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:

SECTION 1. SHORT TITLE.

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

SEC. 2. VOLUNTARY DISCLOSURE CORRECTIONS.
(a) In general.—Section 2702 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

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

(ii) by striking “while in electronic storage by that service,” and inserting “that is in electronic storage with or otherwise stored, held, or maintained by the provider”;

(B) in paragraph (2)—

(i) by striking “to the public”;

(ii) by striking “divulge” and inserting “disclose”; and
(iii) by striking “which is carried or maintained on that service,” and inserting “that is stored, held, or maintained by the provider”; and

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

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by inserting “wire or electronic” before “communication”;  

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

“(1) to an originator, addressee, or intended recipient of such communication, to the subscriber or customer on whose behalf the provider stores, holds, or maintains such communication, or to an agent of such addressee, intended recipient, customer, or subscriber;”; and

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

“(3) with the lawful consent of the originator, addressee, or intended recipient of such communication, or of the subscriber or customer on whose behalf the provider stores, holds, or maintains such communication.”;

(3) in subsection (c) by inserting “wire or electronic” before “communications”;
(4) in each of subsections (b) and (c), by striking “divulge” and inserting “disclose”; and

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

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

SEC. 3. AMENDMENTS TO REQUIRED DISCLOSURE SECTION.

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

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

“(a) CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS IN ELECTRONIC STORAGE.—A provider of electronic communication service shall promptly disclose the contents of a wire or electronic communication that is in electronic storage with or otherwise stored, held, or maintained by the provider if a governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) that—
“(1) is issued by a court of competent jurisdiction; and

“(2) may indicate the date by which the provider must make the disclosure to the governmental entity.

“(b) CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE.—

“(1) IN GENERAL.—A provider of remote computing service shall promptly disclose the contents of a wire or electronic communication that is stored, held, or maintained by the provider if a governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) that—

“(A) is issued by a court of competent jurisdiction; and

“(B) may indicate the date by which the provider must make the disclosure to the governmental entity.

“(2) APPLICABILITY.—Paragraph (1) is applicable with respect to any wire or electronic communication that is stored, held, or maintained by the provider—
“(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communication received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

“(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

“(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.—

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

“(A) if a governmental entity obtains a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or,
in the case of a State court, issued using State warrant procedures) that—

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

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

“(B) if a governmental entity obtains a court order directing the disclosure under subsection (d);

“(C) with the lawful consent of the originator, addressee, or intended recipient of a communication for the record or information associated with such communication, or with the lawful consent of the subscriber or customer of such service; or

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

“(2) SUBSCRIBER OR CUSTOMER INFORMATION.—A provider of electronic communication service or remote computing service shall, in response to an administrative subpoena authorized by Federal or State statute, a grand jury, trial, or civil discovery subpoena, or any means available under paragraph (1), disclose to a governmental entity the—
“(A) name;

“(B) address;

“(C) local and long distance telephone connection records, or records of session times and durations;

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

“(E) telephone or instrument number or other subscriber or customer number or identity, including any temporarily assigned network address; and

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

of a subscriber or customer of such service.

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

(2) in subsection (d)—

(A) by striking “(b) or”;

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

(C) by striking “sought,” and inserting “sought”; and
(D) by striking “section” and inserting
“subsection”; and

(3) by adding at the end the following:

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

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

“(1) require an originator, addressee, or in-
tended recipient of a wire or electronic communica-
tion to disclose a wire or electronic communication
(including the contents of that communication) to
the governmental entity;
“(2) require a person or entity that provides an electronic communication service to the officers, directors, employees, or agents of the person or entity (for the purpose of carrying out their duties) to disclose a wire or electronic communication (including the contents of that communication) to or from the person or entity itself or to or from an officer, director, employee, or agent of the entity to a governmental entity, if a wire or electronic communication is stored, held, or maintained on an electronic communications system owned, operated, or controlled by the person or entity; or

“(3) require a provider of a remote computing service or electronic communication service to disclose a wire or electronic communication (including the contents of that communication) that advertises or promotes a product or service and that has been made readily accessible to the general public.

“(j) Rule of Construction Related to Congressional Subpoenas.—Nothing in this section or in section 2702 shall be construed to limit the power of inquiry vested in the Congress by Article I of the Constitution of the United States, including the authority to compel the production of a wire or electronic communication (including the contents of a wire or electronic communication—
tion) that is stored, held, or maintained by an electronic communications service provider or a remote computing service provider.”.

SEC. 4. DELAYED NOTICE.

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

“SEC. 2705. DELAYED NOTICE.

“(a) IN GENERAL.—A governmental entity acting under section 2703 may apply to a court for an order directing a provider of electronic communication service or remote computing service to which a warrant, order, subpoena, or other directive under section 2703 is directed not to notify any other person of the existence of the warrant, order, subpoena, or other directive.

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

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

“(2) flight from prosecution;

“(3) destruction of or tampering with evidence;

“(4) intimidation of potential witnesses; or
“(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

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

SEC. 5. RULE OF CONSTRUCTION.

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

(1) the contents of a wire or electronic communication pursuant to other lawful authorities, including the authorities under chapter 119 of title 18 (commonly known as the “Wiretap Act”), the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), or any other provision of Federal law not specifically amended by this Act; or

(2) records or other information relating to a subscriber or customer of any electronic communications service or remote computing service (not including the content of such communications) pursuant to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), chapter 119 of title 18 (commonly known as the “Wiretap Act”), or any
other provision of Federal law not specifically amended by this Act.