

ECPA and Law Enforcement

Current and former officials agree that requiring warrants will not hinder investigations

FBI Agents Currently Seek A Search Warrant For Online Communications, Say The 180-Day Rule Is “An Artificial One”:

"When we're seeking content from service providers, for the most part right now, Department of Justice policy is to seek a search warrant in order to obtain content."

"I think there's no doubt that there are going to be certain modifications made [to ECPA]. I also know that it's the position the Department of Justice that the 180-day distinction is an artificial one. Speaking as an FBI agent, we take our legal guidance from the Department of Justice, so we would follow that."

- Konrad Motyka FBI Agents Association President

(C-SPAN's "[The Communicators](#)," 4/14/13)

Modernizing ECPA Would Not “Seriously Concern” Or “Inhibit” Law Enforcement Investigations:

"I don't see anything (in the Senate bill) that's going to seriously concern law enforcement in terms of our ability to request warrants and to get the contents of the material that we need. ... Since you've already got to get warrants for the stuff that's less than 180 days, it's obviously not an insurmountable standard."

- Joseph Cassilly, State's Attorney in Harford County, Md., and former President of the National District Attorneys Association

(Richard Lardner, "Greater email privacy won't hinder law enforcement," [Associated Press](#), 11/29/12)

"As a former federal prosecutor, I can assure you such a requirement would not inhibit law enforcement investigations, but would instead provide the kind of clarity that would facilitate them."

- Bob Barr, former federal prosecutor and former member of Congress

(Bob Barr [Letter](#) to Sens. Leahy and Grassley, 9/12/12)

"ECPA must be amended to require that the government obtain a search warrant from a judge based on probable cause rather than a mere subpoena issued by a prosecutor before it can obtain Americans' electronic communications."

- Asa Hutchinson, former US Attorney for the Western District of Arkansas and former undersecretary of Homeland Security

(Op-ed: "Get a warrant: Congress must act to protect privacy in digital age," Asa Hutchinson and Mickey Edwards, [The Hill](#), 10/25/11)

"Requiring law enforcement to obtain a warrant from a court does not prevent law enforcement from doing its job. "

- 30 former prosecutors and judges, including Ron Woods, former U.S. Attorney, Southern District of Texas; David W. Shapiro, former Federal Prosecutor, Eastern District of New York, District of Arizona and Northern District of California; and William I. Shockley, former Assistant U.S. Attorney

"[T]he amendment would also leave in place the exceptions to the warrant requirement

that appear in current law. Thus, if there is an emergency involving child abduction or an imminent terrorist attack, and there is no time to seek a warrant, law enforcement officers can access the communications immediately and prove probable cause to a court later.”

- Marc J. Zwillinger, founder of ZwillGen PLLC and former attorney in the Computer Crime and Intellectual Property Section of the Department of Justice’s Criminal Division

ECPA Reform Would Improve And Clarify Investigations, Putting Law Enforcement Officers On “More Solid Ground”:

“[I]t would place law enforcement officers on more solid ground when they access private electronic communications, and make it more likely that important evidence of crime is not thrown out in criminal cases.”

- 30 former prosecutors and judges, including Ron Woods, former U.S. Attorney, Southern District of Texas; David W. Shapiro, former Federal Prosecutor, Eastern District of New York, District of Arizona and Northern District of California; and William I. Shockley, former Assistant U.S. Attorney

“A warrant requirement would benefit criminal investigations because it would clarify the law and give confidence about the proper legal standard for law enforcement to follow.”

- Bob Barr, former federal prosecutor and former member of Congress

(Bob Barr [Letter](#) to Sens. Leahy and Grassley, 9/12/12)

“It is my view that, on the whole, a warrant-for-content requirement would benefit criminal investigations by clarifying the law about the proper legal standard for law enforcement to follow. Such uncertainty has increased the friction between such providers and law enforcement, causing delays in criminal cases. Rather than delaying the collection of communications content, a warrant requirement would speed such collection in many circumstances by reducing this friction.”

- Marc J. Zwillinger, founder of ZwillGen PLLC and former attorney in the Computer Crime and Intellectual Property Section of the Department of Justice’s Criminal Division