Democratic senator boasts NSA “reform” bill vetted by US intelligence agencies

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A revised version of the USA Freedom Act, previously passed by the US House of Representatives, was introduced before the Senate Tuesday by Democratic Senator Patrick Leahy.

The bill would supposedly place limits on acquisition of US communications metadata by the National Security Agency (NSA) and establish new transparency procedures. The latter include declassification of “significant” opinions published by the Foreign Intelligence Surveillance Court and publication of statistics covering the number of individuals who have been targeted for metadata surveillance.

In a statement issued Tuesday, Leahy made no effort to conceal the fact that the “reform” bill was drawn up in collaboration with the intelligence agencies.

“I have consulted closely with the Office of the Director of National Intelligence, the NSA, the FBI, and the Department of Justice—and every single word of this bill was vetted with those agencies,” Leahy wrote.

The bill has received support from privacy and civil liberties groups including the American Civil Liberties Union (ACLU), the Center for Democracy and Technology (CDT), and the Electronic Frontier Foundation (EFF), as well as tech corporations affiliated with the Reform Government Surveillance Coalition, including Apple and Google.

In a statement on the bill, the EFF based its support for the bill on two claims: First, that the bill will “end bulk collection of phone records under Section 215.” The EFF claims that bulk collection of metadata will be halted by the bill’s requirement that the state submit “specific selection terms” (SSTs) to the FISA court and the companies holding the data.

In fact, bulk collection will continue, but the data will remain in the hands of telecommunications companies that work closely with the government. The criteria for an acceptable SST have been defined broadly, through the direct intervention of the Obama administration, as any “person, entity, account, address or device.” The bill, moreover, contains open-ended language authorizing “connection chaining,” allowing the government to demand “prompt production of call detail records” from telecommunications providers, and then use “call detail records with a direct connection to such specific selection term (SST) *as the basis for production of a second set of call detail records* .”

The term “direct connection” is vague to the point where it can easily be used to justify extensive targeting beyond the “specifically selected” target. Additionally, the bill allows the government to target subjects who are two “hops” from any suspected target, opening the way for mass surveillance extended potentially to millions of targets on the basis of a single warrant.

Second, the EFF states that the bill “makes significant improvements to the FISA Court,” referring to the bill’s provision for declassification of FISA documents.

In fact, the FISA documents to be released will be handpicked by the Office of the Director of National Intelligence, in consultation with the Attorney General. For NSA oversight to have any meaning it at, it would have to be conducted by civilian agencies completely unconnected to the military-intelligence establishment. Instead, the bill basically tasks the intelligence apparatus with policing its own activities.

The Freedom Act is riddled with other caveats and loopholes. The US government may still target IP addresses, some of which are accessed by thousands of different users, and is authorized to produce new interpretations of the SST requirement, provided it reports these new constructions. The government can also free itself from the requirement to provide

statistics covering metadata collection if it provides a report explaining reasons for withholding the information.

Under the bill, the FBI is also exempted from reporting the number of searches it runs under Section 702 of the Foreign Intelligence Surveillance Act.

The NSA surveillance apparatus is characterized by massive redundancies, with a laundry list of programs engaged in overlapping forms of surveillance. A multitude of programs operate on the basis of various authorizations stemming from Congress, from the executive branch, and from the FISA shadow court system.

Dragnet acquisition of communications content via programs run under Executive Order 12333, for instance, provides the NSA with vast troves of metadata. The Freedom Act does not even address surveillance operations conducted under EO 12333.

As former State Department official and new whistleblower John Napier Tye noted in an op-ed for the *Washington Post*, "Americans should be even more concerned about the collection and storage of their communications under Executive Order 12333 than under Section 215."

The USA Freedom Act represents merely the latest among a number of pseudo-reforms advanced by the Obama administration and the political establishment in the effort to legitimize illegal spying and dissipate widespread popular hostility. It presents cosmetic alterations to one element of the vast spying machine, in order to better ensure that the unconstitutional police-state mechanisms continue.