



Portfolio sample by Stacy Dry Lara

The Right to Privacy in the Digital Age September 12, 2014

Privacy, in varying contexts of our global societies, is a basic human impulse yet privacy measures carried over from the analog age to the digital age have not aged gracefully and are of increasing global concern. The right to privacy is a fundamental human right recognized in the United Nations (UN) Declaration of Human Rights, the International Covenant on Civil and Political Rights and in many other international and regional treaties. Privacy safeguards human dignity and other key values such as freedom of association and freedom of speech. It has become one of the most debated human rights issues of the modern age.

On September 12, HRC27 held a thought-provoking panel discussion on the right to privacy in the digital age. The panel, chaired by H.E. Mr. Baudelaire Ndong Ella, President of the Human Rights Council, was moderated by Mr. Marko Milanovic, Associate Professor at the University of Nottingham. The opening statement was presented by Ms. Flavia Pansieri, Deputy High Commissioner for Human Rights; following were Carly Nyst, Legal Director, Privacy International; Catalina Botero, Inter-American commission on Human Rights (IACHR) Special Rapporteur (SR) on Freedom of Expression; Sarah Cleveland, Professor, Columbia Law School and Yves Nissim, Deputy Chief CSR officer at Orange, former Chair of the Telecommunications Industry Dialogue.

Based on the request of the Human Rights Council (HRC), the panel discussion aimed to “examine the promotion and protection of the right to privacy in the digital age in the context of domestic and extraterritorial surveillance and/or the interception of digital communications and the collection of personal data, including on a mass scale, also with a view to identifying challenges and best practices.” Subsequently, a summary report on the outcome of the panel discussion will be submitted during HRC28 in March 2014.

During her opening statement, Ms. Pansieri said that, “for millions the digital age had opened the door to emancipation and had been perhaps the greatest liberation movement the world had ever known. Still, those digital platforms were vulnerable to surveillance, interception and data collection and deep concerns had been expressed as policies and practices that exploited this vulnerability had been exposed around the globe.”

She made example of the one million people who participated digitally in the consultations for the post-2015 development framework and contributed their ideas and views. She went on to say surveillance practices could have severe impact on human rights telling the listeners that credible reports exist suggesting that some of that digital participation led to torture and other forms of ill-treatment.

Ms. Nyst said that the right to privacy was a fundamental part of human dignity, and it guaranteed the protection of other human rights, for example the right to freedom of expression. She compared the world where there is no right to privacy to the works described by George Orwell and Aldous Huxley, a world where our thoughts are monitored, our choices constrained and our actions predicted and predetermined by the State. She said that post-WWII it was clear States believed that one of the most important aspects of the right to privacy was the right to private communications which today remains one of the more crucial areas of the right to privacy and one of the most challenged by developments in technology.

As SR on the Freedom of Expression, Ms. Botero, has a general mandate to carry out activities for the protection and promotion of the right to freedom of thought and expression. In her remarks to the panel she said that systematic collection of data could entail a negative effect on human rights, including the right to privacy and the right to freedom of expression. Freedom of association and assembly, freedom of expression, and the right to health and sexuality could also be threatened. Sufficient controls had to be elaborated so that those negative effects on human rights could be prevented.

Ms. Cleveland is an American law professor and noted authority on international human rights. From 2009 to 2011 she served as the Counselor on International Law to the Legal Adviser at the U.S. Department of State, where she supervised the office's legal work relating to the law of war, counterterrorism, and Afghanistan and Pakistan, and assisted with its international human rights and international justice work. As part of her panel presentation today, said States were clearly obligated to protect the right to privacy and freedom of expression of all persons within their territory or jurisdiction. Actions outside of a State's territory also fell under this obligation. Surveillance activities were however not per se unlawful, and States had legitimate law enforcement and security interests that human rights were designed to accommodate.

Mr. Nissim made comments on the role of corporation in respecting privacy. He said that several years ago, when the first Arab Spring came in some countries, Governments had asked Orange to do things that it did not want to do. During a time of Orange's refusal to comply, Mr. Nissim's office was actually threatened by men with guns. Orange wished to resolve issues where Governments had direct access to their networks, and to have a process in which Governments could ask it to do things. He went on to say that Orange feels that Governments should be the first ones to be transparent.

In the discussion that followed speakers unanimously agreed that the digital revolution brought liberation yet also new challenges. Complementing the life-changing opportunities for communication, knowledge and business are also new forms of abuse and crime. Many expressed concern about data storage, privacy and subsequent access to information. The importance of ensuring that any State surveillance of citizens was proportionate and fair, respected international law and conventions, and was governed by the rule of law with oversight by civil authorities, was emphasized. Action requested by States includes a review of procedures, practices and legislation with regard to digital communications in order to ensure that the right to privacy was protected.

Speakers urged internet providers to be more transparent and accountable in terms of person's right to privacy. Speakers said the collection of personal information on foreigners was a clear violation of the international protection of the right to privacy. The fight against terrorism could not be used as an excuse for such a human rights violation.

Speaking in the discussion were Germany on behalf of a group of States, European Union, Cuba on behalf of a group of like-minded countries, Pakistan on behalf of the Organization for Islamic Cooperation, Canada, India, Indonesia, Belgium, Ireland, Estonia, Malaysia, United Nations Educational Scientific and Cultural Organization, United Arab Emirates, Russia, France, Slovenia, Italy, Netherlands, Venezuela, China, Australia, United States, Ecuador, Sierra Leone, Algeria, Romania, and United Kingdom. Union of American Civil Liberties, Association for Progressive Communications, Article 19 International Centre against Censorship, and Korea Centre for United Nations Human Rights Policy also spoke.

The digital era and its devices have become part of everyday life. By dramatically improving access to information and real-time communication, innovations in communications technology have boosted freedom of expression and generated global debate on privacy issues. By amplifying the voices of human rights defenders and providing them with new tools to document and expose abuses, these powerful technologies offer the promise of increased exposure and prosecution of human rights violations yet also spark deep concerns over policies and practices that exploit the vulnerability of digital communications technologies. This topic is highly debatable and will continue during HRC28 in March 2015.

Thanks for reading – until the next blog Stacy Dry Lara.

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