

RESOLUTION ON SURVEILLANCE.

The Assembly of Delegates of PEN International, meeting at its 80th World Congress in Bishkek, Kyrgyzstan, 29th September to 2nd October 2014

It has been over a year since Edward Snowden's revelations brought to light the nature and scope of electronic surveillance programs conducted by the United States National Security Agency and similar programs conducted by intelligence organizations in the United Kingdom, Canada, New Zealand, Australia (the Five Eyes+alliance), and other countries such as Ethiopia, Vietnam and China.

At PEN's 2013 World Congress in Reykjavik, the Assembly of Delegates passed a [resolution](#)¹ calling for full review and reform of these mass surveillance programs, and urging governments to affirm the international human right to privacy and its inextricable connection to the realization of the right to freedom of expression.

Mass surveillance chills free speech, harms creative and intellectual freedom, and impinges on our ability to write, think, and communicate freely. A [survey](#)² of writers in the USA conducted by PEN American Centre in October 2013 demonstrated that self-censorship among writers is on the rise: 1 in 6 writers who responded to the survey reported avoiding writing or speaking on a topic they thought would subject them to surveillance.

As a human rights organization, PEN is also alarmed by Edward Snowden's statement that the NSA and its UK counterpart, GCHQ, have spied on the communications of human rights and civil society organizations. PEN's work involves communication with highly vulnerable writers, journalists and human rights defenders around the world. Their safety depends on respect for the right to privacy and our ability to protect the confidentiality of their information.

The extensive intelligence-sharing agreements that exist between the Five Eyes+ alliance governments raise further concerns about the protection of basic human and constitutional rights. Allegations that these governments' intelligence agencies engage in surveillance of the citizens of their counterpart countries, and then share the information gathered with those citizens' home governments, are deeply alarming. This practice, if confirmed, is a dishonest attempt by governments to circumvent their citizens' constitutional and legal protections by allowing them to claim that they have not engaged in surveillance of their own citizens, while in fact they are simply allowing their alliance counterparts to do so on their behalf.

The international human right to privacy is protected under Article 17 of the International Covenant on Civil and Political Rights, to which all five nations in the Five Eyes+

¹ <http://www.pen-international.org/wp-content/uploads/2013/09/USsurveillanceresolution.doc.pdf>

² <http://www.pen.org/chilling-effects>

alliance are States Parties. The Human Rights Committee which oversees states' implementation of the ICCPR has elaborated the interrelationship between the right to privacy and the right to freedom of expression in its General Comments 11 and 34. At the regional level, the right to privacy is protected by the European Convention on Human Rights (Article 8) and the American Convention on Human Rights (Article 11).

International human rights mechanisms, such as the United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights have also stressed the need to ensure that all interception, collection and use of personal information, including all limitations on the right of the affected person to access this information, be clearly authorized by law in order to protect them from arbitrary or abusive interference with their private interests. They have reiterated that the law must establish limits with regard to the nature, scope and duration of these types of measures; the reasons for ordering them; the authorities with power to authorize, execute and monitor them; and the legal mechanisms by which they may be challenged.

Furthermore, the collection of the personal, private communications and metadata of millions of people around the world presents enormous potential for abuse. The risks are compounded by the fact that so much of this electronic information—communications, files, metadata—is stored in the United States, even for non-U.S. citizens, and is therefore under effective U.S. control.

In addition, some governments are using the NSA's actions to justify the construction of new, more tightly controlled internet networks—such as Iran's "national internet" and the balkanization of the internet—may have dangerous implications for the future of free expression and freedom of information. Country-specific internet networks may aid repressive governments' attempts to monitor and target dissidents and activists in their countries, and to tightly control access to online information within the country.

PEN expresses its alarm that to date, no country engaged in dragnet surveillance has enacted meaningful reform to restore our basic rights to privacy, free expression, and due process of law. PEN also notes its deep concern at the passage of *National Security Amendment Bill No 1* by the Australian Parliament, which represents an outrageous attack on press freedom in Australia.

The Assembly of Delegates of PEN International:

- Recalls the principles relating to surveillance presented in Article 3 of the PEN Declaration on Digital Freedom and the [International Principles on the](#)

[Application of Human Rights to Communications Surveillance](#)³ to which PEN International is a signatory;

- Calls on governments in the Five Eyes Alliance, and all other governments implicated in or benefitting from mass surveillance, to immediately enact reforms that will end indiscriminate bulk collection of communications metadata and content, and bring surveillance programs into conformity with domestic and international law, including due process requirements;
- Demands that the governments in the Five Eyes Alliance, and other states parties to the ICCPR implicated in or benefitting from mass surveillance to recognize and fulfill their legal obligations under Articles 17-19 of the International Covenant on Civil and Political Rights to respect the human rights to privacy, freedom of expression, and freedom of thought of all persons, regardless of nationality;
- Urges the U.S. government in particular to improve transparency by complying with private companies' requests to allow them to make public more information about the government orders they receive, and declassifying relevant documents and decisions of the Foreign Intelligence Surveillance Court;
- Urges the Australian government to reconsider or withdraw National Security Amendment Bill No. 1;
- Calls upon the Australian government to ensure that writers are not persecuted for reporting on matters of public interest.

³ <https://en.necessaryandproportionate.org/text>