



February 18, 2010

Senator Richard J. Durbin, Chairman
U.S. Senate Committee on the Judiciary
Subcommittee on Human Rights and the Law
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin:

Thank you for your letter of January 29th regarding the recent 'Chinese cyber-attack' on Google and other companies and on-going efforts to safeguard freedom of expression and privacy across the globe. Over 560 million people around the world utilize Skype's software for their conversations. We strive to ensure that consumers can use Skype to reach friends and loved ones, particularly where no other communications options are available. More and more people around the globe, from the US to Europe to Haiti to Iran, are turning to technologies like Skype to freely connect with one another across borders and to increasingly facilitate interaction and understanding.

As I expressed in my letter to you this past summer, I am deeply committed to Skype's mission to enable the world's conversations and I continue to share your concerns about the efforts of governments to arbitrarily violate core privacy rights. We appreciate the opportunity to discuss these important issues with you. Skype's answers to the specific questions you pose in your letter are set forth below.

Allowing the world to communicate for free empowers and links people and communities everywhere. We believe that our software empowers citizens globally by providing greater freedom of expression and access to information, and is central to the Freedom to Connect, as articulated by Secretary of State Hillary Clinton in a recent address regarding human rights and Internet freedom. Our challenge is to provide our software to people all over the globe, including in Internet restricting countries, while being transparent to our users and staying within the boundaries of applicable local laws. Nearly 1 in 6 people in the world live in China and a great many of them rely on Skype to connect with families and friends, run businesses, and call people around the world. By and large, people in China are able to do this for free. We believe that to deny users in China access to Skype would be to deny their Freedom to Connect.

As a Luxembourg-based company, our primary efforts to protect free speech and privacy rights for the Skype user community have been based, in the first instance, on Luxembourg law. However, where we have a local presence, we need to take account of applicable local laws and regulations. Further, mindful of the need to avoid multiple, overlapping jurisdictional mandates, we are focused primarily on European initiatives that seek to enshrine the same or similar principles as the



Global Network Initiative (GNI). Specifically, Skype has focused primarily on the activities of the Council of Europe (CoE). The CoE is currently working to address practical ways for European companies to comply with human rights obligations and establish relevant best practices for European Internet Service Providers and other Information Society companies. The CoE efforts are based on a collaborative process with the European Internet Services Providers Association (EuroISPA), the world's largest ISP organization, including Internet service providers (ISPs) who provide access services and other information society providers including web hosting, application, and content providers. Together, the CoE and EuroISPA issued guidelines based on the high standards of the European Convention on Human Rights to provide human rights benchmarks for ISPs and other providers in the Internet ecosystem. In fact, Skype has worked to arrange meetings between the current company members of the GNI and the CoE in an attempt to facilitate a deeper understanding and cooperation between the two organizations regarding their overlapping missions. We will continue to act as a facilitator for such cooperation in future.

To address your specific questions about Internet freedom and human rights in China:

1. First, in your letter you ask us to provide a “detailed description of your company’s business in China.”

Skype is a Luxembourg-based company doing business via the global public Internet. As such, Skype does not have any direct operations in China. Skype is a minority partner in a joint venture in China. Skype is represented in China through the majority joint venture partner, TOM Online – a Hong Kong based company with substantial local operations and assets and part of the Hutchison Whampoa Group. The joint venture was formed in 2005. As the local and majority partner, TOM has undertaken responsibility for all government relationships with the Chinese authorities. Skype has not had any interaction with the Chinese government. Skype does not have an office nor employ any staff in China. Our relationship with TOM, including oversight of the joint venture, is managed from our Luxembourg headquarters and regional support offices.

TOM distributes a localized version of the Skype software that brings the Skype experience to Chinese residents and provides greater relevance to the local market. Like any other communications company in China, TOM has established procedures to meet local laws and regulations, including the obligation to cooperate with lawful criminal investigations and to protect public safety, which in the case of the TOM-Skype software includes a requirement to perform text filtering on instant messaging. Separately, Skype makes available a Mandarin version of the global Skype software, which is different from the localized TOM version. Unlike the localized version, the Skype Mandarin version does not include text filters such as those applied to the TOM-Skype client. It is available for download worldwide.



2. Second, you ask “what are your company’s future plans for protecting human rights, including freedom of expression and privacy, in China? Please describe any specific measures you will take to ensure that your products and/or services do not facilitate human rights abuses by the Chinese government, including censoring the Internet and monitoring political and religious dissidents.”

I am proud of Skype’s efforts to enable our users to have safe and secure voice conversations via Skype. Skype undertakes responsible company decision-making and incorporates, as far as is practical and with due respect to applicable local laws, the fundamental tenets of free expression and the right to privacy in our business practices. First and foremost, as stated above, Skype continues to make available a Mandarin-version of our software that is not subject to the text filtering. In other words, the issues of Chinese authorities requiring local providers in China to filter text messages do not affect communications where all parties are using standard Skype software. Filtering occurs only in the context of instant messaging communication in which one or more parties are using the co-branded TOM-Skype client software. We are able to uphold freedom of expression and the right to privacy of Skype users by simultaneously offering the Mandarin version of our software. We also believe that the content of Skype-to-Skype voice or video conversations in China remain secure and private.

As stated previously, in addition to making the Mandarin version of Skype available, we are continually improving Skype’s business operations to protect and safeguard freedom of expression and privacy while ensuring that our users can continue to access the Skype software and communicate across the globe. Specifically, Skype, in our constant attempt to be open and transparent with our users as to how their personal information is processed:

- has modified our security and privacy web pages, which can be found at <http://www.skype.com/security/detailed-security/faq/>, to provide clear and transparent guidance to our users about possible compromises in the security integrity of communications when the software is a version provided by a third party or the communications traverse third party networks;
- is working with TOM to link to a Mandarin version of the Skype security and privacy pages from the TOM web pages to increase local transparency;
- gathers and retains only minimal personal information about our users thereby minimizing risk should a security breach occur;
- has established clear procedures for engaging with law enforcement authorities across the globe in accordance with Luxembourg law; and
- is in conversations with TOM to delineate more clearly their procedures for engaging with Chinese authorities.



In addition to these precautions, as stated previously, we believe that all Skype-to-Skype conversations utilizing the standard Skype software are fully encrypted, and thus secure and private during transmission. Skype is acutely conscious of the need for transparency, consistency, and honesty in how we address the issue of the right to freedom of expression and privacy while maintaining the delicate balance with delivering upon law enforcement and security agencies' legal mandate to pursue criminal and terrorist investigations. We currently achieve this through the encryption and privacy protections that are built into the Skype software, and note that these protections are superior to those offered by traditional telecommunications firm operating in China or across the globe.

In addition to the questions above about China, you go on to ask questions about Skype's involvement with GNI. I am pleased to report that since our response to your August 2009 letter, we have continued a productive and informative dialogue with the members of GNI. Specifically,

1. You ask whether "representatives of your company attended the GNI open house on September 10, 2009."

Skype participated in the GNI open house on September 10, 2009 as well as several additional follow up meetings and conference calls, including: calls to organize meetings in Europe with similarly situated European companies, followed by a meeting in Paris between GNI and Skype's Directors of Government and Regulatory Affairs for North America and Europe and the Middle East; a November 5, 2009 GNI open house in Singapore with Skype's Director of Government and Regulatory Affairs for Asia; and a GNI Implementation Dialogue in December 2009.

While these meetings have been helpful in highlighting those areas of the GNI governing documents that require clarification for Skype, there are a number of factors that we continue to work on with GNI to ensure that we have sufficient information to make a reasoned and informed decision regarding the merits of memberships. These include, as discussed above, our current efforts to balance competing or overlapping requirements in multiple jurisdictions across the globe, as well as our desire to understand thoroughly the impact on our business operations associated with GNI membership. We do not take the responsibilities associated with membership in GNI lightly and will only join after appropriate due diligence, which can be time consuming. As the current members of GNI have recognized during the course of the meetings last year, it is critical that the governing documents are sufficiently flexible to enable compliance by a range of companies regardless of their geographical location, corporate structure or business mission. Through this engagement, Skype has gained a more precise understanding of the various stakeholder positions in GNI and the impact of the governing documents on member companies.

2. Second, you ask whether Skype "plan[s] to participate in the GNI workstream."



As stated above, Skype's dialogue with GNI has been on-going and informative. We have participated in multiple meetings, including the initial workstream meeting highlighted in your letter, and plan to participate in the upcoming GNI Implementation Dialogue scheduled for March 9, 2010. Cooperative efforts such as the workstream are the primary tools necessary to ensure a full understanding of the obligations of GNI membership and the potential modifications or clarifications that might be entertained by the current membership. It is important to continue this dialogue and to include other non-US based as well as smaller/early stage companies that are similarly situated to Skype. It is our hope that these meetings will result in concrete proposals for clarifications and modifications to the GNI guidelines to make them appropriate for non-US and smaller/early stage businesses.

Thank you again for your thoughtful letter. Skype is committed to ensuring that users of communications and information technology tools across the globe are not stymied by arbitrary threats to privacy and freedom of expression. We must all work together, governments and industry alike, to ensure that the Internet continues to be a tool for free expression and innovation everywhere in the world. We look forward to continuing this productive dialogue with your office, GNI members and the CoE.

Respectfully,



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