

Questions for the Record
Senator Mike Lee
ECPA Hearing
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1. I appreciate the stress that companies feel while trying to balance compliance with U.S. warrants and their obligation to foreign customers. It is an important issue that should be dealt with at some point, while making sure we first secure the privacy rights of our own citizens.
 - How would an extraterritorial application of ECPA, such as what the LEADS Act contemplates, affect the privacy rights of US citizens?

Response: Today, there is no statutory basis to apply a warrant issued under ECPA extraterritorially, to reach emails stored overseas. Yet the Government has taken the position that it can use an ECPA warrant to seek emails stored abroad, regardless of whether those emails are stored on behalf of a U.S. person or a foreign national. That position jeopardizes the privacy rights of U.S. citizens, because it invites law enforcement agencies in other countries to reach into the U.S. and access emails stored here.

The LEADS Act would strengthen the privacy rights of U.S. citizens by creating a statutory framework that creates a legal basis for the U.S. Government to obtain emails stored outside of the United States, but only in limited circumstances. This sets an international precedent that law enforcement agencies should seek data stored outside their country in limited scenarios, such as when there is a sufficient nexus between their country and the subscriber whose emails they seek.

The LEADS Act also embraces other reforms to ECPA that are included in S. 699, your bipartisan ECPA Amendments Act, such as requiring a warrant for all email content regardless of its age, and requiring the Government notify a subscriber when her email is obtained with an ECPA warrant. The reforms in the ECPA Amendments Act, and the LEADS Act, greatly strengthen the privacy rights of U.S. citizens. BSA therefore supports both the ECPA Amendments Act and the LEADS Act. The bills complement each other and will improve the privacy rights of U.S. citizens and the economic opportunities of our most successful companies.