

The Email Privacy Act, H.R. 699/ ECPA Amendments Act S. 356

Overview

- **The Email Privacy Act eliminates the outdated aspects of ECPA and is an important step toward creating clear rules for today’s digital world.**
- **BSA supports** this bipartisan, bicameral legislation to **modernize** the current framework for law enforcement access to electronic communications in a manner that **strengthens privacy protection** while **ensuring the needs of law enforcement are met.**

ISSUE DISCUSSION

The Email Privacy Act makes critical updates to the Electronic Communications Privacy Act of 1986 (“ECPA”) to protect the privacy of Americans’ email content and subscriber records. When Congress enacted ECPA nearly 30 years ago, it did not anticipate the new types and vast amounts of data that consumers store today. ECPA is no longer adequate to safeguard Americans’ privacy. It will:

- *Requires the Government to obtain a warrant for **all** electronic content.* Today, ECPA makes a distinction between emails stored for 180 days or fewer, which can only be obtained with a warrant, and older email, which can be obtained with just a subpoena. The result is that older emails can be obtained at a lower legal standard and without review by a judge. This 180 day-distinction may have made sense 30 years ago when consumers rarely stored data for six months or longer, but in today’s digital world it is antiquated and inadequate to protect Americans’ privacy.
- *Clarifies rules regarding notice so that companies can be transparent about privacy protections.* The government is not currently required to notify individuals when it uses a warrant to obtain their emails from a provider, and it can indefinitely prohibit a provider from notifying customers about demands for their information. The bill would change these provisions. The bill would still permit a court to delay notice to targets in certain circumstances, but it imposes reasonable time limits on nondisclosure orders. Providers should not be subject to indefinite orders prohibiting them from communicating with their customers.



BSA POSITION

BSA supports the Email Privacy Act because consumers, businesses and governments will all benefit from greater clarity in the law about the appropriate ways for law enforcement to access data. Just as the Government must show a warrant to an individual when it searches her home, the Government should show an individual a warrant authorizing a search of her email. The Act would update antiquated privacy protections that do not meet citizens' privacy expectations of and harm the trust they have in services.

Ensuring that customers have faith in the security and privacy of their email and other online data is vital to ensuring their trust in digital services. Simply put, if consumers do not trust technology they will not use it.

The Email Privacy Act improves the trust equation between providers and customers by:

- Protecting email communications from government intrusion without a warrant; and
- Providing clarity to data services companies on their legal obligations to law enforcement, so that providers can be transparent about how they treat customers' information.

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