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Electronic Privacy Update - United States v. Ropp - Freedman v. America Online, Inc.

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ELECTRONIC PRIVACY UPDATE

UNITED STATES V. ROPP

347 F. Supp. 2d 831 (C.D. Cal. 2004)

FREEDMAN V. AMERICA ONLINE, INC.

2005 WL 1899381 (D. Conn. Aug. 9, 2005)

Several court cases concerned the Electronic Communications Privacy Act (ECPA) and Fourth Amendment concerns related to electronic privacy.

In *United States v. Ropp*, the defendant attached a keystroke logger to a computer that recorded each keystroke the victim computer user typed. Defendant was indicted for intercepting electronic communications in violation of the Wiretap Act, as amended by the ECPA, 18 U.S.C. § 2511(1)(a). The District Court granted defendant's motion to dismiss, holding that although the keystroke logger captured electronic signals, the statutory definition of "electronic communications" covered only signals transmitted by a system that "affects interstate or foreign commerce." 18 U.S.C. § 2510(12). The court noted that the computer was connected to a network and signals sent over the network could qualify as electronic communications, but that signals internal to the computer did not similarly qualify, even when they were part of the preparation of messages for the network such as e-mail messages.

In *Freedman v. America Online, Inc.*, the plaintiff, Freedman, sent an anonymous e-mail message that the recipient claimed was threatening. Defendant police officers sent an unsigned warrant to defendant internet service provider America Online (AOL) which then turned over information that identified the plaintiff. Freedman sued, claiming that AOL's disclosure of personal information without a valid warrant violated his rights under the Fourth and First Amendments.

The court granted summary judgment against plaintiff on his Fourth Amendment claim. Although AOL's privacy policy stated it would not disclose the plaintiff's screen name, it included exceptions that permitted it to reveal information to the government voluntarily. The court therefore found the plaintiff did not have a reasonable expectation of privacy in his subscriber information. The court denied summary judgment on the First Amendment claim, however, because there was some evidence that a reasonable police officer would not have considered the message a threat.