Statement No 3
For the Respondents
Dated 24 November 2015

IN THE INVESTIGATORY POWERS TRIBUNAL **Case No. IPT/14/85/CH**
BETWEEN:

PRIVACY INTERNATIONAL

Claimant

-and-

(1) SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS
(2) GOVERNMENT COMMUNICATIONS HEADQUARTERS

Respondents

IN THE INVESTIGATORY POWERS TRIBUNAL **Case No. IPT/120-126/CH**
BETWEEN:

GREENNET LIMITED
RISEUP NEWORKS, INC
MANGO EMAIL SERVICE
KOREAN PROGRESSIVE NETWORK ("JINBONET")
GREENHOST
MEDIA JUMPSTART, INC
CHAOS COMPUTER CLUB

Claimants

-and-

(1) SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS
(2) GOVERNMENT COMMUNICATIONS HEADQUARTERS

Respondents

THIRD WITNESS STATEMENT OF CIARAN MARTIN

I, **Ciaran Liam Martin**, of Government Communications Headquarters (GCHQ), Hubble Road, Cheltenham, Gloucestershire, GL51 0EX, WILL SAY as follows:

1) I am the Director General for Cyber Security at GCHQ and a member of GCHQ's main Board. In that role, I am responsible for GCHQ's statutory responsibilities for information security in the United Kingdom and its work protecting the UK from cyber threats. I also

have wider responsibilities for GCHQ's external communications and policy. I have been in this role since February 2014, having previously served in the Cabinet Office as Director of Constitutional Policy, Director of Security and Intelligence, and head of the Cabinet Secretary's Office. I have been a public official since 1997.

2) This is my third witness statement in these proceedings which I am authorised to make on behalf of the Respondents. The contents of this statement are within my own knowledge and are true to the best of my knowledge and belief. Where matters are not within my own knowledge they are based upon documentation made available to me and from discussions with others within the department.

3) In this third statement I respond to certain statements in the Claimants' evidence.

Claimants' evidence

Professor Anderson

4) At §§21-23 of Professor Anderson's evidence he asserts that the intrusion which occurs during CNE activities "may place lives at risk" and he cites an example of political opponents hacking servers in hospitals in Oregon which interfered with medical equipment and put lives at risk.

5) GCHQ's CNE activities are carefully monitored, planned, authorised and inspected. We can only use any of our capabilities when it is necessary and proportionate to do so. So, whilst CNE, like a very broad range of other human activity, can put lives at risk if conducted in a reckless and irresponsible way, putting the lives of innocent members of the public at risk is not acceptable to GCHQ. GCHQ never carries out reckless and irresponsible CNE operations. That would be unlawful and we do not do it.

6) Additionally, GCHQ's processes for CNE include an expert risk assessment panel. This is referred to in my first statement at §65.

Eric King

7) In terms of the scale of CNE operations (see §§136-141 of Mr King's statement), GCHQ cannot confirm or deny assertions regarding the scale of its operations. However, it is simply not correct to assert that GCHQ is using CNE on an indiscriminate and disproportionate scale. As discussed at §28 of my first statement, CNE is a critical GCHQ tool.

Professor Sommer

8) I would not accept Professor Sommer's criticism of the CNE Code on the basis that the type of activity which is involved is too imprecise (see §11ff of his statement). The definitions in §1.6 of the Code do broadly reflect the type of CNE which is conducted and it is to be noted that the Ministerial Foreword to the Consultation Document published with the Code also gave further detail including that it applies to different investigative techniques (i.e. different from interception) including "the use of computer network exploitation, to identify, track and disrupt the most sophisticated targets."

9) Nor would I accept his statement about the role of Ministers. Professor Sommer asserts that politicians have an insufficient understanding of the methods which are employed, e.g. by GCHQ, in the CNE field, such that they are unable properly to assess necessity and proportionality when authorising warrants/authorisations under s.5 and s.7 ISA.

10) It is our responsibility within GCHQ to make sure that we explain the nature of our proposed activity and the intelligence requirements for it so that those who have to authorise the activity can do so on a fully informed basis. It is for that reason that we provide detailed information in support of the s.5 and s.7 warrants/authorisations, as required under the CNE Code. In terms of the CNE Code, it is to be noted that following the public consultation process, the Equipment Interference Code of Practice was laid before Parliament on 4 November 2015. However the paragraphs and paragraph numbers referred to in this and my previous statement are unaltered.

11) This detailed information is then given serious attention by senior Ministers and their advisers. In respect of s.5 and s.7 warrants/authorisations, the FCO has a unit headed at Director General level which, inter alia, advises the Foreign Secretary on authorisation applications. Part of this process involves seeking advice from the department's lawyers, whose views are reflected directly. Meetings to discuss individual warrants/authorisations, and/or requests for further information, and/or requests for different options, are common. As such, Ministers engage very significantly in the detail of the authorisations process and scrutinise carefully the methods that are employed.

12) As to the issues raised at §§96.2 and 108-111 of Professor Sommer's statement, there are precautions which are applied where there is any risk that CNE activities may have the potential to affect evidence in future criminal prosecutions.

Statement of Truth

I believe that the facts stated in this statement are true.

Signed: .....

Dated: 24 November 2015