CDT Submits Comments to the President's Review Group on Surveillance Reform

by <u>Greg Nojeim</u> [1], <u>Joseph Lorenzo Hall</u> [2], <u>Leslie Harris</u> [3] October 2, 2013

Today, CDT made <u>a series of recommendations</u> [4] to the President's Review Group on Surveillance Reform focusing on Section 215 of the PATRIOT Act, Section 702 of the Foreign Intelligence Surveillance Act ("FISA") as amended by the FISA Amendments Act, enhanced transparency, and the structure of the Foreign Intelligence Surveillance Court ("FISC").

We said the Review Group should recommend an end to bulk collection of telephony metadata under Section 215, and that it should prevent bulk collection under similar legal authorities. Nine bills [5] introduced in Congress take this approach. Additionally, we advocated for an end to prospective surveillance under Section 215.

We urged the Review Group to recommend raising the standard of certainty in "foreignness" of targets beyond the NSA's current 51% standard for Section 702 surveillance, and that it end the ongoing mass "upstream" collection of communications that merely mention a target. We also urged the Review Group to recommend limits on the purpose of Section 702 surveillance and that it advise the President to apply the privacy provisions of the International Covenant on Civil and Political Rights to its surveillance that targets people abroad.

The Review Group should also recommend transparency measures: that companies be permitted to report periodically and on a granular basis about the intelligence surveillance demands they receive, that the government be required to show harm before any gag order about a surveillance demand is imposed, and that significant opinions and rulings of the FISC be made public with necessary redactions to protect classified information.

Finally, we urged the Review Group to endorse having a Special Advocate argue for privacy and civil liberties at FISA court proceedings – a concept the President already endorsed. Given the challenging technical nature of many questions before the FISC, the Special Advocate should have access to technical expertise.

After his initial meeting with the Review Group, President Obama stated, "The Review Group will bring a range of experience and perspectives to bear to advise the President on how, in light of advancements in technology, the United States can employ its technical collection capabilities ... while respecting our commitment to privacy and civil liberties." We are hopeful that the Review Group will meet these expectations and give serious consideration to this set of much needed reforms.

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