31 January 2014

1. PEN American Center welcomes the opportunity provided by the United Nations Human Rights Committee to comment on the climate privacy and free expression in the United States. In particular, PEN will comment on the right to privacy (article 17) as presented in paragraph 22 of the List of Issues.

2. PEN American Center is deeply troubled by the implications of bulk government surveillance by U.S. intelligence agencies both in the U.S. and overseas. PEN has challenged government surveillance in domestic courts beginning with the enactment of the USA Patriot Act in 2001. Since then, we have championed reader privacy and fought to challenge the Foreign Intelligence Surveillance Act at the U.S. Supreme Court, among other legal fora.

3. The June 2013 revelations about government surveillance programs support our assertion that the U.S. government is violating international human rights norms. These revelations have not come from the U.S. government or any of the Executive, Congressional, or Judicial institutions charged with overseeing the conduct of U.S. government agencies.

4. Rather, rights violations including the use of secret detention facilities, torture and other war crimes, and sweeping surveillance programs have all come to light through the work of whistleblowers and journalists determined to subject these activities to public scrutiny and review. Too often, their revelations have been met not by official action to investigate and rectify the violations but by threats and legal retribution against the whistleblowers and journalists themselves.

5. It is a fundamental right, not only of citizens of the United States but of citizens throughout the world, to access information about serious human rights violations in any country. And it is a protected right of every individual and every writer anywhere on earth to disseminate information about such violations wherever they occur. PEN stands with all who seek to expose violations of international human rights and humanitarian law, and deplores efforts by the United States government to prosecute as spies and traitors those who strive to bring its human rights violations to light.

6. As an organization dedicated to preserving free expression and creative freedom, PEN is particularly troubled by recent revelations concerning the nature and scope of electronic surveillance programs currently in use by the United States’ National Security Agency. As leaks about the U.S. government’s PRISM program and other such programs make clear, the government now possesses the capacity to monitor the private telephone, internet, and other digital communications of every citizen on earth—among them, the communications of PEN’s 20,000 members worldwide. The right to privacy is protected under Article 17 of the International Covenant of Civil and Political Rights to which the United States is a State Party.
7. PEN American Center’s September 2013 report *Chilling Effects: NSA Surveillance Drives U.S. Writers to Self-Censor* clearly documents that one in six writers in the U.S. are self-censoring in light of U.S. government surveillance, proof of the undeniable chilling effect on freedom of expression of these policies.

8. We are equally concerned that the government has not significantly reformed the three primary sources of authority that enable spying on writers and individuals in other countries, specifically section 215 of the Patriot Act, section 702 of the FISA Act, and Executive Order 12,333.

9. The cross-border implications of bulk surveillance practices were affirmed by the petition Writers Against Mass Surveillance, which garnered over 500 signatures from professional writers, including five Nobel Laureates, and 200,000 signatures worldwide.

10. The indiscriminate, dragnet monitoring of private communications ignores the concept of presumption of innocence and violates basic due process requirements including individualized suspicion. Such monitoring, coupled with new data mining technologies, enables the wholesale profiling of individuals based on their private, expressive activities. Moreover, when such surveillance is conducted across borders, it creates a situation in which citizens have their private lives and thoughts exposed to the judgment and review of governments over which they exert no influence or control—and against which they have no capacity to defend themselves.

PEN American Center:

- Calls on the government of the United States of America to conduct full, independent, and transparent reviews of all such programs and bring them into conformity with domestic and international law;

- Demands an end to attempts to prosecute, or threats to prosecute, individuals for the purported crime of divulging information about secret programs that violate international human rights norms, and the traditional and new media journalists, writers, publishers who publish that information;

- Recommends that the U.S. government repeal or significantly amend section 215 of the Patriot Act, section 702 of the FISA Act, and Executive Order 12,333.

- Urges the U.S. government to affirm the value of individual privacy as an essential right and as a necessary prerequisite for the realization of the right to freedom of expression.

*Founded in 1922, PEN American Center is the largest branch of the federation of PEN International and our 3,700 professional writers are committed to promoting literature and defending free expression wherever it is threatened.*

/s
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