

## SAN FRANCISCO

### Judges OK warrantless monitoring of Web use

#### Privacy rules don't apply to Internet messages, court says

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Federal agents do not need a search warrant to monitor a suspect's computer use and determine the e-mail addresses and Web pages the suspect is contacting, a federal appeals court ruled Friday.

In a drug case from San Diego County, the Ninth U.S. Circuit Court of Appeals in San Francisco likened computer surveillance to the "pen register" devices that officers use to pinpoint the phone numbers a suspect dials, without listening to the phone calls themselves.

The U.S. Supreme Court upheld the use of pen registers in 1979, saying callers have no right to conceal from the government the numbers they communicate electronically to the phone companies that carry their calls.

Federal law requires court approval for a pen register. But because it is not considered a search, authorities do not need a search warrant, which would require them to show that the surveillance is likely to produce evidence of a crime.


They also do not need a wiretap order, which would require them to show that less intrusive methods of surveillance have failed or would be futile.

In Friday's ruling, the court said computer users should know that they lose privacy protections with e-mail and Web site addresses when they are communicated to the company whose equipment carries the messages.

Likewise, the court said, although the government learns what computer sites someone visited, "it does not find out the contents of the messages or the particular pages on the Web sites the person viewed."

The search is no more intrusive than officers' examination of a list of phone numbers or the outside of a mailed package, neither of which requires a warrant, Judge Raymond Fisher said in the 3-0 ruling.

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Defense lawyer Michael Crowley disagreed. His client, Dennis Alba, was sentenced to 30 years in prison after being convicted of operating a laboratory in Escondido that manufactured the drug ecstasy.

Some of the evidence against Alba came from agents' tracking of his computer use. The court upheld his conviction and sentence.

Expert evidence in Alba's case showed that the Web addresses obtained by federal agents included page numbers that allowed the agents to determine what someone read online, Crowley said.

The ruling "further erodes our privacy," the attorney said. "The great political marketplace of ideas is the Internet, and the government has unbridled access to it."

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