

Electronic Communications Privacy Act of 1986

PUBLIC LAW 99-508--OCT 21, 1986

ELECTRONIC COMMUNICATIONS PRIVACY
ACT OF 1986

100 STAT. 1848 PUBLIC LAW 99-508--OCT. 21, 1986

PUBLIC LAW 99-508
99th Congress

An Act

Oct. 21, 1986 To amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes.

Electronic Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

1986 SECTION 1.SHORT TITLE.
18 USC 2510

note. This Act may be cited as the"Electronic Communications Privacy Act of 1986".

TITLE I--INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF COMMUNICATIONS.

(a) DEFINITIONS--(1) Section 2510(1) of title 18, United States Code is amended--
(A) by striking out "any communications" and inserting "any aural transfer" in lieu thereof:

(B) by inserting "(including the use of such connection in a switching station)" after "reception".

(C) by striking out "as a common carrier" and

(D) by inserting before the semicolon at the end the following: "or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit".

(2)Section 2510(2) of title 18, United States Code, is amended by inserting before the semicolon at the end the following:

",but such term does not include any electronic communication".

(3)Section 2510(4) of title 18, United States Code, is amended---

(A)by inserting "or other" after "aural";and

(B)by inserting ",electronic," after "wire".

(4)Section 2510(5) of title 18, United States Code, is amended in clause (a)(i) by inserting before the semicolon the following: "or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business".

(5)Section 2510(8) of title 18, United States Code, is amended by striking out "identify of the parties to such communication or the existence,".

(6)Section 2510 of title 18, United States Code, is amended---

(A)by striking out "and" at the end of paragraph (10);

(B)by striking out the period at the end of paragraph (11) and inserting a semicolon in lieu thereof; and

(C)by adding at the end the following: "(12)'electronic communication' means any transfer of signs,signals,

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writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include---

"(A)the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

"(B)any wire or oral communication;

"(C)any communication made through a tone-only paging device;

or

"(D)any communication from a 18 USC 3117. tracking device (as defined in section 3117 of this title);

"(13) 'user' means any person or entity who---

"(A)uses an electronic communication service;and

"(B)is duly authorized by the provider of such service to engage in such use;

"(14) 'electronic communications system' means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

"(15) 'electronic communication service' means any service which provides to users thereof the

ability to send or receive wire or electronic communications;
"(16) 'readily accessible to the general public' means, with respect to a radio communication, that such communication is not---

"(A)scrambled or encrypted;
"(B)transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;
"(C)carried on a subcarrier or other signal subsidiary to a radio transmission;
"(D)transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or
"(E)transmitted on frequencies allocated under part 25, subpart D,E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;
"(17)'electronic storage' means---
"(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and
"(B) any storage of such communication by an electronic communication service for purpose of backup protection of such communication; and
"(18)'aural transfer' means a transfer containing the human voice at any point between and including the point of origin and the point of reception".

(b) Exceptions With Respect to Electronic Communications.--

(1) Section 2511(2)(a)(ii) of title 18, United States Code is amended--

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(A) by striking out "violation of this subparagraph by a communication common carrier or an officer, employee, or agent thereof" and inserting in lieu thereof "such disclosure";

(B) by striking out "the carrier and inserting in lieu thereof "such person"; and

(C) by striking out "an order or certification under this subparagraph" and inserting in lieu thereof "a court order or certification under this chapter".

(2) Section 2511(2)(d) of title 18, United States Code, is amended by striking out "or for the purpose of committing any other injurious act".

(3) Section 2511(2)(f) of title 18, United States Code, is amended--

(A) by inserting "or chapter 121" after "this chapter"; and

(B) by striking out "by" the second place it appears and inserting in lieu thereof ", or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing".

(4) Section 2511(2) of title 18, United States Code, is amended by adding at the end the following:

"(g) it shall not be unlawful under this chapter or chapter 121 this title for Post p. 1860 any person---

"(i) to intercept or access an

electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

"(ii) to intercept any radio communication which is transmitted--

"(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

"(II) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

"(III) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

"(IV) by any marine or aeronautical communications system;

"(iii) to engage in any conduct which--

"(I) is prohibited by section 633 47 USC 553. of the Communications Act of 1934; or

"(II) is excepted from the application of section 705(a) of the 47 USC 605. Communications Act of 1934 by section 705(b) of that Act;

"(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

"(v) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system,, if such

communication is not scrambled or encrypted

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"(h)It shall not be unlawful under this chapter---

"(i)to use a pen register or a trap and trace device (as those terms are Post,p.1868. defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices)of this title);or

"(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service."

(c)TECHNICAL AN CONFORMING AMENDMENTS.--(1)Chapter 119 of title 18, 18 USC 2510 et United States Code is amended

seq. (A)in each of sections 2510(5),2510(8),2510(11), and 2511 through 2519 (except sections 2515, 2516(1) and 2518(10)),by striking out "wire or oral" each place it appears (including in any section heading) and inserting "wire, oral, or electronic" in lieu thereof; and

(B)in section 2511(2)(b), by inserting "or electronic" after "wire".

(2)The heading of chapter 119 of title 18, United States Code, is amended by inserting "and electronic communications" after "wire".

(3)The item relating to chapter 119 in the table of chapters at the beginning of part I of title 18 of the United

States Code is amended by inserting "and electronic communications" after "Wire".

(4)Section 2510(5)(a) of title 18, United States Code, is amended by striking out "communications common carrier" and inserting "provider of wire or electronic communication service" in lieu thereof.

(5)Section 2511(2)(a)(i) of title 18, United States Code, is amended--
(A)by striking out "any communication common carrier" and inserting "a provider of wire or electronic communication service" in lieu thereof;
(B)by striking out "of the carrier of such communication" and inserting "of the provider of that service" in lieu thereof; and

(C)by striking out ": Provided, That said communication common carriers", except that a provider of wire communication service to the public" in lieu thereof.

(6)Section 2511(2)(a)(ii) of title 18, United States Code, is amended--
(A)by striking out "communications common carriers" and inserting "providers of wire or electronic communication service" in lieu thereof;
(B)by striking out "communication common carrier" each place it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(C)by striking out "if the common carrier" and inserting "if such provider" in lieu thereof.

(7)Section 2512(2)(a) of title 18, United Code, is amended--
(A)by striking out a communications common carrier" the first place it appears and inserting "a provider of wire or electronic communication service" in lieu thereof; and
(B)by striking out "a communications common carrier" the second place it

appears and inserting "such a provider"
in lieu thereof; and

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(C)by striking out "communications
common carrier's business" and
inserting "business of providing that
wire or electronic communication
service" in lieu thereof.

(8)Section 2518(4) of title 18, United
States Code, is amended--

(A)by striking out "communication
common carrier" in both places it
appears and inserting "provider of wire
or electronic communications service"
in lieu thereof; and

(B)by striking out "carrier" and
inserting in lieu thereof "service
provider".

(d) PENALTIES MODIFICATION.--(1) Section
2511(1) of title 18, United States
Code, is amended by striking out "shall
be" and all that follows through "or
both" and inserting in lieu thereof
"shall be punished as provided in
subsection (4) or shall be subject to
suit as provided in subsection (5)".

(2)Section 2511 of title 18, United
States Code, is amended by adding after
the material added by section 102 the
following:

"(4)(a)Except as provided in paragraph
(b) of this subsection or in subsection
(5), whoever violates subsection (1) of
this section shall be fined under the
title or imprisoned not more than five
years, or both.

"(b) If the offense is a first offense
under paragraph (a) of this subsection
and is not for a tortious or illegal
purpose or for purposes of direct or
indirect commercial advantage or

private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled or encrypted, then--

(C)by striking out "an order or certification under this subparagraph" and inserting in lieu thereof "a court order or certification under this chapter".

(2)Section 2511(2)(d) of title 18, United States Code, is amended by striking out "or for the purpose of committing any other injurious act".

(3)Section 2511(2)(f) of title 18, United States Code, is amended--

"(i) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in subsection (5), the offender shall be fined under this title or imprisoned not more than one year. or both;and
"(ii)if the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, the offender shall be fined not more than \$500.

"(c) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted

"(i)to a broadcasting station for purposes of retransmission to the general public or

"(ii)as an audio subcarrier intended for redistribution to facilities open to the public, but not including data

transmissions or telephone calls,
is not an offense under this
subsection unless the conduct is for
the purposes of direct or indirect
commercial advantage or private
financial gain.

"(5)(a)(i) If the communication is--

"(A) a private satellite video
communication that is not scrambled or
encrypted and the
conduct in violation of this chapter
is the private
viewing of that communication and is
not for a tortious

or illegal purpose or for purposes of
direct or indirect commercial
advantage or private commercial gain;
or,

"(B) a radio communication that is
transmitted on frequencies allocated
under subpart D of part 74 of the
rules of the Federal Communications
Commission that is not scrambled or
encrypted and the conduct in violation
of this chapter is not for

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a tortious or illegal purpose or for
purposes of direct or indirect
commercial advantage or private
commercial gain,
then the person who engages in such
conduct shall be subject to suit by the
Federal Government in a court of
competent jurisdiction.

"(i) In an action under this
subsection--

"(A) if the violation of this
chapter is a first offense for the
person under paragraph (a) of
subsection (4) and such person has not
been found liable in a civil action

under section 2520 of this title, the
Infra. Federal Government shall be entitled to
appropriate injunctive relief; and

"(B) if the violation of this
chapter is a second or subsequent
offense under paragraph (a) of
subsection (4) or such person has been
found liable in any prior civil action
under section 2520, the person shall be
subject to a mandatory \$500 civil fine.

"(b) The court may use any means
within its authority to enforce an
injunction issued under paragraph
(i)(A), and shall impose a civil fine
of not less than \$500 for each
violation of such an injunction."

(e) EXCLUSIVITY OF REMEDIES WITH
RESPECT TO ELECTRONIC
COMMUNICATIONS--Section 2518(10) of
title 18, United States Code, is
amended by adding at the end the
following:

(c)The remedies and sanctions
described in this chapter with respect
to the interception of electronic
communications are the only judicial
remedies and sanctions for
nonconstitutional violations of this
chapter involving such communications".

(f)STATE OF MIND.--Paragraphs
(a),(b),(c), and (d) of subsection (1)
of section 2511 of title 18, United
States Code, are amended by striking
out "willfully" and inserting in lieu
thereof"intentionally".

(2)Subsection (1) of section 2512 of
title 18, United States Code, is
amended in the matter before paragraph
(a) by striking out "willfully" and
inserting in lieu thereof
"intentionally".

SEC. 102. REQUIREMENTS FOR CERTAIN DISCLOSURES.

Section 2511 of title 18, United
States Code, is amended by adding at

the end of the following:

"(3)(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

"(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication--

"(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;

"(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

"(iii) to a person employed or authorized, or whose facilities are used, to forward such communications to its destination; or

"(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency."

SEC. 103 RECOVERY OF CIVIL DAMAGES.

Section 2520 of title 18, United States Code, is amended to read as follows:

"2520. Recovery of civil damages authorized

"(a) IN GENERAL--Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may be in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b)RELIEF.--In an action under this section, appropriate relief includes--

"(1)such preliminary and other equitable or declaratory relief may be appropriate;

"(2) damages under subsection (c) and punitive damages in appropriate cases; and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c)COMPUTATION OF DAMAGES--(1) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantages or private commercial gain, then the court shall assess damages as follows:

"(A) If the person who engaged in that conduct has not previously been enjoined under section 2511(5) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or

statutory damages of not less than \$50 and not more than \$500.

"(B) If on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5) or has been found liable in a civil action under this section the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than \$100 and not more than \$1000.

"(2) In any other action under this section, the court may assess as damages whichever is the greater of--

"(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(B) statutory damages of whichever is the greater of \$100 a day for each day of violation or \$10,000.

"(d)DEFENSE--A good faith reliance on--

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2)a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3)a good faith determination that section 2511(3) of this title permitted the conduct complained of; is a complete defense against any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.--A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation".

SEC. 104. CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.

Section 2516(1) of title 18 of the United States Code is amended by striking out "or any Assistant Attorney General" and inserting in lieu thereof "any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division".

SEC. 105. ADDITION OF OFFENSES TO CRIMES FOR WHICH INTERCEPTION IS AUTHORIZED.

(a) WIRE AND ORAL INTERCEPTIONS.--Section 2516(1) of title 18 of the United States Code is amended--
(1) in paragraph (c)---
(A) by inserting "section 751 (relating to escape)," after "wagering information,";
(B) by striking out "2314" and inserting "2312,2313,2314," in lieu thereof;
Motor vehicles. (C) by inserting "the second Aircraft and section 2320 (relating to trafficking in air carriers. certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities)," after "stolen property),";
(D) by inserting "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952B (relating to violent crimes in aid of racketeering activity). after "1952 (interstate and foreign travel or transportation in aid

of racketeering enterprises),";
Energy. (E) by inserting ",section 115
Mail. (relating to threatening or retaliating
Fraud. against a Federal official), the section
in chapter 65 relating to destruction of
an energy facility, and section 1341
(relating to mail fraud)," after
"section 1963 (violations with respect
to racketeer influenced and corrupt
organizations)"; and

(F) by--

Hazardous (i) striking out "or" before
materials. "section 351" and inserting in lieu
Motor vehicles. thereof a comma; and

(ii) inserting before the
semicolon at the end thereof the
following: ", section 831 (relating to
prohibited transactions involving
nuclear materials), section 33 (relating
to destruction of motor vehicles or
motor vehicle facilities), or section
1992 relating to wrecking trains)";

(2)by striking out "or" at the end of
paragraph (g);

(3)by inserting after paragraph (g) the
following:

"(h) any felony violation of
sections 2511 and 2512 (relating to
interception and disclosure of certain
communications and to certain
intercepting devices) of this title;

Natural gas. "(i) any violation of section
1679a(c)(2) (relating to destruction of
a natural gas pipeline) or subsection
Aircraft and air (i) or (n) of section 1472 (relating to
carriers. aircraft privacy) of title 49, of the
United States Code;

"(j) any criminal violation of
22 USC 2751 section 2778 of title 22 (relating to
note. the Arms Export Control Act); or ";

"(k) the location of any fugitive
from justice from an offense described
in this section;

(4) by redesignating paragraph (h) as paragraph (1); and
(5) in paragraph (a) by--
Hazardous (A) inserting after "Atomic materials Energy Act of 1954)," the following:
"section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel),";
(B) striking out "or" after "relating to treason),"; and
18 USC 1361 et (C) inserting before the seq. semicolon at the end thereof the 18 USC 2271 et following chapter 65 (relating to seq. malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy)".
Vessels. (b) INTERCEPTION OF ELECTRONIC COMMUNICATIONS.--Section 2516 of title 18 of the United States Code is amended by adding at the end the following:
"(3) Any attorney for the Government (as 18 USC app. such term is defined for the purpose of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony."

SEC. 106. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF ORDERS.

(a) PLACE OF AUTHORIZED INTERCEPTION.--Section 2518(3) of title 18 of the United States Code is amended by inserting "(and outside that jurisdiction

but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction)" after "within the territorial jurisdiction of the court in which the judge is sitting".

(b)REIMBURSEMENT FOR ASSISTANCE--Section 2518(4) of title 18 of the United States Code is amended by striking out "at the prevailing rates" and inserting in lieu thereof "for reasonable expenses incurred in providing such facilities or assistance".

(c)COMMENCEMENT OF THIRTY-DAY PERIOD AND POSTPONEMENT OF MINIMIZATION.--Section 2518(5) of title 18 of the United States Code is amended--

(1)by inserting after the first sentence the following: "Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered.";and

(2)by adding at the end the following: "In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.".

(d)ALTERNATIVE TO DESIGNATING SPECIFIC FACILITIES FROM WHICH COMMUNICATIONS ARE TO BE INTERCEPTED.--(1) Section 2518(1)(b)(ii) of title 18 of the United

States Code is amended by inserting "except as provided in subsection (11)," before a "a particular description".

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(2) Section 2518(3)(d) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "there is".

(3) Section 2518 of title 18 of the United States Code is amended by adding at the end the following:

"(1) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if--

"(a) in the case of an application with respect to the interception of an oral communication--

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted;and

"(iii) the judge finds that such specification is not practical; and

"(b) in the case of an application with respect to a wire or electronic communication--

"(i) the application is by a Federal investigative or law enforcement

officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities;and

"(iii) the judge finds that such purpose has been adequately shown.

"(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (11) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously."

(4)Section 2519(1)(b) of title 18, United States Code, is amended by inserting "(including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title)" after "applied for",

SEC. 107. INTELLIGENCE ACTIVITIES.

18 USC 2510 (a) IN GENERAL.--Nothing in this act or note. the amendments made by this Act constitutes authority for the conduct of any intelligence activity.

(b) CERTAIN ACTIVITIES UNDER PROCEDURES APPROVED BY THE ATTORNEY

GENERAL.--Nothing in chapter 119 or 18 USC 2510 et chapter 121 of title 18, United States seq.; Code, shall effect the conduct, by post,p. 1860. officers or employees of the United States Government in accordance with other applicable Federal law, under procedures approved by the Attorney General of activities intended to--

- (1) intercept encrypted or other official communications of United States executive branch entities or United States Government contractors for communications security purposes;
- (2) intercept radio communications transmitted between or among foreign powers or agents of a foreign power as 50 USC 1801 defined by the Foreign Intelligence note. Surveillance Act of 1978; or
- (3) access an electronic communications system used exclusively by a foreign power or agent of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978.

Sec. 108. MOBILE TRACKING DEVICES.

(a) IN GENERAL.--Chapter 205 of title 18, United States Code, is amended by adding at the end the following:

18 USC 3117. "3117. Mobile tracking devices

"(a) IN GENERAL.--If a court is empowered to issue a warrant or other order for the installation of a mobile

tracking device, such order may authorize the use of that device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction..

"(b) DEFINITION.--As used in this section, the term "tracking device means an electronic or mechanical device which permits the tracking of the movement of a person or object."

(b)CLERICAL AMENDMENT.--The table of contents at the beginning of chapter 205 of title 18, United States Code, is amended by adding at the end of the following:

"3117. Mobile tracking devices."

SEC.109. WARNING SUBJECT OF SURVEILLANCE.

Section 2232 of title 18, United States Code, is amended--

(1)by inserting "(a) PHYSICAL INTERFERENCE WITH SEARCH.--" before "Whoever" the first place it appears;

(2)by inserting "(b) NOTICE OF SEARCH.--" before "Whoever" the second place it appears; and

(3)by adding at the end the following:

Law (c) NOTICE OF CERTAIN ELECTRONIC enforcement SURVEILLANCE.--Whoever, having and crime. knowledge that a Federal investigative 18 USC 2510 et or law enforcement officer has been seq.; authorized or has applied for post,p. 1859. authorization under chapter 119 to intercept a wire, oral, or electronic communication, in order to obstruct, impede, or prevent such interception, gives notice or attempts to give notice of the possible interception to any person shall be fined under this title or imprisoned not more than five years, or both.

"Whoever, having knowledge that a Federal officer has been authorized or

has applied for authorization to conduct electronic surveillance under the Foreign Intelligence Surveillance Act (50)

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U.S.C. 1801, et seq.), in order to obstruct, impede, or prevent such activity, gives notice or attempts to give notice of the possible activity to any person shall be fined under this title or imprisoned not more than five years, or both."

SEC. 110. INJUNCTIVE REMEDY.

(a) IN GENERAL.--Chapter 119 of title 18, United States Code, is amended by adding at the end the following:

18 USC 2521. "2521. Injunction against illegal interception

"Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a felony violation of this chapter, the Attorney General may initiate a civil action in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is

governed by the Federal Rules of Civil
28 USC app. Procedure, except that, if an
indictment has been returned against
the respondent, discovery is governed
by the Federal Rules of Criminal
18 USC app. Procedure."

(b)CLERICAL AMENDMENT.--The table of
sections at the beginning of chapter
119 of title 18, United States Code, is
amended by adding at the end thereof
the following:

"2521.Injunction against illegal
interception."

18 USC 2510 SEC. 111.EFFECTIVE DATE.
note.

(a) IN GENERAL.--Except as provided in
subsection (b) or (c), this title and
the amendments made by this title shall
take effect 90 days after the date of
the enactment of this Act and shall, in
the case of conduct pursuant to a court
order or extension, apply only with
respect to court orders or extensions
made after this title takes effect.

(b)SPECIAL RULE FOR STATE
AUTHORIZATIONS OF INTERCEPTIONS.--

Any interception pursuant to section
2516(2) of title 18 of the United
States Code which would be valid and
lawful without regard to the amendments
made by this title shall be valid and
lawful notwithstanding such amendments
if such interception occurs during the
period beginning on the date such
amendments take effect and ending on
the earlier of--

(1)the day before the date of the
taking effect of State law conforming
the applicable State statute with
chapter 119 of title 18, United States
18 USC 2510 et Code, as so amended; or
seq. (2)the date two years after the
date of the enactment of this Act.

(c)EFFECTIVE DATE FOR CERTAIN APPROVALS

BY JUSTICE DEPARTMENT
OFFICIALS.--Section 104 of this Act
shall take effect on the date of
enactment of this Act.

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TITLE II--STORED WIRE AND ELECTRONIC COMMUNICATIONS
TRANSACTIONAL RECORDS ACCESS

Sec.201. TITLE 18 AMENDMENT.
Title 18, United States Code, is
amended by inserting after chapter 119
the following:

"CHAPTER 121--STORED WIRE AND ELECTRONIC COMMUNICATIONS AND
TRANSACTIONAL RECORDS ACCESS

"Sec.

"2701. Unlawful access to stored
communications.

"2702. Disclosure of contents.

"2703. Requirements for governmental
access.

"2704. Backup preservation.

"2705. Delayed notice.

"2706. Cost reimbursement.

"2707. Civil action.

"2708. Exclusivity of remedies.

"2709. Counterintelligence access to
telephone toll and transactional
records.

"2710. Definitions.

18 USC 2701. "2701. Unlawful access to stored
communications

"(a)OFFENSE.--Except as provided in
subsection (c) of this section
whoever--

"(1) intentionally accesses
without authorization a facility
through which an electronic
communication service is provided; or

"(2) intentionally exceeds an authorization to access that facility; and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

"(b)PUNISHMENT.--The punishment for an offense under subsection (a) of this section is--

"(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain--

"(A) a fine of not more than \$250,000 or imprisonment for not more than one year, or both, in case of a first offense under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than two years, or both, for any subsequent offense under this subparagraph; and

"(2) a fine of not more than \$5,000 or imprisonment for not more than six months, or both, in any other case.

"(c)EXCEPTIONS.--Subsection (a) of this section does not apply with respect to conduct authorized--

"(1) by the person or entity providing a wire or electronic communications service;

"(2) by a use of that service with respect to a communication of or intended for that user; or

"(3) in section 2703, 2704 or 2518 of this title.

18 USC 2702. "2702. Disclosure of contents

"(a) PROHIBITIONS.--Except as provided in subsection(b)--

"(1)a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

"(2)a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service--

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such 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.

"(b) EXCEPTIONS.--A person or entity may divulge the contents of a communication--

"(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

"(2)as otherwise authorized in section 2516, 2511(2)(a), or 2703 of this title;

"(3)with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

"(4)to a person employed or authorized or whose facilities are used to forward such communication to its destination;

"(5)as may be necessarily incident to

the rendition of the service or to the protection of the right or property of the provider of that service; or
"(6) to a law enforcement agency, if such contents--
"(A) were inadvertently obtained by the service provider; and
"(B) appear to pertain to the commission of a crime.

State and local "2703. Requirements for governmental governments. access

18 USC 2703. "(a) CONTENTS OF ELECTRONIC COMMUNICATIONS IN ELECTRONIC STORAGE.--A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State 18 USC app. warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

"(b) CONTENTS OF ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE.--(1) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection--
"(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued under the

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18 USC app. Federal Rules of Criminal Procedure or equivalent State warrant; or

"(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity--

"(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena; or

Post,p. 1864. "(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

"(2) Paragraph (1) is applicable with respect to any electronic communications that is held or maintained on that service--

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications 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)(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such

service (not including the contents of communications covered by subsection (a) or (b) of this section) to any person other than a governmental entity.

"(B) a provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity only when the governmental entity--

"(i) uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury subpoena;

"(ii) obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant;

"(iii) obtains a court order for such disclosure under subsection (d) of this section; or

"(iv) has the consent of the subscriber or customer to such disclosure.

(2) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

Records. "(d) REQUIREMENTS FOR COURT ORDER.--A

court order for disclosure under subsection (b) or (c) of this section shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service

provider, may quash or modify such order, if

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the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

"(e) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.--No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under this chapter.

18 USC 2704. "2704. Backup preservation

"(a) BACKUP PRESERVATION.--(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

"(2) Notice to the subscriber or

customer shall be made by the governmental entity within three days after receipt of such confirmation, unless such notice is delayed pursuant to section 2705(a).

"(3) The service provider shall not destroy such backup copy until the later of--

"(A) the delivery of the information; or

"(B) the resolution of any proceedings (including appeals of any proceeding) concerning the government's subpoena or court order.

"(4) The service provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such service provider--

"(A) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

"(B) has not initiated proceedings to challenge the request of the governmental entity.

"(5) A governmental entity may seek to require the creation of a backup copy under subsection (a)(1) of this section if in its sole discretion such entity determines that there is reason to believe that notification under section 2703 of this title of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.