

August 4, 2015

Dear Senator,

We, the undersigned companies and organizations, are writing to urge support of Senator Lee and Senator Leahy's amendment, number 2556, to S. 754, the Senate's Cybersecurity Information Sharing Act. The amendment would update the Electronic Communications Privacy Act (ECPA) to provide stronger protection to sensitive personal and proprietary communications stored in "the cloud." The amendment was considered and adopted by a voice vote in the Senate Judiciary Committee in the 113th Congress.

ECPA, which sets standards for government access to private communications, is critically important to businesses, government investigators and ordinary citizens. Though the law was forward-looking when enacted in 1986, technology has advanced dramatically and ECPA has been outpaced. Courts have issued inconsistent interpretations of the law, creating uncertainty for service providers, for law enforcement agencies, and for the hundreds of millions of Americans who use the Internet in their personal and professional lives. Moreover, the Sixth Circuit Court of Appeals in *US v. Warshak* has held that a provision of ECPA allowing the government to obtain a person's email without a warrant is unconstitutional.

The amendment would update ECPA in one key respect, making it clear that, except in emergencies or under other existing exceptions, the government must obtain a warrant in order to compel a service provider to disclose the content of emails, texts or other private material stored by the service provider on behalf of its users.

This standard would provide greater privacy protections and create a more level playing field for technology. It would cure the constitutional defect identified by the Sixth Circuit. It would allow law enforcement officials to obtain electronic communications in all appropriate cases while protecting Americans' constitutional rights. Notably, the Department of Justice and FBI already follow the warrant-for-content rule. It would provide certainty for American businesses developing innovative new services and competing in a global marketplace. It would implement a core principle supported by Digital Due Process, www.digitaldueprocess.org, a broad coalition of companies, privacy groups, think tanks, academics and other groups.

This legislation has seemingly been held up by only one issue – an effort to allow civil regulators to demand, without a warrant, the content of customer documents and communications directly from third party service providers. This should not be permitted. Such warrantless access would expand government power; government regulators currently cannot compel service providers to disclose their customers' communications. It would prejudice the innovative services that all stakeholders support, and would create one procedure for data stored locally and a different one for data stored in the cloud.

Because of all its benefits, there is an extraordinary consensus around ECPA reform – one unmatched by any other technology and privacy issue. Successful passage of ECPA reform sends a powerful message – Congress can act swiftly on crucial, widely supported, bipartisan legislation. Failure to enact reform sends an equally powerful message – that privacy protections are lacking in law enforcement access to user information and that constitutional values are imperiled in a digital world.

Some of the undersigned groups support S.754 and some oppose it, but we are all unanimous in our support of amendment 2556 if S.754 goes forward. For all these reasons, we strongly urge the Senate to support amendment 2556.

Sincerely

ACT | The App Association
American Civil Liberties Union
American Library Association
Apple
Application Developers Alliance
Association of Research Libraries
Brennan Center for Justice
Center for Financial Privacy and Human Rights
Center for Democracy & Technology
Center for National Security Studies
Cisco Systems
CompTIA
Computer & Communications Industry Association
The Constitution Project
Consumer Action
Council for Citizens Against Government Waste
Data Foundry
Direct Marketing Association
Distributed Computing Industry Association (DCIA)
Dropbox
Evernote
Facebook
Federation of Genealogical Societies
Foursquare
Generation Opportunity
Golden Frog
Google
Internet Association
Internet Infrastructure Coalition (I2Coalition)
Microsoft
National Association of Criminal Defense Lawyers
NetChoice

New America's Open Technology Institute
Newspaper Association of America
Niskanen Center
Personal
Snapchat
Taxpayers Protection Alliance
TechFreedom
Twitter
Venture Politics
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