

The Honorable Harry Reid
Senate Majority Leader

The Honorable Mitch McConnell
Senate Minority Leader

Dear Leader Reid and Leader McConnell,

As the Senate considers cybersecurity legislation, we urge you to make in order and to support an amendment that Chairman Leahy has introduced that would update a key privacy law that is critical to business, government investigators and ordinary citizens.

Chairman Leahy's amendment #2580 addresses the Electronic Communications Privacy Act (ECPA), a law that Chairman Leahy himself wrote and guided through the Senate in 1986. ECPA was a forward-looking statute when enacted. However, technology has advanced dramatically since 1986, and ECPA has been outpaced.

As a result, ECPA is a patchwork of confusing standards that have been interpreted inconsistently by the courts, creating uncertainty for service providers, for law enforcement agencies, and for the hundreds of millions of Americans who use mobile phones and the Internet. Moreover, the Sixth Circuit Court of Appeals has held that a provision of ECPA is unconstitutional because it allows the government to compel a service provider to disclose the content of private communications without a warrant.

Chairman Leahy's amendment would make it clear that, except in emergencies, or under other existing exceptions, the government must use a warrant in order to compel a service provider to disclose the content of emails, texts or other private material stored by the service provider on behalf of its users.

Chairman Leahy's amendment would create a more level playing field for technology. It would cure the constitutional defect identified by the Sixth Circuit. It would provide clarity and certainty to law enforcement agencies at all levels, to business and entrepreneurs, and to individuals who rely on online services to create, communicate and store personal and proprietary data. These protections for content are consistent with an ECPA reform principle advanced by the Digital Due Process coalition, www.digitaldueprocess.org, a broad-based coalition of companies, privacy groups, think tanks, and academics.

For Internet and communications companies competing in a global marketplace, and for citizens who have woven these technologies into their daily lives, as well as for government agencies that rely on electronic evidence, the protections for content in the Leahy amendment would represent an important step forward for privacy protection and legal clarity.

While the signatories to this letter have very diverse views on the cybersecurity legislation, and some take no position on the legislation, we urge you to make the Leahy amendment #2580 in order and to support it when offered.

Sincerely,
Adobe
American Booksellers Foundation for Free Expression
Americans for Tax Reform

Association for Competitive Technology
American Library Association
Association of Research Libraries
Bill of Rights Defense Committee
Business Software Alliance
CAUCE North America
Center for Democracy & Technology
Center for Financial Privacy and Human Rights
Center for National Security Studies
Competitive Enterprise Institute
Computer and Communications Industry Association
Council for Citizens Against Government Waste
The Constitution Project
Data Foundry
Distributed Computing Industry Association
eBay
EDUCAUSE
Engine Advocacy
FreedomWorks
Liberty Coalition
Newspaper Association of America
Microsoft
Neustar
Personal
Salesforce
Sonic.net
SpiderOak
Symantec
TechFreedom
TechAmerica
TRUSTe
U.S. Public Policy Council of the Association for Computing Machinery

Cc:

The Honorable Patrick J. Leahy
The Honorable Chuck Grassley