

**Statement Of Senator Patrick Leahy (D-Vt.),  
Ranking Member, Senate Committee On The Judiciary  
Hearing on “Reforming the Electronic Communications Privacy Act”  
September 16, 2015**

Congress passed the Electronic Communications Privacy Act twenty-nine years ago, when most Americans communicated on land lines, when call waiting was novel, and when few had heard of email. Yet Congress anticipated that the new world of electronic communications would need privacy protections. ECPA provided just that.

Since 1986, technology companies have continued to create new ways of communicating. But the privacy rules governing this critical area are simply outdated. As the statute reads today, government agencies can obtain the contents of an email without a warrant if that email is more than 180 days old.

But we do not expect our private letters or photos stored at home to lose Fourth Amendment protection simply because they are more than six months old. Neither should our emails, texts, or other documents we store in the cloud. If I send Senator Grassley a birthday note tomorrow, its long-term constitutional protection should not depend on whether I give him a card that he puts in his desk, or send him a text that is stored in the cloud.

Senator Lee and I have introduced the ECPA Amendments Act to bring privacy protections for the digital world in line with those in the physical world. Our bill has 22 other cosponsors in the Senate, including nine members of this committee. In the House, a supermajority of nearly 300 cosponsors supports this bill. An extraordinary coalition of industry and civil society supports this bill, led by Americans for Tax Reform, the Center for Democracy and Technology, Heritage Action, and the ACLU. This bill has been reported from the Judiciary Committee by voice vote in each of the last two Congresses. Passing this bill is – to use a technical term – a no-brainer.

Five years ago, the U.S. Court of Appeals for the Sixth Circuit found that the contents of email was fully protected by the Fourth Amendment – regardless of its age. And that has effectively become the rule nationwide. Major service providers no longer turn over the contents of emails or texts without a warrant or legitimate warrant exception. The ECPA Amendments Act simply codifies that current practice.

Some have raised concerns that the bill would hamper civil regulatory agencies, such as the SEC. We want these agencies to be effective, but they must abide by the same constitutional constraints that apply to everyone else. They have not been able to obtain emails without a warrant because of the 2010 federal court ruling, and our bill would not alter that status quo.

I look forward to hearing from all the witnesses who have been invited this morning. I am disappointed that the Commerce Department was not asked to join the administration panel, given its important perspective, but I thank the Chairman for focusing on this important issue. I urge him to move this legislation through committee, as we have done twice in the last four years.

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