



May 30, 2017

The Honorable Bob Goodlatte
Chairman
House Judiciary Committee
2309 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John Conyers
Ranking Member
House Judiciary Committee
2426 Rayburn House Office Building
Washington, D.C. 20515

Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee,

In the gritty 2008 Batman reboot *The Dark Knight*, Bruce Wayne uses his position at Wayne Enterprises to build a cell phone surveillance system in order to find the Joker, a terrorist on a killing spree in Gotham City. Concerned about the invasiveness of the surveillance program, Batman turns the program over to Lucius Fox. Mr. Fox is appalled by the program, but agrees to use it to find the Joker because of the significant threat of death and destruction. However, he only accepts on the condition that he can destroy the program after its use.

This dark fiction created by Christopher Nolan provides an analogy for surveillance programs conducted pursuant to Title VII of the FISA Amendments Act (FAA), which is set to expire on December 31, 2017 unless Congress acts to extend the law.

Much like Batman's terrorist surveillance program, surveillance conducted to Title VII (specifically Section 702), such as Prism and Upstream, shocked people when it was dramatically revealed in 2013. Also, like Batman's cell phone surveillance, Section 702 programs were developed to counteract terrorism and they're only reviewed by trusted individuals tasked with protecting our right to privacy.

The analogy breaks down in how 702 programs are restricted. Section 702 surveillance is not limited to counter terrorism. Section 702 programs may be used for the purpose of acquiring "foreign intelligence information." Unfortunately, foreign intelligence information is defined extraordinarily broadly, and includes information that relates to "the conduct of the foreign affairs of the United States." For non-U.S. people, the issue is less about how 702 authority is "abused" and more about the inherently privacy-invasive and harmful ways it can permissibly be used.

The broad application undermines the moral authority to operate invasive surveillance programs and unnecessarily impugns the rights of people around the world. It also creates an indefensible international standard that other countries could, and do, follow. And unfortunately many of those countries do not have the same legal protections.

As mentioned above, Title VII of the FAA will expire at the end of this year without Congressional action. Congress can protect human rights and take steps to provide reassurance that these programs are not used unnecessarily by amending the law to expressly limit the valid foreign intelligence purposes of Section 702, such as to specific national security

threats: sabotage, international terrorism, clandestine intelligence activities, attacks on the U.S. and its allies, and WMD proliferation. In addition, the language in FISA that presumes to authorize surveillance if the collection of foreign intelligence information is only a “significant” purpose of the activity, and not even the primary purpose, must be stricken from the law to close the huge loophole for circumventing the statute’s protections for human rights, which are already sharply limited.

Other options to further reform Section 702 if the FAA are available at <https://www.accessnow.org/new-call-u-s-surveillance-reform/>

Sincerely,

Amie Stepanovich
U.S. Policy Manager

Nathan White
Senior Legislative Manager

