

FOR IMMEDIATE RELEASE

## Privacy International today files an amicus brief before the US Supreme Court in landmark case to prevent US undermining data protection laws all over the world

### Key points

- Privacy International ([www.privacyinternational.org](http://www.privacyinternational.org)), a London-based NGO that defends the right to privacy around the world, has today filed an 'amicus brief' in the landmark 'Microsoft Corp. vs. United States' battle.
- The US government seeks data from Microsoft stored in Ireland under the Stored Communications Act but Privacy International argues that the Act does not permit seizure of data stored abroad and that to hand over the data would breach Ireland's data protection laws.
- The US government's position would effectively undermine the data protection laws of other countries by giving the US government the power to unilaterally seize data no matter where it is located (and without regard for laws protecting that data).

...

*London-based NGO Privacy International has today submitted an 'amicus brief' to the US Supreme Court in a landmark legal battle between the US government and Microsoft over the government's attempts to seize data from Microsoft stored in Ireland. The case has profound implications for the resilience of data protection laws all over the world, which protect the fundamental right to privacy, including in electronically-stored personal communications.*

### **Background to the case**

In December 2013, the US government obtained a warrant pursuant to the Stored Communications Act, for Microsoft to hand over emails and other private information associated with a particular account. Much of that data was stored in Ireland - one of the many data centres Microsoft maintains around the world. Microsoft handed over account information stored on its servers in the US, but refused to hand over data stored on servers in Ireland, arguing that the Stored Communications Act did not authorise the US government to seize data stored extraterritorially.

### **The right to privacy and data protection laws all over the world**

International law recognises the fundamental right to privacy, including the privacy of electronically-stored personal communications. This right is reflected, and given concrete form, in the legal regimes of countries around the world. Approximately 120 countries have laws specifically protecting personal data.

### **Foreign law enforcement requests for data**

Data protection laws protect individuals' data from unwanted intrusion, including by regulating when, how, and to what extent private entities - like Microsoft - may transfer personal information to foreign countries, including in response to law enforcement requests. In order to respect these limitations,

many countries, including the US, have entered into specific agreements to govern cross-border law enforcement data requests. Many data protection frameworks require that these requests proceed using official government-to-government channels. The dominant mechanism is a 'Mutual Legal Assistance Treaty' (MLAT) between two countries. The US has existing MLATs with both Ireland and the EU.

### ***Violating foreign data protection laws***

Rather than relying on the process established through these MLATs, the US government is seeking to unilaterally seize data held in Ireland, conflicting with both Irish and EU data protection laws, and undermining the right to privacy that those laws were designed to protect. The US government's position would also lead to repeated violations of other data protection frameworks (and therefore the privacy rights of people) around the world.

### ***Placing companies in an impossible position***

The US government's demand that Microsoft hand over data stored in Ireland also creates an untenable situation for many other companies. Companies would increasingly be in the position of having to potentially violate the laws of the countries in which they operate in order to comply with warrants issued in the US.

Scarlet Kim, Legal Officer at Privacy International, said:

*"The US government seeks, under the Stored Communications Act, to unilaterally seize the personal data of individuals, no matter where that data is located. There is no indication that Congress has ever considered giving the Executive this type of sweeping authority. Privacy International - joined by over 25 human rights and digital rights groups - submits this brief to inform the Supreme Court of how the US government's position undermines foreign data protection laws - including those of Ireland and the European Union - which operate to protect the fundamental right to privacy. If the US government prevails, it would set the stage for repeated violations of the privacy rights of people all over the world."*

**ENDS**