Changes to Electronic Surveillance using FISA

- Protect America Act
- FISA Amendments Act
- Cyber Intelligence Exploration Section
- Counterterrorism Division (DNI/IC)
- 10 June 2010

Key Points

- 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

Outside the Scope

FAA-27
FISA Amendments Act (FAA)

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

FAA-28
FISA Amendments Act (FAA)

(U) FAA made multiple changes to many different parts of the FISA Law:
- Added to FISA 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- Repealed most provisions of the Protect America Act of 2007 (FAA), but essentially incorporated the provisions allowed under FAA into this new Title VII Section – Specifically, FISA, Section 702

FISA Section 702

LIMITATIONS: 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 target a person reasonably believed to be located outside the United States, if the person is an agent or a principal of such foreign person;

(3) may not intentionally target an US person reasonably believed to be located within the United States;

(4) may not unintentionally collect any коммunications to, from, or over US persons;

(5) shall be conducted in a manner consistent with the Fourth Amendment to the Constitution of the United States.

(U) 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."
CXS Reporting Requirements

- Reporting requirements
  - Compliance Occurrences
  - 5 business days to report to DOJ/OI and ODNI
- Other reports:
  - 90 day report to the MC
  - Quarterly 1013 report
  - Annual Report to Congress
  - MOM/General required to report annually with descriptions of incidents of non-compliance with directives issued or established guidelines or procedures
  - Semi-Annual Assessment to Congress (Joint ODNI/CI product)
  - Director's Annual Report
  - Letters to the Court: 10(b) and 10(e)

CXS Oversight

- Oversight by:
  - DOJ/Office of Intelligence (formerly OIPR)
  - ODNI offices participating in oversight:
    - Civil Liberties and Privacy Office
    - Office of General Counsel
    - ODNI Collection
    - ODNI Office of Inspector General
- DOJ/OI and ODNI Oversight consists of:
  - Monthly targeting audits
  - Bi-Monthly minimization reviews
  - Nomination audits in the future
  - Quarterly FBI INSAD audits
  - DOJ Office of Inspector General Program Review

DOJ/OI and ODNI Oversight consists of:

FAA-30

SECRET
Compliance Occurrences

- Misspelling
- Technical
- Positive hit marked Negative
- Search Approved before
- Complete
- Miscellaneous
- Total Compliance Occurrences

Questions