



## **Patriot Act's Illegal Section 215 due to Expire June 1**

**By Bob Adelman**

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Section 215 of the Patriot Act is set to expire June 1, and each side in the upcoming battle to renew, reform, or let expire this unconstitutional abridgement of freedoms is rolling out its arguments.

Section 215 is often referred to as the Patriot Act's "library records" provision because it allows the FBI to order a library or any other source to produce, without a warrant showing probable cause (as required under the Fourth Amendment), all "tangible things" belonging to its target of interest including "books, records, papers, documents, and other items." That includes books borrowed and websites visited by the target while at the library. Niceties demanded by the Fourth Amendment are ignored in Section 215 as long as the FBI "specifies" that its order is "for an authorized investigation ... to protect against international terrorism or clandestine intelligence activities."

One of those favoring renewal of Section 215 is Senator Chuck Grassley (R-Iowa), chairman of the Senate Judiciary Committee: "Law enforcement officials often use Section 215 to obtain necessary individual business records, such as hotel records, in connection with national security investigations. It's a useful tool that helps them investigate potential threats to [our] national security."

It also speeds things up. As Phillip Swartz noted in the Washington Times, Section 215 "simply allows agents to trace the credit card of a suspected spy ordering at a fast-food restaurant by searching all the purchases [he] made with that card. Without the law, the FBI would have to obtain a subpoena from a grand jury ... not as quickly, more laboriously and not as covertly."

Senate Majority Leader Mitch McConnell (R-Ky.) also lines up in favor of keeping Section 215 in place, claiming that "now is not the time to be considering legislation that takes away the exact tools we need to combat ISIL." Surprisingly, McConnell is joined in arms with Senator Marco Rubio (R-Fla.), who is on record saying that Section 215 should be a permanent part of the law: "The world is as dangerous as ever, and extremists are being cultivated and recruited right here at home.... Legislation [to repeal] would significantly weaken, and, in some cases, entirely do away with some of the most important counter-terrorism capabilities at our disposal."

On the other side is Patrick Eddington, a civil liberties policy analyst at the conservative Cato Institute: "I would take issue with the entire idea that the expiration of the bulk telephone data collection would in any way hamper in any shape or form the FBI's ability to get that they want. What the NSA has been engaged in has literally been totalitarian regime-style dragnet surveillance."

The American Civil Liberties Union is lining up on the side opposing renewal because "Section 215 vastly expands the FBI's power to spy on ordinary people living in the United States, including United States citizens and permanent residents." It adds: "The FBI need not show probable cause, nor even reasonable grounds to believe, that the person whose records it seeks is engaged in criminal activity. The FBI need not have any suspicion that the subject of the investigation is a foreign power or an agent of a foreign power."

The ACLU claims that Section 215 not only tosses rights guaranteed under the Fourth Amendment, but the First as well: "For example, the FBI could spy on a person because they don't like the books she reads, or because they don't like the web sites she visits. They could spy on her because she wrote a letter to the editor that criticized government policy."

And then there's Section 215's "gag order" declaring that "no person shall disclose to any other person ... that the Federal Bureau of Investigation has sought or obtained tangible things under this section." That means that another part of the Bill of Rights has disappeared into the ether: the right to be confronted by one's accuser. A person doesn't even know he or she is being investigated, and can't know, under Section 215's gag order.

It gets worse. The order issued by the FBI and granted by the FISA court (in a phony semblance of constitutional process) is granted "ex parte" — meaning only the government's request may be heard by the court with no opposing view presented on the part of the target, and that once granted, the order may not disclose the reasons, if any, behind the order.

Alongside the ACLU in its opposition to renewal of Section 215 is the Electronic Frontier Foundation (EFF), which holds that "it's the authority that the NSA, with the FBI's help, has been interpreted to allow the U.S. government to vacuum up all the call records of millions of innocent people."

The EFF explained that, even after all the data collection, precious little has been accomplished in the process other than the violation of people's rights, noting that "it's important to remember that we have little or no evidence that bulk collection of telephone call records under Section 215 has ever stopped a terrorist attack." The EFF continued:

*The White House admitted that the government can accomplish its goals without bulk telephone records collection. What's more, the President's Review Board said "the information contributed to terrorist investigations by the use of section 215 telephony meta-data was not essential to preventing attacks."*

*And the Privacy and Civil Liberties Oversight Board could not identify one time when bulk collection under Section 215 of the PATRIOT Act “made a concrete difference in the outcome of a counterterrorism investigation.”*

*Similarly, an in-depth analysis of 225 cases of people charged with terrorism found that “the contribution of NSA’s bulk surveillance programs to these cases was minimal.”*

As the time to reconsider Section 215 draws closer, expect the rhetoric to continue to ramp up as each side makes its case. Of all attempts to rein in the Patriot Act, numbering more than 20 in both houses of Congress, the one that almost made it was the USA Freedom Act, which had 150 co-sponsors in the House and 21 in the Senate last year. As the bill’s author, Representative Jim Sensenbrenner (R-Wis.), explained, the bill was created "to rein in the dragnet collection of data by the National Security Agency and other government agencies ... [and] increase transparency of the Foreign Intelligence Surveillance Court (FISA)."

After the House voted to pass it, the Senate balked, voting in favor 58-42, just two votes shy of the 60 votes needed.

If Section 215 is allowed to expire, the FBI will simply have to go back to doing things the regular way, with search warrants showing probable cause to obtain the information they need. And a grievous abrogation of precious rights will have been turned back.