

The Norm of Government Remote Access to Search: A Normative Perspective of Taiwanese law

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Abstract

Computer technology today provides criminals with the ability to cloak themselves in the dark web, where, with their true identities and locations concealed, they are more emboldened and freer to commit their crimes. This new trend, referred to as “Going Dark”, impedes government efforts to track criminals, identify their true locations, and collect evidence of their criminal activity. Thus, in 2016, the United States Federal Rules of Criminal Procedure were amended to allow law enforcement to remotely access and search a target's computer or electronic storage media where the media or information has been concealed through technological means. This new amendment allows the government to “hack” into the suspect's electronic devices in order to determine identity and location, as well as to search the content of the devices.

This article will analyze this “remote access to search” amendment to the Federal Rules of Criminal Procedure. Additionally, we will seek to illustrate the constitutionality of remote access to search from a U.S. Constitutional perspective. The United States federal courts’ prevailing opinions hold that the “remote access to search” qualifies as a constitutional search, and is thus confined by the requirements of the United States Fourth Amendment. As a result, the remote access to search amendment could be a legislative model for Taiwanese criminal procedure, as we are facing the same types of problems during our investigations. Eventually, this article could help to provide a basic structure for new law, including warrant requirements, particularity requirements, minimization principle, the requirement to have exhausted all other investigative techniques,

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warrant execution period, reasonable efforts to give notice requirement, receipt for information seized or copied, delayed notice, the ex post judicial review, the exclusionary rule of evidence if the application procedure violated the warrant requirements, that both serve the needed public interest and protect the rights of our citizens.

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