

Email Privacy Act Introduced With Bi-Partisan Support in the House

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On January 9, 2017, lawmakers in the House re-introduced legislation, [the Email Privacy Act](#), which, if enacted, would require the government to obtain a court-issued warrant to access electronic communications, including emails and social networking messages, from cloud providers (e.g., Google, Yahoo) when such communications are older than 180 days. Current law, [the Electronic Communications Privacy Act \(ECPA\)](#), only requires court-issued warrants for electronic communications that are 180 days old or less, but authorizes law enforcement and some government agencies — such as the SEC — to obtain electronic communications from cloud providers with a subpoena, issued by a prosecutor without approval of a judge, if the communications are older than 180 days.

Supporters of the Email Privacy Act point out that, when Congress enacted the ECPA in 1986, electronic storage was expensive and email service providers typically deleted electronic communications within 90 days. Congress, when enacting the ECPA, did not require warrants for electronic communications that were older than 180 days, because such communications were, to the limited extent any existed, considered “abandoned property.” Supporters of the Email Privacy Act contend that Congress looked at then existing technology and never contemplated that one day many people would store their electronic communications with email service providers for well beyond 180 days. The Email Privacy Act would, according to supporters, fix this outdated flaw in the ECPA.

Federal agencies, which have relied on the ECPA, have pushed for there to be no changes to the law. In a 2013 letter to Senate Judiciary Committee, the Chair of the

SEC stated, in opposition to similar legislation, that a warrant requirement would block the SEC from obtaining digital content from service providers, and [has recently reaffirmed](#) these sentiments. The SEC is a civil agency and lacks authority to issue warrants, relying instead on subpoenas for investigations.

The Email Privacy Act has bi-partisan support in the House, with four Republicans and five Democrats signed on as original co-sponsors of the legislation. The Email Privacy Act has not been introduced in the Senate, and it remains unclear if any senator will sponsor the legislation in that chamber. Senator Lee (R.-Utah), who sponsored the same legislation in the 114th Congress, reportedly does not plan to introduce it again. It is also unclear at this time if President Trump would sign this legislation into law if it passes both the House and the Senate.

In 2016, during the 114th Congress, the Email Privacy Act passed the House unanimously but then stalled in the Senate Judiciary Committee after Senator Cornyn (R-Texas) offered a controversial amendment that would have provided the FBI with expanded surveillance power.

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