

## **Sens. Wyden, Paul, Baldwin, Daines, Tester: Stopping Mass Hacking (SMH) Act**

### **Background**

Recently, at the request of the Department of Justice (DOJ), the U.S. Federal Courts recommended an **administrative change** to Rule 41 of the Federal Rules of Criminal Procedure (Rule 41). The changes have been approved by the Supreme Court, and pursuant to the Rules Enabling Act the amendments take effect on December 1, 2016 *absent Congressional action*.

### **What Rule 41 Does**

Rule 41 governs how law enforcement can obtain a search warrant. The amendments to Rule 41 make it easier for DOJ to **obtain warrants for remote electronic searches**. DOJ requested two main changes:

- Provide a magistrate judge with the authority to issue a warrant for remote electronic searches of devices located anywhere in the world **when** law enforcement doesn't know the location of the device.
- Give a judge the authority to issue a **single warrant that would authorize the search of multiple, potentially thousands or millions of, devices that can cover any number of searches in any jurisdiction**.

### **Remote Electronic Searches Concerns**

For law enforcement to conduct a remote electronic search, they generally need to plant malware in—i.e. hack—a device. By allowing a single judge to issue a single warrant for any number of searches, this Rule change **will allow DOJ to hack as many as ten thousand or a million computers with the order of a single judge**. Devices will be subject to search if their owners were victims of a [botnet attack](#) – so the government will be treating victims of hacking the same way it treats the perpetrators. The public doesn't know nearly enough about how law enforcement executes these hacks, how (or whether) a victim would be notified of the search, and what risks these types of searches will pose. **By compromising the computer's system, the search might leave it open to other attackers.**

### **Privacy and Fourth Amendment Concerns**

These types of remote electronic searches (hacks) are rarely disclosed. In addition, there is little case law on how they should be approved by judges. The dramatic expansion of the scope and reach of these searches open up a host of privacy, and Fourth Amendment concerns.

### **These are substantive issues Congress should address, not to be simply made by an obscure administrative body**

Even if, as DOJ asserts, these Rule changes are merely a “venue change,” they are a venue change with **very significant policy implications**. These issues are far too serious to be implemented without full debate by the American public and their elected representatives.

For more information, see comments by [ACLU](#), [Google](#), [EFF/Access](#), [OTI](#), [CDT](#), [NACDL](#), the security researchers [Bellovin, Blaze, and Landau](#), and the [Agenda Books](#) from the U.S. Courts.