

Microsoft challenging US on overseas data

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The Microsoft logo is seen before the start of a media event in San Francisco, California on March 27, 2014

In a case closely watched by the tech sector, Microsoft will challenge Thursday a US court order requiring it to give prosecutors electronic mail content associated with an overseas server.

Microsoft said it plans to argue that the warrant, which would require the tech giant to turn over customer emails stored in a data center in Dublin,

should be nullified because it would give the US government excessive power to pry over private information.

The case comes amid rising concern about US surveillance following revelations of snooping disclosed by former National Security Agency contractor Edward Snowden. Leading tech firms, including Apple and Verizon, have filed briefs supporting Microsoft.

Microsoft general counsel Brad Smith said the customer emails, sought in this case in a Justice Department narcotics probe, should be entitled to the same protections as paper letters sent by mail.

That means prosecutors should only be able to access the information in the electronic "cloud" with a warrant.

"But under well-established case law, a search warrant cannot reach beyond US shores," Smith said in an op-ed published Wednesday in The Wall Street Journal.

"Microsoft believes the higher legal protection for personal conversations should be preserved for new forms of digital communication, such as emails or text and instant messaging."



Preet Bharara, U.S. Attorney for the Southern District of New York speaks on May 9, 2014 at the US Attorney's office in New York

Smith also said the case could leave US citizen's privacy vulnerable to overseas prying, writing "it's hard to believe the American people will blithely accept that foreign governments can obtain their emails stored in US data centers without letting them know or notifying the US government."

But US Attorney Preet Bharara argued that under a 1986 law governing electronic communications, the tech giant is required to produce the data regardless of where Microsoft has decided to store it.

"Nothing in the text or structure of the statute carves out an exception for records stored abroad, and none exists in precedent," Bharara said in a court brief.

"Overseas records must be disclosed domestically when a valid subpoena, order or warrant compels their production."

US Magistrate Judge James Francis sided with the government, writing in an April decision that "it has long been the law that a subpoena requires the recipient to produce information in its possession... regardless of the location of that information."

Thursday's hearing will focus on Microsoft's appeal of Francis's decision and will take place in US District Court in downtown Manhattan.

A decision is expected in the coming months and could be appealed to a higher US court.

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