

IN THE INVESTIGATORY POWERS TRIBUNAL
BETWEEN:

Case No. IPT 14/85/CH

PRIVACY INTERNATIONAL

Claimant

and

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

Respondents

IN THE INVESTIGATORY POWERS TRIBUNAL
BETWEEN:

Case No. IPT 14/120-126/CH

GREENNET LIMITED
RISEUP NETWORKS, 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 COMMUNICATION HEADQUARTERS

Defendants

CLAIMANTS’ AGENDA

1. We invite the Tribunal to direct a hearing of open preliminary legal issues as follows:
 - a. On 1 August 2009, was the regime for Computer Network Exploitation “in accordance with the law” for the purposes of Article 8(2) ECHR? Has the position changed since then?
 - b. What is the effect of CMA 1990 s. 3 read with s. 10 on Computer Network Exploitation operations? (See para. 37 of Privacy International Grounds. This deals with CNE operations that have an effect on the operation of the systems concerned).
 - c. What is the scope and effect of CMA 1990 read with CJA 1948? (This issue deals with the extra-territorial legal effect of CMA 1990).

2. An important issue has arisen as to whether the NCND claims in the Defence over the use of CNE are properly made. It appears to us that the NCND claims made in the pleadings by the Respondents are overly broad and unjustifiable. They should not have been made. Our letter of 2 April 2015 invited the Respondents to produce a witness statement explaining their position. This has not yet been responded to and in the absence of such a statement we invite the Tribunal to direct the production of a statement.

3. We invite the Tribunal to direct the Respondents to plead as to the legal effect of CMA s. 3, and CJA 1948. The Claimants' requests for information have not been properly answered.

4. We invite the Tribunal to disclose the arrangements governing CNE, redacted as appropriate to protect any legitimate national security concern. We submit that it cannot be correct that none of the relevant arrangements can be disclosed. Experience has shown that a process of redaction and gisting leads to a far fairer and more useful open hearing.

5. We invite the Tribunal to direct disclosure of the date or dates on which the Commissioner reviewed the policies about CNE.

6. We note that the Tribunal intends to list the hearing later this year. We propose a time estimate of 3 days. A timetable for submissions to be fixed once the date of the hearing is known.