

May 24, 2016

Chairman Chuck Grassley
Senate Judiciary Committee
United States Senate

Ranking Member Patrick Leahy
Senate Judiciary Committee
United States Senate

Dear Chairman Grassley and Ranking Member Leahy,

We, the undersigned civil society organizations, companies and trade associations, write to express our support for the Email Privacy Act (H.R. 699) which was recently passed by the House of Representatives by a vote of 419-0. The Act updates the Electronic Communications Privacy Act (ECPA), the law that sets standards for government access to private internet communications, to reflect internet users' reasonable expectations of privacy with respect to emails, texts, notes, photos, and other sensitive information stored in "the cloud."

The bill would end ECPA's arbitrary "180-day rule," which permits email communications to be obtained without a warrant after 180 days. The Act would also reject the Department of Justice interpretation of ECPA that the act of opening an email removes it from warrant protection. These reforms would ratify the Sixth Circuit's decision in *U.S. v. Warshak*, which held that email content is protected by the Fourth Amendment and that law enforcement access requires a probable cause warrant. Moreover, the changes reflect current practices: DOJ and FBI policies already require law enforcement officials seeking content to obtain a search warrant, and many service providers will not relinquish their users' content without one.

The bill passed by the House does not achieve all of the reforms we had hoped for. Indeed, it removes key provisions of the proposed bill, such as the section requiring notice from the government to the customer when a warrant is served, which are necessary to protect users. However, it does impose a warrant-for-content rule with limited exceptions. It represents a carefully negotiated compromise which preserves existing exceptions to the warrant requirement, provides a new ability for civil agencies to obtain access to previously public commercial content, and maintains the government's ability to preserve records and obtain emails from employees of corporations. We are particularly pleased that the bill does not carve out civil agencies from the warrant requirement, which would have expanded government surveillance power and undermined the very purpose of the bill, or contain unnecessary and overbroad mandatory emergency exceptions.

For these reasons, we support H.R.699 and urge the Committee to pass it immediately and without any amendments that would weaken the protections afforded by the bill.

Sincerely,

ACT | The App Association
Adobe
Amazon

American Association of Law Libraries
American Civil Liberties Union
American Library Association
Americans for Tax Reform
Apple
Application Developers Alliance
Association of Research Libraries
Automattic Inc
Brennan Center for Justice at NYU Law School
BSA | The Software Alliance
Center for Democracy & Technology
Center for Financial Privacy and Human Rights
Cisco Systems
CloudFlare
CompTIA
Computer & Communications Industry Association
The Constitution Project
Consumer Action
Consumer Technology Association
Council for Citizens Against Government Waste
Data Foundry, Inc.
Deluxe Corporation
Digital Liberty
Direct Marketing Association
Distributed Computing Industry Association (DCIA)
Dropbox
Electronic Frontier Foundation
Engine
Entertainment Software Association (ESA)
Evernote
Facebook
Federation of Genealogical Societies
Foursquare
FreedomWorks
Golden Frog, GmbH
Google
Hackers/Founders
Hewlett Packard Enterprise
HP Inc.
IBM
Instacart
Institute for Policy Innovation
Intel Corporation
Internet Association
Internet Infrastructure Coalition / I2Coalition
Information Technology Industry Council

Information Technology and Innovation Foundation
LinkedIn
Microsoft
National Association of Criminal Defense Lawyers
Niskanen Center
New America's Open Technology Institute
Newspaper Association of America
NetChoice
Less Government
R Street Institute
Reform Government Surveillance
Snapchat
Software & Information Industry Association
Sonic
Taxpayers Protection Alliance
TechFreedom
TechNet
Twitter
Venture Politics
U.S. Chamber of Commerce
Yahoo