



Written by [Michael Tennant](#) on September 13, 2017

Trump Admin. Seeks Permanent Renewal of Warrantless Spying Law

The Trump administration is asking Congress to renew a law giving intelligence agencies the authority to collect the communications of millions of Americans without a warrant — despite the fact that such surveillance led to charges that President Donald Trump is in cahoots with Russia.

The law in question is Title VII of the Foreign Intelligence Surveillance Act (FISA), Section 702, which authorizes the National Security Agency (NSA) to intercept the communications of foreigners located outside the United States without obtaining a search warrant. The law expires at the end of the year unless Congress passes legislation reauthorizing it.

“Reauthorizing this critical authority is the top legislative priority of the Department of Justice and the Intelligence Community,” Attorney General Jeff Sessions and Director of National Intelligence Dan Coats wrote in a September 7 [letter](#) to congressional leaders.

Sessions and Coats argued that the law’s privacy protections are sufficient to comply with the Fourth Amendment, which requires authorities to obtain a warrant based on probable cause before they conduct a search. However, as Nate Cardozo, senior staff attorney at the Electronic Frontier Foundation, told [Reason](#), the government is “using [the law] to spy on Americans.”

This should hardly come as a surprise. As [Agence France-Presse](#) reminds us, “Section 702 was passed in 2008 to replace a previously secret and illegal warrantless wiretap program instituted after the September 11, 2001 attacks.” In other words, Congress retroactively codified a blatantly unconstitutional policy that was known to vacuum up data on innocent Americans.

Thanks to leaks from former NSA contractor Edward Snowden, Americans now know just how extensive the agency’s domestic surveillance has become, and hardly anyone believes it is simply about keeping America safe.

Trump, in fact, ought to be among those most opposed to reauthorizing Section 702. Convenient leaks of data obtained via such surveillance by the Obama administration created the perception that Trump conspired with the Russian government to influence last year’s election. Yet the administration is asking Congress to pass a permanent reauthorization of the law.

“The fact that the Trump administration can out of one side of its mouth complain about collection under 702 and on the other say we must snap our fingers and reauthorize it, possibly even without a sunset, ... is mind-boggling,” said Cardozo.





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Critics point to ways the NSA obtains data on Americans under Section 702 despite apparent prohibitions on doing so. One is so-called “about” searches, in which the NSA collects communications that merely mention a foreign target, even if it’s something as innocent as passing along a news report. The NSA claims to have stopped performing such searches, but given the agency’s [history of duplicity](#), many suspect otherwise. Another way around the law is a “backdoor search,” collecting the communications of a foreigner the NSA suspects will be communicating with an American the agency really wants to target.

The NSA has also been known to share its discoveries about Americans with the Federal Bureau of Investigation for use in domestic criminal cases, which is clearly unconstitutional.

While civil libertarians would like to see Section 702 lapse, that is unlikely to happen. In Washington, there are only two sides with muscle in the debate: those who want full renewal and those who want reform.

“The debate is not about keeping or killing Section 702,” Jake Laperruque, senior counsel at the Constitution Project, told [Roll Call](#). “It is about reforming 702 and curtailing mission creep and abuse.”

At best, there may be some language prohibiting the most blatant abuses, though such language has been rejected in the past. At worst, the whole shebang could be reauthorized in perpetuity. Legislation to that effect, introduced by Senator Tom Cotton (R-Ark.), has already garnered 13 cosponsors including three committee chairmen. Most of the resistance to the bill is expected to come from conservative Republicans, but even liberal Senator Dianne Feinstein (D-Calif.) has declared her opposition to any bill that does not include a sunset provision.

Unfortunately, Section 702 is likely to survive, though perhaps with some modest reforms. But the debate and the votes will show the American people which of their elected officials really believe in the Constitution and which merely pay it lip service.



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