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USA PATRIOT Act - Section 215

The American Association of Law Libraries (AALL) urges Congress to reform the *USA PATRIOT Act* to balance the government's interest in protecting national security with defending the constitutional rights of the American people. The framers of the Constitution recognized that there must be checks on the government's authority to monitor the private lives of citizens.

One of the most controversial sections of the *USA PATRIOT Act* is Section 215, the business records or "library" provision. Section 215 expanded the government's power to collect information about innocent Americans by requiring the production of "any tangible thing" (including books, records, papers and documents) it claims to be relevant to authorized foreign intelligence and international terrorism investigations. Section 215 orders come with a "gag order" that restrains the recipient of a Section 215 order from disclosing that fact to anyone other than the attorneys involved in the case and those who need to know in order to comply with the order.

Recent reports indicate that the government may be using Section 215 orders to obtain private information about people who have no link to terrorism or espionage. The government's use of Section 215 orders increased by over 400 percent in recent years - from 21 orders in 2009 to 96 orders in 2010, according to the *Washington Post*. Up to 80 percent of those requests are for Internet records. Senator Mark Udall and Senator Ron Wyden have both sounded alarm bells on the Department of Justice's (DOJ) use of Section 215. In May 2011, Senator Wyden said on the Senate floor, "When the American people find out about how their government has secretly interpreted the Patriot Act, they are going to be stunned and they are going to be angry."

AALL urges Congress to adequately balance the government's interest in protecting national security with the protections of civil liberties the Constitution requires. **We strongly urge Senators to support Senator Patrick Leahy's (D-VT) *USA PATRIOT Act Improvements Act of 2011 (S. 1125)* because the bill:**

- **Strengthens protections for library users.** S. 1125 would amend the *Foreign Intelligence Surveillance Act* to revise requirements for applications for access to business records and other tangible things in counterterrorism investigations. The bill would require an applicant to present a statement of facts and circumstances relied upon to justify the applicant's belief that the records sought are relevant to an investigation.
- **Enhances judicial oversight.** The Fourth Amendment requires prior judicial review and permits warrants to be issued only upon probable cause. S. 1125 requires the government to show that the records sought are relevant to an investigation. This is a common-sense fix: DOJ has indicated that it does not rely on this presumption, and that its current practice is to provide the Foreign Intelligence Surveillance Court with a complete statement of facts to support issuance of an order.
- **Ensures accountability.** S. 1125 defines and requires "minimization procedures" for minimizing the retention and dissemination of information obtained from such records and devices. It also requires the DOJ Office of Inspector General to conduct an audit of the use of Section 215.

Written by Susan Nevelow Mart, AALL Government Relations Committee
AALL Contact: Emily Feltren, (202) 942-4233, efeltren@aall.org
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