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Comparison of House & Senate versions of the USA FREEDOM Act
Center for Democracy & Technology
07/29/14

Today Senator Patrick Leahy introduced [a new version of the USA FREEDOM Act](#). The Center for Democracy & Technology (CDT) [supports](#) the Senate version of the USA FREEDOM Act and urges Congress to pass the bill quickly without weakening it. This bill addresses many issues [identified by CDT](#) as problematic in the [House version](#) of the bill, and includes many key changes that [CDT recommended](#).

The most significant differences present in the Senate bill are described in the charts below.

Banning Bulk Collection Through Requirement of a “Specific Selection Term” (SST)		
	House Bill (H.R.3361), as passed	Senate Bill (S. 2685), as introduced
Does the ban on bulk collection apply to Section 215 of the PATRIOT Act, the FISA Pen/Trap statute, and National Security letters?	Yes.	Yes.
Does the SST definition state that its purpose is to limit the scope of a surveillance order?	No. [Section 107]	Yes. The purpose of the SST is described as “to narrowly limit the scope” of the items sought. [Section 107]
Does the SST definition describe overbroad terms that cannot be used?	No. The SST definition’s lack of a clear prohibition of terms that could encompass large numbers of people is a problematic ambiguity in the House bill. [Section 107]	Yes. The SST definition states that an SST does <i>not</i> mean “a term that does not narrowly limit the scope of the tangible things sought.” The definition specifically excludes terms based solely on a broad geographic region (such as a city, state, zip code, or area code) or terms that name an electronic communications service. [Section 107]
Is the list of potential items that may serve as a SST finite?	No. The bill’s list of potential SSTs is non-exhaustive. [Section 107.]	No. The list of potential SSTs is non-exhaustive. [Section 107]





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Does the SST definition address loopholes in certain terms that could be exploited to collect data on thousands or millions of Americans?	No. The SST definition does not specify the meaning of “address” or “device,” which could be used to name a network router or IP address that would sweep up thousands of individuals. [Section 107]	Somewhat. The SST definition refers to “personal device,” excluding collection off a switch or network router, but permits collection based on a “physical or electronic address,” which might permit the government to use an IP address serving thousands as an SST. [Section 107]
Does the bill create new minimization rules for all Section 215 orders, requiring the deletion of information on irrelevant individuals who are not under investigation or tied to foreign powers?	No. The bill creates new minimization procedures requiring destruction only of call detail records that are not foreign intelligence information. [Section 101(b)]	Yes. For all 215 orders that do not specify individuals, accounts, or personal devices, the government must delete data on individuals that are not targets of an investigation, suspected agents of a foreign power, contacts of such individuals, or in possession of unique knowledge of such individuals. [Section 103(c)]
Does the bill limit the purposes for which the new prospective call detail records program created under Section 215 may be used?	Somewhat. Under the bill, use of the call detail records program must relate to an international terrorism investigation, However, the SST used to produce call records need only be associated with a foreign power or agent of a foreign power. [Section 101(a)(3)]	Yes. The call detail records program may only be used in relation to an international terrorism investigation, and the SST must be associated with an agent of a foreign power engaged in international terrorism or activities in preparation of international terrorism. [Section 101(a)(3)]
Does the bill preserve the statutory requirement of court approval prior to surveillance under Section 215, the call detail authority, and the FISA Pen/Trap statute?	Yes.	Yes.



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Foreign Intelligence Surveillance Court (FISC) Reform		
	House Bill	Senate Bill
Does the bill require public disclosure of significant FISC opinions?	Yes. The bill requires the AG to declassify, to the greatest extent practicable, FISC opinions that include a significant interpretation of law. If declassification is not possible due to national security concerns, the government must release an unclassified summary. [Sec. 402(a)]	Yes. [Sec. 402(a)]
Is disclosure of FISC opinions that make new interpretations of “specific selection term” explicitly required?	No. The bill requires disclosure of significant opinions, including interpretations of “specific selection term,” but does not clearly designate each new interpretation of “specific selection term” as significant. [Section 402(a)]	Yes. [Section 402(a)] The bill designates “any new construction or interpretation of the term ‘specific selection term’ as significant.
Must unclassified summaries of FISC opinions include information necessary to understand its impact on privacy and civil liberties?	No.	Yes. The bill requires that unclassified summaries of FISC opinions include information necessary to understand the impact. [Section 402(a)]
Is the Special Advocate or panel of amici tasked with protecting privacy and civil liberties?	No. The bill has a panel of amici, but they have no explicit mandate to protect privacy and civil liberties. [Section 401]	Yes. The Special Advocates are tasked with advocating “in support of legal interpretations that advance individual privacy and civil liberties.” [Section 401]
Is the Special Advocate or panel of amici explicitly given access to all materials necessary for participation in FISC proceedings?	No. The bill is silent on the amici’s access to background materials.	Yes. The Special Advocate is required to “have access to all relevant legal precedent, and any application, certification, petition, motion, or such other materials as are relevant to the duties of the special advocate.” [Section 401]



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Transparency: Permitted Company Reporting and Mandatory Government Reporting		
	House Bill	Senate Bill
Does the bill clearly allow companies that do <i>not</i> receive surveillance orders to report this?	Unclear. The bill is silent on whether companies can report that they've received no surveillance orders. However, the transparency rules in the bill apply generally, and require companies to report in bands of no less than 0-250. [Section 604(a)]	Yes. The transparency rules in the bill only apply to a person receiving a nondisclosure requirement accompanying a particular type of national security order. [Section 603(a)]
How long must companies receiving a FISA order initially wait before reporting orders regarding a new platform product or service?	2 Years [Section 604(a)]	18 Months [Section 603(b)(1)(C)]
Is the government required to report the number of individuals and U.S. persons whose information was collected using Section 215?	No. The bill requires the government to report the number of 215 orders, not the number of individuals affected. [Section 601]	Yes, although the government does not need to report the number of U.S. persons about whom the FBI collected business records. [Section 602(a)]
Is the government required to report the number of searches for U.S. persons' call records collected using Section 215?	No.	Yes. The bill requires the government to estimate the number of search terms that included information concerning U.S. persons, except for searches conducted by the FBI. [Section 602(a)]
Is the government required to report the number of individuals and U.S. persons whose information was collected using the FISA Pen/Trap statute?	No. The bill requires the government to report the number of FISA Pen/Trap orders, not the number of individuals affected. [Section 603(a)]	Yes. If the government is unable to report the number of U.S. persons, the government must certify that they cannot and state the reason why. [Section 602(a)]
Is the government required to report the number of individuals and persons in the U.S. whose information was collected using Section 702?	No. The bill requires the government to report the number of 702 orders, not the number of individuals affected. [Section 603(a)]	Yes. If the government is unable to report the number of U.S. persons, the government must certify that they cannot and state the reason why. [Section 602(a)]
Is the government required to report the number of searches for Americans' communications in the information collected using Section 702?	No.	Yes, except for searches conducted by the FBI. [Section 602(a)]

