Changes to Electronic Surveillance using FISA

Project America Act
FISA Amendments Act

Key Points

(U) Electronic Search and Surveillance of email communications using:
- Traditional FISA
  - 1978
- Protect America Act (PAA)
  - August 2007
- Section 702 of FISA Amendments Act
  - July 2008
FISA Amendments Act (FAA)

- Signed into law by President Bush on 10 July 2008
- Sunset of 4 years

FISA Section 702

- An acquisition authorized under Section 702—
  (1) may not intentionally target any person known at the time of acquisition to be located in the United States;
  (2) may not intentionally acquire communications where the subject of the acquisition is a United States person located outside the United States;
  (3) may not intentionally acquire communications where the subject of the acquisition is an agent of a foreign power or a foreign intelligence service;
  (4) must be conducted in a manner consistent with the Fourth Amendment to the Constitution of the United States.

(3) FAA directs the court to "promptly" dismiss a lawsuit filed against electronic service providers that helped the government if the AG certifies the assistance was "authorized by the President" and "designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the US."

FISA Amendments Act (FAA)

- FAA made multiple changes to many different parts of the FISA Law
  - Added a new Title VII, "Additional Procedures Regarding Certain Persons Outside the United States," §§ 701-708
  - Repealed most provisions of the Protect America Act of 2007 (PAA), but essentially incorporated the provisions allowed under PAA into this new Title VII Section—Specifically, FISA, Section 702

FISA Section 702

- FISC must verify that the government's methods for determining a target's location are reasonable.
- FISC will also review and APPROVE minimization procedures used by the agencies.
- Except in "exigent circumstances," the government cannot begin surveillance until the court has approved a certification.
- Law directs the Inspector General of various agencies to review how the government is handling U.S. person information.

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