



DIRECTION GÉNÉRALE DE L'ADMINISTRATION
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SUJET

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Ce dossier comporte 1 page (page de garde non comprise).

Can the United States Search Data Overseas?

By **CRAIG A. NEWMAN** *The New York Times* FEB. 26, 2018

Should the United States government be able to conduct a search of your emails if they are stored on a server in another country, or does the government's right to examine digital evidence stop at the border?

That is a central question in *United States v. Microsoft*, a case scheduled to be argued on Tuesday before the Supreme Court.

Both sides in the case have legitimate concerns.

If the court sides with Microsoft and declines to allow searches for data stored in another country, the government will be hampered in investigating crimes like terrorism, child pornography and fraud.

If the court sides with the government and rules that it may demand data stored overseas by American companies, those companies will find it much harder to do business abroad. This is because many foreigners fear that United States warrants authorizing such searches will disregard privacy protections afforded by their country. The government of Germany has already indicated it will not use any American company for its data services if the court decides to allow searches.

For the United States technology industry, the stakes are high. Last year, the worldwide public cloud services market was estimated to be a \$246.8 billion business. Most of the leading companies in this sector are American: Amazon, Microsoft, Google, Oracle, IBM. If other countries were to follow Germany's lead, the economic consequences could be severe.

The Stored Communications Act, a 1986 law that governs the storage and disclosure of electronic communications by third parties, is outdated. Congress needs to act to ensure that technology companies can flourish overseas while law enforcement has the right tools to gather evidence worldwide.

The Supreme Court case goes back to 2013, when federal agents served a warrant on Microsoft, seeking email communications belonging to a drug trafficking suspect. Microsoft handed over the suspect's account information and address book, which sat on its servers in the United States, but refused to turn over any email content, which was stored at a data center in Ireland. Microsoft argued that the email content was outside the reach of United States law enforcement. The government countered that because Microsoft could retrieve the data in Ireland with a click of a mouse, without leaving its headquarters in Redmond, Wash., the email content was within its reach.

Only Congress can address the question, by writing an urgently needed new law... The guiding principle should be that the reach of any new law is defined by the citizenship and geographical location of the individual whose data the government seeks, rather the physical location of the data. This would allow for the right balance between global privacy rights and the needs of United States law enforcement.