

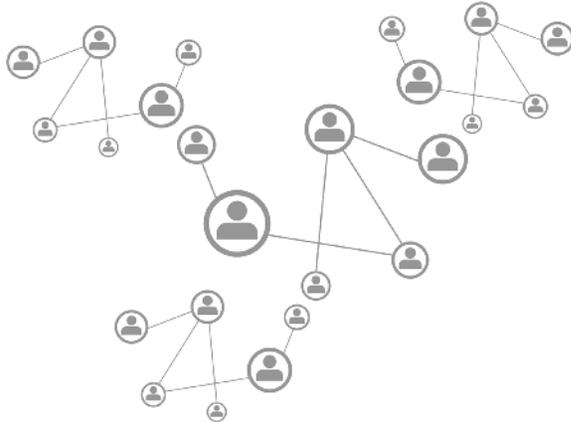


# SECTION **702** OVERVIEW

## SECTION 702: BASICS

### WHAT IS SECTION 702?

- Section 702 is a key provision of the FISA Amendments Act of 2008 that permits the government to conduct targeted surveillance of foreign persons located outside the United States, with the compelled assistance of electronic communication service providers, to acquire foreign intelligence information.
- The government uses the information collected under Section 702 to protect the United States and its allies from hostile foreign adversaries, including terrorists, proliferators, and spies, and to inform cybersecurity efforts.



### WHO CAN THE IC TARGET UNDER SECTION 702?

Non-U.S. persons,  
Located abroad,  
Who are expected to possess,  
receive, or communicate  
foreign intelligence  
information.



### WHY DOES THE IC NEED SECTION 702?

- Congress enacted Section 702 to address a collection gap that resulted from the evolution of technology in the years after FISA was passed in 1978.
- By the mid-2000s, many terrorists and other foreign adversaries were using email accounts serviced by U.S. companies.
- Because of this change in communications technology, the government had to seek individual court orders, based on a finding of probable cause, to obtain the communications of non-U.S. persons located abroad. This proved costly because of the resources required and because the government couldn't always meet the probable cause standard, which was designed to protect U.S. persons and persons in the U.S.



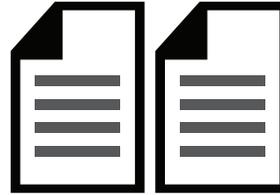
### WHO CAN'T THE IC TARGET UNDER SECTION 702?

- U.S. persons, regardless of location
- Any person located inside the U.S.
- A foreign person located abroad for the purpose of targeting a U.S. person or person inside the U.S. with whom the foreign person is communicating (often called "reverse targeting")



# SECTION 702: THE PROCESS

## HOW IS THE PROGRAM APPROVED?



Certifications



The Attorney General and Director of National Intelligence submit to the Foreign Intelligence Surveillance Court (FISC) certifications that specify categories of foreign intelligence that the IC can use Section 702 to collect. Such certifications may be effective for up to one year and must be resubmitted annually.

- The AG and DNI also submit:
  - The rules designed to ensure that the IC only uses Section 702 to target foreign persons located outside the U.S. to acquire foreign intelligence information (known as targeting procedures); and
  - The rules designed to safeguard any U.S. person information incidentally acquired through Section 702 (known as minimization procedures).

The FISC reviews the certifications and these procedures annually to ensure they comply with both FISA and the Fourth Amendment, taking into account how the program has functioned, including any compliance incidents.



Order

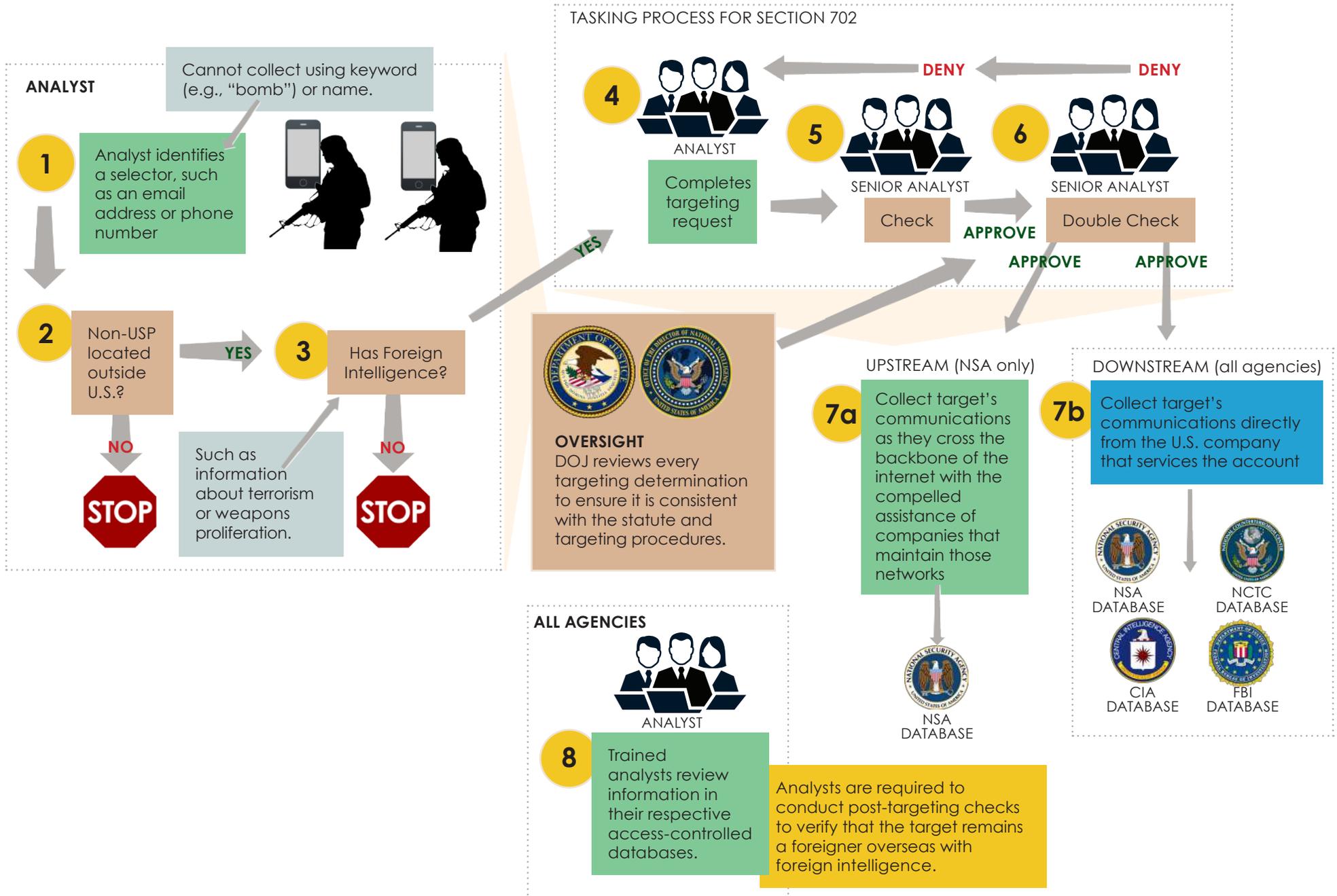
The FISC must issue a written opinion explaining its reasoning.



Only upon FISC approval of the certifications, including the targeting and minimization procedures, the AG and DNI can issue written directives compelling U.S. electronic communication service providers to assist with collection against authorized Section 702 targets.

# SECTION 702: THE PROCESS

## HOW DOES THE IC COLLECT UNDER SECTION 702?



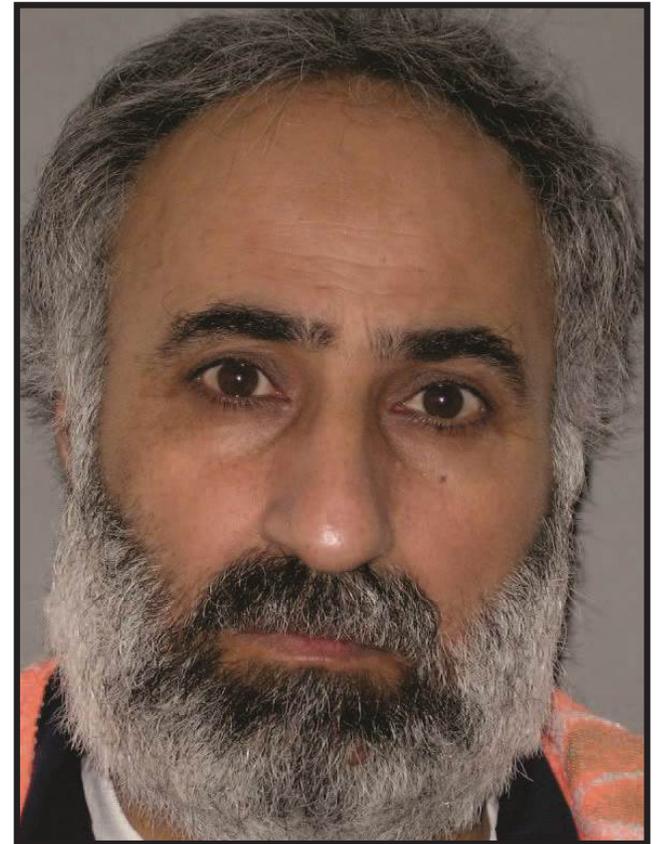
## SECTION 702: VALUE

### HAS THIS TOOL PROVED TO BE VALUABLE?

Yes, extremely valuable. Section 702 is vital to keeping the nation safe. It provides intelligence on activities of terrorist organizations, weapons proliferators, spies, malicious cyber actors, and other foreign adversaries. Here are just a few examples:

#### HAJJI IMAN

- Before rising through the ranks to become, at one point, the second-in-command of the self-proclaimed Islamic State of Iraq and al-Sham (ISIS), Hajji Iman, a non-U.S. person located overseas, was a high school teacher and Imam. His transformation from citizen to terrorist caused the U.S. Government to offer a 7 million dollar reward for information leading to him. It also made him a top focus of the NSA's counterterrorism efforts.
- NSA, along with its IC partners, spent over two years, from 2014 to 2016 looking for Hajji Iman. This search was ultimately successful, primarily because of Section 702. Indeed, based almost exclusively on intelligence activities under Section 702, NSA collected a significant body of foreign intelligence about the activities of Hajji Iman and his associates.
- Beginning with non-Section 702 collection, NSA learned of an individual closely associated with Hajji Iman. NSA used collection, permitted and authorized under Section 702, to collect intelligence on the close associates of Hajji Iman, which allowed NSA to develop a robust body of knowledge concerning the personal network of Hajji Iman and his close associates.
- Over a two-year period, using the Section 702 collection, and in close collaboration with IC partners, NSA produced more intelligence on Hajji Iman's associates, including their location. NSA and its tactical partners then combined this information, the Section 702 collection, which was continuing, and other intelligence assets to identify the reclusive Hajji Iman and track his movements.
- Ultimately, this collaboration enabled U.S. forces to attempt an apprehension of Hajji Iman and two of his associates. On March 24, 2016, during the attempted apprehension operation, shots were fired at the U.S. forces' aircraft from Hajji Iman's location. U.S. forces returned fire, killing Hajji Iman and the other associates at the location. Subsequent Section 702 collection confirmed Hajji Iman's death.



**COUNTERTERRORISM:**

Based on Section 702 collection, CIA alerted a foreign partner to the presence within its borders of an al-Qaeda sympathizer. The foreign partner investigated the individual and subsequently recruited him as a source. Since his recruitment, the individual has continued to work with the foreign partner against al-Qaeda and ISIS affiliates within the country.

**PROTECTING U.S. FORCES:**

Section 702 has been critical to monitoring the activities of potential suicide bombers who threaten U.S. forces in Afghanistan. For example, in June 2016, NSA's timely reporting based on Section 702 collection enabled U.S. and coalition forces to detain a potential suicide bomber and seize various IED components, disrupting planned attacks on U.S. convoys and a U.S. base in Northern Afghanistan.

**CYBERSECURITY:**

Section 702 collection allowed NSA to discover key cybersecurity information concerning foreign actors who planned to use U.S. infrastructure to enable spearphishing techniques against multiple victims that could have resulted in the compromise of personal and sensitive information.

**WEAPONS PROLIFERATION:**

Section 702 reporting helped thwart efforts of front companies seeking to obtain weapons probably bound for a rebel group in the Middle East that is hostile to U.S. interests. Information derived from Section 702 was shared with a European government which prompted that government to prevent a nearly \$1 million shipment of weapons and ammunition. This European government also revoked the export license of multiple arms companies based on the intelligence.



## SECTION 702: PROTECTING U.S. PERSON INFORMATION

### CAN THE IC USE SECTION 702 TO COLLECT U.S. PERSON COMMUNICATIONS?

- The government cannot use Section 702 to target U.S. persons or persons located in the U.S.
- However, as Congress understood when it passed the statute, it is possible that a foreign person who has been targeted under Section 702 may communicate with, or discuss information concerning, a U.S. person.

### WHAT HAPPENS IF AN ANALYST FINDS U.S. PERSON COMMUNICATIONS IN SECTION 702 COLLECTION?

- Each agency's minimization procedures require that the IC properly handles and protects any U.S. person information found within Section 702 collection. Safeguards include:
  - **Access Controls:** Only analysts who are trained on the minimization procedures may see the collection.
  - **Age-Off Requirements:** After a certain period of time, the IC must delete any unminimized Section 702 information, regardless of the nationality of the communicants.
  - **Query Restrictions:** Analysts may not query unminimized Section 702 information using a term, such as a name or phone number, that is associated with a U.S. person, unless the query is designed to identify foreign intelligence information, or in the case of FBI, designed to identify evidence of a crime.
  - **Dissemination Restrictions:** Analysts cannot share (i.e., disseminate) any information that identifies a U.S. person with another agency or entity, unless it falls within one of a few exceptions, such as being necessary to understand foreign intelligence information or assess its importance or being evidence of a crime.
  - **Use Restrictions:** The government can only rely on FISA information in a criminal proceeding with the approval of the Attorney General. FBI and DOJ cannot use an American's communications collected under Section 702 to prosecute him unless the case relates to national security or a handful of other very serious crimes.

### WHAT IS THE SCOPE OF INCIDENTAL ACQUISITION OF U.S. PERSON INFORMATION UNDER SECTION 702?

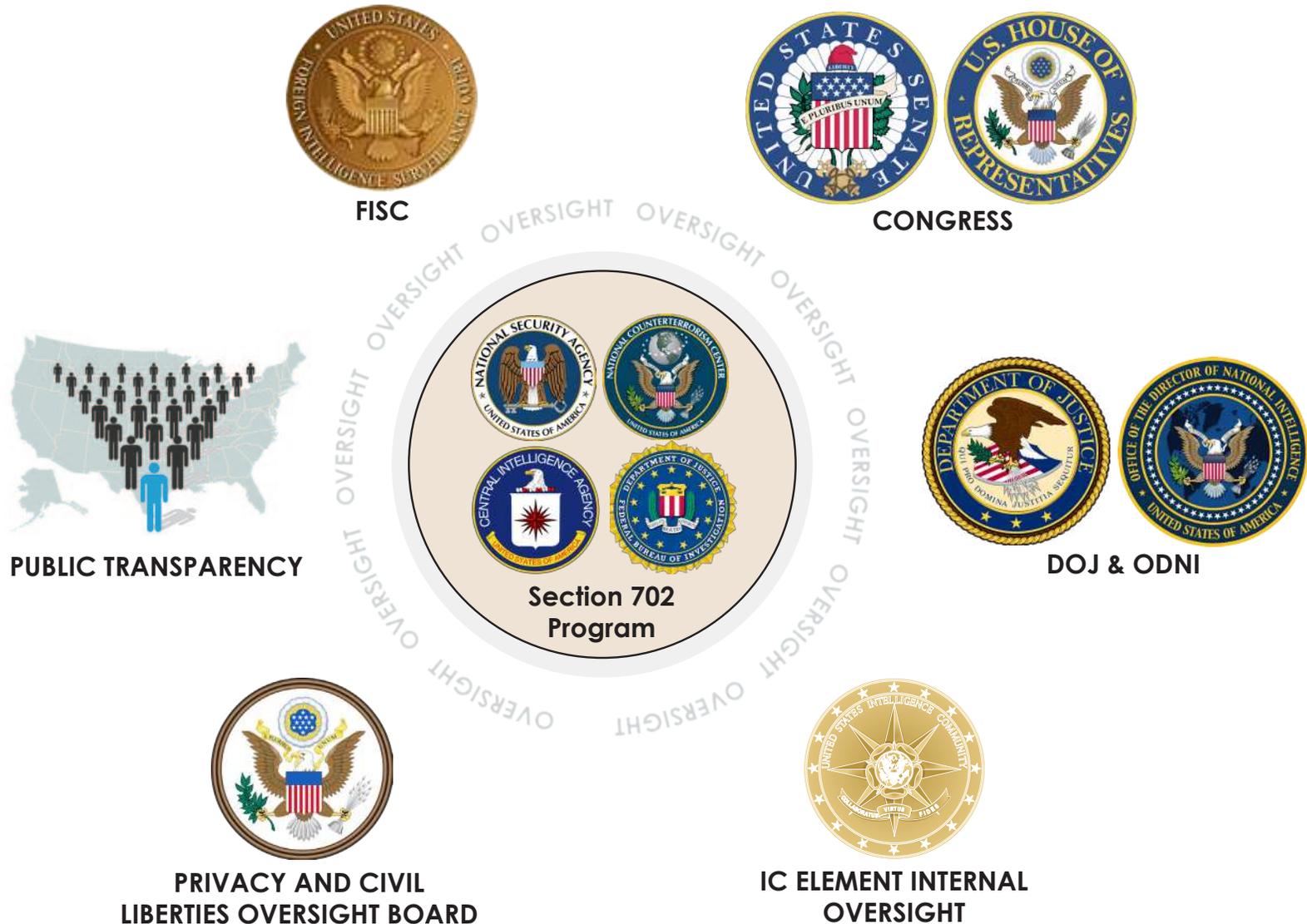
- The government has released a variety of statistics to provide insight on Section 702's potential impact on U.S. person privacy, including the numbers of U.S. person queries and disseminations.
  - o In 2016, NSA & CIA queried contents of Section 702 collection using an estimated 5,288 U.S. person identifiers.
  - o In 2016, NSA disseminated 3,914 Section 702 reports that contained U.S. person identities.
  - o In 2016, there was one instance where FBI received and reviewed Section 702-acquired information in response to a U.S. person query solely designed to identify evidence of a crime. That crime involved the potential abuse of a child.

To put the likelihood of obtaining U.S. person communications in perspective, the world's population is approximately 7.5 billion and there are over 3 billion internet users worldwide. In 2016, the IC had approximately 106,469 targets authorized for collection under Section 702, which is approximately .004% of the world's internet users and .001% of the world's population. Targeting under Section 702 is individualized and focused only on specific foreigners who are assessed to have foreign intelligence information. It is very unlikely that the average U.S. person would be in contact with a foreigner who falls within the limited and select group of individuals targeted under Section 702.

## SECTION 702: OVERSIGHT

### HOW DO I KNOW THE GOVERNMENT FOLLOWS THOSE RULES?

The government's use of Section 702 is subject to **extensive and rigorous oversight by all branches of government**. All of these reviews have universally concluded that the government is properly using this authority to conduct foreign intelligence collection.



**THE FOREIGN INTELLIGENCE SURVEILLANCE COURT (FISC)**

- Annually evaluates the program to make sure it complies with FISA and the Constitution.
- Updated throughout the year on every identified compliance incident and receives regular reports from the Department of Justice and the Office of the Director of National Intelligence on the program.
- Holds hearings, takes testimony, and requires written factual statements and legal analysis to ensure that it fully understands the implementation of Section 702 across the IC.

**DOJ & ODNI**

- Conduct compliance reviews at least every two months at each agency that receives unminimized Section 702 information, which include reviews of targeting decisions, U.S. person queries, and U.S. person disseminations.
- Report any identified incidents of non-compliance to the FISC and to Congress.
- Provide guidance on 702-related issues and review certain systems that agencies use to acquire, retain, or disseminate 702 information.

*In 2016, DOJ conducted approximately 55 Section 702 oversight reviews.*

**IC ELEMENT INTERNAL OVERSIGHT**

- Each IC element involved in implementing Section 702 has a cadre of individuals, such as compliance officers, lawyers, civil liberties and privacy offices, and Inspectors General, that provide oversight on a regular basis. These internal oversight elements train their employees and monitor their agencies' compliance with FISA and the targeting and minimization procedures.

**CONGRESS**

- Receives regular reports describing the government's use of Section 702 and all instances of non-compliance. Including:
  - Reports every six months from the Attorney General and the Director of National Intelligence that assess the government's compliance with the Section 702 targeting and minimization procedures;
  - Reports every six months from the Attorney General that summarize all of the compliance reviews conducted by DOJ and ODNI and describe any compliance incidents;
  - All significant interpretations of the law by the FISC;
  - Annual reports from heads of agencies that collect foreign intelligence under Section 702;
  - Reports from agency Inspectors General;
  - Copies of certifications submitted to the FISC; and
  - Congressional notifications on the 702 program.

*In 2016, alone the government provided over 500 pages of reporting to Congress on the Section 702 program.*

**PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD (PCLOB)**

- Issued a comprehensive public report on Section 702 in 2014 and concluded that the government's Section 702 program operates within legal constraints, collects valuable information, and is both well-managed and effective in protecting national security.
- Receives regular reports on the program.

**PUBLIC TRANSPARENCY**

- To date, the government has declassified and publicly released over 500 documents, many of which relate to Section 702, including declassified FISC opinions and orders, IC-related statements, testimony, and transparency reporting.
- On an annual basis, the IC publishes a report that provides important statistics on how national security authorities, such as Section 702, are used.

## SECTION 702: U.S. PERSON QUERIES

### WHAT ARE U.S. PERSON QUERIES?

- A query is a means to identify previously acquired data in U.S. government systems. Query terms can include, among other things, names, email addresses, and phone numbers.
- The IC can only query Section 702 information if the query is reasonably designed to return foreign intelligence information or, in the case of FBI, evidence of a crime.
- As part of Section 702's extensive oversight, DOJ and ODNI audit the agencies' U.S. person queries of content to ensure the queries satisfy the legal standard.

### WHY DOES THE IC NEED TO QUERY SECTION 702 COLLECTION FOR U.S. PERSON INFORMATION?

- **CONNECT THE DOTS:** Querying lawfully acquired data is a basic investigative step. When the government receives a tip from the public, state and local law enforcement, foreign partners, or other sources about a potential threat to the homeland, one of the first steps is to see if the government already knows something about the person or group. U.S. person queries help the government detect and evaluate connections between U.S. persons and foreign adversaries involved in perpetrating terrorist attacks or other serious national security threats.
  - Several commissions investigating terrorist attacks, including 9/11, Fort Hood, the "Underwear Bomber," and the Boston Marathon Bombing, concluded that removing barriers to the use of information already lawfully in the IC's possession is essential to better protecting the nation.
- **SPEED & EFFICIENCY:** Analysts run queries to more quickly identify information already in the government's possession. Queries allow an analyst to readily identify a relevant message without having to examine every single communication. The time it takes to examine every single communication could prove to be the difference between preventing an attack and investigating an attack.
- **LESS INTRUSIVE:** Querying information the IC already possesses, which is less intrusive than other investigative techniques, can rule out potential subjects and eliminate the need for further investigation.

### COULDN'T THE IC GET A FISA ORDER OR A WARRANT TO RUN THESE QUERIES?

- A warrant requirement would hamper the speed and efficiency of operations, and impair the IC's ability to identify and prevent threats to America. The IC often runs U.S. person queries to identify and protect potential victims of terrorist or cyber attacks, and also as the first step in evaluating and detecting potential threats to the homeland. In these situations, the IC may not have probable cause to believe the U.S. person is a foreign power or agent of a foreign power. Here are a few examples:
  - Using the name of a U.S. person hostage to cull through communications of the terrorist network that kidnapped her to pinpoint her location and condition;
  - Using the email address of a U.S. victim of a cyber-attack to quickly identify the scope of malicious cyber activities and to warn the U.S. person of the actual or pending intrusion;
  - Using the name of a government employee that has been approached by foreign spies to detect foreign espionage networks and identify other potential victims; and
  - Using the name of a government official who will be traveling to identify any threats to the official by terrorists or other foreign adversaries.

