

Rising Star: Covington & Burling's Alexander Berengaut

Law360 (August 6, 2018, 2:18 PM EDT) -- Alexander Berengaut of Covington & Burling LLP has represented tech giant Microsoft on critical privacy matters, including before the U.S. Supreme Court and in a challenge to a statute that barred technology companies from telling clients when their information had been subpoenaed, making him one of five attorneys under 40 selected for Law360's Cybersecurity & Privacy Rising Stars.

HIS BIGGEST CHALLENGE SO FAR:

Berengaut counts as one of his biggest challenges his work defending Microsoft before the Supreme Court, against a federal warrant ordering the company to hand over data stored in servers in Ireland.

"I think one of the things that was challenging about it was applying these new technological realities, such as cloud computing and the fact that you can have a technology service accessed by a user in one country with data stored in a another country," Berengaut said. "How to take account of those technological realities under a law that was created in 1986 when the internet was still really in its infancy."

Courts are still trying to parse how to handle technology that advances faster than the law, Berengaut said, and the Microsoft case in particular brought up extraterritorial issues that made things more complicated. In response to the suit, Congress enacted the CLOUD Act, which requires technology companies to comply with government subpoenas regardless of whether the information is housed in another country.

RISING
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STAR



Alexander Berengaut
Covington & Burling

Age: 37

Home base: Washington, D.C.

Position: Partner

Law school: Harvard Law School

First job after law school:

Assistant tennis coach at YMCA

HOW HE GOT HOOKED ON PRIVACY WORK:

Berengaut considers himself a litigator with a privacy and cybersecurity focus, and for him, working on cases like the Microsoft one gives him a chance to see the law being formed.

“Because these technologies are really very new, the legal issues that arise out of them are also new,” he said. “It’s not as though there’s a 100 years of precedent about how to deal with an international legal request involving data stored in several countries.”

HIS PROUDEST MOMENT:

Being part of the team that won an injunction on behalf of Deferred Action for Childhood Arrivals program recipients, allowing certain immigrants to renew their status and stay in the U.S., is something Berengaut counts as one of his proudest moments.

Part of Covington’s pro bono work, Berengaut served as part of the team representing University of California president Janet Napolitano in her challenge to the Trump administration’s bid to rescind the DACA program.

The team had to move quickly after the administration announced its intention to end the program in September, scrambling to collect evidence for an injunction that they were awarded in January.

“There was just an absolutely huge amount to do — legal work, and also building a really massive factual record to help show the court how important the program is and how much harm would result from rescinding it,” Berengaut said. “It was a real privilege to be part of that big team effort.”

The Supreme Court declined to hear an immediate appeal of the case earlier this year, meaning the injunction will stay in place through the normal appeal process, allowing DACA recipients to continue to renew their status.

OTHER NOTABLE CASES:

Berengaut also represented Microsoft in a First Amendment suit challenging the government’s ability to place indefinite gag orders on tech companies, preventing them from revealing to anyone that customer data has been subpoenaed.

“One thing that we found out as we were working on the case is that oftentimes these restrictions were indefinite, which meant the tech company could often be gagged forever from telling anyone about a particular legal demand,” Berengaut said. “And you know, the case could be over. The defendant could be acquitted or convicted or the government might decide not to pursue the case, but still that gag order would be sticking around forever imposing a First Amendment restriction on the tech company.”

The suit resulted in Deputy Attorney General Rod Rosenstein issuing a nationwide policy with new guidelines for all federal prosecutors to follow when carrying out these gag orders.

“This one was particularly fun because it had this free speech, First Amendment dimension to it,” Berengaut said.

— *As told to Nadia Dreid*

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2018 Rising Stars winners after reviewing more than 1,200 submissions. This interview has been edited and condensed.

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