Kilpatrick

Insights: Publications

Digitizing The Private Search Doctrine: Is A Computer A Container?

Note, 44 Hastings Const. L.Q. 371

MARCH 31, 2017

The digital era has ushered in a new age, where the technology of today is almost instantaneously surpassed by the ideas of tomorrow. As America embraces this digital evolution, the law becomes paralyzed and unable or unprepared to adapt to the new demands of digital devices. New Fourth Amendment search and seizure issues--not previously contemplated--continue to develop. This Note addresses the issue of the circuit split among the U.S. Courts of Appeals over the scope of the Private Search Doctrine as it applies to information stored or viewed in digital media devices (e.g., cell phones, computers, hard drives, etc.). The Private Search Doctrine allows the government to conduct a warrantless follow-up search, on the heels of a private search, without violating the Fourth Amendment. However, the circuits are split as to the constitutional limits on government conduct for a follow-up search of digitally stored material subsequent to an initial private search.