

**Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Committee on the Judiciary,
Executive Business Meeting
September 20, 2012**

We will begin today with consideration of the nomination of William Baer to head the Antitrust Division at the Department of Justice. Last week Senator Grassley suggested a closed session and we proceeded to have such a meeting among Members just now in another room. We can now proceed with public discussion and voting on this nomination.

After that concludes I would like us to begin our consideration of the House-passed bill to update the Video Privacy Protection Act and my substitute that would also update the Electronic Communications Privacy Act with a warrant requirement for e-mails and other personal information sought by the Government. This proposal enjoys broad support from stakeholders in the technology, privacy, civil liberties and civil rights communities. I will place in the record a thoughtful letter in support of my substitute that I received yesterday from several civil rights organizations, including the Asian Law Alliance, the Muslim Legal Fund of America, the NAACP, and the National Hispanic Media Coalition (NHMC).

I hope that Senators will join my effort to protect Americans' privacy. My substitute amendment takes several important steps to improve the digital privacy rights of Americans. First, the substitute improves the privacy protections in the House bill to ensure that American consumers who consent to share their video viewing information with third parties can opt out of that agreement at any time. This update will help the Video Privacy Protection Act keep pace with how most Americans view and share videos today -- on the Internet.

Second, the substitute adds several commonsense updates to the Electronic Communications Privacy Act (ECPA). These updates will enhance the privacy protections afforded to Americans' emails and other electronic communications. Specifically, the substitute would prohibit a service provider from voluntarily disclosing the contents of Americans' emails or other electronic communications to the Government, unless the Government first obtains a search warrant based on probable cause. This sensible update eliminates the outdated and confusing "180-day" rule. This rule currently applies different legal standards for the Government to obtain email content based on the age of the email. There are appropriate exceptions to this prohibition under current law, including when a customer provides consent, or when disclosure to law enforcement is necessary to address certain criminal activity. These exceptions will remain.

The amendment also requires that the Government notify the individual whose email content was disclosed, and provide that individual with a copy of the search warrant and other details about the information obtained within three days. The Government may seek a court order to delay this notification for up to 90 days and this delay period may be extended for periods of up to an additional 90 days at a time by the court.

I drafted these privacy updates in careful consultation with representative from the privacy, civil liberties, technology and law enforcement communities. I did so mindful of the fact that we

must update these privacy laws in a way that does not inadvertently undermine law enforcement's ability to keep us safe. Some have been working on these issues with me for years; others have come to the discussion only recently. I am and will be working to consider all legitimate concerns. So after we adopt the substitute I intend to postpone further action on the bill while those discussions take place and move to other matters. I look forward to continuing to work to make sure that we get that balance right.

Updating these digital privacy laws to address the realities of our time should not be a partisan issue. Americans from all across our Nation -- regardless of party affiliation or ideology -- are impacted by the many new threats to their privacy in cyberspace. That is why a broad coalition of more than 50 privacy, civil liberties and tech industry leaders from across the political spectrum have endorsed my substitute amendment. I would like to submit for the record a letter in support of this proposal from supporters including Microsoft, eBay, the Center for Democracy and Technology, the ACLU and others. They all recognize that improving the privacy protections for our personal information in cyberspace also improves the confidence of American consumers and businesses to continue to purchase, use, and invest in new American technologies.

I hope that all Members of the Committee will join us in supporting these privacy proposals. Given the importance of this legislation, I do not want to rush our discussion. Today's agenda is filled with items other Senators have asked me to place before the Committee before the recess, and I have. I have been disappointed that more members have not joined my privacy efforts. I hope that after the recess and fall elections they will be freer to work with me and that we can have strong bipartisan support. Senator Grassley mentioned some issues that concern him, and I want to give us time to see if we can come to an accommodation on those, as well.

So what I propose to do on the first legislative item is to take our usual initial step of adopting the substitute I have circulated and with the understanding that it will be open to further amendment and then postpone further action on that matter. In order to get to the other items that are important to other Senators, once we adopt the substitute, I will turn to the other matters on the legislative agenda. I hope that in this way we will be able to consider them in the time we have this morning.

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