Service Provider Disclosures of Communications or Records
(per Stored Communications Act as amended)

MAY PROVIDER VOLUNTARILY DISCLOSE?
18 U.S.C. § 2702

PROHIBITIONS – § 2702(a)

Regarding communications content –
• Provider of electronic communication service (ECS) to the public cannot knowingly divulge to anybody communications that are in electronic storage.
• Provider of remote computing service (RCS) to the public cannot knowingly divulge to anybody communications that are carried or maintained for a customer.

Regarding non-content –
• Provider of ECS or RCS to the public cannot knowingly divulge to government a record or other information pertaining to a subscriber or customer.

EXCEPTIONS TO PROHIBITIONS – DISCLOSURE OF COMMUNICATIONS – § 2702(b)

Public provider of ECS or RCS may divulge communication contents
(1) to addressee or intended recipient, or his/her agent;
(2) as authorized under Wiretap Act or compelled under § 2703;
(3) with consent of originator, addressee or intended recipient, or subscriber;
(4) to forward the communication to its destination;
(5) as necessary to provide service or protect the provider’s rights or property;
(6) to NCMEC if disclosure mandated for reporting of child pornography;
(7) to a law enforcement agency if inadvertently obtained by provider and appear to pertain to commission of crime; or
(8) to a government entity if provider believes, in good faith, that related emergency risking death or serious physical injury requires disclosure without delay

EXCEPTIONS – DISCLOSURE OF CUSTOMER RECORDS – § 2702(c)

Public provider of ECS or RCS may divulge a subscriber or customer record or other information (other than communication contents)
(1) if served with appropriate legal process, per § 2703;
(2) with customer consent;
(3) as necessary to provide service or protect the provider’s rights or property;
(4) to a government entity if provider believes, in good faith, that related emergency risking death or serious physical injury requires disclosure without delay;
(5) to NCMEC if disclosure mandated for reporting of child pornography; or
(6) for any reason to any person other than a government entity.
HOW MAY GOVERNMENT COMPEL DISCLOSURE?
18 U.S.C. § 2703

CONTENTS OF WIRE OR ELECTRONIC COMMUNICATIONS

IN “ELECTRONIC STORAGE” [§ 2703(a)]

- for not more than 180 days – Search warrant (no notice required)
- for more than 180 days –
  - without notice to subscriber or customer – Search warrant
  - with prior notice from government –
    - Subpoena, or
    - Court order under § 2703(d)

  But the notice may be delayed under § 2705.

IN “REMOTE COMPUTING SERVICE” [§ 2703(b)]

- without notice to subscriber or customer – Search warrant
- with prior notice from government –
  - Subpoena, or
  - Court order under § 2703(d)

  But the notice may be delayed under § 2705.

ACCOUNT RECORDS [§ 2703(c)]

“TRANSACTIONAL” RECORDS [§ 2703(c)(1)]

- Search warrant, or
- Court order under § 2703(d), or
- Consent of subscriber or customer

  No notice to subscriber or customer is required.

“BASIC” SUBSCRIBER OR ACCOUNT INFORMATION [§ 2703(c)(2)]

- Subpoena, or
  - Search warrant,
  - Court order under § 2703(d), or
  - Consent of subscriber or customer

  No notice to subscriber or customer is required.

“Basic subscriber or account information” obtainable includes:
- Subscriber’s or customer’s name and address
- Telephone connection records
- Logs of session times and durations
- Period of service and types of service utilized
- Telephone or instrument number or other identifier, including dynamic IP addresses
- Payment information, including credit card or bank account number
COURT ORDER FOR DISCLOSURE  [§ 2703(d)]

Can be for
• communications held by Remote Computing Service or
• records concerning a communications or remote computing services subscriber or customer

May be issued
• by court of competent jurisdiction
• on specific and articulable facts
• showing reasonable grounds to believe communications or records
• are relevant and material to criminal investigation.

Court may quash or modify order, on provider’s motion, if information or records sought unusually voluminous or compliance would cause provider undue burden.

GLOSSARY OF KEY TERMS

“Wire communication”
“any aural transfer … of communications by … wire, cable, or other like connection … furnished or operated … for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce”  [§ 2510(1)]

(“Aural transfer” = any “containing the human voice at any point”  [§ 2510(18)])

“Electronic communication”
“any transfer of signs, signals, writing, images, sounds, data, or intelligence … by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but … not (A) any wire or oral communication; (B) any communication made through a tone-only paging device; (C) any communication from a tracking device …; or (D) electronic funds transfer information stored by a financial institution ….”  [§ 2510(12)]

“Electronic communication service” (ECS)
“any service which provides … users … the ability to send or receive wire or electronic communications”  [§ 2510(15)]

“Electronic storage”
“any temporary, intermediate storage of a wire or electronic communication incidental to … electronic transmission …; and … any storage of such communication … for … backup protection ….”  [§ 2510(17)]

“Remote computing service” (RCS)
“the provision to the public of computer storage or processing services by means of an electronic communications system”  [§ 2711(2)]

“Contents”
“any information concerning the substance, purport, or meaning of (a) communication”  [§ 2510(8)]

“Court of competent jurisdiction”
“has the meaning assigned by section 3127, and includes any Federal court within that definition, without geographic limitation.”  [§ 2711(3)]

§ 3127(2):
(A) any district court of the United States (including a magistrate …) or any United States court of appeals having jurisdiction over the offense being investigated; or
(B) a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device"