

ALSO, THE NAIL POLISH REMOVER LOBBY DIDN'T CHALLENGE SECTION 215 ORDERS

The takeaway from the FISC opinion released today from about 6 outlets seems to be that no telecom has ever challenged a Section 215 order.

But the opinion actually says more than that. It says,

To date, no holder of records who has received an Order to produce bulk telephony has challenged the legality of such an Order. Indeed, no recipient of any Section 215 Order has challenged the legality of such an Order, despite the explicit statutory mechanism for doing so.

Now, if your bullshit antennae aren't buzzing when you read that formulation, "no holder of records," then you need to have them checked. Because it sure seems to allow for the possibility that someone whose customers had their records seized via someone deemed the actual holder of them objected. That entity, after all, wouldn't be a Section 215 Order recipient, and therefore would have no standing to object, regardless of the statutory mechanism for doing so. (Plus, both EPIC and ACLU have – and had, by the time this order was written – objected. But they don't count because they're the actual customers.)

But remember, as far as we know, Section 215 has not been used for Internet metadata (except for subscriber information for the first 2 years of the program; see Verizon's CEO bitching about the email companies his company stole data from for years complaining publicly about the dragnet). The one other big "customer base" we know has been targeted by bulk-ish orders are

hydrogen peroxide and nail polish remover
(acetone) purchasers.

However, there, too, like Internet providers whose data gets sucked up at a telecom provider's switch, the actual beauty supply companies are unlikely to be the "holder of records." The beauty of the Third Party doctrine, for the government, is it can always look elsewhere for people who have "records" that betray customers' interests.

If only we had a powerful nail polish remover lobby we might be able to combat the dragnet.