

Google, the Internet and China: A Nexus Between Human Rights and Trade?

March 24, 2010

Testimony before the Congressional Executive Committee
on China

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Good afternoon. We appreciate the efforts of this Commission and especially Chairmen Dorgan and Levin to address the issue of Internet freedom, and I thank you for the opportunity to testify today. It is an issue that will impact the shape of the world we will live in, especially with regard to trade, privacy and human rights. For too long the U.S. business community has had insufficient support from the U.S. government in responding to other nations' efforts to censor or spy on their citizens, and to interfere with the reasonable flow of services, products, and information. Companies are on the front lines in the battle for Internet freedom, but when they are confronted with foreign government demands, the governments that represent these companies must lead in the defense of Internet freedom and free trade principles.

While I now represent a wide variety of technology and communication companies, I was honored to served in the State and Commerce Departments under five Secretaries in the 1970's, and early 80's, where I worked on East-West trade and was actively involved in the approval of the first U.S./China trade agreement. I later chaired and still serve on the State Department's Advisory Committee on International Communication and Information Policy. The interconnection between trade and human rights, including freedom of expression, is an issue I have seen from various vantage points and have cared deeply about throughout my career.

Our nation founded the Internet. Since that time, our government, and those who are committed to freedom and democracy, should have been out there creating and promoting visionary multilateral understandings designed to maximize freedom on the Internet. We are still at an historic crossroads, and we need to seize the opportunity to ensure the Internet lives up to its potential to spread knowledge, awareness, and expand human potential. If we do not lead, we can expect other governments to stifle or distort that potential.

Over the past decade the Internet has grown into the most efficient tool to communicate, exchange information, spark innovation and extend opportunity to many millions around the world. The Internet platform provides a level playing field for anyone to access information, and it gives disadvantaged people and underrepresented and oppressed groups around the world new opportunities to participate in economic, social, cultural and political activity.

Access to the Internet --- and the ability to fully use it for communication, commerce, and exchanging information --- is more than just a First Amendment issue in this country. The United Nations recognizes freedom of expression as a right. Internet freedom is nothing less than freedom of expression in the 21st century. It must become a top-tier human rights, foreign policy and trade issue.

Freedom and openness are the essence of the Internet, which is what makes it such a powerful communications tool. Totalitarian regimes have depended on tightly controlling the flow of information, both domestically and from the outside world, and they have been increasingly restricting the Internet to maintain their control of information. It is a natural temptation for any government to want to achieve its goals by all means possible. This makes the Internet a tempting target to turn into a tool of state control. But we must protect Internet openness not just from those who want to use it for repression, but also from the many seemingly noble, well-meaning efforts to control specific content or monitor Internet traffic.

Direct challenges to the openness and freedom of the Internet are serious and dangerous. In the long run, though, we may find an equally great threat to Internet freedom will come not from direct attacks, which strike a fatal blow, but from a chipping away of openness – a death by a thousand cuts. This happens as every seemingly well-intentioned effort to remedy a societal problem wins an exception to openness. Repressive regimes use that same technology, and rationale, to filter the Internet or spy for reasons our nation does not support. Our best response to this is for countries who support freedom of expression, non-governmental organizations and consortia like the Global Network Initiative (GNI) to work together to adopt a common ethic of principles for Internet freedom, and to build on that support in whatever form and by whatever means are possible.

My testimony explains that: (a) Internet censorship is a human rights issue and a trade issue; and (b) Internet freedom is a principle that countries purporting to espouse democracy and the welfare of their citizens should practice and protect. Internet freedom must be advanced through leading by example here at home and using negotiations, human rights reports and trade agreements to build international support

for Internet freedom principles so as to make outliers of countries that seek to isolate their citizens and use the Internet for censorship, spying and repression.

Censorship is a human rights issue

The Internet can be the greatest tool in history for people to gather information, communicate and provide a more open, transparent relationship between government and its citizens. Or, the Internet can be among the greatest tools for political repression – depending on how it is used. If we fail to take action, others may pervert the Internet and finally bring about the Orwellian future we thought we had avoided, one in which governments perpetually spy, surveil, censor and control - and say they are doing it for our own good.

We fail the citizens of China, Vietnam, Iran and many other Internet-Restricting Countries when we fail to note their governments' censorship¹ and website blocking in human rights reports. For example, in the 2007 Country Reports on Human Rights issued by the State Department, China was upgraded on its human rights issues – despite the apparent increase that year in censorship and surveillance on the Internet.

To respond to government crackdowns on protesters while looking away when a government cracks down on access to the open Internet sends a signal that we are not serious about Internet freedom. The U.S. government must consistently treat Internet freedom as a human rights issue in its dealings and communications with foreign governments.

The need for countries that support freedom of expression to use trade and diplomatic means to exert pressure on Internet censorship is only increasing. Every week we fail to take strong action seems to be viewed as a green light by Internet Restricting Countries like China to further curtail Internet freedom. Last month, China announced new trial restrictions on Internet websites. According to the Associated Press, anyone wanting to start a website in China must now submit identity cards, photos of themselves and meet with Chinese regulators and service providers before

¹ While the policy discussion around Internet-restricting countries often refers to "censorship", there are in fact a variety of practices at issue. When we casually refer to Internet censorship, we must recognize that this includes restrictions such as filtering, blocking, and delaying; state-imposed penalties for posting "wrongthink" online; as well as the self-censorship induced by perpetual state surveillance.

they can register their website. The Chinese government claims this will reduce pornography, but it will clearly also crack down on anyone disagreeing with the government online.

We're here today partly because of the high profile battle of a major technology company in China. But the number of companies and countries impacted are far greater. There are few easy answers for companies as they try to bring their technology services and communications tools into nations that have different rules about free speech and freedom of expression. Without the backing of their own government, companies often are faced with the unappealing decision to follow local laws or else exit the market. Staying and engaging can in some cases offer choices to citizens in a repressive country that they wouldn't otherwise have. What companies face varies from country to country. The involvement of the federal government, pushing for a common ethic, can help ease the complexity companies are forced to handle in negotiating operating deals. But the complexity and diversity of situations faced by companies means that rigid statutory solutions may cause unexpected problems and even be counterproductive.

Ultimately countries – not companies -- must battle countries on human rights issues. But companies are working alongside government and human rights groups to support Internet freedom. The Global Network Initiative (GNI) is a collaborative project begun in 2008 in which a handful of American companies, including Microsoft, Google and Yahoo!, participate with international human rights organizations and academics to find productive pathways forward in the quest for Internet freedom and unimpeded commercial market access, being careful not to jeopardize employees or other citizens in Internet Restricting Countries. Key Members of Congress, including Senator Richard Durbin (D-IL) and Rep. Chris Smith (R-NJ), have expressed strong support for GNI and Secretary Clinton did so as well in a major policy address in January. Congress and the Administration should encourage broader participation in the GNI by a wider range of U.S. companies, foreign nations and foreign and multinational corporations.

I have seen China make extraordinary strides through economic engagement with the outside world to the point where it is now one of the most influential economies in the world. However, while a policy of engagement may be a necessary condition for

increased freedom, it is not in and of itself sufficient to create freedom. As U.S. companies face pressure from the Chinese government in the course of their business activities in China, support from their own government is needed to ensure that they are not taken advantage of, and that China understands that access to its markets is not a coin that enables them to buy their way out of respecting human rights and freedom. Countries that have supported China's growth as a world player in the belief that its economic growth would lead to its becoming a "responsible stakeholder" need to take a stand when China's unreasonable demands on issues like Internet censorship prove inconsistent with such responsibility.

Censorship is a trade issue

The United States is an information economy, and U.S. companies are leading vendors of information products and services. In this context, information discrimination by other countries fundamentally undermines U.S. economic interests, including the interests of U.S. companies seeking to access foreign markets, including those engaged in electronic commerce. Filtering American content and services has the effect of filtering American competition, and combating it should top our trade agenda.

The development of the Internet has led to a revolution in the way we conduct international commerce and trade. The success of e-commerce depends on users feeling comfortable and secure enough to utilize the services our industry provides. That comfort and security can only exist in an environment of Internet freedom. When a foreign government stifles online freedom or otherwise restricts the Internet, it creates a hostile market environment by preventing its consumers from fully using new products, applications and services offered by or through U.S. tech companies.

Government restrictions on the Internet affect trade in a variety of ways, including as follows:

- Information discrimination represents a classic "non-tariff trade barrier" (NTB) that U.S. trade policy should dismantle. By attempting to co-opt U.S. businesses into content filtering, offenders create barriers to market entry that would not otherwise exist.

- Information discrimination constitutes an unfair “rule of origin” by filtering out (through a nontransparent process) U.S.-originating content such as certain U.S. domains deemed to be “subversive.”
- Information discrimination also violates the fundamental free trade principle of “national treatment” to U.S. services and service providers. This provides a leg up to foreign competitors of U.S. companies, thus allowing U.S. companies to be perceived as being coerced into lowering their corporate moral standards and leading to negative public reaction and even penalties at home.
- The WTO requires transparency and access to judicial or administrative review for measures affecting trade in services. Foreign governments, however, regularly restrict the Internet without transparency and accountability.
- When a country blocks access to a U.S. search engine or website, the advertising on those sites is also being blocked, and trade in the products and services advertized are interfered with. This could particularly impact small businesses that rely on U.S. websites to reach international markets.

If foreign governments push U.S. tech companies out of their domestic market, small businesses that rely on these sites to advertise or directly sell goods would be forced to do business instead with those nations’ domestic companies that offer similar services that compete with U.S. companies. Indeed, the unreasonable demands the Chinese government has continuously placed on U.S. companies -- from censorship coercion to Green Dam to Indigenous Innovation -- all seem to have the added objective of clearing the competitive deck of foreign companies.

A special note with respect to China: the Chinese government has been pursuing various “indigenous innovation” policies aimed at controlling technology development and promoting local technology companies. These technology policies extend to the Internet space as well, where Chinese government has been making it difficult for foreign companies to compete and favoring local companies. China’s Indigenous Innovation procurement requirement requires Chinese government agencies to purchase only products for which intellectual property was developed and owned in China. Both Indigenous Innovation and Internet censorship are policies that set the price of access to the Chinese market at an unacceptable level of submissiveness.

The European Union was laudably quick to take the first step to recognize and respond to the issue of Internet freedom as a trade issue. In 2007, the European Parliament overwhelmingly passed a proposal to treat Internet censorship as a trade barrier by a vote of 571-38. Hopefully, the European Commission will soon take the necessary further action to implement this policy.

First Steps to Promote Internet Freedom

Having neglected to devote appropriate attention to foreign governments' restrictions of Internet content and services, we now have considerable work before us. This is where we should begin:

- The U.S. government should investigate cases of Internet censorship and
- The United States Trade Representative (USTR), the State Department and Commerce Department should raise issues of Internet restrictions and combat them using the means of their respective offices. Secretary Clinton's major policy speech is an especially noteworthy and commendable beginning. We appreciate actions like the letter the USTR issued in June after China announced all personal computers sold as of July 1 must have the Green Dam Internet filtering software. But our nation has historically missed opportunities to use our existing trade agreements or even reports as leverage in constraining Internet restrictions, censorship, and surveillance.
- USTR should highlight Internet censorship policies in trade reports. In 2006, the USTR issued a report that was billed as a top to bottom review of U.S.-China trade relations. The report discussed simple infringement of intellectual property, yet did not even mention Internet censorship policies. In U.S. government trade reports, more attention needs to be paid to Internet restrictions taken in the name of censorship. Every year, the USTR conducts the Special 301 review, in which we assess our trade relationships with an eye toward intellectual property protection. Do principles of free expression deserve any less protection? If we are willing to make adequate protection for copyrighted movies a litmus test for our trade relations, how can Internet freedom be worthy of any less?
- In its annual reports on trade barriers, the USTR should review foreign government restrictions on the Internet – taken in the name of censorship or

otherwise – and take appropriate action. If it is found that censorship and surveillance impairs U.S. business interests, we should reassess and adjust our trade relationships accordingly.

- Ultimately, the U.S. government should negotiate provisions that promote Internet commerce, openness and freedom in trade and other agreements.
- The U.S. government should use existing trade agreements wherever appropriate to address Internet restrictions.
- The State Department should actively support GNI. It already lends financial support to censorship technology circumvention projects in Internet Restricting Countries. By encouraging broader American corporate responsibility and participation in GNI, and by seeking the participation of our allies abroad such as the European Union, Congress and the State Department could boost GNI's visibility and effectiveness worldwide.
- The potential effectiveness of treating and contesting Internet censorship as a trade barrier lies in the fact that there is a global rules-based system on trade that nations are obligated to follow. A multilateral rules-based approach may create the necessary leverage to make Internet Restricting Countries respect the economic significance of restricting Internet freedom.

Internet Freedom begins at home

In addition to using existing trade agreements and human rights monitoring to combat Internet censorship and spying, the United States must lead by example when it comes to Internet freedom and openness by being a model:

We should look at policies enacted by Congress or various government agencies to see if they grow Internet access and increase competition among Internet Access Providers. The competition will help when dealing with another threat to the open Internet – legal or policy changes that allow network level discrimination among end users and messages on the Internet.

We should discourage censorship and surveillance ourselves, restrict intrusive practices such as deep packet inspection and think twice before attempting to block content perceived to be unsavory. Once openness erodes, it's hard to get it back.

We must lead by example. While it is tempting to assume warrantless monitoring

of telephone calls, burdensome search engine subpoenas, and regulatory power grabs are not to be equated with the systematic oppression in authoritarian states, these distinctions are hard to make to the rest of the world. To say that our government coerces Internet companies for noble causes while others do so to repress is missing the point: quibbling about the order of magnitude of civilian monitoring will undermine the bold leadership that is necessary to backstop U.S. Internet companies when they are facing down the Thought Police around the world. If our government leads the fight for Internet freedom - by example at home and by negotiations around the world - it will provide invaluable political support to U.S. companies trying to honestly and ethically compete in challenging markets.

Conclusion

If the U.S. government and others who value liberty, do not push Internet freedom to the top of the priority list now, they will be failing the future. We are now faced with a “dangerous opportunity”. China’s policy of coerced censorship has now become a matter of global public concern. The U.S. government should take advantage of this moment by pushing for substantive policies that would not only support U.S. businesses resisting Internet oppression, but would also ensure that no company is left to combat a foreign government’s Internet repression on its own. If the U.S. government does not take meaningful action, foreign governments will conclude that they are free to pick off individual companies and intimidate them into submission.

Nations that support human freedom, dignity, and democracy should ensure Internet freedom starts at home and set standards by adopting policies that support a free open Internet. If the Internet is to fulfill its potential as the printing press of the Digital Age, neither a government nor an Internet access provider should act as a gatekeeper, quashing access and content at their whim. At the end of the day, companies can’t fight repressive regimes alone on Internet freedom. They need government to lead.

Oppressive foreign governments may not easily change their ways but they need to be made to understand the depth of U.S. and international commitment to Internet openness and freedom. We need to elevate this issue to the top of our diplomatic and trade agenda. Finally, we must be consistent with our own Internet freedom policies and

fight for Internet freedom as a common principle so that other nations understand our commitment to curbing censorship of the Internet and threats to Internet freedom in whatever form they manifest.