

EVERY PAGE. EVERY STORY.



SUBSCRIBE TO THE TABLET EDITION OF GQ & ENJOY COMPLETE ISSUES ON YOUR IPAD®.



EVERY PHOTO. EVERYWHERE.

THE AUGUST ISSUE, WITH MILA KUNIS, IS AVAILABLE NOW!

SUBSCRIBE NOW

SUBSCRIBE TO WIRED IPAD® ACCESS INCLUDED! SUBSCRIBE RENEW GIVE A GIFT INTERNATIONAL



Sign In | RSS Feeds

All Wired



Politics : Law

What's in a Laptop? Court Ponders Legality of Border Searches

Ryan Singel 06.20.07

Is your laptop a fancy piece of luggage or an extension of your mind? That's the central question facing a federal appeals court in a case that could sharply limit the government's ability to snoop into laptop computers carried across the border by American citizens. The question, before the 9th U.S. Circuit Court of Appeals, arose from the prosecution of Michael Timothy Arnold, an American citizen whose laptop was randomly searched in July 2005 at Los Angeles International Airport as he returned from a three-week trip to the Philippines. Agents booted the computer and began opening folders on the desktop, where they found a picture of two naked women, continued searching, then turned up what the government says is child pornography. In June 2006, a judge from the U.S. District Court for the Central District of California threw out the evidence, finding that customs officials must have at least "reasonable suspicion" to begin prying into the contents of an electronic storage device, a decision the government is now appealing.

"Electronic storage devices function as an extension of our own memory," Judge Dean Pregerson wrote. "They are capable of storing our thoughts, ranging from the most whimsical to the most profound. Therefore, government intrusions into the mind -- specifically those that would cause fear or apprehension in a reasonable person -- are no less deserving of Fourth Amendment scrutiny than intrusions that are physical in nature."

While it's not clear how many laptops are searched at the border each year, both business and recreational travelers are increasingly toting computers with them, complete with hard drives full of personal pictures, confidential corporate documents and revealing internet logs. An October 2006 survey of business travel executives revealed that some companies were rethinking rules on proprietary information being stored on traveling laptops, and a percent of the respondents reported they had, or knew someone who had, a laptop confiscated at the border.

The reach of such searches will likely widen as more and more people opt for smartphones, such as Apple's upcoming iPhone, which combine elements of traditional computers with the voice capabilities of a cell phone.

The California decision is the first to challenge that trend, and it makes laptops, and even USB memory sticks, very different from every other item brought across the border, including luggage, diaries, prescription drug bottles and sexual toys -- all of which customs and border agents have been allowed to search without cause for years under the "border exception" to the Fourth Amendment.

The government says the rationale behind that exception -- that border agents are responsible for protecting the safety of the nation and enforcing copyright and obscenity rules -- logically extends to laptops. "For constitutional purposes nothing distinguishes a computer from other closed containers used to store highly personal items," the Department of Justice argues in its appeal brief.

Moreover, requiring government agents to have a reasonable suspicion before searching a laptop will invite smugglers and terrorists to hide contraband and evidence there, the government argues. "If allowed to stand, the district court's decision will seriously undermine the nation's vital interest in protecting its borders by removing the significant deterrent effect of suspicionless searches," reads the filing.

Arnold's lawyers, Kevin Lahue and Marilyn Bednarski, disagree, arguing that it's not very difficult for law enforcement agents to come up with "reasonable suspicion."

"No ordinary traveler would expect their private files to be searched at the border without any reasonable justification," they told the appeals court. "The government's argument that a traveler can simply avoid exposure by leaving the laptop at home is an oversimplification of its function and role in daily life."

Lahue has support from the Association of Corporate Travel Executives and the Electronic Frontier Foundation. The two groups submitted a friend-of-the-court brief Tuesday arguing that suspicionless searches of laptops are overly invasive, and that prior to the California ruling, the government had no limits on what it could do when it seizes a laptop and makes a copy of the hard drive.

Already travelers have reported customs agents seizing laptops, making copies of the hard drive and returning the computers weeks later. That practice scares the travel execs' association and the EFF, which argue that under the government's reasoning, border authorities could systematically copy all of the information contained on every laptop computer and cell phone that crosses the border, without any court oversight.

"A suspicionless unrestricted search of a laptop computer is simply electronic eavesdropping after the fact," the groups told the court. "(It) is distinguishable from the forbidden general searches of Colonial times only by the technologies involved."

The case's outcome is far from clear-cut, according to Lahue.

"A lot will depend on whether the court decides it's like searching a piece of luggage or like a body-cavity search," Lahue told Wired News. "A diary, even one that is labeled 'my secret sexual fantasies,' has always been fair game." The government's reply brief is due June 26, and the case will likely be argued sometime in the fall.



40 points 46



Stumble ShareThis

Email Article

Full Page

Comments

Sponsored by:

SIEMENS

ANSWER EXCHANGE

Somewhere in America, the toughest questions are answered every day.

53%

of WIRED users agree that creating clean energy solutions for sustainable cities should be the number one concern for policymakers.

SHARE YOUR THOUGHTS WITH THE COMMUNITY

> EXPAND TO BEGIN <

Also on Wired.com

- [Gut Microbes May Foster Heart Disease](#)
- [Jon Torrent Launches Attack Ad Against Illumina's MiSeq](#)
- [Jetsetter's New iPad App Features 360-Degree, Immersive Photos](#)
- [YouTube Gets Into The Live Stream Business](#)
- [Commodore 64: Back and Better than Ever!](#)

See Also:

Threat Level: Random Laptop Searches at the Border Unconstitutional
Computer Privacy in Distress
Hack My Son's Computer, Please
DHS Passenger Scoring Illegal?
Privacy Debacle Hall of Fame
Search Wired

Top Stories



Related Topics:

Politics, Law, Online Rights, Security

Comments (17)

Want to start a new thread or reply to a post?

subscribe to **WIRED** IPAD® ACCESS INCLUDED!

FREE GIFT!

Subscribe to WIRED
Renew
Give a gift
International Orders

New Laptops Sold for \$31
Brand New Laptops Sold for Massive Discounts. All Inventory Must Go! - [Laptops.DealDash.com](#)

Overstock Laptops: \$31-93
Get a brand new laptop for \$31.93. Limit One Per Day. Grab Yours Now. - [www.DealFun.com/LaptopAuctions](#)

RAID Hard Drive Recovery
Data Recovery Specialists with 24/7 On-Site or Remote Access Available! - [drivecrash.com/Hard_Drive_Recovery](#)

Enter Canada With A DUI
Canadian Immigration Lawyer Criminal Inadmissibility Solutions - [www.DuiCanadaEntry.com](#)

Ads by Google

[Login/Register](#) and start talking!

[See All Comments](#)

Posted by: peregrine 1506 days ago 3 Points

I keep my laptop pretty clean, and move confidential files off the hard drive whenever I have a chance. But I still have confidential documents on my computer or my USB key, that my boss or our clients do not want viewed by people outside the compan...

[Permalink](#)

Posted by: Syrrys 1506 days ago 3 Points

That was almost my first thought. If I've got something on my computer that's embarrassing or whatever fine. I'm embarrassed you know I'm into furies or whatever. That sucks and is an invasion of my privacy but maybe OK if there is some security bas...

[Permalink](#)

Posted by: Flash 1506 days ago 3 Points

Would the government also press charges for having several viruses on your computer? When they download or snoop on your laptop, they'd also get the virus. Wouldn't that serve them right?

[Permalink](#)

Posted by: MTGrizzly 1506 days ago 2 Points

On the otherhand, there are so many people exploiting children all over the world, and this is a serious issue. Save the children from sickos... Are you willing to give up all your personal civil liberties to "save the children"? It amazes me th...

[Permalink](#)

Posted by: bloggrr1 1506 days ago 1 Point

So they open a folder and find the drugs you downloaded?

[Permalink](#)

Posted by: Kumae 1504 days ago 1 Point

There is a solution from <http://www.securstar.com> "DCPP now allows to hide your entire operating system inside the free disk space of another operating system. With DCPP you can now hide your entire operating system, this means you can now define tw...

[Permalink](#)

Posted by: angandstef 1506 days ago 1 Point

I for one believe that border control has the right to search everything, inc laptops. I find it ironic that everyone has an anti big brother view of the world around them, yet these people are the first to raise their voice when things go wrong....

[Permalink](#)

Posted by: peregrine 1505 days ago 1 Point

You seem to forget it's not very likely that a terrorist is going to bring down a plane with a pirated version of Windows Vista. If the laptop boots up, then it's very likely that it contains all of the physical components required for it to boot up...

[Permalink](#)

Posted by: Lazarillo 1506 days ago 1 Point

A comment on the "US gov't" civil liberties vs. other nations: I agree wholly that we need to reign in our government. The government should be working to make our privacy a top priority (along with our safety, quality of life, etc.), not to destro...

[Permalink](#)

Posted by: carmelol 1506 days ago 1 Point

I'm not convinced of the justification...

Carmelo Lisciotto

www.carmelolisciotto.com

[Permalink](#)

Posted by: TJColatrella 1506 days ago 1 Point

The government Attorney General Gonzales in fact has already while lying to Congress and violating the Hatch Act and the Presidential Records Law has used children to hide behind...so as to avoid facing them, remember..? Now we already know that the...

[Permalink](#)

Posted by: Bassman59 1506 days ago 1 Point

Sounds like you could get around the search. My idea is easiest to implement on a Unix-

Subscription: [Subscribe](#) | [Give a Gift](#) | [Renew](#) | [International](#) | [Questions](#) | [Change Address](#)

Quick Links: [Contact Us](#) | [Login/Register](#) | [New sletter](#) | [RSS Feeds](#) | [Tech Jobs](#) | [Wired Mobile](#) | [FAQ](#) | [Sitemap](#)



based machine (of course incl. Macs) but with appropriate restrictions it should work on Windows. First, make sure when you turn on your computer, it doesn't aut...

[Permalink](#)

Posted by: Qalan96 1506 days ago 1 Point

What happens if my data is encrypted? Can I be compelled to divulge the password for decryption? If I refuse will I lose my computer / be arrested / be "rendered" to Syria?

[Permalink](#)

Posted by: ih8usrnames 1506 days ago 0 Points

If you really want to save the children then you would take down the catholic church. There have been more than 100,000 cases of child sexual abuse reported against clergy of the catholic church in America alone. Even the Pope received a pardon fro...

[Permalink](#)

Posted by: krs360 1506 days ago -1 Points

I have read with increasing mirth several stories about invasions of privacy in the US over the last few months. I thought it was supposed to be "the land of the free"? It makes me laugh how a nation can throw their weight around the world about how...

[Permalink](#)

Posted by: marksingletery 1505 days ago 0 Points

The agents responsible for this outrage should be dismissed without benefits. This is a clear abuse of power and a gross breach of manners. The constitution specifically provides protection of such private documents, and the so called "border exempt...

[Permalink](#)

[See All Comments](#)

[Login/Registration](#)

[Corrections](#) | [Sitemap](#) | [FAQ](#) | [Contact Us](#) | [Wired Staff](#) | [Advertising](#) | [Press Center](#) | [Subscription Services](#) | [Newsletter](#) | [RSS Feeds](#) 

Condé Nast Web Sites:

[Webmonkey](#) | [Reddit](#) | [ArsTechnica](#) | [Details](#) | [Golf Digest](#) | [GQ](#) | [New Yorker](#)

Registration on or use of this site constitutes acceptance of our [User Agreement](#) (Revised 8/28/2008) and [Privacy Policy](#) (Revised 8/28/2008).
Wired.com © 2011 Condé Nast Digital. All rights reserved.

The material on this site may not be reproduced, distributed, transmitted, cached or otherwise used, except with the prior written permission of Condé Nast Digital.