

US Senate prepares to extend NSA spy powers

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The US Senate voted 77-17 Sunday to proceed with a second vote on the USA Freedom Act, legislation that would renew the USA Patriot Act while supposedly restraining collection of US telephone metadata by the National Security Agency. The chamber will likely vote to approve a final version of the Freedom Act on Tuesday or Wednesday, returning the legislation to the House of Representatives, where it was approved last month.

A main element of the USA Freedom Act is the reauthorization of surveillance powers stemming from Section 215 of the Patriotic Act that officially expired yesterday. During the past week, the American public had been subject to a barrage of hysterical warnings from the Obama administration that the Senate's initial failure to pass the Freedom Act would hamstring the NSA's surveillance efforts and expose the nation to deadly terror attacks.

The vehemence with which claims that NSA spying would be "wound down" have been advanced by the political and media establishment is a reflection of anxieties in the ruling class over growing mass opposition to the surveillance. Fully 65 percent of Americans believe that the US government has excessive power to collect electronic communications data, according to recently published data from the Pew Research Center. The figure rises to 74 percent among Americans who are well informed about the programs.

The main reforms advanced by the Freedom Act are the addition of a "privacy advocacy panel" to the Foreign Intelligence Surveillance Court (FISC), new requirements for the FISA court to publicly disclose any "novel" legal arguments and secret interpretations invoked by the NSA, and transfer of responsibility for collecting and storing telephone data to the companies.

The "freedom" legislation has won support from establishment "libertarians" of left and right flavorings alike, including Senators Rand Paul (Republican) and

Ron Wyden (Democrat).

Senator Wyden cheered on the moves toward passage of the USA Freedom Act, saying Sunday that Congress "has the opportunity to build on this victory by making meaningful and lasting reforms to US surveillance laws."

"We're winning," Senator Paul proclaimed. The Obama administration will "no longer be able to collect our records all the time." On Sunday, Paul engaged in a political stunt that blocked final passage before the expiration at midnight, while at the same time backing the fraudulent "reform" supported by the Obama administration itself.

The legislation has also received strong backing from a number of privacy NGOs and other groups.

Celebrated by its supporters for supposedly ending the NSA's mass collection and storage of telephone metadata, the Freedom Act provides for telecoms to efficiently transfer data to the NSA, including "a six-month transition period during which the NSA would work with phone companies to ensure that they can set up their systems to quickly search for records and send them to the agency," as the *Washington Post* wrote.

The NSA, FBI and other government agencies have a long history of ignoring and subverting the law whenever doing so serves their purposes. Whatever the theatrics on Capitol Hill, one can be certain that the intelligence and security agencies are forging ahead with ever-more sophisticated spy programs regardless of the current vote tally in Congress.

Entire large-scale NSA programs, including Stellar Wind—which involved data mining of email and phone communications—were kept secret for years. Knowledge of Stellar Wind's existence was withheld even from the secret and authoritarian FISA court system that was specifically created to monitor the spying.

Under Section 702 of the 2008 FISA Amendments

Act (FAA), the NSA's Prism program has received mass data transfers from Google, Yahoo, Facebook and a slate of other leading communications firms since 2007, in exchange for multimillion-dollar payments arranged through the NSA's Special Source Operations (SSO) department. The NSA's SSO has established contractual relations with more than 100 US companies since the 1970s.

Internal NSA documents leaked by whistleblower Edward Snowden in 2013 describe Section 702-based operations, principally the Prism program, as the agency's "number one source of raw intelligence," providing more than 90 percent of the NSA's Internet-based data.

Documents released by Director of National Intelligence James Clapper last summer confirmed that the NSA, FBI and CIA all employ interpretations of FAA Section 702 to carry out "back door searches" of both content and metadata of US communications.

Neither these nor the many other illegal programs exposed by Snowden will be touched by the Freedom Act.

US government agencies have repeatedly devised new legal theories in order to justify programs that were held by Congress and the courts to be incompatible with existing laws. When the NSA was unable to gain Justice Department support for certain metadata collection operations during the George W. Bush administration, a new legal rationale was invented which "essentially gave NSA the same authority to collect bulk internet metadata," according to internal NSA records from 2004.

Section 215 of the Patriot Act has itself been the basis for multiple reinterpretations aimed at authorizing indiscriminate collection of not just phone data but also Internet and personal financial information from US persons.

Attorneys with the NSA and DoJ first interpreted Section 215 as providing the basis for metadata spying in 2005, a position that the Second Circuit Court of Appeals rejected this May.

Defending the agency before the Senate this week, the NSA's top in-house lawyer Stewart Baker acknowledged that the readings of Section 215 by NSA and DoJ lawyers from 2005 required some inventiveness. "The interpretation of 215 that supported the bulk collection program was creative," admitted

Baker.

Baker then proceeded to speak in favor of passage of the USA Freedom Act legislation, saying that such legal "creativity" would no longer be necessary should the law pass.

"I don't think anyone at NSA is going to invest in looking for ways to defy congressional intent if USA Freedom is adopted," Baker said, implying that the bill provides all the necessary leeway for the NSA to operate as it desires.

Baker's testimony makes clear that for all the talk of "ending NSA spying" and "shutting down NSA servers," what is emerging out of the USA Freedom Act saga is, in reality, a blank check for the spy agency to continue and expand its operations, which are targeting the entire US and world population.

Even assuming that constraints against telephone metadata were actually enforced, the USA Freedom Act in no way limits the NSA's existing authority to conduct limitless dragnet surveillance against targets in foreign countries, against US persons who communicate with persons abroad, and against US data "incidentally" collected from servers located overseas.

The vast majority of domestic surveillance operations developed by the NSA, FBI, DEA and other agencies with increasing speed since 9/11 would also not be subject to any new constraints.



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