

July 13, 2018

Chairman John McCain
Ranking Member Jack Reed
Senate Committee on Armed Services

Chairman Mac Thornberry
Ranking Member Adam Smith
House Armed Services Committee

Dear Chairman McCain, Chairman Thornberry, Ranking Member Reed and Ranking Member Smith,

We, the undersigned civil society organizations, companies and trade associations, write to express our support for the Email Privacy Act which was recently included in the House passed version of the National Defense Authorization Act (NDAA) for Fiscal Year 2019. The Act updates the Electronic Communications Privacy Act (ECPA), the law that sets standards for government access to private internet communications, to reflect internet users' reasonable expectations of privacy with respect to emails, texts, notes, photos, and other sensitive information stored in "the cloud."

The bill would end ECPA's arbitrary "180-day rule," which permits email communications to be obtained without a warrant after 180 days. The Act would also reject the Department of Justice interpretation of ECPA that the act of opening an email removes it from warrant protection. These reforms would ratify the Sixth Circuit's decision in *U.S. v. Warshak*, which held that email content is protected by the Fourth Amendment and that law enforcement access requires a probable cause warrant. Moreover, the changes reflect current practices: DOJ and FBI policies already require law enforcement officials seeking content to obtain a search warrant, and many service providers will not relinquish their users' content without one.

The bill passed by the House does not achieve all of the reforms we had hoped for. Indeed, it removes key provisions of the proposed bill, such as the section requiring notice from the government to the customer when a warrant is served, which are necessary to protect users. However, it does impose a warrant-for-content rule with limited exceptions. It represents a carefully negotiated compromise which preserves existing exceptions to the warrant requirement, provides a new ability for civil agencies to obtain access to previously public commercial content, and maintains the government's ability to preserve records and obtain emails from employees of corporations. We are particularly pleased that the bill does not carve out civil agencies from the warrant requirement, which would have expanded government surveillance power and undermined the very purpose of the bill, or contain

unnecessary and overbroad mandatory emergency exceptions. Such changes or other broad warrant exceptions would represent a step back from the status quo, particularly in light of the recent *Carpenter* decision where a majority of the justices on the Supreme Court endorsed a lower court decision applying a warrant standard when law enforcement seek emails.

For these reasons, we support the Email Privacy Act and urge that it be included in the final NDAA without any amendments that would weaken the protections afforded by the bill.

Sincerely,

ACT | The App Association

Adobe

ALEC Action

American Civil Liberties Union

Americans for Prosperity

Amazon

American Association of Law Libraries

American Library Association

Americans for Tax Reform

Association of Research Libraries

Box Inc.

Brennan Center for Justice at NYU School of Law

BSA | The Software Alliance

Center for Democracy & Technology

Cisco Systems, Inc.

Committee for Justice

CompTIA

Computer & Communications Industry Association

Consumer Action

Consumer Technology Association

Council for Citizens Against Government Waste

Data Foundry

Digital Liberty

Discovery Institute

Dropbox

Due Process Institute

Electronic Frontier Foundation

Engine

Facebook

FreedomWorks

Future of Privacy Forum

Giganews

Golden Frog

Google

Information Technology and Innovation Foundation

Information Technology Industry Council (ITI)

Institute for Policy Innovation

Internet Association

Internet Infrastructure Coalition

National Association of Criminal Defense Lawyers

National Taxpayers Union

NetChoice

New America's Open Technology Institute

Oath

Rapid7

Reform Government Surveillance

Software & Information Industry Association

Sonic

Taxpayers Protection Alliance

TechFreedom

TechNet

U.S. Chamber of Commerce

Wikimedia Foundation