



**U.S. Department of Justice**

Office of the Solicitor General

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*Washington, D.C. 20530*

March 23, 2018

Honorable Scott S. Harris  
Clerk  
Supreme Court of the United States  
Washington, D.C. 20543

Re: *United States v. Microsoft*, No. 17-2

Dear Mr. Harris:

The Court heard oral argument in this case on February 27, 2018. The question presented is whether a United States provider of email services must comply with a probable-cause-based warrant issued under 18 U.S.C. 2703 by making disclosure in the United States of electronic communications within that provider's control, even if the provider has decided to store that material abroad.

I am writing to advise the Court that Congress has enacted, and the President has signed, the Consolidated Appropriations Act, 2018, H.R. 1625, 115th Cong., 2d Sess. (2018). Division V of that Act is called the Clarifying Lawful Overseas Use of Data Act, or the CLOUD Act. The CLOUD Act amends the Stored Communications Act, 18 U.S.C. 2701-2712, by adding 18 U.S.C. 2713, which now states:

A provider of electronic communication service or remote computing service shall comply with the obligations of this chapter to preserve, backup, or disclose the contents of a wire or electronic communication and any record or other information pertaining to a customer or subscriber within such provider's possession, custody, or control, regardless of whether such communication, record, or other information is located within or outside of the United States.

CLOUD Act § 103. I have attached the relevant portion of the newly enacted legislation to this letter.

The United States is currently determining whether, and if so, to what extent the passage of the CLOUD Act affects the Court's disposition of this case. It intends to file a supplemental filing addressing the question as promptly as possible. In the interim, I would appreciate it if you would distribute this letter and the attached excerpt to the Members of the Court.

Thank you for your assistance.

Sincerely,

Noel J. Francisco  
Solicitor General

cc: See Attached Service List

17-0002

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1           (2) *the treatment of such transaction, property,*  
2           *or item under such provision would (without regard*  
3           *to the amendments or repeals made by such sub-*  
4           *section) affect the liability for tax for periods ending*  
5           *after such date of enactment,*  
6           *nothing in the amendments or repeals made by this section*  
7           *shall be construed to affect the treatment of such trans-*  
8           *action, property, or item for purposes of determining liabil-*  
9           *ity for tax for periods ending after such date of enactment.*

## 10           ***DIVISION V—CLOUD ACT***

### 11           ***SEC. 101. SHORT TITLE.***

12           *This division may be cited as the “Clarifying Lawful*  
13           *Overseas Use of Data Act” or the “CLOUD Act”.*

### 14           ***SEC. 102. CONGRESSIONAL FINDINGS.***

15           *Congress finds the following:*

16           (1) *Timely access to electronic data held by com-*  
17           *munications-service providers is an essential compo-*  
18           *nent of government efforts to protect public safety and*  
19           *combat serious crime, including terrorism.*

20           (2) *Such efforts by the United States Govern-*  
21           *ment are being impeded by the inability to access*  
22           *data stored outside the United States that is in the*  
23           *custody, control, or possession of communications-*  
24           *service providers that are subject to jurisdiction of the*  
25           *United States.*

1           (3) *Foreign governments also increasingly seek*  
 2           *access to electronic data held by communications-serv-*  
 3           *ice providers in the United States for the purpose of*  
 4           *combating serious crime.*

5           (4) *Communications-service providers face poten-*  
 6           *tial conflicting legal obligations when a foreign gov-*  
 7           *ernment orders production of electronic data that*  
 8           *United States law may prohibit providers from dis-*  
 9           *closing.*

10          (5) *Foreign law may create similarly conflicting*  
 11          *legal obligations when chapter 121 of title 18, United*  
 12          *States Code (commonly known as the “ Stored Com-*  
 13          *munications Act”), requires disclosure of electronic*  
 14          *data that foreign law prohibits communications-serv-*  
 15          *ice providers from disclosing.*

16          (6) *International agreements provide a mecha-*  
 17          *nism for resolving these potential conflicting legal ob-*  
 18          *ligations where the United States and the relevant*  
 19          *foreign government share a common commitment to*  
 20          *the rule of law and the protection of privacy and civil*  
 21          *liberties.*

22   **SEC. 103. PRESERVATION OF RECORDS; COMITY ANALYSIS**  
 23           **OF LEGAL PROCESS.**

24          (a) *REQUIRED PRESERVATION AND DISCLOSURE OF*  
 25          *COMMUNICATIONS AND RECORDS.—*

1           (1) *AMENDMENT.*—Chapter 121 of title 18,  
 2           *United States Code*, is amended by adding at the end  
 3           *the following:*

4           **“§ 2713. Required preservation and disclosure of com-**  
 5                               **munications and records**

6           *“A provider of electronic communication service or re-*  
 7           *mote computing service shall comply with the obligations*  
 8           *of this chapter to preserve, backup, or disclose the contents*  
 9           *of a wire or electronic communication and any record or*  
 10           *other information pertaining to a customer or subscriber*  
 11           *within such provider’s possession, custody, or control, re-*  
 12           *gardless of whether such communication, record, or other*  
 13           *information is located within or outside of the United*  
 14           *States.”.*

15           (2) *TABLE OF SECTIONS.*—The table of sections  
 16           *for chapter 121 of title 18, United States Code*, is  
 17           *amended by inserting after the item relating to sec-*  
 18           *tion 2712 the following:*

*“2713. Required preservation and disclosure of communications and records.”.*

19           (b) *COMITY ANALYSIS OF LEGAL PROCESS SEEKING*  
 20           *CONTENTS OF WIRE OR ELECTRONIC COMMUNICATION.*—  
 21           *Section 2703 of title 18, United States Code*, is amended  
 22           *by adding at the end the following:*

23           *“(h) COMITY ANALYSIS AND DISCLOSURE OF INFORMA-*  
 24           *TION REGARDING LEGAL PROCESS SEEKING CONTENTS OF*  
 25           *WIRE OR ELECTRONIC COMMUNICATION.*—

1           “(1) *DEFINITIONS.—In this subsection—*

2                   “(A) *the term ‘qualifying foreign govern-*  
3           *ment’ means a foreign government—*

4                           “(i) *with which the United States has*  
5                   *an executive agreement that has entered*  
6                   *into force under section 2523; and*

7                           “(ii) *the laws of which provide to elec-*  
8                   *tronic communication service providers and*  
9                   *remote computing service providers sub-*  
10           *stantive and procedural opportunities simi-*  
11           *lar to those provided under paragraphs (2)*  
12           *and (5); and*

13                   “(B) *the term ‘United States person’ has the*  
14           *meaning given the term in section 2523.*

15           “(2) *MOTIONS TO QUASH OR MODIFY.—(A) A*  
16           *provider of electronic communication service to the*  
17           *public or remote computing service, including a for-*  
18           *ign electronic communication service or remote com-*  
19           *puting service, that is being required to disclose pur-*  
20           *suant to legal process issued under this section the*  
21           *contents of a wire or electronic communication of a*  
22           *subscriber or customer, may file a motion to modify*  
23           *or quash the legal process where the provider reason-*  
24           *ably believes—*

1           “(i) that the customer or subscriber is not  
2           a United States person and does not reside in  
3           the United States; and

4           “(ii) that the required disclosure would cre-  
5           ate a material risk that the provider would vio-  
6           late the laws of a qualifying foreign government.  
7           Such a motion shall be filed not later than 14  
8           days after the date on which the provider was  
9           served with the legal process, absent agreement  
10          with the government or permission from the  
11          court to extend the deadline based on an applica-  
12          tion made within the 14 days. The right to move  
13          to quash is without prejudice to any other  
14          grounds to move to quash or defenses thereto, but  
15          it shall be the sole basis for moving to quash on  
16          the grounds of a conflict of law related to a  
17          qualifying foreign government.

18          “(B) Upon receipt of a motion filed pursuant to  
19          subparagraph (A), the court shall afford the govern-  
20          mental entity that applied for or issued the legal  
21          process under this section the opportunity to respond.  
22          The court may modify or quash the legal process, as  
23          appropriate, only if the court finds that—

1           “(i) the required disclosure would cause the  
2 provider to violate the laws of a qualifying for-  
3 eign government;

4           “(ii) based on the totality of the cir-  
5 cumstances, the interests of justice dictate that  
6 the legal process should be modified or quashed;  
7 and

8           “(iii) the customer or subscriber is not a  
9 United States person and does not reside in the  
10 United States.

11           “(3) COMITY ANALYSIS.—For purposes of making  
12 a determination under paragraph (2)(B)(ii), the  
13 court shall take into account, as appropriate—

14           “(A) the interests of the United States, in-  
15 cluding the investigative interests of the govern-  
16 mental entity seeking to require the disclosure;

17           “(B) the interests of the qualifying foreign  
18 government in preventing any prohibited disclo-  
19 sure;

20           “(C) the likelihood, extent, and nature of  
21 penalties to the provider or any employees of the  
22 provider as a result of inconsistent legal require-  
23 ments imposed on the provider;

24           “(D) the location and nationality of the  
25 subscriber or customer whose communications

1       are being sought, if known, and the nature and  
2       extent of the subscriber or customer's connection  
3       to the United States, or if the legal process has  
4       been sought on behalf of a foreign authority pur-  
5       suant to section 3512, the nature and extent of  
6       the subscriber or customer's connection to the for-  
7       eign authority's country;

8               “(E) the nature and extent of the provider's  
9       ties to and presence in the United States;

10              “(F) the importance to the investigation of  
11       the information required to be disclosed;

12              “(G) the likelihood of timely and effective  
13       access to the information required to be disclosed  
14       through means that would cause less serious neg-  
15       ative consequences; and

16              “(H) if the legal process has been sought on  
17       behalf of a foreign authority pursuant to section  
18       3512, the investigative interests of the foreign au-  
19       thority making the request for assistance.

20              “(4) *DISCLOSURE OBLIGATIONS DURING PEND-*  
21       *ENCY OF CHALLENGE.*—A service provider shall pre-  
22       serve, but not be obligated to produce, information  
23       sought during the pendency of a motion brought  
24       under this subsection, unless the court finds that im-



1       mediate production is necessary to prevent an adverse  
2       result identified in section 2705(a)(2).

3               “(5) *DISCLOSURE TO QUALIFYING FOREIGN GOV-*  
4       *ERNMENT.—(A) It shall not constitute a violation of*  
5       *a protective order issued under section 2705 for a*  
6       *provider of electronic communication service to the*  
7       *public or remote computing service to disclose to the*  
8       *entity within a qualifying foreign government, des-*  
9       *ignated in an executive agreement under section 2523,*  
10       *the fact of the existence of legal process issued under*  
11       *this section seeking the contents of a wire or electronic*  
12       *communication of a customer or subscriber who is a*  
13       *national or resident of the qualifying foreign govern-*  
14       *ment.*

15               “(B) *Nothing in this paragraph shall be con-*  
16       *strued to modify or otherwise affect any other author-*  
17       *ity to make a motion to modify or quash a protective*  
18       *order issued under section 2705.”.*

19       (c) *RULE OF CONSTRUCTION.—Nothing in this section,*  
20       *or an amendment made by this section, shall be construed*  
21       *to modify or otherwise affect the common law standards*  
22       *governing the availability or application of comity analysis*  
23       *to other types of compulsory process or to instances of com-*  
24       *pulsory process issued under section 2703 of title 18, United*

1 *States Code, as amended by this section, and not covered*  
 2 *under subsection (h)(2) of such section 2703.*

3 **SEC. 104. ADDITIONAL AMENDMENTS TO CURRENT COMMU-**  
 4 **NICATIONS LAWS.**

5 *Title 18, United States Code, is amended—*

6 *(1) in chapter 119—*

7 *(A) in section 2511(2), by adding at the end*  
 8 *the following:*

9 *“(j) It shall not be unlawful under this chapter for a*  
 10 *provider of electronic communication service to the public*  
 11 *or remote computing service to intercept or disclose the con-*  
 12 *tents of a wire or electronic communication in response to*  
 13 *an order from a foreign government that is subject to an*  
 14 *executive agreement that the Attorney General has deter-*  
 15 *mined and certified to Congress satisfies section 2523.”; and*

16 *(B) in section 2520(d), by amending para-*  
 17 *graph (3) to read as follows:*

18 *“(3) a good faith determination that section*  
 19 *2511(3), 2511(2)(i), or 2511(2)(j) of this title per-*  
 20 *mitted the conduct complained of;”;*

21 *(2) in chapter 121—*

22 *(A) in section 2702—*

23 *(i) in subsection (b)—*

1                   (I) in paragraph (8), by striking  
2                   the period at the end and inserting “;  
3                   or”; and

4                   (II) by adding at the end the fol-  
5                   lowing:

6                   “(9) to a foreign government pursuant to an  
7                   order from a foreign government that is subject to an  
8                   executive agreement that the Attorney General has de-  
9                   termined and certified to Congress satisfies section  
10                  2523.”; and

11                  (ii) in subsection (c)—

12                   (I) in paragraph (5), by striking  
13                   “or” at the end;

14                   (II) in paragraph (6), by striking  
15                   the period at the end and inserting “;  
16                   or”; and

17                   (III) by adding at the end the fol-  
18                   lowing:

19                   “(7) to a foreign government pursuant to an  
20                   order from a foreign government that is subject to an  
21                   executive agreement that the Attorney General has de-  
22                   termined and certified to Congress satisfies section  
23                   2523.”; and

24                   (B) in section 2707(e), by amending para-  
25                   graph (3) to read as follows:

1           “(3) a good faith determination that section  
2           2511(3), section 2702(b)(9), or section 2702(c)(7) of  
3           this title permitted the conduct complained of;” and  
4           (3) in chapter 206—

5           (A) in section 3121(a), by inserting before  
6           the period at the end the following: “or an order  
7           from a foreign government that is subject to an  
8           executive agreement that the Attorney General  
9           has determined and certified to Congress satisfies  
10          section 2523”; and

11          (B) in section 3124—

12           (i) by amending subsection (d) to read  
13           as follows:

14          “(d) NO CAUSE OF ACTION AGAINST A PROVIDER DIS-  
15          CLOSING INFORMATION UNDER THIS CHAPTER.—No cause  
16          of action shall lie in any court against any provider of a  
17          wire or electronic communication service, its officers, em-  
18          ployees, agents, or other specified persons for providing in-  
19          formation, facilities, or assistance in accordance with a  
20          court order under this chapter, request pursuant to section  
21          3125 of this title, or an order from a foreign government  
22          that is subject to an executive agreement that the Attorney  
23          General has determined and certified to Congress satisfies  
24          section 2523.”; and

1                   (ii) by amending subsection (e) to read  
2                   as follows:

3           “(e) *DEFENSE.*—A good faith reliance on a court order  
4 under this chapter, a request pursuant to section 3125 of  
5 this title, a legislative authorization, a statutory authoriza-  
6 tion, or a good faith determination that the conduct com-  
7 plained of was permitted by an order from a foreign govern-  
8 ment that is subject to executive agreement that the Attor-  
9 ney General has determined and certified to Congress satis-  
10 fies section 2523, is a complete defense against any civil  
11 or criminal action brought under this chapter or any other  
12 law.”.

13 **SEC. 105. EXECUTIVE AGREEMENTS ON ACCESS TO DATA BY**  
14 **FOREIGN GOVERNMENTS.**

15           (a) *IN GENERAL.*—Chapter 119 of title 18, United  
16 States Code, is amended by adding at the end the following:  
17 **“§2523. Executive agreements on access to data by**  
18 **foreign governments**

19           “(a) *DEFINITIONS.*—In this section—

20                   “(1) the term ‘lawfully admitted for permanent  
21 residence’ has the meaning given the term in section  
22 101(a) of the Immigration and Nationality Act (8  
23 U.S.C. 1101(a)); and

24                   “(2) the term ‘United States person’ means a cit-  
25 izen or national of the United States, an alien law-

1     *fully admitted for permanent residence, an unincor-*  
2     *porated association a substantial number of members*  
3     *of which are citizens of the United States or aliens*  
4     *lawfully admitted for permanent residence, or a cor-*  
5     *poration that is incorporated in the United States.*

6     “(b) *EXECUTIVE AGREEMENT REQUIREMENTS.*—For  
7     purposes of this chapter, chapter 121, and chapter 206, an  
8     executive agreement governing access by a foreign govern-  
9     ment to data subject to this chapter, chapter 121, or chapter  
10    206 shall be considered to satisfy the requirements of this  
11    section if the Attorney General, with the concurrence of the  
12    Secretary of State, determines, and submits a written cer-  
13    tification of such determination to Congress, including a  
14    written certification and explanation of each consideration  
15    in paragraphs (1), (2), (3), and (4), that—

16           “(1) the domestic law of the foreign government,  
17           including the implementation of that law, affords ro-  
18           bust substantive and procedural protections for pri-  
19           vacy and civil liberties in light of the data collection  
20           and activities of the foreign government that will be  
21           subject to the agreement, if—

22           “(A) such a determination under this sec-  
23           tion takes into account, as appropriate, credible  
24           information and expert input; and

1           “(B) the factors to be met in making such  
2 a determination include whether the foreign gov-  
3 ernment—

4           “(i) has adequate substantive and pro-  
5 cedural laws on cybercrime and electronic  
6 evidence, as demonstrated by being a party  
7 to the Convention on Cybercrime, done at  
8 Budapest November 23, 2001, and entered  
9 into force January 7, 2004, or through do-  
10 mestic laws that are consistent with defini-  
11 tions and the requirements set forth in  
12 chapters I and II of that Convention;

13           “(ii) demonstrates respect for the rule  
14 of law and principles of nondiscrimination;

15           “(iii) adheres to applicable inter-  
16 national human rights obligations and com-  
17 mitments or demonstrates respect for inter-  
18 national universal human rights, includ-  
19 ing—

20           “(I) protection from arbitrary  
21 and unlawful interference with pri-  
22 vacy;

23           “(II) fair trial rights;

24           “(III) freedom of expression, asso-  
25 ciation, and peaceful assembly;

1                   “(IV) prohibitions on arbitrary  
2                   arrest and detention; and

3                   “(V) prohibitions against torture  
4                   and cruel, inhuman, or degrading  
5                   treatment or punishment;

6                   “(iv) has clear legal mandates and  
7                   procedures governing those entities of the  
8                   foreign government that are authorized to  
9                   seek data under the executive agreement, in-  
10                  cluding procedures through which those au-  
11                  thorities collect, retain, use, and share data,  
12                  and effective oversight of these activities;

13                  “(v) has sufficient mechanisms to pro-  
14                  vide accountability and appropriate trans-  
15                  parency regarding the collection and use of  
16                  electronic data by the foreign government;  
17                  and

18                  “(vi) demonstrates a commitment to  
19                  promote and protect the global free flow of  
20                  information and the open, distributed, and  
21                  interconnected nature of the Internet;

22                  “(2) the foreign government has adopted appro-  
23                  priate procedures to minimize the acquisition, reten-  
24                  tion, and dissemination of information concerning  
25                  United States persons subject to the agreement;



1           “(3) the terms of the agreement shall not create  
2           any obligation that providers be capable of decrypting  
3           data or limitation that prevents providers from  
4           decrypting data; and

5           “(4) the agreement requires that, with respect to  
6           any order that is subject to the agreement—

7                   “(A) the foreign government may not inten-  
8                   tionally target a United States person or a per-  
9                   son located in the United States, and shall adopt  
10                  targeting procedures designed to meet this re-  
11                  quirement;

12                  “(B) the foreign government may not target  
13                  a non-United States person located outside the  
14                  United States if the purpose is to obtain infor-  
15                  mation concerning a United States person or a  
16                  person located in the United States;

17                  “(C) the foreign government may not issue  
18                  an order at the request of or to obtain informa-  
19                  tion to provide to the United States Government  
20                  or a third-party government, nor shall the for-  
21                  eign government be required to share any infor-  
22                  mation produced with the United States Govern-  
23                  ment or a third-party government;

24                  “(D) an order issued by the foreign govern-  
25                  ment—

1           “(i) shall be for the purpose of obtain-  
2           ing information relating to the prevention,  
3           detection, investigation, or prosecution of se-  
4           rious crime, including terrorism;

5           “(ii) shall identify a specific person,  
6           account, address, or personal device, or any  
7           other specific identifier as the object of the  
8           order;

9           “(iii) shall be in compliance with the  
10          domestic law of that country, and any obli-  
11          gation for a provider of an electronic com-  
12          munications service or a remote computing  
13          service to produce data shall derive solely  
14          from that law;

15          “(iv) shall be based on requirements for  
16          a reasonable justification based on  
17          articulable and credible facts, particularity,  
18          legality, and severity regarding the conduct  
19          under investigation;

20          “(v) shall be subject to review or over-  
21          sight by a court, judge, magistrate, or other  
22          independent authority prior to, or in pro-  
23          ceedings regarding, enforcement of the order;  
24          and

1           “(vi) in the case of an order for the  
2           interception of wire or electronic commu-  
3           nications, and any extensions thereof, shall  
4           require that the interception order—

5                   “(I) be for a fixed, limited dura-  
6                   tion; and

7                   “(II) may not last longer than is  
8                   reasonably necessary to accomplish the  
9                   approved purposes of the order; and

10                  “(III) be issued only if the same  
11                  information could not reasonably be  
12                  obtained by another less intrusive  
13                  method;

14                  “(E) an order issued by the foreign govern-  
15                  ment may not be used to infringe freedom of  
16                  speech;

17                  “(F) the foreign government shall promptly  
18                  review material collected pursuant to the agree-  
19                  ment and store any unreviewed communications  
20                  on a secure system accessible only to those per-  
21                  sons trained in applicable procedures;

22                  “(G) the foreign government shall, using  
23                  procedures that, to the maximum extent possible,  
24                  meet the definition of minimization procedures  
25                  in section 101 of the Foreign Intelligence Sur-

1        *veillance Act of 1978 (50 U.S.C. 1801), segregate,*  
2        *seal, or delete, and not disseminate material*  
3        *found not to be information that is, or is nec-*  
4        *essary to understand or assess the importance of*  
5        *information that is, relevant to the prevention,*  
6        *detection, investigation, or prosecution of serious*  
7        *crime, including terrorism, or necessary to pro-*  
8        *tect against a threat of death or serious bodily*  
9        *harm to any person;*

10        *“(H) the foreign government may not dis-*  
11        *seminate the content of a communication of a*  
12        *United States person to United States authori-*  
13        *ties unless the communication may be dissemi-*  
14        *nated pursuant to subparagraph (G) and relates*  
15        *to significant harm, or the threat thereof, to the*  
16        *United States or United States persons, includ-*  
17        *ing crimes involving national security such as*  
18        *terrorism, significant violent crime, child exploi-*  
19        *tation, transnational organized crime, or signifi-*  
20        *cant financial fraud;*

21        *“(I) the foreign government shall afford re-*  
22        *ciprocal rights of data access, to include, where*  
23        *applicable, removing restrictions on communica-*  
24        *tions service providers, including providers sub-*  
25        *ject to United States jurisdiction, and thereby*

1        *allow them to respond to valid legal process*  
2        *sought by a governmental entity (as defined in*  
3        *section 2711) if foreign law would otherwise pro-*  
4        *hibit communications-service providers from dis-*  
5        *closing the data;*

6                *“(J) the foreign government shall agree to*  
7        *periodic review of compliance by the foreign gov-*  
8        *ernment with the terms of the agreement to be*  
9        *conducted by the United States Government; and*

10               *“(K) the United States Government shall*  
11        *reserve the right to render the agreement inappli-*  
12        *cable as to any order for which the United States*  
13        *Government concludes the agreement may not*  
14        *properly be invoked.*

15        *“(c) LIMITATION ON JUDICIAL REVIEW.—A deter-*  
16        *mination or certification made by the Attorney General*  
17        *under subsection (b) shall not be subject to judicial or ad-*  
18        *ministrative review.*

19        *“(d) EFFECTIVE DATE OF CERTIFICATION.—*

20               *“(1) NOTICE.—Not later than 7 days after the*  
21        *date on which the Attorney General certifies an execu-*  
22        *tive agreement under subsection (b), the Attorney*  
23        *General shall provide notice of the determination*  
24        *under subsection (b) and a copy of the executive*  
25        *agreement to Congress, including—*

1           “(A) *the Committee on the Judiciary and*  
2           *the Committee on Foreign Relations of the Sen-*  
3           *ate; and*

4           “(B) *the Committee on the Judiciary and*  
5           *the Committee on Foreign Affairs of the House*  
6           *of Representatives.*

7           “(2) *ENTRY INTO FORCE.—An executive agree-*  
8           *ment that is determined and certified by the Attorney*  
9           *General to satisfy the requirements of this section*  
10          *shall enter into force not earlier than the date that is*  
11          *180 days after the date on which notice is provided*  
12          *under paragraph (1), unless Congress enacts a joint*  
13          *resolution of disapproval in accordance with para-*  
14          *graph (4).*

15          “(3) *REQUESTS FOR INFORMATION.—Upon re-*  
16          *quest by the Chairman or Ranking Member of a con-*  
17          *gressional committee described in paragraph (1), the*  
18          *head of an agency shall promptly furnish a summary*  
19          *of factors considered in determining that the foreign*  
20          *government satisfies the requirements of this section.*

21          “(4) *CONGRESSIONAL REVIEW.—*

22                 “(A) *JOINT RESOLUTION DEFINED.—In this*  
23                 *paragraph, the term ‘joint resolution’ means*  
24                 *only a joint resolution—*

1           “(i) introduced during the 180-day pe-  
2           riod described in paragraph (2);

3           “(ii) which does not have a preamble;

4           “(iii) the title of which is as follows:  
5           ‘Joint resolution disapproving the executive  
6           agreement signed by the United States and  
7           \_\_\_\_\_.’, the blank space being appropriately  
8           filled in; and

9           “(iv) the matter after the resolving  
10          clause of which is as follows: ‘That Congress  
11          disapproves the executive agreement gov-  
12          erning access by \_\_\_\_\_ to certain elec-  
13          tronic data as submitted by the Attorney  
14          General on \_\_\_\_\_’, the blank spaces being  
15          appropriately filled in.

16          “(B) *JOINT RESOLUTION ENACTED.*—Not-  
17          withstanding any other provision of this section,  
18          if not later than 180 days after the date on  
19          which notice is provided to Congress under para-  
20          graph (1), there is enacted into law a joint reso-  
21          lution disapproving of an executive agreement  
22          under this section, the executive agreement shall  
23          not enter into force.

1           “(C) *INTRODUCTION.*—During the 180-day  
2           period described in subparagraph (B), a joint  
3           resolution of disapproval may be introduced—

4                   “(i) *in the House of Representatives,*  
5                   *by the majority leader or the minority lead-*  
6                   *er; and*

7                   “(ii) *in the Senate, by the majority*  
8                   *leader (or the majority leader’s designee) or*  
9                   *the minority leader (or the minority lead-*  
10                  *er’s designee).*

11           “(5) *FLOOR CONSIDERATION IN HOUSE OF REP-*  
12           *RESENTATIVES.*—If a committee of the House of Rep-  
13           resentatives to which a joint resolution of disapproval  
14           has been referred has not reported the joint resolution  
15           within 120 days after the date of referral, that com-  
16           mittee shall be discharged from further consideration  
17           of the joint resolution.

18           “(6) *CONSIDERATION IN THE SENATE.*—

19                   “(A) *COMMITTEE REFERRAL.*—A joint reso-  
20                   lution of disapproval introduced in the Senate  
21                   shall be referred jointly—

22                   “(i) *to the Committee on the Judici-*  
23                   *ary; and*

24                   “(ii) *to the Committee on Foreign Re-*  
25                   *lations.*



1           “(B) *REPORTING AND DISCHARGE.*—If a  
2           committee to which a joint resolution of dis-  
3           approval was referred has not reported the joint  
4           resolution within 120 days after the date of re-  
5           ferral of the joint resolution, that committee shall  
6           be discharged from further consideration of the  
7           joint resolution and the joint resolution shall be  
8           placed on the appropriate calendar.

9           “(C) *PROCEEDING TO CONSIDERATION.*—It  
10          is in order at any time after both the Committee  
11          on the Judiciary and the Committee on Foreign  
12          Relations report a joint resolution of disapproval  
13          to the Senate or have been discharged from con-  
14          sideration of such a joint resolution (even though  
15          a previous motion to the same effect has been  
16          disagreed to) to move to proceed to the consider-  
17          ation of the joint resolution, and all points of  
18          order against the joint resolution (and against  
19          consideration of the joint resolution) are waived.  
20          The motion is not debatable or subject to a mo-  
21          tion to postpone. A motion to reconsider the vote  
22          by which the motion is agreed to or disagreed to  
23          shall not be in order.

24          “(D) *CONSIDERATION IN THE SENATE.*—In  
25          the Senate, consideration of the joint resolution,

1           *and on all debatable motions and appeals in*  
2           *connection therewith, shall be limited to not*  
3           *more than 10 hours, which shall be divided*  
4           *equally between those favoring and those oppos-*  
5           *ing the joint resolution. A motion further to*  
6           *limit debate is in order and not debatable. An*  
7           *amendment to, or a motion to postpone, or a mo-*  
8           *tion to proceed to the consideration of other busi-*  
9           *ness, or a motion to recommit the joint resolu-*  
10          *tion is not in order.*

11           “(E)   *CONSIDERATION   OF   VETO   MES-*  
12          *SAGES.—Debate in the Senate of any veto mes-*  
13          *sage with respect to a joint resolution of dis-*  
14          *approval, including all debatable motions and*  
15          *appeals in connection with the joint resolution,*  
16          *shall be limited to 10 hours, to be equally di-*  
17          *vided between, and controlled by, the majority*  
18          *leader and the minority leader or their designees.*

19           “(7)   *RULES RELATING TO SENATE AND HOUSE*  
20          *OF REPRESENTATIVES.—*

21           “(A)   *TREATMENT OF SENATE JOINT RESO-*  
22          *LUTION IN HOUSE.—In the House of Representa-*  
23          *tives, the following procedures shall apply to a*  
24          *joint resolution of disapproval received from the*  
25          *Senate (unless the House has already passed a*

1       *joint resolution relating to the same proposed ac-*  
2       *tion):*

3               “(i) *The joint resolution shall be re-*  
4       *ferred to the appropriate committees.*

5               “(ii) *If a committee to which a joint*  
6       *resolution has been referred has not reported*  
7       *the joint resolution within 7 days after the*  
8       *date of referral, that committee shall be dis-*  
9       *charged from further consideration of the*  
10       *joint resolution.*

11              “(iii) *Beginning on the third legisla-*  
12       *tive day after each committee to which a*  
13       *joint resolution has been referred reports the*  
14       *joint resolution to the House or has been*  
15       *discharged from further consideration there-*  
16       *of, it shall be in order to move to proceed*  
17       *to consider the joint resolution in the*  
18       *House. All points of order against the mo-*  
19       *tion are waived. Such a motion shall not be*  
20       *in order after the House has disposed of a*  
21       *motion to proceed on the joint resolution.*  
22       *The previous question shall be considered as*  
23       *ordered on the motion to its adoption with-*  
24       *out intervening motion. The motion shall*  
25       *not be debatable. A motion to reconsider the*

1 *vote by which the motion is disposed of shall*  
2 *not be in order.*

3 *“(iv) The joint resolution shall be con-*  
4 *sidered as read. All points of order against*  
5 *the joint resolution and against its consid-*  
6 *eration are waived. The previous question*  
7 *shall be considered as ordered on the joint*  
8 *resolution to final passage without inter-*  
9 *vening motion except 2 hours of debate*  
10 *equally divided and controlled by the spon-*  
11 *sor of the joint resolution (or a designee)*  
12 *and an opponent. A motion to reconsider*  
13 *the vote on passage of the joint resolution*  
14 *shall not be in order.*

15 *“(B) TREATMENT OF HOUSE JOINT RESOLU-*  
16 *TION IN SENATE.—*

17 *“(i) If, before the passage by the Senate*  
18 *of a joint resolution of disapproval, the Sen-*  
19 *ate receives an identical joint resolution*  
20 *from the House of Representatives, the fol-*  
21 *lowing procedures shall apply:*

22 *“(I) That joint resolution shall*  
23 *not be referred to a committee.*

24 *“(II) With respect to that joint*  
25 *resolution—*

1                   “(aa) the procedure in the  
2                   Senate shall be the same as if no  
3                   joint resolution had been received  
4                   from the House of Representatives;  
5                   but

6                   “(bb) the vote on passage  
7                   shall be on the joint resolution  
8                   from the House of Representatives.

9                   “(ii) If, following passage of a joint  
10                  resolution of disapproval in the Senate, the  
11                  Senate receives an identical joint resolution  
12                  from the House of Representatives, that  
13                  joint resolution shall be placed on the ap-  
14                  propriate Senate calendar.

15                  “(iii) If a joint resolution of dis-  
16                  approval is received from the House, and no  
17                  companion joint resolution has been intro-  
18                  duced in the Senate, the Senate procedures  
19                  under this subsection shall apply to the  
20                  House joint resolution.

21                  “(C) APPLICATION TO REVENUE MEAS-  
22                  URES.—The provisions of this paragraph shall  
23                  not apply in the House of Representatives to a  
24                  joint resolution of disapproval that is a revenue  
25                  measure.

1           “(8) *RULES OF HOUSE OF REPRESENTATIVES*  
2           *AND SENATE.*—*This subsection is enacted by Con-*  
3           *gress—*

4                   “(A) *as an exercise of the rulemaking power*  
5                   *of the Senate and the House of Representatives,*  
6                   *respectively, and as such is deemed a part of the*  
7                   *rules of each House, respectively, and supersedes*  
8                   *other rules only to the extent that it is incon-*  
9                   *sistent with such rules; and*

10                   “(B) *with full recognition of the constitu-*  
11                   *tional right of either House to change the rules*  
12                   *(so far as relating to the procedure of that*  
13                   *House) at any time, in the same manner, and*  
14                   *to the same extent as in the case of any other*  
15                   *rule of that House.*

16           “(e) *RENEWAL OF DETERMINATION.*—

17                   “(1) *IN GENERAL.*—*The Attorney General, with*  
18                   *the concurrence of the Secretary of State, shall review*  
19                   *and may renew a determination under subsection (b)*  
20                   *every 5 years.*

21                   “(2) *REPORT.*—*Upon renewing a determination*  
22                   *under subsection (b), the Attorney General shall file*  
23                   *a report with the Committee on the Judiciary and the*  
24                   *Committee on Foreign Relations of the Senate and the*  
25                   *Committee on the Judiciary and the Committee on*

1       *Foreign Affairs of the House of Representatives de-*  
2       *scribing—*

3               “(A) *the reasons for the renewal;*

4               “(B) *any substantive changes to the agree-*  
5               *ment or to the relevant laws or procedures of the*  
6               *foreign government since the original determina-*  
7               *tion or, in the case of a second or subsequent re-*  
8               *newal, since the last renewal; and*

9               “(C) *how the agreement has been imple-*  
10              *mented and what problems or controversies, if*  
11              *any, have arisen as a result of the agreement or*  
12              *its implementation.*

13              “(3) *NONRENEWAL.—If a determination is not*  
14              *renewed under paragraph (1), the agreement shall no*  
15              *longer be considered to satisfy the requirements of this*  
16              *section.*

17              “(f) *REVISIONS TO AGREEMENT.—A revision to an*  
18              *agreement under this section shall be treated as a new*  
19              *agreement for purposes of this section and shall be subject*  
20              *to the certification requirement under subsection (b), and*  
21              *to the procedures under subsection (d), except that for pur-*  
22              *poses of a revision to an agreement—*

23                   “(1) *the applicable time period under para-*  
24                   *graphs (2), (4)(A)(i), (4)(B), and (4)(C) of subsection*

1       (d) shall be 90 days after the date notice is provided  
 2       under subsection (d)(1); and

3               “(2) the applicable time period under para-  
 4       graphs (5) and (6)(B) of subsection (d) shall be 60  
 5       days after the date notice is provided under sub-  
 6       section (d)(1).

7       “(g) *PUBLICATION*.—Any determination or certifi-  
 8       cation under subsection (b) regarding an executive agree-  
 9       ment under this section, including any termination or re-  
 10      newal of such an agreement, shall be published in the *Fed-*  
 11      *eral Register* as soon as is reasonably practicable.

12      “(h) *MINIMIZATION PROCEDURES*.—A United States  
 13      authority that receives the content of a communication de-  
 14      scribed in subsection (b)(4)(H) from a foreign government  
 15      in accordance with an executive agreement under this sec-  
 16      tion shall use procedures that, to the maximum extent pos-  
 17      sible, meet the definition of minimization procedures in sec-  
 18      tion 101 of the *Foreign Intelligence Surveillance Act of 1978*  
 19      (50 U.S.C. 1801) to appropriately protect nonpublicly  
 20      available information concerning United States persons.”.

21      (b) *TABLE OF SECTIONS AMENDMENT*.—The table of  
 22      sections for chapter 119 of title 18, United States Code, is  
 23      amended by inserting after the item relating to section 2522  
 24      the following:

“2523. *Executive agreements on access to data by foreign governments.*”.



1 **SEC. 106. RULE OF CONSTRUCTION.**

2       *Nothing in this division, or the amendments made by*  
3 *this division, shall be construed to preclude any foreign au-*  
4 *thority from obtaining assistance in a criminal investiga-*  
5 *tion or prosecution pursuant to section 3512 of title 18,*  
6 *United States Code, section 1782 of title 28, United States*  
7 *Code, or as otherwise provided by law.*

*Attest:*

*Clerk.*