



What is FISA Amendments Act Section 702?

A Discussion with PCFR and The Sandra Day O'Connor College of Law

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Summary

With the turn of the century, intelligence has had to adapt to a very technologically based society that is advancing at a rapid rate. Technology is an important asset in resolving national security threats, proving beneficial. Section 702, a 2008 amendment to the Foreign Intelligence Surveillance Act, is what has allowed for the Department of National Intelligence, among other agencies, to use technology as a tool for trying to keep our nation safe. The amendment is up for renewal this year, but some are not so sure of it, as it is currently written now. Although the act is meant to target non-citizens outside of the United States, there are still concerns over personal privacy and the ability of intelligence agencies to be able to pull copious amounts of information at their discretion. The privacy of American citizens is incredibly important and any threat of information being misused is serious and controversial.

Issue

The question regarding the FISA Amendments Act Section 702 is about whether there is enough oversight to be able to protect the privacy of American citizens and be proven effective in maintaining national security. Although the act is used to investigate non-citizens without warrants, there is still “incidental” information when any non-citizens interact with U.S. citizens.¹ There have been examples of how this information regarding U.S. citizens has been poorly managed and degrades the trust, inviting skepticism regarding the act. So does the FISA Act require more oversight? Is it even lawful? What options are there if it is removed?

¹ [nbcnews.com/politics/congress/section-702-foreign-intelligence-surveillance-act-congress-what-know-rcna96259](https://www.nbcnews.com/politics/congress/section-702-foreign-intelligence-surveillance-act-congress-what-know-rcna96259)

Background

The original Foreign Intelligence Surveillance (FISA) Act was developed in 1978 in response to the Watergate Scandal to create standard procedures of surveillance intelligence. Since its inception, the federal law has been the standard for gathering intelligence. However, the events at the century, particularly 9/11, changed the game, highlighting the need for more efficient intelligence-gathering methods. The intelligence agencies found out that acts of terrorism were being planned using technology that was inaccessible to them, and every time they were granted permission to investigate, it was too late. This led to the development of Section 702, which marked a turning point and a reassessment of the needs of intelligence agencies.

The concern comes at the possible misuse and mismanagement of information regarding American citizens. In a Foreign Intelligence Surveillance Court case, it was found that there was a misuse of American information for investigations approximately 278,000 times, with a particular focus on its use for different instances of rioting in 2020 and 2021. Although the FBI has responded accordingly with making procedural changes to avoid further malfeasance, there is still the threat of recurrence that lingers in the minds of lawmakers. Even with these issues, President Joe Biden stands firmly behind the need for Section 702 in the interest of national security and the safety of Americans.

Current oversight for the practice of Section 702, primarily involves the Foreign Intelligence Surveillance Court (FISC), but also the Department of Justice, Congress, and public oversight by mandating regular reports of its use. FISC actively reviews uses of the FISA Section 702 to ensure that it is being used properly. But as noted prior, this deterrence is not always effective. In 2018, during the latest vote by Congress for the renewal of Section 702, one-third of the Senate voted against the act's renewal, citing concerns over American liberties. To pursue the renewal, it is likely that some reforms will have to be made. One of the options being considered is narrowing the scope of individuals who can be subjected to surveillance. Additionally, more regular declassification of documents and further judicial oversight are being considered as well.

The renewal of Section 702 in 2018 was a close call. However, with recent revelations of further non-compliance of its regulations, it will certainly not be renewed as easily this year. To keep Section 702 of FISA in force, it will be crucial to strike a balance between strengthening national security and preserving civil liberties.