



## Uncertainty after key spying law lapses

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The inability of the Senate to agree to extend a key provision of the Patriot Act means the National Security Agency may no longer collect data on millions of Americans' phone calls — the controversial program it has used for more than a decade in the search for terrorists.

But politicians, officials and analysts differ on the impact of the lapse.

Sen. Barbara A. Mikulski took to the floor of the Senate on Monday to say that the failure of her colleagues to keep the program going "has left us exposed in the world's eyes."

"I am deeply, deeply, deeply frustrated that the key authorities of the Patriot Act expired last night when we had a path forward on legislation," she said.

But others pointed out that the law contained a provision that allows officials to keep ongoing investigations alive, the program made up only a small part of the nation's surveillance apparatus, and any information not being collected now will be recoverable when and if the program is reauthorized.

Officials said the NSA shut the program down Sunday. Robert Cattanach, a former national security lawyer with the Justice Department, compared a loss of a day's worth of data to "a high-definition television screen with one pixel missing."

"I'm not seeing a threat to the republic there," Cattanach said. He said the NSA's ability to track terror suspects would be impaired only if the program went dark for an extended period of time.

The NSA has used Section 215 of the Patriot Act to justify the phone data collection program, which scoops up details including numbers dialed and lengths of calls — but not, officials say, the content of conversations. Officials acknowledged the existence of the program two years ago after it was revealed by former NSA contractor Edward Snowden.

In response to outrage over the revelations, the House voted overwhelmingly this year to approve a measure that would end government collection of the data, leaving it in the hands of the telephone companies, and allowing the NSA to obtain a court order to search it.

Senate Majority Leader Mitch McConnell has wanted to reauthorize the existing dragnet system, leading to the logjam in Congress.

With the existing law on the brink of expiring Sunday, McConnell agreed to let the House bill move forward for a vote in the Senate. But Senate rules meant it could not be considered for final passage before the deadline. The bill will now face a key vote Tuesday.

Rep. C. A. Dutch Ruppersberger said it was "ridiculous that the Senate cannot pass a law that's so important to our national security."

The Baltimore County Democrat, whose district includes the NSA headquarters at Fort Meade, has long backed legislation that would cede the data collection to phone companies.

"Now we're in a situation where if we don't pass the law, the NSA's not authorized to continue to move on and monitor terrorists throughout the world," he said.

On Monday, the Senate took up amendments proposed by McConnell that would limit transparency provisions in the House version of the law and give the NSA more time before it has to switch over to the new system — changes that could stir opposition to the bill in the House.

There is little evidence that the phone data program has been critical in foiling any terrorist attacks — or that it has been abused to invade the privacy of Americans.

But the expiration of the law could leave investigators without other useful tools. It has been used by the FBI to collect large volumes of data about electronic communications, according to a [recently declassified Justice Department report](#).

Cattanach said the provision allowing the NSA to continue collecting data for ongoing investigations should see the agency through the current gap.

Still, the White House has pushed lawmakers to pass a long-term fix as soon as possible.

Stephen Vladeck, a law professor at American University, said the call records program in particular has been subject to such close examination not necessarily because it is so important but because the idea of the NSA gobbling up phone records is easy to understand.

"In focusing on the more accessible program and the more understandable program, I think we're missing what are the more important programs," he said.

He pointed to other legal provisions — an executive order and part of another surveillance act — as empowering much more intrusive surveillance.

Those laws support programs that intercept communications by foreigners, but because of the way Internet traffic is routed around the world, can also ensnare the private information of Americans.

Any programs conducted under those authorities will be unaffected by what happens in Washington this week, but privacy advocates are already considering how they might persuade lawmakers to rein them in in the future.

Vladeck said he is concerned that the passage of any law to restore the NSA phone program could end the debate Snowden started. Julian Sanchez, a fellow at the libertarian Cato Institute, said he sees reasons to be optimistic.

Congress has come to the brink of unraveling the Patriot Act in the past, only to decide at the last minute to reauthorize it.

But with the Snowden disclosures attracting fresh attention to the issue, Sanchez said, there does not seem to be widespread support for doing that.

"The argument before was 'Trust us, we're here to keep you safe, trust us with these authorities,'" he said. But now, "People are more skeptical about these claims."