



Information Technology Industry Council

“Foreign Intelligence Surveillance Act (FISA) Reforms”

Testimony of

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Before the

U.S. Senate Select Committee on Intelligence

June 5, 2014

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Introduction

Chairman Feinstein, Vice Chairman Chambliss, and members of the U.S. Senate Select Committee on Intelligence, thank you for the invitation to offer the views and opinions of the technology sector at today’s important hearing on FISA reform.

I am Dean Garfield, president and CEO of the Information Technology Industry Council, or ITI, a U.S.-based global trade association representing 57 of the world’s most dynamic and innovative companies in the information and communications technology (ICT) sector. I want to thank you for inviting me to testify today on surveillance reform. It is our firm view that through enacting surveillance reform we have the opportunity to advance our economic and geopolitical interests while also putting in place a surveillance framework that aligns with who we are as a nation. We strongly encourage the Senate and Congress generally to seize this opportunity. We are committed to working with you in every way necessary and appropriate to ensure our shared goals are achieved.

I am proud to represent a sector that is changing the world for good—in every meaning of that word. Technological capabilities and innovations have changed the way we live, work, and play. We can wear a watch that is both a phone and a biometric device that can monitor our heart rate. We can drive cars that can slow down on their own to avoid accidents. We have access to three-dimensional printers that one day will produce organs and limbs to expedite transplants. And many of us can work from wherever we happen to be thanks to a device in our hands and the availability of important data to our fingertips.

Technological capabilities and continuous innovation rely on an ecosystem that is global in nature. An Internet governance model that is open, integrated, and borderless has made all this possible. The tech sector is committed to sustaining this model because it has served this nation and our world well.

The revelations about data collection by the National Security Agency (NSA) are having a significant economic impact on our sector. Further, this also has the potential for seriously damaging long-term implications on the global economy for innovation and Internet governance.

Business Impact

The United States has been a leader in, and major economic beneficiary of, practically every part of the technology sector. Public and government responses from around the world to the NSA disclosures put this leadership position at risk. The NSA disclosures have created a crisis of public trust in the U.S. technology sector as well as the U.S. government. “Made in America” is no longer viewed as a positive for customers of U.S. online services. Indeed, ITI member companies are experiencing increased levels of concern about government access to data, specifically access by the U.S. government. Other governments, of course, engage in online surveillance, but the impression being fueled globally in response to the NSA disclosures is that the U.S. government is the source of the problem, with U.S. companies seen as either aiding government surveillance, or particularly vulnerable to it.

The potential losses are tangible, demonstrable, and widespread. In the short term, the resulting commercial losses will likely reach the tens of billions of dollars, translating into lost American jobs. One study from the Information Technology & Innovation Foundation anticipates the revelations could result in as much as a \$35 billion loss to the U.S. cloud computing industry over the course of three years.¹ Other studies, including one by Forrester, suggest the losses could be even higher over a longer period of time.

Broader Implications

The potential adverse economic impact here in the U.S. could be even more significant and lasting if other governments enact legislation that creates barriers to the flow of data or forces localized data storage and production of technology. These types of measures disrupt the current Internet governance model that to date has ignited and sustained the incredible success of the Internet as a global platform for innovation and economic productivity. These measures would be highly disruptive to business operations, create network architecture inefficiencies that would hinder the performance of ICT services, and Balkanize open platforms, including the Internet, that are key to continued transformative innovations and global commerce. These measures will also result in significant economic losses in

¹ Castro, Daniel, “How Much Will PRISM Cost the U.S. Cloud Computing Industry?” The Information Technology & Innovation Foundation, August 2013.
<http://www2.itif.org/2013-cloud-computing-costs.pdf>

jurisdictions considering such proposals, thereby dampening global economic growth.²

Reforms

Public trust in the technology sector and the U.S. government must be restored, and congressional action is critical. At the same time, we also urge the administration to actively engage on this issue globally, and at the highest levels.

International government-to-government dialogue is critical to prevent harmful policies that will impact our economy.

ITI, along with the Software & Information Industry Association, developed a set of [seven global principles](#) that we believe should guide government surveillance policies around the world. These principles include the imperative that government surveillance not result in the indiscriminate collection of data. Also, the principles include the need for greater transparency into government collection. I ask that our seven global principles be submitted for the record along with my testimony.

Both the Review Group on Intelligence and Communications Technologies and the Privacy and Civil Liberties Oversight Board have made recommendations relating to the nation's surveillance programs, many of which align with our global principles. President Obama, back in January, outlined policy measures he supports and issued a Presidential Policy Directive that puts certain limitations in place with regard to government collection. And a recent settlement between the Department of Justice and a number of companies allows companies to be more transparent than previously permitted with regard to the information they are asked to provide to the U.S. government.

We are encouraged by the building momentum to reform our surveillance policies, which now must translate into congressional action. Last month, the House of Representatives passed a bill, the USA Freedom Act, that makes a number of important meaningful reforms to the nation's surveillance framework. We take this opportunity to raise several issues in connection with the version of the bill that recently passed the House. We are cognizant, however, that there may be certain factors unknown to us. That being said, our concerns reflect the important interest of being certain that the text of final legislation reflects legitimate desired policy outcomes.

The House has indicated that with this bill, bulk collection will come to an end. We applaud that goal. We have concerns, however, that the actual language of the bill may not fully achieve this goal. Perhaps the most critical language in the bill is what serves as the basis for a production order with which a company must comply. Defined in

² Matthias Bauer, Hosuk Lee-Makiyama, Erik van der Marel, and Bert Verschelde, "The Cost of Data Localization: Friendly Fire on the Economic Recovery," European Centre for International Political Economy, March 2014. http://www.ecipe.org/media/publication_pdfs/OCC32014_1.pdf.

the bill as the “specific selection term,” this term is purportedly designed to end bulk collection and require that an order to produce information be appropriately targeted. But as currently drafted, the definition is open-ended, thus the list—and the scope—of potential section terms is not meaningfully limited. This concerning definition is a departure from the definition that was in the version of the bill that passed the House Judiciary Committee and the House Permanent Select Committee on Intelligence. The definition in this earlier version of the bill was not open ended, and the goal of ending bulk collection is in fact achieved with this language. The language of any final legislation must match the desired policy outcome, which in this case is ending bulk collection.

Another critical policy outcome in reforming our nation’s surveillance framework is facilitating the greatest level of transparency possible into the orders with which companies must comply. The current USA Freedom Act enables companies to choose from a number of different options on how they can publicly report on the orders they receive. We would urge the Senate Intelligence Committee to consider whether the transparency provisions in the USA Freedom Act could be made even more robust in a way that allows for the greatest transparency possible, consistent with national security interests.

Conclusion

We need to restore “Made in America” as a positive in the technology space. We at ITI are ready to work with this Committee and your colleagues on both sides of Capitol Hill, as well as the administration, to restore trust in the innovative products and services that ITI member companies provide, and to maintain the open and borderless Internet that has served to the benefit of so many individuals, companies, and countries around the world.

Thank you for this opportunity to appear before you today. I will be happy to answer any questions you may have.