

May 28, 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:

We the undersigned companies, industry and trade groups, and civil society organizations write in opposition to the drafted FISA Improvements Act of 2015<sup>1</sup> and the FISA Reform Act of 2015,<sup>2</sup> proposals that fail to properly address overbroad surveillance activities, and would weaken privacy, civil liberties, and the digital economy.

Both bills contain flaws and omissions that are incompatible with the goal of stopping domestic bulk collection. The bills require that collection be based on “specific selection terms” but define these terms so broadly as to raise serious concern as to whether they would significantly curtail the government’s ability to collect large amounts of information of individuals with no nexus to terrorism. Furthermore, the bills do not require any public disclosure of critical Foreign Intelligence Surveillance Court rulings that contain novel or significant interpretations of law. This would result in the establishment of even more secret law as the new requirements under these bills would be interpreted in classified settings, and surveillance programs implemented thereunder may again contravene to Congressional intent and public wishes.

Further, both bills authorize the government to impose a data retention mandate on private businesses, a privacy-threatening measure that is unnecessary and unacceptable. As confirmed by the Director of National Intelligence and Attorney General this month, existing retention practices meet government needs, and do not raise security concerns.<sup>3</sup> A retention mandate would only serve to hinder innovation, decrease trust in communication and technology products and services, and raise significant information security concerns.

Finally, the FISA Improvements Act would permit domestic bulk collection by leaving unchanged the FISA Pen Register/Trap and Trace law, which was used for years to collect Internet metadata in bulk. The bill explicitly leaves Section 215 of the PATRIOT Act unchanged for two years, despite recent public assurances by the NSA Director that a transition period longer than 180 days is not necessary.<sup>4</sup> In addition to this, the bill contains provisions that weaken whistleblower protections, expand surveillance power by granting the FBI the authority to obtain electronic communication transaction records without a court order, and make permanent provisions of the PATRIOT Act that are currently tied to a sunset date.

Section 215 of the PATRIOT Act is set to expire at 12:00 am on June 1. No legislation has passed the Senate, despite a clear demand for surveillance reform. These proposals are unviable, ineffective, and do not offer a path forward. We strongly urge against consideration of the FISA Improvements Act or the FISA Restoration and Reform Act.

Sincerely,

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<sup>1</sup> Draft available at <https://cdt.org/files/2015/05/Burr-FISA-Improvements-Act-2015-Draft.pdf>.

<sup>2</sup> Draft available at <https://cdt.org/files/2015/05/Feinstein-FISA-Reform-Act-Draft.pdf>.

<sup>3</sup> See, Letter from Director of National Intelligence James Clapper and Attorney General Loretta Lynch to Senators Leahy and Lee (May 11, 2015), available at <https://cdt.org/files/2015/05/DNI-AG-USA-FREEDOM-2015-Support-Letter.pdf>.

<sup>4</sup> See, Letter from NSA Director Adm. Michael Rogers to Senate Leadership (May 20, 2015), available at <https://josephhall.org/misc/Section-215-Transition-Letter-20May15.pdf>.

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