

July 11, 2016

Dear Chairman Chuck Grassley and Chairman Richard Burr,

The undersigned civil society organizations and trade associations write to urge you to hold open hearings on the Federal Bureau of Investigation's (FBI) request to expand its ability to demand additional electronic communications transactional records (ECTRs), such as an individual's web browsing history, using National Security Letters (NSLs), which can be issued by any special agent in charge throughout the United States, and are not subject to court review.

This proposal, if enacted, would remove necessary judicial oversight of the FBI's access to these personal records and would threaten individuals' privacy. It would enable the FBI to unilaterally issue demands for information which, in addition to web browsing history, includes sensitive data like logs of who individuals communicate with online via email, chat, video, and text; what services they subscribe to; what times they sign into and out of their accounts; IP addresses; and much more.

Last month, the Senate failed to invoke cloture on the McCain Amendment¹, which would have granted the FBI's request to expand the NSL statute to include ECTRs, and made permanent the never-used "Lone Wolf" provision of the Intelligence Reform and Terrorism Prevention Act of 2004. In addition, there have been similar proposals to expand the NSL statute included in the Senate Intelligence Authorization Act and raised during the debate over Electronic Communications Privacy Act reform. Though these proposals would dramatically expand the FBI's surveillance authority, Congress has never held a single public hearing on it.

Before voting on this amendment again, Senators should have the opportunity to, in a public setting, ask questions that are necessary to understanding the nature of the problem that the FBI purports exists with its current authorities and the impacts of the proposed expansion, including:

- The perspective of technology companies and privacy and civil liberties experts about the massive implications that such a proposal would have for Fourth Amendment and other constitutional rights, privacy rights, and human rights²; and
- The concerns that expanding the NSL statute raise, taking into consideration the fact that in the last 15 years, it has been the subject of significant abuse³, in part because there is no judicial oversight, and thus no check against abuse;

¹ Amendment No. 4787 to 18 U.S.C. §2709, S. 2578, 114th Cong. (2016), *available at* <https://www.justsecurity.org/wp-content/uploads/2016/06/McCain-Cornyn-ECTR-Amendment.pdf>.

² Coalition Letter to Senate, https://www.aclu.org/sites/default/files/field_document/ectr_coalition_letter_6-6.pdf (last visited July 06, 2016) (Many of the undersigned organizations, companies, and trade associations recently wrote a letter to the Senate expressing significant concerns with proposals to expand the NSL statute to authorize demands ECTRs).

³ Michael German, *Roadmap of Justice Department Inspector General's Review of the FBI's Use of National Security Letters*, ACLU (Mar. 19, 2007), <https://www.aclu.org/letter/aclu-roadmap-justice-department-inspector-generals-review-fbis-use-national-security-letters>; U.S. Dep't of Justice, *A Review of the Federal Bureau of Investigation's Use of National Security Letters: Assessment of Progress in Implementing Recommendations and Examination of Use in 2007 through 2009* (2014), <https://oig.justice.gov/reports/2014/s1408.pdf>.

- The status of the implementation of Section 102 of the USA FREEDOM Act, which allows the Attorney General to issue demands for ECTRs without a court order in emergency situations, and seek judicial approval after; and
- What bureaucratic obstacles the FBI could address internally to facilitate obtaining orders for ECTRs under Patriot Act Section 215 or other authorities.

Before the McCain amendment is called up for another vote, we urge you to schedule open hearings to publicly debate the need for and consequences of such a dramatic expansion of FBI surveillance authority.

Thank you for your consideration.

Sincerely,

Access Now
Advocacy for Principled Action in Government
American Association of Law Libraries
American Civil Liberties Union
American Library Association
Amnesty International USA
Association of Research Libraries
Brennan Center for Justice
Center for Democracy & Technology
Center for Media Justice
Computer & Communications Industry Association (CCIA)
The Constitution Project
Constitutional Alliance
Demand Progress
Electronic Frontier Foundation
Electronic Privacy Information Center (EPIC)
Fight for the Future
FreedomWorks
Free the People
Government Accountability Project
Internet Infrastructure Coalition / I2Coalition
National Association of Criminal Defense Lawyers
New America's Open Technology Institute
Niskanen Center
OpenTheGovernment.org
PEN American Center
Restore the Fourth
R Street
Sunlight Foundation
TechFreedom

Cc: Senator Patrick Leahy
Senator Dianne Feinstein