

DOJ IG ISSUES YET ANOTHER CLASSIFIED REPORT THAT SHOULD BE PUBLIC BEFORE CONGRESS VOTES ON PATRIOT ACT

DOJ's Inspector General just announced it completed its draft report on the use of Pen Register/Trap and Trace between 2007 and 2009 15 months ago, but the Intelligence Community only finished its classification review last month. It has now issued a classified version of that report to the Judiciary and Intelligence Committees.

Department of Justice Inspector General Michael E. Horowitz today issued a classified report entitled, The Federal Bureau of Investigation's Use of Pen Register and Trap and Trace Devices under the Foreign Intelligence Surveillance Act in 2007 through 2009. The Department of Justice (DOJ) Office of the Inspector General (OIG) completed a draft of this report in February 2014. At that time, we provided the draft report to DOJ, the Federal Bureau of Investigation (FBI), and the Intelligence Community to conduct factual accuracy and classification reviews. In May 2014, we circulated an updated draft report that reflected minor revisions made in response to the factual accuracy comments we received. We did not receive the final results of the classification reviews until April 30, 2015.

We are providing today's classified report to the relevant Congressional oversight and intelligence committees,

as well as to DOJ leadership offices. We recently submitted a short unclassified Executive Summary of the report to DOJ, the FBI, and the Intelligence Community for review. We will publicly release the Executive Summary as soon as that review is completed.

This is another report that should have been released long before the current debate on the PATRIOT Act. While PRTT is *not* among the authorities that sunsets on Sunday, the issues surrounding the shut-down of the bulk Internet program in (around) October 2009 are central to the debate about the dragnet going forward, because “call” records are increasingly Internet records.

Moreover, the USA F-ReDux calls for “privacy guidelines” that I believe are still inadequate to protect US persons’ privacy in the ways the IC is likely using PRTT today. Plus, PRTT is likely used for applications – such as tower dumps and Stingrays – that affect the privacy of many people not otherwise targeted. Congress should have details about that before they legislate.

In addition, Richard Burr’s bill actually adopts a definition of “content” – excluding Dialing, Routing, Addressing, and Signaling data from the definition of content – that responds directly to the issues behind the Internet dragnet shutdown in 2009.

Last week, much of DC discovered for the first time – because of the delayed release of DOJ IG’s report on Section 215 – what I had been reporting for months: that the bulk of Section 215 orders actually collect bulky Internet data. That report also disclosed that, at least as used up until 2009 (that is, as FBI just started using 215 for that Internet collection), Section 215 wasn’t all that useful.

It is highly likely that the 15-month old PRTT report DOJ’s IG just released would have

information that is equally important to this debate.

But the public is not going to have access to it.