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House Allows FISA Law to Expire

By Tim Starks, CQ Staff

Defying the White House, Republican lawmakers and conservative members of their own party, House Democrats chose last week to let a temporary electronic surveillance bill expire rather than surrender to threats of possible danger to national security.

The day after the Senate passed a six-year overhaul of the Foreign Intelligence Surveillance Act (FISA, PL 95-511), House leaders tried to push through a 21-day extension of a short-term law (PL 110-55, PL 110-182) that was scheduled to run out on Feb. 16. But Republicans and enough members of their own caucus blocked that effort, leaving Democrats facing the president head-on in a legislative version of the game of "chicken."

Box Score

Bills:

HR 3773 — To overhaul for six years the Foreign Intelligence Surveillance Act (PL 95-511);
HR 5349 — To extend for 21 days a temporary electronic surveillance law (PL 110-55, PL 110-182).

Latest Action:

Senate passed S 2248, 68-29, on Feb. 12, then substituted its text into HR 3773. House rejected HR 5349, 191-229, on Feb. 13.

Next Likely Action:

House-Senate negotiations on HR 3773.

Reference:

Senate debate, CQ Weekly, p. 392; 2007 legislation, p. 50; FISA, 1978 Almanac, p. 186.

At the urging of Speaker [Nancy Pelosi](#), D-Calif., the top Democrat on the House Judiciary Committee, [John Conyers Jr.](#) of Michigan, and the leaders of the House and Senate Intelligence panels met Feb. 15 to begin discussing their differences. Senate Judiciary Chairman [Patrick J. Leahy](#), D-Vt., was back in his home state of Vermont.

The Senate on Feb. 12 passed a comprehensive overhaul of the ground rules for electronic surveillance after rejecting a series of amendments that could have turned the White House against the carefully negotiated measure. The vote for passage was 68-29, with 19

Leaders of the House majority defended their decision to leave for the one-week Presidents Day recess without completing work on FISA legislation, saying they needed the extra time to reconcile differences between the Senate version of the bill (HR 3773) and the one the House passed in November.

"Is there an important reason to act? There is," Majority Leader [Steny H. Hoyer](#), D-Md., said Feb. 14 in an impassioned floor speech. "Do we have every intention of acting? We do. But we will not be presented with a bill on Tuesday night and be asked to pass it on Wednesday afternoon without full and fair consideration. That is our duty; that is our responsibility; and that is what we will do."

Republicans did everything they could to force the House to accept the Senate bill, even walking out of the chamber as a group at one point. President Bush castigated Democrats and said he would delay the start of a planned trip to Africa over the weekend if it would help quickly clear long-term legislation.

Reading a statement on the South Lawn of the White House on Feb. 14, Bush warned that if the temporary law expired without a new one in place, "our ability to find out who the terrorists are talking to, what they are saying and what they are planning will be compromised. It would be a mistake if the Congress were to allow this to happen."

Hoyer responded that during the time it would take to negotiate a compromise between the two versions, the intelligence community would have all the tools it needed to defend against terror attacks, contrary to Republican accusations that the expiration of the temporary spying law — enacted in August — would create an intelligence gap.

"There is no urgency," Hoyer said. "That claim is a claim made to stampede this House and the American people."



Democrats and one independent joining 48 Republicans in support of the bill. Not a single GOP senator voted against it. (*Senate vote 20, p. 450*)

After passing the FISA bill, the Senate called up the House-passed bill and substituted the text of its own measure (S 2248), returning HR 3773 to the other chamber. Earlier, senators had voted, 69-29, to limit further debate on the bill. (*Senate vote 19, p. 450*)

The legislation would revamp FISA to establish new rules for electronic surveillance designed to collect foreign intelligence when it involves communications on U.S. soil. The Senate Select Committee on Intelligence, working with the administration, assembled it in October.

One of the main sticking points between the House and Senate versions of the bill is over how the bill would authorize surveillance. The Senate measure would allow warrantless surveillance of foreign targets even if they were communicating with someone in the United States, much like President Bush's program through the National Security Agency and the temporary spying law that expired over the weekend. But the secret court established under FISA would be able to approve procedures for such surveillance, and would have a greater role than under the temporary law.

The House bill would require the administration to apply to the FISA court for an order permitting spying on a large number of foreign targets that may be communicating with people in the United States.



Pelosi confers with Mike Sheehy, her national security adviser, at the Capitol as the debate rages on the House floor. (CQ \ SCOTT J. FERRELL)

Immunity for Telecom Companies

An even more contentious debate has been over whether to provide retroactive legal immunity to companies being sued for their alleged assistance to the administration's warrantless surveillance program. The Senate version of the bill would provide it; the House version would not.

Senate Democrats tried repeatedly to remove the immunity language from the bill but to no avail. Before passing the bill, the Senate rejected, 31-67, an amendment by [Christopher J. Dodd](#), D-Conn., that sought to strike the immunity provision from the bill. (*Senate vote 15, p. 449*)

The closest Senate amendment vote last week came on a proposal by [Dianne Feinstein](#), D-Calif., to tighten language in the bill reaffirming that FISA is the "exclusive means" of conducting intelligence surveillance of Americans. The 57-41 vote was three votes short of the 60 required under a unanimous consent agreement governing consideration of amendments. (*Senate vote 13, p. 449*)

Feinstein, a member of the Senate Intelligence panel, said her language was designed to "prevent a chief executive, either now or in the future, from moving outside of this law."

The temporary law enacted in August expired Feb. 1, so on Jan. 29 Congress cleared an extension of that law, keeping it alive until Feb. 16. Even though Bush said he would not sign another extension, House leaders offered a bill (HR 5349) that would give the law 21 more days.

That effort failed, 191-229, as every House Republican who voted joined with a group of 34 liberal and conservative Democratic defectors Feb. 13 to reject the bill. (*House vote 54, p. 454*)

"We need to address this and get it over with. I want us to vote on the Senate bill," said [Lincoln Davis](#), D-Tenn., one of 21 conservative "Blue Dog" Democrats who endorsed the Senate bill and several of whom voted against the short-term extension.

The defeat for Democratic leaders followed a parliamentary battle that raged all day on the floor. Earlier in the day they had closed ranks to kill, 222-196, a Republican move to replace the Democratic leaders'



PARTIES DIVIDED: House Republicans, above, led by Minority Leader Boehner, at the microphone, stage a walkout Feb. 14 over the Democrats' handling of the FISA bill. (GETTY IMAGES \ MARK WILSON)

short-term bill with the Senate bill. (*House vote 53, p. 454*)

Democrats blamed Republicans for the lapse of the August surveillance law, saying that if they saw it as endangering the country, they should have voted for the extension.

"The president says he won't sign an extension," Pelosi said. "That said to me the president knows he doesn't need an extension. He knows he has the authority" to continue current wiretaps and to launch new ones with a FISA court order.

How Big of a Threat?

Republicans staged a walkout Feb. 14 to pressure Democrats into taking the Senate bill. The demonstration occurred before a floor vote on a rule (H Res 982) adopting a resolution (H Res 979) to cite White House Chief of Staff [Joshua B. Bolten](#) and former White House counsel Harriet Miers for contempt of Congress for refusing to comply with Judiciary Committee subpoenas. (*Contempt resolution, p. 442*)

"We have space on the calendar today for a politically charged fishing expedition, but no space for a bill that would protect the American people from terrorists who want to kill us," Minority Leader [John A. Boehner](#), R-Ohio, said.

Republicans spent the week raising the specter of a hobbled intelligence community if the temporary surveillance law expired and the Senate bill did not become law.

But legal experts say the implications of any expiration are mixed. They note that any spying orders already in place would remain in effect long after the temporary law lapses.

At the same time, most experts agree that the administration would have to go back to the secret FISA court to obtain warrants in cases where foreign-to-foreign communications are routed through the United States' telecommunications infrastructure. That poses little immediate threat, they say, but if a backlog of warrant applications were to build, it could begin to cause problems.

Among experts in national security law, there is no agreement on whether telecommunications companies would continue to be compelled to comply with administration surveillance demands.

And because Bush administration officials have repeatedly claimed the president has all the authority he needs to conduct a surveillance program in the service of national security, some experts argue that the administration is likely to do as it pleases regardless of what happens in Congress.

EXHIBIT J



For Immediate Release
Office of the Press Secretary
February 28, 2008

Press Conference of the President

10:05 A.M. EST

THE PRESIDENT: Good morning. Laura and I, as you know, recently came back from Africa, where we saw firsthand how the Emergency Plan for AIDS Relief is saving lives. I had a chance to go to the -- speak to the Sullivan Foundation the other day about our trip, and the reason I did so was to remind the American people about how important it is for our nation to remain generous and compassionate when it comes to helping people overseas.

I also, during my trip, urged Congress to reauthorize the Emergency Plan and increase our commitment, and they did. They approved a good, bipartisan bill, that maintains the principles that have made this program effective. And so I want to thank acting Chairman Howard Berman and Ranking Member Ileana Ros-Lehtinen, and all the members of the Committee for the action they took. This afternoon they're going to come down and I'll be able to thank them in person -- I'm going to brief them on the trip. Obviously, our hope is now that the House will act quickly and send the bill reauthorizing PEPFAR to the Senate, and I'd like to sign it into law as quickly as possible.

Members should also act on a very urgent priority, and that is to pass legislation our intelligence officials need to quickly and effectively monitor terrorist communications. At issue is a dispute over whether telecommunications companies should be subjected to class-action lawsuits because they are believed to have helped defend America after the attacks of 9/11. Allowing these lawsuits to proceed would be unfair. If any of these companies helped us, they did so after being told by our government that their assistance was legal and vital to our national security.

Allowing the lawsuits to proceed could aid our enemies, because the litigation process could lead to the disclosure of information about how we conduct surveillance, and it would give al Qaeda and others a roadmap as to how to avoid the surveillance. Allowing these lawsuits to proceed could make it harder to track the terrorists, because private companies besieged by and fearful of lawsuits would be less willing to help us quickly get the information we need. Without the cooperation of the private sector, we cannot protect our country from terrorist attack.

Protecting these companies from lawsuits is not a partisan issue. Republicans and Democrats in the United States Senate came together and passed a good bill, protecting private companies from these abusive lawsuits. And Republicans and Democrats in the House stand ready to pass the Senate bill, if House leaders would only stop blocking an up or down vote and let the majority in the House prevail.

Some in Congress have said we have nothing to worry about, because if we lose the cooperation of the private sector we can use the old FISA law. They're wrong. FISA was out of date. It did not allow us to track foreign terrorists on foreign soil quickly and effectively. And that is why a dangerous intelligence gap opened up last year, and that is why Congress passed legislation that reformed FISA -- but they did so only temporarily. The law expired; the threat to America has not expired.

Congress understood last year that FISA did not give our intelligence professionals the tools they needed to keep us safe. The Senate understands that the FISA -- old FISA didn't give us the tools needed to protect America. The bipartisan bill it passed provides those tools our

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intelligence professionals need. Yet the House's failure to pass this law raises the risk of reopening a gap in our intelligence gathering, and that is dangerous.



Another vital priority for protecting the nation is prevailing in Iraq. Unfortunately, this week the Senate debated yet another bill that threatens to cut off funding and tie the hands of our commanders in Iraq. It seems that no matter what happens in Iraq opponents to the war have one answer: Retreat. When things were going badly in Iraq a year ago, they called for withdrawal. Then we changed our strategy, launched the surge and turned the situation around. Since the surge began, high-profile terrorist attacks are down, civilian deaths are down, sectarian killings are down, and our own casualties are down. U.S. and Iraqi forces have captured or killed thousands of extremists, including hundreds of key al Qaeda operatives and leaders. Reconciliation is taking place in local communities across the country. That reconciliation is beginning to translate into political progress in the capital city.

In the face of these changes on the ground, congressional leaders are still sounding the same old call for withdrawal. I guess you could say that when it comes for pushing for withdrawal, their strategy is to stay the course. It's interesting that many of the same people who once accused me of refusing to acknowledge setbacks in Iraq now are the ones who are refusing to acknowledge progress in Iraq. If we followed their advice a year ago, Iraq would be a far different and more dangerous place than it is today. And the American people would be at greater risk.

If we follow their advice now, we would put at risk the gains our troops have made over the past year. Congress does need to act when it comes to Iraq. What they need to do is stand by our brave men and women in uniform and fully fund the troops.

Finally, Congress needs to act to help homeowners avoid foreclosure. Unfortunately, the Senate is considering legislation that would do more to bail out lenders and speculators than to help American families keep their homes. The Senate bill would actually prolong the time it takes for the housing market to adjust and recover and it would lead to higher interest rates. This would be unfair to the millions of homeowners who make the hard choices every month to pay their mortgage on time and it would be unfair to future home buyers. Instead, Congress should move ahead with responsible legislation to modernize the Federal Housing Administration and Fannie Mae and Freddie Mac. By taking these steps we can help struggling homeowners and help our economy weather the difficult time in the housing market.

I'd be glad to take some questions. Terry.

Q Mr. President, bad economic news continues to pile up, the latest today with the GDP barely growing. Are you concerned that a sagging economy and hard times will help defeat John McCain, like it did your father in 1992? And how far are you willing to go to prevent that?

THE PRESIDENT: I'm concerned about the economy because I'm concerned about working Americans, concerned about people who want to put money on the table and save for their kids' education. That's why I'm concerned about the economy. I want Americans working.

And there's no question the economy has slowed down. You just cited another example of slowdown. I don't think we're headed to a recession, but no question we're in a slowdown. And that's why we acted, and acted strongly, with over \$150 billion worth of pro-growth economic incentives -- mainly money going into the hands of our consumers. And some money going to incent businesses to invest, which will create jobs.

And so we acted robustly. And now it's time to determine whether or not this pro-growth package will actually work. Now, the checks will start going out in the second week of May. There are going to be letters out soon explaining who is eligible for the refunds. Credit will happen in the first week of May. In other words, some people will choose to have their bank accounts credited. And in the second week of May, we anticipate the checks start moving out of Washington.

And the purpose is to encourage our consumers. The purpose is to give them money -- their own to begin with, by the way -- but give them money to help deal with the adverse effects of the decline in housing value. Consumerism is a significant part of our GDP growth, and we want to sustain the American consumer, encourage the American consumer and, at the same time, we want to encourage investment. So we'll see how the plan works.

Q But the political context --

THE PRESIDENT: You're trying to get me to be the pundit again. Look, you all figure that out. I mean, we've -- what I'm dealing with is the situation at hand, and I appreciate that -- both Democrats and Republicans in the United States Congress and Senate for getting this bill done very quickly. And it's a substantial piece of legislation, and it's a good sign that we can figure out how to cooperate with each other at times.

And so we'll see the effects of this pro-growth package. I know there's a lot of -- here in Washington, people are trying to -- stimulus package two and all that stuff. Why don't we let stimulus package one, which seemed like a good idea at the time, have a chance to kick in?

Yes.

Q Mr. President, Turkey's ground offensive in northern Iraq is now a week old with no end in sight. How quickly would you like to see Turkey end its offenses, its incursion? And do you have any concerns about the possibility of protracted presence in northern Iraq causing further destabilization in the region?

THE PRESIDENT: A couple of points on that. One, the Turks, the Americans, and the Iraqis, including the Iraqi Kurds, share a common enemy in the PKK. And secondly, it's in nobody's interests that there be safe haven for people who are -- have the willingness to kill innocent people.

A second point I want to make to you, Matt, is that there is a special forces presence in northern Iraq -- in Kurdistan -- now, apart from what you're referring to. So there is a presence. And there has been a presence for a while.

Thirdly, I strongly agree with the sentiments of Secretary Gates, who said that the incursion must be limited, and must be temporary in nature. In other words, it shouldn't be long-lasting. But the Turks need to move quickly, achieve their objective, and get out.

Q But how quickly, sir, do they need to move out?

THE PRESIDENT: You know, as quickly as possible.

Q Days or weeks?

THE PRESIDENT: Well, as possible.

Q Sir, I'd like to ask you about Russia. The Democratic candidates, when asked about the new Russian leader, Dmitry Medvedev, didn't appear to know a great deal about him. I wonder what you can say about him, how much power you think he's really got, with Putin still in the picture? And critics would say you badly misjudged Vladimir Putin. So what would be your cautionary tale to your successor about the threat Russia poses, and how to deal with this new leader?

THE PRESIDENT: I don't know much about Medvedev either. And what will be interesting to see is who comes to the -- who represents Russia at the G8, for example. It will be interesting to see -- it will help, I think, give some insight as to how Russia intends to conduct foreign policy after Vladimir Putin's presidency. And I can't answer the question yet.

I can say that it's in our interests to continue to have relations with Russia. For example, on proliferation matters, it's in our interest to be able to make sure that materials that could cause great harm aren't proliferated. It's in our interest to work together on Iran. As I said I think in this room the last time I was here, I appreciated the fact that Vladimir Putin told the Iranians that they will provide -- they, Russia -- will provide enriched uranium to run the Bushehr power plant, thereby negating the need for the Iranians to enrich in the first place. I thought that was a constructive suggestion, and we need to be in a position to be able to work with Russia on Iran.

There's a lot of areas where -- yesterday, for example, with the Prime Minister of the Czech Republic, I talked about a missile defense system in Europe, but I believe it's in our interests to try to figure out a way for the Russians to understand the system is not aimed at them, but aimed at the real threats of the 21st century, which could be a launch from a violent regime -- a launch of a weapon of mass destruction.

So there's areas, David, where we need to cooperate and -- let me finish -- and so it's -- I'm going to try to leave it so

whoever my successor is will be able to have a relationship with whoever is running foreign policy in Russia. It's in the country's interest. That doesn't mean we have to agree all the time. I mean, obviously we didn't agree on Kosovo. There will be other areas where we don't agree. And yet it is in the interest of the country to have a relationship, leader to leader, and hopefully beyond that.

Q But first of all, are you suggesting, or are you worried that, in fact, Medvedev is a puppet for Vladimir Putin? And --

THE PRESIDENT: No, I wouldn't say that. That's your conclusion, not mine.

Q No, I'm asking the question about whether you're concerned. But isn't there something you took away that you can offer to your successor about how it's risky in the process of sizing up your Russian counterpart? Don't you think that you learned something from your time with Putin?

THE PRESIDENT: Here's what I learned -- here's what I learned: I learned that it's important to establish personal relations with leaders even though you may not agree with them -- certain leaders. I'm not going to have a personal relationship with Kim Jong-il, and our relationships are such that that's impossible.

But U.S.-Russian relations are important. It's important for stability. It's important for our relations in Europe. And therefore my advice is to establish a personal relationship with whoever is in charge of foreign policy in Russia. It's in our country's interest to do so.

Now, it makes it easier, by the way, when there's a trustworthy relationship, to be able to disagree and yet maintain common interests in other areas. And so we've had our disagreements. As you know, Putin is a straightforward, pretty tough character when it comes to his interests. Well, so am I. And we've had some head-butts, diplomatic head-butts. You might remember the trip to Slovakia. I think you were there at the famous press conference. But -- and yet, in spite of that, our differences of opinion, we still have got a cordial enough relationship to be able to deal with common threats and opportunities. And that's going to be important for the next President to maintain.

Yes, Jonathan.

Q Mr. President, do you believe if we have the kind of rapid pull-out from Iraq that Democrats are talking about, that we would be at greater risk of a terrorist attack here at home? And when Senator Obama was asked a similar question, he said, "If al Qaeda is forming a base in Iraq, then we will have to act in a way that secures the American homeland and our interests abroad." So I'm wondering if --

THE PRESIDENT: That's an interesting comment. If al Qaeda is securing a al Qaeda base -- yes, well, that's exactly what they've been trying to do for the past four years. That's their stated intention, was to create enough chaos and disorder to establish a base from which to either launch attacks or spread a caliphate. And the intent of the surge was to send more Marines into the area that -- where they had proclaimed their desire to set up a base. That was Anbar province. And so, yes, that's one of the challenges we face, is denying al Qaeda a safe haven anywhere. And their intentions -- that's what they said, that they would like to have a base or safe haven in Anbar province.

Yes, Bill.

Q But --

THE PRESIDENT: No, next turn.

Q But the question about --

THE PRESIDENT: Nice try. (Laughter.)

Q Mr. President --

THE PRESIDENT: You obviously haven't been here long. John, where have you been, Jonathan? (Laughter.)

Q Across the river.

THE PRESIDENT: Yes, okay, yes. Welcome to the other side. (Laughter.)

Q You can get the Congress to protect telecom companies from lawsuits, but then there's no recourse for Americans who feel that they've been caught up in this. I know it's not intended to spy on Americans, but in the collection process, information about everybody gets swept up and then it gets sorted. So if Americans don't have any recourse, are you just telling them, when it comes to their privacy, to suck it up?

THE PRESIDENT: I wouldn't put it that way, if I were you, in public. Well, you've been long been long enough to -- anyway, yes, I -- look, there's -- people who analyze the program fully understand that America's civil liberties are well protected. There is a constant check to make sure that our civil liberties of our citizens aren't -- you know, are treated with respect. And that's what I want, and that's what most -- all Americans want.

Now let me talk about the phone companies. You cannot expect phone companies to participate if they feel like they're going to be sued. I mean, it is -- these people are responsible for shareholders; they're private companies. The government said to those who have alleged to have helped us that it is in our national interests and it's legal. It's in our national interests because we want to know who's calling who from overseas into America. We need to know in order to protect the people.

It was legal. And now, all of a sudden, plaintiffs attorneys, class-action plaintiffs attorneys, you know -- I don't want to try to get inside their head; I suspect they see, you know, a financial gravy train -- are trying to sue these companies. First, it's unfair. It is patently unfair. And secondly, these lawsuits create doubts amongst those who will -- whose help we need.

I guess you could be relaxed about all this if you didn't think there was a true threat to the country. I know there's a threat to the country. And the American people expect our Congress to give the professionals the tools they need to listen to foreigners who may be calling into the United States with information that could cause us great harm. So, on the one hand, the civil liberties of our citizens are guaranteed by a lot of checks in the system, scrutinized by the United States Congress.

And secondly, I cannot emphasize to you how important it is that the Congress solve this problem. The Senate has solved the problem. And people say, would you ever compromise on the issue? The Senate bill is a compromise. And there's enough votes in the House of Representatives to pass the Senate bill. It's a bipartisan bill. And the House leaders need to put it on the floor, let the will of the House work. In my judgment, it happens to be the will of the people, to give the professionals the tools they need to protect the country.

Elaine.

Q Mr. President, you've stressed over and over in recent days particularly the importance of FISA reform to help keep America safe, and yet you have not yet filled a key national security post. Fran Townsend announced her resignation months ago, in November. What is the delay there, and what are Americans to make of that delay? Is America less safe because of it?

THE PRESIDENT: We got a fine man named Joel Bagnal working that office right now. He's a professional. I trust his judgment. He's a real good guy. And no, they shouldn't worry about Joel. He knows what he's doing.

John.

Q But, sir, the American --

THE PRESIDENT: John.

Q The Homeland Security Advisor is a key post. What's taking so long?

THE PRESIDENT: Joel Bagnal has occupied the position, Elaine. He's doing the job, and I've got confidence in him. And so should the American people have confidence in him. He's a fine professional. He knows what he's doing. And I'm very comfortable in saying, on your cameras, that our staff in the White House, led by Joel Bagnal, knows what they're doing when it comes to advising the President on matters of homeland security.

John.

Q Thanks, Mr. President. There's been a lot of criticism on the campaign trail of free trade policies and even talk about the U.S. opting out of NAFTA. And it doesn't seem that you want to discuss the prospects of Republican candidates on the campaign trail this year, but --

THE PRESIDENT: Not yet.

Q Not yet. But just given all the concerns about the economy that people have, do you feel like you could win in a state like Ohio if you were running again for President?

THE PRESIDENT: Landslide. (Laughter.) Look, I am a big believer in free trade. And the reason why is I firmly believe that free trade is essential to the formation of high-paying, quality jobs. In other words, people who work for industries that export goods to overseas are likely to be paid more than their -- other workers.

Secondly, if you look at the -- our economic growth recently, particularly last year, a major portion of that growth came as a result of exports. It's an essential part of our economic picture.

Yes, I heard the talk about NAFTA. One statistic I think people need to know is I think there's roughly like \$380 billion worth of goods that we ship to our NAFTA partners on an annual basis. Now, \$380 billion worth of goods means there's a lot of farmers and businesses, large and small, who are benefiting from having a market in our neighborhood. And the idea of just unilaterally withdrawing from a trade treaty because of trying to score political points is not good policy. It's not good policy on the merits, and it's not good policy as a message to send to our -- people who have, in good faith, signed a treaty and worked with us on a treaty.

Thirdly, those of us who grew up in Texas remember what the border looked like when we were kids, and it was really poor. And you go down to that border today, it is prosperous on both sides of the river, to the credit of those who proposed NAFTA, and to the credit of those who got NAFTA through the Congress. If you're worried about people coming into our country illegally, it makes sense to help a place like Mexico grow its economy. Most folks would rather be finding a job close to home; most folks would rather not try to get in the bottom of an 18-wheeler to come and put food on the table.

This agreement has meant prosperity on both sides of our borders, north and south. And I believe it's in the interests to continue to seek markets for our farmers, ranchers and businesspeople. I also know it's in our interest to insist that when people sell products into our countries [sic], that we get treated fairly. In other words, if we treat a country one way, people in a country one way, we expect to be treated the same way -- like Colombia.

The Colombia Free Trade vote is coming up. Many of their products come into our country much easier than our products go into theirs. It makes sense to be treated equally. But on this vote, there's an additional consequence. If the Congress rejects the Colombia Free Trade Agreement, it will sorely affect the national security interests of the United States. It will encourage false populism in our neighborhood. It will undermine the standing of courageous leaders like President Uribe. And I strongly urge the Congress, when they bring this -- when the Colombia Free Trade Agreement is brought to a vote, to seriously consider the consequences of rejecting this trade agreement.

Mike.

Q Mr. President, on FISA, do you worry that perhaps some House Democratic leaders are playing a high-stakes game of "wait and see," in terms of if we get attacked, we all lose; if we don't get attacked, then maybe that makes the case that you don't need all the powers in FISA?

THE PRESIDENT: No, I don't think so. I mean, I think that's -- that would be ascribing motives that are -- I just don't think they're the motives of the House leaders to do that. I think they're really wrestling with providing liability protecting to phone companies. I don't think that's cynical or devious, Michael. That's just too risky.

A lot of these leaders understand that there is an enemy that wants to attack. The caucus, evidently, in the House -- the Democratic Caucus -- is, you know, concerned about exactly Plante's question, you know. And I just can't tell you how important it is to not alienate, or not discourage, these phone companies.

How can you listen to the enemy if the phone companies aren't going to participate with you? And they're not going to participate if they get sued. Let me rephrase -- less likely to participate. And they're facing billions of dollars of lawsuits,

and they have a responsibility to their shareholders. And yet they were told what they were going to do is legal.

And anyway, I'm going to keep talking about the issue, Mike. This is an important issue for the American people to understand. And it's important for them to understand that no renewal of the Patriot Act -- I mean, the Protect America Act -- is dangerous for the security of the country, just dangerous.

I'm sure people, if they really pay attention to the details of this debate, wonder why it was okay to pass the Protect America Act last summer, late last summer, and all of a sudden it's not okay to pass it now. And so I will keep talking about the issue, and talking about the issue.

Michael.

Q Thank you, Mr. President. I'd like to ask you about another issue that's kind of come up on the campaign trail, in terms of discussion, which is, this is a point of view that has been espoused, that we would be better off if we talked to our adversaries, in particular, Iran and Cuba, you know, without preconditions. And as President, you have obviously considered and rejected this approach. And I'm wondering if you can give us a little insight into your thinking about this, and just explain to the American people what is lost by talking with those when we disagree?

THE PRESIDENT: What's lost by embracing a tyrant who puts his people in prison because of their political beliefs? What's lost is it will send the wrong message. It will send a discouraging message to those who wonder whether America will continue to work for the freedom of prisoners. It will give great status to those who have suppressed human rights and human dignity.

I'm not suggesting there's never a time to talk, but I'm suggesting now is not the time -- not to talk with Raul Castro. He's nothing more than an extension of what his brother did, which was to ruin an island, and imprison people because of their beliefs.

I had these wives of these dissidents come and see me, and their stories are just unbelievably sad. And it just goes to show how repressive the Castro brothers have been, when you listen to the truth about what they say. And the idea of embracing a leader who's done this without any attempt on his part to release prisoners and free their society would be counterproductive and send the wrong signal.

Q No one is saying embrace him, they're just saying talk --

THE PRESIDENT: Well, talking to him is embracing. Excuse me. Let me use another word -- you're right, "embrace" is like big hug, right? You're looking -- I do embrace people. Mike, one of these days, I'm just thinking about -- (laughter.) Right, okay, good, thank you for reminding me to use a different word. Sitting down at the table, having your picture taken with a tyrant such as Raul Castro, for example, lends the status of the office and the status of our country to him. He gains a lot from it by saying, look at me, I'm now recognized by the President of the United States.

Now, somebody would say, well, I'm going to tell him to release the prisoners. Well, it's a theory that all you got to do is embrace and these tyrants act. That's not how they act. That's not what causes them to respond. And so I made a decision quite the opposite, and that is to keep saying to the Cuban people, we stand with you; we will not sit down with your leaders that imprison your people because of what they believe; we will keep an embargo on you; we do want you to have money from people here in the homeland, but we will stay insistent upon this policy until you begin to get free.

And so that's the way I've conducted foreign policy, and will continue to conduct foreign policy. I just remind people that the decisions of the U.S. President to have discussions with certain international figures can be extremely counterproductive. It can send chilling signals and messages to our allies; it can send confusion about our foreign policy; it discourages reformers inside their own country. And in my judgment, it would be a mistake -- on the two countries you talked about.

Sheryl.

Q Mr. President, thank you. I want to bring you back to Senator Obama's comment on Iraq. Do you believe that his comment was naive?

THE PRESIDENT: I believe Senator Obama better stay focused on his campaign with Senator Clinton, neither of whom

has secured their party's nominee yet -- nomination yet. And my party's nomination hasn't been decided yet either. And so there will be ample time to discuss whoever their candidate -- the positions of whoever their candidate is.

Nice try, Sheryl. Would you like to try another tact, another question?

Q Well, you said it was an interesting comment. Okay, I'll follow on it. About Iraq, you have said in the past -- (laughter) -- that you want to leave a sustainable policy --

THE PRESIDENT: Yes.

Q Wait a minute --

Q I'd like to have another question.

THE PRESIDENT: Okay.

Q You want to leave your --

THE PRESIDENT: Well, it was just -- give her -- should we vote on whether she gets another question? (Laughter.)

Q You've said, Mr. President, that you want to leave Iraq in a sustainable situation --

THE PRESIDENT: Yes, I do.

Q -- at the end of your administration. Can you describe for us specifically what do you mean by "sustainable"? Do you have specific goals and objectives that in your mind would meet the criteria of sustainability?

THE PRESIDENT: Yes, which is to keep enough troops there so we can succeed. And David Petraeus will -- for example, David Petraeus will come back, along with Ryan Crocker, here later on this spring and will make a recommendation as to what those troop levels ought to be.

The idea of having a request by the Iraqi government for a long-term security agreement is part of sustainability. And obviously we're going to be pushing hard at the same time to get the political process moving forward.

I don't know if you noticed yesterday, but it was a very interesting moment in Iraqi constitutional history, when part of the -- a member of the presidency council utilized his constitutional right to veto one of the three pieces of legislation recently passed. I understand the use of the veto, intend to continue to use it, but I thought it was a healthy sign that people are thinking through the legislation that's passed, and they're worrying about making sure that laws are constitutional. And I feel pretty good about the fact that they're, of course, going to continue to work to make sure that their stated objective of getting provincial elections done by October of 2008 will happen.

So there's going to be a lot of -- my only point is sustainability is political, economic and security.

Yes, Ed.

Q Good morning, sir.

THE PRESIDENT: Yes, thank you.

Q If I could get back to the economy. The GDP numbers today show that our economy is increasingly relying on U.S. exports to keep growing. How important is a competitive dollar in keeping U.S. exports strong?

THE PRESIDENT: We believe in a strong dollar policy, and we believe that -- and I believe that our economy has got the fundamentals in place for us to be a -- is to grow and continue growing more robustly, hopefully, than we're growing now. And the dollar, the value of the dollar will be reflected in the ability for our economy to be -- to grow economically. And so we're still for a strong dollar.

Q Can I follow up on that, sir?

THE PRESIDENT: Maybe.

Q The --

THE PRESIDENT: I guess you are -- I haven't said yes. (Laughter.)

Q What's your advice to the average American who is hurting now, facing the prospect of \$4 a gallon gasoline, a lot of people facing --

THE PRESIDENT: Wait, what did you just say? You're predicting \$4 a gallon gasoline?

Q A number of analysts are predicting --

THE PRESIDENT: Oh, yeah?

Q -- \$4 a gallon gasoline this spring when they reformulate.

THE PRESIDENT: That's interesting. I hadn't heard that.

Q Yes, sir.

THE PRESIDENT: Yes. I know it's high now.

Q And the other economic problems facing people. Beyond your concern that you stated here, and your expectations for these stimulus checks, what kind of hope can you offer to people who are in dire straits?

THE PRESIDENT: Permanent tax -- keep the tax cuts permanent, for starters. There's a lot of economic uncertainty. You just said that. You just said the price of gasoline may be up to \$4 a gallon -- or some expert told you that -- and that creates a lot of uncertainty if you're out there wondering whether or not -- you know, what your life is going to be like and you're looking at \$4 a gallon, that's uncertain. And when you couple with the idea that taxes may be going up in a couple of years, that's double uncertainty. And therefore one way to deal with uncertainty is for Congress to make the tax cuts permanent.

Secondly, it's -- people got to understand that our energy policy needs to be focused on a lot of things -- one, renewables, which is fine, which I strongly support, as you know; two, conservation. But we need to be finding more oil and gas at home if we're worried about becoming dependent on oil overseas. And this -- I view it as a transitory period to new technologies that will change the way we live, but we haven't built a refinery in a long time. We're expanding refineries, but we haven't built a refinery in a long time. I strongly suggested to the Congress that we build refineries on old military bases, but, no, it didn't pass. But if you've got less supply of something, as demand continues to stay steady or grow, your price is going to go up.

Secondly, on oil, we -- the more oil we find at home, the better off we're going to be in terms of the short-run. And yet our policy is, you know, let us not explore robustly in places like ANWR. And there are environmental concerns, and I understand that. I also know there's technologies that should mitigate these environmental concerns. They got a bill up there in Congress now. Their attitude is, let's tax oil companies. Well, all that's going to do is make the price even higher. We ought to be encouraging investment in oil and gas close to home if we're trying to mitigate the problems we face right now.

And so, yes, there's a lot of uncertainty, and I'm concerned about the uncertainty. Hopefully this pro-growth package will help -- this, one hundred -- I think it's \$147 billion that will be going out the door, starting electronically in the first week of May, and through check in the second week of May. And the idea is to help our consumers deal with the uncertainty you're talking about. But, yes, no question about it, it's a difficult period.

Yes, Ken.

Q Thank you, sir. Now that you've found a location for your presidential library, you've got to find the money to build it. Reports indicate that you may be trying to collect as much as \$200 million. Is that figure accurate? Do you believe it's important for the American people to know who is giving that kind of money to their President? Will you disclose the contributions as they come in? And will you place any restriction on who gives money and how much they can give?

THE PRESIDENT: No, yes, no, yes. (Laughter.) Next question. (Laughter.) I haven't -- phew, man. You obviously haven't asked a question in a long time. It was like, you know, -- one, I haven't seen the final budget. Two, as Donnie Evans said, who is the chairman of the foundation, we'll look at the disclosure requirements and make a decision. You know, here's -- there's a lot of people -- or some people; I shouldn't say "a lot" -- some people who like to give and don't particularly want their names disclosed, whether it be for this foundation or any other foundation. And so we'll take that into consideration.

Thirdly -- and what was the other?

Q Any restrictions on who can give? Will you take foreign money for this?

THE PRESIDENT: Yes, I'll probably take some foreign money, but don't know yet, Ken. We just haven't -- we just announced the deal and I, frankly, have been focused elsewhere, like on gasoline prices and, you know, my trip to Africa, and haven't seen the fundraising strategy yet. So the answer to your question, really, I can't answer your question well.

Q Where does the people's right to know this fit into all that?

THE PRESIDENT: We're weighing, taking a look, taking consideration, giving it a serious consideration. Nice try, though.

Olivier.

Q Thank you, sir. In China a former factory worker who says that human rights are more important than the Olympics is being tried for subversion. What message does it send that you're going to the Olympics, and do you think athletes there should be allowed to publicly express their dissent?

THE PRESIDENT: Olivier, I have made it very clear, I'm going to the Olympics because it's a sporting event, and I'm looking forward to seeing the athletic competition. But that will not preclude me from meeting with the Chinese President, expressing my deep concerns about a variety of issues -- just like I do every time I meet with the President.

And maybe I'm in a little different position. Others don't have a chance to visit with Hu Jintao, but I do. And every time I meet with him I talk about religious freedom and the importance of China's society recognizing that if you're allowed to worship freely, it will benefit the society as a whole; that the Chinese government should not fear the idea of people praying to a god as they see fit. A whole society, a healthy society, a confident society is one that recognizes the value of religious freedom.

I talk about Darfur and Iran and Burma. And so I am not the least bit shy of bringing up the concerns expressed by this factory worker, and I believe that I'll have an opportunity to do so with the President and, at the same time, enjoy a great sporting event. I'm a sports fan. I'm looking forward to the competition. And each Olympic society will make its own decision as to how to deal with the athletes.

Yes, Mark.

Q Mr. President, back to the oil price -- tax breaks that you were talking about a minute ago. Back when oil was \$55 dollars a barrel, you said those tax breaks were not needed; people had plenty of incentive to drill for oil. Now the price of oil is \$100 a barrel and you're planning to threaten a plan that would shift those tax breaks to renewables.

THE PRESIDENT: I talked about some -- some of the breaks. And this is a -- this generally is a tax increase, and it doesn't make any sense to do it right now. We need to be exploring for more oil and gas. And taking money out of the coffers of the oil companies will make it harder for them to reinvest. I know -- they say, well, look at all of the profits. Well, we're raising the price of gasoline in a time when the price of gasoline is high.

Secondly, we've invested a lot of money in renewables. This administration has done more for renewables than any President. Now, we got a problem with renewables, and that is the price of corn is beginning to affect food -- cost of food, and it's hurting hog farmers and a lot of folks. And the best way to deal with renewables is to focus on research and development that will enable us to use other raw material to produce ethanol. I'm a strong believe in ethanol, Mark. This administration has got a great record in it. But it is a -- I believe research and development is what's going to make renewable fuels more effective.

Again, I repeat, if you look at what's happened in corn out there, you're beginning to see the food issue and the energy issue collide. And so, to me, the best dollar spent is to continue to deal with cellulosic ethanol in order to deal with this bottleneck right now. And secondly, the tax -- yes, I said that a while ago -- on certain aspects, but the way I analyze this bill is it's going to cost the consumers more money. And we need more oil and gas being explored for; we need more drilling; we need less dependence on foreign oil.

And as I say, we're in a period of transition here in America, from a time where we were -- where we are oil and gas dependent, to, hopefully, a time where we got electric automobiles, and we're spending money to do that; a time when we're using more biofuels, and we've taken huge investments in that; a time when we've got nuclear power plants and we're able to deal with the disposal in a way that brings confidence to the American people -- so we're not dependent on natural gas to fire up our -- a lot of our utilities, and a time when we can sequester coal.

That's where we're headed for, but we've got to do something in the interim. Otherwise, we're going to be dealing, as the man said, with \$4 gasoline. And so that's why I'm against that bill.

I thank you. It's been a pleasure. Enjoyed being with you.

Q Sir, do you think Hillary Clinton will be the nominee?

THE PRESIDENT: Pardon me?

Q You still think Hillary Clinton will be the nominee?

THE PRESIDENT: I'm not talking about politics.

Q You said that before, though --

THE PRESIDENT: Trying to get me to be pundit-in-chief.

Q Are they qualified to be commander-in-chief?

THE PRESIDENT: I appreciate you doing that.

Jackson -- Jackson, nice to see you. (Laughter.) Glad to see you back. (Laughter.)

END 10:51 A.M. EST

Return to this article at:

<http://www.whitehouse.gov/news/releases/2008/02/20080228-2.html>



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EXHIBIT K



December 21, 2007

VIA FACSIMILE — (703) 482-2144

Freedom of Information Act/Privacy Act Office
Office of the Director of National Intelligence
Washington, DC 20511

RE: Freedom of Information Act Request and Request for Expedited Processing

Dear Sir or Madam:

This letter constitutes an expedited request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted to the Office of the Director of National Intelligence (“ODNI”) on behalf of the Electronic Frontier Foundation (“EFF”). We make this request as part of EFF’s FOIA Litigation for Accountable Government (“FLAG”) Project, which works to obtain government documents and make them widely available to the public.

On August 5, 2007, President Bush signed into law the Protect America Act, legislation which amended the Foreign Intelligence Surveillance Act (“FISA”) to expand the government’s power to intercept communications without warrants, as well as shield telecommunications companies from future liability for their role in such activity.

Since the passage of this law, the Administration has tried to convince Congress to amend FISA to make it impossible for courts to impose liability on telecommunications companies for participating in a massive and illegal warrantless spying operation conducted by the National Security Agency. *See* Signing Statement, *President Bush Commends Congress on Passage of Intelligence Legislation*, Aug. 6, 2007; James Risen, *Bush Signs Law to Widen Reach for Wiretapping*, *NY Times*, Aug. 6, 2007; Mark Hosenball and Michael Isikoff, *Case Dismissed?: The Secret Lobbying Campaign Your Phone Company Doesn’t Want You to Know About*, *Newsweek*, updated Sept. 26, 2007, *available at* <http://www.newsweek.com/id/41142>; Eric Lichtblau, James Risen and Scott Shane, *Wider Spying Fuels Aid Plan for Telecom Industry*, *NY Times*, Dec. 16, 2007.

National Intelligence Director Mike McConnell has actively campaigned for telecom immunity. In one interview, he said:

The issue that we did not address [in the Protect America Act], which has to be addressed is the liability protection for the private sector now is proscriptive, meaning going forward. We’ve got a retroactive problem. When I went through and briefed the various senators and congressmen, the issue was alright, look, we don’t want to work that right now, it’s too hard because we want to find out about some issues of the past. So what I recommended to the administration is, “Let’s take that off the table for now and take it up when Congress reconvenes in September.”

**454 Shotwell Street, San Francisco, CA 94110 USA
+1 415 436 9333 (v) +1 415 436 9993 (f) www.eff.org**

Chris Roberts, *Transcript: Debate on the Foreign Intelligence Surveillance Act*, El Paso Times, Aug. 22, 2007.

We are seeking all agency records from September 1, 2007 to the present concerning briefings, discussions, or other exchanges that Director McConnell or other ODNI officials have had with 1) members of the Senate or House of Representatives and 2) representatives or agents of telecommunications companies¹ concerning amendments to FISA, including any discussion of immunizing telecommunications companies or holding them otherwise unaccountable for their role in government surveillance activities. This request includes, but is not limited to, all email, appointment calendars, telephone message slips, or other records indicating that such briefings, discussions, or other exchanges took place.

Request for Expedited Processing

This request warrants expedited processing because it pertains to information about which there is “[a]n urgency to inform the public about an actual or alleged Federal Government activity,” and it is “made by a person primarily engaged in disseminating information.” 32 C.F.R. § 1700.12(c)(2). The information we request easily satisfies this standard.

As an initial matter, it is worth noting that ODNI and the Department of Justice recently granted expedited processing for four FOIA requests nearly identical to this one (see ODNI and Justice Department letters granting expedited processing attached hereto).

The federal government activity at issue here — ODNI efforts to secure immunity for telecoms engaged in illegal surveillance — raises serious questions about ODNI’s interests in revision of the FISA. Moreover, the Protect America Act includes a sunset provision requiring Congress to decide within weeks whether to reauthorize the legislation. This decisionmaking process has involved, and will continue to involve, congressional debate about whether to expand the law further, and if so, how much. Because Congress will imminently consider modifying FISA again, there is an urgency to inform the public about the lobbying forces pushing for reform of the law. The information we have requested will help the public and Congress fully participate in the

¹ The phrase “representatives or agents of telecommunications companies” is intended to include lobbyists and lawyers acting on behalf of such companies. According to *Newsweek*, these individuals may include, but are not limited to, “powerhouse Republican lobbyists Charlie Black and Wayne Berman (who represent AT&T and Verizon, respectively), former GOP senator and U.S. ambassador to Germany Dan Coats (a lawyer at King & Spaulding who is representing Sprint), former Democratic Party strategist and one-time assistant secretary of State Tom Donilon (who represents Verizon), former deputy attorney general Jamie Gorelick (whose law firm also represents Verizon) and Brad Berenson, a former assistant White House counsel under President George W. Bush who now represents AT&T.” Mark Hosenball and Michael Isikoff, *Case Dismissed?*, *Newsweek*, updated Sept. 26, 2007.

current and ongoing debate over whether the government's authority to conduct electronic surveillance should be further expanded and facilitated by telecommunications companies.

The purpose of this request is to obtain information directly relevant to ODNI's communications with members of Congress and telecommunications carriers about updating FISA to grant companies retroactive immunity for illegal conduct. There is an urgency to inform the public about the information we seek. Therefore, this request clearly meets the standard for expedited processing set forth in ODNI regulations.

Further, as I explain below in support of our request for "news media" treatment, EFF is "primarily engaged in disseminating information."

Request for News Media Fee Status

EFF asks that it not be charged search or review fees for this request because EFF qualifies as a "representative of the news media" pursuant to the FOIA and 32 C.F.R. § 1700.2(h)(4). In requesting this classification, we note that the Department of Homeland Security and Department of State have recognized that EFF qualifies as a "news media" requester based upon the publication activities set forth below (see DHS stipulation and State Department letter attached hereto). In addition, the National Security Agency has previously determined that EFF is not only a "news media requester," but also "primarily engaged in disseminating information" for purposes of expedited processing (see attached EFF FOIA request and NSA response, in which EFF requested expedited processing because it sought information "urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity," and NSA granted the request). We further note that the U.S. Court of Appeals for the D.C. Circuit has stressed that "different agencies [must not] adopt inconsistent interpretations of the FOIA." *Al-Fayed v. CIA*, 254 F.3d 300, 307 (D.C. Cir. 2001), quoting *Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1287 (D.C. Cir. 1983).

EFF is a non-profit public interest organization that works "to protect and enhance our core civil liberties in the digital age."² One of EFF's primary objectives is "to educate the press, policymakers and the general public about online civil liberties."³ To accomplish this goal, EFF routinely and systematically disseminates information in several ways.

First, EFF maintains a frequently visited web site, <http://www.eff.org>, which received 46,682,194 hits in July 2007 — an average of 62,744 per hour. The web site reports the latest developments and contains in-depth information about a variety of civil liberties and intellectual property issues.

² Guidestar Basic Report, Electronic Frontier Foundation, <http://www.guidestar.org/pqShowGsReport.do?npoId=561625> (last visited Dec. 18, 2007).

³ *Id.*

EFF has regularly published an online newsletter, the EFFector, since 1990. The EFFector currently has more than 77,000 subscribers. A complete archive of past EFFectors is available at <http://www.eff.org/effector/>.

Furthermore, EFF publishes a blog that highlights the latest news from around the Internet. DeepLinks (<http://www.eff.org/deeplinks/>) reports and analyzes newsworthy developments in technology. It also provides miniLinks, which direct readers to other news articles and commentary on these issues. DeepLinks had 510,633 hits in July 2007.⁴

In addition to reporting hi-tech developments, EFF staff members have presented research and in-depth analysis on technology issues in no fewer than eighteen white papers published since 2002. These papers, available at <http://www.eff.org/wp/>, provide information and commentary on such diverse issues as electronic voting, free speech, privacy and intellectual property.

EFF has also published several books to educate the public about technology and civil liberties issues. *Everybody's Guide to the Internet* (MIT Press 1994), first published electronically as *The Big Dummy's Guide to the Internet* in 1993, was translated into several languages, and is still sold by Powell's Books (<http://www.powells.com>). EFF also produced *Protecting Yourself Online: The Definitive Resource on Safety, Freedom & Privacy in Cyberspace* (HarperEdge 1998), a "comprehensive guide to self-protection in the electronic frontier," which can be purchased via Amazon.com (<http://www.amazon.com>). Finally, *Cracking DES: Secrets of Encryption Research, Wiretap Politics & Chip Design* (O'Reilly 1998) revealed technical details on encryption security to the public. The book is available online at <http://cryptome.org/cracking-des.htm> and for sale at Amazon.com.

Most recently, EFF has begun broadcasting podcasts of interviews with EFF staff and outside experts. *Line Noise* is a five-minute audio broadcast on EFF's current work, pending legislation, and technology-related issues. A listing of *Line Noise* podcasts is available at <feed://www.eff.org/rss/linenoisemp3.xml> and <feed://www.eff.org/rss/linenoiseogg.xml>. These podcasts were downloaded more than 2,600 times from EFF's in July 2007.

Due to these extensive publication activities, EFF is a "representative of the news media" under the FOIA and agency regulations.

Request for a Public Interest Fee Waiver

EFF is entitled to a waiver of duplication fees because disclosure of the requested information is in the public interest within the meaning of 5 U.S.C. § 552(a)(4)(a)(iii) and 32 C.F.R. § 1700.6(b)(2). To determine whether a request meets this standard, ODNI considers whether "[i]t

⁴ These figures include hits from RSS feeds through which subscribers can easily track updates to DeepLinks and miniLinks.

is in the public interest to provide responsive records because the disclosure is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester.” *Id.* This request clearly satisfies these criteria.

First, ODNI’s relationship with telecommunications companies and ODNI’s push to amend FISA unquestionably constitutes government operations or activities.

Second, disclosure of the requested information will contribute to an understanding of government operations or activities. EFF has requested information that will shed light on how and why ODNI is lobbying to immunize telecommunications companies from liability for their role in conducting illegal surveillance.

Third, the requested material will contribute to public understanding of ODNI’s efforts to modify FISA. This information will contribute not only to EFF’s understanding of the reasons why and manner in which ODNI is lobbying for legal reform, but to the understanding of a reasonably broad audience of persons interested in the subject. EFF will make the information it obtains under the FOIA available to the public and the media through its web site and newsletter, which highlight developments concerning privacy and civil liberties issues, and/or other channels discussed more fully above.

Fourth, the disclosure will contribute significantly to the public’s knowledge and understanding of ODNI’s push to amend FISA to protect telecommunications companies. Disclosure of the requested information will help inform the public about the Justice Department’s efforts to reform the law and the interests behind them, as well as contribute to the public debate about whether FISA should be further modified.

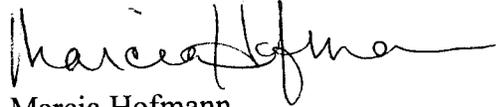
Furthermore, a fee waiver is appropriate here because EFF has no commercial interest in the disclosure of the requested records. EFF is a 501(c)(3) nonprofit organization, and will derive no commercial benefit from the information at issue here.

Under penalty of perjury, I hereby affirm that the foregoing is true and correct to the best of my knowledge.

Thank you for your consideration of this request. As applicable ODNI regulations provide, we will anticipate your determination within ten (10) calendar days. 28 C.F.R. § 16.5(d)(1). Please be advised that, given the urgency of this matter, EFF intends to seek immediate judicial relief if a response to this request for expedition is not issued in a timely manner.

Freedom of Information Act Request and Request for Expedited Processing
December 21, 2007
Page 6

Sincerely,

A handwritten signature in black ink, appearing to read "Marcia Hofmann", with a long horizontal flourish extending to the right.

Marcia Hofmann
Staff Attorney

Enclosures

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
DIRECTOR OF THE INTELLIGENCE STAFF

Mr. John F. Hackett
Chief, Information Management Office
Office of the Director of National Intelligence
Washington, DC 20511

Ms. Marcia Hofmann
Electronic Frontier Foundation
1875 Connecticut Avenue, N.W.
Suite 600
Washington, DC 20009

Reference: DF-2007-00079

Dear Ms. Hofmann:

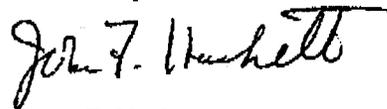
On 4 September 2007 the Office of the Director of National Intelligence received your facsimile dated 31 August 2007, wherein you requested under the Freedom of Information Act (FOIA) records concerning:

“... ODNI's communications with telecommunications companies about updating FISA to provide them retroactive legal immunity for illegal activities.”

We accept your request and have assigned it the reference number above. Please use this number when corresponding with us so that we can identify it easily. In addition, your request for expedited processing is granted and your request will be processed as soon as practicable.

If you have any questions you may contact the FOIA Requester Service Center at 571-204-4774.

Sincerely,



John F. Hackett

Director, Information Management Office

IMS/IRRG/PIPD/carey/.../6 September 2007

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OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
DIRECTOR OF THE INTELLIGENCE STAFF

Mr. John F. Hackett
Chief, Information Management Office
Office of the Director of National Intelligence
Washington, DC 20511

Ms. Marcia Hofmann
Electronic Frontier Foundation
1875 Connecticut Avenue, N.W.
Suite 600
Washington, DC 20009

Reference: DF-2007-00080

Dear Ms. Hofmann:

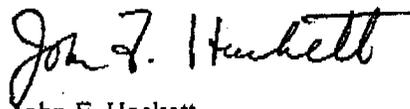
On 4 September 2007 the Office of the Director of National Intelligence received your facsimile dated 31 August 2007, wherein you requested under the Freedom of Information Act (FOIA) records concerning:

“ . . . exchanges that Director McConnell or other ODNI officials have had with members of the Senate or House of Representatives concerning amendments to FISA . . . ”

We accept your request and have assigned it the reference number above. Please use this number when corresponding with us so that we can identify it easily. In addition, your request for expedited processing is granted and your request will be processed as soon as practicable.

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Sincerely,



John F. Hackett

Director, Information Management Office

IMS/IRRG/PIPD/carey/.../6 September 2007

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U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

AUG 27 2007

Ms. Marcia Hofmann
Electronic Frontier Foundation
Suite 650
1875 Connecticut Avenue, NW
Washington, DC 20009

Re: OLA/07-R0909
OLA/07-R0910
MLF:JNJ

Dear Ms. Hofmann:

This is to acknowledge receipt of your two letters dated August 16, 2007, which were received in this Office on August 17, 2007, in which you requested all records of communications between the Department of Justice and Congress and between Justice and telecommunications companies from December 2005 to the present concerning amendments to the Foreign Intelligence Surveillance Act. This response is made on behalf of the Office of Legislative Affairs.

I have determined that for purposes of these requests, it is appropriate to afford them expedited processing. At this time, your requests have been assigned to a FOIA Specialist in this Office and a records search has been initiated in the Office of Legislative Affairs.

We have not yet made a decision on your requests for fee waivers. We will do so after we determine whether fees will be assessed for these requests.

If you have any questions or wish to discuss the processing of your requests, you may contact Julie N. Johns, the analyst processing your requests, by telephone at the above number or you may write to her at the above address.

Sincerely,

Carmen L. Mallon
Chief of Staff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ELECTRONIC FRONTIER)
FOUNDATION)
)
Plaintiff,)
)
v.)
)
DEPARTMENT OF HOMELAND)
SECURITY,)
)
Defendant.)
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Civil Action No. 06-1988 (ESH)

STIPULATED DISMISSAL OF PLAINTIFF’S SECOND CAUSE OF ACTION

Plaintiff Electronic Frontier Foundation (EFF) and Defendant Department of Homeland Security (DHS), by counsel, hereby stipulate and agree as follows:

1. Defendant DHS has granted news media status to Plaintiff EFF based on the representations contained in EFF’s FOIA requests, which demonstrate that EFF is an “entity that is organized and operated to publish or broadcast news to the public.” 6 C.F.R. § 5.11(b)(6). Defendant DHS will continue to regard Plaintiff EFF as a “representative of the news media” absent a change in circumstances that indicates that EFF is no longer an “entity that is organized and operated to publish or broadcast news to the public.” 6 C.F.R. § 5.11(b)(6).
2. Accordingly, the parties herewith agree to the dismissal of Plaintiff EFF’s Second Cause of Action, related to EFF’s status as a “representative of the news media.”
3. The parties further agree that each will pay its own fees and costs for work on the dismissed claim.

SO STIPULATED AND AGREED this 27th day of February, 2007.

/s/ David L. Sobel

DAVID L. SOBEL
D.C. Bar 360418

MARCIA HOFMANN
D.C. Bar 484136

ELECTRONIC FRONTIER FOUNDATION
1875 Connecticut Avenue, N.W.
Suite 650
Washington, D.C. 20009
(202) 797-9009

Counsel for Plaintiff

PETER D. KEISLER
Assistant Attorney General

JEFFREY A. TAYLOR
United States Attorney

ELIZABETH J. SHAPIRO
D.C. Bar 418925
Assistant Branch Director
U.S. Department of Justice
Civil Division, Federal Programs Branch

/s/ John R. Coleman

JOHN R. COLEMAN
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW, Room 6118
Washington, D.C. 20530
(202) 514-4505

Counsel for Defendant



United States Department of State

Washington, D.C. 20520

May 1, 2007

Case Number: 200701765

Ms. Marcia Hofmann
Electronic Frontier Foundation
1875 Connecticut Avenue, N.W., Suite 650
Washington, DC 20009

Dear Ms. Hofmann:

This is in response to your Freedom of Information Act (FOIA) request, dated March 19, 2007 for copies of documents concerning copyright matters between the U.S. and Canada.

We will begin the processing of your request based upon the information provided in your communication. We will notify you as soon as responsive material has been retrieved and reviewed.

We wish to advise you that the cut-off date for retrieving records is either the date you have given the Department by specifying a particular time frame or the date the search is initiated.

Fees: The Freedom of Information Act requires agencies to assess fees to recover the direct costs of processing requests, unless a fee waiver has been granted.

By making a FOIA request, you have agreed to pay all applicable fees up to \$25.00 unless a fee waiver has been granted. You may

Office of Information Programs and Services
U.S. Department of State SA-2
Washington, DC 20522-8100
Web site: foia.state.gov

Inquiries:
Phone: 1-202-261-8484
FAX: 1-202-261-8579
email: FOIAStatus@state.gov

specify a willingness to pay a greater or lesser amount. If the estimated fees exceed this limit, you will be notified.

Based upon the information that you have provided, we have placed you in the "news media" requester category. This category requires us to assess:

- duplication costs after first 100 pages.(see 22 CFR 171, enclosed)

Therefore, without an agreement to pay fees please be advised that your request will be processed without cost up to the required duplication of the first 100 pages.

Please let us know if you are willing to pay the fees that will incurred in the processing of your request. You may set a limit of the maximum amount that you wish to pay.

Based upon the information provided in your letter, your request for a fee waiver has been denied. If you wish to appeal this decision, you may write to the Chief, Requester Liaison Division, at the address given on the bottom of this page. Your appeal should address the points listed in the enclosed sheet entitled "Requests for Fee Waivers." Your appeal must be sent to us within 30 days from the date that you receive this letter.

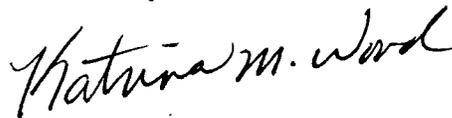
While we will make every effort to meet the time limits cited in the Freedom of Information Act (5 USC § 552), unusual circumstances

may arise for extending the time limit (see enclosure). We appreciate your patience in this matter.

If you have any questions, please do not hesitate to contact us. We can provide faster service if you include the case number of your request in your communications with us.

We are pleased to be of service to you.

Sincerely,



Katrina M. Wood
Requester Communications Branch

Enclosure: As stated.



Electronic Frontier Foundation
Protecting Rights and Promoting Freedom on the Electronic Frontier

January 23, 2007

BY FACSIMILE — (301) 688-4762

National Security Agency
ATTN: FOIA Office (DC34)
9800 Savage Road STE 6248
Ft. George G. Meade, MD 20755-6248

RE: Freedom of Information Act Request and
Request for Expedited Processing

Dear Sir or Madam:

This letter constitutes an expedited request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted to the National Security Agency on behalf of the Electronic Frontier Foundation ("EFF"). We make this request as part of EFF's FOIA Litigation for Accountable Government ("FLAG") Project, which works to obtain government documents and make them widely available to the public.

On January 9, 2007, the Washington Post reported:

When Microsoft introduces its long-awaited Windows Vista operating system this month, it will have an unlikely partner to thank for making its flagship product safe and secure for millions of computer users across the world: the National Security Agency.

For the first time, the giant software maker is acknowledging the help of the secretive agency, better known for eavesdropping on foreign officials and, more recently, U.S. citizens as part of the Bush administration's effort to combat terrorism. The agency said it has helped in the development of the security of Microsoft's new operating system -- the brains of a computer -- to protect it from worms, Trojan horses and other insidious computer attackers.

Alec Klein and Ellen Nakashima, "For Windows Vista Security, Microsoft Called in Pros," *Washington Post*, Jan. 9, 2007, at D01 (attached hereto).

We are seeking all agency records (including, but not limited to, electronic records) related to the NSA's review of and input on the configuration of the Microsoft Windows Vista operating system ("Vista").

Request for Expedited Processing

This request warrants expedited processing because it pertains to information that “is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.” 32 CFR § 286.4(d)(3)(ii). According to DOD regulations, information is “urgently needed” when it “has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest.” 32 CFR § 286.4(d)(3)(ii)(A). The information we request easily satisfies this standard.

The government activity at issue here — the NSA’s involvement in the configuration of Microsoft’s latest operating system — raises serious questions about the Department of Defense’s interest in Vista’s development. Indeed, the NSA’s involvement in the system’s configuration has already attracted substantial media interest since the publication of the *Washington Post* story. Specifically, a Google News search for “Vista and ‘National Security Agency’” returned 67 results from news outlets throughout the world since January 9, 2007 (see first page of Google News search results attached hereto).

Furthermore, the *Washington Post* reported that Microsoft plans to make Vista available to consumers on January 30, 2007, and the system will likely be used by more than 600 million computer users by 2010. Thus, the information we request is unquestionably the subject of a breaking news story of general public interest particularly in the days leading to the product launch.

The purpose of this request is to obtain information directly relevant to the NSA’s involvement in Vista’s development, which has attracted considerable interest from the press and public in the past several days. The information we request is the subject of a breaking news story of general public interest, and therefore clearly meets the standard for expedited processing set forth in DOD regulations.

Further, as I explain below in support of our request for “news media” treatment, EFF is “primarily engaged in disseminating information.”

Request for News Media Fee Status

EFF asks that it not be charged search or review fees for this request because EFF qualifies as a “representative of the news media” pursuant to the FOIA and 32 C.F.R. § 286.28(e)(7). In requesting this classification, we note that the Department of Homeland Security has recognized that EFF qualifies as a “news media” requester, based upon the publication activities set forth below (see DHS letter, attached hereto). We further note that the U.S. Court of Appeals for the D.C. Circuit has stressed that “different agencies [must not] adopt inconsistent interpretations of the FOIA.” *Al-Fayed v. CIA*, 254 F.3d 300, 307 (D.C. Cir. 2001), quoting *Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1287 (D.C. Cir. 1983).



NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 52276
6 February 2007

Ms. Marcia Hofmann
Electronic Frontier Foundation
1875 Connecticut Avenue, NW
Suite 650
Washington, DC 20009

Dear Ms. Hofmann:

This is an initial response to your Freedom of Information Act (FOIA) request submitted via facsimile on 23 January 2007, which was received by this office on 24 January 2007, for all agency records (including, but not limited to, electronic records) related to the NSA's review of and input on the configuration of the Microsoft Windows Vista operating system ("Vista"). Your request has been assigned Case Number 52276.

As we began to process your request, we realized that the first page of the actual request was missing from your 18-page facsimile package. On 1 February 2007, a member of my staff contacted you to advise you of this fact. As a result, you submitted another facsimile of your original five-page request, which we received and have begun to process. There is certain information relating to this processing about which the FOIA and applicable Department of Defense (DoD) and NSA/CSS regulations require we inform you.

For purposes of this request and based on the information you provided in your letter, you are considered a representative of the media. Unless you qualify for a fee waiver or reduction, you must pay for duplication in excess of the first 100 pages. Your request for a fee waiver has been granted. In addition, please be advised your request for expedited treatment has been accepted. We are currently in the process of searching for responsive documents and will notify you of the status of your request as soon as that search has been completed.

Correspondence related to your request should include the case number assigned to your request, which is included in the first paragraph of this letter. Your letter should be addressed to National Security Agency, FOIA Office

(DC34), 9800 Savage Road STE 6248, Ft. George G. Meade, MD 20755-6248 or may be sent by facsimile to 443-479-3612. If sent by fax, it should be marked for the attention of the FOIA office. The telephone number of the FOIA office is 301-688-6527.

Sincerely,

Marianne Stupar
for

PAMELA N. PHILLIPS
Chief
FOIA/PA Office