

114TH CONGRESS
2D SESSION

S. 2986

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

IN THE SENATE OF THE UNITED STATES

MAY 25, 2016

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, 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 “International Commu-
5 nications Privacy Act”.

6 **SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF**
7 **PURPOSE.**

8 Congress finds the following:

9 (1) The Electronic Communications Privacy Act
10 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) Congress recognizes the legitimate needs of
16 law enforcement agencies in the United States to ob-
17 tain, through lawful process, electronic communica-
18 tions relevant to criminal investigations, as well as
19 the privacy interests of citizens of foreign countries.
20 Therefore, where the Government seeks to obtain
21 the contents of electronic communications of foreign
22 citizens located outside of the United States, this
23 Act authorizes the use of search warrants only if the
24 foreign government does not have a Law Enforce-
25 ment Cooperation Agreement with the United States

1 or, if it does have such a Law Enforcement Coopera-
2 tion Agreement, the foreign government does not ob-
3 ject to disclosure.

4 **SEC. 3. EXTENSION AND CLARIFICATION OF WARRANT RE-**
5 **QUIREMENT.**

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

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

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

17 (2) in section 2703—

18 (A) by striking subsections (a) and (b) and
19 inserting the following:

20 “(a) CONTENTS OF WIRE OR ELECTRONIC COMMU-
21 NICATION IN ELECTRONIC STORAGE.—A governmental
22 entity may require the disclosure by a provider of elec-
23 tronic communication service or remote computing service
24 of the contents of a wire or electronic communication that
25 is in electronic storage with or otherwise stored, held, or

1 maintained by the provider, regardless of where such con-
2 tents may be in electronic storage or otherwise stored,
3 held, or maintained, only pursuant to a warrant issued
4 using the procedures described in the Federal Rules of
5 Criminal Procedure (or, in the case of a State court,
6 issued using State warrant procedures) by a court of com-
7 petent jurisdiction. An application for a warrant under
8 this section shall include a full and complete statement
9 of the facts and circumstances relied upon and the inves-
10 tigative steps taken to ascertain the nationality and loca-
11 tion of the subscriber or customer whose contents are
12 sought by the warrant. Any such warrant may be used
13 to require the disclosure of contents of a wire or electronic
14 communication only if the court finds that—

15 “(1) the governmental entity has taken all rea-
16 sonable steps to establish the nationality and loca-
17 tion of the subscriber or customer whose contents
18 are sought; and

19 “(2) at the time the warrant application is
20 made—

21 “(A) there are reasonable grounds to be-
22 lieve that the subscriber or customer whose con-
23 tents are sought by the warrant is—

24 “(i) a United States person;

1 “(ii) physically located within the
2 United States;

3 “(iii) a national of or located in a for-
4 eign country or countries where any of
5 those countries has an applicable Law En-
6 forcement Cooperation Agreement with the
7 United States (or in the case where the
8 warrant application is made on behalf of a
9 foreign government pursuant to a Law En-
10 forcement Cooperation Agreement with the
11 United States, any of those countries has
12 an applicable Law Enforcement Coopera-
13 tion Agreement with the requesting foreign
14 government) and the Central Authority for
15 each such country with such a Law En-
16 forcement Cooperation Agreement provides
17 written certification that the disclosure
18 may be had or does not object to the dis-
19 closure within 60 days after formal sub-
20 mission of a request for such certification;
21 or

22 “(iv) a national of and located in a
23 foreign country or countries where none of
24 those countries have an applicable Law
25 Enforcement Cooperation Agreement with

1 the United States (or in the case where the
2 warrant application is made on behalf of a
3 foreign government pursuant to a Law En-
4 forcement Cooperation Agreement with the
5 United States, none of those countries
6 have an applicable Law Enforcement Co-
7 operation Agreement with the requesting
8 foreign government); or

9 “(B) there are no reasonable grounds on
10 which to base a belief as to either the nation-
11 ality or the location of the subscriber or cus-
12 tomer whose contents are sought.

13 “(b) WARRANT REQUIREMENTS.—Upon a motion
14 made promptly by the service provider, a court issuing a
15 warrant under this section shall modify or vacate such
16 warrant if—

17 “(1) the court finds that the warrant does not
18 meet the requirements of this section or is otherwise
19 unlawful; or

20 “(2) the service provider presents additional in-
21 formation about the subscriber’s or customer’s phys-
22 ical location, status as a United States person, or
23 status as a national of a foreign country that would
24 cause the court to find that the warrant application

1 would not comply with the requirements of this sec-
2 tion.”;

3 (B) in subsection (d), in the first sen-
4 tence—

5 (i) by striking “(b) or”;

6 (ii) by striking “the contents of a wire
7 or electronic communication, or”; and

8 (iii) by striking “sought, are” and in-
9 serting “sought are”; and

10 (C) by adding at the end the following:

11 “(h) RULE OF CONSTRUCTION.—Nothing in this sec-
12 tion or in section 2702 shall be construed to limit the au-
13 thority of a governmental entity to use an administrative
14 subpoena authorized under a Federal or State statute or
15 to use a Federal or State grand jury, trial, or civil dis-
16 covery subpoena to—

17 “(1) require an originator, addressee, or in-
18 tended recipient of an electronic communication to
19 disclose the contents of the electronic communication
20 to the governmental entity; or

21 “(2) require an entity that provides electronic
22 communication services to the officers, directors, em-
23 ployees, or agents of the entity (for the purpose of
24 carrying out their duties) to disclose the contents of
25 an electronic communication to or from an officer,

1 director, employee, or agent of the entity to a gov-
2 ernmental entity, if the electronic communication is
3 held, stored, or maintained on an electronic commu-
4 nications system owned or operated by the entity.”;

5 (3) in section 2704(a)(1), by striking “section
6 2703(b)(2)” and inserting “section 2703”; and

7 (4) in section 2711—

8 (A) in paragraph (3)(B) by striking “war-
9 rants; and” and inserting “warrants;”;

10 (B) in paragraph (4) by striking “thereof.”
11 and inserting “thereof;”; and

12 (C) by adding at the end the following:

13 “(5) the term ‘United States person’ means a
14 citizen of the United States or an alien lawfully ad-
15 mitted for permanent residence (as defined in sec-
16 tion 101(a) of the Immigration and Nationality Act
17 (8 U.S.C. 1101(a)));

18 “(6) the term ‘Law Enforcement Cooperation
19 Agreement’ means—

20 “(A) a mutual legal assistance treaty, mu-
21 tual legal assistance agreement, adherence to
22 the Convention on Cybercrime, signed Novem-
23 ber 21, 2001; or

24 “(B) an executive agreement or treaty be-
25 tween the United States and one or more coun-

1 tries designed to establish a reciprocal process
2 for notifying and obtaining the consent of the
3 other country or countries in order to obtain
4 the contents of electronic communication pursu-
5 ant to section 2703(a)(1)(A)(iii), provided that
6 the Attorney General shall maintain a list of
7 countries with which the United States has
8 such agreements and shall submit such list, as
9 and when amended, to the Committees on the
10 Judiciary and Foreign Relations of the United
11 States Senate and the Committees on the Judi-
12 ciary and Foreign Affairs of the United States
13 House of Representatives, and shall make it
14 available to the public;

15 “(7) the term ‘Central Authority’ means the
16 agency, department, office, or authority of a country
17 responsible for administering a particular Law En-
18 forcement Cooperation Agreement between that
19 country and another; and

20 “(8) the term ‘national of a foreign country’
21 means a citizen, a lawful resident, or an entity orga-
22 nized under the laws of a foreign jurisdiction.”.

23 (b) RULE OF CONSTRUCTION.—Nothing in this Act
24 or the amendments made by this Act shall be construed

1 to expand the investigative authority of any governmental
2 entity.

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;

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; and

23 (C) a process through which certified ap-
24 proval may be sought for disclosure pursuant to
25 warrants issued under section 2703(a).

1 (2) ANNUAL PUBLICATION.—Beginning not
2 later than 1 year after the date of enactment of this
3 Act, and each year thereafter, the Attorney General
4 shall publish on the website of the Department of
5 Justice statistics on—

6 (A)(i) the number of MLAT requests made
7 by the Department of Justice to foreign govern-
8 ments for the purpose of obtaining the contents
9 of an electronic communication or other infor-
10 mation or records from a provider of electronic
11 communications or remote computing services;
12 and

13 (ii) the average length of time taken by
14 foreign governments to process the MLAT re-
15 quests described in clause (i); and

16 (B)(i) the number of MLAT requests made
17 to the Department of Justice by foreign govern-
18 ments for the purpose of obtaining the contents
19 of an electronic communication or other infor-
20 mation or records from a provider of electronic
21 communications or remote computing services;
22 and

23 (ii) the average length of time taken by the
24 Department of Justice to process the MLAT re-
25 quests described in clause (i).

1 (3) NOTICE TO DEPARTMENT OF STATE.—The
2 Attorney General shall notify the Secretary of State
3 not later than 7 days after the date on which dislo-
4 sure of electronic communications content to a for-
5 eign government is made pursuant to an MLAT re-
6 quest.

7 (b) PRESERVATION OF RECORDS.—The Attorney
8 General may issue a request pursuant to section 2703(f)
9 of title 18, United States Code, upon receipt of an MLAT
10 request that appears to be facially valid.

11 (c) NOTIFICATION TO PROVIDER OF MLAT RE-
12 QUEST.—When the Attorney General makes use of the
13 process provided in section 2703 of title 18, United States
14 Code, to obtain information from an electronic commu-
15 nications provider or a remote computing provider based
16 on an MLAT request, the Attorney General shall notify
17 that provider in writing that the request has been made
18 pursuant to a mutual legal assistance treaty.

19 **SEC. 5. SENSE OF CONGRESS.**

20 It is the sense of Congress that—

21 (1) data localization requirements imposed by
22 foreign governments on data providers are—

23 (A) incompatible with the borderless na-
24 ture of the Internet;

1 (B) an impediment to online innovation;

2 and

3 (C) unnecessary to meet the needs of law

4 enforcement; and

5 (2) the Department of Justice, the Department

6 of State, and the United States Trade Representa-

7 tives should pursue open data flow policies with for-

8 eign nations.

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