

## REQUEST FOR LEAVE TO INTERVENE

**To:** The Registrar  
European Court of Human Rights  
Council of Europe  
F-67075 Strasbourg cedex  
Also per fax: +33 (0)3 88 41 27 30

**Case:** Big Brother Watch and Others v. the United Kingdom  
**Application:** 58170/13  
**Date:** 1 April 2014

**Lawyer:** Ot van Daalen  
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1. The following organisations request for a leave to intervene in the case mentioned above (hereafter collectively referred to as "**European NGOs**"):
  - **Asociația pentru Tehnologie și Internet**, a non-profit association under Romanian law, with its registered address at Str. Armenis, nr. 6, BI J3, Sc. D, Ap. 37, sector 3, Bucuresti, Cod postal 032483, Romania ("**ApTI**");
  - **Bits of Freedom**, a non-profit foundation under Dutch law, with its



registered address at Bickersgracht 208, 1013LH Amsterdam, the Netherlands;

- **Digitalcourage e.V.**, a non-profit association under German law, with its registered address at Marktstr. 18, 33602 Bielefeld, Germany ("**Digitalcourage**");
- **Digital Rights Ireland Limited**, a company limited by guarantee under the law of the Republic of Ireland, with its registered address at 10 Castle Hill, Bennettsbridge Road, Kilkenny, Ireland ("**DRI**");
- **Digitale Gesellschaft e.V.**, a non-profit association under German law, with its registered address at Sophienstr. 5, 10178 Berlin, Germany ("**DigiGes**");
- **European Digital Rights**, a non-profit association under Belgian law, with its registered address at 20 rue Belliard, 1040 Brussels, Belgium ("**EDRI**");
- **Electronic Frontier Finland – Effi ry**, a non-profit association under Finnish law, with its registered address at PL 239, 00101 Helsinki, Finland ("**Effi**");
- **Föreningen för digitala fri- och rättigheter**, a non-profit association under Swedish law, with its registered address at Box 3644, SE-103 59, Stockholm, Sweden ("**DFRI**");
- **Initiative für Netzfreiheit**, a non-profit association under Austrian law, with its registered address at Pillergasse 7/3, 1150 Wien, Austria ("**IfNF**");
- **IT-Politisk Forening**, a non-profit association under Danish law, with no registered address ("**IT-Pol**");
- **La Quadrature du Net**, a non-profit association under French 1901 law, with its registered address at 19 rue Richard Lenoir, F-75011 Paris, France ("**La Quadrature**");
- **Panoptikon Foundation**, a registered charity under Polish law, with its



registered address at Orzechowska 4/4, 02-068 Warszawa, Poland (“**Panoptykon**”); and

- **Verein für Internet-Benutzer Österreichs**, a non-profit association under Austrian law, with its registered address at Kirchberggasse 7/5, 1070 Vienna, Austria (“**VIBE**”).

2. The European NGOs would like to jointly submit written comments pursuant to Article 36 of the Convention and Rule 44 of the Rules of Court. A power of attorney for each of the European NGOs is submitted as **Annex 1**.
3. These European organisations are all active in the field of human rights in the information society, and in particular the right to privacy and to freedom of communication (see **Annex 2** for a description). They are closely involved in policy debates on a national and a European level regarding internet surveillance and human rights and have specialised expertise in this area. The organisations are also member or observer of EDRI, an association of European NGOs working in the field of human rights in the information society.
4. The European NGOs would discuss two topics in their submission:

**I. Whether the Court's framework for protection of communications, and in particular the lower protection accorded to so-called "metadata" or "traffic data" vis-à-vis "content" of communications, needs to be revised in view of current technological possibilities.** In the jurisprudence of the Court to date, significantly less protection is accorded to "metadata" or "traffic data" (hereafter "**behavioral data**") than to "content". Technologies for data collection, retention and analysis have



developed rapidly in the past years. Meanwhile, internet users are sharing personal data on a massive scale and internet surveillance programmes in various European countries have been put in place or are contemplated. The European NGOs would discuss whether the framework for protection of internet communications needs to be revised in view of these developments, paying particular attention to the distinction between behavioral data and "content". It will address this framework under the right to privacy and the right to communication freedom.

**II. How internet surveillance directly affects the work of European NGOs.** While we will not comment on the specific facts of this case, we wish to assist the Court in understanding the implications of mass surveillance for European NGOs. Each of the European NGOs regularly communicate privately over the internet with other parties on sensitive issues, also of a political nature. There is a serious risk that these communications are intercepted. This has a chilling effect on their work in the field of human rights and thus restricts their right to privacy and communications freedom. The submission would explain in more detail how European NGOs are affected by such surveillance.

5. The submission will be maximum 10 pages. No other topics will be discussed in the submission. We understand that aspects of the above points may be addressed in other intervention applications. We will coordinate with other interveners to ensure that there is no duplication.
6. If the Court would decide that one or several of the European NGOs cannot be granted leave to intervene, the Court is kindly requested to grant the remaining organisations such leave.
7. I would be grateful if the President's decision could be sent to me. My



contact details can be found on the first page of this request.

On behalf of the European NGOs,

Yours sincerely,

**Ot van Daalen**

Digital Defence



## **Annex 1**



## **Annex 2**

**ApTI** is a Romanian digital civil rights organisation, working on issues such as privacy, online freedom of expression and copyright reform. It has been closely involved in policy discussion on data retention in Romania in the past seven years. It is regularly present as an expert contributor to the policy debates on privacy issues in the national parliament and the government.

**Bits of Freedom** has as its goal to defend the right to communication freedom and privacy, in particular in communication-related issues. It does so by advising policymakers, campaigning and informing internet users. It is active in policy debates in the Netherlands and on a European level. It is actively campaigning against recent plans of the Dutch government to introduce legislation allowing for large-scale wiretapping of internet traffic in the Netherlands.

**DFRI** is actively working for digital rights in Sweden with a focus on privacy and personal integrity. To this end, it arranges seminars and conferences and participates in public debates.

**Digitalcourage** promotes civil rights, data protection and quality of life in the digital age. It organises the Big Brother Awards, the negative awards for the biggest privacy infringers, in Germany since 2000. It is heavily involved in policy debates on privacy issues in Germany. Topics on which Digitalcourage has shaped the debate include (i) privacy intrusions by governments, such as data retention, tax databases, censuses, video surveillance, censorship and (ii) threats to privacy from businesses, such as customer loyalty cards and RFID. Digitalcourage engages in support and networking between similar NGOs at the national and European level.



**DRI** is a non-profit organisation devoted to defending civil, human and legal rights in a digital age through legal challenges, working with policymakers and through public campaigning. It is active in Ireland and at a European level. It has provided testimony to the Irish Parliament and is the lead plaintiff before the European Court of Justice in case C-293/12 /Digital Rights Ireland v. Minister for Communications and others, which challenges the policy of retaining internet and telephone records on the entire population required by the European Data Retention Directive (2006/24/EC).

**DigiGes** works for an open and free information society. It focuses on Germany, but also participates in policy debates on a European level. It opposes restrictions on digital freedoms and civil liberties, including the right to privacy and the right to communication freedom. It promotes free access to knowledge, transparency as well as participation and creative development of internet users. It has organised campaigns against surveillance by the NSA, and is involved in the policy debates regarding German legislation allowing for the large-scale interception of internet traffic.

**EDRi** is the European association gathering digital rights organisations throughout Europe. It consist of 36 members from 21 European countries. Some of these members are also individually joining this request. EDRi is been leading the campaign against the Data Retention Directive since it was first proposed and has been active on surveillance and data protections. It also co-ordinated civil society responses to the current Snowden revelations. The lawyer of the parties in this request is a board member of EDRi.

**Effi** defends digital civil rights, especially in the area of privacy, freedom of





expression and intellectual property. Effi participates actively in Finnish public debates about surveillance, criticising proposals such as satellite-based road tolling or data retention. Effi is a strong opponent of a new legislative initiative that proposes to give national security authorities a wide range of surveillance powers.

**IfNf** is committed to the promotion of freedoms of people on the internet and the protection of citizens' fundamental rights in the information society. Its goal is to ensure that internet policy is central to the political and public debate in Austria. Among many things, it participated in a campaign against data retention legislation in Austria and conducted research into the security of data retention data in Austria.

**IT-Pol** is an association of people specialised in human rights in the information society. It actively provides advice to policy makers on issues such as data retention, cybersecurity, anonymity and web blocking. It is an outspoken critic of Danish policies on internet surveillance and is regularly asked in the media as an expert.

**La Quadrature du Net** defends the rights and freedom of citizens on the Internet. More specifically, it advocates for the adaptation of French and European legislation to the founding principles of the Internet. La Quadrature engages in public-policy debates concerning, inter alia, freedom of expression, telecommunications regulation and online privacy. It is an outspoken critic of the recently adopted, highly controversial, French 2014-2019 Defense Bill which opens the way to generalised surveillance in France.

**Panoptikon Foundation** is a non-governmental organization focused on surveillance and digital rights issues. Its aim is to promote and defend



human rights in surveillance society. It monitors surveillance practices in public and private sector, intervenes when human rights are threatened and strives to influence the legislative process, advocating for stronger human rights safeguards. Over the last five years, Panoptikon Foundation has been involved in public debates and legislative processes concerning access by police and secret services to telecommunication data of citizens as well as other forms of surveillance, both in Poland and on the European Union level.

**VIBE** is committed *inter alia* to the protection of private communications and the use of secure communications technology and the right to free communication on the internet. It is mostly active in Austria but occasionally also participates in policy debates on a European level. In 2013 it, together with other Austrian civil society organisations, led a campaign against Austrian data retention legislation, which managed to attract over 100.000 people opposing the legislation. It is also a leading party in a constitutional challenge against the Austrian data retention legislation. VIBE participates in the advisory committee on information society of the Federal Chancellery. A board member of VIBE is member of the Austrian Data Protection Council, an advisory body to the Federal Government.

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