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House of Representatives Judiciary Committee

Representative John Conyers  
Ranking Member  
House of Representatives Judiciary Committee

Senator Chuck Grassley  
Chairman  
Senate Committee on the Judiciary

Senator Dianne Feinstein  
Ranking Member  
Senate Committee on the Judiciary

CC: Representative Devin Nunes  
Representative Adam Schiff  
Senator Richard Burr  
Senator Mark Warner

Wednesday, March 1, 2017

The organizations represented by the Internet Infrastructure Coalition are largely responsible for the the operation of the global Internet. Together we represent many of the world's most important web hosting companies, data centers, registrars and registries, cloud infrastructure providers, managed services providers and related tech firms. Today, we write to support calls for reform of the U.S. national security surveillance authorities, specifically Section 702 of the Foreign Intelligence Surveillance Act Amendments Act ("FAA"), which is scheduled to sunset on December 31, 2017. The Internet infrastructure community wishes to engage Congress during the Section 702 reauthorization debate, to discuss the positive economic benefits of additional reforms to enhance public confidence, transparency, and privacy.

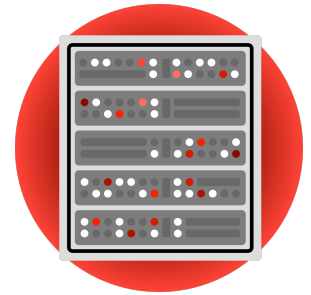
As we learned in 2013, programs operated pursuant to FAA Section 702 include "Prism," under which user information is ordered from technology companies, and "Upstream," which involves surveillance of information as it is in transit. The public attention brought by the revelations of these programs brought negative attention to U.S.-based technology companies and undermined consumer trust across our industries. In 2013, a study by the Information Technology & Innovation Foundation estimated that revelations about Prism alone would cost U.S. based cloud providers up to \$35 billion in revenue<sup>1</sup>, which has since been shown to be a low estimate.<sup>2</sup> Current estimates show that long term industry costs will be as high as \$180 billion.<sup>3</sup>

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<sup>1</sup> <http://www2.itif.org/2013-cloud-computing-costs.pdf>.

<sup>2</sup> <http://diginomica.com/2015/06/16/itif-life-after-nsa-isnt-any-easier-for-cloud-firms/>

<sup>3</sup> <http://blogs.wsj.com/cio/2013/08/16/nsas-prism-could-cost-it-service-market-180-billion/>.



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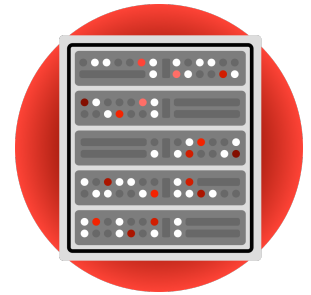
Our organizations have seen a loss of confidence that has directly, negatively, impacted our competitiveness within the United States. This loss of confidence has led to legal and policy changes in other countries. These policy changes have further damaged the U.S. Internet infrastructure economy in key non-U.S. markets. Web hosting providers in countries outside the United States, in particular Germany, Switzerland, and Brazil, have been actively marketing against U.S. web hosts<sup>4</sup>, insisting that data will be better protected outside the United States.

Enacting the USA FREEDOM Act on June 2nd, 2015 has helped to shift the conversation back in the right direction. The reforms present in the USA FREEDOM Act have added clarity, and some much needed reform on how the Federal government collects information gathering for foreign intelligence, counterterrorism, and criminal purposes. This has been a good starting point in restoring market confidence. Section 702 reform is an opportunity to build on the success of USA FREEDOM Act in ways that will aid the U.S. economy by continuing to restore market confidence in the Internet's infrastructure.

While Section 702 reform is likely to aid the U.S. economy, a failure to reform Section 702 could have grave economic consequences. Internet infrastructure companies rely heavily on economic agreements to run their global businesses, some of which are left subject to legal challenge absent Section 702 reform. Indeed, two active legal challenges in European courts are seeking the invalidation of the EU-U.S. Privacy Shield, the current data transfer arrangement between the United States and the European Union, based specifically on the programmatic surveillance authorized by Section 702. Privacy Shield's predecessor, known as the "Safe Harbor," was invalidated in 2015 on the basis that the European Commission failed to reassess the adequacy of protections afforded by the Safe Harbor in the wake of the 2013 disclosures. Appropriate reforms to the authority could support the long term viability of the essential data transfers enabled by the current agreement.

If agreements between the U.S. and European Union to facilitate compliance with European privacy laws fail, European companies would not be able to use Internet infrastructure in the U.S. These agreements allow Europeans to comply with their privacy laws while using U.S. based Internet infrastructure. The U.S. market is not large enough to sustain the growth of U.S. Internet infrastructure providers. The loss of the European market would be devastating to companies who need the ability to utilize their U.S. based infrastructure.

Hardest hit will be the small to medium sized businesses, and entrepreneurial startups that have always been the Internet's most innovative segment. While some larger companies have been able to enter into individualized alternative arrangements in the form of model contract clauses or binding corporate rules, these are difficult, and have to be negotiated on a customer by customer basis. As a result, they're not practical for small businesses, nor are they scalable for mass transactions. Moreover, absent Section 702 reform, those mechanisms could also face active legal challenges and be similarly thrown out.



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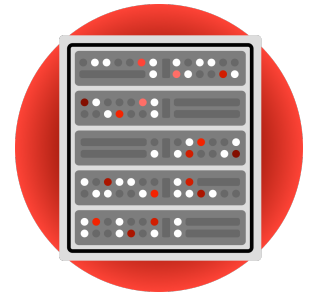
<sup>4</sup> Examples of hosting providers advertising 'Prism-free' hosting can be found at <https://tech.tiq.cc/2014/03/a-list-of-prism-safe-email-providers/>

Reform of Section 702 is necessary to restore confidence in internet companies, preserve the vitality of the free and open internet, and preserve the U.S. innovation economy. We look forward to engaging with your offices on this important issue.



**Sincerely,**

**The Internet Infrastructure Coalition**



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