

**APPLE INCORPORATED v THE U.S. GOVERNMENT**

Some years ago, four senior officials of The Independent Commission Against Corruption (ICAC) showed up, unexpectedly, at the offices of a small Hongkong newspaper.

The ICAC officials ‘*requested*’ a discussion with the Editor of the newspaper.

On being seated in front of the four senior, ICAC officials in the newspaper’s conference room, the officials, sitting on one side of the table, the Editor and two members of the newspaper’s staff on the other side, the Editor was asked whether or not he/the newspaper would be willing to assist the ICAC on matters, relating to certain investigations, undertaken, from time to time, by this interdependent branch of the Hongkong Government.

The Editor, who was, also, the sole shareholder of the newspaper, flatly refused to assist the ICAC.

And there the meeting ended, with the ICAC officials, leaving the newspaper’s Wanchai office in somewhat of a huff.

At that meeting, the Editor had requested one member of his editorial staff to be a witness since he had no idea as to the reason for the impromptu visit of this, the most-feared of any law-enforcement body of British Colonial Hongkong, as the territory was often called in those bygone days.

The ICAC has, always, had wide-sweeping, investigatory powers that The Royal Hongkong Force – now known, only, as the Hongkong Police Force – did not have.

The other staff member, present at that meeting, was involved in administrative matters, only.

After the ICAC meeting had been concluded, this editorial staff member turned to the Editor and said that the newspaper should have been more than willing to cooperate with the ICAC, claiming, among other things, that it would be in the best interests of the newspaper so to do: ‘*Who knows how it could be helpful to us, later on,*’ this journalist suggested with a smirk.

The ICAC’s suggestion, the Editor said, was tantamount to the newspaper, being seen as working for and on behalf of the ICAC; and, it would follow that the newspaper would gravitate as being seen as having become an adjunct of the Hongkong Government.

And a newspaper’s job is to report the facts, accurately, objectively and impartially, without fear or favour.

To assist the ICAC would be contrary to the newspaper’s sworn mandate to its readers.

**In The United States of America**

Today, in The United States of America, a judge of the US District Court of Los Angeles, California, has made a determination to the effect that Apple Incorporated must provide ‘*reasonable technical assistance*’ to the Federal Bureau of Investigation (FBI) in respect of the FBI’s efforts to obtain intelligence from a specific iPhone.

The FBI is the domestic intelligence and security service of The United States of America. It, simultaneously, serves as the country's prime federal law enforcement organisation.

According to Mr Tim Cook, Chief Executive of Apple Incorporated, the FBI is demanding that Apple Incorporated '*build a back door to the companies' iPhones.*'

The FBI maintains that new encryption procedures permit terrorists to '*go dark*' from surveillance that has been approved by the Court, making it difficult for its operatives to conduct criminal and national security investigations.

This matter came to a head, following the mass shootings at the San Bernardino County Department of Public Health on December 2, 2015.

On that fateful day, 14 people were killed and another 22 people were seriously injured in a terrorist attack.

Mr Syed Rizwan Farook and his wife, Tashfeen Malik, were later shot to death by police after it had been confirmed that they had been responsible for the mass killings.

In their investigation of the terrorist attack, the police discovered an iPhone, belonging to a US Government agency in which Mr Syed Rizwan Farook had been employed.

Further investigations led to the discovery that this was the iPhone that was used by Mr Syed Rizwan Farook.

Since locating this iPhone, the FBI has been unable to extract useful intelligence from it due to the encryption features that are installed in all of iPhones of Apple Incorporated.

The Ruling of the US District Court of Los Angeles does not seek to switch off the iPhone's encryption features, but it does Order Apple Incorporated to create special, unique software, the object of which is to circumvent an element of the iPhone's security system that, automatically, erases all data on the electronic device if a password is entered, incorrectly, 10 consecutive times.

This new, specially designed Apple software, if created, would permit the FBI to break into the iPhone, formerly used by Mr Syed Rizwan Farook, and, thus, obtain that which the law-enforcement agency is seeking.

From the point of view of Apple Incorporated, to bow to the demands of the FBI Court Order could be construed as being tantamount, de facto, to making Apple Incorporated as an adjunct of the FBI.

And, it would follow that Apple Incorporated would be seen as having acted contrary to the company's sworn remit to its many tens of millions of customers, worldwide.

To reiterate the remarks of the Editor of that small, Hongkong newspaper of days of yore, private-sector companies are not – and should never become – an '*arm*' of any governmental department or of any law-enforcement agency.

If the US Government is able, covertly or overtly, to force the door open – even a tiny crack – of a private-sector company's proprietary invention, or any part, thereof, that corporate entity, having not committed any crime, it would, in effect, be seen as the company, assisting the US Government.

By so doing, while the US Government might well have achieved its goal, but at what cost to the management of that private-sector company?

One might speculate as to what might follow in the months and years to follow in respect of that private-sector company's public persona.

At what point may one claim that governmental interference in the activities of law-abiding, private corporate entities is right and proper?

While it is not known, at this time, as to what threats were made by the FBI to Management of Apple Incorporated in the event that the law-abiding, private-sector company did not assist the FBI in its quest, it seems only reasonable to assume that, prior to the Ruling of the US District Court of Los Angeles, Mr Tim Cook was apprised as to the determination of the FBI and of the consequences to Apple Incorporated unless it acquiesced.

Coercion is but one of the many tools available to many of the Governmental agencies of The United States of America.

This is well known and appreciated.

It is the practice, also, in the Hongkong Special Administrative Region (HKSAR) of the People's Republic of China (PRC), as Hongkong is, today, known, internationally.

Precedent-setting, legal actions, such as those that are being foisted upon Apple Incorporated, today, will have a long-ranging effect, without question.

Internationally, the outcome of this case will be carefully discussed, debated and analysed and, like a fungus, the definitive decision of the highest court of The United States of America will be spread, far and wide.

Fortuitously, Apple Incorporated is a very wealthy company with its coffers, overflowing, and, as such, it can well afford the legal fees, associated in taking the Government of The United States of America to the highest court.

Not all companies, however, are as wealthy as Apple Incorporated and, as such, coercion could well win the day in respect of private-sector, corporate entities that are not well heeled – especially with regard to the extent of the coercion that must have been applied at the senior management level of Apple Incorporated from the FBI or, in the case of that small, Wanchai-based, HKSAR newspaper, the ICAC.

The Co-Founder of Microsoft Corporation, Mr Bill Gates, has gone on record, stating, inter alia:

*'The extreme view that Government (meaning the Government of The United States of America) always gets everything, nobody supports that. Having the Government be blind, people don't support that.'*

Perhaps, Mr Donald J. Trump, the multi, US dollar billionaire, the Republican candidate to become the next President of The United States of America, should have the last word in respect of this precedence-setting, legal case that could well lead to surveillance software, becoming legal tender by any government in order to spy on anybody, anywhere in the world, without having to apply for a Court Order so to do:

*'Who do they (Apple Incorporated) think they are? They have to open it (the company's iPhones) up.'*

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