REFORMS TO THE ELECTRONIC COMMUNICATIONS PRIVACY ACT

APRIL 2017

The framers of the Constitution recognized that the government should be properly restrained in its power to monitor the private lives of citizens. The American Association of Law Libraries (AALL) urges Congress to reform the Electronic Communications Privacy Act of 1986 (ECPA) to protect our Fourth Amendment rights and uphold the integrity of law enforcement in the digital age. The Email Privacy Act (H.R. 387) is a bipartisan effort to restore a fair balance between the privacy rights of citizens and the legitimate needs of law enforcement. On February 6, 2017, the House of Representatives passed H.R. 387 under unanimous consent.

AALL is a member of the Digital Due Process coalition, which is working together to strengthen ECPA to provide stronger privacy protections for electronic communications in response to changes in technology, while preserving the legal tools necessary for government agencies to enforce laws, respond to emergency circumstances, and protect the public. When Congress passed ECPA in 1986, email was new and the World Wide Web did not yet exist. But while technology has advanced at a rapid pace, electronic privacy laws have remained at a standstill. Without reform, the kind of electronic communications and records that are common today – such as email, Facebook posts, search histories, cloud computing documents, cell phone location information, or text messages older than 180 days – can be freely seized without a warrant.

AALL urges Congress to pass the Email Privacy Act (H.R. 387) because the bill:

- **Strengthens protections for sensitive personal information.** H.R. 387 properly protects sensitive personal information from intrusive government surveillance by requiring a warrant based on probable cause before obtaining the content of emails and other electronic communications. The bill eliminates the outdated “180-day rule” that calls for different legal standards for the government to obtain email content depending upon the age of an email and include exceptions for emergencies and national security.

- **Properly balances notice requirements for members of the public and the government.** H.R. 387 requires the government to notify any individual whose electronic communications has been accessed via a third-party service provider within ten days of obtaining a search warrant, and to provide that individual with a copy of the search warrant and other details about the information obtained. The bills also allow the government to request a court order delaying that notice.

- **Has been crafted in consultation with law enforcement.** The authors of H.R. 387 have worked with law enforcement stakeholders to make sure that the legitimate needs of law enforcement are met. The bills would not interfere with national security or terrorism investigations.