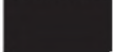


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UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON D.C.

IN RE DIRECTIVES TO YAHOO!, INC. :
PURSUANT TO SECTION 105B OF THE :
FOREIGN INTELLIGENCE SURVEILLANCE :
ACT. :

Docket Number: 105B(g):


(U) DECLARATION

(U) I, J. Michael McConnell, declare as follows:

I am the Director of National Intelligence (DNI) of the United States. I have held this position since February 2007. Previously, I have served as the Senior Intelligence Officer for the U.S. Seventh Fleet, Assistant Chief of Staff for Intelligence for the U.S. Pacific Fleet, the Director of Intelligence for the Joint Chiefs of Staff during Operation Desert Storm, and as the Director of the National Security Agency (NSA).

~~(S)~~ The purpose of this declaration is to explain, in my capacity as the DNI and head of the United States Intelligence Community, why granting Yahoo's Motion for a temporary stay of the Court's April 25, 2008 Memorandum Opinion and Order instructing Yahoo to comply with lawful directives issued by the Attorney General and DNI under the Protect America Act (PAA).

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would harm the national security interests of the United States. As described below, international terrorists, and [REDACTED] in particular, use Yahoo to communicate over the Internet. Due to Yahoo's failure to comply with PAA directives, the Intelligence Community has been prevented from obtaining foreign intelligence information that is vital to our national security. Any further delay in Yahoo's compliance could cause great harm to the United States, as vital foreign intelligence information contained in communications to which only Yahoo has access, will go uncollected. Yahoo's immediate compliance with the directives is therefore critical for the U.S. Intelligence Community to use all lawful resources to counter the threat posed by international terrorists and other threats to our national security.

(U) BACKGROUND ON DIRECTOR OF NATIONAL INTELLIGENCE

(U) The position of DNI was created by Congress in the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, §§ 1011(a) and 1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (amending sections 102 through 104 of Title I of the National Security Act of 1947). Subject to the authority, direction, and control of the President, the DNI serves as the head of the U.S. Intelligence Community and as the principal adviser to the President, the National Security Council, and the Homeland Security Council for intelligence matters related to the national security. See 50 U.S.C. § 403(b)(1), (2).

(U) The United States "Intelligence Community" includes the Office of the Director of National Intelligence; the Central Intelligence Agency (CIA); the NSA; the Defense Intelligence Agency; the National Geospatial-Intelligence Agency; the National Reconnaissance Office; other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs; the intelligence elements of the military services, the Federal Bureau of Investigation (FBI), the Department of the Treasury, the Department of Energy, the

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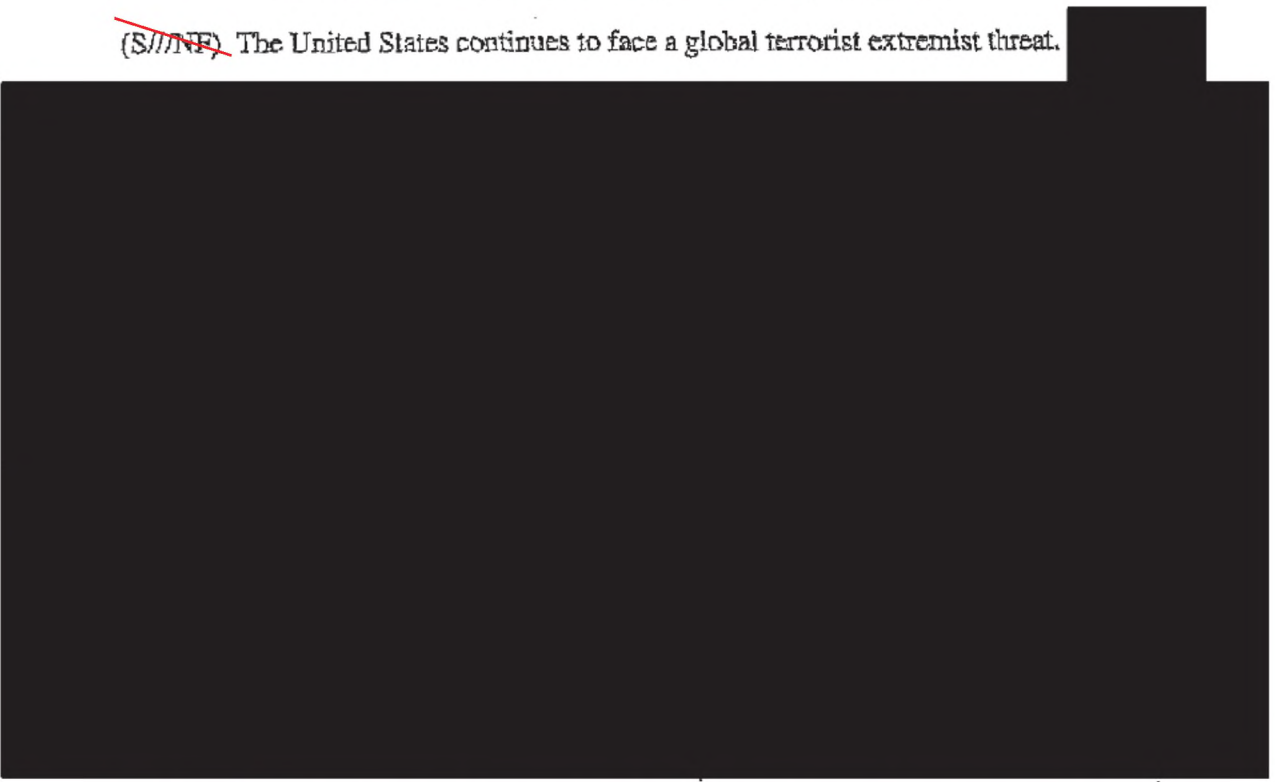
Drug Enforcement Administration, and the Coast Guard; the Bureau of Intelligence and Research of the Department of State; the elements of the Department of Homeland Security concerned with the analysis of intelligence information; and such other elements of any other department or agency as may be designated by the President, or jointly designated by the DNI and heads of the department or agency concerned, as an element of the Intelligence Community. *See* 50 U.S.C. § 401a(4).

(U) The responsibilities and authorities of the DNI are set forth in the National Security Act, as amended. *See* 50 U.S.C. § 403-1. These responsibilities include ensuring that national intelligence is provided to the President, the heads of the departments and agencies of the Executive Branch, the Chairman of the Joint Chiefs of Staff and senior military commanders, and the Senate and House of Representatives and committees thereof. 50 U.S.C. § 403-1(a)(1). The DNI is also charged with establishing the objectives of, determining the requirements and priorities for, and managing and directing the tasking, collection, analysis, production, and dissemination of national intelligence by elements of the Intelligence Community. *Id.* § 403-1(f)(1)(A)(i) and (ii). The DNI is also responsible for developing and determining, based on proposals submitted by the heads of agencies and departments within the Intelligence Community, an annual consolidated budget for the National Intelligence Program for presentation to the President, and for ensuring the effective execution of the annual budget for intelligence and intelligence-related activities, and for managing and allotting appropriations for the National Intelligence Program. *Id.* § 403-1(c)(1)-(5).

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~~TOP SECRET//HCS//SI//NOFORN//MR~~(U) GLOBAL NATIONAL SECURITY THREATS

~~(S//NF)~~ The United States continues to face a global terrorist extremist threat.



~~(TS//NF)~~ Agents of al Qaeda and associated terrorist organizations operate in numerous countries all over the world. The CIA estimates that between 10,000 and 15,000 individuals from approximately 60 countries attended al Qaeda sponsored camps between 1996 and 2001, creating a broad web of support across the globe. *See* CIA Assessment, "Countering Misconceptions About Training Camps in Afghanistan," August 2006. The al Qaeda-directed airline plot that was foiled in London in 2006, the recent merger over the past several years of al Qaeda with regional North African extremist groups, and the maturation of jihadist networks supporting the Iraqi insurgency all reflect the extent to which al Qaeda and its affiliates continue to operate on a global level. *See* Interagency Intelligence Committee on Terrorism (IICT) Assessment, "Status of Homeland Plotting," February 2007; IICT Assessment, "The Magreb and Sahel: Increasing Threat to US Interests," March 2007; *see also* U.S. Department of State,

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Country Reports on Terrorism 2004 at 107-08 (Apr. 2004) (noting that al Qaeda "serves as a focal point or umbrella organization for a worldwide network that includes many Sunni Islamic extremist groups," and that it "has cells worldwide and is reinforced by its ties to Sunni extremist networks" and "probably has several thousand extremists and associates worldwide inspired by the group's ideology"). Additionally, the dramatic proliferation of extremist websites has provided terrorists with worldwide propaganda, recruitment, and communications tools not previously available. See, e.g., Director of National Intelligence Open Source Center Analysis, "Terrorism: The Al-Hisbah Website Provides Online Nexus for Extremist Networking" (Dec. 2006) (noting that the al-Hisbah web forum "provides an online rendezvous for extremists worldwide, creating an environment that reinforces the Salafi jihadist ideology and allows members to interact with like-minded individuals").¹

(S) [REDACTED] In addition, al Qaeda members, affiliates and/or sympathizers have either claimed responsibility or responsibility has been attributed to them by law enforcement and intelligence agencies for a significant number of violent attacks all over the world. Among the locations of these attacks are the following: New York, New York; Washington, D.C.; Pennsylvania; London, U.K.; Madrid, Spain; Casablanca and Rabat, Morocco; Istanbul, Turkey; numerous localities in Iraq; Riyadh and Jiddah, Saudi Arabia; Aden, Yemen; Nairobi, Kenya; Dar es-Salaam, Tanzania; Algeria; and Mauritania; numerous localities in Afghanistan; Tashkent, Uzbekistan; New Delhi, India; Jakarta and Bali, Indonesia; and Zamboanga, Philippines. These attacks are in addition to several failed attempts to conduct attacks that instead ended in arrests in France, Germany, Italy, Turkey and Denmark. Al Qaeda-inspired attacks have also been

¹ (TS) This information, with minor updates, is discussed in the Declaration of [REDACTED]
[REDACTED]

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disrupted in Canada and Australia. Moreover, al Qaeda operations that had been planned for inside the United States have been disrupted by United States government officials before the operations could be effected.

~~(TS//HCS//NF)~~ Beyond al Qaeda and its affiliates, there are additional international terrorist groups that threaten U.S. and Western interests. For example, the Intelligence Community has assessed that the conflict during the summer 2006 between Lebanese Hizballah and Israel caused the terrorist group to develop and update contingency plans to attack Western interests worldwide. The Intelligence Community has further assessed that Hizballah remains willing to retaliate against U.S. and Israeli interests worldwide in the event of a significant U.S. -- or Israeli -- attack against it or its chief sponsor, Iran.

~~(S//NF)~~ The United States faces additional national security threats. The persistent threat of the proliferation of Weapons of Mass Destruction (WMD) remains. The Intelligence Community is most concerned about the threat and destabilizing effect of nuclear proliferation. In particular, the Intelligence Community is following North Korea's maintenance of nuclear weapons, and Iran's pursuit of fissile material and nuclear capable missile delivery systems. We are also concerned about the threat from biological and chemical agents. [REDACTED]

[REDACTED]

~~(S//NF)~~ In addition, the Intelligence Community is aware of the vulnerabilities of the U.S. information infrastructure to increasing cyber attacks by foreign governments and others. Issues of political stability and of national and regional conflict in Europe, the Horn of Africa,

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the Middle East, Eurasia and Southeast Asia, are all areas where collection under the PAA will serve to bolster our intelligence capabilities. For the Intelligence Community, enhanced foreign intelligence collection capabilities place us in a better position to provide warning to the Nation regarding the threats we face.

(U) TERRORISTS USE OF THE INTERNET

(S//) NSA has advised that [REDACTED]

[REDACTED] As has been reported to this Court consistently in applications for electronic surveillance and/or physical search authority made under the Foreign Intelligence Surveillance Act (FISA) in international terrorism cases, [REDACTED]

[REDACTED] in furtherance of their international terrorism activities. Intelligence Community investigation and analysis of [REDACTED] has revealed that [REDACTED]

[REDACTED]

(S//) In particular, Intelligence Community investigation and analysis has shown that [REDACTED]

[REDACTED]

[REDACTED] U.S. Intelligence Community analysis and reporting further demonstrates that:

- [REDACTED]
- [REDACTED]

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o [REDACTED]

o [REDACTED]

o [REDACTED]

o [REDACTED]

o [REDACTED]

o [REDACTED]

o [REDACTED]

o [REDACTED]

[REDACTED]

[REDACTED]

The use by international terrorists of the specific techniques noted above demonstrates why the agility and speed that PAA collection provides has the potential to vastly improve our foreign intelligence collection. Further, our collection through Court-authorized electronic surveillance and/or physical search, PAA authorities and global Signals Intelligence (SIGINT) activities conducted pursuant to Executive Order 12333, reveals that international terrorist groups [REDACTED]

[REDACTED] also use the Internet to communicate.

[REDACTED]

[REDACTED]

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[REDACTED]

Accordingly, each day that

Yahoo does not comply with the directives, we are losing foreign intelligence information that may never be recovered.

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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(U) IMPORTANCE OF PAA ACQUISITIONS
TO U.S. NATIONAL SECURITY INTERESTS

~~(TS//NF)~~ To date, surveillance conducted under the PAA has produced critical foreign intelligence information that has enabled the Intelligence Community to more effectively protect the United States and its interests from terrorist attack and other threats to our national security. [REDACTED]

[REDACTED] Since August 2007, NSA has produced over [REDACTED] foreign intelligence reports that included PAA-acquired information. Most recently, in April 2008, NSA produced over [REDACTED] intelligence reports. NSA's intelligence reports are disseminated to other members of the Intelligence Community to support their counterterrorism and counterintelligence efforts; to intelligence officers and military personnel engaged in dangerous missions on the ground; and to policymakers to inform decision making about critical matters affecting national security and foreign policy affairs. The timely acquisition, analysis and dissemination of intelligence obtained from PAA authorities has made, and will continue to make, important contributions to our ability to protect the Nation. Provider compliance with PAA directives is an essential component in this effort.

~~(TS//REL TO USA, FVEY)~~ For example, NSA has advised that PAA collection was an extremely important source of intelligence concerning [REDACTED]

[REDACTED]

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~~(TS//REL TO FVEY)~~ More recently, PAA coverage in [REDACTED] 2008 provided foreign intelligence information on the following:



The intercepted communications that formed the basis of each of the [REDACTED] intelligence reports noted above were obtained solely or in significant part from PAA-authorized collection.

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~~(S)~~ URGENT NEED FOR YAHOO COMPLIANCE WITH PAA DIRECTIVES

~~(S//SI)~~ Yahoo's immediate compliance with PAA directives is of the highest national security importance because [REDACTED]

[REDACTED] While the traditional FISA framework has enabled the Intelligence Community to obtain highly important foreign intelligence information, its probable cause requirements and accompanying process does not permit us to collect all of the information we should be collecting on overseas targets, and have the statutory authority to collect. As this Court is aware, approximately [REDACTED] of the applications presented to the Court in 2007 targeted [REDACTED] for counterterrorism purposes. PAA-authorized collection provides a more effective way of obtaining foreign intelligence information, given the volume and nature of [REDACTED] e-mails and other Internet communications of foreign intelligence targets overseas.

~~(S)~~ Similarly, the emergency authorization process under the traditional FISA process is not a substitute for the agility provided by PAA authorities. As this Court is aware, before emergency surveillance can begin, the Attorney General must determine that there is probable cause that the target of the surveillance is a foreign power or an agent of a foreign power and that FISA's other requirements are met. The process of compiling the facts necessary for such a determination and preparing the necessary applications takes time and results in delays. Because of the probable cause requirement, the requirement to present applications to this Court within 72

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hours of an emergency authorization, resource constraints and other statutory requirements such as the requirement to obtain Attorney General and other high level approvals, the Intelligence Community must limit the use of emergency authorizations to certain high-priority circumstances. Emergency authorizations cannot be employed for every foreign intelligence target. The National Security Division, Department of Justice, has advised that over [REDACTED] applications targeting [REDACTED] for counterterrorism purposes [REDACTED] were presented to the Court from January 1, 2008 to April 30, 2008 following an emergency authorization.

~~(S)~~ Finally, it is important to highlight that the Intelligence Community is implementing PAA authorities consistent with the Constitution, statutory requirements, and policy. Extensive training, implementation guidance, minimization procedures and oversight mechanisms are in place. In addition, as provided for in each AG/DNI Certification authorized to date, any time NSA seeks to acquire foreign intelligence information against a U.S. person abroad during the course of PAA-authorized collection activity, NSA must first obtain Attorney General authorization, using the procedures under Section 2.5 of Executive Order 12333 that have been in place for decades. NSA advises that currently, the Internet communications of [REDACTED] U.S. persons located overseas are being collected under PAA authorities, with the appropriate concurrent Attorney General approval under Section 2.5 of Executive Order 12333. Accordingly, PAA collection has been implemented consistent with the protection of U.S. person information and rights.


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(U) CONCLUSION

(U) For the foregoing reasons, I provide this declaration in my capacity as the Director of National Intelligence. I declare under penalty of perjury that the foregoing is true and correct.

DATE: 9 MAY 08


J. M. McCONNELL
Director of National Intelligence

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