

CAPITAL INSIGHTS

from The Privacy Times

Note: The following story is a partial reprint of the Capital Insights column from the Privacy Times. ACCESS has divided the column into paragraphs to make is easier to read.

Internal documents obtained by the American Civil Liberties Union indicate the U.S. Justice Dept. and FBI believe they donâ€™t need a search warrant to review Americansâ€™ e-mails, Facebook chats, Twitter direct messages, and other private files, CNET reported. The files suggest a split within the Obama administration, with Justice Dept. prosecutors and investigators privately insisting theyâ€™re not legally required to obtain search warrants for e-mail.

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(function() {
var s = document.createElement('SCRIPT'), s1 = document.getElementsByTagName('SCRIPT')[0];
s.type = 'text/javascript';
s.src = 'http://widgets.digg.com/buttons.js';
s1.parentNode.insertBefore(s, s1);
})();
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(function() {
var po = document.createElement('script'); po.type = 'text/javascript'; po.async = true;
po.src = 'https://apis.google.com/js/plusone.js';
var s = document.getElementsByTagName('script')[0]; s.parentNode.insertBefore(po, s);
})();
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On the other hand, the IRS, after getting heat from Capitol Hill, publicly said last month that it would abandon a controversial policy that claimed it could get warrant-less access to e-mail correspondence. For instance, the U.S. Attorney for Manhattan circulated internal instructions that a subpoena, which can be issued by a prosecutor without a judgeâ€™s consent â€œ was sufficient to obtain nearly â€œall records from an Internet Service Provider (ISP).â€• The U.S. attorney in Houston recently obtained the â€œcontents of stored communicationsâ€• from an unnamed ISP without securing a warrant signed by a judge first.

Not all U.S. attorneys have attempted to obtain Americansâ€™ stored e-mail correspondence without a warrant. In northern California, where many high-tech companies operate, Assistant U.S. Attorney Christopher Hardwood, in response to a judgeâ€™s questioning in an ACLU lawsuit, denied that warrantless e-mail access had taken place.

U.S. Reps. Tom Graves (R-GA) and Kevin Yoder (R-KS) have introduced a bill to protect consumer privacy by updating protections for electronic communications stored by third-party service providers, reported The Chattanooga.com. The E-mail Privacy Act would extend protections for regular mail to e-mail and cloud data. Meanwhile, Sen. Rand Paul (R-KY) has introduced a bill that would repeal the anti-privacy provisions in the Foreign Account Tax Compliance Act, according to The Wall Street Journal.

ACCESS Comment:

This is a topic that we've been warning people about for some time now. Any electronic data that is not stored on a computer that you own and control is susceptible to being subpoenaed. This is true in both civil and criminal matters. The law has not caught up to the technology and it could be several years before this area of the law is actually settled by the courts.

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