



PRESS RELEASE

The CCBE argues against the position of the United States on the extraterritorial application of search warrants.

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The CCBE brings its support to Microsoft Corporation in a case dealing with the extraterritorial search and seizure of electronic communications.

The Council of Bars and Law Societies of Europe (CCBE), has filed an amicus curiae brief in the U.S. Supreme Court in support of Microsoft Corporation, in a case dealing with the extraterritorial search and seizure of electronic communications.

The case, *United States v. Microsoft Corp.*, concerns whether Microsoft, an email service provider, must comply with a warrant issued pursuant to the Stored Communications Act (SCA) demanding the disclosure in the United States of email communications stored in Ireland.

Under the SCA, the government may compel service providers like Microsoft to execute a warrant issued under the SCA by searching for, assembling, and reproducing electronic communications. Microsoft refused to comply with the warrant and was held in contempt.

The CCBE argues, in the amicus curiae, that the analysis of the United States' government is fundamentally misconceived. This case has the potential to dramatically expand the US government's ability to seize electronic communications that are stored outside of the territory of the United States.

The extraterritorial application of search warrants could potentially endanger the privacy rights of Europeans, and the rights of lawyers and their clients to engage in confidential communications. The inviolability of lawyer client communications is an indispensable precondition for due process and a fair trial. It is also a major requirement in establishing trust between a lawyer and his client which is a fundamental aspect of the rule of law.

CCBE's President, Antonin Mokry, asserts that "The US government's position affords no meaningful consideration to foreign law

concerning professional secrecy. Clients – or, in relevant cases, lawyers – whose privileged correspondence stored on a European server is seized by a U.S. warrant would have no redress. They would likely not have an opportunity to intervene because the Government would not be required to provide notice of the seizure."

The Supreme Court will be hearing oral arguments in the case on February 27, 2018.

The CCBE's brief was authored by Cleary Gottlieb partner Nowell Bamberger and his associates, in consultation with the CCBE (Iain Mitchell QC (Chair Surveillance Working Group), James MacGuill (Chair Criminal Law Committee) and Simone Cuomo (Senior Legal Advisor).

About the CCBE

The CCBE represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers. Throughout the case, the CCBE has continuously highlighted the potential threat to international order that the position of the United State pose.

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