

Calendar No. 556

112TH CONGRESS
2^D SESSION**H. R. 2471**

IN THE SENATE OF THE UNITED STATES

DECEMBER 7, 2011

Received; read twice and referred to the Committee on the Judiciary

NOVEMBER 29, 2012

Reported by Mr. LEAHY, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in *italie*]

AN ACT

To amend section 2710 of title 18, United States Code, to clarify that a video tape service provider may obtain a consumer's informed, written consent on an ongoing basis and that consent may be obtained through the Internet.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. AMENDMENT.**

2 Section 2710(b)(2) of title 18, United States Code,
 3 is amended by striking subparagraph (B) and inserting
 4 the following:

5 “(B) to any person with the informed, written
 6 consent (including through an electronic means
 7 using the Internet) in a form distinct and separate
 8 from any form setting forth other legal or financial
 9 obligations of the consumer given at one or both of
 10 the following times—

11 “(i) the time the disclosure is sought; and

12 “(ii) in advance for a set period of time or
 13 until consent is withdrawn by such consumer;”.

14 **TITLE I—VIDEO PRIVACY**
 15 **PROTECTION**

16 **SEC. 101. SHORT TITLE .**

17 *This title may be cited as the “Video Privacy Protec-*
 18 *tion Act Amendments Act of 2012”.*

19 **SEC. 102. VIDEO PRIVACY PROTECTION ACT AMENDMENT.**

20 *Section 2710(b)(2) of title 18, United States Code, is*
 21 *amended by striking subparagraph (B) and inserting the*
 22 *following:*

23 “(B) to any person with the informed, written
 24 consent (including through an electronic means using
 25 the Internet) of the consumer that—

1 “(i) is in a form distinct and separate from
2 any form setting forth other legal or financial
3 obligations of the consumer;

4 “(ii) at the election of the consumer—

5 “(I) is given at time the disclosure is
6 sought; or

7 “(II) is given in advance for a set pe-
8 riod of time, not to exceed 2 years or until
9 consent is withdrawn by the consumer,
10 which ever is sooner; and

11 “(iii) the video tape service provider has
12 provided an opportunity, in a clear and con-
13 spicuous manner, for the consumer to withdraw
14 on a case-by-case basis or to withdraw for ongo-
15 ing disclosures, at the consumer’s election;”.

16 **TITLE II—ELECTRONIC**
17 **COMMUNICATIONS PRIVACY**

18 **SEC. 201. SHORT TITLE.**

19 This title may be cited as the “Electronic Communica-
20 tions Privacy Act Amendments Act of 2012”.

21 **SEC. 202. CONFIDENTIALITY OF ELECTRONIC COMMUNICA-**
22 **TIONS.**

23 Section 2702(a)(3) of title 18, United States Code, is
24 amended to read as follows:

1 “(3) a provider of remote computing service or
2 electronic communication service to the public shall
3 not knowingly divulge to any governmental entity the
4 contents of any communication described in section
5 2703(a), or any record or other information per-
6 taining to a subscriber or customer of such service.”.

7 **SEC. 203. ELIMINATION OF 180-DAY RULE; SEARCH WAR-**
8 **RANT REQUIREMENT; REQUIRED DISCLO-**
9 **SURE OF CUSTOMER RECORDS.**

10 (a) *IN GENERAL.*—Section 2703 of title 18, United
11 States Code, is amended by striking subsections (a), (b),
12 and (c) and inserting the following:

13 “(a) *CONTENTS OF WIRE OR ELECTRONIC COMMU-*
14 *NICATIONS.*—A governmental entity may require the disclo-
15 sure by a provider of electronic communication service or
16 remote computing service of the contents of a wire or elec-
17 tronic communication that is in electronic storage with or
18 otherwise stored, held, or maintained by the provider only
19 if the governmental entity obtains a warrant issued using
20 the procedures described in the Federal Rules of Criminal
21 Procedure (or, in the case of a State court, issued using
22 State warrant procedures) that is issued by a court of com-
23 petent jurisdiction directing the disclosure.

24 “(b) *NOTICE.*—Except as provided in section 2705, not
25 later than 10 business days, in the case of a law enforcement

1 agency, or not later than 3 days, in the case of any other
2 governmental entity, after a governmental entity receives
3 the contents of a wire or electronic communication of a sub-
4 scriber or customer from a provider of electronic commu-
5 nication service or remote computing service under sub-
6 section (a), the governmental entity shall serve upon, or de-
7 liver to by registered or first-class mail, electronic mail, or
8 other means reasonably calculated to be effective, as speci-
9 fied by the court issuing the warrant, the subscriber or cus-
10 tomer—

11 “(1) a copy of the warrant; and

12 “(2) a notice that includes the information re-
13 ferred to in clause (i) and (ii) of section
14 2705(a)(4)(B).

15 “(c) *RECORDS CONCERNING ELECTRONIC COMMUNICA-*
16 *TION SERVICE OR REMOTE COMPUTING SERVICE.*—

17 “(1) *IN GENERAL.*—Subject to paragraph (2), a
18 governmental entity may require a provider of elec-
19 tronic communication service or remote computing
20 service to disclose a record or other information per-
21 taining to a subscriber or customer of the provider or
22 service (not including the contents of communica-
23 tions), only if the governmental entity—

24 “(A) obtains a warrant issued using the
25 procedures described in the Federal Rules of

1 *Criminal Procedure (or, in the case of a State*
2 *court, issued using State warrant procedures)*
3 *that is issued by a court of competent jurisdic-*
4 *tion directing the disclosure;*

5 *“(B) obtains a court order directing the dis-*
6 *closure under subsection (d);*

7 *“(C) has the consent of the subscriber or*
8 *customer to the disclosure; or*

9 *“(D) submits a formal written request rel-*
10 *evant to a law enforcement investigation con-*
11 *cerning telemarketing fraud for the name, ad-*
12 *dress, and place of business of a subscriber or*
13 *customer of the provider or service that is en-*
14 *gaged in telemarketing (as defined in section*
15 *2325).*

16 *“(2) INFORMATION TO BE DISCLOSED.—A pro-*
17 *vider of electronic communication service or remote*
18 *computing service shall, in response to an adminis-*
19 *trative subpoena authorized by Federal or State stat-*
20 *ute, a grand jury, trial, or civil discovery subpoena,*
21 *or any means authorized under paragraph (1), dis-*
22 *close to a governmental entity the—*

23 *“(A) name;*

24 *“(B) address;*

1 “(C) *local and long distance telephone con-*
2 *nection records, or records of session times and*
3 *durations;*

4 “(D) *length of service (including start date)*
5 *and types of service used;*

6 “(E) *telephone or instrument number or*
7 *other subscriber number or identity, including*
8 *any temporarily assigned network address; and*

9 “(F) *means and source of payment for such*
10 *service (including any credit card or bank ac-*
11 *count number), of a subscriber or customer of*
12 *such service.*

13 “(3) *NOTICE NOT REQUIRED.—A governmental*
14 *entity that receives records or information under this*
15 *subsection is not required to provide notice to a sub-*
16 *scriber or customer.”.*

17 “(b) *TECHNICAL AND CONFORMING AMENDMENTS.—*
18 *Section 2703(d) of title 18, United States Code, is amend-*
19 *ed—*

20 (1) *by striking “A court order for disclosure*
21 *under subsection (b) or (c)” and inserting “A court*
22 *order for disclosure under subsection (c)”;* and

23 (2) *by striking “the contents of a wire or elec-*
24 *tronic communication, or”.*

1 **SEC. 204. DELAYED NOTICE.**

2 *Section 2705 of title 18, United States Code, is amend-*
3 *ed to read as follows:*

4 **“§2705. Delayed notice**

5 *“(a) DELAY OF NOTIFICATION.—*

6 *“(1) IN GENERAL.—A governmental entity that*
7 *is seeking a warrant under section 2703(a) may in-*
8 *clude in the application for the warrant a request for*
9 *an order delaying the notification required under sec-*
10 *tion 2703(a) for a period of not more than 180 days,*
11 *in the case of a law enforcement agency, or not more*
12 *than 90 days, in the case of any other governmental*
13 *entity.*

14 *“(2) DETERMINATION.—A court shall grant a re-*
15 *quest for delayed notification made under paragraph*
16 *(1) if the court determines that there is reason to be-*
17 *lieve that notification of the existence of the warrant*
18 *may result in—*

19 *“(A) endangering the life or physical safety*
20 *of an individual;*

21 *“(B) flight from prosecution;*

22 *“(C) destruction of or tampering with evi-*
23 *dence;*

24 *“(D) intimidation of potential witnesses; or*

25 *“(E) otherwise seriously jeopardizing an in-*
26 *vestigation or unduly delaying a trial.*

1 “(3) *EXTENSION*.—Upon request by a govern-
2 mental entity, a court may grant 1 or more exten-
3 sions of the delay of notification granted under para-
4 graph (2) of not more than 180 days, in the case of
5 a law enforcement agency, or not more than 90 days,
6 in the case of any other governmental entity.

7 “(4) *EXPIRATION OF THE DELAY OF NOTIFICA-*
8 *TION*.—Upon expiration of the period of delay of noti-
9 fication under paragraph (2) or (3), the governmental
10 entity shall serve upon, or deliver to by registered or
11 first-class mail, electronic mail or other means rea-
12 sonably calculated to be effective as specified by the
13 court approving the search warrant, the customer or
14 subscriber—

15 “(A) a copy of the warrant; and

16 “(B) notice that informs the customer or
17 subscriber—

18 “(i) of the nature of the law enforce-
19 ment inquiry with reasonable specificity;

20 “(ii) that information maintained for
21 the customer or subscriber by the provider of
22 electronic communication service or remote
23 computing service named in the process or
24 request was supplied to, or requested by, the
25 governmental entity;

1 “(iii) of the date on which the warrant
2 was served on the provider and the date on
3 which the information was provided by the
4 provider to the governmental entity;

5 “(iv) that notification of the customer
6 or subscriber was delayed;

7 “(v) the identity of the court author-
8 izing the delay; and

9 “(vi) of the provision of this chapter
10 under which the delay was authorized.

11 “(b) *PRECLUSION OF NOTICE TO SUBJECT OF GOV-*
12 *ERNMENTAL ACCESS.—*

13 “(1) *IN GENERAL.—*A governmental entity that
14 is obtaining the contents of a communication or in-
15 formation or records under section 2703 may apply
16 to a court for an order directing a provider of elec-
17 tronic communication service or remote computing
18 service to which a warrant, order, subpoena, or other
19 directive under section 2703 is directed not to notify
20 any other person of the existence of the warrant,
21 order, subpoena, or other directive for a period of not
22 more than 180 days, in the case of a law enforcement
23 agency, or not more than 90 days, in the case of any
24 other governmental entity.

1 “(2) *DETERMINATION.*—A court shall grant a re-
2 request for an order made under paragraph (1) if the
3 court determines that there is reason to believe that
4 notification of the existence of the warrant, order,
5 subpoena, or other directive may result in—

6 “(A) endangering the life or physical safety
7 of an individual;

8 “(B) flight from prosecution;

9 “(C) destruction of or tampering with evi-
10 dence;

11 “(D) intimidation of potential witnesses; or

12 “(E) otherwise seriously jeopardizing an in-
13 vestigation or unduly delaying a trial.

14 “(3) *EXTENSION.*—Upon request by a govern-
15 mental entity, a court may grant 1 or more exten-
16 sions of an order granted under paragraph (2) of not
17 more than 180 days, in the case of a law enforcement
18 agency, or not more than 90 days, in the case of any
19 other governmental entity.

20 “(4) *PRIOR NOTICE TO LAW ENFORCEMENT.*—
21 Upon expiration of the period of delay of notice under
22 this section, and not later than 3 business days before
23 providing notice to a customer or subscriber, a pro-
24 vider of electronic communications service or remote
25 computing service shall notify the governmental enti-

1 *ty that obtained the contents of a communication or*
2 *information or records under section 2703 of the in-*
3 *tent of the provider of electronic communications serv-*
4 *ice or remote computing service to notify the customer*
5 *or subscriber of the existence of the warrant, order, or*
6 *subpoena seeking that information.*

7 “(c) *DEFINITION.—In this section and section 2703,*
8 *the term ‘law enforcement agency’ means an agency of the*
9 *United States, a State, or a political subdivision of a State,*
10 *authorized by law or by a government agency to engage in*
11 *or supervise the prevention, detection, investigation, or*
12 *prosecution of any violation of criminal law, or any other*
13 *Federal or State agency conducting a criminal investiga-*
14 *tion.”.*

15 **SEC. 205. RULE OF CONSTRUCTION.**

16 *Nothing in this title or an amendment made by this*
17 *title shall be construed to apply the warrant requirement*
18 *for contents of a wire or electronic communication author-*
19 *ized under this title or an amendment made by this title*
20 *to any other section of title 18, United States Code (includ-*
21 *ing chapter 119 of such title (commonly known as the*
22 *“Wiretap Act”)), the Foreign Intelligence Surveillance Act*
23 *of 1978 (50 U.S.C. 1801 et seq.), or any other provision*
24 *of Federal law.*

Amend the title so as to read: “An Act to amend section 2710 of title 18, United States Code, to clarify

that a video tape service provider may obtain a consumer's informed, written consent on an ongoing basis, to improve the provisions of title 18 relating to the privacy of electronic communications, and for other purposes.”.

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