RESOLVED, That the American Bar Association urges the federal judiciary to recognize the substantial privacy and confidentiality interests, as well as the important national security and law enforcement interests, implicated by searches and seizures of electronic devices at the border; and

FURTHER RESOLVED, That the American Bar Association urges Congress to enact legislation and, until legislation is enacted, urges the U.S. Department of Homeland Security to adopt policy, that would:

1. require a warrant based on probable cause for seizures (other than temporary seizures for searches other than forensic searches or for the purpose of obtaining a warrant) and forensic searches of electronic devices carried by individuals American citizens and lawful permanent residents entering the country, or by any person leaving the country, at the border unless an exception to the warrant requirement other than the border search exception applies;
2. prohibit any government entity from denying an American citizen or lawful permanent resident entry or exit based on the person’s failure to disclose an access credential or provide access to an electronic device for a search;
3. implement policies and procedures to preserve fully protect the attorney-client privilege, the work product doctrine, and the lawyer’s ethical obligation to maintain confidential information during border crossings; and
4. require the federal government to record each instance in which it conducts a forensic search of an electronic device seized at the border and issue an annual report summarizing such searches.

Deletions struck through; additions underlined