

March 16, 2016

The Honorable Robert Goodlatte  
Chairman  
The Honorable John Conyers  
Ranking Member  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Conyers,

We write in strong opposition to H.R. 699, the Email Privacy Act, in its current form. We do not object to the requirement for law enforcement to obtain a warrant for the contents of stored communications, but this bill would do much more than that. We believe that a number of other provisions of the bill would place an undue burden on our ability to gather evidence that can help solve crimes in the digital era. The bill also completely ignores real and growing challenges faced by investigators and prosecutors in obtaining electronic evidence when the required legal process is obtained.

We strongly urge the committee to understand the other provisions of the bill that extend its reach far beyond a simple "warrant for content" requirement.

The bill as drafted would create significantly more protection for stored emails than that afforded the contents of someone's house. Providing stored emails the same protection that we give correspondence stored at home is one thing; providing more protection is another thing entirely.

Digital evidence is a part of nearly every crime scene today, and we believe that a comprehensive understanding of the impact of *all* aspects of H.R. 699 should give the committee pause.

In its current form, H.R. 699:

- makes it significantly more difficult for investigators and prosecutors to develop the building blocks of criminal investigations because it requires probable cause to obtain non-content transactional records held by "remote computing services" including most third party businesses operating on the Internet;
- creates an unprecedented requirement for law enforcement to serve a warrant for electronic evidence directly on a customer or subscriber who is an investigative target - and even describe details of the investigation - creating significant risk of evidence destruction, flight, and threats to the safety of investigating officers;
- fails to account for modern technology and types of data that are increasingly a part of criminal and terrorism investigations, including *publicly posted* electronic content (e.g. social media

postings by terrorist organizations or online advertisements by child sex traffickers), and makes it more difficult to obtain those items in an investigation;

- contains inadequate exceptions to the warrant requirement for exigent circumstances like an imminent threat of physical harm, likely destruction of evidence, consent by a victim or a witness, or public safety emergencies that are not necessarily part of a criminal investigation (missing child, missing elderly adult);
- ignores the lack of standards governing service providers' responsiveness to warrants and other legal process issued by law enforcement, which today is routinely resulting in delays in the investigative process.

Clearly, H.R. 699 is not just a "warrant for content" bill. It goes far beyond that in ways that would make it harder for law enforcement to investigate crimes. Yes, the Electronic Communications Privacy Act (ECPA) is due for an update because technology, data, and the way people generate, store, and use them have changed, but an update to ECPA does no good for crime victims or their families if it addresses only those changes that impact privacy and commercial interests, and ignores the growing challenges facing investigators and prosecutors who routinely and responsibly use legal process to investigate crime and keep the public safe.

We are grateful for the opportunities you have given us to express our concerns, and we strongly urge the committee to narrow the scope of the bill. We believe an appropriate balance is within reach, and we remain at the committee's disposal to provide technical assistance and expert perspectives on these issues.

Sincerely,

Association of State Criminal Investigative Agencies  
FBI Agents Association  
Federal Law Enforcement Officers Association  
Fraternal Order of Police  
International Association of Chiefs of Police  
Major Cities Chiefs Police Association  
Major County Sheriffs Association  
National Association of Assistant United States Attorneys  
National Association of Police Organizations  
National Association of State Drug Enforcement Agencies  
National District Attorneys Association  
National Narcotic Officers' Associations' Coalition  
National Troopers' Coalition  
Sergeants Benevolent Association NYPD

cc: Members of the House Judiciary Committee