



GMS Flash Alert

Immigration Edition

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United States – Escalated Searches of Electronic Devices Continues

On January 4, 2018, U.S. Customs and Border Patrol (CBP), issued updated guidance¹ with respect to the inspection of electronic devices. CBP is the agency responsible for inspecting persons and goods prior to entry into the United States.

CBP has now provided more clarity and transparency on the standards and processes in place for an “advanced search” of an electronic device (i.e., a search beyond that of a cursory inspection, including a review of the data contained therein). This guidance updates the former policy from 2009.

WHY THIS MATTERS

All persons seeking entry into the U.S. should be aware of these standards, and what to expect should CBP conduct an advanced search of an electronic device.

With people crossing borders with these devices more than ever, and with the CBP’s focus on border security, searches of electronic devices increased approximately 37 percent in fiscal year 2017; with an overall increase of about 375 percent since 2015, by some accounts; although CBP emphasizes that these figures represent a tiny fraction of travelers into the United States.² If travelers are concerned about this issue, it is recommended that they research the matter fully before seeking entry into the United States.

Context

CBP continues to maintain its authority to search electronic devices of all persons seeking entry into the United States. Through the rise of powerful hand-held devices such as cell phones and tablets, CBP has managed to maintain its authority to conduct warrantless searches of these devices in the normal course of inspecting persons and goods entering the United States.

KPMG NOTE

KPMG Law LLP will continue to provide updates regarding the impact of this requirement as and when they become available.

FOOTNOTES:

1 A copy of the directive may be found here: <https://www.cbp.gov/sites/default/files/assets/documents/2018-Jan/cbp-directive-3340-049a-border-search-electronic-media.pdf> .

2 See C. Megerian and B. Bennett, "U.S. Dramatically Increased Searches of Electronic Devices at Airports in 2017," McClatchy (online), January 5, 2017 at: <http://www.mcclatchydc.com/news/politics-government/national-politics/article193287169.html> . *Please note that this is a 3rd party (non-governmental, non-KPMG) Web site. Provision of this URL does not represent an endorsement by KPMG Law LLP.*

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