H. R. 387

To amend title 18, United States Code, to update the privacy protections for electronic communications information that is stored by third-party service providers in order to protect consumer privacy interests while meeting law enforcement needs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2017

Mr. YODER (for himself, Mr. POLIS, Mr. GOODLATTE, Mr. CONYERS, Mr. POE of Texas, Ms. DELBENE, Mr. HURD, Mr. NADLER, Mr. COLLINS of Georgia, and Ms. JUDY CHU of California) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to update the privacy protections for electronic communications information that is stored by third-party service providers in order to protect consumer privacy interests while meeting law enforcement needs, 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 “Email Privacy Act”.
SEC. 2. VOLUNTARY DISCLOSURE CORRECTIONS.

(a) In General.—Section 2702 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking “divulge” and inserting “disclose”; and

(ii) by striking “while in electronic storage by that service” and inserting “that is in electronic storage with or otherwise stored, held, or maintained by that service”;

(B) in paragraph (2)—

(i) by striking “to the public”;

(ii) by striking “divulge” and inserting “disclose”; and

(iii) by striking “which is carried or maintained on that service” and inserting “that is stored, held, or maintained by that service”; and

(C) in paragraph (3)—

(i) by striking “divulge” and inserting “disclose”; and

(ii) by striking “a provider of” and inserting “a person or entity providing”;
(A) in the matter preceding paragraph (1), by inserting “wire or electronic” before “communication”;

(B) by amending paragraph (1) to read as follows:

“(1) to an originator, addressee, or intended recipient of such communication, to the subscriber or customer on whose behalf the provider stores, holds, or maintains such communication, or to an agent of such addressee, intended recipient, subscriber, or customer;”; and

(C) by amending paragraph (3) to read as follows:

“(3) with the lawful consent of the originator, addressee, or intended recipient of such communication, or of the subscriber or customer on whose behalf the provider stores, holds, or maintains such communication;”; 

(3) in subsection (c) by inserting “wire or electronic” before “communications”;

(4) in each of subsections (b) and (c), by striking “divulge” and inserting “disclose”; and

(5) in subsection (c), by amending paragraph (2) to read as follows:
“(2) with the lawful consent of the subscriber or customer;”.

SEC. 3. AMENDMENTS TO REQUIRED DISCLOSURE SECTION.

Section 2703 of title 18, United States Code, is amended—

(1) by striking subsections (a) through (c) and inserting the following:

“(a) CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS IN ELECTRONIC STORAGE.—Except as provided in subsections (i) and (j), a governmental entity may require the disclosure by a provider of electronic communication service of the contents of a wire or electronic communication that is in electronic storage with or otherwise stored, held, or maintained by that service only if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) that—

“(1) is issued by a court of competent jurisdiction; and

“(2) may indicate the date by which the provider must make the disclosure to the governmental entity.
In the absence of a date on the warrant indicating the date by which the provider must make disclosure to the governmental entity, the provider shall promptly respond to the warrant.

“(b) CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE.—

“(1) IN GENERAL.—Except as provided in subsections (i) and (j), a governmental entity may require the disclosure by a provider of remote computing service of the contents of a wire or electronic communication that is stored, held, or maintained by that service only if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) that—

“(A) is issued by a court of competent jurisdiction; and

“(B) may indicate the date by which the provider must make the disclosure to the governmental entity.

In the absence of a date on the warrant indicating the date by which the provider must make disclosure to the governmental entity, the provider shall promptly respond to the warrant.
“(2) APPLICABILITY.—Paragraph (1) is applicable with respect to any wire or electronic communication that is stored, held, or maintained by the provider—

“(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communication received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

“(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

“(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.—

“(1) IN GENERAL.—Except as provided in subsections (i) and (j), a governmental entity may require the disclosure by a provider of electronic communication service or remote computing service of a record or other information pertaining to a subscriber to or customer of such service (not including
the contents of wire or electronic communications),
only—

“(A) if a governmental entity obtains a
warrant issued using the procedures described
in the Federal Rules of Criminal Procedure (or,
in the case of a State court, issued using State
warrant procedures) that—

“(i) is issued by a court of competent
jurisdiction directing the disclosure; and

“(ii) may indicate the date by which
the provider must make the disclosure to
the governmental entity;

“(B) if a governmental entity obtains a
court order directing the disclosure under sub-
section (d);

“(C) with the lawful consent of the sub-
scriber or customer; or

“(D) as otherwise authorized in paragraph
(2).

“(2) SUBSCRIBER OR CUSTOMER INFORMA-
tion.—A provider of electronic communication serv-
vice or remote computing service shall, in response to
an administrative subpoena authorized by Federal or
State statute, a grand jury, trial, or civil discovery
subpoena, or any means available under paragraph (1), disclose to a governmental entity the—

“(A) name;

“(B) address;

“(C) local and long distance telephone connection records, or records of session times and durations;

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

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

“(F) means and source of payment for such service (including any credit card or bank account number),

of a subscriber or customer of such service.

“(3) NOTICE NOT REQUIRED.—A governmental entity that receives records or information under this subsection is not required to provide notice to a subscriber or customer.”;

(2) in subsection (d)—

(A) by striking “(b) or”;

(B) by striking “the contents of a wire or electronic communication, or”;

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(C) by striking “sought,” and inserting “sought”; and
(D) by striking “section” and inserting “subsection”; and
(3) by adding at the end the following:
“(h) NOTICE.—Except as provided in section 2705, a provider of electronic communication service or remote computing service may notify a subscriber or customer of a receipt of a warrant, court order, subpoena, or request under subsection (a), (b), (c), or (d) of this section.
“(i) RULE OF CONSTRUCTION RELATED TO LEGAL PROCESS.—Nothing in this section or in section 2702 shall limit the authority of a governmental entity to use an administrative subpoena authorized by Federal or State statute, a grand jury, trial, or civil discovery subpoena, or a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction to—
“(1) require an originator, addressee, or intended recipient of a wire or electronic communication to disclose a wire or electronic communication (including the contents of that communication) to the governmental entity;
“(2) require a person or entity that provides an electronic communication service to the officers, directors, employees, or agents of the person or entity (for the purpose of carrying out their duties) to disclose a wire or electronic communication (including the contents of that communication) to or from the person or entity itself or to or from an officer, director, employee, or agent of the entity to a governmental entity, if the wire or electronic communication is stored, held, or maintained on an electronic communications system owned, operated, or controlled by the person or entity; or

“(3) require a person or entity that provides a remote computing service or electronic communication service to disclose a wire or electronic communication (including the contents of that communication) that advertises or promotes a product or service and that has been made readily accessible to the general public.

“(j) Rule of Construction Related to Congressional Subpoenas.—Nothing in this section or in section 2702 shall limit the power of inquiry vested in the Congress by article I of the Constitution of the United States, including the authority to compel the production of a wire or electronic communication (including the con-
 tents of a wire or electronic communication) that is stored, held, or maintained by a person or entity that provides remote computing service or electronic communication service.”.

SEC. 4. DELAYED NOTICE.

Section 2705 of title 18, United States Code, is amended to read as follows:

“§ 2705. Delayed notice

(a) IN GENERAL.—A governmental entity acting under section 2703 may apply to a court for an order directing a provider of electronic communication service or remote computing service to which a warrant, order, subpoena, or other directive under section 2703 is directed not to notify any other person of the existence of the warrant, order, subpoena, or other directive.

(b) DETERMINATION.—A court shall grant a request for an order made under subsection (a) for delayed notification of up to 180 days if the court determines that there is reason to believe that notification of the existence of the warrant, order, subpoena, or other directive will likely result in—

(1) endangering the life or physical safety of an individual;

(2) flight from prosecution;

(3) destruction of or tampering with evidence;
“(4) intimidation of potential witnesses; or
“(5) otherwise seriously jeopardizing an inves-
tigation or unduly delaying a trial.
“(c) EXTENSION.—Upon request by a governmental
entity, a court may grant one or more extensions, for peri-
ods of up to 180 days each, of an order granted in accord-
ance with subsection (b).”.

SEC. 5. RULE OF CONSTRUCTION.

Nothing in this Act or an amendment made by this
Act shall be construed to preclude the acquisition by the
United States Government of—

(1) the contents of a wire or electronic commu-
nication pursuant to other lawful authorities, includ-
ing the authorities under chapter 119 of title 18
(commonly known as the “Wiretap Act”), the For-

gn Intelligence Surveillance Act of 1978 (50

U.S.C. 1801 et seq.), or any other provision of Fed-
eral law not specifically amended by this Act; or

(2) records or other information relating to a

subscriber or customer of any electronic communica-
tion service or remote computing service (not includ-
ing the content of such communications) pursuant to

the Foreign Intelligence Surveillance Act of 1978

(50 U.S.C. 1801 et seq.), chapter 119 of title 18

(commonly known as the “Wiretap Act”), or any
other provision of Federal law not specifically amended by this Act.