

Global Network Initiative

Protecting and Advancing
Freedom of Expression and Privacy
in Information and Communication Technologies



OUR IMPACT

Highlights from the Global Network Initiative's efforts to protect and advance freedom of expression and privacy during 2013 include:

- Responding to the government surveillance crisis, seeking meaningful reforms to protect users' rights and restore trust:
 - Successfully pressing the United States and other governments to increase transparency around their surveillance laws, policies and practices.
 - Fostering collaboration between technology companies and civil society and other stakeholders.
 - Seeking reforms to end the bulk collection of communications and protect the rights of Internet users' worldwide.
- Engaging the telecommunications sector with the aim of developing a common approach to human rights:
 - Commencing shared learning and fostering our collaboration with nine companies in the Telecommunications Industry Dialogue on Freedom of Expression and Privacy.
 - Publishing original research on the human rights responsibilities of telecommunications companies.
- Advocating with governments in support of free expression and privacy rights, from Bali to Brussels.
- Expanding our membership, welcoming Facebook and LinkedIn as well as other companies, civil society organizations, investors, and academics.
- Completing the first cycle of independent assessments of our founding companies, Google, Microsoft, and Yahoo, the first such assessments involving case reviews of actual government requests.
- Facilitating policy engagement and shared learning among our participants on issues from technology sanctions to intermediary liability in India.

THE BENEFITS OF MEMBERSHIP

- Build global public trust in your brand by demonstrating that you care about users' rights around the world.
- Manage company risk exposure and improve decision-making through the GNI Principles, guidelines, and accountability process.
- Work through complex issues in a safe space, gaining insight from other companies, civil society, investors, and academic participants.
- Engage in public policy on a pressing global challenge with a unique and diverse coalition of experts.
- Build a global standard for corporate responsibility in the ICT sector.



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MESSAGES FROM GNI'S LEADERSHIP



Executive Director Susan Morgan

2013 marked a milestone for the Global Network Initiative, as we celebrated the fifth anniversary of GNI with major achievements and new challenges. GNI has grown significantly, adding new companies including Facebook and LinkedIn, even as we completed the first cycle of independent assessments of founding companies Google, Microsoft, and Yahoo. Revelations regarding the national security surveillance practices of the United States and other democracies have put online privacy on the global agenda and triggered an outcry around the world. In response, GNI raised its collective voice to seek much greater transparency and demand reforms to align surveillance practices with human rights standards. Looking ahead, our priorities for the coming year include continuing to advocate for laws, policies, and practices that

support free expression and privacy rights, and adding to our influence by expanding our membership globally. At the same time, we will conduct a strategic review of GNI and seek to learn from our experience thus far to increase our effectiveness.



Independent Chair Mark Stephens, CBE

I am excited to be joining GNI at this moment, when an informed public debate about personal privacy in modern society is urgently needed. GNI has a critical role to play in formulating, informing, and advancing global privacy and free expression policy through collaboration among our member companies, civil society organizations, investors, and academics. I look forward to helping to internationalize the GNI network, and I welcome our new representatives on the GNI Board that will help us expand our global reach. In addition, our continuing collaboration with global telecommunications companies provides a means of sharing best practices and establishing human rights standards across the ICT sector and around the world.



Outgoing Chair Jermyn Brooks

During my three-year term as GNI's Board Chair, the initiative has made important progress against a complex set of challenges. Established to oppose illegitimate censorship and surveillance of the Internet, the collaboration between ICT companies and other stakeholders in GNI has resulted in Principles and Guidelines that have enabled companies to respect their users' rights in the face of government requests, as demonstrated through our independent assessment process. Enormous thanks are due to GNI's founding Board of Directors for their dedication to the process, to GNI's small staff, and to its funders, particularly the John D. and Catherine T. MacArthur Foundation. I look forward to following GNI's future progress protecting freedom of expression and privacy rights online.

Susan Morgan
Executive Director

Mark Stephens
Independent Chair

Jermyn Brooks
Outgoing Chair

RESPONDING TO ONGOING GOVERNMENT SURVEILLANCE REVELATIONS

In June 2013, news headlines in the *Washington Post* and *The Guardian* based on secret documents disclosed by Edward Snowden brought to the world's attention the surveillance practices of the United States and other governments.¹ Revelations regarding national security demands made of companies, including GNI members, under the Foreign Intelligence Surveillance Act (FISA) triggered an outcry around the globe.

At the time GNI was founded, participants understood that companies faced legal restrictions, such as non-disclosure obligations under FISA and National Security Letters (NSLs) that prevent them from talking publicly about such national security requests. However, the Snowden revelations dramatically brought these issues into the spotlight, shifted the public debate, and demanded a strong response from GNI and its members.

Transparency

In an initial statement issued within a week of the first reports, GNI called for a “thoughtful public debate” and urged governments “to strive for greater transparency about their laws, regulations and actions in this sphere.”² GNI also convened a learning call for the Board with legal experts on national security surveillance in order to ensure a common understanding of the legal constraints facing the companies, and to strategize about avenues for reform. By the end of June a second statement was issued, calling for increased transparency within the framework of the GNI principles, and noting that the inability

of companies to report on the requests they receive makes it difficult for them to be transparent regarding their efforts to protect freedom of expression and privacy.³ GNI called for three specific actions:

- 1) Create a declassification process for significant legal opinions to inform public debate and enable oversight of government actions.
- 2) Revise the provisions that restrict discussion of national security demands.
- 3) Governments—especially those already committed to protecting human rights online—should lead by example and report on their own surveillance requests.

GNI's company members also took action, with Facebook, Google, LinkedIn, Microsoft, and Yahoo filing suits with the FISA Court seeking the right to share data with the public on the number of FISA requests they receive, and publicly supported legislation that would make it possible for companies to report on FISA requests.

Advocacy

We engaged directly with the United States and other governments to advance our transparency agenda:

In July, we submitted comments to the U.S. Privacy and Civil Liberties Oversight Board (PCLOB), reiterating our call for increased transparency and recommending that the Board address the international

1 Glenn Greenwald, “NSA collecting phone records of millions of Verizon customers daily,” *The Guardian*, June 5, 2013, available at <http://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order>; Barton Gellman and Laura Poitras, “US, British intelligence mining data from nine US Internet companies in broad secret program,” *Washington Post*, June 6, 2013, available at http://www.washingtonpost.com/investigations/us-intelligence-mining-data-from-nine-us-internet-companies-in-broad-secret-program/2013/06/06/3a0c0da8-cebf-11e2-8845-d970ccb04497_story.html.

2 “GNI Statement on Communications Surveillance,” June 12, 2013, available at <http://globalnetworkinitiative.org/news/gni-statement-communications-surveillance>.

3 “Transparency, National Security, and Protecting Rights Online,” June 28, 2013, available at <http://globalnetworkinitiative.org/news/transparency-national-security-and-protecting-rights-online>.



GNI Chair Jermyn Brooks at the Open Government Partnership Summit (second from right). Also pictured (left to right): Ellen Miller, Sunlight Foundation, Frank La Rue, UN Special Rapporteur on Freedom of Expression, Nathaniel Heller – Global Integrity, and Morton Halperin – Open Society Foundations.

human rights implications of U.S. communications surveillance programs. We also collaborated with the Center for Democracy & Technology (CDT) and other GNI participants, signing on to a joint letter seeking specific transparency reforms.⁴

In September, GNI wrote to the governments in the Freedom Online Coalition, asking them to report on the requests they make for electronic communications surveillance and to make it legally possible for companies to report regularly to the public on the government requests that they receive from law enforcement as well as national security authorities.⁵ The letters were sent to senior government officials responsible for foreign affairs, justice, and security, with copies to data protection authorities. GNI has met with or received responses from many members

of the coalition, and held conversations with coalition members at the Internet Governance Forum in Bali and at the GNI-ID Learning Forum in Brussels. GNI and CDT are organizing a session on transparency and surveillance reform at the next meeting of the Freedom Online Coalition in Tallinn, Estonia, in April 2014.

In October, GNI Board Chair Jermyn Brooks spoke about communications surveillance at the Open Government Partnership Summit in London, during a special session on “New Frontiers in Open Government.” Following the panel, GNI joined with more than 100 civil society organizations from around the world to sign a Statement of Concern on Disproportionate Surveillance.⁶

⁴ See <https://www.cdt.org/files/pdfs/weneedtoknow-transparency-letter.pdf>.

⁵ The Freedom Online Coalition is a group of governments committed to collaborating to advance Internet freedom. The participating countries include: Austria, Canada, Costa Rica, Czech Republic, Finland, France, Estonia, Georgia, Germany, Ghana, Ireland, Kenya, Latvia, the Republic of Maldives, Mexico, Moldova, Mongolia, The Netherlands, Sweden, Tunisia, the United Kingdom, and the United States.

⁶ <http://www.webfoundation.org/wp-content/uploads/2013/12/CSO-OGP-statement-17dec2013.pdf>

Policy Reform

In November, GNI joined a broad coalition of civil society groups, trade associations, companies and investors, signing an open letter to Congressional leadership calling on Congress to reform U.S. intelligence surveillance practices.

“Recent disclosures regarding intelligence surveillance activity raise important concerns about the privacy and security of communications. This surveillance has already eroded trust that is essential to the free flow of information and to the exercise of human rights and civil liberties both in the United States and around the world,” the letter stated.

The signatories welcomed the USA FREEDOM Act, while stressing the importance of working on this and other legislation to protect the privacy of Internet users, and permitting appropriately targeted intelligence surveillance necessary to protect against terrorism.

In December 2013, Facebook, Google, Microsoft, Yahoo, and LinkedIn joined with other Internet companies to issue principles on Global Government Surveillance Reform, urging changes to practices and laws regulating government surveillance of individuals and access to their information.⁷

The companies called for an end to bulk data collection of Internet communications, demanded independent judicial review of surveillance requests, and presented an approach that would protect privacy for Internet users worldwide. GNI applauded this effort, which showed that even when they are legally barred from disclosing government demands, companies can take action to press for reform.

In December 2013, GNI welcomed the public release of the report by the President’s Review Group on Intelligence and Communications Technologies, an important first step from the Obama administration toward communications surveillance reform.

In advance of a major speech by President Obama in January 2014, building on the Review Group’s recommendations, and reflecting the views of ICT companies, civil society organizations, investors, and academics, GNI made the following recommendations:

- End the bulk collection of communications metadata.
- Protect the rights of non-Americans.
- Continue to increase transparency of surveillance practices.
- Support strong encryption and do not subvert security standards.

In President Obama’s speech, and in a subsequent release by the U.S. Justice Department, the United States announced it would allow companies to publicly report more information about national security requests for user data. These reforms, which allow companies to report details about national security requests in bands of either 250 or 1,000, are an important step forward but fall short of what is needed to allow companies to be transparent with their users. GNI continues to urge legal and policy reforms that would enable more granular reporting. In 2014, we will continue to advocate for a human rights based approach to communications surveillance reforms with the United States, other governments, and at the international level.

⁷ See <http://reformgovernmentsurveillance.com/>.

ENGAGING THE TELECOMMUNICATIONS SECTOR

Engaging with companies in the telecommunications sector has always been a strategic priority for GNI. In 2013, we were pleased to announce a collaboration with nine telecommunications companies who have come together to form the Telecommunications Industry Dialogue (ID), organized a joint Learning Forum in Brussels with the Industry Dialogue and separately released a major research report focused on the free expression and privacy issues in the telecoms sector.

The Industry Dialogue

In March 2013, GNI announced a two-year collaboration with a group of global telecommunications companies, including network operators and equipment vendors, which came together to form the Telecommunications Industry Dialogue (ID) on Freedom of Expression and Privacy.

The Industry Dialogue is a group of companies who have been meeting since 2011 to discuss freedom of expression and privacy rights in the telecommunications sector in the context of the UN Guiding Principles on Business and Human Rights. Companies participating in the industry dialogue are: Alcatel-Lucent, AT&T, Orange, Millicom, Nokia Solutions and Networks, Telefonica, Telenor, TeliaSonera, and Vodafone.

During the two years of collaboration, the members of the GNI and the Industry Dialogue aim to find a shared and practical approach to promoting freedom of expression and privacy rights around the world.

The ID performs its work by electing one of its members to serve a six-month period as Chair of the Dialogue. In July of 2013, Lisl Brunner was hired as the Facilitator for the ID, based with GNI staff in Washington, D.C. The participating companies



John Kampfner – advisor to GNI and Google, Leslie Harris – Center for Democracy and Technology, Jeanette Hofmann – Alexander von Humboldt Institute for Internet and Society, Marília Maciel – Center for Technology & Society – FGV Law School, and Dewi van de Weerd – Ministry of Foreign Affairs of the Netherlands, discuss evolving free expression and privacy challenges in the ICT sector.



John Kampfner, William Echikson – Google, Carina Lundberg Markow – Folksam, Elonnai Hickock – Centre for Internet & Society, Patrick Hiselius – TeliaSonera, and Rebecca MacKinnon – New America Foundation, discuss free expression and privacy issues across the Atlantic and around the globe.

hold conference calls on a weekly basis, and working groups have been created to address particular areas of focus. The companies also meet face to face on a quarterly basis to share best practices and tools and to discuss joint initiatives. In October of 2013, the Industry Dialogue launched its website, a platform for communicating with stakeholders about its activities and events.⁸

In April, at the Stockholm Internet Forum, GNI and the Industry Dialogue organized an “unconference” session, providing an initial opportunity to introduce the collaboration and engage with stakeholders. Susan Morgan from GNI and Patrik Hiselius, the first Chair of the Industry Dialogue explained the reasons behind the collaboration and gave participants the opportunity to raise questions.

In October, GNI and the Industry Dialogue held a joint learning call on communication surveillance. The call featured experts Marc Zwillinger, Greg Nojeim, and Ian Brown and provided an opportunity for GNI and Industry Dialogue members to share information on surveillance law, policies, and practices from U.S. and European perspectives.

Research Report: *Opening the Lines*



In July, GNI released a report on human rights and telecommunications companies.⁹ The report, “Opening the Lines: A Call for Transparency from Governments and Telecommunications Companies,” illustrates the types of requirements telecommunications

companies face and explores how they can respond to them in ways that respect human rights. It was informed by case study reviews of the laws and regulations governing telecommunications companies in the European Union, and at the national level in Russia, Sweden, and the United Kingdom.

The report, authored by Chris Tuppen, senior partner of Advancing Sustainability LLP and the former Chief Sustainability Officer at British Telecom, makes specific recommendations around how to increase transparency. “Telecommunications companies seeking to mitigate their human rights risks have

⁸ See <http://telecomindustrydialogue.org>.

⁹ Available at <http://globalnetworkinitiative.org/content/opening-lines-call-transparency-governments-and-telecommunications-companies>.

an opportunity to work with governments and other stakeholders to increase transparency in a number of areas, particularly volume of requests made and complied with,” said Tuppen.

The report was commissioned prior to GNI entering into the collaboration with the Industry Dialogue.

Responding to the report when it was launched, Patrik Hiselius, Senior Advisor at TeliaSonera, said: “The Industry Dialogue welcomes GNI’s first report on telecommunications and freedom of expression. The report will help different stakeholders understand the complex operating environment of telecommunications companies and sheds light on some of the challenges in defining the boundaries of responsibility regarding freedom of expression within our sector. We look forward to working together, and with the GNI and its members, to further promoting informed debate and practical solutions to these challenges.”

Joint Learning Forum in Brussels

In November, GNI and the Industry Dialogue held a joint Learning Forum in Brussels, presenting an opportunity for civil society organizations, academics, investors, government officials, international organizations, and companies to share their perspectives on current challenges facing freedom of expression and privacy. The discussions addressed revelations about massive communications surveillance by governments, growing government pressure on telecommunications companies to re-draw the borders of the Internet by requiring the localization of data, and the requirement that companies provide governments with direct access to user data in certain markets.

INDEPENDENT ASSESSMENTS OF GOOGLE, MICROSOFT AND YAHOO

In 2013, GNI conducted the first independent assessments of founding companies Google, Microsoft, and Yahoo.

The assessment process consists of three phases:

- **Phase I** consists of self-reporting by the founding companies, as detailed in GNI's 2010 Annual Report.¹⁰
- **Phase II** is a **process review** that assesses whether companies are putting into place the necessary policies, systems and procedures to implement GNI's principles. These assessments were conducted for GNI's three founding companies, Google, Microsoft and Yahoo during 2011. Details of that process are available in our 2011 Annual Report.¹¹
- **Phase III** is a **case review** that assesses a number of specific cases to understand how the companies are implementing the principles and guidelines in practice.

The report on these assessments and the determination by GNI's Board of the three companies' compliance with the GNI Principles on Freedom of Expression and Privacy was announced in early January 2014.¹² This section provides a summary of the key elements of the assessment report.

The Assessment Process

Companies participating in GNI are independently assessed on their implementation of the principles and guidelines. Only assessors accredited by GNI's multi-stakeholder Board are eligible to conduct assessments of member companies. The companies select assessors from among the accredited organizations. Foley Hoag, KPMG, and PwC were selected by the founding companies for the assessments described in this report.

1. Company prepares information for assessor	Includes information on company policies and procedures Proposes a list of cases to be reviewed by the assessor
2. Assessor selects cases	Assessor reviews cases against GNI selection criteria Assessor conducts independent research to inform case selection Assessor confirms that selection of cases meets GNI criteria
3. Assessor conducts assessment	Document and policy reviews Interviews with key staff
4. Assessor prepares report for company	Follows reporting template and includes findings and recommendations Company has opportunity to correct factual inaccuracies and remove confidential information
5. Company shares assessment report with Board	One week prior to Board discussion
6. Company and Assessor respond to Board questions	At in person Board discussion

¹⁰ Available at <http://globalnetworkinitiative.org/content/2010-annual-report>.

¹¹ Available at <http://globalnetworkinitiative.org/content/2011-annual-report>.

¹² Public Report on the Independent Assessment Process for Google, Microsoft, and Yahoo, available at <http://globalnetworkinitiative.org/content/public-report-independent-assessment-process-google-microsoft-and-yahoo>.

Assessing Google, Microsoft, and Yahoo Around the World

59

Total number of cases reviewed

47

Cases involving a specific government request

30

Specific cases concerning privacy

12

Cases related to the broader context of company operations

17

Specific cases concerning freedom of expression

Specific Cases by Geography

Asia & Pacific	Australia China India Malaysia Singapore South Korea Thailand
Europe & Eurasia	France Germany Italy Russia Spain Turkey UK
Middle East & North Africa	Jordan Lebanon Saudi Arabia
North America	Canada Mexico USA
South America	Argentina Brazil

Topics covered by cases

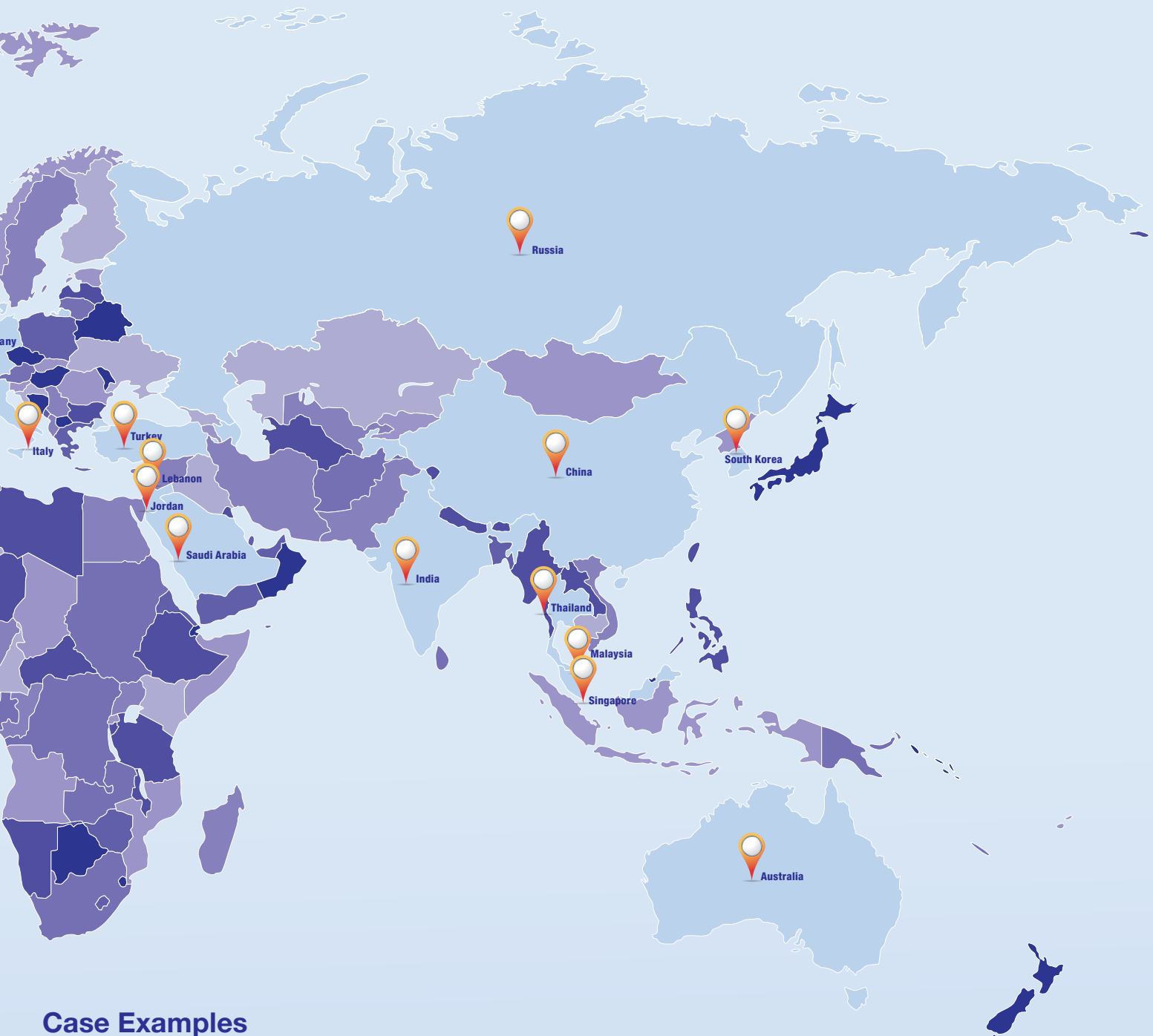
Blocking/Filtering	10
Takedown requests	11
Criminalizing legitimate expression	11
Intermediary Liability	3
Selective Enforcement	2
Request for User Information	29

Some cases covered more than one topic; therefore the total listed here is greater than the 59 cases assessed.

The GNI Principles and Implementation Guidelines guide companies to narrowly interpret government requests and to ensure that applicable legal procedures are followed. Anecdotal data presented by the Phase III Assessments indicates that this approach has resulted in the denial of a number of government requests:

- In 5 freedom of expression cases, requests for clarification or modification contributed to a company deciding not to take action to remove content on a request.
- In 6 freedom of expression cases, the company determined the request stated a clear legal basis and removed the content as indicated.

- In 10 privacy cases, requests for clarification or modification of a request contributed to the denial of a request.
- In 3 privacy cases, a company request to clarify the nature of an emergency contributed to the denial of a request.
- In 13 privacy cases, strict interpretation of jurisdiction and requiring that governments follow established procedures (such as MLATs) contributed to the denial of a request.



Case Examples

Request to block search results in a restrictive operating environment

A company received a written request from governmental authorities that they block search results inside the country related to a legitimate news story. The company's policy is not to filter or remove access to content protected under international standards of free expression unless it receives a legally binding request from an authorized government representative that such action is required. The company asked the relevant governmental authorities to provide a legal basis for the request. The authorities did not provide a response. The company did not remove the content from its search results.

State law enforcement request in the United States

A state law enforcement official in the United States served a subpoena requesting content and non-content user data from an email account.

Based on a United States Circuit Court of Appeals decision (*Warshak v. United States*), the company requires all law enforcement authorities in the U.S. to obtain a search warrant before it will disclose the contents of communications from an email account. Since a subpoena is not a court order, the company rejected the request from the state law enforcement official.

Request for user data in Germany

The German office of a company received a letter from a local government agency, attaching a search warrant from a German court requesting the mailbox content of a user subject to criminal proceedings. A law enforcement response team member from the German company entity checked that the request was a valid legal process and included all necessary information and approvals, and processed the request. Based on the assessment that the request was valid, the company produced the emails as requested.

Request for user information in Brazil

The Brazilian legal entity of a company received a letter from the federal police station of a Brazilian state accompanied by a court order to wiretap all emails sent and received from a user's email account for 15 days. The company's Brazil legal counsel qualified the request as a valid legal process. However, as the stated user account was registered with the company's US legal entity, the request was declined and no data was provided. In a response letter, the company explained that it was technically and legally unable to respond to the request. The letter informed the requesting agency about the proper legal process to be followed for requesting and potentially obtaining user data.

Conducting the Assessments

The assessment process follows the steps described below:

Case Selection

Subject to confidentiality and legal privilege concerns, discussed below, assessors sought to determine how companies responded to government requests and demands involving freedom of expression or privacy, in the context of particular cases. This required a methodology for selecting the specific cases to be reviewed. The assessor was responsible for determining that the cases selected met the GNI criteria, based on requests received by the company, consultation with GNI's non-company participants, and independent research. The objective was to assess a range of cases that were salient to each company's business model, operating environments, and particular human rights risk profile.

Limits on Disclosure

GNI's assessments entail a review by third party assessors of company responses to government requests implicating free expression and privacy. However, both external and internal company constraints limit the information available to assessors. This is one of the most challenging issues that we faced during the assessment process. These limits were recognized at the time of GNI's formation.¹³

Specific reasons for limits on disclosure include the following:

- Legal prohibitions – There are situations where companies are legally prohibited from disclosing information. For example, in the United States, companies face non-disclosure obligations covering NSLs and FISA orders.
- User privacy – Companies have legal obligations to maintain the privacy of users' personal information as set out in their terms of service. This can affect a company's ability to disclose information about a case, even if that case is well known and has been publicly reported.
- Attorney-client privilege – Companies choose when they assert attorney-client privilege.

- Trade secrets – Companies may choose to withhold competitive information including trade secrets from the assessment process. The assessment reports are reviewed by GNI's Board, which includes representatives from other GNI company members. An anti-trust review is completed on the assessment reports prior to their distribution to GNI's Board members.

Assessors are required to report to GNI's Board on whether their access to information was sufficient to conduct the assessment. All three assessors indicated this was the case but they all also identified limitations on access to information that required alternative approaches to be taken during the assessment process, for example when they were prohibited from directly reviewing policies and procedures, or case-specific documents, in order to preserve attorney-client privilege. These other approaches included interviews with company employees, as well as reviews of incoming government requests and outgoing company responses.

Determining Compliance

Based on a review of the assessment reports, discussions with the companies and assessors, and its own collective knowledge, experience and deliberation, the GNI Board voted on company compliance.

GNI's Board determined that Google, Microsoft, and Yahoo are compliant with GNI's Principles. GNI's Board made this determination at their meeting in Washington DC on 21 November 2013.

A finding of compliance indicates that the GNI Board believes the company has committed to our Principles by adopting policies and procedures to implement them; and based on the cases reviewed, is making a good faith effort to implement and apply them, and improve over time.

The assessment process did not and cannot determine whether these policies and procedures are functioning in every case, or whether the company has acted appropriately with respect to each of the many thousands of requests received each year from governments around the world, or with respect to every decision to enter a market, or to develop, alter or acquire a product or service.

¹³ See GNI Governance, Accountability & Learning Framework.

The Board views GNI compliance and assessments as an evolving process. The learning from these first assessments will inform changes to the process in the future. For each company, the assessors identified opportunities for improvement, to be reviewed during the following six months.

Trends and Analysis

The findings from the assessments illustrate the challenges that companies face across a variety of operating environments.

Limitations of independent assessments regarding secret national security requests

The companies cannot disclose whether or not they have been subject to national security surveillance demands by the U.S. government under FISA. In order to assess how companies respond to such requests, assessors would require access to information that companies are legally prohibited from disclosing.

Implementing the principles during acquisitions—and with partners, suppliers, and distributors—remains a challenge

GNI companies have committed to following the Principles and Implementation Guidelines in all circumstances where they have operational control, and to use best efforts where they do not to ensure that business partners, investments, suppliers, distributors and other relevant parties follow the Principles. The assessments highlight these challenges and make recommendations for how companies can implement their commitments in this area.

Companies with existing contractual relationships that predate GNI commitments may need to work over time to review contracts as they come up for renewal. In these cases, actively focusing on steps to lessen risk in the context of these relationships may be the most appropriate approach in the meantime. One case demonstrated that an HRIA contributed to one company's decision to forego a business opportunity in light of significant human rights risks.

Efforts to address new acquisitions present significant challenges for companies, including how to ensure that human rights risks are incorporated into decision-making at the relevant times given the commercial sensitivity of the opportunities being considered and the pace of acquisitions in the tech sector. Another challenge arises when differences are identified in the compliance systems used for responding to government requests at the newly acquired company. This takes time to address. These challenges are heightened when acquired companies operate in higher risk jurisdictions, or when acquired companies operate in different parts of the ICT sector, such as hardware products, which may face different or novel human rights challenges.

Terms of Service (TOS) enforcement

The GNI Principles state that the right to freedom of expression should not be restricted by governments, except in narrowly defined circumstances based on internationally recognized laws or standards. Such circumstances include restrictions to preserve national security and public order, protect public health or morals, or safeguard the rights or reputations of others. Decisions about whether content violates a company's TOS should be subject to appropriate internal review to ensure the company's compliance with its commitments to the GNI Principles. This has been an area of focus for shared learning within GNI that could be enriched and informed by the findings from the assessments.¹⁴

Recommendations

Assessors are tasked with providing non-binding recommendations to the company they assess as well as to the Board. Each company has considered the recommendations from the Phase II assessment carried out in 2011 and in many cases those recommendations have been implemented within the companies. At the Board meeting in November 2013 when the Phase III assessments were discussed the companies committed to report back to the GNI Board within six months on the recommendations they received from their assessor in this most recent assessment.

¹⁴ See <http://globalnetworkinitiative.org/gnitags/account-deactivation-and-content-removal>.

To the assessed companies

Examples of recommendations made to one or more companies include:

- **Improve the integration of human rights considerations in the due diligence process in relation to acquiring and selling companies.** Ensure that employees working on deals are specifically trained on human rights topics and the GNI Principles, and include key questions in the due diligence process such that, given certain factors or circumstances, human rights teams would be involved in advising on relevant issues when a deal is initiated and before it is completed.
- **Consider the impact of hardware on freedom of expression and privacy,** including the need to update company systems, policies, and procedures to reflect and address specific human rights challenges inherent to hardware products, compared to Internet products and services.
- **Improve external and internal reporting.** This includes, but is not limited to:
 - Consider including government requests for content removal or moderation in future transparency reports, or including more specific reasons for government content removal requests.
 - Provide information on the number of requests received through international legal procedures (e.g. MLATs), and the countries from which such requests originated.
 - Review internal reporting procedures about topics related to freedom of expression and privacy. Consider establishing a semi-annual report to management about human rights topics, which could include data compiled for public reporting and interpretation of that data, along with assessment of regulatory developments (e.g. new legislation), business decisions impacting human rights, and key company initiatives.
 - **Review employee access to user data to ensure that employee access rights are restricted by both policy and technical measures on a “need-to-know” basis across global operations.** For example, consider whether employees who only respond to

requests related to US registered users need access rights to users registered with international business entities.

- **Review executive management training,** particularly to ensure that new senior executives and board members receive specific training on human rights matters.
- **Improve stakeholder engagement** at all levels to inform decision-making, risk assessments and policy development and implementation.
- **Improve communication with users.**
 - Notifying users of consumer online services when the company provides a government with data (content or non-content) pursuant to a lawful request, unless notification is prohibited by law.
 - Improve public access to company law enforcement guidelines, which should be published for all jurisdictions in which the company responds to compulsory legal processes. Likewise, facilitate easy access to local terms of service, and to the privacy policies of acquired companies.
 - Improve explanations of what services are or are not offered in particular jurisdictions, the efforts the company makes to promote user safety and privacy and the risks that users face that the company, despite its efforts, is unable to fully mitigate.
- **Increase sharing of best practices.** Consider ways, subject to anti-trust, proprietary and confidential information concerns, to share best practices for implementing GNI's Principles and Implementation with peer companies and the GNI membership.

To GNI

A consistent theme across all three assessments was a recommendation to clarify the scope of the assessment and specifically to provide more guidance on how the Phase II process review relates to the Phase III case review assessment. Recommendations to address the scope of the assessments include focusing the assessor orientation and training session on scope and methodology, and consolidating the guidance documents provided to the assessors.

A recommendation to address the challenge of access to information in light of an assertion of legal privilege was to include in the template guidance on minimum level of access to documentation expected for the assessor. For example, this could include

contemporaneous and other written documentation of incoming requests and outgoing communications with the requestor. Also provide examples of approaches to work around data access limitations.

GROWING THE NETWORK

GNI gained new members across all constituencies in 2013.

In March, GNI welcomed Bolo Bhi, a free expression organization based in Karachi, Pakistan, and the Nexa Center for Internet & Society at Turin's Polytechnic University in Italy. Founded in November 2006, the Nexa Research Center for Internet and Society is an independent research center, focusing on quantitative and interdisciplinary analysis of the force of the Internet and of its impact on society. Bolo Bhi, which means 'Speak up,' in Urdu, is a not-for-profit geared towards advocacy, policy and research in the areas of Internet access, government transparency, legislation, digital security, privacy, gender rights and empowerment.

In May, Facebook became the sixth company to join GNI. "Advancing human rights, including freedom of expression and the right to communicate freely, is core to our mission of making the world more open and connected," said Elliot Schrage, Vice President of Communications, Marketing and Public Policy at Facebook. "We're pleased to join GNI and contribute to its efforts to shed a spotlight on government practices that threaten the economic, social and political benefits the Internet provides."

In October, the following new companies, civil society organizations, investors, and academics joined GNI:

- Prodera Networks, which delivers Internet Intelligence solutions based on Deep Packet Inspection technology for fixed, mobile, and wireless network operators around the world.
- LinkedIn, the world's largest professional network with 238 million members in more than 200 countries and territories around the world, gained one-year observer status with GNI. In March 2014, LinkedIn converted to full membership and joined the GNI Board.

- PEN American Center, the largest center in the international network of PEN Centers. PEN has been a leading voice on behalf of writers and journalists around the world, and is now working to ensure that new technologies serve to advance, and not inhibit, free expression and creative freedom.
- Walden Asset Management, an investment manager with \$2.5 billion in assets under management for clients who seek to integrate environmental, social and governance analysis into investment decision-making, joined the investor constituency.
- EIRIS Conflict Risk Network also joined the investor constituency. Conflict Risk Network includes institutional investors, financial service providers and related stakeholders that are calling on corporate actors to fulfill their responsibility to respect human rights and to take steps that support peace and stability in areas affected by genocide and mass atrocities.
- Professor Philip N. Howard joined the academic constituency in his personal capacity. Howard is a professor in the Department of Communication at the University of Washington and in the School of Public Policy at the Central European University.

EFF departs GNI

In October, the Electronic Frontier Foundation announced that it was exiting GNI due to concerns regarding U.S. national security surveillance. We appreciate the contributions that EFF has made to GNI and we look forward to working with them outside our formal structure to protect rights online.

POLICY AND LEARNING

GNI and its members played an active role advocating for free expression and privacy rights online. Although responding to the surveillance issues arising from the Snowden disclosures became our highest policy priority during the second half of 2013, GNI facilitated policy engagement and shared learning among our participants on a variety of issues:

European Commission ICT Sector Guidance

GNI provided significant input into the ICT Sector Guidance on implementing the UN Guiding Principles, developed by the European Commission. We were also represented on the advisory group for this work.

Technology Sanctions

GNI participated in policy discussions in Washington, DC on the human rights impact of technology sanctions, and in June 2013 issued a statement commending actions by the U.S. and Canadian governments to ensure that sanctions do not prevent Iranian citizens from using information and communication technologies to communicate securely.¹⁵ In December, GNI contributed to a discussion of this issue with other experts and activists published by the New America Foundation.¹⁶

Intermediary Liability in India

India's IT Act, hurriedly amended in 2008 and updated with rules for Internet intermediaries in 2011, is ill suited to deal with ICT innovations such as social media and user-generated content. In April 2013, Jermyn Brooks travelled to India for meetings with GNI members, business and trade associations, and civil society groups. GNI is working on a series of publications addressing the Internet in India, to explore how freedom of expression and privacy can help to promote innovation and economic opportunity.

Events

GNI staff and board members engaged with governments, companies, and civil society at a wide range of international gatherings. Among the highlights from 2013:

- February, Jermyn Brooks spoke at "Internet 2013: Shaping policies to advance media freedom," a conference organized by the OSCE Representative on Freedom of the Media in Vienna Austria, at a session on the multi-stakeholder approach to Internet governance.
- In March, David Sullivan spoke at the 2013 Cyber Dialogue, hosted by CitizenLab at the Munk Center at the University of Toronto, as part of the panel "Policing Cyberspace: Debating who should do the policing and under what conditions."
- In April at the Stockholm Internet Forum in Sweden, Susan Morgan spoke at the opening panel discussion, "Internet Freedom in the global debate – mapping the state of play," featuring Swedish Minister of Foreign Affairs Carl Bildt.
- In June, Jermyn Brooks spoke at the meeting of the Freedom Online Coalition in Tunisia at a session on the UN Guiding Principles on Business and Human Rights.
- In October, GNI jointly organized a workshop at the Internet Governance Forum in Bali, Indonesia together with Index on Censorship and the Center for Strategic and Policy Analysis in Pakistan. The session, "Oppression Online: Rights and Restrictions on the Network," explored the social and economic impacts of national level ICT legislation and regulation as well as international telecom practices on human rights, particularly freedom of expression and privacy. John Kampfner moderated the discussion which also featured Lisl Brunner from the Telecommunications Industry Dialogue, U.S. Deputy Assistant Secretary of State for Democracy, Rights, and Labor Scott Busby,

¹⁵ <http://globalnetworkinitiative.org/news/global-network-initiative-welcomes-us-and-canadian-actions-enable-access-communications>.

¹⁶ <http://weeklywonk.newamerica.net/articles/do-we-need-to-reboot-our-sanctions-strategy/>

and representatives from civil society organizations from Latin America, Southeast Asia, and Europe.

- In November, Jermyn Brooks spoke at the Open Government Partnership Summit in London, UK, on new frontiers in open government and surveillance transparency and reform.
- On November 7-8 in Belgrade, Serbia, John Kampfner spoke at the Council of Europe Conference of Ministers on Freedom of Expression and Democracy in the Digital Age on Access to Internet and fundamental rights.
- In December in Berlin, Germany, David Sullivan spoke at a workshop organized by the German Commission for UNESCO Berlin on Freedom of Expression on the Internet.

Commentary

- In May 2013, Policy & Communications Director David Sullivan authored a post for Slate's Future Tense blog on the network shutdown in Syria and the wider trend around the world.¹⁷
- In July, David Sullivan authored a post for ThinkProgress, "How To Bring More Transparency to U.S. Surveillance Programs."¹⁸
- In November, in an op-ed for the Guardian Sustainable Business, Jermyn Brooks and David Sullivan argued that allowing companies to report on all requests is vital for a truly informed global debate.¹⁹
- In December, Jermyn Brooks authored a letter to the editor of the *Financial Times*, "GNI gets results on human rights."²⁰

17 See http://www.slate.com/blogs/future_tense/2013/05/09/internet_shutdowns_go_beyond_syria.html

18 See <http://thinkprogress.org/security/2013/07/03/2253791/transparency-surveillance-programs/>

19 See <http://www.theguardian.com/sustainable-business/tech-companies-disclose-government-requests>

20 See <http://www.ft.com/cms/s/0/9a52aaa0-6ef6-11e3-9ac9-00144feabdc0.html#axzz2y7Omnpm>

ABOUT GNI

Governance

The Board of Directors is responsible for the strategic direction and fiduciary operations of GNI.

At the start of 2013, GNI's Board extended its first term to ensure that there was continuity of the Board during the completion of the assessments of GNI's founding companies, Google, Microsoft and Yahoo.

GNI's Independent Chair, Jermyn Brooks, announced his intention to step down, promoting the formation of a search committee to oversee the recruitment of a new Independent Chair.

During 2013, members of the Board were:

Independent Chair

Jermyn Brooks

ICT companies

Steve Crown, *Microsoft*

Ebele Okobi, *Yahoo*

Matt Perault, *Facebook* (joined 2013)

Lewis Segall, *Google*

Murem Sharpe, *Evoca*

Civil Society organisations

Arvind Ganesan, *Human Rights Watch*

Leslie Harris, *Center for Democracy and Technology*

Robert Mahoney, *Committee to Protect Journalists*

Meg Roggensack, *Human Rights First*

Tad Stahnke, *Human Rights First* (following Meg Roggensack's departure from Human Rights First)

Investors

Bennett Freeman, *Calvert Group*
(GNI Board Secretary)

Adam Kanzer, *Domini Social Investments*

Academics and Academic Institutions

Colin Maclay, *Berkman Center for Internet and Society, Harvard University*

Rebecca MacKinnon,
New America Foundation, (personal capacity)

At the first Board meeting in 2014 GNI's second Independent Chair was confirmed following an election process involving GNI's full membership. The second Board was also confirmed after each of GNI's constituencies nominated and agreed their Board representatives.

The current members of GNI's Board are now:

Independent Chair

Mark Stephens, CBE

ICT Companies

Pablo Chavez, *LinkedIn*

Christine Chen, *Google*

Steve Crown, *Microsoft*

Ebele Okobi, *Yahoo*

Matt Perault, *Facebook*

Civil Society organisations

Arvind Ganesan, *Human Rights Watch*

Nuala O'Connor, *Center for Democracy and Technology*

Robert Mahoney, *Committee to Protect Journalists*

Open Seat

Investors

Bennett Freeman, *Calvert Group*
(GNI Board Secretary)

Sara Nordbrand, *Church of Sweden*

Academics and Academic Institutions

Eduardo Bertoni, *University of Palermo*

Deirdre Mulligan, *U.C. Berkeley School of Information*

2013 Financials

GNI is a non-profit organization exempt from federal income taxation under section 501c (3) of the Internal Revenue code. GNI's annual 990 submissions to the Internal Revenue Service (IRS) are available on our website.

GNI is funded by member contributions in addition to support from private foundations. Company membership fees are determined on a sliding scale according to revenue and other participants make a nominal contribution of between \$100 and \$1,000. GNI greatly appreciates the support it receives from the MacArthur Foundation.

During 2013 GNI had a shortfall in its income versus expenditure that required us to use some of our reserves.

2013 Financial Statement

PUBLIC SUPPORT & REVENUE:

Membership Fees – General	\$486,301
Membership Fees – Telecom Industry Dialogue	\$149,925
Interest Income	\$44
Total Public Support & Revenue	\$636,270

EXPENSES:

Salary & Benefits	\$296,355
Consultancy	\$148,758
Travel	\$98,343
Professional Fees	\$17,676
Office Supplies & Miscellaneous	\$14,208
Rent	\$26,043
Publications & Conferences	\$12,834
Administrative Support	\$32,458
Total Expenses	\$646,675

Decrease in Net Assets	(\$10,405)
Net Assets – Beginning	\$196,610
Net Assets – Temporarily Restricted	\$74,269
Net Assets – Ending	\$186,2050





Jermyn Brooks, Lisl Brunner, Susan Morgan, and David Sullivan

GNI Staff

Susan Morgan, *Executive Director*

David Sullivan, *Policy and Communications Director*

Lisl Brunner, *Telecommunications Industry
Dialogue Facilitator*

John Kampfner, *European Advisor*

2013 Intern: Imogen Stone

GNI appreciates the legal advice and support it receives from White and Case LLP and Dickstein Shapiro LLP and the support of key staff from the Center for Democracy and Technology including Ian Williams, Michael Grimes and Portia Wenz-Danley.

LOOKING AHEAD

Five years after it was founded, GNI has overcome many of its key early challenges: it has gained new company members, completed its first cycle of assessments, and begun to internationalize its membership. But the scope and scale of the surveillance revelations of 2013 have fundamentally changed the landscape of human rights in the ICT sector. In 2014, with a new Board of Directors in place, GNI will reflect on the strengths and weaknesses of the work it has accomplished during the past five years, from assessments to outreach, policy, and learning. Following a strategic review, the Board will consider recommendations for moving forward.

During 2014 GNI will also begin implementing a pilot engagement and complaints mechanism based

upon a framework developed with the business and human rights non-profit organization Shift. The pilot mechanism is intended to provide a means for affected parties to raise concerns if they believe that the commitments made under GNI have not been met, consistent with the UN Guiding Principles on Business and Human Rights.

Finally, the communications surveillance revelations of 2013 have demonstrated the importance of GNI's focus on collective action by its members to influence policy. Even in cases where companies are legally prohibited from acknowledging that they receive national security requests, there are ways for companies to challenge government overreach. This will be an increased area of focus for GNI in the future.

