

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

In the Matter of a Warrant to Search a Certain  
E-Mail Account Controlled and Maintained by  
Microsoft Corporation

**REDACTED**

Action Nos. 13-MAG-2814, M9-150

**Declaration Of Rajesh Jha**

I, Rajesh Jha, declare as follows:

1. I am a Corporate Vice President at Microsoft Corporation. I have worked for Microsoft since 1990. I began as a software design engineer. I have worked on various products and services throughout my Microsoft career. In my current position, I am responsible for leading Microsoft's Outlook/Office 365 Shared organization within the Application & Services Group. In this capacity I lead development and service engineering for Microsoft's Office 365 enterprise and Outlook.com consumer services, among several other engineering responsibilities. Outlook.com is the successor to Hotmail, and to MSN email services (i.e. the service at issue in this case.) I also lead the Application & Services Group's engineering teams in Norway and China. I have a master's degree in computer science from the University of Massachusetts, Amherst and a bachelor's degree in computer science from Indian Institute of Technology, Madras (Chennai). I have personal knowledge of the facts stated in this declaration.

2. Cloud computing is the use of connected computers and network resources to enable providers such as Microsoft, Google and Amazon to deliver computing resources to users as a service over the Internet. These services made available to the general public (or "public cloud services") can be operated at tremendous scale and provide users with the resources to run

applications, store data, or perform other computing tasks. Historically, businesses, governments and educational institutions were required to make substantial investments in their own computing hardware, software and infrastructure in order to provide their users with such computing capabilities. With the development, availability and adoption of public cloud services, the need for such investment is increasingly becoming unnecessary. Cloud services also ensure that customers always have the most up-to-date computing resources available.

3. This shift in computing has been transformative. It provides tremendous efficiencies to traditional computing-intensive enterprises by enabling them to invest resources in core purposes, as opposed to IT infrastructure. It also unleashes incredible productivity opportunities for enterprises that previously could not afford, or were otherwise unable to make, the investments in information technology that have generally been required. It has also provided tremendous value to consumers – who are able to use cloud computing to obtain free or inexpensive use of vast computer resources to access services, communicate with one another, and store their personal data.

4. Microsoft offers several enterprise public cloud services used by businesses, governments and educational institutions worldwide. These include, but are not limited to, Office 365 (a suite of software applications for commercial productivity services, including email and word processing), Microsoft Azure (platform and infrastructure resources to build, deploy and manage applications and services globally), and CRM Online (sales productivity and resource management services). Microsoft also offers consumer cloud services such as Outlook.com, which provides email and instant message communications to millions of users throughout the world.

5. Microsoft's enterprise cloud service offerings are made available in 100+ countries through a regionally segmented public cloud. This means that Microsoft's public cloud is segmented into regions, and most customer data (e.g. email, calendar entries, and documents) is generally contained entirely within one or more data centers in the region in which the customer is located. This is the most scalable, reliable and cost effective approach. We believe other large enterprise cloud vendors have taken a similar approach. Microsoft stores data for its major enterprise public cloud services in data centers throughout the world in North America, Latin America, Europe and Asia. Some of the countries in which we currently host customer data include the United States, Ireland, the Netherlands, Japan and Brazil. This regional implementation is driven by engineering and business capabilities and constraints, as well as key imperatives such as optimizing for performance and communications latency minimization to deliver outstanding user experiences. [REDACTED]

[REDACTED]

[REDACTED]

6. Microsoft's global datacenter footprint for its enterprise and consumer cloud services is one of the largest in the world, and growing rapidly to accommodate what we expect will be growing customer demand for our cloud services. We currently manage over one million server computers in our datacenters worldwide, in over 100 discrete leased and owned datacenter facilities, spread over 40 countries. Further, it is conceivable that to accommodate the broader shift to cloud computing, each of these numbers could double over the next several years. These facilities host more than 200 online services, used by over 1 billion customers and over 20 million businesses worldwide.

7. The transition to the cloud by consumers and enterprises worldwide is accelerating at a rapid pace. Consumers increasingly store pictures, video, communications and private documents in the cloud, and access cloud computing services as part of their everyday life. Businesses, governments and educational institutions are increasingly taking critical dependencies on public cloud computing solutions, and shifting their information technology investments to such offerings. Based on industry and analyst data, we believe public cloud services will grow significantly over the coming years, and at a much higher rate than the information technology industry as a whole. In 2013, International Data Corporation (IDC) forecasted worldwide spending on public cloud services to reach almost \$59 billion in 2014, with slightly less than half from outside of the United States. IDC also forecasted that information technology industry spend on public cloud services outside of the United States will be approximately \$60 billion in 2017. Further, growth of cloud adoption outside the United States is expected to surpass domestic growth, and public cloud spending outside of the United States will account for more than 55% of worldwide public cloud spending by 2017. This tremendous growth is fueled by the efficiencies and economic benefit that cloud computing promises. Relative to traditional information technology spend by enterprises, cloud services are estimated to save customers as much as 30% to 40% per year.

8. In the year since disclosures by Edward Snowden regarding surveillance practices by the United States Government, Microsoft partners and enterprise customers around the world and across all sectors have raised concerns about the United States Government's access to customer data stored by Microsoft. These concerns relate not only to the actual and perceived practices of the National Security Agency that have been described following the disclosures by Edward Snowden, but there is also clearly a heightened concern, as a general matter, about

United States government access to customer data stored in data centers located outside of the United States that are operated by United States cloud service providers. The notion of United States government access to such data – particularly without notice to the customer – is extremely troubling to our partners and enterprise customers located outside of the United States.

9. These concerns of our partners and customers located outside of the United States have manifested themselves in a number of ways. The concerns are often a substantive topic of discussion in briefings or contract negotiations, and they create friction in the sales process and have a chilling effect on the business. Some customers have delayed a transition to cloud services until the environment around these issues is more settled. Other customers have chosen to not purchase public cloud services from Microsoft at all, and have instead opted for a non-cloud solution. Both of the foregoing result in customers maintaining the status quo of an aging, uncompetitive, less secure and more expensive information technology infrastructure. Customers have also acquired cloud services from a provider based outside of the United States that is perceived as not being subject to United States jurisdiction.

10. Some of these customers referred specifically to the decision in this case by Magistrate Judge Francis as a basis for concern about the United States Government's access to customer data. Although this case involves consumer cloud services, namely Outlook.com email services, many of our partners and enterprise customers (e.g. business and foreign government enterprises) see the U.S. government's unilateral approach to obtaining private data in this case as a threat to the privacy and protection of enterprise data as well. This concern is greatly reduced when the U.S. government is perceived to be acting in cooperation with their counterparts in other governments (thereby ensuring local enterprises that they remain entitled to the privacy and procedural protections of their own governments).

11. This perception of unilateral United States Government access to customer data situated in data centers outside of the United States will in my belief have a substantive negative impact on our public cloud business model. Transition to the public cloud, whether by enterprises or consumers, requires trust in the cloud service provider to deliver a secure and reliable cloud service. An absolute imperative is that the cloud service provider protect the integrity and privacy of its customers' data. Microsoft has made significant investments in the security and reliability of its cloud services to protect customer data. Microsoft has also made significant capital investments in the establishment of data centers situated regionally throughout the world to address customer expectations relative to the location of data storage. Our customers around the world, through their decision to move to our cloud services, have demonstrated that they trust Microsoft and have confidence in the technical and operational safeguards we deploy to protect their data. However, in the wake of the Edward Snowden disclosures and the decision in this case by Magistrate Judge Francis, enterprises and consumers have also clearly indicated that the perception of unilateral government access to their data is undermining that trust and confidence.

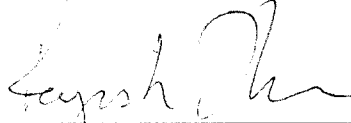
12. Ultimately, these concerns will impact the ability of Microsoft and other United States cloud providers to remain competitive in the global marketplace. To the extent foreign enterprises and consumers perceive that their data entrusted to United States cloud service providers, even when that data resides outside of the United States, is subject to unilateral access by the United States government, there will be increasing demand for national public clouds operated by cloud service providers perceived as not subject to United States Government jurisdiction. Microsoft and other U.S. companies will lose market share, and as a result, the

compelling opportunity that cloud computing offers to our customers through cost savings, productivity gains, and access to the latest information technologies will not be fully realized.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 5, 2014

Signed:   
Rajesh Jha