

**Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Committee On The Judiciary,
On Committee Consideration Of
The Electronic Communications Privacy Act Amendments Act of 2013
April 25, 2013**

Today, the Committee should complete consideration of important bipartisan legislation that I spoke about last week to better protect Americans' digital privacy. The Leahy-Lee Electronic Communications Privacy Act Amendments Act will strengthen the privacy protections for our email and other electronic communications, to meet the challenges of the digital age. I thank Senator Lee for cosponsoring this important privacy bill. We 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 on the Committee will share this view and support this important privacy legislation.

Last year, this Committee favorably reported substantially similar legislation with strong bipartisan support. We did so amidst growing concern among many Americans about the unwarranted intrusions into our private lives in cyberspace. Many Americans are concerned that the Internal Revenue Service, or other government agencies, may be reading their email without first obtaining a search warrant.

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, so that the law protects our privacy rights and keeps pace with innovation and the challenging mission of law enforcement.

The bill takes several important steps to accomplish this. 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 exceptions to the warrant requirement for emergency circumstances and to protect national security.

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.

The bill also 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.

Our bill allows the Government to continue to use administrative, civil discovery and grand jury subpoenas 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”)).

After years of work on ECPA reform, the time has come for the Congress to enact these commonsense privacy reforms. We have held two hearings on ECPA reform and the Committee spent several weeks considering ECPA reform legislation last year. 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. I have consulted with those from the Federal, state and local law enforcement communities, and with many leaders in the privacy, civil liberties, civil rights and technology communities.

Enacting these privacy reforms should not be a partisan issue. All Americans -- regardless of political party affiliation or ideology -- care about their privacy rights. That is why Senator Lee and I are joined in this effort by a broad coalition of more

than 100 privacy, civil liberties, civil rights and tech industry leaders from across the political spectrum that have also endorsed this bill. Liberal organizations such as the American Civil Liberties Union and the Center for Democracy and Technology have joined with conservative organizations such as Americans for Tax Reform and the Heritage Foundation to press for these reforms. I thank all of them for their support. I hope that all Members of this Committee will vote to favorably report this good privacy bill today.