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Supreme Court to Decide Microsoft Data Privacy Case

By Patrick Blake, J.D. Candidate 2019 | November 1, 2017

This month, the Supreme Court has decided to hear a case that will resolve whether a United States company, Microsoft, must provide data stored on servers outside the United States. The decision will impact what data is available to the United States Government and will have reactions in countries where the data is stored.

In 2016, a Second Circuit decision overturned a district court ruling and held that the Government cannot compel an internet service provider to produce information overseas that would constitute an extra-territorial application of the statute not in accordance with congressional intent. The court focused on user privacy and increased global freedom of expression.

This decision has been criticized for not addressing the complexities of data in the technological age. One of the difficulties in all of this is interpreting anachronistic legal terms and cases to a world that where technological progress and entrepreneurship is moving at an incredible pace. Applying the Fourth Amendment in a digital world means a breakdown of traditional distinctions protecting privacy.

Additionally, there may be impacts in foreign relations. The European Union (EU) has updated their policies in what they call the General Data Protection Regulation. It is worth considering whether this policy, which has yet to go into effect, would have implications for EU companies with data stored in the United States. One of the key changes in their law is the extra-territorial application.

What will the Supreme Court have to say? Will they draw clear lines? Will they acknowledge the complexities of this space? Will they issue a ruling that impacts entrepreneurship or your individual data privacy? Or will they send a message the Fourth Amendment needs to be squared immediately with our individual constitutional rights?