



FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION
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September 19, 2012

Senate Committee on the Judiciary

Chairman: The Honorable Patrick J. Leahy

Ranking Member: The Honorable Charles E. Grassley

Re: Opposition to Section 203 in the Proposed
Amendment of H.R. 2471

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the 26,000 members of the Federal Law Enforcement Officers Association (FLEOA), I am writing to express our profound disappointment with both the content of Section 203, and the exclusion of federal law enforcement stakeholder input. Having read the letter submitted by the state and local law enforcement organizations (Law Enforcement Perspectives on ECPA Reform – September 18th, 2012), which FLEOA endorses, it appears this amendment only represents the interests of privacy advocate groups.

Regarding Section 203, we oppose the elimination of the 180-Day Rule. Was any comprehensive review performed to consider the impact of this recommendation? Also, in Section 203, what was the genesis of the three-day notification requirement, and why doesn't the section place a similar time requirement on the service providers to produce content? Furthermore, after reading sections 202 to 204, it is unclear what impact this amendment would have on law enforcement's use of pen registers and trap and trace devices.

Our membership is also concerned regarding the possible impact this amendment would have on National Security letters issued under section 2709. Will this legislation be interpreted as elevating the requirement to the warrant level? We all know that terrorists won't take pause to accommodate our efforts to navigate through added bureaucracy.

We view the amendment's warrant requirement as over-reaching, and it raises questions as to how it would impact law enforcement's access to other forms of online information, i.e., information provided to third parties such as accountants, or online retailers. Since this amendment does not distinguish between public and private providers, will a grand jury subpoena no longer be a valid legal instrument for obtaining employee emails from a corporation?

The position of privacy advocates has obviously resonated with the drafting of this amendment. Did anyone query the federal Inspector General community and the Office of Professional Responsibility to determine if there was a pattern of federal law enforcement abuses? Since we risk our lives with undying honor to protect and defend the citizenry of our great nation, our perspective should matter and factor into a substantive debate and/or review of the need for ECPA reform.

This amendment is reminiscent of the pill commercials where the multitude of possible side effects, delivered in a soothing voice, seems to suggest the pill was manufactured prematurely. Given the gravity of this matter for all interested parties, we recommend that this amendment be withheld pending a comprehensive review of ECPA reform. We would respectfully request that this process include the views of FLEOA, the largest federal law enforcement stakeholder association.

Thank you for considering the perspective of federal law enforcement officers nationwide.

Respectfully yours,

Jon Adler