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Judge Says Google Must Hand Over Search Records

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Firm Ordered to Comply With Narrower Subpoena

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A federal judge said yesterday that Google Inc. needs to turn over thousands of Web search records to the Department of Justice, which wants the information to prove that filtering software is ineffective at limiting children's access to online pornography.

The case, which gained attention when Google refused to comply with a subpoena issued last year, is one of the first tests of how much information the government will be able to access about the behavior of Web surfers.

The Mountain View, Calif., Internet company argued in federal court last month that the government's request could undermine public trust in the privacy of Google's service and expose its trade secrets.

But at a hearing in San Jose yesterday, U.S. District Judge James Ware said the government's narrower request for data -- 50,000 Web sites and 5,000 search queries instead of its original request for a week's worth of queries and a random sample of 1 million Web sites -- would impose less of a burden on the search firm.

According to wire service reports, Ware initially questioned why the government needed the random samples and said he didn't want to create the perception that Internet search engines and other large online databases could become tools for government surveillance.

Because the government was willing to revise its request and pay Google's engineers for the work, Ware said he would "grant some relief to the government."

The judge's comments yesterday "reflected our concerns about user privacy and the scope of the government's subpoena request," Google general counsel Nicole Wong said in a statement. "At a minimum, we've come a long way from the initial subpoena request."

The Justice Department issued subpoenas last year to get data that it believes will help defend the constitutionality of the Child Online Protection Act. America Online Inc., Microsoft Corp.'s MSN Network and Yahoo Inc. said they provided some of the data the government wanted and did so without compromising users' privacy.

The government said it is not seeking personally identifiable information about Internet users, but privacy advocates have questioned how far the government might go in tracking online behavior. Requiring a company such as Google to cooperate with such requests raises broader questions about companies being forced to act as an arm of law enforcement.

"It's really about the outsourcing of surveillance to these private companies, and the question is: How legitimate is that?" said Frank Pasquale, a professor at Seton Hall University School of Law. "There's the burden on Google, and then there's the burden on consumers and whether this is going to destroy people's notion of privacy."

But in an age when unauthorized wiretapping by the Bush administration has stirred controversy and new technologies such as electronic tags and spyware have become part of everyday life, there's a question of how much privacy consumers actually expect.

According to a new survey to be released Thursday by the Ponemon Institute LLC, Americans said they are bothered more by the government tapping their phone conversations than they are by video cameras in department-store dressing rooms or public restrooms. On the whole, those surveyed said they are more accepting of e-mail surveillance, passenger screening at airports and hidden traffic cameras.

"The American public, there are some things we really appear to care about; we hate spyware,

but we seem to accept other forms of surveillance," including one-way mirrors in department-store dressing rooms and cameras that monitor illicit or dangerous activities in public restrooms, said Larry Ponemon, chairman of the Ponemon Institute, the privacy research group that conducted the phone survey of 889 people.

Corporate monitoring of employees' e-mail and Internet searches for inappropriate content prompted disagreement from only 26 percent of those surveyed, while 72 percent said they would not want an Internet company to download software to capture information about online browsing and shopping behavior.

Two decades ago, nearly any form of supervision would have been socially unacceptable, but today, it seems more people are willing to cede their civil liberties, especially to corporations and increasingly to the government, he said.

"There are all sorts of data that, in the wrong hands, could be a civil liberties nightmare, but I think most people think the train left the station," Ponemon said.

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