



October 28, 2014

Senator Orrin Hatch
104 Hart Senate Office Building
Washington DC 20510

Senator Christopher A. Coons
127A Russell Senate Office Building
Washington DC 20510

Senator Dean Heller
324 Hart Senate Office Building
Washington DC 20510

Dear Senators Hatch, Coons and Heller:

Reform of the Electronic Communications Protection Act (ECPA) is overdue. Much has changed since 1986, when ECPA was enacted with the purpose of balancing consumer privacy rights with the legitimate needs of law enforcement. In particular, the expansion of the Internet has enabled a global flow of information, trade and investment, and commerce. U.S. electronic privacy laws should reflect the realities of doing business in this global, digital marketplace. Accordingly, we applaud the introduction of S. 2871, the Law Enforcement Access to Data Stored Abroad (LEADS) Act, which will resolve several long-standing issues related to compliance with legal process for user data and provide much needed clarity to electronic communications service providers when they receive U.S. law enforcement requests for user content stored on servers abroad.

The Entertainment Software Association (ESA) serves the business and public affairs needs of companies that publish interactive games for play on video game consoles and dedicated handhelds, mobile devices, and the Internet. The global footprint of the video game industry continues to grow as smart phones, social networks, and browser games expand the marketplace to consumers worldwide. Ensuring that their global customers have confidence in the privacy of their communications and personal data is a high priority for ESA members. We believe that the LEADS Act is a positive step to accomplish this goal.

We are pleased that the LEADS Act includes requirements for a search warrant for all user content stored in the United States and notice to users absent a substantiated justification for delay, provisions first introduced in the Leahy-Lee ECPA Amendments Act of 2013, and which we strongly support. Additionally, the LEADS Act's provisions addressing access to overseas data should reduce foreign distrust of American businesses operating abroad, ease diplomatic tensions by requiring the U.S. to interact with foreign governments through the Mutual Legal Assistance Treaty process, and minimize the risk that U.S. process will force U.S. companies to violate foreign laws. We support each of the goals. ESA companies remain concerned about a trend for foreign countries to impose local data storage

requirements that inhibit global business growth, and we look forward to further discussion of how the LEADS Act can best reduce the incentives for enacting such laws.

For ESA members – global companies with millions of consumers worldwide – effective ECPA reform can begin the process of easing tensions with foreign users and governments about U.S. law enforcement access to their data. Additionally, as foreign nations review their own privacy laws, the LEADS Act will establish a precedent for strong protection against government access to data that will help protect Americans' privacy against unreasonable intrusion by foreign governments.

We appreciate your attention to these important industry concerns, and we look forward to working with you and your staff as you advance the LEADS Act through the legislative process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael D. Gallagher". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael D. Gallagher
President & CEO

Cc: Senator Patrick Leahy, Chair Senate Judiciary Committee
Senator Chuck Grassley, Ranking Member Senate Judiciary Committee