PRIVACY AND SURVEILLANCE: ECPA & USA FREEDOM ACT
National Library Legislative Day
May 5–6, 2014

The Email Privacy Act/Electronic Communications Privacy Act (ECPA): S.607/H.R. 1852

ALA’s Position:

- **Senators:** Support **S. 607**, the Electronic Communications Privacy Amendments Act of 2013;
- **Representatives:** Support **H.R. 1852**, the Email Privacy Act.

Background:
Congress should vote this year on reforms to the Electronic Communications Privacy Act ("ECPA") and update the law to reflect modern technology and applications. First passed in 1986, the original ECPA modernized the nation’s telephone wiretapping and electronic eavesdropping laws to reflect the then new electronic communications. Technology has changed even more and reform is urgently needed because ever more of our personal, business and daily-life information is embedded in electronic communications.

The American Library Association (ALA) supports reforms that would require third party providers to disclose electronic communications only if the governmental entity obtains a warrant … that is issued by a court of competent jurisdiction directing the disclosure."
This would eliminate the "180-day rule" and the distinction between opened and unopened e-mails for the purposes of law enforcement access.

Additionally, Congress should eliminate administrative loopholes and require executive branch and regulatory agencies, such as the Securities and Exchange Commission (SEC), to obtain warrants for access to personal electronic communications. As with the original ECPA, Congress should seek reforms that protect consumers' personal information while maintaining "a fair balance between the privacy expectations of citizens and the legitimate needs of law enforcement."
THE USA FREEDOM Act: S.1599 & H.R. 3361

**ALA’s position:**

- ALA asks Congress to co-sponsor and support the USA FREEDOM Act (H.R. 3361/S.1599). These bills represent a bipartisan, bicameral effort to reform the government’s surveillance authority and end the bulk collection of American’s phone records.

**Background:** Congress should pass appropriate limits on the USA PATRIOT Act’s powers targeting people in the United States and end the bulk collection of Americans' records shared with third parties. New restrictions would apply to phone records collected under Section 215 of the Patriot Act, as well as to national security letters and pen registers that have also been abused.

Of the many bills before Congress, the USA FREEDOM Act, introduced by Senator Patrick Leahy (D-VT) and Representative James Sensenbrenner (R-WI) remains the most significant reform legislation. ALA supports the FREEDOM Act because it would also:

- Amend the 2008 FISA Amendments Act to require the government obtain a court order before using information about Americans collected during foreign intelligence operations;
- Increase transparency by allowing communications providers to disclose the number of surveillance orders they receive, mandate the government publish how many people are subject to surveillance orders, and make public significant FISA court opinions since July 2003;
- Create a public advocate that could advise the secret surveillance court in certain cases.

These issues of privacy and surveillance remain critically important to the library community based upon long-standing library principles protecting First Amendment and privacy rights. These deep rooted concerns have developed out of librarians’ commitment to protect the public’s right to read and to access information without oversight or government intrusion. What people read or access on the Internet should be private. In debates over the USA PATRIOT Act and other surveillance laws, ALA has consistently argued that court oversight and due process, such as provisions requiring warrants to obtain personal information, are needed protections to balance our civil liberties and the needs of law enforcement.