



**Testimony for the Senate Judicial Proceedings Committee
March 6, 2014**

SB 924 – Electronic Communications - Privacy

SUPPORT

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The ACLU of Maryland supports SB 924, which would bring our law in line with current technology and protect Marylander’s privacy.

We increasingly lead more and more of our lives online. We write emails rather than letters; we have online contact lists rather than paper address books; we post pictures on Facebook, Snapfish or Shutterfly rather than in hard-bound scrapbooks. Our digital lives reveal everything about us. If law enforcement wants access to that information, they should have to get a search warrant—just as they would if they wanted to come into your house and look at your scrapbook.

Maryland’s law on technology and privacy was enacted in 1988.¹ The law was based on the federal Electronic Communications Privacy Act (ECPA), which Congress passed in 1986.² This was long before smart phones, cloud computing, texting, Facebook—even the world wide web—were invented, let alone widely used.

Email is a perfect example of the gap between ECPA and today’s technology. In 1986, email was held in an email provider’s server (such as AOL) until the recipient opened it. Upon opening, the email was downloaded onto the recipient’s desktop computer and deleted from the remote server. ECPA was written with this in mind: it requires a search warrant before the government can retrieve a message from an email provider’s storage if the message is 180 days old or less and doesn’t require a search warrant if the email is left on the server for more than 180 days. This is because in 1986, email left on the provider’s server for more than 180 days was considered abandoned. Today, email is not downloaded onto our hardware, it is all stored on and accessed from remote servers belonging to the email provider. And many people have emails older than 180 days that they don’t consider abandoned, and that they do consider private.

Today, under Maryland law, if law enforcement want to read your emails that are older than 6 months, or look at your contact list, they simply need a court order saying the information is simply relevant to an ongoing criminal investigation. We should not have to choose between technology and privacy. Our founders recognized the critical importance of privacy when they wrote the Fourth Amendment protection against unlawful searches and seizures by the government. Our right of privacy for our “persons, houses, papers, and effects” remains as true today as it did over 200 years ago whether those “papers and effects” are stored in our desk drawers or in the cloud. The line should be clear: any communications content not intended to be viewable by the public, whether created offline or online, should be off limits for the government except in narrowly tailored investigations with appropriate judicial oversight.

For the foregoing reasons, the ACLU of Maryland supports SB 924 and urges a favorable report.

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¹ Maryland Courts and Judicial Proceedings §§ 10-4A-04 *et seq.*

² 18 U.S.C. §§ 2510 *et seq.*