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Second Circuit Says Government Can't Seize Electronic Data Now, Keep It Forever, and Search It Later

When law enforcement officials execute warrants for electronic data, they usually create a mirror image of hard drives and other electronic storage media. In recent years, it has become more common for law enforcement to keep every bit and byte they obtain from doing so. But the Second Circuit's June 17 opinion in *United States v. Ganias* should put a stop to this practice, thanks to the successful advocacy of Day Pitney's Stanley A. Twardy Jr., Daniel E. Wenner and John W. Cerreta.

In *Ganias*, federal agents obtained a search warrant to search the computers of Stavros Ganias, a CPA, for evidence regarding purported wrongdoing by an accounting client. Instead of taking Ganias's computers, the agents mirror-imaged three hard drives, which included large quantities of data outside the warrant's scope. Twenty-three months later, when the agents decided to pursue an investigation of Ganias himself, they obtained a new search warrant and used it to search those mirror images for evidence of alleged wrongdoing by Ganias. The trial court denied Ganias's suppression motion, and the evidence found on the mirror-imaged hard drives was used to convict him. Ganias appealed the denial of his pretrial suppression motion.

On appeal, Day Pitney argued that this practice effectively turned lawful search warrants into unlawful general warrants, thereby contravening the Fourth Amendment. The Second Circuit agreed, reversing the denial of suppression and vacating Ganias's conviction. The court held that even in the face of changing technology, the Fourth Amendment does not permit officials to seize and indefinitely retain electronic files outside a warrant's scope. As a result, the government will no longer be allowed to retain indefinitely mirror-image files seized outside the scope of a lawful warrant.

For a summary of the opinion, click here. To read about the importance of the opinion, click here, here, here or here. To read the opinion, click here.