

Small Tech Companies Need the LEADS Act

Uncertainty around privacy protections in the cloud is threatening U.S. industry and economic growth. Federal prosecutors say they have the power to reach into other sovereign nations to retrieve digital information held there by U.S. companies. That claim of power has resulted in other countries considering a country-only fragmented cloud and risks those countries making the same claims on the digital data of U.S. citizens.

Today, Representatives Tom Marino and Suzan DelBene have introduced the Law Enforcement Access To Data Stored Abroad Act (“LEADS”), which addresses this problem by requiring law enforcement to treat digital information the same way they treat physical information – by obtaining it through warrants that comply with the law of the country where it resides or through an existing information exchange treaty. The bill emphasizes that “data localization requirements” (law enforcement telling cloud providers that U.S. data has to be stored in the U.S.) does not work in a borderless internet and will only serve to impede innovation.

Importantly, the bill increases funds to improve the Mutual Legal Assistance Treaty (“MLAT”) process. The process was designed to facilitate the bilateral exchange of information in criminal investigations for law enforcement agencies in different countries. The MLAT process provides a clear and internationally acceptable way for law enforcement to get the evidence they need in cooperation with other governments. This is the process we want other countries to use when obtaining information located within the U.S.

The greatest feature of the cloud is its ability to transcend boundaries to deliver data to any location and to allow businesses to service international customers. Small businesses use the cloud to scale their activities according to need without incurring the expense of physical equipment. Imagine needing to find a different cloud provider for every country in which a tech company has customers. Such a scenario would completely negate the value of cloud. Considering the largest cloud service providers are based in the U.S. that means a tremendous loss of business for those providers and all the American businesses who use them.

With a case already going through the Federal court system regarding these issues, we need the LEADS Act to protect U.S. industry and innovation in the cloud.