The spy law that big tech wants to limit

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Top tech companies are mounting a push to limit how US intelligence agencies collect and view texts, emails and other information about their users, especially American citizens.

The companies, including Alphabet Inc.'s Google, Meta Platforms Inc.

and Apple Inc., want Congress to limit Section 702 of the Foreign Intelligence Surveillance Act, as they work to renew the law before it expires at the end of the year, according to three people familiar with the discussions.

There is a growing bipartisan consensus in Congress to not only renew the law but to make changes in response to a series of reports and internal audits documenting abuses. That's left the tech industry optimistic that broader reforms will get through Congress this time, according to two lobbyists who asked not to be identified relaying internal discussions.

The law, passed by Congress in 2008 in response to revelations of warrantless spying on US citizens by the Bush administration, granted sweeping powers that have been criticized over the years for different reasons. Civil liberties groups think more privacy protections are needed. Former President Donald Trump and his allies claim that spying powers enable intelligence agencies to conspire against conservatives.

"Reforms are needed to ensure dragnet surveillance programs operate within constitutional limits and safeguard American users' rights, through appropriate transparency, oversight and accountability," said Matt Schruers, president of the tech trade group Computer & Communications Industry Association, which counts Apple, Google, Meta and Amazon.com Inc. among its members.

Intelligence agencies say Section 702 is an essential tool that has generated critical information on the espionage and hacking activities of countries such as China and contributed to the successful drone strike that killed al-Qaeda leader Ayman al-Zawahiri last year.

Under Section 702, the agencies can compel companies without a warrant to turn over communications, phone records and other data for

national security investigations that target non-US citizens living outside the country, even if the communications of American citizens are involved. The information is kept in a database that analysts can access for authorized investigations that have a foreign intelligence purpose.

Top US officials acknowledge there have been problems—or so-called "compliance incidents"—regarding how authorities under Section 702 have been used. But they say significant efforts and reforms have been made to address the issues.

Key lawmakers and national security officials from President Joe Biden's administration have begun talking about what changes might be possible.

Social media companies and technology firms have an economic incentive to seek restraints on what the government can force them to do, as their relationship with US agencies was criticized after former government contractor and whistleblower Edward Snowden exposed how immense the global spying apparatus had become during the Obama administration.

Tech companies and their lobbying organizations want the ability to publicly disclose more information about how many times the government requests information about their users and customers and what kind of data they are being forced to hand over. They also want to restrict the government's ability to use the information, such as requiring the FBI to obtain a warrant supported by probable cause before searching the Section 702 database for information on US citizens.

FBI Director Christopher Wray said during recent congressional hearings that the number of times bureau analysts searched the Section 702 database for information about US people dropped 93% in 2022 compared to 2021.

Searches decline

There's been a decline in the number of searches overall, from about 3.4 million in 2021 to about 204,000 in 2022, according to an FBI official who asked to remain anonymous because the new statistics aren't yet official. That was largely due to reforms the FBI has made since 2021, including requiring analysts to "opt in" to search the Section 702 database, the official said. Previously, the database was included in searches by default even when analysts didn't intend to access it.

The companies mainly plan to work through the Reform Government Surveillance coalition, which was established in 2014. The group, which includes the biggest tech companies, is represented by Chad Tanner, from technology and cybersecurity-focused lobbying shop Monument Advocacy. Tanner, a well-connected advocate for the industry, joined Monument last year after serving as a Senate Intelligence Committee staffer for more than 10 years.

The law "is in a far more precarious position even than it was in the height of the Snowden disclosures," said Jake Laperruque, deputy director of the Security and Surveillance Project at the Center for Democracy and Technology, which receives funding from tech companies including Google, Amazon, Microsoft Inc. and TikTok Inc.

Ironically, the injection of conservative vitriol may provide the necessary impetus to place new legal controls on spying powers this year.

"I believe that a clean legislative reauthorization of 702 is a non-starter," said Representative Darin LaHood, an Illinois Republican, during a House Intelligence Committee hearing on March 9. "You must first acknowledge that a problem exists before we can formulate meaningful reforms to build back trust and confidence in the FISA process."

LaHood said he believes his name was improperly queried multiple times by FBI analysts combing through data collected under the authority.

Representative Pramila Jayapal, a Washington Democrat, welcomed LaHood's statement. "We must take this opportunity to reform Section 702 and overhaul privacy protections for Americans," she said.

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