



Vote NO on Section 702 Surveillance Expansion and Reauthorization

This week, the House of Representatives will vote on a stand-alone measure to enact a four-year reauthorization of Section 702 of the Foreign Intelligence Surveillance Act, which is set to expire on December 31, 2017. The bill is a modified version of the FISA Amendments Reauthorization Act of 2017 ([H.R. 4478](#)), which was reported out of the House Intelligence Committee on a party line vote, with at least four members [voting “no” because of privacy concerns](#). That bill was strongly opposed by [privacy groups](#) and by [technology companies](#). The modifications to this bill are wholly insufficient to address the many concerns it raises. Although its proponents seek to sell the bill as a reform measure, it contains no meaningful reform of Section 702, and in several respects, it expands surveillance authorities and codifies the worst intelligence community practices rather than reforming them. As a result, this bill is worse than a clean reauthorization with a sunset. The FISA Amendments Reauthorization Act:

- **Makes NO meaningful reforms to protect Americans’ privacy.**
- **Codifies and expands “abouts” collection.** “About” collection is part of upstream surveillance where the government collects not only communications that are “to” and “from” a target, but also those that merely reference or are “about” a target. This type of collection results in the collection of [substantial quantities of Americans’ communications](#). The FISA Court has found this type of collection raises serious constitutional concerns because it is so privacy-invasive and has forced the government to [shut it down twice](#), most recently because the government consistently failed to comply with mandatory minimization procedures to protect Americans’ privacy. This bill would not only explicitly ratify this practice, but there is a risk that the government could interpret the bill’s language to expand such collection, by permitting unintentional “abouts” collection and collection of communications that merely reference a target, such as mentioning a target’s name, but that do not include a target’s “selector” such a phone number or email address.
- **Codifies backdoor searches for Americans’ communications.** The bill would write into statute the current practice whereby the intelligence community (FBI, NSA, CIA, and NCTC) can warrantlessly search for and access Americans’ communications that have been collected incidentally through Section 702 surveillance. The FBI even routinely conducts these searches for Americans’ information before initiating investigations, when they have no factual basis for believing the American has been engaged in wrongdoing. These searches can also be conducted to open or further investigations that have nothing to do with national security. This bill pretends to address this problem by providing that the FBI has the “discretion” to seek a warrant before accessing Americans’ information, but this provision would not stop, or even meaningfully limit, these warrantless searches or the use of warrantlessly accessed communications in run-of-the-mill investigations. Instead, the bill would sanction that practice.

Of all of the bills that have been debated, the House Intelligence Committee’s bill is [by far the worst option](#) and the modifications that have been made to the bill fail to adequately resolve its significant problems. OTI does not support a clean reauthorization of Section 702, however, any bill that makes no meaningful reforms and that codifies and expands “abouts” collection, as this bill does, poses an even greater threat to Americans’ privacy and civil liberties than would a clean reauthorization with a sunset. It is no surprise that the bill raises so many concerns: it received [no meaningful public debate](#). When it was marked up in committee, there was no discussion of how the bill would impact Section 702 authorities. On the other hand, while the House Judiciary Committee bill does not address all of the privacy community’s concerns, it does make some [important and meaningful reforms](#) and was subject to robust public debate in Committee, where was approved by an overwhelming bipartisan vote.

Members should vote “NO” on the House Intelligence Committee’s bill and demand that Republican and Democratic leadership allow a vote on a real reform measure.

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