

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 699
OFFERED BY MR. GOODLATTE OF VIRGINIA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Email Privacy Act”.

3 SEC. 2. VOLUNTARY DISCLOSURE CORRECTIONS.

4 (a) IN GENERAL.—Section 2702 of title 18, United
5 States Code, is amended—

6 (1) in subsection (a)—

7 (A) in paragraph (1)—

8 (i) by striking “divulge” and inserting
9 “disclose”;

10 (ii) by striking “while in electronic
11 storage by that service,” and inserting
12 “that is in electronic storage with or other-
13 wise stored, held, or maintained by the
14 provider”;

15 (B) in paragraph (2)—

16 (i) by striking “to the public”;

17 (ii) by striking “divulge” and insert-
18 ing “disclose”; and

1 (iii) by striking “which is carried or
2 maintained on that service,” and inserting
3 “that is stored, held, or maintained by the
4 provider”; and

5 (C) in paragraph (3), by striking “divulge”
6 and inserting “disclose”;

7 (2) in subsection (b)—

8 (A) in the matter preceding paragraph (1),
9 by inserting “wire or electronic” before “com-
10 munication”;

11 (B) so that paragraph (1) reads as follows:

12 “(1) to an originator, addressee, or intended re-
13 cipient of such communication, to the subscriber or
14 customer on whose behalf the provider stores, holds,
15 or maintains such communication, or to an agent of
16 such addressee, intended recipient, customer, or sub-
17 scriber;”; and

18 (C) so that paragraph (3) reads as follows:

19 “(3) with the lawful consent of the originator,
20 addressee, or intended recipient of such communica-
21 tion, or of the subscriber or customer on whose be-
22 half the provider stores, holds, or maintains such
23 communication.”;

24 (3) in subsection (c) by inserting “wire or elec-
25 tronic” before “communications”;

1 (4) in each of subsections (b) and (c), by strik-
2 ing “divulge” and inserting “disclose”; and

3 (5) in subsection (c) so that paragraph (2)
4 reads as follows:

5 “(2) with the lawful consent of the originator,
6 addressee, or intended recipient of a communication
7 for the record or information associated with such
8 communication, or with the lawful consent of the
9 subscriber or customer of such service.”.

10 **SEC. 3. AMENDMENTS TO REQUIRED DISCLOSURE SEC-**
11 **TION.**

12 Section 2703 of title 18, United States Code, is
13 amended—

14 (1) by striking subsections (a) through (c) and
15 inserting the following:

16 “(a) CONTENTS OF WIRE OR ELECTRONIC COMMU-
17 NICATIONS IN ELECTRONIC STORAGE.—A provider of
18 electronic communication service shall promptly disclose
19 the contents of a wire or electronic communication that
20 is in electronic storage with or otherwise stored, held, or
21 maintained by the provider if a governmental entity ob-
22 tains a warrant issued using the procedures described in
23 the Federal Rules of Criminal Procedure (or, in the case
24 of a State court, issued using State warrant procedures)
25 that—

1 “(1) is issued by a court of competent jurisdic-
2 tion; and

3 “(2) may indicate the date by which the pro-
4 vider must make the disclosure to the governmental
5 entity.

6 “(b) CONTENTS OF WIRE OR ELECTRONIC COMMU-
7 NICATIONS IN A REMOTE COMPUTING SERVICE.—

8 “(1) IN GENERAL.—A provider of remote com-
9 puting service shall promptly disclose the contents of
10 a wire or electronic communication that is stored,
11 held, or maintained by the provider if a govern-
12 mental entity obtains a warrant issued using the
13 procedures described in the Federal Rules of Crimi-
14 nal Procedure (or, in the case of a State court,
15 issued using State warrant procedures) that—

16 “(A) is issued by a court of competent ju-
17 risdiction; and

18 “(B) may indicate the date by which the
19 provider must make the disclosure to the gov-
20 ernmental entity.

21 “(2) APPLICABILITY.—Paragraph (1) is appli-
22 cable with respect to any wire or electronic commu-
23 nication that is stored, held, or maintained by the
24 provider—

1 “(A) on behalf of, and received by means
2 of electronic transmission from (or created by
3 means of computer processing of communica-
4 tion received by means of electronic trans-
5 mission from), a subscriber or customer of such
6 remote computing service; and

7 “(B) solely for the purpose of providing
8 storage or computer processing services to such
9 subscriber or customer, if the provider is not
10 authorized to access the contents of any such
11 communications for purposes of providing any
12 services other than storage or computer proc-
13 essing.

14 “(c) RECORDS CONCERNING ELECTRONIC COMMU-
15 NICATION SERVICE OR REMOTE COMPUTING SERVICE.—

16 “(1) IN GENERAL.—A provider of electronic
17 communication service or remote computing service
18 shall promptly disclose a record or other information
19 pertaining to a subscriber to or customer of such
20 service (not including the contents of wire or elec-
21 tronic communications),—

22 “(A) if a governmental entity obtains a
23 warrant issued using the procedures described
24 in the Federal Rules of Criminal Procedure (or,

1 in the case of a State court, issued using State
2 warrant procedures) that—

3 “(i) is issued by a court of competent
4 jurisdiction directing the disclosure; and

5 “(ii) may indicate the date by which
6 the provider must make the disclosure to
7 the governmental entity;

8 “(B) if a governmental entity obtains a
9 court order directing the disclosure under sub-
10 section (d);

11 “(C) with the lawful consent of the origi-
12 nator, addressee, or intended recipient of a
13 communication for the record or information
14 associated with such communication, or with
15 the lawful consent of the subscriber or customer
16 of such service; or

17 “(D) as otherwise authorized in paragraph
18 (2).

19 “(2) SUBSCRIBER OR CUSTOMER INFORMA-
20 TION.—A provider of electronic communication serv-
21 ice or remote computing service shall, in response to
22 an administrative subpoena authorized by Federal or
23 State statute, a grand jury, trial, or civil discovery
24 subpoena, or any means available under paragraph
25 (1), disclose to a governmental entity the—

1 “(A) name;

2 “(B) address;

3 “(C) local and long distance telephone con-
4 nection records, or records of session times and
5 durations;

6 “(D) length of service (including start
7 date) and types of service used;

8 “(E) telephone or instrument number or
9 other subscriber or customer number or iden-
10 tity, including any temporarily assigned net-
11 work address; and

12 “(F) means and source of payment for
13 such service (including any credit card or bank
14 account number);

15 of a subscriber or customer of such service.

16 “(3) NOTICE NOT REQUIRED.—A governmental
17 entity that receives records or information under
18 this subsection is not required to provide notice to
19 a subscriber or customer.”;

20 (2) in subsection (d)—

21 (A) by striking “(b) or”;

22 (B) by striking “the contents of a wire or
23 electronic communication, or”;

24 (C) by striking “sought,” and inserting
25 “sought”; and

1 (D) by striking “section” and inserting
2 “subsection”; and

3 (3) by adding at the end the following:

4 “(h) NOTICE.—Except as provided in section 2705,
5 a provider of electronic communication service or remote
6 computing service may notify such subscriber or customer
7 of a disclosure under subsection (a), (b), (c), or (d) of this
8 section.

9 “(i) RULE OF CONSTRUCTION RELATED TO ADMIN-
10 ISTRATIVE SUBPOENAS.—Nothing in this section or in
11 section 2702 shall be construed to limit the authority of
12 a governmental entity to use an administrative subpoena
13 authorized by Federal or State statute, a grand jury, trial,
14 or civil discovery subpoena, a court order under subsection
15 (d) of this section, or a warrant issued using the proce-
16 dures described in the Federal Rules of Criminal Proce-
17 dure (or, in the case of a State court, issued using State
18 warrant procedures) by a court of competent jurisdiction
19 to—

20 “(1) require an originator, addressee, or in-
21 tended recipient of a wire or electronic communica-
22 tion to disclose a wire or electronic communication
23 (including the contents of that communication) to
24 the governmental entity;

1 “(2) require a person or entity that provides an
2 electronic communication service to the officers, di-
3 rectors, employees, or agents of the person or entity
4 (for the purpose of carrying out their duties) to dis-
5 close a wire or electronic communication (including
6 the contents of that communication) to or from the
7 person or entity itself or to or from an officer, direc-
8 tor, employee, or agent of the entity to a govern-
9 mental entity, if a wire or electronic communication
10 is stored, held, or maintained on an electronic com-
11 munications system owned, operated, or controlled
12 by the person or entity; or

13 “(3) require a provider of a remote computing
14 service or electronic communication service to dis-
15 close a wire or electronic communication (including
16 the contents of that communication) that advertises
17 or promotes a product or service and that has been
18 made readily accessible to the general public.

19 “(j) RULE OF CONSTRUCTION RELATED TO CON-
20 GRESSIONAL SUBPOENAS.—Nothing in this section or in
21 section 2702 shall be construed to limit the power of in-
22 quiry vested in the Congress by Article I of the Constitu-
23 tion of the United States, including the authority to com-
24 pel the production of a wire or electronic communication
25 (including the contents of a wire or electronic communica-

1 tion) that is stored, held, or maintained by an electronic
2 communications service provider or a remote computing
3 service provider.”.

4 **SEC. 4. DELAYED NOTICE.**

5 Section 2705 of title 18, United States Code, is
6 amended to read as follows:

7 **“SEC. 2705. DELAYED NOTICE.**

8 “(a) IN GENERAL.—A governmental entity acting
9 under section 2703 may apply to a court for an order di-
10 recting a provider of electronic communication service or
11 remote computing service to which a warrant, order, sub-
12 poena, or other directive under section 2703 is directed
13 not to notify any other person of the existence of the war-
14 rant, order, subpoena, or other directive.

15 “(b) DETERMINATION.—A court shall grant a re-
16 quest for an order made under subsection (a) for delayed
17 notification of up to 180 days if the court determines that
18 there is reason to believe that notification of the existence
19 of the warrant, order, subpoena, or other directive may
20 result in—

21 “(1) endangering the life or physical safety of
22 an individual;

23 “(2) flight from prosecution;

24 “(3) destruction of or tampering with evidence;

25 “(4) intimidation of potential witnesses; or

1 “(5) otherwise seriously jeopardizing an inves-
2 tigation or unduly delaying a trial.

3 “(c) EXTENSION.—Upon request by a governmental
4 entity, a court may grant one or more extensions of an
5 order granted in accordance with subsection (b).”.

6 **SEC. 5. RULE OF CONSTRUCTION.**

7 Nothing in this Act or an amendment made by this
8 Act shall be construed to preclude the acquisition by the
9 United States Government of—

10 (1) the contents of a wire or electronic commu-
11 nication pursuant to other lawful authorities, includ-
12 ing the authorities under chapter 119 of title 18
13 (commonly known as the “Wiretap Act”), the For-
14 eign Intelligence Surveillance Act of 1978 (50
15 U.S.C. 1801 et seq.), or any other provision of Fed-
16 eral law not specifically amended by this Act; or

17 (2) records or other information relating to a
18 subscriber or customer of any electronic communica-
19 tions service or remote computing service (not in-
20 cluding the content of such communications) pursu-
21 ant to the Foreign Intelligence Surveillance Act of
22 1978 (50 U.S.C. 1801 et seq.), chapter 119 of title
23 18 (commonly known as the “Wiretap Act”), or any

1 other provision of Federal law not specifically
2 amended by this Act.

