

RSA®Conference2018

San Francisco | April 16 – 20 | Moscone Center

SESSION ID: LAW-R04

CYBER LITIGATION 2018: RECENT CYBER CASES IN FEDERAL COURTS & AGENCIES



#RSAC

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Legal Caveat



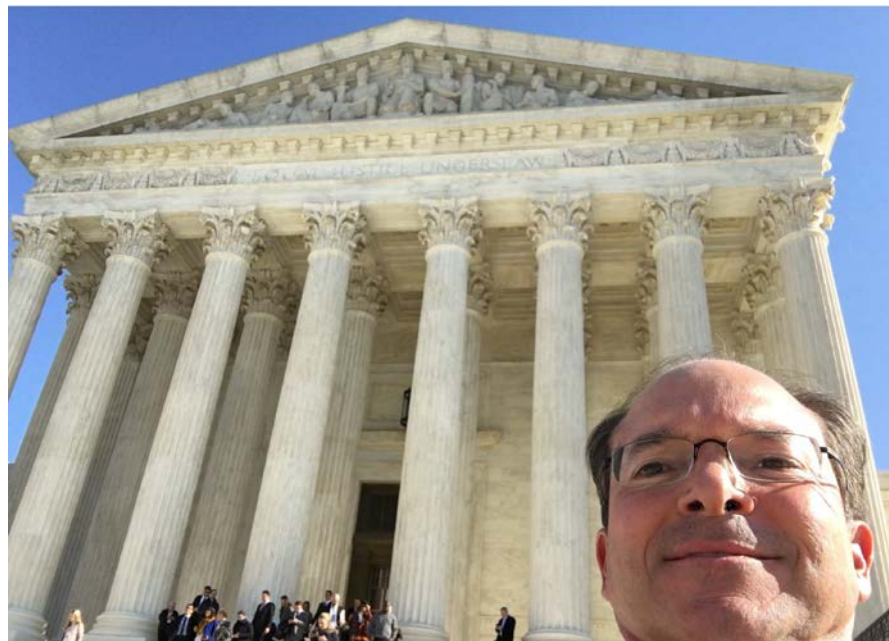
- This presentation is not legal advice*
- It is designed to raise awareness of general legal principles raised in recent cyber-related cases

* The fine print: The information contained in this briefing is for general guidance on matters of interest only. The application and impact of laws can vary widely based on the specific facts involved. Given the changing nature of laws, rules and regulations, there may be omissions or inaccuracies in information contained in this presentation. Accordingly, the information in this presentation is provided with the understanding that the author is not herein engaged in rendering legal advice and services. As such, it should not be used as a substitute for consultation with professional legal advisers.

Significant Recent Cases



- Third-Party Doctrine
- Extraterritorial Searches (Cloud)
- Breaking Encryption
- Artificial Intelligence
- Internet of Things



Carpenter v. United States

- Facts of the case
- Issue: Is the warrantless search and seizure of 127 days of cell site location information a 4th Amendment violation?

Court Holding

- 6th Circuit: No
- Supreme Court heard argument Nov. 29, 2017



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United States v. Microsoft

- Facts of the case
- Issue: Can a warrant issued under the Stored Communications Act require Microsoft to retrieve emails from account in Ireland?

Court Holding

- 2nd Circuit: No
- Supreme Court heard argument Feb. 27, 2018, mooted the case on Apr. 17



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SEC v. Huang

- Facts of the case
- Issue: Can the Securities & Exchange Commission force the Huangs to divulge their smartphone passcode?

Court Holding

- E.D. Penn. Court: No



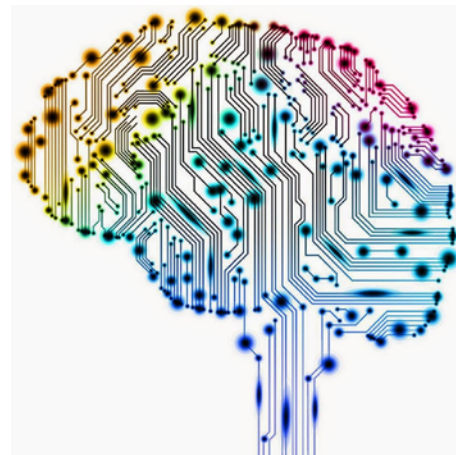
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Loomis v. Wisconsin

- Facts of the case
- Issue: Does it violate the 5th Amendment right to due process to use a proprietary algorithm for sentencing?

Court Holding

- Wisconsin Supreme Court: No



State of Arkansas v. Bates

- Facts of the case
- Issue: Can Amazon be forced to provide its recordings from an Alexa Echo used by Bates?

Court Holding

- Trial Court: Yes, since Bates consented



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Additional Cases and Issues to Watch



- Kaspersky Lab v. United States in DC District Court currently litigating US motion to dismiss.
 - Kaspersky is contesting DHS's Binding Operational Directive and the NDAA of 2018 which required removal of K's AV on government computers
- Solid Oak Sketches LLC v. Visual Concepts LLC et al, U.S. District Court, Southern District of New York, No. 16-00724
 - Copyright infringement in video games for displaying tatoos of NBA players
- Algorithmic warfare and the law of armed conflict
 - Especially algorithms that are difficult or impossible for humans to unpack
- Liability for self-driving cars

Additional Cases and Issues to Watch



- Arrest of Phantom Secure CEO
 - For selling super secure repurposed Blackberries and Androids to criminals with apparent knowledge of how they would be used
 - Servers placed in Hong Kong and Panama apparently because they were perceived as likely to be uncooperative with police
 - Charged as conspirator
- Data breach suits
 - Equifax (147M personal accounts with significant PII)
 - 350 class action suits being consolidated
 - Yahoo! (3B user accounts affected—punitive damages)

Apply What You Have Learned Today



- When you return to your organization you should:
 - Identify where your organization's cloud data is stored. If in multiple countries, how does the law apply to your data stored there? Should your cloud contract require storage in the US?
 - Identify the policies governing your employees' uses of mobile devices. Does it specify how employees are to respond to decryption requests? Do you have a policy regarding cross-border transfers of proprietary data?
 - Is your organization aware of the legal implications of its use of artificial intelligence?
 - Does your organization's legal counsel follow trends in cyberlaw and report trends that could adversely impact the organization to senior leadership?

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