



HOLWELL SHUSTER & GOLDBERG REPRESENTS EUROPEAN PRIVACY EXPERTS IN SUPREME COURT CASE TESTING U.S. AUTHORITY OVER DATA HELD ABROAD

01.18.2018

New York—In a brief written by litigation boutique Holwell Shuster & Goldberg LLP and filed today with the U.S. Supreme Court, a group of 21 European privacy law experts urged the Court to limit the ability of the federal government to compel the production of data stored outside the country. The group made its argument as amici in *United States v. Microsoft*, a closely watched case that could dramatically impact the cloud computing industry as well as United States’ relations with foreign nations. It will be argued before the Supreme Court on February 27, 2018.

A copy of the brief can be found [here](#).

The case calls on the Court to decide whether Microsoft must comply with a search warrant ordering it to retrieve customer files stored in Ireland. The European privacy authorities represented by HSG are asking the Court to interpret the Stored Communications Act—the legislative basis for the warrant—to reach only data stored in the U.S.

“Our courts have a long and sensible tradition of presuming that our laws don’t apply outside the U.S.,” said Daniel M. Sullivan, an HSG partner and counsel of record to the experts at the Supreme Court. “As our brief states, that presumption is at its strongest when the extraterritorial application of U.S. law would conflict with the laws of another country. That’s exactly what the government’s reading of the SCA would do here, raising entirely avoidable and potentially severe discord between the U.S. and E.U.”

The brief argues that: “Complying with the SCA warrant here would trigger—and likely violate—European data-privacy laws, thus confirming its extraterritoriality. Despite the Government’s assertions, the acts of accessing, copying, and transferring personal data stored in Ireland will take place within the European Union and trigger EU law...The Court should not assume that Congress intended the SCA to create such a conflict with foreign law. Instead, the Court should adopt a clear rule against applying the SCA to data stored abroad.”

The approach recommended by HSG’s brief would leave to Congress the decision of whether and under what circumstances to explicitly authorize the collection of data stored in other countries.

The brief was submitted by HSG attorneys Daniel M. Sullivan, Vincent Levy, Matthew V.H. Noller, and Kevin D. Benish. Sullivan and Levy are both former U.S. Supreme Court clerks; they clerked for the Hon. Antonin Scalia and Justice Ruth Bader Ginsburg, respectively.

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