

The LEADS Act, S. 512/H.R. 1174

Overview

- **The LEADS Act properly balances the needs of law enforcement to obtain the content of emails with the need to strengthen privacy protection.**
- **BSA supports** this bipartisan, bicameral legislation, which adds an important element to the ongoing ECPA debate by creating a framework for access to data stored outside the United States.

ISSUE DISCUSSION

The Law Enforcement Access to Data Stored Abroad Act (the “LEADS Act”) makes critical updates to the Electronic Communications Privacy Act (“ECPA”), which was enacted nearly 30 years ago to protect the privacy of Americans’ email content. When Congress enacted ECPA, it did not anticipate the new types and vast amounts of data that consumers store today. Nor did Congress anticipate the global nature of digital information. It will:

- *Makes many of the important amendments to ECPA that are also in the Email Privacy Act and the ECPA Amendments Act. LEADS makes clear that a warrant is required* for the content of all stored electronic communications and **eliminates the antiquated 180-day distinction** between emails stored for fewer than 180 days and those stored for longer.
- *Creates an enduring framework for access to data stored abroad.* Warrants can only be used within the territory of the United States. Data can be easily stored and moved around the world in a way that physical property cannot. LEADS recognizes that law enforcement may have a legitimate need to obtain the content of electronic communications relating to U.S. persons even when the data is stored abroad. LEADS therefore authorizes an ECPA warrant to be used for data stored abroad if the warrant seeks the content of a U.S. subscriber.
- *Modernizes the MLAT process.* If the subscriber is not a US citizen, law enforcement can still obtain the data through the Mutual Legal Assistance Treaty (“MLAT”) process. MLATs create frameworks that allow a law enforcement agency in one country to obtain evidence located in another. LEADS would require updates to the MLAT process to improve efficiency and transparency.



BSA POSITION

BSA supports the LEADS Act because our members store data on behalf of customers who expect their private communications to remain private in the absence of a warrant. Further, the international framework that LEADS creates is critical to—

- Our international competitiveness because American technology providers are at a disadvantage when competing for subscribers abroad if foreign subscribers believe U.S. law enforcement will be able to access their information stored in their own country;
- Stop putting multinational companies in the position of having to violate one country's law or another's when served with a U.S. warrant for data of a foreign subscriber stored outside the United States; and
- Protecting the privacy of Americans by ensuring that foreign governments cannot simply command data belonging to U.S. persons that are stored in the United States.

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