

Federal judge rules US government is entitled to seize proceeds from Edward Snowden's book sales and speaking fees

By Kevin Reed
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A federal judge ruled on Tuesday that the US government can legally seize proceeds from whistleblower Edward Snowden's memoir *Permanent Record* and his paid public speeches because he is in "breach of his obligations" for not submitting these materials to the CIA and NSA for "prepublication review."

In a 14-page decision, Judge Liam O'Grady of the US Eastern District of Virginia ruled against the defendants Edward Snowden and Macmillan Publishing Group, LLC and granted the US government's motion for summary judgement. The ruling stems from a lawsuit filed by the US Justice Department against Snowden and his publisher on the same day that the former NSA contractor's book was released last September.

In *Permanent Record*, Snowden tells the story of his life, how he became an intelligence officer and contractor and how it is that he came to realize that the CIA and NSA were engaged in a global electronic surveillance operation that was in violation of the constitutionally protected democratic rights of the public.

Snowden also explains in his book how he smuggled a massive trove of top-secret intelligence documents out of a secure facility in Hawaii and then handed them over to journalists from the *Guardian* in Hong Kong in May 2013. The whistleblower also recounts how he ended up gaining asylum in Moscow—where he remains to this day—after he was charged with violation of the Espionage Act and his passport was terminated by the US government.

The DOJ lawsuit and court ruling are predicated upon a series of six Secrecy Agreements that Edward

Snowden signed between November 2005 and March 2013 while he was an employee or contractor with the CIA and NSA. According to the ruling, these documents required Snowden to "obtain prepublication review of any preparation, in any form, containing any mention of intelligence data or activities, or any other information or material which is or might be based on information that is marked classified, known to be classified, or known to be in a classification determination process."

The court ruling states, "The terms of the CIA Secrecy Agreements further provide that Snowden forfeits any proceeds from disclosures that breach the Agreements. These terms continue to apply to Snowden." Although the ruling grants the government claim to Snowden's publishing earnings and speaking fees, it does not specify how or when the collection will be carried out.

As Snowden explained very clearly in *Permanent Record*, he acknowledges having signed the intelligence Secrecy Agreements. However, he also notes that he signed another agreement called an appointment affidavit—similar to the Oath of Office for public officials—in which he swore to "defend the Constitution of the United States against all enemies, foreign and domestic," and this oath supersedes any obligations contained in the intelligence agreements.

Along with the publication of his book, the ruling makes specific reference to several public speeches Snowden made—including at a Technology, Entertainment, Design (TED) conference and an Internet security trade fair—where "he displayed and discussed, among other things, at least one slide which was marked classified at the Top Secret level, and other

intelligence-related activities of the CIA and NSA.”

Judge O’Grady’s decision in favor of the government’s lawsuit rejected all three arguments put forward by Snowden’s lawyers: (1) that the government had itself breached its own agreement by stating ahead of time that it would refuse to review the book or speeches in good faith or within a reasonable time; (2) that the DOJ lawsuit was based on animus toward Snowden and his views and that the government selectively enforced its Secrecy Agreements; and (3) there is no basis within the Secrecy Agreements for the government’s claim to seize proceeds from his book and speeches.

Brett Max Kaufman, an attorney for Snowden from the ACLU’s Center for Democracy, said that the legal team disagrees with “the court’s decision and will review our options.” Kaufman also said, “It’s farfetched to believe that the government would have reviewed Mr. Snowden’s book or anything else he submitted in good faith. For that reason, Mr. Snowden preferred to risk his future royalties than to subject his experiences to improper government censorship.”

Snowden’s revelations in 2013 contributed enormously to the awareness of the public both within the US and internationally that the surveillance operations of the CIA and NSA—with the cooperation of the telecommunications corporations—are collecting data on every phone call, e-mail and text message of everyone in the world. Sparking the so-called “Snowden Effect,” the revelations have encouraged the widespread use of end-to-end encryption that hampers or prevents government surveillance of electronic communications.

Although the US government claims to have officially ended its secret surveillance programs with the passage of the USA Freedom Act of 2015 under the Obama administration, numerous media reports, leaks and data beaches have since have revealed that similar if not the exact same programs are ongoing.

The vendetta against Snowden by the US government and its military-intelligence establishment for revealing these truths to the public will never be forgotten or forgiven. Although the state has been unable—up to this point—to rendition Snowden back to the US, the recent lawsuit and federal court ruling show that every effort is being made to silence and intimidate him and set an example for anyone else who might be thinking about

exposing the criminal activities of the government.

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