

You May Have No Right to Online Privacy According to DC Circuit Court

September 23, 2010 - Do you have a right to privacy; especially when it comes to the prying eyes of government? The answer is not a straightforward as you may think. The Fourth Amendment is supposed to guarantee that when the government wants to search your home or business that a court will oversee the process and only grant the government's request when there is probable cause. (Of course, the Patriot Act allows the government to circumvent the Constitution for the time being, but that's another story.) But for years now the courts have held that the minute you go out in public, you have no expectation of privacy. And now, a federal judge in Washington, DC has issued a ruling which appears to state basically the same thing about logging onto the internet. If the ruling stands, then it will be up to consumers to insure their own anonymity.

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s1.parentNode.insertBefore(s, s1);
})();
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The case, *West Bay One, Inc. v. Does 1-1653*, revolves around the illegal downloading of movies from the internet. While you may have no sympathy for someone who illegally downloads movies, the most recent ruling by Judge Rosemary Collyer is so broad that if it is allowed to stand, nobody who signs up for internet service will be able to claim a right of privacy for any of their online activities.

In this particular case, the plaintiffs were trying to find out the identities of 1,653 people who had illegally downloaded certain movies. While it is technically very easy for the plaintiffs to determine which internet service provider (ISP) the downloaders use, they need the assistance of the ISPs to determine who the individual users engaged in the activity are. So, they subpoenaed the information from them.

When this happened, the ISPs notified their clients that the information had been subpoenaed, and some of those clients decided to ask the court to quash the subpoenas.

Judge Collyer could have decided on a number of different and well established grounds to allow the subpoenas to move forward. Unfortunately, her ruling was relatively radical. She said that internet subscribers don't have a recognizable claim of privacy in their subscriber information. In other words, anyone who chooses to give their information to an ISP to setup an internet account has no reason to expect that the ISP will protect that information even if their privacy policy says otherwise.

Just imagine if this same standard was applied to banks, of credit card companies. Apparently, just as soon as any of us decides to do business with another person or company, we have no right to keep any of our information private. Again, even if the company or person we are doing business with has agreed to keep our information private. The ruling defies logic. It also stands in contrast to other rulings on similar issues in both state and federal courts. Eventually, it will have to be ironed out through the appeals process.

Internet users who do want to maintain their privacy do have a few options. These include paid Virtual Private Network (VPN) services, software which uses proxy servers and free services like TOR. Any of these will mask your identity while on the internet. The real downside to using them is that they will slow your connection speed down. Even so, anyone who has reason to maintain their online anonymity, something the Supreme Court has already said we all have a right, should consider one of these options. This includes anyone engaged in political speech that they would rather not have traced back to them.

byJim Malmberg

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