

US government case against Apple would create broad precedent to override phone encryption

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Apple stated in a letter unsealed in court last Tuesday that it is facing requests from the US Justice Department to unlock twelve phones in addition to the phone of San Bernardino shooter Syed Farook. The revelation exposes the Obama administration's claim that it is not seeking a precedent for broader powers as a fabrication.

On February 16, a federal judge in central California ruled that Apple must design new software and provide it to the FBI, enabling the government to bypass security features on the iPhone. Apple has appealed the order, saying it would effectively enable the government to decrypt Apple phones at will in the future.

FBI Director James Comey asserted over the weekend that "the San Bernadino litigation isn't about trying to set a precedent or send any kind of message." The unsealed letter written by Apple's attorney, Marc Zwillinger, shows that the government had filed at least 12 similar requests, under the obscure 1789 All Writs Act, since September 24, 2015.

Zwillinger's letter was filed as part of a case in a federal court in Brooklyn involving a drug distribution ring. The judge in the case has questioned the prosecutor's argument that the All Writs Act gives courts the power to force Apple to assist the government in overriding security features in the phones.

In addition to the requests currently filed in court, law enforcement agencies and prosecutors across the country are hoping to use the court ruling to gain access to encrypted phones.

Manhattan District Attorney Cyrus Vance Jr, has said that his district alone has about 175 phones that they

cannot currently unlock. Vance advocated broad government access to encryption in order to fish beyond active criminal investigations. "What we discover is that investigation into one crime often leads into criminal activity in another, sometimes much more serious than what we were originally looking at," he said.

Vance has been joined by Rod Norgaard, assistant chief deputy in the Sacramento County District Attorney's Office, who said his county has "well over 100" phones they would like to unlock. In an interview with *Newsweek* he said he saw Apple "as no better than those who occupied federal land in Oregon."

In a note published on its web site on Monday, the company said that prosecutors nationwide have "hundreds of iPhones they want to unlock if the FBI wins this case" in California.

The White House has decided to fight Apple publicly in the San Bernardino case because of the high profile of the terror attacks late last year, which it hopes will create better conditions for establishing a precedent to expand government spying powers. The administration has also backed a private lawyer who has filed a brief on behalf of unspecified victims of the San Bernadino shooting.

The current conflict between the Obama administration and Apple is a planned effort to legally mandate a backdoor to all encrypted communication. Legislation to that effect was prepared last year in Congress. In internal e-mails, the top lawyer for the Office of the Director of National Intelligence wrote that while "the legislative environment" was not good at the time, it "could turn in the event of a terrorist attack or criminal event."

Apple had explicitly objected to at least seven similar court orders before the administration decided to make the February 16 ruling on the San Bernardino case a public battle.

The court orders for a government backdoor on phones rely on a tendentious reading of the All Writs Act of 1789, which allows judges to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” The administration has encouraged judges to interpret this so broadly that there is no effective limit on the writs they may issue.

The government seeks this new authority in order to expand its enormous spying apparatus. Apple had been readily cooperating with government programs like the NSA’s domestic spying. According to its own report, Apple received 11,000 requests from governments worldwide for information and complied in 7,100 of those cases in the first six months of 2015.

The Obama administration is pushing this issue because the impact of successfully compelling the decryption would extend far beyond one company that has frequently supported government surveillance.

Meanwhile, a poll released on Wednesday shows broad popular opposition to the government’s efforts to break encryption. The Reuters/Ipsos poll found that 46 percent of respondents said they supported Apple’s position, while only 35 percent said they backed the government.

When they were asked whether they thought the government would use its powers to unlock phones to “spy on iPhone users,” 55 percent said they agreed, and only 28 percent disagreed.

These figures are an expression of the popular hostility to the expansion of police-state spying powers and are a continuation of the broad support for Edward Snowden, who has been forced into exile by the Obama administration after exposing illegal and unconstitutional NSA spying programs.



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