Court ruling authorizes warrantless Web snooping

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Federal agents do not need a search warrant to find out the Web page addresses people visit or the e-mail addresses they correspond with, a federal appeals court has ruled in a case involving an Escondido drug lab.

The decision by a three-judge panel of the 9th U.S. Circuit Court of Appeals hands law enforcement a powerful surveillance tool that it can employ with virtually no check or balance or judicial oversight, legal experts said.

It was the first time a federal court has decided the constitutionality of government surveillance techniques that capture the "to" and "from" addresses of e-mails sent by individuals, and the unique addresses of Web pages that an individual visits.

Known as Internet Protocol, or IP, addresses, they are a sequence of numbers that serve as a kind of street address for Web sites.

In their decision on Friday, the judges ruled that individuals have no privacy expectation when it comes to e-mail or IP addresses because they should know that all of their communications are going through a third party -- the user's Internet service provider.

By voluntarily turning over information to third parties, Internet users are therefore giving up any expectation of privacy, the court said.

The court likened the tactic to the use of a "pen register" -- a device that records the numbers dialed from a specific phone. The U.S. Supreme Court in 1979 ruled that police did not have to get a search warrant for that activity.

But one legal expert said that analogy ignores the fact that more information can be gleaned from an IP address than from a phone number.

"It overlooks the important differences between these kinds of communications," said Shaun Martin, a law professor at the University of San Diego School of Law.

"Getting a list of IP addresses reveals far, far more information than a pen register ever would. And if it didn't, the government wouldn't be looking to get this information in the first place," he said.

The 1979 decision said people should not expect privacy when it came to the numbers they dialed because the numbers went through a third party -- the phone company's switching equipment that completed a call.

The Supreme Court also ruled the pen register tactic was legal because police were collecting just the phone number and not the content of the communication.

In this case, the judges applied that logic to computer users. Simply gathering the electronic addresses is like collecting phone numbers, or reading addresses on envelopes and packages sent through the mail, Judge Raymond Fisher wrote in his opinion. Courts have held that obtaining information from the outside of mail without a warrant is also allowable.

Fisher said that by using the IP address tactic, the government is getting only basic information. It can learn who the person is e- mailing or what Web sites are being viewed, but does not "find out the contents of the messages or the particular pages on the Web sites the person viewed."

The judge cautioned that the ruling only goes so far, "and does not imply that more intrusive techniques or techniques that reveal more content information" are acceptable.

The ruling said surveillance that tracks the Web pages a person visits on a site "might be more constitutionally problematic." So while the government is now free to know that someone visited, for example, signonsandiego.com, it might be barred from knowing a user went to the Web page displaying this story.

Still, Martin said, many people who send an e-mail or visit a Web site probably expect that they are doing so in private.

He said under the ruling, the government can obtain such information from Internet service companies about anyone -- not just those suspected of a crime -- without a warrant.

The ruling opens the door to wider government surveillance, Martin said.

"The reason this is a novel issue is that up to now, police don't do this that much," he said. "One of the important things about this decision is that once you say it is OK to do it, you are going to see police do it a lot more."

The decision came in the case of Dennis Alba, a former Carlsbad man convicted in 2003 of leading a drug ring that produced massive amounts of the drug Ecstasy at an Escondido lab.

At the time, authorities said it was the largest Ecstasy operation they had seen -- pouring out 1.5 million pills a month and netting an estimated $10 million in profit per month.

In May 2001, authorities began to snoop on Alba's e-mail and Internet activity. They later used the information to obtain a search warrant to further investigate the case.

Alba's lawyer, Michael Crowley, objected to the tactics but was rebuffed by the trial judge. Crowley said he would seek a review of the decision by a larger panel of the appeals court.

"It's too important a decision to be decided by a three-judge panel," he said. "It just gives the government unbridled authority to do what they want. There is no judicial oversight, no check or balance."

Alba's appeal was joined with that of his co-leader of the drug ring, Mark Forrester. While upholding Alba's 30-year sentence, the judges reversed Forrester's identical prison term because of errors by the trial judge.

Todd Robinson, the federal prosecutor on the case, said the government will retry Forrester. Because Forrester's retrial is pending, the prosecutor declined to comment on the appeals court ruling on Alba's case.

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Abstract (Document Summary)

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