



July 9, 2008

Mr. Emilio de Capitani
Parlement européen
60, rue Wiertz
B-1047 Bruxelles

Dear Mr. de Capitani:

**AMERICAN CIVIL
LIBERTIES UNION**

**TECHNOLOGY AND LIBERTY
PROGRAM**

PLEASE RESPOND TO:
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CHAIR, NATIONAL
ADVISORY COUNCIL

RICHARD ZACKS
TREASURER

I write to members of the LIBE Committee, as I have written to the Data Protection officials in Europe, about an urgent matter that deserves your attention.

The negotiations underway between U.S. security agencies and their European counterparts over the transatlantic transfer of personal data are just the latest efforts to overcome a looming problem that has consistently interfered with the Bush Administration's attempts to collect the personal information of an ever-increasing share of the world's population.

That problem is the utter absence of real and enforceable privacy laws in the United States.

There is only so much that officials of the American executive branch can do to overcome this problem – even officials of an administration more committed to privacy than the current one. The European Union, having enacted strong legislation to protect the privacy of its citizens, cannot be asked to render that legislation meaningless by allowing its citizens' data to be shared with a country that is, in privacy terms, all but lawless.

While there are undoubtedly security officials in Europe who are hungering to betray their own laws and strike a deal, bureaucratic action and unenforceable administrative assurances cannot make up for the lack of effective U.S. privacy laws. The United States should not be pressuring Europeans into weakening your privacy laws; we should be strengthening our own.

If Europe agrees to data-sharing with the United States under the current U.S. open records law, then European citizens will have far fewer protections for their data in the United States than U.S. citizens will have in Europe. U.S. privacy laws are weak; they offer little protection to citizens and virtually none to non-citizens. The U.S. open records law, the Freedom of Information Act, allows all individuals, including non-citizens, the right to access their data. However, the redress process is cumbersome, and U.S. law does not include any process for correcting errors contained in the data.

These problems are underscored by the experience of your own member Sophie in't Veld, who has been forced to file a lawsuit seeking access to records about her that are held by U.S. government agencies in the departments of Homeland Security, Justice and State. Ms. in't Veld filed a Freedom of Information Act request in October for her records: the State Department has not responded, and the FBI (under the Justice Department), U.S. Customs and Immigration Services, Customs and Border Protection, and Immigration and Customs Enforcement (all under Homeland Security) have all claimed that they have no records pertaining to Ms. in't Veld. This seems unlikely, as Ms. in't Veld is a frequent traveler to the U.S. who often has been selected for in-depth "secondary screening" at U.S. borders.

As you know, the United States will vote in November for a new president. Regardless of who wins the election, we hope that the new president will be more open to genuine dialogue with our allies and, in particular, recognize the differences in our approaches to privacy. We hope that the United States will move closer to Europe's robust data protection laws.

We urge you to reject the Bush administration's attempts to strong-arm an agreement from Europe. There is no need to rush to make compromises with an outgoing administration when a new U.S. president will take office in January.

With regards,

A handwritten signature in black ink, appearing to read 'B. Steinhardt', with a long horizontal flourish extending to the right.

Barry Steinhardt

Director,
Technology and Liberty Program

ACLU

**AMERICAN CIVIL
LIBERTIES UNION**