



Still plenty of means for the feds to collect data

Expiration of section 215 of the Patriot Act is a symbolic victory for the privacy and civil liberties advocacy groups that have fought against its renewal. However, its expiration does very little to reduce the capabilities of the NSA or FBI to collect communications and metadata (the data about data).

Firstly, the USA Freedom Act is still under debate. In its current form, this act will allow the phone metadata activities previously run under section 215 of the Patriot Act to continue with several restrictions.

Agencies still have to receive approval from the Foreign Intelligence Surveillance(FISA) court for access to phone records. The changes are that phone companies will now hold the metadata, not the NSA. There will also be added transparency provisions such as when the FISA court attempts to significantly reinterpret elements of the USA Freedom Act.

Secondly, even if the USA Freedom Act weren't to pass, there are still many other legal avenues available to the NSA to collect phone metadata.

The Cato Institute's Julian Sanchez has pointed out that a "grand father clause" in section 215 allows for phone metadata to, "remain available for investigations already open at the time of sunset, as well as new investigations into offenses committed before the sunset".

Arizona State University/New America fellow Shane Harris observes that national security letters could still be used to, "collect phone, Internet, and financial records".

Thirdly, the expiration of section 215 does not curtail the bulk collection of Internet and other online communication data and metadata. Moreover, for non-US persons, the expiration of section 215 will have no impact on the collection of their phone or Internet records by US agencies. All these programs will continue given that they are justified under other authorities including section 214 of the Patriot Act, which is still in place, Executive Order 12333 (for non-US persons) and section 702 of the FISA Amendments Act (also for non-US persons).

That the renewal of section 215 was not rubber-stamped is significant in and of itself. It indicates that there is a debate happening where, before, there wasn't.

Instead, the Senate voted to advance the USA Freedom Act (termed "on cloture on the motion to proceed"), which is the first move to limit NSA activities since the 1970s. However, there is a long road ahead for those who wish for greater oversight of the bulk data collection activities of intelligence and law enforcement agencies both in the US and globally.

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