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“The Right to Privacy and the Protection of Public Security”

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Introduction

Good Morning. Before I begin addressing our panel topic, I would like to take this opportunity to extend appreciation to Eva Kulesza and her staff for hosting this important conference that focuses on privacy and respect for the dignity of individuals.

I'm standing in today for Nuala O'Connor Kelly, our Chief Privacy Officer at the U.S. Department of Homeland Security. Nuala is quite sad that she is unable to be here. As many of you may know, in May, Nuala delivered her first child - - a little girl. Nuala and the baby are doing well. Nuala is unable to travel this far with the baby, but she looks forward to being with you next year in Switzerland. With some luck, I hope she will bring me along, too!

I am a modest replacement for Nuala. But it is my personal delight to be with you in Poland, to visit this beautiful country, with people of great strength and great heart.

Today's Session

For today's session, I'd like to thank Peter Hustinx for chairing the panel. I hope to help Peter out this morning by delivering fairly brief remarks in order to ensure plenty of time for discussion and questions. I will also be here throughout the conference. I will be available throughout the week and look forward to answering questions that participants may have about programs of the Department of Homeland Security (DHS) and our privacy efforts.

Let me also say that I welcome the opportunities at this conference, not just to speak and share our experiences at the Department of Homeland Security Privacy Office, but also to actively listen and to learn. For that, let me sincerely thank you.

Privacy Protection and Public Security – How to Accomplish Both

The subject of our panel is “The Right to Privacy and the Protection of Public Security.” One could say that implicit in the title is the public expectation that the protection of both goals should be achievable.

We believe that to be the case at the Department of Homeland Security and have integrated the consideration of privacy into the ways in which we assess our programs and use of technologies, handle information, and carry out our protective mission.

Furthermore, the Congress of the United States mandated that it be just so.

The President signed the Homeland Security Act, and Section 222 of the Act requires that the Department appoint a Chief Privacy Officer who has extensive privacy oversight and policy responsibilities and a reporting relationship to Congress, as well as to the Secretary of the Department.

The Chief Privacy Officer and her staff function both internally, and as commenters externally, on the privacy compliance efforts of the agency, on the use of technologies by the agency to collect and share information, on privacy complaints, and on legislative and regulatory proposals, among many additional responsibilities, including an education function.

At DHS, we understand that rhetoric, while important in promoting privacy awareness, is not enough -- either to achieve privacy objectives in the government sphere or to engender trusted relationships with American citizens or visitors to our nation.

One of Poland’s Nobel Prize winners for Literature, Wislawa Szymborska captured the sense of this expectation, for more than mere rhetoric, when she wrote, “The world would rather see hope than just hear its song.” And that is certainly our challenge and privacy commitment in the government sphere, particularly at the Department of Homeland Security, to make transparent our programs, privacy impact assessments, and privacy compliance and protection efforts in the context of seeking public security.

In the next few weeks, the DHS Chief Privacy Officer’s Report to Congress will be published on our website, www.dhs.gov/privacy. I urge you to view the site and the report. It details DHS Privacy Office policy and compliance activities in our initial year of operation. The report records our first steps, not our last. We are proud of the team that has been assembled, the work that has been initiated, the partnerships with senior management and staff throughout DHS, and the cultural receptivity for looking at privacy considerations at the front end and throughout the life cycle of DHS programs.

The DHS Privacy Office website includes additional reports to the public on privacy complaints. Also at the site, in addition to the sites of our component agencies, you will see privacy impact assessments concerning homeland security programs and

technologies used to further program goals. You also will see testimony by the Chief Privacy Officer before the United States Congress.

Information Sharing and Privacy Protections: Need to Know and Need to Share

Most recently, DHS Chief Privacy Officer Nuala O'Connor Kelly testified on August 20th before the Judiciary Committee of the U.S. House of Representatives in a hearing jointly held by the Subcommittees on Administrative Law and on the Constitution. The subject of the testimony included recommendations of the 9/11 Commission concerning the need for privacy protections at the core of our national mission as we devise ways to reform and improve our intelligence and anti-terrorism information sharing efforts.

The 9/11 Commission's Report findings underscored a need within the United States government to abandon the compartmentalized structure of our intelligence bureaucracy that existed before 9/11. The Report recommends moving to a more integrated system that facilitates needed information sharing across agency structures and with first responders at the state and local levels. Some have described this paradigm shift as moving away from a compartmentalized or parochial "need to know" approach to an appreciation of the "need to share" information across government functions and agencies in order to better anticipate, prevent and protect our citizens and visitors from acts of terrorism and illegal activities that support terrorism.

Acknowledging the need for appropriate, timely and agile use of information to enhance public security, as well as increased technological capabilities to share information, Nuala O'Connor Kelly advocated that Congress permit agencies to establish clear parameters for sharing information to protect privacy. In the first year of operation of the DHS Privacy Office our efforts centered on operationalizing privacy within the Department, addressing private sector data sharing with the public sector and appropriate handling of that information, and international cooperation. Certainly to be added to that list in this next year is the focus on government to government sharing of information and applicable policies and procedures.

Establishing reasonable limits on access and embedding fair information principles will be important, not only because it will protect individuals, but also because it will engender the kind of trust in government that is necessary to achieve the cooperation of the public and private sectors and domestic and foreign authorities, with whom relevant information sharing can be essential to international cooperation and protection.

For many years, individuals have relied upon the perceived efficiencies of government to protect their shared information. While there are clear rules in the government space about protecting and sharing data, these will be tested. And where the rules are found lacking, we will need to find a new framework. Where the technology

that supports data sharing evolves, again, our understanding of the rules – or the rules themselves – must evolve.

Technology and privacy awareness, while important tools in protecting individual privacy interests, will not be enough to address our current challenges. As we move forward, we will also need to establish and enforce concrete safeguards and processes that prevent government from exceeding its proper bounds.

As the 9/11 Commission pointed out, the burden should be on policy makers to prove that any new power granted to government is accompanied by “adequate guidelines and oversight to properly confine its use.” The idea is an important one – privacy protections must be in place at the front-end of our governmental processes when programs are in their infancy, rather than later, after privacy abuses and mistakes have already taken place.

It is why, a year into the operations of the Privacy Office, we so appreciate both the internal and external responsibilities of the DHS Chief Privacy Officer and staff to affect privacy on the front end and throughout the development of homeland security programs. U.S. laws, official privacy guidance on implementing those laws, and DHS programs and privacy policies seek to facilitate privacy and security safeguards, not only for our citizens, but for visitors to our welcoming nation.

At the Department, we seek to renew our commitment to respecting the privacy of individuals, with respect for individual dignity and needs for both individual and public security. We hope to work across borders in this challenging, but most important effort of shared concern for individuals, governments and economies throughout the world.