

NSA ONLY FINDS 59% OF ITS TARGETING OF US PERSONS

This will be a minor point, but one that should be made.

The Privacies and Civil Liberties Oversight Board report on Section 702 included this little detail:

In 2013, the DOJ undertook a review designed to assess how often the foreignness determinations that the NSA made under the targeting procedures as described above turned out to be wrong – i.e., how often the NSA tasked a selector and subsequently realized after receiving collection from the provider that a user of the tasked selector was either a U.S. person or was located in the United States. The DOJ reviewed one year of data and determined *that 0.4% of NSA's targeting decisions resulted in the tasking of a selector that, as of the date of tasking, had a user in the United States or who was a U.S. person.* As is discussed in further detail below, data from such taskings in most instances must be purged. The purpose of the review was to identify how often the NSA's foreignness determinations proved to be incorrect. Therefore, the DOJ's percentage does not include instances where the NSA correctly determined that a target was located outside the United States, but post-tasking, the target subsequently traveled to the United States.

0.4% of NSA's targeting decisions falsely determine someone is a foreigner who is in fact a US person.

That's a pretty low amount. Though based on

ODNI's number – showing 89,138 people were targeted in 2013 – that means 356 US persons get wrongly targeted each year. Again, still not a huge number, but it compares rather interestingly with the 1,144 people targeted under FISA each year. Those wrongly targeted under Section 702 actually make up 24% of those targeted in a year.

Just as interesting is comparing the NSA's internal audit (see page 6) with DOJ's results. For a period presumably covering some of the same time period, NSA discovered 20 US persons tasked (for some reason there was a big increase in this number for the last quarter of the report) and 191 incidences of "other inadvertent" tasking violations, which are described as, "situations where targets were believed to be foreign but who later turn out to be U.S. persons *and other incidents that do not fit into the previously identified categories*" (my emphasis). Not all of those 191 incidents should be counted as wrongly targeted US persons – the description includes other inadvertent targeting. But even counting them all as such, that means NSA only found 211 of the potential wrongly targeted US persons in a year, while DOJ found 356.

Again, in a country of 310 million people, these numbers are small, particularly as compared to the collection of US person communications under upstream collection, which is thousands of times higher.

But it does say that NSA's internal reviews don't find all the Americans who get wrongly targeted.

Correction: I originally mistranscribed DOJ's number as .04%—though I had calculated using .4%.