**United States V. Councilman**

In the United States V. Councilman case, the defendant Bradford Councilman was an executive of Interloc Inc., a bookseller that offered email service to his customers. Councilman allegedly ordered two employees to configure the email processing software so that all incoming emails sent from Amazon.com, a competitor was secretly copied and sent to his email account before it arrived in the intended recipient's mailbox. Consequently, Interloc Inc.’s systems administrator wrote a revision to the mail processing code designed to intercept, copy, and store all incoming messages from Amazon.com before they were delivered to the subscribers. Councilman was then charged for using the code to intercept thousands of messages to gain a commercial advantage.

The government sought to prosecute Councilman for intercepting electronic communications in violation of the Wiretap Act. However, he pleaded not guilts, and the charges were dismissed since both Councilman and the government agreed that the communications were stored on the Interloc ISP server when Interloc employees acquired them. Councilman argued that the communications were therefore covered by the Stored Communications Act, not the Wiretap Act. Unfortunately, the government could not charge him for violating the Stored Communications Act because that law exempts ISPs from liability for accessing stored communications. That is, the exemption provides a loophole for ISPs because they can't be prosecuted under the Wiretap Act if they access subscribers' stored email. Additionally, they can't be prosecuted under the Stored Communications Act simply because they are ISPs.

After the District Court of Massachusetts dismissed the charge against Councilman, a three-judge panel of the First Circuit also upheld the district court's holding. The panel ruled that Interloc Inc. obtained the subscriber email messages while they were in temporary storage in a computer system. Additionally, the judges asserted that such storage was only momentary as the email messages were immediately made available to the users. After several groups filed for a petition for a new hearing, the First Circuit granted a rehearing of the case in front of all the judges in the circuit. This court's new decision made it clear that although emails are stored in computer memory during transmission, it is still a criminal activity for an email provider or anyone else to secretly intercept them. As a result, the case was sent back to the district court for trial. However, a Massachusetts jury agreed with Councilman's claims that the employees' allegations were not credible, that Councilman had not instructed them, and dismissed the case. Councilman was acquitted of all charges in February 2007.

References

<https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1630&context=btlj>

<https://www.eff.org/cases/us-v-councilman>

<https://epic.org/privacy/councilman/>