

FOR IMMEDIATE RELEASE



March 5, 2016

For additional information:

Ladar Levison, Founder, at ladar@lavabitllc.com

Jesse Binnall, Esquire, at jbinnall@harveybinnall.com

Lavabit Files Court Brief Supporting Apple

Riverside, CA--Lavabit's motion to file a brief in support of Apple was granted by a federal judge in California. The amicus brief, often referred to as a friend of the Court brief, argues that Apple is correct in resisting the FBI's attempt to force the company into building a cyber weapon capable of unlocking encrypted iPhones. The brief argues there is no basis in statutory law, or case law, which allows the federal government to conscript Apple engineers, and compel the use the company's encryption keys. The brief continues by arguing the extraordinary assistance being demanded of Apple would require them to breach the moral obligation they have to protect the sensitive data on every customer's iPhones, and that forcing the company to breach this sacred trust will have a significant financial impact. Finally, the brief went on to demonstrate that even such statutory authority existed, the FBI's request would violate the rights guaranteed to Apple by the First and Thirteenth Amendments to the U.S. Constitution.

The FBI "is not simply seeking information about a single iPhone user," explains Lavabit in the brief. "The Government is demanding that, under penalty of law, a private entity be required to engineer, test, and produce custom software using Apple's highly valuable intellectual property to obtain data stored on an individual's iPhone... If Congress had intended that private entities and individuals be forced to provide such extraordinary assistance to Government investigations, Congress would have passed a law to that extent."

In explaining other pitfalls in the FBI's plan, the brief states that consumers, "rely on [companies like Apple] to ensure that their information will remain private, secure, and away from the prying eyes of hackers, dictators, and others who would compromise their privacy for nefarious purposes." The brief continued by explaining that "Doctors use the devices to store confidential medical information. Lawyers use the devices for privileged communications with their clients." And that "ordering Apple to construct a new operating system that can be forcefully loaded on an individual's iPhone means coercing Apple, to violate the sacred trust it has built with its customers."

Trust, however, isn't the only thing at stake in this case. So is our collective and continuing responsibility to defend the contract which binds our country together: the United States Constitution. "The Government's position violates Apple's Constitutional right to free speech and to be free from involuntary servitude," explained Lavabit. "Apple is being compelled to provide speech that contravenes its fundamental beliefs, that is, the belief that its customers should have the highest level of security and privacy in their personal data. The proposed action will also violate the Thirteenth Amendment by forcing Apple to perform labor against its will. The Government's proposed use of the All Writs Act, therefore, is unconstitutional as applied to Apple."

“In simpler terms,” stated Lavabit founder Ladar Levison in discussing the brief, “this attempted use of the All Writs Act is a blatant and unabashed attempt to circumvent Congress, and pass a heaping pile of bovine feces off as edible. In fact, the FBI is using a hard case in an attempt to force bad law on the American people. We were all horrified by the attack in San Bernardino. The American people, however, should not have to sacrifice their rights to privacy and digital security as a result.”

Lavabit also explains in its brief that the Thirteenth Amendment, which formally ended slavery and other forms of involuntary servitude, applies to this case. Lavabit was quick to point out that it was not equating this dispute in any way with the horrors of slavery, but rather the more generic prohibition against anyone, the Government included, from forcing people to perform labor against their will. The case law on this matter is quite clear, the Government may not conscript American citizens into their service beyond a handful of well established, and very specific circumstances, none of which are applicable in this case.

“Even if the authority to compel such extraordinary assistance was constitutional, then it is the sole responsibility of Congress to mutilate the economic potential of American technology companies by imposing such an obligation,” said Levison. “We are pleased that Congress has rejected such authority on multiple occasions. Even the Obama administration has decided against pushing for such legislation.”

Lavabit is a former provider of secured e-mail services and is no stranger to privacy disputes with the Department of Justice. In 2013, the Government sought extraordinary assistance from Lavabit in the form of access to encrypted e-mails stored on Lavabit’s servers. Like this case, the FBI sought access to data, which was encrypted with a user’s password (as opposed to Apple’s case where the data is protected by a much less secure 4 to 6 digit pin code), and like this case, tried to compel the use of Lavabit’s private encryption to unlock the data in question. “While goal was the same,” explained Mr. Levison, “the Lavabit case required the FBI to intercept a user’s password, in deference to the background and skills of their target, which led them to believe a brute force approach was impractical. As such, the FBI was required to intercept, decrypt, inspect, and potentially modify, whether intentionally, or accidentally, all of the data traveling between Lavabit and its customers. Their goal was to record the user’s password upon their target’s next login, and suggests an approach the FBI will use when they encounter an iPhone where they can’t brute force the password. That is, if the court grants them the precedent they are currently seeking in this case.” After a federal court, acting behind closed doors, issued an order forcing Lavabit to sacrifice its SSL encryption keys, Mr. Levison chose to suspend the operation of the encrypted email service. While legal and technological issues in play with the Apple case are different, both “stem from the same sense of entitlement”, stated Mr. Levison, “to gain unfettered access to every American’s private data, and their willingness to use any means necessary to defeat encryption, without regard for the harm it might cause innocent parties.”

The entire brief can be found on the Lavabit website:
[\[http://lavabit.com/files/Lavabit.Amicus.Brief.20160303.pdf\]](http://lavabit.com/files/Lavabit.Amicus.Brief.20160303.pdf).

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