



July 17, 2018

Comments of Google LLC regarding the Department of Commerce’s Notice of Inquiry on “International Internet Policy Priorities” (Docket Number: 180124068-8068-01)

INTRODUCTION

Google appreciates the opportunity to provide comments on the U.S. Commerce Department’s Notice of Inquiry on the National Telecommunications and Information Administration (NTIA)’s International Internet Policy Priorities for 2018 and beyond. The Internet became the greatest economic engine and democratizing force of all time because of key underlying policy choices that the U.S. government made in the Internet’s early days in the 1980s and 1990s, as well as choices by the American people beginning in our country’s earliest days to build strong safeguards for security, free expression, and other liberties into the U.S. legal framework. In particular, the U.S. has taken steps to enable innovation from unexpected corners, to keep the Internet’s underlying architecture open and borderless, to not hold free expression platforms liable for what their users say, and to enable fair use of content and a workable take-down system for illegal infringement. Those public policy choices by the U.S. government enabled the Internet’s success more than 20 years ago and are key to its success today.

In addition to its own approach at home, the U.S. government has always led the world on policies that support innovation and entrepreneurship, while highlighting that these policies are compatible with a strong commitment to protecting consumers and enforcing the law. U.S. global leadership on technology, and the Internet in particular, have made the Internet a global symbol of openness, diversity of opinion, equal access to information, and economic opportunity. Continued U.S. advocacy on the global stage is needed to advance a positive, forward-looking policy agenda that allows businesses and innovation to flourish in a highly competitive, dynamic, and interdependent global digital economy.

The Internet’s open and dynamic nature does not mean that it has been or should be a “free for all” or a forum without rules of the road. The U.S. legal framework has protections in place that are appropriate for a global medium like the Internet, including dispute-resolution mechanisms, privacy and consumer protection laws, intellectual property protections, transparency requirements, and security safeguards. Moreover, companies such as Google are highly incentivized by our customers to provide safe, reliable products and services that our users trust. We believe that we have a responsibility to prevent the misuse of our platforms, and we take that very seriously.

Google will continue to engage with the U.S. government and other governments around the world on the opportunities and challenges presented by existing and emerging technologies. The U.S. government should encourage other countries to embrace innovation and transformative technologies that will promote strong, sustainable, balanced, and inclusive economic growth. The U.S. values of openness, support for human rights, transparency, and opportunity for all should continue to set the tone for the global approach to the Internet.

I. THE FREE FLOW OF INFORMATION AND JURISDICTION

The Free Flow of Information

Google was founded with a mission to organize the world's information and make it universally accessible and useful. The U.S. government should sustain its global leadership on the free and open Internet, including promoting cross-border flows of information. Digital trade has become an engine of economic growth for large and small businesses around the world, and the flow of data now contributes more to GDP growth than the flow of goods.

However, some countries have taken steps to limit cross-border flows of information, including through data localization requirements, intermediary liability penalties, unbalanced copyright regimes, discriminatory tax measures, restrictions on 'over-the-top' services, forced technology transfer, and other barriers to digital trade and data flows. The U.S. government should continue supporting measures in trade agreements, WTO negotiations, and other multilateral or bilateral discussions that address these emerging barriers to global data flows and the digital economy. The U.S. government should also work with other countries to accelerate digital capacity-building efforts, promote digitization of small and medium enterprises (SMEs), and develop interoperable and nondiscriminatory regulatory frameworks and standards on digital issues. When the Internet is open to trade, small businesses can grow on a global scale, and consumers around the world can benefit.

This openness is important for trade and data flows, but also for the free flow of information and ideas. Google is deeply committed to our responsibility to respect and protect the freedom of expression and privacy rights of our users. Freedom of speech is essential to creativity and innovation and not only leads to economic growth, but also social, educational, and cultural benefits, for countries, individuals, and companies. Every day, tens of thousands of people from different political and cultural perspectives find their voice online, and while these people may not all agree with one another, the Internet fundamentally empowers them to build community and create content in unprecedented ways. We support a free and open Internet where everyone can express their opinions and learn from others, allowing for the democratization of new voices and ideas.

Similarly, we believe that it is important for the private sector to respect human rights, and for governments to protect these rights. Google has committed to respecting the rights enumerated in the Universal Declaration of Human Rights and its implementing treaties, as well as upholding

the standards established in the United Nations Guiding Principles on Business and Human Rights and in the Global Network Initiative Principles.

While Google believes strongly in the free and open Internet, there are important policy guidelines and restrictions around what content and activities can take place on our services. We believe we have a responsibility to prevent the misuse of our platforms, and we take that very seriously. The abuse of the tools and platforms we build is antithetical to Google's mission to organize the world's information and make it universally accessible and useful.

Governments should work together with the private sector, civil society groups, and academia to protect access to information while enabling a responsible and respectful online ecosystem. Collectively, this ecosystem can enable and encourage companies to take steps against dangerous or illegal content, support counterspeech methods, and drive educational efforts on online safety. Governments should avoid implementing liability measures that limit the ability of online platforms to facilitate transactions and communications among millions of individuals and businesses, or that have a negative collateral impact on free expression online.

Jurisdiction

Some countries are exploring a "Right to be Forgotten," meaning individuals have the right to ask search engines such as Google to remove certain results about them. This approach has led to a robust debate about ways to balance the public's right to information and individuals' right to privacy. In reviewing over 2 million web-pages under Europe's law, Google was thrust into the position of making difficult value judgments about whether to remove posts that are critical of former politicians, articles about the crimes of convicted criminals, and other debatable issues that run up against free expression protections. We have done our best to comply responsibly, but we disagreed with the ruling in Europe and would have concerns about this principle being exported to other jurisdictions.

In addition, we strongly oppose the idea of global removals based on a Right to be Forgotten, which would require us to delist links or URLs not just from local versions of our products but also from all versions globally. Google is committed to the circulation of lawful information and strongly opposes the idea of one national Court or Authority having the power to decide what information is allowed to circulate and enjoyed by citizens throughout the world. Besides legal territoriality and State sovereignty, a call for global removals is concerning because it is based on an approach that, if generally applied, would lead authorities of non-democratic governments to restrict freedom of expression and censor information around the world.

II. THE MULTISTAKEHOLDER APPROACH TO INTERNET GOVERNANCE

Google strongly supports the multistakeholder approach to Internet governance, which is the best mechanism to enable the Internet's continued growth.

The Internet became one of the world's most powerful tools for social and economic opportunity because it was built from the ground up by innovators, technologists, and entrepreneurs committed to its success. This bottom-up, multistakeholder model is key to the Internet's future growth as the engine of the global digital economy and platform for worldwide free expression.

Put simply, we believe that the Internet's future is best managed in the hands of a bottom-up process that involves all stakeholders -- governments, industry, civil society, technologists, users, and others -- *not* government-centric, top-down processes. There is clearly a role for international organizations such as the United Nations to discuss best practices around various issues associated with the Internet, including how to combat restrictions on free speech and promote policies that will result in more ubiquitous and affordable Internet access to everyone in the world. The Sustainable Development goals, for example, recently recognized the importance of Internet access and connectivity to drive progress on other goals. The UN also recognized that governments cannot do it alone; other stakeholders will have to be involved. We agree, which is why Google regularly engages with key international organizations on these issues, as well as topics like online extremism, trade and the importance of cross-border data flows, and other important issues.

The U.S. can play a key role in encouraging appropriate conversations on these issues at the right international organizations, while ensuring that the Internet remains free and open for future generations by resisting efforts to manage the Internet in a top-down, government-centric way that will inevitably lead to restrictions on free expression and data flows, and ultimately fragment the global Internet. For example, we believe that the upcoming ITU Plenipotentiary Conference is a key moment for the U.S. to forcefully advocate for a robust role for the ITU in bridging the digital divide, allocating global spectrum, and supporting telecommunications development activities around the world -- while resisting calls to have the ITU regulate the Internet and the broader digital economy that depends on it.

In 2016 the NTIA signaled its leadership and commitment to this multi-stakeholder model by allowing the IANA Functions Contract with ICANN to expire. As part of the transition, this oversight was directly assumed by the multi-stakeholder communities supporting the naming, numbering and protocol systems. This transition was anticipated in the Green Paper through which ICANN was created, with independent operation of the IANA functions called for as soon as the new organization was established and stable.

In supporting the IANA transition the NTIA demonstrated its trust in these matured, multi-stakeholder communities to be self-governing without jeopardizing the stability or openness of the Internet. Google shares this trust in the multi-stakeholder system and believes that the IANA transition was an essential step in the evolution of an Internet that was truly open, global, and multi-stakeholder.

Google participated in the IANA Transition working group, as well as the parallel effort to enhance ICANN accountability to ensure that the layer of oversight previously provided through

the IANA Functions Contract was strengthened through accountability structures within these multi-stakeholder communities. Through these working groups users, civil society experts, academics, governments, and companies collectively leveraged the multi-stakeholder process to design and improve overall accountability in the governance of these core Internet identifiers. The outputs ensure fairness and due process in the multi-stakeholder system, establish safeguards to ensure no stakeholder could exert undue influence, mandate transparency with respect to operational performance and decision-making, and provide meaningful recourse for stakeholders.

Two years since the NTIA relinquished its contract with ICANN, this decision to move forward with the transition of the IANA functions to the multi-stakeholder community has proven sound. The governance and operational structures devised to support the transition have struck the right balance, improving accountability with respect to policy development while ensuring that the IANA functions continue to be performed without undue interference. Monthly IANA performance reporting shows continued technical excellence and customer satisfaction, despite the existence of new issue reporting and resolution structures developed by these communities. New and improved mechanisms for due process and recourse within the multi-stakeholder model have been leveraged, as a means of ensuring that ICANN continues to operate in accordance with its mission, mandate, and bylaws. Most importantly, the transition had no impact on the billions of Internet users, who continue to use the Internet to connect, conduct business, consume information, and more.

This outcome is a testament to the ability of the multi-stakeholder to produce sound outcomes, and demonstrates that these communities are sufficiently mature to self-govern. Conversely, an effort to unwind the IANA transition would signal to the global stakeholder community that only governments should decide how the Internet is managed. This is a dangerous proposition that incentivizes those who fear the Internet's transformative power to impose burdensome restrictions online, and could lead repressive governments to try to build closed networks operating independently of ICANN, at the expense of an open and thriving Internet ecosystem.

III. PRIVACY AND SECURITY

We appreciate the Department of Commerce's questions about privacy and security -- issues that are core to Google's business. Data powers companies and institutions in all sectors of the economy, civil society, and government. For Google, data allows us to constantly improve our products to deliver relevant, useful, and secure services to our users. When collected and used responsibly and subject to transparency and user control, data is beneficial for individuals, communities, and society.

The U.S. government should continue to advocate on the global stage for policies that embrace the unprecedented opportunities for human advancement made possible by data, but that also protect consumers and address the potential for harm from the misuse of data by making the data ecosystem more transparent and ensuring accountability.

Policymakers, and all entities that collect and use personal data should embrace policies that:

- encourage those collecting and processing data to protect consumers and respect individual liberties and freedoms;
- promote data portability, user control, and transparency;
- include credible enforcement mechanisms;
- are responsive to changing technology, and changing expectations, over time;
- encourage global interoperability;
- are technology neutral.

Consistent, principles-based requirements improve the ecosystem overall and help consumers know what to expect in any context.

Furthermore, the U.S. government should continue working to support new international approaches that both improve legitimate access to data for law enforcement purposes and protect people against unlawful intrusion by governments into their personal communications.

Lawmakers around the globe should take a considered approach to study the laws in effect to understand what is working and what should be improved, all while respecting local variations. There are many laws in the U.S. and around the world that are built on time-tested principles, such as the OECD's "Fair Information Practice Principles."

Many are now focused on Europe's General Data Protection Regulation (GDPR), a significant development in data protection regulation. It is not the only approach, however, and parts of this law might not be the best approach for every jurisdiction. For example, the GDPR enshrines the "Right to be Forgotten," which, if applied in the U.S., would conflict with the First Amendment and the long-held values of free speech and free press. With regard to the E.U., Google appreciates the U.S. government's support for the U.S.-E.U. Privacy Shield Agreement, an agreement that is critical to our ability to continue delivering valuable services to our users.

The Asia-Pacific Economic Cooperation (APEC) Privacy Framework is a strong and flexible set of standards, and the U.S. government should encourage other countries to consider this approach in promoting interoperability. A cooperative framework between countries, as opposed to an adequacy evaluation approach, could better account for the sovereignty of individual countries and the global nature of the Internet. For this reason, the U.S. government should continue its support for the APEC Cross Border Privacy Rules (CBPR), a set of rules developed to accommodate the common privacy interests of countries with different legal traditions. The U.S. has worked closely with a number of APEC member economies to develop a clear and reliable system of privacy commitments that are enforceable on a cross-border basis.

Under the CBPR, companies that apply to and are certified into the scheme agree to adhere to certain principles irrespective of the country where data is processed. These commitments are assessed by independent third parties and are enforceable by national regulators. It is important for the U.S. to stand behind this approach -- which ultimately can provide a model to protect privacy on a global basis -- and promote broader participation in the framework. The OECD can be another useful forum to discuss international, interoperable privacy frameworks and standards -- in the past the OECD has found ways to protect privacy while encouraging innovation.

Privacy goes hand in hand with strong security protection. Security breaches unfortunately remain a common occurrence, which underscores the importance of strong accountability standards to incentivize behavior that reduces the likelihood of security breaches in the first instance. Companies should be required to take security measures and precautions as needed to protect personal information from loss, misuse, and unauthorized disclosure. Breach notification standards should be codified and harmonized to ensure consumers are notified when breaches that create a risk of harm occur. In addition, the U.S. government should continue to support encryption as a best practice and oppose policies that require companies to engineer vulnerabilities into their products and services.

Too often, however, security is used as a catch-all phrase to control content or protect certain countries' domestic companies. The U.S. government should resist efforts by other countries in international fora to use security to advance state control by suggesting policy frameworks that will hinder innovation and the global nature of the internet or infringe on human rights and the rule of law. Conversations about cybersecurity should be limited to addressing clear risks and harms that are tethered to protecting against threats to critical infrastructure, as well as to online networks, systems, and platforms.

IV. EMERGING TECHNOLOGIES AND TRENDS

We appreciate the "Emerging Technologies" section of the Notice of Inquiry because a key principle underlying the U.S. approach to technology has been providing flexibility for ideas and innovations that don't even exist yet, but could transform our societies and our economies in positive ways. At Google, we are optimistic about the many ways that digital technologies will create economic opportunity in the future. Rapid technological innovation, including in the areas of artificial intelligence, quantum computing, and cloud computing, is already enabling millions of businesses in every economic sector -- including agriculture, energy, healthcare, and retail -- to hire more people, manage their operations more efficiently, and reach new markets abroad. One-third of all online sales are made by manufacturers, and U.S. manufacturers are now the leading exporters of products and services online, with \$86.5 billion in exports.

The development of machine learning technologies -- and more generally artificial intelligence (AI) -- holds great promise in improving standards of living. For example, researchers have

partnered with the medical community to develop AI applications that can assist doctors in diagnosing breast cancer tumors, skin cancer, diabetic retinopathy, and other diseases. Additionally, farmers are experiencing the benefits of AI, in applications ranging from forecasting more accurate crop yields to helping keep their cows healthy by using AI to analyze their behavior.

All stakeholders, including companies, nonprofits, and governments, should strive to incentivize technological change that responsibly creates economic growth. For example, Google has recently announced our AI principles, which means that we will design or deploy AI to be socially beneficial and incorporate privacy design principles.

The Internet of Things and cloud computing provide other opportunities for technological advancement. For example, Nest smart thermostats, part of Google's family of hardware products, are helping consumers save up to 12% on heating and 15% on cooling costs. Similarly, 3.5 million companies worldwide depend on Google's cloud-based email and collaboration tools to grow their businesses, and 70 million students use these applications in their educational institutions. The U.S. should encourage the deployment of cost-efficient smart infrastructure from cloud computing and the Internet of Things to the transportation, energy, services, and other sectors by encouraging industry best practices, streamlining regulatory barriers, reducing barriers to foreign investments, promoting interconnected pilot programs, and complementing private investments in underserved areas.

Governments should encourage the growth of new and innovative Internet-enabled services by adopting regulations only where they are necessary to prevent unreasonably, discriminatory, or harmful practices. Governments should not adopt regulations for online services that are not technologically feasible or economically reasonable.

Further, governments should consult with the private sector and nonprofit community and other stakeholders to establish ecosystems that promote innovation and entrepreneurship, preparing workers, citizens, and students for the workforce of the future. The U.S. and other governments should commit to increasing their investments in science, innovation, and education in digital skills, in particular for women and girls of all races, Blacks, Hispanics, and other under-represented groups.

Finally, we should all do our part to ensure that rapid innovation and technological change benefit all parts of society. For example, Google supports digital skill trainings so that technology helps workers and improves people's economic well-being. We want to help people prepare for the jobs of the future and make sure that people from every community can access opportunity. "Opportunity for everyone" is the foundation of the American dream. It is also one of our core beliefs at Google. Google's continuing mission -- to organize the world's information and make it universally accessible and useful -- stems in part from a belief that access to information is intimately connected with access to opportunity. We believe that people can

accomplish extraordinary feats when they have the information and the tools they need.

ADDITIONAL RECOMMENDATIONS

To continue encouraging pro-innovation and pro-growth policies around the world, NTIA and the broader Commerce Department should continue investing in its own staff expertise and policy capacity on evolving technologies. Google strongly supports the Commerce Department's Digital Attaché Program, a program that should be made permanent and expanded. U.S. companies depend upon the expertise and experience of Commerce Department officers at embassies and consulates around the world, as many governments approach technology and the digital economy through a variety of different laws and procedures.

Continued U.S. leadership on the global stage is needed to advance a positive, forward-looking policy agenda that allows businesses and innovation to flourish in a highly competitive, dynamic, and interdependent global digital economy. Google appreciates the opportunity to provide our views and looks forward to engaging further on these important issues.