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INTEREST OF AMICUS CURIAE

Infor is a leading technology company, headquartered in New York City, that provides enterprise software solutions and applications to more than 70,000 customers in over 200 countries. Infor's offerings are fundamentally changing the way information is published and consumed across businesses and sectors around the world. Infor has many cloud-based offerings, including "Infor Cloudsuite," which is a collection of industry-specific cloud applications available on Amazon Web Services' cloud. Infor Cloudsuite consists of several cloud-based technologies designed for specific industries across the public and private sectors, including the aerospace, high tech, pharmaceutical, fashion, hospitality, professional services, health delivery, and automotive industries. Amazon Web Services hosts Infor offerings and its customers' data both inside and outside the United States, including in Ireland and Australia. Infor also maintains corporate datacenters in multiple countries outside the United States, including Australia, China, Germany, India, Japan, the Netherlands, the Philippines, Singapore, Sweden, and the United Kingdom.

Infor has a substantial interest in this matter because it values the privacy of its customers and it is committed to providing highly secure cloud-based applications and software. The reach of electronic search warrants issued under the Electronic Communications Privacy Act of 1986, 18 U.S.C. § 2701 *et seq.*, is of substantial concern for Infor, its partners, and its customers.

INTRODUCTION

Courts around the country continue to restrain government overreaching in the search and seizure of digital information. *See, e.g., Riley v. California*, 573 U.S. ___, 2014 WL 2864483, at **19-20 (June 25, 2014) (protecting digital privacy rights and holding that warrants are generally required for police to search cell phones, even those seized incident to arrest); *In the Matter of the Search of Information Associated with [Redacted]@mac.com that is Stored at Premises Controlled by Apple, Inc.*, 2014 WL 1377793, at **1, 3 (D.D.C. Apr. 7, 2014) (rejecting electronic search warrant application as overbroad and lacking particularity); *United States v. Barthelman*, 2013 WL 3946084, at *11 (D. Kan. July 31, 2013) (same). Recognizing the heightened privacy risks inherent in the digital age, courts have warned that the search and seizure of vast amounts of electronic information require particular scrutiny. *See, e.g., United States v. Galpin*, 720 F.3d 436, 447 (2d Cir. 2013) (emphasizing that, in light of the “serious risk that every warrant for electronic information will become, in effect, a general warrant,” digital searches require “heightened sensitivity”); *United States v. Otero*, 563 F.3d 1127, 1132 (10th Cir. 2009) (“The modern development of the personal computer . . . increases law enforcement’s ability to conduct a wide-ranging search into a person’s private affairs, and accordingly makes the particularity requirement that much more important.”).

The Government’s instant request improperly overreaches in seeking data across international borders. The Government seeks authorization, under the Electronic Communications Privacy Act of 1986 (the “ECPA”), 18 U.S.C. § 2701 *et seq.*, to search and seize electronic communications from any and all of Microsoft Corporation’s “premises” worldwide—that is, from more than one million server computers in more than 100 datacenter facilities across over 40 countries around the world. (*See* 04/25/2014 Mem. and Order, at 3-4, ECF Doc. No. 5 (Francis, *J.*); 06/05/2014 Decl. of Rajesh Jha ¶ 6, ECF Doc. No. 17). The

Government's request defies the purpose and intent of the ECPA, the well-established presumption against extraterritoriality, time-honored principles of state sovereignty, the United States' law enforcement agreements with foreign governments, and the substantial harm that such searches and seizures will cause to U.S. businesses and diplomacy. Courts in the United States do not have the authority to execute U.S. search warrants in foreign countries—and Congress has neither recognized nor granted such authority through the ECPA.

In the age of “the cloud”—a global infrastructure that, among other things, allows customers to remotely access information and media held in large datacenters worldwide—digital information is commonly stored and accessed across international borders. U.S. and foreign companies, governments, and individuals are housing vast quantities of valuable, sensitive, and confidential data in locations around the world. *See* Vivek Kundra, U.S. Chief Information Officer, The White House, *25 Point Implementation Plan to Reform Federal Information Technology Management* 6-7 (2010); Matt Williams, *45 Percent of Local Governments Using Cloud Computing*, Gov't Tech. (Apr. 21, 2010); John B. Horrigan, The Pew Charitable Trusts, Pew Research Internet Project, *Cloud Computing Takes Hold as 69% of All Internet Users Have Either Stored Data Online or Used a Web-Based Software Application* 2 (2008). The innovations presented by the digital age, however, do not afford U.S. law enforcement with the unprecedented power to reach across international borders to execute warrants searching and seizing electronic communications. The Government's search warrant must be vacated.

ARGUMENT

I. Infor Joins The Arguments Set Forth In The *Amicus Curiae* Briefs Of Verizon Communications, Inc., Apple Inc., And Cisco Systems, Inc.

Infor joins the following arguments set forth in the *amicus curiae* brief submitted by Verizon Communications, Inc.: (1) the Stored Communications Act should not be given extraterritorial effect; (2) the magistrate’s ruling would harm American businesses, undermine international agreements and understandings, and spur retaliation by foreign governments; and (3) a search and seizure takes place where the data is stored and from where the data is obtained, not where the data is observed, reviewed, or analyzed by law enforcement. (*See* 06/10/2014 Mem. of Law of *Amicus Curiae* Verizon Communications, Inc., at 2-11, ECF Doc. No. 29).

Infor also joins the following arguments set forth in the *amicus curiae* brief submitted by Apple Inc. and Cisco Systems, Inc.: (1) international law, international comity, conflicts of law, state sovereignty, and U.S. agreements and treaties with foreign governments must be considered; and (2) existing Mutual Legal Assistance Treaties (“MLATs”) between U.S. and foreign governments are valuable instruments in governing law enforcement cooperation and investigations across international borders, *see* Exec. Rep. 107-15 (2002) (MLATs with Belize, India, Ireland, and Liechtenstein); Treaty Between the Government of the United States of America and the Government of Ireland on Mutual Legal Assistance in Criminal Matters, U.S.–Ireland, Jan. 18, 2001, T.I.A.S. 13137. (*See* 06/13/2014 Mem. of Law of *Amicus Curiae* Apple Inc. and Cisco Systems, Inc., at 5-14, ECF Doc. No. 51).

II. U.S. Technology Companies Will Be Substantially Harmed Should ECPA Warrants Apply Extraterritorially.

“The cloud” is the new frontier for information technology. Cloud computing powers the U.S. and global economies, affecting virtually every sector and community imaginable. “Cloud computing is the capacity of Internet-connected devices to display data stored on remote servers

rather than on the device itself.” *Riley*, 2014 WL 2864483, at *16. The cloud model allows customers to access information held in large datacenters over the Internet from any location. Steve Lohr, *The Business Market Plays Cloud Computing Catch-Up*, *The New York Times* (Apr. 14, 2011). In addition to housing and distributing digital services, the cloud model involves Internet technologies that juggle computing workloads more economically, quickly, and efficiently than ever before, reducing the costs of data connection by about half. *Id.* For example, if a company’s online platform suddenly experiences a surge in visits, the cloud model is able to meet this increased demand real-time so that systems are not overwhelmed and unexpected outages and service disruptions do not occur. *See* Vivek Kundra, U.S. Chief Information Officer, The White House, *25 Point Implementation Plan to Reform Federal Information Technology Management* 6-7 (Dec. 9, 2010).

For these reasons, companies and governments around the world use enterprise software and the cloud to house valuable, sensitive, and confidential data in locations around the world. This data could include a hospital or healthcare company’s private medical records, a government agency’s classified information, streaming media and entertainment, intellectual property, and patented designs. In 2010, recognizing the value of enterprise software, the U.S. government announced that it would shift to a “Cloud First” policy; it has since become the largest single customer for cloud computing goods and services. *See id.* By the end of this year, cloud revenue is estimated to reach \$55.5 billion. Steve Lohr, *The Business Market Plays Cloud Computing Catch-Up*, *The New York Times* (Apr. 14, 2011).

Holding that the Government can search and seize information from the datacenters of U.S. companies located around the world will harm U.S. innovation and cloud-related businesses. Such a holding will discourage existing and potential customers from entrusting U.S.

companies with their valuable property and it will discourage U.S. businesses from developing new and innovative forms of technology—the very harms that compelled Congress to enact the ECPA in the first instance. *See* S. Rep. No. 99-541, at 5 (1986); *see also* Mark Scott, *Irked By N.S.A., Germany Cancels Deal With Verizon*, *The New York Times* (June 26, 2014). If U.S. and foreign companies and governments turn to foreign cloud-providers, the U.S. will surely lose billions of dollars. In addition, such a holding will cause international friction, undermine the United States’ agreements with foreign countries, and may expose U.S. companies to repercussions abroad.

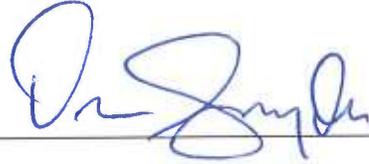
CONCLUSION

For the foregoing reasons, we respectfully urge this Court to vacate the search warrant.

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Respectfully submitted,

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