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,

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Solicitor General

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(2) the treatment of such transaction, property, or item under such provision would (without regard to the amendments or repeals made by such subsection) affect the liability for tax for periods ending after such date of enactment, nothing in the amendments or repeals made by this section shall be construed to affect the treatment of such transaction, property, or item for purposes of determining liability for tax for periods ending after such date of enactment.

**DIVISION V—CLOUD ACT**

**SEC. 101. SHORT TITLE.**

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

**SEC. 102. CONGRESSIONAL FINDINGS.**

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.

SEC. 103. PRESERVATION OF RECORDS; COMITY ANALYSIS OF LEGAL PROCESS.

(a) REQUIRED PRESERVATION AND DISCLOSURE OF COMMUNICATIONS AND RECORDS.—
(1) Amendment.—Chapter 121 of title 18, United States Code, is amended by adding at the end the following:

“§2713. Required preservation and disclosure of communications and records

“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.”.

(2) Table of sections.—The table of sections for chapter 121 of title 18, United States Code, is amended by inserting after the item relating to section 2712 the following:

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

(b) Comity Analysis of Legal Process Seeking Contents of Wire or Electronic Communication.—Section 2703 of title 18, United States Code, is amended by adding at the end the following:

“(h) Comity Analysis and Disclosure of Information Regarding Legal Process Seeking Contents of Wire or Electronic Communication.—
“(1) DEFINITIONS.—In this subsection—

“(A) the term ‘qualifying foreign government’ means a foreign government—

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

“(ii) the laws of which provide to electronic communication service providers and remote computing service providers substantive and procedural opportunities similar to those provided under paragraphs (2) and (5); and

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

“(2) MOTIONS TO QUASH OR MODIFY.—(A) A provider of electronic communication service to the public or remote computing service, including a foreign electronic communication service or remote computing service, that is being required to disclose pursuant to legal process issued under this section the contents of a wire or electronic communication of a subscriber or customer, may file a motion to modify or quash the legal process where the provider reasonably believes—
“(i) that the customer or subscriber is not a United States person and does not reside in the United States; and

“(ii) that the required disclosure would create a material risk that the provider would violate the laws of a qualifying foreign government. Such a motion shall be filed not later than 14 days after the date on which the provider was served with the legal process, absent agreement with the government or permission from the court to extend the deadline based on an application made within the 14 days. The right to move to quash is without prejudice to any other grounds to move to quash or defenses thereto, but it shall be the sole basis for moving to quash on the grounds of a conflict of law related to a qualifying foreign government.

“(B) Upon receipt of a motion filed pursuant to subparagraph (A), the court shall afford the governmental entity that applied for or issued the legal process under this section the opportunity to respond. The court may modify or quash the legal process, as appropriate, only if the court finds that—
“(i) the required disclosure would cause the provider to violate the laws of a qualifying foreign government;

“(ii) based on the totality of the circumstances, the interests of justice dictate that the legal process should be modified or quashed; and

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

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

“(A) the interests of the United States, including the investigative interests of the governmental entity seeking to require the disclosure;

“(B) the interests of the qualifying foreign government in preventing any prohibited disclosure;

“(C) the likelihood, extent, and nature of penalties to the provider or any employees of the provider as a result of inconsistent legal requirements imposed on the provider;

“(D) the location and nationality of the subscriber or customer whose communications
are being sought, if known, and the nature and extent of the subscriber or customer’s connection to the United States, or if the legal process has been sought on behalf of a foreign authority pursuant to section 3512, the nature and extent of the subscriber or customer’s connection to the foreign authority’s country;

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

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

“(G) the likelihood of timely and effective access to the information required to be disclosed through means that would cause less serious negative consequences; and

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

“(4) Disclosure obligations during pendency of challenge.—A service provider shall preserve, but not be obligated to produce, information sought during the pendency of a motion brought under this subsection, unless the court finds that im-
mediate production is necessary to prevent an adverse result identified in section 2705(a)(2).

“(5) DISCLOSURE TO QUALIFYING FOREIGN GOVERNMENT.—(A) It shall not constitute a violation of a protective order issued under section 2705 for a provider of electronic communication service to the public or remote computing service to disclose to the entity within a qualifying foreign government, designated in an executive agreement under section 2523, the fact of the existence of legal process issued under this section seeking the contents of a wire or electronic communication of a customer or subscriber who is a national or resident of the qualifying foreign government.

“(B) Nothing in this paragraph shall be construed to modify or otherwise affect any other authority to make a motion to modify or quash a protective order issued under section 2705.”.

(c) RULE OF CONSTRUCTION.—Nothing in this section, or an amendment made by this section, shall be construed to modify or otherwise affect the common law standards governing the availability or application of comity analysis to other types of compulsory process or to instances of compulsory process issued under section 2703 of title 18, United
States Code, as amended by this section, and not covered 
under subsection (h)(2) of such section 2703.

SEC. 104. ADDITIONAL AMENDMENTS TO CURRENT COMMU-
NICATIONS LAWS.

Title 18, United States Code, is amended—

(1) in chapter 119—

(A) in section 2511(2), by adding at the end

the following:

“(j) It shall not be unlawful under this chapter for a

provider of electronic communication service to the public

or remote computing service to intercept or disclose the con-

tents of a wire or electronic communication in response to

an order from a foreign government that is subject to an

executive agreement that the Attorney General has deter-

mined and certified to Congress satisfies section 2523.”; and

(B) in section 2520(d), by amending para-

graph (3) to read as follows:

“(3) a good faith determination that section

2511(3), 2511(2)(i), or 2511(2)(j) of this title per-

mitted the conduct complained of;”;

(2) in chapter 121—

(A) in section 2702—

(i) in subsection (b)—
in paragraph (8), by striking the period at the end and inserting “; or”; and

(II) by adding at the end the following:

“(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.”; and

(ii) in subsection (c)—

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

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

(III) by adding at the end the following:

“(7) 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.”; and

(B) in section 2707(e), by amending paragraph (3) to read as follows:
“(3) a good faith determination that section 2511(3), section 2702(b)(9), or section 2702(c)(7) of this title permitted the conduct complained of;”; and

(3) in chapter 206—

(A) in section 3121(a), by inserting before the period at the end the following: “or 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”; and

(B) in section 3124—

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

“(d) No Cause of Action Against a Provider Disclosing Information Under This Chapter.—No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with a court order under this chapter, request pursuant to section 3125 of this title, or 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.”; and
(ii) by amending subsection (e) to read as follows:

“(e) DEFENSE.—A good faith reliance on a court order under this chapter, a request pursuant to section 3125 of this title, a legislative authorization, a statutory authorization, or a good faith determination that the conduct complained of was permitted by an order from a foreign government that is subject to executive agreement that the Attorney General has determined and certified to Congress satisfies section 2523, is a complete defense against any civil or criminal action brought under this chapter or any other law.”.

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

(a) In General.—Chapter 119 of title 18, United States Code, is amended by adding at the end the following:

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

“(a) DEFINITIONS.—In this section—

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

“(2) the term ‘United States person’ means a citizen or national of the United States, an alien law-
fully admitted for permanent residence, an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation that is incorporated in the United States.

“(b) Executive Agreement Requirements.—For purposes of this chapter, chapter 121, and chapter 206, an executive agreement governing access by a foreign government to data subject to this chapter, chapter 121, or chapter 206 shall be considered to satisfy the requirements of this section if the Attorney General, with the concurrence of the Secretary of State, determines, and submits a written certification of such determination to Congress, including a written certification and explanation of each consideration in paragraphs (1), (2), (3), and (4), that—

“(1) the domestic law of the foreign government, including the implementation of that law, affords robust substantive and procedural protections for privacy and civil liberties in light of the data collection and activities of the foreign government that will be subject to the agreement, if—

“(A) such a determination under this section takes into account, as appropriate, credible information and expert input; and
“(B) the factors to be met in making such a determination include whether the foreign government—

“(i) has adequate substantive and procedural laws on cybercrime and electronic evidence, as demonstrated by being a party to the Convention on Cybercrime, done at Budapest November 23, 2001, and entered into force January 7, 2004, or through domestic laws that are consistent with definitions and the requirements set forth in chapters I and II of that Convention;

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

“(iii) adheres to applicable international human rights obligations and commitments or demonstrates respect for international universal human rights, including—

“(I) protection from arbitrary and unlawful interference with privacy;

“(II) fair trial rights;

“(III) freedom of expression, association, and peaceful assembly;
“(IV) prohibitions on arbitrary arrest and detention; and
“(V) prohibitions against torture and cruel, inhuman, or degrading treatment or punishment;
“(iv) has clear legal mandates and procedures governing those entities of the foreign government that are authorized to seek data under the executive agreement, including procedures through which those authorities collect, retain, use, and share data, and effective oversight of these activities;
“(v) has sufficient mechanisms to provide accountability and appropriate transparency regarding the collection and use of electronic data by the foreign government; and
“(vi) demonstrates a commitment to promote and protect the global free flow of information and the open, distributed, and interconnected nature of the Internet;
“(2) the foreign government has adopted appropriate procedures to minimize the acquisition, retention, and dissemination of information concerning United States persons subject to the agreement;
“(3) the terms of the agreement shall not create any obligation that providers be capable of decrypting data or limitation that prevents providers from decrypting data; and

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

“(A) the foreign government may not intentionally target a United States person or a person located in the United States, and shall adopt targeting procedures designed to meet this requirement;

“(B) the foreign government may not target a non-United States person located outside the United States if the purpose is to obtain information concerning a United States person or a person located in the United States;

“(C) the foreign government may not issue an order at the request of or to obtain information to provide to the United States Government or a third-party government, nor shall the foreign government be required to share any information produced with the United States Government or a third-party government;

“(D) an order issued by the foreign government—
“(i) shall be for the purpose of obtaining information relating to the prevention, detection, investigation, or prosecution of serious crime, including terrorism;

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

“(iii) shall be in compliance with the domestic law of that country, and any obligation for a provider of an electronic communications service or a remote computing service to produce data shall derive solely from that law;

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

“(v) shall be subject to review or oversight by a court, judge, magistrate, or other independent authority prior to, or in proceedings regarding, enforcement of the order; and
“(vi) in the case of an order for the
interception of wire or electronic commu-
nications, and any extensions thereof, shall
require that the interception order—
“(I) be for a fixed, limited dura-
tion; and
“(II) may not last longer than is
reasonably necessary to accomplish the
approved purposes of the order; and
“(III) be issued only if the same
information could not reasonably be
obtained by another less intrusive
method;
“(E) an order issued by the foreign govern-
ment may not be used to infringe freedom of
speech;
“(F) the foreign government shall promptly
review material collected pursuant to the agree-
ment and store any unreviewed communications
on a secure system accessible only to those per-
sons trained in applicable procedures;
“(G) the foreign government shall, using
procedures that, to the maximum extent possible,
meet the definition of minimization procedures
in section 101 of the Foreign Intelligence Sur-
veillance Act of 1978 (50 U.S.C. 1801), segregate, seal, or delete, and not disseminate material found not to be information that is, or is necessary to understand or assess the importance of information that is, relevant to the prevention, detection, investigation, or prosecution of serious crime, including terrorism, or necessary to protect against a threat of death or serious bodily harm to any person;

“(II) the foreign government may not disseminate the content of a communication of a United States person to United States authorities unless the communication may be disseminated pursuant to subparagraph (G) and relates to significant harm, or the threat thereof, to the United States or United States persons, including crimes involving national security such as terrorism, significant violent crime, child exploitation, transnational organized crime, or significant financial fraud;

“(I) the foreign government shall afford reciprocal rights of data access, to include, where applicable, removing restrictions on communications service providers, including providers subject to United States jurisdiction, and thereby
allow them to respond to valid legal process
sought by a governmental entity (as defined in
section 2711) if foreign law would otherwise pro-
hibit communications-service providers from dis-
closing the data;

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

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

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

“(d) EFFECTIVE DATE OF CERTIFICATION.—

“(1) NOTICE.—Not later than 7 days after the
date on which the Attorney General certifies an execu-
tive agreement under subsection (b), the Attorney
General shall provide notice of the determination
under subsection (b) and a copy of the executive
agreement to Congress, including—
“(A) the Committee on the Judiciary and the Committee on Foreign Relations of the Senate; and

“(B) the Committee on the Judiciary and the Committee on Foreign Affairs of the House of Representatives.

“(2) ENTRY INTO FORCE.—An executive agreement that is determined and certified by the Attorney General to satisfy the requirements of this section shall enter into force not earlier than the date that is 180 days after the date on which notice is provided under paragraph (1), unless Congress enacts a joint resolution of disapproval in accordance with paragraph (4).

“(3) REQUESTS FOR INFORMATION.—Upon request by the Chairman or Ranking Member of a congressional committee described in paragraph (1), the head of an agency shall promptly furnish a summary of factors considered in determining that the foreign government satisfies the requirements of this section.

“(4) CONGRESSIONAL REVIEW.—

“(A) JOINT RESOLUTION DEFINED.—In this paragraph, the term ‘joint resolution’ means only a joint resolution—
“(i) introduced during the 180-day period described in paragraph (2);

“(ii) which does not have a preamble;

“(iii) the title of which is as follows:

‘Joint resolution disapproving the executive agreement signed by the United States and _____’, the blank space being appropriately filled in; and

“(iv) the matter after the resolving clause of which is as follows: ‘That Congress disapproves the executive agreement governing access by _____ to certain electronic data as submitted by the Attorney General on _____’, the blank spaces being appropriately filled in.

“(B) JOINT RESOLUTION ENACTED.—Notwithstanding any other provision of this section, if not later than 180 days after the date on which notice is provided to Congress under paragraph (1), there is enacted into law a joint resolution disapproving of an executive agreement under this section, the executive agreement shall not enter into force.
“(C) **INTRODUCTION.—** During the 180-day period described in subparagraph (B), a joint resolution of disapproval may be introduced—

“(i) in the *House of Representatives*, by the majority leader or the minority leader; and

“(ii) in the *Senate*, by the majority leader (or the majority leader’s designee) or the minority leader (or the minority leader’s designee).

“(5) **FLOOR CONSIDERATION IN HOUSE OF REPRESENTATIVES.—** If a committee of the *House of Representatives* to which a joint resolution of disapproval has been referred has not reported the joint resolution within 120 days after the date of referral, that committee shall be discharged from further consideration of the joint resolution.

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

“(A) **COMMITTEE REFERRAL.—** A joint resolution of disapproval introduced in the Senate shall be referred jointly—

“(i) to the Committee on the *Judiciary*; and

“(ii) to the Committee on *Foreign Relations*. 
“(B) Reporting and discharge.—If a committee to which a joint resolution of disapproval was referred has not reported the joint resolution within 120 days after the date of referral of the joint resolution, that committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be placed on the appropriate calendar.

“(C) Proceeding to consideration.—It is in order at any time after both the Committee on the Judiciary and the Committee on Foreign Relations report a joint resolution of disapproval to the Senate or have been discharged from consideration of such a joint resolution (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not debatable or subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order.

“(D) Consideration in the Senate.—In the Senate, consideration of the joint resolution,
and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

“(E) CONSIDERATION OF VETO MESSAGES.—Debate in the Senate of any veto message with respect to a joint resolution of disapproval, including all debatable motions and appeals in connection with the joint resolution, shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

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

“(A) TREATMENT OF SENATE JOINT RESOLUTION IN HOUSE.—In the House of Representatives, the following procedures shall apply to a joint resolution of disapproval received from the Senate (unless the House has already passed a
joint resolution relating to the same proposed ac-
tion):

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

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

“(iii) Beginning on the third legisla-
tive day after each committee to which a
joint resolution has been referred reports the
joint resolution to the House or has been
discharged from further consideration there-
of, it shall be in order to move to proceed
to consider the joint resolution in the
House. All points of order against the mo-
tion are waived. Such a motion shall not be
in order after the House has disposed of a
motion to proceed on the joint resolution.
The previous question shall be considered as
ordered on the motion to its adoption with-
out intervening motion. The motion shall
not be debatable. A motion to reconsider the
vote by which the motion is disposed of shall not be in order.

“(iv) The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to final passage without intervening motion except 2 hours of debate equally divided and controlled by the sponsor of the joint resolution (or a designee) and an opponent. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

“(B) TREATMENT OF HOUSE JOINT RESOLUTION IN SENATE.—

“(i) If, before the passage by the Senate of a joint resolution of disapproval, the Senate receives an identical joint resolution from the House of Representatives, the following procedures shall apply:

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

“(II) With respect to that joint resolution—
“(aa) the procedure in the
Senate shall be the same as if no
joint resolution had been received
from the House of Representatives;
but
“(bb) the vote on passage
shall be on the joint resolution
from the House of Representatives.
“(ii) If, following passage of a joint
resolution of disapproval in the Senate, the
Senate receives an identical joint resolution
from the House of Representatives, that
joint resolution shall be placed on the ap-
propriate Senate calendar.
“(iii) If a joint resolution of dis-
approval is received from the House, and no
companion joint resolution has been intro-
duced in the Senate, the Senate procedures
under this subsection shall apply to the
House joint resolution.
“(C) APPLICATION TO REVENUE MEAS-
URES.—The provisions of this paragraph shall
not apply in the House of Representatives to a
joint resolution of disapproval that is a revenue
measure.
“(8) Rules of house of representatives

And Senate.—This subsection is enacted by Congress—

“(A) as an exercise of the rulemaking power

of the Senate and the House of Representatives,

respectively, and as such is deemed a part of the

rules of each House, respectively, and supersedes

other rules only to the extent that it is inconst-

sistent with such rules; and

“(B) with full recognition of the constitu-

tional right of either House to change the rules

(so far as relating to the procedure of that

House) at any time, in the same manner, and

to the same extent as in the case of any other

rule of that House.

“(e) Renewal of determination.—

“(1) In general.—The Attorney General, with

the concurrence of the Secretary of State, shall review

and may renew a determination under subsection (b)

every 5 years.

“(2) Report.—Upon renewing a determination

under subsection (b), the Attorney General shall file

a report with the Committee on the Judiciary and the

Committee on Foreign Relations of the Senate and the

Committee on the Judiciary and the Committee on
Foreign Affairs of the House of Representatives des-

cribing—

“(A) the reasons for the renewal;

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

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

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

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

“(1) the applicable time period under para-
graphs (2), (4)(A)(i), (4)(B), and (4)(C) of subsection
(d) shall be 90 days after the date notice is provided under subsection (d)(1); and

“(2) the applicable time period under paragraphs (5) and (6)(B) of subsection (d) shall be 60 days after the date notice is provided under subsection (d)(1).

“(g) PUBLICATION.—Any determination or certification under subsection (b) regarding an executive agreement under this section, including any termination or renewal of such an agreement, shall be published in the Federal Register as soon as is reasonably practicable.

“(h) MINIMIZATION PROCEDURES.—A United States authority that receives the content of a communication described in subsection (b)(4)(H) from a foreign government in accordance with an executive agreement under this section shall use procedures that, to the maximum extent possible, meet the definition of minimization procedures in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) to appropriately protect nonpublicly available information concerning United States persons.”.

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

“2523. Executive agreements on access to data by foreign governments.”.
SEC. 106. RULE OF CONSTRUCTION.

Nothing in this division, or the amendments made by this division, shall be construed to preclude any foreign authority from obtaining assistance in a criminal investigation or prosecution pursuant to section 3512 of title 18, United States Code, section 1782 of title 28, United States Code, or as otherwise provided by law.

Attest:

Clerk.