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Cloud computing, one of the major technological advances of the early twenty-first century, has already brought about tremendous economic and social benefits. In essence, cloud computing takes advantage of the Internet to connect users to a vast “cloud” of interlinked servers, data storage systems, and other digital devices located all over the world. Whereas the user of a computer was once limited to the processing power, storage capacity, and programs within her own machine, cloud computing offers her seamless access to virtually unlimited power and data storage, along with applications tailored to her needs.

The growth and enormous potential of cloud computing make the challenged provisions of the Stored Communications Act all the more troubling. The government’s ability to engage in surreptitious searches of homes and tangible things is practically and legally limited. But the Act allows the government to search personal data stored in the cloud without ever notifying an account owner that her data has been searched. And it empowers the government, upon a minimal showing, to obtain a gag order from a court preventing cloud computing service providers like amici from informing their customers or anyone else that the data has been turned over. Even worse, those gag orders often have no specified end date. These provisions—and the resulting proliferation of indefinite gag orders—are harmful for a number of reasons. First, surreptitious searches of the personal information stored in cloud accounts invade the Fourth Amendment privacy rights of amici’s customers. Second, the specter of surreptitious searches may chill customers from using cloud computing in the first place, dampening a promising technology and the potential for further innovation. Finally, the gag orders violate the First Amendment rights of amici to speak on a matter of public concern—the nature and prevalence of electronic surveillance. There may well be some circumstances in which a narrowly tailored and time-limited gag order is justified, but the Act’s authorization of gag orders sweeps far too broadly. As a result, the public will lack the information it needs to address the problem of surveillance through democratic means. Amici therefore submit this brief in support of Microsoft and in opposition to Defendants’ motion to dismiss.

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