USA FREEDUMB ACT AND RUPPROGE BOTH ADOPT INTELLIGENCE COMMUNITY DEFINITION OF "BULK COLLECTION"

Update: An updated version of the Managers Amendment does define the term:

> *(2) SPECIFIC SELECTION TERM.—The term 'specific selection term' means a term used to uniquely describe a person, entity, or account.*

This is far better than nothing. Though I have concerns about "entity" and I suspect there will be some pushback here, since not even phone numbers "uniquely describe a person," much less IPs. (Update: see my post on my concerns about the definition.)

As I noted in this post, USA Freedumb Act (what I've renamed the compromised USA Freedom Act) purports to limit bulk collection by tying all collection to specific selection terms. It does this for Section 215.

> No order issued under this subsection may authorize the collection of tangible things without the use of a specific selection term that meets the requirements of subsection (b)(2).

It does it for Pen Register/Trap and Trace.

> (3) a specific selection term to be used as the basis for selecting the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied;

And it does for all four NSL types, as here with call records under ECPA.

> COUNTERINTELLIGENCE ACCESS TO TELEPHONE TOLL AND TRANSACTIONAL RECORDS.—Section 2709(b) of title 18, United States Code, is amended in the matter preceding paragraph (1) by striking ‘‘may’’ and inserting ‘‘may, using a specific selection term as the basis for a request’’.

In fact, that's the same mechanism RuppRoge (the House Intelligence Committee's bill) uses to prevent bulk collection — though it limits bulk collection for fewer categories of things.

It does so for electronic communications records.

> Notwithstanding any other provision of law, the Federal Government may not acquire under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) records of any electronic communications without the use of specific identifiers or selection terms.

And it does so for sensitive business records.

> Notwithstanding any other provision of law, the Federal Government may not acquire under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) library circulation records, library patron lists, book sales records, book customer lists, firearm sales records, tax return records, education records, or medical records containing information that would identify a person without the use of specific identifiers or selection terms.

And this limitation, both bills proclaim, will prevent bulk collection.

Neither bill defines what they mean by selection term or specific identifier.

Before I consider whether these bills will, in

fact, prevent what you and I might consider bulk collection, note what has happened: both of these bills — the crappy Intelligence Committee wish list bill and the allegedly less crappy "reform" bill — have adopted the definition of "bulk collection" used by the notoriously Orwellian Intelligence Community.

This is perhaps best explained in Obama's President's Policy Directive on surveillance.

> References to signals intelligence collected in "bulk" mean the authorized collection of large quantities of signals intelligence data which, due to technical or operational considerations, is acquired without the use of discriminants (e.g., specific identifiers, selection terms, etc.).

Now, we're at a huge disadvantage to be able to assess whether this definition of bulk collection bears any resemblance to what ordinary humans might understand bulk collection to mean, because the government is being very disingenuous about what they claim it to mean.

The government often publicly claims selectors are things "like telephone numbers or email addresses," as they did repeatedly at the last PCLOB hearing.

I can assure you, however, that when they refer to "selectors like email or telephone," they're downplaying their use of things like other IDs (phone handset and SIM card IDs, credit card numbers, Internet IDs or even passwords, IP address, and site cookies). And nothing in the definition says selection terms have to have anything to do with actual people (as the evidence they use malware code as a selector would indicate). Plus, I could envision many things — such as "Area Code 202" or "Western Union transfers over $100" — that would seem to qualify as selection terms.

But we can measure whether limits to selectors or search terms prohibits bulk collection via

another means — by looking at the program about which we've gotten most details on selector searches: upstream 702 collection.

While we can't assess how many "innocent" Americans get sucked up in this purportedly non-bulk collection (and I doubt NSA can either!), we do have an idea how many American communications get sucked up who shouldn't according to the one-end foreign rule on the collection.

Up to 56,000 American communications a year, according to FISC Judge John Bates' estimate (because the NSA refused to provide him the real numbers).

56,000 American communications that should not, under the law, have been targeted, sucked up using "identifiers" and "selection terms."

And the government doesn't consider that bulk collection at all.

That, my friends, is the standard two different Committees in Congress have adapted as well, doing the intelligence community's bidding, claiming they've solved the bulk collection problem.