Electronic Communications Protection Act of 1986

Title II: “Stored Wire and Electronic Communications Transactional Records Access”
ECPA Title II Breakdown

- Adds information to Title 18 of the United States Code
- Contains 10 sections which detail anything from data retrieval to the definition of unauthorized entry
Section 2701 – Unlawful access to stored communications

- States that it is unlawful to gain access to unauthorized services intentionally (who would’ve guessed that?)
- Accessing for commercial gain? $250,000 and a year in prison
- Just a average person accessing unlawfully? $5000 and six months in prison
Section 2702 – Disclosure of Contents

- Basically tells services providers to protect their information to insure that unwanted access is, in fact, unauthorized
- Allows for exceptions, which include system admins and law enforcement
Section 2703 – Requirements for Governmental Access

- Outlines that law enforcement agencies need either a subpoena, warrant, court order, or the permission of the user to gain access to information stored by the provider.

- Reminds provider that they don’t have to inform user of such access by law enforcement.
Section 2703 – Requirements for Governmental Access

- Informs the type of information that can and cannot be released to other people (including the user).
- No matter what you do – consult a lawyer!
Section 2703 – Backup Preservation

- Outlines how a governmental agency may go about asking for backups
- With subpoenas, backups can be made before the user is asked, but delivered afterwards
- Exceptions include the possibility that asking for the user’s permission may cause damage to records.
Section 2705 – Delayed Notice

- States that user notification can be delayed up to 90 days (more if court ordered) for many reasons.

Section 2706 – Cost reimbursement

- Cost for services provided can either be agreed upon by the two parties involved or by court order (does not apply to common carriers that relate to telephone toll records)
Section 2707 – Civil Action

- If the provider has been harmed by a violation of the above regulations, they may seek civil action for damages.

Section 2708 – Exclusivity of remedies

- “The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for non-constitutional violations of this chapter.”
Section 2709 – Counterintelligence access to telephone and transactional records

- Allows for information to be retrieved by the FBI if they believe that it may involve “clandestine intelligence activities” of a foreign power
- Provider cannot disclose to anyone that this information was provided to the FBI
- Outlines that nobody under Deputy Assistant Director can request this info
Sources

- http://www4.law.cornell.edu/uscode/18/
- http://www.eff.org/Privacy/Email_Internet_Web/ecpa_laymens_view.article