

Opening Statement of the Honorable Fred Upton
Subcommittee on Oversight and Investigations
Hearing on “Deciphering the Debate Over Encryption: Industry and Law Enforcement
Perspectives”
April 19, 2016

(As Prepared for Delivery)

For months we have witnessed an intense and important debate between law enforcement and the technology community about encryption. While much of this recent debate has focused on the FBI and Apple, this issue is much bigger than any one entity, device, application, or piece of technology. At its core, this is a debate about what we, as a society, are willing to accept.

If you have paid any attention to the debate, it might appear to be a black and white choice. Either we side with law enforcement and grant them access to encrypted technologies – thus weakening the security and privacy of our digital infrastructure. Or, we can side with the technology community and prevent law enforcement from accessing encrypted technologies, thus creating a warrantless safe-haven for terrorists, pedophiles and other evil actors.

It is important that we move beyond the “us versus them” mentality that has encompassed this discussion for too long. This debate is not about picking sides – it is about evaluating options.

This begins by acknowledging the equities on both sides. From the technology perspective, there is no doubt that strong encryption is a benefit to our society. As more of our daily lives become integrated with the digital universe, encryption is critical to the security and privacy of our personal and corporate secrets. As evidenced by the breaches over the past year, data theft can have devastating effects on our personal privacy, economic strength, and national security. In addition, encryption doesn’t just enable terrorists and wrongdoers to do terrible things – it also provides a safe haven for dissidents, victims of domestic violence and others who wish to remain hidden for noble purposes. As we look to the future and see that more and more aspects of our lives will become connected to the Internet – including things such as cars, medical devices, and the electric grid – encryption will play an important role in minimizing the risk of physical harm or loss of life should these technologies be compromised.

From the law enforcement perspective, while strong encryption helps protect information and lives, it also presents a serious risk to public safety. As strong, inaccessible encryption becomes the norm, law enforcement loses access to valuable tools and evidence necessary to stop bad actors from doing terrible things. As we will hear today, this cannot always be offset by alternative means such as meta-data or other investigative tools. There are certain situations, such as identifying the victims of child exploitation - not just the perpetrators - where access to content is critical.

These are but a few of the many valid concerns on both sides of this debate. Which leads us to the question – what is the answer? Sitting here today, I do not have that answer nor do I expect we will find it during this hearing. This is a complex issue and it is going to require some difficult conversations – but that is not an excuse to put our head in the sand or resort to default positions. We need to confront these issues head-on because they are not going away and they will only get more difficult with time.

Identifying a solution to this problem may involve trade-offs and compromise, on both sides, but ultimately it comes down to what society accepts as the appropriate balance between

government access to encryption and security of encrypted technologies. For that reason and others, many have called on Congress to “confront the issues here.” That is why we are holding this hearing and that is why Chairman Goodlatte and I – along with Ranking Members Pallone and Conyers – established a bipartisan, joint committee-working group to examine this issue.

In order for Congress to successfully “confront this issue,” however, it will require patience, creativity, courage, and most importantly, cooperation. It is easy to call on Congress to take on an issue – but you better be prepared to answer the call when we do. This issue is too important to have key players sitting on the sidelines. Therefore, I hope those who were unprepared to participate in this hearing take this to heart and will be part of the solution moving forward.

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