

Computer Crime Law
Professor Ohm

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Stored Communications Act (SCA) Problems

Assume that a federal law enforcement agent (e.g., an FBI agent) seeks information from online sources in the following eight, unrelated cases. For each fact pattern, list the type of information sought, identify the online provider that likely holds the information, discuss whether the SCA applies and, if so, explain what form of process will comply with section 2703. Discuss also whether the online source can legally volunteer the information consistent with section 2702.

Caveats to answers below:

1. I did these in a hurry, so I may have made mistakes, and the descriptions are not very detailed.
2. In many of these cases, the police would want real-time surveillance, too, which I have ignored.

1. A victim reports seeing a death threat posted to a discussion board hosted by MessageBoardz.com.

Info sought: The IP address of the computer used to post the threat.

Provider: The person who administers MessageBoardz.com

2703: Definitely non-content. IP address probably falls under (c)(2)(E), so basic subscriber information. Row five of chart on page 640. Need subpoena, d-order, or warrant. No notice required.

2702: Presumably to the public, so cannot volunteer. Might fall within emergency exception.

2. A legally seized web server reveals that illegal contraband had been posted on the web, and the investigation turns to those who downloaded the contraband.

Info sought: Information about the person whose account was assigned that IP address on that date/time.

Provider: Search the IP address in a public lookup and find the ISP responsible for assigning it. That ISP is the provider.

2703: Definitely non-content. IP address probably falls under (c)(2)(E), so basic subscriber information. Row five of chart on page 640. Need subpoena, d-order, or warrant. No notice required.

2702: Presumably to the public, so cannot volunteer.

3. A victim reports receiving a death threat via email addressed from badguy@gmail.com.

Info sought: The IP address of the computer used to access the account. Other subscriber info associated with account. Copies of email messages stored in the account (opened, unopened, <= 180 days, > 180 days). Possibly other information from related services (Google Docs, Picasa, Calendar).

Provider: Google

2703: IP address and other subscriber info probably Row 5, same as problems above.

Copies of email: Probably governed by Theofel, so everything <= 180 days is in Row One, requires warrant. Everything > 180 days obtainable with warrant, d-order with notice, or subpoena with notice (but Warshak might suggest otherwise.) Some content stored in other/RCS services (Picasa, Docs, Calendar) might also be obtainable with subpoena/d-order with notice.

2702: To the public, so cannot volunteer. Might fall within emergency exception.

4. A confidential informant tells agent that John Smith at 123 Main Street in Anytown, USA, uses online communications services to coordinate a massive drug conspiracy.

Info sought: What IP address is the connection at the house using (not clear this is useful info)? Info about email account if subscriber is using broadband provider's email service.

Provider: Find out whether local cable/telco provides broadband to house.

2703: IP address obtainable with subpoena/d-order/warrant. Email info as in answer to problem 4.

2702: To the public, so cannot volunteer without exception.

5. The person using cell phone number 202-303-7461 is suspected of smuggling people in a truck across the US/Mexico border.

Information sought: Local/Long-distance call records. Other subscriber information. Historical location. Stored voicemail? Associated Internet information (IP address, usage logs).

Provider: Public lookup to find provider who administers the number.

2703: call records and other subscriber info all Row Five, subpoena/d-order/warrant.

Stored voicemail treated like email, so row 1/2 (or three if Theofel doesn't control). Internet information as in answer to problem 4. Historical location information maybe with d-order, but some judges have required warrant.

2702: To the public, so cannot volunteer without exception.

6. St. Louis serial killer case (involving Expedia.com map).

Information sought: What IP address has access this particular part of your map?

Provider: Expedia.com

2703: Probably Row 5, so IP address obtainable with subpoena/d-order/warrant.

2702: To the public, so cannot volunteer without exception.