

Testimony of

Nicole Wong

May 20, 2008

Testimony of Nicole Wong, Deputy General Counsel, Google Inc.
U.S. Senate Judiciary Committee Subcommittee on Human Rights and the Law
Hearing on "Global Internet Freedom: Corporate Responsibility and the Rule of Law"

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Chairman Durbin, Ranking Member Coburn, members of the subcommittee.

Thank you for inviting me to discuss with you the issue of internet freedom and Google's efforts to maximize online freedom of expression and access to information. My name is Nicole Wong, and I'm Google's Deputy General Counsel. In that role, I am responsible for helping to address limits on free speech that Google faces around the world.

Google's commitment to freedom of expression is at the core of everything we do. Our company's mission is to organize the world's information and make it universally accessible and useful. We provide internet users with products like our search engine, Google Maps, and YouTube that let them quickly and easily share, receive, and organize digital information. In theory, any person - regardless of who she is or where she lives - can use these free products that enable free expression and information sharing.

The internet continues to be a powerful medium for propagating political opinions, religious views, and other core speech. And that trend has been accelerating. The estimated number of blogs has grown from fewer than two million in 2004 to more than 110 million this year. Expression through online video has become so popular that ten hours of videos are uploaded to YouTube every minute, and hundreds of millions of videos are watched on the site everyday. Even in countries where governments engage in heavy censorship, the internet has nevertheless proven to be an effective tool for sharing information and promoting political change.

However, the freedom of expression that's generated by blogs, social networks, video sharing sites, and other speech tools available on the internet is not embraced universally. As a global internet company operating in more than 150 countries - all with different national laws and cultural norms - we face daily challenges to our goal of making sure that the internet is a global platform for free expression.

With that in mind, I would like to make four main points in my testimony this morning:
First, our products are above all else platforms for free expression and access to information.

Second, a wide range of legal and cultural barriers around the world regarding the free flow of information impact our products and services every day.

Third, we are working hard to respond to these challenges through policies and technology that promote free expression.

And finally, we believe that governments around the world can and must do more to effectively reduce internet censorship and promote free expression online.

Google's products are open platforms for free expression

Most of our products - offerings like Blogger (our blogging service), Groups (our online bulletin board), orkut (our social networking site), Google Apps (our suite of collaborative productivity tools), and YouTube (our video sharing service) - are open platforms for free expression for which we do not generate the content. We do not serve as a gatekeeper and Google employees generally do not check content before it goes live, just as your phone company would not screen the content of your phone calls or your Internet Service Provider (ISP) would not edit your emails before you hit the "send" button.

Our products are often used as free expression tools in countries that restrict speech through other media. For example, in May 2007 Venezuelan President Hugo Chavez refused to renew the broadcast license of Venezuela's Radio Caracas Television on the grounds that RCTV violated broadcast laws, supported a failed coup against him in 2002, and more generally offered an anti-governmental perspective.

Despite protests by thousands in the streets of Caracas, the Venezuelan government replaced RCTV on May 28, 2007 with a state-run broadcast station. On that same day, RCTV's news department created a channel on YouTube on which it began airing daily installments of its newscast El Observador. Since then El Observador has been viewed more than 850,000 times, and many of RCTV's videos on YouTube have generated lively debates about freedom of expression. The inaugural post in response to the first El Observador video exclaims, "¡Viva la libertad de expresión!" (in English, "Long live freedom of expression!")

In other countries we have seen that communication platforms like internet video sites and blogs may be the only means for speech to emerge from communities closed off by authoritarian governments.

For example, when the military government of Myanmar (Burma) cracked down on protests by tens of thousands of Buddhist monks in the fall of 2007, it tried to do so outside of the public eye. During the protests, foreign journalists were kicked out, national media was shut down, and internet and cell phone service was disrupted within Myanmar in an effort to prevent information leaking out about the extent of the violence.

Nevertheless, tools like Blogger and YouTube were used by citizen journalists to share videos of the protests and information about the extent of the blackout, enabling the rest of the world to understand the human rights abuses taking place within the country.

As our Venezuela and Myanmar experiences indicate, our products are platforms for free expression, transparency, and accountability. Because of this, we often face efforts by governments throughout the world to restrict or deny access to our products.

Censorship challenges that Google faces

Most governments around the world have formal provisions for the protection of freedom of expression in their constitutions or fundamental laws. Indeed, the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, includes language that almost seems to have been written in anticipation of the borderless internet:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. [UDHR, Article 19]

Despite such formal undertakings, it is clear that many governments impose legal or practical limits on their citizens' freedom of speech. These limits on free expression take many forms. Some limitations are laudable and reflect shared moral imperatives such as the fight against child pornography. Others are rooted in culture and history, such as Thailand's laws against insult to the King, Germany's laws against Nazi propaganda, and India's laws against insulting religion or religious beliefs. And finally, of course, some governments, such as China, Iran, North Korea, Zimbabwe, and Myanmar, have imposed varying levels of political censorship.

Over the past several years, Google has encountered a wide array of governmental limitations to free expression online. Because our technologies and services enable every person with an internet connection to speak to a

worldwide audience and, conversely, to read the words and watch the images posted beyond her nation's borders, Google has become a regular focus of governmental efforts to limit individual expression.

In my testimony today, I'd like to give you a sense of the scale and nature of these governmental efforts, and to explain how Google has attempted to promote freedom of speech while navigating the different governmental demands to limit access to information.

? YouTube: Since 2007, our YouTube video sharing site has been blocked in at least 11 countries including China, Thailand, Turkey, Pakistan, Morocco, Brazil, Syria, Indonesia, Iran, Saudi Arabia, and Myanmar.

? Blogger and Blog*Spot: In the last couple of years, we have received reports of our Blogger and Blog*Spot blogging sites being blocked in at least seven countries including China, Spain, India, Pakistan, Iran, Myanmar, and Ethiopia.

? orkut: Our social networking site, orkut, has been blocked recently in Saudi Arabia, Iran, and the United Arab Emirates.

Though we do not believe that it is ever justifiable for a country to block one of our services in its entirety, it is notable that the stated rationales for these instances of blocking range from relatively benign, apolitical, and culturally- and historically-driven content regulations all the way to heavy-handed political censorship directly contrary to basic international standards of political, religious, academic, and cultural freedom of expression.

To fill out this picture, here are three examples of government efforts to restrict expression that resulted in the outright blocking of YouTube for a period of time:

? Turkey and the Ataturk videos. YouTube has been blocked in Turkey repeatedly over the past year because of videos deemed insulting to Mustafa Kemal Ataturk, the founding father of modern Turkey, and other videos deemed by the Turkish government to be threatening to the state, such as videos promoting an independent Kurdistan. Under Article 301 of Turkish law, it is a crime to denigrate Turkishness, to threaten the unity of the Turkish state, or to defame Ataturk. As a result, Turkish courts have ordered the entire YouTube site blocked multiple times, and for several days, because of videos deemed illegal in Turkey. While we have been engaged with Turkish officials for many months, it has been very difficult to even know what videos have been the source of complaint.

? Indonesia and the "Fitna" film. Earlier this year, the controversial short film "Fitna" was uploaded to YouTube. Produced by a Danish politician, the film mixes clips of terrorist acts and propaganda and passages from the Koran to critique Islam in a manner offensive to some viewers. In Indonesia, high-level government officials publicly demanded that YouTube and other sites hosting the video immediately remove the content, in order to minimize the odds of violent protest riots. The government ordered Indonesian ISPs to block the entire YouTube site, preventing users within the country from viewing any videos. This had the ironic effect of blocking dozens and dozens of videos criticizing and responding to "Fitna" from Indonesians. We engaged in a dialog with the Indonesian government to determine what videos they objected to, and worked with local counsel to assess whether the videos violate Indonesian laws against hate speech. In the face of public pressure over the censorship and without further guidance from the government, Indonesian ISPs began lifting the site-wide block. It is our policy to only narrowly remove illegal content for the jurisdiction in which it is banned. As such, Google subsequently took steps to block the "Fitna" video from being viewed within Indonesia due to its likely illegality, but kept it available to users in all other countries.

? China and YouTube. In October 2007, at a time when the Dalai Lama was awarded the Congressional Gold Medal and the Communist Party Congress convened in Beijing, YouTube was blocked throughout China. While we were not informed of the exact cause of this suppression of speech and we did not ourselves remove any videos from YouTube, access to the site in China was reinstated following the conclusion of the Party Congress.

As these examples indicate, despite our efforts to minimize restrictions on speech, we routinely face situations where governments attempt to limit expression through our products.

A broad range of global censorship efforts As noted above, some censorship efforts are relatively benign and stem from factors such as cultural sensitivities and history. For example, when reported to us, we remove links to content that promotes violence against protected groups from the search results for our Canadian search engine, Google.ca, because such content is illegal under Canada's Human Rights Law. On the other end of the spectrum are governments that prohibit commentary or criticism on certain political or otherwise sensitive topics.

Some of these efforts affect our global products; others affect a localized version of our products we have created to better serve a country market. For example, we have launched our search service in Spanish for Argentina. That service is located at www.google.com.ar, and because it is associated with Argentina's top level domain (".ar") and has various other links to Argentina, we apply Argentine law to our removal decisions. By contrast, we do not apply non-US law to the removals from our search service located at www.google.com.

Generally speaking, this distinction allows us to provide .com services with few restrictions on content and localized services with restrictions relevant to the local jurisdiction. The Google.ca example above is illustrative of this point. Another example is what we do in Germany, which bans the promotion of Nazism. German law makes Nazi content illegal, so we remove such content from our products hosted on our German domain, Google.de, when we become aware of such material. However, we do not remove Nazi content because of German law from our global products hosted on Google.com.

On a practical level, these different laws result in a variety of national standards on what can be restricted, which often poses difficult challenges for our services that can be accessed by a global audience. And these legal differences pose not only compliance difficulties but also real technical challenges. Restricting content that is perfectly legal in one country but illegal in another is not easily done on global internet services.

National governments often lack the technical ability and tools needed to address illegal content in a granular fashion, which often results in blocking access to a product as a whole, rather than just to a particular video or blog post. For example, earlier this year, Pakistani concern over an anti-Islamic video actually resulted in a global outage of YouTube after a national ISP erred in implementing orders by that government to block YouTube within the country. Global users of YouTube, including those in the U.S., were redirected to a non-existent site, and they were therefore unable to access the service for several hours.

The case of China

China is a case that has posed for us all of the legal and technical hurdles described above, along with other challenges.

For several years prior to 2006, Google experienced widespread blocking of or other interference with our global search service, Google.com in China. To respond to this interference, in 2006 we launched Google.cn, a filtered search service that operates in China in conformity with local laws, regulations, and policies on illegal content. In doing so, and to provide transparency to our users in China, we became the first search engine in that country to post a notice on the search results page when certain links have been removed. Google.cn has not been subject to outright blockage.

Our Google.cn website supplements, and does not replace, our unfiltered (but periodically interrupted) Chinese-language interface on Google.com. Google.com remains open for Chinese-speaking users worldwide, including within China, when it is not being blocked by the government.

Let me stress that the decision to operate a filtered search engine at Google.cn was a difficult one. It was reached after more than a year of analysis and discussion by our senior management, and we continue to debate how to best operate in China.

The decision was based on a judgment that Google.cn would make a meaningful - though imperfect - contribution to the overall expansion of access to information in China. To date, we believe that on balance the decision to operate in China was the right one because our presence in China has led to improvements in freedom of expression.

For example, we believe that more internet users in China can access more information outside of China through Google.cn than through other offerings. In addition, our engagement in China through Google.cn has driven industry advances in transparency to users. Today, leading search engines in China, including the market leader Baidu, have followed our lead and now provide disclosures when they remove results. This was not the case before Google.cn established this practice with its launch in 2006.

Google's response to censorship efforts

Google works to ensure that our products serve as platforms for free expression, and we are deeply committed to making sure that our products remain vehicles for individual speech, collaboration, learning, and political participation.

To realize these aspirations, we are engaged in numerous activities to help promote free expression online.

Promoting transparency

Providing our users with transparency - an understanding of how our products work - is one of our core principles. In the context of government regulation of content, we try to provide transparency whenever we are required to remove content from our products.

To this end, when we remove content from our search results in response to a legal request, we send the request to Chilling Effects (www.chillingeffects.org), a joint project of the Electronic Frontier Foundation and several academic institutions including Harvard, Stanford, Berkeley, and the George Washington School of Law legal clinics, when we are able to do so legally. Chilling Effects posts the removal requests on its website, and we link to the publication of the complaint in place of the removed content. We are a leader in this level of transparency and the only major search engine to regularly and publicly disclose these removals.

In China, we take the following actions to promote transparency on the Google.cn search engine:

? First, whenever we offer censored results on our Google.cn search engine, we present clear notification on the results page to users. That notification states that, in accordance with local laws, regulations, and policies, we have not displayed all of the results in response to a query. In our view, there is value in letting our users in China know that the information that they searched for exists but cannot be made available because of limitations imposed by their government.

? Second, our Google.cn search engine sometimes shows results that, when clicked on, do not go anywhere because access to the destination site has been blocked. In those instances we show snippets of the blocked page so that, again, Chinese users can see that results have been limited by their government's actions.

? We also provide a link to Google.com on the Google.cn home page, so that Chinese users know that there is an unfiltered alternative - at least to the extent that it is not being blocked.

Providing transparency for users is important because it tells them that, though they may not be able to access information, that information does exist and can be accessed through other means. Transparency allows users to make informed decisions about the services they choose to use.

Establishing best practices

One company alone can have only limited impact. In testimony before the U.S. Congress in 2006, we said that we would work with other technology and telecommunications companies to develop shared principles that can serve as guidelines for doing business in countries that restrict access to internet content and information.

To this end, Google has played an active part in efforts by a group of companies, human rights organizations, socially responsible investors, and academics to produce a set of principles to guide the response of companies when faced

with laws, regulations, and policies that threaten free expression and improper government requests for access to personal information.

Our group has been meeting for more than 18 months and, although it hasn't always been easy, we are optimistic that we will reach an agreement not only on a set of principles but also on ways to demonstrate that companies are putting those principles into practice. Google has taken this process extremely seriously, with our employees investing hundreds of hours and exploring these topics with the senior leadership of the company.

We believe that this effort is consistent with our own current practice of conducting risk assessments that consider the impact on free expression and other human rights of entering new markets or introducing new products into existing markets. Our assessments balance our mission to provide information to citizens around the world with a need to protect our users as well as the safety of our employees around the world.

Collaborating with the human rights community

We also engage with human rights bloggers and other agents of free expression to help them use our products to promote more robust and more diverse speech online.

For example, we have worked with organizations such as Witness, Amnesty International, UNICEF, The Human Rights Foundation, The Equality and Human Rights Foundation, Human Rights First, and Human Rights Watch to start YouTube channels that give voice to human rights issues often ignored by the mainstream media. One of our human rights partners, Witness, uses videos to shed light on human rights abuses around the world.

You can see many of these organizations' channels and the videos they produce at a special human rights channel that we've created located at youtube.com/humanrightschannel. And we continue to underscore our commitment to human rights in our products themselves. For example, we have worked on several human rights projects with the United States Holocaust Museum. The museum's "World is Witness" project uses Google Earth and Blogger to document and map genocide and related crimes against humanity. The initial entries are from a recent Museum visit to Rwanda and the Democratic Republic of the Congo to learn about the legacies of Rwanda's 1994 genocide. And the museum's "Mapping the Holocaust" project uses Google Earth to map key Holocaust sites with historic content from its collections, powerfully illustrating the enormous scope and impact of the Holocaust.

Fighting censorship through technology

Finally, we continue to provide resources to support the development of technology designed to combat internet censorship. For example, we provide platforms where people can host anti-censorship projects free of charge, much in the same way that YouTube hosts videos and Blogger hosts blogs. For example, the developers of Gladder, a Firefox browser extension that is used to counter censorship, use our Google Code platform to host their project. In addition, Google provides development resources to TOR (The Onion Router), an anonymizing program that allows individuals to get around internet censorship technologies.

Supporting government efforts to promote free expression

Google's support for free expression initiatives

Internet censorship is a real challenge, and not one that any particular industry - much less any single company - can tackle on its own. Efforts to promote freedom of expression and to limit the impact of censorship require both private and public sector engagement.

To that end, Google has encouraged the U.S. government to make combating internet censorship a top priority. We believe that government-sponsored censorship is one of the largest barriers to providing more information online and more access to internet-based services - with serious implications for trade and human rights. It is vital for the U.S. Departments of State and Commerce and the Office of the U.S. Trade Representative - in this and in future administrations - to make censorship a central element of our bilateral and multilateral agendas.

In that vein, we applaud the U.S. government's efforts to date to promote the free flow of information in our trade agreements. In addition, the Department of State has helped promote freedom of expression on the internet. Among other things, the State Department has created the Global Internet Freedom Task Force, an internal departmental coordination group that addresses challenges to freedom of expression and the free flow of information on the internet. The State Department has been a strong advocate in United Nations summits and other forums for the right of all persons to create, access, utilize, and share information on the internet, subject only to limited restrictions for legitimate government purposes.

Google has been supportive of these efforts - but we believe that more must now be done.
Recommendations for combating global internet censorship

As we approach the 60th anniversary of the signing of the Universal Declaration of Human Rights, we believe governments that embrace free expression should do more to ensure that the world community respects free speech in cyberspace. International agreements designed to ensure free expression - no matter the particular medium - exist and have been ratified by the U.S. and many, many other countries. However, more can be done to make sure that these agreements are effective and enforced.

The Universal Declaration resulted in the International Covenant on Civil and Political Rights, a U.N. treaty that entered into force over 30 years ago and is commonly known as the ICCPR. The ICCPR very clearly protects freedom of expression: "Everyone shall have the right to freedom of expression . . . to seek, receive and impart information and ideas of all kinds" through any medium. Recent interpretations of the ICCPR make clear that the internet is covered under the agreement.

However, not enough has been done to ensure that the ICCPR truly protects free expression online. We also believe that the U.S. government could act more aggressively to promote online freedom of expression.

We offer the following suggestions as ways of building upon existing human rights mechanisms to reinforce America's and the international community's commitment to free expression throughout the world.

? Promote the universal ratification of the International Covenant. Not every country that has signed the ICCPR has fully embraced its obligations by ratifying it. Approximately 30 countries are not parties to the agreement including China, Cuba, and Saudi Arabia. We would strongly recommend that the U.S. renew diplomatic efforts to encourage these countries to ratify the covenant, and to file separate declarations under the treaty to consent to the Human Rights Committee's jurisdiction over complaints by States against other States. We also believe that more governments - including the U.S. - should be encouraged to join the covenant's First Optional Protocol, which enables individuals to file complaints.

? Strengthen and enhance the State Department's Global Internet Freedom Taskforce. Much has been accomplished by the State Department's Global Internet Freedom Taskforce, but the initiative could be given increased prominence, authority, and funding. Increasing and enhancing the role of the taskforce could leave behind a strong legacy for the current Administration in the area of free expression online, and help ensure that promoting internet freedom is a central priority for the next Administration. Among other things, the agenda could be given increased prominence and authority by, for example, appointing an Ambassador-at-Large for Internet Freedom - which would be a position similar to the Ambassador-at-Large for International Religious Freedom.

? Support increased focus by the UN Human Rights Committee on Internet freedoms. In the area of internet censorship, the States Parties to the ICCPR could focus more attention on impediments to free expression online. For example, the Committee could issue a general comment addressing relevant articles in the Covenant and how they apply to internet restrictions.

? Ensure that countries that are parties to the Covenant submit human rights reports enabling international review. The ICCPR requires States Parties to submit periodic reports on compliance with their ICCPR obligations - generally every four years - to the Human Rights Committee, which conducts a detailed review and issues an assessment of treaty compliance. Many governments have not complied with this requirement, and the United States itself was out of compliance until it submitted a report in late 2005. The U.S., now having fully embraced its reporting obligations, should work to ensure that States Parties file their reports on compliance with the ICCPR in a timely fashion. This

may need to involve offers of support for developing countries who are daunted by the effort involved in drafting the reports and submitting them for review, but we believe that this would be a worthwhile investment that would help protect human rights around the world.

? Strengthen individuals' ability to file complaints under the International Covenant. The ICCPR enables individuals to file complaints with the Human Rights Committee. We believe that the governments that promote free expression could provide funding and other support to non-governmental organizations and other groups to assist individuals in filing such complaints, as well as increasing awareness among relevant populations of their rights under the ICCPR. In addition, participating governments could, through the U.N., provide additional funding that would enable the Committee to address more individual complaints in a timely way, as the Committee is now substantially underfunded.

? Explore methods of shining more light on violations of freedom of expression. We believe that more attention focused on instances of internet censorship will result in greater accountability and transparency and - ultimately - less censorship by governments. For these reasons we would urge the U.S. government to promote enhanced monitoring of instances of internet censorship by governments.

? Promote free expression as part of foreign aid. We believe that the U.S. government could use foreign aid and other programs to better promote ICCPR compliance and free expression on the internet. For instance, the government could incorporate internet freedom of expression into support for and assessments of good governance. In a related area, Google has already urged officials at the Millennium Challenge Corporation to incorporate internet censorship in measuring whether candidate countries have achieved criteria for democratic governance.

At the same time, we continue to urge governments to recognize that information restrictions on the internet have a trade dimension. We urge the U.S. government in particular to continue to use trade agreements and other trade tools to promote the free flow of information on the internet, and to seek binding commitments wherever possible.

The bottom line is that much, much more can be done by the U.S., and at the international level by countries that respect free expression online, to ensure that individuals, companies, and others can use the internet as the free and open platform that it was designed to be. We would be happy to assist the Subcommittee in exploring and helping to implement these and other expression-enhancing initiatives.

Conclusion

I would like to conclude by thanking Chairman Durbin, Ranking Member Coburn, and the other members of the Human Rights Subcommittee for helping to highlight the importance of the internet to free expression around the world. It is only with the attention and involvement of leaders like yourselves that we can make real progress in the effort to combat censorship throughout the world.

We look forward to continuing to inform you about our speech-expanding products, our efforts to promote free expression, and our recommendations for policy makers in this very important category of basic human rights.