

## Comparison of 2014 and 2015 versions of the USA FREEDOM Act

April 28, 2015

CDT supports the newly introduced USA FREEDOM Act of 2015 ([H.R. 2048](#) and [S. 1123](#)). The USA FREEDOM Act of 2015 makes significant improvements to the 2014 House-passed [version](#), which CDT did not support. However, the USA FREEDOM Act of 2015 is weaker in some areas than a [version](#) that was introduced in the Senate in 2014, which CDT supported but which failed on a procedural vote. The most significant differences between the new 2015 bills, the 2014 House bill, and the 2014 Senate bill are charted out below.

### Banning Bulk Collection By Requiring “Specific Selection Terms” (SST)

	2014 House Bill (H.R. 3361) – as passed by the House	2014 Senate Bill (S. 2685) – as introduced in the Senate	2015 Bill (H.R. 2048, S. 1123) - as introduced in the House and the Senate
Does the “specific selection term” (SST) requirement apply to Sec. 215 of the PATRIOT Act, the FISA pen/trap statute, and national security letters (NSL)?	<b>Yes.</b> Applies to Sec. 215 of the PATRIOT Act, the FISA pen/trap statute, and NSLs.	<b>Yes.</b> Applies to Sec. 215 of the PATRIOT Act, the FISA pen/trap statute, and NSLs.	<b>Yes.</b> Applies to Sec. 215 of the PATRIOT Act, the FISA pen/trap statute, and NSLs.
Does the SST definition state that its purpose is to limit the scope of a surveillance order?	<b>No.</b> [Sec. 107]	<b>Yes.</b> The purpose of the SST is described as to narrowly limit the scope of the items sought to the greatest extent practicable. [Sec. 107]	<b>Yes.</b> Substantially the same as the Senate 2014 bill. SST must limit scope of tangible things sought to the greatest extent reasonably practicable. [Sec. 107]
Does the SST definition describe overbroad terms that <i>cannot</i> be used?	<b>No.</b> The SST definition’s lack of a clear prohibition of terms that could encompass large numbers of people was a problematic ambiguity in the 2014 House bill. [Sec. 107]	<b>Yes.</b> 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 or terms that name an electronic communications service. [Sec. 107]	<b>Yes.</b> Substantially the same as the Senate 2014 bill. [Sec. 107]



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Does the SST definition address loopholes in certain terms that could be used to collect data on thousands or millions of Americans?	<b>No.</b> 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 many people. [Sec. 107]	<b>Somewhat.</b> The SST definition refers to “personal device,” excluding collection of 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 many people as an SST. [Sec. 107]	<b>Somewhat.</b> Substantially the same as the Senate 2014 bill. [Sec. 107]
Does the bill limit the purposes for which the new prospective call detail records program created under Sec. 215 may be used?	<b>Somewhat.</b> 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. [Sec. 101(a)(3)]	<b>Yes.</b> 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. [Sec. 101(a)(3)]	<b>Yes.</b> Substantially the same as the Senate 2014 bill. [Sec. 101(a)(3)]
Does the bill create new minimization rules for all Sec. 215 orders, requiring the deletion of information on individuals who are not under investigation or tied to foreign powers?	<b>No.</b> The bill creates new minimization procedures requiring destruction only of call detail records that are not foreign intelligence information. [Sec. 101(b)]	<b>Yes.</b> 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. [Sec. 103(c)]	<b>No.</b> Substantially the same as the House 2014 bill. [Sec. 101(b)]
Does the bill make clear that the FISA Court can impose stronger minimization procedures on Sec. 215 and FISA pen/trap orders?	<b>No.</b>	<b>No.</b> The bill makes this clarification for FISA pen/trap orders, but not Sec. 215 orders. [Sec. 202(a)]	<b>Yes.</b> The bill makes this clarification for both Sec. 215 orders [Sec. 104(a)(2)] and FISA pen/trap orders. [Sec. 202(a)]
Does the bill limit nondisclosure (gag) orders accompanying national security letters (NSLs)?	<b>No.</b>	<b>Yes.</b> Recipients of an NSL can disclose restricted information to an attorney for legal advice. [Sec. 502]	<b>Yes.</b> Substantially the same as the Senate 2014 bill. [Sec. 502]

## Transparency: Company and Government Reporting

	2014 House Bill (H.R. 3361) – as passed by the House	2014 Senate Bill (S. 2685) – as introduced in the Senate	2015 Bill (H.R. 2048, S. 1123) - as introduced in the House and the Senate
Does the bill allow private persons and companies to publicly report on national security surveillance orders received in greater detail than the government currently permits?	<b>Yes.</b> The bill allows private persons and companies to publish ranges of the number of orders received and the number of targets of specific surveillance authorities, whereas the Dept. of Justice’s 2014 settlement agreement with Internet companies only permitted reporting numbers of content and non-content orders. [Sec. 604]	<b>Yes.</b> The bill allows for additional reporting ranges. [Sec. 603]	<b>Yes.</b> Substantially the same as the Senate 2014 bill, except that reports must count the number of “customer selectors targeted” rather than the number of customer accounts affected. [Sec. 603]
Does the bill clearly allow private persons and companies that do <i>not</i> receive surveillance orders to report this?	<b>Unclear.</b> The bill is silent on whether private persons and companies can report that they’ve received no surveillance orders. However, the transparency rules in the bill apply generally, and require reports in bands of no less than 0-250. [Sec. 604(a)]	<b>Yes.</b> The transparency limits in the bill only apply to a person receiving a nondisclosure requirement accompanying a national security order. [Sec. 603(a)]	<b>Yes.</b> Substantially the same as the Senate 2014 bill. [Sec. 603(a)]
Is the government required to estimate the number of individuals whose information was collected using Sec. 215 the FISA pen/trap statute?	<b>No.</b> The bill requires the government to report the number of 215 and Pen/Trap orders, but not the number of individuals affected. [Sec. 601]	<b>Yes.</b> The government is required to estimate the number of individuals whose communications were collected or the number of unique identifiers. [Sec. 602(a)]	<b>Somewhat.</b> The government is required to estimate the number of unique identifiers collected but not the number of individuals affected. [Sec. 602(a)]
Is the government required to estimate the number of Americans whose information was queried from databases of Sec. 215 the FISA Pen/Trap data?	<b>No.</b>	<b>Yes.</b> [Sec. 602(a)]	<b>Somewhat.</b> The government is required to report on the number of queries from Sec. 215 databases, but not FISA Pen/Trap databases. [Sec. 602(a)]
Is the government required to estimate the number of individuals whose information was collected using Sec. 702?	<b>No.</b> The bill requires the government to report the number of 702 orders, not the number of individuals affected. [Sec. 603(a)]	<b>Yes.</b> Or the government must certify that it cannot and state the reason why. [Sec. 602(a)]	<b>No.</b> Substantially the same as the House 2014 bill. [Sec. 602(a)]
Is the government required to estimate the number of searches for Americans’ communications in the information collected using Sec. 702?	<b>No.</b>	<b>Yes,</b> except for searches conducted by the FBI. [Sec. 602(a)]	<b>Yes.</b> Substantially the same as the Senate 2014 bill. [Sec. 602(a)]

## Foreign Intelligence Surveillance Court (FISC) Reform

	2014 House Bill (H.R. 3361) – as passed by the House	2014 Senate Bill (S. 2685) – as introduced in the Senate	2015 Bill (H.R. 2048, S. 1123) - as introduced in the House and the Senate
Does the bill require public disclosure of significant FISC opinions?	<b>Yes.</b> 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)]	<b>Yes.</b> The bill also requires unclassified summaries to include descriptions of the context and the significant interpretations of law. [Sec. 402(a)]	<b>Yes.</b> Substantially the same as the Senate 2014 bill. [Sec. 402(a)(2)]
Is disclosure of FISC opinions that make new interpretations of “specific selection term” explicitly required?	<b>No.</b> The bill requires disclosure of significant opinions, including interpretations of “specific selection term,” but does not clearly designate new interpretation of “specific selection term” as significant. [Sec. 402(a)]	<b>Yes.</b> The bill requires disclosure of FISC opinions of any novel or significant construction or interpretation of “specific selection term.” [Sec. 402(a)]	<b>Yes.</b> Substantially the same as the Senate 2014 bill. [Sec. 402(a)(2)]
Is the amicus curiae to the FISC tasked solely with protecting privacy and civil liberties?	<b>No.</b> The bill establishes a panel of amici, but they have no explicit mandate to protect privacy and civil liberties. [Sec. 401]	<b>Yes.</b> The “Special Advocate” is tasked with advocating “in support of legal interpretations that advance individual privacy and civil liberties.” [Sec. 401]	<b>No.</b> The amici are tasked with advancing privacy <i>or</i> providing information on communications technology <i>or</i> providing other legal or information that will aid the court. [Sec. 401]
Is the amicus curiae explicitly given access to all materials necessary for participation in FISC proceedings?	<b>No.</b> The bill is silent on the amici’s access to background materials.	<b>Yes.</b> 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.” [Sec. 401]	<b>Somewhat.</b> An amici is required to “have access to all relevant legal precedent, and any application, certification, petition, motion, or such other materials” but only those the FISC determines are relevant to the duties of the amicus. [Sec. 401]

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