

Statutory Notes and Related Subsidiaries

CONGRESSIONAL FINDINGS

Pub. L. 115-141, div. V, §102, Mar. 23, 2018, 132 Stat. 1213, provided that: “Congress finds the following:

“(1) Timely access to electronic data held by communications-service providers is an essential component of government efforts to protect public safety and combat serious crime, including terrorism.

“(2) Such efforts by the United States Government are being impeded by the inability to access data stored outside the United States that is in the custody, control, or possession of communications-service providers that are subject to jurisdiction of the United States.

“(3) Foreign governments also increasingly seek access to electronic data held by communications-service providers in the United States for the purpose of combating serious crime.

“(4) Communications-service providers face potential conflicting legal obligations when a foreign government orders production of electronic data that United States law may prohibit providers from disclosing.

“(5) Foreign law may create similarly conflicting legal obligations when chapter 121 of title 18, United States Code (commonly known as the ‘Stored Communications Act’), requires disclosure of electronic data that foreign law prohibits communications-service providers from disclosing.

“(6) International agreements provide a mechanism for resolving these potential conflicting legal obligations where the United States and the relevant foreign government share a common commitment to the rule of law and the protection of privacy and civil liberties.”

CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

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Editorial Notes

AMENDMENTS

2018—Pub. L. 115-141, div. V, §103(a)(2), Mar. 23, 2018, 132 Stat. 1214, added item 2713.

2002—Pub. L. 107-273, div. B, title IV, §4005(b), Nov. 2, 2002, 116 Stat. 1812, made technical correction to directory language of Pub. L. 107-56, title II, §223(c)(2), Oct. 26, 2001, 115 Stat. 295, effective Oct. 26, 2001. See 2001 Amendment note below.

2001—Pub. L. 107-56, title II, §§223(c)(2), 224, Oct. 26, 2001, 115 Stat. 295, as amended by Pub. L. 107-273, div. B, title IV, §4005(b), Nov. 2, 2002, 116 Stat. 1812, temporarily added item 2712.

Pub. L. 107-56, title II, §§212(a)(2), (b)(2), 224, Oct. 26, 2001, 115 Stat. 285, 295, temporarily substituted “Voluntary disclosure of customer communications or records” for “Disclosure of contents” in item 2702 and

“Required disclosure of customer communications or records” for “Requirements for governmental access” in item 2703.

1988—Pub. L. 100-690, title VII, §7067, Nov. 18, 1988, 102 Stat. 4405, which directed amendment of item 2710 by inserting “for chapter” after “Definitions” was executed by making the insertion in item 2711 to reflect the probable intent of Congress and the intervening redesignation of item 2710 as 2711 by Pub. L. 100-618, see below.

Pub. L. 100-618, §2(b), Nov. 5, 1988, 102 Stat. 3197, added item 2710 and redesignated former item 2710 as 2711.

§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, or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State—

(A) a fine under this title or imprisonment for not more than 5 years, or both, in the case of a first offense under this subparagraph; and

(B) a fine under this title or imprisonment for not more than 10 years, or both, for any subsequent offense under this subparagraph; and

(2) in any other case—

(A) a fine under this title or imprisonment for not more than 1 year or both, in the case of a first offense under this paragraph; and

(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under this subparagraph that occurs after a conviction of another offense under this section.

(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 user 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.

(Added Pub. L. 99-508, title II, §201[(a)], Oct. 21, 1986, 100 Stat. 1860; amended Pub. L. 103-322, title XXXIII, §330016(1)(K), (U), Sept. 13, 1994, 108 Stat. 2147, 2148; Pub. L. 104-294, title VI, §601(a)(3), Oct. 11, 1996, 110 Stat. 3498; Pub. L. 107-296, title XXII, §2207(j)(2), formerly title II, §225(j)(2), Nov. 25, 2002, 116 Stat. 2158, renumbered §2207(j)(2), Pub. L. 115-278, §2(g)(2)(I), Nov. 16, 2018, 132 Stat. 4178.)

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AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–296, § 2207(j)(2)(A), formerly § 225(j)(2)(A), as renumbered by Pub. L. 115–278, § 2(g)(2)(I), in introductory provisions, inserted “, or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State” after “commercial gain”.

Subsec. (b)(1)(A). Pub. L. 107–296, § 2207(j)(2)(B), formerly § 225(j)(2)(B), as renumbered by Pub. L. 115–278, § 2(g)(2)(I), substituted “5 years” for “one year”.

Subsec. (b)(1)(B). Pub. L. 107–296, § 2207(j)(2)(C), formerly § 225(j)(2)(C), as renumbered by Pub. L. 115–278, § 2(g)(2)(I), substituted “10 years” for “two years”.

Subsec. (b)(2). Pub. L. 107–296, § 2207(j)(2)(D), formerly § 225(j)(2)(D), as renumbered by Pub. L. 115–278, § 2(g)(2)(I), added par. (2) and struck out former par. (2) which read as follows: “a fine under this title or imprisonment for not more than six months, or both, in any other case.”

1996—Subsec. (b)(1)(A), (2). Pub. L. 104–294 substituted “fine under this title” for “fine of under this title”.

1994—Subsec. (b)(1)(A). Pub. L. 103–322, § 330016(1)(U), substituted “under this title” for “not more than \$250,000”.

Subsec. (b)(2). Pub. L. 103–322, § 330016(1)(K), substituted “under this title” for “not more than \$5,000”.

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EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE

Pub. L. 99–508, title II, § 202, Oct. 21, 1986, 100 Stat. 1868, provided that: “This title and the amendments made by this title [enacting this chapter] shall take effect ninety days after the date of the enactment of this Act [Oct. 21, 1986] 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.”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–618, § 1, Nov. 5, 1988, 102 Stat. 3195, provided that: “This Act [enacting section 2710 of this title and renumbering former section 2710 as 2711 of this title] may be cited as the ‘Video Privacy Protection Act of 1988’.”

SHORT TITLE

This chapter is popularly known as the “Stored Communications Act”.

§ 2702. Voluntary disclosure of customer communications or records

(a) PROHIBITIONS.—Except as provided in subsection (b) or (c)—

(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;

(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; and

(3) a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity.

(b) EXCEPTIONS FOR DISCLOSURE OF COMMUNICATIONS.—A provider described in subsection (a) 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 2517, 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 rights or property of the provider of that service;

(6) to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 2258A;

(7) to a law enforcement agency—

(A) if the contents—

(i) were inadvertently obtained by the service provider; and

(ii) appear to pertain to the commission of a crime; or

[(B) Repealed. Pub. L. 108–21, title V, § 508(b)(1)(A), Apr. 30, 2003, 117 Stat. 684]

(8) to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency; or

(9) to a foreign government pursuant to an order from a foreign government that is subject to an executive agreement that the Attorney General has determined and certified to Congress satisfies section 2523.

(c) EXCEPTIONS FOR DISCLOSURE OF CUSTOMER RECORDS.—A provider described in subsection (a) may divulge 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)(1) or (a)(2))—

(1) as otherwise authorized in section 2703;

(2) with the lawful consent of the customer or subscriber;

(3) as may be necessarily incident to the rendition of the service or to the protection of the