



May 7, 2014

Chairman Bob Goodlatte
2309 Rayburn House Office Building
Washington, D.C. 20515

Ranking Member John Conyers, Jr.
2426 Rayburn House Office Building
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2449 Rayburn House Office Building
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CC:

Rep. Spencer Bachus	Rep. Blake Farenthold	Rep. Jim Jordan
Rep. Karen Bass	Rep. Randy Forbes	Rep. Steve King
Rep. Steve Chabot	Rep. Trent Franks	Rep. Raul Labrador
Rep. Jason Chaffetz	Rep. Joe Garcia	Rep. Zoe Lofgren
Rep. Judy Chu	Rep. Louie Gohmert	Rep. Tom Marino
Rep. David Cicilline	Rep. Trey Gowdy	Rep. Jerry Nadler
Rep. Howard Coble	Rep. Luis Gutierrez	Rep. Pedro Pierluisi
Rep. Steve Cohen	Rep. George Holding	Rep. Ted Poe
Rep. Doug Collins	Rep. Darrell Issa	Rep. Cedric Richmond
Rep. Suzan DelBene	Rep. Sheila Jackson Lee	Rep. Bobby Scott
Rep. Ron DeSantis	Rep. Hakeem Jeffries	Rep. Jason Smith
Rep. Ted Deutch	Rep. Hank Johnson	Rep. Lamar Smith

Re: USA FREEDOM Act, Support if amended

Access believes there is only one current legislative proposal - the USA FREEDOM Act - that moves the U.S. towards meaningful foreign intelligence surveillance reform. While the Bill as amended is less robust than it was in its original form, our analysis demonstrates that it is still the strongest first step toward wholistic reform. We conditionally endorse this bill and urge its passage, subject to the necessary recommendations below. The current version of the USA FREEDOM Act does not address all the necessary surveillance reforms, but it contains important changes that should be codified as quickly as possible.

Access is a global digital rights organization that defends and extends the rights of users around the world. By combining innovative policy, user engagement, and direct technical support, we fight for open and secure communications for all. The Access policy team provides thought leadership and substantive recommendations to the public and private sectors to ensure the continued openness and universality of the internet as a gateway to the



protection of fundamental rights. Access develops papers, briefs, and reports as issues arise globally, with particular expertise in surveillance and human rights, including privacy.

In the wake of revelations about NSA surveillance, several Members of the U.S. Congress introduced reform legislation. Out of more than a dozen bills, four primary proposals received the most attention and support. Access measured how these proposals stack up against the *International Principles on the Application of Human Rights to Communications Surveillance*, which have been endorsed by over 400 civil society organizations.

The USA FREEDOM Act was recently amended substantively, with new provisions added and others modified or removed. While our analysis finds this proposal less robust than the Bill in its original form, it offers more comprehensive reforms than any other proposal. However, Access believes that further changes to the new Bill are necessary in order to address deficiencies, restore critical provisions from the initial draft, and provide for adequate protections for all individuals. These include:

1. Clarification of the FISA Court's authority

The FISA Court authority to review surveillance applications should be clarified. Currently, the language requires only that the government certify that an application for call detail records meets the proposed statutory standard, preventing the FISA Court from reviewing the underlying facts of the case. The language should be clarified to require the government to make a showing to the FISA Court that reasonable articulable suspicion exists in every application for surveillance.

2. Impose express limits on Section 702 Surveillance

Section 702 allows for broad surveillance of non-U.S. persons. This provision needs to be amended to provide additional protections for these individuals, specifically in light of the President's statements on this matter, recognizing the need for additional limits on the incidental surveillance of otherwise innocent individuals. Further, the amended bill must re-incorporate provisions from the original draft, which closed the "back door" on incidental collection for certain types of communications.

3. Re-incorporating provisions that allow increased transparency reporting

The original draft of the USA FREEDOM Act allowed for increased reporting by private companies regarding orders they receive to produce surveillance information for the government or assist with the collection of such information. These provisions have been removed entirely from the new language. It is important that this authority be re-incorporated into the Bill in order to allow greater public transparency regarding the specific numbers of orders received as well as the specific number of surveilled accounts.

4. Enabling dissenting views at the FISA Court

While the new bill includes a provision for an *amicus curiae* to be called upon by the FISA Court to offer assistance for certain "significant" matters, it removes the much stronger language creating a "Special Advocate" position for the court as an Official of the judicial branch. Re-incorporating this provision will provide the Special Advocate greater independence and authority to participate in matters before the FISA Court.



These four “fixes” would allow Access to offer support for the new USA FREEDOM Act. We hope that the Committee will consider making these modifications during its mark-up of the Bill. However, Access recognizes that as it stands, the new bill is still far ahead of its companions.

Thank you for your time on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Amie Stepanovich", set against a light green rectangular background.

Amie Stepanovich,
Senior Policy Counsel,
Access