

U.S. v. Microsoft: Supreme Court to Review Scope of Search Warrant Compliance in a Digital Age

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Microsoft

The US Supreme Court has granted *certiorari* to review a decision by the Second Circuit Court of Appeals, which reversed a District Court's refusal to quash a warrant issued by the Department of Justice to Microsoft that would have required it to produce information housed in an overseas server. The case underscores the increasingly challenging nature

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of our digital world in the context of “searches” and “seizures”. Until recently, the law was straightforward: a warrant could require the recipient to produce to law enforcement anything in its possession responsive to the scope of the warrant, *e.g.*, paper documents stored in its files. All of that changed with the advent of digitized information. Would the recipient have to produce information stored on a server located at the facility where the warrant was served? Of course. What about a server located outside of the jurisdiction of the court issuing the warrant, but which it could easily access? Technically, that information would still be within the “custody and control” of the recipient, and probably would have to be produced.

What about information stored overseas?? Now that's getting a bit more tricky. Arguably it's still within the custody and control of the recipient. But. What if the jurisdiction in which it is located has other limitations on whether it should be produced, and under what circumstances? Now turn the situation around. Does information about US citizens, or even foreign nationals, located in US servers have to be produced in response to a subpoena issued overseas by a foreign government? What if it's North Korea or Iran seeking information on dissidents?

Plainly there are many significant policy issues at play, and it's not clear whether our system for obtaining search warrants adequately reflects the nuances of a digital age. This will be a very closely-watched case, and one hopes the US Supreme Court will shed some light on this increasingly shadowy area of the law.