

“Online Communications and Geolocation Protection Act” proposed amendments to the Electronic Communications Privacy Act:

18 USC § 2703 - Required disclosure of customer communications or records

(a) **Contents of Wire or Electronic Communications.**— A governmental entity may require the disclosure by a provider of electronic communication service or remote computing service of the contents of a wire or electronic communication, ~~that is stored, held, or maintained by that service,~~ only pursuant to a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction. Within three days after a governmental entity receives such contents from a service provider pursuant to this subsection, the governmental entity shall serve upon, or deliver by registered or first-class mail, or other means reasonably calculated to be effective as specified by the court issuing the warrant to the subscriber, customer, or user a copy of the warrant and a notice that includes the information referenced in section 2705(a)(4)(A) and (B)(i), except that delayed notice may be provided pursuant to section 2705 of this title.

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(c) **Records Concerning Electronic Communication Service or Remote Computing Service.**—

(1) A governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications) only when the governmental entity—

- (A) obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction;
- (B) obtains a court order for such disclosure under subsection (d) of this section;
- (C) has the consent of the subscriber or customer to such disclosure;
- (D) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is defined in section 2325 of this title); or
- (E) seeks information under paragraph (2).

(2) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the—

- (A) name;
- (B) address;
- (C) local and long distance telephone connection records, or records of session times and durations;

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(D) length of service (including start date) and types of service utilized;
(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
(F) means and source of payment for such service (including any credit card or bank account number),
of a subscriber to or customer of such service when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under paragraph (1).

(3) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

(d) **Requirements for Court Order.**— A court order for disclosure under subsection (c) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

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18 USC § 2702 - Voluntary disclosure of customer communications or records

(a) **Prohibitions.**— Except as provided in subsection (b) or (c)—

(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service;

(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing; and

(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge [to any governmental entity the contents](#)

of communication covered by subsection (a) of section 2703 or any a record or other information pertaining to a subscriber to or customer or user of such service to any governmental entity.

Comment [1]: Needs deletion

(b) **Exceptions for disclosure of communications.**—
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Comment [2]: Duplicative, needs deletion

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18 USC § 2705 - Delayed notice

(a) **Delay of Notification.**—

(1) A governmental entity acting under section 2703 (a) of this title may—
(A) where a warrant is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703 (a) of this title for a period not to exceed ninety days, if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in paragraph (2) of this subsection; or

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(2) An adverse result for the purposes of paragraph (1) of this subsection is—
(A) endangering the life or physical safety of an individual;
(B) flight from prosecution;
(C) destruction of or tampering with evidence;
(D) intimidation of potential witnesses; or
(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

Deleted: (B) where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703 (b) of this title for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

(4) Extensions of the delay of notification provided in section 2703 of up to ninety days each may be granted by the court upon application.

(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity shall serve upon, or deliver by registered or first-class mail or other means reasonably calculated to be effective as specified by the court issuing the warrant to, the customer or subscriber a copy of the warrant together with notice that—

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(A) states with reasonable specificity the nature of the law enforcement inquiry; and
(B) informs such customer or subscriber—

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(i) that information maintained for such customer or subscriber by the service provider named in such process or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;
(ii) that notification of such customer or subscriber was delayed;
(iii) what court made the determination pursuant to which that delay was made; and
(iv) which provision of this chapter allowed such delay.

Comment [3]: Bill says this change is made to 5(A)(iii) but I believe its 5(B)(iii)

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(b) **Preclusion of Notice to Subject of Governmental Access.**— A governmental entity acting under section 2703, to the extent that it may delay such notice pursuant to subsection (a) of this section, may apply to a court for an order commanding a provider of electronic communications service or remote

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computing service to whom a warrant is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant will result in—

- (1) endangering the life or physical safety of an individual;
- (2) flight from prosecution;
- (3) destruction of or tampering with evidence;
- (4) intimidation of potential witnesses; or
- (5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

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