

DOJ BELIEVES OUTCRY OVER SUBPOENAS EQUATES AN ADVERSE RESPONSE

Yesterday, WikiLeaks revealed it had just been notified by Google that DOJ subpoenaed all the records of 3 staffers 2 years ago. Today, WaPo provides some details on Google's efforts to fight the gag orders that have prevented them from informing customers about such subpoenas.

It reveals that EDVA imposed a gag for WikiLeaks subpoenas after the Twitter one that caused such a stink years ago because "the resulting publicity" from that Twitter subpoena "was a disaster for them."

"The U.S. attorney's office thought the notice and the resulting publicity was a disaster for them," Gidari said. "They were very upset" about the prosecutor's name and phone number being disclosed, he said. "They went through the roof."

About the same time that the Twitter story broke, Google was served with a separate order for the data of Jacob Appelbaum, a WikiLeaks volunteer and security researcher. Google wanted to inform him, but prosecutors balked.

"There was a lot of pushback from the government because they also were getting pressure from the people who got served from Twitter," Gidari said. "The U.S. attorney's office is like, 'Hell no, we'll fight you forever.' "

For the next four years, "Google litigated up and down through the courts trying to get the orders modified so that notice could be given," he said.

As EFF's Hanni Fakhoury noted on Twitter, this

basically means the government is arguing that some harassment and popular criticism about the decision to subpoena WikiLeaks amounts to an adverse result:

- (2) An adverse result for the purposes of paragraph (1) of this subsection is—
 - (A) endangering the life or physical safety of an individual;
 - (B) flight from prosecution;
 - (C) destruction of or tampering with evidence;
 - (D) intimidation of potential witnesses;
or
 - (E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

I'm not excusing harassment, but DOJ is effectively prioritizing avoiding criticism over rights to notice, including (especially in the case of Jacob Appelbaum) to an American citizen.