

THE CHANGES WYDEN/UDALL WANTED TO SECTION 215

As I've been reporting, Ron Wyden and Mark Udall unsuccessfully tried to get the Senate to require the government to reveal how it interprets the PATRIOT Act. And since both have made it clear that Section 215 is one of the concerns, I wanted to look at the amendment they've proposed to fix Section 215. They proposed to replace this language:

(2) shall include—

(A) a statement of facts showing that there are reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, such things being presumptively relevant to an authorized investigation if the applicant shows in the statement of the facts that they pertain to—

(i) a foreign power or an agent of a foreign power;

(ii) the activities of a

suspected agent of a foreign power who is the subject of such authorized investigation; or
(iii) an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation; and
(B) an enumeration of the minimization procedures adopted by the Attorney General under subsection (g) that are applicable to the retention and dissemination by the Federal Bureau of Investigation of any tangible things to be made available to the Federal Bureau of Investigation based on the order requested in such application.

With this:

(2) shall include—

(A) a statement of facts showing that there are reasonable grounds to believe that the records or other things sought—

(i) are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2) to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities; and

(ii)(I) pertain to a foreign power or an

agent of a foreign power;

(II) are relevant to the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or

(III) pertain to an individual in contact with, or known to, a suspected agent of a foreign power; **and**

(B) an enumeration of the minimization procedures adopted by the Attorney General under subsection (g) that are applicable to the retention and dissemination by the Federal Bureau of Investigation of any tangible things to be made available to the Federal Bureau of Investigation based on the order requested in such application.”.

This actually has become a perennial suggested change, one the Administration has been rejecting, in general, since 2009.

What the existing law does, through magic of grammatical obfuscation, is eliminate the requirement that Section 215 have anything to do with an actual investigation of suspected terrorists (or alleged spies like Julian Assange). It’s just easier (“presumptively relevant”) to use Section 215 with such people.

But all of that means the government can use Section 215 to get tangible things to protect against international terrorism. The government might only have to argue that it needs a database of everyone’s cell phone geolocation so when they look for terrorists or WikiLeaks supporters, they’ve got that all on file already.

Wyden and Udall are trying to swap out that language to require that the information both be relevant to an investigation **and** be tied to some suspected terrorist (or Julian Assange). The magic of “and.”

But of course that would make Section 215

useless for bulk collection, which is why this Amendment, after some fear-mongering, always gets defeated.

Because the United States of America, under the guise of fighting terrorists, has to consistently lie to its citizens so it can create massive databases on completely innocent people available for any searches the government might want to do, whether those searches have to do with terrorism or not.

And they call all this lying? The PATRIOT Act.