

DOJ on Collision Course with EU in Microsoft Email Privacy Case

June 28, 2017 - It has been almost a year since the Department of Justice was barred from forcing Microsoft to turn over email messages stored on the company's servers in Ireland. The DOJ attempted to use a search warrant to gain access to information that was stored overseas. Although a lower court had ruled in the government's favor, the US 2nd Circuit Court of Appeals overturned that ruling and specifically noted that search warrants typically can only be applied within the borders of the United States. But late last week, the DOJ asked the US Supreme Court to hear an appeal in the case. If the DOJ is successful, it would put the agency on a collision course with European Union privacy laws.

Tweet

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

The case in question involves email messages belonging to a suspected drug dealer. Because the messages are more than 180 days old, the government claims that they are subject to the Electronic Communications Privacy Act; a 1986 law that says any communications more than 180 days old can be accessed by the government with a search warrant. The government claims that because Microsoft is an American company, it is subject to the law no matter where the messages are actually stored.

But in the appeals court ruling last year, Microsoft successfully argued that a search warrant for information stored on servers located outside of the United States was no more valid than a search warrant authorizing the FBI to break down the doors of the company's Dublin offices would be. That would require authorization of an Irish or EU court.

The ruling obviously displeased the DOJ but the agency's continued efforts to overturn the decision are somewhat puzzling. A win at the Supreme Court could open the flood-gates for other countries to make similar demands for information stored in the United States. It could make the privacy laws of any nation unenforceable worldwide.

A win could also create a foreign policy issue for the United States government and make it difficult for American companies to have operations inside the EU. That's because next year the EU will implement a new law called the General Data Protection Regulation. That law specifically bars companies operating in the EU from transferring customer data stored on its soil to the United States in response to a search warrant. Put another way, if the DOJ wins the case then Microsoft will have a choice. The company will either have to break US law or European law. It is an absolutely impossible situation for American businesses and could lead to unintended consequences for the economy and for American jobs.

We'll keep you posted as the case progresses.

by Jim Malmberg

Note: When posting a comment, please sign-in first if you want a response. If you are not registered, [click here](#).
Registration is easy and free.
Follow me on Twitter:

Follow ACCESS