

THE JOHN BATES INTERNET METADATA OPINION PROBABLY DATES TO JULY 2010

I've seen a lot of outright errors in the reporting on the John Bates opinion authorizing the government to restart the Internet metadata program released on Monday.

Bates' opinion was likely written in July 2010.

We know it had to have been written before October 3, 2011, because Bates' opinion of that date cites this one (page 17 footnote 15). It was almost certainly written before May 2, 2011, because that's when the government "clarified" its upstream production included US person content, which was likely a response to this opinion.

According to Claire Eagan, it was written in 2010; this quotation from Eagan's opinion cites page 73 of this opinion (though she leaves out one word – "analytic" – from this quotation).

As this Court noted in 2010, the "finding of relevance most crucially depended on the conclusion that bulk collection is necessary for NSA to employ [analytic] tools that are likely to generate useful investigative leads to help identify and track terrorist operatives."

It had to have been written after June 21, 2010 and probably dates to between June 21 and July 23, 2010, because page 92 footnote 78 cites Holder v. HLP (which was released on June 21), but uses a "WL" citation; by July 23 the "S. Ct." citation was available. (h/t to Document Exploitation for this last observation).

So: it had to have been written between June 21, 2010 and October 3, 2011, but was almost

certainly written sometime in the July 2010
timeframe.