

Google Says in Court Filing that Gmail Users Have No Expectation of Privacy

August 14, 2013 - In an attempt to head off a class action lawsuit, Google has filed court paperwork which states that users of its Gmail service have no "reasonable expectation" that their email messages will remain private. The suit accuses Google of breaking federal and state wiretap laws by machine-reading email messages. The information that company gleans from this process is used to deliver targeted advertising to Gmail users.

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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);
})();
```

```
(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);
})();
```

For a company with the unofficial motto "Do No Evil", the court filing is a somewhat stunning public admission. For consumer advocates, it is not surprising.

The court filing was uncovered by the consumer advocacy group, Consume Watchdog and first reported by the Guardian.

Google's position in the filing is that all email messages are machine-read to some degree. Anyone sending an email message has to expect that it may not be private. And anyone using a free email service apparently should have an even lower expectation of privacy. But they are conveniently ignoring certain facts.

Gmail is not simply reading the email messages of people using the service. It is also reading the email messages of anyone who sends mail to Gmail accounts. With enough email messages from anyone - even people who don't use Gmail - Google can determine your interests. And if you use other Google services, there is no reason to believe that the email messages you thought were private aren't being used to send advertising your way when you use Google for search or other service.

Even if you don't have any accounts with Google, if the company is able to capture enough of your email messages they may be able to use that information to target you. In our estimation, it is beyond creepy.

Even if you could elect to never send another email message to a Gmail user, you may not be protected. Gmail is actively competing against Microsoft's Exchange Server for corporate-type email accounts. Organizations that use the service continue to use their own web address but have the Gmail platform handling their email communications.

This brings up a very large question. Do paying corporate clients have a reasonable expectation of privacy? Do government clients have such an expectation? Or how about university students whose schools have converted to

Gmail? And of course, what about the people who send email messages to these Gmail users?

If there is a different privacy policy for corporate, or enterprise users, that isn't clear from the Google website. Google's enterprise website provides a direct link to the company's privacy policy. That policy allows the company to use information from any Google service you use to "improve your user experience." After that statement, it talks about serving targeted ads. It also allows them to scan your computer and store information that is stored in certain files: "We may collect and store information (including personal information) locally on your device using mechanisms such as browser web storage (including HTML 5) and application data caches."

If the company provides another privacy policy for enterprise clients, it certainly isn't clear from the pages cited above.

The bottom line for anyone who is concerned about their privacy is that using free email services is probably not in your best interest. And if you are a corporate, government or enterprise user of these services, then you really need to check the privacy policy of the company you are dealing with—whether it is Google or some other company. There is real reason to believe that companies in a wide variety of industries could be setting themselves up for lawsuits or criminal legal action if the privacy policies of the service providers they use conflict with their own privacy policies or the law.

by Jim Malmberg

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