

What the Massie-Lofgren Amendment does [subsections (a) and (b)]:

- Prohibits government funds from being spent to perform warrantless backdoor searches.
- Currently, some agencies such as the NSA search massive databases of online communications, including emails, files, and photos of U.S. persons, without first obtaining a probable cause warrant.
 - FISA requires intelligence and law enforcement agencies to procure a probable cause warrant when directly targeting U.S. persons. While FISA Section 702 cannot not explicitly target U.S. persons, it nonetheless captures a large number of U.S. person communications—so many that the NSA cannot provide an estimate.¹ Prior to 2011, the NSA’s own procedures required obtaining a warrant before querying for U.S. persons data captured under Section 702 authority.

What information is collected under 702?

- Opponents of the amendment admit that FISA Section 702 collects large numbers of US person communications when they communicate with a foreign agent. **What opponents do not mention is that 702 also collects tens-of-thousands of wholly domestic communications (which is not allowed under 702) and collects U.S. person communications merely “about” a target as well, which the FISA courts noted “is more likely than other forms of 702 collection to contain of or concerning a United States person with no foreign intelligence value”²**
- 702 doesn’t just collect terrorist communications, it collects communications with “foreign intelligence” value, which is broadly defined to include “foreign affairs.”
- The 702 program is also known to collect information without foreign intelligence value but might have value to domestic law enforcement. Director of National Intelligence Clapper has stated that 702 information has been used in domestic criminal investigations against US persons – even though it was collected without a warrant.³

What the amendment does NOT do:

- Does not change what information the NSA can collect under 702. It simply requires a probable cause warrant be obtained before searching the information collected for U.S. persons.
- Does not stop the NSA from reading or analyzing any and all 702 communications between a foreign agent and a U.S. person. If the NSA then finds evidence the U.S. person is working with the foreign agent in those communications, it can obtain a warrant to further pursue that lead using U.S. person queries.
- Does not stop the NSA from searching 702 communications using U.S. person identifiers of a lawfully targeted U.S. person.

¹ <http://www.npr.org/sections/thetwo-way/2016/04/25/475599344/u-s-spy-chief-considers-disclosing-number-of-americans-surveilled-online>

² FISA Court Order November 06, 2015 pg 25 fn 21 (https://www.dni.gov/files/documents/20151106-702Mem_Opinion_Order_for_Public_Release.pdf)

³ March 28, 2015 Letter from DNI Clapper to Sen. Wyden (<https://www.wyden.senate.gov/download/?id=130BF88-A3C0-4315-A23B-C4F96C499D9D&download=1>);

What the Massie-Lofgren Amendment does [subsections (c) and (d)]:

- Prohibits government funds from being used to weaken encryption standards, or demand or request that companies alter their products in a way that weakens security or encryption. Also prohibits DOD from using the courts to commandeer private companies into hacking their own products for surveillance purposes.

What the amendment does NOT do:

- Does not prohibit companies from independently—without a government request—designing or redesigning their system to make circumventing security possible. Some companies have already chosen to do this.
- Does not prohibit the government from obtaining technical advice on circumventing a product as long as the government is not asking for a company to design or redesign its product.
- Does not prohibit the government from funding a third-party to break the security of the product for them. This is how the FBI ultimately cracked the iPhone used by San Bernardino shooter Syed Rizwan Farook.