

Fact Sheet on Internet freedom legislative package

Rep. Zoe Lofgren introduced two bills on Friday, Sep. 21, 2012:

- H.R. 6529 – The ECPA 2.0 Act of 2012
- H.R. 6530 – The Global Free Internet Act of 2012

The bills are a package designed to protect innovation in online services and stand up for the privacy and free expression interests of Internet users. Rep. Lofgren welcomes feedback on the bills and intends to introduce the bills again during the next session of Congress.

ECPA 2.0 Act

The ECPA 2.0 Act of 2012 would modify the Electronic Communications Privacy Act (ECPA) to strengthen the privacy of Internet users and wireless subscribers from overbroad government surveillance.

ECPA sets legal standards that law enforcement agencies must meet to access electronic communications such as social networking messages or email to/from information. However, ECPA was enacted in 1986, well before modern online services became mainstream, and its standards do not reflect the way these services are used today. For example, ECPA fails to include clear standards for law enforcement access to location information, leading to significant confusion in U.S. courts as to whether law enforcement should have to obtain a probable cause warrant to track an individual's cell phone location or if a lower standard will suffice. These standards are important: cell phone carriers recently reported that U.S. law enforcement agencies made over 1.3 million demands to carriers for subscriber information in 2011.

ECPA 2.0 would implement four basic principles, widely supported by major technology companies, public interest groups of diverse political persuasion, legal scholars, and technical experts:

1. The government should obtain a warrant before compelling a service provider to disclose an individual's private online communications.
2. The government should obtain a warrant before it can track the location of an individual's wireless communication device.
3. Before it can install a pen register or trap and trace device to capture real time transactional data about when and with whom an individual communicates using digital services (such as email or mobile phone calls), the government should demonstrate to a court that such data is relevant to a criminal investigation.
4. The government should not use an administrative subpoena to compel service providers to disclose transactional data about multiple unidentified users of digital services (such as a bulk request for the names and addresses of everyone that visited a particular website during a specified time frame). The government may compel this information through a warrant or court

order, but subpoenas should specify the individuals about whom the government seeks information.

ECPA 2.0 would apply Fourth Amendment principles to individuals' digital communications and location data while minimizing the impact on law enforcement investigations. The bill would promote commercial growth in technology products and services – particularly cloud computing and location-based services – by reducing compliance burdens on businesses and fostering trust with consumers and trading partners concerned about overreaching government access to private communications data.

Global Free Internet Act

The Global Free Internet Act of 2012 would establish a formal process in the U.S. government for evaluating policies that pose threats to Internet users and online services. The goal of the bill is to ensure greater access to information for Internet users and a more open global marketplace for Internet-related goods and services.

Today, actions by foreign governments, international bodies, and the U.S. government itself sometimes create risks to the global free flow of information, international trade in Internet-related goods and services, and the technical standards that underpin the Internet. Some of these risks include censorship of online content, country-specific technology standards that would make it difficult for computers to communicate with each other, and burdensome requirements for market access.

The Global Free Internet Act would create a Task Force on the Global Internet that identifies, prioritizes, and develops a response to policies and practices of the U.S. government, foreign governments, or international bodies that deny fair market access to Internet-related goods and services, or that threaten the technical operation, security, and free flow of global Internet communications. Members of the Task Force include the heads of several executive branch agencies, four U.S. persons nominated by Congressional leadership, and four U.S. persons who are not government employees nominated by the Internet itself. The Task Force would hold public hearings, issue reports no less than annually, and coordinate the activity of the U.S. government to respond to threats to the Internet. When the next SOPA-like legislation, restrictive international trade agreement, or overbroad treaty from an international body becomes a threat, it is the job of this Task Force to sound the alarm and propose a course of action.

Advancing Internet freedom principles

The Internet is a thriving component of our economy and a vibrant engine of our culture. It has been so successful because it empowers users with the ability to share content and information globally with limited restrictions. These two bills will go a long way to protecting Internet users' privacy and free expression, preserving user trust in online services, and ensuring that the path for growth for Internet-related businesses remains clear.