

Class 11: Federal/State Power and International/Foreign

Stored Communications Act

Empirics

Not a lot of real-time surveillance

AO Report

Table 6 is key

Google reports shedding lots of new light on retrospective surveillance

Twitter and MS now too

Why are they releasing this info?

Surprised by numbers?

A. Criminal Prohibitions

18 USC 2701

"Electronic Communications Service"

"Remote Computing Service"

What is not an ECS/RCS?

CNN?

Amazon?

B. Definitional Boundaries

Social Networking Sites?

Facebook

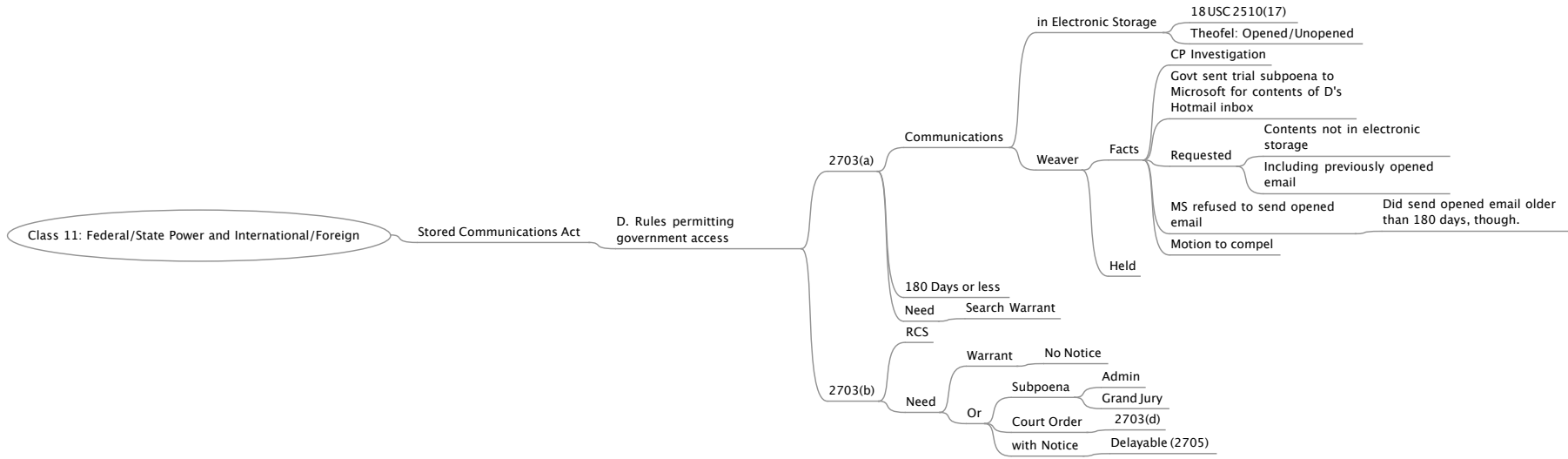
Twitter

LinkedIn

Google?

D. Rules permitting government access

18 USC 2703



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Stored Communications Act

D. Rules permitting government access

2703(d) Order

3d Circuit CSLI Case

Government used D order

Held

A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation.

2703(c)

ECS or RCS

"subscriber to or customer of such service"

(2) Basic Subscriber Information

Need

Subpoena, Order, Warrant

(3) No Notice

(1) "A Record or other information"

Need

Order or Warrant

(3) No Notice

Recap on 638-39 focuses on what you can get with any particular type of process

And chart on 640 should be studied

18 USC 2702

Voluntary access

Prohibition in 2702(a)

What providers?

ECS and RCS

"To the public"

Anderson v. UOP

Relevant Facts

Company provides email accounts to own customers
Also provided accounts to consultants / future litigation adversaries

Held

Contents of Communications

May not divulge unless within exceptions in 2702(b)

Record or other Information

Exceptions in 2702(c)

Exceptions

Consent

(b)(3) and (c)(2)

Provider

(b)(5) and (c)(3)

Emergency

(b)(8) and (c)(4)

E. Remedies

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SCA Hypos

1. A victim reports seeing a death threat posted to a discussion board hosted by MessageBoardz.com.
 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.
 - ✉ 3. A victim reports receiving a death threat via email addressed from badguy@gmail.com.
 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.
 5. The person using cell phone number 202-303-7461 is suspected of smuggling people in a truck across the US/Mexico border.
 6. St. Louis serial killer case (involving Expedia.com map).
- If more time
4. Anonymous imposter (671, Note 11)
 5. McVeigh (Note 9, Page 670)

