

discord—not to mention danger for U.S. citizens if other countries responded by subjecting them to foreign laws.

In our modern world, sometimes borders are irrelevant. Or are they? What should happen when the government wants access to information on a foreign server? You make the call.

## You Be the Judge

### Microsoft Corp. v. United States

829 F.3d 197

United States Court of Appeals for the Second Circuit, 2016

**Facts:** The Stored Communications Act (SCA) prohibits the government from accessing a user's electronic files without a warrant. But because Congress passed the statute in 1986—before the widespread use of the internet—it did not specifically state whether or not the statute applied overseas.

Microsoft operates Outlook.com, a free web-based email service. When Microsoft customers send and receive Outlook emails, the company stores the emails on a network of servers housed in datacenters in over 40 countries. Microsoft's system automatically determines which datacenter will store emails based on the user's self-reported country code. Once the data transfer is complete, Microsoft deletes all information associated with the account from its U.S.-based servers.

A federal judge issued an SCA warrant ordering Microsoft to disclose the contents of a particular user's email account. Because those emails were located in its Dublin datacenter, Microsoft refused to comply, arguing that the SCA did not apply to data housed abroad.

**You Be the Judge:** *Does the SCA authorize the U.S. government to obtain information from foreign servers?*

**Argument for Microsoft:** Your honors, the presumption *against* extraterritorial application of U.S. statutes is strong: Unless Congress specifically states that a statute applies overseas, courts must presume that it does not.

The information sought in this case is stored in Dublin. Enforcing the warrant would be an unlawful application of the SCA and an intrusion on the privacy of Microsoft's customer.

**Argument for the Government:** Nothing in the SCA's text, structure, purpose, or history indicates that Congress wanted to limit *where* electronic records could be seized. Preventing SCA warrants from reaching foreign servers would seriously impede U.S. law enforcement efforts. A wrongdoer could easily shield illegal content from the police just by reporting a different country code—a result that the SCA could not have intended.

## EXAMStrategy

**Question:** U.S. citizens Alberto Vilar and Gary Tanaka managed \$9 billion in investments through their companies, some of which were located in Panama. The two were arrested in the United States for a massive securities fraud: They had lied to their clients about investments—and used some of the money entrusted to them to repair their homes and buy horses. Vilar and Tanaka claimed that U.S. securities laws did not apply to sales that occurred outside the country. These laws were silent as to their application abroad. Do Vilar and Tanaka have a valid argument?