NATIONAL SECURITY, PRIVATE SECTOR DATA, ENCRYPTION

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Accountability Chains and National Security

• IAF has conducted significant research on making accountability work
• Companies can build accountability into their own use of data
• They can control their vendors via contracts and the enforcement of those contracts
• Private sector partners may be policed in the same way
• However, when police and national security agencies come with a perfected legal instrument, corporate accountability chains are only effective until data is surrendered
Dialogue Sessions to Explore Accountability

• IAF partnered with Privacy Projects, CDT, and Indiana University to hold multi-stakeholders sessions on accountability chains
• Concluded:
  – Police work and national security are fundamentally different
  – Accountability chains are important, but the links break once data is surrendered
  – New accountability chains for governments must be required to meet the goals of national security, privacy and fair processing
Privacy Projects Body of Work

• Numerous sessions held over a three-year period
• Academic papers examined the law in most regions
• Recommendations were discussed earlier this year in London
Recommendations for Government

1. **Legality**
   I. Framework that defines governmental powers
   II. Rules to cover specific application – including external approvals

2. **Proportionality** – the inquiry should be proportional to risk and scope

3. **Accountability**
   I. Transparency
   II. Oversight
   III. Redress
Recommendations for Business

Based on Global Network Initiative

– Narrowly interpret and implement govt. demands
– Seek clarification if demands are overly broad
– Request clear communications that explain legal basis for demands
– Require govt. to follow own domestic legal processes
– Policies and procedures to address instances where govt. requests are not in writing or do not adhere to legal procedures
– Narrowly interpret govt. authority’s jurisdiction
– Challenge govt. in domestic courts and/or seek assistance from others with an interest in fundamental rights
Privacy Project Recommendations

• They will be vetted at the International Conference of Data Protection and Privacy Commissioners in Marrakesh, Morocco, in October 2016