

March 30, 2010

Technology Coalition Seeks Stronger Privacy Laws

By MIGUEL HELFT

SAN FRANCISCO — A broad coalition of technology companies, including [AT&T](#), [Google](#) and [Microsoft](#), and advocacy groups from across the political spectrum said Tuesday that it would push Congress to strengthen online privacy laws to protect private digital information from government access.

The group, calling itself the [Digital Due Process](#) coalition, said it wanted to ensure that as millions of people moved private documents from their filing cabinets and personal computers to the Web, those documents remained protected from easy access by law enforcement and other government authorities.

The coalition, which includes the [American Civil Liberties Union](#), the Electronic Frontier Foundation and the Center for Democracy and Technology, wants law enforcement agencies to use a search warrant approved by a judge or a magistrate rather than rely on a simple subpoena from a prosecutor to obtain a citizen's online data.

The group also said that it wanted to [safeguard location-based information](#) collected by cellphone companies and applications providers.

Members of the group said that they would lobby Congress for an update to the current law, the Electronic Communications Privacy Act, which was written in 1986, nearly a decade before Internet use became mainstream. They acknowledged that some proposals were likely to face resistance from law enforcement agencies and the Obama administration.

Under a proposed set of principles, law enforcement agencies or other government representatives would have to obtain a search warrant based on a showing of probable cause

before they could obtain a person's e-mail, photos or other electronic documents stored in a service like Gmail, Flickr or [Facebook](#). Under current law, much of that information is accessible through a simple subpoena, which can be issued under looser rules.

Obtaining access to information about where people are located or the places they have visited would be protected under the same standard. Currently, courts are divided on whether access to location information requires a warrant or a subpoena.

Advocates of the changes said that the new rules were merely intended to ensure that protections that Americans have enjoyed in the past remain in place as technology evolves.

"The U.S. Constitution protects data in your home and on your PC very strongly," said Mike Hintze, an associate general counsel at Microsoft.

"We don't believe that the balance between privacy and law enforcement should be fundamentally turned on its head," Mr. Hintze added, simply because people now choose to store documents online rather than in their homes.

Members of the coalition acknowledged they would probably face resistance. This year, Justice Department lawyers argued in court that cellphone users had given up the expectation of privacy about their location by voluntarily giving that information to carriers. The coalition said it expected a long debate before Congress agrees to change the law.

"We are not expecting that these will be enacted this year," said Jim Dempsey, vice president for public policy at the Center for Democracy and Technology. "But it is time to begin the dialog."

Senator [Patrick J. Leahy](#), Democrat of Vermont, said he welcomed the work of the coalition and planned to hold hearings on the issue. "While the question of how best to balance privacy and security in the 21st century has no simple answer, what is clear is that our federal electronic privacy laws are woefully outdated," he said in a statement.

The coalition said that the new principles would not affect the access of private digital information for national security purposes. And they would not affect the use of personal information for commercial purposes, like marketing, a mounting source of concern among users.

Some privacy advocates welcomed the proposals but said that they hoped that Congress would consider broader protections.

“We also need some consumer protections against private data being reused for commercial purposes,” said Marc Rotenberg, executive director of the Electronic Privacy Information Center.

While some earlier coalitions between industry and advocacy groups have failed in their efforts to promote changes in privacy law, Digital Due Process is remarkable for its breadth. While it includes groups often affiliated with left-leaning causes, like the A.C.L.U. and the Electronic Frontier Foundation, it also has libertarian groups like the Progress and Freedom Foundation and the Competitive Enterprise Institute.

The coalition includes rivals, like Google and AT&T, and court adversaries. The Electronic Frontier Foundation, for example, is involved in longstanding class-action lawsuit against AT&T over the company’s participation in a plan by the [National Security Agency](#) to monitor the private communications of consumers.

Kevin Bankston, a senior staff attorney with the Electronic Frontier Foundation, said that members of the coalition disagreed on several issues, but he added, “We can all agree that this area of the law needs to be updated to reflect changes in technology.”