No Privacy In Use Of Gmail, Google Admits

Article by Neil Guthrie
Borden Ladner Gervais LLP

A class proceeding against Google Inc is underway in California, in which it is alleged that Google violates federal wiretap and state privacy laws when it deploys an automated process to analyse a Gmail user's e-mail messages and send targeted advertising based on the content of the user's communications. Google has argued that its processes are fully disclosed and expressly or implicitly consented to by consumers, as well as being protected from liability under wiretap legislation under specific exemptions for activities conducted in the ordinary course of business: In Re Google Inc Gmail Litigation (ND Cal, case no 5:13md-02430-LHK, hearing date 5 September 2013).

That may well turn out to be true, but what has attracted attention is Google's admission in its motion to dismiss the class complaint that there is 'no legitimate expctation of privacy in information [a party] voluntarily turns over to third parties', including an e-mail provider like Google. In the company's view, even customers of other providers who exchange e-mail communications with Gmail users 'impliedly consent to Google's practices by virtue of the fact that all users of email must necessarily expect that their emails will be subjected to automatic processing'. Google likens its practices to the sending of snail mail: 'Just as a sender of a letter to a business colleague cannot be surprised that the recipient's assistant opens the letter, people who use web-based email today cannot be surprised if their communications are processed by the recipient's ECS [electronic communciation service] provider in the course of delivery.'

You can bet the people at the National Security Agency like that statement.

About BLG

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.