

Testimony of

The Honorable Patrick Leahy

November 29, 2012

Today, the Committee will continue and I hope complete consideration of legislation to update the Video Privacy Protection Act and the Electronic Communications Privacy Act -- two key digital privacy laws that I helped initiate in the 1980s. I have consistently worked to protect the privacy rights of Americans.

Like many Americans, I am concerned about the growing and unwelcome intrusions into our private lives in cyberspace. I also understand that we must update our digital privacy laws to keep pace with the rapid advances in technology. That is why I announced two years ago that I wanted to update the Electronic Communications Privacy Act (ECPA). That is why I have been working diligently to do so.

When we enacted the Electronic Communications Privacy Act in 1986, email was a novelty. Few could have imagined the way the Internet and mobile technologies would transform how we communicate and exchange information today. But, we sensed a need to contain the way surveillance was expanding and taking away our privacy. Three decades after the enactment of ECPA, Americans face even greater threats to their digital privacy, as we witness the explosion of new technologies and the expansion of the Government 019s surveillance powers.

Today, the Committee has an important opportunity to begin to address this privacy challenge. We do so after holding two hearings on this issue, and having had this matter on the Committee 019s business agenda since September 13.

My bill takes several important steps to help protect digital privacy rights, while also promoting new technologies -- like cloud computing. First, the bill updates the Video Privacy Protection Act to keep pace with how most Americans view and share videos today -- on the Internet. This update will allow American consumers, if they wish, to share their movie and television watching experiences through social media, while also ensuring that the important privacy protections in this law are not diminished.

Second, the bill adds several commonsense updates to the Electronic Communications Privacy Act that enhance the privacy protections afforded to Americans 019 emails and other electronic communications. Specifically, the bill requires that the Government obtain a search warrant based on probable cause to obtain the content of Americans 019 email and other electronic communications when those communications are requested from a third-party service provider. I believe strongly that we need to eliminate the anachronistic distinction made in the law depending upon whether the emails are more or less than 180 days old.

The manager 019s amendment I have circulated and intend to offer today makes clear that the updates in the bill do not alter Federal counterterrorism or other criminal laws. In response to requests from the Justice Department and others, the language would allow some additional time for law enforcement to meet the notice obligations contained in the bill. I am sensitive to wanting to protect the integrity of ongoing investigations and to the work done by the Federal Trade Commission and the Department of Justice to protect consumers and their privacy from abuse by corporate interests, as well.

My bill stays true to its core purpose 014to strengthen the protection provided by requiring that the Government get a search warrant to obtain email content, even from third-party providers. I recall that Senator Grassley initially expressed concerns about unduly burdening law enforcement and Government regulators. I hope that the language we are adopting today helps but, if not, I will continue to be open to working with him and others as we move forward.

I have been working diligently to improve current law since I first put forward proposals to update ECPA in early 2011. That has been my goal. I have worked to make sure that these updates carefully protect privacy interests. During the past two years, I have consulted with leaders in the privacy, civil liberties, civil rights and technology communities as well as many from our Federal, state and local law enforcement communities.

When this Committee favorably reported the Electronic Communications Privacy Act to the Senate on September 19, 1986, it did so with the unanimous support of all Democratic and Republican Senators on the Committee. The Committee correctly recognized that protecting Americans 019 privacy rights should not be a partisan issue. Earlier this week, the Director of the American Civil Liberties Union 019s Washington Legislative Office joined Grover Norquist, the President of the conservative group Americans for Tax Reform, in calling on the Congress to enact these important privacy updates. This political odd couple is joined by a broad coalition of more than 50 privacy, civil liberties, civil rights and tech industry leaders from across the political spectrum who have also endorsed this bill. I have received letters from a number of these groups, which I would like to include in the record. I thank them for their support. I hope that all Members of the Committee will follow their example, so that we can report this bill with strong, bipartisan support.

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