

Global Network Initiative

*Protecting and Advancing Freedom of Expression and Privacy
in Information and Communications Technologies*

GOVERNANCE CHARTER

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1. Purpose

This Governance Charter (Charter) establishes a governance structure and defines key organizational elements of the Global Network Initiative (GNI), a multi-stakeholder initiative comprised of companies and other stakeholders in the global information and communications technology (ICT) industry that are committed to protecting and advancing online freedom of expression and privacy.

This Charter describes how the GNI will be governed in order to ensure integrity, accountability, relevance, effectiveness, sustainability, and impact. Alongside the GNI's Principles on Freedom of Expression and Privacy (Principles), the Implementation Guidelines, and the Governance, Accountability, and Learning Framework, this Charter is one of the GNI's foundational core documents. Additional documents such as by-laws, articles of incorporation, and other foundational documents may be added to the core GNI documents in order to further define and fulfill the vision of the GNI.

The contents of this Charter and the other core documents of the GNI may evolve over time to reflect a greater diversity of participants, views, experience, and learning.

2. Governance

A. Legal Structure: The GNI will file to become an independent, not-for-profit entity as soon as practically possible.

B. Board Role and Responsibilities: The primary purpose of the Board of Directors (Board) is to further the Principles and to oversee the organization to fulfill the vision of the GNI. The Board shall be responsible for the strategic direction and fiduciary operations of the GNI.

C. Board Composition: There will be four constituency groups, one each for companies, NGOs, investors, and academics. The Board will be composed of eight representatives from participating companies, four representatives from participating non-governmental organizations (NGO), two representatives from participating academic institutions, two representatives from participating investors, and an independent Chair.

The Board shall not have more than one representative from a single company, NGO, investor, or academic institution at any given time.

Subject to legal or ethical constraints, individuals shall serve on the Board in either their personal or their institutional capacities.

If the Board has fewer than the required number of Board members, then the Board shall strive to fill those open seats as soon as practicable. Each open Board seat will remain open until a suitable individual(s) is selected. In cases where there are open Board seats in a constituency group, the voting authority for those open seats shall be evenly distributed among representatives of that constituency group on the Board.

D. Board Selection: Each constituency will nominate and select its own Board members. When nominating and selecting Board members, each constituency will undertake meaningful consultation with other GNI constituencies about their proposed selections and will be mindful of the need for a high level of competency and participation from Board members.

Each constituency will strive to nominate and approve Board members that together will constitute a balanced board with a diversity of experience, insights, and perspectives on the pursuit of freedom of expression and privacy online.

E. Alternate Board Members: Each Board member may designate an alternate Board member from within its organization or constituency who may be permitted to participate in Board proceedings but who may only vote when a member of his or her constituency group is absent or unable to vote due to a conflict of interest. Under no circumstances will a Board member and an alternate from within the same participating organization cast ballots on the same vote. The method of selection for alternate Board members will be determined by each constituency. Alternate Board members should attend and participate in Board meetings to the extent practicable.

F. Board Terms: Board member terms shall be up to three years in length, and terms are renewable for one term only, subject to the exception for founding company members in section Q below. Members may also serve terms of fewer than three years in the case of removal, resignation, or other opening on the Board. A Board member may serve a third consecutive term with the support of its constituency and the agreement of a super majority of the Board.

A Board member who has served two full consecutive terms is eligible to serve on the Board again after a gap of one year.

A Board member who serves on the Board as a representative of a company, NGO, investor, or academic institution and leaves the employment of that company or institution shall resign from the Board at the latest by the effective date of his or her termination of employment. If such a Board member does not complete his or her term, the company or institution shall select a replacement Board member subject to the approval of the relevant constituency group. Serving a partial term shall not count against the limits to Board terms described above.

G. Board Chair: The Board will select an independent Chair by super-majority vote. The Chair shall have the right to vote. The Chair will serve for a three-year term, renewable once (maximum of six years).

H. Board Participation: Members of the Board must be active participants in GNI meetings, activities, events, and work streams, and must regularly promote the objectives and goals of the GNI with non-participants.

I. Board Competence: Members of the Board must adhere to high standards of professional competence and collaboration and demonstrate leadership in the pursuit of freedom of expression and privacy.

J. Quorum: A majority of the Board members shall constitute a quorum as long as at least one-half of the representatives—or their alternates from each constituency—is present. Participation by tele- or video-conference shall constitute presence for purposes of a quorum. The Executive Director will be permitted to participate *ex officio* in Board and committee meetings, but shall not count towards the quorum and shall not be eligible to vote.

K. Board Meetings: The Board will meet not less than quarterly (four times a year), either via tele- or video-conference or in person, with one meeting serving as the GNI annual meeting. Additional meetings may be convened as necessary by the Board Chair and/or Executive Director with appropriate notice.

The Board may meet in a closed executive session when considering highly sensitive decisions such as personnel matters.

L. Conflicts of Interest: GNI Board members must exercise objectivity, independence, due care, and diligence on all matters. Consistent with ethical and legal obligations, the Board will approve policies and procedures to define conflicts of interest related to Board service and votes and other potential conflicts relating to all participants.

M. Issues for Board Consideration: The Board will strive for consensus and make a concerted effort to make decisions after consultation with the GNI staff and all participating organizations. Where consensus is not reached, the following voting rules shall apply:

Super-majority vote:

- Adoption or amendment of the core GNI documents
- Appointment and removal of the Executive Director
- Appointment and removal of the GNI Board Chair
- Terminating the participation of a company, NGO, academic institution, or investor
- Adoption of and material changes to the reporting and independent assessment process
- Determination of compliance of a GNI participant
- Changing funding commitments for participating companies
- Placing a company on special review
- Exceptions or exemptions to this charter or other GNI documents
- Dissolution of the GNI
- Other votes at the discretion of the Chair

Simple-majority vote:

- Annual operating plan and budget
- Accreditation of independent assessors and determination of independence as to a particular company
- Appointment of Board members or extension of terms of existing Board members
- Admission of new participants
- Adopting meeting minutes
- Recommendations related to company reporting on GNI participation
- Approving GNI's annual report
- Approving conflicts of interest policies and procedures
- Other votes raised by a member of the Board, Executive Director, or other GNI participating organization

A super majority is defined as two-thirds of the full Board and at least 50 percent of each constituent group. A simple majority is defined as 50 percent plus one of the full Board. These definitions refer to the simple or super majority of full Board seats, not just of those Board members present for the vote. Board members who are required to recuse themselves for reasons of conflict of interest shall be counted as part of a quorum and recorded as "present." However, the presence of a Board member who is recused shall not be included in constituent super-majority votes.

N. Board Meeting Minutes: A secretary shall take minutes of each Board meeting. The secretary shall distribute the minutes to Board members via email following a meeting, and the Board will vote by email to approve the minutes within three weeks of the Board meeting.

O. Board Meeting Summaries: A non-attributed summary of Board meetings and the GNI annual meeting reflecting non-confidential discussions will be published on the GNI website following adoption of the minutes for such meetings.

P. Committees and Working Groups: The Board may create committees and working groups in order to facilitate the work of the Board, to provide advice on the further development of the Charter, to inform the development of GNI policies and procedures, and for other purposes. Committees and working groups will strive for consensus, but may bring alternative recommendations to the Board if consensus cannot be achieved. In 2009 and 2010, the following committees, at a minimum, shall be established and operated:

- Communications and Outreach

- Human Rights Risk Assessment and Shared Learning
- Governance and Accountability
- Finance and Audit
- Others required by law

All GNI members are eligible and encouraged to participate in these committees and working groups in order to maintain diverse representation across GNI activities.

Q. Founding Companies: Notwithstanding Sections D, E, and F, each founding company Board member may at the founding company's discretion serve two consecutive terms from the creation of the Board. A founding company Board member may also serve a third consecutive term, with the support of its constituency group. Thereafter, a founding company Board member is eligible to serve on the Board again after a gap of one year. In all other respects, a founding company is fully subject to the provisions of Section D, E, and F.

3. Staff

The GNI will employ a staff led by an Executive Director to fulfill the activities agreed upon by the Board. The Executive Director shall be responsible for implementing the strategy and policies of the GNI as established by the Board and shall serve at the direction of the Board.

4. Participants

A. Joining Process: GNI participation is open to companies in the global ICT sector worldwide, and NGOs, investors, and academic institutions that commit to the Principles and other core GNI documents.

A prospective participant shall submit a statement of interest signed by its director, board member, or other authorized representative declaring a commitment to:

- Implement and advance the Principles and other core GNI documents as relevant to the participating organization's activities
- Promote accountability with respect to the implementation of the Principles
- Contribute to shared learning and collective action on GNI-related issues among participants

Based on these submissions and following appropriate due diligence, the Executive Director shall make a recommendation to the Board regarding the organization's suitability to participate in the GNI.

B. Responsibilities of Participating Companies: Each company shall agree to:

- Adopt the Principles and other core GNI documents
- Implement a system of processes and procedures described in the Implementation Guidelines
- Submit an annual report to the GNI consistent with guidelines established by the Board
- Be assessed and evaluated by independent assessors in accordance with guidelines adopted by the Board
- Contribute to shared learning, accountability, and collective action among GNI participants
- Pay annual dues set by the GNI
- Actively participate in GNI meetings and/or activities.

C. Responsibilities of Participating NGOs, Investors, or Academic Institutions: Each non-company institution will agree to the following:

- Adopt the Principles and the core GNI documents
- Support the Principles and the goals of the GNI through the NGO, investor, or academic institution's program of work
- Contribute to shared learning, accountability, and collective action among GNI participants
- Submit a brief annual report to the GNI consistent with guidelines established by the Board
- Pay nominal annual dues
- Actively participate in GNI meetings or activities

D. Termination: After appropriate notice and opportunity to remedy, a participant's participation in the GNI may be terminated by the GNI Board for any of the following reasons:

- Failure to pay dues
- Failure to attend meetings and activities for more than a 12-month period
- Failure to meet reporting or other participation requirements
- Failure to meet compliance and evaluation requirements
- Disclosure of information identified as confidential

Participants who have been terminated may reapply after two years in accordance with the joining procedures outlined above, provided that remediation efforts have been successfully implemented as determined by the Board.

5. Accredited Independent Assessors

An essential element of the GNI's accountability framework will be assessments of each participating company's compliance with the Principles and Implementation Guidelines undertaken by independent assessors.

A. Assessment Phases: The GNI's accountability framework will be created in three phases, as described in the Governance, Accountability, and Learning Framework document published in October 2008:

- Phase I: Capacity Building (2009–2010)
- Phase II: Independent Process Review (2011)
- Phase III: Independent Process and Case Review (2012 onwards)

B. Independence of Assessors: Individuals and organizations that assess company compliance with the GNI Principles must maintain independence from the companies they assess. In Phase I, the Board will approve independence criteria for assessors.

C. Competence of Assessors: Independent assessors must adhere to the highest professional standards for third-party assessments grounded in the fundamental principles of integrity, objectivity, professional competence, confidentiality, and professional behavior. In Phase I, the Board will approve competency criteria for assessors.

D. Assignment of Assessors: In Phase II, in close consultation with the Executive Director, each company will select its own independent assessor (or team of independent assessors) who meet the GNI's independence and competency criteria to assess implementation of the Principles by the participating company.

In Phase III, the Board will accredit a pool of independent assessors for all subsequent assessments, with additional assessors considered as they apply. In close consultation with the Executive Director, each company will select its own independent assessors from the pool

accredited by the Board in compliance with the GNI's independence and competence criteria as applied to the assessor's relationships with the selecting company. The Board will have the final say on assessor independence as it relates to a particular company.

If upon selection of the independent assessor by a company, a GNI participant or the Executive Director raises in writing a new independence concern not already reviewed by the Board in the assessor certification process, the Board will evaluate the claim and make a further determination on independence through a simple majority vote of the Board.

E. Application Process for Assessors: Prospective assessors shall:

- Submit an application to the Executive Director with the information necessary to demonstrate that the assessor meets the GNI's independence and competence criteria
- Satisfy other reasonable application requirements as further specified by the Executive Director
- Once accredited by the GNI, be subject to re-accreditation every two years
- Once accredited, undergo training by GNI staff related to the Principles and the global ICT industry

The GNI will, at its discretion, undertake due diligence and fact checking on the application provided by independent assessors.

F. Contracting with Assessors: In order to enter the pool of GNI accredited independent assessors, each independent assessor shall enter into a master services agreement with the GNI. This master services agreement shall include the following:

- Independence criteria
- Competency criteria
- Assessment scope template
- Confidentiality, disclosure, and nondisclosure requirements
- Guidelines on frequency and nature of communications between the GNI, the independent assessor, and the company during the course of an assessment
- Guidelines regarding the disclosure of assessment findings to (a) the company being assessed, and (b) the GNI
- The right of the GNI to terminate the master services agreement with the independent assessor in the event of a material violation of the agreement by the independent assessor

For each individual company assessment, a subsidiary agreement will be signed between the company and the independent assessor. The subsidiary agreement will exist under the umbrella of the master services agreement and will detail specific aspects of that individual company assessment, including timeline, cost, terms of payment, and geographical scope that relate to the circumstances of that specific individual company assessment. The subsidiary agreement will also contain a commitment of confidentiality and non-disclosure between the assessor and the company.

Each subsidiary agreement, and any amendments to the subsidiary agreement required by the GNI, must be approved by the GNI's Executive Director before the subsidiary agreement may take effect and the individual company assessment may proceed. This approval, which shall not be unreasonably withheld, will be expressed in the form of a letter from the GNI's Executive Director to the company and the independent assessor, and this approval will also be communicated to the GNI Board. The GNI's Executive Director will not approve the subsidiary agreement if it is materially inconsistent with the master services agreement. If there is a difference of opinion over whether the subsidiary agreement is materially inconsistent with the master services agreement, then this difference will be resolved by the GNI Board.

G. Fees for Assessors: Companies will negotiate terms of payment with the accredited independent assessors and set them out in the subsidiary agreement between the assessors and the company. Each company shall then make payments into an escrow account established for that company and make payments to the accredited independent assessor from the escrow account. The company will provide notice to the GNI Executive Director before any payments are made. The Executive Director shall receive copies of escrow account statements on a monthly basis or upon reasonable request.

6. Assessment Process

A. Assessment Phases: Independent assessments shall be undertaken as described in the Governance, Accountability, and Learning Framework document published in October 2008:

- Phase I: Capacity Building (2009–2010): During this phase, the GNI will develop an assessment template to help companies and assessors prepare for reviews of company compliance with the Principles. In order to assure consistency, transparency, and predictability, the template shall form the basis of each assessment and shall address such matters as the risk-based scope and focus of the assessment, including how to determine what jurisdictions and products the assessor should review based on the risks posed, and also provide guidance regarding how the assessor should conduct the review.
- Phase II: Independent Process Review (2011): During this phase, the assessor will evaluate the company's internal processes to implement the Principles. The goal of the Phase II independent assessment process will be to determine whether a company has systems, policies, and procedures in place to support the implementation of the Principles and other core GNI documents.
- Phase III: Independent Process and Case Review (2012 onwards): During this phase, independent assessors will follow an assessment template prepared by GNI to continue to evaluate the company's internal processes and the company's responses to specific government demands. This combined process review and examination of specific cases will be used to determine each company's compliance with the Principles and Implementation Guidelines.

B. Assessment Scope: When undertaking the assessment, the assessor will have the responsibility and discretion—applying the GNI assessment template—to define the scope of the assessment required to assess the company's implementation of the Principles. In doing so, the assessor will take into consideration relevant information, including but not limited to information provided by the company, input from the GNI, the risk profile of the company's products, and the geographic areas in which it operates.

In conducting the assessment, the assessor shall determine what information, access, facts, and data are necessary to evaluate the effectiveness of a company's implementation of the Principles, including, in Phase III, selecting specific cases to assess and documents to review and determining which interviews to conduct with company employees.

Both the company and the assessor will consult with the Executive Director during the development of the assessment scope and during the assessment itself. The assessor will notify the GNI Executive Director of any material disputes that arise with the company during the assessment process.

C: Limits on Disclosure: The GNI recognizes that companies may be prevented from disclosing information by law, or may choose not to disclose information in order to preserve attorney-client

privilege or protect trade secrets. At the same time, the GNI recognizes that assessors will require a reasonable level of information in order to accomplish their assessment. Among other things, the assessors may comment on whether the inability to access information resulting from a company's withholding of such information affected their ability to evaluate the company's compliance with the Principles. Each company will be required to identify limitations on access to information, if any, to the independent assessor with as much specificity as is practicable.

D. Defining Compliance: The GNI's evaluation of compliance by participating companies will be based on an assessment of the totality of a company's record during the assessment phase to put into operation the Principles and the Implementation Guidelines. The GNI's evaluation of compliance will take into account the fact that participating companies will be different sizes and have different business models, circumstances, markets, products, and services, etc.

The determination of compliance will be based on a review of each company's internal systems, processes, and activities, including how the company has acted in specific cases that implicate the Principles and Implementation Guidelines. The determination of compliance will be made by the GNI Board, based upon guidance made by the independent assessor.

E. Corrective Action Steps: Where a particular compliance problem or pattern of problems is identified in an assessor's report that has been adopted by the Board, the participating company will develop and implement a corrective action plan to remedy the identified problems and report those steps at specified intervals to the Executive Director. The corrective action plan will include measurements for achieving the intended outcomes and anticipated timeline for completion. During the creation of a corrective action plan, the Executive Director and/or relevant GNI staff may provide advice to the company to promote a successful remedy.

F. Special Review: If a company does not meet the participation criteria, is not in compliance, or has failed to take corrective action steps to address problems previously identified, the Board may place it under special review on the following terms:

- The term of the review is 120 days.
- During the term of the special review, the company shall take all necessary actions to achieve compliance.
- The Board may extend the special-review term for as long as is needed for the company to effectively address the identified problems if the Board concludes that an extension of the special-review term is appropriate.

7. Reporting

Reporting is an integral part of participation in the GNI, and will:

- Provide the basis of shared learning
- Inform independent assessments of adherence to the Principles
- Enable regular communications with the public

A: Company Reporting to the GNI: All participating organizations will regularly communicate their progress implementing the Principles to the GNI and its participants. This communication will take place during the ongoing activities of the GNI and will be used to support shared learning and inform the GNI's annual report to the public. The Executive Director may from time to time designate themes, topics, and issues for communication from participating organizations and may share this information with the GNI membership in a format of his or her choosing.

B: Company Reporting to the Independent Assessor: Using a reporting format agreed upon by the Board, companies will provide the independent assessor and the GNI's Executive Director with the information required to enable the independent assessment.

- During Phase II assessments, company reports will include a description of progress related to all activities outlined in the Principles and Implementation Guidelines and will detail the company's experiences making the Principles operational.
- During Phase III assessments, the reports will also contain information relating to specific cases implicating the Principles and Implementation Guidelines.

C: Independent Assessor Reporting to the GNI: At the conclusion of each assessment, and using a reporting format agreed upon by the Board, the independent assessor will prepare a detailed report that summarizes the assessment, the relevant facts, corrective action plans (if any), and an assessment of the company's overall compliance. This report will contain a qualitative evaluation of strengths, weaknesses, and opportunities for improvement in the processes the company has put in place to implement the Principles and a summary of conclusions for the GNI. The independent assessor will:

- Provide the report to the Company for review and response
- Provide the report—and any responses or corrections by the company—to the GNI Executive Director
- Provide a summary of the report (with any confidential information removed) to the GNI Board for a final determination of compliance

D: GNI Reporting to the Public: Using a reporting format agreed upon by the Board, and beginning in 2010, the GNI will publish an annual report to the public that contains information regarding progress implementing the Principles. This report will contain:

- A summary of the progress made by the GNI and individual companies
- Collective lessons learned regarding the Principles and Implementation Guidelines, including the range of effective responses to threats to freedom of expression and privacy
- Information required to improve the understanding of threats to freedom of expression and privacy across different sectors, geographies, legal systems, and cultural traditions
- For each participating company, the GNI Board's compliant or non-compliant assessment

E. Company Reporting to the Public: Using a format of their own choosing, each participating company will provide an annual communication to the public acknowledging their participation in the GNI and summarizing their related activities. The GNI Board will agree on any necessary language restrictions for company reporting to the public about the status of assessments and compliance. Unless required by law, or otherwise agreed upon by the Board, companies shall not disclose results of GNI assessments of its activities related to compliance with the Principles until after the GNI publicly reports this information in its annual report.

8. Public Participation

The GNI will establish mechanisms, through which the public can share information with the GNI, provide feedback, ask questions, and raise concerns related to GNI activities and the Principles. The GNI will consider public input, including inquiries and complaints, in assessing the GNI's overall progress.

The GNI recognizes that it may receive complaints and grievances from users concerning company compliance with the Principles. Due to the complexity of the global landscape regarding online freedom of expression and privacy, and the potential scale of complaints, the GNI will develop an appropriate complaints procedure consistent with its size and available resources. This will focus on processes that can help the GNI to identify and resolve concerns raised by the public of significance to the Principles and to do so through a credible, efficient, and transparent process.

Until that time, the GNI will forward all company-specific complaints, questions, and communications to the relevant company for resolution.

9. General Communications to the Public

The GNI's communications with the public will be managed by the Executive Director at the direction of the Board.

A. Public Information: The following information may be routinely published by GNI staff, the Board, or participants:

- The names of participating companies, NGOs, investors, or academic institutions
- Whether a participant is in good standing as a member of the GNI
- A summary of the actions taken by a participant to promote the Principles, provided that such communications are consistent with the non-disclosure policy and communications protocols

B. Non-Disclosure Policy: The following information will not be disclosed by the GNI staff, the Board, participants, or assessors:

- Information identified as confidential by any participant or that is reasonably understood to be confidential
- The existence or subject matter of any confidential discussions of the GNI or the Board

Violation of the non-disclosure provisions of the Charter may be grounds for removal from participation in the GNI, termination of employment at the GNI, or in the case of assessors, removal of accreditation status by the GNI.

10. Review

The Charter and other core GNI documents will be reviewed annually by the Board in the light of experience, evolving circumstances, and stakeholder feedback.

11. Funding and Resources

The GNI will receive funding from participating companies. The GNI will also seek assistance from foundations and other appropriate sources.

The Board will fashion a scope of work for the GNI that reflects the level of company participation and available funding, while also ensuring that each of the elements of the GNI mission receives meaningful support.

Funding targets, recruiting targets, and budgets will be prepared by the Executive Director and approved annually by the Board.

12. Glossary of Terms

- "Independent assessor" refers to an individual or group of individuals who demonstrate the independence and competency necessary to assess company implementation of the Principles and other core GNI documents.
- "Board" shall mean the Board of Directors of the GNI.
- "Board member" shall mean a member of the Board, including the Chair. If an individual is serving as a representative of an organization, "Board member" shall refer to the organization. The individual serving on the Board on behalf of that member organization will serve as a representative of that member organization, not in a personal capacity. If

the member of the GNI is an individual then that person serving on the Board is doing so in a personal capacity.

- "Chair" shall mean the independent chairman or chairwoman of the Board.
- "Charter" shall mean this Governance Charter of the GNI and any subsequent amendments to it.
- "Compliance" shall mean a determination by an independent assessor and adopted by independent members of the Board that a company is in compliance with the Principles.
- "Core GNI documents" are the Principles on Freedom of Expression and Privacy, the Implementation Guidelines, the Governance, Accountability, and Learning Framework, and this Governance Charter.¹
- "Founding company member" refers to Google, Microsoft, and Yahoo!
- "Quorum" refers to the presence of a majority of the Board members, including at least one-half of the representatives or their alternates from each constituency. A Quorum is required for the conduct of Board business.
- "Simple-majority vote" shall mean 50 percent plus one of the full Board. It refers to a simple majority of full Board seats, not just of those Board members present for the vote.
- "Special review" is a status conferred upon a company by the Board when the Board determines that the company does not meet the participation criteria, is not in compliance, or has failed to take corrective action steps to address problems previously identified.
- "Super-majority vote" shall mean two-thirds of the full Board and at least 50 percent of each constituent group. It refers to a super majority of full Board seats, not just of those Board members present for the vote.

¹ By-laws were not yet drafted at the time of the adoption of the GNI Charter.