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Our View: Protect privacy in the 'cloud'

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We Americans value our privacy. It's enshrined in the Constitution's Fourth Amendment, with its guarantee that "(t)he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Things have become much more complicated in this digital age. Whereas the government once had to physically raid your home or business to grab "papers, and effects," today it can access digital information with a few mouse clicks and keystrokes in a government office. Those subject to such searches often are not aware that their privacy has been violated.

Fortunately, Congress is moving to protect digital privacy rights much the same as traditional rights. Unfortunately, the Obama administration is opposing such moves. Which is ironic because President Barack Obama, a former professor of constitutional law at the University of Chicago, campaigned in 2008 for more personal privacy for Americans.

Wired magazine reported, "As the law stands now, the authorities may obtain cloud email without a warrant if it is older than 180 days, thanks to the Electronic Communications Privacy Act adopted in 1986."

The "cloud" refers to information — pictures, emails, audio files — stored on remote computer servers, rather than someone's personal or business computer. Cloud computing keeps increasing.

Wired continued, "A coalition of Internet service providers and other groups, known as Digital Due Process, has lobbied for an update to the law to treat both cloud- and home-stored email the same, and thus require a probable-cause warrant for access." On April 5, the Senate Judiciary Committee held hearings on updating the law.

Testifying before the committee, James A. Baker, an associate deputy attorney general, cited national security as why the Obama administration opposes tougher rules on searches. He said, "Congress should recognize the collateral consequences to criminal law enforcement and the national security of the United States if ECPA were to provide only one means — a probable-cause warrant — for compelling disclosure of all stored content."

It's the same argument that has been used too often since the 9/11 attacks nearly 10 years ago to limit our liberties and curtail the Bill of Rights. But just as in the predigital era, it is not too onerous for the government of a free people to get a search warrant to look at the cloud equivalents of "papers, and effects."

"More of our lives are moving online," says Jim Harper, director of information studies at the libertarian Cato Institute. "Under traditional analysis, such digital searches without a warrant would be a violation of Fourth Amendment rights."

Harper said that, because of several U.S. Supreme Court cases in recent decades, currently "emails are treated differently in storage or in transit," making it difficult even for law enforcement to figure out when a warrant is required, and when it isn't. Two court decisions he mentioned were United States vs. Miller and California Bankers Association vs. Shultz.

He added that law enforcement actually would be helped by clearing up the law, specifying the process the

government must use to obtain digital information.

We urge U.S. Rep. Wally Herger to support this reform. With even more digital wonders coming our way, Americans' sacred right to privacy is more essential than ever.