An Improbable Coalition: How Businesses, Non-Governmental Organizations, Investors and Academics Formed the Global Network Initiative to Promote Privacy and Free Expression Online

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DEDICATION

I dedicate this dissertation to my parents. All of them.
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There is quite literally no way that this dissertation would have seen the light of day without the generous and tremendous support, ideas, encouragement, patience, and otherwise irreplaceable contributions of many colleagues, friends, and family. Indeed, while I enjoyed support throughout, when the times were toughest or I was least able to make progress, their steadfastness grew in words and deeds, effectively pushing me through the deeper parts of the challenge. My greatest regret is being unable to take full advantage due to a combination of fear, disorganization, and the like. Had I been more effective at harnessing their insights, I have no doubt that this work would be much more profound, accessible, and enjoyable to read. As any author will know, any good we find is due to those immense offerings, while the shortcomings are a product of my own.

The participant observation and so much that I learned during the course of my doctorate occurred while I worked at the Berkman Center for Internet & Society and was the beneficiary of so many wonderful opportunities to learn, to share, and to push myself. Steeped in an environment with so many of the past, current, and future leaders in the study and development of the internet; working at the intersection of technological, social and policy change; in a community valuing collaboration, rigor, and creativity; I’m hard pressed to imagine a better example of what the academy can be.

The original opportunity started with an invitation to join Berkman from Charlie Nesson, of whom Lessig has written: who’s every idea seems crazy for about a year, this one lasted a decade longer. In those early days at Berkman, I was privileged to work alongside colleagues like Ethan Zuckerman and David Weinberger, who have deeply affected how I understand — and engage — the world. Perhaps most influential in that
time and for years to come was John Palfrey, who was not only a force for so many kinds of
good in his own right, but asked me to help him to lead Berkman. It was also John who first
got me involved in GNI. On every level, what followed was a tremendous learning
experience (and also a significant barrier to completing my doctorate).

I was also fortunate to sit with Urs Gasser, then finishing his own dissertation, who
went on to be a close friend and colleague, and demonstrated unparalleled organization of
ideas and frameworks and a complete commitment to excellence, along with wonderful
taste in food and wine. I realized then the importance of hiring, and among the best (of
many greats), I was able to lure my former colleague Rob Faris to Berkman. His own late-
in-life dissertation, wit and wisdom, knowledge, and steady resolve were powerful
eamples for me, and having the chance to teach together for some years only increased
that appreciation.

Over the ensuing years, I became evermore involved in the growing Berkman
network, steeped in wonderfully complex questions around how best to advance the public
interest when the confluence of technological, policy, and regulatory change are creating
the potential for social change, good and ill. I interacted with scholars, practitioners,
activists, and others, collectively mixing approaches and perspectives in novel ways, and
developing new modes of research, teaching, and engagement.

Among the many contributors, Berkman staff and a book (writing) club made of
fellows, were hugely influential. The core team, including Carey Anderson, Amar Ashar,
Catherine Bracy, Jon Murley, and Becca Tabasky, were just awesome colleagues and
friends. The leadership team, then including Rob and Urs, as well as Chris Bavitz, Sebastian
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The Bookies have ebbed and flowed over the years, but were kind enough to allow me to keep hanging out (they did come to my office, so perhaps there was little choice), even though they were mostly writing books and I was mostly offering feedback due to my day job. I can’t really imagine a more thoughtful, giving, perceptive, astute, and fun gang to talk about ideas and writing with. From them, I learned a tremendous amount about substance, process, friendship, commitment, and unfailingly enjoyed it. My heartfelt thanks — for this and especially my future works — to Ethan, David, Judith Donath, Lokman Tsui, danah boyd, Zeynep Tufekci, Doc Searls, Christian Sandvig, Eszter Hargittai, Rey Junco, and still others.

Collaboration with diverse and wonderful colleagues over the years has been enormously valuable, and is at least somewhat reflected in my thesis. I have worked with Mike Best for about 15 years now, which has been composed of great work, endless learning, and serious fun. His approach to blending research, teaching, and making a difference in the world has been inspirational and helped me to finish this process. Chris Coward and Beth Kolko are also from that camp of creative colleagues, reinventing what it means to be a scholar. Beth was also hugely generous and encouraging in offering conceptual help on this dissertation. Ashok Jhunjhunwala has been ceaselessly supportive, hosting me for a previous attempt at a thesis, offering advice and encouragement, and keeping me on track in the most profound way. Had he helped supervise me, I’d surely have finished years ago. In some sense, this all started with my dear friend Geoffrey Kirkman who brought me to the Center for International Development 15 years ago. He was an
unparalleled partner in crime and in life as we launched the Information Technologies Group and later transitioned to Berkman.

As you may gather from this work, the GNI was a much larger and more influential part of my life than I’d expected. At one point I joked that I saw its participants more than my friends. Further, in the classic way in which the main implications are not the expected ones, the gains from the process were surprising and worthwhile. Beyond learning and having the chance to make a difference on important issues, I had the rare opportunity to get to know the approaches and ideas of the people I interviewed as one measure of how much everyone invested in the process. Their patience, honesty, and generosity were essential to bringing this project together.

As I hoped to finish this work, I switched jobs to start a new organization. Despite the urgency and need for my attention, however, I received indulgence, encouragement, and kicks in the pants to finish it. My colleagues Laura Moon, Deb Walters and Kerry Herman, asked, volunteered, cajoled, and reminded. My bosses, Karim Lakhani and Marco Iansiti, have been known to ask me to do things on occasion, but unfailingly made this my top responsibility, plying me with sushi and ramen to steel my resolve, and welcoming me to HBS in a way that I’d not dared hope for. My teammates Caroline Fay and Matt Tucker are a joy to work with, reminding me of the unlimited potential of youth and demonstrating just how far ahead of me at that age they are, while creating space for me to finish.

I’ve appreciated Northeastern since I first visited nearly 20 years ago, from its co-op program, to the public interest focus of the Law School, to the then-rare interdisciplinary LPS program. In many senses, none of this would be possible without LPS/LPP, the fine
students and faculty with whom I’ve had the opportunity to study, and the kind assistance of its directors and the CSSH.

So many people faces challenges with their committee, while mine was literally only helpful and supportive, never issuing an undeserved challenge, reorienting an appropriate approach, or misplacing a motivational stick. Judy Perrolle basically willed me to this point, guiding, challenging, explaining, and otherwise overseeing much of the (good) work that I did. Her persistence and interest, along with help in navigating the program, were irreplaceable...right down the bitter end. Judy was able to convince Tom Koenig to add another investment to his overflowing portfolio. His keen eye, experience, and process understanding provided the essential foundation to get this done, and only became more important when Judy took her much deserved retirement and he became chair. Finally, Ernie Wilson’s willingness to find the time to advise me offered trenchant ideas that avoided significant shortcomings in the dissertation and definitely helped me to understand my task better. His ideas and actions have made for an inspiring, impactful, and creative career, and it was a treat to have his gentle yet forceful nudging.

I couldn’t, really couldn’t, have done this without my wife Rachel. Her selfless dedication, fearlessness, and drive to move have also been a powerful example. Between our kids and life, it was not easy, but she created space where needed, saw through my mood swings and frustration, and was the underpinning not just for this work, but also for my life.

My parents set this all in motion long ago, getting their own PhD’s in the 1970’s and showing me then and over the years how it all — in the doctoral and (slightly) more grand
sense of life — works. They have pushed and pulled, offered and encouraged, and been the very best parents I could have asked for.

It took more than one village, but everyone stuck with me and I will be forever grateful.
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by

Colin M. Maclay

Abstract of Dissertation

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ABSTRACT

This is an investigation into organizational motivations for participation in a multi-stakeholder initiative to protect online privacy and freedom of expression and the factors that shaped the policies it produced. The research seeks to better understand emerging approaches to the governance challenges of an increasingly interconnected and technologically enabled world.

The Global Network Initiative (GNI) was launched in 2008 and consisted of internet and communications technology companies, non-governmental organizations, investors, and academics. There had been more than a decade of explosive growth these technologies and governments were both enthusiastic and eager to exert control over them. Regulatory environments were characterized by uncertain and often ineffective legal regimes governing expression and privacy, and companies found themselves torn by conflicts among laws, policies, practices, markets, and human rights standards.

In practice, companies needed to determine how to anticipate and respond to government requests to limit content or provide access to personal data. The coalition aimed to develop a more immediate, adaptable, and systematic approach to encouraging and supporting responsible corporate behavior — and better human rights outcomes — regarding online privacy and expression. The perceived relationship to legislation varied from complement to substitute, precursor to regulatory avoidance.

Government attempts to control public access to information and to gain government access to private information have long raised concerns. The issues are exacerbated by a host of legal uncertainties around internet and related new media technologies, and a
general lack of transparency into the mechanisms that effectively govern free expression and privacy online. Fueled by soaring information and communications technologies penetration and use, increasing government awareness of the private sector’s role (and vulnerabilities) in communications, and resulting breaches of user trust and rights, addressing these issues has become an increasingly prominent, pressing, and shared priority since the mid 2000s.

Beginning in 2006 and continuing for over two years, organizations participating in the GNI development process created a multi-stakeholder model organized around principles, implementation guidelines, and an accountability regime. It was based on collaborative learning, proactive planning, robust process, policy engagement, and external evaluation of overall company compliance. This approach sought to help companies enact policies to anticipate and respond to situations in which local law and practice differ from international standards for the rights to privacy and free expression online, to raise public awareness and stakeholder understanding of these issues, and to foster adoption of public policies that address the gaps.

Using a multi-observation case study, this research investigates the participant organizations’ motivation to develop this approach to governance and the formation of the policies generated through the resulting negotiations. The data comes from thirty-one interviews, diverse primary and secondary sources, and two years of participant observation. The framework for evaluation is derived from the interrelated factors Philip Pattberg (2007) associates with the development of co-regulatory models: macro-systemic change, problem structure, organizational resources, and new models.
Micro factors of problem structure, including public sector regulation capacity and interconnectedness, and particularly organizational resources, including interests, experience, and prioritization, offered the greatest power to explain the difference between implementers and organizations who either did not participate or helped design the GNI, but chose not implement it. Problem structure was helpful in understanding participation in the design process, and organizational resources offered insights for both the nature of participation and for policy implementation. In terms of macro factors, macro-systemic change was similar for most parties, although there was an influential divergence in problem prevalence among companies. New models varied modestly, but affected the nature of participation, rather than overall likelihood. An inductive exploration into the policy implementation process echoed the prominent role of micro factors, including the importance of trust and organizational factors, and the relevance of multiple stakeholders participating in the negotiations. Individual and organizational experience, an aspect of organizational resources, substantially influenced the accountability model, a key innovation of the process and a surprise.

The work offers insight into the creation and development of new mechanisms for addressing gaps in global governance particularly in the domain of information and communications technologies, noting that government content requests continue to rise rapidly alongside government attempts to access data. The insights are relevant for the creation and development of individual multi-stakeholder processes, as well as a for consideration over wide range of existing and emerging domains in which society’s needs are ill served by traditional governance mechanisms.
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Chapter 1: BUSINESS, POLICY, AND SCHOLARLY CONTEXT

On the sixtieth anniversary of the Universal Declaration on Human Rights on December 4, 2008, at Paris’ Palais de Chaillot, companies, human rights organizations, investors and academics publicly launched the Global Network Initiative. Introduced by Mary Robinson, UN High Commissioner for Human Rights, the group consisted of representatives of Google, Yahoo, Microsoft, Calvert Investments, Human Rights First, the Committee to Protect Journalists, the Center for Democracy and Technology, and Harvard’s Berkman Center for internet & Society. Robinson’s introduction and the group’s conversation explained their strategy to protect and advance freedom of expression and privacy online. Building upon the online document release two months prior, the group developed a structure that it described as consisting of stable, but ambitious Principles, functional and dynamic Implementation Guidelines, and a rigorous Framework for Learning and Accountability.

As a participant observer in the intense development process that lasted over two years, I was intrigued to know what had driven this surprising group of twenty-four competing businesses, along some of their most demanding investors, harshest critics, and policy-oriented scholars to undertake an attempt at multi-stakeholder governance, and what led to this particular approach? I was likewise eager to understand why some groups that had participated throughout the process decided against implementation, and why other seemingly relevant organizations had chosen not to join in the first place. Beyond these contextual particulars, I wondered how these phenomena informed the scholarship around internet and technology regulation, governance gaps, business and human rights,
challenges that span borders and sectors and the many other related fields for which they held potential insights.

This chapter covers the events and circumstances leading up to the creation of the Global Network Initiative, drawing upon a mix of primary documents, news and analysis, literature, and personal observation. It places these developments within both the ongoing scholarly discourse around understanding and regulating new media and other transnational interests, and the relevant policy environment at the time. It concludes with a broad overview of the Global Network Initiative’s foundational elements mentioned above.

TROUBLE BREWING, MOST VISIBLY IN CHINA

In late 2005, news surfaced that in 2004 Yahoo provided Chinese law enforcement authorities with personal information that was used in sentencing journalist Shi Tao to a decade-long imprisonment for emailing a list of the Chinese government's censored terms.1

Around the same time, Microsoft’s Chinese joint venture garnered international attention when it deleted the contents of journalist Michael Anti’s blog based on an informal law enforcement request because he had called attention to protests from journalists related to the government’s efforts to crack down on their anti-corruption reporting (Barboza and Zeller 2006). Cisco Systems was accused of selling the Chinese government thousands of routers that not only directed internet traffic and filtered spam, but also could be configured to filter internet access and monitor users (Mirsky 2006).

In early 2006, Google entered the Chinese search market with Google.cn, deciding not to offer email or blog services to avoid its competitors’ problems regarding requests for

personal data and content control. It also took the novel step of appending notices to search results where items had been censored (removed from query results altogether rather than the links appearing, but being inaccessible when selected by users) to foster transparency with users about the government’s requirements for and actions to impose content limitations. Google argued that although it was censoring content in compliance with Chinese law, the practice was being communicated publicly for the first time, and that it was still vastly improving its Chinese offerings, while continuing to keep Google.com uncensored.² Google received widespread criticism for supporting censorship practices.

These high visibility bad outcomes for companies (and in at least the first two cases, for individuals human rights) were part of a larger narrative of threat to online freedoms in China and around the world, including the United States, where the New York Times revealed a National Security Agency program of domestic warrantless eavesdropping on phone and email communications (Risen and Lichtblau 2005). Further energized by the rapid growth of the internet, these revelations collectively drew a substantial amount of attention — and criticism — from rights groups, academics, US policymakers, shareholders and others. The companies, many of which saw themselves as organizationally young, socially and politically progressive, and empowering to users, were suddenly the enemy of otherwise like-minded groups. Their employees were frustrated, civil, digital and human rights groups were livid, shareholders proposed changes, and the US Congress rumbled with legislative energy.

**BORDERLESS TECHNOLOGIES?**

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The developments were very much at odds with John Perry Barlow’s iconic 1996 cyber-utopian Declaration of Independence of Cyberspace, which declared in the early days of the consumer internet:

*Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather.*

*We have no elected government, nor are we likely to have one, so I address you with no greater authority than that with which liberty itself always speaks. I declare the global social space we are building to be naturally independent of the tyrannies you seek to impose on us. You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear.*

*Governments derive their just powers from the consent of the governed. You have neither solicited nor received ours. We did not invite you. You do not know us, nor do you know our world. Cyberspace does not lie within your borders. Do not think that you can build it, as though it were a public construction project. You cannot. It is an act of nature and it grows itself through our collective actions.*

*You have not engaged in our great and gathering conversation, nor did you create the wealth of our marketplaces. You do not know our culture, our ethics, or the unwritten codes that already provide our society more order than could be obtained by any of your impositions.*

*You claim there are problems among us that you need to solve. You use this claim as an excuse to invade our precincts. Many of these problems don’t exist. Where there are real conflicts, where there are wrongs, we will identify them and address them by our means. We are forming our own Social Contract. This governance will arise according to the conditions of our world, not yours. Our world is different.*

While few companies were likely in quite the same camp as Barlow, after a somewhat naive period in which many felt some immunity to government influence, as more people
got online and businesses became more international, it became clear that it was not possible to escape government regulation and power. It was unclear whether the internet — then often referred to as cyberspace — had sufficiently different characteristics to require a new sort of law: what happens to copyright, when literally everything is a copy? Lessig (1996) and Post (2003), argued that it rendered aspects of current law inoperable and was exceptional due to the very nature of the technology, while Goldsmith (2003) found that there was both capacity and legitimacy to regulate, arguing that the law was largely settled.

Continuing from the discussion of whether to regulate differently, was one of how to regulate, and to understand how the internet was actually being regulated. It was in this context that Lessig (2006) powerfully widened the scope of regulation beyond law to include technological architecture and code, norms and market behavior. Goldsmith and Wu (2006) went on to simply describe what was happening, demonstrating that techno-utopian and libertarian hopes had gone unrealized, finding that traditional legal and policy controls had not been rendered irrelevant, national borders still exist in the online world, and that states can, in fact, effectively govern the internet.

This was famously demonstrated in practice in 2000, when a French court successfully barred California-based Yahoo’s online auction site from selling Nazi memorabilia as a violation of French law, ultimately leading Yahoo to block users they deemed to be likely coming from France from accessing those materials (Greenberg 2003). In some respects, this marked an early public learning about the challenges of operating global businesses from the United States: local law matters when you have resources on the ground, in part, because judgments can be easily enforced against those people, money, or
physical assets (as opposed to depending on agreements between governments and supporting processes).

Whether reality or perception, this decision heralded the beginning of greater deference to local law that continued for over a decade, despite conflicts with international human rights standards or home country expectations, and resulting challenges for companies, civil society and policymakers. In practice, this meant that large technology companies regularly invoked “respect for local law” when complying with governmental requests that conflicted with international standards or were viewed as objectionable in their home or other jurisdictions. Zittrain (2003) noted the power of local jurisdictions and their impetus to regulate, observing that we would long be torn between parallel embrace of the internet’s freedom and its anarchy.

Consistent with the Yahoo case, the power of local jurisdiction, and reality of company practices, Goldsmith and Wu (2006) identify as one key piece of the puzzle, that despite claims and assumptions that the internet is free of geography, it is not. This is in part because of the servers and fiber that physically connect it, and uses internet Protocol (IP) addresses that correspond with geo-location. The two essential elements for enforcement are in-country assets (human, technological, or resources) that make companies vulnerable to government enforcement of their laws and practices, and the technical capacity (of both governments and companies) to implement those requests in relatively straightforward fashion (e.g., by blocking particular IP addresses from accessing specific websites).

OPERATING IN DIVERSE MARKETS
Although scaling technology and business may have initially seemed straightforward to service providers because of the globally connected nature of the internet, the continued relevance of geography and jurisdiction were indicative of a range of significant complexities revealed as companies pressed into new markets. Companies also needed to manage the confluence of differing user needs, linguistic needs, and cultural contexts along with the distinct and often unclear regulatory regimes that came with recognizing the importance of local law and the reality of local practices. Companies sought to navigate all of this even as use exploded, technology was shifting, and business models continued to evolve.

For telecoms, the need for physical operations and resources is perhaps more self-evident, although internet companies also found the need to locate offices for sales, engineering, technology, and policy, as well as data centers, around the globe. In terms of Participants in the Global Network Initiative process, Vodafone had operations in over two dozen countries across five continents in 2006. At the same time, Microsoft operated in over 100 countries, employing nearly 40% of its staff internationally. Yahoo had nearly twenty US offices, data centers in the US, Europe and Asia, and owned or leased property in nearly two dozen countries on five continents in 2006. Google reported facilities in 34 countries across six continents, including 15 new international offices that year, plus data centers on three continents, with international employees representing almost one-third of the company.

Services varied according to the company, but were wide ranging, especially for the internet companies, which included search, marketplaces, news, maps, entertainment, groups, books, business-to-business offerings, and much more. This range translated into
language customization: Yahoo reported offered most of its services in over 20 languages, while Google offered many products in 40 languages, such as news, mail and advertising. Google recognized risk in “developing products and services in different languages and for different cultures,” while Yahoo lamented that to address deficits in experience, they may “rely on the efforts and abilities of foreign business partners,” in new international markets.

The combination of technological development, business model development, network growth, globalization, and user expectations enabled — and perhaps demanded — the resulting modest forking of the internet, with different jurisdictions (suggested by IP address as an imperfect but approximate indicator of location) being served different content, as opposed to a single experience, regardless of the user’s likely location. In practice, this could mean tailoring advertisements to be locally relevant, offering search results in the local language, or limiting access to illegal — or potentially objectionable — materials. Just as many experiences are personalized based on your behavior, others are determined by likely jurisdiction.

**GOVERNMENT PRESSURE**

While most governments welcomed and encouraged the proliferation of these new technologies and the so-called information age they portended, many seemed ambivalent due not only to negative externalities like child pornography, spam, and crime, but for potentially more self-serving reasons. Indeed, governments around the world began to realize that inexpensive, immediate, widespread and potentially unrestricted global exchange of information, both privately and in plain view, could represent a threat to social
norms, vested interests, and ultimately, to political and economic stability. Rohozinski and Deibert (2010) remind us of Stalin’s famous reaction to a proposal to build a modern telephone system for the Soviet Union: “I can imagine no greater instrument of counterrevolution in our time.”

Attempts by governments to address this range of perceived threats took many different forms, with free expression and privacy often the casualties. Ron Deibert et al. (2008) found that prevalence of state-sponsored internet censorship grew from a handful of countries, such as China and Saudi Arabia, in 2002 to over 40 countries in 2008. Some regimes focused purely on pornography, while others extended to religion and social issues, politics, security and conflict, and internet tools. Legal provisions to increase the capacity for surveillance were enacted (Deibert et al. 2008, Ch. 3), even as provisions already existed based on old law. Less visible pressures, from coercion to punitive use of the legal system and more, were utilized to silence individuals and to secure cooperation of companies and others.

The dynamics of the technology infrastructure, markets and business models, and legal regimes — and in particular, state desires to affect control over aspects of the internet — have led to what Zittrain and Palfrey, among others, called balkanization of the internet (Deibert et al. 2008). The series of books from the OpenNet Initiative collaboration (Deibert et al. 2008, 2010) document state-sponsored internet censorship around the world, helping to lay important empirical groundwork for understanding global free expression online.³ Research from the OpenNet Initiative team has also explored surveillance, privacy and

³ Many related resources at http://www.opennet.net
highlights the role of companies as vulnerable intermediaries for a range of services that have implications for privacy and expression.

Its secrecy and the fact that, if artfully conducted, surveillance is essentially impossible to detect, rendered surveillance more challenging to study, leaving us with limited factual information on it and other government incursions into privacy (which is often subject to severe legal restrictions). Over the course of 2013-14, however, the Snowden revelations have offered extensive documentation on the scope, scale, and mechanisms for surveillance in the US, and rest of the ‘five eyes’ nations (Australia, Canada, New Zealand, United Kingdom). Within the revelation of many surprises about the approaches to and extent of surveillance undertaken by established democracies, the role of companies as both conscious and unwitting sources of personal information became better understood.4

Deibert et al. (2008, 2010) detail a wide range of legal, technical, practical, and other strategies states use to influence the availability, flow and character of information and communications, many of which directly involve influencing internet or online service providers to achieve their ends. Although the research only reveals part of the story, this body of work provides the richest, most rigorous, factual basis upon which to understand the challenges to freedom of expression, provoking questions about the role of the private sector, pressures upon it, and its capacity to meet its obligations. Among other important revelations, they find that censorship rarely works as intended, with consistent instances of mission creep, over-blocking, under-blocking, and other distortions of the marketplace —

4. For more, see http://www.washingtonpost.com/world/national-security/nsa-secrets/
both financial and of ideas — underscoring the importance of a reasoned response by companies to protect both their own interest and society’s.

**Challenging Policy Environment**

Attempts to limit access to online materials began at the edges of the internet by targeting sources (a website creator) and recipients (individual users) but turned to intermediaries\(^5\) in many countries. As the primary facilitators of online expression, access to information, and communications services, online service providers represented what Jonathan Zittrain (2003) calls internet points of control. Governments realized that these companies were more efficient and scalable ways to control access. Furthermore, they were vulnerable through diverse paths, from registration and licensing regimes and expectations requiring self-censorship, like China’s, to formal law enforcement procedures for accessing personal information such as court orders or national security letters, as well as informal practices with similar aims and fewer controls. As intermediaries, the companies providing ICT services were often involved in the implementation of these policies — whether as good corporate citizens, unwitting accomplices, or overmatched adversaries — performing censorship, identification and evidence gathering for interests ranging from clearly public to obviously political (OpenNet Initiative 2010, Ch. 5).

In practice, this means that online service providers receive a wide range of government requests, including to remove content from blogs or websites, to eliminate search results or to provide personal data of users, whether the content of email communications or communications metadata. Reasons range from intellectual property

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5. Helpful diagram and explanation at [https://www.eff.org/free-speech-weak-link](https://www.eff.org/free-speech-weak-link)
infringement to illegal content and criminal activity. Depending on the jurisdiction and the particular incident or infraction, these requests come in diverse forms, with varying degrees of process, background information, and expectations regarding response time.

The situation is made more complex because existing laws are applied to internet technologies, even though they may have been drafted before widespread availability and adoption and be based on a complete different information landscape. This often makes them ill suited to reality, difficult or unpredictable to interpret, and vulnerable to abuse. Despite creating the internet, maintaining a prominent role in its development, enjoying a massive financial stake in a vibrant technological ecosystem, and having a national narrative about independence and freedom from repression, for instance, the US has outdated laws regarding many key provisions around surveillance. Among them is the Stored Communications Act (part of the Electronic Privacy Communications Act, which was passed in 1986), and is typically interpreted to mean that law enforcement need not have a warrant or court order, but merely present a subpoena to access any email stored over 180 days or any email that has been opened or downloaded. This seems arbitrary and inconsistent with an era where some of our most sensitive communications occur via email.

The varied and unclear legal regimes for new technologies mean that local law can be applied to achieve diverse ends based on the intentions and institutions of the people applying them. With new business models and technologies emerging at a breakneck pace, simply determining what to call these services and which regulatory regimes they are subject to can range from challenging to rife for abuse. News services, for instances, may require licensing, but should a blogger be considered a news service? How might that view
change based on the presentation of opinion or original photographs, versus merely pointing to other news sources? A regime wishing to silence that blogger may very well identify the violation of a law in any of those instances. Other services offering the capacity to communicate widely for purposes of information sharing or organizing can also be perceived as threatening.

Traditional laws also have implications for internet activity. National security regulations create unsurprising opportunities for abuse, including the state secrets law used to imprison Shi Tao when his email divulged the censorship regime. For its part, Vietnam has convicted bloggers of trying to overthrow the government for blog posts, digital security workshops, and associating with the opposition party. Seemingly less consequential codes including intellectual property and tax law are also fundamental to understanding free expression and the politics of control and the challenges of intermediaries. For instance, copyright has been used as an excuse to raid Russian environmental groups (Levy 2010) and to remove online US presidential campaign videos (Center for Democracy & Technology 2010), while Vietnam has used its tax code to punish bloggers, earning international criticism (United Nations Human Rights Council Working Group on Arbitrary Detention 2013). The upshot of this environment is that companies find themselves in a variety of awkward positions, dealing with unclear laws, legal authorities who do not understand technology well, settings with questionable rule of law, questions around jurisdiction, and their own internal processes or lack thereof. They must balance the need to respond in cases that are legitimate, to the extent they can tell, and the need to resist or reduce the scope of requests in instances in which the requests appear overbroad or suspect. The
exchange may not occur in a vacuum, the internet provider may have an ongoing relationship with law enforcement or enjoy other human or infrastructure assets that are vulnerable, including a license to operate. Nor are they guaranteed time for reflection, especially in the case of an exigent request, where expectations are of a prompt turnaround.

Whether as a conscious decision to avoid potential conflict with the authorities, due to ineffective internal processes, or other reasons, companies have repeatedly shown themselves to be vulnerable to uneven compliance as shown by Mackinnon (2009) and to over-compliance with questionable or even patently illegitimate requests as demonstrated by Rishab (2012). These requests come in many forms, from a government demands for content removal or personal information, to user complaints about a media object or another user’s behavior violating terms of service. Zuckerman (Deibert et al. 2010, Ch. 5) catalogues these (albeit with some notable exceptions), noting that, “Threats to online speech come not just from government regulations, but from the needs of online service providers to interpret and follow government regulations and to turn an operating profit.”

Mackinnon (2012) offers perhaps the most comprehensive examination of the many ways in which challenges to online expression and privacy emerge, with particular attention to role of and interactions between companies and governments, and a call to engage users in the processes of protecting these human rights. Her lens accounts for the interaction among corporate interests, incentives, and functions; regulations, governance gaps, and globalization; and technological growth and change. She calls for a new relationship dynamic that recognizes our tenuous position and the inability of any one approach to offer a lasting solution in which users have a greater say in these governance
processes, expanded access to technology to combat censorship and surveillance, and operate in a more transparent environment.

As the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank Larue (2013) undertook a sustained examination of information and communication technologies, privacy, and expression, emerging with an atypically blunt report. Against a backdrop of the international human rights framework and the interdependency of these rights, he catalogs communications surveillance modes, issues with national legal standards, and the roles of the private sector. He finds deep existing concerns in each area, with need to update laws and change company practices.

**INFORMATION AND COMMUNICATIONS TECHNOLOGY RISING**

The dot-com boom of the 1990s began in the United States, but rapidly extended around the world, with the trajectory of commercially available internet and mobile telephony surpassing technological penetration rates of previous innovations. Use of ICT arguably reaching a tipping point as internet users increased from approximately 40 million in 1995, to 400 million in 2000, 1 billion in 2005 and 1.6 billion in 2008.6 Meanwhile, mobile phone growth has been even more marked, with subscriptions rising from a similar number in 1995 to perhaps 4 billion by 2008, according to the International Telecommunications Union (ITU 2014). Both trends have continued since then.

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ITU found that the first decade of the millennium saw mobile penetration reach 100% in 97 economies and internet penetration reach 30% globally. Indicators of this industry growth are diverse, but consistent (ITU 2011). At the end of 2010, although more than 2.6 billion people lacked access to toilets or other sanitation (United Nations nd), there were almost 4 billion mobile cellular subscriptions in the developing world. Indeed, ITU calculates that mobile cellular penetration in the developing world reached 70% in late 2010 – just six years after reaching the same level in industrialized countries.

Internet rates are lower but tell a similar story: penetration was 30% globally in 2010, with developed countries reaching that level just nine years earlier. It exceeded global fixed (16%) and mobile (12%) telephone penetration in the year 2000, when internet user penetration was under 1% in 72 economies. Ten years later, there were just 6 economies with internet user penetration under 1%.
Content, services, and activity have grown in conjunction with this increased network, with the integration of digital tools in daily life likewise expanded. This shift has fostered innovation and economic change, offering new learning opportunities, creating new forms of social interaction, altering civic and political engagement and much more. There are many ways to track it, but e-commerce is one blunt, but useful indicator encompassing a wide range of online activity, which shows strong growth in the US and in many industrialized and developing countries.


Collectively, these increases are reflected across industries, from universities offering Massively Open Online Courses or MOOCs, to massive government investments in digital infrastructure for operations, services, open data, and surveillance. Business is no
exception, as suggested by the myriad startups and venture-backed efforts, as well as the market capitalization of the larger tech and internet players, which grew (for the most part) during the period of conception of the Global Networked Initiative and the present.

The late 1990s had been marked by concerns around the so-called digital divide between those who had access to technology and those who did not. That frame expanded to include not simply technology but useful online resources and the literacy or fluency to
take advantage of them. By the mid to later-2000’s, dropping costs of hardware and internet access, increasing mobile phone penetration, and growth in online content and services addressed many basic access issues in the US and portended reduced barriers to access in the Global South.

The popular exuberance associated with the technology boom was accompanied, however, by complex sets of issues and concerns spanning child pornography, fraud, security, intellectual property theft, and privacy. Perhaps unsurprisingly, as people flocked to the internet, it became an increasingly appealing target for email scams and viruses, which exploited limited media and technology literacies of a huge and growing population of users at relatively low cost. Others used these new technologies to share software, music, and movies in contravention of copyright law. People also identified more harmful uses of the new technologies, amassing child pornography and realizing other abuses of children and other vulnerable populations.

In the realm disruptive developments with unknown implications, there were seismic changes in the news and entertainment industries, the demise of one and the rise of another class of gatekeeper, and new challenges to state sovereignty, including cyber warfare. Perhaps unsurprisingly, this at once exciting and ominous new domain was increasingly perceived, both by those with power and those without it, as increasingly relevant for security, social stability, economic prosperity, and liberty.

**INCREASED RISK AWARENESS – AND PRESSURE ON COMPANIES**

Amidst the increasingly mainstream role of technology in everyday life came a rapid succession of revelations of what appeared to many Americans to be complicit behavior by
US technology companies in China. The unsettling particulars of the case were arguably fueled further by a range of particularities of the US-China relationship from US calls for religious freedom, to ever-increasing economic competition and tension and long-standing anti-communist sentiment (illustrated by the February 2006 Congressional hearings described in Chapter 3). That larger context led this cooperation with Chinese authorities to spur public attention to the role of information and communication technology companies, and in particular, to their relationship to privacy and free expression.

Human rights groups, investors and others sought to raise their concerns of technology companies violating rights to privacy and expression, often framed as corporate complicity, to the fore, pressuring governments and companies through a variety of campaigns and private conversations. Amnesty International released an investigation into China and launched the Irrepressible.info website to document censorship and surveillance along with the Guardian newspaper. Reporters Without Borders (2006) sustained an ongoing campaign against Yahoo for its role in the Shi Tao case and began publishing an annual list of internet enemies. Human Rights Watch published extensive research on the way technology companies were behaving in China (Mackinnon et al. 2006).

Although China figured prominently in the debate, the issue was more widespread. Online media represented half of all jailed journalists globally in 2009 according to Committee to Project Journalists (2009), as an indicator of increasing online media and government to it, and major issues between governments, users technology companies became public around the world in that period. The Thai government, for instance, invoked its lese majeste law, ultimately driving YouTube to remove videos that insulted the Thai King. In Turkey, a similar situation arose where offensive portrayals of Turkey's founder
Ataturk were the source of a dispute that led to multi-year blockage of the video service. A court in Argentina ordered Yahoo to remove search results for a large number of people, from judges to football star Diego Maradona. While the range of concerns and jurisdictions broadened the narrative somewhat, substantial focus continued to be on China.


Technology companies had been in an expansion mode, seeking to reach new markets, especially in developing and transitioning nations, where rule of law and regulatory institutions were often more fragile than in industrialized nations. As they began more formal operations, including physical presence in these states, companies encountered unclear and challenging regulation (real-name registration and self-censorship in China) pressure from host government threats (license removal, employee detention, service blockage), user lawsuits (as experienced by Yahoo), home country shareholder action (Yahoo, Google), and legislative hearings and threats (e.g., the Global Online Freedom Act). These companies also experienced other forms of business “friction,” including high internal transaction costs, unpredictable policy environments in home and foreign markets, and challenging technical environments (e.g., facing cyber-attacks, government imposed service outages, defensive decisions such as hosting servers remotely that resulted in degraded service speed or not offering services in certain markets). They
were in an awkward position with threats to their business, employee dissatisfaction resulting from the news cycle, and apparently uncertain about a productive path forward.

**ARC OF INTERNET REGULATION**

The global internet infrastructure, including its many technical standards, practices and decision-making apparatuses, has been governed in many respects by multi-stakeholder approaches and largely informal bodies with little official government participation. As recounted by Hoffman (2012), the original sentiment is perhaps best immortalized in David Clark’s description of the one of its key bodies, the Internet Engineering Task Force, as “We reject: Kings, presidents and voting. We believe in: Rough consensus and running code.” Indeed, while there are many bodies that exert force on the space, its history is arguably relatively unregulated. As the internet has grown in scale, scope, and technical complexity, while becoming a powerful economic, social and political force, those original ideals and approaches have continuously been called into question.

Despite the entry of new actors who are in many instances less technical than the creators and early users of the internet, core ideas about the technology and limiting intervention in the network remain relevant touchstones for considering technical and regulatory changes. The end-to-end principle, first offered by Internet pioneers Saltzer, Reed, and Clark (1984), suggested that application-specific functions introduced on a network, should reside at the edges rather than in the intermediary points. This was further built upon by the idea of the stupid network, in which David Isenberg (1997) suggested that telecommunications network was best served by not offering additional services, but to just “deliver the bits, stupid,” as requested by intelligent end-user devices.
The principle of Network Neutrality is more recent incarnation of this line of reasoning. Originally proposed by Wu (2003), it holds that all bits traversing the network should be treated equally, rather than privileged based on their type or point of origin. These ideas underscore an ethos that is suspicious of and resistant to central intervention in the network.

Through the last decades of the twentieth century, the telecommunications industry and voice calling dominated financially and socially, attracting the lion’s share of government attention. Governments largely focused on promoting growth of the internet, telecommunications deregulation, and other ways to influence industry structure, such as common carriage, which would determine whether existing networks would be open their own infrastructure to their competitors, but there was relatively little actual regulation. Other areas of regulation were intended to complement telecoms policy, such as the US sales tax exemption for online sales. The first significant attempt to regulate online speech in the US was contained in the indecency sections of the Communications Decency Act of 1996. Somewhat ironically, most of its attempts to regulate pornography were blocked by courts, and the most impactful element turned out to be its Section 230, which offers online service providers safe harbor for items they publish under certain circumstances.

Perhaps the largest direct connection to government was the US government’s creation of the Internet Corporation for Assigned Names and Numbers (ICANN), a California-based non-profit organization incorporated in 1998, officially contracted to the US Department of Commerce, but is under a multi-stakeholder governance model with global representation. Far from widespread control of the internet, ICANN describes itself as helping computers to find each other through management of Internet Protocol address
spaces, the Domain Name System, creation of top-level domain names, and other responsibilities intended to preserve help the internet to be “secure, stable and interoperable.” It implements policy around these, but does not control content, access, or other key features (ICANN nd).

While the early stages of new deployments of information and communications (and other) technologies have historically escaped early regulation, Spar (2001) finds that it is only a matter of time before the cycle passes from innovation and commercialization through creative anarchy to rules, in a variety of forms. In other words, existing systems, approaches, and organizations are challenged by a new technology — perhaps in the way Barlow suggests in his Declaration of Independence — and they collectively respond in time to rein in the innovation. Indeed, as the internet became more prevalent and associated concerns around unauthorized use of copyrighted materials, pornography, and other concerns, there were calls for increased regulation of the internet.

International organizations had played little role in the development and regulation of the internet, but the internet had clearly expanded from its US origins to a global stage, as suggested by the United Nations World Summit on the Information Society (WSIS). Until that point, issues of interest were taken up in largely piecemeal fashion in a variety of national and international fora, led by and including diverse stakeholders from across social sectors. In various ways and forms, these spanned the many bodies that coordinate the Internet’s technical infrastructure, digital civil liberties organizations, academia, business, governments, and international organizations. With major international convenings in 2003 and 2005 surrounded by a series of regional meetings, it was the first time invited civil society stakeholders to participate officially in a UN summit.
The agenda was broad and reflected the lofty ambitions, diverse priorities, and many unanswered questions that had emerged as internet use boomed in industrialized nations and lagged elsewhere, raising issues of regulation, control, access, language, and much more. It served to place information and communications technology on the UN system radar, including bodies such as the International Telecommunications Union (ITU), which would later become a lead actor in the internet governance debates. The meeting advanced understanding in many of the national contexts that had not yet taken up the technology banner (largely from the Global South), resulting in high-level policy commitments from governments around the world on implementation and assistance. Perhaps tellingly, one immediate and concrete action of the 2003 summit was the creation of UN Working Group on Internet Governance, which was followed by the creation of the Internet Governance Forum at the 2005 summit, a multi-stakeholder approach to considering ongoing issues related to decision-making around the Internet.

Much in the tradition of the end-to-end principle, Zittrain (2008) is hopeful about ‘generativity’ — the internet and related technologies’ capacity to generate innovation including confronting the problems that internet creates. He invokes the ‘procrastination principle’ of resisting external fixes to give the network’s users and creators the opportunity to develop their own responses to addressing the deficits. Despite that confidence, he prods consideration of the stage of the Internet’s development, asking whether the US regulatory model of self-restraint remains relevant, or whether we need to introduce new controls to prevent the onset of a less generative — more closed — internet. This directs us to consider whether a new regulatory approach is necessary to protect the internet we now have, rather than a continuation of existing efforts — effectively
questioning the tendency toward “internet exceptionalism,” in which its regulatory approach is markedly different from other spaces.

Tambini, Leonardi and Marsden (2008) take up related questions in practice. Drawing lessons on experiences from related media and communications spaces in Europe, they suggest the challenges and opportunities for codes of conduct and other like approaches, helping to chart the way forward for an exploration of the GNI approach to internet regulation. Marsden (2010, 2011) explores social responsibility of technology providers to their users, state regulation in the media and technology domain, and additional exploration of emerging co-regulation phenomena (Marsden and Brown, 2013).

Academics may have come to question the wellbeing of the internet on grounds of openness, monopoly, and privacy, and the multi-stakeholder model of internet governance has continued, but there have been increased calls for alternative approaches to governance from governments, including China and Russia, through the United Nations and the International Telecommunications Union. This led to the 2012 World Conference on International Telecommunications and the perspective holds that the US should have less influence and the rest of the world — and governments, in particular — should have more.

The treaty-level conference led by the ITU sought to update international telecommunications regulation after the rise of the internet and included proposals to move a host of infrastructure and operations activities from bodies like ICANN to oversight by the UN or national regulators. While some observers were permitted, only member states were permitted to formally participate, threatening the multi-stakeholder model in process and outcome. The United States and a host of large economic powers refused to sign, but the proceedings underscored the potential for a change in regulatory approach.
We are reminded, however, that regulation is not all about law by Lessig (2006) who demonstrates that technology architecture (or ‘code’) is in some respects analogous to — or even more powerful than — the law. His model for understanding behavior regulation involves the four forces of code, law, the market, and social norms, and it has proven remarkably resilient for examining the new media landscape. He suggests that it is this mixture of forces that affect behavior, and given the powerful nature of each of these in the internet and communications technologies domain, this offers a powerful lens for considering the challenge confronted by the Global Network Initiative designers, as well as a guide for their activities.

There have been numerous regulatory efforts since the rise of the commercial internet twenty years ago, and the overarching orientation for much of the internet infrastructure remains multi-stakeholder. While those policies may shift, what is notable for the purposes of this dissertation is the multi-stakeholder sensibility, which is intertwined with a largely non-interventionist approach and informed by respect for the end-to-end argument, remains strong.

A Patchwork of Unsatisfying Solutions

To many observers in the US congress and civil society, online expression and privacy were different from other global challenges of bad company behavior: the concern was not primarily about corporate non-compliance with regulations and legal authorities, but the lack of resistance to them. The perspective was that when companies were faced with government demands for to censor search results or provide user data in violation of international human rights standards, companies should deny such requests. If they felt
unable to do so, they might opt to not serve the particular market at all rather than being complicit in human rights violations.

That attitude, which was shared widely among civic actors in 2006, including many designers, presented a substantial challenge for the companies. Many saw entry in emerging markets as important for business growth, saw an opportunity to introduce useful services into those markets, and yet feared that they would be unable to deny all demands without significant business and human consequences. While they may have used the need to comply with local law as a shield for their own inaction in some instances, the clash between the need to observe international human rights expectations and abide by local law was a tense one, with the immediacy and potential for impact of local law enforcement looming large.

Unlike labor or environmental standards, however, where associated costs (e.g., for better facilities, overtime, or selective harvesting) can arguably be at odds with social interests (e.g., humane conditions, fair wages, sustainable resource use), user and company interests were substantially aligned, and in at least some tension with government interests and related practices. Indeed, companies generally wanted to retain user trust and to maximize user access to information, while some governments wished to limit public access to information and gain their own access to user data.

At the same time, there are a host of situations in which most parties will agree that companies should be responsive to certain classes of government requests, including inappropriate content (whether it is insulting the Thai King, to which many Thais take offense, or child pornography) or criminal or terrorist investigations, where the target is not explicitly political and individuals may be at physical risk. Indeed, many people agree
that companies have at least some responsibility to respect local law, because although users want to access the internet freely and fully, they also expect government protection. The question was what to do when it conflicts with international human rights norms, to which the authorities may be party, but the interpretation may be in the eye of the beholder.

While ideas for addressing the situation spanned legislative, executive, market, and technological measures, each had substantial limitations and none earned widespread support among stakeholders. Ultimately, these disparate perspectives and approaches challenged the development of consensus on appropriate responses. Legislation, such as the Global Online Freedom Act of 2006, which built on a past series of bills intended to avoid national restrictions on online free expression, took square aim at the role of companies, for instance.

The Global Online Freedom Act of 2006 would have effectively required companies to follow US law rather than respect the local jurisdiction and made it illegal for companies to introduce any restrictions on access to US government-supported websites (such as Voice of America). US companies would have also been exposed to foreign lawsuits, sought to introduce transparency by introducing reporting requirements around filtering, and otherwise promote incorporation of the US free speech standard globally (Mackinnon 2006a; Gasser 2006). Companies and some individuals alike, including Michael Anti who’s own mistreatment by Microsoft’s Chinese Joint Venture at the request of Chinese law enforcement had partially incensed Congress, criticized the Act as likely to drive US service providers from China (Mackinnon 2006b).
The Global Online Freedom Act was the most prominent specific legislative offering at the time, and its perceived shortcomings were not inconsistent with a larger body of critique regarding the limits to national law. Some viewed national law as having difficulty keeping pace with global challenges due in part to cross-jurisdictional and cross-cultural differences, which are particularly prominent in the information and communication technology context. Further, due to the dynamic and unpredictable nature of technology, many hold that, law's tendency to trail technology can result in inefficacy and unintended consequences of technology-based regulation. Indeed, appropriate legal and regulatory approaches for the information age have been a constant topic of debate over the last fifteen years.

Some groups favored the Global Online Freedom Act (at least generally) as a step towards legislation and a potential analog to the Foreign Corrupt Practices Act. In that instance, a transnational governance gap resulting in companies engaging in corrupt behaviors was addressed with a national law aimed at companies doing business in the US. Although there were initial concerns that US companies would be less competitive as a result, it ultimately led to broader international standards and laws, setting global expectations for corporate behavior (Kennedy and Danielsen 2011). Ultimately, efforts to implement legal approaches to address these tensions achieved only marginal support in the US and Europe (although associated legislative pressure attracted seemingly important attention to the issues, particularly in the US).

The US Department of State early 2006 launch of the Global internet Freedom Task Force sought to develop a strategic approach based on monitoring the free flow of information globally, acting when that flow is staunched, and expanding access to the
internet (Department Of State 2006). The Task Force planned to leverage its personnel to track abuses, engage foreign officials and stakeholders, and maintain commitments in international fora. It was associated with US government funds directed at increasing internet access, creating tools to circumvent internet filtering, and generating other approaches to support free expression online. It did not explicitly take on privacy rights, stating a focus on free expression.

Internationally, although enshrined as essential human rights in the Universal Declaration on Human Rights, International Convention on Civil and Political Rights and elsewhere, privacy and expression are especially thorny issues due to their interplay with national security, crime, health, and child protection. These areas receive mandated exceptions within international conventions, meaning that while privacy and expression are protected, there is a significant zone for exceptions that is wide open to interpretation and will vary significantly by national setting.

Beyond these uncertainties, the processes and mechanisms for remedy for violations of these rights within the international governmental organizations generally and internet governance community specifically did not appear well suited to the role. At that time, Palfrey and Zittrain (Deibert et al. 2008) found that they showed no commitment to taking it on. These issues received scant attention at the United Nation’s 2003 and 2005 World Summit on the Information Society, which involved civil society in a global summit for the first time. The 2005 meeting was held in Tunisia, and internet access was filtered at the venue, offering a modest suggestion as to the nature of the challenge to addressing at these issues in a global governance forum.
Market-based and self-regulatory approaches are predominant in the US, but few stakeholders had confidence that a combination of market responses and corporate self-restraint would effectively address these challenges. Surveys have repeatedly shown these measures to be unsatisfying (Electronic Privacy Information Center nd). These forces, where the user has very limited information as to the actual practices of the service provider, let alone the interest and capacity to understand them, are unlikely to impact decision-making. While many US websites rely on services such as TRUSTe, a seal program intended to indicate responsibly privacy practices, and initial hopes were high (Benassi 1999), these sites are more likely to be untrustworthy than uncertified sites (Edelman 2011).

Stock prices, consumer behavior, and shareholder action were insufficient to affect significant changes in corporate behavior vis-à-vis online privacy and expression. Following negative reports on a company or shareholder interventions, there was no direct visible impact on the companies. Company errors that became public drove policy shifts in some instances, as when Microsoft announced policy changes immediately following the Michael Anti takedown (Microsoft 2006b), but they were limited in scope, and did not suggest a sustained effort to address emergent issues at the intersection of privacy, free expression, and new media. They may have changed minds inside the company, but not demonstrably within the public.

With mounting concerns and unclear prospects for regulatory changes or business strategies that address them — and perhaps accelerated by the techno-centric belief that technological solutions are best to address technology-based problems — a great deal of attention has been paid to empowering users with information on threats and technical
ways to address them. Unfortunately, around the time of the formation of the Global Network Initiative, most technological interventions were considered ineffective, incomplete, fleeting, unwieldy, and or insufficiently widespread. The combination of poor usability (Roberts, Zuckerman and Palfrey 2011) and little use (Roberts et al.) limited their impact.

They also had other shortcomings, including that circumvention and encryption technologies, for instance, which endeavor to evade internet filtering and to shield the contents of communications, do not protect against other threats, such as system penetration, hardware confiscation, or physical surveillance. When these kinds of approaches are used, the resulting service may be slow, may sacrifice access for privacy (in the case of proxies, which allow access, but may expose the content and user), may attract undue attention because the contents are encrypted, and or may require elaborate and inconvenient changes in user behavior. Exacerbating these challenges is the fact that people often do not understand or mitigate privacy risks effectively, and the associated fear that misunderstandings associated with these tools can actually lead people to let their guard down disproportionately, leading to increased risks.

Efforts began among like-minded organizations within sectors, e.g., academics creating a market-based response (industry code) or non-profits exploring legislation, but it became clear that the issues did not lend themselves to being addressed effectively by these groups, but needed a mix of their perspectives. Lawrence Lessig’s four forces of regulation, technical code, market behavior, law and social norms, suggest the potential of each to influence behavior. The framework also underscores the existing lackluster constellation of regulatory deficits, market-based approaches, technological gaps, and
diversity of perspectives on the relevant norms. Bringing together diverse perspectives into sustained conversation by integrating the approaches led to more informed and innovative approaches to drawing on the four forces positively. Ultimately, appeal emerged for process that extended beyond the limited influence of any single sector. It was within this environment, that the Global Network Initiative was born.

**GOVERNANCE GAPS AND NEW FORMS OF REGULATION**

Scholarship around governance gaps is uneven, rich in some areas, with substantial attention to longer-term transnational challenges such as extractive industries, labor and the environment. The dynamics of these deep and widespread issues are well established, from absent rules to limited government enforcement capacity and more. There has also been work on mass media and telecommunications regulation, where concerns about monopoly have emerged, but many emergent areas of information and communications technologies remain little understood, including the newer concerns around privacy and expression online. The need is to build upon that base of research, exploring points of intersection and tensions with these emerging human rights issues, in the hopes of deepening our understanding in both areas.

As one relevant starting point, researchers examining fields such as self-regulation of environmental and labor standards have identified the breakdown of effective government regulation, globalization, and the rise of the power of transnational corporations as the roots of these approaches (O’Rourke 2003). These are broad trends that also characterize the ICT space, suggesting potential parallels.
Over the last decade plus, we have also seen the emergence of many new forms of global governance in these and other areas, including alternative regulatory mechanisms that do not rely on formal legal authority, but rather on systems of self-regulation and private governance. Some governments view these strategies as more dynamic (Ayres and Braithwaite 1992), appreciate their market-based appeal (Cashore 2002), or are attracted by the associated reduced burden on government (Braithwaite & Drahos 2000).

The significant new public attention to and pressures on companies’ social performance of recent years make codes of conduct and monitoring systems attractive to companies and civil society alike (Conroy 2001), especially when there are effective external means of demonstrating appropriate behavior (Nadvi & Wältring 2001). Also relevant is the need for companies to align these priorities with their own actions to create shared value (Porter and Kramer 2011). The thinking goes that public frustration with companies’ shorted sighted behavior around large social priorities drives policymakers to introduce responses that further challenge businesses, and that attention to better aligning behavior with social needs will reduce costs and increase collective gains. These contextual factors underscore why adopting these approaches appeals to the private sector for a range of reasons, including increasing the ability to better meet and acknowledge increased public expectations for socially responsible corporate behavior, the creation of additional incentives to support decision-making that incorporates those public expectations, the potential to demonstrate the actual nature of corporate behavior, and the opportunity to either inform new or more strict legislation, or to avoid it altogether.

For their part, although many NGOs have traditionally opposed self-regulation and been concerned by a reduced state role, they have increasingly supported new approaches
as a supplement to ineffective state regulation (Cashore 2002; Conroy 2001). The significant role of accountability measures within the GNI structure and to self-government efforts more broadly, suggests the importance of research on self-regulation and the power and limits of voluntary compliance, such as the work of Richard Locke (2010). Among the other relevant findings is that private governance with accountability measures can raise the behavioral floor, but that gains are prone to reach a plateau with static requirements. In addition to limiting the gains with known issues, this also suggests that they might be slow to anticipate and respond to new challenges.

In Private Institutions and Global Governance, Phillip Pattberg (2007) observes that there has been a trend towards institutionalization of cooperation across sectors emanating from international organizations, NGOs, and businesses themselves. This is notable along at least three dimensions. First, the locus of problem solving extends beyond formal authority, meaning that complex challenges are not addressed only through traditional legal and regulatory means, but through a range of other actors and institutions. Second, collaboration serves as a complement to traditional confrontational approaches, so whereas the different stakeholder groups have acted in largely oppositional fashion, they are also increasingly able to learn from each other and to identify areas for joint gains. Finally, the underlying practices are increasingly institutionalized, leading to a sort of ‘soft law’ complement to traditional regulation.

Contrasting the observation of government regulations due to the legitimacy of the system with the choice to cooperate based on the calculation of expected benefit (without authority for enforcement), Pattberg argues that sustained collaboration among non-state actors is institutionalized through rules governing roles and behavior. These are
complemented by other activities such as deliberation, problem solving, and learning. They combine to further exercise authority, providing an institutionalized response akin to international governance, what he calls private governance. Drawing on regime theory, partnership politics, and studies in global political economy, he proposes a model in which the conditions for private governance are described as a combination of macro-level factors including globalization and the international dissemination of ideas, and micro-level factors specific to the problem and the actors and resources involved.

Even as we seek to understand the motivations to develop a method for private governance, we also look at the collaboration itself, including how it actually developed in practice. Helpful resources ranged from Kanter’s work on Collaborative Advantage, describing the potential benefits of collaboration, to the decades of works by Huxham and Vangen (2005) exploring numerous dynamics of cross-sectoral collaborations — with attention to why and how they work. Wenger (1998) and others complement this with exploration of communities of practice, integrating learning, community and action, in ways that may help understand the process, and how different sectors experience and contribute to it.

Wilson’s (2004) research on the dynamics of leadership and multi-sectoral interaction underlying the rise of the internet in the Global South as developed in The Information Revolution and Developing Countries, explores the ways in which the relationships among people and organizations across sectors have combined to promote — or limit — the development and adoption of ICTs. Other research explores more explicitly the ‘quad’ relationships among business, government, non-governmental organizations, and academia (Wilson 2003). With the development of the internet substantially based on
these origins, there is reason to ask whether and how quad relationships remain relevant for the continued build-out of the network.

**Stakeholders Converge to Develop GNI**

The process that led to GNI originated in three distinct conversations, driven respectively by companies, scholars, and non-governmental organizations. In early 2006 a group of companies first met to draft an industry code of conduct under the joint facilitation of Business for Social Responsibility (BSR) and the Berkman Center. That spring, Orville Schell and Xiao Qiang of the University of California-Berkeley’s Graduate School of Journalism initiated the creation of a code of conduct by academics, in collaboration with the Berkman Center. Meanwhile, the Center for Democracy and Technology convened a third and slightly more diverse set of actors to deepen understanding, raise issue awareness, and seek solutions.7

The initial framing of the company group was inspired substantially by the Sullivan Principles, introduced in 1977 as a code of conduct for US companies doing business in apartheid South Africa. An industry-code approach offered the potential to set a higher standard than if companies were left to fend for themselves, allowed them to benefit from the strength of their numbers, and it recognized the need for even dread competitors to unite around human rights to protect the shared value of trust in the internet—all while retaining control of expectations and commitments.

7. The description of the creation of the Global Network Initiative and its foundations incorporate the chapter I wrote in Deibert et al. (2010, Ch. 6) entitled Protecting Privacy and Expression Online: Can the Global Network Initiative Embrace the Character of the Net?
The academic group shared the same inspiration and some of the same members, but being neither blessed nor cursed with institutional stakeholders, was more activist in nature. Indeed, part of its strategy was to serve as a forcing function for the company group to produce something meaningful to avoid having academics write the code. The NGO group was perhaps more exploratory, bringing in more diverse voices to focus on better understanding the problem and implications, rather than on a particular solution.

Behind-the-scenes conversation led to the academic group inviting participants from the other two processes to meet in Oxford in July 2006. This resulted in a rapid series of meetings over summer and fall. After achieving initial agreement as to some elements of the overall approach, the group announced their intention to work together in a January 2007 press release. Until that time, the mere fact that the organizations were in discussion was scarcely discussed in public.

Over this period a consensus emerged that underscored the importance of collaboration across sectors, each recognizing that it required the other for understanding, implementation, legitimacy, experience, access, and other resources. Regardless of the preferences among participants, law and regulation were not currently attending to the challenges that individual companies confronted in seeking to respond responsibly to government requests. An unlikely family was born, including former colleagues, current competitors, and long-time critics, and in which each group arguably needed the other to accomplish its goals. There was also a great diversity of views, in particular, on how best to achieve those goals, what to take as givens, and so on, but initial agreement on a solution-set and a process moving forward.
Over the next approximately two years, more than two dozen organizations and many more individuals undertook an involved process to develop the foundations of GNI’s formal structure. There were more than two-dozen extended in-person meetings hundreds of conference calls, and an extraordinary amount of email.

**FOUNDATIONAL ELEMENTS**

The structure and overall approach that emerged from the Global Network Initiative’s multiyear process are largely defined by four documents: the Principles, the Implementation Guidelines, and the Governance, Accountability, and Learning Framework, which were released in October 2008 and were later supplemented by the Governance Charter. At the most fundamental, aspirational, and stable level lie the Principles, which express overarching support for international standards centered on expression and privacy, and a commitment to act upon them. The associated Implementation Guidelines provide concrete guidance to companies regarding the realization of the Principles in practice and are intended to reflect developing institutional knowledge and respond to the challenges companies and users face. The Framework describes the initial expectations regarding a supporting organization and the general design of the accountability and learning regime, which both ensures that companies are complying with the Principles and fosters learning within and across GNI participants.

**Principles**

In order to articulate a common understanding of global principles for freedom of expression and privacy online, the GNI drew heavily upon 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), which together constitute the International Bill of Human Rights. The document highlights the undergirding role of government in respecting, protecting, and promoting human rights, along with the complementary responsibility—and opportunity—of ICT companies to do likewise.

The Principles include a preamble and sections on freedom of expression; privacy; responsible company decision-making; multi-stakeholder collaboration; and governance, accountability, and transparency. The structure and tone balance lofty statements with more actionable commitments within each of these areas, acknowledging the elements of aspiration and implementation in the GNI.

While the GNI limits its explicit focus to online expression and privacy, the Principles recognize the interdependence of all human rights. They call out the particularly important role of expression and privacy in realizing other rights and as guarantors of human dignity. On the more active side, GNI participants commit to protect expression and privacy rights both generally and in the face of laws and government demands that seek to undermine them.

They also acknowledge “narrow” but potentially substantial exceptions to the rights outlined in the ICCPR, including “actions necessary to preserve national security and public order, protect public health or morals, or safeguard the rights or reputations of others,” related interpretations issued by international human rights bodies, and the Johannesburg Principles on National Security, Freedom of Expression, and Access to Information.
The sections that describe the key elements of the GNI’s approach—including responsible company decision making; multi-stakeholder collaboration; and governance, accountability, and transparency—include reference to both higher-level vision and operational commitments. Companies agree to integrate the Principles within their mission, decisions, and culture, and to that end, commit to senior-level involvement, to anticipate risks and opportunities centered on expression and privacy, and to make best efforts to encourage partners and related businesses to also implement the Principles. In recognition of the novel challenges associated with ICT, the Principles point to the value of collaborative strategies that reach across sectors, and agree to engage jointly to advance expression and privacy. The final, and perhaps most notable, element is the commitment to public transparency and accountability in implementation of the Principles—including independent assessment and evaluation of compliance.

**Implementation Guidelines**

While accounting for the limitations of the GNI’s current incipient understanding of effective strategies and tactics, the Guidelines promise actionable steps for ICT companies that constitute compliance with the Principles and provide an initial framework for collaboration among participants. Drawing upon collective experience to date, they are designed as a starting point, prepared to incorporate lessons as the GNI and its participants discern them.

The expectations cover roughly the same terrain as the Principles, but place ‘responsible company decision making’ first, suggesting the overall frame within which the activities occur. Companies are expected to form internal cross-functional teams to lead
implementation, to train employees (and the board) on approaches and procedures, to provide whistle-blowing mechanisms for employees, and to encourage business partners and others to adopt the Principles.

With a priority placed on preventing incidents, participants will undertake human rights impact assessments to identify circumstances when expression and privacy rights may be jeopardized or advanced (e.g., entering new markets; designing and introducing new technologies, products, or services; selecting partners; responding to policy change) and develop steps to mitigate risks and to leverage opportunities. Companies will elaborate procedures and polices that govern these occurrences and the possible issues that arise within them.

The Guidelines state that authorities seeking to limit expression or privacy will be expected to do so in writing along with the legal basis for the restriction and the name of the requesting official, and that when required by governments to limit access to information and ideas, companies will interpret laws and requests narrowly and communicate actions to users when legally permissible. When they are confronted with a practice that appears inconsistent with domestic law and procedures or international human rights laws and standards on expression or privacy, companies will challenge it. Companies will document these requests and demands to permit tracking and review.

**Governance, Learning, and Accountability Framework**

Much of the value of the collective is created by means of the activities described in the Framework, which include the GNI’s organizational structure and responsibilities, along with those of the participating companies and the independent assessors. The Framework
covers basic institution-building responsibilities including recruiting of new participants and outreach, fostering learning and collaboration on policy issues, offering a communications channel for external parties and users, publishing an annual report, and creating an accountability mechanism.

Independent monitoring, which begins with an orientation toward process and becomes increasingly comprehensive over the GNI’s first five years (ultimately including incident review), supports corporate accountability, remediation where necessary, development of good practice among participants, and continued evolution and refinement of the GNI. The accountability process moved from capacity building (2009–10), to independent process review (2011), and independent process and case review (2013 and beyond). The phasing process was designed to accommodate the lack of existing capacity to conduct monitoring and assessment in the ICT space, with the recognition that assessment would have to parallel a gradual learning process, evolving alongside the GNI and company implementation. During the first phase, the board develops independence and competence criteria for monitor selection as well as operational guidance for assessors, while the companies initiate implementation of the Principles, and the organization focuses on learning and outreach.

The second phase expects the companies to have fully implemented the Principles and provided a detailed report of its internal processes to the organization. Based on this report, an assessor (or team, more likely) who meets the GNI’s criteria and is selected by a company will review that company’s processes in operation. In preparing their report, assessors draw upon other relevant materials from the company, except in cases of
reasonable legal limits to disclosure, preservation of attorney-client privilege, or protection of trade secrets.

In addition to facilitating the assessment process, the organization will review the accountability process with an eye to necessary improvements, while also informing the board of the results of individual assessments. In conjunction with GNI participants, the organization develops “clear, achievable guidelines” for compliance with the next phase of assessment based on experience to date.

In the third phase, the board accredits a pool of eligible assessors, identifying any concerns related to independence for particular companies, and companies draw from this pool, with the board resolving any resulting concerns. With GNI’s guidance, the assessor goes beyond process, examining actual incidents and company responses to government requests, providing recommendations for improvement and a detailed report to the GNI on the company’s implementation of the Principles. Based on this and accounting for any changes the company has made in response to the findings, the board will determine whether the company meets GNI expectations and share that finding publicly.

As in the previous phase, companies may choose to withhold certain information based on legal limitation (as in the case of a national security letter), for the preservation of attorney-client privilege, or to protect trade secrets, but will be expected to provide as much information as possible as to any specific limitations on their responses. Withholding and the reasoning behind it will be reported and factored into the findings, and may render the assessor unable to certify compliance.
BUSINESS AND HUMAN RIGHTS

The roles of public and private actors, and companies in particular, vis-à-vis fundamental human rights have changed over time and vary across sectors, and these roles and expectations continue to evolve rapidly. Recognizing the important interactions among private business and human rights, the United Nations Secretary General appointed John Ruggie as Special Representative on Business and Human Rights in 2005 (and again in 2008 (United Nations nd). His mandate culminated in the 2011 endorsement of the Guiding Principles on Business and Human Rights by the Human Rights Council of the United Nations, the Council’s only authoritative guidance on business and human rights, and the only endorsement it has made of a normative text that was not negotiated by governments (Ruggie 2013).

Ruggie’s mandate consisted of a massive undertaking to distill law, precedent, consultations and more, to guide the private sector and trans-national actors on their behavior as it related to human rights. It yielded the United Nations (2011) Protect, Respect, and Remedy Framework and Guiding Principles recognizing:

a) “States’ primary role in promoting and protecting all human rights and fundamental freedoms, including with regard to the operations of business enterprises”;

b) “The role of business as specialized organs of society performing specialized functions, required to comply with all applicable laws and meet the societal expectation not to infringe on the human rights of others”, and

c) “The reality that rights and obligations have little meaning unless they are matched to appropriate and effective remedies when breached.”

Government helps ensure that respect through a combination of various mechanisms that regulate business behavior and offer paths for remedy. While government has performed these regulatory functions to varying degrees of effectiveness, depending on the period, setting, behavior in question, and many other variables, it comes as little surprise that practice is often different from the model. Despite the rigorous and multi-faceted work around it and the long and wide view it takes, this model remains new, with Ruggie noting that it would not bring business and human rights challenges to a close, but mark the beginning of that journey.

The Principles endeavor to be broadly applicable, and to provide a focal point for all companies as they consider their role in regarding human rights, but by design, it also leaves many questions unaddressed. It does not seek to address gaps in governance, nor delve into new models of governance that respond to these gaps and other deficits, which fall beyond the scope of the mandate — but are relevant to it.

This body of work is important as a comprehensive indicator of a sustained investigation of theory and practice that cuts across sectors, disciplines, cultures and governments to offer a fundamental normative vision for business at it intersects with all human rights. Beyond those resources for understanding why participants in the Global Network Initiative came together, the timing was notable in that its development was coincident with the Global Network Initiative. There was significant overlap between the processes and the people who drove them, and among many people involved in the Global Network Initiative, there was a sense that its work embodied the spirit of the Special Representative on Business and Human Rights and that the two processes were informing
one another. It merits mention that Ruggie initiated the exploration of a legal instrument modeled on the UN Convention Against Corruption, consistent with a previous article (Ruggie 2007; 28) in which he suggested that international legal instruments would be important for business and human rights “as carefully crafted precision tools,” to take on specific gaps that are otherwise elusive.

For online privacy and expression, there are a host of questions that may or may not be unique. We must ask what it means for new governance models when there are billions of affected people, rather than millions? Beyond scale, how does the role of government change in these different settings? How can Ruggie’s remedy be achieved at that scale and across jurisdictions and cultures? How does the pace of change in a given sector affect approaches to governing it, how do we understand which regulatory models are appropriate given the characteristics of their focus?

**Broader Relevance**

Despite what already feels like a sea change, many technology observers feel the knowledge age is just beginning, with far greater changes and challenges ahead. Fundamental – and unresolved — issues affecting individual users, business, and society abound with more in the wings, underscoring the importance of developing the capacity to understand and influence these developments in ways that harness technology for social progress rather than undermining it. As information and communications technologies and the issues around them, including free expression and privacy, continue to grow in ubiquity, importance, and complexity, the challenge of understanding these dynamics and influencing them only becomes more pressing.
Through an examination of this particular domain and the Global Network Initiative’s response to its challenges, we may learn both about ways that it may improve its own efficacy in the near term, while also gaining insight into addressing other questions emerging alongside the rapid and varied development of new media and technology tools, businesses, uses, and responses. Neither the future of the Global Network Initiative nor almost anything else in this realm seem certain. It does seem clear that the confluence of factors will continue to push the limits of existing institutions and conventions, requiring us to continuously reflect on the issues and to consider how to proceed, whether with forbearance, a proactive path to change, or somewhere in between, and to develop support for that navigation.

The internet and communications technologies domain’s characteristics are not typical, but neither are they unique in an increasingly globalized, interconnected, and fast-changing world. Arguably, the environment, public health, and other social priorities have certain similarities. In each, problems cross borders, multiple-sectors and stakeholders combine to create and inform practices and approaches, and associated tools and needs evolve rapidly and unpredictably, all of which requires new and dynamic responses. The interaction of these characteristics underscores limitations to traditional approaches to regulation, in which regulators rule, stakeholders do battle, and new responses are not institutionalized. This suggests that the multi-stakeholders approach represented by the Global Network Initiative may be teach us about models for responding to other pressing and complex challenges.

This study offers an opportunity to expand upon these foundations of scholarship, exploring the formation of a collaborative effort to take on global challenges with
characteristics that are different from those in much of the research on self-regulation and private governance. As such, it may be well positioned to add new approaches and insights to the better-documented fields of environment and labor, among others. It also adds to internet policy research, offering a close and deep look into a novel — and still unproven — approach to addressing significant threats to the rights of privacy and free expression, which are core to enabling the productive use of information and communications technologies around the world.
Chapter 2: RESEARCH METHODS

Through an examination of the creation of the Global Network Initiative, I seek to better understand two fundamental and interrelated research questions about private governance in the ICT domain: 1) which factors help explain the formation of multi-stakeholder attempts at governance, and 2) how those factors influence the adoption of particular approaches to regulation. This chapter covers the methods I use to explore these questions, beginning with the hypotheses and research framework, through research design and process.

INTRODUCTION

Pattberg’s (2007) scholarship on co-regulation in the environmental sector underpins my exploration of these questions, offering four major factors as a research framework for the conditions of the emergence and institutionalization of private governance such as the Global Network Initiative. Macro-systemic transformation pertains to overarching contextual changes, such as globalization and growth, leading to changes in regulatory efficacy. Problem structure involves interconnected interests, knowledge, and abilities related to addressing the issue at hand. Organizational resources refer to potential participants’ ability for, potential gains from, and prioritization of a private governance solution. The new models factor refers to the broad availability of and familiarity with alternative approaches to regulation. These brief descriptions are further elaborated in the following sections.

My broad expectation is that Global Network Initiative participants were motivated by forces similar to what Pattberg (2007; 114) observed in forestry regulation, “When
private regulatory demand, being a result of strategy and macro-systemic transformation, is not met by adequate public supply [for regulation], a broad inclusive idea can help to integrate resources that can be mutually exchanged to solve the multi-party problem.” In terms of the technology domain, if privacy and free expression online are insufficiently protected by public regulation, society demonstrates a desire for additional regulation, and cooperation is possible across sectors that are often in tension, then new policy strategies for regulation emerge, including approaches to self-governance such as the Global Network Initiative.

I expect that these same factors will play a significant role in terms of the particular model developed within the Global Network Initiative process, while being complemented by trust among and within participants and constituencies, positions of individual participants within their organizations, other multi-stakeholder experiences. The premise being that the development of trust is important to achieving consensual agreement, impactful and engaged organizations had higher level representatives, and that other successes and failures would loom large in decisions about the Global Network Initiative approach. These are further elaborated in the following section.

The research design is a non-experimental, single explanatory case study with multiple subjects and observations. The research process consists of mixed methods and numerous data sources, including participant interviews, participant surveys, participant observation, and primary and secondary sources.
FRAMEWORK

Pattberg’s approach identifies four primary factors (noted before and described hereafter) emerging from the international relations, political economy, and regime theory literatures to create an integrated conceptual model of conditions associated with the development of private governance. Based on these literatures and his reasoning, I further elaborated Pattberg’s model, seeking to define it more clearly by identifying the distinct variables described in the Factors section below that comprise the four broad factors. Based on his work, I contributed indicators with the intention of having widespread applicability in understanding the key elements of the enabling environment for private governance. I further operationalized the factors and variables for this case through the development of corresponding research instruments and sources.

Macro-Systemic Change

Globalization, Industry Growth, Problem Prevalence and Urgency. “Macro-systemic transformations, such as globalization or hegemonic reconfiguration, as well as contextual factors at the macro-level,” are a demand-side aspect of the larger environment in which efforts at private governance are emerging (Pattberg 2007, 62). Changes in power distribution across government, business, and civil society, may render governments less central and effective, due to dynamics including cross-jurisdictional issues associated with globalization, and the real-world challenge of effectively regulating a dynamic and complicated sector. Markets, communities, organizations, and individuals are more interconnected through the global communications infrastructure (internet, phones, media, creative industries) in addition to migration, shared concerns like health and environment,
and trade. Companies become more important as they span markets and integrate their varied offerings into the lives of billions, and also take on new roles including serving a key locus of public activity. Non-governmental actors are transnational, media-savvy and perceived as legitimate agents for social change. When these developments are understood in combination with one another, these trends and factors make possible agreement on a shared problem set that spans sectors and offers novel and potentially efficacious solutions.

**Problem Structure**

Public Regulation Capacity, Sectoral Roles and Interconnectedness. “Problem structure, characterized by interdependent interests as well as different levels of information and knowledge,” is specific to the issue area at the micro rather than macro level, and is a reflection of stakeholder demand for solutions (Pattberg 2007, 62). Aspects of the problem include perceived inefficacy of public regulation alone, appreciation for the shared and interconnected interests across sectors in addressing the challenges, and recognition of the differences in stakeholders’ knowledge and capacity to respond to the situation. These traits suggest that unilateral responses by any one sector, whether government, the private sector, or civil society, would produce less than ideal results.

**Organizational Resources**

Interest, Experience, and Prioritization. “Organizational resources that enable actors to reduce transaction costs or improve their strategic position,” is organizationally specific, noting the underlying conditions for and opportunities for joint gains that mitigate risks
and reduce costs related to uncertainty, negotiation and regulation (Pattberg 2007, 62). Resources are suggested by their expected gains in addressing the challenge through this mechanism, their previous experience with co-governance or related processes, and with the relative priority of their engagement and their constituents’ levels of interest. This combination of expected gains, experience, and priority suggests the basis of organizational level strategies and calculations for participation.

**New Models**

Self-Governance, Co-Regulation. “Ideas and models that allow actors to agree on a common framework for their collaboration,” relate to an emerging discourse around new understanding of challenges and new approaches that include more prominent roles for civil society and corporate actors, including self-governance and co-regulation as two forms of private regulation (Pattberg 2007, 62). Moving away from singular expectations about responsibility for problems or solutions, there is appreciation for alternative (general) means of approaching large-scale problems by marshaling organizational resources in response to particular problem structures arising from macro-level transformations, and using that approach to understand the challenge differently.

**Interconnection**

Pattberg breaks the factors into demand (what is the context and structure of the challenge) and supply sides (what are the means available to address it, specifically and broadly), but can also be grouped as macro-factors (macro-systemic transformations and new approaches) and micro-factors (problem structure and organizational resources).
Pattberg’s model is especially appealing because it acknowledges that these conditions are intertwined and offer insights that single-factor models miss, with macro-level shifts creating micro-level opportunities, and the relationship between needs and opportunities leading to novel co-regulatory activities.

Pattberg’s model does not suggest how to interpret the factor characteristics, and I hope to understand which combination of micro and macro demand factors influence willingness to explore and which combination of micro and macro supply factors influence willingness to implement. I expect variation within the four broad factors among organizations and constituencies, especially with respect to the variables that compose each category, with some having more influence and others being less relevant.

<table>
<thead>
<tr>
<th>Factor Attributes</th>
<th>Micro level</th>
<th>Macro level</th>
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<tbody>
<tr>
<td><strong>Supply side</strong></td>
<td>Organization Resources</td>
<td>New Models</td>
</tr>
<tr>
<td><strong>Demand side</strong></td>
<td>Problem Structure</td>
<td>Macro-Systemic Change</td>
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FIGURE 4: Factor Attributes

**Hypotheses**

I expect to find that participation in the design process is correlated with demand factors, and that implementation is associated with supply factors. I hypothesize that a combination of the urgency and challenge resulting from macro-systemic change and the perceived problem structure makes organizations willing to explore private governance approaches. I hypothesize that a combination of the perceived efficacy of new governance models for solving complex societal challenges (generally and this one specifically) and
their own organizational capacity to contribute to and benefit from a solution makes them likely to adopt the approach. I hope to learn which elements of each factor have more explanatory power for participation and implementation and how that varies across organizations and sectors. I hypothesize that the particular policy approach is driven substantially by the experience and capacity of the designing organizations and social processes, rather than a precise approach to problem solving that yields logical outcomes based on the problem structure. I expect to find that participation in the process associated with the following organizational perspectives, briefly described below, as elucidated by interviews, surveys and public communications with the organizations, as well as other data points.

**FACTORS**

**Macro-Systemic Change**

Organizations across the sectors view the challenges to protecting and advancing freedom of expression and privacy online within a context of macro-systemic change that is characterized by an increasingly globalized, interconnected, and technology-infused world, replete with overlap among stakeholder interests and related changes in sectoral roles and abilities. These developments are especially prominent within the internet technologies domain, which continues to have tremendous growth in industry offerings, technology applications, and users.

Views are informed by the reality that companies’ organizational operations are global, with distributed physical presence, support for multiple languages, distributed constituencies, and complex authorizing environments. Participant organizations recognize
these new interests and roles, including that in addition to the governments’ responsibility to protect human rights, business has an important role in respecting them, while acknowledging the legitimacy of related civil society engagement. These changes echo the rise of corporate power and multi-national actors generally, while still realizing that nation-states still have substantial regulatory power even on less physically dependent businesses in the media and communications space.

ICTs and networked societies are more pervasive, which is associated with greater government interest in regulating online spaces due to their growing importance as venues for political, religious, cultural, social, educational, and economic activity. As technological, regulatory, and economic barriers are addressed and access to networked technologies increases within and among countries, the questions around governance of these technologies and the companies providing them spurs conflicts between national laws and between local jurisdiction and international laws and standards. These tensions create risk and uncertainties for companies, users, and governments, and risk undermining the value of information and communication technologies more broadly.

Globalization and Industry Growth variables are measured with documentation data, e.g., globalization indices, quantitative representations of the size and reach of various elements of information and communications technologies availability, penetration, and use. Problem Prevalence and Urgency is measured through interviews, surveys, and documentation, e.g., government requests for personal data, censorship, takedown requests available through Google’s transparency tool, the Chilling Effects database and the OpenNet Initiative research compendium. Together, these form the context in which the participants organizations are seeking to address a problem, I expected their views inform
their perception of the problem and of the solution set, and influence their policy preferences.

**Problem Structure**

Participants recognize a problem structure that suggests they are better served to engage with other stakeholders, than drive a single-actor (or sector) approach to addressing the situation, such as public sector regulation. As part of this dynamic, they see government regulatory capacity and functioning as being currently inadequate with uncertain or dim future prospects. Participants may actually oppose new public regulation to protect online expression and privacy and be trying to delay or forestall it. Participants may also favor it, but doubt its likelihood in the near-term, and or believe an alternative approach would not negatively impact future regulatory responses.

The problem is complex, characterized in part by stakeholders’ varying knowledge and understanding of its dimensions, and different abilities to support effective responses. Participants have confidence in the capacity of a collective of companies and non-companies to play a core role in creating nuanced appreciation and better awareness of the challenges, and to advance related protections. While government may be hard-pressed to address the problem because of factors such as the mismatch between blunt regulation and rapidly evolving technologies, even a robust company-led approach is unlikely to enjoy sufficient public credibility, which is particularly important given the evolving nature of the problem and the likelihood that no solution will be completely effective.

Participant interests are interconnected and often shared across constituencies. Both individual companies and civil society organizations have limited capacity to directly
influence government behavior, such as limiting overreach around online privacy and expression. From developing deep issue understanding and achieving company behavior change, which civil society cannot easily do without industry insights and relationships, to responding directly to human rights issues and earning public trust, which companies cannot easily do without civil society support, constituent aims are interrelated and mutually reinforcing.

Perceptions of whether Public Sector Capacity for regulation is (or will be) effective and Roles and Interconnectedness among stakeholders and the relationships of the various perceived problems to one another are based primarily on interviews and survey responses. Firms’ business offerings, including geographical distribution, user numbers, and service offerings are included in Roles, because they inform their understanding of the problem and solution sets. The participants’ perception of the problem structure drives their view of solutions to it, affecting both motivation to participate and the policies developed in the Global Network Initiative process.

**Organizational Resources and Dynamics**
Participation and implementation are associated with the unique characteristics and dynamics of each organization, including the ability, perceived need, attitudes, and willingness to participate in the design and or implementation of private governance efforts. This encompasses past experience with collaborative approaches to problem solving generally and co-regulation particularly, and other cooperative interactions within and among sectors. External interest, whether from shareholders, supporters, or other constituents is another relevant consideration. These interact with the availability of useful
and sufficient organizational resources, and broader organizational policy preferences (e.g., openness to alternative regulatory approaches). Ultimately, these elements converge in some level of perceived gains resulting from participation.

Commitment to implementation, however, fits into a larger context with organizations realizing that the capacity for gains is interdependent — spanning organizations and sectors. Sustainable corporate policies and practices that better protect the human rights of users are beneficial for companies and non-companies alike, and reduce the need for or facilitate new government regulation to protect user rights. With civil society insight, advocacy, and support, companies can still be good corporate citizens (cooperating as appropriate with government), even as they push back against government overreach, and advocate for more effective regulation.

From the perspective of companies, perceived potential gains include improving user trust, protecting and motivating employees, mitigating risks around government interactions, reducing tension with shareholders, limiting the criticisms of human rights organizations, and delaying or avoiding unpredictable legislative interventions. Meanwhile, civil society actors advance the internet policy, journalism and related human rights issues they support — whether by addressing current issues or establishing standards that could become law, expand their own understanding of the issues at hand, and join other key stakeholders in related awareness raising and advocacy efforts. Each of these gains may reinforce the others, potentially laying the groundwork to respond to new challenges that will continue to emerge online, thus offering support for the integrity of the internet ecosystem.
Organizational Interest, Experience and Prioritization are measured primarily through surveys and interviews. Capacity is substantially related to past experience with collaborative problem-solving approaches, while prioritization is reflected by the level and type of resources available for participation — ostensibly also tied to external interest. The participants’ perceptions of key organizational factors help explain organizational motivation to participate and possible policy approaches.

**New Models**
Designers are at least open to if not disposed towards novel approaches to addressing shared problems, including regulatory approaches that include multiple businesses or businesses plus non-business participants. Established means, whether direct legal regulation or self-regulation, are not viewed as the only paths forward, with other methods being perceived as potentially efficacious and meriting consideration. Understanding of or openness to these alternatives establishes the possibility to design new architectures and processes for regulatory functions.

While developed in the environmental context, Pattberg’s model is not specific to any particular field, but in a domain that ranges from heavy government involvement to substantially unregulated activities, the regulatory approach, history, and culture of the information and communications technology sectors have particular relevance in the context of models for regulation. The telecommunications industry has been characterized by substantial regulation (or direct government control in the case of state-owned companies), while the internet itself has a largely participatory and multi-stakeholder approach to infrastructure regulation, and the internet technology industry (especially in
the United States) has been substantially self-regulated. This represents a substantial gap within the company constituency, with telecoms toward one extreme and internet companies closer to the other.

The participants’ perceptions of and experience with different approaches to regulation inform motivation and policymaking were established through interviews and surveys, complemented by documentation and secondary sources describing other developments and trends in governance models. The focus is on their views of Self-Governance, approaches to regulation that only include governance by business models, and Co-Regulation, which includes business along with at least one non-business participant. It bears note that views on public regulation, both existing and potential, are captured by the Public Sector Capacity variable within Problem Structure.

**Policy Outcomes**

What influenced the development of the Global Network Initiative’s design? Why did what was initially envisioned as a basic industry code of conduct develop into an ambitious and multi-faceted initiative? How did the approach become one that was designed and implemented by diverse stakeholders with widespread policy implications, not only including fierce critics as partners, but also agreeing to collaborative efforts to influence policy, third party monitoring for accountability, and public certification of company compliance with commitments to Global Network Initiative? How did the design characteristics and other factors influence designers’ decisions on whether or not to implement the Global Network Initiative?
While I hope that my adaptation of Pattberg’s model offers explanatory insight into the decisions by organizations to participate in the design and implementation of the Global Network Initiative, I experiment with their capacity as factors that inform the actual design choices. The effort is exploratory, not focusing primarily on the negotiations, analyzing draft versions of the formative documents, but looking at the model’s factors to see whether they not only drove decisions around participation, but also informed the outcome of that participation.

I hypothesize that the resulting policies reflect substantive views on privacy and free expression online, as informed by organizational views and experience relating to macro-systemic change, problem structure, organizational capacity, and new models. I anticipate that the micro-factors of Problem Structure and Organizational Resources will be more directly prominent. These arguably ‘rational’ elements of the problem set will have a significant overlap with the negotiations process. To some extent, I expect that organizations will divide themselves into distinct roles to account for resource limitations, with individual organizations focusing on certain elements of substance or process depending on their expertise and interests. I suspect that organizations with co-regulatory experience would seek to preemptively correct problems that arose in other initiatives or to explore strategies similar to those that led to successes.

For expected gains, as captured in Organizational Resources, all participants would seek measures to protect their reputations, although they would likely have different paths. I anticipate companies focusing on limiting disclosures, ensuring certification, and focusing on the most directly efficacious approaches. For their part, non-companies are a more
heterogeneous group, seeking some mixture of accountability measures, inside information into company behavior, method for remedy, and other evidence of real change.

While companies would want to identify and implement meaningful changes, so long as they have an appealing perceived benefit-cost ratio, they will likely seek to limit the scope of impact on their operations. Practically, this means demanding clarity regarding expectations around those changes, while also endeavoring to maximize their own flexibility and control regarding implementation. For their part, non-companies may range from being more inclined toward experimentation to being quite risk averse. While they will understand that it is impossible to eliminate all human rights risk, they will endeavor to demonstrate they have done everything possible to mitigate it and otherwise acted responsibly with regard to the creation of the Global Network Initiative, and that threshold will vary across organizations.

Assuming that organizations behave as purely rational actors is unreasonable and I predict that the policy decisions will be strongly affected by internal organizational factors, as suggested above, from culture to structure and beyond, in turn influencing each organization’s mode of participation and preferences, and thus the policy process overall.

**RESEARCH DESIGN**

**Description**
The research is a non-experimental, single explanatory case study employing a mixed methods approach in the hopes of yielding a deep, nuanced, and integrated picture of the factors underlying this multi-stakeholder initiative. The primary unit of analysis is the
organization as it related to the Global Network Initiative, a collaborative approach to institutionalize private-governance on online expression and privacy.

The views of each organization on the issues surrounding and the actual formation of the Global Network Initiative – and its own decisions regarding participation and implementation — offer insight into the factors associated with the Initiative’s development and that of other multi-stakeholder attempts at governance. Beyond this particular context, exploration of these factors and dynamics allows refinement of Pattberg’s model for understanding the rise of private governance efforts.

The case study includes multiple subjects (organizations) and observations, consisting of diverse data sources including participant interviews, surveys, participant observation, and primary and secondary sources. The research begins in January 2006 with the onset of forerunner conversations among participants and rising public interest, and ends with Global Network Initiative’s official launch in December 2008, with selective inclusion of relevant data points outside this window.

**Rationale**

In his work, Yin (1994) proposes a powerful model with the type of question, period, and control as the three conditions for selecting a research strategy, finding that the case study is appropriate for instances in which the researcher asks questions about how and or why relating to contemporary events (rather than historical ones) over which the investigator has no control. In this case, the research questions are about how and why a group consisting of competitors and critics chose to work together and developed their particular approach. Although less current than when the research began, the dynamics of the case
are very much present-day, with the Global Network Initiative still growing and its issues are present in the public debate, although it has enjoyed little in-depth writing or research attention. Finally, there was no behavioral control of the organizations that were part of the study. Further, the case study allows the incorporation of all other research approaches except experimentation.

The rich and diverse forms of qualitative data and relatively narrow focus promote an understanding of the group’s formation and the resulting policy development process that would be difficult or impossible to achieve through other research methods. This approach facilitates the derivation of unanticipated insights beyond the hypotheses, allows exploration of causal mechanisms in ways that other methods cannot, and is appropriate for understanding the connection of factors over time (Yin 1994; George and Bennett 2005; Gerring 2007). Where other methods may be unable to access, eliminate or collapse variables bluntly, their inclusion facilitates surprises (George and Bennett 2005). Faced with understanding contemporary events that are not well or publicly documented, the case approach also facilitates the sort of mixed-method, cross-disciplinary analysis and debate that is fundamental to the domain of Law and Public Policy, among other academic and policy discussions.

The case is not intended to be widely representative of potential private governance initiatives, which would be difficult given the paucity of relevant cases of business co-regulation, but as a test and refinement of existing theory. The focus was selected based on data availability, diversity of observations, and current and future policy relevance. As a participant observer, I enjoyed unique access to relevant data and the trust of those engaged in the process (and saw the corresponding risk that the data would be degraded or
lost altogether without timely research). Organizations spanned social sectors and foci, and ranged from aware, to designing, to implementing the process, offering a variety of perspectives on the effort and surrounding issues. Finally, the study has significant potential for policy impact in terms of the further development of the Global Network Initiative, exploration of other efforts to co-regulate both the online privacy and expression space and networked technologies more broadly, and understanding private regulation more generally.

**Alternative Approaches**

Yin’s conditions for research design underscore the limitations of effectively employing alternative approaches to undertaking this study. One overarching challenge is that the theoretical grounding for understanding the formation of multi-stakeholder governance initiatives is relatively young, and there is little research in the technology domain, where the challenges and the stakeholders may be different from other sectors. This favors explanatory approaches that also allow for exploration.

In terms of methods, we can rule out an experiment due to the lack of direct, precise and systematic behavioral control, to say nothing of the challenge of experimenting with an organization rather than an individual, and the likely detachment from actual organizational behavior and thus limited external validity. It bears mention that certain elements of a quasi-experimental approach do appear in the case, in its ex-post examination of the perspectives on contextual issues of not only the implementers, but also designers and non-participants.
History and archival analysis have elements in common with the case method, which make them somewhat more appropriate. Due to the limited availability of written and archival materials, and the contemporary nature of the work, including access to individuals involved in the organizations and the Global Network Initiative, relying solely on history is unnecessarily limiting. We can expect that an archival analysis would be more broadly unsatisfying based both on the how/why nature of the research (rather than questions of who, where, how many) and the limited extent and availability of relevant archival materials.

There is often limited public documentation of many of the processes that lead to multi-stakeholder initiatives, official communications necessarily represent some sort of compromise or common ground, and public communications of stakeholders seem likely designed to advance some aspect of their organizational interest. Whether a press release, a shareholder action, a congressional hearing, or some other record, the aforementioned dynamics, suggest that public records would offer at best an incomplete picture, if not a potentially misleading one. Indeed, the most complete and impartial information often comes via case studies.

In the specific case of Global Network Initiative, the design participants collectively decided not to disclose the existence of the meetings during an approximately six-month period. Once a brief public announcement was made in January 2007, the potentially disruptive nature of any communications emerging from the group continued to outweigh a deep commitment to transparency. This complexity, along with a pressing workload and limited independent communications capacity, resulted in modest public records from the
formation period and beyond, now occurring due to limited resources rather than process concerns.

For their part, individual organizations, recounted their own views, role, rationale, and experience, ostensibly according to some mixture of their resources, interests, and ability, which means that there are wildly differing form, focus, and framing. There is, however, no set of resources that is comprehensive enough to answer many of the questions asked herein for any one organization, let alone for all organizations. The purpose of the communications which do exist are also varied, but none are intent on providing an impartial, wide ranging, and forthcoming understanding of the process as it unfolded. The remaining possibility is a survey-based approach, which would face limitations in terms of explanatory power and generating unexpected insights, and be especially challenging without the sort of questions gleaned through some combination of relevant theory and participant observation or other form of familiarization with the Global Network Initiative.

In Yin’s model, it would be less appropriate to the how and why question because of the challenge of tracking developments and connections over time. Oral surveys would compensate for that somewhat, offering the opportunity for interactivity, but would lack the meaningful integration of self-reporting with events and other developments — the connection to history and archival information.

The Global Network Initiative founders are few in numbers so any survey would be severely limited by the small number of potential respondent organizations in the designer and implementer categories (and or when divided across the four constituencies), rendering quantitative results of little value (even in the unlikely event that full
participation was achieved). Effective surveys and high response rates would require a more advanced understanding of the case, forthcoming participants, willingness of high-level actors to invest time in responding, and even then would fall prey to the limits of self-reporting.

**Alternative Frames**
While none of aforementioned alternative research approaches was more appropriate to my particular research questions, they are relevant to understanding governance initiatives that are private or relate to online expression, privacy, or other technological regulation. They may be useful in different cases, which are better suited to historical or archival methods, may use a natural or other quasi-experimental method to leverage instances in which there is no control by the experimenter, or may compare multiple efforts, which could create a variety of methodological possibilities. Naturally, the questions might also change, extending from how and why, to what organizations want, what the impacts are, how many exist, and so on.

Each of these, could be complementary to the present work, offering insights, connections, and context, but would also have its own limitations. These range from the contemporary setting, to the limited numbers of total initiatives and participants within them, to the inclusion of a wider variety of intentions and structures, and the willingness of participants to provide additional information.

Perhaps most importantly, so much of the development of private governance attempts happens outside the public eye and is often essentially undocumented until (and if) it becomes a more established effort. Even then, with much work to do, many elements
of interest only to researchers rather than participants or other stakeholders, and certain aspects of the story sensitive for individual or organizational reasons, many of the contributing factors will never be communicated publicly. The impact is to leave actual provenance of the effort largely unknown to outsiders, uncertain to insiders, and difficult to study for anyone, regardless of method. This dynamic serves to deprive each of those groups of the associated lessons, along with disinterested parties who are stakeholders in other contexts but would stand to gain from their collective experience.

In terms of comparability, while there have been sufficient multi-stakeholder initiatives in recent years to support comparative study, they are spread across a swath of interests, with significant concentrations around long-established challenges such as the environment, labor, and extractive industries. There are few, if any, that are arguably similar to the Global Network Initiative, especially vis-à-vis the role of government, or otherwise in the rapidly growing zone of information and communications technologies and human rights.

Those activities touching that field, may implicate the supply chain, labor, or other more traditional areas of corporate social responsibility — where companies are the bad actors and their incentives are perceived to be in more direct tension with profitability — rather than emergent challenges, government involvement in the heart of the problem, and alignment of corporate social responsibility and mission. The overall range of aims and approaches yields a host of difficulties about comparability and the associated sacrifices in granularity necessary to generate a significant number of cases.
Shortcomings of the Approach

Although the case method has faced criticism historically, methodological refinements, increases in mixed-methods approaches, and “cooler heads” are making progress in recognizing unique capacities, limitations and ultimately the complementarities among the various ways of knowing (George and Bennett 2005). These concerns emanated largely from experimental and quantitatively oriented researchers, and included concerns about generalizability, researcher rigor and bias, resource intensiveness, and unnecessary detail (Yin 1994). Flyvbjerg (2006) offers a wonderfully comprehensive exploration — and debunking — of the "Five Misunderstandings About Case-Study Research," which he summarizes as regarding theory, reliability and validity. We consider these broad-ranging considerations in the context of the case in question.

Many have suggested that case studies are most appropriate for early stage hypothesis testing, rather than hypothesis development, causal insights, theory building or testing. Yin (1994) characterizes the old perception of a hierarchy among methods, with cases being appropriate to exploratory phases, surveys and histories suited to the descriptive phase, and experiments being the only way to offer explanatory and causal insights. He notes, however, that each of these methods can be suited to every task, depending on other conditions, and points out that they are more overlapping than often perceived.

The inability to offer scientific generalization from a single case is a common cry, although it is arguably little different from a single experiment, which typically is complemented by many other experiments. Indeed, the case cannot be seen as a sample whose results can be statistically projected onto a population, but as an opportunity to
expand and generalize theories analytically, rather than with statistical generalization. Flyvbjerg’s (2006; 228) findings are similar, “One can often generalize on the basis of a single case, and the case study may be central to scientific development via generalization as supplement or alternative to other methods. But formal generalization is overvalued as a source of scientific development, whereas ‘the force of example’ is underestimated. The case study is useful for both generating and testing of hypotheses but is not limited to these research activities alone.”

Generalizability is promoted through the strategic selection of cases, when rather than seeking random or representative instances, cases, which are atypical, the least likely or most likely instance to see the expected outcome can shed the greatest light (Ragin and Becker 1992). Flyvbjerg (2006) suggests that when understanding the underlying roots and implications — not describing symptoms and their frequency — identifying cases based on their validity is preferable.

We must recognize that a single case has limited external validity — focusing rather on the challenge of understanding the particulars related to the case — than on explaining a broader set of phenomenon (George and Bennett 2005). It cannot claim to offer more broad causal or predictive power alone, but rather to focus on novel insights around a particular setting, which can serve as a building block for subsequent research in other settings, testing and refining existing theoretical models, or adding new factors for consideration

In terms of addressing potential concerns, there are various mitigating factors, ranging from increased observations within a single case (George and Bennett 2005), to cases which are a compelling test because they are either the most likely instance for the
theory to verify the proposition (raising fundamental questions, if it does not) or the least likely to verify it (offering substantial proof if it does). Deviant or atypical cases also offer powerful insights through their ability to test and extend the current theory and hypotheses (George and Bennett; Flyvbjerg 2006; Ragin and Becker 1992). The Global Network Initiative is just this sort of deviant case, where rather than a governance enforcement gap, the roots of the problem lie with government itself.

The reality and perception of research bias or other bias toward verification of the initial hypothesis is a concern regardless of research method, but perhaps leveled more frequently in case-based research and when participant observation is employed. There are strong arguments to the contrary, however, Flyvbjerg (2006) recounts many researchers who have repeatedly been forced to revisit their hypotheses based on their experiences conducting in-depth case studies. Indeed, Ragin (Ragin and Becker 1992) calls this a ‘special feature of small-N research,’ noting that single-case studies ‘are multiple in most research efforts because ideas and evidence may be linked in many different ways.’

Flyvbjerg (2006) reminds us that subjectivism and are concerns regardless of methods, and that those biases likely are not addressed through a survey, for instance, because there is no opportunity for subjects to effectively push back on the research frame or biases. Ragin (1992) explains that small scale qualitative research is essential to early theory development precisely because by the time the sample size is larger, the scope of a case and its variables are established, with no real opportunity to reintroduce diversity, heterogeneity or other missing factors. Flyvbjerg (237) concludes that, “The case study contains no greater bias toward verification of the researcher’s preconceived notions than other methods of inquiry. On the contrary, experience indicates that the case study
contains a greater bias toward falsification of preconceived notions than toward verification.”

In this instance, the balance of participant observation, diverse ‘objective’ data sources, engaged participants with diverse entrees into the research (i.e., surveys, interviews, critiques) and mutual-familiarity, and the ‘deviant’ nature of the case, underscore the controls on research or validation bias. It bears note that bias can be just as manifest in the design — and evaluation — of other research approaches, as can a lack of intellectual and implementation rigor. The predominant focus within many advanced degree programs on statistical methods rather than qualitative or case research seems likely to contribute to this issue (George and Bennett 2007), and may reflect (in part) institutional constraints of graduate education rather than other priorities (Flyvbjerg 2006).

Each method or data source suffers from limitations, beginning with interviews (like surveys) that not only have a limited population to draw from, but may also suffer from inaccuracies arising from incomplete memory (e.g., recall bias), changing past perspective (e.g., retrospective and hindsight bias), willingness to be forthcoming, and or self-serving commentary. These deficits are mitigated by independent and semi-structured interviews that allow for prompts, responses to questions of timelines or other cues that may jog memory, deeper probes of statements based on consistency or other potential discrepancies, and precisely the type of reactions that may cause the researcher to question the original premise, while triangulating data across multiple responses. The opportunity for real-time conversation, in conjunction with an invitation to selectively record interviewees’ comments with varying degrees of attribution (e.g., on record, on
background, for sectoral attribution, off record), was designed to facilitate both honest responses, unexpected reflections, and to identify insights that might have otherwise been missed.

With twenty-four organizations participating throughout the design process (including an observer and a facilitator) and nineteen implementing Global Network Initiative, many of whom had the same primary representative throughout the design phase, there is a limited universe of people to draw upon for first-hand information regarding these stages. The universe of relevant organizations that were sufficiently familiar with the effort but did not participate is likewise fairly modest. The interviews consist of nearly all of these first groups, and while harder to calculate, they cover a less comprehensive range of the latter group. It would require substantially more resources to expand this universe, but recognizing the limitations of a less targeted sample, it is unclear whether additional observations would provide deeper and representative insights into the non-participants.

Ultimately, this approach seemed most appropriate to the timing, available resources, and stage of this work. It will hopefully compliment other methods and surely benefit from alternative ways of understanding this and related self-governance considerations.

**Case Scope and Data Sources**

With Global Network Initiative's formation as the case, the subjects include three primary subject groups: nineteen organizations that negotiated its development, adopted its policies publicly, and joined the organization at launch — called implementers, five organizations that participated in its development but did not join Global Network
Initiative at launch — called designers, and a sample of interested organizations that were aware of the design process, but opted not to participate — called non-participants. Other relevant participants include two facilitators and one official process observer.

Fully acknowledging the complexity of understanding what gives rise to and shapes an effort at self-governance, we can do significant learning by thoughtfully gathering and integrating a wide range of existing data related to the Global Network Initiative’s formation with participant interviews and surveys. This approach offers multi-faceted insights into decision-making and process development, and drawing upon diverse data sources helped ensure the validity and reliability of the case study by using multiple sources to converge on fact.

Observations center on the period of 2006-2008, which includes the first meetings of constituent groups that led to the Global Network Initiative and runs through the public launch of their work products, with selected references to events that were relevant to its genesis. Broad descriptions of data sources and uses follow.

Interviews, semi-structured, open-ended, and complemented with digital surveys, provided rich detail and essential context, interactive exploration, and an invaluable path to understanding the intersection of organizations, processes, conditions, and individuals. Quotes from the interviews and surveys permitted the subjects to communicate directly to the reader in their own voice, while surveys facilitated clear, controlled, and comparable responses across respondents.

Documentation from meeting notes to correspondence, reports to press accounts was used to develop the interview protocols, corroborate, and augment evidence from other sources. These materials informed questions, identified inconsistencies meriting closer
attention, suggested information flows and otherwise provided useful evidence on the form and substance of interactions. As materials produced for other purposes, archival records such as lists of meeting participants in the Global Network Initiative process helped solidify subject groupings and offered additional insights into its workings.

Finally, participant observation allowed access to not only the relevant people and materials, but to the process itself. Because the Global Network Initiative process was conducted out of the public eye with special attention to not disclose details of the negotiations or otherwise risk the trust among participants, my participation in the process provided vital insights into what was happening away internally. While it could not reveal the underlying motivations and dynamics, participant observation and the notes generated in that process were helpful in generating hypotheses, creating the survey instrument, and in contextualizing inputs from the primary data sources. The pre-existing relationships developed during the observation period were also essential to eliciting respondent participation and accessing the aforementioned archival records.

**RESEARCH PROCESS**

**Interviews and Surveys**

I contacted 35 representatives of organizations that either participated in the Global Network Initiative process or were aware of it and, although potentially relevant, did not participate in the process. This resulted in 31 interviews representing the Global Network Initiative’s four constituencies, other process participants, and non-participants listed in Figure 5. The interviews include almost all of the organizations involved in the process and cover each of the four constituencies. In addition to the Implementers, it includes the five
designers that opted not to implement after participating in the entire process, as well as
the two lead facilitators, and one long-term observer. I was also able to interview
representatives from two companies and one non-profit organization that opted not to
participate.

Interviews were semi-structured, with 20 open-ended questions for the
implementers, and adaptations for the designers, non-participants, facilitators and
observer, located in the appendix. They lasted one to two hours. Where possible, the
interviews were conducted in-person, although approximately one-third of them occurred
remotely due to physical and schedule constraints. Of these, about half had audio and
video, while the remainder were audio only. All the interviews except for three were
recorded with the subjects’ permission. Brief follow-ups occurred via email, phone, and in-
person.

Recognizing the sensitive nature of the questions, the fact that some respondents
would have needed to seek organizational approval for their responses, and other
respondents no longer served in the same organization as they did during Global Network
Initiative’s formation, they were offered a range of forms of attribution. With a stated
preference for on-record communications, respondents were also invited to participate
anonymously / on-background (e.g., attributed to a constituency or sector, rather than
their name and or organization), or off-the record entirely. They had the option to vary the
attribution over the course of their interview, so as to have the majority on the record,
while offering special treatment where necessary to facilitate sharing. One respondent
opted to remain anonymous and attributed to sector and geography, while a couple others
preferred their comments attributed to their sector. The rest spoke primarily on the record, with modest exceptions off the record or for less precise attribution.

Interviews were accompanied by a web survey consisting of Likert-scale answers, multiple choice questions, and short answer questions that took respondents approximately 10-20 minutes, with implementers completing the full survey, and other groups responding to a subset of the questions. Twenty-four interviewees completed the entire web survey.

### Global Network Initiative Participants and Implementers

<table>
<thead>
<tr>
<th>Constituency</th>
<th>Name</th>
<th>Organization (at the time)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NGO</td>
<td>Erica Razook</td>
<td>Amnesty International</td>
</tr>
<tr>
<td>NGO</td>
<td>Mila Rosenthal</td>
<td>Amnesty International</td>
</tr>
<tr>
<td>Facilitator</td>
<td>Dunstan Hope</td>
<td>Business for Social Responsibility (BSR)</td>
</tr>
<tr>
<td>Investor</td>
<td>Dawn Wolfe</td>
<td>Boston Common Asset Management</td>
</tr>
<tr>
<td>Investor</td>
<td>Bennett Freeman</td>
<td>Calvert Group</td>
</tr>
<tr>
<td>NGO</td>
<td>Leslie Harris</td>
<td>Center for Democracy &amp; Technology (CDT)</td>
</tr>
<tr>
<td>NGO</td>
<td>Cynthia Wong</td>
<td>Center for Democracy &amp; Technology (CDT)</td>
</tr>
<tr>
<td>NGO</td>
<td>Robert Mahoney</td>
<td>Committee to Protect Journalists (CPJ)</td>
</tr>
<tr>
<td>Investor</td>
<td>Adam Kanzer</td>
<td>Domini Social Investments LLC</td>
</tr>
<tr>
<td>Company</td>
<td>Tod Cohen</td>
<td>eBay</td>
</tr>
<tr>
<td>Type</td>
<td>Name</td>
<td>Organization</td>
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<td>---------------------------------------</td>
</tr>
<tr>
<td>NGO</td>
<td>Danny O'Brien</td>
<td>Electronic Frontier Foundation</td>
</tr>
<tr>
<td>Investor</td>
<td>Alexis Krajewski</td>
<td>F&amp;C Asset Management</td>
</tr>
<tr>
<td>Company</td>
<td>Bob Boorstin</td>
<td>Google, Inc.</td>
</tr>
<tr>
<td>NGO</td>
<td>Mike Posner</td>
<td>Formerly Human Rights First</td>
</tr>
<tr>
<td>NGO</td>
<td>Sharon Hom</td>
<td>Human Rights in China</td>
</tr>
<tr>
<td>NGO</td>
<td>Arvind Ganesan</td>
<td>Human Rights Watch</td>
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<td>NGO</td>
<td>Kathleen Reen</td>
<td>Internews</td>
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<td>Company</td>
<td>Chuck Cosson</td>
<td>Microsoft Corp.</td>
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<tr>
<td>Company</td>
<td>Ira Rubinstein</td>
<td>Microsoft Corp.</td>
</tr>
<tr>
<td>Academia</td>
<td>Rebecca MacKinnon</td>
<td>New America Foundation</td>
</tr>
<tr>
<td>NGO</td>
<td>Gus Hosein</td>
<td>Privacy International</td>
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<tr>
<td>NGO</td>
<td>Lucie Morillon</td>
<td>Reporters Without Borders (RSF)</td>
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<tr>
<td>Company</td>
<td>Patrik Hiselius</td>
<td>TeliaSonera AB</td>
</tr>
<tr>
<td>Investor</td>
<td>Steve Lippmann</td>
<td>Trillium Asset Management</td>
</tr>
<tr>
<td>Observer</td>
<td>Christine Bader</td>
<td>United Nations Special Representative to the Secretary-General on Business &amp; Human Rights</td>
</tr>
</tbody>
</table>
Academia | Deirdre Mulligan | Univ. of California at Berkeley, School of Information
---|---|---
Company | Stephen Deadman | Vodafone
NGO | Mark Bench | World Press Freedom
Company | Michael Samway | Yahoo

FIGURE 5: Interviewees by Name, Constituency, and Organization

I analyzed the interview data using a hybrid model that combines a written survey instrument (in Appendix NUMBER) that combines Likert scale and short-answer questions with an open-ended interview. The benefit of this approach is to increase clarity of responses and limit the challenges of interview coding, while preserving the openness of the exercise (and ideally enhancing it by having a more informed interview). As suggested previously, while one key goal of the interview process was to gain insights into each of the above factors, their open-ended nature was designed to help identify additional relevant factors that are not considered in Pattberg’s approach.

**Documentation and Archival Data**
While the Global Network Initiative itself issued limited communications during the period of the dissertation, the process itself produced a body of relevant documents including document drafts (with changes tracked and associated communications), electronic mail, and meeting documents, such as agendas, background materials, minutes, and my notes, all of which assisted in tracking the policymaking process. Over the research period, there were more than two-dozen extended meetings and over one hundred “official” conference
calls (with many associated agendas, minutes, and documents), the drafts of the various iterations of what became the Global Network Initiative’s three foundational documents, plus hundreds of relevant electronic mail messages. Archival resources, such as meeting attendance lists, were also available as a result of my participation in the negotiation process.

Publicly available primary source documentation included reports, policy statements, educational resources and advocacy-oriented communications from relevant non-governmental organization such as Amnesty International, Electronic Frontier Foundation, and Human Rights Watch, which suggest the gravity of the human rights impact, their views on appropriate responses, and efforts to reach people, companies, and other stakeholders.

There are scholarly contributions from the OpenNet Initiative research consortium based on original empirical research documenting state-sponsored internet censorship and related practices from 2002 until the present. This group consisted of between two and four university teams and interacted extensively with stakeholders across sectors as it developed, conducted, and disseminated research on diverse censorship and surveillance related topics.

Via blog post and press release, companies made direct public communications of relevant policy matters online, including Google’s statement upon launching its service in China, Microsoft’s policy change in response to a public censorship debacle, and Yahoo’s launch of its Business and Human Rights Program. Their annual reports also acknowledge relevant risks and considerations. F & C Asset Management, the UK’s second largest institutional investor (not explicitly what are often called “socially responsible investors” in
the US), published a relevant study describing pressing issues of the technology and media landscape based on interviews with their leading investments and other experts.

The range of issues and the perspectives raised in these publicly available documents converged most formally in a series of US congressional hearings, where many of the organizations who would later become Global Network Initiative participants along with other stakeholders entered their perspectives into the public record, along with the views of their congressional hosts. There were numerous relevant congressional hearings and meetings during the period of the research, and more since that time. Resources vary depending on the meeting, but the testimony, transcripts, and video footage are available in most cases, in addition to other publicly accessible commentary. In support and as a result of this interest, the Congressional Research Service produced at least two relevant reports, and the Department of State and other government entities made other public communications.

While the activity among European government counterparts was more modest, the Council of Europe and European Union have undertaken a variety of relevant activities. They do not offer the same level of insight into the corporate perspective, but foster understanding of the perceived policy problems and associated universe of policy responses. Most of these exist in written form, while at least one is available in online video footage.

Secondary sources of documentation including mainstream media and blogs offered support in understanding the way these activities and communications were viewed by others, helping to focus attention on what might otherwise seem to be a minor
development, for instance, or to piece together multiple strands of information. I created a press archive of relevant articles.

**Participant Observation**

As the primary representative to the Global Network Initiative process of my organization, I had the opportunity to observe it directly — including both the more formal or better documented aspects and conversations and other more opaque elements — and to participate actively in most of its common elements. I came to suspect and wonder many things about participating organizations’ involvement (or lack thereof) and the implications of process dynamics, but lamented the fact that my ideas were subjective, unevenly informed, and did not permit me to objectively and accurately share a more generalizable description of key facets of the Global Network Initiative’s creation. I wanted a deeper and more nuanced understanding of my observations, to be able to place them in a theoretical context, and to be able to offer lessons learned with others, both inside and outside the process.

Alone, these observations had little or no explanatory power, but they served as an essential ingredient for the development of the research, guiding selection, refinement and application of theory, and provided an ongoing “reality check” throughout each step of the research process. My participation was likewise essential for enabling me to access and assemble otherwise inaccessible documents, to secure the interview and survey participation of busy and hard-to-reach organizational representatives, and to be able to interview them effectively based on relevant knowledge and interpersonal trust. The
combination of these factors makes it difficult to imagine having realized this research effort without a substantial participant observation component.
Chapter 3: PARTICIPATION ANALYSIS

In the previous chapter, I offered an overview of my research methods, covering the framework I applied, hypotheses, and how I undertook the research. This chapter explores why each organization chose its form (or lack) of participation, detailing the information relevant to each of the individual areas of the framework. The aim is to understand the organizations’ decisions regarding engagement in the creation and implementation of the Global Network Initiative, and for testing and improving the model’s efficacy to explain the creation of multi-stakeholder approaches to governance.

The chapter uses my adaption of Pattberg’s model, consisting of four primary factors (macro-systemic change, problem structure, organizational resources, new models), each of which I have operationalized into distinct sub-components, as they pertain to the various organizational approaches to involvement with the Global Network Initiative, i.e., whether organizations actually implemented, participated in the design process only, or chose not to be involved. The data consist of new information gleaned through interviews and surveys, and is complemented by existing primary and secondary sources that shed light on stakeholder attitudes and context of the creation of the Global Network Initiative. My hypothesis is that these factors explain at least some of the major forces behind implementation.

MACRO-SYSTEMIC CHANGE

Globalization

Globalization refers to the integration of activity around the world, through cross-border movements of capital, trade, labor, knowledge and more, and has wide-ranging dimensions,
including culture, politics, economic activity, the environment and more, and comes as a result of technology development and human progress (International Monetary Fund 2008). Most debates around globalization are centered on its implications, including the environment, equity, migration, labor, and other topics that implicate interests that cross national borders and thus create questions for governance of these domains, while there is little conversation about whether and where it is occurring.

The International Monetary Fund (2008) offers a few example indicators illustrating globalization in the Global Network Initiative design timeframe:

- The value of trade (goods and services) as a percentage of world GDP increased from 42.1 percent in 1980 to 62.1 percent in 2007.
- Foreign direct investment increased from 6.5 percent of world GDP in 1980 to 31.8 percent in 2006.
- The stock of international claims (primarily bank loans) as a percentage of world GDP increased from roughly 10 percent in 1980 to 48 percent in 2006.
- The number of minutes spent on cross-border telephone calls on a per-capita basis increased from 7.3 in 1991 to 28.8 in 2006.
- The number of foreign workers has increased from 78 million people (2.4 percent of the world population) in 1965 to 191 million people (3.0 percent of the world population) in 2005.

In terms of measurement of globalization, Dreyer, Gaston, Martens (2008) draw upon the KOF Swiss Economic Institute’s annual index of globalization, which includes economic, social and political dimensions, along with sub-indices for actual economic flows, economic restrictions, data on information flows, data on personal contact and data on cultural
proximity. The numbers and pictures demonstrate a clear globalization trend. In 2006, at the time of the beginning of the Global Network Initiative development process, there was a substantial increase over the previous decades and widespread measured globalization across these dimensions with every region of the world (except Oceana) exceeding an aggregated mark of 40%.

Looking more toward cultural and contextual indicators, including what people are writing about, Google Books’ Ngram database of word frequency in books reveals that the use of the word globalization became about seventy times more frequent in the books published in that period that Google has scanned (from .00002% in 1985 to .00139% in 2006).

FIGURE 6: Frequency of the word “globalization” in Google Books by year (Google nd)

While increased awareness and the political nature of globalization may lead us to overestimate its prevalence somewhat (evidenced perhaps in the Ngram viewer), there has been a prolonged period of international trade growth since World War II, and one primary driver has been the rise of information and communications technologies (World Trade
Organization 2008). These same technologies support other forms of connectedness through entertainment, interpersonal communication, learning and more.

Trade agreements are one of many indicators of both this growth and the related policy implications, and they have increased substantially, increasing from 124 notifications of trade agreements between 1948 and 1994, to over 300 agreements in the last two decades according to Wikipedia. At the time of the design phase, however, there had not yet been an increase in coordinated attempts to specifically address the emergent needs related to the rise of the internet and communications technologies sector, although diverse agreements such as the Trans-Pacific Partnership have significant technology implications.

**Industry Growth**

After recovering from the early 2000s dot-com bust and during the inception period of the Global Network Initiative, virtually every indicator of growth of the internet, World Wide Web, and mobile telephony scale and scope were in the midst of a massive increase. Technology access and use has increased globally, along with the companies offering these services, the number and range of related service offerings, and the global user base for internet and communications technologies and services. Of direct relevance is the rise of technology-mediated activity in developing and transitioning nations and their populations...internet and phones are no longer a province of the Global North, but of nearly every nation.

While data capturing information and communications technologies are notoriously complicated and imprecise due to factors such as estimating users from shared accounts
and single users having multiple accounts, measuring usage meaningfully, and suggesting actual utility, the trends are striking enough that these issues need only serve as order of magnitude and trend indicators to be useful. Developing and emerging regions’ internet penetration, for instance, increased by a thousand percent or more in between 2000-2012, while industrialized regions increased by hundreds of percent. In an even shorter period (2002-2010), the number of countries with 100% mobile penetration went from two to ninety-seven (International Telecommunications Union 2011).

**FIGURE 7:** Global Mobile Subscribers per 100 People by Year (World Bank nd)

**FIGURE 8:** Global Internet Users per 100 People by Year (World Bank nd)
In terms of the volume of material and usage, one indicator is the geometric increase in the absolute number of websites. Google engineers counted approximately 26 million pages in 1998, one billion by 2000, and one trillion in 2008 (Alpert and Nissan 2008). While the count is anything but precise, it gives a sense of the massive growth of the World Wide Web. Internet traffic, which also captures the many non-Web uses of the internet, has increased on the order of 50% annually from 2000 onward according to Cisco Systems estimates (Wikipedia nd).

The increasing numbers of internet users and changing demographics were reflected by other developments, with countries like India, Brazil, Russia and Indonesia breaking the top-ten globally in sheer numbers of users. For its part, China’s users surpassed the US in early 2006 (Pace 2006) and had more than double the US users by 2012 (Internet World Stats 2013). Reflecting this, the composition of the Web also shifted somewhat from English language dominant (Pastore 2000) to bit more evenly distributed (W3Techs nd).

Beyond their language or country of origin, the ways in which people used the internet changed during the formation of the Global Network Initiative, with a substantial increase in visits to social media sites and increasing time spent on them. According to Facebook (nd), it launched in February 2004, claiming one million users by December, six million one year later, 58 million in December 2007, and 360 million in December 2009. By October 2012, Facebook boasted of over one billion active and widely distributed users. Beyond users, the amount of time spent on these sites also increased massively.
Although social networking is one winner in terms of growth, the rise of these platforms suggests changing communications patterns, in which user-generated content, interaction, social sharing and engagement with news and other media objects — rather than more passive consumption — are becoming more pronounced. International (Telecommunications Union 2010). The interactivity among activities and platforms has been broadly beneficial to companies, with substantial growth in diverse technology companies. They experienced these changes firsthand, seeing tremendous growth in users, the markets they served, their product offerings, volume of usage, and more.

Like other telecoms, they suffered despite this growth: TeliaSonera cut nearly 3000 additional jobs in 2008 (Nordstrom 2008), after reducing Sweden-based jobs by 15,000 between 2000-2006 (Larsson 2008).
Google in 2006

According to its Annual Report, Google (2006) offered a growing suite of services, including search, maps, advertising, books, and more, and was available in 158 domains and more than 100 languages. It generated 39 different News editions, offered both Gmail and Adwords in 40 languages, and had more than 20 language pairs for its translation service. In terms of volume and expansion, it also purchased one-year old YouTube, which was serving 100 million videos daily along with 65,000 daily uploads in 2006 by mid-year (Cashmore 2006).

The company itself was also increasingly international, including almost one-third of its employees along with 43% of its revenue. Over just the year 2006, Google opened new offices in Beijing, Trondheim, Istanbul, Tel Aviv, Copenhagen, Vienna, Taipei, Warsaw, Haifa, Moscow, St. Petersburg, Sydney, Mumbai, Cairo, and Delhi. They had pre-existing offices in Argentina, Austria, Australia, Belgium, Brazil, Canada, China, Czech Republic, Denmark, Egypt, Finland, France, Germany, Holland, Hungary, India, Ireland, Israel, Italy, Japan, Korea, Mexico, New Zealand, Norway, Poland, Russia, Singapore, Spain, Sweden, Switzerland, Taiwan, Turkey, and the United Kingdom.

Despite what is clearly a significant growth for a company founded in 1998, within that report, Google (2006; 24) noted incumbent challenges based on their global operations, limited experience outside the US, and a range of associated risks arising from “distance, language and cultural differences and by doing business with foreign agencies and governments,” and “difficulties in developing products and services in different languages and for different cultures.”
Microsoft in 2006
The Microsoft 2006 Annual Report states that the company employed approximately 71,000 people, nearly 40% of which were outside the US, and had offices in more than 100 countries. They offered a broad array of software products for a range of devices and user groups, sold a gaming platform, peripherals and games, and had many online products ranging from productivity to communications and portals to business services. Microsoft (2006; 17) acknowledges a range of associated risks, including that:

*Online offerings are subject to government regulation of the internet domestically and internationally in areas such as user privacy, data protection, and online content. The application of these laws and regulations to our business is often unclear and sometimes may conflict. Compliance with these regulations may involve significant costs or require changes in business practices that result in reduced revenue. Noncompliance could result in penalties being imposed on us or orders that we cease conducting the noncompliant activity.*

Yahoo in 2006

Service offerings were similarly widespread and similar to others, such as search, online marketplace (including shopping, real estate, travel, autos, personals), news and entertainment, Communications, communities and groups, etc., and most were localized in over 20 countries. Yahoo also offered a range of business-to-business services including:
advertising and marketing, job-listings, small business services (email, web hosting, 
electronic commerce), and local listings. Offerings for pictures, video, and maps cut across 
these categories (Yahoo 2006).

Yahoo Acknowledged its limited experience not just in marketing but offering its 
services in foreign markets, leading them to rely on foreign partners in some instances, and 
pointed out effective regulatory differences. Local providers, they observed, were subject 
only to local law, while Yahoo also had to observe US Requirements, which led to reduced 
flexibility. Further, they realized that international operations created management risk 
based on scope, volume, distance and differences.

**France Telecom / Orange in 2006**

As one of the larger telecoms in the world, the company claimed nearly 160 million 
customers on five continents, who use a range of services including fixed line, mobile, 
internet content, with mobile representing an increasing share of their revenue.

As of 2006, they had 191,000 employees, of which approximately 80,000 were 
international (France Telecom Group/Orange 2006). It bears mention that while many 
internet companies were growing, France Telecom lost a reported 22,000 jobs between 
2006-08 (Hohe 2014).

**Vodafone in 2006**

The company’s annual report stated (Vodafone plc. 2006; 4), “Vodafone is the world’s 
leading mobile telecommunications company with mobile operations in 26 countries 
[across five continents] and Partner Network agreements in a further 32 countries.” They
claimed annual growth in their customer base of 15% and a 60% increase in non-
messaging data use, showing robust mobile and internet growth that paralleled other
telecoms.

Vodafone’s 170 million users had grown since 1998 from under 6 million spread
across a dozen countries. In 2006, Vodafone laid off 400 employees and reported losses of
over £14 billion (Meyer 2006) and lost 500 more staff in 2009 (Ray 2009).

**TeliaSonera in 2006**
According to its annual report, TeliaSonera (2006; 5) operated mobile, fixed voice, data,
and television services in 15 countries in Europe and Asia. At the end of 2005, they had
seen a “breakthrough” in mobile data services, a shift from fixed line to mobile, an increase
of 28% in their customer base, and a substantial increase in internet-based service
offerings. The past year had seen an increase of 17 million customers, leaving them with a
total of approximately 80 million customers. In 2006, TeliaSonera had approximately
29,000 employees, 10,000 of which were in Sweden.

**Problem Prevalence and Urgency**
During the period 2005-2006, there was significant attention to and action around online
privacy and free expression issues in civil society organizations, the media, academia, the
US Congress and State Department, investors, corporate shareholders and within
companies. Public awareness appears to have been much greater within the US than it was
globally. It was fueled in part by ties to China, perhaps unsurprising based on the nature of
its activities and the role it occupies within the US political, economic and social psyche.
Many of the organizations involved in related activities at the time came to participate in Global Network Initiative.

While there had been ongoing attention to internet censorship and concerns about privacy, perhaps the single most significant and catalytic revelation belonged to the nongovernmental organization Reporters Without Borders, which publicly shared the role of Yahoo in providing Chinese law enforcement with Shi Tao’s email contents in 2004 (Reporters Without Borders 2005). In the same period, Microsoft’s role in the Michael Anti blog takedown, and Google initiating service offerings in China reinforced the China focus and the narrative of tech firms prioritizing money and markets over users’ rights. Human Rights Watch published an extensive report in August 2006 on privacy and free expression on the Chinese internet authored by Rebecca Mackinnon and others, and Amnesty UK published a similar study in July 2006. These reports informed their organizations and communities, put companies on public notice, and began to frame the situation as one of corporate complicity.

University researchers including the OpenNet Initiative, a collaboration of scholars at the University of Toronto, Oxford University, Cambridge University, and Harvard University focusing on state sponsored internet censorship, undertook empirical research to test anecdotal evidence and theory starting in 2002. The group ultimately published a series of books and reports that offered the most widespread, robust, and impartial information available, which led it to inform most of the other stakeholders, policy processes and so on.

Much of the public pressure converged around the US Congress, beginning with hearings held by the Congressional Human Rights Caucus and jointly by two sub-
committees of the House International Affairs Committee in February of 2006. Testimony came from a variety of stakeholders, including many people and organizations that were already or would subsequently become involved in the Global Network Initiative process. These included Google, Yahoo, and Microsoft, as well as Human Rights in China, Reporters Without Borders, Human Rights Watch, and Harvard’s Berkman Center (where I worked at the time).

Relevant Congressional hearings held during the course of the creation of the Global Network Initiative include:

- **Congressional Human Rights Caucus, "Human Rights and the internet: The People’s Republic of China”** (February 1, 2006)
- **House Committee on Foreign Affairs, “internet Privacy in China”** (November 6, 2007)
- **Formation of the House Global internet Freedom Caucus** (March 9, 2010)
• Formation of the Senate Global internet Freedom Caucus (March 24, 2010)

The February 15, 2006, hearing was perhaps the most relevant to the process in terms of timing, tone, and a window into the state of thinking at the time, and the first introduction of the Global Online Freedom Act came the next day. It came within months of public awareness of the Shi Tao and Michael Anti and weeks after the launch of Google.cn, and companies — and the US Government — had begun to respond to the issues. It also coincided with the initiation of the technology company consultations facilitated by BSR and Berkman. Civil society groups were engaged on the issues and released relevant reports that summer. For their part, participating members of Congress were passionate and largely unsympathetic to the companies (Zeller, Jr. 2006).

The representatives’ tenor was largely contentious and accusatory, including the Subcommittee on Africa Chair Representative Chris Smith (a Republican) comparing US technology companies’ cooperation with the Chinese government against dissidents to IBM support for the Nazi’s persecution of Jewish people during the Holocaust. Before detailing the problematic behavior of each of the four companies present at the hearing, Smith impugns their motives and the offers his view of the serious implications of their decisions:

Yet for the sake of market share and profits, leading US companies, like Google, Yahoo, Cisco, and Microsoft, have compromised both the integrity of their product and their duties as responsible corporate citizens. They have, indeed, aided and abetted the Chinese regime to prop up both of these pillars, secret police and propaganda, propagating the message of the dictatorship unabated and supporting the secret police in a myriad of ways, including surveillance and invasion of privacy, in order to effectuate the massive crackdown on its citizens.
For Smith (Subcommittee on Africa, Global Human Rights, and International Operations and Subcommittee on Asia and the Pacific of the Committee on International Relations 2006), there are at least a couple elements of the path forward including a company code of behavior and the Global Online Freedom Act that he introduces subsequently.

_I, and many of my colleagues on both sides of the aisle, would welcome leadership by the corporations to develop a code of conduct which would spell out how they could operate in China and other repressive countries like Vietnam while not harming citizens and respecting human rights. But I believe our Government also has a major role to play in this critical area and that a more comprehensive framework is needed to protect and promote human rights, and that is why I intend to introduce the Global Online Freedom Act of 2006 within the next couple of days to promote freedom of expression on the internet._

In close alignment, the Ranking Member at the hearing, Democrat Tom Lantos likewise made comparisons to Nazi cooperation, berated the companies for focusing on profits, and enthusiastic embrace of deference to local law. He dismisses their “high-sounding documents which simultaneously affirm their respect for freedom of communication and, at the same time, their complete compliance with repressive laws in China,” suggesting what could happen if the same approach were followed in other nations (Subcommittee on Africa, Global Human Rights, and International Operations and Subcommittee on Asia and the Pacific of the Committee on International Relations 2006).

While the focus of each member varies, there was rare bipartisan consistency in recognizing the success and power of the American companies and their capacity for positive social impact through their work, along with the fundamentally misguided and deeply disconcerting policies of their China operations. Representatives call for companies to resist government demands, to develop and implement technologies that protect privacy
and provide access to information, with only fleeting acknowledgement of the companies’ awkward positions.

On behalf of the US Department of State, David Gross, Deputy Assistant Secretary for International Communications and Information Policy, Bureau of Economic and Business Affairs, lamented the Chinese government’s policies and practices seeking to control citizen uses of and access to the internet, and expressed appreciation for the position of US companies. He points to ongoing State Department efforts to encourage the Government of China to change these policies for China’s benefit and to be consistent with their other commitments, and to the Secretary of State’s deep interest and announcement (just prior to the hearing) of the formation of a Global internet Freedom Task Force (GIFT).

According to Gross, GIFT would consider foreign policy impacts on internet freedom including: "The use of technology to restrict access to political content and the impact of such censorship efforts on US companies; The use of technology to track and repress dissidents; and Efforts to modify internet governance structures in order to restrict the free flow of information." Gross notes that the issues are not confined to China, that GIFT would not be limited to any one geography, and the challenge and potential of developing a set of best practices to respond to these dynamic conditions (Subcommittee on Africa, Global Human Rights, and International Operations and Subcommittee on Asia and the Pacific of the Committee on International Relations 2006).

Michael Callahan, Yahoo Senior Vice President and General Counsel, expressed solidarity with the democratic and human rights values described in the hearing (Subcommittee on Africa, Global Human Rights, and International Operations and Subcommittee on Asia and the Pacific of the Committee on International Relations 2006),
but also noted that, “When we receive a demand from law enforcement authorized under the law of the country in which we are operating, we must comply. Failure to comply in China could have subjected Yahoo China and its employees to criminal charges, including imprisonment. Ultimately, American companies face a choice: Comply with Chinese laws or leave.”

While he urged the Members to lead on government-to-government relations, as part of the company’s commitment to an open and accessible internet, Callahan committed to:

- **Collective Action:** We will work with industry, government, academia and NGOs to explore policies to guide industry practices in countries where content is treated more restrictively than in the United States and to promote the principles of freedom of speech and expression.

- **Compliance Practices:** We will continue to employ rigorous procedural protections under applicable laws in response to government requests for information, maintaining our commitment to user privacy and compliance with the law.

- **Information Restrictions:** Where a government requests that we restrict search results, we will do so if required by applicable law and only in a way that impacts the results as narrowly as possible. If we are required to restrict search results, we will strive to achieve maximum transparency to the user.

- **Government Engagement:** We will actively engage in ongoing policy dialogue with governments with respect to the nature of the internet and the free flow of information.

Microsoft’s Jack Krumholtz, Managing Director of Federal Government Affairs and Associate General Counsel, made similar points to Callahan’s, pointing out frustrations with their relative powerlessness versus the Chinese government, the reality of competitive marketplaces, their shared values, the value of their services for social development, and so on. He cautioned that the impact of legislation could force Microsoft to withdraw from
China, and made a similar call for government to drive global consensus among governments to address these challenges. Krumholtz acknowledged Microsoft’s consultations with the companies present at the hearing and others to consider industry principles, and stated that the company would consider withdrawing from countries altogether in certain circumstances (Subcommittee on Africa, Global Human Rights, and International Operations and Subcommittee on Asia and the Pacific of the Committee on International Relations 2006). In terms of immediate steps, Krumholtz detailed the company’s response to the Michael Anti situation as:

- **Explicit standards for protecting content access:** Microsoft will remove access to blog content only when it receives a legally binding notice from the government indicating that the material violates local laws, or if the content violates MSN’s terms of use.

- **Maintaining global access:** Microsoft will remove access to content only in the country issuing the order. When blog content is blocked due to restrictions based on local laws, the rest of the world will continue to have access. This is a new capability Microsoft is implementing in the MSN Spaces infrastructure.

- **Transparent user notification:** When local laws require the company to block access to certain content, Microsoft will ensure that users know why that content was blocked, by notifying them that access has been limited due to a government restriction.

Elliot Schrage, Google’s Vice President for Corporate Communications and Public Affairs, explained the difficulty of Google’s (then-recent) attempt to navigate the challenges of the Chinese market while respecting their commitments to user interests, access to information, and responding to local conditions, which was relevant in China. That process resulted in three unique policies of disclosing removal of Google.cn search results to users, protecting user privacy by not offering services with personal data (email or blogging, for
example), and continued availability of their unfiltered Google.com site in addition to the filtered Google.cn. Other elements of their approach echo the commitment of Microsoft and Yahoo around transparency, removal process, and privacy (Subcommittee on Africa, Global Human Rights, and International Operations and Subcommittee on Asia and the Pacific of the Committee on International Relations 2006).

Schrage repeated the potential for “internet industry action to guide the practices of technology firms in countries that restrict access to information,” noting that they might include disclosure, user data protection and reporting around government restrictions. He also calls for government leadership in making censorship a bi- and multi-lateral trade issue.

Cisco Systems Vice President and General Counsel, Mark Chandler, did not acknowledge the same sorts of challenges as the other companies did, framing the fundamentals of their technologies as dual-use rather than any complex set of calculations his company needs to make to operate in China. He explained that because Cisco's products facilitate and manage interconnection among computers, they are designed to protect against viruses or hackers and to be configured to filter content or limit access, whether for security, legal concerns or social norms. Chandler stated that the operators of this equipment (and the many other similar offerings), not Cisco, determine how to use those functionalities. He points out that:

- *Cisco does not customize, or develop specialized or unique filtering capabilities, in order to enable different regimes to block access to information*

- *Cisco sells the same equipment in China as it sells worldwide*

- *Cisco is not a service or content provider, or network manager*
• *Cisco has no access to information about individual users of the internet*

In terms of a policy response, Chandler cautioned against anything that provokes countries to create their own national closed standard or separate internet. He underscored the importance of a globally unified response (Subcommittee on Africa, Global Human Rights, and International Operations and Subcommittee on Asia and the Pacific of the Committee on International Relations 2006).

Harry Wu, Executive Director of the Laogai Research Foundation and Publisher of the China Information Center, had little sympathy for Yahoo, Inc.’s rationale for divulging information to the authorities in the cases of two cyber-dissidents, but reserved deeper criticism for Cisco’s sales to the Chinese government (Subcommittee on Africa, Global Human Rights, and International Operations and Subcommittee on Asia and the Pacific of the Committee on International Relations 2006). He called into question the dual-use explanation Chandler offered, noting the company’s extensive campaign to — and success in — selling to Chinese Public Security, in which Cisco actively served their demand for diverse surveillance purposes, including automatic phone recording, voice recognition, integrated biometric data, video surveillance, and mobile internet tracking. While it may be legal, he noted, “Continued sales of high-tech equipment will strengthen China’s ability to suppress democratic voices, and further tighten its grip over the Chinese population.”

Xiao Qiang, Director of the China internet Project in the Graduate School of Journalism at the University of California-Berkeley, introduced another key element of the work that would ultimately lead to the Global Network Initiative. While the companies (except for Cisco) each recognized the value of some sort of industry principles, Qiang went further,
describing in greater detail his expectations around the creation of standards and practices (Subcommittee on Africa, Global Human Rights, and International Operations and Subcommittee on Asia and the Pacific of the Committee on International Relations 2006). He included the idea that they be jointly created by companies and universities, to help facilitate collaboration among competitors, and called for voluntary participation, noting:

> It will only be effective if processes are simultaneously set up to actively promote, implement, and monitor the standards. The information industry should also make the implementation of these standards and practices transparent. Congress, the media, company shareholders, universities, non-governmental organizations, and the public all have an important role to play in helping those corporations be accountable to these standards.

The Washington Representative of Reporters Without Borders, Lucie Morillon, expressed dismay at the situation in China generally and of the role of the testifying companies and other US firms particularly in enabling censorship, surveillance in violation of Article 19 of the Universal Declaration of Human Rights, and blocking the Chinese path to democracy. Morillon suggested that even following local law, the companies are violating China’s own constitution in addition to international standards. She pointed out that since 2002, only Google among the companies was even willing to interact with her organization, until Cisco finally agreed in November 2005 based on media coverage (Subcommittee on Africa, Global Human Rights, and International Operations and Subcommittee on Asia and the Pacific of the Committee on International Relations 2006).

In terms of next steps, Morillon made a series of proposals to the US, the European Union and the Organization for Economic Cooperation and Development, noting that law should be a “last resort,” with companies in consultation with civil society, first drafting their own code. She offered specific policies for internet companies, such as not hosting...
email or servers in a “repressive” country, and placing limits on the ability or nature of censoring and surveillance technology to repressive countries.

Sharon Hom, Executive Director of Human Rights in China, pointed out that values of transparency, openness and fairness are actually shared by non-governmental organizations, governments, and the private sector, along with the belief in the power of knowledge. She also recognized both the complexity of their role and that they have been engaged in censorship and surveillance, like others, pointing out that, “The issue is not whether US companies do business in China, but how they operate and what the relevant guidelines are.” Hom underscored that, “Engagement and presence in the market alone will not inevitably lead to any particular result except for market access for the companies. Corporate engagement and presence in China will contribute to greater reform and openness only if it is responsible and coherent.”

As with other civil society representatives, Hom challenged the deference to local law, noting, “vague, abstract, inaccurate reference to ‘Chinese law’ and compliance with domestic law is an indefensible justification for undermining human rights.” She offered that, “The obligations of companies need to be viewed in light of a coherent framework of the legal and ethical obligations of IT companies that includes the laws of the home country, the host foreign country, and the larger framework of international human rights responsibilities of transnational companies.” In line with this legal orientation, Hom’s primary recommendations were to focus on promoting rule of law in China and internal consistency with international norms, developing specific industry-wide standards according to international norms (and associated monitoring and reporting), and recognizing the integrated nature of the challenge, online and off spanning a dynamic
mixture of technologies (Subcommittee on Africa, Global Human Rights, and International Operations and Subcommittee on Asia and the Pacific of the Committee on International Relations 2006).

Illustrating the substantial China focus of Congress and other key stakeholders, the Congressional-Executive Committee on China also held a series of hearings including these topics beginning with Human Rights and Rule of Law in China (Congressional-Executive Commission on China 2006), in which Xiao Xiang of University of California-Berkeley (who co-founded one of the three GNI-progenitors) referenced the four layers of internet control in China of law, technology, propaganda, and self-censorship, noting the companies’ aid and compliance with these policies. He laid out a vision to help the companies establish guiding principles for the industry that, “transcend companies’ own relationship to any given market,” and allow them to “resist demands for information or technology that violate fundamental human rights.” He went on to announce the intention of the Graduate School of Journalism at the University of California at Berkeley, the Berkman Center for Internet & Society, and the Oxford Internet Institute to initiate a collaboration among academics and industry.

In a subsequent hearing on The Impact of the 2008 Olympic Games on Human Rights and the Rule of Law in China (Congressional-Executive Commission on China 2008), Sharon Hom of Human Rights in China, called for attention to surveillance and the role of US companies and products in that dynamic. Ranking member, Chris Smith stated: “I am afraid that many American companies, like Google, Microsoft, and Yahoo have cooperated with the Chinese government in turning the internet into a tool of surveillance and censorship. Last year I introduced the Global Online Freedom Act to prevent US high-tech
internet companies from turning over to the Chinese police information that identifies individual internet users, and to require them to disclose how the Chinese version of their search engines censors the internet. In October, the Foreign Affairs Committee approved the bill [Global Online Freedom Act 2008], and we are hoping to move it to the floor of the House soon.”

Underscoring the strong interest in China in particular, the US-China Economic and Security Review Commission held hearings on access to information and media control in China in June 2008. It had hearings on the implications of China’s information control practices for the US in June 2010.

The Executive branch was engaged with the issues as illustrated by the US Department of State’s establishment of the Global internet Freedom Task Force (GIFT) in February 2006. With a focus on promoting freedom of expression online through a mixture of monitoring abuses, responding to threats, and increasing access to the internet (Department Of State 2006a). Interestingly, despite the connection with the right to privacy and the attention to those issues, they go unmentioned in the State Department GIFT documentation. State called for collaboration with civil society and industry (Shiner 2006), and also introduced relevant reporting into its own processes, such as including internet Freedom into its 2006 Country Reports on Human Rights Practices (Department Of State 2006c). The Congressional Research Service prepared a comprehensive list of US efforts around online expression and privacy in April 2010.

Concern and action were not limited to government, but also manifest in investors. F&C Asset Management, one of the UK’s largest institutional investors at the time, controlling over 100 billion GBP (over 180 billion USD), released a research report in
January 2007 entitled Managing Access, Security & Privacy in the Global Digital Economy. The report laid out these pressing issues as they pertained to large technology, media, and telecoms companies for their investments.

Beyond guidance, throughout this period a number of investors and activist shareholder groups placed other pressures on technology companies to change their practices related to online expression and privacy, interactions with potentially oppressive regimes, and to otherwise report on or improve practices related to these human rights. One early significant collective action was the November 2005 Joint Investor Statement on Freedom of Expression and the internet, which was signed by 25 primarily US-based organizations including future Global Network Initiative members such as Boston Common Asset Management, Domini, Trillium, Calvert Group, and KLD Research and Analytics. Representing $21 billion in assets, the group received public attention (Zeller, Jr. 2005) for its call for action on the part of companies and committed to monitoring these operations and supporting shareholder resolutions to change company policy on these issues.

In addition to private meetings with investors and advocates, these companies experienced numerous direct shareholder resolutions regarding privacy and free expression. Some made it to a shareholder ballot, while many others were blocked in process (Pepitone 2011). Cisco shareholders averaged two formal proposals annually over 2005-10, including formation of a human rights committee of the board, a review of current policies and policy options to protect expression and privacy online, and a proposal to end sales to China and other countries likely to use technologies to abridge human rights. The Board opposed each of them and none were adopted, although reporting on human rights policy received nearly 30% of the vote in 2006.
Other tech companies also faced these actions annually from small shareholders and investment organizations including the aforementioned groups as well as the New York City Pension Funds. Between the Congressional hearings and the well-publicized corporate missteps, along with Cisco, Yahoo, Microsoft, and Google received a great deal of this attention. Advocacy and civil society groups like Amnesty International (2008) and Reporters Without Borders (2006c) would further amplify the message by reporting on these resolutions. It bears mention that some researchers have argued that shareholders in these instances act as norm entrepreneurs, helping to introduce and establish new ideas for corporate social responsibility (Sjöström 2010).

In addition to these other pressures, there were legal challenges that added fuel to the proverbial fire for companies. Perhaps most prominently, in April 2007 Wang Xiaoning filed a lawsuit against Yahoo in US Federal Court in the state of California under the US Alien Tort Claims Act, which allows foreign citizens to file suit in US Courts for certain wrongs such as torture, genocide, or human rights violations. It was subsequently joined by Shi Tao and others (Helft 2007), and settled out of court in November 2007 (Rampell 2007). According to Business and Human Rights (nd), Cisco Systems also had two lawsuits filed against it in 2011, in which the plaintiffs were ultimately unsuccessful (in 2014). These developments received substantial US media attention in high profile venues including the New York Times, Washington Post, San Jose Mercury News, and Wall Street Journal, along with many others.

The response in Europe was more restrained within civil society and government. The Council of Europe, European Union and European Parliament engaged in relevant
activities, but relatively later than their US counterparts and in a manner that led to companies feeling no real external urgency to address these issues. They included:

- Council of Europe, “Guidelines for the Cooperation Between Law Enforcement and internet Service Providers Against Cybercrime” (April 2, 2008)
- Council of Europe, “Guidelines for internet filtering” (March 26, 2008)
- European Union, “Global Online Freedom Act (draft only)” (2008)

Reporters Without Borders (Reporters Sans Frontières or RSF) played a significant role in publicizing and campaigning around these issues and was the most active European-based international civil society organization during this period. RSF also had a Washington office and worked closely with Amnesty-US and other advocacy organizations. While groups such as Human Rights Watch and Amnesty International have European offices and headquarters, respectively, their US Offices drove their online expression and privacy work.

When I asked stakeholders to describe the problem years later, the vast majority of the survey respondents across sectors and participation types described the online freedom of expression and privacy situations as being substantial or among the most serious challenges they were facing at the time. One participant saw them as “substantial but surmountable challenges,” underscoring the need and potential. One investor linked
the nature of the challenge with the response, saying that the “challenge was very great and [the] need for cooperative industry-wide response was essential.”

There was also pressure for change, “At the time Global Network Initiative was set up, there was increasing international attention and media pressure on business and governments on issues of online expression and privacy.” Supporting that attention, opined one non-governmental organization representative was “the role of the private sector as a driver and vector of governance and law-making — regulations lag and governments struggle to keep up with developments in online technologies — has increased. CSOs and NGOs [civil society organization and non-governmental organizations] increasingly are engaging the influence of business.” Beyond pressure, said another non-company representative, “We recognized that there was a window of opportunity when the companies’ incentives aligned with a positive freedom of expression and privacy model.”

There was agreement across constituencies that the problem was significant and pressing, with the primary variation around the degree to which China represented the epicenter and inspiration. For their part, the participating companies recognized a need. According to facilitator, Dunstan Hope, the companies “started with a common challenge and concern... not [a vision of] the Global Network Initiative.”

Google’s Andrew McLaughlin noted that, “It was clear in 2005 that Google was going into China. We were blocked and slowed down already and it was a big gamble. Google was going to be alone in front of the Chinese government, next to Yahoo’s accomodatious [Sic] policy and the active collaboration of Baidu, and we didn’t see any way to not get picked off by Chinese government.” Indeed, the process and rationale, including McLaughlin’s opposition to entering the Chinese market, are described in detail in Stephen Levy’s 2011
book *In the Plex: How Google Thinks, Works, and Shapes Our Lives*. McLaughlin noted that the idea was “focused on China, but generally applicable and useful elsewhere. Google never felt pressured, but like it was trying to build a useful institution.” Part of the reason for the limited pressure, according to another company implementer, was that the tremendous public attention to the Shi Tao incident actually shortened the press cycle for Google and Microsoft.

Indeed, as another company participant noted, “It was easy to focus on China and may have been the forcing moment — but was not the only reason by far that we entered into something that turned out to so torturous, difficult and long — and worth it. There was less internal pressure because they felt they were doing the right thing every day, but there was a realization of dangerous new waters and people were worried, and there was recognition public pressure would be forthcoming.” As that company and others had already begun to learn that, “A growing company wanting to expand operations and offerings to new countries, recognizing cultural, political, historical, regulatory, and economic differences, and facing really difficult situations forces you to come up with principles and operational guidelines to make daily decisions. It was not just one problem that came and went, but it was clear that the challenge would grow as we expanded, became more global and known.”

Companies were far from monolithic, however. According to Microsoft’s Chuck Cosson, “many saw it as public relations problem and just didn’t want to be caught in the middle.” While China was the primary manifestation, it had global relevance because “Microsoft applied a lens of cultural differences,” feeling as though they were a global company having to operate effectively across different systems. “We don’t agree with the Government of China or the US Congress, we’re just trying to do business.”
Ira Rubenstein of Microsoft noted that, “Privacy and free speech issues were there and lurking, but tended to coalesce around very specific issues: this country with a peculiar local law insisted on taking down something that in the US would be considered unremarkable, and then it would blow up. On the other hand, law enforcement and national security requests were just a steady drum role. It was a fairly significant problem within the policy arena and that it didn’t then and still doesn’t have an easy solution. There are incompatible laws and very different legal systems and very different perceptions across home and local markets.”

“For Microsoft in particular, it was problematic because the company’s greater maturity and enterprise sales-orientation, including government sales, meant that we had a lot of feet on the ground. Rather than a regional subsidiary, we had many employees in these countries and that made it much more real — we couldn’t have some high-handed US-based policy that could put employees in jeopardy. US lawyers suggested just refusing to comply, but our employees were in fact coerced or even threatened. It was an issue we had been giving a lot of thought to.”

Those different forms of recognition, however, did not necessarily translate into perceived action or engagement by companies that were sympathetic to non-company urging. Non-governmental organizations reported underwhelming responses by companies, with one non-company implementer described company “responses to lawsuits that weren’t smart for business or public relations, public and private unresponsiveness, and little openness to deeper legal analysis.” Said Cynthia Wong, who represented first Human Rights in China and then CDT in the Global Network Initiative, “While responses
varied by company, the lack of willingness to engage led to real frustration on the part of civil society.”

The cynical view, one non-company implementer felt, was that the Shi Tao congressional “hearing and lawsuit did it,” until then activists had asked themselves what they could “do to impact these companies’ behaviors, mostly in China.” Many of the non-companies kept pressure on the companies by supporting the Global Online Freedom Act. They pushed companies directly in correspondence and campaigns, and when Yahoo founder Jerry Yang testified before congress in the Shi Tao case, Reporters Without Borders ensured that Shi Tao’s mother sat directly behind Yang.

The Shi Tao incident was a watershed for many participants and implementers. According to Rob Mahoney of Committee to Protect Journalists, “It went to the core of what we do as an organization, but it was a new type of concern that was part of emerging trends of increasing numbers of online journalists and a blurring of who was a journalist. It was a no brainer — there were more journalists and they needed safeguards, which was confirmed in 2008 as more online journalists were in jail than print journalists globally.”

Amnesty’s concern began with Shi Tao, which according to Mila Rosenthal represented a “classic Amnesty International bread and butter issue of unfair imprisonment for free speech.” After the Individual at Risk program took him up, information on Yahoo’s role came to light, which “launched the Business and Human Rights Program in a whole direction — in a perfect storm of concerns about Yahoo, Microsoft, Google censorship in China – all within a few months of each other.” This connected with Amnesty’s ongoing research in China and Vietnam on internet censorship, Rosenthal’s
personal experience with censorship and surveillance in Vietnam, and was underscored by the OpenNet Initiative report on Vietnam (OpenNet Initiative 2006).

Others tracked international organizations and advocated within them, such as the World Press Freedom Coalition, which sought to ensure no restrictions on free expression were approved within these bodies. “Anyplace where communication was the byword, we were there,” described Mark Bench. Indeed, while China provided the best-known examples, many perceived it as an indicator of more widespread concern. Deirdre Mulligan of University of California-Berkeley suggested that it provided an opening, “It was China for some, but I seriously disbelieve that. There was strong pressure on the companies to do something, which made it an opportunity not to be squandered.”

In contrast to other industries such as labor and apparel, “A lot was outside the companies’ control — it was more complicated,” according to Mike Posner, board chair of Human Rights First and co-founder of the Fair Labor Association. He observed that, “Fundamentally, technology companies had a shared set of objectives with the human rights community, including the idea of the open internet, and freedom of expression and privacy were shared interests, forming a common agenda, which is good thing. Culturally, the companies were more inclined to talk to non-governmental organizations. This contrasts with the extractives [petroleum products and mining], where there is such a cultural divide that the trust factor is huge undertaking.”

Kathleen Reen of Internews observed that, “The environment is changing faster than anyone can keep up with: from 2007-08 they have already changed radically from search, data retention and sharing, to intermediary liability, user experience, surveillance, and government intervention; Twitter started in 2006, Facebook was less than 3 years old with
just few users and now has one billion of them.” The rapidly changing set of challenges means, “The mandate and work has had to accommodate changes.” Deirdre Mulligan of University of California agreed, “There are new products all the time, products that create new questions...and more need for iteration and conversation — the technology keeps changing and raising new issues — the dynamic nature of the problem is the difference.”

Many organizations were directly aware of the implications and interconnections, and the investors had a somewhat systemic view. According to Adam Kanzer of Domini Investments, “The long-term value of the internet as a business proposition is tied to fulfillment of expression and privacy rights. People need to feel confident using the internet, or else they won’t use it and will find some other way to communicate or make transactions, and if people aren’t able to express themselves, then it doesn’t have its full value.”

For its part, according to Alexis Cheang, F&C Asset Management “felt the risks to companies were becoming more material and needed to be addressed as business risks, and nobody had a good solution and an independent one was needed.” Based on press attention around data security and privacy, they could see that telco regulation and data access and emergency access by law enforcement were pressing issues, although they did not understand the full complexity at the time.

As with the participant non-governmental organizations, both non-participant and designer companies did not have significantly different views of the problem, seeming to recognize the changing industry and in some measure or other, the stresses it would place on companies and the issues around privacy and free expression. “Vodafone had been focusing on consumer privacy, how to handle data, what it’s used for, and set up a body to
govern that,” according to Stephen Deadman. "Upon completion, we recognized that there was a gap with the government...which, due to the nature of business and vulnerability to surveillance, didn't give us coverage. In 2005, we needed clear perspective on the relationship to government and access to data. There was no problem — yet — but it doesn't take a genius to recognize...”

The telcos faced different challenges from the technology and content companies, with a lesser concern around freedom of expression. They had faced challenges with early online content and adjusted from a purely child protection perspective to balance oversight, degree of intrusion, etc. “Consumers were not turning to mobiles as a major source of expression, just as simple entertainment, but you could see the direction it was going in,” said Deadman.

For eBay’s Tod Cohen, so-called big data and mobile represented the biggest trends, underscoring the importance of exploring how their broad social implications, which include everything from the breakdown of privacy, due to the characteristics of mobile and the power of data aggregation and synthesis. For a large Europe-based Telco, privacy was becoming a more live issue, with tradeoffs of people's awareness levels and that would prompt debate about responsibilities of companies, not only from a government perspective, but more broadly. There were likewise issues around jurisdiction, and in sum, a very complicated world that was being created — who could get access to what data where under what circumstances.
**PROBLEM STRUCTURE**

**Public Regulation Capacity**

The perceived ability to implement effective legal and regulatory structures to address challenges to online free expression and privacy varied widely across stakeholders. About half the survey respondents believed Government had a significant role (trailing only companies in importance), but precisely what the role was varied across organizations and constituencies. As suggested at the initial Congressional hearings described above, some companies asked the US Congress and the Executive branch to bridge the gaps among governments, placing direct pressure on foreign powers, utilizing processes designed to protect free trade, and otherwise reducing their exposure to government action. While the Global Online Freedom Act was only one such approach to government regulation, it was the most prominent and most advanced.

In the 2006 US Congressional Human Rights Caucus hearing, John Palfrey (2006) of Harvard’s Berkman Center, offered that, “It may be the case that the Congress could develop a corollary to the Foreign Corrupt Practices Act that would guide — and tie the hands of – United States technology companies doing business under these circumstances. Such a step is risky on many levels and should be taken only with great care, and only if our technology industry is unable to work out the problem on its own.”

In a 2008 testimony before the Senate Judiciary Subcommittee on Human Rights and the Law entitled Global internet freedom: Corporate Responsibility and the Rule of Law, Palfrey and I cautioned against strong legislation at that time. We argued that it would be premature and blunt with unintended consequences due to the tension between respecting local laws, human rights, and continuing to operate in challenging countries, and proposed
that the fledgling Global Network Initiative could inform future regulation. We also argued that the online service providers like Microsoft, Google and Yahoo priorities were actually aligned with their users and valuable for engagement, unlike companies such as Cisco and Juniper who sell directly to governments (Palfrey and Maclay 2008).

In at least the first years of consideration, companies, industry associations, and others characterized the bill as effectively requiring companies to withdraw from China and other markets, undermining expression and privacy goals rather than advancing them. According to Broache (2007), Computer & Communications Industry Association President Edward Black claimed in a letter to the House panel that, "By placing these businesses in this untenable position of choosing between complying with either US or Chinese law, but not both, GOFA guarantees an exodus of US businesses from the Chinese market. By ensuring our unilateral withdrawal from the battle for the hearts and minds of the Chinese people, GOFA will forfeit this critical frontier for spreading democracy to state-run and state-influenced Chinese enterprises with no interest in promoting American values."

After years of company resistance, lobbying and pushback (Francisco and Washington 2009) in which the US Department’s of Justice and State also registered concern (McCullagh 2008), Google offered more support the bill upon its withdrawal from China in 2010 (Hart 2010) and Yahoo (2012) actually endorsed the bill in 2012. Many human rights groups had a more active vision for government regulation, believing that by requiring US technology companies to behave in a certain way, human rights would be protected and a global example would be set. This was the argument a group of advocates including Reporters Without Borders, Amnesty USA, Human Rights Watch, China Information Center, Committee to Protect Journalists, International Campaign for Tibet,
Laogai Research Foundation, and others made in favor of GOFA in 2008 (Reporters Without Borders et al. 2008). Many, including Amnesty USA, continued their support for GOFA in the following years (Razook 2010).

Respondents were distributed evenly across the spectrum in their views on the potential for legal and regulatory approaches to take on the problems Global Network Initiative sought to confront, divide roughly equally among little-suited, somewhat, modestly, and substantially, while nobody called them extensively suited. This is consistent with the non-rivalrous relationship most implementers observed between the Global Network Initiative and formal regulation, with organizations variously viewing the Global Network Initiative as a path towards regulation, a complement to regulation, or a company tactic to delay legislation, but few expecting it to be a long-term substitute.

Traditional human rights organization were more likely to be supporters of regulation, while the more technically grounded organizations both for-profit and non, viewed regulation skeptically. Indeed, with government at the heart of the problem, a combination of poor public regulation and bad practice was precisely what Global Network Initiative was trying to combat. Microsoft's Chuck Cosson observed that, “The problem identified was growing government pressure to comply with laws in ways that may conflict with internationally recognized human rights of privacy and freedom of expression, and a need for a collaborative and systematic guidance.”

To some extent the operative question was whether regulation in one jurisdiction (or potentially by an international organization) could effectively counterbalance the perceived shortcomings of another jurisdiction. Designer, Patrik Hiselius of TeliaSonera framed the issues as global in a sector that was developing technology, use and legislation,
with "difficulties emerging from differences between international standards and local law. Global perspective and joint approach would benefit everyone, as well as the issues as such." Another company representative observed that their priorities included “avoiding reputational harm and misguided legislative solutions.”

UN-based observer Christine Bader felt that the Global Network Initiative got to the heart of UN Special Representative for Business and Human Rights mandate: the mismatch between global business and national regulation, and resulting governance gaps. She saw the effort as a way of filling the gap where guidance is missing, national regulation is silent or contradictory to international standards.

For Human Rights Watch’s Arvind Ganesan, it was a “pretty strong moment for regulation,” which led them to “push for progress with voluntary standards and regulation simultaneously, with the former as a precursor to the latter.” Lucie Morillon of Reporters Without Borders noted, “Voluntary rules are important, but laws are important, and we still support the Global Online Freedom Act, especially with the new provisions.” While the companies resisted legislation at the time, some have come to support it subsequently because, as Morillon says, “It’s in their interests; it’s a government to government issue and they need a shield, not unlike the Foreign Corrupt Practices Act.”

According to Bennett Freeman of Calvert, “Companies didn’t like the Global Online Freedom Act, viewing it to tantamount to exiting china and overly proscriptive cookie cutter approach. It concentrated the minds of companies on dealing with the issues.” Said Adam Kanzer, “Domini has a pro-regulatory bent, but the global nature of the issue makes it difficult to enforce.”
Within organizations like the Electronic Frontier Foundation (EFF), there was a great deal of skepticism around government regulation and the internet. Indeed, while Danny O’Brien described the “lack of government representatives [in the Global Network Initiative design phase] as the big ghost in the room,” he felt that possibly changed it to being more appropriate for EFF to join the Initiative. The EFF worry emerging from the Shi Tao case was about the Chinese – or US – government pressuring companies into violating the rights of their users. EFF believed that internet “companies didn't initially realize that states could be threats to infrastructure and users, while in EFF’s view, states play a really important part in that model, where overreach by the state means using whatever [resources] they have to violate individual rights of users.”

With the anti-China sentiment in congress creating momentum around legislation, EFF was “equally concerned that the US government would use this as an issue to impose damaging regulations on companies, requiring intermediaries to register, share filter lists, or build systems to support US government intrusion.” As such, their “stance against regulation is not in favor of business, but reflects the dangers of technology regulation being too narrow or broad.” EFF was more invested in the success of Global Network Initiative because of these concerns about internet regulation.

It bears mention that US-China politics were an important driver, as Lucie Morillon observed, although “the Global Online Freedom Act focused on repression, the congressional hearings were really on China. It was a Global problem, but the news drove it.” In a similarly dim view of public sector regulation in the international arena, World Press Freedom Committee saw its role as policing international governmental
organizations by “nipping it in the bud” as encroachments to free expression crept in or were inserted by national governments, according to Mark Bench.

For Deirdre Mulligan from University of California-Berkeley, “It was possible that we would get domestic or international legislation, but only a limited set of non-governmental organizations think legislation would fully address the problem.” While Mulligan recognized that some governments perceive other governments’ actions as the problem, they also want to protect their own enforcement capacity. “This set of issues is different from many other areas in the context of other corporate social responsibility efforts or multi-stakeholder initiatives arising from perceived lapses in company attendance to external social values, this is a problem that governments aren’t going to solve. The corporations aren’t the problem, but actually the tool to curb government behavior. The question is how can we make sure that corporations act as a check on government behaviors that impact human rights, not mitigate corporate impact on human rights.”

Human Rights First’s Mike Posner differed, recounting their frustration that companies could shift the blame to governments, without acknowledging their own responsibility in the dynamic. There was ongoing tension of at once recognizing government at the center of the problem and not absolving companies of the responsibility to respond proactively to the challenges they face.

One respondent noted, “The space that [typical] voluntary codes are trying to fill is where there needs to be legislation — and there isn’t or it isn’t enforced — whereas the Global Network Initiative is trying to address issues where there is legislation. It does exactly the opposite of what other multi-stakeholder initiatives are created to do.” The respondent pointed out that when it comes to telcos, for instance, “All countries have the
right to switch off the network — the powers the governments have vis-a-vis companies are awesome — but they elicit a big outcry when enforced, which is totally different from the absence of legislation around working conditions [for instance].” Steve Lippman of Trillium echoed this sentiment, “The usual problem with multinationals is nonexistent or unenforced regulation, but this is the flip-side: companies are operating where there’s too much regulation. I’m not confident that you could get effective regulation to deal with those disconnects.”

While the implementing companies called for government support, recognizing the power asymmetry of their own position with respect to host governments, they also perceived limitations to legislative solutions. Microsoft’s Ira Rubenstein suggested that, “A system in which industry drafts the code is likely to be more beneficial than one in which government clumsily drafts legislation that is immediately overtaken by events and technology.” While one company implementer offered that, “If you believe all this about decentralization and about the waning power of government, while the power of companies is increasing, then it is organizations like the Global Network Initiative that are going to become increasingly important.” From Yahoo’s perspective, involvement of the Department of State was a positive, according to Michael Samway, “In September 2005 when Jeff Krilla and Department of State team came in, they said: we’re the government and we’re here to help...it was sort of a unifying moment. They also recognized the limits of government.”

The designer companies (those who participated in the design process, but chose not to implement) had a somewhat different perspective, largely due to differences in industry and jurisdiction. Stephen Deadman of Vodafone summed it up, saying that it was “more of a
burning issue in the US with the Global Online Freedom Act debate, while the there are lots of telco regulations but they are not around human rights. It bubbles up in parliament in the European Commission, but there was not a sense that legislation was coming in the near future. It was a marginal issue.”

**Perceived Sectoral Roles and Interconnectedness**

In his 2006 congressional testimony, Berkman’s John Palfrey (2006) suggested that, “The United States ought to consider making this human rights issue a matter of foreign trade policy or other forms of international negotiation. In the internet context, the United States ought to stop worrying about the future of the Internet Corporation for Assigned Names and Numbers and should make internet filtering and surveillance the key internet governance issue on the world stage.”

When Palfrey testified again in 2008, I joined him, and we proposed that government support additional research, learning and increased awareness; support partnerships and cross-sectoral exchanges; create incentives for progress by companies; lead through its own practices and policies; promote transparency by companies; and consider codifying the approaches of the Global Network Initiative in time (Palfrey and Maclay 2008).

While Companies initially held a dim view — or were at least trepidatious — about US Government regulation along the lines of the Global Online Freedom Act (GOFA), they did see a role for government. For its part, around the 2008 Congressional hearings, Google proposal’s included making censorship a central aspect of the US trade agenda; expanding the countries who ratified the International Covenant on Civil and Political Rights (ICCPR) and building additional process around it; building out the State Department’s Global
internet Freedom Task Force (GIFT); and including censorship considerations in foreign aid programs (Chavez 2008).

Google Deputy General Counsel Nicole Wong’s testimony before the Senate Judiciary Committee noted that, “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.” She expanded upon these ideas, but did not propose consideration of US legislation.

For Google’s part, Wong’s testimony described Freedom of Expression as being “at the cover of everything we do.” In practice, she described translating that ethos into promoting transparency via platforms like Chillingeffects.org (which documents legally mandated content removal in the US, primarily for intellectual property and defamation), establishing good practices through the Global Network Initiative, collaborating with human rights groups using YouTube for dissemination, and supporting technology interventions through funding and hosting.

By the time of the 2010 hearing entitled Google and internet Control in China: A Nexus Between Human Rights and Trade? (Congressional-Executive Commission on China 2010), Google’s perspective had expanded accordingly to go beyond China, suggesting that, “Internet freedom must become a major plank of our foreign policy. The free flow of information should be an important goal of diplomacy, of foreign assistance, and our engagement on human rights.” Their call was in keeping with other companies like Godaddy.com and industry bodies such as the Computer and Communications Industry Association, which were consistent with Google’s call to focus on trade and to lead by
setting a strong example of respecting online expression and privacy. On behalf of Human Rights in China, Sharon Hom proposed increased government support for technologies supporting privacy and free expression, and government pressure to participate in multi-stakeholder approaches including the Global Network Initiative. Both of these were at least to some extent already underway within Congress and would continue to grow over time.

Among survey respondents, the vast majority viewed inclusion of different sectoral and organizational perspectives to be substantially or extensively important for learning, problem solving, and reaching agreement. Respondents elaborated on this orientation, noting the need “to find workable solutions to a novel challenge that did not neatly line up with earlier corporate social responsibility efforts and required significant knowledge exchange on technology and human rights.” One participant felt that, “NGOs and companies recognized that a strategy of engagement with advocacy targets / critics [respectively] might be in their interests. A handful recognized that there might be shared interests [e.g., changing government behavior].” Another was more optimistic, feeling the group had, “A realization that organizations from different sectors had similar rather than divergent goals--and that they could be more effective advancing those goals through collaboration.”

Among companies, one designer noted that, “Each of the constituents had their own unique viewpoint on the issue and there existed quite large gulfs between them. The only way to break down these misconceptions was to bring all parties together.” A company implementer felt that as a pioneer in international markets, they had “learned directly about government threats to free expression and privacy,” and “recognized the need for a multi-stakeholder approach to combat the growing human rights challenges.”
Arvind Ganesan pointed out international and interest complexities, “Freedom of expression was a global problem and law enforcement is even more so because while there is a continuum for free expression, law enforcement wants all the data.” He also noted the tremendous scale of impact, “These are global companies and if they make one change in security or expression that affects 100 countries — the magnitude is enormous.”

Dunstan Hope of BSR was familiar with the view of companies as enemies of human rights, “Companies didn’t want to bow to government, because in contrast to other contexts, commercial interests were aligned with those of human rights groups, which helped ease discussion and collaboration.” Domini had a similar perspective, with Adam Kanzer explaining that, “Companies always think they are being pushed out of China, and Domini wants to help them to understand and address challenges. In this case, business interests seemed really aligned with human rights. It seemed to us is that this was core to the companies’ business models and mission, which is different from many other situations.”

Mike Posner agreed, “Fundamentally, technology companies had a shared set of objectives with the human rights community: the idea of the open internet, free expression and privacy were in both our and the companies’ interest.” He expressed hope for “recognizing the importance of companies asserting themselves and advancing an open internet agenda, and finding ways to get companies to realize they had a practical role to play in that process.” He was concerned by “the daunting nature of the issues, especially privacy and state demands in terms of law enforcement and national security, which are hugely complicated — legally, factually, politically — underscoring the companies’ need for government support.”
UC-Berkeley’s Deirdre Mulligan observed that, “There are not radically different perspectives on the nature of problem. Companies are important sources of control and data because of the networked environment, so if we can extract them, we can certainly develop a much greater understanding of the challenges they face — even if they have the right people trying to do the right thing. Relations with government are fraught due to lack of knowledge, companies don’t know what actions countries will take when data is disclosed, that requires context specific information, is dynamic, and you just may not be aware as a regular lawyer. What are good sources of information to inform that decision-making? I appreciate the complexity of problem.”

For Human Rights Watch, the key was to “understand the nature of the problem, which gives companies tools to identify problems and mitigate risks, and from an assessment standpoint, gives you a way of assessing negligence in a process. There is no global regulatory action coming, but you can hold all companies accountable for their behavior in the manner of the Foreign Corrupt Practices Act, where the burden is not on the Federal Bureau of Investigation, but on the process.”

One participant’s perspective was that in some respects it was “similar to the maps situation — naming policies became huge — whether it was the Arabian or Persian Gulf, East Sea or Sea of Japan. You had to come to grips with it, if not, you’re setting yourself up for constant problems with your constituents, users, governments, and even other companies looking for guidance and consistency.”

Microsoft’s Ira Rubenstein observed the importance of “oversight and regulatory pressure, in this case mostly brought by advocacy groups and reputational interests, which was sufficient due to the heated and troubling nature of the issues, and subject to effective
accountability mechanisms,” but that, “It works better for companies to devise their own codes and to have codes with the knowledge and expertise that industry brings.” Certain provisions, such as safe harbor “need stronger regulation, including approval of code, backstop enforcement by government of the code with penalties for violations.”

For Rubenstein, recognizing that business has a role is important in part because he sees the typical business response to a command and control approach “is largely to litigate and resist and devote resources to bending or overcoming regulation, rather than pursuing the goals that motivate regulations.”

For Microsoft, the alignment of companies was also important, Chuck Cosson recalled, “Our initial decision — go it alone or try and do something collaborative, was sort of made for us, because Yahoo and Google were dealing with analogous challenges in contemporaneous times. We also took the substantive decision that we did not want make it up as we go along.” They acknowledged willingly sacrificing nimbleness for protection.

Michael Samway observed complementary views in Yahoo’s case, “Decision-making was segmented around the company, which is sometimes helpful in a young fast-moving company because it allows dynamism, but in hindsight, it may limit internal coordination and the use of expert knowledge or information.” Unlike subsequent process, Samway pointed out, “The early decision to go into China was a business decision, where they consulted lawyers on the needful such as editorial, corporate setup, and law enforcement. At that point the public policy team was one to two people and mostly focused on Washington, DC, and was probably not consulted. The [February 2006 congressional] hearing marked the first time people came together to think about these issues.”
While Yahoo was not worried about organizational commitment or executive support, they needed to translate it into effective action, recognizing the need for internal processes to support good decisions, the certainty of personnel changes over time, the ongoing nature of the issue, and that growth markets are in some of the more challenging jurisdictions. “Yahoo’s hope was to build something inside the company, but also an industry-wide or multi-stakeholder effort that was sustainable and ongoing.”

For Domini, “Bringing companies together with outsiders makes perfect intuitive sense — they are all facing similar challenges and you want them sitting together and talking.” But it represented a challenge in practice, as one American investor remembered, “There was no agreement at the beginning: asking how companies can do business in these markets successfully without violating freedom of expression and privacy rights was very different from asking whether companies should be in these markets at all, and organizations were distributed across the spectrum. Our job was to get companies to a more holistic view.”

Calvert policies permit investment only if the companies in question meet their criteria including human rights, labor, and corporate governance, but it was increasingly unclear whether Microsoft, Google, Yahoo and others met them. “We needed to push those companies to give greater confidence that they met our criteria, which meant creating a global standard that acknowledges and addresses relevant and unique risks.” According to Bennett Freeman, “There were common and converging interests among the parties,” and it called for “broad principles, as with the Voluntary Principles on Security and Human Rights, where companies have legitimate security interests, but the security must go hand in hand with human rights safeguards.”
“The Human Rights Watch approach is to begin with good research, get specific actors to change their practices, and where standards are insufficient, to build or strengthen them to prevent and address future problems,” according to Arvind Ganesan, “which means pushing progressive voluntary standards and regulation simultaneously, with the former as a precursor.”

From Amnesty International’s point of view as a campaigner, “The situation was a strong reminder of how powerful and how intertwined with state actors and repression companies had become.” Mila Rosenthal explained that, “While companies shared a sense of support for freedom of expression, privacy, safety, security, and rule of law, the reality is that they also had some interest in getting civil society off their backs. They recognized that it was a terrible public relations problem, and saw themselves as different kinds of companies and wanted to get there. They want to promote speech, they don’t want repress it.”

The solution set was unclear, however, as Rosenthal notes, “Companies were frustrated by non-governmental organizations because they just wanted us to make it ok, but were also genuinely disappointed that we couldn’t give them better answers — we didn’t know how to fix it — [it requires] something more concrete than a policy and reporting; solutions that worked within the business model, allowing profit, competition, etc.”

According to Kathleen Reen of Internews, the Global Network Initiative is a complement to substantial demand at the “regional and country level for local language solutions — fora, coalitions, movements — that are developed and inspired by Global Network Initiative, borne of necessity in real time, as we’ve seen Thailand, for instance —
where people are fighting this on the ground, on issue-based responses.” There is a link
Reen says, because, “Most challenges are among global commons, jurisdictions, and so on,
and new regulations need to be enacted in an evolving environment...the Global Network
Initiative informs companies implementing and dealing with the rules as enacted, and GNI
can reflect on those facts as they occur.”

She points out a host of challenges to the Global Network Initiative, from the
likelihood of defining the size of challenges as smaller than they are, to their changing
nature and the limits of using the assessment process to track emerging issues moving
forward. In recent years and more so with the Snowden revelations, problem awareness
has increased tremendously, but the availability of straightforward solutions remains
limited. According to Reen, the balance among urgency, real detail that spans areas from
law to technology and policy difficult to achieve, and the changing inner workings of
companies make it not only complicated but also dynamic in nature.

Human Rights In China’s Sharon Hom observed that there was a confluence of shared
interests among the companies providing internet and communications services and the
human rights groups concerned about privacy and free expression. The companies faced
tangible challenges in operating effectively and the non-governmental organizations
believed that a sustained engagement with companies was essential to developing an
integrated approach to the situation that could be sustained over time.

Gus Hosein of Privacy International, a non-participant organization, lamented
government’s tendency to create bad laws and policies around communications
surveillance and companies’ relative silence in the associated processes. In his view, the
aim is not just for companies to respond in an enlightened way, but to try more diligently to
respond to and actively shape the process in the first place. He did appreciate, however, the value of interactions — ideally of the less formal variety — among companies and non-companies, which he viewed as a valuable means to reaching new communities and increasing their understanding of the issues.

Deirdre Mulligan observes that, “The most important thing that the Principles do is to set out an understanding that the formal law of any jurisdiction might not be the most important, that transcendent human rights concepts need to act as a touchstone, even as formal law anywhere might fall short. It’s in tension with formal law, sometimes quite directly, and that’s a big part of the value.” She sees it as buttressing the international human rights community, suggesting a reasonable approach, and underscoring that companies have internal process behind their decisions, which offers some degree of external credibility.

Amidst all the nuance of the participants, one telco respondent offered a clear reminder about the frame of and limitations to responding to the overarching challenge of limiting government access to personal information. “Government access versus consumer privacy is a false distinction — only no data collection would make government unable to seek it. Industry will continue to struggle in the future.”

**Organizational Resources**

**Interests**
The profile, role, and attitudes of technology providers — and the services they offered loomed large for non-company participants. Observed Kathleen Reen of Internews, “Technology companies are still at the front lines in the news everyday, creating a sense of
public responsibility beyond other spaces. Many people care.” BSR-facilitator Dunstan Hope simply observed that, “There was lots of political pressure on the companies, and competition among them. Plus, Silicon Valley has a can-do attitude.” Consistent with that perspective is that across all groups, internal motivations to participate were important, with only a few survey respondents reporting substantially external factors as drivers of participation. Alternatively, about half of survey respondents reported equally internal and external factors, and the remaining third highlight substantially or almost exclusively internal factors.

“It’s not a cookie cutter approach we want, but principles and internal discipline to slot cases through hierarchy, etc., for consistent application of knowledge and learning from past experience,” said one company. “Approaching it on a case-by-case basis would be foolish and ineffective, resulting in fire drills. The YouTube takedown policy evolution is another example. Developing community guidelines, flagging procedures, and a force that became used to what is good and bad, and all the shades of gray in between.” As compared to the others, the representative felt that, “Google was the company in the room that had the most to gain and the least to lose. Yahoo had no choice [because of the Shi Tao incident]. Microsoft had a different agenda — they don’t have a moral compass built into their mission.”

Domini’s Adam Kanzer remembered that, “Something’s happening and you should be part of it. We want to be on the cutting edge of these issues. Additionally, making a decision to not be involved can be really costly — it [the potential initiative] may not happen, or socially responsible investors may not be represented.” Trillium’s Steve Lippman felt similarly, “The Global Network Initiative was a great substantive way to address an issue
Trillium wanted to make an impact in — it had good ingredients. It was a foregone conclusion that we would join.”

Organizations also recognized the direct relevance of online expression and privacy to their work, with Arvind Ganesan recalling, “These issues are important to human rights and Human Rights Watch. We need an open internet to have the impact we have.”

“In the past, EFF had participated in industry discussions and they knew what was at stake and could intervene,” according to Danny O’Brien, “but I was not sure that would happen in Global Network Initiative. But shit, with so many venues for all this bad stuff to happen (e.g., ACTA since WIPO was no longer a place to evade the public eye)...we knew others could oversee it, but we wanted to stay in the room, see what was happening, and how it fit together. The fluidity of whole situation — that we didn’t know where these things would go — pushed us over the edge. Previous EFF international involvement had been through WIPO, Free Trade Acts, and other regulatory policy settings and our view was to test the water and see if it made sense. We were wary of efforts that were viewed by some as being captured by business interests and we did not want to see companies use this as cover.”

For Kathleen Reen, “There was lots of debate in the United States and Internews brought international interest and experience in the policy and media sphere. We thought we could play a unique role by being in the picture with a global footprint and offering direct assistance to organizations of interest to the Global Network Initiative, we could have an amplifying effect.” Further, participants represented a bridge-building opportunity with a wide range of organizations that they felt they should be talking and working with.
One investor remembered hearing about the issue from clients, "We own stock, what are you doing about it? We ask ourselves does it matter, do they want to see us doing something on this issue? It was client interest that drove it.”

As a clinical project for the Samuelson Law, Technology & Public Policy Clinic at the University of California-Berkeley’s Boalt Hall, Deirdre Mulligan sought “to give students an appreciation that not all law is regulation — that there’s a lot that’s in shadow of law, interpretations of the social license to operate is not just about government but other stakeholders control over a given company that’s essential to people’s freedom of expression and privacy.”

Mulligan found it to be an appealing clinic project in some respects, teaching about modalities of regulating with direct access to high-level folks, the opportunity to serve under-resourced non-governmental organizations, and the potential to explore research gaps that could leverage value of the academy. It was also slightly frustrating due the varied demands for different legal skills, diverse challenges, unclear client, many stakeholders, unclear path, and nature of being generally messy and complicated.

Sharon Hom and Human Rights in China were concerned that the use of tech could get people into very real trouble, allowing government to track, document and jail people for activities ostensibly protected by domestic and international law, which raised serious issues for both companies and human rights groups. The gravity of the situation and depth of the problem meant that it offered the potential for a sustained conversation rather than the one-off company consultations to which they had been largely limited. Hom noted that, “The companies were in deep shit,” and that, “If anyone was going to make a difference,
Yahoo, Google, and Microsoft had the potential — the big boys were at the table and talking.”

It also fit well with the organization’s other activities, complementing their international policy work, hands-on technology deployment, and internal capacity development efforts. Starting in 2003, Human Rights in China had been actively involved in the United Nations-led World Summit on the Information Society (WSIS) and worked extensively on freedom of expression and privacy issues. At the same time, they undertook a five-year effort to use technology to circumvent the so-called Great Firewall, which censored China’s access to the internet. They were also growing the organization, adding capacity to understand and monitor Chinese law, including regulation of the internet and media.

“The companies had a lot to answer for — they wouldn't answer and then they would — due to media attention and public outrage,” said Lucie Morillon. As Amnesty International’s Erica Razook observed, “If there’s a space for processes, it only happens close to companies getting a real beat down somewhere else — where they’ve learned there’s a real cost to abusing rights. Progress on corporate human rights issues takes the bad cop, litigation, legislation because that’s how business works.”

A balance of hope, concern, and pressure was widespread among non-companies including designers. “We hoped that companies could take some constructive action about how they deal with data and censorship. But we also needed to keep pressure on companies,” according to Lucie Morrillon of Reporters Without Borders.

Mila Rosenthal recalled that, “In the early meetings there was a lot of discussion about our goals — the vision for a different world. We drew on Amnesty International’s
experience with different MSI’s, ranging from the United Nations Global Compact to the Voluntary Principles [for Security and Human Rights], and my own experience as the main person working on the Fair Labor Association at Human Right First, plus some others from London, such as Mary Robinson of Business and Human Rights, and others. It is good for companies to work together, to develop standard principles, to agree on a common code, and to have some method of operations reporting, transparency and accountability. We had also learned what worked and didn’t — and were disappointed by voluntary efforts, and felt like they needed to improve. We wanted to see real accountability, high-level transparency, and so on. “

While the corporate responsibility structure of one telecoms industry non-participant is now different, at the time of the GNI design phase, it had a central team, board committee, and leadership panel of external experts/stakeholders, which led to awards for reporting, recognition by the Dow Jones Sustainability Index and global leadership in this area. They found the effort to be “useful, but we didn’t think the risk was sufficient to warrant it.”

They found it to be an interesting topic and something of an issue, but the approach suffered from “business model differences, which meant few overseas connections with consumer customers and more with businesses and governments, and that it looked like an America - China matter.” It was simply not at the scale or significance of other corporate social responsibility issues that they were researching at the time, such as climate change, health and safety, and was difficult for them to discern where the problem would lead to impact.
Indeed, from the perspective of European telcos, they had received little attention before these issues and felt they were viewed as a largely positive force, providing critical national infrastructure. Noted a telecoms industry non-participant, “Companies have been helping governments with law enforcement for a very long time. Nobody asked any questions before.”

Based on his perception of the low likelihood of Congressional legislation, for eBay’s Tod Cohen, the question was, “What are the implications of not participating for our risk profile — is it worse with us in or out? Our decision was that it was marginally worse to participate than being an [informal] observer.”

Furthermore, “We didn’t know how clean our own house was with respect to Skype. We never knew what was there; we only had a license to the intellectual property and never owned it. Only when it was sold to Microsoft (along with the intellectual property assets) did we learn what was in there. We didn’t control the underlying technology that would be subject to GNI. We had more authority than Yahoo in China, so it was more of a question of lack of information than lack of control.”

**Experience**

About half the organizations that responded to the survey felt they had extensive experience that was relevant to multi-stakeholder approaches to governance and collaboration, while only a handful felt they had little or only some experience. Those experiences varied widely, however, from industry associations or consultations to similar multi-stakeholder processes, suggesting the value of a more detailed exploration of the
nature of the experience, including both its type and level of positivity, rather than simply its existence or volume.

For Microsoft, “It was new territory in a lot of ways. All sorts of multi-stakeholder initiatives in the early 2000s lined up against Microsoft,” as Chuck Cosson noted. “There were not many instances of Microsoft being one of many in the crowd and playing with others. We did have some experience in consumer trust building activity and industry trade associations where you don't always get your way.” According to another representative, “It was the first time my company ever did anything like this and it was a big fucking deal for us.”

It was slightly more familiar territory for some of the other companies. “Yahoo had good industry association experience around children and other issues with groups such as the National Center for Missing and Exploited Children, but it was very DC-focused,” according to Michael Samway. “TeliaSonera and I had a lot of experience nationally and internationally, and with multi-stakeholder initiatives as well,” said Patrik Hiselius.

The co-regulatory experience was fairly extensive among the investors. Bennett Freeman of Calvert specializes in multi-stakeholder initiatives, conceiving and leading the Voluntary Principles on Privacy and Human Rights, which he described as also having no precedents. He had been involved with other initiatives including Kimberly Process, EITI, Fair Labor Association, and done related consulting. Approaching the Global Network Initiative with extensive relevant experience, he “relished the opportunity to do it again, in a different industry, with different issues, and yet striking commonalities.”

One investor felt that it was a human rights issue that built upon their “long history of work on CISCO and China issues, along with other past work.” Trillium had a similar
orientation, with good multi-stakeholder initiative experience, as well as the extensive collaboration with advocacy organizations and dialogues with companies.

“Multi-stakeholder initiatives are at the core of the Center for Democracy and Technology,” said Leslie Harris, its president and CEO. “We participate in many working groups with companies and civil society, often seeking to establish a policy or practice in an industry. The Global Network Initiative was more ambitious than many of these undertakings and we were well-resourced in terms of knowledge and contacts, but not financially, especially at first.”

Human Rights In China (HRIC) had limited experience in multi-stakeholder initiatives, having interacted with the United Nations Global Compact, but been limited by China politics, but had consulted extensively with companies doing business in China as part of their policy on corporate social responsibility. As part of the lead up to the Beijing Olympics in 2008, HRIC launched the campaign Incorporating Responsibility 2008, which featured extensive interaction with companies providing key services for the Olympics, and offered them a window in to the companies and the technology infrastructures they were developing (which HRIC saw as beta-testing for broader deployment).

EFF had deep, albeit less formal, relationships with companies, said Danny O’Brien, “Being based in San Francisco and having a strong reputation with geeks, we offer lots of ‘drive thru’ consultation: is this evil or not? We’re free to opine, advise without non-disclosure agreements, etc. EFF accepts no corporate funding. Companies appreciate and EFF gets a lot out of the relationships — not the typical ‘you don’t understand,’ but helping human rights sensitive groups within companies who didn’t [otherwise] have the tech muscle [understanding] to win arguments.”
Internews has a long history of work on internet policy, having been involved since the late 1990s. They support regulatory and legal reform at all levels, from local to national, primarily in the developing world. They have long been interested in mechanisms to advance that work — especially the role and capacity of local organizations. “With Internews’ interest in increasing internet access, the role of government and non-state actors in both telecoms and security, and other threshold matters,” remembered Kathleen Reen, “The Global Network Initiative marked a new endeavor around principles we thought would be important. It was consistent with our belief in the importance of interdisciplinary work — issues of access, architecture, and protection require the participation of different sectors to address problems. They must bring different backgrounds and work areas, and seek to understand each other. In our work on cyber security in 2002-3, non-governmental organizations were actually in the room with law enforcement and other government folks talking about how to keep the internet open and safe. GNI was a logical progression from that work.”

Committee to Protect Journalists also did not have much experience in the multi-stakeholder setting, but had worked with “multi-laterals and international organizations, government agencies, journalist syndicates, and regional and international press groups,” according to Rob Mahoney. For its part, “World Press Freedom Committee only had experience with companies as financiers,” said Mark Bench.

Erica Razook recalled, “The GNI was a very familiar mode, between Amnesty-USA, Amnesty-UK, and Amnesty-International, we had among the most experience. Human Rights Watch, and Human Rights First, were also experienced, but Amnesty had done lots of work on the Voluntary Principles for Security and Human Rights, the Kimberly Process,
in addition to direct engagement with companies.” One of the benefits of that experience, she observed “is that having engaged across industries, you start to hear similar ‘lines’ coming from the industry side.”

Lucie Morrillon remembered that for Reporters without Borders, “It was our first time to really be involved in a multi-stakeholder initiative with companies on their issues. Not just denouncing them, but trying to find solutions.”

eBay’s Tod Cohen noted that, “In part because cross border sales and payment are global with special regulations, eBay had a lot of relevant experience, including intellectual property issues, third part liability, counterfeiting, payments, stakeholder dialogues, multilateral settings like APAC, OECD, WIPO; engagements with the US Chamber of Commerce Code of Conduct; and dealing with exploited children and child pornography.”

Privacy International had extensive experience working with European non-governmental organizations, sometimes with substantial industry participation, according to Gus Hosein. They had also had many individual meetings with industry, but had little constructive engagement on lawful access, and had focused more on the technologies the companies were creating.

**Prioritization**

Although the interview results suggest resource deficits across constituencies, a majority of survey respondents felt they were average, substantially or extensively resourced. This difference suggests that average does not mean sufficient and calls to attention the lack of alignment between resources and organizational prioritization. With about half of the respondents calling the Global Network Initiative substantial or high priority for their
organization, it illustrates the unforeseen nature of the commitment and difficulty in obtaining additional resources.

For one company, “It was much more of a shoestring than it should’ve been, which it always is at a company when you are trying to do something new,” offered its representative, “but it got much better when [my colleague] arrived because I had a strong lawyer and he was careful, but forward leaning. I had backing from top and that was huge. I am not sure there was the same backing at Microsoft. Ours went all the way to top — our board sat through three meetings with options. All the major players were there and had the chance to say yea or nay.”

Microsoft’s Ira Rubenstein recalled that, “We were well-resourced early on, although it might have become a tougher issue for Chuck [Cosson] after I left, since he was less senior, had nobody to call upon, and he needed to get other parts of the company to devote their own resources to deal with the requirements for the assessment, etc., and that was inherently a tougher task.”

According to Cosson, “For Legal and Corporate Affairs, it was a very high priority, so much so that I thought this was the thing to build my career on. For business, it was a priority, but one that they wanted to get rid of — they wanted to make this [the problem] go away. So long as Ira [Rubenstein] was my manager, our mode was to do whatever was required — budget, time, etc., so long as Ira was there it was a high priority. Even after that, Pamela [Passman, Microsoft Vice President for Global Corporate Affairs] continued to place a high priority...and strongly understood the impact on brand, reputation, customer trust.” Among that team, there was agreement that they were “not going to let Microsoft get dragged through the mud as a human rights violator.”
The non-governmental organizations experienced fairly significant resource constraints. Arvind Ganesan of Human Rights Watch recalled, “Our resources were terrible, then as now. Normally we have one researcher, plus them and another doing advocacy, while this was just me, and it was not even my full-time job. It takes my own [personal] time to do it all.” Although Mike Posner was the Chair of Human Right’s First’s board and had a larger team, he termed it “a busman’s holiday and a labor of love,” which he did in spite of his full-time job and family, noting that, “It’s surprising how few resources and how little attention these issues get.” “The Global Network Initiative was a natural for the Center for Democracy and Technology,” according to Cynthia Wong, although “resources varied.” The very busy Executive Director of Human Rights In China was involved in the design phase in addition to one staff member who changed over time.

Wong observed, “Groups such as Human Rights In China, Human Rights Watch, and Committee to Project Journalists had high-level participants and could make decisions, but were not as resourced as the companies were, with other non-governmental organizations sending lower level and or less experienced representatives, which impacted expectations for GNI. The criticism is that more junior people didn’t have the necessary heft, experience, or authorization to make agreements on behalf of their organizations.”

Staff, travel, and other resources were quite constrained at Human Rights In China, and some members of the board and Chinese staff had substantial reservations, but Executive Director Sharon Hom was confident in the importance of participating in the Global Network Initiative. Some did not see the point of engagement, while others did not want to deal with Yahoo at all (Yahoo initially expressed similar concerns about working with HRIC). Hom argued that their focus on China had global importance because it was
going to be “The one country that is going to map the internet space.” The potential impasse was avoided, when the ideal staffer arrived in the person of Cynthia Wong as an endowed fellow with an educational background in technology and law. It bears mention that since her departure, their level and type of participation has varied.

Danny O’Brien lamented, “EFF did not have enough capacity — resources were a constant question. We increased staff half way through [the design process], partly as a result of growth of this area.” Due to its separation between advocacy and legal functions, the Electronic Frontier Foundation faced challenges in sourcing diverse legal expertise to complement O’Brien’s technical and human rights understanding. Said O’Brien, “If only we could clone Gwen [Hinze, EFF Special Counsel] imitating a corporate lawyer. I could rarely give the requisite attention. I wish we could have provided a few pairs of legal eyes over the Principles to explore how they interfaced with legal principles. Fortunately, people like Arvind [Ganesan of Human Rights Watch] were fantastic.”

For Internews’ Kathleen Reen, “The question was how to afford to participate and contribute. Conceptually and strategically, it made sense but it was practically challenging to resource travel and active participation.” Echoing the experience and approach of other non-companies, Reen noted, “Donors were not aboard because they were conceptually unsure, skeptical that it would have real outcomes, and that common ground could be reached. To make it work, we developed parallel projects internally to create opportunities for collaboration and overlap, and forced selectivity by focusing on certain projects that fit with Internews’ agenda.” As with other organizations, there were functional implications to the resource constraints: “These limitations meant that we did not feel we were leaders in
the Global Network Initiative, but we were able to participate and engage, actually providing organizational support we never envisioned, such as proposal writing.”

Size and money were a limiting factor for many non-companies. World Press Freedom Committee found that resources were sparse during the design phase, ultimately determining that they needed to merge to keep operating. Mark Bench, who had led WPFC lost his job after merging with freedom house, but continued his work on the GNI due to personal interest. Similarly, Committee to Protect Journalists had, “no people or cash, but the founder was supportive and we could contribute on the current state of affairs for journalists.” They were focused on that niche, and eager to communicate what was happening to their audience, ultimately expanding their team (by hiring EFF’s Danny O’Brien), and finding ways to increase coverage of the Arab Spring and issue a security guide to journalists.

One investor lamented being not well resourced at all to participate in the GNI. They were already working on other human rights issues at the time, functionally filling that area of obligation. With that pressure, progress that felt slow, there was little capacity to report it, and the ‘shiny’ new topic of technology began to feel like a resource drain. They were eager to complete the standards to be able to use with companies, and also to be recognized for participating in the process.

F & C Asset Management suffered from a similar mismatch. The design phase crowded out other work on technology such as energy, waste, and supply chain, requiring a tremendous amount of time in dealing with only 3-5 companies, instead of affecting perhaps 25 companies on another issue. It later led them to take a lesser role of alternate
board member, and to be not as involved as they otherwise might have. In terms of budget and prioritization, technology was not prioritized, which exacerbated the problem.

Domini’s Adam Kanzer acknowledged that, “You don’t know what you are getting into at first. Resources to attend a meeting are one thing, but you choose to devote time to it.” Time was the most significant constraint because Domini is a small firm, but they have found that the multi-stakeholder approach allows for more flexibility and collaboration. It was important that Kanzer was personally interested in first amendment/free expression and human rights issues, which meant he was excited about the topic and felt he had a relevant background. Still, he recalled, “It was a ton of work.”

In terms of resources, while Erica Razook was the Amnesty-USA representative in the room during the design phase, she felt that she had a network of experts behind her. This was including the expert who authored the Amnesty report on China, her supervisor Mila Rosenthal, the International Secretariat, etc. She remembered, “I’m sure that the company representatives were dismissive [of me], but information privacy was an academic interest of mine, so it was comfortable.” Rosenthal said, “It was fairly high priority — not the public piece — but as part of a campaign. We [Amnesty-USA] released a joint report with Amnesty-UK surveying the issues. It was desk research—which is not a typical report to use as campaigning tool. We also had resources including the irrepresible.info website.”

According to Rosenthal, Amnesty “felt incredibly stretched being just the two of us plus an intern here or there, including Erica [Razook] on a fellowship. It was not bad, but it always felt inadequate regarding the lack of technical expertise and the risk that companies would ‘dazzle us with science.’” To help understand the issues better, they sought to complement their team with tech-savvy volunteers. The team evolved as Rosenthal became
senior management in fall 2007, meaning that she gained eleven additional projects covering every country in the world and business and human rights issues — and correspondingly less directly involved with the design process. A decreasing role for Amnesty-USA and rising role of Amnesty-UK influenced the relationship further.

For its part, Reporters Without Borders tried to attend most of the meetings, but found that their modest size meant they were unable to participate in the groups that drafted much of the language that laid out the policy design. They coordinated with other non-governmental organizations to compensate and participated in many meetings.

“Vodafone was well-resourced enough to make the [initial] trip to the West Coast, but...in terms of people looking at it, it was Charlotte [Grezo, director of Corporate Social Responsibility], a couple of others and me, so we were lightly resourced in that sense,” said Stephen Deadman. “The feeling was that internet companies had more resources in the center and less in the periphery, which is the opposite of telcos, and that requires them to go to the periphery -- which is tricky,” suggesting that what mattered was not simply volume of resources, but their nature and distribution.

Patrik Hiselius of TeliaSonera noted that, “At least as much time is needed on internal work as you put to the GNI discussions.” The two staff working on the GNI design reported to the Public Affairs and Corporate Responsibility teams, respectively, both within communications, but in different dependencies. With management commitment, but absent public pressure and with job changes that occurred as a result of cost-cutting measures that further complicated the need for formal and informal support, the situation was challenging for Hiselius and TeliaSonera.
During this period, European telcos were in the midst of a financial struggle, defaulting to financially driven leaders and decisions that limit organizational vision, strategy, leadership orientation. Said one non-participant telco representative, “I cannot overemphasize how much cost drives everything,” which led to a challenge in justifying participation costs given the perceived level of risk. There was no public pressure or threat of legislation for European telcos around legislation at that time, which limited motivation. “People are largely unaware of what telcos do — but they are going to be aware — the position for telcos now is so different from that time.”

“The Global Network Initiative didn't merit full participation,” according to Tod Cohen, “eBay was not a target and we were under less pressure than other companies, there was a question of prioritization and whether we could free ride on other activities. Limited resources are a strong motivator for difficult decisions.”

Privacy International had created a series of projects, tools and campaigns, but Gus Hosein explained that they “are very small and have limited resources,” which forced hard questions. “If there's a well-established initiative that we can't provide a unique perspective to, why focus on that and not something else?”

**NEW MODELS**

**Self-Governance**

According to facilitator Dunstan Hope, “The BSR theory of change for a just and sustainable world is that you can achieve more through collaboration across sectors and through companies, so we are favorably disposed toward collaboration. Of course, the effort could have been company only — we are pragmatic.” One participant differed, however, opining
that, “Companies would have put out things but they would have meant nothing, although they might’ve been followed. [They would be] Toothless and almost more trouble than they were worth.”

For Microsoft, “The initial decision — to go it alone or try and do something collective and collaborative — was sort of made for us, because of Yahoo and Google dealing with analogous challenges in contemporaneous times,” observed Chuck Cosson. “If it was just the less-prominent MSN Spaces blog, it would not have been so interesting, but Google made it a lot more interesting.” The more involved decision was finding, “We don’t want make it up as we go along. You are more nimble alone but also more exposed. Microsoft can live without being nimble, but we needed to protect the company.”

From Ira Rubenstein’s perspective, it was clear that the problems were not abating and that significant reputational risk continued, which created troublesome uncertainty for new initiatives within Microsoft and drove the appeal for a comprehensive solution. “Where this was going to heat up next was an issue, but as a group there to help solve business problems, you can’t become symbolic of a business obstacle if you are in-house council — it’s a bad dynamic when you are at the table for each deal because the problem is unaddressed — so you look for ways to solve that.” He noted, “The legislative approach did not carry the promise to achieve their business objectives, and this [the GNI] had some potential for imposing costs, but also for bringing a clarity and certainty that allowed business to be conducted.” They did not imagine it as a final solution, but felt that it would provide some breathing room.

Michael Samway and others at Yahoo had made a dedicated effort to develop a strong understanding of corporate social responsibility issues, and he also had a good personal
and professional familiarity with human rights issues. Nobody, however, had really integrated them into a corporate setting. After the Shi Tao incident, Yahoo worked to develop that contextual understanding, they considered a statement of principles, looked at companies like Levi’s and others who had a human rights policy, considered whether they should develop their own such policy and, “We realized things that could come from the GNI process that would be helpful.”

Yahoo had begun to explore other multi-stakeholder initiatives including the Fair Labor Association, Voluntary Principles on Human Rights and Security, and also to examine their own law enforcement practices. “We recognized how rigorous they were — if there was one team who had process in Yahoo, it was law enforcement, which was set up by [future Google law enforcement lead] Nicole Wong.” They began to imagine common industry principles.

For the Committee to Protect Journalists, it was clear that a non-collaborative approach would have been detrimental to all parties. For Rob Mahoney, “Creating awareness of the implications opened channels for action that far exceeded the possibilities of typical corporate social responsibility.” The continued activity of non-governmental organizations was key to forcing companies to continue to drive internal awareness, and the interaction helped non-companies to understand how companies work. “Without this approach, we wouldn’t have gotten where we are today: we would just have a name and shame capacity, and companies would be defensive and reactive, not collaborative.”

From Deirdre Mulligan’s point of view, without a multi-stakeholder approach, the documents would be different, there would have been no audit and there would have been less guidance on important issues. “The specificity of some of the principles is a product of
a multi-stakeholder environment. Engagement with governments, leveraging their sphere of influence would not have been part of an industry code, which would have been less full, more internally focused, and with high level of generality.” She thought it also would have been less useful to the participants, noting that, “The process developed relationships among the companies within companies, and with external stakeholders who want them to succeed. The process helped to build relationships that are helpful in a sustained way.”

“A single sector approach could not have resulted in the Principles,” offered Calvert’s Bennett Freeman, noting that while some stakeholder engagement would have been possible, without non-companies as equal partners, and so on, there would have been no credibility with human rights groups, academics, or groups such as Calvert. The Boston Common Asset Management Group took a similar view, recognizing that, “A company-only approach to self-regulation is a hard sell, even if it’s great. When non-governmental organizations come up with standards for companies, it’s seen as what it is: an organization talking to itself and its community, and not being realistic about implementation and practicality.”

A European telco non-participant noted that, “We’re really now living in a complicated world, so it’s unlikely that there is an ‘aha’ answer — there will always be a combination of approaches. Codes of conduct and credible industry standards are always going to be an important part of the mix going forward, but never sufficient alone.”

The reality of and perceptions around self-directed approaches may vary by context, with what the non-participant described as the tendency of European telcos tending to draw upon people for specific issues as required. In practice, it might mean exploring the implications of a particular emerging technology by having the corporate social
responsibility team conduct research and convene experts and stakeholders to develop a policy for responsible deployment — but not have an ongoing mechanism to address any particular concern. “I didn’t imagine a permanent multi-stakeholder initiative, simply having no frame of reference for that as we were used to engaging with stakeholders in a different way.”

At that time, Privacy International was involved in projects with an anti-internationalist bent, taking the perspective that they major international mechanism like the Group of 8 and Council of Europe were “developing global treaties to increase law enforcement and national security powers,” leaving Gus Hosein and his colleagues quite cynical about international initiatives and their capacity to counter the momentum behind these surveillance proposals.

**Co-Regulation**
For the Center for Democracy and Technology, “An iterative code appealed over legislation, but we never would have envisioned the organization that GNI is today. Consultation on what a code should include is the CDT model, where you advise and move towards good practices,” but what those looked like were unclear at the time. “The biggest issue in the general multi-stakeholder model is that to be real, [the organization] needs resources,” including people, expertise, and information to be effective.

“I’m a big believer in the co-regulatory model, under which GNI fits,” offered Microsoft’s Ira Rubenstein. “A system in which industry drafts code is likely to be more beneficial, than one in which government clumsily drafts legislation that is immediately overtaken by events and technology,” explained Rubenstein. He felt there was precedent
from older industries where the regulatory approach has failed and self-regulation has been shown to be toothless, and that co-regulation has achieved better results. “The tech industry was at a point where it would benefit from this as well.”

Rubenstein had conducted research on co-regulation and decided that if participants with diverse interests reach consensus it demonstrates the appropriateness of the principles that they identified “since they will only reach consensus if they each believe they are sufficiently better off from the principles that were reached jointly, than if they had resisted and took chances on prevailing in the regulatory model.”

Human Rights Watch Arvind Ganesan picked up on some of the deeper challenges to organizational participation for companies and non-companies alike in highlighting the complexity of their internal negotiations. “The companies in the Global Network Initiative are fighting a battle about being perceived as going native versus giving away the proverbial farm, and that is true for every multi-stakeholder initiative. Human rights groups write a report about shortcomings and tell companies what they need to do, but we don’t have ownership of their decision, they have control.”

That is an ongoing tension for non-company participants, even leading some away from the model. According to Ganesan, “In a multi-stakeholder effort, you have to assume ownership over what you are doing. You bear responsibility for support and critique. You also have to understand the nature of compromise. You are not going to get it all in a voluntary initiative. You cannot control the regulated actor much — really just by walking away. It will be a less than ideal outcome, but you can’t let perfect be the enemy of the good. However, it is not the natural posture of human rights groups, and there is still a lot of
caution, skepticism, and distrust. Within Amnesty International, for instance, there is a longstanding debate about any MSI participation at all.”

That debate was ongoing within the Electronic Frontier Foundation, according to Danny O’Brien, “EFF institutionally has a great deal of skepticism about multi-stakeholder initiatives. We understand suing and defending, but the history is that with the divergence from the Center for Democracy and Technology [which arose from EFF in 1994], which became more of a roundtable, while EFF became more focused on impact litigation. The question was as much about whether EFF even had a role in roundtable discussions at all, not the Global Network Initiative, but all of them. Is it EFF’s place to act as a stakeholder when we don’t have a client?” It bears mention that these concerns became more relevant in 2013, when EFF withdrew from the GNI, citing frustration and concern arising from the Snowden revelations.

Mike Posner of Human Rights First described a set of “false alternatives: the Global Online Freedom Act is not the solution, but points to the fact that some people in Congress want to go in a regulatory direction. Some in industry are going to say, let’s just have an industry meeting and figure it out. Around the edges there are people who are drifting in other directions. There is no obviously better alternative — this is a work in progress — but the multi-stakeholder model is better than regulation, going it alone, or having companies only. By definition, it’s not only multi-stakeholder in terms of broad governance, but because there are many, many constituencies that help make the internet real. Non-governmental organizations and companies can’t do it alone.”

According to Internews’ Kathleen Reen, “Laws are seen as the gold standard to changing things. We are not purely an advocacy or human rights organization, but a
development organization that believes in the power of independent media. That perspective forced a self-articulation of our role and identity in the Global Network Initiative, where we focused on internationalization of the problem.”

Domini’s Adam Kanzer pointed out that they did not want the results of the process to replace or delay regulation “which had been something of a fear that it was motivating some of the companies.” Kanzer underscored the complexity of addressing a global and international issue through regulation, including challenges to enforcement. “To the extent that the Global Network Initiative strengthens rule of law, institutions, etc., that is good. But it is not strong enough as a replacement (because it is small, has no government representative at the table, it is just not appropriate), but is good to help companies navigate the challenges they face. Hopefully, the idea is not to use the Global Network Initiative to squash regulation in Congress, but to inform the process so that legislation effectively reinforces these human rights.” One investor did not see the same role regarding future legislation, but was attuned to company interests in using the negotiations to defend against more challenging legal standards.

Deirdre Mulligan of UC-Berkeley “knew what it wasn’t going to be... traditional industry self-regulation where they need to figure out what they can live with so when legislation becomes real, they have something to put on the table.” From her perspective, “There were no reasons not to engage in this process. Not that companies were unconcerned about politics (and there is still some reason to fear), but I never thought that the outcome would become legislation, so the greater opportunity was to have a more detailed conversation about what sorts of things should be requested, not just in principle, but in practice. It didn’t feel like the Implementation Guideline’s would be legislated.
Otherwise there can be a reluctance to dig too deeply into implementation due to associated legislation issues.”

Underlying that broad opportunity, Mulligan saw different needs from other domains that made a multi-stakeholder model more desirable for organizations seeking genuine change. She observed that, “Typically government and non-governmental organizations align against companies and threaten regulation in ways that address social concerns and non-governmental organization demands, as in the Fair Labor Association or other codes of conduct. In the ICT environment, there are new products all the time, products that create new questions...and thus, more need for iteration and conversation. It is not just setting principles, but understanding what it means to implement, to have fidelity to them in the design of the product, its configuration and defaults. Other fields may offer learning activities, but in the GNI context, the technology keeps changing and raising new issues for the Principles. The dynamic nature is the difference.”

“Multi-stakeholder [principles] are better than self-generated principles,” offered eBay’s Tod Cohen. Whether due to status as a non-participant or a different perspective that informed that decision, eBay’s Tod Cohen observed that, “Companies approach these issues as companies seeking to maximize benefits for the company. Multi-stakeholder initiatives are a great shield for companies — when you can send something to an MSI or outside process, it’s a great way to say that’s being handled there. It is a tremendous diversion from direct pressure being applied to companies, but that is not what most companies will say. You join because it gives you protection. Multi-stakeholder dialogue diffuses issues — not quite ‘sending them to committee,’ but kind of. It is a classic, ‘we’re
going to study that, make recommendations, and then people will decide whether or not to follow them.”

“Treaties that bind all governments offer the highest level of impact, but GNI principles are useful because it makes it easier to deal with outliers... in the accounting world you need to follow GAAP to get funding for your companies. These are one of the highest MSI rules of road. GNI gives you a way to identify outliers and ways to work with them or to have others do so (if you want).”

Erica Razook separated her perspective from Amnesty’s, noting that, “I, personally, am more distrustful of these initiatives, but the organizational trend is away from them due to modest gains as compared to the required effort. In a cynical worldview, it [the Global Network Initiative] was an effort to create an alternate legal regime to avoid binding standards and liability. It at least gives them an extra argument in a lawsuit. This is not specific to the Global Network Initiative – a lot of MSIs can ghettoize the law around companies and take them out of regular legal systems, creating much less severe penalties for breaking the rules and a lot more carrots [for participation].”

Razook’s predecessor and supervisor Mila Rosenthal drew on Amnesty International’s experience with different MSIs ranging from the United Nations Global Compact to the Voluntary Principles on Privacy and Human Rights, herself having served as Human Rights First’s main representative to the Fair Labor Association. She ultimately left Amnesty, but expressed a somewhat different perspective noting that, “It is good for companies to work together, to standardize principles, agree upon a common code, and have some method of operations, reporting, transparency and accountability.”
CONCLUSION

Chapter 3 presented an in-depth look at each of the four broad factors that the Pattberg model suggests will predict the emergence of multi-stakeholder attempts at governance. It divided each into sub-factors or variables I created to help establish fit with the framework and draws on diverse sources and types of information to establish a nuanced picture of macro-systemic change, problem structure, organizational resources, and new models for governance.

I examined the demand-side macro factor of macro-systemic change with data about globalization broadly, and the growth of the internet and communications industries generally and participating companies, in particular. There can be little doubt about the significance of either trend, which are very much in keeping with the models expectations of rapid, wide-scale change. Using information from public sources including US congressional testimony, organizational communications, interviews, and surveys, I established that these changes are accompanied by the perceptions of increasingly prevalent and urgent problems for online free expression and privacy. It bears note that although the problems were perceived as urgent by participants, members of the US Congress and US executive branch, they were less prevalent among European governmental bodies, and received limited public attention in both the US and Europe. While they were sufficiently aware of and motivated by the challenge, the pressure differential they faced was a significant factor in the European companies’ decision not to implement the Global Network Initiative.

Turning to the demand-side micro factor of problem structure, I drew primarily on participant interviews and surveys along with modest amounts of US Congressional
testimony to establish both the capacity of the public sector to effectively address this problem through regulation and to explore perceived sectoral roles and interconnectedness. There was significant skepticism about either the likelihood or efficacy of government regulation in the near term, which invited participation in the Global Network Initiative both by those who wanted to see regulation and those who wished to avoid it. There was great consensus around the interconnected interests and resources among constituencies. Most notably, participants had the shared perception that government behaviors were at the root of the problem, felt that company missions were largely aligned with their users’ rights and civil society interests, and that including a diversity of knowledge and perspectives helped to improve the solution set.

Regarding the supply-side micro factor of organizational resources, a combination of interviews and surveys formed the basis for my investigation of organizational interests, experience, and prioritization. There were some modest surprises in this realm, beginning with organizational interests and priorities being less externally generated than I would have predicted. Whereas I would have expected a higher volume of experience to be associated with participation, the relationship was more complicated, with limited experience not forming a barrier and with the nature of past experiences informing the organizational approach to participation. Paradoxically, that may have meant experienced organizations were better prepared to participate, but more likely to behave according to past lessons than the present situation. Finally, every organization reported feeling under-resourced relative to the task at hand, although they also reported this as the normal state of affairs.
Finally, on the supply-side, macro factor of new models, interviews and surveys established the general view that self-regulation would be insufficient in this setting. This comes as little surprise, with companies having already come together to at least develop a shared approach to self-regulation and opted to take on a multi-stakeholder approach. Likewise, as the model would predict, many implementers reported substantial interest and in appreciation for co-regulatory approaches to governance, but those with less understanding were not resistant to it. Confidence in these approaches varied among participants with concerns fueling problem solving in most instances, and strong reservations associated with one designer choosing not to implement.

The micro factors of problem structure and organizational resources seemed to hold the greatest explanatory power. Problem structure was helpful in understanding participation in the design process, and organizational resources offered insights for policy implementation. In terms of macro factors, macro-systemic change was similar for all parties, while new models varied, but affected the nature of participation, rather than likelihood.
Chapter 4: POLICY IMPLEMENTATION ANALYSIS

Whereas the previous chapter examined what led organizations to participate in the Global Network Initiative design process, this chapter aims to shed light on the factors that influenced the actual design and their decision regarding its implementation. Chapter 4 uses the factors in Pattberg’s model as foundational elements and extends beyond that framework to discern additional insights from empirical observations as a participant and interviewer. While necessarily an incomplete look at all the formative factors, leaving aside the intricacies of the negotiation process itself among other factors, it draws upon participant perspectives to begin to unravel what happened when unlikely collaborators came together. This inductive approach to understanding endeavors to call attention to elements that might otherwise go overlooked and to better the design of future research and private governance efforts.

The groupings that emerged are a series of factors related to 1) trust and organizational factors; 2) the negotiations themselves; 3) the accountability regime, which was among the more surprising and novel developments; and 4) the final decision reached by Designers and Implementers. I also offer a section on other outcomes and implications of the design process. These build upon the factors explored in the previous chapter, cutting across and integrating them and overlapping with other comments and among each other to offer a more nuanced and granular sense of the experience from a range of perspectives.
TRUST AND ORGANIZATIONAL FACTORS

Beyond the dimensions of the problem and preferences of organizations, I expected the characteristics of individuals, their relationships, and their organizations to have some modest influence on the development of the Global Network Initiative. The task at hand was to develop a collaborative approach to the interactive complexities and tensions of jurisdiction, new communications technologies, emerging technology practices, organizational strategy and tactics, and other observed challenges to online expression and privacy. While there were no doubt many possible approaches that could appeal based on rational problem solving or organizational self-interest, the interview data underscores the importance of human and organizational factors, and trust, in particular. This study allows us to discern what these dynamics looked like in practice — what the most salient elements were — and the perceived impact they had, whether subtly affecting the process or having a more profound role.

The participant surveys offer a collective glance at the trajectory of trust and the role of individuals and organizations in the process. Only 5 of 24 respondents reported average, substantial, or high initial trust among participants, while 20 of 24 reported that level of subsequent trust. In a less start contrast, initial trust within the constituencies looked like a bell curve, with 17 respondents in that group, while subsequent trust increased to 22. Individuals were reported as substantially important in negotiation process by 13 of 24 respondents, while 9 said that individual and organizations were equally important, with similar patterns across constituencies.

Whatever the source and mixture, Business for Social Responsibility facilitator Dunstan Hope observed that, “There was more trust between companies than we usually
see. Competitive issues often get in the way, but for the most part they did not, and the companies collaborated and were largely friendly to one another.” Mark Bench of the World Press Freedom Committee was impressed by the commitment of company representatives, noting that, “You see them in the press tearing each other’s hair out and yet they have the same purpose in Global Network Initiative.”

One ultimately powerful generator of trust across constituencies turned out to be the ‘learning sessions’, which were not directed at negotiations, but at developing deeper understanding of the issues. BSR’s Hope saw that, “Those who participated ended up with higher trust than those who did not,” and recognizing that, “they invested more time in learning and sharing information, than in negotiating, which helped develop perspective, trust, etc. Circles of trust gradually grew over time, with more and more people included, as a result of them realizing they had shared interests.” Overall, he observed that the non-participants trusted less.

While the initial company-only meetings and their representatives may have established a platform for mutual trust among companies, perhaps further united by the inclusion of a wide range of non-companies, they faced a real challenge in dealing with the other constituencies. According to Google’s Andrew McLaughlin, “The non-governmental organizations treated us like teens who got caught in liquor cabinet,” noting that, “It was understandable due to Google’s entry in china.”

Yahoo’s Michael Samway observed that the designers worked to a common goal, which was in part a function of trust developed over time, personal relationships, and information sharing, which served as a form of currency and reinforcement. “I thought we advanced our shared perception of the problem — you can’t rush it any more than we did
we moved ahead with all due speed, knowing the urgency of issues and also that you can’t build trust without time, shared experience, and shared info...ultimately, the process was substantive.”

He noted the importance of not just personal leadership in the design group, but that of any given representative’s trust and reach within her own company, underscoring the challenge of in-company segmentation and acting as an interlocutor in a complex, rapid, and multi-party negotiation. Samway pointed out that due to high levels of individual specialization and expertise within companies, it is difficult to include effectively colleagues into the design process. This requires understanding and representing their interests on their behalf — and then convincing them that this was the case, regardless of the relevant outcomes.

It was helpful that Microsoft’s Ira Rubenstein, for instance, “was both thoughtful and senior. It was helpful that I was in a senior position with more access and credibility [Vice President and Deputy General Counsel for International Legal Affairs], particularly across regions where you might not be as familiar. Knowing the founder and General Counsel, in particular, made it easier.” For Samway’s part, “I needed to build trust around the company so that when I went into a meeting, I could say yes or no behalf of Yahoo, but I didn’t sense that from other companies. It was clear from beginning that the telco decision-makers weren’t in the room. Of course, that’s also a good negotiating tactic [having or creating an internal client or approval process].”

As every company representative said and the news of the period underscores, the companies were dread competitors. Samway noted the lack of personal relationships among them, but that, “The humanizing element came from meeting in person. Colin
Maclay and Dunstan Hope helped to build trust among the companies, and the companies put good people on this issue. None took it lightly — really the opposite because it cost a ton of time — and we maintained a healthy competitiveness and tension.”

Yahoo’s participation was not really in question due to the Shi Tao case and the associated experience and developments within the company. From Samway and Yahoo’s perspective, it was significant that, “It wasn’t a public relations exercise — the PR team was never involved — although the human rights groups might have suspected that, at least initially. It was helpful to have a lot of autonomy, and to know I had the support of the General Counsel and founder — and that they would help make it happen,” said Samway.

After a high-level review of participation in the initial 2006 meetings at Microsoft by Vice President for Global Policy Pamela Passman, VP and General Counsel Brad Smith, and CEO Steve Ballmer, Microsoft Associate General Counsel Ira Rubenstein decided to take it on due to his own extensive relevant work and personal interest. He felt that participants mattered, “On a company level, we weren’t all VP’s but we were all pretty senior which meant we had a lot of discretion. I would hypothesize that secondary factors of who was helping to organize it, plus seniority, and at least the possibility of trust made it important for each of us to make the discretionary decision that it was worth our time. Of course, there were a lot of potential weak points — if any company starting finger pointing, the competition, or harshness among academics or advocates could have led to different discretionary decisions.”

Microsoft’s Ira Rubenstein noted the role of personal chemistry involved, “Michael Samway was very engaging guy, Bob Boorstin and I really got along despite joking that we hated each other, which probably played some role – I wasn’t dealing with people who
were going to turn around and screw me when it got a little more tense. Everybody participated in good faith. I thought it was a pretty good group of people overall...there were certain companies I’ve dealt with but never really trusted, and there were certain advocacy groups who were always interested in ‘gotcha’ ways to embarrass companies and even distortion for attention. I didn’t feel the participants were like that — even academics who seemed to find Microsoft repugnant back then — none of that was present.” The auspices also mattered, with the trust arising, “partly due to Berkman and CDT’s history and talent in convening and mode of consensus seeking.”

Another participant underscored the significance the individuals involved, their expertise, mutual respect, and of moderation, “You can’t underestimate the importance of personalities in making this work: with other companies, people, and so on, it might not have.” Of note was that one implementer replaced an early representative whose temperament had ultimately been a poor fit, and lost another barrier when a senior and strong opponent of implementation left the organization.

The other organizational representatives were equally important: “I respected my partners in process, if I hadn’t respected them and known they had huge talent outside my area, it would have been hard to go on. The people from the world of technology, Leslie [Harris of CDT], Caroline [Nolan of the Berkman Center], Cynthia [Wong of CDT] were all great additions.”

Wong’s previous employer, Sharon Hom and Human Rights in China (HRIC) had been active privately, profiling companies online, testified in the 2006 hearings, and they perceived the companies as hostile to them. At least one of the implementing companies, Hom said, did not want the organization as a participant. Over time, they developed direct
relationships with companies, as they asked HRIC about topics like China’s State Secrets Law, upon which HRIC had published a major study, or warned them about an outgoing press release in advance. Relationships were mixed within constituencies, with HRIC and Human Rights Watch sharing past collaborations and substantial comfort level, and while they were “not in the same boat as Amnesty International,” they were familiar with their approach and tone.

For F&C Asset Management, Alexis Cheang saw that while each party viewed it differently, saying, “I personally trusted companies, saw them as willing to do the right thing, and trying to be flexible, but I felt less trust was where issues were described as a fact of the landscape.” Steve Lippman of Trillium Asset Management observed varied levels of trust among the companies, and “a bit more us versus them among the non-companies, which probably slowed us down by creating friction from the basic lack of trust.”

Christine Bader, Observer from the UN Secretary General’s Special Representative on Business and Human Rights felt that building trust took time, but was apparent as attendance stabilized. She recalled one turning point at a dinner in Washington DC in which representatives from Google, Microsoft, Yahoo and others joking about Microsoft’s effort to buy Yahoo. It mirrored her experience in the oil and gas industry, where companies had come to understand where they compete and where they collaborate — a marked change from the initial Global Network Initiative meetings.

Genuine dedication to the process was cited as another significant element or norm among the participants, as noted by Calvert’s Bennett Freeman, “The remarkable supply of commitment of organizations and especially the individuals was unfuckingbelievable, and transcends what I’ve seen in any MSI.” He goes on to underscore both the “extraordinary
commitment by so many individuals, including Ira [Rubenstein of Microsoft], Chuck
[Cosson of Microsoft], Michael [Samway of Yahoo] and the entire cast of characters,
including Leslie [Harris of CDT], Rebecca [Mackinnon, independent], and more, each with
highly distinct and complementary expertise and perspectives. Mackinnon, he observed,
was a leading observer of the Chinese internet who was developing a global view, but
largely unfamiliar about traditional human rights or corporate social responsibility, while
Freeman was already an international leader in those topics and while familiar with China,
knew virtually nothing about the internet issues the group took on.

“Trust was less constant surplus than commitment,” according to Calvert’s Freeman,
but yet, “A success needs trust-building and constant replenishing.” He highlighted a “near
fatal break” in the final stretch of negotiations, along with others in the previous years.
Indeed, while Freeman underscored the healthiness and necessity of trust, he noted that,
“Total trust is undesirable or even fatal. You have to disagree — there has to be conflict.”

Many non-company participants were suspicious, as suggested by Committee to
Protect Journalists Rob Mahoney, who said simply, “My filters were at work as a participant
and also a reporter.” Although he sought to be detached initially and as the meetings
proceeded, he “had human contact and saw where folks were coming from.” He described a
good relationship with Google’s Boorstin and Yahoo, along with a natural alliance among
non-governmental organizations, which combined to be quick to build trust overall.
Notably, he was diligent in distinguishing between the individual and the company
representative, who he felt did “some overselling of internal challenges.” Also of note was
that, “There were too many lawyers in the room” for Mahoney (and others), “Journalism is
the anti-law — we got bogged down in legalistic arguments — while the point was real people, real services, and real credibility."

There were issues between organizations, among constituencies, and within constituencies, which interacted with the “trust especially between individuals — rather than all acrimonious relationships” observed one investor. Unsurprisingly and even helpfully, as many participants offered, “There were moments of coming together and others of blowing apart,” which both fed and challenged that trust.

Within this range of views, Human Rights Watch’s Ganesan both discounts the role of the trust factor and sees it developing differently. For Ganesan, “It starts from scrutiny and pressure, not enlightened self-interest. The working assumption has to be that there’s not a lot of trust, since that’s not the motivator. You build trust through negotiating openly. That’s how people see where you’re coming from.” He begins with low expectations of trust, but expects that it will grow over time due to human nature, noting, “Where it breaks down is when you start negotiating without explaining motivations — then people interpret the worst.” For Ganesan, some of the most critical moments are thus those in which participants said why they wanted what they wanted.

Internews’ Reen observed a profound change over time, despite changes in roles and positions, reaching impressive, consistent, and persistent levels of institutional and personal trust evidenced by alliances and concrete collaboration that would have been impossible without trust. Despite these gains, however, she highlighted that it is, “Important to have leadership that stays with the work, or to pass the baton visibly within the constituency,” noting the challenge created by structural barriers and differences among sectors and organizations.
The underlying value of the institutionalization of relationships is apparent to her within the companies of the Global Network Initiative, because although “trust waxes and wanes on issues, the principles are maintained.” Reen credits the drive among the founding collective for following through with the idea, holding to its tenets, expanding throughout their organizations to make it viable, noting that, “You can’t go it alone — it really takes a team,” and reaching that point internally requires a tremendous amount of diligence — and conversations, meetings, memos, calls, and presentations.

While observing that communication has been a primary element for creating trust at top level, Reen felt that, “The Global Network Initiative didn’t really have an identity, point of contact, and is not quantifiable, which made it harder. So despite a desire to be modern, there needs to be someone to talk to — it’s just hard to overcome that.” She felt that this approach resulted in the requirement of extra effort within both Internews and the Global Network Initiative.

CDT representative and co-facilitator Leslie Harris felt that there was, “Enormous trust among individuals that varied across and within sectors,” but somewhat paradoxically she also observed that, “Once the trust was won, it was hard to introduce new participants, it would have been toxic.” This may have had real near and mid-term consequences for additional designers or implementers. Two of the designer companies joined later in the process, and additional companies were slow to join. This is also consistent with Reen’s ideas on the importance of building the institution around trust and complementing it with other resources such as clarity of leadership and communication.

In contrast to the participants who saw an increasing level of trust over time (especially implementers), or a decreasing level of trust over time (designers), UC-
Berkeley’s Deirdre Mulligan observed that, “Trust varied enormously and it still varies enormously. I’d like to say there was a trajectory, but I don’t think so. Keep your friends close and your enemies closer... there were some places where people developed pragmatic and useful relationships and bound them to not get burned. The only thing that’s trusted is that we understand the limits of our trust. There were other places where people developed communities of practice that spurred trust with sense of community.”

The personal and organizational roles and relationships also meant that, “Continuity was key,” for CPJ’s Mahoney, who noted the challenge of the departure of Microsoft’s Rubenstein, which left a “core group of under 20 who are the people who made it happen because of trust, and despite hard moments.” Consistent with Calvert’s Freeman, Yahoo’s Samway, and others, Mahoney noted the likely necessity of having “hard times” in the process, pointing out that the result was not a given, but that, “People were committed and able to get understanding from others. It was very collaborative.”

That strong combination of group attributes had notable pre-existing issues to address among non-company participants, as illustrated by one American investor, who recalled that, “After the Shi Tao case broke, I really thought companies were less committed to human rights and free expression than one would hope. The perception was that it [serving markets with human rights challenges] was all about money.” Echoing statements of many other participants from across constituencies, she recalled that, “My conversations with Michael [Samway] changed my view on how much they [the companies] wanted to get it right.”

The investor felt that, “The trust or lack thereof was based on the individual representing the organization, not the sector, but the person’s name.” She highlighted
Human Rights Watch’s Arvind Ganesan as engendering a particularly high level of respect and trust due to his approach and deep knowledge base. “People listened when he talked and another Human Rights Watch representative could have been different.”

While noting that, “Getting the right people is important,” we are reminded of the value of pragmatism and setting. “I was impressed by the level and depth of Samway’s knowledge and that of the Microsoft team, and their eagerness to get to a workable place.” The investor was appreciative of companies’ willingness to speak openly, as demonstrated by Google’s Lewis Segall, which taught her that, “Under the right circumstances, companies will talk. You just need a level of trust and a safe place to have those discussions.”

Individuals were essential in order to make it through the ups and downs of the process. Sharon Hom of Human Rights in China observed the important and difficult role Samway played along with Microsoft’s Chuck Cosson as “water carriers between us and their organizations, and change agents.” She noted “We lucked out to have them — they are super smart, were very good on process, and good with people — special individuals.”

In a somewhat more provocative sense, one company representative echoed what many participants observed as the lead role played by Human Rights First’s Mike Posner, remembering “Without him, I don’t think this thing would have happened. He really understands organizational behavior in this context due to his experience. He also understood that we couldn’t let perfect be the enemy of good. Without his counsel and pushing, we could have ended up in a mess, with Amnesty and Reporters without Borders running us to an extreme.”

UC-Berkeley’s Deirdre Mulligan agreed noting that, “One could not overstate Mike’s Posner’s impact. He was experienced, forceful and viewed as important to keep in the
room. He had a very specific impact on the compact, and if Human Rights First had been without him, it’s unclear whether things would have been the same.”

Domini’s Adam Kanzer noted that his “impression of intentions evolved over time, with a good sense of buy-in and good will from the beginning, along with real commitment within limitations.” Kanzer felt that trust came in part due to the alignment of the companies’ business models with privacy and free expression, which was complemented by the view that individuals at the table were personally committed and their demonstration of that over time. As suggested by Samway and others, that interpersonal trust required long conversations, face to face meetings, calls, and so on. Kanzer also found it helpful that he knew some participants, including the investor representatives, Arvind Ganesan of Human Rights Watch, and Rebecca Mackinnon through her work on Cisco, and the companies and Mike Posner by reputation.

Cynthia Wong, initially of Human Rights in China and then the Center for Democracy and Technology, pointed out that, “Personal relationships are where group gels,” although these are developed and strained in diverse ways. With respect to China issues, for instance, “HRIC Director Sharon Hom is outspoken and can be scary in public, but she does lots of calls with companies to learn what is actually happening, which is invaluable. These direct contacts are essential for helping to demystify and ‘de-demonize’ both sides.” An important learning for Wong was how much individual relationships matter to building trust and common understanding of the endeavor.

Alternatively, Christine Bader, observer from the UN Special Representative on Business and Human Rights saw patterns that were familiar to her from other multi-stakeholder initiatives, in which some advocates did not seem interested in how the
industry actually worked, and were primarily there to advocate, while others were more
eager to “get their hands dirty,” learning the issues in greater depth. This echoed the
perceptions of others and was consistent with lackluster attendance in certain learning
fora by non-companies. Likewise relevant was that each participant had her own frame of
reference and perspective. “While some non-companies may see companies behaving badly
and feel they need to stand and shout, while others may want to avoid doing anything that
would threaten the companies. Meanwhile, companies are looking for a way to continue
operating.”

These characteristics of relationships among individuals and organizations was set in
a larger context that Internews’ Kathleen Reen described as a “Humanistic nimbus over the
top of the Global Network Initiative, in which principled personal behaviors were
required.” That environment allowed for a range of otherwise potentially risky decisions,
and became attractive to folks, further fed by the challenges representatives faced within
their own organizations because they were sometimes viewed as “consorting with enemy,”
and also allowed for collaboration beyond the context of the Global Network Initiative.

Reen’s ‘nimbus’ did not extend to all participants, including Amnesty USA’s Erica
Razook, who had a markedly different experience from many implementers. As a recent
law graduate with prelaw background in auditing information systems, and system audits
within the financial industry, she had an informed understanding of what companies can
and should do to collect and monitor data on their own operations. “I remember the
moment in which someone from a company said, ‘we don’t track requests.’ It was just not
believable — you can collect the information if you want to — the irony being that these
are the foremost information service companies in world telling you they can’t collect information on themselves. Who buys that?”

For Razook, that sort of fundamental disconnect made it difficult “to accept the legitimacy of the process,” and made it feel as though, “Rights groups were being used in a public relations exercise. I wasn’t inclined to give the benefit of the doubt.” She had been hopeful for more transparency as far as company operations and the situation, at least within the design group if not with public at large, and expected there would be an audit of some sort during the process. “If these things [MSIs] have a chance, it really depends on trust and that came up a lot at meetings. Companies were asking trust of us, but not really inviting us in via an audit, truth, or information.”

Amnesty USA’s initial representative Mila Rosenthal observed a “high degree of trust among human rights organizations.” She knew Human Rights Watch’s Ganesan and even if they did not always agree, she had genuine respect and trust, and felt closely allied with HRW and Human Rights First, knowing that they had a different organizational culture and were likely to remain in the process, fight, and seek a commitment akin to that of the ‘Fair Labor Association’ (which she had worked on while at HRF). Alternatively, there was a “grey area about role of technology organizations like CDT and EFF, and why was the Committee to Protect Journalists there? I thought of Berkman, EFF, and CDT as connected with tech and insider knowledge, but was unclear as to their agenda, framework, and goals.”

Intentions matter, because from Rosenthal’s perspective, human rights are more clear set of goals, it is just the tactics that may vary. Although BSR was a principled convener in her estimation, “There was not a lot of trust with companies.” She did feel they were trying
to be constructive and would not misrepresent the discussion in order to use Amnesty's name as a fig leaf, which meant the basics were in place to find a way to move forward.

While Amnesty did not attribute any particular influence to its own organization, various implementers observed that organizational factors including structure, layoffs, leave, and a promotion had a significant impact on their participation. From their perspective, it led to a less senior and less connected representative, and therefore a less effective participant in the process, which reduced their perceived efficacy in the negotiations and otherwise contributed to their ultimate decision to not implement. Also important was a longstanding internal debate at Amnesty into whether they should be participating in any multi-stakeholder initiatives at all.

Vodafone's Stephen Deadman explained that there was “quite a lot of trust between the telcos between the common European geography, frequent collaboration within telecoms, and natural commonality. We do things the same way.” The issues were different with technology companies, for instance, with telcos needing to address international fiber needs, and American companies focusing substantially on China. It took more time, but he felt that trust with the US-based technology companies did develop.

There was more of a mix with the non-companies. Deadman noted that many were US-based and already had relationships to the technology companies, while they had better ties to London-based participants like F & C Asset Management, with whom they had more in common and greater trust. Other elements of affinity also mattered, such as how well organizations understood the telco business, with many following the internet in China closely, rather than mobile communications in Africa, which was more pressing for the telcos. TeliaSonera’s Patrik Hiselius was more positive, observing a “high level of trust” and
“very good working relations” developed through conference calls within constituency and among them, including some sharing of privileged information, discussions and negotiations.

Perhaps more influential for the telcos were the importance of team, roles and organizational continuity and composition, as illustrated by Vodafone’s experience. Of the two original representatives, Corporate Social Responsibility Director (and architect of the Vodafone’s responsible business strategy) Charlotte Grezo left in November 2007, followed by layoffs within that group and across the company, and a reorganization in which Policy and Corporate Affairs became External Affairs (Russell 2009). This left representation to Group Privacy Officer Stephen Deadman and changed representation before the company’s executive committee, and shortly before implementation of the Global Network Initiative, Vodafone had a new CEO. For Deadman, “It meant new people to explain what we were doing and why we were doing it, and it had quite a bit of impact. The new people came from outside the process, didn’t have their mark on it, and would need to get comfortable with it.”

While every company (and most organizations) described some version of the challenge Yahoo’s Samway observed in faithfully serving as the intermediary between their organization and the negotiation, personnel and organizational changes exacerbated these challenges, noted within three of the five designers. Difficulties such as organizational communications and complex real-time negotiations were further compounded by the evolving nature of the group’s understanding of the problem it sought to address.

“Our understanding of the problem changed over time as a result of substantial shared learning within the [design] process,” said TeliaSonera’s Patrik Hiselius. “It was a
challenge for two company representatives to feed that knowledge into the relevant parts of TeliaSonera. It became more and more difficult in a project such as the Global Network Initiative, where there was more and more focus on the wording of the documents, whereas that’s not the main interest for people inside the companies. It was challenge to find time for both — that [drafting] and feeding the larger picture into the company.” It bears mention that beyond the challenge of bridging these communities, Hiselius observed that, “The process was human,” echoing many of the feelings that implementers described.

It is noteworthy that both representatives of Vodafone and TeliaSonera were active participants in the many interactions of the design phase, they had few existing relationships with other participating organizations, were located in Europe, situated in a different time zone, and had fundamentally different types of organizations. France Telecom faced the same challenges, but had a representative from a lower level in the organizational hierarchy, and less robust participation. While they were connected with each other, no participant mentioned any of them individually or organizationally in describing their relationships, despite up to 30 months of collaboration. More than one participant offered their assessment that France Telecom was simply following the lead of the other telcos.

**Negotiations**

Along with other organizational factors from views to style and resources, interpersonal relationships and trust were both built within and also shaped the course of the policy implementation negotiations. Rather than undertake an in-depth or tactical look at the negotiations process, I sought to understand how participants approached and viewed
them. Blending orientation and process, we can hopefully understand a bit about how they informed the outcome.

There were initially three separate groups of forbears working on online expression and privacy, of which two, one made of companies and the other of academics, had initiated development of codes of conduct. The roots of the Global Network Initiative began to grow when the academic group invited the corporate group and the civil society conveners to a joint meeting in July 2006. The conversation continued into fall and the three groups ultimately agreed to join forces and generate a shared approach. Of the survey respondents, 19 of 24 representatives thought that the integration of diverse sectoral and organizational perspectives in the negotiations process had substantial or extensive impact in terms of learning, problem solving, and agreement.

When considering whether to collaborate and where to begin, from Microsoft’s perspective, including “The human rights groups required an executive decision after the [July 2006] Oxford meeting, so the choice was to go it alone and argue for different principles or to come together and to start over. Our senior management decided to live with the process,” according to Chuck Cosson.

Another company implementer recalled, “We began with two parallel processes, ours and the academic process. Each thought the others was nuts, with the academics saying ‘that’s vague and doesn’t hold you accountable’ and the companies responding that international law does not provide guidance for day to day functioning and decision-making. I thought it was a good idea when everybody agreed to discuss it and try to reconcile the two extremes, but initial drafts were each unworkable for the other and I was convinced that the attempt to bring all these people into the same room would fail. In my
experience in government working with non-governmental organizations, business and politics, I’d seen it actually push people farther apart. One thing we had going for us is that this is one issue where the far right and far left actually come together — free flow of information — and promotion of those values was something that could bring us together."

Berkeley’s Mulligan observed that, “Part of the reason to develop academic principles was to sustain a conversation. The risk was that the companies came to the table with their own principles, which did not feel very ‘multi-stakeholdery’…that we also had principles underscored the need for genuine conversation and a more collaborative process.” Indeed, the academic principles were developed in parallel with the companies’ own draft principles before the groups converged with this partly in mind. Participating in both of those seminal efforts as a co-facilitator and contributor, the Berkman Center was uncertain whether the company-only process would move ahead and wanted an alternative to strengthen their resolve, an independently developed approach, and a fallback set of ideas should it falter.

For their part, at least Microsoft felt it had an especially strong sense of their own interests based on “its large and separate lines of business in China,” which according to Ira Rubenstein, also meant that they “knew what the actual market size was, rather than the potential, as other companies might see it. There was real money just being left on the table, we just needed to address piracy, so it felt tangible not speculative.”

From the human rights organization perspective, Human Rights Watch’s Arvind Ganesan acknowledged feeling less knowledgeable about elements of the substance of the issues, and observed that the academic principles were difficult to implement due to their substance and company resistance to being told what to do. “The academic principles were
the best window of insight into what the academics wanted at the time, but would need to be bounced off others with different views.”

Different views and perceptions abounded and formed a real challenge, as became clear to Yahoo’s Samway when, “I realized how little most non-governmental organization understood about corporate structure and functioning.” That took a variety of forms in practice, from a follow-up meeting with an Amnesty representative after presenting to the group on Yahoo’s Viet Nam human rights impact assessment, to a pre-meeting with the Human Rights First team in which Samway and Yahoo’s lead for law enforcement spent hours explaining and diagramming their relationships functioned in practice.

In addition to these more explicit attempts at learning, according to Samway, side exchanges and events also played a significant role in developing mutual understanding, trust, and perspective on the challenges. The sustained criticism of Yahoo by Reporters Without Borders gradually evolved into a more moderate relationship in part due to a shared relationship with China human rights advocate Harry Wu, and collaborating on a conference in the context of Wu’s organization’s board. Samway also worked quietly and extensively with Sharon Hom and Human Rights in China on dissident cases, coordinated communications with the US Department of State, and was intimately involved in the Shi Tao case. Yahoo also engaged Rebecca Mackinnon on the substance, which facilitated both learning and mutual respect.

Samway described the process as one of “our own learning and mutual education as to why the decisions were so hard — moving to shades of gray, rather than the black and white version both sides saw initially.” Importantly for Yahoo, “It helped us to see that we
could also do more than we were doing without putting employees at additional personal risk.”

Another company participant recalled that, “I learned more about other people’s jobs than I expected to, who their constituents were...how credibility and money interacted — and how that drove their reasoning and goals, including the need to please funders with accountability. I saw the value of standing in other’s shoes. I learned how seriously people take international law, which was a real eye opener, while I am more practical and interested in what is happening on ground.”

The representative, as with many other implementers, noted the importance of the learning process and structures, recalling that, “The single most valuable thing that we did was to provide knowledge. I’ll never forget the day we spent in Berkeley when Nicole Wong [then Google’s Associate General Counsel for Law Enforcement] told people how the system works. It was the most eye-opening day for me and I think for everybody else...led the way for people to understand that this is really fucking complicated. This is not something we can settle in a day in a year or in two years, and that we have to build in flexibility for the future.”

The theory of change for co-facilitator Business for Social Responsibility includes shared learning and collaborative effort for mutual understanding, and indeed, figures much more prominently than an accountability regime. BSR’s Dunstan Hope observed, “A substantial effort was made among companies, starting in February 2006, including the telcos, and by academics, too. I’m not sure that the human rights groups tried as much, especially the non-tech ones.” Indeed, Hope was frustrated that, “Certain non-companies did not appreciate the value of learning in creating change. We tried to develop a common
understanding, but perhaps not as much as we should have. There were many learning
days and calls, but the attendance was sometimes lackluster."

At least some non-companies recognized the learning as well. Committee to Protect
Journalist’s Rob Mahoney called it an “evolutionary process that just opened up,” noting
that “with more learning, we realized how little we knew, and the potential dangers. We
were not ignorant of security online, but in press freedom this was all quite new. Iran,
Ethiopia, and others were behind in repression, but were gaining ground.”

Mike Posner observed the importance of patience and empathy in this particular
setting, noting that, "You don’t make progress until you dig down deeper than a few inches
to understand the particular industry, the dynamics of major players, and to put yourself in
the shoes of the folks who are trying to solve problems. The differences outweigh the
similarities, so you can’t do it on the cheap. This industry is particularly challenging
because it’s so dynamic, as compared to oil for instance, this industry is constantly
reinventing itself, with new players coming into the game every hour it seems. Traditions
aren’t that long, and there are new technologies, new companies, and a changing global
environment. To develop an approach in such a volatile environment is challenging — and
very different from other domains.”

While opinion varied as to how tight a consensus there was around the problem itself
— 14 of the 24 survey respondents felt it was somewhat or modestly shared, and 10
thought it was substantially shared — organizations did acknowledge and incorporate the
dynamic nature of the challenges into their approach. The potential to have better
leveraged learning opportunities remains an open question. Internews’ Kathleen Reen felt
that, “There was no common perception amongst the Global Network Initiative’s architects.
It was not just slapped together, and there was extensive groundwork, but there was an expectation that there was a common perception. As organizations checked into it internally, it was harder to recognize than expected.” Sharon Hom of Human Rights In China agreed, noting that, “We never really faced the dragon head on,” and while that was not necessarily a problem, it underscored the importance of acknowledging the associated consequences.

Reen recalled how the group initially looked to other industries such as apparel and mining to project into the future and see what they might expect. Although there were similarities among people and organizations, the facts were simply moving much faster in the technology space than in the other industries, which reduced comparability to other MSIs. This led to significant challenges “especially within the accountability realm and companies willingness to be evaluated,” Reen offered, “which made it difficult for human rights groups like Amnesty and RSF to discern paths to compromise.”

Any common understanding was made more difficult by the dynamic nature of the problem the participants were confronting. From Mulligan’s perspective, “There were not radically different perspectives on the nature of the problem. Companies are important sources of control and data because of the networked environment. We certainly developed a much greater understanding of the challenges companies face even if they have the right people trying to do the right thing. Relations with government are so fraught, in part due to the lack of knowledge. You don’t know what actions countries will take when data is disclosed and you lack context specific information. It is dynamic and you may not be aware as a regular lawyer. What are good sources to inform decision-making? I appreciate the complexity of problem.”
She underscored the importance of learning and information exchanges in refining the perceived threat landscape perception, “While it is valuable at abstract level, few understood just how valuable it was. People always discount that. They thought it was a bone, almost a platitude, but in this environment, information sharing...promoted a more robust understanding of the questions to ask, constantly shifting threats, and ultimately made information sharing, discussion, collaboration, and relationship-building even more important than it normally is.”

According to Human Rights First’s Mike Posner, “The first rule is to figure out what matters to other side and how to respond. People start in dramatically different places, and you have to look for common ground and that’s not everyone’s cup of tea. The opportunity is to recognize that there are some big global challenges that cannot be addressed just by NGOs writing reports, or companies acting on their own and doing everything. The goal is to find the sweet spot where there can be a common effort that moves the ball forward, gives everyone a sense of buy-in, and creates space for everyone to take risks.”

From the perspective of co-facilitator, Leslie Harris of the Center for Democracy and Technology observed that the different understandings and preferences were not only among constituencies, but also within them. “The non-governmental organization tent is a really big one — larger than other constituencies — with a variety of views on good outcomes, which makes it difficult to get people to walk in step.” CPJ’s Mahoney observed relatedly that, “It took our constituency a long time to form a consultative process of our own, unlike the companies. We needed to do it to avoid getting steamrolled,” echoing the widespread perception that the companies had greater collective resources to direct to the negotiations.
Resource constraints played a significant role for everyone, especially non-company participants, translating into strategic prioritization and other constraints on their engagement. Mahoney observed that, “We were unable to participate at a technical level due to a lack of expertise, so we had to figure out what we wanted narrowly and go for it. The negotiations were an incredible suck on resources and time, requiring far more input from the organization than we were able to give. We had to stake out maximalist positions, be tough, and then concede. We were better served pushing back against censorship, which was a familiar freedom of expression. Like other non-governmental organizations, we were content to line up behind Mike Posner in the push for accountability because it was important and he could do it.”

Many respondents referred to the importance of Posner’s role in the design process in general and around the accountability regime in particular. CDT’s Leslie Harris raised the concern that, “Mike felt the need for the process to mirror the Fair Labor Association, despite fundamental questions about the appropriateness for sector of accountability, for instance.” She pointed out the differences from other sectors, because a company could be non-complicit and have a responsible goal, but could still experience bad outcomes in terms of privacy and free expression. Indeed, whereas according to UN Special Representative Ruggie, government weakness had led to most problems (e.g., environment), the challenges the group confronted arose from government strength.

Even as many implementers expressed appreciation for Posner and Human Rights First’s leadership, with acknowledgements including, “He helped us reach a better place,” but more than a few also felt that he had been stubborn at times, describing him as “not always part of the solution,” and noting that, “He didn’t compromise as much as I would
have liked, even as the companies gave ground.” Compounding the situation for some was the feeling that, “He added animosity that may not have been helpful.”

That process was not purely substantive or limited to any one constituency either, with what Harris called “deadlockers versus icebreakers” who did not correspond to institutional interests, but individual approaches. “There were people who knew how to listen, to articulate a challenge, and to offer a variation that works,” citing HRW’s Arvind Ganesan as one example. “Personal trust became more important than institutional trust, with many behind the scenes personal conversations that weren’t organizational in nature.”

Part of the dynamic, according to one American investor was because, “Companies were under fire and needed this — they had more motivation to arrive at a solution — and people knew that.” For Human Rights Watch’s Ganesan, part of the plan “was to do research that could expose the Global Network Initiative companies and non Global Network Initiative companies, while highlighting government conduct,” noting that, “You need constant scrutiny to advance standards.”

Ganesan pointed out that pressure was not inconsistent with a good working relationship, because “There is no trust at the outset, which is fine, but once people realize non-nefarious motives...” He offered the Amnesty discussions as one example, noting that while he did not agree with their decision not to implement, “It will give GNI external impetus to do better. They looked at internal discussions as ‘us versus them,’ and there was limited trust thereafter.”

From Deirdre Mulligan’s point of view, “It felt like it was genuinely a conversation in most instances. There were places where lines were drawn and heels were dug in, but the
bulk of that [behavior] was around accountability.” She also observed variation across constituencies with, “Some company coordination and generally more strategic behavior among them, except around auditing where it was among non-companies. Academics supported reasoned conversations in different ways, facilitating better and broader thinking by all participants at different times, demonstrating less certainty or commitment to a preconceived outcome.”

Kathleen Reen of Internews “was surprised and delighted that there was so much common ground. The conflicts were expected. We knew the differences, but the common ground was surprising. There had been no previous communication between human rights groups and companies in some instances, and we watched some of those prejudices break down.” Danny O’Brien of the Electronic Frontier Foundation was broadly consistent noting that, “One of the more positive developments was that, by end of it, people had come to a fair consensus of the challenges. The grandstanding on all sides had been eroded.”

During her time with Human Rights in China and the Center for Democracy and Technology, Cynthia Wong recalled that not all civil society organizations had the same credibility, with especially substantial deference granted to Posner and Ganesan, and their groups. Even when strong feelings were absent, the idea was to present common stance, and maintain an ‘us versus them’ posture.

There were also tensions within rights definitions and regulatory domains that echo the different interests at play, and represented gaps within and across constituencies. The World Press Freedom Committee viewed Article 19 of the Universal Declaration on Human Rights as clear-cut, precise, succinct and without restrictions, which also limits governmental authority, in contrast to the International Code for Civil and Political Rights,
which allows for greater flexibility and autonomy. To their frustration, both were used as points of reference for the Principles.

Other framing elements also gave rise to deep-seated challenges within constituencies, citing the division between Amnesty and Human Rights First, Microsoft’s Chuck Cosson recalled, “The distinction between operational and aspirational principles was incredibly important.” In other words, should the goal and accountability regime focus on what companies should be doing in time or what they should be doing currently, with Human Rights First on the former and Amnesty advocating for the latter? By balancing these, it promoted ongoing improvement and “got people to stay in the room,” said Cosson, else there would be a fear that, “They [civil society] are never going to stop [asking for more] because there’s no end to what a company could be doing.”

Danny O’Brien remembered that, “EFF was very close to coming out and had always discussed an exit strategy — because the biggest power in discussions is to leave them — but they had never discussed criteria.” Consistent with Samway’s perception is O’Brien’s observation that, “One sign of a good negotiation is how close to the line it gets and there were genuinely close calls. We agonized. We discussed the situation with the non-governmental organizations who were leaving, whose positions were not that different, but given the choice of all but one leaving, we decided it was better to stay involved.”

O’Brien observed that being perceived as being accused of co-opted by industry is a significant risk of working with companies that most organizations face. Due to the Electronic Frontier Foundation’s strongly confrontational position with companies inside and outside of the Global Network Initiative, however, he felt little risk of discrediting the organization.
EFF faced another issue, however, in that they had more confidence in the good intentions of the companies than most civil society organizations, but more skepticism about their ability to actually affect change within companies, especially when it was unclear how much the companies’ bottom line would really be affected by more traditional corporate social responsibility. Part of that concern came because EFF perceived that within these technology companies, “The balance of power was different, the policy people have less power and the engineers lead companies. They have some power, but it is just not the same as with the policy team at AT&T.”

For O’Brien, this contrasted with traditional human rights groups who were less confident in companies’ good intentions, but more optimistic about internal change. O’Brien observed, “This was not really diamond mines, but in companies vested interest to have unfiltered service and no meddling. They didn’t need to appeal to higher interests to get something done.”

Attitude, events and organizational dynamics also loomed large. While Yahoo’s Samway recalled, “The tough moments were all helpful — in one way or another. There were lots of peaks and valleys, ebb and flow, you couldn’t get too high or low.” These challenges ranged from crises such as the Chinese governments efforts to require the Green Dam software, which would have represented a significant risk to privacy and free expression, and offered a palpable and unifying example of the threat the group faced.

As Samway observed, “There was a lot going on inside every organization and different approaches in each, and it was easy to underestimate the organizational forces inside them.” Certain incidents demonstrated elements of the dynamics and created significant adjustments within the group. In one meeting at the Department of State, for
instance, Samway recalled an uninvolved person from Human Rights Watch attacking the group in a way that underscored the challenge Ganesan faced in his organization. Early on, Samway recalled, a Google representative claimed to be unwilling to participate unless Yahoo subsidiary Alibaba would, too, which was the same position many civil society groups had. Later, when Amnesty decided not to implement the Global Network Initiative, their departure played a useful role that Samway likened to “deals in the commercial world where everyone walks away unhappy and it demonstrates that something real was going on.”

In the realm of substance meeting process, many implementers referenced the importance of the role that the facilitators played in the design phase. Trillium’s Steve Lippman was one of many who singled out Business for Social Responsibility and the Center for Democracy and Technology, noting that, “They shaped how things unfolded...having professional, experienced, trusted facilitators, a safe space, and so on was helpful for keeping things on track.”

Amnesty’s experience was consistent with observations made by the implementers in terms of expectations, alignment, motivations and more. Amnesty’s Erica Razook “expected a more aligned strategy among the NGOs. It was surprising to realize they are all a bit different and there for different reasons,” which overlapped with the low level of trust she felt within the constituency.

As the organizations that felt they were the most demanding, Amnesty and RSF were closely aligned, perhaps unified in the face of what Razook called the “defeatist attitude” of some organizations that reported participating because the Global Network Initiative “was the only game in town.” To Amnesty, there simply was a different mandate among civil
society and the investors. Ultimately, she observed that while, “There was not a lack of trust, but I didn’t feel I could depend on others to advance our work.” In the background of Amnesty’s calculations was the concern that, “If you pull out too soon, you risk being accused of being a drive-by activist. We needed to give it enough time to say, ‘we put them on notice and we will see what happens.’”

Getting there, however, was a challenge due to the perceived imbalance of resources. Razook remembered spending hours on the phone with Google lawyers fighting over one little world, and that the companies won on all of those battles with the manpower and sophistication they could devote to winning. “For a human rights group, how long can you argue with Google lawyers before you decide there are other priorities and better uses of your time?”

Amnesty’s response to the imbalance was to pursue public advocacy campaigns as a countervailing pressure against what was happening in the negotiation. Even that had limited efficacy, as companies presented their progress to other stakeholders and undertake other activities, such as offering fellowships (like Yahoo’s fellowships at Georgetown and Stanford) or research support (from Google to the OpenNet Initiative, for instance), which make it harder to convince people that companies are not sincere. “Complexity is hard and folks don’t have the time, harder still with competing messages coming from the companies,” said Razook.

“Part of the impetus for joining was to make sure there was a bad cop in the room,” recalled Razook. “Some colleagues would criticize us for not playing well with others, but there’s a real feeling that Amnesty holds the line. We are not necessarily the practical ones, not the ones prostrating ourselves in Washington DC, but sticking by the Universal
Declaration of Human Rights no matter what. And we need to be there to hold that line.”
Ultimately, Razook reported feeling “extreme frustration,” as she learned about communications they found objectionable between companies and the US Department of State. “We felt we were being used.”

Reporters Without Borders described a markedly different experience, in which there was substantial openness about goals and satisfaction among NGOs, and clashes between NGOS and companies. Lucie Morillon recognized that, “Companies were working with their competitors and that was legitimately hard. Investment funds had an interesting take — and they had the money — they were less aggressive, but still raising questions without antagonizing the companies.”

More broadly, Morillon thought it was “great that they wanted to come together with different issues and backgrounds. Investors and academics have different concerns and perspectives, and it was very complementary to have all these people involved. NGOs and companies [alone] would have been a real fight...having others came in between allowed it to address the complexity of the issue.

For Vodafone’s Stephen Deadman, “Companies split along the lines of carriers and internet companies, which was mirrored by geography [Europe versus the US] and issues — surveillance for telcos versus freedom of expression for internet companies — and we struggled to find common ground. Non-companies were more focused on burning issues, freedom of expression and privacy as it related to free expression, not the issues of the telcos. All that made it difficult to find common ground among stakeholders.”

Patrik Hiselius of TeliaSonera noted the essential role played by BSR and CDT in a large process with so many stakeholders and entities, but lamented the attitude of a few
NGOs who he felt wouldn’t be satisfied regardless of company commitment, and were thus not very helpful. “Among most NGOs and all other participants and companies, which are competitors, we had frank and forward-leaning discussions,” he recalled. “Sometimes it was forgotten that the companies were all competitors, which makes it difficult to share things openly, while noting that there should be constraints, but non-companies didn’t always understand those limitations.”

For Christine Bader of the UN Special Representative on Business and Human Rights, the circumstances of the relative youth of the companies, changing products, dynamic business models, and unanticipated areas of competition suggest the depth of the challenge to developing robust principles. Amidst conditions of such uncertainty and change, Bader felt the result of the process underscored the importance of excellent facilitation, and its role in building trust, fostering good dissent and constructive exchanges, and managing and reconciling breakdowns in the conversation.

**Accountability**

Among the many salient points of the policy implementation process, none was more important or challenging than the consideration and creation of a third party accountability regime to assess company compliance with the agreed upon principles and implementation guidelines. At the beginning, such a mechanism was unimagined by many participants, while others viewed participation unimaginable without a robust outside accountability framework. Understanding where and how consensus was reached helps us to better contextualize the creation of one of the Global Network Initiative’s most salient features.
Calvert’s Bennett Freeman “wanted to make sure the Global Network Initiative did not emerge without a governance structure and assurance mechanism.” Along with other participants, he recalled waiting “five years to begin the governance and accountability discussion in Voluntary Principles, while I watched...in fascination and horror.” With Human Rights Watch’s Arvind Ganesan and Human Rights First’s Mike Posner as “co-conspirators of sorts,” Freeman recalled them committing to each other “to develop it properly and go out of their way to prevent the emergence of a half-assed multi-stakeholder initiative lacking a fully developed governance and accountability structure. We wanted to set the standard for multi-stakeholder initiatives going forward.”

This was in part a product of the times, with increasing civil society distrust of multi-stakeholder initiatives in 2007-8. This arose in part due to the perceived deficits of the Voluntary Principles mentioned by numerous participants in these interviews and throughout the design phase (“the VPs were a goat fuck,” said Freeman). Likewise significant was their discomfort with the mandate of the UN Secretary General’s Special Representative for Business and Human Rights, including its emphasis on multi-stakeholder initiatives. According to Freeman, “Posner came in intellectually curious, open minded, noting the new issues with some commonalities, understanding they were very important issues, and firmly believing that multi-stakeholder initiatives needed accountability and governance structures.

Human Rights Watch’s Ganesan underscored the rationale, “The principal objective was to get a monitoring mechanism in place, because once you get there, a lot of things will fall into place. Combining a reasonably good set of standards with a monitoring mechanism
would lead to changes in conduct within two to three years. You’ll get a lot of what you need, and we didn’t get it all, but we learned a lot and the situation has improved.”

Domini’s Adam Kanzer recalled that, “With the accountability battle, people might have questioned a hidden agenda, but I felt it was always clear and Mike Posner was pushing to get it done because hard issues need decisions, and the human rights groups and investors might not have signed on [implemented] without having done that.” He also noted the importance of the discussion process-wise in surfacing important issues, and demonstrating achievement of a certain level of trust that was ultimately essential to the process. “You can’t have a knock-down drag-out fight right away, but later on, you can survive it,” Kanzer observed.

Multiple participants expressed surprise at the degree of accountability proposed emerging from the design process. Steve Lippman of Trillium described their position as “more moderate than the Human Rights First voice on audits — it needed to be something that companies would actually be willing to do, to be practicable.” Human Rights in China’s Cynthia Wong observed that, “The Voluntary Principles loomed large — human rights groups didn’t want to make the same mistakes again, they didn’t want to lose credibility and be co-opted, and companies didn’t fully understand that.” Lippman observed that “achieving definite trust through accountability mechanisms such as audits, is difficult and not necessarily the best use of resources. If proof is so valuable, he reasoned, there should not have been such a protracted argument around accountability.”

Center for Democracy and Technology Co-facilitator Leslie Harris observed that, “The interest in an accountability regime didn’t initially surprise me because there are lots of ways to do it, but where we wound up was due to the sins or ghosts of the Voluntary
Principles, which just colored the whole [design] process.” Harris felt that, “Some civil society participants wanted to refight that battle, while half the people had no dog in that fight. Despite talking about making sense for the sector, small companies, and so on, they couldn’t sign onto anything without vindicating the sins of the Voluntary Principles. Everyone needs a therapist!” The result, in her view, was that the lessons of the Voluntary Principles loomed large, creating a “line in the sand” that was difficult to address rationally, functionally and productively.

There was a range of influences on the process whose relevance was anticipated by at least some of the participants. One implementing company representative observed that certain extreme cases, including Nazis, Shi Tao, China, and other especially challenging situations had a great impact, rather than more middle of the road situations such as intermediary liability issues in Italy. “The GNI was shaped by these extremes, (happily) by data, and by the personal experience of the people at table, particularly Mike Posner, Bennett Freeman, and Arvind Ganesan and their interaction with similar kinds of initiatives.”

The representative respectfully noted, “Without them we wouldn’t have otherwise got to the stage we got to or to the organization that looks the way it does. The Fair Labor Association was brought up often, despite being one hell of an ugly comparison — it’s so different to measure than what FLA measures [in the sense of the accountability mechanism]. The Voluntary Principles were always brought up as a negative because they didn’t set up an accountability process before finishing the negotiations. They [FLA] thought they could get it afterwards, and that’s the hardest part.”
The changing nature of the collective understanding of the problem was also a factor in the accountability discussion. Committee to Protect Journalist’s Rob Mahoney observed that, “Things have changed so quickly — we were thinking of old fashioned stuff – Shi Tao wasn’t even publishing. We [initially] expected extension of old things: hold companies to account publicly, sensitize them to the impact of their services; and keep them honest. The dual track approach was effective, both naming and shaming, along with an inside track approach to listen to concerns, get updates, and assess them on it. With that evolution of process, the public accountability mechanism became more necessary to sell the approach on the street.”

For UC Berkeley’s Deirdre Mulligan, “The outcome was partly about stakeholder dynamics. For Mike Posner and part of the investor and civil society group some form of auditing was a requirement. The question became how staged it was, but at some point it was clearly a requirement. I think all of the people who participate now appreciate it, but I’m not sure the stakeholders who participated then appreciated it.”

The UN’s Bader agreed, noting that Posner was an essential force in both slowing the process down and driving it forward. “The sheer force of Mike and Arvind [Ganesan] in the Voluntary Principles [on Security and Human Rights] and Mike in the Fair Labor Association were quite powerful...and they were not going to let the Global Network Initiative launch without governance.” Indeed, she expressed surprise that the framework and architecture offered in October 2008 was sufficiently developed to reach agreement.

DECISION
The negotiations, including and accountability aspects, lasted more than two years (throughout the process and beyond launch), much more discrete decisions were made about whether to participate in the Global Network Initiative design process and whether to implement its products. Pattberg’s model and Chapter 3 lay the groundwork for participation in both phases, while the previous sections on trust and organizational factors, negotiations, and accountability offer additional influences on policy implementation. These come together as we examine the organizations’ rationale for implementing those policies and joining the Global Network Initiative — or leaving it.

For Internews, “There was a crisis of confidence when Amnesty and Reporters Without Borders dropped out — they were blue chip human rights organizations,” recalled Kathleen Reen, “they should be members and were part of our reason for joining.” While each implementer compensated for the loss in its own way, Internews had interacted with them extensively throughout the process, had developed relationships, and were dismayed at their departure.

According to Reen, Internews made the decision to implement on different grounds from the reasons their colleagues had left, which involved looking at Internews’ ongoing role within the Global Network Initiative and comparing that to the organization’s mandate. “We asked ourselves how we could contribute,” Reen said. From Internews’ perspective, they brought unique attributes including long-term engagement with governments on media and policy matters and experience with coalitions, within which they were effective advocates for independent media.

The decision to implement was uncertain for many participants, especially civil society, including the Committee to Protect Journalists. Rob Mahoney remembered that
when “Amnesty and RSF pulled out, we reached our Rubicon. We had an internal debate and decided it was still worthwhile, that it was better to be on the inside [of the Global Network Initiative] with a voice. We needed to try to make it work.” Positions mattered in that determination, with the Board Chair’s support being fundamental to cross the “Rubicon.”

Cynthia Wong of Human Rights in China noted the influence complexity had on the process. “It became clear that it was difficult to craft white line rules, unlike in other sectors, where you might prohibit child labor, for instance. Everyone discovered that, which made standards logical and a focus on risk mitigation and so on feel appropriate. From the beginning to the end, it was not a surprise, but a gradual development of that approach.” While she understood the high standards of those who did not implement, Wong noted that, “It was an unrealistic goal to never have another Shi Tao incident.”

Consistent with Wong’s observations and indicative of the in-progress nature of the solution, but shared in a more public reflection than most, the Electronic Frontier Foundation decided to implement, lauding both the progress made by the group and raising unresolved concerns about its future (O’Brien 2008). The group highlighted how far the participating companies in committing to do more internally and externally to protect online privacy and expression, but also pointed out limitations particularly around nuanced decisions where the group did not establish clear requirements.

Rebecca Mackinnon (2008) contextualized many of these issues along with the news coverage of the Global Network Launch, noting the relatively early stage of the agreement, the urgency of its mission, and its potential going forward. “The initiative must prove its value in the next couple of years by implementing a meaningful and sufficiently tough
process by which companies' adherence to the principles will be evaluated and benchmarked.”

Sharon Hom of Human Rights In China noted that while they would have preferred a stronger final agreement, they understood the need to move forward. “We need to put trust in it and build it as we go along. It’s not a perfect — it’s a process, not reified thing — we will give teeth as it develops. It made total sense and was consistent with what we knew from our deep experience with technology. It’s stupid to think you can build far into future.”

On the other hand, for Amnesty and Erica Razook, “Our measure was: would this have changed the Shi Tao case? We withdrew, because they said no, because it was still possible. That was always the bottom line.” While that was made clear in the negotiations and participants felt that the intent was laudable, like Wong, most agreed that such a guarantee was impossible.

There were other factors, however, in Amnesty’s decision, including reputation and trust. Razook explained, “Amnesty is a Nobel organization and its name is its greatest asset. So despite pressures to come up with a win, there was always was a concern about not having the name be compromised or have the brand watered down with an outcome that was less than proper.” This was palpable due to their “experience with the Voluntary Principles and the Kimberly Process right there in the background.”

There was also a more human element to the departure. “It came to a peak – we were trying and trying and giving the benefit of the doubt, making long calls and seeing no progress, while we were seeing how the process was being presented to Department of
State and others, and felt like it was not a serious endeavor.” Of the exchanges with State, Razook described it as “a rosy version, no lies, but really thin and suggestive.”

As a result, Amnesty-USA and the International Secretariat jointly raised their concerns, including their feeling that the Global Network Initiative did not achieve international standards, and made the recommendation to end their participation (Amnesty International Secretariat 2008). “We had learned what worked and what didn’t — the purely voluntary efforts — and felt like they needed to improve. We needed real accountability and a high level of transparency, and we wanted GNI to be better,” remembered Mila Rosenthal of Amnesty International. “At the end, the feeling was that it wasn’t what we had been looking for — this group just was not going to get there — and that it would be dangerous to put our name on more voluntary initiatives. The fact that Mike Posner was involved, from the Fair Labor Association and beyond — made it feel like groundhog day — replaying some of those debates. Human Rights First is different from Amnesty, so it [HRF’s implementation] made sense — it fit their approach, style and organizational DNA better than it fit Amnesty’s.”

According to one non-company implementer, “The reasons Amnesty pulled out had nothing to do with substance [but with resources]. The human rights world has been under-resourced generally and there are no resources on this issue.” The decision to not implement was driven by the organization’s structure (national organizations focusing on companies of that nationality), substantial layoffs, and individual leave and a promotion. The structure of Amnesty International is that a National body (e.g., Amnesty-USA) focuses on companies from that nation. In this instance, Global Network Initiative design was shared by Amnesty-UK and Amnesty-USA. The former was undergoing substantial change
including on the order of 25% of its staff, including business and human rights, while the latter had one key person on maternity leave plus a promotion to Mila Rosenthal, who initially led participation. According to one participant, the International Secretariat should have led this effort.

Another participant expressed disappointment at the seemingly disingenuous explanation for Amnesty’s departure, with their public statements criticizing the shortcomings of the approach, contrasting with internal organizational considerations. The rationale was based on perceived deficits, when the reality was more complicated, including the dilemmas of whether multi-stakeholder approaches were worth the effort, concerns about the reactions of their constituencies, the aforementioned resource challenge, and the tensions associated with simultaneously working with and fighting against companies.

One implementer saw the decision to depart arising from a perhaps deeper strategic orientation of the organization toward issuing demands and expecting companies to follow them. Other organizations, she observed had more patience, and rather than aiming to expose companies (often called naming and shaming), they were more deeply focused on addressing the underlying problem.

Reporters Without Borders Lucie Morillon recalled that, “The first draft was much stronger than what was ultimately adopted. It was not strong enough to stop another Shi Tao case. For instance, [the company commitment to] requiring requests in writing became doing their best to get them in writing, with too much leeway to have bad stuff happen.” Part of the problem in reducing the requirements for Morillon was that, “After the Shi Tao trauma, the watered down text meant that we didn’t trust them [the companies] even
though we knew they were not the bad guys. At the end, we looked at the process and were worried about governance. Mike Posner fought, but we were not convinced completely by the assessment process,” explained Morillon (Reporters Without Borders 2008).

The company designers had different reasons for not implementing that were consistent with many other data points. TeliaSonera’s Patrik Hiselius noted that, “The true and real intention was to have this as a global initiative. But the discussions were more based on Capitol Hill, US — China relations, and the Google, Yahoo, Microsoft situation, rather than on telcos in faraway and home countries.” While this was clearly frustrating, he reflected that, “It was not completely the fault of internet companies — we [telcos] as operators need to have better explained or shared more, but we didn’t succeed in that knowledge sharing and joint understanding.” So while Hiselius observed that the broad and overarching points were consistent, “At the nitty gritty level, freedom of expression in China and how the internet companies operate there was just not relevant to the telcos. Had there been a fully shared understanding, all six companies would have joined [designers TeliaSonera, Vodafone, France Telecom plus implementers Google, Yahoo and Microsoft].”

Hiselius summed up reasons for withdrawal more specifically as “the differences between US internet companies and Euro telecom companies, which consist of infrastructure, personnel, and on the ground licensing requirements. For instance, Yahoo provides Malaysian services remotely, where an [telecom] operator couldn’t.” External accountability also played a role, “TeliaSonera still does not have it as part of corporate responsibility in any domain of its operation.” Finally, “Despite global intentions, the Global
Network Initiative was still too-US-based with too much focus on internet companies and China.”

**OTHER DEVELOPMENTS**

The Global Network Initiative was created with the broad aim of protecting and advancing online freedom of expression and privacy, seeking to accomplish that through structure, behaviors, and activities that were initially developed in the design process and continue to evolve as the organization grows. While the focus of the policy implementation process was on organizational design and approach, a host of notable reflections emerged in the research process that nuanced the implications of the people, organizations, and approach, and how they collectively played out within this community of people and organizations, and on the issues of online free expression and privacy.

Looking back on the GNI, one company observed that, “The best products of the process may not be things that are achieved on paper, but relationships: the friends and colleagues I’ve made. Before an issue becomes public, for example, it can be solved. Even if the Global Network Initiative is a bust, there are fundamental new ties between companies and other participants. They are critical and have already saved lives.”

That reaction was in the majority in reporting enthusiasm for the group and belief in the value of the work. Internews’ Kathleen Reen pointed out that, “It was really interesting and fun work, and it is fast becoming everybody’s business — we all have a stake in the outcome. We were carrying the torch for a lot of people — and it is exciting to take part in the communications future because it relates to the economy, prosperity, poverty, art… you name it.”
Reen also echoed the enthusiasm around productive and ongoing collaborations reporting that, “Many individuals associated with the Global Network Initiative have had these conversations elsewhere, have developed projects, laws, etc., that are indicative of the Global Network Initiative experience. It came from trust because beliefs were there and needed to change, but lacked trust. Those relationships have led to alliances.” She noted that this is more achievable within a sector or organization, and while meaningful collaboration is “still a forbidding challenge,” with institutional trust and personal trust developed, it is important to maintain leadership over time or to “pass the baton visibly within [the Global Network Initiative] constituency” to maintain its integrity.

In retrospect, Committee to Protect Journalist’s Rob Mahoney reflected on the emotional nature of the process in which “trust, modest size and continuity were all crucial,” noting that, “It’s now a bit different... and less likely that we could use same strategy for dealing with issues.”

Some felt the design phase was more of a learning process and exploration, while others were more directed in their engagement. CDT’s Cynthia Wong observed that for “Mike Posner [Human Rights First] and Arvind Ganesan [Human Rights Watch], it was really about strategy: if you build it, companies will come. Beginning with a small tent is fine now, and if we demonstrate efficacy, companies will come due to the appeal -- or to being compelled.” She pointed out, however, that four years after launch, the utility of that strategy remains an “open question.”

That strategy was intimately related to the actual policy design of the Global Network Initiative. According to Domini’s Adam Kanzer, among others, “Having the accountability feature is totally critical and makes the Global Network Initiative unique. It is frustrating to
consider whether or not that’s a selling feature. If you think about it the right way, it’s a key feature: you simply can't buy that kind of credibility — but only get it through a multi-stakeholder initiative with independent reporting and so on. You can only get it at GNI.” Despite that enthusiasm, he acknowledges, “Companies are resistant. That's an interesting tension.”

The perception that the group reached consensus around the challenges was valuable to EFF's Danny O’Brien, who observed, “People around the table became internal advocates within companies. The personal changes were as prominent as institutional ones.” However, notes O’Brien, “I wonder how far that [understanding] has permeated within those organizations; have their strategies changed?” This point was essential for the UN’s Christine Bader, who had witnessed the value of individual participants truly wanting to learn and participating in the process to make it work and noted that while much of the process comes down to the resulting trust these individuals can build with each other, their organizations have to “back it up.”

For F&C’s Alexis Cheang, the ultimate result of the design process was “much more sophisticated and useful,” as compared to the “expected industry code, annual report if we were lucky, and an individual country report if we were really lucky. Now, we have something akin to a trade body doing research on emerging issues. The decision to make it an ongoing initiative, not just set of standards, but a living organization, creating a board, and undertaking all the subsequent organizational activities. I was pleased to go beyond the Principles, adding Implementation Guidelines and working groups for implementation.”

From the perspective of the facilitator, BSR’s Dunstan Hope expected principles, but not a multi-stakeholder organization and certainly not one with an accountability regime.
For Hope, “Companies and people made leap of faith, which is especially striking since no other companies have done this.” He also pointed out a valuable organizational learning for BSR is that they needed to ensure development of a better understanding of the nature of the problem before designing a solution set.

Looking ahead, these relationships and this model could be extended to other domains as noted by Ira Rubenstein of Microsoft. He points out that safe harbor needs stronger regulation, for example, perhaps some sort of a regulatory approval of code, with backstop enforcement by governance of that code with penalties for violations, and that could be accomplished or supported through a model like the Global Network Initiative.

Domini’s Adam Kanzer echoed O’Brien and Rubenstein’s observations, recognizing that his work on the Global Network Initiative had spilled over into other areas of his work. “It helped me to understand lobbying better – I thought it was disgusting. I realize that legislation can benefit from more informed and independent perspectives, that well-meaning legislation could have unintended consequences and that corporate perspectives could help — as long as it is done transparently and they are well meaning. A multi-stakeholder initiative does roughly that.”

Sharon Hom, of Human Rights in China, appreciated the individual and organizational learning that resulted from their participation. The learning streams and exposure to issues they were previously not sophisticated about including Terms of Service, the Cloud and intermediary liability deepened their organizational expertise. It also pushed her personally to learn more, focusing her continuing legal education requirements on issues related to technology.
For Amnesty’s Mila Rosenthal, the final result represented a “profound sense of disappointment — disillusionment seems too strong — but there was such a sense of promise about the campaign and in the early meetings.” She observed the great potential for companies to be proactive and responsible and the typical evolution that mirrors “the stages of grief — denial, exploration, stonewalling, engagement, and crap corporate social responsibility. I had the sense that these companies wanted to be different from other companies, but over the course of the year [in which she participated], I felt like I had been wrong in that optimism...despite the tremendous potential to do wild crazy innovative stuff.” She does note that she, “understand[s] there is a counter argument, but still has that impression.”

Reporters Without Borders’ Lucie Morillon, who participated throughout the process, had a more optimistic view of the outcome. “The result was really interesting: it has created links between non-governmental organizations and companies. Mistrust has moved to collaboration that extends to us [Reporters Without Borders], too, even though we’re not involved. We have learned to wait for feedback before going public, and the companies have become more responsive.”

Other organizational factors played a role for the Telcos, who still had to determine how best to address the challenges they faced regarding privacy and free expression online. According to Patrik Hiselius, TeliaSonera’s analysis was that, “The privacy issue was more broad including government requests as well as user expectations. We felt we could address it by ourselves and spent a year on a privacy policy that was adopted in February 2011 and is being implemented now.” Alternatively, “Our conclusion regarding freedom of
expression was that it is almost impossible to do anything as a single company — that it needs to be addressed industry-wide.”

TeliaSonera received substantial negative international attention regarding a range of practices affecting privacy and free expression across many former soviet republics, including allowing authoritarian governments access to its facilities and selling them surveillance technologies, which also resulted in physical harm (Gallagher 2012). The company launched an “Action programme for protection of privacy and freedom of expression” in April 2012 according to TeliaSonera (2012).

In collaboration with seven other companies in March 2013, TeliaSonera helped launch the Telecommunications Industry Dialogue, a new venture their website (nd) described as “a group of telecommunications operators and vendors who jointly address freedom of expression and privacy rights in the telecommunications sector in the context of the UN Guiding Principles on Business and Human Rights.” At the same time, the Global Network Initiative (2013) announced that it would “house the work of the Industry Dialogue and provide a common platform to exchange best practices, learning, and tools. 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.”

“It is now possible to get management attention,” but according to Patrik Hiselius of TeliaSonera, “That wasn’t the case during the discussions. There was no public pressure at all — our work was quite proactive. We had sufficient management commitment, but today is extreme. TeliaSonera has encountered a very public debate and has more internal and
external pressure to act on these issues. It was not the case then, but we understood these were issues we needed to address. We made a thorough try to do it through the GNI."

It is also clear that the ideas and strategies within the Global Network Initiative Principles and Implementation Guidelines have stretched well beyond its participants. According to multiple participants in the Global Network Initiative design process, many companies, including designers such as Vodafone, had used the Principles and Implementation Guidelines to inform their practices, despite lacking formal interaction with the organization. Still other organizations have had formal information sharing sessions with the community, explaining their processes and learnings around events such as Arab Spring.

**CONCLUSION**

Chapter 4 offered a selective exploration of four elements that influenced policy implementation, which emerged directly from participant surveys, interviews, and participant observation, covering trust and organizational factors, negotiations, accountability, and the decision on implementation. It also described some of the additional outcomes and implications of the design process and implementation. The chapter builds upon Chapter 3 and its framework, asking not what led organizations to participate, but what happened once they chose to, and how did they collectively arrive at this particular model.

Participants raised a range of important human, interpersonal, and organizational factors that interacted with policy implementation. Among participants, constituencies, and even inside participants own organizations, the absence or presence of trust was a
recurrent theme and far from static. Trust was viewed by many as an important theme that informed preferences, possibilities, and potential contributors. It began as an important deficit, and went on to be a substantial resource. Tense moments tested that trust and helped develop it further. Just as its limits made the negotiations complex, its development supported their progress.

Intertwined with trust were other individual and organizational elements, which had complementary and related influence on group dynamics and the engagement of individual participants. Representation by someone senior in the organization was associated with the likelihood that they could navigate internally and be trusted by both their organization to negotiate and by other stakeholders to make trustworthy commitments. Characteristics like knowledge, dedication, and personal disposition fostered the relationships and trust that allowed stakeholders to get beyond their preconceptions and to explore new territory. Other organizational elements created barriers to trust building, effective participation, and or to policy implementation, which arose by sending a less-connected representative, suffering staffing changes, or facing unrelated organizational changes. These placed representatives in challenges positions vis-à-vis the group and representing and advancing the negotiations to their home organization. Some organizations had a particular organizational perspective or less willingness to engage in the particulars of the domain, which limited their ability to identify and exploit common ground with other participants.

The negotiations began when the four constituencies who would ultimately combine to be the Global Network Initiative merged three existing and separate processes. Each group had developed something of a shared perspective on the issues, and the integration of these three orientations created tensions and opportunities for learning. These distinct
starting points began the process of sharing diverse expertise and knowledge sets that helped to foster learning throughout the negotiation, which most participants viewed as valuable. The differences were both among constituencies and within them, particularly among the broad range of human rights groups, who had different modes, focus area, audiences, and more, and the companies, who beyond being competitors, were divided by sub-industry, geography, business product, and regulatory environment, as suggested by participants from those groups choosing not to implement. Individuals were essential for smoothing these differences, whether through substantive side meetings that further learning and or trust or by unofficial facilitators who sought to identify areas of agreement.

There was perhaps limited consensus on the challenge at hand, but more agreement around the dynamism of the space and the need to do more than reach a one-time agreement. Figuring out how to balance aspirational and operational expectations was a key challenge and opportunity that helped the group to develop an approach that would continue to evolve, but it also led to discomfort due to the lack of specificity, which contributed further to the non-company commitment to accountability. When paired with a few parties committed to an accountability regime and widespread resource constraints limiting the participation of non-company participants, the expectation grew further.

Development of the accountability regime was consistent with the rest of the negotiations, and also benefited from some in-built support due to the then ongoing challenges of adding a framework after agreement in the case of the Voluntary Principles for Security and Human Rights, while mirroring wider concerns about multi-stakeholder agreements within civil society. Accountability was ultimately viewed as necessary to achieve participation from human rights groups and investors, based in part on a handful
of committed non-company experts and the stakeholder dynamics that allowed them to lead. While inclusion of the regime may have been ultimately viewed by participating organizations as essential to build the right foundation, these factors may have led to a different approach to the regime, rather than the one that was adopted, which many felt was substantially based on the Fair Labor Association.

In terms of the final decision on implementation, among many factors, the accountability regime represented perhaps the largest barrier for company participants and was instrumental in the choices made by the European telecoms. They opted not to implement based on the cost of the assessments in conjunction with organizational resources described in Chapter 3 and the differences in perspective from other companies. Organizational interests also were the driving factor for the non-company designers, along with unreasonably high expectations for overall efficacy (no additional Shi Tao incidents). Those dropouts shook the confidence of some organizations, while they underscored the toughness of the negotiations for others. Alongside the trust mentioned above, the accountability and governance framework helped ease non-company’s uncertainty around the model, including its mixture of operational and aspirational expectations, because it allowed them to verify the behavior of the company participants, even if it could not guarantee overall programmatic effectiveness.

The focus of the group was very much on mitigating risks, improving responses, and identifying other areas of engagement, a series of largely unintended developments such as relationships, collaborations, and real-time problem solving capacity were described by many participants as being among the most important outcomes of the process. They found that their learnings and ties fed many other activities. At the time of the interviews, most
felt it was too early to tell whether the original idea will be a success — whether others will join and the standards will become global — but there has been adoption reported well beyond the participants along with the return of four of the five designers to the community in one form or another. There remain many questions, including about the nature of internal organizational change among participants, the capacity to extend the model to other spaces, and which elements of the Global Network Initiative will fall short or bear fruit over time.

These elements of the policy implementation process build upon the understanding derived from the factors in Pattberg’s framework that are associated with participation, exploring what happens when organizations do participate. Just as micro factors of problem structure and organizational resources loomed large as considerations for participation, what could be termed micro factors presented themselves as salient elements for policy implementation.
Chapter 5: CONCLUSIONS & IMPLICATIONS

Chapter 3 covers the four broad factors the model suggests as indicating a likelihood to participate in a multi-stakeholder initiative, each of which are composed of a series of sub-factors that I identified to develop a more nuanced understanding of the factors. Chapter 4 incorporates and extends those factors, exploring the most salient and influential elements of the actual policy the group implemented once it came together. Chapter 5 interprets the data and analysis presented in Chapters 3 and 4, examining its consistency with the model, and offers reflections and areas for additional investigation.

Participation Analysis Interpretation

The participation factors are macro-systemic change, problem structure, organizational resources, and new models. They interact with each other, which is illustrated in part because the factors can be viewed as demand (the first two, which suggest the need for a response) and supply (the last two, which capture the availability of responses) or as macro (the first and last, which are distributed across the system) and micro (the middle two, which are specific to the problem and the organization).

Macro-Systemic Change

Pattberg suggests that large-scale change in the form of globalization, industry growth, and emergent problems provoke the kinds of governance gaps that multi-stakeholder initiatives arise to address. In this instance, the combination of a rapidly globalizing world and technology industry, massive industry growth in terms of users, uses, geographies and more, and shared perceptions of pressing challenges to online free expression and privacy,
was consistent with the framework. This factor and its component pieces were associated with participation in and formation of the Global Network Initiative, as Pattberg would have predicted.

**Globalization**

International technology and communications companies are largely in the business of globalization, endeavoring to connect people with knowledge and other people for diverse purposes through the reduction of traditional limitations, whether physical or human-created. Those connections may span countries, geographies, languages, communities, or any other number of gaps, but a more global world is precisely what allows participant companies to do business, is viewed as essential for their continued growth (in a very competitive marketplace), and promises rewards for doing so. Non-company foci vary in terms of the audience they serve and approach, but a basic frame of reference for the issues they track and the ways they engage them is the globalized world in which they occur. Indeed, were it not for globalization, the issues that brought this group together would either have not occurred or not captured public attention.

These conditions are consistent with the model, forming at least as or arguably an even more extreme and comprehensive example of globalization than the environmental and sustainability issues that the theory was developed to address. With most of the world and diverse industries and sectors increasingly crossing international borders, it merits exploration as to whether and how the global nature of the particular domain in question plays into the model — is there simply a tipping point or is there some function of a continuum? How do international, regional, and global considerations differ? How are
cases at the extremes different from each other and those closer to the middle of the scale? For instance, if the issues considered by the Global Network Initiative were still trans-border but more regional in nature, how would that have changed participation? Alternatively, what implications would we see if the domain were somewhat less emphatically global?

**Industry Growth**

The sector as a whole and the participating companies individually saw huge growth across most dimensions, in their home countries and internationally. Between technological advances, increased demand, infrastructure growth, new business models, increasing availability of relevant content and services, and still other developments, networks of internet and mobile technologies were spreading widely and deeply around the world at the time of the onset of the Global Network Initiative.

Many of the companies involved in the Global Network Initiative were in the middle of that expansion, whether entering new markets as Google did with China and extensive hiring of international policy staff in 2006, or in the midst of competitive battles, whether Microsoft attempting to buy Yahoo in early 2008 or the attempted advertising deal between Google and Yahoo to defend against Microsoft. The designer companies were established and trying to compete in this fast-changing marketplace. Despite overall growth, however, companies in both the internet and telecommunications services sectors faced significant challenges.

Internet companies saw international growth as a fundamental aspect of any long-term strategy, which presented them with the difficulty of developing a sustainable
approach to serving audiences in countries with widely varied cultures, business environments, and legal systems, and raised a host of associated risks and questions. As their international presence continued to grow, many companies became increasingly involved in policy matters with international bearing in the US and globally, activities that the US-based internet companies had been slow to appreciate the importance of. Google, for instance, created a one-person lobbying arm in Washington DC in 2005, but only began to really establish a presence there in 2008.

For their part, the relatively more established telcos were already internationally oriented with extensive ownership and partnership arrangements in place, and as a result of that — and the physical, technical, regulatory, and cultural characteristics of telecommunications industry — were more limited in their flexibility to respond to emerging issues across their organization and their diverse operating contexts. As more traditionally structured companies in a domain that was undergoing profound change, however, the telcos experienced pressing financial and organizational issues that substantially increased their sensitivity to cost — even as their business grew.

Most or all non-company participants had at least an abstract sense of the rate of growth of the industry, but many did not fully grasp its volatility. Those who were unfamiliar with the technology and telecommunications industry had a less-developed understanding of the nature and extent of the companies’ growth and scope of activities. Few had a strong sense of how the technologies actually worked, the business and technology implications of decisions the group considered, or how those issues interacted with growth of the business. Collectively, participants’ knowledge was often more abstract and anecdotal in nature and varied significantly across business areas. In practice, this
meant that some non-company participants did not understand the pace or profound implications of the growth of mobile telephony, for instance, underestimated the tension among direct competitors, or did not grasp the rapid and constant evolution among suites of products and services.

The combination of growth and dynamism of the participating industries was consistent with the model in terms of the environment of macro-systemic change. With an emerging pattern of increasingly rapid technology diffusion, we may see faster growing domains in the future, but as with its global character, the growth in size, scale, and scope of the internet and telecommunications industries represents an extreme case of macro-systemic change in which policies and practices were unable to keep pace. In terms of the components, while globalization was extreme, industry growth was even more so, raises questions as to whether the model is robust to more a modest pace or range of macro-systemic change, or requires this sort of (potentially rare) extreme.

**Problem Prevalence and Urgency**
The vast majority of participants described online freedom and privacy as either substantial or among the most serious challenges they were facing, underscoring the importance of these issues among participants, and suggesting their motivation for joining in the design process. The perception that governance oversight lags technology deployment created doubts about the overall capacity for the public sector to regulate technology effectively. The resulting motivation was complemented by the non-company view that enactment of relevant legislation in the near term was unlikely and the fact that
civil society seemed to be increasingly prominent in guiding and influencing business at these points of intersecting interests.

The emergence of three temporally close and public instances of high profile US technology companies being directly linked to significant human rights issues in China was a powerful driver and frame for the formation process of the Global Network Initiative. The combination of concern and attention across stakeholders, including companies, academics, rights groups, investors, the media, and the US Congress, created a combination of problem density and urgency for some sort of action. While some saw it as primarily a China problem and were focused on the China aspects of the situation, others saw it as a manifestation of more global challenges and priorities, and many across those groups sought to use it to harness the associated interest for policy or behavior change.

Without characteristics including temporal and geographical concentration, grave human rights implications (of at least the Shi Tao case), and perhaps other specifics of these events (such as the complicated US relationship with China), which fueled and shaped the associated media and congressional attention, it is entirely possible the Global Network Initiative design process would have not have begun or required another stimuli such as the Snowden revelations. This unique constellation of circumstances absolutely contributed to the perceptions of urgency that helped open a window for policy change within companies and brought both the initial and the larger group together.

While there is little doubt of the increasingly globally interconnected world and the prominent role of information and communications technologies within it, most non-company participants had an uneven picture of the implications, with their perception dominated by Yahoo, Google, and Microsoft’s China tribulations. The facts and emotions of
these cases, and of Shi Tao and Yahoo in particular, exerted substantial influence on the process itself, including driving views of and expectations for it.

Existing organizational paradigms and modes of engagement informed participants’ understanding, interactions with other participants, and response preferences. Views of the problem prevalence and urgency among the group varied by constituency, geographic focus, organizational identity, and other factors. Perhaps the most notable area of separation within the group lay between organizations with extensive exposure to new media technologies and those with limited relevant technical experience.

There was a strong general sense that the challenges were urgent and important (as well as interesting, which was significant), which is consistent with Pattberg’s model and expectations. Understanding of the problem prevalence by (and the potential contributions of) participating organizations ranged widely, from intimate experience to tangentially related knowledge. Some felt they had a good initial grasp of the suite of issues, while others felt they had a stake in progress, but were uncertain of the actual nature of the problem and their potential to address it. Although many participants likely anticipated the potential for technologically fueled disruptions to government and business, few would have expected the developments of the last couple years, whether Arab Spring or the Snowden revelations, and just how important the work they had undertaken would become.

**Problem Structure**

Pattberg’s model anticipates a complex problem structure, with regulatory challenges, interconnected interests and knowledge, and the resulting appeal of a suite of responses.
The operating consensus among participants was that government was the source of the problem as well as part of the solution, and that companies have a fundamental, direct, and near-term need to mitigate risks and harms. While there was early tension among groups, there was agreement that the business interests of the participating internet and communications companies are (or should be) largely aligned with human rights priorities. Most participants identified business as one of the most important aspects of the response, while about half felt government was among the most important, followed by non-governmental organizations. Nobody saw the issue as primarily national problem, underscoring the genuine tension between domestic and international law.

Participants exhibited a complementary combination of doubts about government’s capacity to regulate effectively and the uncertainty of government intervention at all, finding interesting common ground, and demonstrated the increasing focus of civil society on engaging and influencing business in public — and private. These views underscored the perceived interconnection of interests and complementarity of roles among business, government, and civil society. There were also shared interests within constituencies, such as the need among companies for unity and consistency as they navigate government demands (whether well or ill-intentioned) and the overarching priority to maintain user confidence in their medium. The problem structure became clearer during the process, as did the challenges to regulation and the interconnectedness of the problem, which only served to cement views around the value of participation in the manner the Pattberg’s model predicted.
Public Regulation Capacity

The specter of public regulation and views around its likelihood, efficacy, and relationships to other elements of the response suite were important considerations from organizations across constituencies and participant groups, but there was no common view on outcome preference or likelihood. The potential for legislation in the US was an important motivator for corporate response, while the relative absence of European legislative interest did not reinforce the pro-active commitment among European designers with a threat for inaction. Although the US companies were at least somewhat motivated by the potential for legislation, some members of civil society were participated due to their perception of the relatively low likelihood of near term US regulatory intervention.

Views on the likely effectiveness of a regulatory response were varied and substantially aligned with technology policy experience. The groups with more technology and communications experience tended to be more dubious of the capacity to effectively regulate the behavior of internet and communications companies because of government’s lack of understanding of the domain. They saw the difficulty in anticipating and adapting to change in technologies, user behaviors, business models, and government responses as forming tremendous barriers to legislation effectively advancing its goals, rather than creating unintended consequences.

The internet side of the industry had long resisted legislation or even engaging with policymakers, while formal regulation was quite familiar in telecommunications industry. Beyond their libertarian culture, technology companies feared that the regulations would limit their flexibility to respond to legal requests from foreign governments. The implications could be serious in their view, including forcing them to jeopardize their
personnel or assets, and to potentially withdraw from certain markets, ultimately leading to bad outcomes for both business and human rights.

Less technically oriented participants, largely non-governmental organizations and investors were familiar with the potential for powerful legislative responses to force meaningful change in organizations and create global standards. They resisted what to some felt like technological exceptionalism (i.e., that technology is inherently different from other domains), noting that other seemingly intractable challenges had been addressed through regulation. Some raised the Foreign Corrupt Practices Act in this light, noting the initial outcry of unfair competition by US companies along with the ultimate result of fostering complementary legislation in other nations and ultimately creating positive worldwide expectations for not engaging in corrupt practices.

While many non-governmental organizations favored a regulatory response, most felt it was unlikely in the near term and that development of a multi-stakeholder response would not decrease its likelihood. Many investors felt likewise, although they voiced some concerns over the potential for replacing legislation rather than informing it. Companies were reticent to say whether they thought that their participation would delay or undermine the move to legislation, although at least one non-participant company and some non-company participants assumed this was at least part of the calculus. The general consensus was that the Global Network Initiative was a potentially valuable part of the solution moving forward, whatever form it might take.

With the timeline and efficacy of the regulatory track uncertain, and potential complementarities among approaches, participants of all perspectives did not feel they could wait for another solution or that the Global Network would undermine a legal
response. Although perspectives among the group were markedly different, they converged largely in a manner that was consistent with the Model. The different legislative context in Europe and lack of implementation by European telecoms merits further examination, however, because the even lower likelihood of public regulation appears to have been a significant factor in the decision to abandon the effort.

**Perceived Sectoral Roles and Interconnectedness**

Specific views of the problem expressed by participants varied, but there was consistency around the overall theme of interconnectedness among interests, actors, and responses along with the value of communication, shared understanding, and collaboration among them. Whether viewed from the perspective of organizations or constituencies, deep connections among concerns and resources ran throughout the conversations.

Companies’ own priorities, knowledge, and capacity varied across internal units, reflecting different priorities and highlighting the challenge of reaching internal consensus on how to address issues related to privacy and expression online. When business development, for instance, pursues a strategy to serve new markets or engineering develops a new product, these offerings may be in tension with the policy body, which seeks to reduce risks associated with these new services. Effective solutions require both knowledge and participation from across these groups, but many companies have limited practices for addressing these relationships, especially when business moves so quickly and the urgency of revenue generation outweighs the reserve of risk mitigation. They also lacked external resources and knowledge that would help to understand or address the resulting situations. Arguably, the design and implementation stages underscored the
importance of these types of processes and exchanges by effectively requiring they be implemented, documented, and evaluated externally.

Participants from across constituencies reported developing deeper and more nuanced comprehension of the problems they sought to address by virtue of their interaction with others, from methods to domain knowledge, driven by the shared learning required in and facilitated by the design process. Most participants appreciated the roles and perspectives of the different constituencies, and the manner in which the assembly supported a more robust understanding, broader solution sets, and collaboration.

At the earliest stages, perceptions of the role and value of the diverse participants were varied across organizations and constituencies, but reached a threshold that was sufficient for organizational participation as the model anticipates. No implementer believed in pure self-regulatory approaches. Awareness of the interconnected and interdependent interests and opportunities for collaboration within and beyond the formal structures of the Global Network Initiative grew over time among participants. Perhaps notably, some participants observed that those who were less committed to learning and developed fewer organizational connections within the group (companies and non-companies), were less likely to implement. While perceptions of sectoral roles varied across organizations, awareness of the interconnectedness of interests was consistent with Pattberg’s model.

**Organizational Resources**

Pattberg’s organizational resource factor is unique to each participant, representing the interests, experience, and prioritization of their engagement with the issues and the policy
design and implementation. This interactive mix of organizational characteristics integrates and responds to the macro indicators, informing and describing the nature of their participation.

Participant organizations were diverse and the combination of potential for gains and Pattberg’s concept of organizational resources varied likewise, with relatively more similarities within the company and investor constituencies. Perceived gains for non-companies ranged from being fairly clear in the case of companies, to everything from a learning opportunity, to being in the room with decision-makers, to being a primary organizational focus. If interests were somewhat idiosyncratic, experience was less so, with at least some (if not many) collaborations across organizations and sectors being the norm. Prioritization was consistent in the sense that most reported it being high, but with resources in short supply, largely in the manner to which they were accustomed.

Despite some commonalities, the combination of those complex factors influenced individual organizations, constituencies, and the process in different ways. Examining the designers and non-participants, differences in organizational resources, in particular the components of interests and prioritization, were associated with the organizations that chose not to implement. Past experience was more complex, apparently not affecting the decision to participate, as the model would have predicted, but informing the organizational approach to engagement. Aside from that, however, the designer, implementer and non-participant decisions were consistent with the model.
Interest

The US-based implementing companies felt that they had a fair amount to gain from the Global Network Initiative’s design process and final product. The trigger events had left each of them facing scrutiny from the public, US Congress, and civil society, and the internal costs to dealing with these challenges were high and perceived to be mounting. Each company likely defined its interests uniquely, but given the significant investments and sacrifices each company made, they evidently felt that participation in the design and implementation phase would improve their position.

The equation was different for the European telcos, however, and they did not feel the same combination of opportunity for advancement and fear of the alternative. They faced little public or legislative pressure, had more developed (and thus overlapping with the proposed new accountability measures) corporate social responsibility regimes, financial limitations and associated personnel changes, and a fundamentally more constrained industry, due to technology infrastructure, regulation, and business structure. They saw gains to be made and explored them in earnest, but simply did not have the same pressure or freedom for action, and the perceived China focus of many in the group was less resonant in terms of market-focus.

Non-company participants saw opportunities for gains as well, from learning a new and exciting issue area, to addressing constituent interests, to supporting their overall mission and objectives and to influencing potential legislation. Some gains were more tightly aligned with organizational interests and views, while others took a more flexible approach to considering their participation and contributions. Investors would be able to address a burgeoning problem among their investments — the perception or reality that
they were complicit in abridging rights to privacy and free expression — and be more assured of the appearance and fact of responsible behavior on the part of those investments.

It bears mention that the non-governmental organizations that were designers (or implementers who later left, in the case of the Electronic Frontier Foundation) reported greater initial misgivings about the arrangements, including more tension with their broader interests, approaches, and constituencies. For these groups, the perceived risks of participation were simply greater, and the gains were more modest.

Interest is arguably among the more powerful variables for explaining individual decisions to design and implement a multi-stakeholder approach to governance. As such, its import is consistent with the model. It merits mention that perceptions were important, with participants’ expected gains or interests varying from the actual ones.

**Experience**

The group valued collaboration and saw that it could lead to change, but the their satisfaction with previous co-governance activities varied considerably. Most participants had collaborated with other organizations and many had worked across sectors to some extent, but only a fairly small number of non-governmental organizations and investors had extensive experience in multi-stakeholder settings. The past and concurrent work of this expert sub-group had a powerful influence on the process, bringing their knowledge, relationships, and the perspectives they had developed to bear on the design process. Also relevant is that those with greater multi-stakeholder experience did not also enjoy deep knowledge regarding online expression and privacy.
The less-experienced participants and the companies in particular, had extensive understanding of the intersection of technology and online expression and privacy, but much to learn regarding a formal multi-stakeholder effort. This mirror image of the co-regulatory experts created a mismatch in culture and focus that created serious challenges for the negotiation process. Companies’ saw themselves as providing valuable essential services to their users, including the US companies’ self-image of being progressive and supporting human rights. This contrasted with the non-companies’ multi-stakeholder experiences, including those in the Voluntary Principles, for instance, which involved working with extractive industries and governments with a different perspective and mode of engagement.

The difficulty that group faced in introducing an accountability regime into the voluntary principles further fed their distrust and cemented the non-company commitment to integrating accountability measures before launch. That focus increased tension to the group and implementation barriers for the companies, while reducing attention to shared learning on online expression and privacy and other group priorities.

Looking across the group, multi-stakeholder experience was less influential on the decision to participate than it was on organizations’ approaches to participation and their ultimate expectations regarding the shape of the initiative. For one designer, extensive past experience made implementation less appealing, while little past experience arguably made it less appealing for other designers, although it was not deciding factor for either. Given the different implications of experience, this variable was at least inconsistent with my adaptation of the model, which would have viewed experience as a driver for participation and as interacting positively with other factors of the model.
Prioritization

While according to surveys, prioritization was high and resource levels were normal for many participants, the work volume surprised many participants and every organization experienced limitations to their engagement arising from insufficient resources. Most non-companies had at least some financial deficit, while virtually every organization had insufficient person-power. These conditions resulted in sacrifices such as being unable to participate in meetings and limited involvement in remote activities, which sacrificed learning opportunities, interpersonal relationships, and efficacy.

Significant implementation implications (especially for companies) meant that senior organizational input and buy-in was important throughout the design process, underscoring the importance of the organizational role and reach of representatives. They needed to anticipate other internal organizational interests, to access additional expertise, and to communicate progress effectively across their organization. Due to the workload and resource constraints, people working anywhere but the smallest organizations had limited time to internally explain the issues, gain inputs, and establish a supportive constituency within their organization, which was a particular challenge within companies and more complex non-companies.

The dynamics of those internal interactions and the individual representatives proved to be a significant factor on a variety of fronts related to design and implementation. Company and non-company designers, in particular, faced challenges due to the intersection of individual roles and resource constraints with large and or complex organizational issues. Their efficacy depended largely on their representative’s role within the organization, going beyond their knowledge of the issues to their human network the
trust they enjoyed within their organization. This fed back to their effectiveness within the process, where some representatives could speak effectively on behalf of their organization, while others could not. Their capacity to do so influenced their standing and relationships within the group, and signaled the level of prioritization for their organization.

   Most participants did not anticipate the work level when they became involved, whether because they were unsure where the conversation would lead, its rapid onset, or simply underestimating the effort needed. Designers faced financial, personnel, and role resource limitations, which adversely affected their ability to develop ties with other participants, to feel and be effective in their efforts, to make their case internally, and ultimately contributed to their decision not to implement. Chief among them were the actual representative’s role within their organization and larger organizational changes and factors relating to prioritization, including the modest level of external impetus or support for seeking change.

   Clearly intertwined with Interest, prioritization offered a powerful way to understand both the ability of an organization to participate in the process, as well as the likely implications of that participation for their efficacy and overall return on that engagement. The model sees it as a pre-condition, but the recursive nature of prioritizing participation meant that the organization was more likely to find the process rewarding when it was prioritized, and thus more likely to implement.
New Models

Based on the problem and all the complexities of the situation, Pattberg’s model expects awareness of and openness to new models for governance that involve more pronounced roles for the private sector and civil society. There was widespread agreement that individual or industry attempts at self-regulation were insufficient, and recognition across constituencies of their growing roles. Perhaps because there was substantial experience within some members of the group on multi-stakeholder activities, there was also some concern around its appropriateness.

Ultimately, implementers, many designers, and non-participants recognized the potential of new models of governance to address the situation in a stable and ongoing way. Awareness was not associated with implementation, however, with at least one designer deciding not to implement and the subsequent departure of one implementer due to their concerns about multi-stakeholder governance. As Pattberg would predict, the availability of and some familiarity with new models were associated with participation. Notably, however, some combination of the relatively few models to draw upon and uneven knowledge and perceptions among participants had substantial implications for policy implementation as will be discussed in that section of this chapter.

Self-Governance

With the participants opting for a multi-stakeholder approach, it comes as little surprise that there were significant and widespread concerns relating to pure self-governance, doubts about public regulation (as noted), and almost universal support for the value of some form of collaborative approach among companies and non-companies to address
challenges to online privacy and expression. The companies began with a self-regulatory orientation and envisioned some form of unified and standards-based model without an accountability aspect, which seemed pragmatic to them. To the surprise of some, they fairly quickly shifted to a broader conversation, and, when pushed, to a true multi-stakeholder model.

There was clear and widespread recognition that self-regulatory measures would not have resulted in something as ambitious as the Global Network Initiative, and would have been hard pressed to earn external credibility. With public and legislative focus on US technology companies, the latter was essential to them for at minimum escaping the ire of the human rights community, and ideally even earning its support. European telcos operated in a generally more regulated industry and setting and arguably boasted a more substantial form of self-governed corporate social responsibility due to associated audits. They faced little public — but great financial — pressure and seemed to calculate that self-governance was a more reasonable approach to their situation. It bears mention that while they continued to act on their own, in some cases in accordance with Global Network Initiative guidelines and principles, they returned to industry self-regulation and the exploration of something more robust with the creation of the aforementioned Telecommunications Industry Dialogue.

This phenomenon underscores the industry preference for minimal regulation, with the designer companies open to but ultimately unwilling to commit to a multi-stakeholder arrangement, while the implementers were inclined to go further. The interviews and decisions were largely consistent with the model.
Co-Regulation

A multi-stakeholder approach may have been the last, best hope because of the dynamic and complex nature of the problem, the fact that self-regulation was insufficient for most participants, and regulation was viewed as unlikely, uncertain, or unhelpful in the near term. The multi-stakeholder approach was compelling not only for free expression and privacy, but for the internet, due to its diversity of perspective, potential for evolutionary responses, and inclusion of stakeholders.

The model was not without its detractors, however, with designers’ concerns arising from on past experience, and fears that companies would use them to cover up bad human rights records and to delay legislation. Some designers had serious doubts about multi-stakeholder models of governance. Others did not question the underlying logic of the multi-stakeholder approach so much as elements of the particular design, the challenge of its effective implementation, and concerns about its implications regarding a regulatory response.

In addition to the awareness and support for new models that Pattberg’s predicts, there was a good deal of openness among the participants, without substantial experience of knowledge of multi-stakeholder solutions. Further, with few immediately relevant examples of like approaches in the technology and communications domain, the results call into question the importance of widespread awareness of new models. Scattered, deeper knowledge among the group may be sufficient to settle on a multi-stakeholder approach, when it exists in conjunction with some blend of modest awareness that multi-stakeholder solutions do exist along with perceived deficits in the other governance options, which
collectively render the approach open to exploration. That blended model, rather than widespread embrace and awareness, describe the composition of this group.

**PARTICIPATION HYPOTHESES REVISITED**

**Hypotheses**

Among the most appealing elements of adapting Pattberg’s model to explore the formation and development of the Global Network Initiative was its design for interactivity among factors, which seems an essential acknowledgement of real-world complexity. As such, it does not suggest bright lines between factors, but threads that connect them. The idea is that they work in concert to influence behavior.

My broad hypothesis was that participation in the design process would be correlated with demand factors (macro-systemic change and problem structure), while implementation would be associated with supply factors (organizational resources and dynamics and new models). In other words, the context and shape of the problem would get potential participants into the room, while potential solutions and their interests and abilities in supporting them would determine whether or not they would stay.

On the demand side, I expected that the context, character, and urgency of the challenge resulting from macro-systemic change and the perceived problem structure, including limits to public regulation and interconnected interests, would make organizations more willing to explore private governance approaches. If the need felt sufficiently novel, important, and significant to them, it stood to reason that they would be interested in developing potential responses.
On the supply side, I hypothesized that a combination of perceived efficacy of new models to address governance gaps along with individual organization's ability to contribute to and derive benefit from a private governance solution would drive participation in the design process. While the need is a strong motivator, investment in the design process would be unlikely without a reasonable vision to address it that corresponds not only with organizational resources but benefits from using those resources.

**Findings**

Contrary to my expectations about the importance of demand factors for initial participation and supply factors informing policy implementation, the micro level factors of problem structure and, in particular, organizational resources and dynamics, had the greatest impact on organization decisions regarding participation. They were telling in both the decisions of the designer companies not to implement and the lack of involvement in the design process by non-participants. The supply factors did inform the overall landscape of possible approaches to private governance, but did not drive decisions, including on whether to implement, to the same degree as the micro-level interests. For their part, the macro factors were similar across the implementer and designer company groups, offering little explanatory power. Perhaps unsurprising due to the group's diversity, the macro factors had more variation among non-companies (particularly around new models), but seemed to be relatively modest influences in the organizational decision to participate in the design process.
Designers

Reviewing the designers, organizations that chose not to implement, we see that although the designer companies observed a range of reasons for their decision, the factors were overwhelmingly micro level. In the case of all three companies, the essential problem structure element was the lack of external pressure from the public or government to change their behavior. Absent this proverbial stick, the organizational resources and dynamics drove the decision. The apparently appealing carrot of addressing needs that at least two companies felt were insufficiently substantial to outweigh the resources necessary to implement.

It is essential to note, however, that the resource deficit actually suggests organizational dynamics not anticipated in the model. In the case of Vodafone and TeliaSonera, additional elements that played a significant role in this decision included financial pressures, existing governance and accountability structures that would be at least partially redundant, and key staff and managerial changes that made participation more difficult to explain and less appealing for the new management.

One of the greatest challenges Vodafone and TeliaSonera faced was with their internal communication during the policy design and implementation process. The challenge of conveying progress, explaining decisions, getting feedback, and ultimately achieving internal support across parts of the organization was registered by most of the participating organizations in one way or another (with the primary exceptions being small organizations and or those with senior management representation in the process). In light of the other organizational dynamics and in particular, the lack of external pressure for action, the limited ability for the small team leading participation in the design process to
communicate and ultimately convince other key organizational stakeholders was arguably the deciding factor in their decision to not implement.

In the case of the third company, Orange, the parties involved in the process were no longer with the company and did not respond to interview requests. Most observers felt, however, that Orange was simply following the other European telecommunications companies. Their withdrawal was consistent with the imbalance of external pressure and internal communications capacity seen in the other companies, with only one low to mid-level representative participating in the design process, albeit for a massive company.

The deciding influences for the human rights groups who chose not to implement were arguably oriented around micro factors. In the case of Amnesty, the drivers included resource issues, negative past organizational experiences and associated policy questions around multi-stakeholder approaches, and organizational dynamics ranging from the separate Amnesty USA and Amnesty International structures to the nature of their constituent relationships and standard approaches. For its part, Reporters Without Borders (RSF) appears to have been subject to at least some similar influences in addition to its close alignment with Amnesty.

Both organizations had little trust in companies in part due to unproductive meetings with them (they did also had limited trust in the more technology-oriented non-companies), and a deep commitment to creating an approach that guaranteed there would be no additional Shi Tao-type incidents. The combination of these two led them to take more extreme positions, have higher expectations, and be less satisfied with outcomes that were incomplete and based in part on trust for their further development. As advocacy organizations accustomed in part to ‘name and shame’ approaches to keep public pressure
on companies through mass mobilization, expectations around delaying or limiting public disclosures were particularly uncomfortable for these organizations (as with other implementers, it should be noted).

As with other non-companies, Amnesty and RSF also faced constraints on their participation, although the impact on them may have been greater. A series of staff changes meant that the senior, knowledgeable, experienced, socially embedded, Amnesty lead for the design process was promoted to a senior supervisory role early on before leaving the organization altogether in the lead up to the final decision. The replacement representative was knowledgeable regarding the issues and context, but was relatively inexperienced in the multi-stakeholder negotiation process and new to the organization.

**Non-Participants**
The representatives of non-participant companies I interviewed, one Europe-based telecom and an US-based internet company, had similarly micro motivations, with any modest external pressure mitigated by a mix of resource concern and potential risk (being associated with companies who had been publicly excoriated, challenging important markets such as China, changing organizational practice). Thus, again, while some of the demand factor conditions were arguably met, their influence was were modest with respect to issues related to organizational resources and dynamics.

The non-company’s I interviewed who did not participate in the design process were strongly influenced by organizational resources and dynamics. Privacy International’s modest size and focus on laws and policies left them largely supportive of the Global Network Initiative effort, albeit with some significant questions provoked through a
combination of uneven past experience with companies, minimal communication with the
designers, and an associated lack of trust. Ultimately, while it was generally consistent with
their mission, it was poorly aligned with their strategy.

**Reflections**

Even before the data were gathered and analyzed, it should have apparent in retrospect
that the interaction of such a complex system could not be faithfully reduced to a relatively
straightforward approach in which demand creates the opportunity and supply determines
the ultimate action. If I were to revisit my hypotheses, I would propose that the macro
factors create the opportunity for participation, while the micro factors are more
determinate in the result of that participation. That, however, would remain a dangerously
general assertion and would overstate the patterns observed within this sample.

To further improve the hypothesis, I would be more precise about the implications
for participation in the design phase versus those for each organization’s decision to
implement at the end of it. Some participants’ views of the four factors were sufficiently
consistent with the model’s expectations to participate in the design phase, but the second
decision of whether to implement the solution raised additional considerations. For
instance, had the process been opened to other organizations after design and before
implementation, it is possible that some non-participants would have been willing to
commit the resources necessary to implement, although they chose not to participate in the
design process.

This distinction recognizes that the combination of perceived organizational costs
and benefits for participating in the design process may be different from those associated
with implementing its solution. For a company, that first stage benefit might include learning and developing ties for all participants, while non-companies could grow or amend their public profile. These gains might be viewed as substantial, while the additional costs and risks of implementation, such as organizational complexities for companies and reputational risk for non-companies, may be viewed as exceeding any additional benefits of implementation.

**Policy Implementation Interpretation**

In addition to testing the factors Pattberg’s model associates with participation in a multi-stakeholder governance effort, I endeavored to explore how they interact with the development of the policy solution. Based on semi-structured interviews and surveys that included and extended beyond these factors, I identified five substantial venues that helped to shape and explain the policy outcome, along with post-implementation reflections on the implications of the process.

**Trust and Organizational Factors**

Although we might expect the policy development process to be a largely rational exercise, characteristics of the actual individuals and organizations involved and the interactions among them played prominent roles in determining the solution set. These dynamics interactively developed from a combination of trust and human and organizational factors.

Most participants reported substantial growth and ultimately high levels of trust within and among constituencies and between individuals Implementers, and felt that was important to ongoing participation and the ultimate design of the initiative. While the
particular observations varied across organizations, many observed a sort of ebb and flow, punctuated by process challenges and substantive issues, which both strained and built trust over time. This dynamic reflects that trust was important, but not dominant, nor blindly offered. Learning activities were important for building trust because they afforded the opportunity to share sensitive information with the group to better understand the issues.

Trust was neither universal nor without complexities. The greatest deficits of trust were among non-governmental organizations, manifest both within this diverse constituency and between some of its members and the companies. Notably, the designers reported lower levels of trust for other participants. Some participants felt that the lack of central organizer (there were just facilitators, but not a durable and authoritative organization) made the process of trust building more difficult. Somewhat paradoxically, the trust achieved among group members may have increased the barriers to entry for future participants, and highlights the importance of ensuring that trust is held institutionally, lest it be lost as participant organization representatives change over time.

The organizational representative to the design phase was an early decision and an important one on dimensions such as their role and level in the organization, formal and informal decision-making authority, and reach within the organization. Having senior leadership was essential to growing the zone of possible agreement, taking timely decisions, and being able to marshal internal support efficiently. Most designers were large or had a complex structure without senior representation to the process, limiting efficacy internally and within the process.
Those characteristics also mattered within the group alongside more personal attributes, with perceived individual commitment, expertise and behavior fostering mutual respect, allowing for shared learning, and supporting trust. Many participants cited the importance of individuals' knowledge of the issues, multi-stakeholder initiatives, or process facilitation as valuable resources. Knowledge imbalances presented both opportunities for learning while also fostering deference that blocked further exploration.

The high concentration of lawyers among the group, however, was a frustration for some. People periodically felt the dominance of that specialization unduly influenced the substance and the process of the design phase, for instance, by eliminating an important concept or phrase based on potentially distant implications. In terms of process, people felt that some conversations had barriers of language and style for non-lawyers, making participation difficult.

Organizational characteristics unrelated to the substance of the effort significantly affected the nature of participation and the policies developed. Genuine appreciation of the suite of challenges, although not necessarily a deep understanding of the issues, was common across participating organizations, with prioritization being particularly influential regarding selection of their representative and the implementation decision for companies. Significant internal organizational change during the design phase in terms of people, structure, and financial resources, were the most important factors for the decision not to implement for both designer companies and designer non-governmental organizations.

The designers experienced the most disruptive organizational changes, had non-senior representatives, had lower levels of trust, and were more isolated. The barrier for
the European Telecommunications companies could be anticipated based on the combined differences in country of origin, geography, organizational focus and culture, and merits further exploration. Amnesty and Reporters Without Borders limited integration and trust with the rest of the group, including within their own constituency, may also be telling. While geographically similar, they are culturally different both in the sense of including an international secretariat for Amnesty and the French origin and based of Reporters Without Borders. Their traditionally confrontational approaches with business may have represented a culture clash with the cross-sector collaboration represented by the Global Network Initiative, creating internal tension among their passionate staff and community.

Collectively, these five designers had specific conditions that explain their decision not to implement, but as the only organizations based outside the US to participate in a process seeking a global standard, their experience is especially important to understand. The 2007 decision of the group to not more aggressively globalize the composition of participant organizations for non-substantive reasons, primarily the associated challenges of time and geography logistics, cost, pace of negotiation, and on-boarding of new participants, may have had significant unintended consequences for the overall endeavor.

**Negotiations**

Differences among the groups were partially reflected in the starting point for the design phase, which saw three separate groups with two sets of draft principles come together and ultimately develop a new set of principles that laid out a more ambitious approach than any group had initially expected. The collective understanding of the approach needed to confront the challenges the companies faced and how best to create it evolved over the
course of the negotiations. Although there was not complete consensus on the problem the group faced at the time of the launch of the Global Network Initiative, there was at least substantial agreement.

The group confronted its members’ uneven and limited understanding of the technical, legal, practical and other elements of the challenges to online expression and privacy, as well as similar deficits for multi-stakeholder models for taking on such concerns. Recognizing this diversity and unevenness of knowledge along with expectations for continued change over time, there was agreement on the importance of instituting a strong commitment to learning in the midst of the design process.

This commitment was widely was viewed as beneficial because rather than proceeding directly to negotiations, it offered organizational representatives the opportunity to better understand the problem and to identify elements of the approach collaboratively, while also building trust through the act of sharing their own specialized (and sometimes sensitive) knowledge. Between the companies’ interest in ongoing participation or endorsement by non-governmental organizations (fueled in part by the public pressure they placed and maintained on companies) and widespread recognition of the dynamic and evolving nature of the challenge, the initially more narrow intent to draft a code of conduct became a more sustained, reflective, and responsive approach to addressing the challenge. Rather than a static code, it would be a living and ongoing effort fueled by continued learning.

At the same time, many felt the learning activities suffered from lackluster participation, whether due to disinterest or the oft-mentioned resource constraints and the difficult decisions on prioritization they provoked (e.g., responding to negotiation’s
urgency over learning’s importance). Many non-company participants felt unable to engage on the full range of issues, choosing the area in which they felt most effective or viewed as most important. It allowed the group to move forward even when there was not a clear, coherent, and shared understanding of the challenge. It also meant that certain organizations were able to anchor the negotiations in areas where there fewer participants had relevant knowledge or experience. The most significant implication was within the negotiation around the accountability regime, which occupied so much of the group’s focus, that it undermined the commitment to learning.

While the academic and investor constituencies seemed to be largely aligned in terms of their perspectives and engagement with the process, driven in part by severe time constraints for both groups, dynamics within the company and non-governmental organization constituencies were more fractious. Rather than leading to the exploration and adoption of more diverse solutions that incorporated a wider range of views, it permitted dominant clusters to advance their views disproportionately in some instances.

The two primary company groups were separated by continent, technology, differential legislative pressure, geographical focus, existing corporate social responsibility measures and economic status, which led to significant differences in their interests and lack of overall alignment. The US companies, for instance, were more focused on China, had greater operational flexibility because of their physically more-flexible infrastructure and less regulated business, were much less cost sensitive, and had no existing accountability regimes, each of which contrasted with the European telecommunications companies. This meant that some of the most salient elements of the solution set had vastly different implications for the two groups of companies (ultimately contributing to the telecoms
companies decision to not implement). This was further exacerbated by the greater attention paid by the non-company group to the US internet companies resulting from familiarity with them and their travails.

Participating non-governmental organizations were even more diverse, with differences in organizational structure, substantive and geographic focus, engagement approach, domain experience, and relationships, which made reaching consensus within that constituency slow and difficult. It also made gaining traction for more isolated voices and ideas more difficult so that potentially powerful areas of exploration such as technological interventions were insufficiently explored and leveraged.

In addition to widespread agreement over the insufficient nature of a self-governance approach and the importance of some sort of a structured and ongoing response to protect and advance online expression and privacy, elements of the policy approach were also impacted significantly by the particularities of the design process. Factors include the unevenness of issue understanding and multi-stakeholder experience, limited resources and attention, the commitment of some non-company actors to a particular model, and the imprecise agreement on root causes. Between deference to others, insufficient participation, pre-formed ideas, and broad goals, these factors combined to permit distortions in the model.

Operating within this context was the extensive non-company experience in other multi-stakeholder efforts. The Voluntary Principles had longstanding troubles agreeing on an accountability regime, questionable alignment across party interests, and a paucity of trust that led a subset to require accountability as a pre-condition for launch. Participation in this process of the founders of the Fair Labor Association made it the most salient model
for the Global Network Initiative, despite seemingly important differences in taking on labor issues, the affected population, shared interests among stakeholders, and the different role of government.

These imbalances were further supported by the individual style and approach — perceived as effective and at times extreme — of one participant who demonstrated aggressive negotiation tactics that participants felt advanced the endeavor but crossed the boundaries of constructive collaboration at times, becoming personal and nearly derailing the negotiation process. As we will see in the next section, the creation of the accountability regime that few expected is the most tangible output of the interaction of these factors with the negotiation. Despite these differences, for the most part, people felt there was consensus and negotiation in good faith in which all parties made reasonable compromises.

**Accountability**

The design phase occurred within a broader context of increased interest in multi-stakeholder approaches to governance, and parallel questions among stakeholders regarding their efficacy and critical structural elements. The painful process to develop an accountability regime for the Voluntary Principles strongly influenced the Global Network Initiative negotiation due to its high public profile, common participants, and timing. Years after its launch, the accountability regime was still under negotiation at the same time as the foundational elements of the GNI were being determined. Three powerful participants in both processes committed to not repeating the shortcomings of the Voluntary Principles in the GNI context.
The experience and narrative reinforced the concern among non-companies that they were being taken advantage of by companies and risking their credibility to collaborate. It introduced additional tension into the negotiations and translated into a commitment among numerous (non-company) participants that the Global Network Initiative would include a robust accountability regime upon its launch.

In addition to this non-company group’s commitment to accountability mechanisms, they were the participants with the greatest direct experience in formal multi-stakeholder initiatives, meaning they were better informed than the rest of the group and their perspectives were tightly aligned. Many of the non-companies deferred to their vision and strategy due their strong leadership and their own lack of experience, while the companies sought to resist and scope their ambition, soon realizing that including at least some agreement on accountability was a prerequisite for launch with the groups they sought.

The companies were initially resistant to the inclusion of an accountability regime, which was a completely new undertaking and anathema to the competitive US-based internet companies, and represented an expensive and uncomfortable overlap with the existing auditing process for the European telcos. At the same time, however, the companies had decided that they needed to emerge from the design phase with at least some participating human rights groups, while perhaps not the entire group, they wanted to have at least a few who had widespread legitimacy within the human rights community and publicly. The companies reasoned that technology or other niche-oriented non-company participants would not be sufficient to establish the credibility of the process, which made resistance to the accountability regime difficult.
The combination of substantial but incomplete agreement on the problems the group sought to confront, inconsistent understanding of how best to address those challenges, the aforementioned uneven distribution of multi-stakeholder and accountability experience, and direct interests of certain participants, contributed to the group developing a regime for third-party assessment that few would have predicted. While many came to feel that the agreement was important for the approach they had developed, some felt that it was overdone, onerous, impractical and or poorly suited to the domain it sought to impact.

**Decisions and Implications**

After a design and negotiation phase lasting approximately two years, concerns and objections had been raised, parties had threatened to withdraw, adjustments were made and the final documents were agreed. The time had come for participating organizations to decide whether to continue as signatories to and implementers of the Global Network Initiative or to end their participation. Some designers described their decision to implement as almost a foregone conclusion, others went through a more rigorous process of deliberation, and three companies and two human rights organizations made the decision to withdraw.

Although the European telcos departure was met roundly with regret due to the lost breadth of technology and geography, the only reported secondary implication for other participants was for France Telecom/Orange. Many participants had long felt it would follow the other companies, which had been more deeply engaged in the process. Their stated concerns centered on what they felt was a China-focus rather than a global one; an approach better suited to the business and technology of internet companies than the
telecommunications industry; and a costly, complex, and somewhat duplicative assurance process. The context in which they operated was of at least equal importance, however, as it occurred amidst substantial financial pressure and associated organizational change (including layoffs and reorganization). Further, unlike their American counterparts, there was limited public or regulatory pressure to address concerns regarding online privacy and expression.

The implications of Amnesty and Reporters Without Borders deciding not to implement were more widespread. The departure of respected organizations withdrawing suggested to some non-company organizations that perhaps their side had given too much ground to the companies. It shook the resolve of various non-companies, making their own determinations about participation more painstaking, but did not sway any other organizations in the end. Their departure also helped some organizations by the demonstrating the give-and-take nature of the negotiations, or by creating more of an imperative to continue to engage from the inside (as many had decided was important during the design phase).

**Other Outcomes**

At the time of the interviews, the Global Network Initiative remained in an early stage of a long and ambitious trajectory, limiting the expectations for definitive or measurable results. In the estimation of many participants, however, their work had already begun to bear fruit by enabling learning about the issues and fostering new, productive, and promising relationships among stakeholder organizations. The understanding and interactions had led to real work both inside and outside the context of the Global Network
Initiative, in such forms as a semi-formal online human rights network among companies and trusted human rights intermediaries, as well as collaborations among individual organizations. These relationships reflected the significant level of trust among participants, even as some recognized that there was a need for more sustained and systemic ways to support collaboration.

The parallel boom in information and communications technologies during the formation of the Global Network Initiative was important, helping people to feel that their efforts were relevant, and otherwise rewarding their efforts to learn about cutting edge social, technical, and business developments. These feelings continued to be reinforced by diverse related developments including the many issues that arose before, during, and after Arab Spring and the Snowden revelations. These globally significant developments placed the Global Network Initiative at the fore of some of the most pressing issues around democracy, technology, human rights, and governance, which has expanded its audience to the mainstream.

Many participants agreed that the policy model emerging from the design process was more far-reaching than they had expected in terms of its multi-pronged approach to engagement and the commitment to ongoing collaboration, but there remain numerous questions. Perhaps most prominently, these include the implications of the accountability regime for increasing, diversifying, and sustaining company participation; promoting improvements in company decision making; and the community’s investment in other programmatic activities.

Third party assessments are a high cost activity requiring significant corporate investment and the attention of the Global Network Initiative staff and board, while
yielding benefits for legitimacy, trust, and learning. Thus far the costs have been widely perceived as high relative the benefits, and improving the ratio will continue to be an important consideration for current and potential participants. At present, there is not consensus on that balance, although the group is exploring significant revisions to the regime.

While one non-company designer expressed lasting disappointment at the perceived gap between the initial promise and the ultimately limited ambition of the model, the other non-governmental organization designer has ongoing relationships with the community and was optimistic about the future. At least two of the company designers experienced significant related issues that received widespread negative public attention — and increased management interest. All three are now participating in the Telecommunications Industry Dialogue, a new industry association that is depending substantially on a facilitation and joint learning agreement the Global Network Initiative to advance and its work on free expression and privacy.

**Policy Hypothesis Revisited**

**Hypotheses**

In contrast to the evaluation of participation analysis, the approach to the policy implementation analysis was exploratory. I expected that the resulting policies would reflect substantive views on privacy and free expression online informed by organizational views relating to Pattberg’s factors of macro-systemic change, problem structure, organizational capacity, and new models. I hypothesized that micro-factors of problem structure and organizational resources would be more directly prominent, with arguably
‘rational’ elements of the problem set having a significant overlap with the negotiations process.

While the model did not predict the influence that organizational experience would have beyond increasing likelihood of participation, I predicted that organizations with previous co-regulatory experiences would be informed by past successes and lessons. With much to do, limited resources, and a range of organizational interests and abilities, I expected organizations to create distinct approaches that account for those resource limitations, with individual organizations preferring certain areas of process or substance depending on their expertise and interests.

**Findings**

Problem structure and organizational resources were significant drivers of the policy implementation process, with rational problem-solving balanced by more organic factors captured in part by organizational resources, along with other human and organizational factors, interpersonal trust, social processes, each representative’s position with the organization, and broader organizational factors. Experience was associated with not only with depth of participation, but in certain cases, also with particular positions, such as support for an accountability regime, and for the overall solution set.

Experience was telling, as the models with which there was greater familiarity, both positive and negative, dominated the conversation. With many participants familiar with the Fair Labor Association, that approach played a formative role in policy implementation, despite deep differences in the issues. One salient positive element from the approach that became a fundamental norm of the group was that the approach was not a ‘gotcha’ model,
in which non-companies sought to catch companies failing, but rather one in which they sought to help them succeed.

Alternatively, the Voluntary Principles for Security and Human Rights offered what was for many a negative example they sought to avoid. The contemporaneous experience of a small group of non-company participants in which they were unable to reach agreement on outside assessments cemented that group’s commitment to including outside accountability in the Global Network Initiative from the beginning. Their aspirations gained support from other non-company participants due to trust deficits and organizational resources, including time constraints, limited experience, and deference to experts, that combined for non-company consensus on the need for these largely unexpected yet substantial measures. For their part, companies were driven at least in part by fear that they would otherwise lose the participation of the human rights groups and agreed to a regime that would eventually permit third parties to assess and report on their compliance with the principles.

It bears note that in addition to the importance of process familiarity (i.e., with multi-stakeholder initiatives), was the participant experience in the substantive domains of privacy, free expression, and internet and communications technologies. Having the technical understanding in short supply and not well-distributed across constituencies had implications for how the problems were viewed and the solution sets that were developed, limiting both collective understanding and the range of potential approaches.

As predicted, organizations took on a variety of strategies to manage their workload, with some deferring to others in their constituency or experts in the group, and others choosing to focus on some particular aspect of the work. What I did not predict was the
nature and the gravity of the implications of those strategies. Some felt that their inability to participate as fully as others undermined their efficacy, including at least one non-company designer. Among the most widespread and arguably negative implications of the time-poverty arising from the combination of senior participants and high demands were lost opportunities for learning and the default engagement in areas of existing knowledge, rather than developing new ones.

Although minimally understood, a related and likewise profound implication of organizations’ moderated participation was the investment each representative was able to make in communicating progress and developing support within their home organization. In this realm, participants across constituencies were most like each other in that many faced doubt or criticism about whether they had advocated effectively for their organizational interests. Companies and human rights groups alike had this reaction to their representatives.

The resulting tension created additional demands for internal communication, slowed the negotiation process (for internal consultations), and made compromise harder due to fears about the internal suspicions. The designers faced greater challenges inside their organizations than the implementers. As previously noted, internal organizational fear about an imbalance of commitments was also important during the period of decision regarding policy implementation. In making the case for participation internally, some representatives used the withdrawal of designers to demonstrate that with both companies and non-companies refusing to implement, the level of compromise was demonstrably high and fair, with the pain distributed evenly across groups.
Reflections

Identifying the factors that are most likely to be relevant seems to be relatively straightforward, but predicting the ways human and organizational dynamics will be manifest across the group and the impact they will have on each particular organization is actually complicated. It is difficult to understate the importance of the aspects of social and organizational context that were so influential in determining the outcome. Revisiting the hypotheses, I would think more deeply about the implications of the hypotheses for the range of participating organizations. The goal would be to more fully incorporate the organizational particulars in my thinking and to develop better elaborated expectations about how different organizational characteristics will interact with Pattberg’s model to explain what we expect to see.

Reconsidering the Model and Approach

The broad trends that Pattberg proposes were largely useful and effective in understanding participation and implementation. However, they may be necessary conditions but not necessarily sufficient ones. Indeed, activation of that potential energy may require some combination of other ingredients that elevate and frame the constellation of problem urgency, problem structure, and organizational resources to the point where organizations take action. While there was awareness of these challenges, the effort to address them collectively seems unlikely to have occurred without the impetus provided by the concentration of China events and associated public and congressional pressure.

Pattberg’s model with my adaptations provided a useful overall framework for considering participation and offering context for policy implementation. Perhaps the
largest open questions were around my application of the model to predict organizational participation within a private-governance effort, rather than the rise of such efforts, and its application at the intersections of internet and communications technology and privacy and freedom of expression. Both turned out to be largely non-issues in light of the framework’s overall utility.

The interaction among factors that makes the model so appealing, however, also gives rise to the potential for overlap among the factors. That combined with the first-time use of the indicators (i.e., factor sub-components) that I created, led to some muddiness in the analysis. Problem prevalence and urgency, for instance, may be closer to problem structure than macro trends and interacts with organizational resources and dynamics. In large measure, however, the indicators worked well.

In a further stretch from the original model’s intended purpose, I considered how the factors for emergent private-governance that Pattberg proposed might offer insight into the policy development and implementation process. I sought to complement these with other influences identified in my data. This was a worthwhile exploration, with some factors lending substantial insight and others less and collectively capturing most of the influences that were not primarily related to the negotiation and design process itself.

Of the numerous ways I could have improved implementation of the model and the research process overall, the most significant issues were anticipated. I made a conscious decision to apply the framework to the policy design and implementation process, rather than seeking an existing model. My approach sacrificed the precision that the use of a scoped framework-based approach would have provided. Alternatively, the inductive
elements of the approach offered more open learning and the possibility of further expanding Pattberg’s model.

In terms of the sample, I was fortunate to achieve a very high level of participation among organizations involved in the process, including designers and implementers. My difficulty in identifying organizations that did not participate in the process, but which were knowledgeable about the issues and process severely limited my understanding of that perspective. In retrospect, I would have considered adding a light survey-based approach to the interviews aimed at complementing the deeper insights with wider ones gleaned from a larger sample of non-participants.

Likewise anticipated was the gap in time between the period of focus for the study and the actual interviews, which could have been conducted in the midst of the process or immediately after implementation. While appealing, the sensitivity to these issues at the time (since subsided significantly) and my additional role and responsibilities as a participant in the process would have made it unappealing for some organizations and potentially skewed the remarks of others. Thinking ahead, one potentially productive approach would be to integrate the data gathering into the process itself, for instance, offering a periodic survey on issues, trust, progress, and other relevant topics. The results could be used to adjust mid-course, shared with the group, and or embargoed for later release.

**Areas for Further Investigation**

This operationalization of Pattberg’s model and extension to an edge case merits a closer examination of how some of the more unique aspects of the online privacy and expression
domain interact with the model’s factors and indicators. In terms of macro-systemic change, much of the world can be described as globalized, in particular technology and communications. It bears exploration into whether this intersection of technology, business, and human rights offers a glimpse into the future of other governance gaps, or whether it represents an extreme case.

While the time or trend dimension may be implicit in macro-systemic change and well represented in globalization, the presence of time in problem prevalence seems to also have a different shape. Perceived prominence may be achieved by a steady frequency over time, or by a dense clustering of concerning events, as observed with the three China narratives that were formative to the creation of the Global Network Initiative. It would be an overstatement to say that the US Congressional hearings started the conversation, but the ongoing legislative pressure was a powerful motivating force for US companies, while European companies felt no such urgency. A related question is whether a trend — or a cluster — is necessary or sufficient to create a policy window. We might also explore the implications of each motivation for policy design and implementation, e.g., whether its response addresses those particular cases, the dominant problem, the anticipated problem, and so on.

The implications of an edge case are likewise relevant with respect to problem structure, and whether this space represents the shape of things to come or is an outlier. In terms of roles and interconnectedness, the affirmatively and highly networked nature of internet technologies and communications, the rise of social media, and the decentralization of the media ecosystem create a complex and interconnected environment. It may drive attention to companies in the sector, but it can also be lost in the
chaos. Ultimately, it is unclear whether they would need to respond, and if so, what would be sufficient, including the nature of any engagement with civil society.

There may also be relevant differences among companies, whether based on attributes such as age, suite of services, culture, size, geographic origin, or brand identity. For instance, despite a series of high profile actions that violated expectations about user privacy, AT&T has largely eluded any significant action without notable consequences. We may ask first about technology and communications companies, but as more companies engage in the social media marketplace, and they depend increasingly upon technology and data as per Marc Andreessen’s (2011) oft-repeated observation that ‘software is eating the world.’ There is a strong argument that the implications will be widespread.

We have seen the outsize importance of organizational resources and dynamics, so future research should be both expanded and informed by theory to introduce greater precision, clarity, and rigor. Among the indicators, experience was less clearly relevant to participation, but had much more, albeit varied, impact on implementation and developing a better understanding what that means in practice and how best to account for diverse levels and types of experience is an area for potentially large gains for similar processes.

In the realm of traditional challenges for organizational resources was that most participants reported both insufficient prioritization and associated resources, and also reported the normal level of resources. This merits greater attention due to observed impacts on the decision to implement, form and degree of participation, organizational efficacy, access to learning opportunities, and so on.

While sufficient funding levels will vary across organizations, it is worth exploring issues such as what participation actually cost in time and money, versus what they
preferred to invest and how participation was enabled or funded, whether financial or staffing support was sought, and, if so, under which conditions it was granted. I would posit that philanthropy and other mechanisms available to non-profits and academics take substantial effort and start up time. They may effectively require existing relationships (and more) to actually make them possible, and any funds may entail conditions that are ill suited to this type of process. Companies and investors have their own similar constraints, which had substantial bearing on the process, but those are ostensibly more closely aligned with internal prioritization of the activity. With those in mind, I would propose earlier and deeper attention to the needs to facilitate and participate in private governance processes, followed by exploration of associated funding and support mechanisms that would be better coordinated and more strategic than each organization simply mustering what it could.

Other aspects of organizational resources also call for additional attention and action. Among them, exploring the implications of organizational size and structure, any relevant existing solutions to these issues (such as the European audits, which risked competition with the proposed accountability regime) the particular role and social capital of their representative(s) to the process, and the capacity and resources to communicate about the process internally and otherwise engage the relevant (often diverse) parts of their organization successfully. One effective approach paired a more senior and established representative, with a more junior one, which achieved the insider benefits while recognizing the organizational costs. The commonality of internal organizational challenges across constituencies and the importance to the process to interfacing with home organizations suggests the development of shared approaches to support these
dialogues, whether written materials, media objects, or a traveling roadshow that aims to build internal awareness and support while eliciting feedback within participants.

Unevenness among the group both in the context of experience and awareness of new models did not influence participation, but was important for implementation. There were attempts to share those experiences, but they appeared insufficient to address this imbalance and leverage the available knowledge more effectively. The phenomenon that spanned constituencies and had a significant impact on the overall approach the Global Network Initiative took, and underscores the importance of more commitment to understanding and evaluating relevant models. Closely related are parallel areas of knowledge in internet and communications technologies, and freedom of expression and privacy. With these widespread but ill-distributed resources, the facilitators were challenged to create a more shared knowledge base.

The implications are wide ranging; they can be of parties disengaging where they feel less prepared, small groups dominating the decisions, undermining trust due to inability to evaluate claims, and so on. Alternatively, meaningfully sharing that knowledge was demonstrated to be a powerful way to engage others, diversify the conversation, and to develop trust among participants.

These examples illustrate some ways in which a diverse group of stakeholders represent both a resource and a challenge. That diversity of knowledge and distinct constituencies were valuable in the policy design negotiations because they avoided a two pole set of views and introduced a multi-dimensional suite of options. These benefits underscore the priority for facilitators.
While diversity was largely valued, it was also sacrificed when the group opted to continue with primarily US based organizations without participants from developing nations. Based on resource constraints, the decision was to continue with the current group and to open to a wider range of participants after launch. That sacrificed the inclusion of a wider range of experiences in the process, and may have further isolated the handful of foreign organizations that were participating by reifying the US oriented culture of the Global Network Initiative.

Beyond what the framework suggested, there were a host of lessons and questions that emerged about the design and implementation efforts including social, organizational, and process dynamics that interactively shaped the result. We have highlighted many considerations around trust and trust building and while it seems reasonable to extend the importance to other domains of governance challenges, it bears note that there may be particular importance in this space due to its dynamic and unpredictable nature.

Early on, the group established a formative shared expectation that due to the ever-changing nature of technology, business models, uses, and government responses, it would seek a non-static solution and view the need to adjust the response as an ongoing challenge. This was an important decision in terms of committing the Global Network Initiative to echo the tech space, which acknowledges the need to continually change value propositions alongside user needs and expectations.

Another important early decision was to create a fresh draft of the core organizational principles, rather than draw upon either of the existing drafts. Those statements were helpful in staking out different perspectives and approaches, but suffered from being created in an environment with less diverse perspectives. The new draft served
to symbolically underscore the equality among participants and the novelty of the shared journey.

Notably, this in-built uncertainty with the approach (paralleling future iterations of the challenge at hand) made negotiations and decisions more complex. It amplified the perceived risks and drove (perhaps undue) attention to legal provisions and robust accountability measures, all of which underscore the importance of trust and the related value of formal and informal facilitation.

The relationships built and knowledge developed during the extended design and negotiation process had unintended externalities that may be as important as the formal agreements, but may have been hard to achieve by design. These include the informal network of participants and other organizations that works together to help human rights activists navigate companies to protect activists, informal consultation and advance warning on very sensitive issues, and other sub-group collaborations. Setting out to create these resources would have been unreasonable, but giving them the environment in which to develop massively increases the value of the shared investment.

As a participant observer, I would say that despite a substantial commitment to learning, there was never a genuine root cause analysis, and the interviews and surveys did not find consensus about the extent of the group’s shared understanding of the challenge. The implications of this observation are unclear, however. Not expending energy to reach the core of the issue might have avoided unnecessary argument and investment of time. Alternatively, it could have been leveraged to foster greater learning and trust building, and created the opportunity for more creative approaches. With this in mind, it is important for
the group and the facilitators to develop awareness and reflect honestly on the potential costs and benefits of each approach and to plan accordingly.

**DEVELOPMENTS AND IMPLICATIONS**

Change has not been in short supply since this improbable coalition came together to create the Global Network Initiative. The developments underscore the tremendous challenges the GNI confronts as well as the potential for impact it has helped to create. We have seen the Arab Spring, in which entrenched leaders and ordinary citizens alike came to better understand the power of internet technologies to promote social change. The response of the state in the Edward Snowden revelations regarding the extensive digital surveillance activities of US National Security Agency and other democratic nations’ security apparatuses has also revealed the unique potential dangers of internet technologies in the hands of the powerful.

Amidst it all, have been internet and communications companies. Private sector operators have made questionable decisions and found themselves in difficult circumstances such as the consequences of Vodafone’s participation in sending mass texts on behalf of the Mubarak regime and ultimately shutting its network down at the Mubarak government’s request during the Arab Spring (Beard 2013). TeliaSonera’s support of state surveillance in former Soviet republics (Gallagher 2012), and the involvement of Microsoft, Google, Yahoo, Facebook, PalTalk, YouTube, Skype, AOL and Apple with the National Security Agency through PRISM and other mysteriously named programs (Gellman and Poitras 2013) underscore that the risks are not limited to times of crisis. In addition to ostensibly acceding to government requests, companies have also been the victims of the...
NSA and other government programs to access user information (Ackerman and Ball 2014). There are equally troubling trends for online expression in non-Western democracies like Turkey (Pen International 2014), India (Morgan and Sullivan 2012), and Russia.

To their credit (and GNI’s), many of these companies have also pushed back against the state and taken a range of steps that support privacy and freedom of expression. Their actions have been taken both collaboratively and individually, with increasing public awareness and associated value placed on rights-protecting behavior. As noted, a group of eight telecoms operators and vendors launched the Telecommunications Industry Dialogue, while nine leading US technology companies joined to lobby the government for surveillance reform (Wyatt and Miller 2013), with both efforts led by Global Network Initiative participants. Facebook, LinkedIn, Procera, and numerous non-companies have joined the GNI. A large group of companies and civic organizations launched the Digital Due Process coalition in 2010 to modernize the 1986 Electronic Communications Privacy Act to reflect the Internet Age (Digital Due Process nd).

Stand-alone corporate efforts have been important in their own right and in terms of their impact on other companies. In an effort to shed light on government behavior regarding online expression and privacy, Google launched a series of transparency reports in 2010 (Drummond 2010) and is now in its tenth data release. Their data offers information on government requests to access user data, including a 120% increase over the past four years according (Infantino 2013), and to remove content, in which the first half of 2013 increased by 68% over the second half of 2012 (Salgado 2014). The reports also share information about access to Google services as an indicator of technical network
interference and email encryption to suggest vulnerability to surveillance. Finally, they share copyright-based content removal requests, which can be related to free expression.

Starting with Twitter in 2012, over 30 companies (including Global Network Initiative participants) now offer some form of transparency reporting. Vodafone released the most comprehensive document (Vodafone Group plc.), which broadened the concerns from the Snowden leaks by revealing the existence of direct government networks surveillance in the 29 countries in which Vodafone operates (Garside 2014). Looking ahead, this relates to the increase of public activity occurring in privately operated spaces, including the vast majority of the internet, which is another trend that has accelerated since Pattberg first offered his model and suggests this domain may be a leading indicator for others. There is still more to do to address the unknowns around enforcement opacity (who did what and why) that are exacerbated by firms who do not make clear what was their choice versus what was a public request, whether because they choose not to or are legally prohibited from doing so.

Beyond advocacy and transparency, companies have implemented new technical measures to support privacy and thwart government surveillance. Companies such as Google, Yahoo, and Microsoft have introduced HTTPS or Secure Sockets Layer protections by default to web and mail traffic, support for Perfect Forward Secrecy, and efforts to encrypt traffic between servers and providers that the NSA had exploited (Stamos 2014). Apple’s newest iPhone operating system closed security flaws and turned on encryption by default, making it less vulnerable to both hackers and law enforcement (Poulsen 2014), and suggesting improved attention to privacy and security issues. We do not yet know how the
market will respond, whether it will reward companies for these behaviors or punish others for their inattention, in a way that makes them sustainable.

These tensions have further provoked anti-US sentiment and given additional energy to broader questions of internet governance involving the International Corporation for Assigned Names and Numbers (ICANN), some nations’ desire for greater internet control, and the International Telecommunications Union mandate for the digital age. These concerns arguably came to a head at the 2012 World Conference on International Telecommunications in Dubai (WCIT), where many felt that the multi-stakeholder model of internet governance was dueling against a United Nations / ITU approach offering greater government control (Dourado 2012). The US Congress, European Parliament (Farivar 2012), companies, civil society and others came out in opposition to changes, while countries with well-documented efforts to control the internet like Russia, China, Saudi Arabia, and Egypt proposed increased national controls (Downes 2012).

Nearly half the delegates did not sign on to the proposed treaty, falling far short of intended consensus, although the ITU did make some headway into the internet governance space. According to Siy 2012), observers variously called it “a bloody nose for the ITU, a victory for a free Internet, a collapse of talks due to hypersensitivity by the US and others, or an avoidable backwards step in promoting good governance.” The level of activity and attention to WCIT, continued energy (Llanso and Shears 2014) at the Internet Governance Forum (Farrell 2014), and the recent launch of the NETmundial Initiative to create principles for internet governance by ICANN and the World Economic Forum, however, underscore the contentious nature of these issues (Malcolm 2014), the
uncertainty about how and who should play a role in regulating the space, and the
relevance of the Global Network Initiative and other private governance mechanisms.

In addition to sharing its principles and implementation guidelines, raising awareness
on the issues, engaging policymakers, and creating a forum for organizations and their
representatives, the Global Network Initiative has continued its process of
institutionalization. Since its launch, it has addressed the outstanding issues around
accountability, overseen the first complete round of assessments, and initiated the second
generation of organizational and board leadership. The implications of many of the issues
raised in this research remain uncertain. Is the group too US centric or can it engage
meaningfully at a global level? Will it be able to branch out more broadly to include
telecommunications companies? Will it gain additional company participants or can it be
effective with a limited number of high impact companies? Will it grow its staff beyond the
bare minimum? Will it find financial sustainability? How will the group’s activities scale as
the number of technology users and uses increases?

Other issues are somewhat clearer, such as the power of the human network and
organizational relationships created under its auspices, which has led to progress. There
has been notable commitment to continue work on online privacy and expression by both
organizations that implemented and those that only participated in the design process. The
group also is demonstrating its commitment to learning from its own experiences and
events in the field by running regularly learning forums and initiating a process for
adjusting its accountability regime.

With the continued increases in technology penetration and the addition and
interconnection of new technologies (Lakhani and Iansiti 2014) and the data that
accompanies them, will also come new questions and challenges for companies, civil society, and government, and organizations like the GNI will likely grow in relevance if they can address existential challenges. Policymaking, company processes, technology design, and user behavior will continue to lag the pace of change, creating risks for human rights and sacrificing opportunities to advance expression and privacy alongside other fundamental human needs. There was widespread consensus among all participants within the Global Network Initiative process of the value of diverse perspectives, learning, and exchanges across stakeholders. As suggested above, the implementation current model has great room for improvement, but its core concepts remain promising.

The insights and questions raised in this research can help to inform the creation and design of such endeavors, fostering improvements in the multi-stakeholder approaches to addressing the challenges and opportunities afforded by internet and communications technologies. As a leading edge rather than an edge case, these insights will be relevant to a wider suite of issues that exist in domains characterized by the intersection of public-private, governance gaps, and the dynamic nature of the challenge they face.
**SEMI-STRUCTURED INTERVIEW PROTOCOL**

Thank you for agreeing to participate in this interview. While it will be on the record and attributed to you, we invite you to determine (at the time or promptly after our conversation) whether there are any elements of the conversation that you wish to be shared without personal attribution, institutional attribution, entirely off-the-record, or in some other fashion that otherwise limits any potential risk or impediment to your participation. You may choose not to answer any question and may stop the conversation at any time.

1. Why was your organization initially interested in participating in the development of GNI and how did it get involved initially? How did your organization reach its decision to participate, who was involved, what was the process like? How influential were external vs. internal pressures in the decision?

2. How did your organization perceive the situation that the group (which became GNI) was confronting at that time? Were there particular aspects/manifestations of the issues that drove your participation? What role did you anticipate for GNI initially? How significant a priority was it? How was that evident?

3. What were your organizational expectations of the kind of approaches that would be desirable, efficacious, and acceptable at the beginning of the separate processes? Were there initial concerns around your organization’s participation, the process, outside actors, or otherwise?

4. What experience does your organization have with sectoral associations, multi-stakeholder initiatives, or other collaborative approaches, and how did these affect your participation? What were the potential benefits to involving other sectors?
5. How well prepared and resourced was your organization in terms of its capacity to participate effectively in the process, and what were the implications? Who was involved and how did that influence your participation? How did you address any challenges to your organization’s participation? [Skip for observers, facilitators]

6. How did your organization expect to benefit from implementation in fall 2008? How was the final decision to implement made? Who was involved and how difficult was it? Would not continuing with GNI have represented a significant “cost”? [Skip for observers, facilitators, and non-participants; adjust last phrase for non-ratifiers to “Did not implementing with GNI represent a significant ‘cost’”?]

7. How did your organization’s perception of the problem – and the approach it called for – change over time, both when the three constituent streams combined initially and at implementation? What factors informed those changes? [Skip for non-participants]

8. What was your organization most hopeful about at implementation? Most concerned about? Have these issues been addressed since then, or do you feel they will be over time? [Skip for non-participants]

9. What was your organization’s reaction when different sectors came together to collaborate? What were your organization’s perceptions of the other participants’ goals, approach, capacity for collaboration, and utility as long-term partners? How did having multiple sectors represented affect the process and its outcome? [Skip last for non-participants]
10. How much trust was there among participants at both an individual and organizational level? Within constituencies? How was it developed and manifest, and what impact did that have on the process? [Skip for non-participants]

11. To what extent was there – or did the participating organizations develop (or seek to) – a shared understanding of the problem(s)? What impact did that have? Were there common views on possible solutions? What impact did that have? [Skip for non-participants]

12. How did the final approach differ from what your organization expected at the outset? Which elements are based on other sources and which are more innovative? Is the approach is fairly specific to the ICT, privacy and expression space or where else might it be relevant? [Skip for non-participants]

13. How would your organization describe the relationship between the GNI and law/regulation?

14. Which factors during the negotiating process had the greatest impact on the GNI model, and why? What were the most disconcerting or frustrating elements of the process? The most heartening or pleasantly surprising? [Skip for non-participants]

15. Do you feel that participating organizations tended to compromise, to hold their ground, or both? Which organization/constituency did what? How much influence do you feel your organization had in the process as compared to other organizations? What was the source of any difference? [Skip for non-participants, skip last questions for facilitator and observer]
16. What were the greatest lessons you learned in the process, whether about the issues, about MSIs, other participants, negotiations, or otherwise? [Skip for non-participants]

17. How did internal factors within your organization affect its participation, from organizational structure and culture, to specific individuals’ interest or departure, to other trends or development? How did outside factors (legislative, government actions, etc.) influence the process generally, and your organization’s participation specifically? [Skip for observers, facilitators, non-participants]

18. Beyond any commitments resulting from the GNI, what impact has the process had on your organization? What are the implications for its participation in and approach to future collaborations? [Skip for non-participants]

19. How might the results of this process compare to those of a single sector or single organization approach? How did the multi-stakeholder approach affect the balance of power? Who’s interests does it protect or advance? [Skip for non-participants]

20. Is there anything else that you would like to share that we have not yet discussed?
Online Interviewee Survey and Informed Consent

Informed Consent Form and Questions

Northeastern University, Law and Public Policy Program
Colin M. Macalay, researcher and doctoral candidate
Thomas Koenig, principal investigator and dissertation advisor

An Improbable Coalition: How Businesses, Non-Governmental Organizations, Investors and Academics Formed the Global Network Initiative to Promote Privacy and Free Expression Online

Why am I being asked to take part in this research study? You and/or your organization were invited (or welcome) to participate in some or all aspects of the process which led to the creation of the Global Network Initiative (GNI). You must be at least 18 years old to be in this research project.

Why are you doing this research study? The purpose of this study is to better understand the factors that motivated organizations to create and participate in the GNI and the forces that shaped the GNI’s approach. Those insights may be valuable to our understanding of multi-stakeholder initiatives, new models for governance, and the protection of human rights.

What will I be asked to do? If you decide to take part in this study, we will ask you to respond to a brief survey and to participate in a semi-structured interview in which you discuss your views on the formation of the GNI. We may ask for modest follow-up clarifications after the interview.

We prefer to record the interview for the sake of accuracy, but if you prefer that it not be recorded, please mark the statement below.

☐ You are welcome to record my interview.
☐ I do not wish my interview to be recorded.
☐ I would like to discuss this in person.

Where will this take place and how much of my time will it take?

1. The online survey will take about 15 minutes and is located immediately following this informed consent document.

2. You will also be interviewed at a mutually agreed upon time and location (or medium) for one-two hours. You may be contacted via phone or email for clarification or additional questions, which you are free to answer or ignore, but will take less than one hour.

Will there be any risk or discomfort to me? We anticipate no significant risk, but we wish to create an environment conducive to safe and forthcoming conversation. To that end, with your explicit permission, we hope you will consider speaking on the record about your experiences relating to GNI, meaning that your name will be attributed to your comments. If so, while the interview will be on the record and attributed to you, we invite you to determine (at the time or subsequently, but promptly) whether there are elements of the conversation that you wish to be shared without personal attribution, institutional attribution, entirely off-the-record, or in some other fashion that limits potential risk.

You may also specify that your name not be attributed to your comments and that your participation be handled in a confidential manner.

Surveys will only be reported by sector or other characteristic that renders respondents and their organizations not clearly identifiable.

Will I benefit by being in this research? There are no direct benefits to you for participating in the study. However, it is hoped that your contribution may improve the quality of this research, thus better informing the community of people and institutions who work on issues of global governance challenges, online privacy and expression.

Who will see the information about me? Only the researchers on this study will have access to any recordings or notes of your conversation. These will be stored securely and will be destroyed following transcription and analysis. In rare instances, people authorized by Northeastern University may request to see research information about you and others in this study to be sure that the research is done properly.

How will my participation be described? Our goal is for you to be as forthcoming as possible, and we are happy to organize the interview to maximize your comfort and minimize risk. If you are willing to be quoted, for instance, the researcher will verify in advance of publication any statement that is attributed to you, and offer you the opportunity to contextualize, clarify, or otherwise adjust (or even retract) your words.

In terms of acknowledging your participation please let us know the following (question and text where applicable):

- I am willing to have my participation in the research project be shared. My name, title, and affiliation at the time of the GNI's creation process is in the box below.

- Please do not acknowledge my participation.

In terms of your comments to the interviewer (not the short survey), please let us know how to attribute them. Note: you may combine and refine these preferences in the course of the interview, or in subsequent review of your statements.

- I am willing to speak ON the record (except where otherwise noted).
- I prefer to speak OFF the record only, meaning my comments will not be included in any reports or publications.
- I prefer to speak on background or with otherwise limited attribution. By that I mean:

Can I stop my participation in this study? Your participation in this research is completely voluntary and you can refuse to answer any question. Even if you begin the study, you may quit at any time.

Who can I contact if I have questions or problems? Colin MacKay can be reached at 617.821.3683 or cmacjlay@cyber.law.harvard.edu. His advisor is Thomas Koenig and he can be reached at t.koenig@neu.edu.

Who can I contact about my rights as a participant? You may contact Nan C. Regina, Director, Human Subject Research Protection, 960 Renaissance Park, Northeastern University Boston, MA, 02115, or via phone: 617.373.4588 or email: irb@neu.edu. You may call anonymously if you wish.

If you have any questions regarding electronic privacy, please feel free to contact Mark Narzane, IT Security Analyst via phone at 617-373-7901, or via email at privacy@neu.edu.

Will I be paid for my participation? No.

Please submit the consent form now with your recording and interview preferences, although we can
What level of priority were these issues given within your organization?

- Low
- Some
- Average
- Substantial
- High

How much previous experience did your organization have with similar efforts, such as sectoral associations, multi-stakeholder initiatives, or other relevant collaborative approaches?

- Little
- Some
- Average
- Substantial
- Extensive

How well resourced was your organization in terms of its capacity to participate effectively in the process?

- Poorly
- Somewhat
- Average
- Substantially
- Extensively

What did your organization initially believe were the most important sectors for addressing online expression and privacy problems? (Choose two)

- Business
- Government
- Civil society
- International bodies
- Academia
- Users
- Other

How surprised was your organization when different sectors came together to collaborate on these issues?

- Not at all
- Somewhat
- No reaction / other
- Substantially
- Very

How would you describe your organization's perception of the challenges/needs that motivated this group to collaborate? (Recognizing a much longer and more complete answer is possible, please keep it to a sentence or so.)


The following questions refer to the midst of the process that led to GNI (mid-late 2006 until 2008):

(non-participants please skip this section)
11/2/2014

Quintixx Survey Software

How would you describe the level of initial trust among participants?

- Low
- Some
- Average
- Substantial
- High

How would you describe the level of initial trust within your constituency?

- Low
- Some
- Average
- Substantial
- High

How would you describe the level of subsequent trust among participants?

- Low
- Some
- Average
- Substantial
- High

How would you describe the level of subsequent trust within your constituency?

- Low
- Some
- Average
- Substantial
- High

Were individuals or organizations more important in the negotiation process?

- Almost exclusively individuals
- Substantially individuals
- Equally individuals and organizations
- Substantially organizations
- Almost exclusively organizations

Do you feel that most participating organizations tended to compromise, to hold their ground, or both?

- Compromised little
- Compromised some
- Average
- Compromised substantially
- Compromised extensively

To what extent was the participants’ understanding of the problem(s) a shared one?

- Little
- Somewhat
- Modestly
- Substantially
- Extensively

Of how much significance for the GNI process was the participation of different sectoral and organizational perspectives in terms of learning, problem solving, and ultimate agreement?

- Little
- Somewhat
- Modest
- Substantial
- Extensive

Did your organization’s perception of the problem – and the approach it called for – change over time?


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The following questions refer to the period following the launch of GNI (late 2009):

How well-suited are legal / regulatory approaches to dealing with the problems GNI confronts?

How would your organization describe GNI’s relationship to law and regulation? (choose one)

What are the characteristics of other challenges the GNI approach might be relevant for? (choose at least one)

Which had a bigger impact on the nature of your organization’s participation: factors internal to your organization (e.g., organizational structure and culture, specific individuals’ interest or departure) or factors external to it (e.g., legislative, government actions, users/constituents, etc.)?

Beyond specific GNI-related commitments, how significant has the impact of this process been on your organization?

Is there anything else you would like to say at this time?

Thank you!
Acknowledged Survey Respondents

Christine Bader, Advisor to the UN Secretary-General’s Special Representative on business & human rights (former)

Mark Bench, Executive Director, World Press Freedom Committee

Bob Boorstin, Director, Corporate Communications (former)

Tod Cohen, VP & Deputy General Counsel, eBay Inc.

Chuck Cosson, Senior Policy Counsel, Microsoft (former)

Stephen Deadman, Group Privacy Officer and Head of Legal - Privacy, Security & Content Standards, Vodafone

Arvind Ganesan, Director of Business and Human Rights Division, Human Rights Watch

Leslie Harris, President/CEO Center for Democracy & Technology (former)

Patrik Hiselius, Senior Advisor Digital Rights, TeliaSonera Group

Dunstan Hope, Director, ICT Practice, BSR (Business for Social Responsibility)

Adam Kanzer, Managing Director & General Counsel, Domini Social Investments LLC

Steve Lippman, Vice President Social Research and Advocacy, Trillium Asset Management (former)

Rebecca MacKinnon, Bernard L. Schwartz Senior Fellow, New America Foundation

Lucie Morillon, Head of Reporters Without Borders New Media Desk

Danny O’Brien, International Activist Coordinator, Electronic Frontier Foundation

Erica Razook, Legal Advisor, Amnesty International USA (former)

Kathleen Reen, VP Asia, Environment and Internet Initiatives, Internews

Mila Rosenthal, Director, Business & Human Rights Program, Amnesty International USA (former)
Ira Rubinstein, Senior Fellow, Information Law Institute

Michael Samway, former Vice President & Deputy General Counsel, Yahoo Inc.

Dawn Wolfe, Associate Director, Boston Common Asset Management (former)

Cynthia Wong, Plessor Fellow, Center for Democracy & Technology (former)
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