

NSA Mass Surveillance: US Government wants to intervene in European Facebook-Case

In an unusual move the United States government has asked the Irish High Court today, to be joined as an amicus in a case between the Austrian privacy activist and lawyer Max Schrems and the social network Facebook. The US government likely wants to defend its surveillance laws before the European Courts and highlighted the significance of the case for the United States before the High Court. The US administration has previously argued that European Courts have misrepresented the surveillance laws applicable to US tech companies, when data reached the US.

US government under oath in foreign court. It is understood that the US will try to defend its mass surveillance systems and fight against, what it perceives as “misinterpretations” of US surveillance laws and practices ([see previous statements](#)). The US intends to become an “*amicus curiae*”.

Compared to diplomatic talks with the EU and EU member states, as well as public statements in the United States, it will not be protected by US laws on confidentiality and be placed under oath. The party that gives evidence on behalf of the US government could therefore face severe consequences, if he does not truthfully answer all questions raised on US mass surveillance.

Schrems: *“This may be a unique opportunity for us. I therefore very much welcome that the US government will get involved in this case. This is a huge chance to finally get solid answers in a public procedure. I am very much looking forward to raise all the uncomfortable questions on US surveillance programs in this procedure. It will be very interesting how the US government will react to the clear evidence already before the court.”*

German: “Das könnte eine einmalige Chance für uns sein. Ich begrüße daher, dass die US-Regierung sich an dem Verfahren beteiligt. Es ist eine großartige Möglichkeit endlich solide Antworten in einem öffentlichen Verfahren zu bekommen. Ich freue mich schon, all die unangenehmen Fragen zur US-Massenüberwachung in diesem Verfahren stellen. Es wird sehr interessant wie die US-Regierung auf die klaren Beweise reagiert.”

AmCham, BSA and IBEC also want to join landmark procedure. In addition to the US government, representatives of the tech industry have also appeared in the court. The American Chamber of Commerce, Business Software Alliance and the Irish Business and Employers Confederation also asked to join the procedure, as these organizations’ members use the same legal basis to transfer data to the United States as Facebook.

Background. For reasons of tax avoidance, Facebook’s international operations for all users outside of the US and Canada (about 82% of all worldwide users) is based in Dublin Ireland. The Irish Facebook office (“Facebook Ireland Limited”) then transfers all user data to Facebook USA.

Schrems argues that Facebook may not send his personal data from Facebook’s international headquarters in Dublin, Ireland to the United States, as the data may be subject to US mass

surveillance programs, such as the “PRISM” program. Under EU privacy laws personal data may not be sent to a foreign country unless “adequate” protection of the data is ensured.

Schrems succeeded with his claim at the Court of Justice of the European Union (CJEU) on October 6th of last year (see judgement [C-362/14](#)). Facebook based his data transfers on the so-called “Safe Harbor” system between the EU and the US. The CJEU has invalidated the “Safe Harbor” system, because of concerns over far-reaching US mass surveillance of Facebook data.

Since the invalidation of “Safe Harbor” Facebook has moved to so-called “model contracts” (more [here](#)) as a legal basis to transfer data to the United States. Schrems, along with many legal experts, argues that this shift in the legal basis does not remedy the fact that Facebook is still subject to US mass surveillance laws and programs, which the CJEU already found to be conflicting with EU law.

The complaint was brought back before the Irish Data Protection Commissioner (DPC), who has recently informed the parties that he will file a procedure with the Irish High Court. The application by the DPC is aimed at (again) seeking further clarification by the CJEU on conflicts between the “model contracts” used by Facebook and US surveillance laws.

Schrems: “We are right now seeking all relevant documents from the DPC, which we have so far been denied without reason. After receiving the submissions from Facebook we will be able to take a position on the application by the Irish DPC. Only then we will be able to assess if this case should be dealt with by the CJEU.”

German: “Wir verlangen jetzt mal alle relevanten Akten von der irischen Datenschutzbehörde, welche uns bisher ohne Grund verweigert wurden. Nachdem wir die Vorbringen von Facebook erhalten haben, können wir dann eine klare Position zum Antrag der Datenschutzbehörde einnehmen. Erst dann können wir einschätzen ob dieser Fall wirklich zum EuGH gehen muss.“

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More Info: http://www.europe-v-facebook.org/EN/Complaints/Model_Contracts/model_contracts.html