

113TH CONGRESS
2^D SESSION

S. 2871

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

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

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 tigungen related to United States persons wherever
 2 that content may be stored. Therefore, this Act au-
 3 thorizes the use of search warrants extraterritorially
 4 only where the Government seeks to obtain the con-
 5 tents of electronic communications belonging to a
 6 United States person.

7 **SEC. 3. SCOPE AND CLARIFICATION OF WARRANT RE-**
 8 **QUIREMENT.**

9 (a) IN GENERAL.—Chapter 121 of title 18, United
 10 States Code, is amended—

11 (1) in section 2702(a), by amending paragraph
 12 (3) to read as follows:

13 “(3) a provider of remote computing service or
 14 electronic communication service to the public shall
 15 not knowingly divulge to any governmental entity
 16 the contents of any communication described in sec-
 17 tion 2703(a), or any record or other information
 18 pertaining to a subscriber or customer of such serv-
 19 ice.”;

20 (2) in section 2703—

21 (A) by striking subsections (a) and (b) and
 22 inserting the following:

23 “(a) CONTENTS OF WIRE OR ELECTRONIC COMMU-
 24 NICATION IN ELECTRONIC STORAGE.—A governmental
 25 entity may require the disclosure by a provider of elec-

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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