
REFERENCES IN TEXT

The Foreign Intelligence Surveillance Act of 1978, referred to in subsec. (a), is Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, as amended, which is classified principally to chapter 36 (§1801 et seq.) of chapter 9 of Title 47, Telecommunications, Telephones, and Radiotelegraphs. Sections 102 and 106 of the Act are classified to sections 1001 and 1007, respectively, of Title 47. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 47 and Tables.

CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

Sec.
2701. Unlawful access to stored communications.
2702. Voluntary disclosure of customer communications or records.
2703. Required disclosure of customer communications or records.
2704. Backup preservation.
2705. Delayed notice.
2706. Cost reimbursement.
2707. Civil action.
2708. Exclusivity of remedies.
2709. Counterintelligence access to telephone toll and transactional records.
2710. Wrongful disclosure of video tape rental or sale records.
2711. Definitions for chapter.
2712. Civil actions against the United States.

AMENDMENTS


1998—Pub. L. 100–618, title VII, §7067, Nov. 18, 1988, 102 Stat. 4405, which directed amendment of item 2710 by inserting “for chapter” after “Definitions” was executed by making the insertion in item 2711 to reflect the probable intent of Congress and the intervening re-designation of item 2710 as 2711 by Pub. L. 100–618, see below.

Pub. L. 100–618, §2(b), Nov. 5, 1988, 102 Stat. 3197, added item 2719 and redesignated former item 2710 as 2711.

§2701. Unlawful access to stored communications

(a) OFFENSE.—Except as provided in subsection (c) of this section whoever—

(1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or

(2) intentionally exceeds an authorization to access that facility; and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

(b) PUNISHMENT.—The punishment for an offense under subsection (a) of this section is—

(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain, or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State—

(A) a fine under this title or imprisonment for not more than 5 years, or both, in the case of a first offense under this subparagraph; and

(B) a fine under this title or imprisonment for not more than 10 years, or both, for any subsequent offense under this subparagraph; and

(2) in any other case—

(A) a fine under this title or imprisonment for not more than 1 year or both, in the case of a first offense under this paragraph; and

(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under this subparagraph that occurs after a conviction of another offense under this section.

(c) EXCEPTIONS.—Subsection (a) of this section does not apply with respect to conduct authorized—

(1) by the person or entity providing a wire or electronic communications service;

(2) by a user of that service with respect to a communication of or intended for that user; or

(3) in section 2703, 2704 or 2518 of this title.


AMENDMENTS


Subsec. (b)(1)(B), Pub. L. 107–296, §225(j)(2)(C), substituted “10 years” for “two years”.

Subsec. (b)(2), Pub. L. 107–296, §225(j)(2)(D), added par. (2) and struck out former par. (2) which read as follows: “a fine under this title or imprisonment for not more than six months, or both, in any other case.”


1994—Subsec. (b)(1)(A), Pub. L. 103–322, §330016(1)(U), substituted “under this title” for “not more than $250,000”. 

Page 587 TITLe 18—CRIMES AND CRIMINal PROCEDURE
Subsec. (b)(2). Pub. L. 101–322, §330016(1)(K), substituted “‘under this title’” for “‘not more than $5,000’.

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Effective Date

Section 202 of title II of Pub. L. 99–508 provided that: ‘‘This Act [enacting this chapter] shall take effect ninety days after the date of the enactment of this Act [Oct. 21, 1986] and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this Act takes effect.’’

Short Title of 1988 Amendment

Pub. L. 100–690, title II, § 7037, Nov. 18, 1988, 102 Stat. 4399, provided that: ‘‘This Act [enacting section 2710 as 2711 of this title] may be cited as the ‘Video Privacy Protection Act of 1988.’”

§ 2702. Voluntary disclosure of customer communications or records

(a) Prohibitions.—Except as provided in subsection (b) or (c)—

(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

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

(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; and

(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))—

(1) as otherwise authorized in section 2703;

(2) with the lawful consent of the customer or subscriber;

(3) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

(4) to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency;

(c) Exceptions for Disclosure of Customer Records.—A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))—

(1) as otherwise authorized in section 2703;

(2) with the lawful consent of the customer or subscriber;

(3) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

(4) to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency;

(5) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 2238A; or

(6) to any person other than a governmental entity.

(d) Reporting of Emergency Disclosures.—On an annual basis, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report containing—

(1) the number of accounts from which the Department of Justice has received voluntary disclosures under subsection (b)(8); and

(2) a summary of the basis for disclosure in those instances where—

(A) voluntary disclosures under subsection (b)(8) were made to the Department of Justice; and

(B) the investigation pertaining to those disclosures was closed without the filing of criminal charges.