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30 November 2009

**Statement of Media Organizations and Associations  
re: Impact of Weakening Protection of Sources in Europe**

Dear Mr. Stephens:

The undersigned news organizations and publishers' associations write this statement in response to your request for information about the impact on our work that would result were the Grand Chamber of the European Court of Human Rights ("ECHR") to affirm the Third Section's judgment in the case of *Sanoma Uitgevers B.V. v. the Netherlands*. Each of us is based, has news bureaus or operations, has members, or reports on events occurring, in European nations. We are significantly affected by decisions of the ECHR that concern the protection of journalistic sources, safeguards against the search of newsrooms, and other aspects of media freedom. Brief descriptions of our organizations and associations appear at the end of this letter.

The ECHR's seminal judgment in *Goodwin v. the United Kingdom* established the right of a journalist to protect his or her sources as a fundamental principle of media freedom throughout Europe. In *Roemen and Schmit v. Luxembourg*, the ECHR made clear that a similar principle protects media companies from arbitrary searches of their premises and seizure of their work product and other documents.

We are concerned that the Third Section's judgment in *Sanoma Uitgevers B.V. v. the Netherlands* undermines these standards to the extent that it appears to condone interference with journalistic sources without prior formal judicial scrutiny, and without proof of exhaustion of alternative sources of information. We believe that if this precedent stands, police forces and public prosecutors across Europe may consider themselves free to exercise a similar lack of moderation and we may find ourselves the first resort – not the last – when the authorities begin investigations into newsworthy subjects. If our operations are subject to the threat of searches and seizures, and if we are not able to fully protect our sources, this will greatly impede our ability to gather and report information of public interest.

In the past, in various jurisdictions, many of us have been the target of operations not dissimilar to those taken by the Dutch police against Sanoma Uitgevers. When authorities close or search newsrooms, or threaten to do either, the result is a disruption of journalists' ability to inform the public – often at precisely the moment that important and previously unknown information should be disseminated. The possibility of search and

seizure creates a lingering unease that can lead to self-censorship among reporters, editors, and publishers. A news operation cannot serve the public's interests as effectively if its offices and newsrooms are vulnerable to the threat of search by authorities. Nor can journalists do their jobs effectively if they are perceived as instruments of the state – a real risk when there are insufficient safeguards to prevent government authorities from compelling journalists to provide them with information.

For many stories, just the possibility that police or prosecutors could, without strict judicial scrutiny, demand information about a story's source is sufficiently intimidating to ensure that the source never comes forward in the first place. Particularly when the media act as a government watchdog and report on important issues such as public corruption and official or corporate abuses, the willingness of sources to speak to journalists is of the utmost importance and sensitivity. The powerless must be able to trust that they can hold the powerful to account by providing information to journalists.

An example of the importance of sources feeling secure enough in assurances of confidentiality to speak to the press is the uncovering in 2005 of secret United States Central Intelligence Agency prisoner-holding facilities known as “black sites.” Dana Priest of *The Washington Post* and many other reporters who worked to uncover this story relied on information from unnamed sources.<sup>1</sup> The black sites, several of which were located in Eastern European democracies, were used by the CIA to hold and interrogate so-called “high value” detainees. The black sites remained a classified secret for four years and might never have come to light had these sources been afraid to share their knowledge for fear that their identities might be exposed.

In another prominent example, journalists on several continents obtained from sources the documents that uncovered the U.N. Oil-for-Food scandal, prompting a U.N. inquiry and other investigations that revealed a global web of corruption and the diversion of oil proceeds intended to meet the humanitarian needs of the Iraqi civilian population.<sup>2</sup>

In coverage in 2008 that was made possible only through the use of confidential source information, the *International Herald Tribune* (“*IHT*”) exposed the inner workings of a price-fixing cartel among manufacturers of paraffin wax.<sup>3</sup> On the condition that the newspaper protect his identity, a source offered to the *IHT* unreleased documents that had supported fines of more than half a billion euros levied against the companies by the European Commission. The news story triggered official investigations of one of the companies and an unsuccessful internal European Commission probe aimed at identifying the source. In another recent example, a source offered the *IHT* photographs, documents, and records of money transfers to show that a high-ranking Bulgarian official had met with a businessman who was under investigation for alleged scams to collect

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<sup>1</sup> See Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, Wash. Post, Nov. 2, 2005, at A1.

<sup>2</sup> See, e.g. Susan Sachs, *Hussein's Regime Skimmed Billions From Aid Program*, N.Y. Times, Feb. 29, 2004, at A1; Therese Raphael, *The Oil-for-Food Scandal*, Wall St. J., Mar. 11, 2004, at A16.

<sup>3</sup> See Doreen Carvajal and Stephen Castle, *Fixing Prices with Style*, Int'l Herald Trib., Dec. 12, 2008, at A1.

European Union subsidies.<sup>4</sup> The source, who feared that his telephone lines had been tapped and that he was being followed, would provide these documents only if the *IHT* agreed to guarantee him confidentiality. The records showed that a businessman and nearly a dozen employees had each given large campaign contributions to the official's political party soon after the visit.

In 2006, Dutch reporters Bart Mos and Joost de Haas of the Amsterdam-based daily *De Telegraaf* wrote a series of articles that reported on alleged leaks of classified information to local mafia. The two were later called as witnesses in the trial of a former secret agent charged with leaking information about an organized crime gang. When the reporters refused to reveal their sources, an investigative judge in the Hague sent Mos and de Haas to jail before deciding, after three days, that there was insufficient evidence to justify holding the reporters.

In the Czech Republic in 2008, investigative reporter Sabina Slonkova posted a video, provided to her by a confidential source, documenting a clandestine meeting between the presidential chief of staff and a lobbyist with believed ties to the underworld.<sup>5</sup> In France, journalists from the *Le Point* and *L'Equipe* have relied on information from unnamed sources in reporting on the investigation of members of the French cycling team Cofidis for suspected possession and use of performance enhancing drugs.<sup>6</sup> In both instances, confidence in the protection of sources was integral in bringing the story to light. Unfortunately, these reporters faced searches of their offices and even fines by prosecutors eager to learn the identity of their sources. If such government interference is permitted without strict judicial scrutiny, potential sources for journalistic investigations of great importance will remain silent.

Journalistic sources are equally important to the daily reporting of more routine news stories. Reporters regularly consult background sources to confirm the accuracy of official news pronouncements and to understand their broader context and significance. If these sources stop cooperating with us out of fear that prosecutors will force us to reveal their identities, confirmation of even the most basic news stories will become far more difficult.

While some journalists have been able to resist pressure to reveal their sources, in the long term an erosion of source protection in Europe will have an immeasurable chilling effect on our profession. We are concerned that, if the Third Section's judgment of 30 March 2009 is affirmed, the media's right to freedom of expression, the source's right to

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<sup>4</sup> See Doreen Carvajal and Stephen Castle, *Mobsters Muscle into the Lucrative Business of Bulgarian Politics*, Int'l Herald Trib., Oct. 17, 2008, at A5.

<sup>5</sup> See Sabina Slonková and Adam Junek, *Tajná schůzka na Hradě: Šlouf a Klausův kancléř*, Aktuálně.cz, Feb. 4, 2008, available at <http://aktualne.centrum.cz/domaci/kauzy/clanek.phtml?id=520339>; *Exkluzivní video: Klausův kancléř se sešel tajně se Šloufem*, Aktuálně.cz, Feb. 4, 2008, available at <http://aktualne.centrum.cz/video/?id=122683>.

<sup>6</sup> See Jean-Michel Décugis, Christophe Labbé, and Olivia Recasens, *Des Ecoutes Accablantes*, *Le Point*, Jan. 22, 2004; Dominique Issartel and Damien Ressayot, *Les PV de l'Enfer*, *l'Equipe*, April 9, 2004.

assist journalists in informing the public on matters of public interest, and society's right to be informed will suffer.

Sincerely,

*The Associated Press, Bloomberg News, Index on Censorship, The European Newspaper Publishers Association (ENPA), Condé Nast Publications, Hearst Corporation, The National Geographic Society, the New York Times Company, La Repubblica, Reuters, Time, Inc., The Washington Post, and The World Association of Newspapers and News Publishers (WAN-IFRA).*

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### **Descriptions of Organizations and Associations Joining This Letter**

***The Associated Press*** is a news cooperative operating under the Not-for-Profit Corporation Law of New York State, with more than 240 news bureaus around the world and services delivered in five languages to newspapers and broadcast news outlets in 121 countries, including most of Europe.

***Bloomberg News*** is the world's largest newsgathering organization, comprised of more than 2,500 journalists around the world in more than 120 bureaus, many of which are located in Europe. Bloomberg provides business, legal and financial news through the Bloomberg Professional Service, Bloomberg's website and Bloomberg Television.

***Index On Censorship*** is Britain's leading organisation promoting freedom of expression. With its global profile, its website provides up-to-the-minute news and information on free expression from around the world. Its events and projects put its causes into action. Its award-winning magazine shines a light on these vital issues through original, challenging and intelligent writing.

***Condé Nast Publications*** publishes twenty magazines in the U.S. (including *Architectural Digest, Glamour, Golf Digest, GQ, The New Yorker, Vanity Fair* and *Vogue*), and operates numerous websites associated with its print publications.

***The European Newspaper Publishers Association (ENPA)*** is an international non-profit association that represents over 5,200 national, regional and local newspaper titles, published in 25 European countries. The ENPA is an advocate for the interests of the European newspaper publishing industry at different European and international organisations and institutions.

***Hearst Corporation*** is privately held and one of the world's largest diversified media companies. Its major interests include ownership of more than 50 newspapers and interests in an additional 117 newspapers; hundreds of magazines; 29 television stations; ownership in leading cable networks; business publishing; television production;

newspaper features distribution and real estate. Hearst's international interests include Hearst Magazines International, the largest U.S. publisher of magazines worldwide, with more than 200 editions for distribution in more than 100 countries, such as *Cosmopolitan*, *Esquire*, *Good Housekeeping*, *Harper's BAZAAR*, *Popular Mechanics*, and *Seventeen*, as well as other titles through joint ventures in the U.K., Australia, Russia and China. In Great Britain, a wholly-owned subsidiary, The National Magazine Company Limited, publishes 20 magazines.

***The National Geographic Society*** is one of the world's largest nonprofit scientific and educational organizations. Through various media vehicles, including *National Geographic* magazine, and other magazines, films, television programs, cable channels, and other media, the Society reaches more than 325 million people a month. National Geographic magazine, published in English and 31 local-language editions, is read by more than 40 million people each month. The National Geographic Channel reaches more than 270 million households in 34 languages in 166 countries.

***The New York Times Company*** publishes *The New York Times*, which is read throughout the world and has bureaus in London, Paris, Rome, Berlin and Moscow, and the *International Herald Tribune*, which is headquartered in Paris. The Company also owns and operates *The Boston Globe*, 15 other daily newspapers and more than 50 websites, including NYTimes.com, Boston.com and About.com.

***La Repubblica*** is one of the most widely circulated newspapers in Italy. First published in 1976, *La Repubblica* is a daily general-interest newspaper that is owned by Gruppo Editoriale L'Espresso (The Espresso Group).

***Reuters*** serves the financial markets and news media with real-time, high-impact, multimedia news and information services and is the world's largest international news agency. Through Reuters.com and affiliated websites around the world and via multiple platforms including online, mobile, video and outdoor electronic displays, Reuters provides trusted, unbiased, professional-grade business news, financial information, market data and national and international news directly to an audience of business professionals around the world. In addition, Reuters publishes a portfolio of market-leading titles and online services, providing authoritative and unbiased market intelligence to investment banking and private equity professionals. Reuters is the editorial and media arm of the Markets Division of Thomson Reuters.

***Time Inc.*** is one of the largest magazine publishers in the world. Its more than 130 magazines reach total audiences of more than 300 million. Among its well-known magazine titles are *Entertainment Weekly*, *People*, *Southern Living*, *Sports Illustrated*, and *Time*. Time also owns IPC Group Limited, the UK's top magazine publisher.

***The Washington Post Company*** is a diversified media and education company whose principal operations including newspaper and magazine print and online publishing, television broadcasting and cable television services. It publishes the *Washington Post*,

*Newsweek* magazine, Slate, and several other print and online journalistic operations, and regularly engages in newsgathering operations in Europe and throughout the world.

***The World Association of Newspapers and News Publishers (WAN-IFRA)*** is a world-wide service and representative organisation of newspapers and of the news publishing industry, grouping national and regional press associations. It is a non-profit, non-government organisation that represents more than 18,000 publications internationally. The main objectives of WAN-IFRA include: defending and promoting press freedom and the economic independence of newspapers; contributing to the development of print and digital news publishing; and promoting co-operation between its member organisations.