



NEWS RELEASE

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FOR IMMEDIATE RELEASE: Monday, July 31, 2017
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Attorney General Jackley Joins Amicus Asking U.S. Supreme Court to Review Microsoft Data Case

PIERRE, S.D. – Attorney General Marty Jackley announced today he has joined 32 other State Attorneys General in asking the U.S. Supreme Court to rule that email service providers cannot shield evidence of a crime from law enforcement by storing data outside the United States.

“The South Dakota Internet Crimes Against Children (ICAC) Unit works diligently to protect our children. It is vital that information which can save and protect children be made available for state authorities,” said Jackley.

In the *Microsoft* case, a federal judge issued a search warrant under the Stored Communications Act (SCA), authorizing the search of a specific Microsoft Outlook email account. An email provider who receives a warrant under the SCA for evidence of a crime must disclose the requested data to the law enforcement agency. In this case, Microsoft argued compliance with the warrant was not required because the data was stored on a server in Ireland. Microsoft asserted it would be an impermissible extraterritorial application of the SCA to require the company to retrieve data from a foreign server, even though Microsoft could access that data from its offices in the United States. The U.S. Court of Appeals for the Second Circuit agreed with Microsoft and quashed the warrant. The federal government has asked the U.S. Supreme Court to review and reverse the Second Circuit’s decision.

The States argue that email providers around the country are relying on the *Microsoft* decision to refuse compliance with warrants issued under the SCA and similar state laws. The refusal to disclose email information that is housed outside the United States allows providers to deny disclosure of evidence in cases involving crimes committed in the United States. The brief argues that the Supreme Court’s review “is necessary to address the Second Circuit’s remarkable conclusion that a private company has unfettered discretion to shield evidence of crime from law enforcement, simply by electronically sending that evidence out of the jurisdiction.”