

**TECH
FREEDOM**



April 27, 2015

The Honorable Mitch McConnell
Senate Majority Leader
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Harry Reid
Senate Minority Leader
522 Hart Senate Office Building
Washington, D.C. 20510

Dear Majority Leader McConnell and Minority Leader Reid:

As organizations and individuals dedicated to free markets and constitutionally limited government, we write to express our strong opposition to the Senate's latest attempt to fast-track an unamended reauthorization of expiring provisions of the USA PATRIOT Act without meaningful reforms to protect Americans' privacy.

In the two years since Americans learned of the NSA's mass surveillance, they have grown increasingly skeptical about whether the government's intrusive surveillance programs serve the public interest¹ — and rightly so: the speculative benefits of these programs simply are not worth their cost, in constitutional, practical, or economic terms.

Section 215 of the USA PATRIOT Act, the statutory basis for bulk collection of domestic telephone records, is set to expire on May 31, 2015. The Senate has a duty to carefully evaluate existing programs before voting on whether to simply reauthorize them without reforms — especially because lawmakers in 2001 didn't set out to create a vast surveillance state. Indeed, the PATRIOT Act's primary author, Rep. James Sensenbrenner (R-WI), has denounced this Administration's sweeping interpretation of Section 215 as greatly exceeding what Congress intended.²

1. According to a recent Pew Research poll, "70 percent of Republicans and those leaning Republican said they were losing confidence that the agency's surveillance programs served the public interest. Just 55 percent of Democrats and those leaning Democratic said they had lost faith. Overall, 61 percent of respondents said they had become less confident that surveillance operations had served the public interest." Dustin Volz, *Republicans Have Less Faith in the NSA than Democrats*, NAT'L J. (Mar. 16, 2015), <http://www.nationaljournal.com/tech/republicans-have-less-faith-in-the-nsa-than-democrats-20150316>.

2. Rep. F. James Sensenbrenner, Jr., *How Obama Has Abused the Patriot Act*, L.A. TIMES, Aug. 19, 2013, available at <http://www.latimes.com/opinion/op-ed/la-oe-sensenbrenner-data-patriot-act-obama-20130819-story.html>.

The reasons to reform Section 215 are compelling.

Blanket surveillance violates basic Constitutional values. Our forefathers threw off the yoke of colonial rule in large part because of British surveillance of innocent Americans for “national security” purposes. The Fourth Amendment originated with Virginia’s June 1776 Declaration of Rights, which denounced “general warrants” as “grievous and oppressive.” For 223 years, the Constitution’s prohibition against mass surveillance has stood alongside free speech and the right to bear arms as the crown jewels of our civil liberties.

These mass surveillance programs are unnecessary and costly. The government has identified only one case in which bulk collection of telephone records *might* have been useful in helping “connect the dots” faster about national security threats.³ But even in this case, the FBI waited two months *after* using the NSA’s telephone metadata database before tapping the suspect’s phone.⁴ The Privacy and Civil Liberties Oversight Board found that the bulk collection of Americans’ phone records under Section 215 made no concrete difference in any counterterrorism investigation.⁵ The privacy intrusion of such programs heavily outweighs any conjectural national security benefit as a supposed “insurance policy.”

Bulk collection undermines consumer confidence in U.S. Internet businesses. Studies estimate that current surveillance programs could, overall, cost the American cloud computing industry between \$22 billion and \$180 billion over three years in direct costs and lost revenue.⁶ Growing suspicion of American products around the world helps foreign competitors gain a competitive edge — from social networks to hardware. This helps foreign governments surveil and censor such systems while hampering U.S. signals intelligence. To help restore global trust in U.S. tech products and services, Congress must take meaningful steps to protect privacy from overbroad government surveillance.

Legislative sunsets offer a valuable opportunity for careful reconsideration. Understanding the need for careful evaluation and scrutiny in the years following the passage of the PATRIOT Act, legislators wisely included a sunset provision requiring future reauthorization of Section 215. By not taking the opportunity for careful reconsideration, Congress risks becoming subordinate to the Administration’s creative reinterpretation of the inevitable statutory ambiguities. Sunsets are especially important when dealing with

3. Spencer Ackerman, *NSA Makes Final Push to Retain Most Mass Surveillance Powers*, THE GUARDIAN (Jan. 10, 2014, 12:23 PM), <http://www.theguardian.com/world/2014/jan/10/nsa-mass-surveillance-powers-john-inglis-npr?r=q>.

4. Peter Bergen et al., *Do NSA's Bulk Surveillance Programs Stop Terrorists?* 2 (New America 2014), available at http://www.newamerica.net/sites/newamerica.net/files/policydocs/Bergen_NAF_NSA%20Surveillance_1_0_0.pdf.

5. U.S. PRIVACY & CIVIL LIBERTIES OVERSIGHT BD., REPORT ON THE TELEPHONE RECORDS PROGRAM CONDUCTED UNDER SECTION 215 OF THE USA PATRIOT ACT AND ON THE OPERATIONS OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT 11 (2014), available at https://www.pclob.gov/library/215-Report_on_the_Telephone_Records_Program.pdf#page=15.

6. See Danielle Kehl et al., *Surveillance Costs: The NSA's Impact on the Economy, Internet Freedom & Cybersecurity* 8–9 (New America 2014), available at http://www.newamerica.net/sites/newamerica.net/files/policydocs/Surveillance_Costs_Final.pdf.

fast-changing technologies, which can quickly upset the balance of power between citizens and their government. Today's domestic surveillance programs are just the tip of the iceberg compared to how the NSA *could* use its current authority to spy on Americans' communications on the Internet and future technologies we haven't even imagined.

For all these reasons, we strongly urge the U.S. Senate not to renew the expiring PATRIOT provisions, especially Section 215, without significant reform.

Respectfully,

TechFreedom
R Street Institute
Competitive Enterprise Institute
Center for Financial Privacy and Human Rights
FreedomWorks
Generation Opportunity
Institute for Liberty
Less Government
Liberty Coalition
National Taxpayers Union
Niskanen Center
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Taxpayers Protection Alliance

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