

ECPA Reform: DOJ Moves in Two Directions at Once

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Further Reading

In [testimony](#) [2] before the House Judiciary Crime Subcommittee on March 19, the US Justice Department acknowledged that it is time for Congress to update the Electronic Communications Privacy Act (ECPA), the 1986 federal statute setting rules under which government agencies compel service providers to disclose email and other private documents stored online on behalf of their customers.

It is widely-recognized that ECPA has been outpaced by technology and no longer provides privacy protections adequate for the way we live today. In its testimony, DOJ came very close to saying that ECPA should be amended to uniformly apply the Constitution's warrant standard to all private electronic communications and other documents stored online by third party service providers. This reform—requiring for online data the same protection afforded to letters and phone calls—is supported by a [diverse coalition of companies and public interest groups](#) [3] as well as by [leading policy advocates on both the left and the right](#) [4].

However, as CDT explains in a new memo, the Department also raised three troubling proposals that would weaken current privacy protections. Among the DOJ's suggestions: give regulatory agencies conducting civil investigations the power to compel communications service providers to disclose their customers' documents and communications without approval of a judge. CDT has just released an [analysis](#) [5] of the DOJ testimony, warning policymakers and others of the implications of the DOJ's proposals to weaken current privacy protections.

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