

## Lavabit.com owner: 'I could be arrested' for resisting surveillance order

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A screen grab taken from the main page of Lavabit.com website on Aug. 9 shows a letter posted by Lavabit LLC owner Ladar Levison, saying he was suspending operations.

The owner of an encrypted email service used by ex-NSA contractor Edward Snowden said he has been threatened with criminal charges for refusing to comply with a secret surveillance order to turn over information about his customers.

"I could be arrested for this action," Ladar Levison told NBC News about his decision to shut down his company, Lavabit LLC, in protest over a secret court order he had received from a federal court that is overseeing the investigation into Snowden.

Lavabit said he was barred by federal law from elaborating on the order or any of his communications with federal prosecutors. But a source familiar with the matter told NBC News that James Trump, a senior litigation counsel in the U.S. attorney's office in Alexandria, Va., sent an email to Levison's lawyer last Thursday – the day Lavabit was shuttered -- stating that Levison may have "violated the court order," a statement that was interpreted as a possible threat to charge Levison with contempt of court.

Trump, who has been a lead attorney on high-profile leak investigations targeting former CIA officers John Kiriakou and Jeffrey Sterling, did not respond to a request for comment, nor did prosecutors in the U.S. Attorney's Office, whose prosecutors have charged Snowden with violations of the Espionage Act. "We have no comment," said Andrew Ames, a spokesman for the Justice Department.

Levison, a 32-year-old entrepreneur who ran his company out of a Dallas apartment, said in a public statement last Thursday that he made "the difficult decision" to shut down Lavabit because he did not want "to become complicit in crimes against the American people."

The court order that prompted the action is believed by legal observers to be a sealed subpoena or a national security letter requiring him to cooperate in surveillance related to the Snowden investigation. Recipients of such legal orders are barred from publicly comment on them. Levison said he believes this prohibition is a violation of his First Amendment rights while the underlying request violated the Fourth Amendment rights of his customers. "I'm fighting it in every way," said Levison, adding that he is challenging the government's action in a federal appeals court.

"Because the government has barred Lavabit from disclosing the nature of its demands, we still don't know what information the government is seeking, or why it's seeking it," said Ben Wizner,

a national security lawyer for the ACLU. "It's hard to have a debate about the reasonableness of the government's actions — or Lavabit's response, for that matter — when we don't know what we're debating."

Levison said he started Lavabit 10 years ago to capitalize on public concerns about the Patriot Act, offering customers a paid service — between \$8 and \$16 a year — that would encrypt their emails in ways that would make it extremely difficult, if not impossible, for law enforcement agents to decipher. He said that until he shut down, his small company was generating about \$100,000 in revenue annually with about 10,000 users paying for the encryption service.

One who appears to have been a customer was Snowden: When the ex-NSA contractor invited human rights groups to a press conference at the Moscow airport on July 11, his message was communicated from a Lavabit.com email address — edsnowden@lavabit.com. Snowden himself told Glenn Greenwald of the Guardian last week that he found Levison's decision to close rather than provide information to the government "inspiring" and asked why other larger companies such as Google "aren't fighting for our interest the same way small businesses are."

Levison stressed that he has complied with "upwards of two dozen court orders" for information in the past that were targeted at "specific users" and that "I never had a problem with that." But without disclosing details, he suggested that the order he received more recently was markedly different, requiring him to cooperate in broadly based surveillance that would scoop up information about all the users of his service. He likened the demands to a requirement to install a tap on his telephone. Those demands apparently began about the time that Snowden surfaced as one of his customers, apparently triggering a secret legal battle between Levison and federal prosecutors.

Levison said he has been "threatened with arrest multiple times over the past six weeks," but that he was making a stand on principle: "I think it's important to point out that what prompted me to shut down my service wasn't access to one person's data. It was about protecting the privacy of all my users."

He has also started a legal defense fund and said he's gotten "an overwhelming response," raising more than \$90,000 in the past few days. Among those now backing him is former Texas congressman and Republican presidential candidate Ron Paul, who told NBC News on Tuesday that Levison's legal battle "should be in the interests of everybody who cares about liberty."

**Related story: Lavabit email service linked to Snowden shuts down**