



What's Really at Stake in the Apple Encryption Case?

There is a lot at stake in the case of the FBI demanding that Apple create new software to enable the agency to circumvent the encryption on the iPhone of one of the Sam Bernardino shooters. The FBI argues that the phone — used by Syed Farook, but which actually belongs to the county of San Bernardino, where Farook was employed — may contain information about his terrorist contacts. Privacy advocates and Apple argue that the software the FBI wants is a backdoor and would threaten the privacy — and liberty — of anyone using encryption on any device to protect their data and communications.



Late last month, Apple lawyer Ted Olson told CNN's Laurie Segall that if Apple loses the case challenging a court order to provide the software, it would lead to a police state. He said:

You can imagine every different law enforcement official telling Apple we want a new product to get into something. Even a state judge could order Apple to build something. There's no stopping point. That would lead to a police state.

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Former Congressman Ron Paul agrees. In an [article](#) earlier this week he said:

Apple has so far stood up to a federal government's demand that it force its employees to write a computer program to break into its own product. No doubt Apple CEO Tim Cook understands the damage it would do to his company for the world to know that the US government has a key to supposedly secure iPhones. But the principles at stake are even higher. We have a fundamental right to privacy. We have a fundamental right to go about our daily life without the threat of government surveillance of our activities. We are not East Germany.

Let's not forget that this new, more secure iPhone was developed partly in response to Ed Snowden's revelations that the federal government was illegally spying on us. The federal government was caught breaking the law but instead of ending its illegal spying is demanding that private companies make it easier for it to continue.

Dr. Paul also makes the point that others (including this writer) have made: This case is about setting a precedent that will be followed by other courts and other agencies. The FBI's claim that this is a one-time-use tool is bunk. As Dr. Paul wrote:

When FBI Director James Comey demanded a back door into the San Bernardino shooter's iPhone, he promised that it was only for this one, extraordinary situation. "The San Bernardino litigation isn't about trying to set a precedent or send any kind of message," he said in a statement last week. Testifying before Congress just days later, however, he quickly changed course, telling the Members of the House Intelligence Committee that the court order and Apple's appeals "will be



Written by [C. Mitchell Shaw](#) on March 2, 2016

instructive for other courts.” Does anyone really believe this will not be considered a precedent-setting case? Does anyone really believe the government will not use this technology again and again, with lower and lower thresholds?

According to press reports, Manhattan district attorney Cyrus Vance, Jr. has 175 iPhones with passcodes that the City of New York wants to access. We can be sure that is only the beginning.

Apple began making full-device encryption part of the iOS platform — and Google followed suit by making it available in the Android platform — precisely because the market (made up of private citizens who had learned that they were being routinely spied upon by agents of their own government) demanded solutions to the ubiquitous surveillance of the guilty and the innocent alike. As Apple’s lawyer said in the CNN interview, “Apple is being asked to put an Achilles heel on the iPhone. The iPhone’s security is the reason why many, many people bought the phone.” He added, “It’s very easy to say ‘terrorism is involved’ and therefore you should do whatever the government wants to do. But just because you’re using the word ‘terrorism,’ you don’t want to violate the civil liberties that all of us cherish.” And there is the rub. Not “all of us” cherish civil liberties. The surveillance hawks have waged a war of public opinion and pitted security against liberty. Some have fallen for this false dichotomy and find themselves accepting the notion that security and liberty cannot coexist. The truth, however, is that private citizens cannot long remain secure in the absence of liberty.

Olsen also told CNN that this case could go all the way to the Supreme Court and that if that court rules against Apple, the company would have to comply.

It may not need to go that far, though. As *The New American’s* Raven Clabough [reported](#) on Tuesday:

On Monday, U.S. Magistrate Judge James Orenstein ruled that the Department of Justice cannot force Apple to provide the FBI with access to a locked iPhone involved in a drug case in Brooklyn, New York, as it represents a violation of the separation of governmental powers. Experts contend the ruling could have significant implications in Apple’s current battle with the FBI regarding the San Bernardino terrorism investigation.

A federal judge ruled that, as Clabough wrote, “The All Writs Act does not apply to cases wherein Congress could have authorized the government to obtain the information it needed, but did not, as is the case with the 1994 Communications Assistance for Law Enforcement Act (CALEA).” That ruling will almost certainly have an effect on the Apple/FBI case.

While, as Olsen points out, FBI Director Comey and the rest of the surveillance hawks are trying to keep the focus on “terrorism,” this case has implications that reach much farther. As this writer has said [previously](#):

There is more at stake here than the outcome of one investigation. The privacy of millions — not just in the United States, but around the world — will be determined by how this case turns out.

Since privacy is a fundamental element of liberty, it must be preserved. Even (perhaps *especially*) when it is falsely pitted against the fear of terrorism.



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