

United States Senate

WASHINGTON, DC 20510

May 15, 2008

SENT VIA FAX

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535

Dear Director Mueller:

On May 7, 2008, documents became public relating to a National Security Letter (NSL) served in November 2007 on the Internet Archive, a San Francisco-based digital library. The Internet Archive challenged the NSL on the grounds that the Internet Archive was not a provider of “electronic communications service” for purposes of the applicable NSL statute and that the statute was unconstitutional. According to court documents, the FBI and the Internet Archive reached a settlement whereby the FBI agreed to withdraw the NSL that had been served on the Internet Archive, and partially lifted the accompanying nondisclosure order. Certain court filings were also unsealed.

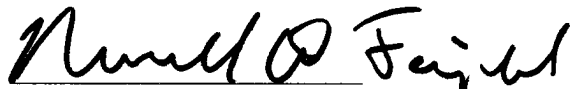
The FBI’s issuance of an NSL to this entity raises a number of concerns about the FBI’s view of the scope of its authority under the NSL statute for communications records, 18 U.S.C. § 2709. Please respond to the following questions, which are important to Congress’ oversight of the FBI’s use of NSLs:

- Does the FBI believe that the Internet Archive is a provider of “electronic communications service” that was properly served with an NSL pursuant to 18 U.S.C. § 2709 to obtain the information that the FBI sought? If so, please explain the legal theory underlying this determination.
- Was the issuance of this NSL reported to the FBI Office of General Counsel as a possible Intelligence Oversight Board matter?
- Was it reported to the Intelligence Oversight Board?
- Has the FBI issued any guidance about what constitutes a provider of “electronic communications service,” defined at 18 U.S.C. § 2510(15) as “any service which provides to users thereof the ability to send or receive wire or electronic communications”? If so, please provide that guidance. If not, please provide any relevant information about the FBI’s view of the scope of that term.


Thank you in advance for your expeditious response.

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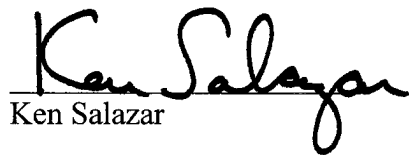
Sincerely,



Russell D. Feingold


John Sununu


Richard J. Durbin


Lisa Murkowski


Ken Salazar


Chuck Hagel