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**1 April 2014**

PEN International is the world’s leading association of writers. We work to promote literature and defend freedom of expression. Since our establishment in 1921, PEN has argued that surveillance is harmful to creativity and free expression. Following Edward Snowden’s revelations of mass surveillance by the NSA and GCHQ, PEN International and our PEN Centres have responded with research, advocacy and targeted litigation. This submission to the OHCHR is a compilation of this work to date and includes the following documents:

* [**PEN International Declaration on Digital Freedom**](http://www.pen-international.org/pen-declaration-on-digital-freedom/)
* [**PEN International Resolution on Surveillance and the Protection of Whistleblowers**](http://www.pen-international.org/wp-content/uploads/2013/09/USsurveillanceresolution.doc.pdf)
* **PEN American Center,** [***Chilling Effects: NSA Surveillance Drives Writers to Self-Censor***](http://www.pen.org/sites/default/files/Chilling%20Effects_PEN%20American.pdf)
* [***Big Brother Watch, Open Rights Group, English PEN, Dr Constanze Kurz* v *United Kingdom***](https://www.privacynotprism.org.uk/assets/files/privacynotprism/496577_app_No_58170-13_BBW_ORG_EP_CK_v_UK_Grounds.pdf)
1. [**PEN International’s Declaration on Digital Freedom**](http://www.pen-international.org/pen-declaration-on-digital-freedom/) **(Article 3: Surveillance and the Right to Privacy)**

Concerned by the growth in surveillance of writers by Governments through the use of digital technologies, in 2012 at the PEN International Congress in Gyeongju, Korea, PEN members approved the Declaration on Digital Freedom, a concise statement of PEN’s position on threats to free expression in the digital age.

Article 3 articulates PEN’s position on surveillance and the right to privacy:

**All persons have the right to be free from government surveillance of digital media.**

a. Surveillance, whether or not known by the specific intended target, chills speech by establishing the potential for persecution and the fear of reprisals. When known, surveillance fosters a climate of self-censorship that further harms free expression.

b. As a general rule, governments should not seek to access digital communications between or among private individuals, nor should they monitor individual use of digital media, track the movements of individuals through digital media, alter the expression of individuals, or generally surveil individuals.

c. When governments do conduct surveillance—in exceptional circumstances and in connection with legitimate law enforcement or national security investigations—any surveillance of individuals and monitoring of communications via digital media must meet international due process laws and standards that apply to lawful searches, such as obtaining a warrant by a court order.

d. Full freedom of expression entails a right to privacy; all existing international laws and standards of privacy apply to digital media, and new laws and standards and protections may be required.

e. Government gathering and retention of data and other information generated by digital media, including data mining, should meet international laws and standards of privacy, such as requirements that the data retention be time-limited, proportionate, and provide effective notice to persons affected.

**2.** In September 2013, at the 2013 PEN International Congress in Reykjavik, Iceland, PEN members approved a resolution detailing PEN’s position on the impact of surveillance on free expression, the right to privacy and the protection of whistle blowers, available [here](http://www.pen-international.org/wp-content/uploads/2013/09/USsurveillanceresolution.doc.pdf). In particular, please see the final recommendation urging:

* All governments 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.

 **3. In November 2013, PEN American Center published *Chilling Effects: NSA Surveillance Drives Writers to Self-Censor*. The full report is available** [**here**](http://www.pen.org/sites/default/files/Chilling%20Effects_PEN%20American.pdf)**.**

**Summary**

 PEN has long argued that surveillance is harmful to creativity and free expression. To more precisely define how it is harmful, PEN undertook a survey of over 520 American writers as an opportunity to better understand the specific ways in which awareness of far-reaching surveillance programs impacts writers’ thinking, research, and writing. The results of this survey confirm PEN’s position: Writers are overwhelmingly worried about government surveillance, and are engaging in self-censorship as a result. Freedom of expression is under threat, and as a result, freedom of information is as well. Fully 85% of writers responding to PEN’s survey are worried about government surveillance of Americans, and 73% of writers have never been as worried about privacy rights and freedom of the press as they are today.

Furthermore, writers are self-censoring their work and their online activity due to their fears that commenting on, researching or writing about certain issues will cause them harm. Writers reported self-censoring on subjects including U.S. military affairs, the Middle East-North Africa region, mass incarceration, drug policies, pornography, the Occupy movement, the study of certain languages, and criticism of the U.S. government. The fear of surveillance, and doubt over the government’s intentions for using the data it gathers, have prompted PEN writers to change their behavior in numerous ways that curtail their freedom of expression and restrict the free flow of information. The results of the survey regarding forms of self-censorship were particularly striking, and troubling:

* 28% have curtailed or avoided social media activities, and another 12% have seriously considered doing so;
* 24% have deliberately avoided certain topics in phone or email conversations, and another 9% have seriously considered it;
* 16% have avoided writing or speaking about a particular topic, and another 11% have seriously considered it;
* 16% have refrained from conducting Internet searches or visiting Web sites on topics that may be considered controversial or suspicious, and another 12% have seriously considered it;
* 13% have taken extra steps to disguise or cover their digital footprints, and another 11% have seriously considered it;
* 3% have declined opportunities to meet (in person, or electronically) people who might be deemed security threats by the government, and another 4% have seriously considered it.

PEN’s survey also demonstrated surveillance’s harm to freedom of the press. Among survey respondents who are journalists, 30% reported having taken extra precautions to protect sources’ anonymity. The NSA’s surveillance will damage the ability of the press to report on the important issues of our time: if journalists refrain from contacting sources for fear that their sources will be found out and harmed as a result; and also if sources conclude that they cannot safely speak to journalists, and stay silent as a result.

4.[***Big Brother Watch, Open Rights Group, English PEN, Dr Constanze Kurz* v *United Kingdom***](https://www.privacynotprism.org.uk/assets/files/privacynotprism/496577_app_No_58170-13_BBW_ORG_EP_CK_v_UK_Grounds.pdf)

On 4 September 2013 English PEN joined with [Big Brother Watch](http://www.bigbrotherwatch.org.uk/), [Open Rights Group](http://www.openrightsgroup.org/) and the German internet activist [Constanze Kurz](http://de.wikipedia.org/wiki/Constanze_Kurz)**,**launched **a legal challenge against the actions of GCHQ, alleging it has illegally intruded on the privacy of British and European citizens. They argue that** any interference with that right must be proportionate and in accordance with adequate and published legal standards. The law and practice in the UK fails to meet either requirement. **The grounds for the challenge can be read** [here](https://www.privacynotprism.org.uk/assets/files/privacynotprism/496577_app_No_58170-13_BBW_ORG_EP_CK_v_UK_Grounds.pdf)**.**

In January 2014, the ECHR completed its preliminary examination of the case and has communicated it to the British government, asking it to justify how GCHQ's practices and the current system of oversight comply with the right to privacy under Article 8 of the European Convention. The court has also given the case a rare 'priority' designation. The government has until 2 May 2014 to respond, after which the case will move into the final stages before judgment. The ECHR’s letter to the UK Government can be read [here](https://www.privacynotprism.org.uk/assets/files/privacynotprism/letter_from_ecthr_to_uk_gov.pdf).