



ELECTRONIC FRONTIER FOUNDATION

Protecting Rights and Promoting Freedom on the Electronic Frontier

September 20, 2013

The Honorable Jerry Brown
Governor of the State of California
Sacramento, California 95814

Re: SB 467 – Request for Signature

Dear Governor Brown:

The Electronic Frontier Foundation (“EFF”) urges you to sign SB 467, a sensible bill that updates the state’s electronic privacy laws to the realities of the 21st century by requiring the government to obtain a search warrant before obtaining electronic communications from third party Internet and communication service providers.

Communicating online is a way of life, especially for Californians. E-mail is now a ubiquitous form of communication for friends, family, businesses and educators. California companies like Twitter, Facebook and Linked In are creating new forms of online communication beyond traditional e-mail. As the popularity of “cloud” storage has soared in recent years, we live in a reality where years of electronic correspondence are now stored online for extended periods of time.

Although technological changes have had a profound impact on how we talk to loved ones and do business, electronic privacy laws have failed to keep up. The current law that governs access to electronic communications stored by online service providers was enacted long before the advent of the World Wide Web as we know it, let alone smartphones and e-mail inboxes with infinite storage capacity. As a result, current law provides inadequate privacy protection. Most problematic is the fact current law allows government officials to obtain the contents of electronic communications without a search warrant once a message has been stored online for more than 180 days.

This 180-day privacy expiration date was set more than 25 years ago, when cloud computing didn’t exist, and it was presumed people would store electronic messages on their own personal computers. The opposite is true today. With bigger online storage capacity and the prevalence of smartphones and tablets, people are leaving more of their electronic correspondence online in order to access them on any device wherever they are. But current law only allows people to take advantage of this convenience by surrendering their privacy rights.

Thankfully, courts and legislatures are beginning to address this problem. In 2010, the Sixth Circuit Court of Appeals ruled that people have a reasonable expectation of privacy in e-mail, meaning a search warrant is required before the government could access electronic messages regardless of how long they had been stored online.

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Following that decision, some of California's biggest technology companies, such as Google, Facebook, Microsoft and Yahoo!, have publicly explained their practice is to require a search warrant before disclosing the contents of electronic communications to law enforcement.

Even the federal Department of Justice recently testified before Congress in *support* of federal legislation that would impose a search warrant requirement before law enforcement can access the contents of electronic communications from a service provider, demonstrating that a warrant requirement will not hinder law enforcement's ability to investigate and solve crimes.

And finally, state legislatures have acted too. Texas and Montana both passed state laws earlier this year mandating government agencies secure a search warrant before obtaining the contents of electronic communications.

SB 467 codifies these principles and practices and ensures that California's electronic privacy laws are consistent with the Fourth Amendment and the California Constitution's guarantees of privacy. SB 467 protects e-mails and other electronic communications content from warrantless government intrusion when stored online and in the cloud. Given California's unique role as a leader in the technology world and the home state for Silicon Valley, it ensures the state remains a leader in protecting its citizens' electronic privacy too.

SB 467 creates an easy rule that balances the needs of law enforcement with the right to privacy inherent in the state and federal Constitution in a way that reflects today and tomorrow's technological reality. EFF respectfully asks you to sign SB 467.

Respectfully,

A handwritten signature in black ink, appearing to read 'Hanni M. Fakhoury', with a stylized flourish at the end.

Hanni M. Fakhoury, Esq.
Staff Attorney