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## Protecting Your Data When Travelling (Can They Search my Blackberry?)

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## Search and Seizure at the U.S. Border

The Fourth Amendment –

Protects the right of people to be secure in their persons, houses, papers and effects against unreasonable search and seizure. It also provides a basis by which warrants may be issued.

## The Exception

- ▶ **The Border Search Doctrine -**
  - ▶ Searches at the border in the ordinary course of inspecting do not require a warrant, probable cause or reasonable suspicion as these types of searches are considered routine
- ▶ **Routine Searches include:**
  - ▶ wallets, luggage, purses, pockets, etc.

## Border Search Doctrine: The Privacy Issue

- ▶ Electronic data storing devices i.e. laptops, BlackBerrys, etc., can involve more intrusive searching
- ▶ These devices hold personal information (i.e. trade secrets) in which the owner has a reasonable expectation of privacy and/or is subject to solicitor-client privilege

## The Law

▶ **United States v. Ickes, No.03-4907 (4th Cir. 2005)**

▶ **Facts:**

- ▶ Ickes drove to the Ambassador Bridge border. He told a U.S. Customs Inspector that he was returning from vacation. However, his van contained what looked like all of his possessions.

## The Law

▶ **United States v. Ickes, No.03-4907 (4th Cir. 2005)**

▶ **Facts (continued):**

- ▶ A routine inspection of his van was conducted. Customs inspectors confiscated and searched a computer and 75 disks.
- ▶ Ickes attempted to suppress the evidence obtained through the border search of his computer and disks.

## Held:

- ▶ The border search doctrine includes computers and disks
- ▶ A traveller's expectation of privacy is substantially lessened at the border

## United States v. Romm, No. 04-10648 (9th Cir. 2006)

- ▶ **Facts:**
  - ▶ Romm tried to enter Canada but was placed on a flight back to the U.S. by Canadian Border Service Agents after they learned he had a criminal record.
  - ▶ In Seattle, Romm agreed to an inspection of his laptop by customs officers. The officers arranged for a forensic analysis of the laptop's hard drive.
  - ▶ Romm attempted to have the evidence obtained through the border search of his laptop suppressed.

## **Held:**

- ▶ **The border search doctrine:**
  - ▶ includes the forensic analysis of a laptop, and
  - ▶ is not limited to cases where the searching officer has reason to suspect the traveler may be carrying foreign contraband.
- ▶ **Border searches are reasonable simply by virtue of the fact that they occur at the border**

## **United States v. Arnold** **(Dist. Ct. for the Central District of California 2006)**

- ▶ **Facts:**
  - ▶ After arriving from the Philippines, Arnold was selected for questioning by border inspection officers. His luggage included a laptop, hard drive, CDs, and a memory stick. After asking Arnold to turn on his laptop inspectors began to view a number of folders
  - ▶ Arnold argued that a warrantless search of his computer violated his Fourth Amendment right

## Held:

- ▶ Searches of one's private and valuable personal information is an intrusion into the dignity and privacy interests of a person.
- ▶ They are akin to intrusions into the mind since electronic devices hold a large volume of personal information (i.e. trade secrets and confidential client information) and function as an extension of our own memory.

## Held:

- ▶ Any border search of information stored on a person's electronic storage device must be based, at minimum, on a reasonable suspicion.

## How do these Decisions Affect you...

- ▶ **You must operate under the assumption:**
  - ▶ that laptops and other electronic data storing devices are subject to a border search, and
  - ▶ that any confidential information stored on these devices is vulnerable to search and nothing therein is deemed private
  
- ▶ **You and your lawyer should take precautions to secure confidential information**

## Solutions

1. Laptop:
  - ▶ **Encrypt data**
  - ▶ **Ensure that when travelling you do not use your personal laptop**
  - ▶ **Use a virtual private network to access your organization's network (remote access)-travel with a laptop with no information**
  - ▶ **Use a flash disk to initiate connection and ensure all files are stored on the home network**

## Solutions

### 2. BlackBerry:

- ▶ Erase emails before leaving the country
- ▶ Deactivate your Blackberry while travelling
- ▶ Reactivate after you have crossed the border

## Conclusion

- ▶ Take the proper precautions to ensure confidential information remains secure when travelling
- ▶ The key is to recognize the type of electronic device you are using and ensure that it does not reveal any information you intend to keep confidential