

SEC. 7. SOURCES AND WORK PRODUCT PRODUCED WITHOUT PROMISE OR AGREEMENT OF CONFIDENTIALITY.

Nothing in this Act shall supersede, dilute, or preempt any law or court decision regarding a subpoena, court order, or other compulsory legal process relating to disclosure by a covered person or communications service provider of—

(1) information identifying a source who provided information without a promise or agreement of confidentiality made by the covered person; or

(2) records or other information, or contents of a communication obtained without a promise or agreement that such records, other information, or contents of a communication would be confidential.

SEC. 8. PROCEDURES FOR REVIEW AND APPEAL.

(a) **CONDITIONS FOR EX PARTE REVIEW OR SUBMISSIONS UNDER SEAL.**—With regard to any determination made by a Federal court under this Act, upon a showing of good cause, that Federal court may receive and consider submissions from the parties in camera or under seal, and if the court determines it is necessary, *ex parte*.

(b) **CONTEMPT OF COURT.**—With regard to any determination made by a Federal court under this Act, a Federal court may find a covered person to be in civil or criminal contempt if the covered person fails to comply with an order of a Federal court compelling disclosure of protected information.

(c) **TO PROVIDE FOR TIMELY DETERMINATION.**—With regard to any determination to be made by a Federal court under this Act, that Federal court, to the extent practicable, shall make that determination not later than 30 days after the date of receiving a motion requesting the court make that determination.

(d) **EXPEDITED APPEAL PROCESS.**—

(1) **IN GENERAL.**—The courts of appeal shall have jurisdiction—

(A) of appeals by a Federal entity or covered person of an interlocutory order of a Federal court under this Act; and

(B) in an appeal of a final decision of a Federal court by a Federal entity or covered person, to review any determination of a Federal court under this Act.

(2) **EXPEDITED APPEALS.**—It shall be the duty of a Federal court to which an appeal is made under this subsection to advance on the docket and to expedite to the greatest possible extent the disposition of that appeal.

SEC. 9. RULE OF CONSTRUCTION.

Nothing in this Act may be construed to—

(1) preempt any State law relating to defamation, slander, or libel;

(2) modify the requirements of section 552a of title 5, United States Code, or Federal laws or rules relating to grand jury secrecy

(except that this Act shall apply in any proceeding and in connection with any issue arising under that section or the Federal laws or rules relating to grand jury secrecy);

(3) preclude a plaintiff from asserting a claim of defamation against a covered person, regardless of whether the claim is raised in a State or Federal court; or

(4) create new obligations, or affect or modify the authorities or obligations of a Federal entity with respect to the acquisition or dissemination of information pursuant to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

SEC. 10. DEFINITIONS.

In this Act:

(1) **COMMUNICATIONS SERVICE PROVIDER.**—The term “communications service provider”—

(A) means a person that transmits information of the customer’s choosing by electronic means; and

(B) includes a telecommunications carrier, an information service provider, an interactive computer service provider, and an information content provider (as such terms are defined in sections 3 or 230 of the Communications Act of 1934 (47 U.S.C. 153 and 230)).

(2) **COVERED PERSON.**—The term “covered person”—

(A) means a person who—

(i) with the primary intent to investigate events and procure material in order to disseminate to the public news or information concerning local, national, or international events or other matters of public interest, regularly gathers, prepares, collects, photographs, records, writes, edits, reports, or publishes on such matters by—

(I) conducting interviews;

(II) making direct observation of events; or

(III) collecting reviewing or analyzing original writings, statements, communications, reports, memoranda, records, transcripts, documents, photographs, recordings, tapes, materials, data or other information whether in paper, electronic or other form; and

(ii) has such intent at the inception of the newsgathering process;

(B) includes a supervisor, employer, parent company, subsidiary, or affiliate of such person; and

(C) does not include any person—

(i) who is a foreign power or an agent of a foreign power, or as to whom there is probable cause to believe that the person is a foreign power or an agent of a foreign power, as those terms are defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801);

(ii) who is a foreign terrorist organization designated under section 219(a) of the Immi-

gration and Nationality Act (8 U.S.C. 1189(a));

(iii) who is designated as a Specially Designated Global Terrorist by the Department of the Treasury under Executive Order Number 13224 (50 U.S.C. 1701 note);

(iv) who is a specially designated terrorist, as that term is defined in section 595.311 of title 31, Code of Federal Regulations (or any successor thereto); or

(v) who is a terrorist organization, as that term is defined in section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

(3) **DOCUMENT.**—The term “document” means writings, recordings, and photographs, as those terms are defined by rule 1001 of the Federal Rules of Evidence (28 U.S.C. App.).

(4) **FEDERAL ENTITY.**—The term “Federal entity” means an entity or employee of the judicial or executive branch or an administrative agency of the Federal Government with the power to issue a subpoena, court order, or issue other compulsory legal process.

(5) **PROPERLY CLASSIFIED INFORMATION.**—The term “properly classified information” means information or documents that have been classified in accordance with Executive Orders, statutes, applicable procedures, and regulations regarding classification of information or documents.

(6) **PROTECTED INFORMATION.**—The term “protected information” means—

(A) information identifying a source who provided information under a promise or agreement of confidentiality made by a covered person; or

(B) any records, contents of a communication, documents, or information that a covered person obtained or created upon a promise or agreement that such records, contents of a communication, documents, or information would be confidential.

Amend the title so as to read: “A bill to maintain the free flow of information to the public by prescribing conditions under which Federal entities may compel disclosure of confidential information from journalists.”

Mr. SPECTER. I thank the Chair and yield the floor.

ADJOURNMENT UNTIL 10 A.M.
TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 10 a.m. tomorrow.

Thereupon, the Senate, at 7:08 p.m., adjourned until Wednesday, July 30, 2008, at 10 a.m.