

## Email Privacy Act Advances in Congress

April 14, 2016 – Yesterday the House Judiciary Committee unanimously advanced a bill being called the Email Privacy Act. The bill actually modifies Electronic Communications Privacy Act of 1986. It would require law enforcement authorities to get a search warrant to view stored electronic communications that are more than 180 days old. Current law only requires a subpoena; which is much easier to get.

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var s = document.createElement('SCRIPT'), s1 = document.getElementsByTagName('SCRIPT')[0];
s.type = 'text/javascript';
s.src = 'http://widgets.digg.com/buttons.js';
s1.parentNode.insertBefore(s, s1);
})();
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(function() {
var po = document.createElement('script'); po.type = 'text/javascript'; po.async = true;
po.src = 'https://apis.google.com/js/plusone.js';
var s = document.getElementsByTagName('script')[0]; s.parentNode.insertBefore(po, s);
})();
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Prior versions of this proposed law have failed. But current efforts are likely to succeed because the bill enjoys wide bipartisan support. The version of the law being considered in the House of Representatives has 314 co-sponsors. A Senate version also has wide support.

The bill is actually misnamed because it provides protection to all electronic communications stored in the cloud that are more than 180 days old. Current law already requires a search warrant for communications that are less than 180 days old.

Prior to the committee vote an amendment was adopted that weakened the law somewhat. As it was originally written, the bill would have required that anyone who was the subject of a criminal investigation to be notified when a search warrant ordering the turn-over of their electronic communications was served. The amendment changed that; only requiring that the search warrant be served to company storing your communications. For instance, if you keep your email on Gmail, the government could simply provide a search warrant to Google for your communications. You wouldn't necessarily know that a warrant had been served. In the example used here, Google would still be free to notify you that they had received a warrant (unless the court issuing the warrant prohibits it), but they would be under no obligation to do so.

Even with the amendment, the Email Privacy Act is long overdue. Perhaps Rep. Kevin Yoder (R-KS) summed it up best when he said, "Today is a great day for not only the Fourth Amendment advocates who have fought long and hard to move the Email Privacy Act, but also for all Americans, who are one step closer to having private and secure digital communications."

The full House of Representatives is likely to vote on the measure before the end of April. The Senate is also likely to consider its version before the end of summer.

by Jim Malmberg

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