

LEAHY SUBSTITUTE TO H.R. 2471 SECTION BY SECTION

The substitute bill clarifies that video tape service providers may obtain customer consent to share video viewing information on an ongoing basis and that such consent may be given via the Internet. The substitute also updates the Electronic Communications Privacy Act to enhance consumer privacy and meet the new privacy challenges posed by cloud computing and other new technologies.

TITLE I - VIDEO PRIVACY PROTECTION

SECTION 101 -- SHORT TITLE.

This section designates the title as the *Video Privacy Protection Act Amendments of 2012*.

SECTION 102 - VIDEO PRIVACY PROTECTION ACT AMENDMENT.

Section 102 amends title 18, United States Codes, section 2710(b)(2) to clarify that video tape service providers may obtain a customer's informed, written consent to share video viewing information on an ongoing basis and that such consent may be obtained *via* the Internet. The provision includes a requirement that video service providers provide their customers, in a clear and conspicuous manner, with the opportunity to withdraw the consent given to share video viewing information at any time.

TITLE II - ELECTRONIC COMMUNICATIONS PRIVACY

SECTION 201 – SHORT TITLE.

This section designates the title as the *Electronic Communications Privacy Act Amendments Act of 2012*.

SECTION 202 – CONFIDENTIALITY OF ELECTRONIC COMMUNICATIONS.

Section 202 amends title 18, United States Code, section 2702 (the Electronic Communications Privacy Act or "ECPA") to prohibit an electronic communication or remote computing service provider from voluntarily disclosing the contents of its customer's email or other electronic communications to the Government. There are limited exceptions to this prohibition under current law, including, customer consent and disclosure to law enforcement to address criminal activity.

SECTION 203 – ELIMINATION OF 180 DAY RULE; SEARCH WARRANT REQUIREMENT FOR CONTENT; REQUIRED DISCLOSURE OF CUSTOMER RECORDS.

Section 203 amends ECPA so that the disclosure of the content of email and other electronic communications by an electronic communication or remote computing service provider to the Government is subject to one clear legal standard -- a search warrant issued based on a showing of probable cause. The provision eliminates the confusing and outdated "180-day" rule that calls

for different legal standards for the Government to obtain email content, depending upon the email's age. The provision also requires that the Government notify the individual whose account was disclosed, and provide that individual with a copy of the search warrant and other details about the information obtained, within three days.

Section 203 also reaffirms current law to clarify that the Government may use an administrative or grand jury subpoena in order to obtain certain kinds of electronic communication records from a service provider, including customer name, address, session time records, length of service information, subscriber number and temporarily assigned network address, and means and source of payment information.

SECTION 204 – DELAYED NOTICE.

Section 204 amends section 2705 of ECPA to provide that the Government may seek a court order to delay notifying an individual of that fact that the Government has accessed the contents of the individual's electronic communications for up to 90 days. This delay period may be extended for a period of up to an additional 90 days at a time by a court. Section 204 also establishes a 90-day time limit on the period that the Government could prevent a service provider from informing its customer about the disclosure of electronic communications information to the Government. This time period may be extended by a court for up to an additional 90 days at a time.