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Surveillance Court of Review

Washington, D.C. 20530

July 10, 2008

The Honorable Bruce M. Selya  
Presiding Judge  
United States Foreign Intelligence Surveillance Court of Review  
Washington, D.C.

Re: In re Directives to Yahoo Inc. Pursuant to Section 105B of the Foreign  
Intelligence Surveillance Act, No. 08-01 ~~(S)~~

Dear Judge Selya:

Pursuant to Federal Rule of Civil Procedure 28(j), the Government respectfully calls the Court's attention to the attached Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 ("FISA Amendments Act"), which was signed by the President on July 10, 2008. (U)

Like the Protect America Act, pursuant to which the Government issued the directives at issue in this litigation, the FISA Amendments Act establishes procedures by which the Attorney General and the Director of the National Intelligence may authorize the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information. See FISA Amendments Act § 101(a). Among other things, the Act authorizes the Government to issue directives to electronic communication service providers requiring them to provide all information, facilities, and assistance necessary to accomplish such acquisitions, including the acquisition of stored communications. See id. To target U.S. persons abroad, the Government will obtain a FISC order based on a finding, in relevant part, that there is probable cause to believe that the targeted U.S. person is a foreign power or an officer, employee, or agent of a foreign power, the same determination currently made by the Attorney General under Section 2.5 of Executive Order 12333. See id. ~~(S)~~

Importantly, the FISA Amendments Act provides that any order, authorization, or directive issued pursuant to the Protect America Act—including the directives at issues in this case—shall continue in effect until "the expiration of such order, authorization, or directive," id. § 404(a)(1), or, if the Government seeks to replace the authorization, until such time as the FISC approves the Government's new submission, id. §§ 404(a)(2)-(7), 101(a), whichever comes later.

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Thus, the directives at issue remain in effect. The Government has not sought to replace those directives, and the directives by their terms do not expire until September 2008.<sup>1</sup> ~~(S)~~

Sincerely,



Gregory G. Garre  
Acting Solicitor General

cc: Marc J. Zwillinger  
Sonnenschein Nath & Rosenthal LLP  
1301 K Street, NW  
Washington, D.C. 20005

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<sup>1</sup> Although the directive issued to Yahoo pursuant to [REDACTED] will expire [REDACTED] the same acquisitions are authorized under [REDACTED] and the directives to Yahoo under those certifications expire on [REDACTED]

~~(S)~~

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