

**Hearing Statement of Chairman F. James Sensenbrenner, Jr.
Subcommittee on Crime, Terrorism, Homeland Security and Investigations
Hearing on “ECPA Part 1: Lawful Access to Stored Content”
Tuesday, March 19, 2013 at 10:00 a.m.**

The Electronic Communications Privacy Act of 1986 (or “ECPA”) is complicated, outdated, unconstitutional, and oftentimes, nonsensical. ECPA made sense when it was drafted, but the role of the Internet and electronic communications in our lives is vastly different now than it was during the Reagan Administration. Needed reforms can better protect privacy and allow the growth of electronic communications and the economy without compromising the needs of law enforcement.

ECPA was drafted in 1986, the same year Fox News was launched. That year, President Reagan ordered a strike against Muammar Qaddafi. Arnold Schwarzenegger married Maria Shriver. At this time in 1986, Mark Zuckerberg was one year old.

The world is a different place. A 1986 law governing the Internet is like having a national highway policy drafted in the 19th century.

Today's hearing is the first in a series the Subcommittee will hold to examine ECPA. Today we will explore the needs of government to access the contents of stored electronic communications in certain circumstances. We will learn the levels of judicial review currently required to access stored communications, and we also hope to learn what reforms are needed in light of evolving technology and the vast expansion of electronic communications since 1986.

ECPA was a necessary response to the emergence and rapid development of wireless communication services and electronic communications in the digital era. At that time, electronic mail, cordless phones, and pagers were in their infancy. As these devices have become smaller, cheaper, and more sophisticated, we have embraced them more and more in our everyday lives.

The Federal wiretap statute had been limited to voice communications and addressed an area of communication for which there is a Fourth Amendment right to privacy. ECPA extended the wiretap provisions to include wireless voice communications and electronic communications such as e-mail or other computer-to-

computer transmissions. ECPA established a framework for law enforcement to obtain the content of communications.

The evolution of the digital age has given us devices and capabilities that have created conveniences for society and efficiencies for commerce. But they have also created convenience and efficiency for criminals, as well as innovative new ways to commit crimes. Fortunately, new ways to detect and investigate crimes and criminals have also evolved.

At the intersection of all of these developments and capabilities are the privacy rights of the public, the economic interests in expanding commerce, the public policy of encouraging the development of even better technologies, and the legitimate investigative needs of law enforcement professionals.

We are eager to hear about Constitutional considerations that would require changes to the level of judicial review for access to stored communications. Also, we must consider the lawful access to stored content by the Government in civil litigation, particularly when the

Government is a defendant. Lastly, we must examine the effect that ECPA reform would have on investigations at the state and local level.

Today's hearing will focus on the actual contents of electronic stored communications. Email "content" is the body of a private electronic communication transmitted from the sender to one or more recipients. The primary question is whether Fourth Amendment protections apply and to what type of stored communications. Our ultimate goal is to enact reforms that will endure for decades. This will give everyone the certainty they need to move forward in the digital age.

It's no secret that, in the digital age, privacy is harder to maintain. But Americans should not have to choose between privacy and the Internet. In 1986, if you wanted privacy, you might keep a personal document in filing cabinet instead of posted on a cork bulletin board. Today, you would probably save the same document behind a password in a Google account rather than post it on your Facebook Wall.

But our expectations of privacy haven't changed, and the Fourth Amendment protects more than just Luddites. If our laws fail to

recognize this, we risk needlessly stunting technological progress and economic growth.

I look forward to hearing from all our witnesses today.

It is now my pleasure to recognize for his opening statement the Ranking Member of the Subcommittee, Congressman Bobby Scott of Virginia.

[Ranking Member Scott delivers opening statement]

It is now my pleasure to recognize for his opening statement the Chairman of the Full Committee, Congressman Bob Goodlatte of Virginia.

[Chairman Goodlatte delivers opening statement]

It is now my pleasure to recognize for his opening statement the Ranking Member of the Full Committee, Congressman John Conyers of Michigan.

[Ranking Member Conyers delivers opening statement]

Without objection, other Members' opening statements will be made a part of the record.

And without objection, the chair will be authorized to declare recesses during votes on the house floor.