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ABSTRACT

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INTERNET FREEDOM & ONLINE CENSORSHIP

MAY 2010

- *The free flow of information is essential to Internet freedom. Filtering or regulation by private carriers or by governments curtails the democratizing effect of the Internet. CCIA encourages Obama Administration efforts to combat censorship, filtering and invasions of online privacy by foreign regimes.*
- *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 regarding censorship or possible facilitation of human rights violations. Government-to-government engagement including multilateral efforts and the Global Network Initiative (GNI) will prove more effective than punitive measures against U.S. businesses.*

Background: Filtering or regulation by private carriers or governments curtails the democratizing effect of the Internet. 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.

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 our trade agenda, our human rights agenda, and our diplomatic agenda. The Internet industry takes pride in the fact that technology has greatly expanded the scope and freedom of social interaction. The Global Online Freedom Act pending in the House of Representatives is problematic for much of U.S. industry because it is difficult for private companies to unilaterally induce large-scale political and social reform in countries that would restrict Internet freedom. The bill would require the State Department to compile an annual list of Internet restricting countries (IRCs), and would require U.S. companies to store personally identifiable information outside of IRCs and report on all foreign government requests to censor, block or restrict access to information. Civil penalties and private causes of action apply.

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, and telling Chinese students that they can think for themselves. 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) and David Wu (D-OR) announced the launch of the Congressional Internet Freedom Caucus to promote online free expression; and Senators Kaufman (D-DE) and Brownback (R-KS) announced the bipartisan Senate Global Internet Freedom Caucus, which Senators Durbin, McCain, Lieberman, Johanns, Barasso, Risch, Menendez, and Casey have joined. Congressman Wu also introduced

legislation to support groups and individuals' efforts to use technology to circumvent state-sponsored Internet suppression. Also earlier this year, the Treasury Department lifted a trade embargo 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.

And finally, on March 24th 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 on the points listed below, as did Google and GoDaddy. The domain name registrar company had just decided that it would no longer register new .cn domain names for websites in China because the Chinese government had changed a five-year old policy to now require photo identification and a signed document along with other personal information from each domain registrant. The GoDaddy witness said the company refuses to be an agent of the Chinese government.

CCIA's Position: Instead of imposing punitive measures on U.S. businesses for the repression perpetrated by foreign states, CCIA encourages our government to partner with U.S. industry and make freedom of expression on the Internet a top priority in foreign policy. 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 initiate multilateral consultations to ensure that the United States actively participates in a family of nations acting to guarantee freedom of expression alongside peaceful development of the global economy. The Administration must also recognize censorship as a trade barrier, and, if necessary, utilize all resources for adjudicating trade disputes.

The Chinese government's actions seem to constitute violations 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.

Aside from evaluating WTO actions against China and other 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 perpetuate the most egregious acts or practices of censorship that affect trade, and review the trade privileges of those trading partners whose attacks on Internet freedom impair U.S. enterprise and threaten U.S. jobs. If U.S. corporate media content production is worthy of such a process, so too must be U.S. enterprise that depends on freedom of expression.
- Highlight Internet censorship policies in trade reports on China and other IRCs.
- Initiate multilateral consultations to ensure we are participating in family of nations acting to publicize the Universal Declaration of Human Rights and in particular, Articles 19 (freedom of expression) and 20 (freedom of assembly), which in the 21st century must include "freedom to connect."
- Actively support the Global Network Initiative (GNI).
- Employ Ambassador Hunstman to lobby/negotiate in private with the Chinese on behalf of e-commerce in general and intervene when necessary. The Ambassador should help

bring fair access to the market for U.S. businesses in general to compete – without focusing on specific U.S. firms.

Direct challenges to the openness and freedom of the Internet are serious and dangerous. The U.S. government and those countries that support freedom of expression need to elevate the issue of Internet freedom to the top of their human rights and trade agendas.

Further Background: Major technology companies such as Yahoo!, Microsoft, Google, and Cisco Systems endured harsh criticism from human rights organizations and from members of Congress in the past decade for allegedly collaborating with the Chinese government's efforts to monitor and censor Internet activities. Yahoo! was accused of providing information leading to the arrest and imprisonment of Chinese journalists. Microsoft and Google were accused of censoring words such as "freedom" and "democracy". Cisco was accused of selling routers and equipment enabling the Chinese government to monitor and censor communications. Siemens, Nokia and others have been accused of selling filtering equipment to the government in Iran. Google has admitted to censoring some search results in compliance with Chinese "national security" law, while deliberately informing customers it was doing so. These companies have defended their practices arguing that they have no choice but to obey local laws if they are to remain active in the Chinese market. They contend that their presence in China does more good than harm, and that even a minimally censored Internet search is better than no quality international search at all. In January of this year, however, Google announced plans to stop censoring Google.cn in China after it discovered an infiltration of its technology and the e-mail accounts of Chinese human rights activists. 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.

The late House Foreign Affairs Committee Chairman Tom Lantos (D-CA) was a courageous and prominent voice on human rights, and was highly critical of technology companies' operations in China. Human rights have been very important to House Speaker Nancy Pelosi (D-CA) as well. Rep. Howard Berman (D-CA), Chairman of the Foreign Affairs Committee, and Rep. Chris Smith (R-NJ), are now key policymakers on these issues, and held the most recent hearing on this subject in March. Chairman Dick Durbin (D-IL) of the Senate Judiciary Committee's Human Rights and the Law Subcommittee has been engaged and held a second hearing this past March on Global Internet Freedom. Durbin believes that Congress has a role because governments, not companies, must be the primary protectors of Internet freedom.

Over the past several years, Internet companies, human rights organizations, academics and journalists embarked on a series of 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 and its only corporate business members to date. 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. The idea is to enable companies to stand up for their customers and employees while respecting the rule of law. GNI is currently conducting membership recruitment in the U.S. and internationally to build a global identity.

During the Bush Administration, the State Department established the Global Internet Freedom Task Force (GIFT) to identify and protect against abuses of Internet freedom by governments

that seek to pervert technology to limit the flow of information and/or invade personal privacy online for repressive purposes. However, the Obama Administration must go much further to make Internet freedom a subject of multilateral consultations and recognize censorship as a trade barrier. "The United States would not be alone in making this a trade issue. In 2008 the European Parliament voted 571-38 in favor of a proposal to treat Internet censorship as a trade barrier."

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 delighted that this Administration has begun to apply these principles to its international relations as well as domestic policy. The State Department has organized a Net Freedom Task Force co-chaired by Undersecretaries Robert Hormats and Maria Otero, which recently held a strategy meeting between government officials and business executives. They are planning a similar meeting for this summer to include NGOs. CCIA will continue to work with Congress, the State Department and USTR officials as they develop innovative policies on global Internet freedom.