

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2871

To amend title 18, United States Code, to safeguard data stored abroad from improper government access, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 2014

Mr. HATCH (for himself, Mr. COONS, and Mr. HELLER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to safeguard data stored abroad from improper government access, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “The Law Enforcement  
5 Access to Data Stored Abroad Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The Electronic Communications Privacy Act  
9 of 1986 (Public Law 99–508; 100 Stat. 1848) (re-

1       ferred to in this section as “ECPA”) was intended  
2       to protect the privacy of electronic communications  
3       stored with providers of electronic communications  
4       services and remote computing services, while bal-  
5       ancing the legitimate needs of law enforcement to  
6       access records stored by such providers.

7           (2) To strike this balance, ECPA authorized  
8       governmental entities to obtain certain categories of  
9       communications data from providers using estab-  
10      lished, pre-existing forms of process—warrants and  
11      subpoenas. It also created a new form of court  
12      order, in section 2703(d) of title 18, United States  
13      Code, that governmental entities could use to obtain  
14      additional types of communications data.

15          (3) It has been well established that courts in  
16      the United States lack the power to issue warrants  
17      authorizing extraterritorial searches and seizures,  
18      and neither ECPA nor subsequent amendments ex-  
19      tended the warrant power of courts in the United  
20      States beyond the territorial reach of the United  
21      States.

22          (4) Nevertheless, Congress also recognizes the  
23      legitimate needs of law enforcement agencies in the  
24      United States to obtain, through lawful process,  
25      electronic communications relevant to criminal inves-



1 tronic communication service or remote computing service  
2 of the contents of a wire or electronic communication that  
3 is in electronic storage with or otherwise stored, held, or  
4 maintained by the provider only pursuant to a warrant  
5 issued using the procedures described in the Federal Rules  
6 of Criminal Procedure (or, in the case of a State court,  
7 issued using State warrant procedures) by a court of com-  
8 petent jurisdiction. Subject to subsection (b), a warrant  
9 issued pursuant to this subsection may be used to require  
10 the disclosure of contents of a wire or electronic commu-  
11 nication that are in the provider’s electronic storage within  
12 the United States or otherwise stored, held, or maintained  
13 within the United States by the provider.

14 “(b) WARRANT REQUIREMENTS.—A warrant issued  
15 under subsection (a) may require the disclosure of the con-  
16 tents of a wire or electronic communication, regardless of  
17 where such contents may be in electronic storage or other-  
18 wise stored, held, or maintained by the provider, if the  
19 account-holder whose contents are sought by the warrant  
20 is a United States person. A court issuing a warrant pur-  
21 suant to this subsection, on a motion made promptly by  
22 the service provider, shall modify or vacate such warrant  
23 if the court finds that the warrant would require the pro-  
24 vider of an electronic communications or remote com-  
25 puting service to violate the laws of a foreign country.”;

1 (B) in subsection (d), in the first sen-  
2 tence—

3 (i) by striking “(b) or”;

4 (ii) by striking “the contents of a wire  
5 or electronic communication, or”; and

6 (iii) by striking “sought, are” and in-  
7 serting “sought are”; and

8 (C) by adding at the end the following:

9 “(h) RULE OF CONSTRUCTION.—Nothing in this sec-  
10 tion or in section 2702 shall be construed to limit the au-  
11 thority of a governmental entity to use an administrative  
12 subpoena authorized under a Federal or State statute or  
13 to use a Federal or State grand jury, trial, or civil dis-  
14 covery subpoena to—

15 “(1) require an originator, addressee, or in-  
16 tended recipient of an electronic communication to  
17 disclose the contents of the electronic communication  
18 to the governmental entity; or

19 “(2) require an entity that provides electronic  
20 communication services to the officers, directors, em-  
21 ployees, or agents of the entity (for the purpose of  
22 carrying out their duties) to disclose the contents of  
23 an electronic communication to or from an officer,  
24 director, employee, or agent of the entity to a gov-  
25 ernmental entity, if the electronic communication is

1 held, stored, or maintained on an electronic commu-  
2 nications system owned or operated by the entity.

3 “(i) NOTICE.—Except as provided in section 2705,  
4 not later than 10 business days after a governmental enti-  
5 ty receives the contents of a wire or electronic communica-  
6 tion of a subscriber or customer from a provider of elec-  
7 tronic communication service or remote computing service  
8 under subsection (a), the governmental entity shall serve  
9 upon, or deliver to by registered or first-class mail, elec-  
10 tronic mail, or other means reasonably calculated to be  
11 effective, as specified by the court issuing the warrant, the  
12 subscriber or customer—

13 “(1) a copy of the warrant; and

14 “(2) notice that informs the customer or sub-  
15 scriber—

16 “(A) of the nature of the law enforcement  
17 inquiry with reasonable specificity; and

18 “(B) that information maintained for the  
19 customer or subscriber by the provider of elec-  
20 tronic communication service or remote com-  
21 puting service named in the process or request  
22 was supplied to, or requested by, the govern-  
23 mental entity.”;

24 (3) in section 2704(a)(1), by striking “section  
25 2703(b)(2)” and inserting “section 2703”;

1 (4) in section 2705—

2 (A) in subsection (a), by striking para-  
3 graph (1) and inserting the following:

4 “(1) A governmental entity that is seeking a  
5 warrant under section 2703 may include in the ap-  
6 plication for the warrant a request, which the court  
7 shall grant, for an order delaying the notification re-  
8 quired under section 2703(i) for a period of not  
9 more than 90 days, if the court determines that  
10 there is reason to believe that notification of the ex-  
11 istence of the warrant may have an adverse result  
12 described in paragraph (2) of this subsection.”; and

13 (B) in subsection (b), in the matter pre-  
14 ceding paragraph (1), by striking “under sec-  
15 tion 2703(b)(1)”; and

16 (5) in section 2711—

17 (A) in paragraph (3)(B) by striking “war-  
18 rants; and” and inserting “warrants”;

19 (B) in paragraph (4) by striking “thereof.”  
20 and inserting “thereof; and”; and

21 (C) by adding at the end the following:

22 “(5) the term ‘United States person’ means a  
23 citizen or permanent resident alien of the United  
24 States, or an entity or organization organized under

1 the laws of the United States or a State or political  
2 subdivision thereof.”.

3 **SEC. 4. MUTUAL LEGAL ASSISTANCE TREATY REFORMS.**

4 (a) **MUTUAL LEGAL ASSISTANCE TREATY TRANS-**  
5 **PARENCY AND EFFICIENCY.—**

6 (1) **IN GENERAL.—**Not later than 180 days  
7 after the date of enactment of this Act, the Attorney  
8 General shall establish—

9 (A) a form for use by a foreign govern-  
10 ment filing a mutual legal assistance treaty re-  
11 quest (referred to in this section as an “MLAT  
12 request”), which shall—

13 (i) be made available on the website of  
14 the Department of Justice; and

15 (ii) require sufficient information and  
16 be susceptible for use by a foreign govern-  
17 ment to provide all the information nec-  
18 essary for the MLAT request; and

19 (B) an online docketing system for all  
20 MLAT requests, which shall allow a foreign  
21 government to track the status of an MLAT re-  
22 quest filed by the foreign government.

23 (2) **ANNUAL PUBLICATION.—**Beginning not  
24 later than 1 year after the date of enactment of this  
25 Act, and each year thereafter, the Attorney General

1 shall publish on the website of the Department of  
2 Justice statistics on—

3 (A)(i) the number of MLAT requests made  
4 by the Department of Justice to foreign govern-  
5 ments for the purpose of obtaining the contents  
6 of an electronic communication or other infor-  
7 mation or records from a provider of electronic  
8 communications or remote computing services;  
9 and

10 (ii) the average length of time taken by  
11 foreign governments to process the MLAT re-  
12 quests described in clause (i); and

13 (B)(i) the number of MLAT requests made  
14 to the Department of Justice by foreign govern-  
15 ments for the purpose of obtaining the contents  
16 of an electronic communication or other infor-  
17 mation or records from a provider of electronic  
18 communications or remote computing services;  
19 and

20 (ii) the average length of time taken by the  
21 Department of Justice to process the MLAT re-  
22 quests described in clause (i).

23 (3) NOTICE TO DEPARTMENT OF STATE.—The  
24 Attorney General shall notify the Secretary of State  
25 not later than 7 days after the date on which dislo-

1       sure of electronic communications content to a for-  
2       eign government is made pursuant to an MLAT re-  
3       quest.

4       (b) PRESERVATION OF RECORDS.—The Attorney  
5       General may issue a request pursuant to section 2703(f)  
6       of title 18, United States Code, upon receipt of an MLAT  
7       request that appears to be facially valid.

8       (c) NOTIFICATION TO PROVIDER OF MLAT RE-  
9       QUEST.—When the Attorney General makes use of the  
10      process provided in section 2703 of title 18, United States  
11      Code, to obtain information from an electronic commu-  
12      nications provider or a remote computing provider based  
13      on an MLAT request, the Attorney General shall notify  
14      that provider in writing that the request has been made  
15      pursuant to a mutual legal assistance treaty.

16   **SEC. 5. SENSE OF CONGRESS.**

17      It is the sense of Congress that—

18           (1) data localization requirements imposed by  
19      foreign governments on data providers are—

20                   (A) incompatible with the borderless na-  
21      ture of the Internet;

22                   (B) an impediment to online innovation;

23      and

24                   (C) unnecessary to meet the needs of law  
25      enforcement; and

1           (2) the Department of Justice, the Department  
2           of State, and the United States Trade Representa-  
3           tives should pursue open data flow policies with for-  
4           eign nations.

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