

September 17, 2012

The Honorable Patrick J. Leahy
Chairman
Senate Judiciary Committee

The Honorable Charles Grassley
Ranking Member
Senate Judiciary Committee

Dear Chairman Leahy and Ranking Member Grassley,

We, the undersigned companies, organizations and individuals, are writing to express our support of Chairman Leahy's amendment to H.R. 2471, which the Committee will consider shortly. The Chairman's amendment would update the Electronic Communications Privacy Act (ECPA) to provide protection to sensitive personal and proprietary communications stored in "the cloud." We urge all Members of the Committee to support this amendment

ECPA, which sets standards for government access to private communications, is critically important to businesses, government investigators and ordinary citizens. Though the law was forward-looking when enacted in 1986, technology has advanced dramatically and ECPA has been outpaced. Courts have issued inconsistent interpretations of the law, creating uncertainty for service providers, for law enforcement agencies, and for the hundreds of millions of Americans who use the Internet in their personal and professional lives. Moreover, the Sixth Circuit Court of Appeals has held that a provision of ECPA allowing the government to obtain a person's email without a warrant is unconstitutional, jeopardizing law enforcement investigations and leaving communications providers in other circuits uncertain of their obligations.

The Chairman's amendment would update ECPA in one key respect, making it clear that, except in emergencies, or under other existing exceptions, the government must obtain 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.

This standard would create a more level playing field for technology. It would cure the constitutional defect identified by the Sixth Circuit. It would allow law enforcement officials to obtain electronic communications in all appropriate cases while protecting Americans' constitutional rights. It would provide clarity and certainty to law enforcement agencies at all levels and to American businesses developing innovative new services and competing in a global marketplace. It would implement a core principle supported by Digital Due Process, www.digitaldueprocess.org, a broad coalition of companies, privacy groups, think tanks, and academics.

For all these reasons, we strongly urge all members of the Senate Judiciary Committee to support the Chairman's amendment to H.R. 2471.

Sincerely,

Adobe
American Booksellers Foundation for Free Expression
American Civil Liberties Union
American Library Association
Americans for Tax Reform

Association for Competitive Technology
Association of Research Libraries
Autodesk
Bill of Rights Defense Committee
CAUCE North America
Center for Democracy & Technology
Center for Financial Privacy and Human Rights
Center for National Security Studies
Competitive Enterprise Institute
Computer & Communications Industry Association
The Constitution Project
Council for Citizens Against Government Waste
Data Foundry
Distributed Computing Industry Association
eBay
EDUCAUSE
Future of Privacy Forum
Microsoft
National Association of Criminal Defense Lawyers
Neustar
Newspaper Association of America
Open Society Policy Center
Personal
Reed Elsevier Inc.
SpiderOak
TechAmerica
TechFreedom
Software & Information Industry Association
U.S. Public Policy Council of the Association for Computing Machinery

cc: Members of the Senate Judiciary Committee