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October 12, 2016

CC: Ron Bell  
General Counsel  
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701 First Avenue  
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Dear Mr. Silliman,

We write to urge Verizon, as it explores acquiring Yahoo!, to support strong human rights protections for its growing, global user base. Recent news reports indicate Yahoo! complied with a U.S. government order by modifying internal software to scan customers' incoming emails for specific communications signatures.<sup>1</sup> Reportedly, the modification took place without the consultation of Yahoo!'s security team. We assume that Yahoo!'s pioneering Business & Human Rights Program likewise was not consulted.

Mass government surveillance threatens the right to privacy.<sup>2</sup> This is true whether the surveillance takes place directly or, as is increasingly the case, by a private proxy at the government's demand. While important details are still absent, such as greater detail on the technology used and the legal authority for the program, more must be done to ensure user rights and security are protected. Even in places where companies are already performing analysis on user data, modifications needed to comply with government orders will further infringe upon user privacy and could increase data insecurity or serve as a backdoor for unauthorized actors to exploit private user communications.

As you engage in due diligence around the acquisition, we urge you to probe the privacy and security risks and safeguards needed to protect Yahoo! and Verizon users.

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<sup>1</sup> Joseph Menn, *Exclusive: Yahoo Secretly Scanned Customer Emails for U.S. Intelligence - Sources*, Reuters, Oct. 4, 2016, <http://www.reuters.com/article/us-yahoo-nsa-exclusive-idUSKCN1241YT>; Charlie Savage and Nicole Perloth, *Yahoo Said to Have Aided U.S. Email Surveillance by Adapting Spam Filter*, The New York Times, Oct. 5, 2016, <http://www.nytimes.com/2016/10/06/technology/yahoo-email-tech-companies-government-investigations.html>.

<sup>2</sup> International Principles on the Application of Human Rights to Communications Surveillance, May 2014, [https:// necessaryandproportionate.org/text](https://necessaryandproportionate.org/text).

Verizon has developed as a company with a primarily United States user base. By contrast, Yahoo! serves users around the world. As Lowell McAdams, Verizon's CEO, noted in a prior statement, the Yahoo! acquisition "will put Verizon in a highly competitive position as a top global mobile media company . . ."<sup>3</sup>

For its part, Verizon has defended its "long history of standing up for the privacy rights" of its customers, and we expect it to now take steps to uphold that value.<sup>4</sup> For example, Verizon has released regular transparency reports on government request for user data and has issued a "Human Rights Statement" noting its respect for human rights principles.<sup>5</sup> But it must do more in preparation for its acquisition of a global internet platform.

Yahoo! has a record of bold measures on behalf of its global user base. Yahoo! was the first ICT company to form a business and human rights program and was a founding member of the Global Network Initiative.<sup>6</sup> The company successfully disputed orders prohibiting transparency around certain national security-related requests.<sup>7</sup> Yahoo! also gained accolades from privacy experts for standing up for its users in the secretive Foreign Intelligence Surveillance Court, challenging the pre-cursor to the FISA Amendments Act even when the U.S. government threatened the company with significant fines.<sup>8</sup> Yahoo! was also an original member of Reform Government Surveillance, a coalition of companies that played an essential role in the passage of the most significant U.S. surveillance reform legislation in decades.<sup>9</sup> The central principles of Reform Government Surveillance heavily draw from the International Principles on the Application of Human Rights to Communications Surveillance, which have been endorsed by more than 400 organizations globally.

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<sup>3</sup> Todd C. Frankel, Brian Fung, and Hayley Tsukayama, *Why Verizon Wants to Buy an Ailing Yahoo in \$4.8B Deal*, July 25, 2016, <https://www.washingtonpost.com/news/the-switch/wp/2016/07/24/why-verizon-wants-to-buy-an-ailing-yahoo/>.

<sup>4</sup> Verizon, *Thoughts on Foreign Data Storage and the Patriot Act*, <https://www.verizon.com/about/news/thoughts-on-foreign-data-storage-and-the-patriot-act> (last visited Oct. 7, 2016).

<sup>5</sup> Verizon, *Transparency Report - Archive*, <https://www.verizon.com/about/portal/transparency-report/archive/> (last visited Oct. 7, 2016); Verizon, *Human Rights Statement*, [https://www.verizon.com/about/sites/default/files/Verizon\\_Human\\_Rights\\_Statement.pdf](https://www.verizon.com/about/sites/default/files/Verizon_Human_Rights_Statement.pdf) (last visited Oct. 11, 2016).

<sup>6</sup> Yahoo Business & Human Rights Program, *The Global Network Initiative*, <https://yahoobhrp.tumblr.com/post/75545597754/the-global-network-initiative-yahoo-is-a-founding> (last visited Oct. 7, 2016).

<sup>7</sup> Kim Zetter, *Yahoo Publishes National Security Letters After FBI Drops Gag Orders*, *Wired*, June 1, 2016, <https://www.wired.com/2016/06/yahoo-publishes-national-security-letters-fbi-drops-gag-orders/>.

<sup>8</sup> See Kim Zetter, *Feds Threatened to Fine Yahoo \$250K Daily for Not Complying With PRISM*, *Wired*, Sep. 11, 2014, <https://www.wired.com/2014/09/feds-yahoo-fine-prism/> ("Yahoo should be lauded for standing up to sweeping government demands for its customers' private data,' Patrick Toomey, staff attorney with the ACLU said in a statement.")

<sup>9</sup> Reform Government Surveillance, <https://www.reformgovernmentsurveillance.com/> (last visited Oct. 7, 2016).

We have noted Yahoo!'s pioneering steps to respect human rights,<sup>10</sup> but recent revelations raise important questions about its continued commitment to its users. According to reporting, Yahoo! complied with a government order to analyze all incoming emails for certain digital signatures, and affirmatively chose not to challenge that order.<sup>11</sup> In doing so, Yahoo! showed indifference to its users' right to privacy and the principles Yahoo! espouses.

Compounding the violation, the reports indicated that Yahoo! failed to adequately consult with its security team in creating new vulnerabilities for user information. Yahoo!'s response — that it narrowly interprets government orders — is frustratingly vague and inadequate.<sup>12</sup> Companies must vigorously challenge overbroad orders that indiscriminately impact all users as part of their responsibility to prevent and mitigate their contribution to adverse human rights impacts.

As Verizon finalizes its acquisition of Yahoo!, we encourage you to continue to investigate the details behind Yahoo!'s complicity with the U.S. government's broad request, and affirm that, under Verizon's ownership, Yahoo! will not only maintain, but strengthen its commitment to human rights protections. We further suggest the following:

**Ensure proper consultation with internal and external structures.** The culture of secrecy around human rights decisions must end. External structures like the Global Network Initiative (GNI) and internal structures within the company, including the proper individuals who work on privacy, security, and human rights, should be consulted when rights-infringing requests are received. We suggest Yahoo! fund a full, independent human rights and security audit with results made public to the greatest extent permitted under law. For its part, Verizon should consider joining the GNI to formally open its human rights practices to assessment by expert stakeholders.

**Reaffirm a commitment to detailed and robust transparency reporting.** Both Verizon and Yahoo! regularly issue transparency reports. The structure of these reports should be frequently re-visited to ensure that they keep pace with new threats in the sector. Further, it is vital that all transparency reports are complete and accurate to the extent possible under the law. These transparency reports lose value if they fail to expose programs that impact every user of a particular service.

**Implement strong, proactive digital security protections.** The United Nations Special Rapporteur for Freedom of Opinion and Expression David Kaye has noted the central role that

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<sup>10</sup> Letter from Peter Micek of Access Now to Maynard Webb Jr. and Marissa Mayer of Yahoo! (June 1 2016), <https://www.accessnow.org/cms/assets/uploads/2016/06/LettertoYahoo.pdf>.

<sup>11</sup> Supra fn 1.

<sup>12</sup> Michael Kan, *Yahoo Calls Report of Secret Email Scanning 'Misleading'*, IDG News Service, Oct. 5, 2016, <http://www.computerworld.com/article/3127579/security/yahoo-calls-report-of-secret-email-scanning-misleading.html>.

digital security tools play in the safeguarding of human rights.<sup>13</sup> However, breaches of Yahoo!'s systems, and the company's responses, show a reactive approach to security. In 2013 it was discovered that U.S. and UK intelligence agencies' exploited Yahoo! data center links.<sup>14</sup> Then, CEO Marissa Mayer committed the company to greater encryption of user data in transit.<sup>15</sup> Despite this, highly sensitive data taken in the recently announced 2014 breach, including security questions and answers, were reportedly unencrypted.<sup>16</sup> Further, the failure of senior management to seek the input of security staff in implementing the access point to incoming user emails shows a failure at promoting a culture of security.<sup>17</sup> Verizon should ensure that Yahoo! is re-dedicated to providing robust encryption, increases protections for stored data, offers effective breach notification, and enforces a corporate policy of consulting with the chief information security officer on decisions with significant implications for user security.

**Demonstrate a broader commitment to user rights.** Verizon should carry out and publish a human rights impact assessment related to its acquisition of Yahoo!. Additionally, we urge Verizon to commit to Yahoo!'s continued membership in the Reform Government Surveillance coalition and to explore joining independently. Strong, unified positions in favor of human rights are critical to effective surveillance reform. Section 702 of the Foreign Intelligence Surveillance Act (FISA) Amendments Act has been used to broadly collect private data of non-U.S. persons and is set to expire at the end of 2017. Company involvement will strengthen efforts to reform this authority.<sup>18</sup> Surveillance reforms could include, for example, a stronger mechanism for companies to contest overbroad orders, expanded involvement of the Foreign Intelligence Surveillance Court in the approval of targets under Section 702, and for the U.S. government to finally recognize the human rights of users around the world.

**Increase engagement with civil society in discussions around companies' responsibilities to their users.** The partnership between the private sector and civil society is vital to ensuring the continued protection of user rights and to establishing rights-respectful processes to respond to intercept orders for Verizon's growing global community. To continue this conversation, we invite you to attend RightsCon Brussels from March 29 - 31, 2017.

The above measures can be part of a platform to develop strong user trust. We welcome a response and look forward to continued engagement.

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<sup>13</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Human Rights Council, U.N. Doc.A/HRC/29/32 at 12 (May 22, 2015) (by David Kaye).

<sup>14</sup> Barton Gellman and Ashkan Soltani, NSA Infiltrates Links to Yahoo, Google Data Centers Worldwide, The Washington Post Snowden Documents Say, Oct. 30, 2013, [https://www.washingtonpost.com/world/national-security/nsa-infiltrates-links-to-yahoo-google-data-centers-worldwide-snowden-documents-say/2013/10/30/e51d661e-4166-11e3-8b74-d89d714ca4dd\\_story.html](https://www.washingtonpost.com/world/national-security/nsa-infiltrates-links-to-yahoo-google-data-centers-worldwide-snowden-documents-say/2013/10/30/e51d661e-4166-11e3-8b74-d89d714ca4dd_story.html).

<sup>15</sup> Marissa Mayer, *Our Commitment to Protecting Your Information*, Yahoo! Tumblr, Nov. 18, 2013, <https://yahoo.tumblr.com/post/67373852814/our-commitment-to-protecting-your-information>.

<sup>16</sup> Yahoo! Help, Account Security Issue FAQs, <https://help.yahoo.com/kb/account/SLN27925.html> (last visited Oct. 7, 2016).

<sup>17</sup> *Supra* fn 1.

<sup>18</sup> footnote about Yahoo's battle against the PAA. even though Yahoo lost, groups were thankful for company engagement



Sincerely,

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