



Section 702 of the Foreign Intelligence Surveillance Act (FISA): Its Illegal and Unconstitutional Use

FISA was passed in 1978 after the Church Committee, a special investigative committee, uncovered illegal and unconstitutional spying by the NSA and CIA. FISA created a secret court called the Foreign Intelligence Surveillance Court (FISA Court) to oversee the targeted spying on *specific and identified* agents of foreign powers.

After 9/11, President Bush bypassed the FISA Court and began illegally mass spying on domestic communications. Journalists and whistleblowers exposed the illegal surveillance a few years later, but Congress failed to stop the spying. Instead, it passed the 2008 FISA Amendments Act (FISA AA) to justify more spying. In particular, Section 702 is used to justify mass collection of emails and phone calls.

How It Works:

<i>"Upstream" Collection Orders</i>	<i>PRISM (Other) Collection Orders</i>
The FISA Court approves a Section 702 order allowing NSA to work with telecoms to copy, scan, and filter Internet and phone traffic coming through their physical infrastructure.	Other Section 702 orders are directed at specific companies to compel the disclosure of content of communications, so long as it is "targeted" at sufficiently (51%) foreign people.
In both instances, even if the communication is from, or to, an innocent American, the communications are copied and stored in a searchable database.	

The Use of Section 702 Is Illegal and Unconstitutional

Section 702 specifically prohibits intentionally targeting an American. Nevertheless, while targeting others, the NSA routinely acquires innocent Americans' communications without a probable cause warrant. The surveillance is similar to the hated British general warrants—broad and vague warrants used against American colonists—which led to the Fourth Amendment.

Rampant Violations of the Law and the Constitution

In 2011, the FISA Court held that the NSA's collection of Internet communications violated the Fourth Amendment because, despite targeting foreign communications, the agency was still collecting approximately 56,000 American emails a year.¹ The agency still collects the communications, but now segregates them into a separate database. In addition, an annual NSA Internal Audit revealed over thousands of violation, in Washington area offices in one year.² Each violation could impact hundreds of thousands of innocent communications. In one example, a programming error confused US area code 202 for 20, the international dialing code for Egypt, and intercepted a "large number" of calls placed from Washington.

In another, analysts searched databases for communications with "Ericsson" and "radar" or "radio"—terms that would surely pick up innocent American's communications. Other news reports show extensive abuse of the spying, including NSA employees using the system for LOVEINT: to spy on their ex-boyfriends and girlfriends.³

Mass Spying Must Stop:

As part of the StopWatching.US, over 100 organizations and half-a-million people demand Congress stop mass spying on innocent communications and conduct a full Congressional investigation into the spying by a new investigative committee.

¹ US Foreign Intelligence Surveillance Court. Memorandum of Opinion. October 3, 2011. <https://eff.org/r.b6ZT>

² Gellman, Barton. "NSA broke privacy rules thousands of times per year, audit finds." *Washington Post*, 15 August 2013. <https://eff.org/r.1bZV>

³ Strohm, Chris. "Lawmakers Probe Willful Abuses of Power by NSA Analysts." *Bloomberg LP*, 21 August 2013. <https://eff.org/r.1bZW>