



Union Internationale des Avocats
International Association of Lawyers
Unión Internacional de Abogados

“Rassembler les avocats du monde • Bringing Together the World's Lawyers • Reunir a los abogados del mundo”

RESOLUTION ON “PRIVACY IN DIGITAL COMMUNICATIONS”

The Union Internationale des Avocats (UIA – International Association of Lawyers), which brings together lawyers, bar federations and lawyers’ associations from 120 countries, which represent all the regions of the world and all legal systems, met at its 58th Congress in Florence (Italy) and adopted the following Resolution:

Noting that digital communication technologies, such as the Internet, mobile smartphones and other Wi-Fi enabled devices have become part of our daily life,

Considering that these technological innovations have brought new ways to exercise human rights but at the same time have given rise to challenges, particularly in the form of interference to our privacy by States and companies which are not always consistent with international legal principles and standards,

Whereas the right to privacy is enshrined in several international human rights instruments, such as Article 12 of the Universal Declaration of Human Rights, Article 17 of the International Covenant on Civil and Political Rights, Convention 108 for the protection of individuals with regard to the automatic processing of personal data and Article 8 of the European Convention on Human Rights, all recognizing the need to ensure the fundamental right to privacy and data protection is safeguarded, in law and in practice.

Recalling the Resolution on “Surveillance” approved by the Governing Board of the UIA in its meeting of March 27, 2010, in Budapest,

Deeply concerned by the revelations in 2013 and 2014 that have revealed that an increasing number of States are using practices that may have a negative and/ or intrusive impact on the right to privacy of citizens in their digital communications,

Considering that not only States but also companies and other organizations can cause harm by abusing the right to privacy of individuals in their digital communications, either at the behest of governments and/or for their own purposes and benefit,

Reaffirming that data arising from today’s digital communications technologies that include personal information of individuals, such as their time and location data, their digital activities and other aggregated information (the so-called metadata) give an insight into an individual’s behavior and life beyond the content of communications and therefore deserves strong privacy protections and at least same protection than the content.

Observing that any arbitrary or unlawful interference on the right to privacy may have a chilling effect on other rights, such as freedom of opinion and expression, and the right to seek, receive and impart information; the right to freedom of peaceful assembly and association; the right to family life and to effective legal representation, among others,

Being persuaded that, in this context, the legal professional privilege needs specific protection as a fundamental value and guarantee of the rule of law and should be kept up at an international level with changing digital communications technologies in order to protect client confidence,

Having regard to the principles and standards on privacy currently under discussion in many human rights advocacy organizations and specially the resolutions adopted by United Nations such as 'The Promotion, Protection and Enjoyment of Human Rights on the Internet' of June 29, 2012 and 'The Right to Privacy in the Digital Age' of November 20, 2013,

Being of the opinion that persons deserve the same legal protection online as offline, including the right to privacy, regardless of national borders and the communication technology that is used,

Consequently, the UIA:

Calls on lawyers and professional associations of lawyers to:

- Assume their important role in the defense of the right to privacy in the digital age. Lawyers worldwide need to work together to uphold the right to privacy internationally and monitor that the rule of law is not interrupted or eroded at the national level,
- Facilitate and boost global debates on how to better protect privacy in the context of digital communications through the rule of law,
- Seek for effective protection of confidential communications between lawyers and their clients, which are sacrosanct under the legal professional privilege, covering both those transmitted by digital means, including metadata, and those stored in digital form, irrespective of the physical location of the data. Any government policy and procedure intended to interfere with this privilege should be challenged if there is a lack of proper legal check and balances,
- Be familiarized with the risks of employing certain tools and services to communicate with their clients, store or use their data in a digital environment, and receive training on practices and means available to better protect the confidential information,

- Spur to action policymakers, companies and organizations around the world to develop international frameworks to ensure that the right to privacy is respected in the context of digital communications,

Calls upon States to:

- Ensure that national frameworks and enforcement are fully compliant with international human rights law against unlawful or arbitrary intrusions to the right to privacy, in particular that any communication surveillance measure complies with the principles of data minimization, transparency, legitimacy, necessity, proportionality and subsidiarity,
- Guarantee that these frameworks are set internationally in order to avoid conflicting laws or where a conflict may arise, states should work together to resolve the conflict. For this purpose, States shall assure that the right to privacy in digital communications is afforded the highest possible level of protection or at least the higher standard of protection provided by any given national regime,
- Foster negotiations on the level of intergovernmental organizations to set forth and/or amend common standards on the protection of privacy and data protection in the digital age and the free flow of data,
- Safeguard effective domestic oversight and accountability for state surveillance activities,
- Take appropriate measures to prevent and punish the adoption of any governmental policy, practice and procedure undermining the legal professional privilege, in particular by any form of intrusion into the computer systems and digital communications of lawyers and law firms,
- Protect metadata, requiring high standards for government and companies' access, including metadata of digital communications covered by the legal professional privilege. Metadata need to have the same level of privacy protection as content,
- Refrain from adopting or keeping any law or practice imposing security holes in digital communications technologies in order to facilitate surveillance, or forbidding or restricting the use of cryptography,
- Grant effective redress to citizens of foreign countries so that individuals are not denied privacy rights simply because they live in another state from the one that is interfering with their privacy rights,
- Use Mutual Legal Assistance Treaties or similar instruments to obtain digital electronic communications and not to use surveillance to steal industry or trade secrets or to use the information for other illegal purposes,

Calls up to Companies to:

- Disclose to data subjects in a clear manner their identity, what personal information they are collecting from them and for which purpose, the safeguards that are in place to protect the privacy of the data subjects, their storage and retention periods, and under which circumstances they may provide access to the personal data to third parties, including any governments,
- Promote the use of technologies that enhance privacy and implement principles such as Privacy by Design and Privacy by Default from the start when designing new products and services,
- Offer technological solutions to enhance the protection of the legal professional privilege in the digital context, such as electronic communication lines or other methods to identify data packets as coming from lawyers and therefore covered by the privilege.
- Encourage governments to be specific, transparent and consistent with international law and standards on privacy, in particular when facing demands to access information by their governments that may compromise the right to privacy,
- Adopt policies and procedures to address how they will respond when governments demands do not include a written directive or fail to adhere to established legal procedure,

Calls on international organizations to:

- Continue their efforts to debate and create principles and standards that could drive the necessary change towards a better protection of the right to privacy in the context of the digital communications,

Lastly, calls on Data subjects to:

- Be proactive in the defense of their right to privacy and use technology as a tool to prevent or at least to minimize any unlawful and arbitrary interference to their right to privacy when sending or storing digital communications.

Resolution approved by the Governing Board held on October 29, 2014 in Florence (Italy).

Resolution ratified by the General Assembly held on October 28, 2015 in Valencia (Spain).