

HOUSE JUDICIARY COMMITTEE TO PROPOSE PATRIOT AND FISA REFORMS

John Conyers, Jerry Nadler, and Bobby Scott just introduced bills that will provide needed reforms to PATRIOT and FISA while reauthorizing most of the sunseting authorities this year.

From the Committee press release, the PATRIOT bill does the following.

Title I: Patriot Act Related Amendments

Roving Wiretaps

- Clarifies roving wiretap laws in order to ensure that the government only conducts surveillance on a single, identifiable target.

Section 215 Orders

- Improves the standard for issuing a Section 215 order by requiring specific and articulable facts to show that the tangible things sought are relevant to an authorized investigation, other than a threat assessment.
- Provides recipients of Section 215 orders with the ability to immediately challenge both the underlying order and any gag order associated with it.
- Facilitates compliance with already existing minimization procedures to ensure proper safeguards pertaining to information collected via Section 215 orders.
- Prohibits a request for Section 215 records to a library or bookseller for documentary materials that contain personally identifiable information concerning a patron.

Criminal "Sneak and Peak" Searches

- Adopts safeguards against abuse of searches

where notice to subject of search is delayed by shortening the initial 30 day delay period to 7 days, requiring that any application for an extension in the 7 day delay be made by the Senate confirmed US Attorney in the district where the delayed notice warrant was originally obtained, and removing ability to obtain delay by merely alleging that notice would "otherwise seriously jeopardize an investigation or unduly delay a trial."

Pen Register and Trap and Trace Device

- Requires more specificity in the application for pen register and trap and trace and establishment of minimizations procedures.

Nationwide Court Orders

- Allows a provider of electronic communication service or remote computing service to challenge a subpoena, order, or warrant requiring disclosure of customer communications or records in either the district in which the order was issued or the district in which the order was served.

Audits, Reports, and Sunsets

- Requires annual Inspector General audits and reports to Congress on the use of Section 215 orders, NSLs, and Pen Registers and Trap and Trace Devices through the end of 2013.
- Provisions pertaining to Section 215, NSLs, and roving wiretaps will sunset on December 31, 2013.

Lone Wolf

- Allows the Lone Wolf provision to sunset at the end of this year (December 31, 2009).

Title II: NSL Reform

- Ensures that the FBI can obtain basic information without a court order, but also adds reasonable safeguards.
- Improves the issuance standard for NSLs by

requiring specific and articulable facts showing that there are reasonable grounds to believe that the information sought pertains to a foreign power or agent of a foreign power, and requires the FBI to record them in a written certification.

- Improves procedures which provide an opportunity for an NSL recipient to challenge the NSL itself and any gag order associated with it.
- Authorizes meaningful, constitutionally sound judicial review of NSLs and associated gag orders.
- Requires the Attorney General to authorize the use of any information acquired or derived from an NSL in a criminal proceeding.
- Requires the Attorney General to establish minimization and destruction procedures to ensure that information obtained pursuant to an NSL regarding persons who are no longer of interest in an authorized investigation is destroyed.

And the FISA bill does the following:

H.R. 3846, FISA Amendments Act of 2009 Brief Summary

Telecommunications Immunity

- Repeals the retroactive immunity provision in the FISA Amendments Act of 2008, leaving it to the courts to determine whether telephone companies that complied with the illegal warrantless wiretapping program acted properly under the laws in effect at the time and therefore deserve immunity.

Bulk Collection

- Prevents the government from using the warrantless collection authorities of the FISA Amendments Act of 2008 to conduct "bulk collection," which could include the collection of the contents of all communications between the United States and the rest of the world.

Reverse Targeting

- Places additional limits on the warrantless collection authorities of the FISA Amendments Act of 2008 to ensure that they are not used as a pretext when the government's real goal is to target the Americans with whom the ostensible foreign target is communicating.

Use of Unlawfully Obtained Information

- Limits the government's use of information about U.S. persons that is obtained under FISA Amendments Act of 2008 procedures that the FISA Court later determines to be unlawful, while still giving the FISA Court flexibility to allow such information to be used in appropriate cases.

Protections for International Communications of Americans

- Permit unfettered acquisition of foreign-to-foreign communications and of communications of suspected terrorists into or out of the United States, while creating safeguards for communications not related to terrorism that the government knows have one end in the United States.