

The Obtainment of Communications During Criminal Investigation

Rong-Geng Li *

Abstract

In order to investigate crimes, the law enforcement may obtain the contents of targets' communications, like e-mails, from communications service providers. The evidence-gathering has been the focus of the practical and theoretical discussion. The Supreme Court held that, in the Chen case, people have reasonable expectations of privacy in e-mail stored in communications service providers, and the law enforcement has to obtain warrants from courts in advance. The U.S. congress enacted "the Stored Communications Act" to enhance the protection of people's privacy. The Sixth Circuit Court, in Warshak, held that people have privacy rights of the Fourth Amendment to the U.S. Constitution and the warrant requirement applies to the obtainment of communications. In addition, the application of the third party doctrine should be limited. The conclusions of the Chen case and Warshak are acceptable. This article argues that people have general privacy, rather than communication privacy, in those e-mails stored in third parties' service. Therefore, the Communications Security and Surveillance Act should not apply to the obtainment of e-mails. In order to obtain e-mails stored in communications service providers, the law enforcement should apply for warrants according to the Code of Criminal Procedure. Moreover, communication privacy protects communications from the scope of senders' control to recipients'. Thus, those e-mails which arrive at the communications service and have not been read are out of the protection of communication privacy. Last, although the Supreme Court held that Article 133-1 of the Code of Criminal Procedure applies

* S.J.D., Indiana University-Bloomington Maurer School of Law; Professor of Law, National Taipei University.
E-mail: rgli@mail.ntpu.edu.tw

to the obtainment of e-mails stored in communications service providers, due to the nature of e-mails, related provisions do not conform to the obtainment of e-mails. The Code of Criminal Procedure should to be revised accordingly; and, before the revision, related provisions should be interpreted and applied based on character of information.

Keywords: communication surveillance, e-mail, reasonable expectations of privacy, seizure, the third party doctrine, communication privacy