# WIKILEAKS: COURT UPHOLDS US SUBPOENA FOR TWITTER RECORDS

In a 21 page opinion, US Magistrate Judge Theresa Buchanan of the Eastern District of Virginia District Court has just granted the United States Department of Justice subpoena demand for records in the WikiLeaks investigation.

Three people associated with WikiLeaks – Jacob Appelbaum, Birgitta Jonsdottir, and Rop Gonggrijp – had petitioned the court to vacate the subpoena and to unseal the court pleadings. The court held:

> For the foregoing reasons, petitioners' Motion to Vacate is DENIED. Petitioners' Motion to Unseal is DENIED as to docket 10- gj-3793, and GRANTED as to the 1:11-dm-00003 docket, with the exception of the government attorney's email address in Twitter's Motion for Clarification (Dkt. 24), which shall be redacted. Petitioners' request for public docketing of the material within 10-gj-3793 shall be taken under consideration. An Order shall follow.

The three WikiLeaks individuals had argued the subpoena violated constitutional protections for free speech and association; the court disagreed. Appelbaum, Gonggrijp and Jonsdottir have already stated they will appeal.

You can read the full opinion here. I will be updating the post as I read the decision.

In December of last year, the US government, upon ex parte motion, moved the EDVA Court to enter a sealed Order ("Twitter Order") pursuant to 18 U.S.C. § 2703(d) of the Stored Communications Act, which governs government access to customer records stored by a service

provider. The Twitter Order, which was unsealed on January 5, 2010, at the request of Twitter, required Twitter to turn over to the US subscriber information concerning the accounts and individuals: Wikileaks, rop_g (Gonggrijp), ioerror (Appelbaum), birgittaj (Jonsdottir), Julian Assange, and Bradley Manning. Of those targets, the three individuals – Appelbaum, Gonggrijp and Jonsdottir objected and this decision has been pending since that time.

The first key to the case is the court found no standing for the petitioners since "content" was not being sought by the government:

> The Court holds that targets of court orders for non-content or records information may not bring a challenge under 18 U.S.C. §2704, and therefore, petitioners lack standing to bring a motion to vacate the Twitter Order.

As to the substance of the government's request for subpoenaed information, the court also found the petitioner's claims non-compelling:

> Notwithstanding petitioners' questions, the Court remains convinced that the application stated "specific and articulable" facts sufficient to issue the Twitter Order under §2703(d). The disclosures sought are "relevant and material" to a legitimate law enforcement inquiry. Also, the scope of the Twitter Order is appropriate even if it compels disclosure of some unhelpful information. Indeed, §2703(d) is routinely used to compel disclosure of records, only some of which are later determined to be essential to the government's case. Thus, the Twitter Order was properly issued pursuant to §2703(d).

As to the First Amendment claim, the court didn't like that much either:

> The Court finds no cognizable First Amendment violation here. Petitioners, who have already made their Twitter posts and associations publicly available, fail to explain how the Twitter Order has a chilling effect. The Twitter Order does not seek to control or direct the content of petitioners' speech or association. Rather, it is a routine compelled disclosure of non-content information which petitioners voluntarily provided to Twitter pursuant to Twitter's Privacy Policy. Additionally, the Court's §2703(d) analysis assured that the Twitter Order is reasonable in scope, and the government has a legitimate interest in the disclosures sought.

The First Amendment claim was bound to fail; far more disturbing and significant, however, is the ease with which the court dismissed the Fourth Amendment claim:

> Here, petitioners have no Fourth Amendment privacy interest in their IP addresses. The Court rejects petitioners' characterization that IP addresses and location information, paired with inferences, are "intensely revealing" about the interior of their homes. The Court is aware of no authority finding that an IP address shows location with precision, let alone provides insight into a home's interior or a user's movements. Thus the *Kyllo* and *Karo* doctrines are inapposite. Rather, like a phone number, an IP address is a unique identifier, assigned through a service provider.

Part and parcel of the court's process here involved a determination that when Twitter users create a Twitter account, they do so under the knowledge and information that IP addresses are among the kinds of "Log Data" that Twitter

collects, transfers, and manipulates and, therefore, should recognize that internet service provider's notice of intent to monitor subscribers' emails diminishes expectation of privacy. Effectively, because subscribers willingly give their IP addresses to service providers, like Twitter, as a condition of participation, they waive any Fourth Amendment privacy interest. That has pretty broad impact on the internet far beyond simply this case, even if it is not inconsistent with where the law in this area has been, and is headed toward, for a while now.

The last substantive area of the order addresses the demand for international comity by Birgitta Jonsdottir, who is currently a member of Iceland's Parliament. The court was having none of that either:

> Here, the Twitter Order does not violate this provision. It does not ask Ms. Jonsdottir to account for her opinions. It does not seek information on parliamentary affairs in Iceland, or any of Ms. Jonsdottir's parliamentary acts. Her status as a member of parliament is merely incidental to this investigation.

All in all, you would have to characterize the decision, substantively, as a complete loss for the Jonsdottir, Appelbaum and Gonggrijp. The only rewarding thing that appears easily on the surface here is that Twitter was successful in initially getting notification to the individuals so that they could at least file challenges. Save for that, not much fun here.