



## Library Associations Urge Congress to Increase Oversight and Enhance Civil Liberties Protections In Reauthorizing Provisions of the USA PATRIOT

The American Library Association (ALA) and the Association of Research Libraries (ARL) support including enhanced civil liberties and due process safeguards in the reauthorization of selected provisions of the USA PATRIOT Act. When Congress last reauthorized these provisions in 2005, it recognized the need for oversight and sunsets to ensure that there would be an opportunity to revisit the Act and make necessary changes. Since then, Justice Department investigations have produced abundant evidence of the need for comprehensive reform of the Act. **Congress should pass the USA PATRIOT Act Sunset Extension Act of 2009 with key amendments to protect civil liberties.**

Libraries have a deep and longstanding commitment to protecting patron privacy. Privacy is essential to the exercise of free speech, free thought, and free association. Patrons of libraries (physical or virtual) have the right to seek out information without having the subject of their interests unduly examined or scrutinized. As a consequence, libraries oppose unwarranted intrusions that exceed the legitimate needs of law enforcement. The USA PATRIOT Act should be reformed to ensure that these fundamental rights are protected regardless of the manner of access to the materials or who receives the order.

The USA PATRIOT Act Sunset Extension Act of 2009 (“Sunset Extension Act”) and the JUSTICE Act of 2009 (“JUSTICE Act”) reauthorize the sunset provisions of the USA PATRIOT Act with critical new protections for civil liberties and due process, including implementation of reasonable safeguards for National Security Letters, revised standards for “Section 215” orders more closely aligned with criminal law, enhanced review procedures for FISA gag orders, and increased reporting of FISA orders. Each of these reforms will empower law enforcement to continue to protect America while instilling confidence among the public that their constitutional rights are secure.

ALA and ARL further urge your support for amendments modeled on the JUSTICE Act to strengthen vital protections for civil liberties and due process. We also support preserving core protections in the Sunset Extension Act against amendments that would weaken the bill. Legislation should also include the following critical safeguards:

- *A reasonable standard for issuing National Security Letters (NSLs)*: The NSL power is by far the most frequently used PATRIOT Act provision. It also has the most potential for abuse, because of the lack of judicial oversight and standards for their issuance. Because in many cases the NSL power and the Section 215 power can be used to obtain the same information from the same parties (including libraries), we believe these provisions should be reformed comprehensively, rather than in isolation. ALA and ARL support amending the Sunset Extension Act to include provisions from the JUSTICE Act requiring a statement of *specific, articulable facts* to support the issuance of NSLs.
- *Proper targets for NSLs*: Because NSLs are issued without judicial oversight, ALA and ARL support amending the Sunset Extension Act to include provisions

from the JUSTICE Act limiting their use to gathering information about terrorists, terrorist activities, and persons in contact with terrorists. Reform should ensure that NSLs are not used to gather information about innocent library patrons.

- Proper limitations on disclosure of NSLs: ALA and ARL support reform of gag order rules prohibiting individuals and entities from disclosing receipt of an NSL. For example, the JUSTICE Act of 2009 requires high-level FBI officials to make a detailed certification of the tangible danger that would result from disclosure, thus preventing misuse of this gag order power.
- Providing for sufficient oversight and review: ALA and ARL urge Congress to mandate a comprehensive audit of orders issued from 2007 through 2012, as provided for in the Sunset Extension Act. An audit will provide needed transparency to the use and potential misuse of FISA orders.
- Extending the sunset provision: ALA and ARL support extension of the sunset provision until the end of 2013, as provided for in the Sunset Extension Act. An extension of the sunset, rather than permanent codification, will facilitate continued Congressional oversight and allow for necessary modifications in response to our rapidly changing security environment.

---

**Association of Research Libraries**

**Prue Adler**

Associate Executive Director, Federal  
Relations and Information Policy  
Phone: 202.296.2296  
Email: prue@arl.org

**Brandon Butler**

Legal and Policy Fellow  
Phone: 202.296.2296  
Email: brandon@arl.org

---

**American Library Association**

**Lynne Bradley**

Director, Office of Government  
Relations  
Phone: 202.628.8410 x8210  
Email: lbradley@alawash.org

**Jessica McGilvray**

Asst Director, Office of Government  
Relations  
Phone: 202.628.8410 x8209  
Email: jmcgilvray@alawash.org



## **Library Association Statement on Section 215 of the USA PATRIOT Act and National Security Letters**

### **SUMMARY STATEMENT**

Freedom of inquiry is a cornerstone of a democratic society. Individuals must be free to explore ideas from all perspectives and without regard for the technology used to access those ideas. The USA PATRIOT Act and related laws have expanded law enforcement agencies' authority to obtain the business and personal records of Americans. This expansion impacts library patrons' rights directly and undermines their expectation of privacy when using library services. Although only Section 215 of the USA PATRIOT Act is set to expire this year, ALA and ARL urge a comprehensive review of the laws authorizing National Security Letters (NSLs) as well as Section 215 to provide systematic reform of investigative tools. Reforms should include heightened standards for issuance of these orders and for the gag orders that often accompany them, proper limitations on the scope of information sought, and a reasonable opportunity to challenge the use of these expansive powers. ARL and ALA believe that these changes will bolster the rule of law and strengthen civil liberties guaranteed by the U.S. Constitution, without sacrificing law enforcement's ability to pursue terrorists.

### **LIBRARY CONCERNS AND PATRON CONFIDENTIALITY**

Libraries have a deep and longstanding commitment to protecting patron privacy. Privacy is essential to the exercise of free speech, free thought, and free association. In a library (physical or virtual), the right to privacy is the right to free inquiry without having the subject of one's interest unduly examined or scrutinized. Libraries protect that right by opposing unwarranted intrusions that exceed the legitimate needs of law enforcement. Respect for these rights must not give way as new technologies allow our patrons to access information in new ways: libraries support reader privacy across all media. The special confidentiality accorded to libraries and their patrons is formally recognized by law or policy in all 50 states, but is now called into question by new federal powers that can intrude upon library patron privacy.

### **SECTION 215 AND LIBRARIES**

Section 215 has been an extremely troublesome provision for the library community since the Act was passed in 2001 and reauthorized in 2006. Indeed, despite the fact that it does not mention libraries specifically, the provision is often called the "library provision" because its breadth undermines the expectation of privacy that Americans have long held with respect to their activities in libraries.

The USA PATRIOT Act did not create Section 215 orders but substantially expanded their scope. Currently, the Act permits law enforcement to compel, with a minimal showing to a judge, any person or entity to turn over any "tangible thing" related to almost any person, including innocent Americans. The FBI may request the records secretly, and is not required to show

“probable cause” that the person whose records are being sought has committed or will commit a crime or is in contact with a terrorist, which is a linchpin of American criminal law. A gag order prohibits the librarian who receives a Section 215 order from revealing it to anyone except those whose help is needed to produce the records. To obtain a gag order, the government need only show that the information or object sought is relevant to an investigation against international terrorism or espionage. Current law even creates a “presumption” in favor of the government in many cases, undermining the court’s oversight function and creating a virtual rubber stamp.

### **NATIONAL SECURITY LETTERS (NSLS)**

The USA PATRIOT Act, coupled with the Intelligence Authorization Act of FY 2004, greatly expanded the FBI’s authority to obtain business and personal records of individuals by issuing NSLS. NSLS do not require prior judicial approval and can be used to obtain a wide range of documents based on claims that the information is merely “relevant” to a terrorism investigation. In addition, the FBI can keep records acquired via an NSL indefinitely, even after the subject of the records has been deemed innocent of a crime and is no longer of intelligence interest.

In addition, it is virtually impossible for individuals to successfully challenge a lifetime gag order once issued. Under the revised PATRIOT Act, if the government declares that lifting the gag order would “harm national security”, the court must accept that assertion as “conclusive” and dismiss the challenge. Hence, there is no prior judicial review to approve an NSL and, with rare exception, no legal way to challenge an NSL after the fact.

No doubt the FBI and other agencies need the power to obtain information quickly in some circumstances, but that power should not exceed the agencies’ legitimate needs. Comprehensive reports by the Inspector General of the Department of Justice have confirmed that the NSL power has been used in cases where it may not have been warranted. In two cases the FBI used NSLS to obtain information after the FISA court had refused to issue Section 215 orders citing serious First Amendment concerns. Because of the overlapping nature of the two powers, they cannot be considered in isolation.

### **CONCLUSION**

In order to uphold the Constitutional principles of free speech and association, due process, and privacy, and in light of the serious mis-steps documented by the Department of Justice Office of Inspector General, ALA and ARL urge Congress to enact comprehensive reform of both Section 215 and the National Security Letters provisions. These must be systematically reviewed and reformed to assure that law enforcement agencies are empowered to investigate terrorists while also being required to respect the rights of the public. Reforming single provisions in isolation is not a solution as it may drive agencies to seek out alternative means to obtain information. Only a comprehensive approach to reform can ensure that law enforcement has the tools it needs while at the same time upholding and protecting our Constitutional rights.