



Harvard Model Congress

Boston 2024

NSA Oversight Update

Debates over the ethics and risks of the National Security Agency’s data collection and surveillance methods raged on in the media and on Capitol Hill this fall. In July, WIRED reported that NSA agents have lobbied congresspeople to oppose an amendment to the must-pass National Defense Authorization Act, which funds the U.S. military. The bipartisan amendment, introduced by Reps. Warren Davidson (R-OH-8) and Sara Jacobs (D-CA-51), would forbid federal intelligence agencies from “purchasing data that would otherwise require a warrant, court order, or subpoena” to obtain (Cameron 2023).

A leading voice on NSA oversight has been Sen. Ron Wyden (D-OR), who sits on the Senate Intelligence committee and has taken hardline stances against the inappropriate use of civilian data. In November, he announced that he would block the nomination of Lt. Gen. Timothy Haugh to be the next director of the National Security Agency, saying that “The American people have a right to know whether the NSA is conducting warrantless domestic surveillance of Americans in a manner that circumvents the Fourth Amendment to the Constitution” (Wyden 2023). Haugh was eventually confirmed in December of 2023 (NSA/CSS 2023). But that hasn’t stopped Wyden, who in January 2024 released an unclassified document that shoed the National Security Agency regularly buys web browsing data from commercial vendors without warrants. The former NSA director, Paul Nakasone, said that the purchases include data with information on domestic internet users, though it does not involve the content of those communications (Fung 2024).

Congressional debate has also centered around Section 702 of the Foreign Intelligence Act, which is the key provision allowing government agencies to collect data on their own citizens. Politico reported in early February that Speaker Mike Johnson (R-LA) is considering having a vote on the House floor on a bill – which is still in negotiations – to revise federal agencies’ spy powers (Carney and Beavers 2024). A sticking point for representatives has been an amendment requiring a warrant to search for information on U.S. citizens collected under Section 702 – a draft from the House Judiciary committee included it, which worried some critics who felt it would “effectively neuter” the provision, while a draft from the House Intelligence committee did not (Carney and Beavers 2024). Though many congresspeople were looking toward the Privacy and Civil Liberties Oversight Board, an independent bipartisan watchdog, to give guidance on what to do about Section 702, the panel was split among partisan lines. The report – voted through by the panel’s three Democrats – notably endorses the proposal to have federal agents

seek permission from the Foreign Intelligence Surveillance Court in order to seek Section 702 information on U.S. citizens (Sakellariadis and Carney 2023). The debate over whether to reauthorize Section 702, and with what restrictions, is one that is fiercely raging in Congress as we speak.

BIBLIOGRAPHY

Cameron, Dell. “US Spies Are Lobbying Congress to Save a Phone Surveillance ‘Loophole.’” *Wired*, Conde Nast, 27 July 2023, www.wired.com/story/nsa-ndaa-lobbying-privacy-loophole/.

Carney, Jordain, and Olivia Beavers. “Johnson Considers New Vote on Spy Powers for next Week.” *POLITICO*, 7 Feb. 2024, www.politico.com/live-updates/2024/02/07/congress/spy-powers-redux-in-the-house-00140257.

Fung, Brian. *The NSA Buys Americans’ Internet Data, Newly Released Documents ...*, 26 Jan. 2024, www.cnn.com/2024/01/26/tech/the-nsa-buys-americans-internet-data-newly-released-documents-show/index.html.

Sakellariadis, John, and Jordain Carney. “Privacy Watchdog Fractures over 702 Opinion.” *POLITICO*, 28 Sept. 2023, www.politico.com/news/2023/09/28/privacy-civil-liberties-oversight-702-00118562.

Savage, Charlie. “N.S.A. Buys Americans’ Internet Data without Warrants, Letter Says.” *The New York Times*, The New York Times, 25 Jan. 2024, www.nytimes.com/2024/01/25/us/politics/nsa-internet-privacy-warrant.html.

“Senate Votes to Confirm Lt. Gen. Timothy Haugh to Lead CYBERCOM and NSA/CSS.” *National Security Agency/Central Security Service*, 22 Dec. 2023, www.nsa.gov/Press-Room/Press-Releases-Statements/Press-Release-View/Article/3625189/senate-votes-to-confirm-lt-gen-timothy-haugh-to-lead-cybercom-and-nsacss/.

“Wyden: NSA Must Answer Whether It Is Buying Americans’ Location Data and Web Browsing Records before New Director Is Confirmed.” *U.S. Senator Ron Wyden of Oregon*, 30 Nov. 2023, www.wyden.senate.gov/news/press-releases/wyden-nsa-must-answer-whether-it-is-buying-americans-location-data-and-web-browsing-records-before-new-director-is-confirmed.