[US] Search warrants for emails stored on servers outside the US

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In an opinion issued on 3 February 2017, a US judge ordered Google to comply with search warrants seeking customer emails stored outside the United States. The court ruled that transferring emails from a foreign server so that FBI agents can review them locally as part of a domestic fraud probe did not qualify as an illegal seizure in violation of the Fourth Amendment of the United States Constitution. The Fourth Amendment to the US Constitution prohibits unreasonable searches and seizures. The Court found that there was "no meaningful interference" with the account holder's "possessory interest" in the data sought. Furthermore, the court found that “the crux of the issue before the court is as follows: assuming the focus of the Act is on privacy concerns, where do the invasions of privacy take place? To make that determination, the court must analyse where the seizures, if any, occur and where the searches of user data take place.” The court noted that Google transfers data between its domestic and international servers all the time and that none of these transfers is a seizure within the meaning of the Fourth Amendment, and that the account holders’ privacy is not invaded until the government reviews the data. It thus concluded that any actual infringement of privacy would only occur at the time of disclosure in the United States rather than through the retrieval of the electronic data by Google from its data centres abroad.

The ruling stands in contrast with a ruling the 2nd U.S. Circuit Court of Appeals in New York issued on 14 July 2016, that Microsoft could not be forced to turn over emails stored on a server in Dublin, Ireland that U.S. investigators sought in a narcotics case. Both cases involved warrants issued under the Stored Communications Act, which was passed in 1986 in part to extend the protections of the Fourth Amendment to emails. Google argued that it had complied with the precedential ruling set by the Microsoft case because it had turned over all data known to be stored in the United States. It vowed to appeal the case and to continue to push back on overbroad warrants.

Google Ruling from 3 February 2017

https://www.washingtonpost.com/news/volokh-conspiracy/wp-content/uploads/sites/14/2017/02/Opinion.pdf?tid=a_inl

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Microsoft Ruling from 14 July 2016

https://assets.documentcloud.org/documents/2997030/Microsoft-Ireland-2d-Cir-Opinion-20160714.pdf

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