



«Hey Mr. Terrorist, you can use me for propaganda!»

[WhatsApp itself said]



Workshop 3

Service provider/law enforcement cooperation on cybercrime and electronic evidence





These slides reflect the position of the Author as Italian Public Prosecutor, not necessarily official positions of the T-CY Cloud Evidence Group.



The investigation (started in January, 2016)

- six suspects for the crime of international terrorism under art. 270-*bis* of the Italian Penal Code
- two of them were already in the IS territory as foreign fighters



The communication system between IS and Italy

- the two guys in the IS territory as foreign fighters were using WhatsApp in order to communicate with the others living in Italy
- According to the first investigation results, they usually contact themselves every 15 days via WhatsApp





Have you ever heard the sound of a mobile phone during its physical destruction? (April, 2016)

- during a house wiretapping, we discovered that one of the guys in Italy decided to destroy her mobile phone because she was afraid to be traced by the Police
- considering that a WhatsApp communication flow from IS territories to Italy could be continued anyway, the Judicial Police valuated the hypothesis to ask the undelivered messages (held in WhatsApp's server) to the Isp



The investigative problems

The Judicial Police referred to me the results of the house wiretap

We looked for the WhatsApp's emergency procedure policy, without any results

In accordance with the Public Prosecutor, the Judicial Police decided to directly contact the Isp

They found only this «useful» contact:
WhatsAppLEC@zwillgen.com.

953
4-2-24 2015



RAGGRUPPAMENTO OPERATIVO SPECIALE CARABINIERI
- Reparto Anticrimine di Milano -



TEL 02/6276.6000 - FAX 02/6276.6080 - rosacm@carabinieri.it - smi34261@pec.carabinieri.it

N. 102/23-2015 di prot.llo

Milano, Mercoledì 13/04/2016

WhatsApp Inc
650 Castro Street, Suite 120-219
Mountain View

CALIFORNIA
WhatsAppLEC@zwillgen.com

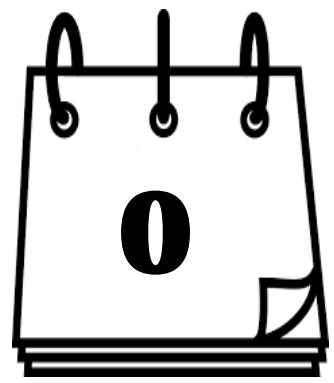
1. In a criminal file of the Milano Prosecutor's Office on Foreign Fighters, it is necessary to request WhatsApp, Inc. to provide the above mentioned Prosecutor's office with the some information regarding the WhatsApp profile hereinafter detailed ID: +39  .-
2. It would be appreciated if you could provide the undelivered messages held in WhatsApp's server related to the above mentioned profile. In case you need a Subpoena Request, it would be appreciated if you could freeze the messages just for the limited time to receive the formal request by the Prosecutor.
3. Your early attention to this matter would be appreciated.

Thanks in advance for the cooperation

IL COMANDANTE 



13 April 2016





15 April 2016

102/23-1-2015
Posta Reparto A/C Milano

Da: /@zwillgen.com>
Inviato: venerdì 15 aprile 2016 09:08
A: Posta Reparto A/C Milano
Cc: whatsappLEC
Oggetto: WhatsApp IR N930 / RE: Procedimento Penale nr. 283/16 RGNR - Information Request



RECIBO
CC SMI34261 0004231 15-04-2016
CSP: 4.2.24 Prof. Arma: 102/23-1/2015

CARABINIERI MILANO
15 APR 2016
POSTA IN ARRIVO

102/23-1-2015

Thank you for your inquiry to WhatsApp. We are outside counsel for WhatsApp Inc. and are following up regarding a request for user data you sent to WhatsApp. Please be advised that WhatsApp is a U.S. company and that all of its data is stored inside the U.S. As such, WhatsApp only responds to valid legal process issued by a U.S. governmental entity or court and properly served on it in the U.S. To achieve this as non-U.S. law enforcement, you will need to work through an applicable MLAT, letter rogatory, or other process for international cooperation. For more information, you may wish to contact the Office of International Affairs at the U.S. Department of Justice.

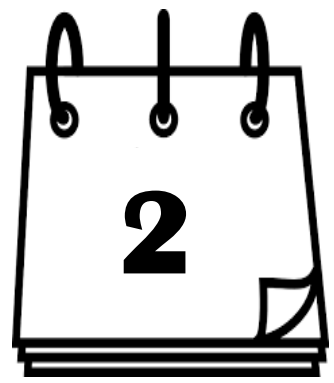
If you have any follow up questions, please email whatsapplec@zwillgen.com.

Respectfully,



ZwillGen Law LLP
235 Montgomery Street, Suite 425
San Francisco, CA 94104

ZwillGen Law



The Law of the Internet Landscape

We have built a strong practice counseling leading internet and tech companies and handling their high profile online legal issues. Our scope of experience gives our clients the fullest range of services to tackle emerging legal threats and the ever changing business environment.



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BURNER



NOW HIRING





The investigative problems (reprise)

The Judicial Police reported me the answer they received

We looked for the WhatsApp's emergency procedure policy, without any results

Milan, 20th April 2016

Subject: WhatsApp IR N930/RE: Procedimento penale nr. 283/16 RGNR – Information Request

Dear Sir,

I've received your kind reply to the request of the Italian Judicial Police, herewith attached, regarding an investigation about foreign fighters.

I thank you to advise me that *"WhatsApp is a U.S. Company and that all of its data is stored inside the U.S."*.

Considering that WhatsApp is offering its services to European citizens and in order to better understand the legal framework you have recalled in your reply, I'd like to receive the text of the WhatsApp's emergency procedure in case of requests regarding terrorism activities, if there is any.

I'm sure you will understand the reasons for considering my request as extremely urgent.

Best Regards,

Francesco Cajani

Deputy Public Prosecutor, High Tech Crime Unit
Counter Terrorism Department
Court of Law in Milan (Italy)



20 April 2016

Cajani Francesco



26.4.2016

Da: ligen.com]
Inviato: lunedì 25 aprile 2016 22:37
A: Cajani Francesco
Cc: paolo.storoni@carabinieri.it; whatsappLEC
Oggetto: RE: WhatsApp IR N930/RE: Procedimento penale nr. 283/16 RGNR - Information Request
Allegati: image002.png; image003.png

Il Sostituto Procuratore della Repubblica
Dr. Francesco Cajani



25 April 2016

Dear Mr. Cajani:

The one exception to this policy is for emergency situations where there is a clear and imminent risk to human life. If you believe it is an emergency situation where there is a clear and imminent risk to human life, we ask you to please provide answers to the below six (6) questions to assist WhatsApp in determining whether to exercise its discretion to disclose information to you pursuant to 18 U.S.C. § 2702(b)(8) and § 2702(c)(4).

1. What is the nature of the emergency involving death or serious physical injury?
2. Whose death or serious physical injury is threatened?
3. What is the imminent nature of the threat? Please provide information that suggests that there is a specific deadline before which it is necessary to receive the requested information and/or that suggests that there is a specific deadline on which the act indicated in response to Question 1 will occur (e.g., tonight, tomorrow at noon).
4. What specific information in WhatsApp's possession related to the emergency are you seeking to receive on an emergency basis? SPECIFY THE WHATSAPP ACCOUNT NUMBER (INCLUDING COUNTRY CODE) FOR WHICH THE INFORMATION IS BEING REQUESTED. (Note: Please do not respond by asking for everything WhatsApp has in its possession as such response will likely result in delaying or denying this request.)
5. Please explain/describe how the information you request will assist in averting the threatened death or serious physical injury.
6. If a message that was sent from a WhatsApp account is the basis for the belief that there is a risk of imminent harm, please attach a copy of the message(s) to this form.

Respectfully,



IT'S HERE. Download the new AP NEWS app



<http://bigstory.ap.org/>

Prosecutors says IS ordered Italian resident to attack Rome

By COLLEEN BARRY Apr. 28, 2016 11:43 AM EDT

MILAN (AP) — Italian police have arrested four suspects in a foreign fighter investigation, including a Moroccan-born man living in Italy who had received Islamic State orders to carry out attacks on Rome during Holy Year, prosecutors said Thursday.

Milan prosecutor Maurizio Romanelli told reporters that investigators intercepted communications from within IS territory ordering attacks in Italy, "with particular attention to the city of Rome" and focusing on the Holy Year pilgrimage now underway.

He said the messages promoting lone-wolf attacks were "very strong, very serious and very efficient," indicating that Islamic State's current policy is to push for attacks in locations where foreign fighters are residing "as the best way of creating terror within Western countries."

Interior Minister Angelino Alfano told Sky TG24 "there was a serious intention to hit Italy," and while they weren't yet involved in the material preparations for an attack, "there was a decision, an accentuated willingness, to proceed."

Romanelli said authorities acted quickly to close the investigation, arresting four people in the northern Lombardy region and issuing arrest warrants for two others believed to be in IS territory.

"This is a new profile, because it was not a generic indication, but an indication given to a specific person who was invited to act within the territory of the Italian state," Romanelli said.

He said the death in battle late last year of a foreign fighter with ties to the group within IS territory had contributed to the radicalization process. The fighter had been expelled from both Italy in 2015 and later from Switzerland before traveling to IS territory, where he was killed.

Italian Premier Matteo Renzi praised the anti-extremists operation as "very important."

Milan, 28th April 2016

Subject: WhatsApp IR N930/RE: Procedimento penale nr. 283/16 RGNR – Information Request

Dear  ,

I thank you for your kind reply of 25th April with which you already informed me about WhatsApp emergency procedure, that we didn't find online.

Luckily, after 15 days from the former request to WhatsApp made by my Judicial Police, today we have proceeded to the arrest of the suspects and therefore our emergency situation has ceased.

As you certainly know, since WhatsApp is always more frequently used by the terrorists of the Islamic State, I would be very grateful to receive an answer to my further question:

where in a future investigation it appears that, as already happened in this closed one, some foreign fighters send message via WhatsApp in Italy with which they incite other terrorists to blow themselves up in public places, this described situation is adequate to integrate an emergency situation “in determining whether to exercise” your “discretion to disclose information” (coming from a specific WhatsApp account, as already indicated in our former request dated 13th April) to the requesting Judicial Authority?

I thank you in advance and I look forward to hearing from you soon.

Kind Regards

Francesco Cajani



28 April 2016





28 April 2016

Cajani Francesco



Da: [REDACTED]
Inviato: giovedì 28 aprile 2016 20:32
A: @zwillgen.com]
Cc: Cajani Francesco; Darcy Riedell
Oggetto: paolo.storoni@carabinieri.it; whatsappLEC
Request
RE: WhatsApp IR N930/RE: Procedimento penale nr. 283/16 RGNR - Information Request
Allegati: image001.png; image002.png

Handwritten notes: "v. capo", "Cajani, 21.4.16", and a vertical signature "Dr. Francesco Cajani" next to the title "Sp. Sostituto Procuratore della Repubblica".

Dear Mr. Cajani:

Thank you for following up with us. First, the initial inquiry sent from the Italian Judicial Police on April 13 gave no indication that this was an emergency situation – we require that emergency requests are appropriately designated as such.

Second, in response to your question regarding “some foreign fighters send message via WhatsApp in Italy with which they incite other terrorists to blow themselves up in public places”, we would require more information about the specific situation to determine whether to exercise our discretion to disclose information to the Italian government. This determination is very fact-specific, and the question of “imminence” is very important. For example, the situation you have described could be one user sharing a propaganda news story with another user, or it could be the final stages of planning an attack. Since WhatsApp is end-to-end encrypted and we have no way of decrypting the content of communications, we require more information from government officials before we disclose any user information.

Finally, are you coordinating with any US law enforcement agencies on this investigation? They may be able to provide some assistance. Please do not hesitate to contact me should you have further questions.

Respectfully, .



1. In a criminal file of the Milano Prosecutor's Office on Foreign Fighters, it is necessary to request WhatsApp, Inc. to provide the above mentioned Prosecutor's office with the some Information regarding the WhatsApp profile hereinafter detailed ID: [REDACTED]
2. It would be appreciated if you could provide the undelivered messages held in WhatsApp's server related to the above mentioned profile. In case you need a Subpoena Request, it would be appreciated if you could freeze the messages just for the limited time to receive the formal request by the Prosecutor.
3. Your early attention to this matter would be appreciated.



Procura della Repubblica
presso il Tribunale di Milano

Mrs. Cristina Posa

Department of Justice Attaché
U.S. Embassy
Via Vittorio Veneto 121
00187 ROMA

Milan, 2nd May 2016

Dear [Cristina](#),

As I mentioned you by phone, I enclose the entire correspondence with WhatsApp following the [investigation](#) that led to the arrest of four suspects for the crime of international terrorism under art. 270-bis of the Italian Penal Code, investigation also emphasized last week by the media for the reported danger of an attack in the Vatican and to the Israeli embassy.

I feel really worrying the position taken by WhatsApp, even considering the provisions of the emergency procedures of Facebook, Apple, Google and Microsoft, knowable prior to the Judicial Authorities, unlike those of WhatsApp which are not online.

Moreover, thanks to your precious activity (as [it was done in the past by Bill Nardini](#)), over the years American companies have provided in fact a valuable collaboration in investigations related to terrorism.

Conversely, WhatsApp does not consider an [emergency situation](#) the one in which "*some foreign fighters send message via WhatsApp in Italy with which they incite other terrorists to blow up themselves in public places*". Surprising is the justification that this situation could be confined to a "*one user sharing a propaganda news story with another user*".

In my opinion, this attitude puts WhatsApp in a position hardly compatible with existing international legal instruments against terrorism.

[Therefore](#) I hope that you will want to bring my deep concern, if shared, to the attention of the US Justice Department.

Kind Regards,

Francesco CAJANI
Deputy Public Prosecutor





What is your feeling after this real story?

[please choose one]





Now and for the future:

- could be feasible that every Isp will have **online, for LEA purpose**, its emergency procedure policy?
- could be possible that every US Isp, offering the same type of service, has **different emergency procedure policy**?
- is it reasonable that a company (as WhatsApp or Skype) has **different policies** from its parent company (as Facebook or Microsoft)?





Francesco Cajani

*Deputy Public Prosecutor
High Tech Crime unit and counter terrorism department
Public Prosecutors' Office – Court of Law in Milan
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