

Senate Committee on the Judiciary  
Questions for the Record from Senator Grassley  
To: Peter Swire  
Huang Professor of Law and Ethics  
Scheller College of Business  
Georgia Institute of Technology

---

**1. Global Competitiveness**

In my opening statement, one of the concerns I expressed was that, in considering solutions to the “Going Dark” problem, we carefully consider the impact on the global competitiveness of American technology companies. You testified that if U.S. companies were required to give U.S. law enforcement access to encrypted communications and devices, U.S. companies find themselves at a disadvantage in the global marketplace. Yet it appears that countries like the United Kingdom, France and China are considering laws that would move in this direction.

- a. Do you agree that these foreign governments may be moving in this direction? If so, how would the global competitiveness of U.S. companies be damaged if foreign governments mandate the same sort of access?

Swire: I agree that other countries have been considering laws concerning mandated access. My view is that the position of the United States government is highly relevant to the likelihood of other countries adopting such laws, especially for close allies such as the United Kingdom and France. If the United States were to mandate access legally, which I hope it will not, my view is that the U.S. decision would substantially increase the likelihood of such laws being enacted by our allies. By contrast, if the United States maintains the status quo of no such mandates, then that fact becomes an important and relevant precedent against enactment of such measures by our allies.

I believe the U.S. position would also have a large impact on other countries around the world, especially for authoritarian or dictatorial regimes that would like to use mandated access to clamp down on political dissent, religious activity, and other activities. If the U.S. resists mandates, then the U.S. based technology companies have a much greater ability to resist demands for mandated access in such countries. Being able to resist such demands will protect devices and sensitive data of Americans and American businesses in those countries. By contrast, if the U.S. requires access, then it will be much for difficult for U.S. based technology companies to push back against requests from China or other foreign governments.

My initial point, therefore, is that the U.S. actions in this area have a very important impact on whether other countries adopt mandated access. As I stated during the hearing, I also believe that mandates in the U.S. would harm U.S. based technology companies because of the suspicion around the world that their products and services are not secure and information is shared with U.S. government agencies.

In terms of mandates in another country, such as a U.S. ally, there would be multiple effects and the overall outcome depends on the circumstances. For instance, if a small market country mandates access, then that might aid local companies that comply with the local law while U.S. companies may decide not to take the reputational risk of doing business in that jurisdiction. In that event, U.S. companies might lose access to a small market but face less competition from companies based in there in other markets. If the country is seen globally as having a weak human rights record, mandated access may push the U.S. companies, consistent with the Global Network Initiative principles, not to continue doing business there, thus losing market access. Such company decisions to eschew a market, however, may send a strong signal globally about the importance of customer security to the U.S. based companies, with offsetting gains in other markets.

In addition, there is a crucial dynamic aspect to such mandates. The small country, or country with weak human rights, might find the consequences negative if they lose access to cutting edge technology from U.S. based companies. They thus might reconsider their decision to mandate access, in order to bring U.S. based companies back into the jurisdiction. In such an event, a clear U.S. policy of not requiring access is crucial – the good long-term outcome of U.S. company participation and no mandates occurs only if the U.S. retains its policy where no mandates are imposed.