Google Refuses Demand for Search Information

Government Asked 4 Firms for Data in Effort to Revive Anti-Porn Law

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The Justice Department said yesterday that it subpoenaed four major Internet companies for data on what people search for on the Web as part of an eight-year battle over a federal law designed to shield children from online pornography.

Three of the companies responded to some degree, but Google Inc. said it was resisting the demand. Privacy advocates said the subpoenas raised deep concerns about the government's ability to track what ordinary people view on the Internet.

Attracted by the Internet's apparent anonymity, Americans have turned to the Web in growing numbers to view pornography and, according to one industry publication, spent $2.5 billion on online adult entertainment last year.

The government asked Mountain View, Calif.-based Google, which operates the world's most popular search engine, to turn over every query typed into its search engine over the course of one week without providing identifying information about the people who conducted the searches.

It also asked for a random sample of 1 million Web pages that can be searched in the vast databases maintained by Google, whose stated corporate mission is to "organize the world's information and make it universally accessible and useful."

While privacy experts said the requests appeared to have been tailored to try to protect the privacy of the millions of people who carry out searches, they said it could set a precedent for more intrusive future government demands. They also said it raised the question of just how much information Google stores about consumers.

"The real issue here is, is Google being deputized to spy on us? In this case, you could maybe argue that the spying is not that bad, because very little of it is personally identifiable, but what will the next case be?" said Richard M. Smith, a Boston-based software engineer who has written about the Internet age. "It's a terrible precedent."

Several privacy advocates said they did not object to government subpoenas in criminal cases in which someone is suspected of a crime, but they suggested that the latest demand was so broad it amounted to a fishing expedition.
"This is the government's nose under the search engine's tent. Once we cross this line it will be very difficult to turn back," said Marc Rotenberg of the Electronic Privacy Information Center, a District-based nonprofit group that advocates privacy protections. "If companies like Google respond to this kind of subpoena . . . I don't see why the next subpoena might not say, 'Give us what we asked for the last time -- plus a little more.'

"Google has always been a kind of ticking privacy bomb because Google retains personally identifiable information," he added. "Even though Google may intend to protect online privacy, there will be circumstances beyond their control that will place Internet users at risk, and they include government warrants, as in this case, or future security breaches which have plagued the financial services sector over the past couple of years."

The Justice Department issued subpoenas to four companies in August: Google, Time Warner Inc.'s America Online Inc., Microsoft Corp.'s Microsoft Network, and Yahoo Inc. News of the government subpoenas emerged this week when the Justice Department asked a federal court in California, where Google is based, to force the company to turn over the information.

The San Jose Mercury News reported on the filing on Thursday.

America Online, Microsoft and Yahoo said they had responded to the requests but stressed that they did not provide all the requested information.

"We complied on a limited basis and did not provide any personally identifiable information," Yahoo spokeswoman Mary M. Osako said. "In our opinion, this is not a privacy issue."

"We did provide the DOJ with some information that we thought would be of use to them, but it was not the information requested in the subpoena and there were no privacy implications for our users," AOL spokesman Andrew S. Weinstein said. The spokesman said AOL gave the Justice Department only a "generic list of aggregate and anonymous search terms."

"We did comply with the their request for data in regards to helping protect children in a way that ensured we also protected the privacy of our customers. We were able to share aggregated query data (not search results) that did not include any personally identifiable information at their request," a Microsoft spokesperson said in an e-mail.

The Justice Department issued the subpoenas in August as part of its effort to resurrect the 1998 Child Online Protection Act, a federal law that was designed to shield children from Internet pornography but whose enforcement has been blocked by a 2004 Supreme Court decision.

The law required that sexually oriented commercial Web sites take steps to keep minors out, such as requiring a credit card for entry. Visiting such sites has become a big business.

According to Nielsen-NetRatings, more than 38 million people -- or 25 percent of active U.S. Internet users -- visited an adult Web site in December. Adult Video News, the porn industry's trade magazine, estimates that Americans spent $2.5 billion on the Web for adult entertainment last year.

The Supreme Court held that the government had failed to prove that the law's criminal penalties would protect children without unduly limiting options for adults.
It sent the case back to the Philadelphia-based U.S. Court of Appeals for the 3rd Circuit for a trial that is due to begin in October.

Google has made it clear that it will resist the government's subpoena but said it was not doing so on privacy grounds.

"Google is not a party to this lawsuit and their demand for information overreaches. We had lengthy discussions with them to try to resolve this, but were not able to and we intend to resist their motion vigorously," Google associate general counsel Nicole Wong said in a written statement.

The company declined to further explain its position, but the Justice Department said in court documents that Google believes disclosing the information would divulge trade secrets.

The Justice Department said it needed the information to address a Supreme Court demand that it establish a "factual record" on which to buttress its argument that the 1998 federal law would be more effective than filtering software in preventing children from accessing adult material on the Internet.

The government argued that the Google data would, among other things, help it to understand what Web sites people can find using a search engine, to estimate how much "harmful-to-minors" content may be on those sites and to gauge the effectiveness of software in screening out such material.

Aden J. Fine, a staff attorney for the American Civil Liberties Union, which is part of a group that opposed the 1998 law in court on grounds that it violated the First Amendment, said Google was right to resist the demand.

"This is the latest example where the government seems to think they are entitled to get all sorts of information without providing an adequate justification," Fine said. "They have not explained exactly what they are going to do with this information and exactly why they need it. Until they do that, they are not entitled to get this information."

Staff writers Mike Musgrove and Yuki Noguchi contributed to this report.

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