



Internet Association

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August 5, 2015

The Honorable Mitch McConnell
Office of the Majority Leader
U.S. Capitol
Washington, DC 20510

The Honorable Harry Reid
Office of the Minority Leader
U.S. Capitol
Washington, DC 20510

RE: Section 603 of the Intelligence Authorization Bill for Fiscal Year 2016

Dear Leaders McConnell and Reid:

The undersigned associations respectfully urge the Senate to delete Section 603 of the Intelligence Authorization Bill for Fiscal Year 2016. Section 603, which was drafted and adopted in a closed door session without input from the public, would impose a new government mandate that would require a broad spectrum of companies to report users' activities and communications to the U.S. Government.

We understand and are sympathetic to the motivation for this provision. Our member companies work every day to ensure those who use our platforms are doing so legally, and respond to legal requests from law enforcement to cooperate with investigations. However, this hastily written provision is unworkable, and goes well beyond U.S. law and 20 years of federal Internet policy.

The unworkable requirements of Section 603 would have the effect of chilling free speech as Internet platforms could be burdened with reporting content that in many cases they have no way to understand. Section 603, which requires companies to report facts and circumstances connected to the vague and overbroad term any "terrorist activity," would result in overbroad reporting to the government, swamping law enforcement with useless information, and potentially raising First Amendment and privacy concerns for the user who posted the item.

The proposed reporting obligation is fundamentally different to existing mandatory reporting obligations for Child Sexual Abuse Imagery in U.S. law, which concern content that is *per se* unlawful, generally easy to detect, and is never constitutionally protected speech.

The core term that triggers the reporting mandate, any "terrorist activity", is infeasible due to its breadth. It is not a legal term of art nor is it ever defined in the legislative text. What is more, content that might potentially be subject to the reporting requirement is written in a huge range of languages that service providers subject to this law are unlikely to understand. As such, the provision will lead to reporting of items that are not of material concern to public safety, creating a "needle in the haystack"

problem for law enforcement. Further, companies would face a strong incentive to over-report a broad manner of communications and activities - or be subject to crippling liability in civil lawsuits. Zealous plaintiffs may argue that the bill creates a standard of care for Internet companies and that “actual knowledge” is met if an employee receives an unsolicited email containing content meeting the broad definition of “terrorist activity”, which could result in massive liability if not reported.

In addition, the scope of the kind of Internet platforms that would be covered by the proposal is enormous. It would create a huge universe of entities subject to the mandate, including but not limited to, social media companies, search engines, Internet service providers, blogs, community bulletin boards, and universities. And, the proposal would not limit the reporting requirement to publicly viewable sites. It could require a cloud storage or email provider to police a third party’s internal, stored communications to avoid liability under the provision.

Finally, if adopted, the provision would risk serving as a global template for other countries to impose reporting requirements for activities those jurisdictions deem unlawful. This would be particularly problematic with countries that regulate speech, including political speech, and with authoritarian regimes that would demand that Internet companies police their citizens’ activities.

For these reasons, we urge the Senate to delete Section 603 from S. 1705. We look forward to working with the Senate to explore alternative ways of combating those who incite violence through the Internet.

Respectfully,

Internet Association
Reform Government Surveillance
Internet Infrastructure Coalition