

Filed [redacted]
CSO: [redacted]
DATE: 4-25-08

~~SECRET~~

UNITED STATES

FOREIGN INTELLIGENCE SURVEILLANCE COURT

WASHINGTON, D.C.

IN RE DIRECTIVES TO YAHOO!, INC.

Docket Number 105B(g): 07-01 ~~(S)~~

PURSUANT TO SECTION 105B OF THE
FOREIGN INTELLIGENCE SURVEILLANCE
ACT ~~(S)~~

ORDER COMPELLING COMPLIANCE WITH DIRECTIVES ~~(S)~~

This case comes before the Court on the government's motion pursuant to 50 U.S.C.A. § 1805b(g) (West Oct. 2007) to compel compliance with [redacted] directives it issued to Yahoo!, Inc. (Yahoo) pursuant to the Protect America Act of 2007, Pub. L. No. 110-55, 121 Stat. 552 (PAA).¹ These directives issued to Yahoo were signed by the Acting Attorney General on November 6, 2007, and the Director of National Intelligence on November 7, 2007, pursuant to [redacted]

¹ The PAA amended the Foreign Intelligence Surveillance Act (FISA) (which, in its present form, can be found at 50 U.S.C.A. §§ 1801-1871 (West 2003, Supp. 2007 & Oct. 2007)). As originally enacted, the PAA had a "sunset" provision, under which its substantive terms would "cease to have effect 180 days after the date of the enactment" of the PAA, subject to certain exceptions applicable to this case. PAA § 6(c). On January 31, 2008, Congress extended this period to "195 days after the date of the enactment of [the original PAA]." See Pub. L. 110-182, § 1, 122 Stat. 605. Congress took no further action, and this 195-day period expired on February 16, 2008. (U)

~~SECRET~~

~~SECRET~~

certifications that were styled [REDACTED]

[REDACTED] (S)

1. For the reasons stated in the Memorandum Opinion issued simultaneously with this Order, the Court finds that the above-referenced directives do not offend the Fourth Amendment, and were “issued in accordance with [§ 1805b(e)] and [are] otherwise lawful.” § 1805b(g). (U)

Accordingly, it is hereby ORDERED that Yahoo shall forthwith comply with the directives, and shall continue to comply with each directive until the expiration date specified therein. (S)

2. The determination of lawfulness stated in paragraph 1. above is predicated in part on the Court’s understanding of the nature of the amendments that the government has made to the above-referenced certifications. Those amendments are discussed in the Memorandum Opinion at pp. 17, 37-39. (S)

Accordingly, it is further ORDERED that the government shall forthwith apprise the Court, through a written submission in the above-captioned docket, of any further change to an authorization (the certification, the underlying affidavits, or any of the government’s procedures) when such change pertains in any way to the acquisition of foreign intelligence information pursuant to the above-referenced directives issued to Yahoo.² (S)

² In issuing this directive, the Court expresses no opinion on whether or to what extent the government now has the authority to make such changes, given the expiration of the PAA. See PAA § 6(c). (S)

~~SECRET~~

~~SECRET~~

3. The determination of lawfulness stated in paragraph 1. above is also predicated on certain assumptions that the Court has made in the Memorandum Opinion regarding the process whereby acquisitions targeting United States persons are approved by the Attorney General under section 2.5 of Executive Order No. 12,333, 3 C.F.R. 200 (1982), reprinted as amended in 50 U.S.C. § 401 (2000 & Supp. V 2005).³ Specifically, the Court has assumed that:

(a) the government will follow the section 2.5 procedures whenever it is reasonable to believe that the target is a United States person; and

(b) after the initial authorization under section 2.5 to target a U.S. person, the Attorney General must re-authorize the acquisition every 90 days in order for acquisition to continue, and if the Attorney General does not issue a new authorization after 90 days, acquisition for a targeted account used by a United States person will cease.⁴ ~~(S)~~

Accordingly, it is further ORDERED that, on or before May 9, 2008, the government shall apprise the Court, by written submission in the above-captioned docket, in the event that either of the above-stated assumptions is not correct. ~~(S)~~

It is further ORDERED that, in the event that the government changes how it implements the section 2.5 process regarding accounts to be identified for acquisition under the above-referenced directives issued to Yahoo in a manner that would render either of the above-stated

³This section 2.5 process does not apply to acquisitions targeting non-United States persons. ~~(u)~~

⁴The Court believes that these assumptions are correct; however, the government's submissions are not entirely clear on these points. Rather than delaying the issuance of this Order pending clarification of a process applicable only to the subset of acquisitions targeting United States persons, the Court has decided to issue this Order based on the above-stated assumptions, subject to a requirement that the government promptly inform the Court if either assumption is not correct. ~~(S)~~

~~SECRET~~

~~SECRET~~

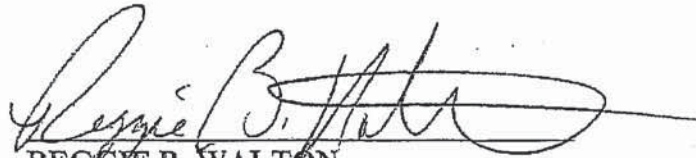
assumptions incorrect, the government shall forthwith apprise the Court of such change by written submission in the above-captioned docket. ~~(S)~~

It is further ORDERED that because the Memorandum Opinion discusses classified information submitted to the Court for ex parte and in camera review pursuant to 50 U.S.C. § 1805b(k), it shall be reviewed for proper classification prior to being served on counsel for Yahoo. Such review shall be conducted in accordance with paragraph 2 of this Court's Order Establishing Procedures for Handling Classified Information, entered in this matter on December 28, 2007. ~~(S)~~

It is further ORDERED that, as expeditiously as possible, and no later than May 14, 2008, a copy of the Memorandum Opinion, appropriately marked for classification and redacted as necessary, shall be served on counsel for Yahoo. A copy of the Memorandum Opinion as served on counsel for Yahoo shall also be filed with the Court. ~~(S)~~

It is further ORDERED that this Order and the Memorandum Opinion are sealed and shall not be disclosed by either party without authorization by this Court. (u)

ENTERED this 25th day of April, 2008 in Docket Number 105B(g): 07-01. (S)



REGGIE B. WALTON
Judge, Foreign Intelligence Surveillance Court

Classified by: Mark A. Bradley
National Security Division
U.S. Department of Justice

Declassify on: April 29, 2033

~~SECRET~~