



Facebook Fighting Bulk Search Warrants In Court

Facebook is arguing before the New York Court of Appeals that it should be able to challenge warrants for users' account and profile information before being compelled to simply comply.

With so much focus these days on the warrantless surveillance conducted by the NSA and other government agencies who have become a power unto themselves, it is good to remember that not all warrants are created equal. Police and government agencies should certainly have to serve a warrant to obtain digital information, but the warrant should meet the constitutional standard that requires that "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."



The case at hand involves a "bulk search warrant" that Facebook received in the summer of 2013 from a New York court requiring Facebook to hand over "nearly all data from the accounts of 381 people who use [Facebook], including photos, private messages and other information." The 381 Facebook users were suspected of disability fraud. Not only was Facebook required to turn over the information, it was prohibited from alerting the people involved that their privacy was being invaded.

It now appears that the New York authorities behind the warrant were on a fishing expedition. According to [a statement released by Facebook](#), "Of the 381 people whose accounts were the subject of these warrants, 62 were later charged in a disability fraud case. This means that no charges will be brought against more than 300 people whose data was sought by the government without prior notice to the people affected. The government also obtained gag orders that prohibited us from discussing this case and notifying any of the affected people until now."

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A panel of five judges on the New York Court of Appeals began hearing arguments last Thursday as to whether Facebook and others have the right to appeal search warrants that are overly broad. Current law does not allow people or businesses to appeal warrants, but Facebook is arguing that this is "different from a typical search warrant where you stand aside and let the police come in with a box," since Facebook had to take an active role in finding, assembling, and delivering the information that was sought by authorities. In a show of solidarity, other social media giants including LinkedIn, Google, and Twitter have filed briefs with the court in support of Facebook's arguments in the case.

Facebook's brief, which was filed with the court, makes the case that people who use the service have a right to be protected from these types of broad, sweeping searches. "They use Facebook to share



Written by [C. Mitchell Shaw](#) on December 15, 2014

photographs, videos, and communications of a personal nature, and they control the audience with whom they share this information. The Government's bulk warrants, which demand "all" communications and information in 24 broad categories from the 381 targeted accounts, are the digital equivalent of seizing everything in someone's home. Except here, it is not a single home but an entire neighborhood of nearly 400 homes. The vast scope of the Government's search and seizure here would be unthinkable in the physical world."

It was only recently that Facebook was able to make the affected people aware of what happened. When it initially sought to fight the warrant, Facebook was told by a lower court that it did not have legal standing in the case. When threatened with criminal contempt, Facebook released the information to the court. After New York authorities charged 62 people with disability fraud — and did not charge the other 319 people — Facebook requested that the data be returned. When the state refused, Facebook filed an appeal. From Facebook's statement, "Immediately after we filed our appeal, the government moved to unseal the warrants and all court filings, which has allowed us to finally notify the people whose accounts were affected about the warrants and our ongoing legal efforts."

The statement also explained, "We recognize that law enforcement needs to investigate potential crimes, but we believe all government data requests must be narrowly tailored, proportionate to the case, and subject to strict judicial oversight. Moreover, we believe search warrants for digital information should be specific and narrow in scope, just like warrants for physical evidence. These restrictions are critical to preventing overreaching legal requests and protecting people's information."

The outcome of this case will impact the way digital privacy rights are understood by the courts. A win for Facebook in this case would be a win for everyone who uses Internet services — not just those who use Facebook.

What is at stake here is privacy. In the digital age, more than ever, privacy and liberty are inseparable. Facebook, a social-media giant not usually thought of as a guardian of privacy, may be fighting for the privacy (and liberty) of us all in this case.

Photo of Facebook logo on iPad screen: AP Images



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