Newman in Bloomberg BNA: Google Data-Storage Ruling Sends Warning

By Tim Newman | August 17, 2017

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Alphabet Inc.'s Google has lost a bid to overturn a magistrate judge's order forcing the company to turn over Gmail data stored abroad in response to a federal warrant (In re Google Inc. , N.D. Cal., No. 16-mc-08263, review denied 8/14/17), *Bloomberg BNA* reported.

Companies that store data on servers located outside the U.S. increasingly face the prospect that a government warrant seeking access will be upheld if the company is able to access and move the data from within the U.S. Companies should assess their privacy policies and promises in that context, privacy attorneys told Bloomberg BNA.

Judge Richard Seeborg of the U.S. District Court for the Northern District of California on Aug. 14 upheld a magistrate judge's order denying Google's motion to quash the warrant. Google must turn over all content that is "accessible, searchable, and retrievable from the" U.S. pursuant to the lawful warrant under the Stored Communications Act (SCA), Seeborg said. The SCA warrant, served on U.S.-based Google, was a "domestic application of the statute" because the data is "easily and lawfully" accessed and disclosed in the U.S., he said. Also, the "conduct relevant" to the warrant occurred in the U.S., he said. …

Google fought to quash the warrant and overturn the magistrate judge's opinion because it believed that the SCA warrant was applied beyond U.S. borders in violation of the statute and turning over the data would flout user privacy interests.

There is a "growing consensus" among courts in SCA cases "that the location of the data being requested is less important than the location of the cloud provider or the location where the retrieval of data will take place," Timothy Newman, a privacy and cybersecurity associate at Haynes Boone in Dallas, told *Bloomberg BNA* Aug. 15.

The court upheld the warrant here in part because Google's Legal Investigation Support team is the only group "authorized to access user data for production in response to legal process, and the entire team is located in the" U.S., Newman said. The "growing trend" of courts accepting SCA warrants in rulings in favor of the government and against cloud service providers when data is stored abroad should motivate companies to "consider the impact of these orders on their storage and retrieval practice, their privacy policies, and their customer agreements," Newman said. …

Newman said that courts are having "an easier time enforcing these warrants when the location of the data is determined by an algorithm and not based on user-specified location."

Excerpted from *Bloomberg BNA*. To read the full article, click here.

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