

April 13, 2018

The Honorable Bob Corker, Chairman
The Honorable Bob Menendez, Ranking Member
U.S. Senate Committee on Foreign Relations
423 Dirksen Senate Office Building
Washington, D.C. 20510-6225

Dear Chairman Corker and Ranking Member Menendez:

We write to you regarding the nomination hearing¹ for the Honorable Mike Pompeo to be the U.S. Secretary of State. We urge the U.S. Secretary of State to lead in upholding privacy as a fundamental human right around the world.

The Electronic Privacy Information Center (“EPIC”) is a public interest research center in Washington, DC. EPIC was established in 1994 to focus public attention on emerging privacy and civil liberties issues and to protect privacy, freedom of expression, and democratic values in the information age. EPIC has played a pivotal role in the international development of privacy law and policy. EPIC established the Public Voice project in 1996 to enable civil society participation in decisions concerning the future of the Internet.² And EPIC has worked to promote respect for international privacy rights.³

In the 21st Century, the United States must lead in defending rule of law and human dignity around the world. Supporting international law is a necessary condition for securing human rights but is also essential to the national security and international influence of the United States. As the National Security Strategy states: “government must do a better job of protecting data to safeguard information and the privacy of the American people.”⁴

In the digital era, defending the right to privacy is the new frontier for human rights around the world. Nations increasingly recognize privacy as a fundamental right⁵ and compete to

¹ U.S. Senate Comm. on Foreign Affairs, *Nomination of the Honorable Mike Pompeo of Kansas to be Secretary of State* (Apr. 12, 2018), <https://www.foreign.senate.gov/hearings/nomination-041218>.

² See About the Public Voice, The Public Voice, <http://thepublicvoice.org/about-us/>.

³ Brief of Amici Curiae EPIC, *United States v Microsoft* (Jan. 18, 2018), <https://epic.org/amicus/ecpa/microsoft/US-v-Microsoft-amicus-EPIC.pdf>.

⁴ White House, National Security Strategy of the United States of America (Dec. 2017), <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905-1.pdf>.

⁵ *Puttaswamy v. Union of India*, JT 2017 (9) SC 141 (holding privacy is a fundamental right under the Indian Constitution).

provide stronger and better privacy protection than the next.⁶ However, the U.S. has fallen behind in defending the right to privacy.⁷

The right to privacy is enshrined in international human rights instruments, including Article 17 of the International Covenant on Civil and Political Rights⁸ and Article 12 of the Universal Declaration of Human Rights.⁹ EPIC seeks widespread adoption of the Madrid Privacy Declaration, a document drafted in 2009 in tandem with the 31st International Conference of Data Protection and Privacy Commissioners.¹⁰ The Declaration “reaffirms international instruments for privacy protection, identifies new challenges, and call[s] for concrete actions” and has been signed by hundreds of organizations and experts. EPIC encourages the U.S. Secretary of State to lead in protecting and promoting these rights.

Further, because of the global reach of new technologies, international agreements provide the best opportunity to establish data protection standards.¹¹ For instance, in 1981 the Council of Europe established Convention 108 (also referred to as the “International Privacy Convention”) to strengthen the legal protection of individuals with regard to automatic processing of personal information.¹² The Privacy Convention is the first binding international legal instrument on data protection, and is open to any country, including non-members of the Council of Europe. EPIC has long campaigned for the U.S. to ratify the Convention and urges the Secretary of State to pursue ratification.¹³

EPIC urged former Secretary of State Clinton to begin the process of US ratification of the International Privacy Convention.¹⁴ As we said at the time:

The protection of privacy is a fundamental human right. In the 21st century, it may become one of the most critical human rights of all. Civil society organizations form around the

⁶ See, e.g., Regulation 2016/679, 2016 O.J. (L119) 1 (EU).

⁷ See, e.g., C-362/14, *Schrems v. Data Prot. Comm’r*, 2015 E.C.R. 650 (finding the U.S. provided insufficient legal protection to personal data transferred from the EU to the U.S. under “Safe Harbor” arrangement).

⁸ International Covenant on Civil and Political Rights, art. 17, adopted Dec. 16, 1966, S. Exec. Rep. 102–23, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

⁹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 12 (Dec. 10, 1948)

¹⁰ The Madrid Privacy Declaration (2009), <http://www.thepublicvoice.org/Madrid-declaration/>.

¹¹ Brief for EPIC and Thirty-Seven Technical Experts and Legal Scholars as Amici Curiae in Support of Respondent 12-20, *United States v. Microsoft*, No. 17-2 (Jan. 18, 2018), <https://epic.org/amicus/ecpa/microsoft/US-v-Microsoft-amicus-EPIC.pdf>.

¹² Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Jan. 28, 1981, ETS No. 108.

¹³ EPIC, *Council of Europe Privacy Convention*, Epic.org, <https://epic.org/privacy/intl/coeconvention/>.

¹⁴ Letter from EPIC to Secretary Clinton Re: US Ratification of COE Convention 108 (Jan. 28, 2010), https://epic.org/privacy/intl/EPIC_Clinton_ltr_1-10.pdf.

world have recently asked that countries which have not yet ratified the Council of European Convention 108 and the Protocol of 2001 to do so as expeditiously as possible.¹⁵

We renew our view that the United States should move forward with ratification of the Convention.

We look forward to working with the Committee on this and other efforts to safeguard the fundamental rights of individuals in the modern age.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg
EPIC President

/s/ Eleni Kyriakides

Eleni Kyriakides
EPIC International Counsel

/s/ Christine Bannan

Christine Bannan
EPIC Administrative Law and Policy Fellow

¹⁵ *Id.* at 2.