

**Federal Bureau of Investigation**  
*Agents Association*

April 24, 2013

The Honorable Patrick J. Leahy  
Chairman  
Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Charles E. Grassley  
Ranking Member  
Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Re: S.607—The Electronic Communications Privacy Act Amendments Act of 2013**

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the FBI Agents Association (FBIAA), a voluntary professional association currently representing over 12,000 active duty and retired FBI Special Agents, I write to express the FBIAA's concerns about S.607, entitled the *Electronic Communications Privacy Act Amendments Act of 2013*. This legislation would make a number of significant changes to the Electronic Communications Privacy Act (ECPA), and the FBIAA believes that the legislation needs to be subjected to additional scrutiny before the Senate considers it.

On behalf of the brave men and women defending this Nation as federal law enforcement officers, let me assure you that we share the important goal of protecting privacy interests. Likewise, it is clear that each of you shares the equally important goal of thwarting terrorist attacks and ending criminal enterprises. As Chairman Leahy has stated, "In the fight against al-Qaida and other terrorist threats, we should give our intelligence, military, and law enforcement professionals all the tools they need—not limit those tools." In the wake of the recent events in Boston it is clearer than ever that we must protect and enhance our ability to detect, investigate, and thwart threats to our country and its citizens. Thus, to ensure that the twin goals of safety and privacy are reached, laws such as ECPA must always carefully balance federal law enforcement needs and the privacy interests of citizens.

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The FBIAA has several concerns regarding S. 607 that we hope will be addressed by the Senate Committee on the Judiciary.

First, we urge the rejection of the provisions that would require law enforcement officers to obtain a probable cause warrant in order to compel the production of all stored electronic content and recommend reasonable exceptions to this requirement. Requiring a probable cause warrant for access to all electronic information could add additional delays to the investigation process, and such delays could pose unique risks to investigations that are uniquely time-sensitive. Accordingly, the FBIAA believes that S.607 should include explicit exceptions to the warrant requirement for emergencies and investigations of crimes such as child pornography where the time and delays associated with warrants and the risks of notification can jeopardize investigations.

Second, we urge you to revise the provisions of S. 607 requiring notice to targets of investigations about the issuance of a warrant unless a delay order is obtained from the court issuing the warrant. Search warrants are often obtained in the early stages of investigation, and notifying the target of a search warrant about its issuance could allow for the destruction of vital evidence. Requiring notice a few days after a warrant is issued, even with the ability to request a delay, risks administrative and technical errors that could result in targets of an investigations being told of ongoing investigations, a potential threat to public safety. Further, even if a delay order is obtained, limiting the delay to 180 days could undermine investigations that require more than 180 days to complete because targets would be notified of the ongoing investigation. While the orders can be renewed, an accidental failure to do so or a delay due to administrative error would alert the target to the investigation.

For these reasons, the FBIAA believes that further changes need to be made to the proposed notification requirements in S. 607. Specifically, rather than a presumption of notification, there should be a presumption that notice is not required until an investigation is ended and a court finds that notification would not pose a risk to ongoing investigations.

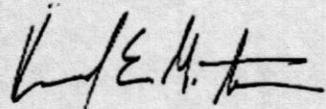
Third, service providers should be required to respond to law enforcement requests in a timely manner. S. 607 increases administrative burdens on law enforcement but does not address the need for internet service providers to deliver timely responses to law enforcement requests. Delayed responses or a lack of communication from internet service providers in response to law enforcement requests can jeopardize sensitive investigations, and Congress should compel these providers to develop reliable and efficient procedures for responding to law enforcement requests for electronic information. S. 607 should include language requiring that internet service providers develop internal response protocols designating at

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least one individual as a “24/7” point of contact for law enforcement requests, and requiring that responses to requests be made in a timely manner

We greatly appreciate your consideration of these concerns, which are of critical importance to the federal law enforcement community. We look forward to continuing to work with you as you explore the impact of ECPA changes on federal law enforcement activities.

Sincerely,



Konrad Motyka