



Rand Paul says we should just let Patriot Act provisions expire. Here's why he's wrong.

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A Patriot Act provision that the government claims allows it to scoop up the calling records of every American is set to expire this weekend. That's because the Senate failed last week to pass either a reform bill called the USA Freedom Act or a measure championed by Sen. Mitch McConnell to renew the law without modification.

Some civil libertarians are hailing the development. They argue that allowing the provision known as Section 215 to expire is the best way to stop the government from collecting the telephone records of millions of Americans. These die-hards, including Sen. Rand Paul (R-KY), regard the USA Freedom Act as a weak compromise, and see little reason to settle for half a loaf.

But Julian Sanchez, a privacy advocate at the Cato Institute (where I worked from 2003 to 2005), [argues](#) that this is backward. In his view, merely allowing Section 215 to expire does *less* to rein in government spying than the USA Freedom Act would. That's because USA Freedom doesn't just reform Section 215; it also modifies other parts of the law that (unlike Section 215) are not scheduled to expire. For example, national security letters:

National Security Letters or NSLs, allow the FBI to obtain a more limited range of telecommunications and financial records without even needing to seek judicial approval. Unsurprisingly, the government loves these streamlined tools, and used them so promiscuously that the FBI didn't even bother using 215 for more than a year after the passage of the Patriot Act. Inspector General reports have also made clear that the FBI is happy to substitute NSLs for 215 orders when even the highly accommodating Foreign Intelligence Surveillance Court manages a rare display of backbone. In at least one case, when the secret court refused an application for journalists' records on First Amendment grounds, the Bureau turned around and obtained the same data using National Security Letters.

Letting Section 215 expire doesn't do anything to reform NSLs or other legal tools that might be subject to abuse. The USA Freedom Act doesn't reform every legal tool in the NSA's arsenal, Sanchez argues, but it reforms several of them, and it would bring some much-needed transparency to the agency. So it would be a mistake for privacy advocates to declare victory if Congress simply allows Section 215 to expire.