



Written Testimony of Arvind Ganesan,
Director, Business and Human Rights Program,
Human Rights Watch:

Senate Committee on the Judiciary,
Subcommittee on Human Rights and the Law

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**“Global Internet Freedom: Corporate
Responsibility, and the Rule of Law, Part II”**



Mr. Chairman, Senator Coburn, and members of the subcommittee,

Thank you for allowing Human Rights Watch the opportunity to submit written testimony on internet freedom, corporate responsibility, and the rule of law to the Senate Judiciary Subcommittee on Human Rights and the Law.

We would like to focus on two issues that we think are critical to securing greater respect for human rights online:

- The current status of voluntary efforts to ensure corporate responsibility, and other steps needed to ensure that companies respect human rights.
- The elements of a comprehensive and effective US policy to promote internet freedom.

Corporate Responsibility

The Global Network Initiative (GNI) was launched in October 2008, a few months after your first hearing on this subject. It is an important effort to safeguard freedom of expression and privacy on the internet by obliging member companies to adopt and implement human rights standards; to independently assess their compliance; and to provide a forum to collectively address challenges to freedom of expression and privacy online.

However, we believe that one of the key challenges today is the reluctance of companies to join the effort. The founding member companies, Google, Microsoft, and Yahoo, are the only companies currently in the GNI. No other companies have joined. We believe this problem is fundamentally a lack of political will on the part of companies and a failure to recognize their human rights responsibilities. The GNI's structure and governance is flexible enough to allow a wide variety of companies from the internet and telecommunications industries to adapt its principles to their operations. It has a phase-in period for implementation and monitoring that provides for three years between the time they join the GNI and the time when they will be fully assessed for compliance. And it has a progressive fee structure that currently begins at \$2,000 annually for a company with less than \$100 million a year in revenue to \$60,000 annually for a company with more than \$100 billion a year in revenue.

We welcome your committee's efforts to encourage companies to adopt human rights standards and your recognition of the GNI as an initiative to implement them. But the response of companies has been very disappointing. Their approach also stands in stark contrast to Secretary of State Clinton's January 22, 2010 speech. In that major address on internet freedom, she acknowledged the GNI and stated that "[c]ensorship should not be in any way accepted by any company from anywhere," and noted that "American companies need to make a principled stand." She also said that the "private sector has a shared responsibility to help safeguard free expression. And when their business dealings threaten to undermine this freedom, they need to consider what's right, not simply the prospect of quick profits."

We believe that this is a crucial moment for companies to demonstrate their commitment to human rights. For example, Google's announcement in January 2010 that it was prepared to leave China due to censorship and attacks on the privacy of human rights activists underscores how important it is for companies to adopt and embrace human rights policies and practices, such as those espoused by GNI.

However, as we noted in our testimony to the subcommittee in May 2008, voluntary standards are not enough. As we currently have seen with GNI, companies may not join them, and governments may be adept at dividing or pressuring companies to ignore voluntary efforts in favor of access to their markets.

For these and other reasons, we continue to believe that legislation is an essential step to complement efforts such as the GNI. As we remarked in our May 2008 testimony, new rules and regulations would ensure that the playing field is level for human rights, since rules would apply to far more companies than those who join a voluntary initiative. Legislation would also ensure that there are meaningful consequences for companies who do not respect those standards; it would make it more difficult for governments to force companies into becoming complicit in human rights abuses; and it could encourage a more assertive US foreign policy on these issues. In the wake of new developments, such as Secretary Clinton's speech and the passage of the Victims of Iranian Censorship (VOICE) Act in October 2009, this is an opportune time to examine legislation.

In the House of Representatives, House Speaker Nancy Pelosi noted on January 13, 2010 that "It is essential that technology companies not assist in efforts that violate human rights or prohibit the free exchange of ideas." Several other members have also proposed legislation to legally protect human rights online. These are important steps and we hope that

Congress will enact legislation to ensure that internet and telecommunications companies respect human rights.

Any regulation should, at a minimum, contain the following elements:

- A requirement that companies have effective policies and procedures in place to safeguard human rights, which includes provisions for adequate due diligence, and can be modeled after provisions in the US Foreign Corrupt Practices Act.
- A provision that requires companies to catalog and record efforts by governments to censor information.
- A process in which foreign government requests for user information can be addressed through US diplomatic or other government-to-government channels so that a company and its personnel are at less risk of pressure or retaliation.
- A requirement that companies locate personal information outside of jurisdictions that punish individuals exercising their right to free expression where the authorities may try to obtain personal data to do so.
- A private right of action so that victims can seek redress against companies that violate their rights.
- Clear and aggressive steps that the US government should take to combat censorship and protect user privacy through its foreign policy, trade policy, and other means.
- An examination of whether certain types of hardware and software, such as servers and other equipment, should be subject to export controls because of their capacity to be used by governments to spy on individuals and censor information.
- Effective penalties to deter companies from violating human rights.
- A restriction of access to federal funds for companies that do not abide by these standards.

Government Policy

In her January 22 speech, Secretary of State Clinton recognized that an open internet is not just a matter of human rights, but integral to economic development and political stability. For example, the most comprehensive search engines are offered by US companies. When

they have to censor in order to operate in foreign markets, they have to offer a lesser product, thus undermining their ability to fairly compete.

At a minimum, Human Rights Watch believes that the Obama administration should take the following steps to put these policies into practice:

- US diplomats should regularly press their counterparts to eliminate online censorship.
- The administration should ensure that all government agencies work to combat censorship through the establishment of a high-level office for internet freedom.
- The Commerce Department or the US Trade Representative (USTR) should call for an open internet in the course of commercial diplomacy and trade negotiations, for example. And future US trade agreements should have provisions to protect freedom of expression online, comparable to labor protections. This could include modifying Trade Promotion Authority to explicitly incorporate Freedom of Expression.
- The administration should also begin a formal review of US export control laws to better regulate certain technologies to ensure that governments do not use them to censor their critics.
- Expand reporting requirements such as those under the Victims of Iranian Censorship Act to more countries. That law requires the US government to issue reports to determine whether non-Iranian companies may have provided surveillance or censorship technologies to the Iranian government.
- Require companies to demonstrate that they have policies and procedures in place to protect human rights online as part of any government cooperation or support for their efforts.

We hope that the administration will take these steps on its own, but would welcome legislation to strengthen those efforts.

We believe that this is a critical moment to protect human rights online and we thank the Subcommittee for its leadership on the issue.