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O'Melveny Files Amicus Brief in Landmark Supreme Court Privacy Case

January 22, 2018

FOR IMMEDIATE RELEASE

NEW YORK—January 22, 2018—O'Melveny filed an amicus brief before the US Supreme Court in the closely watched privacy case *Microsoft Corp v. United States*. The brief, which was filed on behalf of the Brennan Center, the ACLU, the Electronic Frontier Foundation, Restore the Fourth, and R Street Institute, supports a Second Circuit ruling that a warrant issued under the Stored Communications Act (SCA) cannot compel US companies to produce data stored abroad.

In December 2013, the federal government obtained a search warrant for emails from a Microsoft user in connection with a drug investigation. The substantive data was stored on a server in Dublin, Ireland. Microsoft produced limited data stored in the US, but refused to turn over data stored overseas, arguing that a US court had no authority to compel the search abroad and that the federal government should instead rely on a longstanding mutual legal-assistance treaty to obtain the data from Ireland. The Southern District of New York ordered Microsoft to comply, agreeing with the government's position that the SCA warrant was akin to a subpoena allowing the government to compel production of documents stored abroad. Microsoft refused to comply and was held in contempt.

On July 14, 2016, the Second Circuit agreed with Microsoft and reversed, holding that an SCA warrant should be treated like any other warrant and did not have extraterritorial effect. O'Melveny supported Microsoft at the Second Circuit, filing an amicus brief for the Brennan Center for Justice at

NYU, the Electronic Frontier Foundation, the ACLU, and the Constitution Project. The Supreme Court granted certiorari on October 16, 2017.

On January 18, 2018, O'Melveny filed its amicus brief before the Supreme Court, arguing that the Fourth Amendment is implicated as soon as data is collected in Ireland; subpoenas cannot be used to compel the disclosure of data stored abroad; and a ruling against Microsoft could embolden foreign governments to seek data belonging US persons.

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