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### Nicolas Barré, Managing Director, Les Echos

Thank you, Ben. Joseph Nye, I would love to ask you Ben's question, whether you changed your behaviour or whether you do not care, because you have nothing to hide. However, more seriously perhaps, can you tell us in what sense big data is changing American power, is it also harming transatlantic relations as we maybe have seen?

### Joseph Nye, University Distinguished Service Professor, Center for Public Leadership, Harvard Kennedy School

Well by putting me last you have saved me a problem, which is that half of what I was going to say has been said, so I will not repeat it. However, I will try to address some of the questions of politics, rather than business. Let me do so by going back to the basic question, what is big data? We are on a panel on big data, but nobody said what it is. Is it a terabyte? Is it a petabyte? The answer to that, the only way you can define big data is relative. It is data that is so large that it is difficult to process by normal means. Essentially what it means is that big data is a product of Moore's law. When you have the capacity of computing power doubling every 18 months, the ability to analyse data has outgrown our social mores and norms and laws, which set limits on this in the past. In that sense, we are struggling to understand how to deal with it.

I frankly think that this emphasis on Snowden is a bit overdone. We would have had this problem whether Snowden existed or not. Viktor Mayer-Schönberger has written a very interesting book on big data. He pointed out that what is really interesting about big data is it reverses what we think of as the normal scientific method. No longer do we formulate a hypothesis and then test it by accumulating a lot of data, which can be very big. It means we now have computing power so great that we can fall back on poor induction. You just look at a whole mass of things and you see the patterns that come out. That does not mean you understand causation, but it does have enormous social implications when you think about reversing what we think of as the normal scientific method. Again, this would have happened whether Edward Snowden existed or not.

The interesting point is that you have good and bad that comes out of this. Mr Salvador referred to something good. By looking at the pattern of Google searches for influenza, you can show exactly where the influenza epidemic is spreading and you do not have to wait for reports from local clinics of people who have come in and said, 'I have influenza'. You just look at the number of people who are Googling influenza; it tells you exactly where the pattern is. It does not tell you causation. A lot of these people may be asking because their cousin has influenza in Korea, but the point is it does not matter; the pattern works as pure induction. However, if you can do that, why can you not also do it for crime? In other words, once you can say, 'I will just look at the patterns', then you say, 'Where is it likely that we are going to see criminal behaviour?' The same thing is true. If you can tell where the influenza is spreading, you can also tell where the crime wave is spreading. Then what do you do? Do you say there is a 99% probability that a murder will occur here; should we or should we not arrest this person? That has enormous implications for civil liberties. It has nothing to do with Snowden.

Again, there are basic problems inherent in this movement from deduction and normal causal reasoning to pure correlation and simplistic induction, if you want, as a way of approaching things. In that sense, I think that if we have in our minds the dangers of Big Brother, the Orwellian image, there has been a lot of discussion this morning about what



you might call not Big Brother, but Little Cousins, the companies and others. There has not been much attention on the problem that I just identified, which is what I might call putting a Panopticon in your pocket.

What is a Panopticon? Jeremy Bentham said you can get perfect surveillance by creating something he called a Panopticon. You have one guard in the middle who looks out hallways in all directions, so each prisoner in this Panopticon does not know whether he or she is being surveilled or not and that means they have to have their behaviour adjusted accordingly. The guard may be watching television, not in Bentham's day, but today, looking at her iPhone. The point is that the Panopticon was a method of social control that Bentham imagined well before we ever heard of Edward Snowden or big data. What is interesting is that each of you, I suspect, has a Panopticon in your pocket. Therefore, what we have done is gone to a world in which instead of worrying about Big Brother or Little Sister, we put a Little Cousin in our pocket. Unless you have turned off the geographical location on your phone, you are essentially playing a part of this game, which is what is basic to big data. Again, this has nothing to do with Snowden.

There is a poll that Fen Hampson organised for the Global Commission on Internet Governance that Carl Bildt chairs. CHANG Dae-Whan and I happen to be members among others, it is a private Commission, but Fen's poll showed that there was a great deal of anxiety of citizens in democracies about surveillance permitted by big data. It tended to be very much about the companies, even more than about the governments. Yet when it comes to actual behaviour, you are then faced with the types of paradoxes or apparent paradoxes that we heard from Ben in terms of the behaviour.

Now I would argue that some of these paradoxes, and he did not pay quite enough attention to this, those that relate to government, really are deep and inherent. There is a trade off between security and liberty. There are situations in which citizens feeling insecure will give up a certain amount of liberty. It does not have to be, but in fact you look at American history, the periods when we lost most in civil liberties were under liberal presidents, but under times of great fear. Abraham Lincoln suspended habeas corpus during the civil war. Franklin Roosevelt unfairly interned American citizens of Japanese origin at the beginning of World War II. Therefore, when you put people in a democracy in conditions of great fear, even liberal leaders may essentially see the need to do things which invade privacy, which limit liberty, in the name of security. They are responding not just to their own problems, but to a popular demand. I think that is not caught by the three dilemmas that Ben identified.

Now what can you do about this? I would argue that you go back in the American case to James Madison who, when he asked the question of what do you do about government being too strong, or what do you do about who takes care of those who govern us, how do you make sure they are constrained, he argued that you need to divide power, you need checks and balances. From my point of view, what was wrong about the NSA was not simply that they allowed this enormous benefit that Moore's law gave them to collect this data, what was wrong is that the processes for checking and balancing them had not kept up with what technology had produced. That meant that institutions such as the so called Foreign Intelligence Surveillance Court or the congressional oversight committees had not caught up with this new capacity. It was not that the NSA was a rogue agency, it just had this enormous new capacity and the procedures for limiting it and controlling it had not been updated.

I disagree with Ben; I think in the United States at least there has been progress in this area. Go back to the surveillance commission that Obama created and look at the conclusions of that review committee, see Obama's speech in January of this year, and there were some useful, not adequate, not complete, but some useful returns to what I would call Madisonian government. Which is not, do I succumb to surveillance, do I say this is a pure libertarian situation, but how can I set up institutions that strike the balance? Therefore, rather than the executive branch being the judge and jury, I want other checks and balances on this. What Obama did was, and we wait for Congress to enact this, it still has not happened, was say that the NSA would no longer hold the metadata of the telephone calls and Internet connections that it had been holding. That those would be held now by the phone companies and that you would need a subpoena from a court to be able to access them. I think that is an improvement along the grounds that I described, in the direction of preserving civil liberties.

Similarly he has provided for improvements in the so called FISA court, the secret court which looks at these requests by making sure there will now be a public advocate. Therefore, it will not be just an executive branch official saying, 'Give me a warrant', there will also be someone who can argue, 'This is not enough; you have to make more evidence



before this is credible'. There are some steps that are taken in the right direction and whatever the questions about Snowden, I think that some of what he did was shake the American democracy into realising that it had to do more to think about maintaining civil liberties in a time of a growth in big data which we had not adapted our domestic processes for. Therefore, I disagree with Ben that nothing has happened, or nothing will happen. I would agree with him, not enough has happened; I would like to see more.

However, the question is what about internationally? It is one thing for Obama to say to American citizens that the government will not listen into you without a warrant. What about foreign citizens? How do we deal with that? He mentioned in his speech that he would be attentive to the rights of privacy of foreign citizens, but he did not say why, or just did not say how. The question there is if you want to think about approaches to this, Fen Hampson has suggested this to me, you could suggest something like national treatment. In other words, if a country protects its own citizens from its own government, with judicial procedures, with a legislative oversight and so forth, we could say we will treat those citizens of that country differently than we will treat the citizens of countries like Russia and China. All this talk about Snowden almost has driven away the fact that in Russia or China we know of no procedure, no court, no legislative check or balance. We are all focusing just on the democracies, but what about the non democracies, which is where Big Brother really lives? What I would say is if you set up a procedure in which you said, for countries which protect civil liberties of their own citizens, and incidentally some European countries do not, they do not do it very well, but when they do, you might say, we should think about national treatment or equal treatment as we do under trade law.

Similarly when we negotiate something like TTIP we can ask, how do you harmonise some of the precautionary procedures that we would want. Those could include things like the principles of transparency, no commercial espionage, which the American do not do, commercial espionage being for private advantage as opposed to economic espionage, which can be general. You could also set up rules and procedures on limits to extra territoriality. Those struck me as useful suggestions that Ben brought up. However, those are going to be difficult. Those of you who heard Pascal Lamy yesterday talking about what is new in trade negotiations today, heard him say that it is a lot easier to limit protectionism than it is to harmonise precautions. That promises then to be a difficult task but one we should turn to.

What we should not turn to is what I would call the new fad of data sovereignty. I heard a high German official say at a meeting in Washington six months ago, 'We must control the Internet inside Germany, so that we are safe sending an email from Frankfurt to Berlin without it being listened to by the NSA.' I thought, what a rudimentary misunderstanding of the Internet and how it works. You can send an email from Frankfurt to Berlin, but some of the packets may go through Singapore, Seoul or Costa Rica and the idea that somehow setting out rules for data localisation is going to protect citizens in Germany is technological nonsense. However, it is good protectionism. If you are a big German telecom company and you want to fight Google, it is a good use of your slogans.

We are seeing in the name of protectionism a lot of very phoney approaches to civil liberty protection and I think in that sense we want to ask, how do we get precautionary principles which are negotiated along the lines the ones Ben Scott described, and avoid these ideas which are essentially phony solutions? They are not going to leave any German any more secure but are going to put some Euros in the pockets of some companies. Let me stop there.