipartisan support in both houses of Congress, and from the Intelligence Community, the technology industry, and privacy and civil liberties advocates. On May 13, 2015, an overwhelming majority of the Republican-led U.S. House of Representatives passed the USA Freedom Act of 2015 by a vote of 338 to 88. [U.S. House of Representatives, [5/13/15](#)]*

### **Banning Bulk Collection of Americans' Private Records**

**Banning bulk collection.** This bill bans bulk collection of Americans' private records by requiring the government to use a specific selection term to limit the scope of its collection to the greatest extent reasonably practicable, and makes clear that the government may not collect all information relating to a particular service provider or to a broad geographic region, such as a city, zip code or area code. Under current law, the Foreign Intelligence Surveillance Court has approved the bulk data collection of phone records under Section 215 of the USA PATRIOT ACT (P.L. 107 – 56, as amended). Various panels of legal, national security, and industry experts have called for an end to the bulk collection of phone records, calling into question its legality and effectiveness:

- The President's Review Group on Intelligence and Communications Technology called for an end to bulk collection, concluding that, "the information contributed to terrorist investigations by the use of section 215 telephony meta-data was not essential to preventing attacks and could readily have been obtained in a timely manner using conventional section 215 orders." [Liberty and Security in a Changing World, [12/12/13](#); CDT, [5/11/15](#); Bloomberg, [1/13/14](#)]
- The Privacy and Civil Liberties Oversight Board has also called for an end to bulk collection, concluding that the program "lacks a viable legal foundation under Section 215, implicates constitutional concerns under the First and Fourth Amendments, raises serious threats to privacy and civil liberties as a policy matter, and has shown only limited value. As a result, the board recommends that the government end the program." [Privacy and Civil Liberties Oversight Board, [1/23/14](#); New York Times, [1/23/14](#)]
- On May 7th, a three-judge panel of the Second Circuit Court of Appeals unanimously concluded that the NSA's bulk collection program is illegal. The court specifically rejected the government's argument that all Americans' telephone records were "relevant" under Section 215's legal authority, stating that "such an expansive

concept of ‘relevance’ is unprecedented and unwarranted.” [United States Court of Appeals for the Second Circuit, [5/7/15](#)]

- A federal judge in the United States District Court for the District of Columbia also ruled that the Section 215 bulk phone record collection program violates Americans’ reasonable expectation of privacy and constitutes an unreasonable search or seizure under the Fourth Amendment. In his opinion, Judge Richard Leon also questions the efficacy of the program in protecting Americans, stating that “the Government does not cite a single instance in which analysis of the NSA’s bulk metadata collection actually stopped an imminent attack, or otherwise aided the Government in achieving any objective that was time sensitive in nature.” [United States District Court for the District of Columbia, [12/16/13](#)]

**Using a targeted approach.** To replace the bulk collection of telephone records, the bill creates a new authority under Section 215 that allows the government to obtain two hops of “call detail records” on a daily basis, if the government can demonstrate reasonable, articulable suspicion that its search term is associated with a foreign terrorist organization.

### **Strengthening Oversight and Privacy Protections**

**Imposing new privacy protections for Foreign Intelligence Surveillance Act (FISA) pen registers and trap and trace devices.** The bill ensures that the FISA pen register / trap and trace statute and National Security Letters (NSL) statutes cannot be used to justify bulk collection.

**Providing more transparency about government surveillance activities.** The bill requires the government to report the number of individuals whose information has been collected using various authorities, and the number of searches run on Americans in certain databases, subject to certain exceptions. It also requires the declassification of significant interpretations of law by the FISA Court and gives private companies four options for reporting public information about the number of FISA orders and national security letters they receive.

**Reforming the FISA Court process.** The bill requires the FISA Court to appoint a panel of experts who can serve as amicus curiae when the Court confronts significant or novel legal issues and expands the opportunity to appeal FISA Court decisions.

**Bringing Section 215 and National Security Letter nondisclosure orders into compliance with the First Amendment.** This legislation improves the judicial review procedures for nondisclosure orders that accompany Section 215 and national security letters. These changes respond to decisions by Federal courts finding that such provisions violate the First Amendment.

### **Extending Expiring FISA Authorities**

**Extending the expiring FISA provisions.** The USA Freedom Act of 2015 extends the three FISA authorities set to expire in June 2015 until December 2019. These authorities consist of the improved business records authority (Section 215), the lone wolf authority, and the roving wiretap authority. The lone wolf authority allows the government to use FISA to target an individual without known ties to a terrorist organization, while the roving wiretap authority allows the government to keep better track of terrorism suspects who frequently change their modes of communication.

## **Support for the USA FREEDOM Act**

**The USA FREEDOM Act of 2015 is supported by the Intelligence Community and law enforcement.** In a May 11, 2015, letter to Senator Patrick Leahy and Senator Mike Lee and in a September 2, 2014, Letter to Senator Patrick Leahy, the current and former Attorneys General and the current Director of National Intelligence stated that “[t]he Intelligence Community believes that, based on communications providers’ existing practices in retaining metadata, the bill will retain the essential operational capabilities of the existing bulk telephone metadata program while eliminating bulk collection.” [Letter to Senators Leahy and Lee, [5/11/15](#); Letter to Senator Leahy, [9/2/14](#)]

**The USA FREEDOM Act of 2015 is supported by an expansive group of privacy, civil liberties and technology groups and companies.** The USA FREEDOM Act of 2015 is supported by privacy and civil liberties advocates and technology organizations such as: Access, the American Association of Law Libraries, the American Library Association, the Association of Research Libraries, BSA | The Software Alliance, the Center for Democracy & Technology, the Center for National Security Studies, CloudFlare, the Competitive Enterprise Institute, the Computer & Communications Industry Association, The Constitution Project, the Consumer Electronics Association, Facebook, the Global Network Initiative, Google, Human Rights Watch, the Information Technology Industry Council, The Internet Association, the Internet Infrastructure Coalition (the i2Coalition), Microsoft, Mozilla, the National Rifle Association, the New America Foundation’s Open Technology Institute, The Niskanen Center, the PEN American Center, R Street Institute, Rapid7, Reform Government Surveillance Coalition, the Rutherford Institute, ServInt, Silent Circle, LLC, the Software & Information Industry Association (SIIA), Sonic, TechFreedom, Tech Net, the World Press Freedom Committee, and Yahoo!.