



Statement for the Record
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The Encryption Tightrope: Balancing Americans' Security and Privacy
United States House of Representatives
Committee on the Judiciary

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Fourteen innocent people were killed in San Bernardino on December 2, 2015 in the nation's deadliest terrorist attack since 9/11. Evidence relating to that crime might exist on the iPhone used by the terrorist Syed Rizwan Farook. FBI Agents—thousands of whom I am honored to represent—are investigating this crime and others like it. In this case, Apple has refused to abide by a federal court order requiring the company to assist the FBI with accessing the data on Farook's iPhone pursuant to a warrant. Apple's decision reflects a blatant disregard for the work of FBI Agents and constitutes a threat to national security.

First, Apple has failed to acknowledge that their customers are also our customers. It is our sworn duty to keep our customers, the American people, safe. Our duty is undertaken while adhering to Constitutional provisions barring unreasonable searches and seizures, protecting privacy. Apple's job is undertaken while adhering to an economic principle: a return on investment. While profits may dictate Apple's decisions, the Constitution dictates ours.

Second, Apple's actions now will embolden criminals, providing a safe haven for their activities. This includes the cyber-criminals. It would be unwise to disregard established search and seizure procedures to give Apple products special treatment. Terrorists, child pornographers, and others criminals should not escape lawful warrants because corporations use the promise of secure communications as a marketing tool.

Third, while Apple now claims openness to public dialogue about the company's technology, their actions belie their words. In November 2015, the FBI Agents Association, the Attorney General of Ohio, the National District Attorneys Association, and the National Sheriffs' Association jointly wrote to Apple to engage in the discussion you now seek. However, Apple did not bother to respond to that request. Rather, Apple and other technology companies have spent millions on lobbying and public relations, and have attempted to leverage the industry's significant influence to derail Congressional debate.

Fourth, if Apple is unwilling to act, then we urge Congress to do so. There are ways to resolve this problem, and the solution is not based on the false choice between absolutely secure communications and a wide-open door. Apple has worked with law enforcement to extract data from iPhones scores of times previously, and we urge the company to do so again. Absent this, Congress should enact legislation requiring companies to incorporate options into their technology that prevent smartphones from serving as barriers to lawfully-issued search warrants. Given existing technologies, this is a reasonable and practical request.

Finally, the ability to lawfully obtain the private records of criminal conspiracies is a time-tested and indispensable part of effective law enforcement. The papers and letters of the past are being replaced by the electronic data held on Apple devices. Apple is choosing to provide modern criminals with a tool that past generations of criminals never had: an impenetrable door that is booby-trapped to destroy evidence. A homeowner could not reject law enforcement officers executing a warrant by claiming they don't want to unlock the door. Likewise, Apple should not be able to stonewall the FBI and the courts simply because the company has decided not to unlock its iPhones.

We applaud Apple's innovative spirit and customer dedication. Please bear in mind that their customers are also our customers—customers who FBI Agents are sworn to protect from criminals and terrorists. Our customers deserve a means of ensuring that the drive for profits does not come at the cost of public safety.

The FBI Agents Association (FBIAA) is an organization dedicated to providing support and advocacy to active and former Special Agents of the Federal Bureau of Investigation. Membership includes more than 13,000 active and former Special Agents of the FBI. For more information, please visit www.fbiaa.org. Contact: Paul Nathanson, 202-828-1714, media@FBIAA.org.