



October 11, 2016

The Honorable Chuck Grassley  
Chairman, Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

The Honorable Bob Goodlatte  
Chairman, Judiciary Committee  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Patrick Leahy  
Ranking Member, Committee on the Judiciary  
U.S. Senate  
Washington, DC 20510

The Honorable John Conyers  
Ranking Member, Judiciary Committee  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Grassley, Ranking Member Leahy, Chairman Goodlatte, and Ranking Member Conyers:

We write you on behalf of the video game industry to express our support for the International Communications Privacy Act (S. 2986/H.R. 5323).<sup>1</sup>

In 1986, the year that Congress enacted the Electronic Communications Privacy Act, the tech industry was nascent. IBM introduced its first “laptop” computer (weighing 13 lbs.); Microsoft published an updated version of its PC-DOS operating system; Sears and its partners were making plans to launch Prodigy, an online news and information service; and Nintendo released the first installment of *The Legend of Zelda* adventure game. A lot has changed since then, but ECPA has not. While the law was intended to advance consumer privacy, as technology evolved, the level of privacy set by the law has not kept pace and, as a result, privacy protections have eroded. We need to modernize our outdated electronic privacy laws.

Today’s video games and game networks harness the Internet to offer interactive gaming experiences that surpass anything anyone could have imagined 30 years ago. Every day, millions of gamers link up on game networks to compete in games ranging from a handful of participants to thousands. They communicate by text and voice chat. They send each other video clips of their heroic game play battles. They form guilds with elaborate rules and leadership responsibilities. In short, they are building durable virtual communities with fellow gamers—all of this, enabled by the Internet and cloud services.

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<sup>1</sup> The Entertainment Software Association is dedicated to serving the business and public affairs needs of companies that publish computer and video games for video game consoles, handheld devices, personal computers, and the Internet.

Their privacy matters. It should not be easier for law enforcement to access gamer data stored for a long period than data stored for a shorter duration. A warrant requirement should apply across the board. This is critical as our society—and youth culture, in particular—moves more personal information to the cloud. We are pleased that ICPA will fix this problem.

ICPA also provides improved procedures and safeguards for handling requests from foreign governments for stored communications. We think this is an area worthy of attention, especially in light of the recent ruling in the “Ireland” case. The U.S. Court of Appeals for the Second Circuit makes clear that the U.S. Congress did not give the U.S. Government the authority to use warrants unilaterally to reach beyond U.S. borders. We recognize that law enforcement has legitimate needs to access stored communications, but it should do so in a way that respects fundamental rights, including personal privacy. We think that the balance struck in ICPA is a reasonable approach.

Finally, we are pleased that ICPA addresses the issue of “data localization.” ICPA creates a modern legal framework for law enforcement access to electronic communications, regardless of where the data is stored. Requiring servers to be located on foreign soil is not a good solution for promoting the free flow of information. We support the U.S. Government’s continued efforts to make our networks more interconnected, not less so.

Thank you for your consideration, and we hope that you’ll address this important matter before Congress adjourns for the year.

Sincerely,



Stanley Pierre-Louis  
Senior Vice President and General Counsel

cc: Senator Orrin Hatch  
Senator Christopher Coons  
Senator Dean Heller  
Representative Tom Marino  
Representative Suzan DelBene