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## Court allows e-mail interception

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ASSOCIATED PRESS

**BOSTON** - In an online eavesdropping case with potentially profound implications, a federal appeals court ruled it was acceptable for a company that offered e-mail service to surreptitiously track its subscribers' messages.

A now-defunct online literary clearinghouse, Interloc Inc., made copies of the e-mails in 1998 so it could peruse messages sent to its subscribers by rival Amazon.com Inc. An Interloc executive was subsequently indicted on an illegal wiretapping charge.

An advocacy group said Tuesday's ruling by the 1st U.S. Circuit Court of Appeals opens the door to further interpretations of the federal Wiretap Act that could erode personal privacy rights.

"It puts all of our electronic communications in jeopardy -- voice mail, e-mail, you name it," said Jerry Berman, president of the Center for Democracy and Technology. "I think it violates the letter and spirit of the statute."

Another group, the Electronic Frontier Foundation, said in a statement that the court "dealt a grave blow to the privacy of Internet communications."

In a 2-1 decision, the Boston-based appeals court upheld a federal judge's dismissal last year of a wiretapping charge against a former Interloc vice president, Branford C. Councilman.

According to his 2001 indictment, Councilman directed employees to write computer code to intercept and copy all incoming e-mails from Amazon.com to Interloc's subscribers, who were dealers seeking buyers for rare and out-of-print books. Amazon.com did not then offer used books but offered customers help in tracking down rare books.

The government alleged that Interloc tried to exploit the Amazon e-mails "to develop a list of books, learn about competitors, and attain a commercial advantage."

But Councilman argued that no violation of the Wiretap Act had occurred because the e-mails were copied while in "electronic storage" -- the messages were in the process of being routed through a network of servers to recipients.

The wiretapping law broadly protects eavesdropping on messages that are not stored -- such as an unrecorded phone conversation -- but does not afford the same legal protections to stored messages. The 1968 law was amended in 1986 to address emerging computer technologies.

In a dissenting opinion on Tuesday's ruling, Appeals Court Judge Kermit V. Lipez wrote that upholding Councilman's arguments "would undo decades of practice and precedent regarding the scope of the Wiretap Act and would essentially render the act irrelevant to the protection of wire and electronic privacy."

Prosecutor Gary Katzmann declined to comment, as did Amazon.com.

Although Councilman fought his indictment, prosecutors did win guilty pleas from two other defendants, including Alibris Inc., an Emeryville-based online rare-book broker that acquired Interloc in 1998. Alibris paid a \$250,000 fine, said Andrew Good, Councilman's attorney in Boston. A message left with an Alibris representative was not immediately returned.

The other guilty plea came from Interloc's former computer systems administrator, who was placed on probation.

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