OPEN TECHNOLOGY INSTITUTE

NEW AMERICA

March 17, 2015

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

RE: SB 178 (Leno) – Support

Dear Senator Leno,

New America's Open Technology Institute strongly supports SB 178 - The California Electronic Communications Privacy Act, which safeguards the rights of Californians, spurs innovation, and supports public safety by updating California privacy law for the modern digital world.

New America is a nonprofit, nonpartisan public policy institute based in Washington, DC, that invests in new thinkers and new ideas to address the next generation of challenges facing the United States and the global community. The Open Technology Institute (OTI) is a program within New America which promotes affordable, universal access to open and unrestricted communications networks through technology development, applied learning, and policy reform. OTI offers in-depth, objective research, analysis, and findings for policy decision-makers and the general public, develops technologies and tools to support universal and secure communications, and works directly with communities to address communications and technological disparities.

In California today, technology is a ubiquitous aspect of our everyday life. We use it in our work lives, our personal lives, and our lives as advocates for social change. The state's leading technology companies rely on consumer confidence in these important services to help power the California economy. However, given a fraught history of government surveillance and stigmatization in both social and professional life, which disproportionately impacts communities of color, immigrant communities, and low-income communities, it is critical that private communications remain between individuals and their intended recipients. SB178 takes important steps toward ensuring that communication sent on new technological devices is not readily available to government officials and other institutions without a pressing need.

The California legislature has long been a leader in enacting laws to properly safeguard Californians' constitutional right to privacy. But while technology has advanced exponentially, California's electronic privacy laws have not kept pace. Californians are increasingly concerned about warrantless government access to their digital information, and for good reason. Law enforcement is increasingly taking advantage of outdated privacy laws to turn mobile phones into tracking devices and access sensitive emails, digital documents, and text messages without proper judicial oversight. For example, Google announced it had received over 12,500 requests from U.S. law enforcement in the first 6 months of 2014 alone, a 250% increase over five years prior. Only 1/4 of those requests were warrants.

As a result, public confidence in technology has been badly damaged. Polls consistently show that consumers believe that their electronic information is sensitive and that current laws provide inadequate protection from government monitoring. In fact, a recent Pew Internet & Society survey found that 75% or more adults believe that their email messages, text messages, and location information are sensitive, and 80% of adults feel that Americans are rightly concerned about government monitoring of internet communications. Companies in turn are increasingly concerned about loss of consumer trust and its business impact.

SB 178 creates clear expectations about our right to privacy. It will make sure that the police go to a judge and get a warrant before they can access sensitive information, including data from personal electronic devices, emails, digital documents, text messages, and location information under normal circumstances. The bill also includes thoughtful exceptions that acknowledge legitimate public safety needs. The bill's notice, reporting, and enforcement provisions make sure that there is proper transparency and oversight mechanisms to ensure that the law is followed.

Courts and legislatures around the country are recognizing the need to update privacy laws for the modern digital age. In two recent decisions, *United States v. Jones* and *Riley v. California*, the U.S. Supreme Court upheld Fourth Amendment privacy rights against warrantless government surveillance. Justice Alito in Jones also urged lawmakers to take action, noting that in circumstances involving dramatic technological change "a legislative body is well suited to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way."

California has fallen behind fifteen states as diverse as Texas, Maine, and Utah which have already heeded Justice Alito's call and enacted legislation to safeguard rights, spur innovation, and support public safety. Nine states have already safeguarded location information[1] and five have protected electronic communications content.[2] The White House has called on lawmakers to update the law to "ensure the standard of protection for online, digital content is consistent with that afforded in the physical world." And a federal bill currently has over 242 bipartisan cosponsors in the United States Congress.

The state's leading technology companies and organizations have joined a bipartisan group of legislators to support this important legislation which makes sure that Californians are not forced to choose between using new technology and their privacy, and that California's technology companies are not burdened with privacy laws stuck in the digital dark ages. Accordingly, we thank you for introducing this important legislation and we are happy to support it during this legislative session.

Respectfully,

Robyn Greene
Policy Counsel
New America's Open Technology Institute

Kevin Bankston
Policy Director
New America's Open Technology Institute

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[1] IN H.B. 1009 (2014); IL S.B 2808 (2013); MD S.B. 698 (2013); ME S.P. 157 (2013); MN S.F. 2466 (2014); MT H.B. 603 (2013); TN S.B. 2087 (2013); UT H.B. 128 (2014); WI A.B. 536 (2013).

[2] HI H.B. 1641 (2013); MD S.B. 698 (2013); ME S.P. 484 (2013); TX H.B. 2268 (2013); UT H.B. 128 (2014).