AMENDMENT NO._______ Calendar No._______

Purpose: To amend section 2710 of title 18, United States Code, to clarify that a video tape service provider may obtain a consumer’s informed, written consent on an ongoing basis, to improve the provisions of title 18 relating to the privacy of electronic communications, and for other purposes.


S.3414

To enhance the security and resiliency of the cyber and communications infrastructure of the United States.

Referred to the Committee on and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEAHY

Viz:

At the end, add the following:

TITLE VIII—PRIVACY PROTECTIONS
Subtitle A—Video Privacy Protection

SEC. 821. SHORT TITLE.

This subtitle may be cited as the “Video Privacy Protection Act Amendments Act of 2012”.
SEC. 822. VIDEO PRIVACY PROTECTION ACT AMENDMENT.

Section 2710(b)(2) of title 18, United States Code, is amended by striking subparagraph (B) and inserting the following:

“(B) to any person with the informed, written consent (including through an electronic means using the Internet) of the consumer that—

“(i) is in a form distinct and separate from any form setting forth other legal or financial obligations of the consumer;

“(ii)(I) is given at time the disclosure is sought; or

“(II) is given in advance for a set period of time or until consent is withdrawn by the consumer; and

“(iii) the video tape service provider has provided an opportunity, in a clear and conspicuous manner, for the consumer to withdraw on a case-by-case basis or to withdraw for ongoing disclosures;”.

Subtitle B—Electronic Communications Privacy

SEC. 841. SHORT TITLE.

This subtitle may be cited as the “Electronic Communications Privacy Act Amendments Act of 2012”.

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SEC. 842. CONFIDENTIALITY OF ELECTRONIC COMMUNICATIONS.

Section 2702(a)(3) of title 18, United States Code, is amended to read as follows:

“(3) a provider of electronic communication service, or remote computing service to the public shall not knowingly divulge to any governmental entity the contents of any communication described in section 2703(a), or any record or other information pertaining to a subscriber or customer of such service.”.

SEC. 843. ELIMINATION OF 180-DAY RULE; SEARCH WARRANT REQUIREMENT; REQUIRED DISCLOSURE OF CUSTOMER RECORDS.

(a) In general.—Section 2703 of title 18, United States Code, is amended by striking subsections (a), (b), and (c) and inserting the following:

“(a) CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS.—A governmental entity may require the disclosure by a provider of electronic communication service, or remote computing service of the contents of a wire or electronic communication that is in electronic storage with or otherwise stored, held, or maintained by the provider if the governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using
State warrant procedures) that is issued by a court of competent jurisdiction directing the disclosure.

“(b) NOTICE.—Except as provided in section 2705, not later than 3 days after a governmental entity receives the contents of a wire or electronic communication of a subscriber or customer from a provider of electronic communication service, or remote computing service under subsection (a), the governmental entity shall serve upon, or deliver to by registered or first-class mail, electronic mail, or other means reasonably calculated to be effective, as specified by the court issuing the warrant, the subscriber or customer—

“(1) a copy of the warrant; and

“(2) a notice that includes the information referred to in section 2705(a)(5)(B)(i).

“(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE, OR REMOTE COMPUTING SERVICE.—

“(1) IN GENERAL.—Subject to paragraph (2), a governmental entity may require a provider of electronic communication service, or remote computing service to disclose a record or other information pertaining to a subscriber or customer of the provider or service (not including the contents of communications), only if the governmental entity—
“(A) obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) that is issued by a court of competent jurisdiction directing the disclosure;

“(B) obtains a court order directing the disclosure under subsection (d);

“(C) has the consent of the subscriber or customer to the disclosure; or

“(D) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of the provider or service that is engaged in telemarketing (as defined in section 2325).

“(2) SUBPOENAS.—A provider of electronic communication service, or remote computing service shall, in response to an administrative subpoena authorized by Federal or State statute or a Federal or State grand jury or trial subpoena, disclose to a governmental entity the—

“(A) name;

“(B) address;
“(C) local and long distance telephone connection records, or records of session times and durations;

“(D) length of service (including start date) and types of service used;

“(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and

“(F) means and source of payment for such service (including any credit card or bank account number), of a subscriber or customer of such service.

“(3) NOTICE NOT REQUIRED.—A governmental entity that receives records or information under this subsection is not required to provide notice to a subscriber or customer.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

Section 2703(d) of title 18, United States Code, is amended—

(1) by striking “A court order for disclosure under subsection (b) or (c)” and inserting “A court order for disclosure under subsection (c)”; and

(2) by striking “the contents of a wire or electronic communication, or”.

SEC. 844. DELAYED NOTICE.

Section 2705 of title 18, United States Code, is amended to read as follows:

“§ 2705. Delayed notice

“(a) Delay of Notification.—

“(1) In general.—A governmental entity that is seeking a warrant under section 2703(a) may include in the application for the warrant a request for an order delaying the notification required under section 2703(a) for a period of not more than 90 days.

“(2) Determination.—A court shall grant a request for delayed notification made under paragraph (1) if the court determines that there is reason to believe that notification of the existence of the warrant may result in—

“(A) endangering the life or physical safety of an individual;

“(B) flight from prosecution;

“(C) destruction of or tampering with evidence;

“(D) intimidation of potential witnesses; or

“(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

“(3) Extension.—Upon request by a governmental entity, a court may grant 1 or more exten-
sions of the delay of notification granted under para-

graph (2) of not more than 90 days.

“(4) Expiration of the delay of notification.—Upon expiration of the period of delay of no-
tification under paragraph (2) or (3), the govern-
mental entity shall serve upon, or deliver to by reg-
istered or first-class mail, electronic mail or other
means reasonably calculated to be effective as speci-

fied by the court approving the search warrant, the
customer or subscriber—

“(A) a copy of the warrant; and

“(B) notice that informs the customer or

subscriber—

“(i) that information maintained for

the customer or subscriber by the provider

of electronic communication service, or re-
mote computing service named in the proc-

ess or request was supplied to, or re-

quested by, the governmental entity;

“(ii) of the date on which the warrant

was served on the provider and the date on

which the information was provided by the

provider to the governmental entity;

“(iii) that notification of the customer

or subscriber was delayed;
“(iv) the identity of the court author-
izing the delay; and
“(v) of the provision of this chapter
under which the delay was authorized.
“(b) Preclusion of Notice to Subject of Gov-
ernmental Access.—
“(1) In general.—A governmental entity that
is obtaining the contents of a communication or in-
formation or records under section 2703 may apply
to a court for an order directing a provider of elec-
tronic communication service, or remote computing
service to which a warrant, order, subpoena, or other
directive under section 2703 is directed not to notify
any other person of the existence of the warrant,
order, subpoena, or other directive for a period of
not more than 90 days.
“(2) Determination.—A court shall grant a
request for an order made under paragraph (1) if
the court determines that there is reason to believe
that notification of the existence of the warrant,
order, subpoena, or other directive may result in—
“(A) endangering the life or physical safety
of an individual;
“(B) flight from prosecution;
“(C) destruction of or tampering with evidence;

“(D) intimidation of potential witnesses;

“(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial; or

“(F) endangering national security.

“(3) Extension.—Upon request by a governmental entity, a court may grant 1 or more extensions of an order granted under paragraph (2) of not more than 90 days.”.