

Right to Privacy in the Digital Age – U.S. Redlines

- 1) Clarify that references to privacy rights are referring explicitly to States' obligations under ICCPR and remove suggestion that such obligations apply extra-territorially.

PP5 *Reaffirming* the ~~human~~ privacy rights of individuals under Article 17 of the ICCPR, that is ~~to privacy and~~ not to be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, and the right to enjoy protection of the law against such interferences ~~and attacks~~ **(new, based on article 17 of the ICCPR)**, and recognizing that the exercise of ~~the right to privacy rights~~ is often understood as an essential requirement for the ~~realization~~enjoyment of the rights to freedom of expression and to hold opinions without interference, and one of the foundations of a democratic society **(new, based on the report A/HRC/23/40 (para 24) of the Special Rapporteur)**,

At the end of the first line, add “that is” before “not to be subjected.” This addition is essential in order not to suggest that there are two sets of privacy rights, one under the ICCPR and the other from some other source. We are seeking the same fix in OP1.

OP1. *Reaffirms* the rights contained in article 12 of the Universal Declaration of Human Rights, and in article 17 of the International Covenant on Civil and Political Rights, in particular ~~the right to privacy rights, that is and~~ not to be subjected to arbitrary or unlawful interference with privacy, family, home or correspondence, and the right to enjoy protection of the law against such interference ~~or attacks, in accordance with article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights~~ **(new)**;

In the third line, replace the “and” before “not to be subjected...” with “that is.” It is necessary to clarify that these are not two separate rights. This is the same edit proposed for PP5.

PP10 *Deeply concerned* ~~that~~ human rights ~~violations and~~ abuses ~~that~~ may result from the abuse of information acquired through the conduct of any surveillance or interception of private communications, including extraterritorial surveillance or interception of private communications, their interception, as well as the collection of personal data, including particular massive surveillance, interception and data collection **(new)**,

In the first line, change “at” to “that” and delete “violations and.” As the text currently reads, it suggests that states have international human rights obligations to respect the privacy of foreign nationals outside the U.S., which is not the U.S. view of the ICCPR.

- 2) Clarify that the focus of the resolution is on “unlawful” or “illegal” surveillance and interception of communications.

PP8 *Emphasizing* that under ICCPR Article 17, States' illegal unlawful surveillance and interception of private communications, their interception, as well as the illegal unlawful collection of personal data, constitute a highly intrusive act that violates ~~the right to privacy~~

rights and may threaten freedom of expression, including the expression of political and religious beliefs, and may threaten the foundations of a democratic society (new, based on the report A/HRC/23/40 (para 81) of the Special Rapporteur),

Add “under ICCPR Article 17,” or change the two references to “illegal” to “unlawful” to clarify that this paragraph is addressing the obligations under the ICCPR only.

It is essential to collapse the references to surveillance and interception of private communications into one category that is modified by “unlawful.”

Replace “their interception” with “and interception” and move it to after “illegal surveillance.” We understand this paragraph to be referring to surveillance and interception of the content of communications, both of which should be qualified by “unlawful.” Recall that the USG’s collection activities that have been disclosed are lawful collections done in a manner protective of privacy rights, so a paragraph expressing concern about illegal surveillance is one with which we would agree. We suggest moving “interception” on the grounds of bad English syntax (which is fair). In that way, we can have “unlawful” modify all the elements of the paragraph.

3) Clarify that violations of privacy rights to not necessarily violate freedom of expression.

PP8 *Emphasizing that under ICCPR Article 17, States’ ~~illegal~~ unlawful surveillance and interception of private communications, ~~their interception~~, as well as the ~~illegal~~ unlawful collection of personal data, constitute a highly intrusive act that violates ~~the right to~~ privacy rights and may threaten freedom of expression, including the expression of political and religious beliefs, and may threaten the foundations of a democratic society (new, based on the report A/HRC/23/40 (para 81) of the Special Rapporteur),*

Move “may threaten” from before “the foundations of a democratic...” to before “freedom of expression.” We need to clarify that privacy violations could “interfere with” freedom of expression and avoid the inaccurate suggestion that all privacy violations are violations of freedom of expression.