American Society of Newspaper Editors
The Associated Press
Association of Alternative Newsweeklies
Coalition of Journalists for Open Government
Magazine Publishers of America
National Newspaper Association
Newspaper Association of America
Radio-Television News Directors Association
The Reporters Committee for Freedom of the Press
Society of Professional Journalists

April 28, 2006

The Honorable Peter Hoekstra
Chairman
Permanent Select Committee on Intelligence
H-405, The Capitol
Washington, DC 20515

The Honorable Jane Harman
Ranking Member
Permanent Select Committee on Intelligence
H-405, The Capitol
Washington, DC 20515

Dear Chairman Hoekstra and Ranking Member Harman:

We are aware that the House Permanent Select Committee on Intelligence remains concerned about the unauthorized disclosure of classified information and is continuing its legislative review of all the relevant issues surrounding this important matter, including whether changes in the law are desirable. Because of the importance of this issue, we are writing to express the views of our organizations.

We recognize that the government has a duty to protect classified national security information, and we share your concern that "leaks" of such information can cause genuine harm. The media have historically been careful in avoiding such harm, even while carrying out their constitutionally protected reporting on matters of public concern.

As part of the media's responsibility, they also recognize that the Founding Fathers understood there is a delicate balance between the public's right to know and the need of the government to protect secrets. That balance is difficult to maintain and, throughout our history, Congress and the courts have struggled to define it. Every generation faces its own challenges in defining these core principles. In our time, the challenge is raised anew by rapid development of new technology and the increased threat of terrorism. While the media understands the desire to withhold certain information, we also face a daunting task of keeping the American people abreast of both the threats and the measures being taken to keep the nation safe and free.

As your Committee continues with its important review of this matter, we wanted to give you our perspective and suggest some steps that we think would be helpful.

In our view, there is wide misunderstanding about the nature and causes of leaks, the adequacy of the laws that apply and the consequences of leaks. We believe that in order to

address the subject of leaks, a critical first step is to undertake a comprehensive review of the problem. There are many specific issues that need to be addressed. These include:

1) Is current law, including the espionage and related statutes, as well as employment and security agreements within the executive branch and its contractors, adequate to deal with harmful leaks?

2) What harm has resulted from leaks? In this regard we note that the executive branch and some in Congress assert great harm has been caused but have not publicly specified that harm. It is difficult for the media and the public to assess the need for change in the legal framework when questions about the degree of need remain unanswered. We believe that it is very important to find some way of providing details, in an unclassified form, to the public. From greater disclosure, we believe will flow a higher degree of sensitivity by journalists to the need to protect sources and methods and other critical secrets.

3) What steps can be taken in the executive and legislative branches to better prevent harmful leaks? For example, would technology help keep better track of highly sensitive information and documents?

4) What steps have been taken by the executive branch to implement the recommendations 10 and 11 of the Silberman-Robb Commission on WMD that suggested several specific measures on the harms resulting from the authorized disclosure of classified information related to sources and methods and agency preparedness to conduct leak investigations?

5) What can be done to prevent overclassification of information that all believe to be a major contributor to the leaks problem? As Justice Potter Stewart observed, "For when everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or the careless, and to be manipulated by those intent on self-protection or self-promotion."

6) What role can education of both the government officials and the media play in reducing leaks of truly harmful secrets, as suggested by the Silberman-Robb Commission? Both executive and legislative branch officials need to understand how to talk to the press about sensitive information without improperly disclosing highly classified information. The media need to understand how to proceed when they

> do learn of highly sensitive information that could potentially be harmful if disclosed.

There are many ways these issues could be explored. The Congress could direct the Administration to study these issues and report back with specific recommendations. Or Congress could create a commission of recognized experts, including some from the media, to consider these issues and make recommendations. Regardless, our members stand ready to work with you to explore these difficult issues with the goal of balancing national security with the right of the American people to be informed about critical issues of the day and what their government is doing.

One step has already been taken that we believe has considerable promise. For the past four years, representatives of the media have engaged in a constructive dialogue with the intelligence community on these important issues. Congressional representatives also participated in some of these sessions. This dialogue has taken the form of a series of candid, off-the-record discussions that we believe have been very valuable. We would be happy to describe to you the progress that has been made - and the further progress that we believe could be made if the dialogue were to get additional support and emphasis. We believe one concrete step your committee could take would be to endorse further support for this dialogue and to participate in this forum.

Finally, we believe constructive two-way communications would be a more productive solution than enacting new legislation. Let us explain.

Over the years, Congress has passed a variety of laws to punish disclosure of specific types of classified information (e.g., communications intelligence, atomic weapons, covert agents, etc.). Thus far, Congress has resisted requests for a broad "Official Secrets Act" that would criminalize the unauthorized disclosure of any classified information. This was the case even in the face of serious threats to the nation's security, including the outbreak of World War I, the attack on Pearl Harbor in World War II and the Cold War. More recently, after a congressionally mandated comprehensive review of protections against the unauthorized disclosure of classified information, then-Attorney General John Ashcroft submitted an October 15, 2002 report to Congress in which he stated: "Accordingly I am not recommending that the Executive Branch focus its attention on pursuing new legislation at this time."

Broad legislation would have a chilling effect on legitimate interactions between government officials and the public. It would alter the way in which government officials — including members of Congress — deal with the press, the way in which the press gathers and reports the news and the way in which the public learns about its government. In addition to the press, it would affect the legitimate interaction of many others with the government, including historians and public policy think tanks. Such legislation would discourage government "whistleblowers" from coming forward with information that may shed light on inappropriate or unlawful activities. While such disclosures often cause discomfort within the institutions

involved, they have often informed Congress in its constitutional responsibility to govern the nation.

Consider the following matters that came to light when classified information was disclosed to journalists: The Pentagon Papers; lapses in security creating vulnerability to espionage, such as the case of former CIA agent Edward Lee Howard; government radiation and biological warfare experiments on unwitting Americans; and waste, fraud and abuse in the defense industry. Leaks to the media, even of classified information, have served as a vital source of information about public issues and the operation of government.

Media organizations are keenly interested in preserving free discussion of important public issues of the day while preventing harm to national security. We want to continue the dialogue with you and your colleagues, and with the intelligence community to explore remedies to the problems and challenges. Should you have any questions or need additional information, please contact Paul Boyle, Senior Vice President/Public Policy, Newspaper Association of America at (202) 638-4784.

Sincerely,

American Society of Newspaper Editors
The Associated Press
Association of Alternative Newsweeklies
Coalition of Journalists for Open Government
Magazine Publishers of America
National Newspaper Association
Newspaper Association of America
Radio-Television News Directors Association
The Reporters Committee for Freedom of the Press
Society of Professional Journalists

cc: Members, Permanent Select Committee on Intelligence
The Honorable John Boehner, House Majority Leader
The Honorable Nancy Pelosi, House Minority Leader