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ABSTRACT

INTERNET FREEDOM & ONLINE CENSORSHIP

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- *The free flow of information is essential to Internet freedom and to electronic commerce. Filtering or regulation by private carriers or by governments curtails the democratizing effect of the Internet. CCIA applauds Obama Administration efforts to combat censorship, filtering and invasions of online privacy by foreign regimes. Online censorship is a barrier to free trade in goods and services on the Internet.*
- *Businesses possess limited tools to combat government censorship and demands for information. A supportive U.S. Government response is essential when foreign regimes attempt to strong-arm U.S. businesses into censorship or human rights violations. Government-to-government engagement and multi-stakeholder efforts such as the Global Network Initiative (GNI) will prove more effective than punitive measures against U.S. businesses.*

Overview: The Internet's capability to broadly disseminate information and ideas has been the greatest tool for freedom since the printing press. Safeguarding the free flow of information and ideas over the Internet should be at the top of both our trade agenda and our human rights diplomatic agenda. The Internet industry takes pride in the fact that technology has greatly expanded global trade and citizens' freedom of expression.

Ed Black testified before the Congressional-Executive Commission on China in November 2011 on the subject of China's Censorship of Internet and Social Media: The Human Toll and Trade Impact. His testimony focused on the economic distortions of state erected barriers to the free flow of information in online commerce. He has also addressed the WTO on the subject of the trade-distorting effects of Internet censorship. CCIA is encouraged by the USTR's recent formal inquiry using WTO mechanisms to force disclosure by China of its shadowy and mysterious censorship practices.

CCIA's Position: As an organization dedicated to the promotion of open markets, open systems, and open networks, CCIA highly values the ability of the Internet to facilitate the free flow of information and ideas.

CCIA encourages the U.S. Government to partner with U.S. industry and NGOs to make freedom of expression on the Internet a top foreign policy priority, and the free flow of data and information a central element of US trade policy as neither of these two objectives can be successful if the other fails. If Internet freedom is not even on the list of priorities when U.S. officials visit with foreign leaders, that omission sends the wrong message. The Executive Branch should conduct the multilateral business of the United States so as to ensure that it acts in concert with other nations to guarantee freedom of expression alongside peaceful development of

the global economy. The Administration must also recognize censorship and forced localization of data as trade barriers, and utilize all resources for adjudicating trade disputes.

The Chinese government's actions are contrary to the spirit of its WTO-GATT obligations, as well as specifically scheduled commitments in relation to the General Agreement on Trade in Services (GATS) and China's WTO Accession Protocol, and may be contrary to the letter of its obligations as well.

Aside from evaluating WTO actions against China and other Internet Restricting Countries (IRCs), the USG should:

- Establish a Special 301-like process for the USTR to annually review and place on a watch list those U.S. trading partners which take measures which affect trade by interfering with data flows, and review the trade privileges of those trading partners whose attacks on Internet freedom impair U.S. enterprise and threaten U.S. jobs.
- Highlight Internet censorship policies in trade reports on China and other IRCs.
- Engage forcefully and effectively at the multilateral level to push for all nations to live up to their commitments under the Universal Declaration of Human Rights and in particular, Articles 19 (freedom of expression) and 20 (freedom of assembly), including the 21st century "freedom to connect" as well as major international human rights treaties.
- Employ U.S. directors of Chinese companies to lobby/negotiate in private with the Chinese on behalf of e-commerce in general and intervene when necessary. Our Ambassador to China should also work toward fair access to the market for U.S. businesses in general to compete.
- Commit resources to quantifying the value of open networks, and partner with the private sector to help governments worldwide understand that open networks are not just an avenue for speech, but are the highway to the future of jobs, employment, and national competitiveness.

Background: Major technology companies faced harsh criticism from human rights organizations and some members of Congress in the past decade for allegedly collaborating with the Chinese government's efforts to monitor and censor Internet activities. Google once censored some search results in compliance with Chinese "national security" law, while deliberately informing customers it was doing so, before discontinuing operations in mainland China. Facebook and Twitter must deal with similar issues. China often applies a different standard to its own companies. U.S. companies argue that they have no choice but to obey local laws if they are to participate in the Chinese market. In 2010, Google announced plans to stop censoring Google.cn in China after it discovered an infiltration of its technology and customer e-mail accounts. Dealing with conflicting pressures and foreign legal requirements can be difficult for individual companies, but the range of positive outcomes increases if the U.S. Government takes a diplomatic leadership role and works effectively with other countries to do the same.

Internet companies, human rights organizations, academics and journalists embarked on groundbreaking discussions that culminated in the late 2008 announcement of the Global Network Initiative (GNI). CCIA members Microsoft, Google, and Yahoo! are among the

founding members of GNI. GNI is dedicated to protecting freedom of expression and privacy in information and communications technologies by providing a framework to chart ethical and accountable business responses to growing threats to online freedom and privacy rights. GNI is working to expand internationally and to build a global model for Internet freedom.

In 2005, the State Department first established the Global Internet Freedom Task Force (GIFT) to identify and protect against abuses of Internet freedom by governments that seek to limit the flow of information and/or invade personal privacy online for repressive purposes. The Obama Administration has brought this mission to life and given it greater visibility, but must do more to make Internet freedom a subject of multilateral negotiations and recognize censorship as a trade barrier. The United States is not alone in making this a trade issue. In 2008 the European Parliament voted overwhelmingly in favor of a proposal to treat Internet censorship as a trade barrier. Meanwhile, even some democratic nations, such as Pakistan, are following the autocratic China down the road of online censorship for public morality and national security, and to curb blasphemy, albeit in a far more upfront and transparent manner than the Chinese. Pakistan published an RFP and advertised for commercial technology recently – before public pressure worldwide caused a rethink. This is an example of what can be done when the open Internet is made a broad-based public policy priority.

During a visit to China in November 2009, President Obama urged his hosts to stop censoring Internet access, calling for their cooperation on the free flow of information to build stronger societies. In January 2010, Secretary of State Hillary Clinton gave a speech in which she established global Internet freedom as a major new diplomatic priority. In March 2010, Congressmen Chris Smith (R-NJ) announced the launch of the Congressional Internet Freedom Caucus to promote online free expression; and a bipartisan Senate Global Internet Freedom Caucus was formed and is chaired by Senator Bob Casey (D-PA). Chairman Dick Durbin (D-IL) of the Senate Judiciary Committee's Human Rights and the Law Subcommittee held a hearing in 2010 on Global Internet Freedom. Durbin believes that Congress has a role because governments, not companies, must be the primary protectors of Internet freedom.

The Treasury Department lifted a trade embargo in 2010 and authorized downloads of free mass market software from companies such as Microsoft and Google to facilitate the flow of information to citizens in Iran, Cuba and the Sudan.

Also in 2010, the Congressional Executive Committee on China, chaired by Senator Byron Dorgan (D-ND), held a hearing on Internet Control in China. Ed Black of CCIA testified, as did Google and GoDaddy. Later in 2010, Black testified at a Senate Finance subcommittee hearing chaired by Sen. Wyden, D-Ore., to explain why Internet filtering and censorship are trade violations that must be addressed.

In January 2011, censorship as a human rights issue drew global attention when Egypt shut down all Internet traffic for days at the start of populist movements that then spread to Tunisia and Libya in what became known as the Arab Spring.

Early this year Twitter was accused of abetting censorship when it announced that it had created a targeted solution to removing locally "illegal" material on a country-by-country basis. Twitter has played a significant role in facilitating freedom of expression in Iran and in the countries of the 2011 Arab Spring. Faced with mandates in a few Asian countries to either filter out some content locally in or be blocked entirely, it's a defensible position for a social media company to

comply just enough to establish some presence in that country, while the rest of the world still has access to fully uncensored tweets. Transparency is key: Twitter users whose messages are removed will be informed of the situation, and this will encourage them and those outside with whom they are attempting to communicate to pressure for policy changes. Censorship will also be reported to civil society and academic NGOs, so that Internet mainstream governments will have the data necessary to pressure Internet restricting countries to embrace the free flow of information online.

Current Status: President Obama has consistently made clear his support of the full and free exchange of information through an open Internet, and its importance for democracy and commerce. We are encouraged that this Administration has applied these principles to its international relations as well as domestic policy. The State Department launched a Net Freedom Task Force. Senator Ron Wyden (D-OR) has called the Internet “the biggest shipping lane in the world.” CCIA will continue to work with Congress, the State Department and USTR officials as they develop innovative, holistic policies that promote global Internet freedom.

The stakes are high: Facebook and Google executives currently are being prosecuted in India for not adequately complying with that country’s content censorship demands.