



June 15, 2017

The Honorable Bob Goodlatte
 Chairman, Committee on the Judiciary
 United States House of Representatives
 Washington, DC 20515

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,

Thank you for your continued leadership in highlighting the issue of U.S. law enforcement access to data stored overseas by holding the hearing, “Data Stored Abroad: Ensuring Lawful Access and Privacy Protection in the Digital Era.”

This hearing is timely, as the U.S. Court of Appeals for the Second Circuit recently held that the Electronic Communications Privacy Act (ECPA) does not authorize U.S. law enforcement to obtain a warrant for certain communications content stored overseas by a U.S. company. This means that it is critical for Congress to act to update our laws as soon as possible to establish a modern legal process for U.S. law enforcement to seek such data stored abroad. As you know, the law regulating government’s access to digital information is more than 30 years old. This law was enacted long before the advent of cloud computing, the digital platform where businesses and individuals increasingly store their most sensitive information.

We strongly believe that Congress should update the laws to reflect today’s modern technology rather than continue enforcing legal rules stuck in the past that don’t reflect the global nature of customers’ data. More specifically, simply reaffirming an outdated law would raise a variety of concerns, including:

- Putting U.S. citizens and U.S. companies at risk by encouraging reciprocal action by foreign governments;

- Continuing to place U.S. cloud providers in a conflict of laws situation – to choose either to comply with U.S. law or violate another country’s;
- Competitively disadvantaging and undermining trust in U.S. cloud providers; and
- Undermining international cooperation.

Almost every U.S. company – many of which are small businesses – are now a part of the global digital economy in some way. They use cloud computing to store customer data, correspond via email, and make transactions online. To keep growing our economy and creating jobs, U.S. businesses need Congress to modernize the laws governing cross-border access to digital information.

Congress has already taken steps to address this important issue. Last year, the International Communications Privacy Act (“ICPA”) was introduced by Reps. Marino (R-PA) and DelBene (D-WA) and Sens. Hatch (R-UT) and Coons (D-DE) to create a more durable legal framework, and we understand the sponsors are seeking to reintroduce the bill after incorporating input from a range of stakeholders. We look forward to Rep. Jeffries (D-NY) joining this bipartisan, bicameral effort. We believe ICPA provides a solid foundation for a legislative framework and we look forward to building on that product to reach a consensus on a modernized process.

We need a new framework that accounts for law enforcement’s needs, the realities of today’s technology, and the way people and businesses rely on that technology – now and into the future. Rules to access and protect global data require a solution with a global focus.

We look forward to working with you and other stakeholders on a modern framework that will enable future generations to take advantage of cutting edge technology while ensuring law enforcement has the tools they need to keep us safe. Thanks again for holding today’s important hearing.

Sincerely,

ACT | The App Association
BSA | The Software Alliance
Computer & Communications Industry Association (CCIA)
Computing Technology Industry Association (CompTIA)
Entertainment Software Association (ESA)
Information Technology Industry Council (ITI)
Internet Association (IA)
National Association of Manufacturers (NAM)
NetChoice
Reform Government Surveillance
TechNet
Telecommunications Industry Association (TIA)
U.S. Chamber of Commerce

cc: Senator Orrin Hatch
Senator Chris Coons
Senator Dean Heller
Representative Tom Marino
Representative Suzan DelBene
Representative Hakeem Jeffries