



## Section 702

Congress should not reauthorize Section 702, the invasive spying program that sweeps up the emails, text messages, and other online communications of millions of innocent Americans. Congress should end the many years of overreach by the U.S. Intelligence Community (IC) and close warrantless “backdoor” access to data by allowing the law to sunset at the end of 2023.

### **Backdoor Access to Americans’ Data is Illegal and Unconstitutional**

Section 702 specifically prohibits intentionally targeting an American. Nevertheless, while targeting foreigners outside the U.S. for “foreign intelligence information,” the IC routinely acquires innocent Americans’ communications without a probable cause warrant. The collection of all that data from U.S. telecommunications and internet providers results in the “incidental” capture of conversations involving a huge number of people in the United States. The IC’s latest [Annual Statistical Transparency Report](#) documents how the Federal Bureau of Investigation (FBI) [abuses Section 702](#) to spy on Americans without a warrant. The report reveals that between December 2020 and November 2021, the FBI queried the data of potentially more than [3,000,000](#) “U.S. persons” without a warrant.

### **Warrantless “Incidental” Collection Must Be Stopped**

This backdoor access to U.S. persons’ data isn’t “incidental”; each agency’s “targeting” and “minimization” rules allow access to Americans’ communications caught in the Section 702 dragnet.

Based on the staggering number of times the FBI searches the Section 702 database using queries related to individual Americans, Section 702 has become a routine part of the Bureau’s “law enforcement mission.” The IC lobbied for Section 702 as a tool for national security outside the borders of the U.S., but it is apparent that the FBI uses it to conduct domestic, warrantless surveillance on Americans, including for run-of-the-mill crimes. This “incidental” collection of data must be stopped.

### **Conclusively Prohibit “About” Collection**

Prior to 2017, the IC interpreted Section 702 to allow “about” collection, the practice of searching through Internet traffic to collect not only communications to or from an intelligence target but also those that simply mention an identifier used by a target, such as an email address. The NSA’s “about collection” repeatedly overstepped even very permissive rules imposed by the FISA Court, and in 2017 the agency announced it would end “about collection” rather than try to comply. In its 2018 extension of Section 702, Congress unwisely codified the practice and set rules by which the NSA could restart the collection, potentially without public notice. Particularly considering the ongoing abuse of Section 702 described above, Congress should now conclusively and permanently prohibit “about collection.”

### **Ensure Accountability and Transparency**

As the misuse of Section 702 for warrantless access to Americans’ communications and “about collection” demonstrate, national security laws that mandate secrecy and deference to the executive branch stand in the way of oversight by Congress, the courts, and the public. Congress should overhaul the classification system and amend FISA to explicitly reject statutory interpretations by the Supreme Court that bar private litigants from enforcing their rights against unconstitutional surveillance.

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