

SPC 2 – Accountability in Governance

Protecting civil privacy while maintaining national security



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Introduction

National security refers to governments being able to protect their nation and citizens, which includes attacks and other danger. In order to maintain this safety it is crucial they use information, which is predominantly digital or online from telecommunication or the Internet that allows them to identify potential threats. Governments collect this information through means such as telephone tapping.

The term civil privacy can refer to forms of privacy other than digital or online privacy. However, as these forms of privacy are currently the most prevalent and relevant issues of today, it will be the focus of this report.

This issue is very relevant to today's digital era, as there has been an apparent increase in the use of technology. Advancements are discovered every day to invent more refined technology. The leading causes of the popularity of using digital technology are rapid responses and easy accessibility. The Internet and in particular mobile phones have become remarkably more popular. One of the main advantages of technological advancement is to allow people from all over the world to communicate with each other and to give access to information from all over the globe. Digital technology often requires users to fill in personal information online and servers record all the information stored on the application. Governments use this stored information to help maintain national security by identifying possible threats. However, the problem governments are facing is maintaining individual privacy and rights while maintaining national security.

In 2013, Edward Snowden, a former US NSA (National Security Agency) contractor, revealed comprehensive telephone and Internet surveillance done by US Intelligence. The whistleblower leaked sensitive information of the National Security Agency, concerning the measures to maintain national security. These measures were arguably infringing upon civil privacy and put in motion an international debate on government's capability to access private information in order to maintain national security. People argue that any access by governments to private information of its citizens is an infringement of privacy of citizens and should be abolished. However, on the other hand research has shown that surveillance on

private information of citizens does allow the government to identify potential threats, prevent them and successfully maintain national security. Governments are accountable for protecting civil rights as well as maintaining national security. Thus, it is imperative to come to a balanced compromise under which circumstances it is acceptable for governments to collect information to preserve national security, while safeguarding civilian right to privacy.

Definition of Key Terms

Civil privacy

This term refers to the privacy of citizens, which is the responsibility of governments.

National security

The protection of a country from threats both internal and external, through defense like: military and maintaining good foreign relations.

Privacy

This term refers to the state in which one is not disturbed or observed by another party.

Right to privacy

This term refers to the right of people to make their own decisions regarding personal matters without unwarranted publicity and is a human right.

Sensitive information

In this context, the term refers to information that is protected against undesired publication because if publicized it can pose as a threat to the National Security Agency and the US government.

Surveillance

The attentive watching of a person or place, especially by the police or other security entities, because a crime is expected. Surveillance can be used to prevent potential threats, by collecting information through surveillance.

Telephone tapping

This is the act of monitoring telephone and Internet conversations by a third party, in this case the government, an example of this is the National Security Agency, which is an entity of the US government.



Whistleblower

A person who informs the public of a person or organization that engaged in unlawful or unethical activity. An example of this is Edward Snowden who revealed misconduct of the US National Security Agency.

General Overview

The Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights proclaims (UDHR) in Article 12 that 'no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence.' It was drafted by world leaders from different parts of the world with cultural as well as legal backgrounds. This declaration was adopted by the General Assembly on 10th December 1948 in Paris, France. The goal of the declaration was to officially affirm the fundamental and universal human rights that should be respected worldwide. In addition, it lay the foundation of many other laws and documents to protect human rights.

Article 12, which pertains to protecting civil privacy, is an important component of human rights, especially in the current digital age, where an increasing amount of issues arise concerning infringements of civil privacy.

Civil Right to Privacy

The major causes of many civil rights, especially concerning digital privacy treaties and resolutions, are to counteract the past infringements of human rights, to promote safety in electronic goods that a country may produce like in Japan. The countries attempting to encourage people to purchase their electronic product or service can then assure them of safety of their privacy, which is very helpful in marketing and sales of the product. In turn, then earn money from this investment in protecting civil rights treaties.

The International Covenant on Civil and Political Rights was adopted and ratified by Members States in the General Assembly on 16th December 1966. This treaty states that Member States that ratified the treaty must oblige to all articles. Article 17, relating to the issue at hand, states that 'No one shall be subjected to arbitrary or unlawful interference with his privacy'.

The European Convention for the Protection of Human Rights and Fundamental Freedoms is an international treaty between European countries. It was drafted in 1950 in Rome, Italy by the Council of Europe and was implemented on 3rd September 1953. Article 8



states that citizens of the European Union must have the right to respect their private and family life.

These treaties pertain to the issues concerning the protection of civil privacy because these rights are protected in the above-mentioned treaties, however many years later are being violated.

The Cold War

The Cold War arose from distrust between the Soviet Union (USSR) and the United States of America (US) during World War II. Although, during the war the two states were allies of each other, their relationship was a complicated one. The two countries had significantly different political views. The US was anxious about the strict communism in the Soviet Union and with the dictatorship of the Soviet leader Stalin. The Soviet Union, however, held a grudge against the United States for their continuous noncompliance to view the USSR as a proper state. In addition, the delayed arrival of the US into WWII, which resulted in many casualties on both sides, added the hostile relationship. After the war the mutual enemy of the Soviet Union and US was defeated but the grief of the recent war caused bilateral distrust. After the war the Soviet expanded their territory over Eastern Europe and contributed to the feeling of distrust between the US and USSR, because the US was fearful for the Soviet Union planning to conquer the world. This caused the US to build up armed forces and in turn lead to the Soviet Union to do the same, which became a repeating cycle. The build up of forces on both parties noticeably contributed to a bitter atmosphere between the two states. The hostile atmosphere leads to the US creating The Five Eyes.

The Five Eyes

The Five Eyes is a classified alliance between the United States National Security Agency, the New Zealand's Government Communications Security Bureau, the Australian Signals Directorate, the United Kingdom's Government Communications Headquarters and Canada's Communications Security Establishment Canada. This association was founded in 1946, post World War II, and created mutual agreements that are known as the UKUSA agreement. The agreement meant that the respective states would gather information in their regions of the globe and share all collected information to help the five English-speaking countries to maintain their national security. The purpose of The Five Eyes was to share intelligence, mostly signals intelligence (SIGINT). The secret partnership had built up a global surveillance framework to spy on worldwide communications.



The Five Eyes alliance was intended to help maintain national security, however, after the existence of the alliance became public it fueled a global debate on the ability of governments to access private information. In addition, rumors emerged that the involved countries made a pact that they would not 'spy' on each other, although these rumors were never confirmed.

The Five Eyes (FVEY) later became the 9 Eyes when France, The Netherlands, Norway and Denmark joined the alliance. With the addition of Italy, Germany, Sweden, Belgium and Spain the 9 Eyes became the 14 Eyes.

11th September 2001 terrorist attacks

On 11th September 2001, attacks commonly referred to as 9/11 took place where 19 militants associated with a terrorist organization called Al-Qaeda hijacked four airlines. Al-Qaeda is an extremist Islamic terrorist group that originates from Saudi Arabia and several other Arab nations. In the morning of 11 September 2001, an America Airlines Boeing 767 crashed into the north tower of the World Trade Center, located in New York City, carrying 20,000 gallons of jet fuel. The crash killed hundreds of people instantly and trapped hundreds more in the upper stories. Many people attempted to escape through the sister tower. Minutes after the first collision a United Airlines Boeing 767, took a sharp turn towards the south tower of the World Trade Center. The second crash caused a colossal explosion that caused a rain of burning debris to hit the streets of New York. An American Airline airplane hit the pentagon and the fourth hijacked airplane crash-landed into an empty lot in Pennsylvania.

These series of attacks lead the US to start their War on Terrorism, which changed the US's perception of measures they should take to maintain national security. The USA Patriot act is an effect of 9/11, which sets out measures to maintain national security often at the expense of civil privacy rights.

National Security Agency (NSA) Revelations

On 5th June 2013 The Guardian, an American newspaper, published an article reporting that the National Security Agency (NSA) of the US had been recording phone records of US citizens. Edward Snowden, a former employee of NSA, exposed this information to The Guardian. He worked as a contractor for the Central Intelligence Agency (CIA) and the NSA. In the coming months Snowden leaked more classified information concerning surveillance of telephone records of US citizens.



Snowden revealed that the NSA had secret court orders that allowed them to access and collect phone records of US customers of one of the largest telecommunication providers in the US. This provider is called Verizon and has millions of users in the US, which the NSA had access to their records.

In addition, the NSA had access not only to phone calls and messages, but also to metadata. Metadata is information concerning the location and time a phone call was made or message was sent for example, instead of the contents of the call or message. This revelation caused much uproar by the public as they think this is a major infringement on their right to privacy and is overstepping the boundary the NSA “should” have in order to maintain national security.

Another revelation Snowden exposed was that the NSA has access to all the data collected by fiber-optic cables in the US. These cables are connected to 63 countries and because the cables are connected, the NSA was able to tap the cables, meaning they had access to data from almost all over the world.

Furthermore, The NSA owns a program called Prism, which is the largest contributor to the agency’s intelligence. According to Snowden, this program collects information from Internet giants like: Yahoo, Facebook, Google and Apple. There has been a claim that the agency has complete access to these servers, however the companies in question, who claim they have given access to the NSA only if they provide a lawful request for the data, have denied this. However, neither of the claims has been officially proven.

Social Media

Social media played a large role in the uproar pertaining to the NSA revelations by Snowden. Social media provided a platform where people all over the globe could share information on the recent findings. This way the news about the NSA quickly travelled worldwide and created awareness on the issue of infringements on civil privacy to attempt to maintain national security. Social media helped to spark the global debate on this issue. The new consciousness of mass surveillance put pressure on governments to act accordingly and to implement appropriate measures. A measure that was taken was the adoption of the resolution ‘The Right to Privacy in the Digital Age’. Especially, in modern times social media is a relevant channel through which information is communicated, notably because of the increased popularity of digital technology.

The NSA’s response to Snowden’s revelations is that in order to maintain national security they require access to all this data. They claim that to prevent similar attacks



to the 9/11 attacks they require this information. They argue that it is better that they have all the information in the case of a potential threat, as they will then be able to quickly identify them and act accordingly. The NSA has a crucial value in maintaining national security because they help to maintain national security, however, the extent to which they do this is questionable. Snowden revealed this information about the NSA, in order to start a global debate on accessibility of data and the boundaries to protect civil privacy rights of similar agencies such as NSA.

Major Parties Involved and Their Views

United States of America (USA)

The United States is the most involved nation in the debate on the level of government authority concerning the violation of civil privacy with the goal to maintain national security. Historically, the US has been involved in many events pertaining to this discussion, like the NSA revelations, being a leading nation in the Five Eyes and 9/11.

Especially the 9/11 attacks have caused the US to become more vigilant to protect their national security, putting less importance on protecting civil privacy. Their view, therefore, on this topic is that governments should have full access to private information and communication data with the goal to maintain national security, although this may interfere with multilateral treaties that demand the protection of civil privacy. The United States believe that gathering such data is key to maintaining national security and stand by their mass-surveillance programs. Due to previous attacks and events, the US is convinced that surveillance on not only US citizens but also citizens worldwide should be authorized for governments with the intent to maintain the nation's security.

The Russian Federation

Although the Soviet Union fell in 1991-92, the nation currently known as the Russian Federation was the major leading state of the Soviet Union. Russia still feels friction with United States due to the difference in political ideologies. Currently, the US and Russia both have arms on standby pertaining to the fact that the United States believed that Russia would carry out a plan to control the world. However, over the years this idea evolved into fear on behalf of both parties in case of attacks, although this has dimmed over the years.

Russia sees the importance of maintaining national security through collecting data that may violate privacy however, are adamant about not wanting surveillance by other governments on their government of their citizens to maintain their national security.



United Kingdom

The United Kingdom was a member of the Five Eyes alliance, meaning that they value governments to have access to this private information, however only under certain conditions. They believe that there should be an agreement between governments and Internet Service Providers or Telecommunication Providers to grant them access to data. In addition, The UK believes they should provide a reason for this and that a third party should decide on whether the demand is reasonable. The United Kingdom also believes governments should not be granted access to entire data collection of a telecommunication provider/ Internet Provider in order to protect some civil privacy, unless under exceptional circumstances, that again a third party should decide on whether the demand is adequate.

Germany

On 18th December 2013, the resolution Germany submitted pertaining to the protection of civil privacy was adopted by the General Assembly. This shows that Germany is a firm believer of protecting the right to privacy, especially in this digital age, as it is a human right. Germany does recognize the importance to access data to maintain national security can be useful in some cases, however believes that in order for a government to infringe upon a citizen's right to privacy they must have substantial reason to do so. They believe this can no longer be done secretive, as the NSA revelations showed. Germany believes that the right to privacy has great value and should not be undermined by governments.

European Union (EU)

In 1950 the European Council drafted the European Convention for the protection of Human Rights and Fundamental Freedoms. This convention outlined the importance of protecting civil rights, which the European Union has always believed to be imperative. Since then they have maintained their views on the issue of protecting civil rights.

Concerning the issue of protecting civil privacy while maintaining national security the EU would like a comprehensive agreement between nations. The EU believes that using private data from Internet Providers can help to maintain national security, however, governments who wish to do so must provide abundant information and a valid reason to do so. The government in question should also be given access to a restricted amount of data, except possibly in remarkable situations. The main goal of the EU is to implement measures to maintain national security and at the same time, also strongly regard the human rights of citizens.



Timeline of Events

Date	Description of event
5 th March 1946	The UKUSA agreement is passed and the Five Eyes alliance is established.
December 10 th , 1948	Adoption of the Declaration of Universal Human Rights by the General Assembly.
1950	The Council of Europe drafts the European Convention for the protection of Human Rights and Fundamental Freedoms.
3 rd September, 1953	The European Convention for the protection of Human Rights and Fundamental Freedoms is implemented.
December 16 th , 1966	The International Covenant on Civil and Political Rights is adopted by the General Assembly.
23 rd March, 1976	The International Covenant on Civil and Political Rights is enforced.
11 th September 2001	9/11 Terrorist attacks on the Pentagon and the World Trade Centre.
5 th June, 2013	The Guardian publishes Edward Snowden's revelations pertaining to the National Security Agency (NSA).
18 th December 2013	The General Assembly adopts the resolution 'The Right to Privacy in the Digital Age', submitted by Germany.
14 th July, 2014	The adoption of the resolution 'The promotion, protection and enjoyment of human rights on the Internet' by the Human Rights Council.
23 rd December, 2014	The NSA release oversight reports from over the last 10 years.
April 2015	John Oliver, the host of Last Week Tonight, interviews Snowden concerning the documents he released and the NSA surveillance programs.

UN involvement, Relevant Resolutions, Treaties and Events

- The Right to Civil Privacy in the Digital Age, 18 December 2013 (**A/RES/68/167**).
- International Covenant on Civil and Political Rights (ICCPR), 16 December 1966.
- Developments in the field of information and telecommunications in the context of international security, 9 January 2014 (**A/RES/68/243**)
- Universal Declaration of Human Rights (UDHR), 10 December 1948 (**A/RES/3/217A**).
- The promotion, protection and enjoyment of human rights on the Internet, 14 July 2014 (**A/HRC/RES/26/13**)



Evaluation of Previous Attempts to Resolve the Issue

In response to the NSA revelations, Germany submitted a resolution with the aim to protect civil rights, especially in the digital age. This resolution was an effective means to combat the infringements on civil privacy while maintaining national security. Although the resolution addresses the issues concerning infringements on civil privacy, currently there are still violations of privacy occurring in order to maintain national security. Therefore, this means to solve the issue was very effective although, creating another resolution also addressing a similar topic will help to ensure that civil privacy will not be violated again.

Edward Snowden's revelations on the NSA fueled a global debate on the issue and also gained wide publicity. These revelations also helped to put pressure on governments to take actions towards combatting this issue. Clearly Edward Snowden stepping forward and getting interviewed by The Guardian caused measures to be taken, because as previously mentioned, Germany responded to the revelations by submitting a resolution to the General Assembly aimed at tackling these problems.

After The Guardian published Snowden's revelations the story went viral on social media. People worldwide were sharing the article as well as other posts, photos and videos. Online, many people posted about their opinion and thoughts about the issues, as well as other social media discussing the NSA revelations. This helped to create awareness for the issue and put pressure on governments to act on the issues concerning violations on privacy, which helped to lead Germany submitting their resolution concerning this issue to the General Assembly.

Possible Solutions

Previous attempts to protect civil rights are outdated, for example: the Universal Declaration of Human Rights, as in the current age, different types of issues regarding civil privacy arise.

A potential way to help to solve the issue could be to urge the Security Council to create a new UN body that focuses on tackling the issue of protecting national security while maintaining national security. This UN body should consider the following: the reason why the government wants access to the information and how much/ the type of information they need. The reason a government should request access should be to maintain their national security and should provide adequate evidence of a potential threat they have discovered



This new UN body should also be responsible to produce reports stating agreements that grant access to governments access to collected data, however, should remain classified to maintain national security. The reason a government is given access to data should be with the intent to help prevent a potential threat. These agreements should also be discussed with Internet and Telecommunication Providers.

Furthermore, possibly an existing UN body or a new one should oversee all worldwide data collection. This should help to prevent leaks and infringements on civil privacy, as the collected data would be used to maintain national security, instead of for commercial research for example. In addition this body could to provide reliable information to the UN pertaining to a leak if it occurred.

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Appendix or Appendices

Appendix I: The link to the resolution on the question of 'The Right to Privacy in the Digital Age'

http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/68/167

Appendix II: The link to the Universal Declaration of Human Rights

<http://www.un-documents.net/a3r217a.htm>

Please find Article 12 below that is very relevant to this issue.



Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Appendix III: The link to the International Covenant on Civil and Political Rights

<https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>

Article 17 is especially useful concerning this issue please find it pasted below:

Article 17.

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

