



Supreme Court Holds That Recent Legislation Moots Dispute Over Emails Stored Overseas

***United States v. Microsoft Corp.*,
No. 17-2**

Decided April 17, 2018

Today, the Supreme Court held that Microsoft's dispute with the federal government over the government's attempts to access email stored overseas is moot.

Background:

The Stored Communications Act, 18 U.S.C. § 2701 *et seq.*, authorizes the government to require an email provider to disclose the contents of emails (and certain other electronic data) within its control if the government obtains a warrant based on probable cause. In this case, the federal government obtained a warrant to obtain emails from an email account used in drug trafficking. The drug trafficking allegedly occurred in the United States, but the emails were stored on a data server in Ireland. Microsoft refused to provide the emails on the ground that the Stored Communications Act does not apply to emails stored overseas.

Issue:

Whether the Stored Communications Act requires an email provider to disclose to the government emails stored abroad.

Court's Holding:

The case is moot. On March 23, 2018, the President signed the Clarifying Lawful Overseas Use of Data Act (CLOUD Act), which amended the Stored Communications Act so that it now applies to emails stored abroad. The parties' dispute under the old version of the law therefore was moot.

"No live dispute remains between the parties over the issue with respect to which certiorari was granted."

Per Curiam

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What It Means:

- o Given passage of the CLOUD Act, there was no longer any need for the Supreme Court to interpret the prior version of the Stored Communications Act.
- o The CLOUD Act requires an email provider to disclose emails, so long as the statute's procedures have been followed, regardless of whether those emails are "located within or outside of the United States." CLOUD Act § 103(a)(1) (to be codified at 18 U.S.C. § 2713).
- o But the CLOUD Act permits courts to exempt providers from disclosing emails of customers who are not U.S. Citizens or residents, if disclosure would risk violating the laws of certain foreign governments. CLOUD Act § 103(b) (to be codified at 18 U.S.C. § 2703(h)).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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