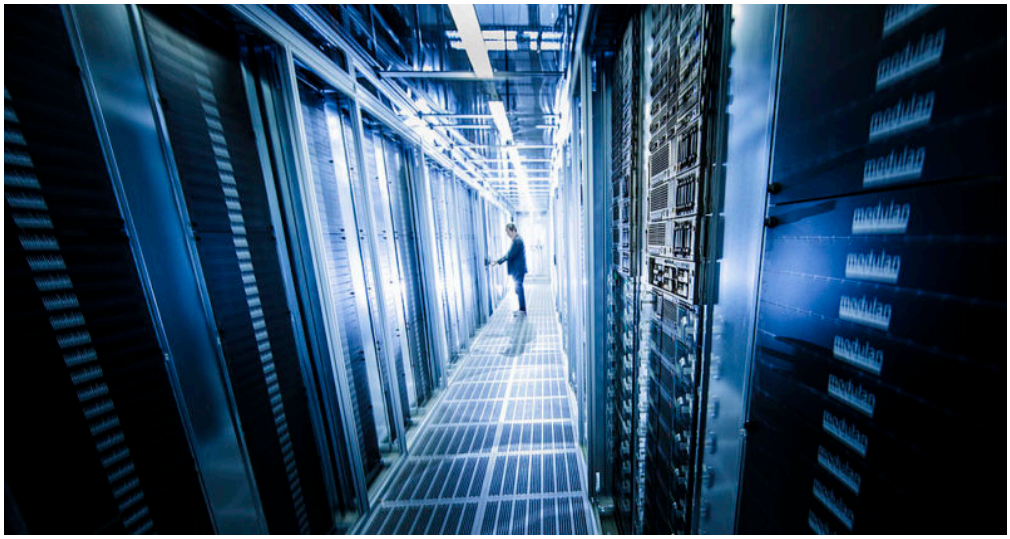
LAW & DISORDER —

Maybe the US *does* have the right to seize data from the world's servers

Until Supreme Court resolves this, we'll likely see many conflicting rulings.

DAVID KRAVETS - 2/6/2017, 11:45 AM



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Can the US government demand that it be able to reach into the world's servers with the tech sector's assistance? International relations issues aside, the answer to that legally thorny question depends on which US court is asked.

Consider that a federal magistrate judge in Philadelphia answered that question Friday in the affirmative, ordering Google to comply with US warrants and transfer e-mail stored overseas to the US so the FBI could examine it as part of a criminal probe. Yet just two weeks ago, a New York-based federal appeals court let stand its highly publicized July decision that allowed Microsoft to quash a US court warrant for e-mail stored on its servers in Dublin, Ireland.

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In response to that NY appellate court ruling, the Justice Department said it was "considering our options" on whether to appeal the 2nd US Circuit Court of Appeals' decision to the Supreme Court. And in response to the Philadelphia magistrate's decision, Google said, "The magistrate in this case departed from precedent, and we plan to appeal the decision. We will continue to push back on overbroad warrants."

What all of this means is that current law on the US government's legal right to reach into the world's servers is vague at best. It also shows that the US government, despite the appeals court ruling, is still pursuing overseas data, but it's doing so in judicial districts that don't have to comport with the 2nd Circuit's ruling.

In that latest Philadelphia ruling, the issue concerned e-mails that were all sent within the US. Google forwarded relevant data on its US-based servers to the FBI. However, Google

moves data around the world to optimize performance, and the company refused to turn over other e-mails because of where the data was stored. Google argued that it legally complied, because warrants may only lawfully reach "data stored within the United States."

While Google cited the 2nd Circuit's opinion, Magistrate Thomas Rueter said he was not obligated to follow that precedent. Rueter noted that prior to the 2nd Circuit's opinion, Google had "routinely complied with federal courts' search warrants which commanded the production of user data stored on Google servers located outside the United States."

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Magistrate Rueter departed from the 2nd Circuit decision and said the data wasn't really being seized overseas because "the searches of the electronic data disclosed by Google pursuant to the warrants will occur in the United States when the FBI reviews the copies of the requested data in Pennsylvania." The 2nd Circuit, however, had ruled that a federal warrant doesn't apply to data stored beyond US borders.

"This court agrees with the Second Circuit's reliance upon Fourth Amendment principles but respectfully disagrees with the Second Circuit's analysis regarding the location of the seizure and the invasion of privacy," Rueter ruled. That means the privacy invasion will be in the US, and the warrant authorized it, the magistrate noted.

Until the Supreme Court resolves the issue, we're likely to see a flood of conflicting rulings on the issue.

As an aside, Magistrate Rueter noted in his opinion that Google each year receives "over 25,000" requests from federal, state, and local entities "seeking the disclosure of user data in criminal matters."

DAVID KRAVETS
The senior editor for Ars Technica. Founder of TYDN fake news site. Technologist. Political scientist. Humorist. Dad of two boys. Been doing journalism for so long I remember manual typewriters with real paper.

EMAIL david.kravets@arstechnica.com // **TWITTER** @dmkravets

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