

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: [REDACTED]

JOHN ASHCROFT, in his official capacity as
Attorney General of the United States;
ROBERT MUELLER, in his official capacity
as Director of the Federal Bureau of
Investigation; MARIONNE BOVENSAN, et al.

SEALED

advised me to assume that Section 2709 does not require an electronic communication service

_____ electronic communication service

_____ electronic communication service

issues such as privacy, technology, terrorism, intelligence, wiretapping, encryption, and information hiding.

7. I am the author or co-author of eight books on the topic of information security, including the books, Practical UNIX and Internet Security, 3rd Edition; Web Security,

Privacy and Commerce; Database Nation: The Death of Privacy in the 21st Century; and PGP: Pretty Good Privacy. My books, especially Practical UNIX and Internet Security, are widely

recognized books in the field of information security

information and related log files, and the establishing of a chain of evidence from the field to the

courtroom.

12. I am also the holder of CISSP (Certified Information Systems Security

Specialist) and am a member of the International Information Security Association (IISA) and am a member in the field of computer security.

[REDACTED]

This seamless network is the Internet.

18 To be sent over the Internet, all information must first be broken down into

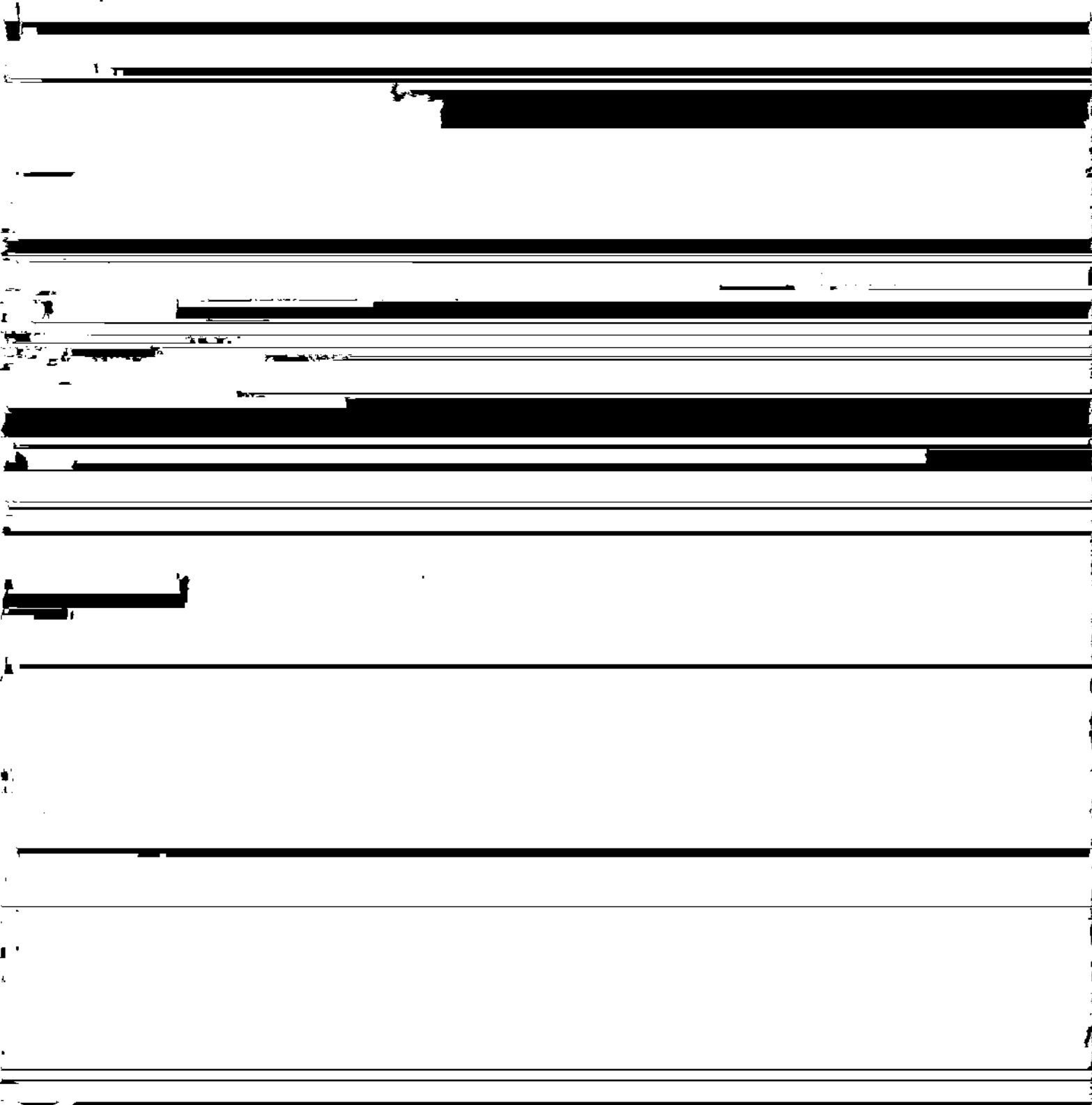
[REDACTED]

[REDACTED] Each of these packets consists of a header and a data payload

uninhibited exchange of ideas and opinions that the users might not otherwise feel comfortable discussing.

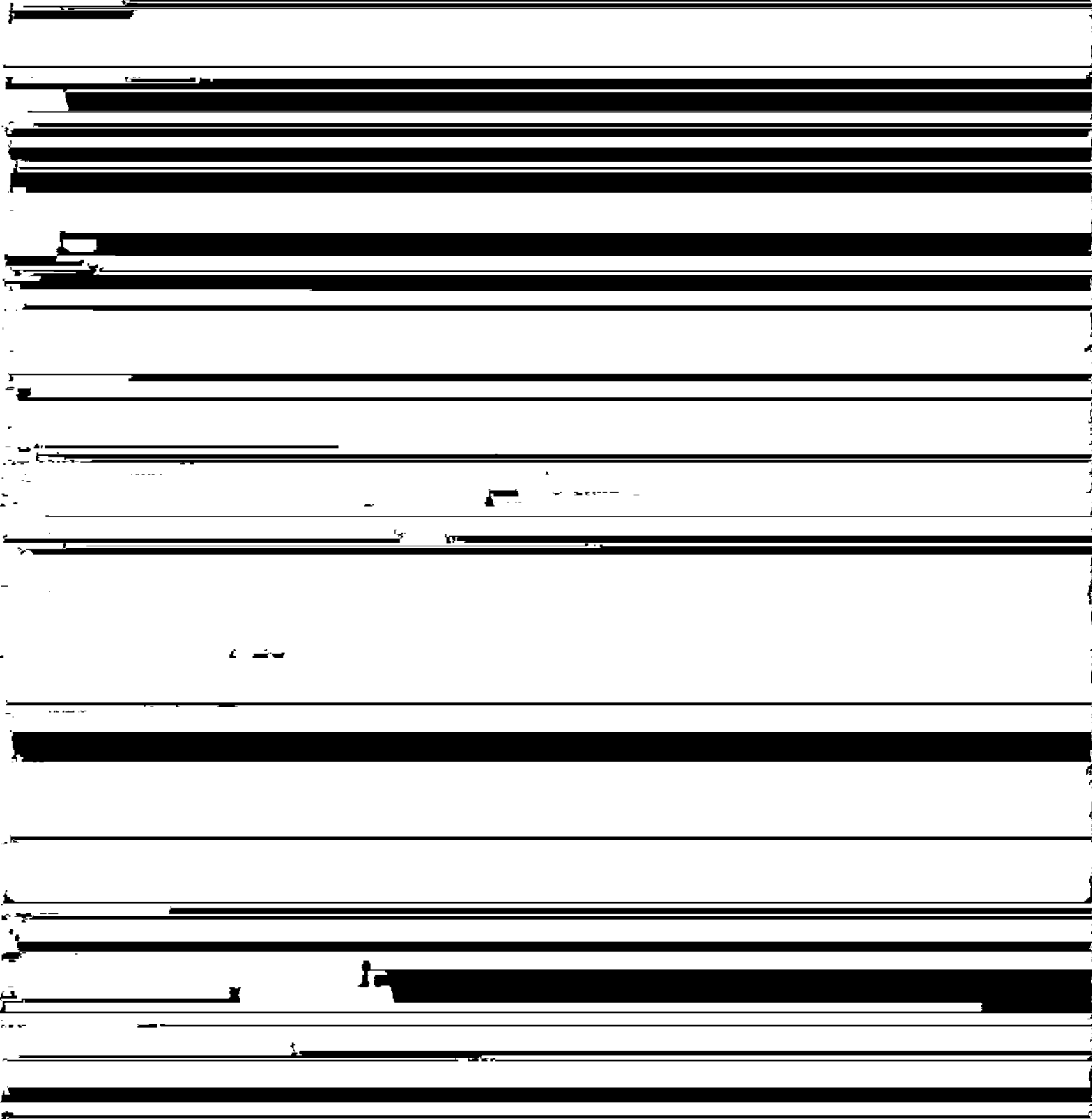
ELECTRONIC COMMUNICATION SERVICE PROVIDERS

21. 18 U.S.C. § 2510(15) defines an "electronic communication service" as: "any service which provides to users thereof the ability to send or receive wire or electronic



23. Any business or organization, including any advocacy organization, which has a web site that enables users to send messages through the web site, would appear to be covered by the terms of the statute. For example, the American Arab Anti-Discrimination Committee is likely a communication service provider because its web site enables Internet users to compose

and e-mails to elected officials to support or oppose legislation important to the



engine, which then performs the requested search and sends the results back to be received by the user.

information requests directly through the site itself, as well as to complete transactions, are also

Indeed, any web site like Amazon or like

information it covers, based on my experience and knowledge of electronic communication service providers, I read these terms to encompass a wide range of different types of information

addresses (and any descriptive information contained in the address, such as the organization the address is associated with), who they are sending and receiving email from, which web sites or

web pages they are visiting, and the subject matter of their communications (as reflected in the

messages that merely pass through their networks, but are not actually sent or received through the provider's email servers.

34. Electronic communication service providers also have the ability to monitor

Such monitoring can be

performed by routing all of a user's traffic through a web proxy, or by monitoring communications using a network monitoring system. These transaction logs can be exceedingly

information about the page's content.

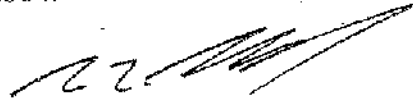
record for every image, web page, video clip, or other "object" that is downloaded by every user

... creates a single record of a user's web browsing

habits without involving that individual's ISP.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 13 day of May 2004.



Simson L. Garfinkel

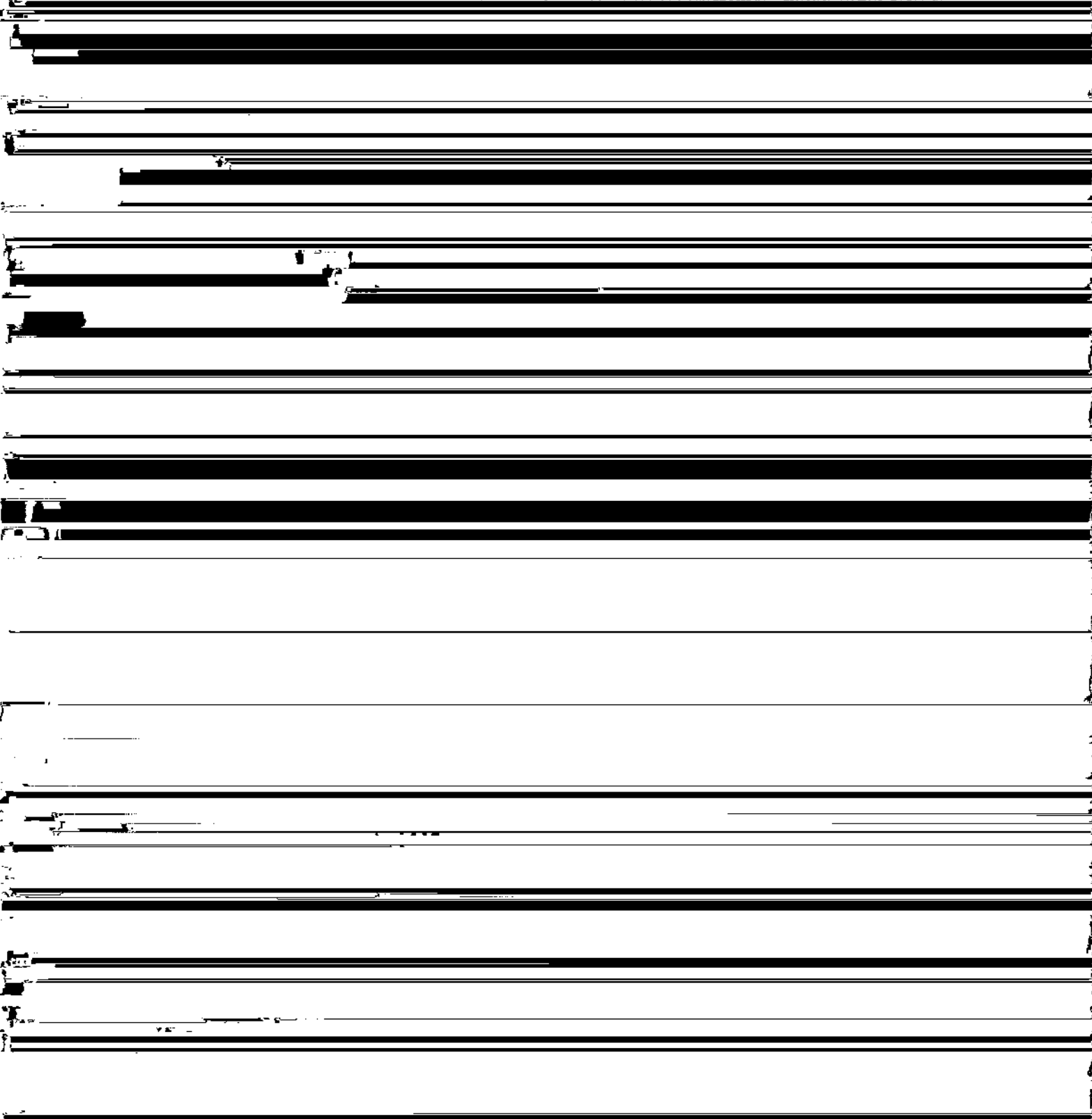
Garfinkel
Declaration
Exhibit 1

Garfinkel, S., A Web Service for File Fingerprints: The Goods, the Bads, and the Unknowns, final paper for MIT 15.972, January 2003.

Garfinkel, S. and Shelat, A., "Remembrance of Data Passed: A Study of Disk Sanitization Practices," *IEEE Security and Privacy*, January/February 2003.

Garfinkel, S., Robertson, H., Elledge, C., Levine, J., Synframe: a Multi-Peer Synchronization Framework, final paper of MIT 6.824, December 2002.

Garfinkel, S., "A Web Service for File Fingerprints", paper presented at



Technical lead for certain nation-wide wireless ISP. Responsibilities included network design.

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Magazine "Machine Shop."

2003 Best Regular Column, Contributed (Silver) (East Coast Region, Under 80,000 circulation), awarded by the American Society of Business Publication Editors, for the "Machine Shop" series in CSO Magazine.

Institute of Electrical and Electronic Engineers, Member.

Association of Computing Machinery, Member.

Sigma XI, The Scientific Research Society, Member.

Education

Columbia School of Journalism, 1988