

Where you've been on Net not private, judge rules



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Presented by

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Justin Sullivan

An Ontario Superior Court ruling could open the door to police routinely using Internet Protocol addresses to find out the names of people online, without any need for a search warrant.

Justice Lynne Leitch found that there is "no reasonable expectation of privacy" in subscriber information kept by Internet service providers (ISPs), in a decision issued earlier this week.

The decision is binding on lower courts in Ontario and it is the first time a Superior Court-level judge in Canada has ruled on whether there are privacy rights in this information that are protected by the Charter.

The ruling is a significant victory for police investigating crimes such as possession of child pornography, while privacy advocates warn there are broad implications even for law-abiding users of the Internet.

"There is no confidentiality left on the Internet if this ruling stands," said James Stribopoulos, a professor at Osgoode Hall Law School in Toronto.

The ruling by Judge Leitch was made in a possession of child pornography case in southwestern Ontario.

A police officer in St. Thomas faxed a letter to Bell Canada in 2007 seeking subscriber information for an IP address of an Internet user allegedly accessing child pornography. The court heard that it was a "standard letter" that had been previously drafted by Bell and the officer "filled in the blanks" with a request that stated it was part of a child sexual exploitation investigation.

Bell provided the information without asking for a search warrant. The name of the subscriber was the wife of the man who was eventually charged with "possession of child pornography" and "making available child pornography."

Most ISPs in the country require search warrants to turn over subscriber information unless it is a child pornography investigation.

Ron Ellis, the lawyer for the defendant, stressed to the judge that there was no allegation of attempted luring or of a child in immediate danger. The "making available" charge stems from peer-to-peer websites that permit the downloading of images from other users.

Mr. Ellis argued that police should have been required to seek a search warrant to obtain the subscriber information.

Judge Leitch accepted the arguments of Crown attorney Elizabeth Maguire that the information is similar to what is in a phone book.

"One's name and address or the name and address of your spouse are not biographical information one expects would be kept private from the state," said Judge Leitch.

The reasoning of the judge misses the context of what police are seeking, suggested Mr. Stribopoulos.

"It is not just your name. It is your whole Internet surfing history. Up until now, there was privacy. An IP address is not your name; it is a 10-digit number. A lot more people would be apprehensive if they knew their name was being left everywhere they went," he said.

This information should require a search warrant by police if there is suspected criminal activity, said Mr. Stribopoulos. Judges are accepting the argument that this is "just your name" because "everyone wants to get at the child abusers," he said.

The federal Personal Information Protection Electronics Documents Act permits ISPs to provide this information to someone with "lawful authority," which Judge Leitch interpreted as meaning a police officer and not requiring a court ordered warrant.

There is an irony that exemptions in federal privacy legislation have been used to increase police powers and potentially reduce privacy rights, said Mr. Stribopoulos.

The trial of the defendant in St. Thomas will resume this spring. Mr. Ellis declined on Thursday to comment about the ruling because the case is ongoing.

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