

The Honorable John Boehner
Speaker
United States House of Representatives
H-232 The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
Democratic Leader
United States House of Representatives
H-204, US Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Majority Whip
United States House of Representatives
H-107, The Capitol
Washington, DC 20515

The Honorable Steny Hoyer
Democratic Whip
United States House of Representatives
1705 Longworth House Office Building
Washington, DC 20515

The Honorable Hal Rogers
Chairman
House Appropriations Committee
2406 Rayburn House Office Building
Washington, DC 20515

The Honorable Nita Lowey
Ranking Member
House Appropriations Committee
2365 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Rodney Frelinghuysen
Chairman
Defense Appropriations Subcommittee
2306 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Pete Visclosky
Ranking Member
Defense Appropriations Subcommittee
2256 Rayburn House Office Building
Washington, D.C. 20515

June 18, 2014

Dear Representatives Boehner, McCarthy, Rogers, Frelinghuysen, Pelosi, Hoyer, Lowey, and Visclosky:

We are writing in support of an amendment that Representatives Massie and Lofgren intend to offer to H.R. 4870, the Department of Defense Appropriations Act, with the support of a bipartisan coalition of cosponsors. The recent and ongoing revelations about the intrusive nature and broad scope of government surveillance have badly damaged the trust users have in the security of their Internet communications. This amendment would help begin to restore that trust in two ways.

First, the amendment would address the “backdoor search loophole” by prohibiting the use of appropriated funds to enable government agencies to collect and search the communications of U.S. persons without a warrant using section 702 of the Foreign Intelligence Surveillance Act (50 U.S.C. 1881a), a statute primarily designed to pick up communications of individuals abroad. Although section 702 prohibits the government from intentionally targeting the communications of U.S. persons, it does not impose restrictions on querying those communications if they were inadvertently or incidentally collected under section 702. Moreover, as a result of an apparent change in the NSA’s internal practices in 2011, the NSA is now explicitly permitted under certain circumstances to conduct searches using U.S. person names and

identifiers without a warrant.¹ In March, James Clapper, the Director of the Office of National Intelligence, confirmed in a letter to Senator Wyden that such warrantless queries of U.S. person communications are being conducted.²

We appreciate that section 8127 of H.R. 4870 prohibits the use of funds by the NSA to target a section 702 acquisition against a U.S. person or to acquire content under section 501 of the Act (“215”). However, it is widely understood that those prohibitions are already established in statute, and therefore those changes would do little beyond clarifying current law. We believe that Representatives Massie and Lofgren’s proposal judiciously complements these provisions by ensuring similar treatment of information about U.S. persons after its collection.

Second, the amendment would prohibit the use of appropriated funds to require or request that any person or entity build back doors in its products or services that would facilitate electronic surveillance of users of such products or services. This is a sensible limitation that not only improves transparency of surveillance practices, but also promotes security by avoiding the creation of potential vulnerabilities that can later be exploited by criminals and other bad actors. Notably, this particular provision would exempt any mandates or requests that are made with regard to products and services that are covered under the Communications Assistance for Law Enforcement Act (CALEA).

Both of these measures would make appreciable changes that would advance government surveillance reform and help rebuild lost trust among Internet users and businesses, while also preserving national security and intelligence authorities. We urge passage of Representatives Massie and Lofgren’s amendment.

Sincerely,

Access
American Civil Liberties Union
American Library Association
Bill of Rights Defense Committee
Center for Democracy & Technology
CloudFlare, Inc.
Competitive Enterprise Institute
Computer & Communications Industry Association
CREDO
Demand Progress
Electronic Frontier Foundation
Fight for the Future
Floor64

Free Press Action Fund
Google
Internet Infrastructure Coalition (i2C)
Liberty Coalition
National Association of Criminal
Defense Lawyers
New America Foundation's
Open Technology Institute
OpenTheGovernment.org
Project on Government Oversight (POGO)
Sonic.net
SpiderOak
ThoughtWorks

¹Minimization Procedures Used By The National Security Agency In Connection With Acquisitions Of Foreign Intelligence Information Pursuant To Section 702 Of The Foreign Intelligence Surveillance Act Of 1978, As Amended (Jan. 8, 2007), *available at* <http://www.dni.gov/files/documents/Minimization%20Procedures%20used%20by%20NSA%20in%20Connection%20with%20FISA%20SECT%20702.pdf>.

² Letter from James Clapper, Director of National Intelligence, to Senator Wyden (Mar. 28, 2014) (on file with author), *available at* <http://www.wyden.senate.gov/download/?id=130BFF88-A3C0-4315-A23B-C4F96C499D9D&download=1>.