

YAHOO, THE LAW-ABIDING FREE EMAIL PROVIDER

The FISA Court has officially agreed to declassify that Yahoo

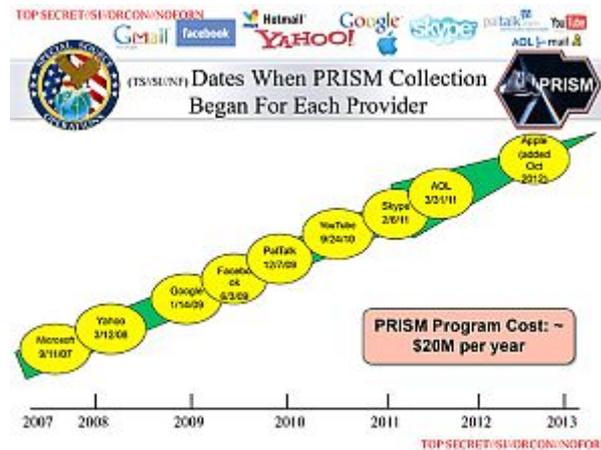
was the company that challenged a Protect Amendment Act order in 2007.

Once this PRISM slide was published, it was always pretty likely that Yahoo – or maybe Google – was the company in question. Yahoo started complying around the time the FISC decision was reached; Google joined in after the FISC decision was unsealed.

Which leaves ... Microsoft, which started cooperating before the law and then the FISA Court forced it to (though collection may not have begun until after PAA passed and, as Rayne has pointed out, Microsoft's code was being exploited by the government for entirely different purposes in precisely that timeframe).

Now might be a good time to review what happened with the 7 companies the government asked to participate in an illegal wiretap program based solely on the President's say-so. Per the 2009 NSA Draft IG Report, the companies are:

- Telecoms A, B, and C (probably AT&T, Verizon, and – definitely – MCI, respectively, since they



were the 3 telecoms working onsite at FBI's direct access office under another program). These companies were approached by people from NSA's Special Source Operations unit as soon as the program was approved, and they agreed to participate "voluntarily." In 2003, MCI got cold feet and demanded a letter from John Ashcroft stating that the request was lawful, in which he "directed" them to comply with NSA's requests.

- Telecom E (Qwest). It was approached by SS0 personnel in 2002, purportedly for collections related to the Olympics. After some discussion, Qwest's General Counsel decided to not support the operation.
- Internet Provider D (probably Microsoft). This company was approached by "NSA legal and operational personnel" (not SS0) in September 2002. In response, this company provided "minimal" support, spanning roughly from October 9, 2002 through just after September 11, 2003. No person at this company was ever cleared to store letters from the NSA.

- Internet Provider F (probably Yahoo). This company was approached in October 2002 by NSA legal and operational personnel. In response to NSA's request, Internet Provider F asked for a letter from Attorney General Ashcroft certifying the legality of the program. While in December 2002, NSA's Commercial Technologies Group through Internet Provider F was participating, NSA's GC says they did not because of corporate liability concerns.
- Private Sector Company G. This company was approached in April 2003 by NSA legal and operational personnel. This company's GC said he or she wanted to consult outside counsel. NSA chose to drop the request. I have no idea what company this would be (CISCO?); any thoughts?

Here's what these companies provided:

Type of Content	A	B	C	D
Telephony content	√	√	√	
Internet email	10/1-1/07	2/02-1/07	4/05-1/07	4/03-11/03
Telephony metadata	√	√	12/02-3/03	
Internet metadata	√	√	4/05	

This table tells us a great deal about the program—and also the legal problems behind it.

Internet provider D – the one of two that cooperated – only did so for 7 months in 2003, and only provided Internet content (probably primarily Hotmail emails), not metadata.

Which left the government to get the other Internet data off of AT&T and Verizon's switches (we know C is MCI because February 2005 is when Verizon bought it, which explains why it started handing over Internet content and metadata then). As the IG Report explains,

A, B, and C provided access to the content of Al Qaeda and Al Qaeda-affiliate email from communication links they owned and operated.

[snip]

The last category of private sector assistance was access to Internet Protocol (IP) metadata associated with communications of al Qaeda (and affiliates) from data links owned or operated by COMPANIES A, B, and C.

In other words, Microsoft and Yahoo, the biggest free email providers, were not crazy about providing content (though one, probably Microsoft, did for a period). And they were completely unwilling to provide IP metadata.

So the government just went to AT&T and Verizon's switches and took it there.

Even the 2004 kluge to keep the Internet metadata program going after Jack Goldsmith and Jim Comey objected was a stretch, as the FISC Pen Register/Trap & Trace (PR/TT) solution was getting Internet metadata not from the Internet companies, but from the phone companies through whose networks the Internet providers' data traveled. Before that, they were basically just stealing the Internet companies data.

Remember, in 2008 during the FISA Amendments Act debate, the trade group for tech companies including Microsoft, Yahoo, and Google, issued a letter stating,

The Computer & Communications Industry Association (CCIA) strongly opposes S. 2248, the "FISA Amendments Act of 2007," as passed by the Senate on February 12, 2008. CCIA believes that this bill should not provide retroactive immunity to corporations that may have participated in violations of federal law. [my emphasis]

Basically, they wanted the telecoms to get busted for stealing their (customers') stuff.