



July 18, 2014

The Honorable Loretta A. Preska
Chief Judge
United States District Court for the Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

Re: Case No. 13-MAG-2814: In the Matter of a Warrant to Search a Certain Email Account Controlled and Maintained by Microsoft Corporation

Dear Judge Preska,

BSA | The Software Alliance (BSA)¹ respectfully submits this letter in support of the brief submitted by *amici curiae (amici)* Apple Inc. and Cisco Systems, Inc. supporting Microsoft's Objections to the Magistrate's Order denying Motion to Vacate Search Warrant in the above-referenced case.²

Amici filed their brief following the Magistrate's decision to uphold a warrant served upon Microsoft that directed the company to produce the contents of a customer's email account. Microsoft had determined that the data in question was held on a server in Ireland and had moved to quash that warrant to the extent it required the company to conduct an extraterritorial search.

As *amici* demonstrate in their brief, the Magistrate's decision to reject Microsoft's motion to vacate the search warrant:

- (1) fails to consider the conflicting obligations under foreign and domestic law that arise when courts order providers to produce data about foreign users stored in foreign countries;
- (2) improperly places the burden of reconciling conflicting international laws squarely on U.S. providers by omitting this evaluation and by dismissing the Mutual Legal Assistance

¹ BSA | The Software Alliance (www.bsa.org) is the leading advocate for the global software industry before governments and in the international marketplace. Its members are among the world's most innovative companies, creating software solutions that spark the economy and improve modern life. With headquarters in Washington, DC, and operations in more than 60 countries around the world, BSA pioneers compliance programs that promote legal software use and advocates for public policies that foster technology innovation and drive growth in the digital economy.

BSA's members include: Adobe, Altium, Apple, ANSYS, Autodesk, AVG, Bentley Systems, CA Technologies, CNC/Mastercam, Dell, IBM, Intel, Intuit, Microsoft, Minitab, Oracle, PTC, Rockwell Automation, Rosetta Stone, Siemens PLM, Symantec, Tekla, The MathWorks, and Trend Micro.

² Memorandum of Law in Support of Motion by Apple Inc. and Cisco Systems, Inc. to Participate as *Amicus Curiae* and Microsoft Inc.'s Motion to Vacate Search Warrant.

Treaty (MLAT) process out of hand with no factual findings regarding the Irish MLAT at issue;

- (3) places U.S. providers and their employees at significant risk of foreign sanctions and threatens a loss of customer confidence in U.S. providers generally; and,
- (4) encourages foreign law enforcement to take reciprocal actions by using equivalent foreign laws to require production of data stored in the United States, despite disclosure prohibitions in U.S. law.

BSA agrees with the arguments of *amici* and similarly asks that the court find that the law in question here, the Electronic Communications Privacy Act (ECPA), was not intended to apply extraterritorially and that principles of comity and reciprocity require the Government to comply with the MLAT process when foreign user data is stored abroad.

A handwritten signature in black ink, reading "Victoria A. Espinel". The signature is written in a cursive, flowing style.

Victoria A. Espinel
President and CEO