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UNITED STATES
FOREIGN INTELLIGENCE SURVEILLANCE COURT
WASHINGTON, DC

2008-09-11 11:04

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IN RE DIRECTIVES TO YAHOO INC.
PURSUANT TO SECTION 105B OF
THE FOREIGN INTELLIGENCE
SURVEILLANCE ACT. (S)

Docket Number: 105B(g) 07-01

MOTION FOR LEAVE TO FILE CLASSIFIED DECLARATION
FOR THE COURT'S EX PARTE AND IN CAMERA REVIEW (U)

The United States of America, through the undersigned Department of Justice attorneys, hereby moves this Court for leave to file the attached classified declaration of J. M. McConnell, Director of National Intelligence ("McConnell Declaration"), pursuant to section 105B(k) of the Foreign Intelligence Surveillance Act of 1978, as amended (FISA or the Act). The grounds for the motion are as follows: ~~(S)~~

1. On April 25, 2008, this Court issued an Order directing Yahoo!, Inc. ("Yahoo") to "forthwith comply with the directives" issued to Yahoo by the Director of National Intelligence and the Attorney General pursuant to Section 105B(e) of the Act.

~~(S)~~

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Classified by: Matthew G. Olsen, Deputy Assistant Attorney General, NSD, DOJ
Reason: 1.4 (c)
Declassify on: 8 May 2033

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2. On May 6, 2008, Yahoo moved for a stay of the April 25, 2008 Order pending its appeal of the order. The Government has filed its opposition to the motion for a stay and has moved for an order holding Yahoo in civil contempt for failing to comply with the April 25, 2008 Order. In support of its opposition to the motion for a stay, and pursuant to section 105B(k) of the Act, the Government submits the McConnell Declaration, attached hereto as Exhibit A. ~~(S)~~

3. This motion constitutes the Government's request under section 105B(k) that the Court review ex parte and in camera the McConnell Declaration, which contains classified information including top secret and compartmented information. The Government has styled this request as a motion for leave to file classified material, although section 105B(k) speaks in mandatory terms, providing that "the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions of a submission, which may include classified information." ~~(S)~~

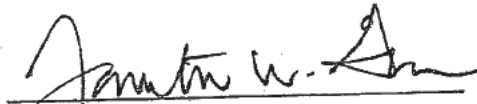
4. Because the government is filing the McConnell Declaration for the Court's ex parte and in camera review, it has provided counsel for Yahoo with a copy of this motion without the attached Exhibit A. ~~(S)~~

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WHEREFORE the United States of America, by counsel, respectfully requests that the Court review the classified information attached hereto as Exhibit A ex parte and in camera. A proposed Order is attached hereto. ~~(S)~~

Respectfully submitted,



Matthew G. Olsen
Deputy Assistant Attorney General



Chief, Special Operations Unit
Office of Intelligence



Deputy Chiefs, Special Operations Unit
Office of Intelligence



Attorney Advisor, Special Operations Unit
Office of Intelligence

National Security Division
United States Department of Justice

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