



February 25, 2015

Honorable Mark Leno
State Capitol, Room 5100
Sacramento, CA 95814

RE: SB 178 (Leno) – Support

Dear Senator Leno,

EFF is proud to co-sponsor SB 178, a sensible bill that requires law enforcement agencies in California to use a search warrant to access the wealth of digital information contained in our electronic devices and stored on the web in email inboxes and social media profiles.

California has a long and cherished history when it comes to preserving its citizens' privacy. In 1972, Article I, section I of the California state constitution was amended to include privacy amongst the "inalienable" rights of the people of the state. As the California Supreme Court noted in *White v. Davis*, 13 Cal.3d 757 (1975), this amendment was aimed specifically at "the accelerating encroachment on personal freedom and security caused by increased surveillance and data collection activity in contemporary society." As a result, the strong privacy rights contained in the state constitution provide greater protection than the Fourth Amendment to the U.S. Constitution. More than 35 years ago, the California Supreme Court in *People v. Blair*, 25 Cal.3d 640 (1979), disagreed with the U.S. Supreme Court and recognized that a person's telephone calling history—a primitive form of metadata—was entitled to an expectation of privacy under Article I, section 13 of the state constitution because this information provides a "virtual current biography" of an individual.

Today as the advances of technology—born out of companies and universities located in California—permeate everyday life, it becomes even more important to protect the privacy rights enshrined in the California state constitution. Of course digital data stored on electronic devices or online provides law enforcement with a powerful investigative tool for solving crimes, a tool it should be permitted to use to make Californians safer and solve crimes. But there must be a balance between security and privacy. That balance has traditionally been struck by requiring law enforcement obtain a search warrant before they can access private information.

SB 178 brings that balance to the modern, digital world by requiring law enforcement to obtain a search warrant before it can access data on an electronic device or from an online service provider, such as an email provider or social media site.

While the premise of SB 178 is the strong privacy protections enshrined in the California constitution, even the U.S. Supreme Court is recognizing the need to protect digital data. This past summer, its decision in *Riley v. California* confirmed that electronic devices like cell phones, and specifically the digital data stored on the phone, differ in both "a quantitative and a qualitative sense" from other physical objects accessible to law enforcement. These devices, and the digital data contained within, is "not just another technological convenience" but, given "all they contain and all they may reveal...hold for many Americans 'the privacies of life.'" Thus the

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Supreme Court, required police “get a warrant” before searching the data on a cell phone incident to arrest.

SB 178 follows the spirit of *Riley* and extends the warrant requirement to a wealth of digital information that reveals personal and sensitive details about who we are, whom we communicate and associate with, and where we’ve been. While law enforcement will still be able to obtain this information and utilize it to solve crimes, SB 178 provides needed oversight by requiring law enforcement obtain a search warrant in order to access this wealth of information. The bill contains reasonable exceptions that allow law enforcement to obtain digital information without a warrant during an emergency.

The balance between allowing law enforcement access to effective investigatory tools, and protecting the public’s privacy rights is oftentimes a delicate one. But SB 178 strikes the right balance in light of the strong privacy protections in the California constitution, and the state’s status as a technology leader. For that reason, EFF is proud to be a co-sponsor.

Thank you for taking the initiative over this important issue.

Sincerely,



Hanni M. Fakhoury, Esq.