

Huge Win for Privacy Rights and Big Loss for Federal Government at Second Circuit Court of Appeals

July 15, 2016 - A closely watched case between the federal government and Microsoft resulted in a huge win for privacy rights yesterday when the Second Circuit Court of Appeals ruled against the federal government. The United States had attempted to use a search warrant to access information stored on Microsoft servers located in Ireland. The government's argument was essentially that since Microsoft is an American corporation, it needed to comply with any search warrant issued by an American court, regardless of where the search was to take place. The government also argued that the stored email messages which were the subject of the warrant were not the property of the people who sent them but that they were simply business records and the property of Microsoft. Fortunately the court disagreed.

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Microsoft argued that a search warrant issued for data stored overseas was no more valid than a search warrant authorizing the FBI to break down the doors of the company's Dublin facilities; where Irish law and jurisdiction would clearly supercede US law. The three judge panel hearing the case unanimously agreed.

Had the federal government won the case - which it did in lower court - it had the potential to create big problems for Microsoft. European privacy laws are much stronger than American laws. Had the company turned over the emails the government wanted, Microsoft was in the uncomfortable position that it likely would have had to break European law. There is no telling what the end result of that would have been.

The federal government's argument also seems to have been fairly short sighted. While the US may have won the case, in the end we certainly could have lost far more than we gained. Last year Microsoft's attorney, Joshua Rosenkranz, said to the court, "We would go crazy if China did this to us." He went on to say, "This notion of the government that private emails are Microsoft's business records is very scary." We have to agree with him.

by Jim Malmberg

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