
Backdooring Investment Security (On the Apple Case)

By Jennifer Woods, John L. Hines, Jr. / Feb 24, 2016

There's lots of talk about information security with the Apple case. But, perhaps just as important, the case also raises important concerns relating to *investment* security and to the predictability of our markets and laws.

The government wants to bypass the security features of an iPhone, but it can't without its attempt to obtain access potentially destroying the possibility of access. So now, the government is asking a court to allow it to conscript Apple programmers to write code that allows access -- new code that defeats the very code that Apple wrote to prevent unauthorized access.

The legal regimes underpinning US intellectual property help create incentives to match the huge investments required to create the amazing technologies epitomized by Apple. And indeed Apple, many would argue, is the gold standard: its designs, its trademarks and its technology are recognized and used around the world. Apple's coders met market demand, here and abroad, by creating a technology that has afforded end users a high level of information security along with the iPhone's other features.

There is a delicate balance between innovation, market forces and the law. The government's request puts this balance not into the hands of Congress (who thus far has failed to act), but into those of a single District Court Magistrate Judge. There is lots of back and forth on the potential impact of this technology rewrite -- the claim that it is limited to one phone and contrary claims that suggest that the rewrite may ultimately make consumers less secure. But in theory - and if not with Apple then with the next technology company - executing this type of request may degrade the IP and/or the reputation of the company in the eyes of the consuming and investing public.

Yes, this case is about security, but it's also about the technology that created the secure space, the intellectual property laws that protect the technology, Apple's enterprise value and the reasonable expectations of shareholders. The world business community will be watching how Apple and the government join issue over the next few days and weeks. It is no exaggeration to say that this case implicates a core aversion to takings of property and conscription that is fundamental to our Bill of Rights.