# Global Network Initiative

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

# HIGHLIGHTS

GNI's key achievements from the past year include:

- **The first assessments of our three founding companies—Google, Microsoft, and Yahoo!—were conducted during 2011 and early 2012.** This report details that process and its preliminary conclusions and explains how the assessments will inform GNI's future work.

- **GNI gained nine new participant organizations from six countries.** New members include academic organizations, investors, and civil society groups from Argentina, Denmark, India, Sweden, the United Kingdom, and the United States. Two companies, Evoca and Websense, joined GNI in 2011, the first new corporate members since the formation of the initiative.

- **We increased our focus on policy engagement and learning.** We responded at key moments to events in Egypt, the United Kingdom, and the United States, raising our collective voice on issues ranging from intellectual property to intermediary liability. GNI hosted learning calls on topics including government jurisdiction over data and cloud computing and organized an "emerging issues" discussion series on account deactivation and content removal.

- **We produced original research on the human rights risks facing ICT companies.** We published "Protecting Human Rights in the Digital Age," a report by corporate responsibility consultancy BSR, and we commissioned a new research project on the interconnection of freedom of expression, privacy, law enforcement, and national security. As part of the research, we held discussion forums with governments, companies, and civil society in London, Washington, and New Delhi.

- **GNI presented at high-profile international fora**, including events at the European Parliament on human rights and the ICT sector and on Internet regulation and companies' self-governance. We participated in policymaking consultations with the United Nations, the Council of Europe, and the Organization for Economic Cooperation and Development (OECD). In September, GNI hosted its first workshop at the Internet Governance Forum in Nairobi, Kenya.

- **Senior government officials highlighted GNI in public statements**, including Dutch Foreign Minister Uri Rosenthal, European Commission Vice President Neelie Kroes, Swedish Minister of Foreign Affairs Carl Bildt, UK Foreign Secretary William Hague, and U.S. Secretary of State Hillary Rodham Clinton.

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# THE BENEFITS OF GNI MEMBERSHIP

## For companies:

- Build global public trust in your brand by demonstrating you care about users' rights around the world

- Manage company risk exposure and improve decision-making through GNI Principles, guidelines, and accountability

- Benefit from a unique opportunity to work through complex issues and learn in a safe space, gaining insight from other companies, civil society, investors, and academic participants

## For all stakeholders:

- Work with a unique coalition of experts on a pressing and complex global challenge

- Engage in public policy as part of a diverse coalition

- Demonstrate leadership in a critical area of social policy

- Build a global standard for corporate responsibility in the ICT sector

To find out more, go to **www.globalnetworkinitiative.org**

# MESSAGE FROM EXECUTIVE DIRECTOR SUSAN MORGAN

The human rights implications of information and communication technologies (ICTs) are in the global spotlight in an unprecedented manner. The catalytic role that technology has played in support of democratic aspirations in the Middle East and around the world is undeniable, but so too are the uses of technology by governments to aid in surveillance and the suppression of rights. We welcome the growing international consensus around business and human rights, as well as the collaborative efforts of some governments, companies, and civil society groups to promote an open Internet.

The Global Network Initiative (GNI) brings together companies, civil society organizations, investors, and academics to forge a common approach to these challenges. In a pivotal year, we:

- Pioneered the independent assessment of our founding companies—Google, Microsoft, and Yahoo!—on their implementation of the GNI Principles.

- Expanded our membership, gaining nine new participants in six countries, including companies from different areas of the ICT sector and civil society, investors, and academics from around the world.

- Contributed to global policy debates and the development of international standards on human rights and Internet governance.

- Raised our collective voice at key moments, from the Internet shutdown in Egypt to the battle over copyright legislation in the United States.

- Conducted cutting-edge research and real-time learning on free expression and privacy in the tech sector.

GNI builds upon similar efforts in other sectors that have come under scrutiny with regard to human rights issues. Our ambitions are substantial, reflecting the scale and scope of the challenges facing the ICT sector. Although we are pleased with our progress in terms of growth and internationalization, there is clearly a long way to go. We welcome feedback and constructive criticism as we continue our work.

This report sets out GNI's progress since our Inaugural Report, focusing on the difference we are making in seeding a global standard for free expression and privacy, helping companies to chart an ethical path forward, and using our collective voice to change policy and advance human rights worldwide.

Susan Morgan

# MESSAGE FROM INDEPENDENT CHAIR JERMYN BROOKS

After a year serving as the first independent chair of the GNI Board, I am pleased to report that GNI is making great progress with its multi-stakeholder approach to a demanding new area: the responsibilities of ICT sector companies for the human rights of their users. As companies ranging from telecommunications to web services grapple with the human rights implications of their work, they are recognizing the value of credible voluntary corporate action.

From my own previous experience in business and civil society, GNI has created something unique: a permanent dialogue among business, NGOs, investors, and academia as both a learning platform and a forum committed to finding solutions to human rights challenges in the fast-moving ICT world. It is therefore not surprising that GNI has also gained recognition from governments and international organizations worldwide as a model for how the ICT sector can proactively engage on free expression and privacy concerns. In 2011, GNI has grown both in size, with new members joining from Europe, India, and Latin America, and in maturity, with the founding companies undergoing the first-ever process of independent assessment of their work to date to implement the initiative's Principles, a crucial landmark.

As GNI is poised for further growth in 2012, it is important that we proactively prepare for the implications of the massive increases in mobile access across emerging economies. These will create huge opportunities for users, but will also trigger new challenges as governments attempt to manage and control newly connected populations. These issues can only be addressed through frank and inclusive dialogue among stakeholders.

In line with its growth, GNI has made progress on a very modest budget in professionalizing its organization and adding staff. Enormous thanks are due to the members of the Board, who have worked unstintingly at meetings to drive forward our initiative during the year, presented GNI's perspectives at numerous conferences, contributed to policy statements, and provided advice to non-member companies operating in difficult circumstances under autocratic regimes. Thanks also go to the Open Society Foundations and the MacArthur Foundation, which have provided critical funding and institutional support. Above all, thanks go to our small executive team, without whose efforts neither our expansion nor the assessment process could have been achieved.

Jermyn Brooks

# OUR WORK

The work of GNI gained momentum and global relevancy during 2011. The role of ICTs in connecting activists and catalyzing protest in the Middle East and North Africa has been well documented, as has regimes' use of these technologies to crack down on activists.[1] In the aftermath of revolutions in Tunisia, Egypt, and Libya, investigative journalists and activists found evidence that Western companies were among the vendors of the technologies used by states to monitor their citizens, raising new questions about these companies' human rights obligations.[2] These stories have prompted renewed interest in both the United States and Europe in regulatory measures around exports of ICT products and services.

The challenges of navigating the nexus of human rights and technology are too complicated for any single company or human rights activist to manage alone. GNI's comparative advantage is the pooled expertise and resources of its participants. In this report, we describe the highlights from the past year and key challenges for the future.

## I) Seeding a Global Standard for Free Expression and Privacy in the ICT Sector

GNI aims to set a global standard for the ICT sector on freedom of expression and privacy. This is a complex and dynamic challenge.

GNI is founded upon Principles on Freedom of Expression and Privacy that all its participants commit to uphold. These Principles are based on internationally recognized laws and standards for human rights, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Principles, as well as the accompanying Implementation Guidelines that set out in greater detail how participating companies will implement the Principles in practice, were the product of two years of extensive negotiations among the companies, civil society organizations, investors, and academics that culminated in the formation of GNI in 2008.

### Addressing Challenges Across the Sector

GNI addresses free expression and privacy risks for companies at all points along the ICT value chain, from manufacturers of hardware to providers of telecommunications and web services. To this end, GNI has been engaged in dialogue with companies across the ICT sector since its inception in 2008. To further this work and to highlight the issues that are faced across the sector, we commissioned "Protecting Human Rights in the Digital Age," a report by Dunstan Allison Hope of the corporate-responsibility consultancy BSR, which was published in February 2011.[3]

### Increasing Membership

GNI conducted extensive outreach around the world to raise awareness of our approach and expand our membership across all constituencies, gaining nine new participants in six countries. The two companies that joined GNI in 2011 are the first new corporate members since the formation of the initiative. In July, start-up company Evoca became the first non-founding company to join GNI, demonstrating that our Principles are relevant to newer firms as well as larger, established multinationals.

Evoca is a cloud-based voice-to-web service that makes it easy to record and publish anyone's voice. "Evoca is a platform for free expression, and so GNI is a natural fit for us," Evoca CEO Murem Sharpe said. "As an early stage web services company, we

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1. See Leila Hassanin, "Egypt's 25 January Revolution: The Role of the Internet and Mobile Technology in Social Resistance and Public Demonstrations," Global Information Society Watch 2011, available at http://www.giswatch.org/en/2011.
2. In particular see Bloomberg News "Wired for Repression" series, available at http://topics.bloomberg.com/wired-for-repression, and the Wall Street Journal "Censorship, Inc." series, available at http://topics.wsj.com/subject/C/censorship-inc/6743.
3. Dunstan Allison Hope, "Protecting Human Rights in the Digital Age: Understanding Evolving Freedom of Expression and Privacy Risks in the Information and Communications Technology Industry," BSR, February 2011, available at http://www.globalnetworki-nitiative.org/cms/uploads/1/BSR_ICT_Human_Rights_Report.pdf.

employ software and web services of other companies operating in the cloud for customer service, telecommunications, data storage and streaming, payment, and other key functions. We look forward to engaging with these suppliers so that in turn we can assure our subscribers and licensees of our commitment to their rights to free expression and privacy."

In December, Websense, a global provider of web, data, and e-mail security, became the fifth company to join GNI. Websense has a strict policy against selling to governments that censor or Internet service providers (ISPs) that carry out official censorship, except in the case of prohibiting child pornography or access to pornography by minors. Michael Newman, Websense's general counsel and interim chief financial officer, said: "We believe that companies have an obligation to ensure the appropriate use of their technology and we are committed to the principle that broad public access to information and the freedom to create and communicate ideas are critical to the advancement of knowledge, economic opportunity, and human potential."

GNI's new civil society organization, investor, and academic members are:

- The Centre for Internet & Society, based in Bangalore, India. A technology policy research institute, CIS brings to GNI in-depth expertise on global Internet governance as well as online freedom of expression and privacy in India.

- The Center for Studies on Freedom of Expression and Access to Information at the University of Palermo School of Law (CELE) in Buenos Aires, the first GNI member from Latin America.

- The Church of Sweden, which holds investments of around $760 million that are managed according to principles of responsible investment.

- Folksam, a leading Swedish investor with $38 billion in assets under management and the first non-founding investor to join GNI.

- Index on Censorship, the influential British free speech campaign group and publisher, the first non-founding NGO to join.

- International Media Support (IMS), an international NGO based in Denmark that works to support local media in countries affected by armed conflict, human insecurity, and political transition.

- Movements.org, a US-based NGO that identifies, connects, and supports grassroots digital activists from around the world with training and regional summits and acts an online hub for best practices.

## Getting the Message Out

GNI staff, board members, and participants promoted the initiative in the media and at events around the world. Among the highlights from 2011:

- GNI participated in multiple events at the European Parliament. In May, Executive Director Susan Morgan presented on the interplay of human rights and ICTs. In December, Independent Chair Jermyn Brooks was a featured speaker on a panel examining Internet regulation and companies' self-governance.

- Susan Morgan spoke at "Yahoo! and YouTube: Balancing Human Rights and Business," an event at the Carnegie Council for Ethics in International Affairs in New York.[4]

- In September, GNI hosted its first workshop at the Internet Governance Forum in Nairobi, Kenya, entitled "The Business of Human Rights: Corporate Responsibility and ICTs." The workshop featured panelists from GNI, Google, the U.S. State Department, and CELE.[5]

- As entrepreneurs, engineers, and activists gathered in San Francisco for the inaugural Silicon Valley Human Rights Conference in October, GNI's work was "at the center of debate," according to *Politico*, and highlighted as a crucial component of efforts to manage the human rights implications of new technologies.[6]

- GNI contributed a guest post to Witness's Video For Change blog responding to that organization's report "Cameras Everywhere."

- In reaction to a column by Michael Skapinker in the *Financial Times*, Susan Morgan wrote a letter

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4.   See http://www.globalnetworkinitiative.org/newsandevents/GNI_at_the_Carnegie_Council.php.
5.   See http://www.intgovforum.org/cms/component/chronocontact/?chronoformname=Workshops2011View&wspid=438.
6.   See Politico Morning Tech newsletter, available at http://www.politico.com/morningtech/1011/morningtech335.html, and http://www.globalnetworkinitiative.org/newsandevents/GNI_at_the_Silicon_Valley_Human_Rights_Conference.php.

to the editor, "Collaborating over Human Rights."[7] The letter responded to Skapinker's comments on the risks facing Internet and telecommunications companies by noting that "those companies seeking an ethical course of action need not act alone" and referencing the work of GNI.

### Engaging with Companies

GNI's Governance Charter allows for the development and adaptation of the Implementation Guidelines as we receive feedback from stakeholders and as new issues emerge.[8]

In 2011, GNI has continued to pursue dialogue across the ICT sector, but also increased engagement with specific telecommunications firms. GNI believes that the time is now right to address issues in this part of the sector. Our goal in doing so is to demonstrate the value of GNI membership for these companies.

Questions around "dual-use" hardware technologies, such as routing and network equipment that can be used for censorship and surveillance purposes, continue to be a difficult challenge, with new legislation proposed in both the European Parliament and the US Congress that aims to restrict the export of these technologies to oppressive governments. These questions have been raised during GNI implementation dialogues, and we will continue to pool our expertise to explore ways forward.

### Providing Practical Recommendations for Companies, Governments, and Civil Society

There are legitimate reasons for companies, law enforcement agencies, and governments to cooperate in monitoring online activity, such as removing images of child exploitation or confronting fraud, terrorism, or crime. However, there are instances in which government requests can be overly broad, vague, or illegitimate, harming the human rights of users. Finding the balance between these priorities is not easy.

In late 2011, GNI commissioned a new research project to explore the interconnection of freedom of expression, privacy, law enforcement and national security and develop recommendations for corporate, government, and civil-society stakeholders. GNI is collaborating with Ian Brown of the Oxford Internet Institute and Douwe Korff of London Metropolitan University and has held discussion forums in London, Washington, and New Delhi.

## II) Helping Technology Companies Chart an Ethical Path Forward

GNI bridges the gap between corporate responsibility and accountability by offering a practical framework through which companies can implement the Principles. Its unique credibility is based upon the inclusion of stakeholders from civil society, academics, and investors and the transparency that comes from public reporting on the independent assessment process.

First, this section offers an update on implementation progress since the last report, including shared learning. Second, it reports on the findings of the inaugural independent assessments of GNI's three founding companies conducted during 2011.

### Implementation Updates

GNI's 2010 report detailed the steps taken by the three founding companies toward putting the Principles into action. During 2011, the companies continued implementation as they prepared for assessments. Highlights of the past year include:

#### GOOGLE

During the Internet shutdown in Egypt, described in more detail later in this report, Google worked together with engineers at Twitter and SayNow, a company that Google had just acquired, to develop Speak2Tweet, an application that allows anyone to tweet using only a voice connection.[9] This technology allowed Egyptians to communicate using social media during the shutdown, with thousands of spoken tweets posted in the following days.

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7.   See http://www.globalnetworkinitiative.org/newsandevents/GNI_Letter.php.
8.   See Governance Charter, available at http://www.globalnetworkinitiative.org/charter/index.php.
9.   See http://googleblog.blogspot.com/2011/01/some-weekend-work-that-will-hopefully.html and http://www.usatoday.com/tech/news/2011-02-04-google-egypt-twitter-tool_N.htm.

In 2010 Google built an online Transparency Report as a deterrent to censorship and to educate users and others. The company made enhancements to it during 2011. These include adding graphs for each region that show traffic patterns for all products in aggregate, as well as greater detail on the reasons why governments request content to be removed and on the percentage of user data requests that Google has complied with in whole or in part.[10] Google also began to disclose the number of users or accounts that are specified in those requests.[11]

### MICROSOFT

As reported last year, Microsoft faced a challenge in Russia regarding intellectual property rights enforcement actions against the media,[12] NGOs, and other civil society organizations. In collaboration with Human Rights First (HRF), Microsoft met in fall 2010 with affected individuals and gathered advice from them on both the challenge and the outlines of a response. Microsoft responded by creating a temporary, unilateral license for software already in use—and made this program broadly applicable to civil society organizations. Microsoft also participated with HRF in a Moscow session to announce and explain the program to Russian civil society organizations, and in meetings with Russian and US officials to describe the license program and oversight going forward.

Over the course of the past year, Microsoft and HRF have continued to collaborate regarding new cases of selective enforcement and their resolution. The partnership between Microsoft, HRF, and local Russian organizations enabled swift identification of cases, timely intervention by Microsoft to inform authorities of the license, and prompt resolution, including dismissal of charges and the return of seized computers and software. Microsoft and HRF continue to collaborate to ensure awareness of the program and to smooth the path for a transition to a permanent software donation program.

### YAHOO!

Yahoo! recognizes that the simple act of making one's voice heard is, for women around the world, itself a revolutionary act. In recognition of this, Yahoo!

launched the Change Your World series in Cairo, an event created to shine the light on women who are using the Internet and digital media to change the world and to identify areas where companies can use their technology and platforms to amplify women's voices. Moderated by noted journalist and activist Mona Eltahawy, the Cairo event brought together political activists, women's rights advocates, entrepreneurs, journalists, technologists and women leaders from across the Middle East and North Africa. Yahoo! will host a Change Your World event in Washington, DC on May 18, 2012, as well as in Brazil in the fall of 2012.

In October 2011, in response to the Flickr removal of images of purported members of Egyptian security forces, Yahoo! hosted a Visual Media Summit. The event convened a small group of company representatives, including legal and policy directors, technologists, and project managers, civil society actors, and scholars and practitioners to discuss issues of safety, privacy, and human rights in visual social media. Proposed next steps include working towards shared standards for policies and practices related to visual media and multi-stakeholder engagement to shape policy and educate users about the human rights issues implicated by the use of visual media.

### Shared Learning
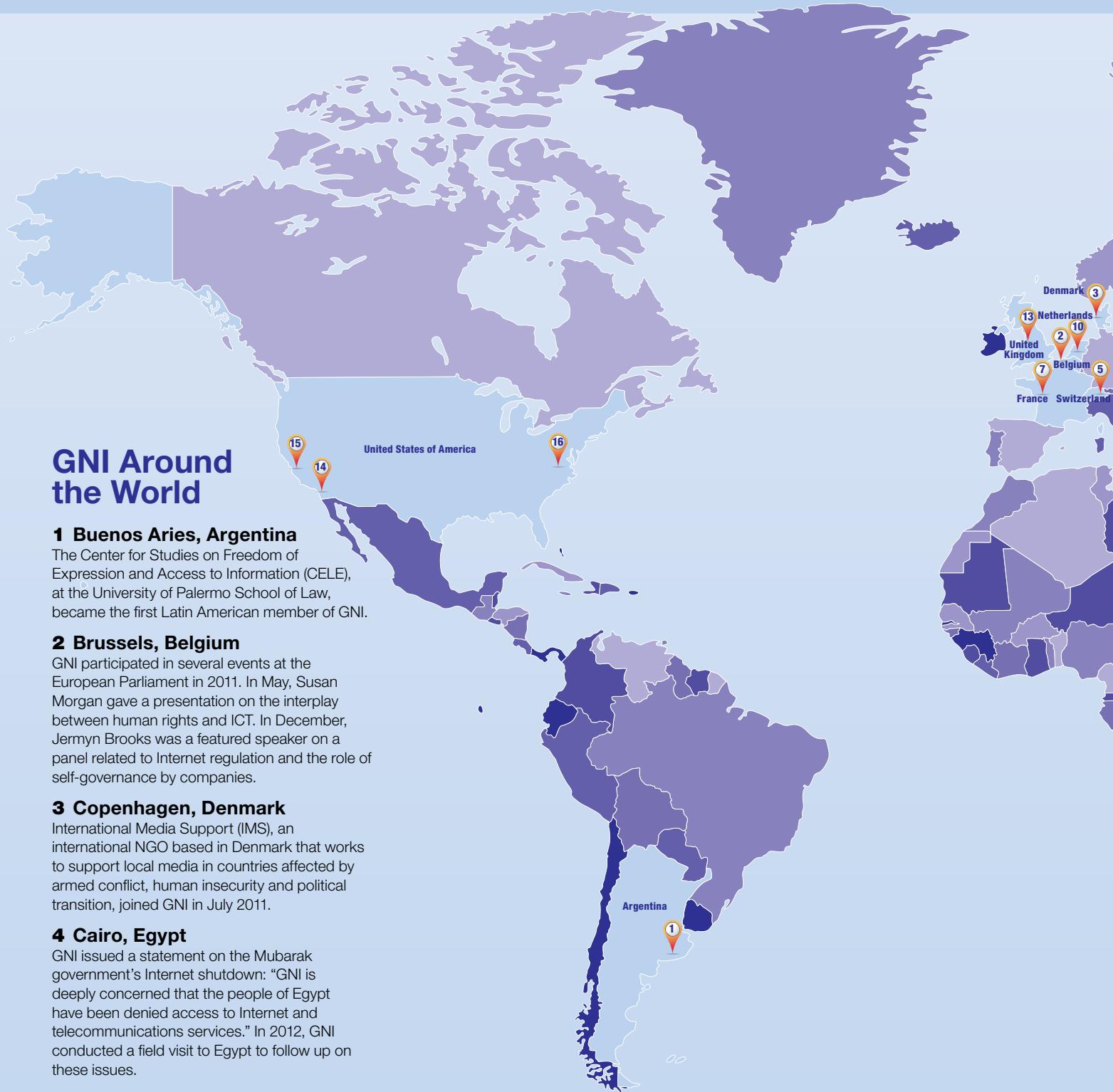
GNI provides opportunities for members to work through complex issues with other participants in a safe, confidential space. During 2011, GNI hosted learning calls on topics ranging from the challenges involved in implementing the Principles to questions of government jurisdiction over data, especially in the case of cloud computing.
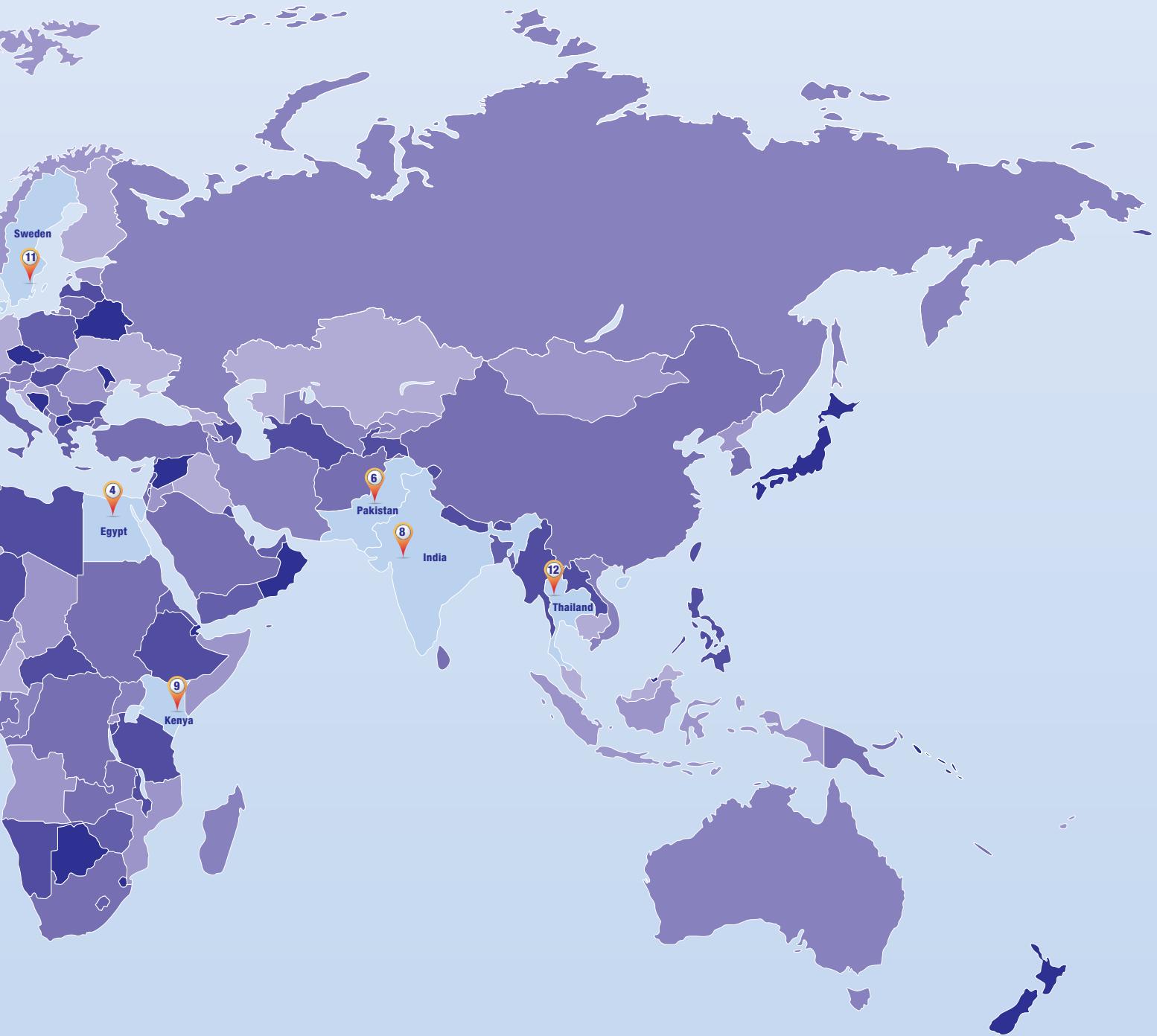
In addition to internal learning calls, GNI also organized an "Emerging Issues" discussion series on account deactivation and content removal by platforms that host user-generated content. Participants included both GNI members and external representatives from industry, civil society, the investor community, and elsewhere. Based in part on the learning series, two GNI members, the Center for Democracy and Technology and the Berkman Center at Harvard

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10.   See http://googleblog.blogspot.com/2011/04/real-time-traffic-graphs-for.html and http://googleblog.blogspot.com/2011/06/updated-and-more-detailed-transparency.html.

11.   See http://googleblog.blogspot.com/2011/10/more-data-more-transparency-around.html.

12.   See GNI Inaugural Report 2010, p. 19, available at http://www.globalnetworkinitiative.org/cms/uploads/1/GNI_annual_report_2010.pdf.

# GNI Around the World

### 1 Buenos Aries, Argentina
The Center for Studies on Freedom of Expression and Access to Information (CELE), at the University of Palermo School of Law, became the first Latin American member of GNI.

### 2 Brussels, Belgium
GNI participated in several events at the European Parliament in 2011. In May, Susan Morgan gave a presentation on the interplay between human rights and ICT. In December, Jermyn Brooks was a featured speaker on a panel related to Internet regulation and the role of self-governance by companies.

### 3 Copenhagen, Denmark
International Media Support (IMS), an international NGO based in Denmark that works to support local media in countries affected by armed conflict, human insecurity and political transition, joined GNI in July 2011.

### 4 Cairo, Egypt
GNI issued a statement on the Mubarak government's Internet shutdown: "GNI is deeply concerned that the people of Egypt have been denied access to Internet and telecommunications services." In 2012, GNI conducted a field visit to Egypt to follow up on these issues.

### 5 Geneva, Switzerland
GNI wrote to the UN Working Group on Business and Human Rights to propose that the issues of free expression and privacy in the ICT sector be a focus for the working group. GNI attended the first meeting of the Working Group in Geneva on January 20, 2012.

### 6 Islamabad, Pakistan
GNI issued multiple statements of concern when the Government of Pakistan issued a request for proposals (RFP) to build and implement a new system for Internet filtering capable of blocking "undesirable" content on the scale of up to 50 million URLs. Given the Pakistani government's previous use of Internet filtering, GNI encouraged companies not to respond to this RFP.

### 7 Paris, France
GNI participated in OECD meetings on the Internet economy and on the revised OECD guidelines for multinational corporations.

### 8 New Delhi, India
India became a focus country for GNI after the government issued new rules around intermediary liability for Internet companies in April 2011, which were followed by court cases brought against ICT companies over objectionable content. GNI held a research consultation in New Delhi in March 2012 and the Centre for Internet & Society became GNI's first Indian member organization.

### 9 Nairobi, Kenya
GNI hosted "The Business of Human Rights: Corporate Responsibility and ICTs," a workshop at the 6th Annual Internet Governance Forum 2011, held September 27-30 at the United Nations Office in Nairobi, Kenya.

### 10 The Hague, Netherlands
The Dutch Ministry of Foreign Affairs hosted a ministerial conference on Internet freedom in The Hague on December 8-9, 2011. GNI was mentioned in remarks by Dutch Foreign Minister Uri Rosenthal, U.S. Secretary of State Hillary Rodham Clinton, and EC Vice President for the Digital Agenda Neelies Kroes. GNI Board members, including Independent Chair Jermyn Brooks, spoke at the event.

Sweden

**11**

**4**

Egypt

**6**

Pakistan

**8**

India

**12**

Thailand

**9**

Kenya

### 11 Stockholm, Sweden

Swedish investors Folksam and the Church of Sweden joined GNI in 2011. In November, Sweden's Ministry of Trade hosted a meeting with technology companies and other stakeholders on Internet freedom.

### 12 Bangkok, Thailand

Thailand has been a major focus of concern around intermediary liability, with a number of high-profile prosecutions under its Computer Crimes Act and "lesé majesté" laws forbidding criticism of the royal family, including the case of Chiranuch Premchaiporn, editor of the Prachatai. com website. In 2012, GNI will work together with participant organizations to engage on these issues.

### 13 London, United Kingdom

In April, UK-based Index on Censorship became the first non-founding civil society organization to join GNI. In August, GNI wrote to the UK Home Secretary regarding discussions due to take place between the Government and ICT companies following the civil unrest in London and elsewhere. In November, GNI held a consultation with a broad range of companies, government agencies, civil society organizations, and other stakeholders to begin our research project on balance points among free expression, privacy, national security, and law enforcement.

### 14 San Diego, USA

Websense, a San Diego-based global provider of web, data, and email security, became the fifth company to join GNI in December.

### 15 San Francisco, USA

As entrepreneurs, engineers, and activists gathered for the inaugural Silicon Valley Human Rights Conference on October 25-26, 2011, GNI's work was repeatedly highlighted as a crucial component of wider efforts to manage the human rights implications of new technologies.

### 16 Washington, DC, USA

On November 15, 2011, GNI wrote to the House Judiciary Committee to express its concerns about the Stop Online Piracy Act. In December, GNI participated in the US-China Internet Industry Forum. GNI also hosted a research consultation in Washington on January 20, 2012.

University, published a report, "Account Deactivation and Content Removal: Guiding Principles and Practices for Companies and Users," in September 2011.[13]

GNI members also benefit from an informal network, with companies able to call upon civil society, investors, and academics, and vice versa, for discussions and to share information relating to human rights issues in ICTs.

## Independent Assessment

GNI offers a set of publicly available Principles and Implementation Guidelines, developed and supported by diverse stakeholders and based on international human rights standards. While policy engagement and learning are central GNI objectives, accountability and credibility have been key considerations driving the development of GNI from the outset, resulting in a process of independent assessment of company efforts to implement the Principles. This section outlines our progress on the assessments and how they will inform GNI's future work.

Information on the GNI assessment process is publicly available on our website in our Governance Charter and our Governance, Accountability, and Learning Framework. The assessment process is split into three phases:

- Phase I consisted of self-reporting by the companies, as detailed in GNI's 2010 report.

- Phase II, described below, is an independent assessment of the policies, processes, and procedures that companies are putting in place to implement the GNI Principles.

- Phase III will look at specific case examples to understand how the implementation is working in practice.

## The Phase II Assessments

The first Phase II assessments of our three founding companies, Google, Microsoft, and Yahoo!, were conducted during 2011 and early 2012. The development of the assessment process—the first of its kind—was challenging. We have approached this

# ASSESSMENT TEMPLATE

The assessment template required examination of the following:

### Responsible Company Decision-Making

- Board review, oversight, and leadership

- Human rights impact assessments

- Partners, suppliers, distributors

### Integration into Business Operations

- Structure

- Procedures

- Employees

- Complaints and assistance

### Freedom of Expression

- Government demands, laws, and regulations
- Communication with users

### Privacy

- Data collection

- Government demands, laws, and regulations

- Communication with users

task conscious of the fact that it would necessarily be a learning process, requiring the dedicated work of each of our constituencies, and that our efforts would evolve and strengthen over time.

The Phase II assessment process is a major step forward for GNI. For the first time, third-party assessors received unprecedented access to these ICT

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13. Erica Newland, Caroline Nolan, Cynthia Wong, and Jillian York, "Account Deactivation and Content Removal: Guiding Principles and Practices for Companies and Users," The Berkman Center for Internet & Society and The Center for Democracy & Technology, September 2011, available at http://cdt.org/report/account-deactivation-and-content-removal-guiding-principles-and-practices-companies-and-users.

sector companies to assess their policies and processes related to government requests affecting free expression and privacy rights.

The GNI Board approved three core documents to guide the Phase II assessment process:

1.  Independence and competency criteria, which set out the expectations for organizations conducting the Phase II assessments.

2.  An assessment template, which guided the process, including the preparation of a company report for the assessors outlining the steps taken to implement the Principles, and the subsequent work of the assessor.

3.  A reporting framework that lays out the expectations for the assessor's report.

A summary of these documents is available on the GNI website.

Using the independence and competency criteria, and in consultation with GNI, the companies each appointed their assessors. The assessors met with GNI's Board at the beginning of the assessment process and after their reports were prepared and periodically with GNI's Executive Director.

Three assessors were selected for the Phase II assessment: law firm Foley Hoag LLP, whose corporate social responsibility practice conducted the work, and accounting/consulting firms KPMG AG and PricewaterhouseCoopers LLP. The selection of assessors from different professional fields allowed GNI to learn from varying approaches within the guidance provided. GNI's purpose in the Phase II Assessment was to determine whether the companies had the systems, policies and procedures in place to support the implementation of the Principles within their organization. As an initial set of assessments, these were not audits or attestations by the assessors and did not result in the issuance of an opinion.

The assessors have provided valuable feedback to GNI and the companies on a number of aspects of the process that will be used in future Phase II assessments and incorporated into GNI's development of Phase III.

Each company prepared a confidential report for the assessor, based on the template provided by GNI. Upon completion of each assessment, a report from the assessors to each company was shared by the company with GNI's Executive Director and Independent Chair. GNI's Board received redacted versions of the reports to facilitate discussion of the outcome of the assessments at the February 16, 2012, Board meeting.

## GNI'S PRINCIPLES

**The GNI Principles establish a framework to provide direction to ICT companies on freedom of expression and privacy.**

**Participating companies commit to seek to avoid or minimise the impact of government restrictions on the freedom of expression and privacy rights of their users when confronted by government demands inconsistent with international standards. Participating companies implement the Principles by adopting responsible policies, procedures, and processes.**

**The Principles are publicly available on GNI's website.**

## GNI's Reporting on the Phase II Assessments

In each company the commitments made in joining GNI contributed to enhanced policies and procedures relating to freedom of expression and privacy. Although each company is taking its own approach to implementation, all have enhanced existing policies and procedures and created new processes as steps toward full implementation. The companies found that the use of independent assessors offered valuable learning opportunities in refining their approach to implementing GNI's Principles.

GNI noted that the assessment reports indicated the following:

- The companies have processes to review government requests related to freedom of expression and privacy.

- There is senior-level oversight of freedom of expression and privacy issues.

- The companies are conducting human rights impact assessments to identify circumstances when freedom of expression and privacy may be jeopardized or advanced, and the development of appropriate risk mitigation strategies may be needed.

- The companies are communicating with staff on human rights issues and offering related training.

- Where they have operational control, the companies have started to apply GNI's Principles to relationships with partners, suppliers, and distributors established since the formation of GNI.

Each company's assessment produced different recommendations. The list below illustrates the types of recommendations that were made for companies to consider:

- Engage more directly with human rights groups and expert stakeholders to increase capacity when conducting risk assessments.

- Improve the sharing of information on freedom of expression and privacy issues and trends to help public policy engagement with governments on the most concerning issues.

- Document the process for conducting human rights impact assessments, updating it as new policy or legislative developments are identified.

- Begin to review the efficacy of training information on freedom of expression and privacy risks.

- Taking a risk-based approach, review the policies procedures and activities of vendors whose contracts were in place prior to the formation of GNI.

The assessors provided feedback for GNI that we will consider in our future work:

- Develop recommendations around specific training for Board Directors on freedom of expression and privacy.

- Develop recommendations regarding information sources for companies when conducting human rights impact assessments.

- Develop recommendations regarding the review of vendor contracts in place before GNI.

- Consider how GNI members can collectively provide guidance to companies when they are responding to specific requests in a short timeframe.

- Develop recommendations on specific disclosures companies should make to users regarding corporate policies and procedures for responding to government demands to disclose personal information.

A number of issues emerged during the Phase II assessments. One issue that had already been identified in GNI's Governance Charter was the recognition that companies may be prevented from disclosing certain information by law, or may choose not to disclose information in order to preserve attorney-client privilege or protect trade secrets. Having met with the assessors and reviewed the reports, GNI's Board concluded that despite these challenges the assessments were rigorous and credible.

The Board recognized the need to preserve attorney-client privilege and protect trade secrets, but noted that the assessment process could be improved in the future by developing clearer guidance on the information that should be available in the reports to the full Board.

The assessment process also generated useful feedback on the assessment template, including a recommendation for more specific definitions of terms

to support greater comparability between the reports of each company. Examples of this include specific definitions for findings, observations, and recommendations. GNI will consider revisions to the assessment template based on this feedback.

Moving forward, GNI will give significant thought to how it adjusts its processes for future assessments including reviewing the process of Board oversight of the assessments and consideration of who has access to confidential reports.

### The Phase III Assessment Explained

Whereas Phase II focused on assessing the existence of policies and procedures that companies have adopted to implement the GNI Principles, Phase III will examine how these mechanisms are deployed in practice.

We are incorporating the learning from Phase II into the development of Phase III. Phase III assessments are due to begin in late 2012 and will be carried out by assessors accredited by GNI's Board. GNI will place advertisements asking for organizations to register their interest in becoming accredited assessors and setting out the relevant competency and independence requirements. After accreditation is complete, GNI staff will then work with the assessors to prepare them for the process.

The expectation is that the Phase III assessments will be completed in the first half of 2013. Although this is a few months later than planned, GNI's Board decided that incorporating the learning from Phase II was sufficiently critical to justify this extra time. Once Phase III is complete, GNI will report on it.

## III) Using Our Collective Voice to Change Policy and Advance Human Rights Worldwide

GNI's Principles commit our participants to "engage governments and international institutions to promote the rule of law and the adoption of laws, policies and practices that protect, respect and fulfill freedom of expression and privacy." Our diverse expertise gives GNI's collective voice an authority that is more than the sum of each individual contributor. In 2011, we increased our policy engagement using a twin-track approach: We responded at key moments to events in specific parts of the world, and we engaged in international fora to help shape emerging norms around freedom of expression and privacy.

### Internet Shutdown in Egypt

Following the fall of the Ben Ali regime in neighboring Tunisia and facing growing protests organized in part online, the Egyptian government of Hosni Mubarak took the nearly unprecedented step of shutting down public access to the Internet and mobile communications on January 28, 2011. The same day, GNI issued a statement[14] expressing deep concern about the actions of the Egyptian government and the implications for companies:

**"Companies can find themselves under duress from governments to operate in ways that go beyond legally accountable law enforcement activities. In these circumstances, a valuable first step for companies is to be transparent and have human rights principles in place to govern their response."**

The Egyptian crisis highlighted the role of ICT companies—telecommunications companies in particular—in responding to governments during crises and elevated the visibility of this corporate responsibility issue during 2011.[15] To follow up, GNI staff and Board members conducted a field visit to Egypt in early 2012.

### Social Media and Unrest in London

From August 6-10, 2011, following a police shooting in the Tottenham neighborhood of north London, rioting, looting, and arson rapidly spread across areas of Britain's capital, as well as other cities in the United Kingdom. In an August 11 speech to Parliament, Prime Minister David Cameron called

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14. See http://www.globalnetworkinitiative.org/newsandevents/Global_Network_Initiative_Statement_on_Internet_Shutdown_in_Egypt.php.

15. Luke Allnut, "Vodafone in Egypt: How tech companies can uphold, not violate, human rights," Christian Science Monitor, February 22,2011, available at http://www.csmonitor.com/Commentary/Opinion/2011/0222/Vodafone-in-Egypt-How-tech-companies-can-uphold-not-violate-human-rights.

for police to be able to shut down online social networking applications.[16] In response to these events, on August 24 GNI wrote to British Home Secretary Theresa May about the discussions between the government and companies in the ICT sector.[17] From the letter:

**"Criminality and violence deserve both condemnation and prosecution under the full extent of the law. However when considering next steps, and in particular the development of any specific proposals relating to communications technology and social media, we urge a Government response that protects legal due process and internationally recognized human rights and free speech norms."**

In the aftermath of the riots, technology companies were called before the Home Affairs Select Committee for hearings on the relationship between social media and mobile technology and law enforcement.[18]

The British government had already been pursuing international engagement on Internet-related issues, culminating in the London Cyber Conference in November 2011, at which the Foreign & Commonwealth Office convened representatives from 86 countries, as well as government and civil society groups. Foreign Secretary William Hague mentioned GNI in his closing remarks. In December, Minister of State for Foreign Affairs Jeremy Browne, in an article for the *Huffington Post*, said of GNI: "It is currently one of the few initiatives that seeks to guide companies on Internet freedoms, and I am encouraging more UK companies to join."[19]

## Intellectual Property in the United States

In late 2011, legislation aiming to curb copyright infringement and protect intellectual property on the Internet was introduced in the U.S. Congress.[20] Concerned about dangerous unintended consequences for freedom of expression and economic innovation around the world, GNI addressed the House Judiciary Committee in an Open Letter on Freedom of Expression, Intellectual Property and H.R. 3261, the Stop Online Piracy Act.[21] From the letter:

**"In shaping this legislation, we urge Congress to ensure that free speech and due process rights of individuals are respected, and to shape a regime worthy of imitation and that Congress would be comfortable having mirrored by other governments."**

Rising concern about SOPA and its companion legislation in the Senate, the Protect IP Act (PIPA), culminated in an outpouring of protest in mid-January 2012, with many popular websites going dark in protest or encouraging users to contact their representatives in Congress. After both bills' progress was halted, GNI issued a statement urging a more inclusive approach to balancing concerns about intellectual property with free expression considerations.[22]

## International Policy Dialogues

An encouraging development during 2011 was the increasing number of countries that are considering free expression and privacy rights in the development of national and international policy. Examples of this include export controls under review in Europe and

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16. Eric Pfanner, "Cameron Exploring Crackdown on Social Media After Riots," The New York Times, August 11, 2011, available at http://www.nytimes.com/2011/08/12/world/europe/12iht-social12.html?_r=1&scp=13&sq=Internet%20Censorship&st=cse.
17. See http://www.globalnetworkinitiative.org/newsandevents/open_letter.php.
18. Financial Times, "Twitter, Facebook and RIM face more questions from British MPs over riots," http://blogs.ft.com/fttechhub/2011/09/home-affairs-committee-riots/#axzz1kgYUfI2Z
19. Jeremy Browne, "Human Rights Day: Many People Are Still Denied the Most Basic Human Rights on a Daily Basis," Huffington Post, December 10, 2011, available at http://www.huffingtonpost.co.uk/jeremy-browne/human-rights-day-many-peo_b_1139080.html.
20. For more on this issue see http://cdt.org/issue/digital-copyright.
21. See http://www.globalnetworkinitiative.org/cms/uploads/1/GNI_SOPA_letter_11.15_2.pdf.
22. GNI SOPA/PIPA statement, available at http://www.globalnetworkinitiative.org/newsandevents/GNI_Statement_on_Protecting_Intellectual_Property_and_Upholding_Free_Expression_and_Innovation_Online.php

the United States, proposals to integrate the free flow of information online into consideration of international trade, and support for dissidents and bloggers living under authoritarian regimes.

Particularly noteworthy was the formation, at the December 2011 Freedom Online ministerial conference in the Netherlands, of a coalition of 14 countries committed to defending online freedom. At this meeting, US Secretary of State Clinton described GNI as "a growing forum where companies can work through challenges with other industry partners, as well as academics, investors, and activists."[23] European Commission Vice President for the Digital Agenda Neelie Kroes also identified GNI as "a possible model" for industry self-regulation, and GNI board members and participants made remarks.[24]

Alongside these positive developments are a number of proposals with more worrisome implications for Internet governance. One example is the proposal for an Internet code of conduct put forward at the UN General Assembly by China, Russia, Uzbekistan, and Tajikistan.[25] A second is the proposal by India, Brazil, and South Africa to create a new global body located within the UN system to oversee Internet policymaking.[26]

GNI participated in a number of international policy dialogues. In February, we hosted a consultation with Frank La Rue, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Contributions from GNI participants were reflected in La Rue's 2011 Report to the Human Rights Council, which highlighted the right to freedom of expression on the Internet.[27] Following this report, Sweden, on behalf of 41 countries, led the submission of a Freedom of Expression on the Internet Cross-Regional Statement to the UN Human Rights Council.[28] GNI also provided input into consultations held by the Council of Europe and welcomed the reference to human rights and Internet freedom in the revised OECD Guidelines for multinational corporations, as well as the provisions on intermediary liability that were incorporated into the Recommendation on Principles for Internet Policy Making adopted by the OECD Council in December 2011.[29] In January 2012 GNI participated in the UN Working Group on Business and Human Rights in Geneva.

23. Hillary Rodham Clinton, "Conference on Internet Freedom," 9 December 2011, available at http://www.state.gov/secretary/rm/2011/12/178511.htm.

24. Neelie Kroes, "ICT for democracy: supporting a global current of change Freedom Online – Joint Action for Free Expression on the Internet," 9 December 2011 available at http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/866&format=HTML&aged=0&language=EN&guiLanguage=en.

25. See http://blog.internetgovernance.org/pdf/UN-infosec-code.pdf

26. See http://blog.internetgovernance.org/blog/_archives/2011/9/17/4901669.html.

27. Special Rapporteur to the Commission on Human Rights (CHR) and Human Rights Council (HRC), "Report of the Special Rapporteur to the General Assembly on the right to freedom of opinion and expression exercised through the Internet," A/66/290, available at http://www.ohchr.org/Documents/Issues/Opinion/A.66.290.pdf.

28. http://www.regeringen.se/sb/d/14186/a/170565

29. "OECD Council Recommendation on Principles for Internet Policy Making," 13 December 2011, available at http://www.oecd.org/dataoecd/11/58/49258588.pdf.

# THE FUTURE OF GNI

2011 has been a pivotal year for GNI. We increased our membership, began to demonstrate the potential of multi-stakeholder collaboration around learning and policy, and pioneered the independent assessment of our member companies as a means of ensuring accountability. Still, much work remains to be done.

## Seeding a Global Standard for Free Expression and Privacy in the ICT Sector

In 2012, we are poised for growth, continuing conversations with companies from around the world and across the ICT sector. In particular, we have established an observer status option for a limited number of companies who are actively considering joining GNI and interested in learning more about our approach. Observer companies will have the opportunity to learn how GNI's Principles are implemented and see more closely how the organization works for a nonrenewable 12-month period. Our key objectives for 2012 include:

- Increasing GNI's membership across all constituencies, with a focus on new members in developing countries and emerging markets.

- Deepening GNI's relationships with companies across the ICT sector.

## Helping Technology Companies Chart an Ethical Path Forward

The development of Phase III of the assessment process will be a key priority in 2012. As GNI accredits assessors and the founding companies prepare for Phase III, we have also commissioned a study to inform the development of a public engagement process that would enable the initiative to

seek feedback from a broad set of stakeholders in a transparent and structured manner. In 2012, planned activities include:

- Carrying out the first Phase III assessments of our founding companies to see how implementation of the Principles is working in practice.

- Working with new company members on the issues and challenges they identify.

## Using our Collective Voice to Change Policy and Advance Human Rights Worldwide

As GNI's membership grows, so too do the opportunities to utilize the expertise and influence of its participants in policy engagement around the world. During 2012, we will dedicate time for shared learning and policy debates at Board meetings that will be open to all full members and observers. Policy priorities will flow from areas of consensus among members; issues surrounding intermediary liability in Thailand are one key priority that has already been identified. In June 2012, we will hold GNI's first Multi-Stakeholder Learning Forum in Washington, inviting participants from around the world.[30] The forum will include public dialogue on GNI's Principles and shared learning from implementation; the launch of our research report on balancing free expression, privacy, national security, and law enforcement; and private, confidential dialogue dialogue between GNI members relating to human rights issues in ICTs.

- Increasing our policy engagement with governments on freedom of expression and privacy.

- Dedicating time at GNI Board meetings to shared learning and policy debates with all GNI participants, and holding our first Multi-Stakeholder Learning Forum.

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30.   See Implementation Guidelines for more on this activity.

# ABOUT GNI

## Board of Directors

GNI's Board of Directors functions to further the Principles and ensure that the organization's work fulfills GNI's vision. In 2011, GNI appointed Independent Chair Jermyn Brooks. Jermyn serves as Chair of Transparency International's (TI) Business Advisory Board and was Executive Director and Chief Financial Officer of TI from 2000 to 2003. He joined TI after a career with PricewaterhouseCoopers LLP (PwC), which saw him elected worldwide chairman of the firm in 1997. In his time at PwC, he championed the introduction of corporate social responsibility issues into the firm's strategies.

The current members of GNI's Board are:

## Independent Chair
Jermyn Brooks

## ICT Companies
Steve Crown, *Microsoft*

Ebele Okobi, *Yahoo!*

Lewis Segall, *Google*

Five seats remain open for future member companies.

## Civil Society Organizations
Arvind Ganesan, *Human Rights Watch*

Leslie Harris, *Center for Democracy and Technology*

Robert Mahoney, *Committee to Protect Journalists*

Meg Roggensack, *Human Rights First*

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

Adam Kanzer, *Domini Social Investments*

## Academics and Academic Organizations
Colin Maclay, *Berkman Center for Internet and Society, Harvard University*

Rebecca MacKinnon, *New America Foundation* (personal capacity)

Board members serve three-year terms, with each constituency nominating and selecting its members. 2012 will be the final year of the Board's first term. The following Board Committees carry out its work:

- Executive and Management

- Governance and Accountability

- Outreach and Communications

- Policy and Learning

The Policy and Learning and Outreach and Communications committees are open to all GNI participants, providing multiple avenues for members who do not serve on the Board to make substantial contributions to our work.

## Institutional Capacity

GNI's institutional capacity grew significantly during 2011, with the addition of new staff and broadened sources of funding.

GNI is funded by contributions from its members and through support from private foundations. Company membership fees are determined using a sliding scale based upon annual revenues, while other participants pay a nominal fee of $100 to $1,000. In 2011, GNI also received a capacity-building grant from the Open Society Foundations (OSF) and a grant from the MacArthur Foundation to support development of Phase III of the assessment process.

In June 2011, GNI became an independent nonprofit organization, receiving its 501(c)3 tax-exempt status and separated administratively from the Center for Democracy and Technology (CDT). We continue to appreciate the support of key CDT staff, including Reid Day, Cyrus Nemati, and Portia Wenze-Danley.

In September, GNI added Policy and Communications Director David Sullivan, the second full-time staffer. GNI also benefitted from the support of White & Case LLP deferred associate Bruce Wells and interns Olivia Meng He, Joe Rosner, and Phil Zager. GNI is grateful for the legal advice and support it has received from White & Case LLP.

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