

## 6th Circuit Court of Appeals Rules that Companies Making Spyware Can be Sued

August 19, 2016 - A three judge panel from the US 6th Circuit Court of Appeals has issued a ruling with grave consequences to companies that manufacture and/or sell software designed to spy on consumers. The ruling against Awareness Technologies, Inc. allows the plaintiff - Javier Luis - sue the company for software they made that was used to intercept text and email messages between Luis and Catherine Zang; a married woman who Luis was romantically involved with.

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s.type = 'text/javascript';  
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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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According to Luis, Awareness Technology marketed their software to be used to "catch a cheating spouse." In actuality, the company markets their software to parents and employees for monitoring communications, but there is no doubt that it can be used for other purposes. Ms. Zang's husband used their software to intercept text and email messages between his wife and Luis. He then used that information in divorce proceedings with this wife.

Unfortunately for the defendant in the case, federal wiretapping laws make it illegal to tap or listen in on electronic communications. According to Vanderbilt News, once the communications were intercepted, they were then stored on servers owned by Awareness Technologies and which could be accessed at will by Zang's husband. If true, there would be no doubt that the company was actively involved in the husband's actions against his wife.

The ruling has the potential to impact software manufactures significantly. It means that companies need to be careful in the way that they market their products. It also means that they need to make sure that use of their products will not violate federal laws.

In most cases, website operators and software manufacturers can rely on "safe harbor" provisions in the law. Safe harbor mean that they will not have any liability when individuals use their sites or software for illegal purposes. But the 6th circuit ruling brings safe harbor into question and means that companies need to review their business and marketing models.

At this time, it is unclear whether or not the ruling will be appealed.

by Jim Malmberg

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