



Written by [Joe Wolverton, II, J.D.](#) on October 5, 2016

Federal Agents Can Secretly Read Every E-mail of Every American

The federal government can read every e-mail of every American without leaving any trace, an article published by *The Observer* reports.

Clark D. Cunningham, the author of the [Observer article](#), which was posted on September 23, argues that the FBI's case against Microsoft, Apple, and others "brought the founders' fight for liberty into the 21st Century." He used his experience in the law to read the file of the case and to analyze how the federal government's position was completely contrary to the protections placed in the Fourth Amendment by the framers of the Constitution and he came to the conclusion that "our basic liberties are threatened" by the Obama administration.



Basically, the facts of the case reveal that the FBI (and other federal agencies) have usurped the power to gain access to entire e-mail accounts from citizens of the United States without the slightest scrap of due process and without a warrant, as mandated by the Fourth Amendment.

The Fourth Amendment reads:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Not only is the federal government able to read every e-mail ever sent by every American regardless of any reasonable belief that the target has committed any crime, they have these decisions upheld by secret courts where the owner of the e-mails has no right to question the accusers.

How did the federal government get this power? They were given it by federal judges who allowed the government to define "premises" in a clever, crafty, and contemptuous way.

The record of the case between the federal government and Microsoft contains the following statement:

"An application by a federal law enforcement officer or an attorney for the government requests the search of the following ... property located in the Western District of Washington, the premises known and described as the email account [REDACTED]@MSN.COM, which is controlled by Microsoft Corporation."

In other words, the e-mail is not considered the property of the account holder, but the premises of Microsoft, Inc.



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Not only did the Obama administration violate the spirit of the Fourth Amendment through its insistence that e-mail is “premises,” but they also violated the black letter of the Fourth Amendment by seizing “all” e-mails, rather than “particularly describ[ing] the things to be seized” based on “probable cause” established by sworn testimony that a crime has been committed.

So, according to the current state of constitutional law in the United States, not only can your e-mail be seized, searched, and cataloged by the federal government, but you will never know it happened, because according to the definitions of terms approved by the federal judges in the Microsoft case, you are not the owner of your e-mail; Microsoft is.

The *Observer* article exposes how the feds excuse their obviously unconstitutional seizure of all e-mail, rather than those “particularly described” by a warrant.

“To get away with this, it tells judges that incriminating e-mails can be hard to find — maybe even hidden with misleading names, dates and file attachments — so their computer forensic experts need access to the whole data base to work their magic,” the article explains.

How common is this creative constitutional interpretation? Apparently, it’s the way most of these situations are handled by officers of the executive branch and their co-conspirators in the federal judiciary. Here’s the story from *The Observer*:

Former federal computer-crimes prosecutor Paul Ohm says almost every federal computer search warrant lacks the required particularity. Another former prosecutor, Orin Kerr, who wrote the first edition of the federal manual on searching computers, agrees: “Everything can be seized. Everything can be searched.” Even some federal judges are calling attention to the problem, putting into print their objections to signing such warrants — but unfortunately most judges seem all too willing to go along.

It is important to remember, however, that this is not simply the opinion of a clique of constitutional lawyers. These conclusions were reached after a simple study of the pleadings filed in the Microsoft case.

Americans jealous of the rights protected by the Constitution should be very interested in the proceedings in the Microsoft case. Should the federal government be permitted to continue collecting every e-mail from every American without even the slightest conformity to constitutional protections against tyranny, then every American will be at once converted from citizen to suspect.

The Obama administration filed a motion to dismiss the Microsoft case on September 23. The ruling on that motion is of interest to all who want to see the federal beast put back inside its constitutional cage and who believe that the Fourth Amendment was included in the Bill of Rights precisely to prevent such despotic actions as are now being taken by the U.S. government.



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