

## Senate:

Sen. Leader Harry Reid, Democratic Leader

Sen. Mitch McConnell, Republican Leader

Sen. Barbara Mikulski, Chairwoman, Senate Appropriations

Sen. Richard Shelby, Ranking Member, Senate Appropriations

## House:

Rep. John A. Boehner, Republican Leader

Rep. Nancy Pelosi, Democratic Leader

Rep. Harold Rogers, Chairman, House Appropriations

Rep. Nita Lowey, Ranking Member, House Appropriations

November 18, 2014

Dear Members of Congress:

We the undersigned respectfully urge you to grant the Mutual Legal Assistance Treaty (MLAT) appropriations requested by the Department of Justice.<sup>1</sup> MLATs create a clear and consistent legal process for sharing evidence between the United States and foreign jurisdictions in international investigations.<sup>2</sup> They promote international law enforcement cooperation and contain human rights and due process protections that may be lacking in informal assistance requests and letters rogatory, the other two primary means of obtaining evidence from beyond our borders.<sup>3</sup>

Yet funding limitations have significantly restricted the Department of Justice's ability to meet the US government's obligations in the face of a 60% increase in incoming MLAT requests over the last decade.<sup>4</sup> At present, the MLAT system struggles to cope with the pace, complexity, and volume of data transfers across jurisdictions due to lack of funds. As a result, there is a long delay in the ability of the Department of Justice to fulfill requests for evidence through the MLAT process.<sup>5</sup> This delay reduces the US' ability to cooperate with our foreign law enforcement partners who want to catch dangerous criminals, denying justice to victims of crime. The delay also increases the risk of foreign governments putting inappropriate pressures on US

<sup>1</sup> *FY 2015 Budget Request, Mutual Legal Assistance Treaty Process Reform, +\$24.1 Million in Total Funding*, DEP'T OF JUSTICE (July 7, 2014), <http://www.justice.gov/sites/default/files/jmd/legacy/2014/07/13/mut-legal-assist.pdf>.

<sup>2</sup> See generally *Mutual Legal Assistance Treaties*, <https://mlat.info/>, for further discussion of the benefits of MLATs.

<sup>3</sup> See generally *International Principles on the Application of Human Rights to Communications Surveillance*, <https://en.necessaryandproportionate.org/text>, (2013), for further discussion on how MLATs can protect rights through a dual criminality standard.

<sup>4</sup> FY 2015 Budget, *supra* note 1, at 1.

<sup>5</sup> *Liberty and Security in a Changing World*, PRESIDENT'S REV. GRP. ON INTELLIGENCE AND COMMC'S TECH., 227 (Dec. 12, 2013), [http://www.whitehouse.gov/sites/default/files/docs/2013-12-12\\_rg\\_final\\_report.pdf](http://www.whitehouse.gov/sites/default/files/docs/2013-12-12_rg_final_report.pdf) (Reporting the average MLAT response takes 10 months and sometimes years).

companies and harming individuals by seeking data through processes with weak accountability and human rights protections.

As a result of the delays that currently hinder the formal MLAT process, some foreign government officials have turned to highly problematic means of accessing evidence held by US companies.<sup>6</sup> A number of countries have adopted or proposed data localization laws requiring companies to store data within national borders.<sup>7</sup> These restrictions on the flow of data lead to increased surveillance by foreign governments, reduced innovation, fragmentation of the Internet, and costs for US tech firms.<sup>8</sup> Many technology industry leaders warned of the risks to the US economy at a recent event in Silicon Valley.<sup>9</sup> Google CEO Eric Schmidt has called the threat of data localization and the mistrust of US tech firms a “national emergency,”<sup>10</sup> and the Reform Government Surveillance Coalition, composed of a number of the largest US tech companies, has urged our government to improve its MLAT process.<sup>11</sup>

Formal MLAT requests better protect the human rights of technology users, including Americans. Many MLATs include provisions ensuring respect for international human rights and domestic privacy protections. Some MLATs make clear that the procedural and substantive laws of both countries need to be considered when requests are made. The US has its own protections, in that federal judges review requests forwarded by the Department of Justice to make sure they meet evidentiary and constitutional standards.<sup>12</sup> This ensures that investigations initiated by foreign authorities—including investigations of Americans—are subject to judicial oversight just as they would be in a domestic criminal investigation.

Unquestionably, more MLAT reforms will be needed in the future in order to improve transparency and efficiency. However, improving resourcing to enable faster processing of requests is critical to the US’ ability to meet its international obligations and prevent unnecessary infringements on users’ privacy and due-process rights. The undersigned organizations therefore urge Congress to amend the 2015 Continuing Appropriations Resolution by increasing MLAT funding by \$24.1 million.

Please direct your responses to either Drew Mitnick at Access [drew@accessnow.org, 888.414.0100, x702] or Sarah St. Vincent at CDT [sstvincent@cdt.org, 202.407.8835] and we will share it with the other signatories.

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<sup>6</sup> See, e.g., Paula Sonne and Olga Razumovskaya, *Russia Steps Up New Law to Control Foreign Internet Companies*, WALL ST. J., Sept. 24, 2014, <http://online.wsj.com/articles/russia-steps-up-new-law-to-control-foreign-internet-companies-1411574920>.

<sup>7</sup> *Id.*

<sup>8</sup> Jonah Force Hill, *The Growth of Data Localization Post-Snowden: Analysis and Recommendations for U.S. Policymakers and Industry Leaders*, LAWFARE RESEARCH PAPER SERIES (July 21, 2014), <http://www.lawfareblog.com/wp-content/uploads/2014/07/Lawfare-Research-Paper-Series-Vol2No3.pdf>.

<sup>9</sup> Seth Rosenblatt, *U.S. Spying Scandal Will ‘Break the Internet,’ Says Google’s Schmidt*, CNET (Oct. 8, 2014), <http://www.cnet.com/news/us-spying-scandal-will-break-the-internet-says-googles-schmidt/>.

<sup>10</sup> *Id.*

<sup>11</sup> *The Principles*, REFORM GOV’T SURVEILLANCE COAL., <https://www.reformgovernmentsurveillance.com/>.

<sup>12</sup> 28 U.S.C. § 1782.

Sincerely,

Access

Center for Democracy & Technology

Advocacy for Principled Action in Government

American Library Association

New America's Open Technology Institute

PEN American Center