

The Weakened USA FREEDOM Act

The new manager's amendment version of the USA FREEDOM Act to be considered on the House floor is a substantially weakened reform bill compared to the compromise version that was unanimously approved by both the Judiciary and Intelligence committees two weeks ago.

Below are some key differences between those versions, differences that weaken USA FREEDOM so much that a wide spectrum of advocacy groups including New America Foundation's Open Technology Institute, the Center for Democracy & Technology, the Electronic Frontier Foundation, Demand Progress, and the ACLU have refused to support it. Among other things, the new version:

- **Weakens The Definition of "Specific Selection Term."**ⁱ This definition, the key to the bill's ban on bulk collection of records, has been made dangerously more broad and vague. The term was originally defined as "a term used to uniquely describe a person, entity, or account." The new definition—"a discrete term, such as a term specifically identifying a person, entity, account, address, or device"—converts what was an exclusive list of "unique" identifiers into an unbounded list of "discrete" identifiers, while explicitly adding "addresses" and "devices" as types of identifiers. Taken together, the changes to this definition may still allow for massive collection of millions of Americans' private information based on very broad selection terms such as a zip code, an area code, the physical address of a particular email provider or financial institution, or the IP address of a web hosting service that hosts thousands of web sites.
- **Weakens The Transparency Reporting Provisions.**ⁱⁱ The bill that is going to the floor:
 - struck the provision that would have allowed companies to publish rounded numbers about how many court orders they receive under Title VII of FISA, which includes the Section 702 authority behind the controversial PRISM program—one of the main reasons companies and advocates have been pressing for more transparency.
 - added a new time delay such that companies cannot report on any requests until six months later, even though the companies' current deal with the Department of Justice allows them to report on the National Security Letters they receive with no delay.
 - would prohibit new communications companies or services from issuing transparency reports for two full years, essentially a transparency tax on startups and innovators. If you're new, you can't be transparent.
- **May Give Congressional Stamp of Approval to Controversial "About" Searching Under Section 702.**ⁱⁱⁱ The NSA currently not only targets communications to and from its targets but also scans the content of all international communications for information *about* its targets. This dangerously expansive use of Section 702 was never considered by Congress when it passed the FISA Amendments Act, but the new 702 minimization procedures in the bill appear to condone it.
- **Weakens FISA Pen Register Minimization Procedures.**^{iv} The bill's original requirement of court-overseen procedures to minimize retention and dissemination of US persons' information have been watered down into a vague requirement that the Attorney General ensure that "appropriate" policies and procedures are in place to protect US persons' privacy.
- **Eliminates Strengthened Ban on Reverse Targeting of Americans' Communications under FISA Section 702.**^v A provision clarifying that reverse targeting of persons inside of the US is never an allowable purpose of Section 702 surveillance was completely removed from the bill.
- **Gives the Intelligence Community More Control Over Transparency Decisions:** The bill previously required the Attorney General to conduct declassification reviews of significant FISA court decisions, but in the new version of the bill, the Director of National Intelligence leads those reviews.^{vi}

ⁱ See new § 107.

ⁱⁱ See new § 604.

ⁱⁱⁱ See new § 301.

^{iv} See new § 202.

^v See old § 301.

^{vi} See new § 602.