

USA PATRIOT Act

Summary of Proposed Changes to Conference Report

Judicial Review of Section 215 Non-Disclosure order

- Explicit judicial review of a section 215 non-disclosure order.
 - Recipient may challenge non-disclosure order after one year of receipt.
- Judge may overturn the non-disclosure order if the judge finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person.
- If the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the FBI certifies that disclosure may endanger the national security of the United States or interfere with diplomatic relations, such certification shall be treated as conclusive, unless the judge finds that the certification was made in bad faith.

Naming of Attorney for NSL Recipients

- Removes from the conference report the requirement that a person inform the FBI of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to a NSL order.

Applicability of NSL's to Libraries

- Adds clarification to current law that libraries, when functioning in their traditional roles, including providing Internet access, are NOT subject to section 2709 NSL's.

Strike section 106(f)(2) and insert the following:

“(2) PROCEEDINGS.—Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is further amended by adding at the end the following new subsection:

“(f)(1) In this subsection—

“(A) the term ‘production order’ means an order to produce any tangible thing under this section; and

“(B) the term ‘nondisclosure order’ means an order imposed under subsection (d).

“(2)(A)(i) A person receiving a production order may challenge the legality of that order by filing a petition with the pool established by section 103(e)(1). Not less than 1 year after the date of the issuance of the production order, the recipient of a production order may challenge the nondisclosure order imposed in connection with such production order by filing a petition to modify or set aside such nondisclosure order, consistent with the requirements of subparagraph (C), with the pool established by section 103(e)(1).

“(ii) The presiding judge shall immediately assign a petition under clause (i) to 1 of the judges serving in the pool established by section 103(e)(1). Not later than 72 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the petition. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the production order or nondisclosure order. If the assigned judge determines the petition is not frivolous, the assigned judge shall promptly consider the petition in accordance with the procedures established under section 103(e)(2).

“(iii) The assigned judge shall promptly provide a written statement for the record of the reasons for any determination under this subsection. Upon the request of the Government, any order setting aside a nondisclosure order shall be stayed pending review pursuant to paragraph (3).

“(B) A judge considering a petition to modify or set aside a production order may grant such petition only if the judge finds that such order does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the production order, the judge shall immediately affirm such order, and order the recipient to comply therewith.

“(C)(i) A judge considering a petition to modify or set aside a nondisclosure order may grant such petition only if the judge finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person.

“(ii) If, upon filing of such a petition, the Attorney General, Deputy Attorney General, an Assistant Attorney General, or the Director of the Federal Bureau of Investigation certifies that disclosure may endanger the national security of the United States or interfere with diplomatic relations, such certification shall be treated as conclusive, unless the judge finds that the certification was made in bad faith.

“(iii) If the judge denies a petition to modify or set aside a nondisclosure order, the recipient of such order shall be precluded for a period of 1 year from filing another such petition with respect to such nondisclosure order.

“(D) Any production or nondisclosure order not explicitly modified or set aside consistent with this subsection shall remain in full effect.

“(3) A petition for review of a decision under paragraph (2) to affirm, modify, or set aside an order by the Government or any person receiving such order shall be made to the court of review established under section 103(b), which shall have jurisdiction to consider such petitions. The court of review shall provide for the record a written statement of the reasons for its decision and, on petition by the Government or any person receiving such order for writ of certiorari, the record shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

“(4) Judicial proceedings under this subsection shall be concluded as expeditiously as possible. The record of proceedings, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures established by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

“(5) All petitions under this subsection shall be filed under seal. In any proceedings under this subsection, the court shall, upon request of the Government, review *ex parte* and *in camera* any Government submission, or portions thereof, which may include classified information.”.

In section 106(e), strike subparagraph (C) of section 501(d)(2) of the Foreign Intelligence Surveillance Act of 1978, as added by that section, and insert the following:

“(C) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under subparagraph (A) or (C) of subsection (d)(1) shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request.”.

In section 116(a), strike section 2709(c)(4) of title 18, United States Code, as added by that section, and insert the following:

“(4) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the Director or such designee of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request under subsection (a).”.

In section 116(b), strike section 626(d)(4) of the Fair Credit Reporting Act, as added by that section, and insert the following:

“(4) At the request of the Director of the Federal Bureau of Investigation or the

designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the Director or such designee of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request for the identity of financial institutions or a consumer report respecting any consumer under this section.”.

In section 116(c), strike “Section 626(c) of the Fair Credit Reporting Act” and insert “Section 627(c) of the Fair Credit Reporting Act”.

In section 116(c), strike section 627(c)(4) of the Fair Credit Reporting Act, as added by that section, and insert the following:

“(4) At the request of the authorized government agency, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized government agency the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the requesting official of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request for information under subsection (a).”.

In section 116(d), strike section 1114(a)(3)(D) of the Right to Financial Privacy Act, as added by that section, and insert the following:

“(D) At the request of the authorized Government authority or the Secret Service, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized Government authority or the Secret Service the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the requesting official of the authorized Government authority or the Secret Service of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request for financial records under this subsection.”.

In section 116(e), strike section 1114(a)(5)(D)(iv) of the Right to Financial Privacy Act, as added by that section, and insert the following:

“(iv) At the request of the Director of the Federal Bureau of Investigation or the designee of the Director, any person making or intending to make a disclosure under this section shall identify to the Director or such designee the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the Director or such designee of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request for financial records under subparagraph (A).”.

In section 116(f), strike section 802(b)(4) of the National Security Act of 1947, as

added by that section, and insert the following:

“(4) At the request of the authorized investigative agency, any person making or intending to make a disclosure under this section shall identify to the requesting official of the authorized investigative agency the person to whom such disclosure will be made or to whom such disclosure was made prior to the request, except that nothing in this section shall require a person to inform the requesting official of the identity of an attorney to whom disclosure was made or will be made to obtain legal advice or legal assistance with respect to the request under subsection (a).”.

In section 116, add at the end the following:

(g) Privacy Protections for Library Patrons.—Section 2709 of title 18, United States Code, is amended by adding at the end the following:

“(f) Libraries.—A library (as that term is defined in section 213(1) of the Library Services and Technology Act (20 U.S.C. 9122(1)), the services of which include access to the Internet, books, journals, magazines, newspapers, or other similar forms of communication in print or digitally by patrons for their use, review, examination, or circulation, is not a wire or electronic communication service provider for purposes of this section, unless the library is providing the services defined in section 2510(15) (‘electronic communication service’) of this title.”.