

Floor Statement
Senator Susan Collins
Digital Security Commission Act
March 1, 2016

Ms. Collins: Mr. President, I rise today as a cosponsor of the Digital Security Commission Act, a bill that will establish a national bipartisan commission to examine digital security and privacy and the “going dark” problem that poses a real challenge for those responsible for our national security and for protecting the American public. Let me commend the primary author of this bill, the Senator from Virginia, Senator Warner, for his expertise in putting together not only a well-balanced commission but also a broad array of cosponsors in support of this important legislation.

Mr. President, senior administration officials -- the FBI director first among them -- have been vocal in articulating the problem of terrorists and criminals “going dark” with the result that our intelligence agencies and our law enforcement are going blind. Director Comey has testified repeatedly to the fact that there are terrorists who are using encrypted communications to plot attacks against our people, and we know that international criminal cartels are doing so as well.

There are many competing and difficult concerns that need to be worked out as we address this complex issue. Under our bill, a national and diverse commission will perform its review and then will make recommendations that will protect the privacy rights of law-abiding individuals in an era in which terrorists and criminals increasingly use encrypted devices. The Digital Security Commission will have the opportunity to make a valuable contribution to this debate, and that is the opportunity that our legislation creates.

Mr. President, the laws of the United States, unfortunately, have not kept pace with technology, which has obviously rapidly evolved during the past three decades. As a result, the issues of “going dark” and preserving personal privacy are ones that we simply must grapple with today and for the future. To resolve what often are competing concerns will undoubtedly require a new law.

Now, let me be clear that I personally don't believe that the absence of a new law in any way exempts a company or an individual from complying with a court order issued by a federal judge. In the San Bernardino terrorism case, Apple has been ordered by a federal judge to provide technical assistance to help the FBI access data on a cell phone that was used by one of the terrorists involved in killing 14 people and injuring 22 others.

Now, here's an important fact that's been overlooked in many of the reports on this crime: given that this phone was owned by the county, which has given its permission for the data to be retrieved -- and I think that is a critical point here -- and that the court order is narrowly tailored, I believe that Apple should reconsider its position as it relates to this particular case. In the long run, however, it is clear that we need a new law and a dialogue among the Administration, Congress, federal and state law enforcement, and the tech community in order to deal with this issue.

Mr. President, it's appalling to me that there's been no legislative proposals submitted by the White House or any other federal agency to guide us on this issue. At a time when the Administration has been notably absent in offering a legislative proposal to address these important and complex issues, the practical solutions that I believe would come from the Digital Security Commission would be most welcome by Congress and would help us and guide us as we draft a new law.

To be sure, these are difficult issues to resolve, and I believe that if you surveyed the cosponsors of this bill, you would find all sorts of different views on the cases that are before us. Indeed, the courts have reached different opinions. Well, I do not expect that the commissioners will see eye to eye on every recommendation. We can have confidence that the final report will reflect the consensus judgment of a supermajority of the commissioners who are selected in equal numbers by Republicans and Democrats. The final report must be supported by at least three quarters of the commission to ensure that no recommendation represents the view of just a few stakeholders. When we had the 9/11 Commission's recommendations, one reason they were so powerful in enabling us to revamp the intelligence community was their unanimity.

Again, let me thank Senator Warner for his leadership. I look forward to working with him and with my other colleagues, including the Senator from Maine, Angus King, to make sure that we get this issue right for the challenges we face now and in the decades to come.

Thank you, Mr. President.