



proudly present:

Status of Legislative Reform

Greg Nojeim

Director of the Project on Freedom,
Security and Technology

Center for Democracy & Technology

CLOUD COMPUTING
Revolutionizing Entertainment & Media
The Impact of Mobile Cloud Computing & Big Data
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Two Kinds of Reforms For Two Kinds of Surveillance

- Intelligence Surveillance: Purpose is to collect Foreign Intelligence Information
 - Authority: Foreign Intelligence Surveillance Act
 - Amended by the PATRIOT Act
 - Includes PRISM Program (downstream, Section 702)
 - Includes “upstream” surveillance
 - Bulk collection of telephony metadata (Section 215)
 - Bulk collection of Internet metadata 2004-2011 (pen/trap)

Two Kinds of Reforms For Two Kinds of Surveillance

- Criminal surveillance: purpose is to investigate crimes
 - Authorities: Electronic Communications Privacy Act (ECPA) and the Wiretap Act
 - PATRIOT Act made minor changes
 - More focused, less bulk collection
 - No major updates since enacted in 1986

ECPA REFORM: 3 years old

DIGITAL DUE PROCESS COALITION

- Warrant for content: key for cloud
 - Eliminate 180-day rule
 - Eliminate “opened/unopened” distinction
 - Override RCS/ECS distinction
- Warrant for location information
 - GPS v. cell site
 - Stored v. prospective
- Raise pen/trap standard
- Result: clarity, certainty & privacy

FISA REFORM: 3 months old

COALITION IN THE MAKING

- Parameters: Protect Americans & protect all
- Transparency: limits on “gag orders”
 - Disclose no. of orders & no. of accounts impacted
- End bulk collection
 - Info sought must pertain directly to terrorist, spy or other “agent of a foreign power,” or person in contact with AFP, or to the AFP’s activities
 - Section 215 (used for telephony metadata)
 - Pen/trap (used for Internet metadata)
 - National Security Letters

OTHER FISA REFORMS

- Close “backdoor search loophole”
- Insert “special advocate” to argue for privacy in FISA Court proceedings
- Disclose significant FISA Court opinions
- Limit scope of Section 702 intelligence surveillance
 - Narrow the permissible purposes of surveillance
 - Eliminate “about-the-target” interception
- Human rights framework for surveillance
 - “necessary & proportionate” (non-legislative)

Anti-Reform Agenda

- Motivated by legitimate concerns about terrorism
- Codify bulk collection
 - Though no proof the telephony metadata program or the Internet metadata program foiled a single terrorist attack
- Data retention mandates

Status and Timeline

- ECPA Reform
 - Cleared Senate Judiciary Committee, awaiting Senate floor action
 - Pending: resolution of SEC objections
 - Pending: introduction in House Judiciary
- FISA Reform
 - 30 bills introduced; bills likely to move will be introduced this week
 - End vs. codify bulk collection
 - Judiciary Committee bills would end it and Intelligence Committee bill would codify it

What Can Cloud Companies Advocate In Order To Build User Trust?

- ECPA Reform
- FISA transparency
 - Legislation, litigation, administrative reforms
- End to bulk collection
- Limits on scope of intelligence surveillance
- Human rights framework for intelligence surveillance