

John Smith
Acting Director
Office of Foreign Asset Control
U.S. Department of Treasury
Treasury Annex
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Mr. Smith,

We write to urge the Office of Foreign Assets Control (OFAC) to act immediately to protect the free flow of information in the Crimea region of Ukraine through issuing a General License authorizing the provision of services, software and hardware necessary for personal communications over the Internet.¹

On January 23, Google Apps users in Crimea, and elsewhere in Ukraine, received notice that access to services for individuals in the contested territory would be suspended within a week. The notifications followed similar recent suspensions from other American technology companies, including Amazon, Apple, GoDaddy and Paypal. Shortly after, updates to Google's Chrome web browser were reportedly blocked inside the region and sites registered to individuals in Crimea were removed from their hosts.² These restrictions are clear attempts by private companies to comply with sanctions that were enacted by President Obama in December, actions that we fear foreshadow more onerous restrictions on Internet communications in Crimea. As OFAC's Crimea regulations currently stand, it is not clear that there are any authorizations to allow for the lawful provision of even the most simple Internet services or software.

Late last month, OFAC released three general licenses for the Crimea sanctions program, which authorized transactions related to [personal remittances](#), [mail and telecommunications services](#). These general licenses follow a decades-old precedent that sanctions should not impede the free flow of information or contribute to the isolation of individuals living in embargoed countries.³ However, these general licenses do not include authorizations that would ensure the continuation of access to Internet-based services, software and hardware — which have in many ways superseded telephony and postal communications.

¹"General License D-1: General License with Respect to Certain Services, Software, and Hardware Incident to Personal Communications," http://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_gld1.pdf

²"Google blocks updates of internet browser Chrome in occupied Crimea," Ukraine Today, January 30, 2015. <http://uatoday.tv/news/google-blocks-updates-of-internet-browser-chrome-in-occupied-crimea-406189.html>
"Domain name registrar Go Daddy ceases Crimean operations over sanctions," Kyiv Post, January 30, 2015. <http://www.kyivpost.com/content/ukraine/domain-name-registrar-go-daddy-ceases-crimean-operations-over-sanctions-378926.html>

³For example, the Cuban Democracy Act of 1992 explicitly authorized telecommunications services at the same time that it increased sanctions against most other forms of business with the country. Similar provision on telecommunications and Internet can be found in Iran and elsewhere. <http://thomas.loc.gov/cgi-bin/bdquery/z?d102:hr5323:>

The December embargo against Crimea is among the first comprehensive U.S. sanctions programs introduced since authorizations for personal communications over the Internet were put into place in Cuba, Iran, Sudan and Syria beginning six years ago.⁴ These authorizations were subsequently expanded for Cuba and Iran to include services, software, and hardware offered at cost, based on the recognition that information technologies offer unprecedented opportunities for independent media, person-to-person exchange, and documentation of human rights violations. Through these actions, OFAC set a precedent: it is within the public interest to ensure that access to digital platforms and modern communication technologies is, and remains, unaffected by sanctions. These Internet authorizations have received wide support from civil society organizations and Congress, and do not contradict the overall objectives of the sanctions programs.

Access to the Internet is essential to the protection of freedom of expression, access to information, and free association, and is increasingly recognized as a human right.⁵ Journalism and independent media is fundamentally dependent on access to secure and reliable information technologies for documentation of events inside contested areas, and to enable their populations to bypass state controls on information. In Crimea, as with Cuba and Iran, access must be protected to prevent further isolation and deterioration of the region. Moreover, restricting access to U.S. communications platforms could force blocked users to rely on competitive and available services provided by Russian companies. As we have seen from the start of this conflict, these services are highly controlled by Russian authorities and have actively stifled independent channels of information through aggressive censorship and surveillance.

The Crimea sanctions will also be an onerous burden on American small and medium-sized enterprises due to the difficulty of enforcing regional restrictions. Given the ambiguity of geographic barriers in cyberspace, the sanctions could lead to overblocking, underenforcement and a chilling effect on broader access for Ukrainian or Russian users. It is instructive that in cases where regional exemptions to sanctions are in place — namely in the Specified Areas of Sudan — there is little indication that American companies have been able or willing to offer authorized services to permitted territories.

Thus far, comprehensive sanctions regulations have generally targeted the whole territory of states rather than specific regions, especially those under international dispute. This has allowed for easier enforcement in the past. Since Internet addresses are delegated through national and regional Internet registries, they are traceable to specific countries with a reasonable degree of certainty. However, there is no accuracy requirement for address registrations beyond this. As a result, American companies have no assurance that registration information is accurate at a more granular level than national borders. In other words, companies cannot be certain whether a Ukrainian user is in Crimea or whether a Crimea registered address is actually in use in some other part of the country. To add complexity to the matter, Internet

⁴“License Exception Consumer Communications Devices,” September 2009.

<http://www.gpo.gov/fdsys/granule/CFR-2012-title15-vol2/CFR-2012-title15-vol2-sec740-19>

“General License Related to Personal Communication Services,” March 2010. http://www.treasury.gov/resource-center/sanctions/Programs/Documents/soc_net.pdf

⁵“Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue,” United Nations Human Rights Council, May 16, 2011.

http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

Service Providers in Crimea have begun to change their international transit providers, and Russian companies are expected to enter the market. This will make full compliance difficult, if not impossible, in the majority of cases where personally-identifying information is not required, such as to download software or access a service. As a result we may expect that companies will be forced into overcompliance in order to mitigate potential liabilities, which would adversely affect Russian and Ukrainian users. We are aware of incidents where human rights organizations in other regions of Ukraine have already been disconnected under the pretense of Crimea sanctions, a product of the difficulties of attribution and compliance requirements of service providers.

Without explicit authorization for personal communications technologies, these suspensions are likely to portend even greater restrictions on the free flow of information to Crimea. Experiences from other sanctions regimes demonstrate that removing restrictions is a difficult process when general licenses are issued after limitations are already in place. Reevaluations of compliance strategies require costly changes to engineering platforms and new interpretations of legal risks, compared to an uncertain promise of financial gain. In Iran, General License D-1 required months of outreach from government agencies and advocacy from civil society before permitted services and technologies began to be available inside the country.

For these reasons, OFAC should act expeditiously to protect the free flow of information by issuing a General License authorizing the provision of services, software and hardware incident to personal communication over the Internet, while providers are still considering compliance strategies, rather than waiting until after individuals in Crimea are cut off from these vital services.

Cordially,
The Undersigned

Access

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Global Voices Advocacy

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