

**Statement Of Senator Patrick Leahy (D-Vt.), Chairman, Senate Committee On The  
Judiciary,**

**On Introduction Of**

**“The Electronic Communications Privacy Act Amendments Act of 2013”**

**March 19, 2013**

Today, I am pleased to introduce the Electronic Communications Privacy Act Amendments Act of 2013 -- a bill to strengthen the privacy protections for email and other electronic communications. Last year, the Judiciary Committee favorably reported substantially similar legislation with strong bipartisan support. I thank Republican Senator Mike Lee for cosponsoring this important privacy bill. Senator Lee and I understand that protecting Americans’ privacy rights is something that is important to all Americans, regardless of political party or ideology. I hope that all Senators will support this bill and that the Senate will pass this privacy legislation this year.

Like many Americans, I am concerned about growing and unwelcome intrusions into our private lives in cyberspace. I also understand that we must update our digital privacy laws to keep pace with these threats and the rapid advances in technology.

When I led the effort to write ECPA 27 years ago, email was a novelty. No one could have imagined the way the Internet and mobile technologies would transform how we communicate and exchange information today. Three decades later, we must update this law to reflect the realities of our time, so that our Federal privacy laws keep pace with American innovation and the changing mission of our law enforcement agencies.

**Privacy Rights for the Digital Age**

My bill takes several important steps to improve Americans’ digital privacy rights, while also promoting new technologies -- like cloud computing -- and accommodating the legitimate needs of law enforcement. First, the bill requires that the government obtain a search warrant based on probable cause to obtain the content of Americans’ email and other electronic communications, when those communications are requested from a third-party service provider. There are balanced exceptions to the warrant requirement to address emergency circumstances and to protect national security under current law.

Second, the bill requires that the government promptly notify any individual whose email content has been accessed *via* a third-party service provider, and provide that individual with a copy of the search warrant and other details about the information obtained. The bill permits the government to seek a court order temporarily delaying such notice in order to protect the integrity of ongoing government investigations. In addition, the bill permits the government to ask a court to temporarily preclude a service provider from notifying a customer about the disclosure.

## **Privacy Safeguards Do Not Hinder Law Enforcement**

The bill contains several important provisions to ensure that the reforms to ECPA do not hinder law enforcement. The bill adds a new notice requirement to the law that requires service providers to notify the government of their intent to inform a customer about a disclosure of electronic communications information at least three business days before giving such notice. Furthermore, to help law enforcement investigate and prosecute corporate wrongdoing, the bill adds civil discovery subpoenas to the existing tools that the government may use to obtain non-content information under ECPA.

In addition, the bill makes clear that the government may also continue to use administrative, civil discovery and grand jury subpoena to obtain corporate email and other electronic communications directly from a corporate entity, when those communications are contained on an internal email system. Lastly, the bill also provides that the search warrant requirement in the bill does not apply to other Federal criminal or national security laws, including Title III of the Omnibus Crime Control and Safe Streets Act of 1986 (commonly known as the “Wiretap Act”) and the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. § 1801, *et seq.* (commonly known as “FISA”)).

Since I first put forward proposals to update ECPA in early 2011, I have worked to make sure that these updates carefully balance privacy interests, the needs of law enforcement and the interests of our thriving American tech sector. During the past two years, I have consulted with many stakeholders from the Federal, state and local law enforcement communities, including -- the Department of Justice, the Federal Trade Commission, the Securities and Exchange Commission, the International Association of Chiefs of Police, the Federal Law Enforcement Officers Association, the Association of State Criminal Investigative Agencies, and the National Sheriffs Association. I have also consulted closely with many leaders in the privacy, civil liberties, civil rights and technology communities who support these reforms.

## **ECPA Reform Benefits All Americans**

The 113<sup>th</sup> Congress has an important opportunity to address the digital privacy challenges that Americans face today. We should do so by enacting the commonsense privacy reforms contained in this bill.

When the Senate Judiciary Committee favorably reported the Electronic Communications Privacy Act on September 19, 1986, it did so with the unanimous support of all Democratic and Republican Senators. At the time, the Committee recognized that protecting Americans’ privacy rights should not be a partisan issue.

In that bipartisan spirit, I am pleased to join with Senator Lee in urging the Congress to enact these important privacy reforms without delay. Senator Lee and I are joined in this effort by a broad coalition of more than 50 privacy, civil liberties, civil rights and tech industry leaders from across the political spectrum that have also endorsed the ECPA reform effort. I thank the Digital Due Process Coalition, the Digital 4<sup>th</sup> Coalition and the many other individuals and organizations that have advocated for ECPA reform for their

support. I hope that all Members of the Senate will follow their example, so that we can enact this digital privacy bill with strong, bipartisan support.

I ask that the full text of the bill be printed in the Record immediately following my remarks.