Congress of the United States
House of Representatives
Washington, D.C. 20515

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The Honorable Greg Walden, Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
2182 Rayburn House Office Building
Washington, D.C. 20515-3310

Dear Greg,

Thank you for sharing a discussion draft of your Internet governance legislation during the February 5th Joint Subcommittee hearing titled "Fighting for Internet Freedom: Dubai and Beyond." I share your commitment to promoting a global Internet and preserving the multi-stakeholder model that has enabled the Internet to thrive.

It is my understanding that our respective staffs have been in communication with the Federal Communications Commission (FCC) and the State Department to solicit feedback on the proposed legislation. Both agencies expressed significant reservations about the proposed approach, and recommended that we consider changes to address unintended consequences. Based on this feedback, I urge you to think about the following modifications to ensure clarity and avoid future complications:

1. The legislation should be changed from a bill to a concurrent resolution, similar to S. Con. Res. 50, which passed the Congress unanimously last December. A Sense of Congress aimed prospectively at upcoming international forums on Internet governance will demonstrate our unwavering support for a multi-stakeholder model while avoiding any complications that might develop as a result of placing a formal Policy Statement in statute. More specifically, both the FCC and State have expressed concern that a Policy Statement in statute could unintentionally impact ongoing or future agency litigation or undermine Administration flexibility in conducting foreign policy. Moreover, the agencies have expressed concern with the term "governmental control." One diplomat suggested that the use of this term might actually undermine existing Internet governance institutions such as ICANN because of its close relationship with the U.S. government, as embodied by arrangements such as the IANA Functions Contract and the Verisign Cooperative Agreement. Foreign countries frequently cite the close coordination between ICANN and the U.S. Department of Commerce as an example of U.S. "control" over the Internet.

2. The Sense of Congress should be amended to make it clear that a global free and open Internet should not be subject to the control of *international* regulatory bodies. It should not, however, create unnecessary confusion by suggesting that a global Internet should be free from *any* form of governmental control. Such sweeping language could affect domestic efforts by the United States and our allies to address cybersecurity, combat cybercrimes, maintain public safety, and ensure the free flow of information over the Internet.

I am, of course, willing to consider additional revisions you might propose in light of the concerns articulated by the FCC and State, and I'm open to other ideas about how to express our policy directives. I'd also be happy to join you in a meeting with the FCC and State to discuss the issues the agencies have raised directly with staff.

If we can resolve these concerns, I look forward to joining you in cosponsoring this legislation. I'm confident that other Democratic members of the Committee would strongly support these efforts as well.

I believe it's critical that our efforts in this area be completely in sync. Any daylight between Republicans and Democrats will send the wrong signal to the international community and could undermine the efforts of our diplomats going forward. Accordingly, I respectfully urge you to consider these modest revisions to your draft bill.

Most gratefully,

Anna G. Eshoo
Member of Congress