

Opening Statement of Chairman Franken on “The Surveillance Transparency Act of 2013”

This hearing will come to order. Welcome to the Senate Judiciary Subcommittee on Privacy, Technology and the Law. The subject of this hearing is my bill, the Surveillance Transparency Act of 2013. I'm proud to say that two weeks ago I re-introduced this bill with the support of my friend and colleague, Senator Dean Heller of Nevada, who we'll be hearing from shortly.

This bill is urgently necessary. Americans understand that we need to give due weight to privacy, on the one hand, and national security, on the other. But Americans are also naturally suspicious of executive power. And when the government does things secretly, Americans tend to think that power is being abused. This is exactly the place where congressional oversight is useful and necessary.

For months now, there has been a steady stream of news stories about the NSA's surveillance programs. And yet right now, by law, Americans cannot get really the most basic information about what's going on with those programs. Consider this: it's been months since the PRISM program and the telephone call records program were revealed to the public. And yet to this day:

- Americans don't know the actual number of people whose information has been collected under those programs.
- They don't know how many of those people are American.
- And they have no way of knowing how many of these Americans have had their information actually seen by government officials – as opposed to just being held in a database.

The Administration has taken good steps in good faith to address this problem. But I'm afraid that these steps are too little, and they're not permanent.

And so, Americans still have no way of knowing whether the government is striking the right balance between privacy and security – or whether their privacy is being violated. There needs to be more transparency.

I've written a bipartisan bill to address this. It will require the NSA to disclose to the public how many people are having their data collected under each key foreign intelligence authority. It would make the NSA estimate how many of those people are American citizens or green card holders – and how many of those Americans have had their information actually looked at by government agents.

My bill would also lift the gag orders on Internet and phone companies so that those companies can tell Americans general information about the number of orders they're getting under each key authority and the number of users whose information has been produced in response to those orders.

Right now, as a result of those gags, many people think that American Internet companies are giving up far more information to the government than they likely are. The Information Technology & Innovation Foundation estimates that American cloud computing companies could lose \$22 to \$35 billion in the next 3 years because of concerns about their involvement with surveillance programs. The analytics firm Forrester puts potential losses much higher, at \$180 billion.

A few companies have litigated and secured permission to publish limited statistics about the requests that they get. But again, this is too little – and it's not permanent.

My bill would permanently ensure that the American people have the information they need to reach an informed opinion about government surveillance. And it would protect American companies against losing business from misconceptions about their role in these programs.

I'm pleased to say that this bill is the leading transparency proposal in the Senate, supported by a strong coalition of tech companies and civil liberties groups. The version as introduced gained the support of 12 Senators, including the Chairman of the full Judiciary Committee, Patrick Leahy. I anticipate that we'll soon be adding our original supporters onto the new bipartisan bill, hopefully with some additional support as well.

The purpose of this hearing is to make the case for this bill and to improve it by getting the feedback of top experts in the Administration, privacy groups, and the private sector. I've specifically asked the Office of the Director of National Intelligence and the Department of Justice to provide candid comments on this bill – especially any concerns they have. I've already added provisions to the bill to protect national security, but I want to know of any further concerns they have. I suspect that I'll agree with them in some cases and disagree with them on others. In those cases, I want to have an open exchange about those disagreements.

That said, I want it to be clear at the outset that I have the utmost respect for the men and women of our Intelligence Community. I think they are patriots, and I think they save lives.

I look forward to starting this conversation. With that I'll turn to our Ranking Member, Senator Flake.