

AMENDMENT NO. _____ Calendar No. _____

Purpose: To improve the bill.

IN THE SENATE OF THE UNITED STATES—112th Cong., 2d Sess.

H. R. 2471

To amend section 2710 of title 18, United States Code, to clarify that a video tape service provider may obtain a consumer's informed, written consent on an ongoing basis and that consent may be obtained through the Internet.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. LEAHY

Viz:

- 1 On page 3, line 20, at the end add "to the public".
- 2 On page 3, line 24, insert "only" before "if".
- 3 On page 4, line 4, strike "3 days" and insert "10
4 business days".
- 5 On page 5, line 18, strike "SUBPOENAS" and insert
6 "INFORMATION TO BE DISCLOSED"

1 On page 5, line 22, strike “or” and insert a comma.

2 On page 5, line 22, strike “subpoena” and insert “,
3 or civil discovery subpoena, or by any means available
4 under paragraph (1)”.

5 On page 7, lines 10 and 11, strike “90 days” and
6 insert “180 days”.

7 On page 8, line 2, strike “90 days” and insert “180
8 days”.

9 On page 10, line 10, strike the quotation marks and
10 the second period and insert the following:

11 “(4) PRIOR NOTICE TO LAW ENFORCEMENT.—
12 Upon expiration of the period of delay of notice
13 under this section, and not later than 3 business
14 days before providing notice to a customer or sub-
15 scriber, a provider of electronic communications
16 service or remote computing service shall notify the
17 governmental entity that obtained the contents of a
18 communication or information or records under sec-
19 tion 2703 of the intent of the provider of electronic
20 communications service or remote computing service
21 to notify the customer or subscribe of the existence

1 of the warrant, order, or subpoena seeking that in-
2 formation.”.

3 **SEC. 205. REQUIRED DISCLOSURE OF CUSTOMER COMMU-
4 NICATIONS OR RECORDS IN FEDERAL CIVIL
5 INVESTIGATIONS.**

6 (a) IN GENERAL.—Chapter 121 of title 18, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

9 **“§ 2713. Federal civil regulatory enforcement**

10 “(a) IN GENERAL.—A independent regulatory agency
11 (as that term is defined in section 3502(5) of title 44),
12 in connection with any lawful civil proceeding, investiga-
13 tion, examination, or inspection may require by a means
14 described under subsection (b)—

15 “(1) a provider of electronic communications
16 services to disclose the contents of a wire or elec-
17 tronic communication that has been in electronic
18 storage for more than 180 days; and

19 “(2) a provider of remote computing service to
20 disclose the contents of any wire or electronic com-
21 munication that is held or maintained by the pro-
22 vider of remote computing service—

23 “(A) on behalf of, and received by means
24 of electronic transmission from (or created by
25 means of computer processing of communica-

1 tions received by means of electronic trans-
2 mission from), a subscriber or customer of the
3 provider of remote computing service; and

4 “(B) solely for the purpose of providing
5 storage or computer processing services to the
6 subscriber or customer, if the provider of re-
7 mote computing service is not authorized to ac-
8 cess the contents of any such communications
9 for purposes of providing any services other
10 than storage or computer processing.

11 “(b) MEANS.—The means described in this sub-
12 section are—

13 “(1) without prior notice to the subscriber or
14 customer, a warrant issued using the procedures de-
15 scribed in the Federal Rules of Criminal Procedure
16 by a court of competent jurisdiction; and

17 “(2) with prior notice to the subscriber or cus-
18 tomer—

19 “(A) an administrative subpoena author-
20 ized by a Federal statute;

21 “(B) a Federal grand jury, civil discovery,
22 or trial subpoena; and

23 “(C) a court order for such disclosure pur-
24 suant to section 2703(d).”.

1 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—

2 The table of sections for chapter 121 of title 18, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

2713. Federal civil regulatory enforcement.

5 **SEC. 206. EMERGENCY MATTERS.**

6 Section 2702(b)(8) of title 18, United States Code,
7 is amended by inserting “or a law enforcement agency”
8 after “provider”.

9 **SEC. 207. RULE OF CONSTRUCTION.**

10 Nothing in this title or an amendment made by this
11 title shall be construed to apply the warrant requirement
12 for contents of a wire or electronic communication author-
13 ized under this title or an amendment made by this title
14 to any other section of title 18, United States Code (in-
15 cluding chapter 119 of such title (commonly known as the
16 “Wiretap Act”)), the Foreign Intelligence Surveillance Act
17 of 1978 (50 U.S.C. 1801 et seq.), or any other provision
18 of Federal law.