115TH CONGRESS  
1ST SESSION  

H. R. 387  

IN THE SENATE OF THE UNITED STATES  

FEBRUARY 7 (legislative day, FEBRUARY 6), 2017  
Received; read twice and referred to the Committee on the Judiciary  

AN ACT  

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.  

Be it enacted by the Senate and House of Representa-
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tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

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”;

(2) in subsection (b)—

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

SEC. 3. AMENDMENTS TO REQUIRED DISCLOSURE SEC-
TION.

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 COMMU-
NICATIONS IN ELECTRONIC STORAGE.—Except as pro-
vided in subsections (i) and (j), a governmental entity may
require the disclosure by a provider of electronic commu-
nication service of the contents of a wire or electronic com-
munication that is in electronic storage with or otherwise
stored, held, or maintained by that service only if the gov-
ernmental entity obtains a warrant issued using the proce-
dures described in the Federal Rules of Criminal Proce-
dure (or, in the case of a State court, issued using State
warrant procedures) that—
“(1) is issued by a court of competent jurisdic-
tion; 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 re-
quire 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 subsection (d);

“(C) with the lawful consent of the subscriber or customer; or

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

“(2) Subscriber or customer information.—A provider of electronic communication serv-
ice 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 con-
nection 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 iden-
tity, including any temporarily assigned net-
work 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'';

(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, di-
rectors, employees, or agents of the person or entity
(for the purpose of carrying out their duties) to dis-
close 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, direc-
tor, employee, or agent of the entity to a govern-
mental entity, if the wire or electronic communica-
tion is stored, held, or maintained on an electronic
communications system owned, operated, or con-
trolled by the person or entity; or

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

“(j) RULE OF CONSTRUCTION RELATED TO CON-
GRESSIONAL 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 contents 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 investigation or unduly delaying a trial.
“(e) EXTENSION.—Upon request by a governmental entity, a court may grant one or more extensions, for periods of up to 180 days each, of an order granted in accordance 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 communication pursuant to other lawful authorities, including the authorities under chapter 119 of title 18 (commonly known as the “Wiretap Act”), the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), or any other provision of Federal law not specifically amended by this Act; or

(2) records or other information relating to a subscriber or customer of any electronic communication service or remote computing service (not including 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.

Passed the House of Representatives February 6, 2017.

Attest: KAREN L. HAAS,
Clerk.