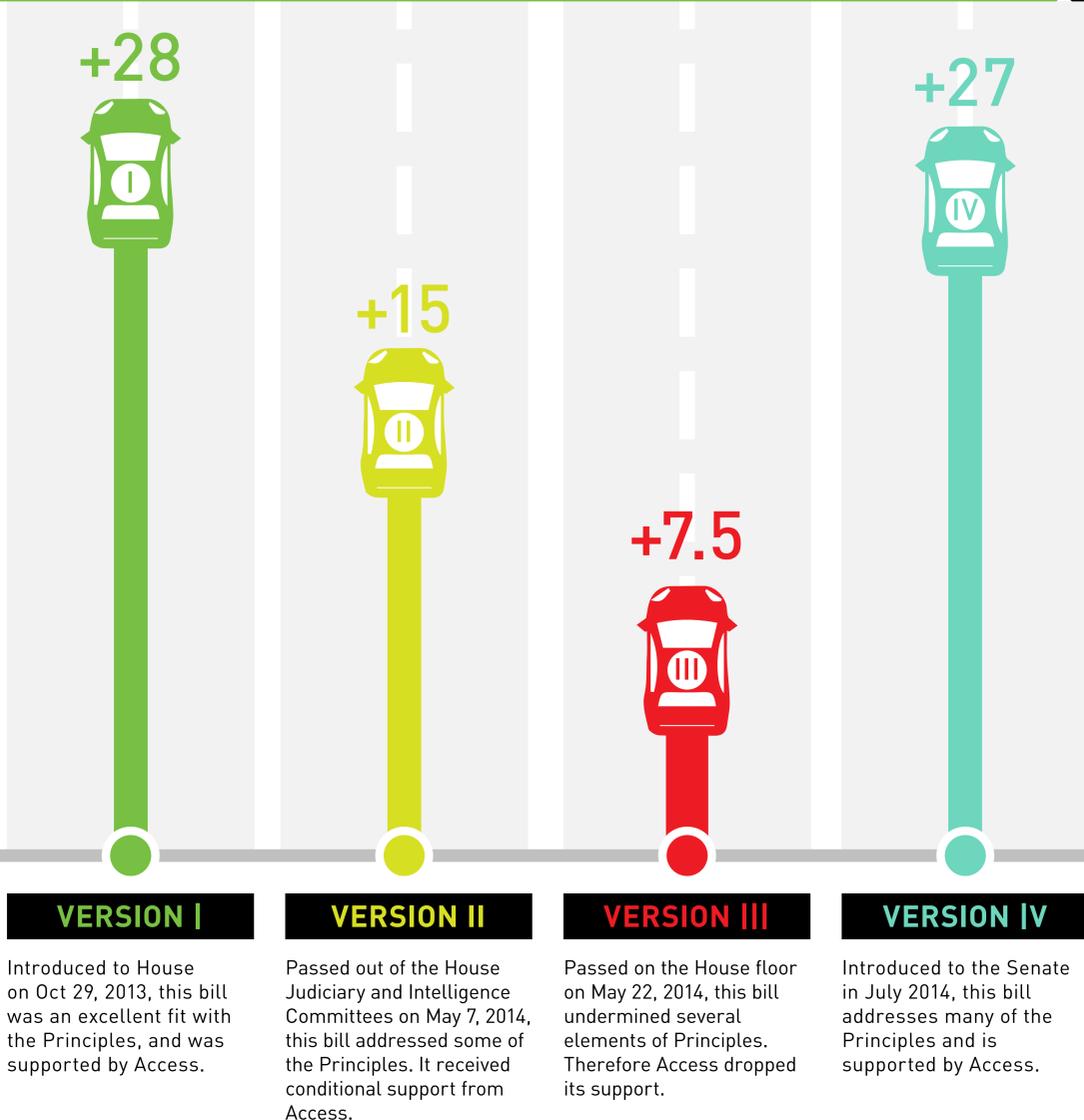


THE USA FREEDOM ACT'S ROAD TO THE RECOGNITION OF INTERNATIONAL HUMAN RIGHTS

Timeline



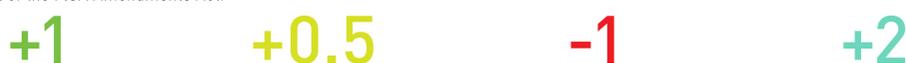
LEGALITY

The original USA FREEDOM Act reconciled the ambiguity between the public and private interpretations of Section 215 of the USA PATRIOT Act. After the House Committee passed a succinct definition of who could be targeted, the House introduced ambiguity, which was later remedied by the Senate.



LEGITIMATE AIM

Generally, each version of the USA FREEDOM Act has added some additional protections for targeting of U.S. persons and restrictions on the use of collected data pertaining to U.S. persons. Most versions have failed to provide additional rights for non-U.S. persons, though the Senate version has removed language that would have codified for the first time the collection of certain additional non-U.S. persons' communications under Section 702 of the FISA Amendments Act.



NECESSITY

The original USA FREEDOM Act initially attempted to prevent bulk collection by requiring a close connection to a legitimate aim and by clarifying non-target communications assessments. The Senate version adopts the House modification tying collection to a "specific selection term," but provides a significantly more narrow definition and includes a prohibition on searching based on broad geographic regions or across communications networks.



ADEQUACY

The original USA FREEDOM Act included an annual review of certain collection activities and required annual assessments by the Inspector General. Each subsequent version has omitted the review and required the IG to review fewer categories. The House version stripped provisions that allowed judges to conduct increased compliance reviews for the use of certain surveillance authorities, which were contained in the other versions.



PROPORTIONALITY

In reforming Section 215 bulk collection, the first version of the USA FREEDOM Act required the government to demonstrate a nexus between a terrorist investigation and a target of surveillance. The Committee version vaguely required only an assertion that facts existed reasonably indicating the target was a foreign power or agent thereof, which was corrected in the House version and further strengthened in the Senate, which included language to renew the requirement that surveillance activities have to be related to international terrorism.



COMPETENT JUDICIAL AUTHORITY

The House versions stripped the Special Advocate provisions from the original in favor of much weaker language allowing an "amicus" to be appointed. The Senate version returns some of the original language in order to further provide for the presence of a strong dissenting viewpoint, to be appointed expeditiously in consultation with the Privacy and Civil Liberties Oversight Board, and also allows for additional expert assistance, including from experts on technology.



DUE PROCESS

All four versions include some form of emergency authority for access to business records, subject to minimization and use limitations. The Senate version makes explicit that the FISA Court and the FISA Court of Review can certify discrete legal issues for review by a higher court. The original USA FREEDOM Act attempted to reform gag order provisions, but also expanded the justifications for a gag order. Conversely, the House provisions offered no significant gag reform. The Senate version re-inserted provisions on gag orders and judicial review without including the expanded justifications. Gag orders prevent individuals from challenging surveillance targeted at them.



USER NOTIFICATION

No version requires an individual to be notified if they are or have been subject to government surveillance. The original USA FREEDOM provided some reforms on notice and judicial review.



TRANSPARENCY

The original USA FREEDOM allowed both granular reporting by companies on the number of national security orders received, as well as required greater government reporting. The House versions significantly watered down the corporate transparency reporting sections by adding wide ranges in the place of exact or estimated numbers. The Senate version maintained the ranges but provided additional options to provide greater detail to the public.



PUBLIC OVERSIGHT

The original USA FREEDOM Act increased the oversight authority of the Privacy and Civil Liberties Oversight Board and also allowed for FISA Court opinions to be made available by request of the judge. The following versions gave the authority to declassify FISA Court opinions and filings to the Director of National Intelligence and the Attorney General, though the Senate version increased the level of detail that was required in the absence of publication. Each version includes additional reporting to Congress on the uses of surveillance authorities.



INTEGRITY OF COMMUNICATIONS AND SYSTEMS

No version of the USA FREEDOM Act advanced or defended the integrity of communications systems.



SAFEGUARDS FOR INTERNATIONAL COOPERATION

No version of the USA FREEDOM Act advanced safeguards for international cooperation.



SAFEGUARDS AGAINST ILLEGITIMATE ACCESS

The original USA FREEDOM provided additional use limitations but did not include retention limitations. The Committee version ostensibly required destruction of call detail records after 5 years but contained a huge loophole, and the version contained no other retention limitations. The Senate that passed the House required retention limitations for call detail records, but those limitations are established the by executive branch. The Senate version requires destruction of all records collected under Section 215 except in limited circumstances. Other than the original USA FREEDOM Act, all versions provide liability protection to companies that cooperate with orders from the government for call detail records.

