

1 Marcia Hofmann (SBN 250087)  
marcia@eff.org  
2 Kurt Opsahl (SBN 191303)  
kurt@eff.org  
3 ELECTRONIC FRONTIER FOUNDATION  
454 Shotwell Street  
4 San Francisco, CA 94110  
Telephone: (415) 436-9333 x116  
5 Facsimile: (415) 436-9993

6 David L. Sobel (*pro hac vice*)  
sobel@eff.org  
7 ELECTRONIC FRONTIER FOUNDATION  
1875 Connecticut Avenue NW  
8 Suite 650  
Washington, DC 20009  
9 Telephone: (202) 797-9009 x104  
Facsimile: (202) 707-9066

10 Attorneys for Plaintiff  
11 ELECTRONIC FRONTIER FOUNDATION

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13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN FRANCISCO DIVISION**

16 ELECTRONIC FRONTIER FOUNDATION, )  
17 Plaintiff, )  
18 v. )  
19 OFFICE OF THE DIRECTOR OF NATIONAL )  
20 INTELLIGENCE and DEPARTMENT OF )  
21 JUSTICE, )  
22 Defendants. )

NOS. 08-1023 JSW & 08-2997 JSW  
DECLARATION OF MARCIA HOFMANN  
IN SUPPORT OF MOTION FOR A STAY  
OF PROCEEDINGS  
Date: April 3, 2009  
Time: 9:00 a.m.  
Courtroom: 2, 17th Floor

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1           1.       I am an attorney of record for Plaintiff Electronic Frontier Foundation (“EFF”) in  
2 this matter. I am a member in good standing of the California State Bar, and am admitted to  
3 practice before this Court. I have personal knowledge of the matters stated in this declaration. If  
4 called upon to do so, I am competent to testify to all matters set forth herein.

5           2.       This declaration is submitted in support of EFF’s Motion for a Stay of Proceedings.

6           3.       On February 5, 2009, my co-counsel and I conferred by phone with Marcia Berman,  
7 counsel for Defendants Office of the Director of National Intelligence (“ODNI”) and Department  
8 of Justice (“DOJ”) in the above-captioned cases. We informed Ms. Berman of EFF’s intention to  
9 file a motion to stay proceedings pending issuance of the Attorney General’s forthcoming  
10 guidelines on the Freedom of Information Act. Later that day, Ms. Berman notified us by email  
11 that her clients would not stipulate to stay.

12          4.       Attached hereto as Exhibit A is a true and correct copy of the Memorandum for  
13 Heads of Executive Departments and Agencies, available at 74 Fed. Reg. 4683 (Jan. 21, 2009).

14          5.       Attached hereto as Exhibit B is a true and correct copy of the following news item:  
15 Department of Justice, Office of Information and Privacy, *New Attorney General FOIA*  
16 *Memorandum Issued*, FOIA POST (Oct. 15, 2001).

17          6.       Attached hereto as Exhibit C is a true and correct copy of the following news  
18 article: Hope Yen, *Advocates Praise Obama Move on Disclosure*, Associated Press (Jan. 22, 2009).

19          7.       Attached hereto as Exhibit D is a true and correct copy of the following news  
20 article: Andrew Noyes, *Obama’s FOIA Directive Brings Praise, Bit Of Skepticism*, National  
21 Journal’s CongressDaily (Jan. 22, 2009).

22          8.       Attached hereto as Exhibit E is a true and correct copy of Executive Order No.  
23 13489, available at 74 Fed. Reg. 4669 (Jan. 21, 2009).

24          9.       Attached hereto as Exhibit F is a true and correct copy of a Joint Motion to Stay  
25 Proceedings and Briefing Schedule filed in *Electronic Frontier Foundation v. Office of the United*  
26 *States Trade Rep.*, No. 08-1599-RMC (D.D.C. filed Jan. 30, 2009).

27          10.       Attached hereto as Exhibit G is a true and correct copy of the stay order issued by  
28 Judge Rosemary M. Collyer in *Electronic Frontier Foundation v. Office of the United States Trade*

1 *Rep.*, No. 08-1599-RMC (D.D.C. filed Feb. 2, 2009).

2 11. I certify that today I served a copy of EFF's Motion for a Stay of Proceedings and  
3 the accompanying declaration and proposed order on Defendants ODNI and DOJ via the Court's  
4 Electronic Case Filing System.

5  
6 I declare under penalty of perjury of the laws of the State of California that the foregoing is  
7 true and correct to the best of my knowledge and belief. Executed February 10, 2009 in San  
8 Francisco, California.

9 */s/ Marcia Hofmann*

10 Marcia Hofmann