

# Applicability of U.S. Laws to Personal Data of EU Data Subjects

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JENNER & BLOCK

94TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 94-755 }

**FOREIGN AND MILITARY  
INTELLIGENCE**

**BOOK I**

**FINAL REPORT  
OF THE  
SELECT COMMITTEE  
TO STUDY GOVERNMENTAL OPERATIONS  
WITH RESPECT TO  
INTELLIGENCE ACTIVITIES  
UNITED STATES SENATE  
TOGETHER WITH  
ADDITIONAL, SUPPLEMENTAL, AND SEPARATE  
VIEWS**



APRIL 26 (legislative day, APRIL 14), 1976

69-983 O

U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1976

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Washington, D.C. 20402 - Price \$5.35

Stock No. 052-071-00470-0

## FISA § 702 (50 U.S.C. § 1881a)

“**Section 702 of the FISA does not indicate any limitations** on the power it confers to implement surveillance programmes **for the purposes of foreign intelligence** or the existence of guarantees for non-US persons potentially targeted by those programmes.”

- *Schrems II* judgment § 180

# Executive Order 12333

- “PPD-28 . . . allows for “bulk” collection . . . of a relatively large volume of signals intelligence information or data under circumstances where the Intelligence Community cannot use an identifier associated with a specific target . . . to focus the collection’ . . . . **That possibility, which allows, in the context of the surveillance programmes based on E.O. 12333, access to data in transit to the United States without that access being subject to any judicial review, does not, in any event, delimit in a sufficiently clear and precise manner the scope of such bulk collection of personal data.”**

- *Schrems II* judgment § 183

# “Essentially Equivalent”

- “[N]either Section 702 of the FISA, nor E.O. 12333, read in conjunction with PPD-28, correlates to the minimum safeguards resulting, under EU law, . . . **the surveillance programmes based on those provisions cannot be regarded as limited to what is strictly necessary.** . . . [T]he limitations on the protection of personal data arising from the domestic law of the United States on the access and use by US public authorities of such data transferred from the European Union to the United States . . . are **not circumscribed in a way that satisfies requirements that are essentially equivalent to those required, under EU law**, by the second sentence of Article 52(1) of the Charter.

- *Schrems II* judgment §§ 184–85

# USA FREEDOM Act of 2015, 50 U.S.C. § 1874

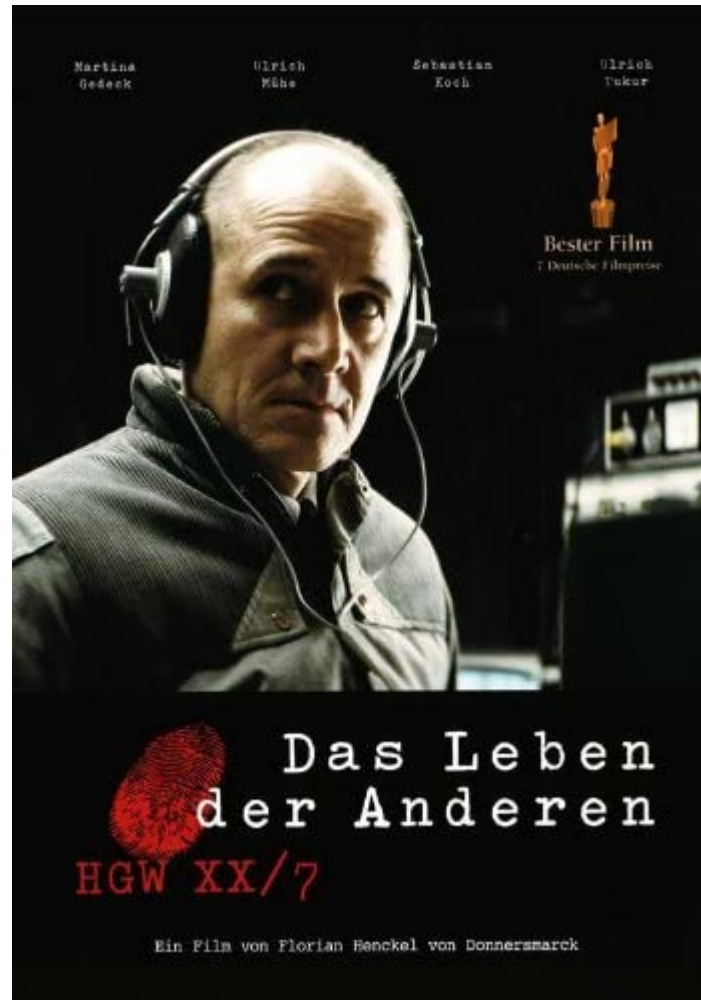
- 50 U.S.C. § 1874(a): “**A person subject to a nondisclosure requirement** accompanying an order or directive under this chapter . . . **may**, with respect to such order, directive, or national security letter, **publicly report** the following information using one of the following structures:
  - A semiannual report that aggregates the number of orders, directives, or national security letters with which the person was required to comply into separate categories . . .
  - An annual report that aggregates the number of orders, directives, and national security letters the person was required to comply with into separate categories.”
- 50 U.S.C. § 1874(c): “**Nothing in this section prohibits the Government and any person from jointly agreeing to the publication of information** referred to in this subsection in a time, form, or manner other than as described in this section.”

# U.S. National Security Requests for User Information

Google		
<i>January 2019 – June 2019</i>		
	<b>Number of Accounts*</b>	<b>% of Accounts**</b>
<b>FISA content requests</b>	107,499	0.007%
<b>FISA non-content requests</b>	499	0.00003%
<b>National Security Letters</b>	1,499	0.00010%

\*maximum of reported range

\*\*calculated based on 1.5 billion users in 2018





# Questions



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