

Microsoft says private data 'at risk' in court case

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Microsoft General Counsel Brad Smith said a court order requiring the company to give US prosecutors data stored in Ireland could set a dangerous precedent, and invite other countries to take similar actions

Microsoft argued Monday in a court brief that an order requiring it to give US prosecutors data stored in Ireland could "put all of our private digital information at risk."

The brief with the US Court of Appeals in New York comes with prosecutors seeking customer emails in a narcotics probe, with the data stored in Microsoft servers in Ireland.

A lower court ruled that the US tech giant must hand over data sought in the probe, dismissing Microsoft's claims of "extraterritorial" authority.

Microsoft general counsel Brad Smith said the case could set a dangerous precedent, and invite other countries to take similar actions.

"The filing begins by imagining how the US government might react if the shoe were on the other foot," Smith said in a blog post.

"For example, how would the United States react if a foreign government attempted to sidestep international law by demanding that a foreign company with offices in the United States produce the personal communications of an American journalist?"

Smith said that if the US prevails, "how can it complain if foreign agents require tech companies to download emails stored in the US? This is a question the Department of Justice hasn't yet addressed, much less answered."

In the court brief, Microsoft said, "The power to embark on unilateral law enforcement incursions into a foreign sovereign country—directly or indirectly—has profound foreign policy consequences. Worse still, it threatens the privacy of US citizens."

A ruling requiring Microsoft to turn over the data "would put all of our private digital information at risk, not just emails, but everything else we store on remote computers collectively called 'the cloud'—a veritable 'cache of sensitive personal information' saturated with the highest constitutional privacy rights."

Microsoft had argued that the court order was invalid. But prosecutors contended that it must comply with the order and US Magistrate Judge James Francis ruled in April 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."

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.

Smith said Microsoft "complies with lawful orders from US authorities" but that the government "should follow the processes it has established for itself for obtaining physical evidence outside the United States."

He added that "the warrant issued here cannot reach emails stored in Ireland, and as we argue in our brief, we believe the lower court's judgment should be reversed."

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