

FIGHTING FOR INTERNET FREEDOM: DUBAI AND BEYOND

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND
TECHNOLOGY

OF THE

COMMITTEE ON ENERGY AND
COMMERCE

AND THE

SUBCOMMITTEE ON TERRORISM, NONPROLIFERA-
TION, AND TRADE; AND THE SUBCOMMITTEE
ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN
RIGHTS, AND INTERNATIONAL ORGANIZATIONS

OF THE

COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

FEBRUARY 5, 2013

Serial No. 113-2

(Committee on Energy and Commerce)

Serial No. 113-18

(Committee on Foreign Affairs)

Printed for the use of the Committee on Energy and Commerce and the
Committee on Foreign Affairs

<http://energycommerce.house.gov> and <http://www.foreignaffairs.house.gov>



U.S. GOVERNMENT PRINTING OFFICE

79-530

WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
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FIGHTING FOR INTERNET FREEDOM: DUBAI AND BEYOND

TUESDAY, FEBRUARY 5, 2013

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,
COMMITTEE ON ENERGY AND COMMERCE,
JOINT WITH THE SUBCOMMITTEE ON TERRORISM,
NONPROLIFERATION, AND TRADE;
AND THE SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH,
GLOBAL HUMAN RIGHTS, AND INTERNATIONAL
ORGANIZATIONS,
COMMITTEE ON FOREIGN AFFAIRS
Washington, DC.

The subcommittees met, pursuant to notice, at 10:35 a.m., in room 2123, Rayburn House Office Building, Hon. Greg Walden (chairman of the Subcommittee on Communications and Technology) presiding.

Present from the Subcommittee on Communications and Technology: Representatives Walden, Latta, Shimkus, Terry, Blackburn, Scalise, Lance, Guthrie, Gardner, Kinzinger, Long, Ellmers, Barton, Eshoo, Matsui, Welch, Lujan, and Waxman (ex officio).

Present from the Subcommittee on Terrorism, Nonproliferation, and Trade: Representatives Poe, Kinzinger, Cotton, Cook, Perry, Sherman, Lowenthal, and Vargas.

Present from the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations: Representatives Smith, Marino, Weber, Stockman, Meadows, Bass, and Bera.

Also present: Representative Royce.

Staff present from the Committee on Energy and Commerce: Gary Andres, Staff Director; Ray Baum, Senior Policy Advisor/Director of Coalitions; Mike Bloomquist, General Counsel; Sean Bonyun, Communications Director; Matt Bravo, Professional Staff Member; Neil Fried, Chief Counsel, C&T; Debbie Hancock, Press Secretary; Sydne Harwick, Staff Assistant; Sean Hayes, Counsel, O&I; Andrew Powaleny, Deputy Press Secretary; David Redl, Counsel, Telecom; Charlotte Savercool, Executive Assistant/Legislative Clerk; Tim Torres, Deputy IT Director; Lyn Walker, Coordinator, Admin/Human Resources; Jean Woodrow, Director, Information Technology; Roger Sherman, Minority Chief Counsel; Shawn Chang, Minority Senior Counsel; Margaret McCarthy, Minority Professional Staff Member; Patrick Donovan, Minority FCC Detail; and Kara Van Stralen, Minority Special Assistant.

Staff present from the Committee on Foreign Affairs: Don MacDonald, Professional Staff Member, Subcommittee on Terrorism,

Nonproliferation, and Trade; and Eric Williams, Professional Staff Member, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations.

Additional staff members present: Doug Seay, Senior Professional Staff Member, House Committee on Foreign Affairs; Gregory Simpkins, Professional Staff Member, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, House Committee on Foreign Affairs; Luke Murry, Staff Director, Subcommittee on Terrorism, Nonproliferation and Trade, House Committee on Foreign Affairs; and Mark Kearney, Staff Associate, Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, House Committee on Foreign Affairs.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. I am going to call to order the Subcommittee on Communications and Technology for a hearing on "Fighting for Internet Freedom: Dubai and Beyond."

Before I give my opening remarks, I would just like to thank both Chairman Upton and Chairman Ed Royce of the Foreign Affairs Committee for their work in pulling together the largest group of subcommittees that have held a hearing here in a very long time between the Foreign Affairs Committee and the Energy and Commerce Committee.

Because this is sort of a different lay of the land, if you will, I am going to go through the procedures here and how we are going to go back and forth on opening statements so no one is surprised. I will start, and then my colleague, Ms. Eshoo, will follow. We each have 4 minutes. And then Chairman Smith and Ranking Member Bass will each have 3; Chairman Poe and Ranking Member Sherman will each have 3; Chairman Upton and Ranking Member Waxman will each have 3 minutes; and then Chairman Royce and Ranking Member Engel will each have 3 minutes. So that is the order we will follow so that everybody knows.

And, again, I want to thank our colleagues on the Foreign Affairs Committee for your interest and participation with us, and we with you, on this issue.

As we begin this subcommittee's first hearing in the 113th Congress, I want to welcome back our returning members and recognize some new members who have joined our subcommittee. Leonard Lance, Cory Gardner, Mike Pompeo, Billy Long, Renee Ellmers, Bruce Braley, Peter Welch, Ben Ray Lujan, and Jim Matheson are all on our subcommittee.

I would also like to recognize our returning member, Anna Eshoo, who will continue as our ranking member on the subcommittee. And the subcommittee's new vice chair is Bob Latta. So we look forward to working together on telecommunications policy going forward, as we did in the last Congress.

I also want to welcome again our friends from the Foreign Affairs Committee, Chairman Ed Royce, Subcommittee Chairmen Ted Poe and Chris Smith, and all the other members from Foreign Affairs Committee for joining us today on a matter of great importance,

and that is preserving a global Internet free from government control.

And I want to express my appreciation to Dr. Bitange Ndemo, who is joining us from Nairobi, Kenya. He is the Permanent Secretary of Information and Communications from Kenya. He has agreed to participate via this marvelous thing we now call the Internet, which made it a lot easier for him to participate than trying to work out a way to have him here in person. So we are using technology to accomplish something pretty important today.

Governments' traditional hands-off approach has enabled the Internet to grow at an astonishing pace and become perhaps the most powerful engine of social and economic freedom and job creation our world has ever known. Under the current multistakeholder governance model, nonregulatory institutions manage and operate the Internet by developing best practices with public- and private-sector input.

This is not to say the Internet operates outside the law. To be sure, illegal activity should be no less illegal simply because someone has used digital tools rather than ones of brick and mortar. But the structure of the Internet and the content and applications it carries are organized from the ground up, not handed down by governments. This allows the Internet to evolve quickly to meet the diverse needs of users around the world and to keep government or nongovernmental actors from controlling the design of the network or the content it carries.

Yet, at the World Conference on International Telecommunications, affectionately known as WCIT, in Dubai last December, billed as a routine review of an international treaty on traditional phone service, a number of nations sought to subject the Internet to international regulation. While disguised in language about broadband deployment, interconnection of networks, management of spam, cybersecurity, and access to telecommunications, at bottom the proposals could be used to justify economic regulation of the Internet and even government censorship.

This development was not unanticipated, which is why we called the hearing last May in advance of the Dubai conference and why the subcommittee moved a resolution advocating adherence to the multistakeholder governance model. By the end of the year, both the House and Senate unanimously passed the resolution, with only minor changes, expressing the sense of the Congress the U.S. delegation should oppose international efforts to control the Internet.

Buttressed by this resolution and facing a treaty that subjected the Internet to international regulation, even though conference organizers had promised Internet issues were not going to be on the agenda, the U.S. delegation and 54 other nations refused to sign. Unfortunately, 89 nations did sign the treaty, and this is likely the start, not the end, of efforts to drag the Internet within the purview of the international regulatory bodies. That is why this hearing will examine not only the implications of Dubai but also draft legislation turning last year's resolution into the law of the land, officially making it the policy of the United States to promote a global Internet free from government control.

[The discussion draft follows:]

[DISCUSSION DRAFT]113TH CONGRESS
1ST SESSION**H. R.** _____

To affirm the policy of the United States regarding Internet governance.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced introduced the following bill; which was referred to the Committee on _____

A BILL

To affirm the policy of the United States regarding Internet governance.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 The Congress finds the following:

5 (1) Given the importance of the Internet to the
6 global economy, it is essential that the Internet re-
7 main stable, secure, and free from government con-
8 trol.

9 (2) The world deserves the access to knowledge,
10 services, commerce, and communication, the accom-

1 panying benefits to economic development, edu-
2 cation, and health care, and the informed discussion
3 that is the bedrock of democratic self-government
4 that the Internet provides.

5 (3) The structure of Internet governance has
6 profound implications for competition and trade, de-
7 mocratization, free expression, and access to infor-
8 mation.

9 (4) Countries have obligations to protect human
10 rights, which are advanced by online activity as well
11 as offline activity.

12 (5) The ability to innovate, develop technical
13 capacity, grasp economic opportunities, and promote
14 freedom of expression online is best realized in co-
15 operation with all stakeholders.

16 (6) Proposals have been, and will likely con-
17 tinue to be, put forward at international regulatory
18 bodies that would fundamentally alter the govern-
19 ance and operation of the Internet.

20 (7) The proposals would attempt to justify in-
21 creased government control over the Internet and
22 could undermine the current multistakeholder model
23 that has enabled the Internet to flourish and under
24 which the private sector, civil society, academia, and

1 individual users play an important role in charting
2 its direction.

3 (8) The proposals would diminish the freedom
4 of expression on the Internet in favor of government
5 control over content.

6 (9) The position of the United States Govern-
7 ment has been and is to advocate for the flow of in-
8 formation free from government control.

9 (10) This Administration and past Administra-
10 tions have made a strong commitment to the multi-
11 stakeholder model of Internet governance and the
12 promotion of the global benefits of the Internet.

13 **SEC. 2. POLICY REGARDING INTERNET GOVERNANCE.**

14 It is the policy of the United States to promote a
15 global Internet free from government control and to pre-
16 serve and advance the successful multistakeholder model
17 that governs the Internet.

Mr. WALDEN. How can we use this legislation to further strengthen our Nation's resolve? What impact will the Dubai treaty have both on citizens of signatory nations and in countries that stood firm? What can we do to strengthen the multistakeholder governance model and its support across the globe? These are just some of the questions that we will explore from our panel of terrific witnesses today.

With that, I will now turn over to Ms. Eshoo for an opening statement of 4 minutes.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

As we begin this subcommittee's first hearing in the 113th Congress, I want to welcome back our returning members and recognize our new colleagues: Leonard Lance, Cory Gardner, Mike Pompeo, Billy Long, Renee Ellmers, Bruce Braley, Peter Welch, Ben Ray Lujan, and Jim Matheson. I'd also like to recognize our returning Ranking Member Anna Eshoo and the subcommittee's new Vice Chair, Bob Latta. I look forward to working with all of you.

I also want to welcome our friends from the Foreign Affairs Committee, Chairman Ed Royce and Subcommittee Chairmen Ted Poe and Chris Smith and all the other members from Foreign Affairs Committee for joining us today on a matter of great importance: preserving a global Internet free from government control. And I want to express my appreciation to Dr. Bitange Ndemo, Permanent Secretary of Information and Communications for Kenya, for agreeing to participate by Internet stream today, which we thought was particularly fitting.

Governments' traditional hands-off approach has enabled the Internet to grow at an astonishing pace and become perhaps the most powerful engine of social and economic freedom and job creation our world has ever known. Under the current multistakeholder governance model, non-regulatory institutions manage and operate the Internet by developing best practices with public and private sector input.

This is not to say that the Internet operates outside the law. To be sure, illegal activity should be no less illegal simply because someone has used digital tools rather than ones of brick and mortar. But the structure of the Internet and the content and applications it carries are organized from the ground up, not handed down by governments. This allows the Internet to evolve quickly, to meet the diverse needs of users around the world, and to keep governmental or non-governmental actors from controlling the design of the network or the content it carries.

Yet at the World Conference on International Telecommunications (WCIT) in Dubai last December, billed as a routine review of an international treaty on traditional phone service, a number of nations sought to subject the Internet to international regulation. While disguised in language about broadband deployment, interconnection of networks, management of "spam," cybersecurity, and access to telecommunications, at bottom the proposals could be used to justify economic regulation of the Internet and even government censorship.

This development was not unanticipated. Which is why I called a hearing last May in advance of the Dubai conference and why the subcommittee moved a resolution advocating adherence to the multistakeholder governance model. By the end of the year, both the House and Senate had unanimously passed the resolution, with only minor changes, expressing the sense of Congress that the U.S. delegation should oppose international efforts to control the Internet.

Buttressed by this resolution, and facing a treaty that subjected the Internet to international regulation even though conference organizers had promised Internet issues were not on the agenda, the U.S. delegation and 54 other nations refused to sign. Unfortunately, eighty-nine nations did sign the treaty and this is likely the start, not the end, of efforts to drag the Internet within the purview of international regulatory bodies. That's why this hearing will examine not only the implications of Dubai, but also draft legislation turning last year's resolution into the law of the land, officially making it the policy of the United States to promote a global Internet free from government control.

How can we use this legislation to further strengthen our nation's resolve? What impact will the Dubai treaty have, both on citizens of signatory nations and in countries that stood firm? What can we do to strengthen the multi-stakeholder governance model and its support across the globe? These are some of the questions we will explore today.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. ESHOO. Thank you, Mr. Chairman.

And along with you, I want to welcome the members of the Foreign Relations Committee that are with us today. A welcome to all the new members of our committee, the returning members of our committee. We look forward to working together in this new Congress.

Less than 2 months ago, the World Conference on International Telecommunications, WCIT, concluded in Dubai. Despite bipartisan agreement across our government, it is increasingly clear we have a lot of work ahead of us, particularly among nations who do not share our vision for maintaining the free flow of information across the Internet. It is certainly a hallmark of democracy, and we want to keep it that way.

Through the leadership of Ambassador Kramer, the U.S. delegation presented a united front of 110 representatives from our government, from industry, and from civil society. Equally important, a well-coordinated approach that advocated the importance of Internet freedom, liberalized markets, and the multistakeholder approach to Internet governance ensured that the U.S. was able to build a coalition of countries, 54 in total, who opposed an expansion of the international telecommunications regulations.

Now, going forward, we have to have a strategy for engaging developing countries. The U.S. shares many of the same goals, including expanding broadband deployment and adoption, ensuring the security of communications networks, and protecting intellectual property. Each of these goals can be addressed through the existing multistakeholder model for Internet governance, but we have to convince others of that.

I am pleased the chairman has proposed bipartisan legislation affirming a U.S. policy position that defends the successful multistakeholder process and ensures the Internet remains free from government control.

I thank each of our witnesses for being here today. And I look forward to your important perspectives on how to ensure the Internet remains open and a success story for generations to come, not only for Americans, but for people around the world.

And, with that, Mr. Chairman, I would like to yield the balance of my time to Congresswoman Matsui.

Ms. MATSUI. I thank the ranking member for yielding me time. And I would like to welcome our witnesses here today.

In today's global economy, with over 2.3 billion users, the Internet has become a necessity and certainly not a luxury. That is why I was deeply troubled by the decision in Dubai regarding government control over the Internet.

I believe the U.S. delegation worked diligently in Dubai to craft a deal that protects a free and open Internet. One of the positives that came out of Dubai was recognition by most of the developed world to protect the current multistakeholder approach, which has allowed the Internet to flourish. Ultimately, however, the administration made the right decision by refusing to support a bad policy.

I believe the status quo of a free, transparent, and open Internet must continue. We need to continue to promote innovation and openness of the Internet around the globe.

I yield back the balance of my time.

Ms. ESHOO. Are there any Members on our side that would like to take the 20 seconds that are left? Seventeen, 16—I think we yield back, Mr. Chairman. Thank you.

Mr. WALDEN. I thank the gentlelady.

I now recognize Chairman Smith from the Foreign Relations Committee.

OPENING STATEMENT OF HON. CHRISTOPHER H. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. SMITH. Thank you very much, Mr. Chairman. Thank you for your leadership on this very important issue.

Internet freedom is an issue of vital concern, as we all know, to an ever-growing number of people around the world. In a little more than 2 decades, the Internet has opened a vast storehouse of information to many, but not everyone, with computer access. It has allowed people to communicate easily and immediately over vast distances and changed the way products and services are marketed. Most important, the Internet can be used to promote the spread of democracy and respect for fundamental human rights. Yet it can also be used by repressive governments to censor and surveil.

Currently, the Internet is regulated, as we all know, under a multistakeholder system in which both agencies and private organizations, mostly American, play various roles. Russia and China and a host of other nations with poor human rights records have objected to this multistakeholder system and American influence.

Some of these countries objecting to the current system have refused to recognize that fundamental freedoms, such as freedom of speech and freedom of the media, apply to the Internet, just as they apply to all other modes of communication. In fact, Russia has blocked passage of a simple statement to that effect in the Organization for Security and Cooperation in Europe.

In December of last year, Russia, China, and 87 other countries signed a treaty at the world conference of the ITU in Dubai. The treaty touches on vital issues of Internet governance in ways our country objected to, and I am glad we did. And, in fact, the United States and 54 other countries refused to sign.

While many of the issues that the treaty deals with are technical and do not directly concern freedom from censorship and surveillance, and while many of the countries supporting the treaty are themselves not repressive, it is clear that many, as well, are repressive governments and have another agenda in the treaty. It is not to promote Internet freedom but to bring the Internet under international controls in ways that will, over the long term, legitimize their own repressive practices.

Yesterday, I reintroduced the Global Online Freedom Act, H.R. 491. This bill is a response not to the treaty directly, signed in Dubai in December, but to a larger and more general problem that

drives many of our concerns about the Dubai treaty: the growing use of the Internet as a tool of repression.

The new Global Online Freedom Act updates legislation I introduced in 2006, as well as in 2008, which advanced through three House committees. The new GOFA requires the State Department to beef up its practices on Internet freedom in the annual country reports on human rights practices and to identify by name Internet-restricting countries.

It requires Internet companies listed on U.S. stock exchanges to disclose to the Securities and Exchange Commission how they conduct their human rights due diligence, including with regard to the collection and sharing of personally identifiable information with repressive countries, and the steps that they take to notify users when they remove content or block access to content.

Finally, in response to many reports that we have all seen in the papers recently of U.S. technology being used to track down or conduct surveillance of human rights and democracy activists through the Internet or mobile devices, this bill will prohibit the export of hardware or software that could be used for potentially illicit activities such as surveillance, tracking, and blocking by the governments of Internet-restricting countries.

I thank you again, Mr. Chairman, for calling this very important hearing, and I look forward to the statements of our distinguished witnesses.

Mr. WALDEN. I thank the chairman and now recognize the ranking member of the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, Ms. Bass, for 4 minutes. Thank you.

OPENING STATEMENT OF HON. KAREN BASS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. BASS. Thank you, Mr. Chairman, Ranking Member Eshoo, and my colleagues on the participating subcommittees. Thank you for your leadership on this issue and moving swiftly to hold a hearing on one of the most important innovations of our day.

I want to also express my appreciation to today's witnesses, who bring depth and expertise on the issues before us.

Let me echo the sentiment expressed that the Internet for many of the world's people is an essential part of daily life. And while billions of people still have little to no access, the way in which it is governed globally is important to all of us. The recent deliberations in Dubai make clear that the international community, from government to business to diverse civil societies, all have a stake and role to play in the future of the Internet.

One key challenge, though, before us is how the Internet will be governed globally. Our current system relies on a decentralized, multistakeholder approach that has allowed innovation and expansion on a global scale. Proposed changes to the system could very well jeopardize this progress and hinder what has been a truly remarkable collaboration of diverse sectors.

The Internet represents an extraordinary and remarkable tool to convene individuals and communities, and provides a vehicle for expression. Today's hearing reminds us what is at stake if ground is lost to governments that seek to undermine a people's ability to

freely express their opinions and to voice those opinions without fear of harassment, retribution, or sentiment.

And while it is important to support open access to the Internet as a democratic tool, we must also be aware of the new challenges posed by the Internet. Chairman Chris Smith and I share a deep commitment to combating human trafficking. A recent research study by the University of Southern California documents the pervasive use of online classified ads and social networking sites to sexually exploit youth throughout the world. I look forward to working alongside my congressional colleagues and the expert witnesses here today to promote an open and free Internet, while working to stop Internet-facilitated human trafficking, child pornography, and other exploitation online.

It is my sincere hope that our government will continue to provide global leadership and partnership with other nations that strengthen the Internet as we know it.

Thank you, and I yield back the balance of my time.

Mr. WALDEN. I thank the gentlelady for her opening statement and now turn to the chairman of the Subcommittee on Terrorism, Nonproliferation, and Trade, Chairman Poe, for 3 minutes.

**OPENING STATEMENT OF HON. TED POE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF TEXAS**

Mr. POE. Thank you, Mr. Chairman.

The idea that the U.N. ought to be controlling the Internet, to me, is like putting the Taliban in charge of women's rights. It doesn't make any sense at all.

Oppressive countries want the United Nations to control the Internet. They want to control the content; they want to control the operations of the Internet. And they are led by none other than our fellow countries, Putin's Russia and our good buddies, the Chinese. They want to use the U.N. as a shield to protect against the threat of free speech, and they want to use it as a spear, a weapon against democratic opposition.

This is a threat to liberty, American liberty, free speech, human rights, economic freedom, competence, and innovation. It does hurt the developing world. The best thing for developing countries is an unfiltered Internet. We should consider the consequences for countries who want to, as my friend Mr. Smith has said, want to limit free speech through the Internet. We must remember that the United States does give several of these countries aid, and we should reexamine that if need be.

In November of 2014, the ITU's constitution will be written. We know what the U.N. is like. We don't need them governing the Internet. Some say what happened in Dubai could have been worse. That is like saying, you weren't hung, but you were drawn and quartered.

I am glad that we are having this hearing, and I thank the chairman for leading in this effort to find out exactly what the motivations are of these countries that want U.N. control of speech.

I yield back.

Mr. WALDEN. I thank the gentleman and now turn to the ranking member of the Subcommittee on Terrorism, Nonproliferation, and Trade, Mr. Sherman, for 3 minutes.

OPENING STATEMENT OF HON. BRAD SHERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. SHERMAN. I want to thank Chairman Walden and Ranking Member Eshoo for cutting across the jurisdiction of three subcommittees to put together these important hearings.

As others have stated, we have to keep the Internet free, particularly from those who would try to regulate its content. And, therefore, we were correct, even though we were in the minority, when the International Telecommunications Union sought through one of its ITU's core agreements, the International Telecommunications Regulations, to begin the process of governmental, multinational regulation of the Internet.

But we are in the minority. The ITU is an important organization. The Dubai round came up with a 30-page document, short by diplomatic standards, only 2 pages of which seem to be objectionable. So at issue for us is: How do we participate in the ITU in the future, knowing that we can never support this attempt to regulate the Internet?

The ITU was created in 1865, when its focus was the telegraph. It is part of the U.N. family of organizations. It has been an important forum for international telecommunications and has played a significant and useful role with regard to global telegraph and telephone service.

Prior to Dubai, the telecommunications regulatory treaty had not been updated since 1988, and so, not surprisingly, it did not deal with the Internet. We need to preserve the Internet's multistakeholder organization and governance and not allow governments, particularly those bent on censorship, to gain control.

Therefore, the United States was correct in not signing the agreement, but the question is: How do we participate in the ITU in the future? Can we work toward a bifurcation of the Dubai treaty, such that we can agree to a 28-page treaty while refusing to sign 2 pages? How dangerous would it be for us, and is it a viable course, to sign the 30 pages but with reservations? Would those reservations be sufficient, or is it more important that we make it clear that we will not sign any document, even with reservations, that has those two pages in it? Or do we want to learn from First Lady Nancy Reagan and just say no to this agreement, knowing that that puts us in the minority at the ITU?

So I want to hear from the witnesses what tactics we should employ. I want to commend the State Department not only for not going along with the majority, which is so easy, but instead not only making a stand but organizing a stand that had a very substantial minority of ITU members refusing to sign this treaty.

And I look forward to hearing from the witnesses how the State Department can reach out to the publics of other nations, particularly in Latin America. Because while a majority of the world's governments may be in favor of ITU regulation of the Internet, a majority of the world's people, I believe, are not.

So I look forward to hearing from our panel, and I thank you for putting together these hearings.

Mr. WALDEN. I thank the gentleman for his opening statement.

The vice chair of the full committee, Ms. Blackburn, is recognized next.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman.
I want to welcome all our witnesses.

Secretary Ndemo, I am just thrilled that you are able to join us. And we are so pleased that the wonders of the Internet allow us to bring you in and have you present for this hearing today.

I think that we are, each and every one, concerned about what we saw transpire in Dubai. Our goal is to make certain that we do have a free and open Internet, not only here in the United States but globally. And when we see the overreach, we realize that that is impeding on our freedoms.

So we are pleased that the U.S. left the Dubai conference just in time, and we want to make certain that we do not put ourselves in those situations again.

Mr. Chairman, I want to at this point yield 1 minute to the gentleman from Texas, Mr. Barton.

Mr. BARTON. Thank you.

I, too, want to welcome our witnesses. I want to welcome the Foreign Relations Committee, its distinguished chairman, for being here.

I am just going to say I double down on what Mr. Poe said. This is the committee that when the Internet first got started, the Energy and Commerce Committee, a Congressman from California, Chris Cox, who later became chairman of the FCC, offered the amendment that passed that we would have no regulation of the Internet here in the United States and no taxation. The only way to make freedom totally free is to keep it free. And in the world today, that is to keep the Internet free.

So I want to echo what I think everybody has said in some shape, form, or fashion: For the United States to sign this treaty would be absolute absurdity. And I hope that common sense prevails and we don't do that.

And I yield back.

Mrs. BLACKBURN. And at this time I want to yield 1 minute to the gentleman from Ohio, Mr. Latta.

Mr. LATTA. I thank the lady for yielding.

And, Mr. Chairman and Chairman Poe and Chairman Smith, I thank you for holding this hearing on the critical topic of Internet freedom.

And I thank the distinguished panel of witnesses for testifying today.

A global Internet free from government control is in the best interests of all Americans, as many of you have heard already from the other members of these committees. In every global city, it has revolutionized the world economy, communications, and the cause of freedom.

However, the Internet will only continue to thrive if governments refrain from regulating it and if it can remain under a multistakeholder governance model. Developments in the World Conference

on International Telecommunications last December in Dubai were troubling and a reminder that the United States must stand steadfast in its defense of Internet freedom.

I look forward to hearing from our witnesses today on the subject, and I yield back the balance of my time to the lady. Thank you.

Mrs. BLACKBURN. And I yield back.

Mr. WALDEN. The gentlelady yields back the balance of her time.

The chairman now recognizes the ranking member of the full Energy and Commerce Committee, Mr. Waxman.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you, Mr. Chairman and Chairman Walden. I appreciate your holding this joint hearing on the outcomes of the World Conference on International Telecommunications which took place last December in Dubai.

First and foremost, I want to commend the tireless work of our talented U.S. delegation, led by Ambassadors Phil Verveer and Terry Kramer, including the invaluable contributions made by staff at NTIA and the FCC under the directions of Assistant Secretary Larry Strickling and Chairman Genachowski.

We are all disappointed that the WCIT produced a treaty that seeks an expansion of governmental control into Internet governance instead of recognizing the success of the existing multistakeholder approach. But we must also recognize our U.S. delegation for the positive aspects of the treaty on which we were able to reach consensus with other member states. That work and dialogue with other nations must continue.

I am pleased that Congress, through bipartisan efforts initiated in the Subcommittee on Communications and Technology, was able to pass a unanimous resolution last year reaffirming our commitment to the multistakeholder model of Internet governance and a global, open Internet.

We stood shoulder-to-shoulder in support of the Administration because we agree that regardless of our domestic disagreements on the best ways to achieve our shared vision of Internet openness, these differences stop at the water's edge.

Today we will examine the path forward to build upon and strengthen the coalition of countries that stood together in Dubai. We need to work in close coordination with our allies to ensure the Internet remains a tool for the global dissemination of ideas, information, and commerce.

I look forward to hearing from our expert panel of witnesses.

And unless any Members on the Democratic side wish me to yield the balance of my time, I will yield back that time.

Mr. WALDEN. I thank the gentleman and now recognize the distinguished chairman of the Foreign Affairs Committee, Mr. Royce, for opening comments.

OPENING STATEMENT OF HON. EDWARD R. ROYCE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. ROYCE. Thank you, Mr. Chairman.

I think one of the great advantages in our Bill of Rights enumerated in our Constitution is the commitment to freedom of speech. I think it is one of the things that really unites Democrats and Republicans, one of the many things that unite us in the West, frankly. But it is something on which authoritarian regimes certainly have a very different take.

I want to thank our witnesses for being here with us this morning in order to testify on this subject. Because I think that we in the West are pretty well accustomed to threats from brutal dictatorships that come head-on, but danger can also come from some pretty obscure corners. The latest is the push by foreign governments to use the International Telecommunication Union to regulate the ability through the Internet to really exercise free speech.

I think government regulation of the Internet really had its first big success last December at the ITU conference. I wish we had been more effective in working earlier to head this off. But the fact that the strong objections of the United States and its allies were simply pushed aside by a majority vote—a majority vote, frankly, that was led by Russia, led by China—is a loud and clear warning of what lies ahead.

Some might wonder why this kind of regulation by the ITU should be a concern. You hear the argument, well, this U.N. agency has been around for decades, it has worked to set technical standards. But I think the problem here is threefold. First, the ITU has never had any role in regulating the Internet and has no business doing so today. Second, the countries behind the proposal want to use the ITU to help them control the Internet in their countries. And, third and most important, the creativity and innovation of the Internet can flourish only in an environment free from intrusive government regulation.

As bad as it was, the step taken at the ITU conference in December was only the first in a planned series by these authoritarian regimes. We know that the original proposal was even worse, so we must expect that the same countries will push for an even larger agenda in the future.

So we have our work cut out. I think the struggle here is going to be a permanent one. Once those forces have an initial victory, those seeking control of the Internet are not going to stop. It is too valuable to them as a tool.

Fortunately, I think we have strength in numbers in the West, I think we have strength in our ideas. But I think we need a forum, as demonstrated here today, in order to begin this discussion so that this discussion plays out abroad as well.

I think Congress has a key role to play, such as last year's resolution that passed our House unanimously and our Senate unanimously, as well as the proposed legislation that we are going to talk about today.

With this hearing, we shine a spotlight on those who seek to do their work behind the scenes and in the shadows. The truth of the old saying that the price of liberty is eternal vigilance is, I think,

being demonstrated here. If we are to prevail, we must always remember that we are engaged in a battle with very high stakes: the free flow of information and commerce, the very bedrock, in fact, of our society. That was understood by our Founders. We should keep that in mind today.

Thank you.

Mr. WALDEN. The gentleman yields back the balance of his time.

The chairman now recognizes the gentleman from New York, the ranking member, Mr. Engel.

He is not here. Does anyone on the full committee seek his time?

It does not appear so. OK. Then that wraps up our opening statements.

I ask unanimous consent to insert in the record a letter from the Internet Association.

Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. WALDEN. Ms. Eshoo?

Ms. ESHOO. Mr. Chairman, I ask unanimous consent to place in the record a letter from SIIA, the Software & Information Industry Association, on the topic that is the subject of our hearing today.

Mr. WALDEN. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Ms. ESHOO. Thank you.

Mr. WALDEN. OK. With that, then, we will turn to our distinguished panel of witnesses. And we will start with the Honorable Robert McDowell, Commissioner of the Federal Communications Commission.

Commissioner, thank you again for joining us on this topic, as you have on several other occasions, and on other topics, but we especially welcome your comments today. And please proceed.

STATEMENTS OF THE HON. ROBERT M. MCDOWELL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; THE HON. BITANGE NDEMO, PERMANENT SECRETARY, MINISTRY OF INFORMATION AND COMMUNICATIONS, REPUBLIC OF KENYA; THE HON. DAVID A. GROSS, FORMER U.S. COORDINATOR FOR INTERNATIONAL COMMUNICATIONS AND INFORMATION POLICY, U.S. DEPARTMENT OF STATE; SALLY SHIPMAN WENTWORTH, SENIOR MANAGER, PUBLIC POLICY, INTERNET SOCIETY; AND HAROLD FELD, SENIOR VICE PRESIDENT, PUBLIC KNOWLEDGE

STATEMENT OF THE HON. ROBERT M. MCDOWELL

Mr. MCDOWELL. Thank you, Mr. Chairman. And it is terrific to be back here again.

Thank you to all the chairs and all the ranking members and all the vice chairs and all the members of the various subcommittees. This is a new degree of difficulty for me, testifying before three joint committees, so we will see how this goes. But it is also a privilege to testify with this terrifically distinguished panel here.

Ladies and gentlemen, the Internet is quite simply under assault. As a result, freedom, prosperity, and the potential to improve the human condition across the globe are all at risk.

In my testimony today, I will make five fundamental points. First, proponents of multilateral intergovernmental control of the Internet are patient and persistent incrementalists who will never relent until their ends are achieved.

Number two, the recently concluded WCIT ended the era of an international consensus to keep the intergovernmental hands off of the Internet in dramatic fashion, thus radically twisting the one-way ratchet of even more government regulation in this space.

Third, those who cherish Internet freedom must immediately redouble their efforts to prevent further expansions of government control of the Internet as the pivotal 2014 plenipotentiary meeting of the ITU quickly draws near.

Fourth, merely saying no to any changes is quite obviously a losing proposition. Therefore, we should work to offer alternative proposals, such as improving the longstanding and highly successful nongovernmental multistakeholder model of Internet governance to include those who may feel disenfranchised.

And, finally, last year's bipartisan and unanimous congressional resolutions clearly opposing expansions of international powers over the Internet reverberated throughout the globe and had a positive and constructive effect.

So, first, it is important to note that as far back as 2003 and maybe further back than that, during the U.N.'s Summit on the Information Society, the U.S. found itself in the lonely position of fending off efforts by other countries to exert U.N. and other multilateral control over the Internet.

At that time, due to the highly effective leadership of my friend, Ambassador David Gross, and his stellar team at the State Department and other agencies and other folks as well, champions of Internet freedom were able to avert a wave of regulation by enhancing the private-sector multistakeholder governance model through the creation of entities such as the Internet Governance Forum, the IGF, where all stakeholders, including governments, could meet to resolve challenges.

Nonetheless, countries such as China, Russia, Iran, Saudi Arabia, and scores of their allies never gave up their regulatory quest. They continued to push the ITU and the U.N. itself to regulate both the operations, economics, and content of the Net. I have outlined some of these proposals in more detail in my written testimony.

The purpose of the WCIT was to renegotiate an earlier treaty from 1988. As such, it became the perfect opportunity for proponents of expanded regulation to extend the ITU's reach into the Internet's affairs. In fact, in 2011, Vladimir Putin summed it up best when he declared that his goal and that of his allies was to establish international control of the Internet through the ITU. Last December in Dubai, Mr. Putin largely achieved his goal.

To my second point, before the WCIT, ITU leadership made three key promises. The first, no votes would be taken at the WCIT. The second, a new treaty would be adopted only through unanimous consensus. And the third, any new treaty would not touch the Internet. All three promises were resoundingly broken. As a result of an 89-to-55 vote, the ITU now has unprecedented authority over the economics and content of key aspects of the Net.

Although the U.S. was ultimately joined by 54 other countries in opposition to the new treaty language, that figure is misleading. Many countries, including otherwise close allies in Europe, were willing to vote to ensnare the Internet in the tangle of intergovernmental control. In short, Internet freedom experienced a rude awakening regarding a stark reality: When push comes to shove, even countries that purport to cherish Internet freedom are willing to surrender.

Our experience in Dubai is a chilling foreshadow of how international Internet regulatory policy could expand at an accelerating pace. Many countries, as well as the ITU itself, brazenly argued that old treaty texts from 1988 gave the ITU broad jurisdiction over the Internet. This is plainly false, but if these regulatory expansionists are willing to conjure ITU authority where clearly none existed, their imaginations will see no limits to the ITU's authority over the Internet's affairs under the new treaty language. Their appetite for regulatory expansionism is simply insatiable, as they envision the omniscience of regulators replacing the billions of daily private-sector decisions that allow the Internet to flourish.

At the same time, worldwide consumer demand is driving technological convergence. As a result, companies such as Verizon, Google, AT&T, Amazon, Microsoft, Netflix, and many others, and many others across the globe, are building across borders thousands of miles of fiberoptics to connect sophisticated routers that bring voice, video, and data services more quickly to consumers tucked into every corner of the globe. From an engineering perspective, the technical architecture and service offerings of these companies look the same. To be blunt, these dynamic new wonders of the early 21st century are inches away from being smothered by innovation-crushing old rules designed for a different time.

Third, time is of the essence. While we debate what to do next, Internet freedom's foes around the globe are working hard to exploit yet another treaty negotiation. In 2014, the ITU will conduct what is literally a constitutional convention, called a plenipotentiary meeting, which will define the ITU's mission for years to come. Additionally, the World Telecommunications Policy and ICT Forum, which convenes in Geneva this May, will focus squarely on Internet governance and will shape the 2014 plenipot.

Accordingly, the highest levels of the U.S. Government must make this cause a top priority and recruit allies in civil society, the private sector, and diplomatic circles around the world. We should start with the President immediately making appointments to fill crucial vacancies in our diplomatic ranks.

Fourth, as I warned a year ago—and I see I am short on time—merely saying no to any changes to the multistakeholder Internet governance model has recently proven to be a losing proposition. Using the IGF as a model, we should immediately engage with all countries to encourage a dialogue among all interested parties, including governments, civil society, the private sector, nonprofits, the ITU, to broaden the multistakeholder umbrella.

Lastly, in my nearly 7 years at the FCC, I have been amazed by how closely every government and communications provider on the globe studies the latest developments in American communications policy. In fact, we can be confident that this hearing is streaming

live in some countries, such as Kenya—and thank you, Kenya—but it is being blocked by government censors in other countries.

Every detail of our actions is scrutinized. And when Congress speaks, especially when it speaks with one loud and clear voice, as it did last year with the unanimous and bipartisan resolutions concerning the WCIT, an uncountable number of global policymakers pause to think. Although Internet freedom suffered as a result of the WCIT, many even more corrosive proposals did not become international law in part due to Congress's actions last year.

In conclusion, finally—and I apologize for going over—I ask you in the strongest terms possible to take action and take action now. Two years hence, let us not look back at this moment and lament how we did not do enough. We have but one chance. Let us tell the world now that we will be resolute and stand strong for Internet freedom and that all nations should join us.

Thank you, and I look forward to your questions.

Mr. WALDEN. Commissioner, thank you very much for your strong testimony today.

[The prepared statement of Mr. McDowell follows:]

STATEMENT
OF
COMMISSIONER ROBERT M. MCDOWELL
FEDERAL COMMUNICATIONS COMMISSION

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON
COMMUNICATIONS AND TECHNOLOGY
AND
COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON
TERRORISM, NONPROLIFERATION, AND TRADE
AND
COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON
AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS

FIGHTING FOR INTERNET FREEDOM: DUBAI AND BEYOND

FEBRUARY 5, 2013

Thank you Chairman Upton, Ranking Member Waxman, Chairman Royce, Ranking Member Engel, Chairman Walden, Ranking Member Eshoo, Chairman Poe, Ranking Member Sherman, Chairman Smith and Ranking Member Bass. It is an honor to be before you during this rare joint hearing. Thank you for inviting me. It is a privilege to testify before such a rare meeting of three subcommittees and beside such a distinguished group on this panel.

Ladies and gentlemen, the Internet is under assault. As a result, freedom, prosperity and the potential to improve the human condition across the globe are at risk. Any questions regarding these assertions are now settled. Last year's allegations that these claims are exaggerated no longer have credibility.

In my testimony today, I will make five fundamental points:

- 1) Proponents of multilateral intergovernmental control of the Internet are patient and persistent incrementalists who will never relent until their ends are achieved;
- 2) The recently concluded World Conference on International Telecommunications ("WCIT") ended the era of an international consensus to keep intergovernmental hands off of the Internet in dramatic fashion, thus radically twisting the one-way ratchet of even more government regulation in this space;
- 3) Those who cherish Internet freedom must *immediately* redouble their efforts to prevent further expansions of government control of the Internet as the pivotal 2014 Plenipotentiary meeting of the International Telecommunication Union ("ITU")¹ quickly draws nearer;

¹ ITU was founded in Paris in 1865 as the International Telegraph Union. Throughout the years various treaties have expanded ITU's scope. History, ITU, <http://www.itu.int/en/about/Pages/history.aspx> (last visited January 31, 2013).

- 4) Merely saying “no” to any changes is – quite obviously – a losing proposition; therefore we should work to offer alternate proposals such as improving the long-standing and highly successful, *non-governmental*, multi-stakeholder model of Internet governance to include those who may feel disenfranchised; and
- 5) Last year’s bipartisan and unanimous Congressional resolutions clearly opposing expansions of international powers over the Internet reverberated throughout the world and had a positive and constructive effect.

I. Proponents of multilateral intergovernmental control of the Internet are patient and persistent incrementalists who will never relent until their ends are achieved.

First, it is important to note that as far back as 2003 during the U.N.’s Summit on the Information Society (“WSIS”), the U.S. found itself in the lonely position of fending off efforts by other countries to exert U.N. and other multilateral control over the Internet. In both 2003 and 2005, due to the highly effective leadership of my friend Ambassador David Gross – and his stellar team at the Department of State – champions of Internet freedom were able to avert this crisis by enhancing the private sector multi-stakeholder governance model through the creation of entities such as the Internet Governance Forum (“IGF”) where all stakeholders, including governments, could meet to resolve challenges. Solutions should be found through consensus rather than regulation, as had always been the case with the Internet’s affairs since it was opened up for public use in the early 1990’s.²

Nonetheless, countries such as China, Russia, Iran, Saudi Arabia and scores of their allies never gave up their regulatory quest. They continued to push the ITU, and the U.N. itself, to

² Internet Growth Statistics, INTERNET WORLD STATS, <http://www.internetworldstats.com/emarketing.htm> (last visited Jan. 31, 2013). For more background information, please refer to Exhibit A, Statement by FCC Commissioner Robert M. McDowell, *International Proposals to Regulate the Internet* (May 31, 2012), attached.

regulate both the operations, economics and content of the Net. Some proposals were obvious and specific while others were insidious and initially appeared innocuous or insignificant. Many defenders of Internet freedom did not take these proposals seriously at first, even though some plans explicitly called for:

- Changing basic definitions contained in treaty text so the ITU would have unrestricted jurisdiction over the Internet;³
- Allowing foreign phone companies to charge global content and application providers internationally mandated fees (ultimately to be paid by all Internet consumers) with the goal of generating revenue for foreign government treasuries;⁴
- Subjecting cyber security and data privacy to international control, including the creation of an international “registry” of Internet addresses that could track every Internet-connected device in the world;⁵

³ See, e.g., *Arab States Common Proposals for the Work of the Conference*, Algeria (People’s Democratic Republic of), Bahrain (Kingdom of), Comoros (Union of the), Djibouti (Republic of), Egypt (Arab Republic of), Iraq (Republic of), Jordan (Hashemite Kingdom of), Kuwait (State of), Lebanon, Libya, Mauritania (Islamic Republic of), Morocco (Kingdom of), Oman (Sultanate of), Qatar (State of), Saudi Arabia (Kingdom of), Somali (Democratic Republic of), Sudan (Republic of the), Tunisia, United Arab Emirates and Yemen (Republic of), Contribution 7, at Art. 2 (Oct. 24, 2012), <http://www.itu.int/md/S12-WCIT12-C-0007/en> (“*Arab States Contribution 7*”); *African Common Proposals for the Work of the Conference*, African Telecommunication Union Administrations, Contribution 19, at Art. 2 (Nov. 2, 2012), <http://www.itu.int/md/S12-WCIT12-C-0019/en> (“*Africa Contribution 19*”); *Proposals for the Work of the Conference*, India (Republic of), Contribution 21, at Art. 2 (Nov. 3, 2012), <http://www.itu.int/md/S12-WCIT12-C-0021/en> (“*India Contribution 21*”); *Proposals for the Work of the Conference*, Russian Federation, Contribution 27, at Art. 2 (Nov. 17, 2012), <http://www.itu.int/md/S12-WCIT12-C-0027/en> (“*Russia Contribution 27*”); *Proposals for the Work of the Conference*, Algeria, Saudi Arabia, Bahrain, China, United Arab Emirates, Russian Federation, Iraq, Sudan, Contribution 47, at Art. 2 (Dec. 11, 2012), <http://www.itu.int/md/S12-WCIT12-C-0047/en> (“*Algeria, Saudi Arabia, Bahrain, China, United Arab Emirates, Russian Federation, Iraq, Sudan Contribution 47*”).

⁴ See, e.g., *Arab States Contribution 7* at Arts. 6.0.5, 6.0.6; *Africa Contribution 19* at Arts. 6.0.1-6.0.6; *Algeria, Saudi Arabia, Bahrain, China, United Arab Emirates, Russian Federation, Iraq, Sudan Contribution 47* at Arts. 6.0.3, 6.0.4; *Revisions of the International Telecommunications Regulations – Proposals for High Level Principles to be Introduced in the ITRs*, ETNO, CWG-WCIT12 Contribution 109, at 2 (2012), <http://www.itu.int/md/T09-CWG.WCIT12-C-0109/en>.

⁵ See, e.g., Letter dated 12 September 2011 from the Permanent Representatives of China, the Russian Federation, Tajikistan, and Uzbekistan to the United Nations addressed to the Secretary-General, Item 93 of the provisional agenda - Developments in the field of information and telecommunications in the context of international security, 66th Session of the United Nations General Assembly, Annex (Sep. 14, 2011),

- Imposing unprecedented economic regulations of rates, terms and conditions for currently unregulated Internet traffic swapping agreements known as “peering;”⁶
- Establishing ITU dominion over important non-profit, private sector, multi-stakeholder functions, such as administering domain names like the .org and .com Web addresses of the world;⁷
- Subsuming into the ITU the functions of multi-stakeholder Internet engineering groups that set technical standards to allow the Net to work;⁸
- Centralizing under international regulation Internet content under the guise of controlling “congestion,” or other false pretexts; and many more.⁹

Despite these repeated efforts, the unanimously adopted 1988 treaty text that helped insulate the Internet from international regulation, and make it the greatest deregulatory success story of all time, remained in place. Starting in 2006, however, the ITU’s member states

http://www.cs.brown.edu/courses/csci1800/sources/2012_UN_Russia_and_China_Code_o_Conduct.pdf (last visited Jan. 31, 2013); *Arab States Contribution 7* at Art. 5A; *Proposals for the Work of the Conference*, Cameroon (Republic of), Contribution 15, at Art. 5A (Oct. 2, 2012), <http://www.itu.int/md/S12-WCIT12-C-0015/en> (“*Cameroon Contribution 15*”); *Africa Contribution 19* at Art. 5A; *India Contribution 21* at Art. 5A; *Common Proposals for the Work of the Conference*, ITU Member States, Members of the Regional Commonwealth in the Field of Communications (RCC), Contribution 14, at Art. 5A (Oct. 1, 2012), <http://www.itu.int/md/S12-WCIT12-C-0014/en> (“*RCC Contribution 14*”); *Algeria, Saudi Arabia, Bahrain, China, United Arab Emirates, Russian Federation, Iraq, Sudan Contribution 47* at Art. 3C.

⁶ See, e.g., *Arab States Contribution 7* at Art. 6.0.4; *India Contribution 21* at 6.0.4; Internet Society Background Paper, *International Telecommunications Regulations*, available at http://www.isoc.org/pubpolpillar/docs/itr-background_201108.pdf (last visited Jan. 31, 2013).

⁷ See, e.g., *Arab States Contribution 7* at Art. 3.5; *Russia Contribution 27* at 3A.2; *Algeria, Saudi Arabia, Bahrain, China, United Arab Emirates, Russian Federation, Iraq, Sudan Contribution 47* at Art. 3B.

⁸ See, e.g., *Africa Contribution 19* at Art. 3.4A; *Russia Contribution 27* at 3A; *Algeria, Saudi Arabia, Bahrain, China, United Arab Emirates, Russian Federation, Iraq, Sudan Contribution 47* at Arts. 1.6, 3.1, 4.2, 4.3.

⁹ See, e.g., *Arab States Contribution 7* at Art. 5A; *Africa Contribution 19* at Art. 5B. Some member states also called for requiring network operators to disclose to the government identification information about every communication carried over their networks or to give the governments control of the routing of those communications. *Arab States Contribution 7* at Arts. 3.3, 3.6; *Africa Contribution 19* at Arts. 3.3, 3.4B; *RCC Contribution 14* at Art. 3.3; *Algeria, Saudi Arabia, Bahrain, China, United Arab Emirates, Russian Federation, Iraq, Sudan Contribution 47* at Arts. 3.3, 3B.3; *Cameroon Contribution 15* at Art. 3.6.

(including the U.S.) laid the groundwork for convening the WCIT.¹⁰ The purpose of the WCIT was to renegotiate the 1988 treaty. As such, it became the perfect opportunity for proponents of expanded regulation to extend the ITU's reach into the Internet's affairs. In fact, in 2011, then-Russian Prime Minister Vladimir Putin summed it up best when he declared that his goal, and that of his allies, was to establish "international control over the Internet" through the ITU.¹¹

Last month in Dubai, Mr. Putin largely achieved his goal.

II. December's WCIT ended the era of international consensus to keep intergovernmental hands off of the Internet in dramatic fashion.

Before the WCIT, ITU leadership made three key promises:

- 1) No votes would be taken at the WCIT;
- 2) A new treaty would be adopted only through "*unanimous consensus*;" and
- 3) Any new treaty would not touch the Internet.¹²

¹⁰ Review of the International Telecommunication Regulations, Resolution 146 (Antalya 2006), available at <http://www.itu.int/ITU-T/itr-eg/files/resolution146.pdf>.

¹¹ Prime Minister Vladimir Putin meets with Secretary General of the International Telecommunication Union Hamadoun Touré, GOV'T OF THE RUSSIAN FED'N, <http://government.ru/eng/docs/15601/print/> (last visited Jan. 31, 2013) ("The International Telecommunication Union is one of the oldest international organisations; it's twice as old as the United Nations. Russia was one of its co-founders and intends to be an active member. We are thankful to you for the ideas that you have proposed for discussion. One of them is establishing international control over the Internet using the monitoring and supervisory capabilities of the International Telecommunication Union (ITU). If we are going to talk about the democratisation of international relations, I think a critical sphere is information exchange and global control over such exchange. This is certainly a priority on the international agenda.").

¹² WCIT-12: Clarification Needed During Open Letter Session, ITUBLOG (Nov. 15, 2012), <http://itu4u.wordpress.com/2012/11/15/wcit-12-clarification-needed-during-open-letter-session/> (last visited Feb. 1, 2013) ("Internet Control is simply not in the ITU mandate and ITU will continue to fully support the multi-stakeholder approach which it initiated some ten years ago for the World Summit of the Information Society."); Hamadoun I. Touré, U.N. Must Lead Internet Regulation Effort, WIRED.COM (Nov. 7, 2012), <http://www.wired.com/opinion/2012/11/head-of-itu-un-should-internet-regulation-effort/> (last visited Feb. 1, 2013) (stating "[n]o proposal will be accepted if it is not agreed upon by all participants through consensus."); Hamadoun I. Touré, Global Media Briefing on WCIT, ITU (June 22, 2012), <http://www.itu.int/en/osg/speeches/Pages/2012-06-22.aspx> (last visited Feb. 1, 2013) ("We all know that, in the true tradition of the ITU, we will not vote on any issues – just like in January, at the World Radiocommunication Conference, where in four weeks we did not vote once, but came to consensus on every issue."); Speech by ITU Secretary-General Touré, *The Challenges of Extending the Benefits of Mobile*, ITU (May 1, 2012), <http://www.itu.int/en/osg/speeches/Pages/2012-05-01.aspx> (last visited Jan.

All three promises were resoundingly broken.¹³ As a result of an 89-55 vote, the ITU now has unprecedented authority over the economics and content of key aspects of the Internet.¹⁴

Although the U.S. was ultimately joined by 54 other countries in opposition to the new treaty language, that figure is misleading. Many countries, including otherwise close allies in Europe, were willing to vote to ensnare the Internet in the tangle of intergovernmental control until Iran complicated the picture with an unacceptable amendment. In short, the U.S. experienced a rude awakening regarding the stark reality of the situation: when push comes to shove, even countries that purport to cherish Internet freedom are willing to surrender. Our experience in Dubai is a chilling foreshadow of how international Internet regulatory policy could expand at an accelerating pace.

Specifically, the explicit terms of the new treaty language give the ITU policing powers over “SPAM,” and attempt to legitimize under international law foreign government inspections of the content of Internet communications to assess whether they should be censored by governments under flimsy pretexts such as network congestion.¹⁵ The bottom line is, 89

31, 2013). (“You will, I am sure, have seen and read various media articles talking about the UN or the ITU trying to take over the Internet. Let me say quite plainly and clearly: This is simply ridiculous.”); David McAuley, *WCIT ‘Internet Governance’ Hype Distracts Attention From Serious Issues, ITU Head Says*, BLOOMBERG, Sept. 11, 2012, <http://www.bna.com/itus-toure-wcit-b17179869586/> (last visited Jan. 31, 2013) (quoting ITU Secretary-General Touré that WCIT “has nothing to do with [Internet] Governance.”).

¹³ Remarks by Assistant Secretary Strickling at the PLI/FCBA Telecommunications Policy & Regulation Institute (Dec. 14, 2012), http://www.ntia.doc.gov/Remarks_by_Assistant_Secretary_Strickling_at_PLI/FCBA (last visited Jan. 31, 2012) (“The International Telecommunication Union had made two important promises in advance of the conference. First, that it would operate by consensus and second, that Internet issues would not be appropriate for inclusion in the ITRs. As it turned out, the ITU could not deliver on either of these promises. When around 40 percent of the participating countries do not sign the final documents of the conference, it is obvious that the ITU did not achieve the consensus it had promised.”).

¹⁴ Notably, at the end of the WCIT, a “resolution to foster the greater growth of the Internet” was adopted “resolving to instruct the Secretary-General to continue to take necessary steps for ITU to play an active and constructive role” in Internet governance. This will serve to broaden the scope of the ITU’s rules to include the Internet, undermining the highly successful, multi-stakeholder model of Internet governance.

¹⁵ INTERNATIONAL TELECOMMUNICATION UNION, FINAL ACTS: WORLD CONFERENCE ON INTERNATIONAL TELECOMMUNICATIONS, at Art. 5B (Dubai 2012) (“FINAL ACTS”). The new ITRs provide signing nations with a

countries have given the ITU jurisdiction over the Internet's operations and content. Many more were close to joining them.

More broadly, pro-regulation forces succeeded in upending decades of consensus on the meaning of crucial treaty definitions that were universally understood to insulate Internet service providers, as well as Internet content and application providers, from intergovernmental control by changing the treaty's definitions.¹⁶ Many of the same countries, as well as the ITU itself,¹⁷ brazenly argued that the old treaty text from 1988 gave the ITU broad jurisdiction over the Internet.¹⁸ If these regulatory expansionists are willing to conjure ITU authority where clearly none existed, their control-hungry imaginations will see no limits to the ITU's authority over the Internet's affairs under the new treaty language. Their appetite for regulatory expansionism is

greater ability to regulate the blocking of "SPAM," opening the door to the regulation of content on the Internet, including possible blockage of political dissent or other forms of protected speech under the First Amendment of the U.S. Constitution. *See id.*

¹⁶ FINAL ACTS at Art. 1 abis). For example, an early disagreement at the WCIT over the reach of the international treaty's application resulted in a vague, undefined new term that could have far-reaching consequences. Prior to the WCIT, the ITRs applied only to "Recognized Operating Agencies" (ROAs), or telecommunications operators in each country. During the WCIT, some countries sought to change the term to "Operating Agencies," expanding the ITRs applicability. This debate was resolved by the adoption of "Authorized Operating Agencies" (AOA), undefined in the ITU Constitution. At present there is no definitive interpretation of which entities this provision applies to, likely precipitating disputes between member states regarding which entities specifically qualify as AOAs. Most assuredly, however, given current trends, key member states will push aggressively for definitions that are as expansive as possible.

¹⁷ The ITU can serve as a useful and constructive forum for the resolution of many important international communications policy matters, such as harmonization of spectrum and the allocation of satellite orbital slots. In contexts such as these, reaching international consensus through the ITU can produce positive outcomes. The danger, however, lies with unwarranted ITU "mission creep" into new spheres, such as the complex ecosystems of the Internet. Replicating the ITU's antiquated telecommunications regulations for modern digital communications technologies and services that do not operate like, or in any way resemble, traditional telecom services would be highly counterproductive. Although maintaining strong U.S. involvement in the pre-WCIT-12 ITU mission is vital, on a going forward basis, we should reassess America's support for new ITU actions we find harmful to freedom, prosperity, our national interest, and the well-being of all nations, but especially the developing world.

¹⁸ Speech by ITU Secretary-General Touré, *WCIT-12 – Myths and Reality* (Sept. 24, 2012) <http://www.itu.int/en/osg/speeches/Pages/2012-09-24.aspx> (last visited Feb. 1, 2013) (stating that "ITU's day-to-day activities [] are already fundamental to promoting Internet growth."); *WCIT-12 Myth Busting Presentation*, ITU, Slides 24, 25, <http://www.itu.int/en/wcit-12/Pages/WCIT-backgroundbriefs.aspx> (last visited Feb. 4, 2013) (stating that "[m]any consider that [the ITU definition of telecommunications] includes communications via the Internet, which runs on telecom infrastructure" and that it is an incorrect myth that the "ITU's scope does not include the Internet" and that "WCIT is about the ITU or the UN extending their mandate so as to control the Internet.").

insatiable as they envision the omniscience of regulators able to replace the billions of daily decisions that allow the Internet to blossom and transform the human condition like no other technology in human history.

At the same time, worldwide consumer demand is driving technological convergence. As a result, companies such as Verizon, Google, AT&T, Amazon, Microsoft, Netflix, and many more in the U.S. and in other countries, are building across borders thousands of miles of fiber optics to connect sophisticated routers that bring voice, video and data services more quickly to consumers tucked into every corner of the globe. From an engineering perspective, the technical architecture and service offerings of these companies look the same. Despite this wonderful convergence, an international movement is *growing* to foist 19th Century regulations designed for railroads, telegraphs and vanishing analog voice phone monopolies onto new market players that are much different from the monoliths of yore.

To be blunt, these dynamic new wonders of the early 21st Century are inches away from being smothered by innovation-crushing old rules designed for a different time. The practical effect of expanded rules would be to politicize engineering and business decisions inside sclerotic intergovernmental bureaucracies. If this trend continues, Internet growth would be most severely impaired in the developing world. But even here, as brilliant and daring technologists work to transform the world, they could be forced to seek bureaucratic permission to innovate and invest. In sum, the dramatic encroachments on Internet freedom secured in Dubai will serve as a stepping stone to more international regulation of the Internet in the very near future. The result will be devastating even if the United States does not ratify these toxic new treaties.

III. We must waste no time fighting to prevent further governmental expansion into the Internet's affairs at the upcoming ITU Plenipotentiary in 2014.

Time is of the essence. While we debate what to do next, Internet freedom's foes around the globe are working hard to exploit a treaty negotiation that dwarfs the importance of the WCIT by orders of magnitude. In 2014, the ITU will conduct what is literally a constitutional convention, called a "plenipotentiary" meeting, which will define the ITU's mission for years to come. Its constitution will be rewritten and a new Secretary General will be elected. This scenario poses both a threat and an opportunity for Internet freedom. The outcome of this massive treaty negotiation is uncertain, but the momentum favors those pushing for more Internet regulation. More immediately, the World Telecommunications Policy/ICT Forum ("WTPF"), which convenes in Geneva this May, will focus squarely on Internet governance and will shape the 2014 Plenipotentiary. Accordingly, the highest levels of the U.S. Government must make this cause a top priority and recruit allies in civil society, the private sector and diplomatic circles around the world.

The effort should start with the President immediately making appointments to fill crucial vacancies in our diplomatic ranks. The recent departures of my distinguished friend, Ambassador Phil Verveer, his legendary deputy Dick Beard, as well as WCIT Ambassador Terry Kramer, have left a hole in the United States' ability to advocate for a constructive – rather than destructive – Plenipot. America and Internet freedom's allies simply cannot dither again. If we do, we will fail, and global freedom and prosperity will suffer.

IV. We should work to offer constructive *alternative* proposals, such as improving the highly successful multi-stakeholder model of Internet governance to include those who feel disenfranchised.

As I warned a year ago, merely saying “no” to any changes to the multi-stakeholder Internet governance model has recently proven to be a losing proposition.¹⁹ Ambassador Gross can speak to this approach far better than can I, but using the creation of the IGF as a model, we should immediately engage with all countries to encourage a dialogue among all interested parties, including governments, civil society, the private sector, non-profits and the ITU, to broaden the multi-stakeholder umbrella to provide those who feel disenfranchised from the current structure with a meaningful role in shaping the evolution of the Internet. Primarily due to economic and logistical reasons, many developing world countries are not able to play a role in the multi-stakeholder process. This is unacceptable and should change immediately. Developing nations stand to gain the most from unfettered Internet connectivity, and they will be injured the most by centralized multilateral control of its operations and content.

V. Last year’s bipartisan and unanimous Congressional resolutions clearly opposing expansions of international powers over the Internet reverberated around the world and had a positive and constructive effect, *but Congress must do more.*

In my nearly seven years of service on the FCC, I have been amazed by how closely every government and communications provider on the globe studies the latest developments in American communications policy. In fact, we can be confident that this hearing is streaming live in some countries, and is being blocked by government censors in others. Every detail of our actions is scrutinized. It is truly humbling to learn that even my statements have been read in Thailand and Taiwan, as well as translated into Polish and Italian.

¹⁹ Robert M. McDowell, *The U.N. Threat to Internet Freedom*, WALL ST. J. Feb. 21, 2012, at A19, available at <http://online.wsj.com/article/SB10001424052970204792404577229074023195322.html>.

And when Congress speaks, especially when it speaks with *one* loud and clear voice, as it did last year with the unanimous and bipartisan resolutions concerning the WCIT, an uncountable number of global policymakers pause to think. Time and again, I have been told by international legislators, ministers, regulators and business leaders that last year's resolutions had a positive effect on the outcome of the WCIT. Although Internet freedom suffered as a result of the WCIT, many even more corrosive proposals did not become international law in part due to your actions.²⁰

IV. Conclusion.

And so, I ask you in the strongest terms possible, to take action and take action *now*. Two years hence, let us not look back at this moment and lament how we did not do enough. We have but one chance. Let us tell the world that we will be resolute and stand strong for Internet freedom. All nations should join us.

Thank you for having me appear before you today. I look forward to your questions.

²⁰ Many other proposals that would threaten the Internet were defeated at the WCIT, such as "sender party pays," which would have required Web content providers to pay Internet service providers (ISPs) in other countries for the traffic sent over those networks. See also David Gross, *Walking the Talk: The Role of U.S. Leadership in the Wake of WCIT*, BLOOMBERG, Jan. 17, 2013, <http://www.wileyrein.com/resources/documents/Gross--BNA--1.17.13.pdf> (last visited Feb. 1, 2013) (explaining that Congress's clear message was heard at WCIT, "This action was important not only because of the substance of Congress's statements, but also because the world understood just how extraordinary it is for our Congress to act with unanimity, especially in an era when Congress has immense difficulty reaching consensus on almost anything. At the end of WCIT, I heard from many foreign officials that they knew that the United States would not sign the revised treaty with its Internet-related provisions because Congress had sent a clear and unequivocal message that such an agreement was unacceptable to the American people.").

EXHIBIT A

**STATEMENT
OF
COMMISSIONER ROBERT M. McDOWELL
FEDERAL COMMUNICATIONS COMMISSION**

**BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON
COMMUNICATIONS AND TECHNOLOGY**

INTERNATIONAL PROPOSALS TO REGULATE THE INTERNET

MAY 31, 2012

Thank you, Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee for inviting me to join you today. Tomorrow will mark my sixth anniversary as an FCC commissioner, and every day has been an honor and a privilege. I am pleased to be back before you. As always, I look forward to answering any questions you may have.

It is a pleasure and an honor to testify beside my friend, Ambassador Phil Verveer. First, please allow me to dispense quickly and emphatically any doubts about the *bipartisan* resolve of the United States' to resist efforts to expand the International Telecommunication Union's ("ITU") authority over Internet matters. Some ITU officials have dismissed our concern over this issue as mere "election year politics." Nothing could be further from the truth as evidenced by Ambassador Verveer's testimony today as well as recent statements from the White House, Executive Branch agencies, Democratic and Republican Members of Congress and my friend and colleague, FCC Chairman Julius Genachowski. We are unified on the substantive arguments and have always been so.

Second, it is important to define the challenge before us. The threats are real and not imagined, although they admittedly sound like works of fiction at times. For many years now, scores of countries led by China, Russia, Iran, Saudi Arabia, and many others, have pushed for, as then-Russian Prime Minister Vladimir Putin said almost a year ago, "international control of the Internet" through the ITU.¹ I have tried to find a more concise way to express this issue, but I can't seem to improve upon now-President Putin's crystallization of the effort that has been afoot for quite some time. More importantly, I think we should take President Putin very seriously.

¹ Vladimir Putin, Prime Minister of the Russian Federation, Working Day, GOV'T OF THE RUSSIAN FED'N, <http://premier.gov.ru/eng/events/news/15601/> (June 15, 2011) (last visited May 14, 2012).

Six months separate us from the renegotiation of the 1988 treaty that led to insulating the Internet from economic and technical regulation. What proponents of Internet freedom do or don't do between now and then will determine the fate of the Net, affect global economic growth and determine whether political liberty can proliferate. During the treaty negotiations, the most lethal threat to Internet freedom may not come from a full frontal assault, but through insidious and seemingly innocuous expansions of intergovernmental powers.

This subterranean effort is already under way. While influential ITU Member States have put forth proposals calling for overt legal expansions of United Nations' or ITU authority over the Net, ITU officials have publicly declared that the ITU does not intend to regulate Internet governance while also saying that any regulations should be of the "light-touch" variety.² But which is it? It is not possible to insulate the Internet from new rules while also establishing a new "light touch" regulatory regime. Either a new legal paradigm will emerge in December or it won't. The choice is binary.

Additionally, as a threshold matter, it is curious that ITU officials have been opining on the outcome of the treaty negotiation. The ITU's Member States determine the fate of any new rules, not ITU leadership and staff. I remain hopeful that the diplomatic process will not be subverted in this regard.

As a matter of process and substance, patient and persistent incrementalism is the Net's most dangerous enemy and it is the hallmark of many countries that are pushing the pro-regulation agenda. Specifically, some ITU officials and Member States have been discussing an alleged worldwide phone numbering "crisis." It seems that the world may be running out of phone numbers, over which the ITU *does* have some jurisdiction.

² Speech by ITU Secretary-General Touré, *The Challenges of Extending the Benefits of Mobile* (May 1, 2012), http://www.itu.int/net/pressoffice/press_releases/index.aspx?lang=en (last visited May 29, 2012).

Today, many phone numbers are used for voice over Internet protocol services such as Skype or Google Voice. To function properly, the software supporting these services translate traditional phone numbers into IP addresses. The Russian Federation has proposed that the ITU be given jurisdiction over IP addresses to remedy the phone number shortage.³ What is left unsaid, however, is that potential ITU jurisdiction over IP addresses would enable it to regulate Internet services and devices with abandon. IP addresses are a fundamental and essential component to the inner workings of the Net. Taking their administration away from the bottom-up, non-governmental, multi-stakeholder model and placing it into the hands of international bureaucrats would be a grave mistake.

Other efforts to expand the ITU's reach into the Internet are seemingly small but are tectonic in scope. Take for example the Arab States' submission from February that would change the rules' definition of "telecommunications" to include "processing" or computer functions.⁴ This change would essentially swallow the Internet's functions with only a tiny edit to existing rules.⁵

When ITU leadership claims that no Member States have proposed absorbing Internet governance into the ITU or other intergovernmental entities, the Arab States' submission demonstrates that nothing could be further from the truth. An infinite number of avenues exist to

³ *Further Directions for Revision of the ITRs*, Russian Federation, CWG-WCIT12 Contribution 40, at 3 (2011), <http://www.itu.int/md/T09-CWG.WCIT12-C-0040/en> (last visited May 29, 2012) ("To oblige ITU to allocate/distribute some part of IPv6 addresses (as same way/principle as for telephone numbering, simultaneously existing of many operators/numbers distributors inside unified numbers space for both fixed and mobile phone services) and determination of necessary requirements.").

⁴ *Proposed Revisions*, Arab States, CWG-WCIT12 Contribution 67, at 3 (2012), <http://www.itu.int/md/T09-CWG.WCIT12-C-0067/en> (last visited May 29, 2012).

⁵ And Iran argues that the current definition already includes the Internet. *Contribution from Iran*, The Islamic Republic of Iran, CWG-WCIT12 Contribution 48, Attachment 2 (2011), <http://www.itu.int/md/T09-CWG.WCIT12-C-0048/en> (last visited May 29, 2012).

accomplish the same goal and it is camouflaged subterfuge that proponents of Internet freedom should watch for most vigilantly.

Other examples come from China. China would like to see the creation of a system whereby Internet users are registered using their IP addresses. In fact, last year, China teamed up with Russia, Tajikistan and Uzbekistan to propose to the UN General Assembly that it create an “International Code of Conduct for Information Security” to mandate “international norms and rules standardizing the behavior of countries concerning information and cyberspace.”⁶ Does anyone here today believe that these countries’ proposals would encourage the continued proliferation of an open and freedom-enhancing Internet? Or would such constructs make it easier for authoritarian regimes to identify and silence political dissidents? These proposals may not technically be part of the WCIT negotiations, but they give a sense of where some of the ITU’s Member States would like to go.

Still other proposals that have been made personally to me by foreign government officials include the creation of an international universal service fund of sorts whereby foreign – usually state-owned – telecom companies would use international mandates to charge certain Web destinations on a “per-click” basis to fund the build-out of broadband infrastructure across the globe. Google, iTunes, Facebook and Netflix are mentioned most often as prime sources of funding.

In short, the U.S. and like-minded proponents of Internet freedom and prosperity across the globe should resist efforts to expand the powers of intergovernmental bodies over the Internet

⁶ Letter dated 12 September 2011 from the Permanent Representatives of China, the Russian Federation, Tajikistan, and Uzbekistan to the United Nations addressed to the Secretary-General, Item 93 of the provisional agenda - Developments in the field of information and telecommunications in the context of international security, 66th Session of the United Nations General Assembly, Annex (Sep. 14, 2011), http://www.cs.brown.edu/courses/csci1800/sources/2012_UN_Russia_and_China_Code_o_Conduct.pdf (last visited May 29, 2012).

even in the smallest of ways. As my supplemental statement and analysis explains in more detail below, such a scenario would be devastating to global economic activity, but it would hurt the developing world the most.

Thank you for the opportunity to appear before you today and I look forward to your questions.

* * *

FCC Commissioner Robert M. McDowell
Supplemental Statement and Analysis
May 31, 2012

Thank you, Chairman Walden and Ranking Member Eshoo, for holding this hearing. Its topic is among the most important public policy issues affecting global commerce and political freedom: namely, whether the International Telecommunication Union (ITU), or any other intergovernmental body, should be allowed to expand its jurisdiction into the operational and economic affairs of the Internet.

As we head toward the treaty negotiations at the World Conference on International Telecommunications (WCIT) in Dubai in December, I urge governments around the world to avoid the temptation to tamper with the Internet. Since its privatization in the early 1990s, the Internet has flourished across the world under the current deregulatory framework. In fact, the long-standing international consensus has been to keep governments from regulating core functions of the Internet's ecosystem.

Yet, some nations, such as China, Russia, India, Iran and Saudi Arabia, have been pushing to reverse this course by giving the ITU or the United Nations itself, regulatory jurisdiction over Internet governance. The ITU is a treaty-based organization under the auspices of the United Nations.¹ Don't take my word for it, however. As Russian Prime Minister Vladimir Putin said almost one year ago, the goal of this well-organized and energetic effort is to establish "international control over the Internet using the monitoring and supervisory capabilities of the [ITU]."²

Motivations of some ITU Member states vary. Some of the arguments in support of such actions may stem from frustrations with the operations of Internet Corporation for Assigned Names and Numbers (ICANN). Any concerns regarding ICANN, however, should not be used as a pretext to end the multi-stakeholder model that has served all nations – especially the developing world – so well. Any reforms to ICANN should take place through the bottom-up multi-stakeholder process and should not arise through the WCIT's examination of the International Telecommunication Regulations (ITR)s.

Constructive reform of the ITRs may be needed. If so, the scope of any review should be limited to traditional telecommunications services and not expanded to include information services or any form of Internet services. Modification of the current multi-stakeholder Internet governance model may be necessary as well, but we should all work together to ensure no intergovernmental regulatory overlays are placed into this sphere. Not only would nations surrender some of their national sovereignty in such a pursuit, but they would suffocate their own economies as well, while politically paralyzing engineering and business decisions within a global regulatory body.

¹ History, ITU, <http://www.itu.int/en/about/Pages/history.aspx> (last visited May 14, 2012).

² Vladimir Putin, Prime Minister of the Russian Federation, Working Day, GOV'T OF THE RUSSIAN FED'N, <http://premier.gov.ru/eng/events/news/15601/> (June 15, 2011) (last visited May 14, 2012).

Every day headlines tell us about industrialized and developing nations alike that are awash in debt, facing flat growth curves, or worse, shrinking GDPs. Not only must governments, including our own, tighten their fiscal belts, but they must also spur economic expansion. An unfettered Internet offers the brightest ray of hope for growth during this dark time of economic uncertainty, not more regulation.

Indeed, we are at a crossroads for the Internet's future. One path holds great promise, while the other path is fraught with peril. The promise, of course, lies with keeping what works, namely maintaining a freedom-enhancing and open Internet while insulating it from legacy regulations. The peril lies with changes that would ultimately sweep up Internet services into decades-old ITU paradigms. If successful, these efforts would merely imprison the future in the regulatory dungeon of the past.

The future of global growth and political freedom lies with an unfettered Internet. Shortly after the Internet was privatized in 1995, a mere 16 million people were online worldwide.³ As of early 2012, approximately 2.3 billion people were using the Net.⁴ Internet connectivity quickly evolved from being a novelty in industrialized countries to becoming an essential tool for commerce – and sometimes even basic survival – in all nations, but especially in the developing world. Such explosive growth was helped, not hindered, by a deregulatory construct. Developing nations stand to gain the most from the rapid pace of deployment and adoption of Internet technologies brought forth by an Internet free from intergovernmental regulation.

By way of illustration, a McKinsey report released in January examined the Net's effect on the developing world, or "aspiring countries."⁵ In 30 specific aspiring countries studied, including Malaysia, Mexico, Morocco, Nigeria, Turkey and Vietnam,⁶ Internet penetration has grown 25 percent per year for the past five years, compared to only five percent per year in developed nations.⁷ Obviously, broadband penetration is lower in aspiring countries than in the developed world, but that is quickly changing thanks to mobile Internet access technologies. Mobile subscriptions in developing countries have risen from 53 percent of the global market in 2005 to 73 percent in 2010.⁸

³ Internet Growth Statistics, INTERNET WORLD STATS, <http://www.internetworldstats.com/emarketing.htm> (last visited Feb. 21, 2012).

⁴ *Id.*

⁵ See McKinsey High Tech Practice, *Online and upcoming: The Internet's impact on aspiring countries*, MCKINSEY & CO. (Jan. 2012) ("*McKinsey Aspiring Countries Report*"), http://www.mckinsey.com/Client_Service/High_Tech/Latest_thinking/Impact_of_the_internet_on_aspiring_countries (last visited May 24, 2012).

⁶ *Id.* at 22 (categorizing the following as aspiring countries: Algeria, Argentina, Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Iran, Kazakhstan, Malaysia, Mexico, Morocco, Nigeria, Pakistan, the Philippines, Poland, Romania, the Russian Federation, Saudi Arabia, South Africa, Taiwan, Thailand, Turkey, Ukraine, Venezuela, and Vietnam).

⁷ *Id.* at 1, 3-4, 23.

⁸ *Id.* at 1.

In fact, Cisco estimates that the number of mobile-connected devices will exceed the world's population sometime this year.⁹ Increasingly, Internet users in these countries use *only* mobile devices for their Internet access.¹⁰ This trend has resulted in developing countries growing their global share of Internet users from 33 percent in 2005, to 52 percent in 2010, with a projected 61 percent share by 2015.¹¹ The 30 aspiring countries discussed earlier are home to one billion Internet users, half of all global Internet users.¹²

The effect that rapidly growing Internet connectivity is having on aspiring countries' economies is tremendous. The Net is an economic growth accelerator. It contributed an average 1.9 percent of GDP growth in aspiring countries for an estimated total of \$366 billion in 2010.¹³ In some developing economies, Internet connectivity has contributed up to 13 percent of GDP growth over the past five years.¹⁴ In six aspiring countries alone, 1.9 million jobs were associated with the Internet.¹⁵ And in other countries, the Internet creates 2.6 new jobs for each job it disrupts.¹⁶ I expect that we would all agree that these positive trends must continue. The best path forward is the one that has served the global economy so well, that of a multi-stakeholder governed Internet.

One potential outcome that could develop if pro-regulation nations are successful in granting the ITU authority over Internet governance would be a partitioned Internet. In particular, fault lines could be drawn between countries that will choose to continue to live under the current successful model and those Member States who decide to opt out to place themselves under an intergovernmental regulatory regime. A balkanized Internet would not promote global free trade or increase living standards. At a minimum, it would create extreme uncertainty and raise costs for *all* users across the globe by rendering an engineering, operational and financial morass.

For instance, Harvard and the Massachusetts Institute of Technology (MIT) recently announced placing many of their courses online for free – for anyone to use. The uncertainty and economic and engineering chaos associated with a newly politicized

⁹ Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2011-2016, CISCO, at 3 (Feb. 14, 2012), http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf (last visited May 24, 2012).

¹⁰ McKinsey Aspiring Countries Report at 1.

¹¹ *Id.* at 3-4, 23.

¹² *Id.* at iv, 4, 23. And 73 percent of Internet users do not speak English as a first language. *Id.* at iv.

¹³ *Id.* at 2, 8-9, 26-27.

¹⁴ *Id.* at 2.

¹⁵ *Id.* at v.

¹⁶ McKinsey Global Institute, *Internet Matters: The Nets Sweeping Impact on Growth, Jobs, and Prosperity*, MCKINSEY & CO., at 3, 21 (May 2011), http://www.mckinsey.com/Insights/MGI/Research/Technology_and_Innovation/Internet_matters (last visited May 24, 2012).

intergovernmental legal regime would inevitably drive up costs as cross border traffic and cloud computing become more complicated and vulnerable to regulatory arbitrage. Such costs are always passed on to the end user consumers and may very well negate the ability of content and application providers such as Harvard and MIT to offer first-rate educational content for free.

Nations that value freedom and prosperity should draw a line in the sand against new regulations while welcoming reform that could include a non-regulatory role for the ITU. Venturing into the uncertainty of a new regulatory quagmire will only undermine developing nations the most.

As evidenced by today's panels, attempts to regulate the Internet sphere have rallied opposition here in the U.S. and internationally on a bipartisan basis. I am grateful that my friend, Ambassador Phil Verveer, is here with me today. I am encouraged by his recent indication that the Administration will name a head of the U.S. delegation to the WCIT in June. Furthermore, my friend and colleague, FCC Chairman Genachowski, also has been working to raise awareness of this important issue as have other key members of the Obama Administration.

I am further buoyed by the leading role played by the private sector, both for-profit and non-profit, not only domestically, but abroad as well. I am pleased to report that there are many entities of all stripes, including public interest groups, telecommunications companies, content providers, think tanks, Internet access service providers, non-profit Internet governance entities and network manufacturers standing together to help spread the message and educate policymakers across the globe. A solid diverse "coalition of coalitions" is starting to grow, which will help the soon-to-be named leader of our delegation begin on a positive note.

Finally, it is worth noting that even if this effort is unsuccessful in December, we must continue to be vigilant. Given the high profile, not to mention the dedicated efforts by some countries, I cannot imagine that this matter will disappear. Similarly, I urge skepticism for the "minor tweak" or "light touch." As we all know, *every* regulatory action has consequences. Put another way, when tended with care and patience, even a mustard seed can grow into Jack's Beanstalk. We must remain vigilant for years to come.

For your convenience, I have attached a copy of a recent *Wall Street Journal* op-ed that I wrote which provides more detail on the issue. See Exhibit A.

Thank you again for the opportunity to appear before you today. I look forward to your questions.

Exhibit A

Robert M. McDowell, *The UN Threat to Internet Freedom*, WALL ST. J., Feb. 21, 2012, at A19, available at <http://online.wsj.com/article/SB10001424052970204792404577229074023195322.html>.

THE WALL STREET JOURNAL

TUESDAY, FEBRUARY 21, 2012

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The U.N. Threat to Internet Freedom

By ROBERT M. McDOWELL

On Feb. 27, a diplomatic process will begin in Geneva that could result in a new treaty giving the United Nations unprecedented powers over the Internet. Dozens of countries, including Russia and China, are pushing hard to reach this goal by year's end. As Russian Prime Minister Vladimir Putin said last June, his goal and that of his allies is to establish "international control over the Internet" through the International Telecommunication Union (ITU), a treaty-based organization under U.N. auspices.

If successful, these new regulatory proposals would upend the Internet's flourishing regime, which has been in place since 1988. That year, delegates from 114 countries gathered in Australia to agree to a treaty that set the stage for dramatic liberalization of international telecommunications. This insulated the Internet from economic and technical regulation and quickly became the greatest deregulatory success story of all time.

Since the Net's inception, engineers, academics, user groups and others have convened in bottom-up nongovernmental organizations to keep it operating and thriving through what is known as a "multi-stakeholder" governance model. This consensus-driven private-sector approach has been the key to the Net's phenomenal success.

In 1995, shortly after it was privatized, only 16 million people used the Internet world-wide. By 2011, more than two billion were online—and that number is growing by as much as half a million every day. This explosive growth is the direct result of governments generally keeping their hands off the Internet sphere.

Net access, especially through mobile devices, is improving the human condition more quickly—and more fundamentally—than any other technology in history. Nowhere is this more true than in the developing world, where

unfettered Internet technologies are expanding economies and raising living standards.

Farmers who live far from markets are now able to find buyers for their crops through their Internet-connected mobile devices without assuming the risks and expenses of traveling with their goods. Worried parents are able to go online to locate medicine for their sick children. And proponents of political freedom are better able to share information and organize support to break down the walls of tyranny.

The Internet has also been a net job creator. A recent McKinsey study found that for every job disrupted by Internet connectivity, 2.6 new jobs are created. It is no coincidence that these wonderful developments blossomed as the Internet migrated further away from government control.

Today, however, Russia, China and their allies within the 193 member states of the ITU want to renegotiate the 1988 treaty to expand its reach into previously unregulated areas. Reading even a partial list of proposals that could be codified into international law next December at a conference in Dubai is chilling:

- Subject cyber security and data privacy to international control;

- Allow foreign phone companies to charge fees for "international" Internet traffic, perhaps even on a "per-click" basis for certain Web destinations, with the goal of generating revenue for state-owned phone companies and government treasuries;

- Impose unprecedented economic regulations such as mandates for rates, terms and conditions for currently unregulated traffic-swapping agreements known as "peering."

- Establish for the first time ITU dominion over important functions of multi-stakeholder Internet governance entities such as the Internet Corporation for Assigned Names and Numbers, the nonprofit entity that coordinates the .com and .org Web addresses of the world;

- Subsume under intergovernmental control many functions of the Internet Engineering Task Force, the Internet Society and other multi-stakeholder groups that establish the engineering and technical standards that allow the Internet to work;

- Regulate international mobile roaming rates and practices.

Many countries in the developing world, including India and Brazil, are particularly intrigued by these ideas. Even though Internet-based technologies are improving billions of lives everywhere, some governments feel excluded and want more control.

And let's face it, strong-arm regimes are threatened by popular outcries for political freedom that are empowered by unfettered Internet connectivity. They have formed impressive coalitions, and their efforts have progressed significantly.

Merely saying "no" to many changes to the current structure of Internet governance is likely to be a losing proposition. A more successful strategy would be for proponents of Internet freedom and prosperity within every nation to encourage a dialogue among all interested parties, including governments and the ITU, to broaden the multi-stakeholder umbrella with the goal of reaching consensus to address reasonable concerns. As part of this conversation, we should underscore the tremendous benefits that the Internet has yielded for the developing world through the multi-stakeholder model.

Upending this model with a new regulatory treaty is likely to partition the Internet as some countries would inevitably choose to opt out. A balkanized Internet would be devastating to global free trade and national sovereignty. It would impair Internet growth most severely in the developing world but also globally as technologists are forced to seek bureaucratic permission to innovate and invest. This would also undermine the proliferation of new cross-border technologies, such as cloud computing.

A top-down, centralized, international regulatory overlay is antithetical to the architecture of the Net, which is a global network of networks without borders. No government, let alone an intergovernmental body, can make engineering and economic decisions in lightning-fast Internet time. Productivity, rising living standards and the spread of freedom everywhere, but especially in the developing world, would grind to a halt as engineering and business decisions become politically paralyzed within a global regulatory body.

Any attempts to expand intergovernmental powers over the Internet—no matter how incremental or seemingly innocuous—should be turned back. Modernization and reform can be constructive, but not if the end result is a new global bureaucracy that departs from the multi-stakeholder model. Enlightened nations should draw a line in the sand against new regulations while welcoming reform that could include a nonregulatory role for the ITU.

Pro-regulation forces are, thus far, much more energized and organized than those who favor the multi-stakeholder approach. Regulation proponents only need to secure a simple majority of the 193 member states to codify their radical and counterproductive agenda. Unlike the U.N. Security Council, no country can wield a veto in ITU proceedings. With this in mind, some estimate that approximately 90 countries could be supporting intergovernmental Net regulation—a mere seven short of a majority.

While precious time ticks away, the U.S. has not named a leader for the treaty negotiation. We must awake from our slumber and engage before it is too late. Not only do these developments have the potential to affect the daily lives of all Americans, they also threaten freedom and prosperity across the globe.

Mr. McDowell is a commissioner of the Federal Communications Commission.

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DOW JONES

Mr. WALDEN. Our next witness is the Permanent Secretary Bitange Ndemo from the Kenyan Ministry of Information and Communications. We are pleased that the Permanent Secretary is able to join us via the Internet from the U.S. Embassy in Nairobi.

Before we have him speak, I would like to extend special thanks to the team at the State Department, both here in Washington, D.C., and in Nairobi, for their help in coordinating Permanent Secretary Ndemo's testimony. I would particularly like to thank the acting head of the International Communication and Information Policy Group at the State Department, Jack Spilsbury, for his time and efforts.

With that, we are delighted, Secretary Ndemo, that you would take time out of your busy schedule to speak with us today.

I understand that in Nairobi they are, I believe, 8 hours ahead of us, so it is already 7:15 in the evening. He is able to testify, but another commitment prevents him from being able to take our questions later in the hearing. We will obviously be able to submit questions to him in writing, but he is not able to stay with us.

But, Secretary, we are delighted that you would join us today. We look forward to your comments. Please unmute your microphone and share your thoughts with us. And thank you again, sir, for joining us.

I think your microphone is live.

Mr. NDEMO. Can you hear me?

Mr. WALDEN. Yes, I can.

STATEMENT OF THE HON. BITANGE NDEMO

Mr. NDEMO. Thank you, Chairman. And I want to take this opportunity to thank all the other chairmen, the Congressmen and Congresswomen, to thank you for allowing me to make a presentation about what happened in Dubai in December.

In Kenya, prior to our going to Dubai, we had consultations in line with our new Constitution, which guarantees freedom of information and freedom of speech. And we did not want to go against the new Constitution that we have in Kenya. And we thank the American Government, through the leadership of Ambassador Kramer, Ambassador Verveer, and Ambassador Gross, who, through their leadership, we were able to fully understand the proceedings in Dubai.

And I would say here that many of my—of African countries were literally coerced into—hello?

Mr. WALDEN. You are doing fine. We can hear you just fine.

Mr. NDEMO. Yes. Many of the countries here were literally coerced into signing the treaty. Because after a while, some came and said what Kenya did was good because on their own they had been working towards a common understanding, until we tried to explain that this would go against the achievements that we have made.

Some of you who know what has happened in Kenya, is that we have heavily invested in the Internet. We have invested in fiberoptic cables, the undersea cables. And because of this investment in the Internet, we have begun to see a lot of innovation coming out of Kenya. If you know the money transfer, what it has done to the poor in this country; if you know some of the new applica-

tions, like Ushahidi, which have helped throughout the country, it is because that freedom has been free in this country.

And we want to continue to have it free. But we want to work with the like-minded throughout the world to make sure that the 2014 plenipotentiary does not become a nightmare for those who believe in freedom of the Internet.

One thing that we must pay attention is that the Internet has given so many people hope, it has given so many people—it has empowered so many people to make their governments responsive. In Kenya, through Twitter and Facebook, people are able to question the government. And you know what has happened in most countries in northern Africa.

So Internet is very key. It is the lifeblood of the innovations that we have had in Kenya here. We want to continue to support this. We want to work together with the Americans to prepare for the Geneva conference, to prepare for the plenipotentiary, and hope that the countries that were coerced into signing come to our side and support the new initiatives that would ensure that the Internet remains free, and help to empower the citizens of the world as it has done, and we have seen that it has done so.

That is the only way we can help those countries that are in between, trying to figure out whether to support the freedom of the Internet. Kenya, for example, has been host to ICANN, to IGF, to freedom on the Internet. And we are helping those countries that are members of freedom of Internet to be able to convene and explain the benefits of the Internet.

I would stop here, but I would hope we continue to work together to ensure that the Internet remains free for the years to come. Thank you very much.

Mr. WALDEN. Secretary, thank you very much for your willingness to testify today from Nairobi and for your strong statement in support of a free Internet. We appreciate your testimony. We know you may have to depart at some point. But, again, thank you, and thanks for your good work and your good words.

[The prepared statement of Mr. Ndemo follows:]

Kenya at the 2012 World Conference on the International Telecommunication Regulations (WCIT)

Introduction

Kenya has seen great socio-economic, political, cultural and individual benefits of mobile and Internet. Recognizing these benefits, Kenya has a goal of 100% Internet penetration by 2017 and is well on its way. In 2012, Kenyan mobile phone usage jumped 19%. Moreover, the Kenya Internet Exchange Point (KIXP) currently localizes more than 1Gbit/s of peak traffic, dramatically reducing latency (from 200-600ms to 2-10ms on average), while allowing ISPs to save almost \$1.5 million per year on international connectivity. The IXP also increases mobile data revenues by an estimated \$6 million for operators having generated at least an additional traffic of 100Mbit/s per year; helps the localization of content in the country; is critical to raising government tax revenues, and increasingly acts as a regional hub for traffic from neighboring countries with over 50 regional networks accessible directly from KIXP.

On matters pertaining to security, the Communications Commission of Kenya has established the National Computer Security and Incident Response Team (CSIRT) that coordinates the dissemination of information from various industry-specific CSIRTs. The Internet Service providers have a functional CSIRT that provides information that is relevant to resolve potential security threats and vulnerabilities to its members.

The International Telecommunications Regulations (ITRs)

In early December 2012, a global treaty conference, the World Conference on the International Telecommunication Regulations (WCIT), was held under the auspices of the International Telecommunication Union (ITU). The treaty, called the International Telecommunication Regulations (ITRs), was developed at the 1988 World Administrative Telegraph and Telephone Conference (WATTC-88) and had not been revised since that time. The ITRs are intended to facilitate “global interconnection and interoperability” of telecommunications traffic across national borders. The regulations provide a framework for international cooperation in which global interoperability of telecommunications networks is achieved.

Kenya’s national consultations process leading to the WCIT12

Kenya held several multi stakeholder national consultations leading up to the WCIT meeting in Dubai:

- Kenya IGF, which commenced with online discussions conducted on three local lists serves namely the Kenya ICT Action Network (KICTANet)¹, skunkworks and ISOC Kenya and culminated in a face to face meeting that took place on July 6, 2012²
- The 2012 East African Internet Governance Forum (EAIGF), which took place in July 17-18, 2012³ and held in collaboration with the African Telecommunications Union (ATU) with the second day, 18th July fully dedicated to discussing the ITRs.

¹ <http://www.kictanet.or.ke/wp-content/uploads/2012/07/KENYA-IGF-2012-ONLINE-REPORT.pdf>

² Kenya IGF 2012 Programme: <http://www.kictanet.or.ke/?p=10217>

³ EAIGF 2012 Programme: http://www.eaigf.or.ke/files/5th_EAIGF_Programme_July_17_18_2012.pdf

- Kenya ITRs National Consultations convened by the CCK took place on November 13, 2012. On September 24, 2012, the CCK had released the 'African Common Proposals, for public consultations.⁴ It had been expected that after the public consultations, Kenya would develop a national position.

This multi stakeholder model of policy making is enshrined in Kenya's 2010 Constitution where article 10 provides for the participation of citizens as one of the national values and principles of governance. It provides inter alia that: -

10. (1) the national values and principles of governance in this Article binds all State organs, State officers, public officers and all persons Whenever any of them--
 (a) Applies or interprets this Constitution;
 (b) Enacts, applies or interprets any law; or
 (c) Makes or implements public policy decisions.

(2) The national values and principles of governance include--
 (a) Patriotism, national unity, sharing and devolution of power,
 The rule of law, democracy and participation of the people

In the spirit of the new constitution, the Kenya delegation to WCIT 2012 was multi-stakeholder in nature and consisted of representatives from industry, technical community, civil society, media, academia and government. The head of delegation was the Permanent Secretary, Ministry of Information and Communications Dr. Bitange Ndemo.

The ITU Secretary General had encouraged member states to hold multi-stakeholder consultations to help form their national positions and encouraged delegations to include members from civil society, academia and the private sector. He was proud of this as an innovation in the ITU, recognizing, in conformance with the Tunis Agenda, "the need for the development of public policy by governments in consultation with all stakeholders." The Kenya national multi stakeholder processes produced results that were not compatible with the current state of the 2012 treaty. During various consultations stakeholders recommended that the ITRs remain high-level principles and the scope be limited to telecommunications. However, during the WCIT other subjects were included that unacceptably altered the nature of the discussions, and ultimately of the ITRs. Kenya's national multi stakeholder consultations produced several viewpoints and recommendations, this process should be respected and the revised treaty must therefore be considered at the national level before signing is considered. There is a need to hold further multi stakeholder consultations before we sign or take reservations and sign, or not sign. Particularly when there were issues that clashed with the national position.

While the African block, (based on political interests and lack of foresight on the unintended consequences)-supported positions throughout the conference that may cause damage to our economy. For instance, two proposals that were in the African Common Proposal that would have had significant unintended consequences for Kenya are as follows:

⁴ http://www.cck.go.ke/links/consultations/current_consultations/Africa_T09-CWG_WCIT12-C-0116xMSW-E1.pdf

1. The definition of Operating Agencies which would have potentially caused all communications providers, from mobile operators to ISPS and website providers to be subject to the provisions of the treaty. This would have caused instability in our communications market, with even the potential for MPESA (it is an international system now) coming under the provisions of ITRs.

2. The addition of article 41K, which proposed a fair compensation for, carried traffic (Sending party pays for traffic termination). This proposal was prescriptive of business models for member states to apply. This business model while beneficial in the short term for less developed countries, those that have made significant development such as Kenya and are exporting traffic, would suffer in the long term through such a provision. The unintended consequence would be a rise in the cost of services to end users attributed to the change in the business models.

In addition, the treaty in its current state is inconsistent with the multi-stakeholder model of Internet governance. It is Kenya's long-standing position that ICT and Internet policy must be multi-stakeholder driven and should not be determined by governments, rather by broader society, citizens and communities. Such consultations must be multi-stakeholder in nature including civil society, private sector, technical community and others.

Delaying the decision to sign the 2012 ITRs was the right decision both because of the unprecedented expansion of "human rights" language in the treaty that is inconsistent with international human rights standards, and the encroachment of the treaty into regulation of the Internet that could endanger Kenya's efforts to grow its Internet-based industries. Our decision to not sign at WCIT-12 is reinforced by the fact that, to the extent there are positive aspects to the treaty, Kenya and its businesses will still enjoy many of their benefits in the global international telecommunications ecosystem. We should take the decision to sign, take reservations, or not sign after further national multi stakeholder consultations and careful consideration of Kenya's national interest. Kenya is not alone in making this determination; indeed 55 countries did not sign the Final Acts of the Conference in Dubai, including both developing and developed countries, and Member States from every continent. It is normal for many countries to sign such important and binding documents like treaties after a round of consultation at the national level.

Contentious issues

Preamble *"These Regulations recognize the right of access of Member States to international telecommunication services"*

This unprecedented new human rights language is inconsistent with established principles of international law. It is a dilution of human rights as applied to the individual and a shift towards towards collective, state rights. This language was added to the Preamble of the treaty as a supplement to the commitment made by Member States to implement the revised Regulations "in a manner that respects and upholds their human rights obligations." The new language - (which was added on the last working day of the conference pursuant to a vote called for by Iran, and supported by various African and other nations) - appears to recognize a unique international human right that is inconsistent with established human rights precedents.

Regardless of whether Kenya agrees with the underlying sentiment of the provision, the ITU and telecoms sector are not appropriate venues for the creation and recognition of new human rights. Kenya, like other countries, should carefully and fully consult with all relevant legal experts and national stakeholders (especially those in other, non-telecoms parts of the government), the private sector, and civil society to determine if this radical expansion of “human rights” to include governments is appropriate and lawful.

Kenya remains committed to upholding human rights obligations and to the values of freedom of expression and the free flow of information and ideas on the Internet. Kenya will continue to work with the ITU and others to achieve universal affordable access.

-**Recognized operating agencies** versus operating agencies “authorized operating agencies,” this is a category that could include a large number of new entities such as Internet access service providers (ISPs). To the extent regulatory solutions are required in these areas, they can be implemented on the national level without this revised treaty. Ultimately, Kenya - with vibrant and growing ICT and Internet content industries - should see this expansion of international regulation as adverse to its national economic interests.

- **Article 3.7 “Implementation of regional telecommunication exchange points”:** This is a new introduction to the ITRs. There is no definition of “Regional telecommunication exchange points” in the telecommunications sector or ITRs. As such, this may imply “regional Internet exchange points”. The growth of regional “Internet” exchange points is driven by social economic factors. Kenya has strategically managed to develop these factors in its favor hence the growth of the Kenya Internet Exchange Point (KIXP) and Mombasa Internet Exchange Point (IXP). The unintended consequence of this article will be eliciting discussion on the location of the regional telecommunications exchange point, at regional level, since each country cannot have one. Such a process is likely to hamper national efforts, growth or emergence of a regional exchange point driven by the fundamentals.

-**Article 5A “Security and robustness of networks”:** ITRs is not a useful venue for addressing security issues. This would have significant implications for issues of privacy and freedom of information. Kenyan stakeholders have made significant progress in addressing security concerns through collaboration and setup of industry specific CSIRTs coordinated by the CCK. We therefore encourage national, regional and international collaboration and cooperation to further enhance the effectiveness of the efforts made thus far. Kenya is an active and committed participant in such efforts, for example the multi stakeholder commonwealth Cybercrime (CCI) Initiative among others.

-**Article 5B: “Unsolicited bulk electronic communications”** is a new introduction to regulating spam, which is a form of content and inevitably opens the door to regulation of other forms of content, including cultural and political speech. This article introduces regulatory scope of the treaty into Internet issues and invites governments to take content-based action and moves the treaty into the realm of regulating speech on the Internet. Similar concerns are relevant to the security language adopted in Article 5A.

-**Resolution Plen/3 “To foster an enabling environment for the greater growth of the Internet”** represents a direct extension of ITUs role and scope into the Internet despite earlier assertions from ITU that the WCIT would not address

Internet issues. While the resolution is not on the body of the ITRs, and is nonbinding, it is still in the Final Acts and will therefore give the ITU the scope to assert its intergovernmental role in Internet governance processes. We also note that the highly selective references to the WSIS outcome documents do not reflect previous international agreement on Internet policy and governance. For Kenya, which has a growing ICT sector and is a regional leader in terms of connectivity and innovation, these new Internet provisions risk undermining successful multi-stakeholder mechanisms and proven strategies for growth. This Resolution, therefore presents an unbalanced view of Internet governance that is inconsistent with the principles underlying the Internet Governance Forum (successfully hosted by Kenya in 2011) and many of the provisions agreed to at the United Nations World Summit on the Information Society (WSIS) in 2003 and 2005. This Resolution- which was adopted at 1:30 AM on Thursday morning through a procedural mechanism known as “taking the temperature of the room” that strangely became a de facto vote of the Conference - focuses heavily on government involvement in the management and development of the Internet, as opposed to established, successful multi-stakeholder processes.

We are concerned that this resolution has been introduced following the ITU S.G. statements before the conference that WCIT was not about the Internet, and in a speech to the opening plenary of WCIT that “WCIT is not about taking over the Internet. And WCIT is not about Internet governance.”

Recommendations and way forward

The revised ITRs contain several positive provisions, including an explicit recognition of the role of commercial agreements in determining the terms and conditions for international telecommunications services arrangements, important provisions regarding pricing transparency and quality of service in international mobile roaming, and new Member State commitments regarding the prevention of number misuse. However, because the international telecommunications ecosystem is a global market and Kenya has a conducive policy and regulatory environment that continues to provide for liberalized telecommunications environment that has spurred competition and growth, Kenya’s industry/companies will continue to enjoy many of the benefits of these achievements notwithstanding its decision to not sign the treaty. In light of this and the significant concerns discussed above, there is no compelling reason for Kenya to sign the revised treaty.

In addition, the divergence of views was quite significant during the conference and since the treaty does not come into effect until January 15th, there are several activities and conferences that are going to take place before then that could change a lot of opinions. Kenya is committed to remaining engaged in global dialogue on the role of governments and other stakeholders in the growth, development and evolution of international telecommunications and the Internet sectors as we expect these discussions will continue beyond the WCIT.

Mr. WALDEN. We will now go to the former U.S. Coordinator for International Communications and Information Policy at the U.S. Department of State, the Honorable David A. Gross.

Ambassador, thank you for being with us. Thank you for your work on this issue. We look forward to your testimony, as well.

STATEMENT OF THE HON. DAVID A. GROSS

Mr. GROSS. Thank you very much, Mr. Chairman, chairmen, ranking members. I appreciate very much, of course, the opportunity to appear once again.

I also want to thank my fellow panelists here in Washington who were also in the U.S. delegation and were terrific members of the U.S. delegation.

But if I may, before the Permanent Secretary leaves, if I may, with your permission, say a few words about why it is particularly important that he is appearing before you today.

The Permanent Secretary led the Kenyan delegation to WCIT, and he defended the interests of the Kenyan people and the Kenyan Government in an extraordinarily effective and forceful way. He did not bow to the wishes of other countries, but instead defended that which he believed to be correct and I believe is clearly correct. That is not an insubstantial contribution to the conference.

His standing to be able to make that is not just because of his representing the great country of Kenya, a host, as the Permanent Secretary just said, of the Internet Governance Forum just about 2 years or so ago, but rather because of his personal involvement and the involvement of his team, the ministers and others, in Kenya.

Kenya has transformed itself in regard to the Internet. When he took office, Kenya had no Internet access other than through very expensive and very slow satellite communications. Because of his tireless work and the work of his team, they now have four, or some might even claim five, high-capacity submarine cables coming into Kenya that is transforming that country.

The cost of the Internet connectivity has gone down; latency has improved. As the Permanent Secretary said, it has resulted in jobs that have benefited not only the Kenyan people but all of us, because what happens in Kenya affects us in so many ways. In addition, of course, it has promoted the free flow of information, something that the Permanent Secretary believes strongly in.

So I am particularly pleased and proud that he has participated in this hearing because he brings a perspective that is truly unique and very powerful.

Now, I have heard and of course have read the testimony of my fellow panelists, and I agree that the key message, I think, has been that there is much work to be done. We need to learn the lessons of the past, including the lessons from WCIT, which are very clear, I believe, but it is important for all of us to look forward. We need to listen carefully to the technical community, to civil society, to the private sector, to other countries, and especially those, such as those represented by the Permanent Secretary, from the developing world.

I think, however, as we look at these issues, it is important for us to look carefully at the ITU. The ITU is an extraordinarily im-

portant organization to the United States. And, in many respects, if it did not exist, we would have to invent it because of its important work in many areas, particularly with regard to spectrum-related issues, something that is important to all of our economies.

It is also traditionally an important organization because, unlike other parts of the U.N., it is primarily a bottom-up, contribution-driven organization. It is not the Secretariat that sets the agenda, but rather it is governments. And, therefore, as I disagree with many things the ITU does, it is not a disagreement with the Secretariat; it is a disagreement with member states and their views and their advocacy with regard to important issues, particularly those involving the Internet.

Therefore, it is important for us, I believe, to differentiate between ITU control of the Internet, something that we all believe is an anathema, and the ITU as an effective convenor, particularly with regard to our outreach to the developing world, in which it can be an effective facilitator.

I was pleased, in that regard, that the Secretary-General just gave a speech just a few days ago in which he said he was disappointed that in Dubai to see attempts to derail the conference by those who were persuaded that Internet control was an issue for discussion. I agree. I, too, not only was disappointed, I was very, very unhappy with that outcome. But that is the outcome as a result, as many of you have already noted, of the issues raised by Russia, China, and others who seek to use the ITU for control, not the ITU itself.

So, in conclusion, it seems to me that the importance is for us to continue to advocate strongly, as we did at WCIT. The skill of the delegation in its advocacy was strong. We did not, as some reports made, we never walked out. We engaged to the very end. It is because of that engagement and the skill of our chairman, Mohamed Al Ghanim from the UAE, that, in fact, much of what is in the agreement is positive from a telecoms perspective.

But, nevertheless, the Internet-related aspects make it an unsignable and unacceptable treaty, in my view. That is a tremendous disappointment for all of us. But it is, in fact, an opportunity for us to redouble our efforts of involvement, particularly, as has been noted, with the upcoming plenipotentiary in Korea in 2014 and just this upcoming May at the World Telecommunications Policy Forum.

With that, Mr. Chairman, I thank you very much and look forward to questions.

Mr. WALDEN. Thank you, Ambassador.

[The prepared statement of Mr. Gross follows:]

TESTIMONY OF AMB. DAVID A. GROSS

Thank you for the opportunity for me to speak with you today about the recent World Conference on International Telecommunications (“WCIT”). My name is David A. Gross and I had the great honor of serving in the Department of State as the United States Coordinator for International Communications and Information Policy from 2001 to 2009.

From December 3, 2012 until December 14, 2012, the world gathered in Dubai, United Arab Emirates, under the auspices of the International Telecommunication Union (“ITU”) to attempt to revise the 1988 international telecommunications treaty known as the International Telecommunication Regulations (“ITRs”). I was pleased to attend that treaty-writing conference, WCIT, as a member of the U.S. delegation.

Before discussing some of the unfortunate aspects of the treaty negotiations, I would like to begin by noting there were many positive aspects to the treaty negotiations. Perhaps most notably, I was extraordinarily proud of the performance of the US delegation – from the top down. Ambassador Terry Kramer was our head of delegation. Although this was his first ITU treaty-writing conference, Amb. Kramer handled himself, the negotiations, and the delegation like a seasoned professional. His job was difficult not only because of the controversial nature of the subject matter, but also because of the size and diversity of our delegation. Amb. Kramer, together with the other delegation leaders including Amb. Phil Verveer, Dick Beaird, Assistant Secretary Larry Strickling, and other government officials from State, Commerce, the Federal Communications Commission, the Departments of Defense, Justice, and Homeland Security, as well as the private sector and civil society, did an outstanding job.

I was also pleased that the U.S. continued its long tradition of encouraging the active participation of the private sector and civil society on the official U.S. Delegation. The Delegation’s various private sector, civil society, and academic members worked extraordinarily well together.

Led by the example of the amazing diversity of the U.S. delegation, I was very pleased by the fact that other countries – including many from the developing world – also included members of their private sector and civil society as part of their official delegations. This is a major, positive change for the ITU, made possible, in part, because the ITU’s Secretary General, Hamadoun Touré, actively encouraged it.

Similarly, I was encouraged by the fact that the countries accepted that, for purposes of exchanging traditional international telecoms traffic, companies should use market-based, commercially negotiated agreements rather than government imposed rates. In addition, WCIT rejected the many different attempts to regulate international Internet networks and services, such as the imposition of routing and technical network management requirements. I was especially pleased that proposals to impose government regulations on international IP interconnection rates, as proposed by some in Africa and the Middle

East, were firmly rejected. Positive, consensus-based outcomes such as these are important not only to the U.S. consumers and companies, but also to everyone globally.

There were, however, many very troublesome aspects arising from WCIT, including the final revised treaty text that was signed in Dubai by 89 countries. Notably, many countries, including Russia, Saudi Arabia, China and others sought to use WCIT to establish new international rules through the ITU that would “govern” important aspects of the Internet. Although the most radical Internet-related proposals made by these countries were soundly rejected at WCIT, it is very troubling that the revised treaty seeks to create an Internet governance role for the ITU regarding “spam” and to provide international authorization for repressive governments to inspect the content of those Internet messages to determine if they can be blocked to solve so-called “network congestion” issues. Simply stated, these types of policy issues should not be resolved at the ITU.

Similarly, the WCIT Resolution regarding Internet governance that was adopted with the revised ITRs is strangely and grossly unbalanced in that it appears to reaffirm some aspects of the agreement adopted by the United Nations at the World Summit on the Information Society (“WSIS”) in 2005, but not other important provisions. Perhaps that lack of balance is not really surprising as the Resolution was adopted at about 1:30 in the morning by a process that left many very experienced delegates very confused.

Perhaps most strangely, during the last minutes of WCIT, Iran was successfully able to call for a vote on the adoption of what I understand is an unprecedented treaty provision that creates, in the ITU’s words, a “human right” for governments – not individuals – to access international telecommunications networks despite the imposition of international sanctions. Because human rights are well understood to involve providing rights to individuals, often at the expense of governments, such a provision turns the concept of “human rights” on its head by creating new rights for governments (not individuals) to avoid international sanctions that are often imposed to help individuals fight repressive governments. Such a provision alone should make the revised ITRs unacceptable to any thoughtful country.

Looking ahead, it is important to recognize that, although many believe that WCIT failed because 55 countries – including the United States, virtually all of Europe, and other Internet-leading countries such as Japan, Kenya and India – did not sign the revised treaty, in reality WCIT is an important early chapter in the critical global process of discussing the political and policy future of Internet networks and services – and in turn, the technical and economic future of the Internet.

I believe that it is important to recognize that the Internet’s political and policy future should be shaped by American leadership – not just through traditional U.S. rhetoric about competition, private sector leadership, and “multi-stakeholder” decision-making, but by America’s ability to “walk the talk” by showing unequivocally that the ideals we preach internationally are fully reflected in what we do at home. This is also why it is so important to guard against short term “solutions” such as withdrawing from some of

these international fora or materially reducing our economic support for international institutions that create great value for the American people. Instead, the U.S. should sustain and, in fact, increase its international engagement in light of the developing global dialogue on the important technological and economic issues discussed at WCIT and elsewhere.

American policymakers, in Congress as well as among our various Executive Branch and independent agencies, should continue to recognize that what we do domestically is watched and analyzed with great care by much of the rest of the world. For example, before the WCIT negotiations began in Dubai, Congress' remarkable action to pass unanimously resolutions on WCIT and Internet governance had an incredible and important impact. It was widely noted and recognized that Congress spoke with one voice in declaring that "the United States should continue to preserve and advance the multi-stakeholder governance model under which the Internet has thrived as well as resist the imposition of an International Telecommunication Union (ITU) mandated international settlement regime on the Internet." That statement, together with Congress finding that "it is essential that the Internet remain stable, secure, and free from government control" had a profound impact on WCIT.

This action was important not only because of the substance of Congress' statements, but also because the world understood just how extraordinary it is for Congress to act with unanimity, especially in an era when Congress has a well-recognized problem reaching consensus on almost anything. At the end of WCIT, I heard from many foreign officials that they knew that the United States would not sign the revised treaty with its Internet-related provisions because Congress had sent a clear and unequivocal message that such an agreement was unacceptable to the American people.

Looking ahead, we must recognize the obvious – Internet policy issues affect virtually everyone in the world, and U.S. leadership depends on the power of its forward looking arguments, not just on the historical fact that the United States gave the world a transformational technology. Although establishing a global Internet policy that ensures that individuals, the private sector, and governments work together appropriately to create a safe, secure and sustainable Internet for everyone will be long, complex and challenging, we are fortunate that the United States has a well-established road map to follow.

We can continue to lead the world toward greater prosperity and the socially transformational benefits long associated with the Internet. But when we discuss domestically laws and regulations that affect the Internet it is important to recognize that other countries will look carefully at our decisions. We should be prepared for other governments to act based upon what we do – rather than what we say – when making decisions both for their own countries as well as internationally.

The test of our resolve and our policies will happen many times during the next few years. This May, for example, the ITU will host the fifth World Telecommunications/ICT Policy Forum ("WTPF") that is designed to focus explicitly on

Internet governance issues. Similarly, there will be events this year hosted by the ITU and UNESCO that will focus on WSIS+10 (a potentially major event to look at the WSIS outcomes on the tenth anniversary of that important UN heads of state summit). In addition, the Internet Governance Forum (“IGF”) will be held in Indonesia this Fall, and there will be major debates regarding the Internet at the United Nations.

Perhaps most importantly, in less than two years the ITU’s Plenipotentiary Conference will be held in Korea where the ITU’s role regarding Internet policy will be not only hotly debated at another treaty-writing conference, but also there will be elections for a new Secretary General and a Deputy Secretary General to lead that important organization for at least the following four years.

Significantly, the revised ITRs adopted at WCIT-12 will not come into force for those countries that signed it until January 1, 2015. U.S. engagement at these international fora can be particularly important in the interim as the interpretations and implementation of that treaty and the issues discussed at the conference continue to develop.

Despite the difficulties and controversy surrounding WCIT, it is important to remember that the ITU continues to play an important role for both the United States and the rest of the world. Among other things, it plays an extraordinarily important role regarding spectrum – something that Congress has often recognized to be of the utmost importance to the United States. Similarly, it is important to recognize that the ITU is extraordinarily important to many other countries, especially developing world nations, and therefore it is an effective place for the United States government and others to listen to concerns, learn of opportunities, and to use (as we have in the past) as a platform to advocate for the values and positions that we hold dear.

Similarly, the IGF has become a remarkably effective forum for the discussion of Internet governance and other issues in a truly multi-stakeholder, non-decisional environment. The IGF’s economic viability has always been uncertain and without new sources of funding its future is unclear. Because the United States has often advocated for multi-stakeholder forums such as IGF and because the IGF needs additional funding to make it a viable place for the developing world and others to gather to discuss these important Internet-related issues, I hope that United States can find sufficient sources to help the IGF.

Regardless of the venue, there is much work to be done to convince the world that our Internet vision benefits people regardless of where they live because it is a key to better lives globally. But as our experiences at WCIT demonstrated and as the long list of important upcoming global forums where Internet governance issues will be debated and decided makes clear, it is critically important that we work together – government, industry and civil society – to marshal our facts, hone our arguments, and to reach out to everyone to make our case for the future of the Internet. That process – with Congress’ strong, unified support – must continue and be intensified.

Mr. WALDEN. And I think the Permanent Secretary has to leave at some point here.

So, again, Mr. Secretary, thank you for all your great leadership at WCIT and for your country and for testifying today.

We will now turn to Ms. Sally Shipman Wentworth, who is senior manager, public policy, Internet Society.

Ms. Wentworth, thank you for joining us today. We look forward to your testimony.

STATEMENT OF SALLY SHIPMAN WENTWORTH

Ms. WENTWORTH. Thank you very much.

My name is Sally Shipman Wentworth. I am senior manager of public policy for the Internet Society. The Internet Society is a non-profit organization dedicated to ensuring the open development, evolution, and use of the Internet for the benefit of all people throughout the world.

On behalf of the Internet Society, which is made up of more than 65,000 members worldwide and 91 chapters in countries around the world, I would sincerely like to thank the leaders of the various subcommittees gathered here for the opportunity to testify on the current state of global Internet policy and the future of Internet freedom.

I am honored to be on a panel with such distinguished colleagues, and in particular, of course, the Honorable Permanent Secretary from Kenya. Kenya has made enormous strides, as was said, in its Internet development and has truly embraced groups like the Internet Society and the technical community as it moves forward along its path toward Internet development. And we look forward to that partnership continuing.

I had the honor of testifying last May before the Subcommittee on Communications and Technology about our concerns that the outcome of the WCIT meeting could undermine the security, stability, and innovative potential of networks worldwide. The Internet Society was a sector member participant at the WCIT, not on a national delegation. And when we arrived at the conference in Dubai, we quickly determined that our concerns were well-founded.

In the end, the results from WCIT are concerning. The lack of consensus among nations and the persistent aims by governments to establish Internet policy in a closed, intergovernmental context sets the Internet policy dialogue on uncertain footing. There is significant ambiguity as to how certain treaty provisions will be implemented and whom the treaty will ultimately cover. Some governments could use new ITR language on spam and security as a justification for imposing more restrictions on the Internet and the content it carries.

The treaty also includes a controversial new Internet resolution that, in our opinion, shifts the emphasis from community and consensus to centralization through government action. In some ways, the debate at WCIT revived a longstanding concern that the global Internet could give way to a set of national Internets, each with its own rules and gatekeepers and with higher costs for everyone. From the standpoint of the Internet Society, this is an outcome that must be averted.

Still, while the final text was disappointing, enough so that 55 nations, including the U.S., declined to sign it, it was not as bad as it could have been, thanks in large part to the work of national delegations from the U.S., Canada, Australia, the Philippines, Kenya, European Union member states, and Internet advocates working tirelessly within dozens of national delegations from around the world.

It is also important to point out that the ITU, in response to unprecedented global public interest in the WCIT, took a number of steps to make the process in Dubai more transparent. The ITU must build on these steps to make its processes more open and more meaningfully inclusive in the future.

In the aftermath of WCIT, we are all faced with considerable uncertainty as to what extent the lack of consensus will negatively impact global communications networks going forward. We suspect that it will.

What is certain is that the WCIT is one piece of a much longer narrative. At the heart of this narrative is a very basic question over the role of government in a technology space that is fundamentally borderless. This narrative will continue through a rigorous schedule of ITU and U.N. meetings between now and at least 2014.

The lesson from WCIT is that supporters of the multistakeholder model must engage more, not less, in order to demonstrate clearly how this model could respond meaningfully to the legitimate Internet public policy questions that many governments have.

Fortunately, there are a number of opportunities for positive engagement. The annual Internet Governance Forum and the national and regional IGFs that have sprung up around the world have proven to be an exemplary model where governments can be active in a multistakeholder context without needing to control the process or negotiate a formal outcome. We should all recognize, however, that the IGF is only possible with sustained support and commitment from all of us. We also welcome UNESCO's active leadership in advocating for a free and open Internet.

Finally, I should note that there are other critical technical and policy organizations around the world that are working to make the Internet better for everyone. They also deserve our support and active participation.

In conclusion, I want to leave you with one key message: Please continue your support for the multistakeholder model of Internet policy development both at home and abroad. The importance of sustained U.S. commitment to the principles of the global open Internet cannot be overstated. While the impact of WCIT will be felt for years to come, we can work together to ensure that the Internet continues to transcend political divides and serves as an engine for human empowerment throughout the world.

From the Internet Society perspective, the WCIT has not shaken our basic confidence that the Internet is fundamentally good for the world and that the multistakeholder model of policy and technical development is still the most effective way to support its growth and innovation.

So thank you for hosting this important discussion, and the Internet Society looks forward to being part of this conversation.

Mr. WALDEN. Thank you, Ms. Wentworth. We appreciate your testimony this morning.
[The prepared statement of Ms. Wentworth follows:]

Introduction

My name is Sally Shipman Wentworth and I am Senior Manager of Public Policy for the Internet Society. The Internet Society is a nonprofit organization dedicated to ensuring the open development, evolution, and use of the Internet for the benefit of all people throughout the world. On behalf of the Internet Society, which is made up of more than 65,000 members and 91 Chapters worldwide, I would like to sincerely thank the leaders of the subcommittees gathered here for the opportunity to testify on the current state of global Internet policy and the future of Internet freedom.

Two months ago, in December 2012, the International Telecommunication Union (ITU) convened the World Conference on International Telecommunications (WCIT) in Dubai to review and revise a 1988 treaty called the International Telecommunication Regulations (ITRs). In the months prior to the WCIT, members of the Internet community, advocates, and policymakers began to express concern that some ITU Member States could seek to leverage these telecom treaty negotiations to establish greater governmental control over the Internet. In May 2012, I had the honor of testifying before the Subcommittee on Communications and Technology about WCIT. At the time, we expressed concern that some government proposals would threaten the viability of the successful, existing global multistakeholder model for the Internet, including Internet standards-setting and policy development, and by extension would pose a direct threat to the innovative, collaborative and open nature of the Internet itself.

While the final treaty text was disappointing, it was not as bad as it could have been, thanks in large part to the work of national delegations from the United States, Canada, Australia, Philippines, Kenya and many European Union Member States. However it does contain language that could have a lasting impact on the Internet's infrastructure and operations, and on the content that is so fundamental to its value.

I participated in an Internet Society delegation that attended the Dubai meeting as a Sector Member (i.e., nongovernmental, nonvoting member) of the ITU. As an ITU Sector Member, the Internet Society was able to monitor, but not directly participate in the treaty process, which under ITU rules is the sole province of Member States. As we noted to this committee last May, intergovernmental treaty making processes are not the best way address critical Internet policy issues because they do not allow for full multistakeholder engagement in the decision making. It is important to point out that the ITU, in response to unprecedented global public interest in the WCIT, took a number of steps to make the process in Dubai more transparent – Sector Members like ISOC participated in preparatory meetings prior to the WCIT, certain sessions at the Conference were webcast and daily updates from Dubai were posted to the ITU website. It will be important for the ITU to build on these steps in the future and to make its processes more transparent and more meaningfully inclusive.

In the aftermath of WCIT, considerable uncertainty remains as to whether and how the new International Telecommunication Regulations will be implemented and to what extent the lack of consensus will negatively impact global communications networks going forward. We suspect that it will. What *is* certain is that WCIT is one piece of a much longer narrative. At the heart of this narrative is a very basic question over the role of governments in a technology space that is fundamentally borderless. It is a question of how to implement policy – either at the national or international level – in a way that is consistent with a need for global interoperability and accessibility, consensus among all stakeholders, economic growth and on-going innovation. These questions have been around for many years and unsurprisingly, WCIT did not move us toward consensus.

In the end, the results from WCIT are concerning. The lack of consensus among nations and the persistent aims by some governments to establish Internet policy in a closed, intergovernmental context sets the Internet policy dialogue on uncertain footing. It remains to be seen to what extent the highly politicized environment at the WCIT will permeate future Internet governance discussions.

From our perspective, while the WCIT was difficult and presents a host of challenges, it has not shaken our basic confidence that the Internet is fundamentally good for the world and that the multistakeholder model of policy development is still the most effective way to support Internet growth and innovation. We believe that it is our collective responsibility to learn from our experiences in Dubai and work together toward a constructive way forward.

In that light, the Internet Society appreciates the opportunity of this Joint Committee Hearing to examine the potential impact of the WCIT, and seek a path forward that preserves the fundamental values of the open Internet.

Dubai Aftermath: Lack of Consensus Creates New Uncertainty

Although some of the most troubling proposals offered in advance of the WCIT meeting did not make it into the renegotiated treaty, the final document was still controversial enough that 55 nations declined to sign it. The chief question going into WCIT was whether the ITRs would be expanded to apply to international Internet traffic. And while WCIT, as an intergovernmental meeting, could not fully answer that question, certain aspects of the final treaty do anticipate a greater role for the governments and/or the ITU in the Internet. How Member States choose to define that role over the course of the coming years – and to what extent all stakeholders are included in the conversation – will determine how dramatically the ITRs impact the landscape of global Internet policy. If anything, WCIT once again demonstrated the perils of just one stakeholder group – governments – making decisions for all others.

Before highlighting the more concerning aspects of the revised ITRs, it is important to acknowledge the hard work done by so many national delegations to push back on the most prescriptive proposals considered at WCIT. As mentioned above, the U.S. delegation along with delegates from Canada, Sweden, Australia, UK, the Netherlands, Kenya, the Philippines, and many, many others worked tirelessly to oppose the most interventionist proposals offered at the conference. Even in many national delegations that ultimately supported the treaty, Internet advocates toiled against the most prescriptive proposals. Without the engagement of those leaders, including many in Latin America and the Caribbean and also in Africa, the treaty could have been much worse. Importantly, many of these delegations welcomed Internet experts as advisors onto their delegations, a development that we believe was critical to moderating the final treaty text.

As a result of that collective hard work, the final treaty does not directly impose new routing regulations, IP addressing rules, or costly interconnection requirements. It does not endorse a “sender-pays” regime that could have dramatically raised connection costs and barriers to entry, especially for users in the emerging economies. The new treaty also provides for greater transparency regarding mobile roaming rates. At face value, the treaty does not “break” the Internet, and for that, the hundreds of delegates who advocated tirelessly for the Internet’s core values should be very proud. At the same time, the Final Acts are ambiguous as to scope and to whom the Regulations will apply so this is an area to watch closely.

Unfortunately, the WCIT did adopt a controversial new Internet resolution that, in our opinion, suggests a much more prominent role for governments and the ITU on Internet matters, with only a passing reference to the value and promise of multistakeholder policy development. This Resolution selectively quotes from a carefully crafted compromise at the 2005 World Summit on the Information Society which recognized that “the existing arrangements for Internet governance have worked effectively to make the Internet the highly robust, dynamic and geographically diverse medium that it is today, with the private sector taking the lead in day-to-day operations, and with innovation and value creation at the edges.”¹ The WCIT Resolution does not reflect the essence of the 2005 WSIS outcome and, in citing the WSIS texts selectively, shifts the emphasis from community and consensus to centralization through government action.

The Internet resolution focuses on the very heart of the longstanding debate between those who envision a more direct role for intergovernmental organizations in the management of Internet communication, and those who support the existing, open, multistakeholder model of Internet governance. That model, which is unique to the Internet, engages technologists, the private sector and civil society in a bottom-up, consensus driven approach to standards setting, Internet development, and management. This approach has proven to be nimble and effective in ensuring the stability, security, and availability of the global infrastructure, while still giving sovereign nations the flexibility to develop Internet policies within their borders. And while UN members formally endorsed the multistakeholder model in 2005, a strong undercurrent of support for greater governmental involvement has remained among some countries. In fact, these countries see the UN as the natural home for intergovernmental cooperation and believe that the ITU, as the UN specialized agency for telecommunication, is the “logical organization” to deal with Internet issues. At WCIT, that view held greater sway for some countries than ever before.

In addition to the broad Internet resolution, the treaty also contains new language relating to network security and unsolicited bulk electronic communications (“spam”). While the language for both of those provisions is quite general, there is concern that government implementation of these provisions will ultimately place restrictions or limitations on the Internet and the content it carries.

Looking ahead, the question now for all of us is how to translate the WCIT experience into tangible actions and more widespread buy-in for the Internet’s multistakeholder model of Internet policy development. We need to take the lessons learned seriously or we will continue to be faced with the kinds of divisions that resurfaced at the WCIT.

¹ 2005, United Nations World Summit on the Information Society; “Tunis Agenda for the Information Society”, paragraph 55.

Lessons Learned

While WCIT outcomes remain ambiguous, the Conference did crystallize deep tensions that may be poised to define Internet policymaking at the global level. The tensions that led to the WCIT outcome are not new - many of the same issues that colored the debate in Dubai also factored heavily at the World Summit on the Information Society (WSIS) in 2003 and 2005 and at subsequent international meetings. How we collectively respond to WCIT, will determine if those divisions deepen rather than diminish.

In some ways, the debate at WCIT helped to clarify the risk: that the global Internet may give way to a set of national Internets, each with its own rules and gatekeepers, and with higher costs for all. If that happens, the platform will become more fragmented and fewer people will benefit from it. From our perspective as an organization that believes that the Internet becomes more valuable and powerful as it becomes more globally diverse, this is an outcome that must be averted.

WCIT provided a great deal of insight into developing country priorities with respect to the Internet. They have important questions and, in many cases, legitimate concerns. They have concerns about the high cost of connectivity, privacy, and consumer protection. They have a desire for more information in the areas of IP addressing and numbering. They have a desire to drive more local traffic and content. These countries aim to make smart infrastructure investments, to get answers to weighty questions surrounding censorship and human rights, and to have their experts represented in technical standards setting bodies and international policy processes.

If we do not increase our efforts to address these issues, there is a risk that many countries will turn to sources that do not support the Internet's multistakeholder model. In discussions with our members and partners from across the global Internet community, including individual users, industry, engineers, and civil society groups and government representatives, the consensus is clearly in favor of more problem solving and more capacity building. In short, more engagement, not less, is the answer.

This emphasis on engagement becomes more important as we look at the timeline for upcoming international meetings thru 2015 where we could see continued efforts to undermine the multistakeholder approach. In 2013, the ITU will host the World Telecommunication/ICT Policy Forum followed by the ITU's Plenipotentiary Conference in Busan, South Korea in October 2014, which will set the scope and strategic vision for the ITU and another international treaty. We fully expect that the role of the ITU in Internet policy issues will figure prominently in the political debate at the Plenipotentiary Conference. Between now and then, a series of important regional and global ITU development meetings will set the regional framework for the negotiations in Busan. On a positive note, meetings of the Internet Governance Forum (IGF) in 2013 and 2014 offer a non-negotiating forum in which more productive dialogue can take place and, as I outline below, present an opportunity to tangibly support the multistakeholder approach.

At the Internet Society, we recognize that certain geopolitical and substantive rifts among countries are not likely to be solved before 2014. However, we can work with those countries that want to engage to take those core elements of an open Internet model and apply that approach to address the problems that policy makers face all over the world.

Thus, in addition to presenting significant challenges, WCIT should be a call to action for members of the global Internet community – including technologists, policymakers, advocates, industry leaders,

and individual users – to focus their efforts to improve and expand the multistakeholder model of Internet governance so that it continues to serve the needs of *all* users across the globe.

Next Steps: Staying Engaged and Building Bridges

Although WCIT revealed deep regional and national differences over policy, there were bright spots to recognize as well. In fact, in reading through the final statements by governments to the conference, we see a number of strong statements of support for the overall Internet model, even among those who chose to sign the treaty. Many countries stated their commitment to playing an active role in the Internet economy, and to ensuring that their citizens are able to take advantage of the full value that the Internet has to offer. This is something to build upon. Our challenge, and the challenge of all supporters of the multistakeholder approach, is not only to advocate for the model, but also to ensure that it actually works for those who may doubt its effectiveness.

We can look to the Internet Governance Forum as a constructive mechanism within the UN system to bring together Internet stakeholders from around the world and as a model for multistakeholder dialogue that is inclusive of governments but not centrally managed by governments. The Internet Society has been a long-standing supporter of the IGF model, believing that genuine progress can be made in this environment. The vision of the IGF is also taking hold at the regional and national levels. In 2012, we participated in African, Arab, Caribbean, Latin American, and Indian IGF meetings. In the U.S., IGF-USA has become a very useful and important national event. But the IGF is only possible with the sustained support and commitment by all.

Beyond the dialogue, tangible action is also needed. The Internet community, through organizations like the Regional Internet Registries (RIRs), the Internet Corporation for Assigned Names and Numbers (ICANN), the Internet Engineering Task Force (IETF), the Internet Society (ISOC) and many others, has a long track record of working hard to make the Internet more inclusive and better for everyone through concrete activities. Dating back to the earliest days of the Internet's development, there was a keen recognition that, to be truly successful, the Internet needed advocates around the world that could sustain and build Internet infrastructure and, in doing so, would expand the Internet to their local communities – whether in Silicon Valley or at a local university in Kenya. Beginning in 1992, the Internet Society hosted frequent developing country workshops that were attended by over 1,300 participants from over 94 countries. Many of the workshop participants are now Internet leaders in their country or region. We know that some of this training supported Internet pioneers in Ghana, Thailand, Argentina, and Brazil who are now spearheading Internet connectivity growth and sustainable Internet human capacity development and training in their communities. We continue this work today, strengthening partnerships and opportunities for the Internet to grow around the world.

Conclusion

The Internet Society is deeply grateful to the members of the subcommittees that called this hearing for addressing an issue of vital importance to the global Internet. We also sincerely appreciate the longstanding commitment of the United States government to the multistakeholder model of the Internet.

I want to leave the Subcommittees with one key message: please continue your support for the multistakeholder model of Internet policy development, both at home and abroad. As we face a high level of uncertainty going forward, the best way to respond post WCIT is to listen to the legitimate

concerns expressed by governments and work together to engage appropriately to demonstrate that the multistakeholder model remains the most robust and the most effective way to expand the benefits of the Internet to everyone. The importance of sustained U.S. commitment to the principles of the global, open Internet cannot be overstated. While the impact of WCIT will be felt for years to come, we can work together to ensure the Internet continues to transcend political divides, and serves as an engine for human empowerment throughout the world.

Mr. WALDEN. Now we will go to our final witness, Mr. Harold Feld, who is senior vice president of Public Knowledge.

Mr. Feld, thank you for joining us today. We look forward to your testimony, sir.

STATEMENT OF HAROLD FELD

Mr. FELD. Good morning. Thank you, Chairmen, Ranking Members. My name is Harold Feld. I am senior vice president of Public Knowledge, a nonprofit dedicated to an open Internet. It was also my privilege to participate as an advisory member of the U.S. delegation to Dubai.

I am struck by the broad general agreement among the witnesses with regard to the inappropriateness of the ITU as a forum for regulating Internet governance and of the very real threat to Internet freedom we now face. In particular, I wish to voice my agreement with Commissioner McDowell's written testimony, that the danger we face is real, and we must respond quickly with both engagement and firmness.

I want especially to applaud and emphasize Commissioner McDowell's observation that we must make the multistakeholder alternatives to the ITU accessible to developing nations, which have traditionally lacked resources to fully participate in these forums. This inability to fully participate has created a feeling of disenfranchisement and resentment in some quarters, which drives many developing countries to see the ITU as a counterbalance to what they perceive as dominance of the Internet by the United States and the developing world generally.

But there is good news from Dubai, as well. I want to focus on our enormous success in engaging with global civil society and how building on that success is a key building block to winning the global debate now in progress between those who agree with an open and transparent multistakeholder approach and those who embrace a traditional treaty organization dominated by government ministries and conducting most of its business behind closed doors.

As Mr. Sherman said earlier, while the majority of governments may at the moment be in favor of a traditional treaty approach, as we saw in the lead-up to the WCIT the majority of the people of the world are not. The ITU has not traditionally been open to participation by civil society. In the lead-up to the WICT, protests of global civil society forced both the ITU and many member governments to backpedal, at least publicly, from the most aggressive proposals. The decision of many countries not to sign the ITRs and the statements issued by some signing nations limiting the scope of ITRs come in no small part from the vigorous efforts of civil society organization within these countries.

In the lead-up to the WCIT, civil society, including Public Knowledge, made several efforts to overcome barriers to participation. To its credit, ITU's Secretary-General, Dr. Hamadoun Touré, and the ITU staff responded to these criticisms and sought to engage with us, both before the WCIT and in Dubai. The ITU webcast its plenary sessions and the meetings of its most important committee, allowing a window into what has, until now, been an utterly opaque process.

In the end, however, civil society were forced to sit on the sidelines, unable to access key documents, unable to observe, never mind participate, in the actual working sessions behind closed doors, and unable to speak with our own voices or engage directly with voting delegates.

The United States played a vital role in supporting and encouraging the efforts of global civil society. First, the United States walked the walk on civil society by reaching out to domestic NGOs, such as Public Knowledge, and including us fully in consultation preceding WCIT and as part of the delegation. I am pleased to report that I and my colleagues from civil society were treated with the same courtesy and consideration as our colleagues from industry. We had the same access, and our contributions were given the same weight and respect. This vastly improved the credibility of the United States as a defender of transparency, inclusion, and Internet freedom in the ITU process.

Second, the United States directly engaged with global civil society. Ambassador Kramer himself held two personal meetings with international NGOs—one prior to the WCIT and one at the WCIT itself, meeting for 2 hours with representatives of global civil society, including representatives from the developing global south, and genuinely engaged with them.

These civil society organizations were able to take our concerns back to their own delegations and to advocate for support of our positions on limited ITU jurisdiction, not because these organizations agree with U.S. policy generally, but because we were successful in persuading them that their own aspirations for Internet freedom were equally threatened by the expansion of ITU authority and the agenda advanced by certain countries trying to extend their online censorship regimes.

Even those countries that ultimately signed the ITRs, who began willing to dismiss our concerns and accused us of dominating the Internet, needed to at least reconsider their positions.

To conclude, the good news is that the Dubai conference was just the beginning of the discussion around the globe on Internet governance, not the end. We must build on this beginning going forward and on the alliances and relationships that we created in Dubai.

To ensure that civil society and smaller developing countries can participate fully, the U.S. State Department and Congress should lead by example by creating a fund to support the travel and registration of both civil society groups and small countries that are unable to afford to participate in multistakeholder processes.

I would add that our industries and industries around the globe who depend upon these multistakeholder processes and upon coordination through voluntary efforts would likewise be well-served to contribute to these efforts.

Thank you to the members of the subcommittees for your time, and I look forward to the opportunity to answer your questions.

Mr. WALDEN. Mr. Feld, thank you for your testimony.

[The prepared statement of Mr. Feld follows.]



Testimony of Harold Feld
Senior Vice President
Public Knowledge

Before the
U.S. House of Representatives
Committee on the Energy and Commerce
Subcommittee on Communications and Technology

Jointly with the
Committee on Foreign Affairs
Subcommittee on Terrorism, Nonproliferation, and Trade
And the
Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations

Hearing On:
Fighting for Internet Freedom: Dubai and Beyond

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Good morning Chairmen Walden, Poe, and Smith, Ranking Members Eshoo, Sherman, and Bass and members of the subcommittees. I am Harold Feld, Senior Vice President at Public Knowledge, a public interest nonprofit dedicated to the openness of the Internet and the open access for consumers to lawful content and innovative technology. As part of Ambassador Kramer’s highly successful outreach to civil society, I and my colleague Rashmi Rangnath served as advisory members of the U.S. delegation to the ITU World Conference on International Telecommunications (WCIT) in Dubai this past December. I am pleased to have the opportunity to testify before you today on the ongoing effort to ensure that Internet freedom is preserved through the policies and interactions of nations and individuals at the International Telecommunications Union (ITU).

Introduction

Let me begin with a personal observation. I have been involved in what people loosely refer to as “Internet governance” for over 15 years. I was involved in the debate around the formation of the

Internet Corporation for Assigning Names and Numbers (ICANN) and served on the ICANN Names Council (as it was then called) in 2002-03. I have testified previously before the House Subcommittee on Technology and Telecommunications on the subject of ICANN and the future of Internet governance. For as long as I can remember, I have heard variations of “the ITU wants to take over the Internet.” Accordingly, when the State Department and other non-governmental organizations (NGOs) collectively referred to as “civil society” reached out to Public Knowledge with concerns about what might happen at the WCIT, I initially reacted with considerable skepticism. How, I asked, could the ITU “take over the Internet?”

My experience as an advisory member to the U.S. delegation to the WCIT has convinced me that this time is different. The danger to free expression online, and the possibility of a fragmented global Internet with tariffs and checkpoints at every national border, is unfortunately very real. It is important to stress, however, that this is *not* because the ITU is an evil organization that hates freedom or a bloated bureaucracy that wants world domination, as some have argued. Nor is it simply a struggle between nations that have an agenda of censorship and repression seeking to hijack the ITU’s processes to extend their reach beyond their borders – although this is certainly part of the problem we face.

Rather, as demonstrated in Dubai, the ITU presents a complicated set of issues and challenges that require a great deal of diplomatic effort and engagement to address. This engagement must include the broad coalition of private sector actors and civil society representatives that the State Department and Ambassador Kramer successfully brought together and engaged prior to the WCIT. It requires us to recognize the difference between the institutional interests of the ITU

and the agendas of the various member states. We must work actively to oppose the agendas of those countries which, for their own reasons, seek to extend their reach beyond their own borders and supersede national protections on privacy, free expression and due process either by direct efforts to internationally regulate content or through control of routing information or other technical aspects of “Internet governance.”

At the same time, however, we must recognize the diversity of interests from nations that share our concerns for free expression, but seek an appropriate forum to address issues ranging from cybersecurity to the global digital divide. Many of these countries, even if they are uneasy about the possibility of enabling global censorship, believe the ITU provides them with such a forum. Our challenge going forward lies in providing a more compelling vision of how the existing International multi-stakeholder processes can better address these very real concerns. This must include a commitment on our part to improve the existing multi-stakeholder processes to meet the concerns of developing nations that participation in these forums requires far greater resources than they have available, or that these forums are essentially captured by the United States and other developed nations.

In making our case, continued engagement with global civil society will remain critical. As I discuss below, the United States outreach to global civil society – both through inclusion of domestic NGOs and engagement with NGOs based in other countries – was critical to enhancing our credibility and making our case in Dubai. As a result, we did not stand isolated at the WCIT. We must build on this foundation through a policy that demonstrates both our continued

engagement in good faith, at the ITU and elsewhere, while simultaneously demonstrating the continued firmness of our resolve.

The Lead Up To The WCIT and What Actually Happened In Dubai.

Two diametrically opposed narratives have emerged from Dubai. In unfortunate echoes of the Cold War, proponents of expanded ITU jurisdiction and defenders of the ITU as an institution accuse the United States of having “ITU-phobia,” or of refusing to negotiate in good faith because of our supposed dominance of the Internet. Alternatively, some commentators have cast this as a straightforward contest between those who want U.N. control of the Internet and those who love freedom, with countries that signed the ITRs siding automatically with the former.

With regard to the accusation that we did not enter into these negotiations in good faith, I can say from my own personal experience that this is categorically not true. The United States went into the World Conference for International Telecommunications with a good faith resolve to negotiate changes to the ITRs to reflect today’s telecommunications networks. At the same time, however, the US government, businesses and civil society agreed that the WCIT must not deal with Internet governance issues. These issues are appropriately discussed in multi-stakeholder forums that provide a voice to governments, businesses, civil society and the Internet technical community and the ITU is not such a forum. Nor were we alone in this resolve. Many other countries equally made clear that they did not believe that the WCIT was an appropriate place to discuss Internet governance or issues surrounding Internet content.

Nevertheless, many of the issues that countries wanted to discuss going into the WCIT were extremely controversial and lacked international consensus. For instance, some countries wanted the ITRs to recognize their right to monitor Internet traffic, control content flowing over the Internet and give them a role in allocation of naming and numbering resources. Others were opposed to these measures and had different proposals of their own. Attempting to forge a consensus among these widely divergent positions in the short duration of the conference was ill advised and proved unsuccessful. Many of these issues would have to be openly discussed and deliberated upon carefully and with consideration for all points of view before they could be incorporated in an international treaty.

Before the WCIT, Dr. Hamadou Toure, Secretary General of the ITU, assured the world that the WCIT would not be about Internet governance. Yet, as the conference progressed it became clear that for many member states, the WCIT would be all about Internet governance. Russia, China, S. Arabia, UAE, and a few other states made proposals that would have fundamentally changed the open nature of the Internet. For instance, these states made proposals calling for recognition of rights of member states to suspend Internet services, to monitor Internet traffic routes, and to encourage Internet access providers to impose additional charges on application and service providers for privileged access to the Internet. These proposals would have harmed the free flow of information on the Internet by providing legitimacy at the international level to indiscriminate surveillance and also by preferring commercial arrangements inconsistent with the open nature of the Internet.

Thanks to the efforts of the US and our allies, many of these provisions did not make it to the final acts of the WCIT. I was proudly part of this delegation and witnessed first hand its good faith efforts to bridge differences of opinions among countries. As part of our negotiations, we made concession on every single proposal not related to Internet governance, such as proposals governing international roaming and handicap accessibility.

Most significantly, after engagement with global civil society and numerous other countries, the United States reversed its previous position with regard to an express recognition of the fundamental right of free expression in the ITRs. Until Dubai, the United States took the position that the ITRs, as a technical document, should not contain any reference to human rights, even if the reference is one with which we fundamentally agree and support. In the spirit of compromise and consensus, the United States was prepared to support inclusion of a reference to the Fundamental Right of Free Expression set forth in Article 19 of the U.N. Convention on Fundamental Human Rights in the Preamble of the ITRs, as urged by global civil society and numerous member states.

Yet, the final acts of the WCIT did not stay true to the promise that the WCIT would not be about Internet governance. They contain certain provisions and resolutions that touch on Internet governance. In addition, a number of countries sought to subvert the language on free expression and create new rights for member states using the language of human rights. While the implications of these provisions will emerge once countries start implementing them, it is clear that they do not move towards an Internet governance system that respects and fosters the free

flow of information. For these principled reasons, the U.S. government and 53 other countries did not sign the ITRs. Public Knowledge fully supports this decision.

At the same time, we must recognize that the 89 countries that signed the ITRs are not all of one mind or purpose with regard to the future of the ITU and its jurisdiction over Internet issues. The ITRs addressed many issues other than the Internet governance and human rights references that made it impossible for the United States and 53 other countries to sign. It would be an unfortunate mistake to regard the signatory countries as uniformly supporting a broader role for the ITU in the area of Internet governance – despite the efforts of the ITU and certain member states to create just such an impression. By the same token, however, it would be a mistake to assume that countries that declined to sign the ITRs in Dubai could not be persuaded to sign in the future, if we do not continue to remain engaged in good faith and offer a viable alternative.

The Role Of Civil Society

Any account of the developments during the WCIT would be incomplete without telling the story of civil society's role in the conference.

Civil society participation in the WCIT faced many challenges. First, the ITU was not initially open to civil society membership. Thus, while many industry representatives could participate in ITU processes as sector members, for various reasons, civil society could not. In the lead up to the WCIT civil society made several attempts to overcome this barrier and provide meaningful comments to the ITU. After all, the conference was discussing issues such as governments' ability to control Internet content and the nature of traffic flows on the Internet. These issues

have deep impacts on the freedom of expression and other human rights and civil society was uniquely qualified to speak to these issues.

The ITU, for its part, responded with numerous efforts to engage with global civil society, including providing an opportunity for public comment and holding a meeting between Secretary Torre and representatives of global civil society organizations present in Dubai. The ITU also persuaded members to agree to webcasting the plenary sessions and the meetings of Committee 5, the substantive Committee. While welcome, these efforts nevertheless had significant limits. As ITU staff repeatedly advised us, the ITU is ultimately a creature of its member states, and participation relies heavily on either participating through a member state or sector member delegation. While some member states and some sector members (such as the Internet Society) provided credentials to civil society, many others did not. This stands in marked contrast to multi-stakeholder forums such as ICANN, where NGOs can participate fully in their own right. In particular, the inability of unaffiliated NGOs to access ITU documents, or to have a formal say in ITU efforts, severely constrained participation by internationally diverse civil society organizations.

Despite these constraints, civil society managed to gain access to some WCIT documents via leaks and based on this raised public awareness about the conference.

The one silver lining to this situation was the willingness of some governments, most prominently the US government, to include members of civil society on their delegation. I would like to extend my gratitude to the US government for including us and other civil society

members on its delegation. It is important to note however, that this was not an option available to civil society representatives in many other countries.

Public Knowledge participated as part of the U.S. delegation, as well as in international forums with other NGOs. For example, Public Knowledge joined 30 other international civil society organizations in a joint declaration at the Best Bits conference in Baku a month prior to the WCIT highlighting key concerns both with the ITU process and for free expression online. In Dubai, representatives from civil society NGOs participating in affiliation with sector members or as part of national delegations (and the small number of NGOs that sought to participate without formal affiliation) met regularly. Through this engagement, global civil society helped to highlight at WCIT, and within their respective delegations, concerns with regard to various proposals and their potential impact on free expression online.

For the United States, the presence of a diverse and global representation of civil society NGOs allowed the United States to reach out directly to this community, which shared many of the same concern with regard to Internet freedom and the future of Internet governance. Ambassador Kramer met with global civil society representatives at the Best Bits conference in Baku, and again in Dubai. This outreach, combined with inclusion of domestic civil society representatives such as Public Knowledge, enhanced U.S. credibility as a champion of Internet freedom and transparency.

The inability of civil society to participate effectively in the WCIT was inconsistent with a multi-stakeholder model of Internet governance, a model that we all believe in. Any forum that

discusses Internet governance issues must provide civil society the opportunity to participate in its own right and without having to be part of a government delegation. This applies to the upcoming WTPF and the ITU plenipotentiary conference in 2014. The US government has been very supportive of this principle in the past. I sincerely appreciate this support and request that it continue and become more vocal.

Moving Forward: Remaining Engaged In The Global Debate.

The good news is that the Dubai conference was just the beginning of the discussion around global Internet governance, not the end. Although the United States Government refused to sign the ITRs, the Internet as a global medium is too important to democratic and economic progress for the United States to disengage from this discussion moving forward. The next step for the United State government must be to fully engage in diplomacy and outreach, not merely with those countries that agreed with us in Dubai, but with those countries that disagreed with us about the role of the ITU and the value of the multi-stakeholder process. Many of these countries are small and developing nations that must be persuaded that the multi-stakeholder process of governance benefits them as much as it benefits the United States and other developed countries.

The freedom of expression online connects democratic activists domestically and internationally, amplifying their voices in the digital public square. Leaving judgment of each regime aside, no one can deny the role that free expression on the Internet had on building support across borders for the uprisings in Tunisia, Egypt, Libya, and other Arab Spring countries. Many of these activists utilize the same websites and online communications tools as the members of Congress

here in this room. Egyptian or Libyan or Syrian citizens sharing their struggles with democracy with their American cousins over a free and open Internet can hopefully support their efforts to make the most of their new free society.

On the economic side, the Internet and information technology industries continue to be the thriving sector in a slumping global economy. According to OECD (Organization for Economic Cooperation and Development) calculations, in 2009 some 12% of the value added of the non-financial business sector in the United States could be attributed to Internet-related activities. At present, the Internet contributes more of a percentage to America's GDP than traditional industry sectors like information and technical services, construction, education, agriculture, and arts, entertainment, and recreation. And it comprises about 5.5 percent or \$252 billion of all retail. U.S. economic growth and international trade are dependent upon bringing the world around to our vision of democracy, rule of law, and trade to other nations. Any U.S. trade representative can argue the benefits of free trade to their counterpart in another country, but open access to American products, exports, and consumers online can spread the opportunity of international trade to even the smallest town or village with a broadband connection. American businesses will lose these opportunities for trade and economic expansion if we do not share our vision and success with open Internet communication with the developing world.

Through my many conversations as a part of the delegation, it was clear that many developing countries hold the accurate view of the United States as the one of the main drivers of the Internet. The facts of global Internet traffic support these impressions. North America now accounts for a majority of global Internet traffic, with US company Netflix generating more than

33% according to a recent Sandvine report. Eight out of the ten largest cloud storage centers in the world are in the U.S., positioning the U.S. to maintain its Internet leadership as remote big data continues to support business growth.

Unfortunately, this dominance by American traffic, content, and storage, combined with the economic strength of the United States results in sense of disenfranchisement among smaller and developing countries in a multi-stakeholder process. The focus of the American outreach and diplomacy must be to empower smaller and developing countries through their participation and in a shared vision of the opportunity of the Internet for economic opportunity and political empowerment. Even those nations that seek to emulate our success often take the attitude that 'well, multi-stakeholderism is OK for you; you're a big country with lots of resources, well established Internet industries, and fully deployed networks. We need a different approach.' These countries have a long history of close relationships with the ITU. They view the ITU as an important source of technical assistance and standards development through the ITU-T, and a source of aid for network development through the ITU-D. The fact that the ITU is structured around member states, under rules that these countries understand, encourages them to view the ITU as a counterweight to the United States and other developed nations.

Repeatedly, countries seeking to advance an agenda of expanding the role of the ITU in Internet governance have sought to exploit these concerns. We must be wary of tactics intended to show our resolve that play into the narrative of opponents who seek to cast us as international bullies. For this reasons, recent calls to defund the ITU or curtail our participation should be rejected. We have appropriately demonstrated the firmness of our resolve by refusing to sign the new ITRs.

We must equally show our willingness to engage even when our view does not carry the majority.

While we must not allow ourselves to be portrayed as bullies, we must also guard against the impression that we are wavering in our commitment to our principles. Too often, the willingness to engage is taken as a sign of weakness. We proved in Dubai this was not the case, and Congress may, from time to time, find it necessary to demonstrate that it remains equally true going forward. As long as Secretary General Toure and others continue to insist that the United States and other nations will eventually be compelled to sign the new ITRs, we will continue to need to demonstrate that we cannot be bullied, and that our continued willingness to engage does not signal a weakening of our resolve. Public Knowledge and I therefore support the effort in this Congress to demonstrate its unity around Internet freedom through a bill similar to the 112th Congress' unanimous bipartisan resolution, S. Con. Res. 50. The draft language that has been shared with us is similar to S. Con. Res. 50 and continues to provide for a position that civil society and all stakeholders should be able to support.

Small and developing countries, especially those from the southern hemisphere, are the swing bloc as the ITU works to implement the acts of the WCIT. Failure to engage these countries on the benefits of an open network will only confirm their view of the United States and others who refused to sign the ITRs as countries that are working to preserve their dominance of the network. There are several international forums over the next couple years which will provide the opportunity for the United States to demonstrate the power and ability that the multi-

stakeholder process of governance offers these countries and the importance of a global open Internet to their growth.

The story of the Internet in the United States has been one of new innovative companies and organizations using the networks decentralized structure to compete. If this was not true, we would still be using Webcrawler to search for content and ICQ to chat instead of the market dominant Google and Facebook. With continued engagement, we could share the benefits of these experiences with other countries.

Finally, I must give a word of caution to those who think we can best achieve our goals by cutting funding to the ITU or otherwise refusing to engage with those who do not agree with us. The Internet is a global medium. Its strength as an engine of freedom and as an engine of economic growth depends heavily on it remaining a global medium. If we isolate ourselves, we cede the ground to our opponents, giving them the opportunity to gradually pick off our allies one by one. Indeed, supporters of the ITRs have boasted that this is exactly their plan.

Our vision of a free global Internet is a compelling one. We should continue to have faith in our ability to share that vision rather than risk an isolation we cannot sustain.

The Continuing Role of Civil Society

Simply engaging in diplomacy with small and developing countries is only half of the effort. Civil society can play a large role in empowering smaller and developing countries in a multi-stakeholder process. Independent voices from civil society help to balance out the dominant

diplomatic position of the United States government and other large governments while adding critical non-state support for Internet freedom and openness to the multi-stakeholder process. It is not enough for the United States to include civil society groups among its delegation periodically, but the United States government must stand up for the full inclusion of civil society as a stakeholders and participants in future conferences. Civil society groups are trusted globally as defenders of Internet freedom.

Beyond WCIT and the ITU

Commitment to engagement with global civil society, and constructive good faith engagement with the rest of the world on Internet governance issues, cannot stop with WCIT and the ITU. It must extend to all our international negotiations and participation in multi-stakeholder forums. The absence of support for our full inclusion by the United States government in international trade negotiations, for example, sends the wrong message to smaller and developing countries that the voice of the outsiders are not welcomed, whether these voices come from governments or their public. In Europe, for example, activists repeatedly referred to the WCIT as “ACTA by the back door.” While we gratefully accepted the support of European NGOs and member states in resisting encroachment of the ITU into Internet governance, it is obviously unfortunate that it is associated in the minds of many of our allies with a trade agreement negotiated and championed by the U.S. Trade Representative (USTR), without any of the openness or transparency we seek to champion in the Internet governance context.

This mistake continues to be made in the ongoing negotiations of the Trans Pacific Partnership trade agreement, and in the past has resulted in trade policies that restrict innovation online and

ensor lawful material for public use. As a consequence, our efforts to negotiate international trade agreements have suffered (the ACTA Treaty, for example, was rejected by the European Union) and our credibility as a champion of Internet freedom, transparency, and multi-stakeholderism are repeatedly undermined by our own USTR.

To ensure that civil society and smaller developing countries can participate fully in international conferences, the U.S. State Department and Congress should lead by example by creating a fund to support the travel and registration of both civil society groups and small countries that are unable to afford to participate. In addition, USTR should follow the lead of the State Department by actively embracing engagement with global civil society and enhancing the openness and transparency of its processes.

Epilogue: No One Brought Up Net Neutrality In Dubai

Finally, in order to show our nation's unity and resolve around global Internet freedom it is critical that this international process is not hijacked for a debate over domestic rules preserving an open Internet. It is important to note that during my entire trip to Dubai I did not hear any questions from participants over the FCC's open Internet regulations. A search of the archives of the Plenipotentiary sessions and Committee 5 likewise finds no reference to these issues. If this were as potent an argument as some apparently believe, it seems unlikely that our opponents would have so utterly failed to challenge us on it publicly – especially when members of our own government have shown no such restraint.

I would also note that many of our allies, such as Canada and the European Union, classify certain sorts of Internet access service as “telecommunications,” but do not believe that Internet governance is suitable for international regulation at the ITU (or national regulation, for that matter). Similarly, many in this Congress who have raised concerns about Title II classification have not hesitated to introduce or support legislation related to issues such as cybersecurity and privacy. But the United States equally opposed consideration of cybersecurity and privacy at the ITU, arguing that these were matters for sovereign governments in the first instance, and multi-stakeholder cooperation internationally. If we are to accept the that any matter unfit for ITU consideration is equally unfit for national regulation, than we must give up all hope of addressing a lengthy list of issues considered critical on both sides of the aisle.

In short, the effort to leverage the debate over the future of Internet governance internationally for domestic political agendas needs to end immediately. Those who repeatedly urge that an open Title II docket at the FCC or network neutrality rules somehow invites the ITU to regulate the Internet are writing a script for countries that would seek to divide us not only on the global network, but also as a U.S. delegation.

Thank you to the members of the subcommittees for your time and I look forward to the opportunity answer your questions.

Mr. WALDEN. And thanks to all of our witnesses here and abroad for your testimony. It helps in our work.

I will lead off with the first set of questions, and then we will alternate back and forth.

So I have a question for all the witnesses. What impact do you think the congressional resolution last year had on discussions at WCIT? And do you think the discussion draft we are considering today, which takes the language of that resolution and makes it the formal policy of the United States, might be helpful going forward?

Mr. FELD?

Mr. FELD. Thank you.

I believe, as others have stated and as we stated in our testimony, that it was enormously helpful for us to see the United States speaking with one voice. What we need is a combination of diplomatic engagement and firmness of resolve, and I believe that the legislation shows that firmness of resolve.

Mr. WALDEN. Thank you.

Ms. Wentworth?

Ms. WENTWORTH. Thank you.

Yes, as an organization that was not on a national delegation, I can say that the bipartisan congressional resolution and the bipartisan resolve in Congress did help to strengthen the U.S. position and the U.S. credibility in the negotiating process. And I think the strength of the legislation will be extremely helpful in the Internet discussions going forward.

Mr. WALDEN. Thank you.

Ambassador Gross?

Mr. GROSS. Thank you very much.

I can be a fact witness for you, having been told by a number of senior representatives from other countries that they not only knew of the resolution but took it into account in understanding where the U.S. was coming from on our positions. So, therefore, from my perspective, there is no doubt it not only had an impact, it had a substantial impact on the treaty negotiations.

I would also note that there is now a history of such resolutions. There was one also before it, with regard to the World Summit on the Information Society back in 2005, that had exactly the same impact—very substantial in that U.N.-heads-of-state negotiation.

So, clearly, when the committee speaks, when Congress speaks, the world listens.

Mr. WALDEN. Thank you.

Commissioner McDowell?

Mr. MCDOWELL. Well, it is hard to build on all those answers, so I will incorporate them by reference. But I can also be a fact witness for you. In bilateral negotiations between the U.S. Government and other governments, this issue came up of our Congress being unified, unanimously unified. And I don't mean this as a flip-pant remark, but that was seen as something quite extraordinary abroad, internationally—

Mr. WALDEN. And domestically.

Mr. MCDOWELL [continuing]. And was very powerful.

Mr. WALDEN. Good.

Mr. MCDOWELL. I think it focused the resolve. And I think going further, making it the law of the land, would be even more powerful. And we should do that sooner rather than later to make sure we are prepared for 2014.

Mr. WALDEN. Thank you.

Commissioner, I have a question for you. You were one of the first to warn that the WCIT could veer off into Internet governance issues, and we appreciate your persistence.

The international community will gather again in May in Geneva for the World Summit on the Information Society Forum and the World Telecommunication/Information and Communication Technology Policy Forum. What should we be on the alert for there?

Mr. MCDOWELL. WTPF will have squarely in its sights Internet governance. I think this will lay the groundwork. While it doesn't maybe technically feed into 2014, the plenipot, it really does, because a lot of the same representatives, the same actual people who will be at the WTPF in May will be negotiating the new treaty in 2014 in Korea. But this focuses squarely on Internet governance.

So, yes, the WCIT could have been worse, but it was pretty bad. So what the proponents of international regulation did not get explicitly in Dubai they will try to get explicitly in Korea in 2014. And so this May is the next big opportunity to influence that treaty negotiation in 2014.

Mr. WALDEN. All right. Thank you.

Ms. Wentworth, I get the sense that if other nations better understood the opportunities available to them to participate in the multistakeholder governance model, the less need they would see for international regulation and the more likely they would be to see the harms.

Can you share with us some of the steps the Internet Society is taking to promote greater global inclusion in Internet governance process?

Ms. WENTWORTH. Yes, and thank you for that question.

The Internet Society has long believed that more engagement and more participation from all countries in the processes, in the multistakeholder processes that make the Internet work is the most effective way forward. To that end, the Internet Society does a tremendous amount of work at the national level, working with countries to help build and sustain technology in-country and build the capacity of the technical community in that country to sustain the technology going forward.

At the global level, we provide a lot of opportunities, a lot of fellowships for developing country participants to participate in things like the Internet Engineering Task Force, the Internet Governance Forum, the Organization for Economic Cooperation and Development, and a host of other meetings where we think the more voices that are at the table, the more rich and enhanced the dialogue will be. We are committed now more than ever to keep that activity going.

Mr. WALDEN. Thank you very much.

My time has expired. I would now recognize the gentlelady from California, Ms. Eshoo, for 5 minutes.

Ms. ESHOO. Thank you, Mr. Chairman.

And thank you to each of you, our witnesses. I think the entire country owes you its gratitude for what you have done. And I think that what you have shared with us today and more than nailed down is that we have a ways to go, but that the action of the Congress—and I know that there were some smiles, Commissioner McDowell, when you said that other countries found it really rather exceptional that the Congress was united. We have to re-appreciate that, that when there wasn't any daylight—any daylight between any of us in the Congress, bicameral, bipartisan, and in the executive branch, that that is a powerful message to people around the world. And it is powerful because it is really a restatement of our great values of our Nation. This isn't just the innards of something technological that has just taken off; this has embedded in it the great values of our democracy. And I want to thank you each of you for advancing the ball down the field.

My question to all five of you is: For what lies ahead, what do you think the United States should do in working with developing nations to help turn them around? What are the ingredients?

We know what has worked, we know what hasn't. We know, obviously, the countries that disagree the most with us are far more closed societies, they are not as open as we are.

I hope that there is not contagion of that thinking. And, first, I would hope that you can tell us that they didn't gain new friends in Dubai and bring people over to their side. But what do you think are the most effective strategies for turning this around?

Because we all agree with each other here. And you all agree with each other at the table. And I am thrilled that civil society and the roles that you played with your organization, as well, on the public side are involved in this. And these are very, very powerful tools.

So tell me, how do we keep hope alive here? What is the strategy, moving forward? Now that we have come through this, I mean, I think we are wiser. So whomever wants to go first.

Sure.

Mr. MCDOWELL. Thank you. I think that is an excellent point, and I agree with everything you just said.

I think we need to offer an alternative. There are countries, especially in the developing world, who feel left out of the multistakeholder model.

Ms. ESHOO. I heard that. That is why I said "developing." Uh-huh.

Mr. MCDOWELL. And I think we need to broaden the umbrella and find new ways for inclusion and sort of modernize that.

So sometimes these representatives can't afford to fly to these far-off meetings. So is there a way to fund that? Is there a way to have them participate remotely, as our friend from Kenya just did?

Ms. ESHOO. Now, who would fund it?

Mr. MCDOWELL. Well, you know—

Ms. ESHOO. I mean, where would we get that from?

Mr. MCDOWELL. That could be—

Ms. ESHOO. Everyone chips in or—

Mr. MCDOWELL. Everyone chips in. You know, there are ways—

Ms. ESHOO. Our side chips in?

Mr. MCDOWELL. Yes.

So, I think we also need to educate them on the facts. We need to recruit allies in civil society, as Mr. Feld said—

Ms. ESHOO. Yes. That is very powerful.

Mr. MCDOWELL [continuing]. In all these countries. And one key fact, for instance, in Africa, 1999, 70 percent of all Internet traffic from Africa went to the United States. Today it is less than 5 percent.

So there is the myth out there that the Internet is somehow U.S.-dominated. More and more traffic is going to come from within these countries and develop their own economies in a beautiful way. We need to let them know that that is the beauty of it.

Ms. ESHOO. Thank you. And thank you for the great role you have played in this. You rang the bell a long time ago. We are grateful to you.

Mr. Ambassador?

Thank you.

Mr. MCDOWELL. Well, thank you very much.

Ms. ESHOO. Wonderful work.

Mr. MCDOWELL. You are very kind. Thank you.

Ms. ESHOO. Important work.

Mr. GROSS. There is no silver bullet here, and we all recognize that. At the risk of stating the obvious, what we need to do is to continue that which we have been doing: the hard work of putting together the evidence, honing our arguments, and to making our case.

Now, having said that, there are many realities that we also need to work on. One is we need to think, as we do, about what it is we do, how we support organizations. If I may suggest, for example, one of the organizations that is near to my heart, or one of the processes that is near to my heart, is the Internet Governance Forum, created as a result of the World Summit back in 2005.

Ms. ESHOO. Yes.

Mr. GROSS. It was created because the United States said that although we did not believe in international control of the Internet, we believed it was important to have a dialogue with the world on Internet-related issues and that we would meet with and talk with anyone anywheres because we thought it was that important.

I am concerned about the future of the Internet Governance Forum, in part because of funding issues. It has been kept together—

Ms. ESHOO. Where does the funding come from?

Mr. GROSS. The funding is a very complicated method.

One is, in theory, because it is a U.N. event, the money flows through the U.N., there is a mechanism for donations to be made by countries, by regional groups, by civil society, and by corporations and others, some of whom are here today, that have been very generous in their contributions. But it is clearly insufficient to keep it going, at least in the long term.

If our view is that the multistakeholder approach is the way it should work, which I believe is true, then it is important that at least this, which is probably the most significant and well-known of the multistakeholder global meetings, needs to be supported and enhanced.

Obviously, there are many other places and many other organizations that do terrific work in this area. I don't want to sound like I am picking one out. But this is one where the world gathers that is extraordinarily important.

Ms. ESHOO. Thank you.

I am more than out of time, and I hope that the other two witnesses will, in writing, be instructive to us on the question that I posed. Because I think you have a great deal to offer, very importantly a great deal to offer, given who and what you represent. Thank you.

Ms. ESHOO. Thank you, Mr. Chairman.

Mr. LATTI [presiding]. Thank you very much.

And Chairman Smith is now recognized for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. LATTI. Thank you.

Mr. SMITH. Thank you.

Commissioner McDowell, you testified that three promises, key promises, were made by the ITU leadership: no votes to be taken on the WCIT; a new treaty will be adopted only by unanimous consensus; and a new treaty would not touch the Internet.

And I am wondering if that promise, if they were duplicitous, or did events that they had no part and could not control intervene. And did that affect or mal-affect, if you will, our strategy?

I look at the list of countries, the 89, and it is very clear that many of those are developing countries. Europe pretty much stayed—the European Parliament, as we all know, like here in the United States, took a very strong action in terms of a resolution. The Europeans pretty much stayed with us.

So my question would be, did that duplicity—were we prepared? Were we demarching? Were we doing the work—and, Ambassador Gross, you might want to speak to this, as well—that needed to be done in advance of the Dubai meeting that would make the difference in terms of outcome?

Mr. McDOWELL. To the second part of your question, I don't think it affected U.S. advocacy. I do think, however, that both civil society, the private sector, nonprofits, and the U.S. Government could have gotten started sooner on working on the WCIT. I don't know if that would have changed the ultimate outcome, but I don't think reliance on those promises changed U.S. strategy.

On the duplicity aspect of it, I don't know. I can't tell people's intentions. You have statements by ITU leadership saying one thing, but, as Ambassador Gross pointed out, that it is a member-driven organization. So you have the member states doing what they were going to do regardless of what ITU leadership may or may not have said.

Mr. GROSS. Thank you very much. And it is a great pleasure to testify before you again.

I agree with what the Commissioner said. I think the key here is, to some degree, it is not a question of individual motives, it is a question of governmental interests. And as we have discussed in the past, there is no doubt in my mind that some governments would like to seek to control the Internet in any way that they can, not only domestically but internationally, because it will further their interests.

Our advocacy with those governments has been ongoing, needs to be ongoing. It needs to be strengthened, of course, as well. But I don't come with any illusions that it is merely a question of if we can come up with a slightly better formulation of our arguments or if we start a few months earlier, that those governments will change their mind.

Having said that, there is a large number of governments who can be directly influenced by the correct arguments. We have heard from the Kenyans today, as well. I would note that there are about 193 countries that are members of the ITU. As we have heard, 89 of those countries signed the treaty in Dubai, but that means almost half of the countries, maybe more than half the countries, have either not signed or did not attend that conference. As a result, there is lots of opportunities for our effective advocacy.

Mr. SMITH. Thank you, Mr. Ambassador.

You know, in 2006, as you know better than anyone, I chaired the first hearing of a series of hearings on the misuse of the Internet by human rights violators, particularly gross violators like the People's Republic of China. Representatives from Google, Microsoft, Cisco, and Yahoo! testified, and they told us how they were compelled to conform to surveillance and censorship policies placed upon them by Beijing, making them unwittingly a part of the ongoing crackdown of indigenous human rights activists.

This also goes on in Vietnam, it goes on in Belarus, it goes on in Iran, as we all know. Today the Laogai is filled to overflowing with human rights activists, put there precisely because of the Internet and because they were surveilled and caught by the government.

Pervasive censorship is not just about information exclusion, but it is about redirecting netizens to government-favored information and Web sites. And that is the rule of the way it happens in China today.

My question is, exactly what did China and other Internet-restricting countries gain in Dubai? Are their policies reinforced? Are there any mitigating aspects to this treaty? Will it have any kind of curtailing impact on the great China firewall or not? And how will this treaty be enforced on the 89 that have signed on to it?

Mr. FELD. Let me take a first shot at that, cautioning that I am not an expert in international law.

I will say that the last-minute debate with regard to what I can only describe as the usurpation of human rights language by countries for the purposes of subsuming that language to their own end was profoundly shocking. I think it reverberated to our advantage, ultimately, in the political sphere by making clear to many in global civil society what the stakes are here.

Particularly as China articulated a theory in which countries, rather than individuals, would be the ministers of the U.N. fundamental right of free expression, could not have been more calculated to send chills down the spine of every organization that had foreseen precisely this effort to extend censorship regimes through the ITRs.

That said, I must add one note of caution which we need to take account of in our diplomacy, which was when I asked a fellow activist from the Africa bloc why the African countries were sup-

porting this, she said, We have families who cannot call home to Sudan because telephone cards will not work because of the sanctions.

And so while we fully support the sanctions and we believe in protecting human rights, we also need to be aware in our diplomacy as we move forward that many countries may choose to support some of these not because they love censorship but because they have alternative concerns. And as Commissioner McDowell has said repeatedly and appropriately, we need to be showing that we are sensitive and engaged on those concerns while continuing to isolate those who would violate human rights.

Mr. GROSS. I would just add that, in answer to your question, time will tell. I take the importance of how the language is interpreted. It doesn't go into effect until January of 2015. The WCIT treaty will be incredibly important.

I hope and expect that the ITU leadership and others will continue to advance the view that the language of the WCIT treaty, the new ITRs, revised ITRs, are telecoms-related, not Internet-related. And so it will take long and hard work by the U.S. and others to ensure that that promise continues to be kept.

Mr. MCDOWELL. If I could add very quickly. I know we are over time. I apologize.

The authoritarian regimes have crossed a regulatory Rubicon, and that is their biggest victory from Dubai. So from now on—remember, at the outset I said these regimes are patient and persistent incrementalists. So they won't stop at this; they will want more.

And they will also try to argue that current treaty language says more than what it says on its face, because that is what they did with the 1988 treaty language, which clearly did not contemplate giving the ITU control over the Internet. But even ITU leadership and ITU staff in a PowerPoint presentation that I have right here, which is on is the ITU Web site, claimed that the 1988 treaty language incorporated the Internet. And that is still up on their Web site; I hope it remains there. And so I think we need to keep that in mind.

So what they got, their big victory, they were able to create a new paradigm and destroy the old paradigm.

Mr. LATTA. Thank you.

The chair now recognizes the gentleman from California, Mr. Sherman, for 5 minutes.

Mr. SHERMAN. I would like to pick up on that concept, and that is, we have got a lot of language adopted from 1865 to 1988, and one can imagine that the opponents of freedom will try to apply that to the Internet.

In addition, the Internet is broadening its scope to include voice, some would say telephony. As the Internet, Ambassador Gross, includes voice, does that bring it under the language adopted in 1988 and prior?

Mr. GROSS. The fortunate answer for us is that the 1988 treaty that resulted in the ITRs dealt with issues other than what we are talking about. That is, it dealt with issues about how state-controlled enterprises, in essence, exchanged traffic in ways—financial arrangements and related arrangements.

Mr. SHERMAN. Yes, but my focus is not just on the 1988 language. From 1865 to 1988, people were writing treaties about telegraph. Then they started including telephony. And did they stumble into language that would either apply to the Internet as I use it today or that would apply to an Internet that is even more used for telephony than what we see today?

And I know Mr. Feld will want to respond, as well, but first Ambassador Gross.

Mr. GROSS. As I mentioned, fortunately, that which was done by the ITU in terms of treaty language, binding treaty language, does not go to the sorts of things, I think, that would concern us with regard to Internet. And I don't at all suggest that what it does applies retroactively to the Internet. But, rather, it really dealt with the relationship between states and how those transactions took place with regard to the networks.

In addition, it is important, I think, to recognize that the way in which the Internet has evolved has resulted in many of us now looking afresh at how these things should be done. And, importantly, in the 1988 treaty, what the ITU did was very important; it allowed for the private sector and others to make their own commercial arrangements. That part applies regardless.

Mr. SHERMAN. Mr. Feld, I do want to pick up on your idea that the U.S., perhaps the private sector as well as government, should be chipping in a bit to help those from poorer countries participate in the multistakeholder forums. And I would note that we provide \$11 million a year, which seems a rather modest amount, to the ITU itself. And it wouldn't be such a bad idea if both businesses and the government would help strengthen the multistakeholder approach.

So thank you for those statements. And now please comment on the question I asked Ambassador Gross.

Mr. FELD. To focus on the question just asked, I think what is important here is to recognize that even under the traditional ITU approach to telecommunications, it never approached questions of content, it never attempted to extend the controls of one country into another country, which are precisely the issues that are of concern here.

Nothing in the ITRs ever would have suggested, for example, that countries could regulate prank phone calls or unwanted telephone solicitations, but somehow countries persuaded themselves that it was suitable because of the Internet to try to regulate spam.

And what we need to be careful of here is to not make this a telecom/nontelecom distinction, but to much more focus on the appropriate role of the ITU as tied to traditional technical coordination.

Mr. SHERMAN. So we should be saying, No content regulation, whether it is text or voice, whether it is over old telephony wires or new Internet technology; the ITU is there to provide for international payment recognition, not content regulation.

I know others want to respond to this, but I want to add one other question. Our colleague, Congresswoman Bass, pointed out, as we all know, that the Internet is sometimes used by bad people for bad reasons. And she gave a great example, a terrible example, and that is those engaged in human trafficking.

How does the multistakeholder approach respond to those who say, We need the ITU to regulate; otherwise, and if you don't believe in that, then you must be helping human traffickers?

Mr. McDowell?

Mr. MCDOWELL. Thank you for the opportunity.

So for the first part, you know, voice is now an application. It is all part of a slurry of ones and zeroes. So as we just saw from our friend from Kenya, was that voice, was that a voice communication? Was that video? Was it data? The answer is, it was all of the above; it was all a slurry of ones and zeroes.

Packet-switch networks, the networks of the Internet, operate very differently and have a different architecture completely from the traditional copper voice analog networks of yore that the old ITU rules were set up for. That is an important distinction, actually. So we are talking about new networks and old rules, and we need to avoid blurring the two or putting the old rules on the new networks.

And regarding the other issues, it could be trafficking, it could be intellectual property, it could be a lot of other things. There are still national laws, there is still national sovereignty. And what growing the jurisdiction of the ITU or maybe another U.N. organization yet to be born undermines is national sovereignty in these areas. And there are other treaties that can be put into play for trafficking or intellectual property and all the rest, with the Internet as a tool, perhaps, in those crimes. But we need to make sure that we are not subjecting to the Internet to international control.

Mr. SHERMAN. I will just ask a question for the record because the chairman has been very generous with the time. And that is, should we have done more to tell countries that, to use the language here in Congress, we are scoring the vote? That is to say, that those making other important U.S. foreign policy decisions are taking note of how countries vote at the ITU? Is that undue pressure or a demonstration of how important Internet freedom is?

And I will ask you to respond in writing to that.

Mr. LATTA. Thank you.

The chair recognizes the gentleman from Texas, Chairman Poe, for 5 minutes.

Mr. POE. You hesitated on that "gentleman" part.

Mr. LATTA. You are a gentleman.

Mr. POE. Thank you once again for being here.

It seems to me that there is one thing that we do all agree on: that the Internet, as great as it is, is a tool for freedom. It promotes freedom of speech, and it promotes economic and political freedom.

Freedom is kind of something we do in this country, whether it is here or somewhere else. And I would hope that, as we move forward, we would continue as a body to bipartisanly promote that concept that we believe in as a nation, even though it may, as Commissioner McDowell said, shock a few countries that we all agree on this one issue. And so I think that is important and that is why this hearing is important. And what we do as a body, Congress, does make a difference, and especially other people notice what we do.

But that is, to me, the underlying issue, it is about freedom, liberty. It is not corny, it is not old-fashioned; it is just what we do in this country.

One thing that concerns me is the ITU's kind of secret plan. They meet in secret. They don't reveal to the public what they do behind closed doors, as Mr. Feld has pointed out. Transcripts sometimes aren't available. Other things that take place, no one knows what occurred.

I don't know if you want to weigh in on that as whether we can do something about that as a procedure matter or not.

It seems to me, also, that on this issue we have those that are determined to have control, government control, ITU control, over the Internet. I mean, their motives are obvious. Russia, Iran, China, Saudi Arabia, UAE—those people will never be converted to our philosophy, I don't think. Then on the other side we have the United States, Sweden, Great Britain, Kenya, and some other countries.

So I think most countries are still in the middle, from what you say, that most countries are still trying to find out where they stand on this issue. And that should be our goal, is to promote that concept—which is in their best interest, not necessarily ours, but their best interest as well—diplomatically, however we can. And I know that I couldn't do that. I have been called a lot of things, but I have never been called a diplomat. And I am glad that you are in that assignment, that you want to do that.

So my question to you is, should there be, first, on one end—and I am just asking for your opinion—any consequences for countries that seem to want government control of the Internet, or not? And, second, a little more specific: how can we be prepared to communicate better to these—the vast majority of countries, as Ambassador Gross has mentioned, that still haven't made up their mind?

So three questions: ITU procedure; any consequences; and what can we specifically do. I will let anybody who wants to answer, if you do.

Ms. WENTWORTH. Thank you for the question. It is an important question, and it goes to, I think, some of the other comments earlier.

First, the ITU does need to become more transparent. And, hopefully, the pressure and the attention that the world put on the ITU over the last 18 months will make a deep impression going forward that processes need to be more open, more inclusive of civil society, more reflective of a broader community, and not a closed-door intergovernmental place where work gets done, which I think promotes this feeling that it is a secret plan.

The question about what to do about the countries, as you said, in the middle is a really important one. Organizations and groups like the Internet Governance Forum are incredibly important.

It is also really important to build the technical capacity in these countries. And by "technical capacity," that could mean the actual technical infrastructure, but also the human capacity, the technical people in this country who can build the technology, sustain the technology, and work with their governments in forums like the ITU to defend the technology and to defend the model.

As we see more engineers from developing countries involved in the technical community, involved in growing the Internet in their countries, we then see them on national delegations, like the Kenyan delegation, like the Philippine delegation, across a number of delegations that had Internet experts on that delegation helping to inform their governments about what the consequences of these treaty proposals were.

So it wasn't just a matter of us saying to them, this is wrong or this is bad, they actually had homegrown, national citizens in their countries who truly believe in the model because they are building it in their countries.

And I think that it is important to really push and to support that kind of technical capacity-building, both at the architectural level and at the human level, so that you build a sense of buy-in within these countries that is sustainable over the long term.

Mr. FELD. Yes, I would like to just add, one, with regard to ITU procedure, the United States, as a member, has the discretion when to disclose official documents and to whom it chooses to designate to have access. And to the extent that the members of the member states of the ITU do not agree to open this in transparency, the United States and other countries that believe in that principle can unilaterally say, well, we plan to make copies of these official documents available. And if the ITU insists on operating through official documents, then that is going to be the mechanism through which the rest of the world gets to judge the proposals that are being put out there. And the United States can drag this as much into the light as possible.

With regard to engagement, I think it is important for us to continue to walk the walk. And that includes not just at the ITU. I will point out that I and my colleagues were thrilled and delighted with the reception we had at State for the delegation with regard to Dubai. I would say we have gotten a somewhat different reaction when we have talked to USTR with regard to negotiations, for example, in the Trans-Pacific Partnership. It plays into the hands of our opponents if we are totally about openness and civil society and engagement in the ITU context and not in the Trans-Pacific Partnership and other trade contexts.

And the fact that European activists and some in the European Parliament were referring to the ITU as "ACTA by the backdoor" shows us, I think, unfortunately how far we have fallen on the trade front. And it would be enormously helpful for us to walk the walk consistently with regard to engagement with civil society.

Mr. POE. I am out of time. Ambassador Gross, if you don't mind just responding in writing.

And also if the four of you, if you wish to respond on the issue of consequences in writing.

And I will yield back my time.

Mr. LATTA. I thank the gentleman.

And the chair will recognize himself for 5 minutes.

And if I could—oh, I am sorry. I got ahead of myself. I am sorry. The gentleman from California is recognized for 5 minutes, Mr. Lowenthal. Sorry about that.

Mr. LOWENTHAL. That is all right.

Mr. LATTA. You pass? All right, thank you.

Going back, again, I will recognize myself for 5 minutes.

And if I could, Commissioner McDowell—and for all of our panelists, thanks again for being here. It has been a very, very informative hearing this morning.

And if I could go back to your testimony, especially your five fundamental points that you were bringing up, and especially your point number one, stating that “proponents of multilateral inter-governmental control of the Internet are patient and persistent incrementalists who will never relent until their ends are achieved,” which you started on. And I think you were talking about crossing the Rubicon.

And the three points, if you could maybe touch on briefly again, especially in light of what has been going on, especially the cyber attacks that have occurred on businesses and, of course, on other government agencies in this country from abroad.

But could you comment on especially your bullet point stating that “subjecting cybersecurity and data privacy to international control, including the creation of an international registry of Internet addresses that could track every Internet-connected device in the world”? If you could start with that point, especially in light of the cyber attacks.

Mr. MCDOWELL. This sounds like fiction, but I in my written testimony have it heavily cited so that people can see those proposals, and these are very real. They can read it in black and white. So this is an outstanding question, as to what is the future state of international regulation of cybersecurity.

So if China, in particular, is pushing hard for something along these lines, one has to ask why. And is that to use it as a shield, as a way of having other countries live by a set of rules which they then can break? That is a legitimate question to ask with any treaty negotiation but especially this one. So is it a sword and a shield all at the same time?

So this is something that I think these patient and persistent incrementalists will be back for more, to have more multilateral control over what probably should be something conducted by nations in their own national interest.

Mr. LATTA. Let me ask, on your last bullet point under that heading, “centralizing under international regulation Internet content under the guise of controlling ‘congestion’ or other false pretexts, and many more,” if you want to expound on that.

Mr. MCDOWELL. Right. So if we look at the provisions on spam that came out of Dubai, there is a legitimate argument to make, which others on the panel have made, that this enables governments across the globe to look at the details of Internet communications. It actually gives them cover because many of them, of course, do this already, China being the best example. But this gives them international political cover to do this and starts to make it, through international treaty, the worldwide norm for governments to do these types of things.

And back, also, to the registry point of the first part of your question, that is ultimately where this can lead. If these proposals will ultimately result in having an international registry for IP addresses, each device—your mobile phone, your tablet, your computer—has an IP device. And in the future, as we grow the Internet of

things, you know, your refrigerator, goods on cargo vessels, all the rest, will have their own addresses. And if there is an international registry of these, that enables the tracking.

It sounds like black-helicopter conspiracy theories, but so did my op-ed a year ago in *The Wall Street Journal*, and it became a reality. So this is very real and is a very real threat, and it could be international law before we know it.

Mr. LATTA. And then finally, on your bullet point dealing on peering, do you want to talk a little bit about that?

Mr. MCDOWELL. So peering, just in a nutshell, these are the long-haul pipes, the Internet backbone that carry large volumes of traffic. And from the inception, there have been contracts between the builders of these pipes to swap traffic as they see fit. And it has been mainly a swapping arrangement without compensation.

But if we go in the direction of there being some sort of international economic regulation of peering, that is really going to start to dry up investment and squelch innovation in this regard. It will upend the economics of the Internet as we know it and cause a tremendous amount of disruption and increase costs, ultimately.

And these costs will be borne by every Internet consumer in the world. So a lot of things that are free on the Internet—for instance, MIT and Harvard recently announcing that they were going to have free classes offered on the Internet. Well, those free classes all of a sudden incur a cost because the costs of these technologies start to rise dramatically.

And, at a minimum, it creates a tremendous amount of uncertainty, not knowing where these decisions are going to go. These decisions would be politicized inside these sort of sclerotic international bureaucracies by appointed, not elected, people. And we don't know where they are going to go. And that uncertainty really starts to dampen investment and innovation.

Mr. LATTA. Thank you.

And the chair at this time recognizes the gentleman from Missouri, Mr. Long, for 5 minutes.

Mr. LONG. Thank you, Mr. Chairman.

And thank you all for being here today. And it was especially interesting to have the doctor from Kenya testify here at the hearing today over the Internet that we are discussing. So that was pretty nice, being able to hear from him, and glad no one decided to block the content there.

And I will disagree with my friend from Texas, Mr. Poe. He says that most countries will never be converted to our way of thinking, and I think that, hopefully, I believe they will. I think the citizenry of these countries, from what I have seen, my travels around to different areas, that everyone has an iPhone, everyone has an iPad. There are ways to get information to go around some of this blocking, whether they are trying to block *The New York Times* from coming into their country or whatever it is.

So I, for one—I have always been an optimist. I was a salesman before I got here. So I am hopeful that these other countries will come around to our way of thinking. And I think that the citizens of those countries will be the ones leading the charge, probably not us here in Congress.

But, Commissioner McDowell, you state in your testimony, in 2011, then-Russian Prime Minister Vladimir Putin declared that his goal and that of his allies was to establish international control over the Internet through the ITU. In your position, what can you suggest as policymakers here to combat this domestically?

Mr. MCDOWELL. To combat this domestically?

Mr. LONG. Yes.

Mr. MCDOWELL. So I think we have a tremendous opportunity here. Congress has a huge role to play, as we have all agreed earlier that the unanimous bipartisan resolution coming out of both Houses of Congress last year was very powerful. So I think amplifying that as best you can.

And I subscribe to the position that I don't tell Congress what to do, you tell me what to do. But you are asking me, so I think codifying—

Mr. LONG. We tell a lot of people what do, but they never listen.

Mr. MCDOWELL. So codifying this as U.S. law I think is very helpful. But I think that helps fuel the conversation internationally.

And you are absolutely right, the citizenry of these countries are crying out for an unfettered Internet. And as we see the information spread—and, you know, there is more computing power in the hands of pineapple farmers from Ghana than we had for the entire Apollo program that put people on the moon. It is in their hands now, and that is incredibly powerful.

It is threatening to a lot of authoritarian regimes, but it is truly transformational for the citizenry around the world, some of whom—you know, one of the biggest challenges in the world is just finding drinkable water. And there are wireless devices that have applications that allow them to do just that, or to find the proper market price for their crops that they sell in the market. It is just absolutely transformational.

So you are absolutely right. As these technologies are allowed to proliferate and if information is allowed to flow unimpeded, it will have an effect on their governments ultimately.

Mr. LONG. So you, like me, are a hands-off-the-Internet guy.

Mr. MCDOWELL. Yes, sir, I am.

Mr. LONG. OK.

Yes, I think that it is very telling and very interesting to note that our Embassy in Beijing a few years ago hung an air pollution monitor, and we were putting out the air pollution number in Beijing, which did not thrill the Chinese. And they took us to task for it and said we had no business doing that. And it went from that point to now they have more—we only had one place to hang one, but they have several monitors. And sometimes their daily pollution index will show a number higher than ours does from the Embassy.

And the other day, I had a Chinese general pull out his cell phone proudly out of his pocket, his iPhone, and hold it up. And through his interpreter, he told our delegation that he had the American Embassy app for the air pollution index in Beijing, and he turned around and showed it to us very proudly.

So I think things are changing. And like I said, I am an optimist, hopeful. And thank you all again for your testimony.

And I yield back.

Mr. LATTA. The gentleman yields back.

And I believe the gentleman was our last Member to ask questions. And the record will remain open for 10 business days for Members to submit questions for the record.

And if there is no further business to come, this joint meeting of the subcommittees—I again want to thank all of our witnesses for being here today. You have done an excellent job. We appreciate it and appreciate your time.

And, at this time, we will stand adjourned.

[Whereupon, at 12:27 p.m., the subcommittees were adjourned.]

[Material submitted for inclusion in the record follows:]



The Internet Association

February 5, 2013

The Honorable Greg Walden
Chairman
Subcommittee on
Communications and Technology
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna G. Eshoo
Ranking Member
Subcommittee on
Communications and Technology
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Ted Poe
Chairman
Subcommittee on Terrorism,
Nonproliferation, and Trade
House Committee on Foreign Affairs
2170 Rayburn House Office Building
Washington, DC 20515

The Honorable Brad Sherman
Ranking Member
Subcommittee on Terrorism,
Nonproliferation, and Trade
House Committee on Foreign Affairs
2170 Rayburn House Office Building
Washington, DC 20515

The Honorable Christopher H. Smith
Chairman
Subcommittee on Africa, Global Health,
Global Human Rights, and
International Organizations
2170 Rayburn House Office Building
Washington, DC 20515

The Honorable Karen Bass
Ranking Member
Subcommittee on Africa, Global Health
Global Human Rights, and International
Organizations
2170 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden & Ranking Member Eshoo, Chairman Poe & Ranking Member Sherman, and Chairman Smith & Ranking Member Bass:

Thank you for the opportunity to submit this letter to your Subcommittees on the important issue of global Internet governance and the continued growth of the Internet economy.

I am the President and CEO of The Internet Association, a trade association representing the interests of the leading U.S. Internet companies and their global community of users. The Internet Association's members are Amazon.com, eBay, Facebook, Google, IAC, Yahoo!,





The Internet Association

salesforce.com, AOL, Rackspace, LinkedIn, Monster Worldwide, Inc., Expedia, TripAdvisor, and Zynga. We at The Internet Association believe that maintaining a free and innovative Internet is critical to the platform's continued growth and development and will ultimately lead to global economic success, technological innovation, and democratic discourse. We commend Congress for unanimously passing resolutions in support of the Internet's current bottom-up, decentralized, and multi-stakeholder model and urge the U.S. government to continue its unified stance.

Although imperfect, the current multi-stakeholder approach to Internet governance has been on the whole extraordinarily successful. By working with entities like the Internet Corporation for Assigned Names and Numbers (ICANN), the Internet Engineering Task Force (IETF), the Internet Governance Forum (IGF), and other multi-stakeholder organizations, rather than governmental entities to determine and implement key governance functions, the Internet ecosystem remains open and decentralized. That openness and decentralization make the Internet a forum for expression and an engine of economic growth available to everyone.

The benefits of this approach were apparent in the recent uprisings in Egypt and Tunisia. While those states aggressively policed the media outlets that they controlled, the Internet remained an available forum for dissidents to communicate with each other and those outside their countries. The Internet's prominent role as a global source of economic opportunity is equally apparent. As the International Telecommunication Union recently noted in a draft report





The Internet Association

by its Secretary General, the Internet is transforming the global economy by creating opportunities in local communities, and acting as a driver for social change.¹

In the United States alone, the Internet and technology sectors have been beacons of economic growth in the midst of the recession. The numbers are staggering. Over the past five years, the Internet accounted for 21 percent of the GDP growth in advanced economies.² About eight trillion dollars is exchanged each year through e-commerce.³ Such an actively engaged online business community strengthens the U.S. economy and allows our nation to effectively compete internationally. The U.S. captures more than 30 percent of global Internet revenues and more than 40 percent of net income.⁴

As with all historical shifts in our economy, new technologies obsolesce certain jobs. However, the Internet creates 2.6 new jobs for every one job it disrupts.⁵ In fact, if the Internet were classified as a sector of the U.S. economy, it would have a greater weight in GDP than agriculture or utilities according to a recent study by the McKinsey Global Institute.⁶ Internet services, like social media tools, empower small businesses that have little-to-no marketing budgets to advertise and interact with customers in the global marketplace. It also provides a platform for sole proprietors and other small businesses to engage in business transactions via

¹ ITU, *Fourth Draft of the Secretary-General's Report for the Fifth World Telecommunication/Information and*

² James Manyika and Charles Roxburgh, *The great transformer: The impact of the Internet on economic growth and prosperity*, McKinsey Global Institute at 1 (Oct. 2011).

³ *Id.*

⁴ Mathieu Pélissier du Rausas, *Internet Matters: The Net's sweeping impact on growth, jobs, and prosperity*, McKinsey Global Institute, at 4 (May 2011).

⁵ *Id.* at 3.

⁶ *Id.* at 14.





The Internet Association

websites such as Amazon and eBay. These businesses contributed 375,000 full-time equivalent jobs of the two million in the Internet ecosystem.⁷

The Internet's global reach expands that economic impact by several orders of magnitude. Currently, 2.3 billion people around the globe use the Internet and rely on our companies' products and services for accessing information, knowledge and education, commerce, entertainment, and free expression.⁸ By 2016, Internet users are expected to grow to 3 billion – almost half of the world's population.⁹

Notwithstanding the Internet's success as an incubator of both democracy and economic growth, many member states in the ITU persist in efforts to increase governmental and intergovernmental control over the Internet. Leading up to the December 2012 World Conference on International Telecommunications ("WCIT"), UN ITU Secretary Dr. Hamadoun I. Touré assured stakeholders that WCIT would "definitely not ... tak[e] control of the Internet."¹⁰ However, the final treaty text included an Internet resolution that quite clearly asserted a role for the ITU in Internet governance. This led to protests by delegates from the U.S. and other countries. Aside from the content of the Internet resolution itself, the lack of transparency or accountability in the ITU's deliberations drew criticism from several delegations

⁷ Interactive Advertising Bureau, *Economic Value of the Advertising-Supported Internet Ecosystem*, available at http://www.iab.net/media/file/iab_Report_September-24-2012_4clr_v1.pdf at 2 (Sept. 2012).

⁸ ITU, *Fourth Draft of the Secretary-General's Report for the Fifth World Telecommunication/Information and Communication Technology Policy Forum 2013*, released January 10, 2013 at 7.

⁹ David Dean et. al., *The Internet Economy in the G-20, Boston Consulting Group Perspectives*, available at https://www.bcgperspectives.com/content/articles/media_entertainment_strategic_planning_4_2_trillion_opportunity_internet_economy_p20/ (Mar. 19, 2012).

¹⁰ Dr. Hamadoun I. Touré, ITU Secretary-General, Address at the Columbia University Institute for Tele-Information (CITI) WCIT -12- Myths and Reality (Sept. 24, 2012).



The Internet Association

and civil society organizations. Some countries nonetheless signed the updated treaty, leading to differing rules for countries that signed and the countries that did not.

The 2012 WCIT is by no means the first or only instance of a government seeking to assert control over Internet governance. A 2012 Freedom House report analyzed nations fighting for greater freedom on the Internet and those seeking to gain greater control over it. The report showed that some nations are employing less visible tools to control the Internet, such as enacting new laws to regulate online speech, using tactics to manipulate online discussions, increasing online surveillance with minimal checks for abuse, and often times resorting to physical violence.¹¹ Allowing intergovernmental oversight of Internet functions and policy may legitimize even more restrictions on online content and interactions.

Such a change would stand in stark contrast to the principles acknowledged in the Tunis Agenda for the Information Society (“the Tunis Agenda”), part of the 2005 World Summit on the Information Society (WSIS). There, member states recognized that “the existing arrangements for Internet governance have worked effectively to make the Internet the highly robust, dynamic and geographically diverse medium that it is today, with the private sector taking the lead in day-to-day operations, and with innovation and value creation at the edges.”¹² The Tunis Agenda also reaffirmed member countries’ “commitment to the freedom to seek, receive, impart and use information, in particular, for the creation, accumulation and dissemination of knowledge.”¹³

¹¹ Freedom House, *Freedom on the Net 2012: A Global Assessment of Internet and Digital Media*, available at <http://www.freedomhouse.org/sites/default/files/resources/FOTN%202012%20Summary%20of%20Findings.pdf> (Sept. 2012).

¹² Tunis Agenda, ¶ 55. <http://www.itu.int/wsis/docs2/tunis/off/6rev1.html>.

¹³ *Id.* at ¶42.





The Internet Association

The Tunis Agenda recognized the link between the Internet's current multi-stakeholder governance process and the innovation and free flow of information that take place on the Internet. The Internet's open and decentralized governance framework should not be challenged by some states' top-down assertion of control over aspects of Internet governance and their desire to use the ITU as a mechanism for asserting such control. The Internet Association stands ready to work with Congress and the Executive Branch to ensure that the current, successful Internet governance framework is respected and preserved.

Sincerely,

Michael Beckerman
President & CEO
The Internet Association

Software & Information
Industry Association
1090 Vermont Ave NW Sixth Floor
Washington, DC 20005-4095



February 4, 2013

The Honorable Greg Walden
Chairman, U.S. House Energy & Commerce
Subcommittee on Communications and
Technology
U.S. House of Representatives
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member, U.S. House Energy &
Commerce Subcommittee on
Communications and Technology
U.S. House of Representatives
Washington, DC 20515

The Honorable Christopher Smith
Chairman, Subcommittee on Africa, Global
Health, Global Human Rights, and
International Organizations
U.S. House of Representatives
Washington, DC 20515

The Honorable Karen Bass
Ranking Member, Subcommittee on Africa,
Global Health, Global Human Rights, and
International Organizations
U.S. House of Representatives
Washington, DC 20515

The Honorable Ted Poe
Chairman, Subcommittee on Terrorism,
Nonproliferation, and Trade
U.S. House of Representatives
Washington, DC 20515

The Honorable Brad Sherman
Ranking Member, Subcommittee on
Terrorism, Nonproliferation, and Trade
U.S. House of Representatives
Washington, DC 20515

Dear Subcommittee Chairmen and Ranking Members,

I am writing on behalf of the Software & Information Industry Association (SIIA) to express our strong support for the intent behind the draft bill regarding Internet governance that is scheduled to be considered at a joint hearing of your Subcommittees on February 5, 2013.

We too agree that the International Telecommunications Union (ITU) is not the appropriate place for Internet policy decisions to be made. However, we are concerned that the text of the policy statement might be subject to misinterpretation. Therefore, we suggest a modest revision that eliminates the possible confusion and targets the policy statement at a real and genuine threat to Internet freedom.

Our concern is that the text might inadvertently appear to endorse the now-discredited view of Internet exceptionalism that exempted the Internet from the reach of traditional territorial governments. On the contrary, there is an appropriate and context-dependent role for government and regulation of the Internet. Where regulation is appropriate, government should use a light touch to avoid interfering with innovation or creating undue burdens or unintended consequences.

Tel: +1.202.289.7442
Fax: +1.202.289.7097

www.siiia.net

Territorial governments provide important services for the Internet, including criminal law, contract enforcement, property rights (including intellectual property rights), fraud prevention, privacy protection and consumer protection. To take just one example, in 1998 Congress passed the Children's Online Privacy Protection Act to ensure that Internet companies could knowingly collect personal information from children only with the affirmative consent of their parents. In our view, the recent revision of implementing regulations by the Federal Trade Commission went too far and might threaten the ability of many companies to provide needed services to children. But we agree that government should take reasonable steps to protect children's privacy online. In order to ensure a safe, secure and sustainable Internet, it cannot be a government-free zone.

We fully support a regime of light regulation of the Internet. As acknowledged by the Supreme Court, the First Amendment guarantees of free speech apply in the strongest way to activities on the Internet. Congress added to these constitutional protections a series of laws limiting the liability of Internet service providers for content provided by third parties, and making sure that they were protected from infringement claims if they satisfied various conditions depending on the services they offer, e.g. notice and take-down obligations for host providers. The goals of this regime are to encourage responsible behavior by intermediaries and to protect them from unlimited liability, thereby enhancing trust and confidence in the Internet.

The problem with the proposed treaty considered at the World Conference on International Telecommunications was not that it contemplated a role for government in policing the Internet. That is a legitimate role which we endorse. The problem was that it attempted to impose the unlimited control of an intergovernmental body on top of the policies freely adopted by sovereign nations, and that the control exercised by that intergovernmental body would have severely weakened the technological freedom that is the hallmark of the Internet. The United States could not, and did not, accept this. We applaud the U.S. Ambassador, Terry Kramer, for his strong stand in defending Internet freedom against this form of intergovernmental intrusion.

The U.S. supported the role of multi-stakeholder processes as an alternative to intergovernmental standard setting. This approach allows open participation by governments, industry, technical groups, academics and public interest and civil liberties groups. It is not led by governments. We endorse this multi-stakeholder approach to setting Internet technical standards. ICANN, W3C, IETF, ISO/IEC and others all provide valuable services. Indeed, the technical telecommunication standard-setting function of the ITU should be encouraged as one effort among others to address the need for common standards to provide Internet services. That is one reason, among others, why continued U.S. government financial and political support for the ITU's vital role is crucial. But we also believe that the standard-setting role of the ITU is in telecommunication, rather than in creating IT standards that detract from those of the established and effective organizations mentioned above and that are outside of the ITU's area of technical expertise.

But technical standard setting should not be a disguised route for establishing public policy. In a September 2012 letter to Jon Leibowitz, Chairman of the Federal Trade Commission, nine members of Congress warned against the use of multi-stakeholder groups in the area of Do Not Track to establish “stealth regulations” through an “extra-legal policymaking process.”

There is a role for public policy to recognize voluntary industry codes of conduct and self-regulation designed to protect the public in such areas as privacy policy. The multi-stakeholder process run by the National Telecommunications and Information Administration is one such effort.

A very useful international multi-stakeholder initiative is the Internet Governance Forum. It is a non-decisional group, open to all, not just to governments, that provides an annual forum for continued conversation about crucial Internet governance issues. SIIA urges the U.S. government to continue to support this organization as an appropriate multi-stakeholder forum for discussing Internet governance issues.

SIIA supported H.Con.Res.127 last year and similar resolutions in the Senate, and we applaud the initiative to keep the Internet out of the hands of intergovernmental organizations such as the ITU. But we remain concerned about the possible misinterpretation of this position and urge a revision of the text of the possible resolution to say:

It is the policy of the United States to promote a global Internet free from control from non-elected international government entities such as the ITU and to preserve and advance the successful multi-stakeholder model that governs the Internet.

Thank you for your consideration of this request. Please do not hesitate to contact me if I can answer any questions you might have.

Sincerely yours,



Ken Wasch
President

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

March 5, 2013

The Honorable Robert M. McDowell
Commissioner
U.S. Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Commissioner McDowell:

Thank you for appearing at the joint hearing with the Subcommittee on Communications and Technology, the Subcommittee on Terrorism, Nonproliferation, and Trade, and the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations entitled "Fighting for Internet Freedom: Dubai and Beyond" on February 5, 2013.

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also included are requests from Members that you agreed to provide for the record. The format of your responses to these requests should follow the same format as your responses to the attached additional questions for the record.

To facilitate the printing of the hearing record, please e-mail your responses, in Word or PDF format, to Charlotte.Savercool@mail.house.gov by the close of business on Tuesday, March 19, 2013.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Anna Eshoo, Ranking Member,
Subcommittee on Communications and Technology

Attachments

COMMISSIONER ROBERT MCDOWELL

Questions for the Record from the

February 5, 2013 Joint Hearing

"Fighting for Internet Freedom: Dubai and Beyond"

Attachment 1—Member Requests for the Record

During the hearing, Members asked you to provide information for the record. For your convenience, relevant excerpts from the hearing transcript regarding these requests are provided below.

The Honorable Ted Poe

1. So my question to you is, should there be, first, on one end and I am just asking for your opinion any consequences for countries that seem to want government control of the Internet, or not? And, second, a little more specific: how can we be prepared to communicate better to these the vast majority of countries, as Ambassador Gross has mentioned, that still haven't made up their mind.

So three questions: ITU procedure; any consequences; and what can we specifically do?

There are very real adverse consequences for countries that favor intergovernmental control of the Internet because ultimately a balkanized Internet will be created whereby it is partitioned between member states that chose to live under an intergovernmental regulatory regime and those member states, such as the United States, that chose to remain under the highly successful multi-stakeholder model. Such a regime would be devastating to global free trade and rising living standards. It would also create an engineering morass because such an expansion of rules would politicize engineering and business decisions inside intergovernmental bureaucracies. Such a complex system would make it increasingly impossible for entrepreneurs to be able to build and operate new cross-border technologies such as cloud computing. Moreover, those countries that would be the most severely impaired are in the developing world.¹ At the very least, this type of partitioned Internet will create an enormous amount of uncertainty and drive up costs for all Internet consumers.

A recent news article summed up the chaotic effects of a partitioned Internet. Note the Russian official's call for the U.S. to agree to international regulation of the Net to avoid fragmentation – a clever and cynical maneuver to turn arguments against Net regulation on their head:

The U.N. has no power to force the United States to adopt any Internet regulation, and the U.S. refused to sign the December treaty, along with 55 other countries. But if a large number of countries agree on regulations, the Internet could become fragmented, with very different rules applying in different regions of the world. "That becomes an engineering nightmare," McDowell said. Russia has pushed hardest for international Internet regulation. "In the future we could come to a fragmented Internet," warned Andrey Mukhanov, one of Russia's representatives to the U.N. conference, as the U.S. and many European countries declined to sign the treaty in December. "[Fragmenting] would be negative for all, and I hope our American and European colleagues come to a constructive position." But by a "constructive position," Mukhanov means one with international web regulation....Technology groups and companies like Google say that the regulations, while they often seem nice on the surface, give government the power to censor content.²

¹ See, e.g., Ken Banks, *In African Agriculture, Information is Power*, Nat'l Geographic (Sept. 5, 2011), <http://newswatch.nationalgeographic.com/2011/09/05/in-african-agriculture-information-is-power/>.

² Maxim Lott, *Internet Still Under Attack by UN, FCC Commissioner Says*, FOXNEWS.COM (Feb. 13, 2013).

COMMISSIONER ROBERT MCDOWELL

Questions for the Record from the

February 5, 2013 Joint Hearing

"Fighting for Internet Freedom: Dubai and Beyond"

As the Administration prepares for the Plenipotentiary conference in Busan, Korea in 2014, our government, the private sector, civil society, and non-profits must redouble efforts to fight against attempts to impose more international control over the Internet. For example, all of these entities can work together leading up to and during the World Telecommunications Policy/ICT Forum in Geneva in May of 2013 to find new allies and demonstrate to them how successful an unfettered Internet is to the economy and the human condition throughout the world.

The Honorable Brad Sherman

Should we have done more to tell countries that, to use the language here in Congress, we are scoring the vote? That is to say, that those making other important U.S. foreign policy decisions are taking note of how countries vote at the ITU? Is that undue pressure or a demonstration of how important Internet freedom is?

Yes, the United States government should have done more to tell countries that we were scrutinizing the vote. The United States has a duty and a right to inform other ITU member states of its positions. Moreover, U.S. diplomats' work on behalf of Internet freedom has been bolstered by the fact that the U.S. House of Representatives and the U.S. Senate unanimously passed concurrent resolutions regarding this topic. Sending this message to other ITU members is not undue pressure. Rather, it is incumbent on our country to make sure its position is clear and firm: An unregulated Internet is a freedom-enhancing and borderless network of networks that is an essential tool for commerce – and sometimes basic survival – in *all* nations, but especially in the developing world.

COMMISSIONER ROBERT MCDOWELL

Questions for the Record from the

February 5, 2013 Joint Hearing

"Fighting for Internet Freedom: Dubai and Beyond"

Attachment 2—Additional Questions for the Record

The Honorable Greg Walden

1. In his testimony, Mr. Feld asserts that "No one brought up Net Neutrality in Dubai." As part of the core delegation of U.S. Government employees, was this your experience?

This was absolutely *not* my experience. Mr. Feld's statement is simply without merit. As part of the official U.S. delegation to the WCIT, I was an active participant in bi-lateral meetings in Dubai where the topics of "Net Neutrality" and Title II classification of Internet access services were raised by delegates from other countries. They noted that the U.S. is sending conflicting signals because it regulates the Internet domestically with its Net Neutrality rules but opposes proposals to allow the ITU to regulate the Internet.

2. The United Nations does have a place for countries to discuss governance of the Internet – the Internet Governance Forum. What are your thoughts on the IGF and how can the U.S. help develop the IGF as part of a true multistakeholder process?

I agree that the Internet Governance Forum (IGF) is an appropriate place for Internet governance to be addressed. The IGF is comprised of civil society, private sector, non-profits, governments and the ITU. It provides a forum for decision making through consensus and works in a bottom-up manner. Such a structure can be empowering for even the smallest of participants. In that vein, in order to improve the IGF's multi-stakeholder process, it is imperative that we find ways to increase the participation of all interested parties, especially the participation of developing nations, who often lack funds and time to participate in the myriad of IGF meetings. If we don't improve it, developing nations will turn to further increasing the power of the ITU instead.

The Honorable Anna Eshoo

As a way of paying for the expansion of broadband, some developing nations have suggested the use of telecom-style termination fees on Internet traffic. To counteract this effort, what tangible actions do you think the United States should take in working with developing nations to promote deployment and expand investment of broadband?

The United States government and private sector can work together to help educate developing nations about the importance of Internet freedom. Investment dollars always flow to where they are welcome. In this case, less regulation and taxation of broadband would result in increased investment, deployment and adoption which will grow economies throughout the globe. Furthermore, industry, non-profits and academia have been generous in providing resources to developing nations to help ensure that their citizens benefit from the use of Internet and its continued deployment. These efforts should continue and there should be a coordinated communications effort to ensure that developing nations realize the importance of such efforts and that it will not be possible to continue to make great economic strides if the Internet is not allowed to flourish without governmental control.

The Honorable Henry Waxman

Did you see any positive outcomes from the U.S. perspective resulting from the WCIT negotiations?

Yes. The fact that certain proposals were *not* adopted at the WCIT can be considered a positive outcome of the negotiations. For example, one of the proposals not adopted was a "sender party pays" proposal which would have required Web content providers to pay Internet service providers (ISPs) in other countries for the traffic sent over those networks. Unfortunately, however, proponents of such proposals will return in force at future negotiations and continue

COMMISSIONER ROBERT MCDOWELL

Questions for the Record from the

February 5, 2013 Joint Hearing

“Fighting for Internet Freedom: Dubai and Beyond”

to advocate for their adoption. They are patient and persistent incrementalists and will pursue these additional proposals in all future negotiations. I am not optimistic about the outcome of the 2014 Plenipotentiary conference.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 925-2827
Minority (202) 225-3641

March 5, 2013

Dr. Bitange Ndemo
Permanent Secretary
Ministry Of Information and Communications
Republic of Kenya
Teleposta Towers, Kenyatta Avenue/Koinange Street
P.O. Box 30025
Nairobi, Kenya 00100

Dear Dr. Ndemo:

Thank you for appearing at the joint hearing with the Subcommittee on Communications and Technology, Subcommittee on Terrorism, Nonproliferation, and Trade and the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations entitled "Fighting for Internet Freedom: Dubai and Beyond" on February 5, 2013.

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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Anna Eshoo, Ranking Member,
Subcommittee on Communications and Technology

Attachment

The Honorable Greg Walden

1. Kenya was one of the 55 nations – including the United States – that left Dubai without signing the new treaty. What aspects of the treaty led you to conclude that Kenya could not sign? What can we do to expand the coalition to more African nations? What about nations in other continents?
2. What are the benefits of the multi-stakeholder model that flow to Kenya and other nations? What are the harms that you believe will come if we subject the Internet to international regulation?
3. What do you think are the greatest challenges that supporters of the current Internet governance model will face in Geneva at the WTPF and in Buson at the Plenipotentiary conference?

The Honorable Anna Eshoo

1. How will Kenya seek to harmonize the different position adopted by the African block?

The Honorable Greg Walden

What aspects of the treaty led us to conclude that Kenya could not sign?

- **The unprecedented expansion of “human rights” language** in the treaty’s Preamble is inconsistent with international human rights standards, and the encroachment of the treaty into regulation of the Internet that could endanger Kenya’s efforts to grow its Internet-based industries. In addition it is a dilution of human rights as applied to the individual and a shift towards towards collective, state rights. This new language appears to recognize a unique international human right that is inconsistent with established human rights precedents. Regardless of whether Kenya agrees with the underlying sentiment of the provision, the ITU and telecoms sector are not appropriate venues for the creation and recognition of new human rights. Kenya remains committed to upholding human rights obligations and to the values of freedom of expression and the free flows of information and ideas on the Internet.
- **Recognized operating agencies versus operating agencies** “authorized operating agencies,” this is a category that could include a large number of new entities such as Internet access service providers (ISPs). To the extent regulatory solutions are required in these areas, they can be implemented on the national level without this revised treaty. Ultimately, Kenya - with vibrant and growing ICT and Internet content industries - we view this expansion of international regulation as adverse to our national economic interests.
- **Article 3.7 “Implementation of regional telecommunication exchange points”**: This new introduction to the ITRs has no definition of “Regional telecommunication exchange points” in the telecommunications sector or ITRs. As such, this may imply “regional Internet exchange points”. The growth of regional “Internet” exchange points is driven by social economic factors and Kenya has strategically managed to develop these factors in its favour hence the growth of the Kenya Internet Exchange Point (KIXP) and Mombasa Internet Exchange Point (IXP). The unintended consequence of this article will be eliciting discussions on the location of the regional telecommunications exchange point, at regional level, since each country cannot have one. Such a process is likely to hamper national efforts, growth or emergence of a regional exchange point driven by the fundamentals.
- **Article 5A “Security and robustness of networks”**: This would have significant implications for issues of privacy and freedom of information. Kenyan stakeholders have made significant progress in addressing security concerns through collaboration and setup of industry specific CSIRTs coordinated by the CCK. We therefore encourage national, regional and international collaboration and cooperation to further enhance the effectiveness of the efforts made thus far. Kenya is an active and committed participant in such efforts, for example the multi stakeholder commonwealth Cyber crime (CCI) Initiative among others.
- **Article 5B: “Unsolicited bulk electronic communications”** is a new introduction to regulating spam, which is a form of content and inevitably opens the door to regulation of other forms of content, including cultural and political speech. This article introduces regulatory scope of the treaty into Internet issues and invites governments to take content-based action and moves the treaty into the realm of regulating speech on the Internet. Similar concerns are relevant to the security language adopted in Article 5A.

- **Resolution Plen/3 “To foster an enabling environment for the greater growth of the Internet”** represents a direct extension of ITU's role and scope into the Internet despite earlier assertions from ITU that the WCIT would not address Internet issues. While the resolution is not on the body of the ITRs, and is nonbinding, it is still in the Final Acts and will therefore give the ITU the scope to assert its intergovernmental role in Internet governance processes. For Kenya, which has a growing ICT sector and is a regional leader in terms of connectivity and innovation, these new Internet provisions risk undermining successful multi-stakeholder mechanisms and proven strategies for growth. The Resolution, also presents an unbalanced view of Internet governance that is inconsistent with the principles underlying the Internet Governance Forum (successfully hosted by Kenya in 2011) and many of the provisions agreed to at the United Nations World Summit on the Information Society (WSIS) in 2003 and 2005. This Resolution focuses heavily on government involvement in the management and development of the Internet, as opposed to establish, successful multi-stakeholder processes.

Our decision to not sign at WCIT-12 is reinforced by the fact that, to the extent there are positive aspects to the treaty, Kenya and its businesses will still enjoy many of their benefits in the global international telecommunications ecosystem.

What can we do to expand the coalition to more African countries and other countries in other continents?

Promoting the multistakeholder model and enabling all countries and stakeholders to participate meaningfully in Internet governance policy processes.

What are the benefits of the Multistakeholder model that flow to Kenya and other nations

Kenya has a long-standing position that ICT and Internet policy must be multi-stakeholder driven and should not be determined by governments, rather by broader society, citizens and communities. This multi stakeholder model of policy making is now enshrined in Kenya's 2010 Constitution where article 10 provides for the participation of citizens as one of the national values and principles of governance. It provides inter alia that: -

10. (1) the national values and principles of governance in this Article binds all State organs, State officers, public officers and all persons Whenever any of them--

- (a) Applies or interprets this Constitution;
- (b) Enacts, applies or interprets any law; or
- (c) Makes or implements public policy decisions.

(2) The national values and principles of governance include--
(a) Patriotism, national unity, sharing and devolution of power,
The rule of law, democracy and participation of the people

This model has helped us build and foster trust among various stakeholders over time and has contributed to enabling policy and regulatory environments that encourage innovation and responsiveness to our development plans and citizens needs. E.g. TEAMS, KIXP, MIXP, etc.

What are the harms that could come to the Internet if subjected to international regulation?

Kenya has seen great socio-economic, political, cultural and individual benefits of mobile and Internet. Recognizing these benefits, Kenya has a goal of 100% Internet penetration by 2017 and is well on its way. Our mobile phone usage jumped to 19%. Our Internet Exchange Point (KIXP) localizes more than 1Gbit/s of peak traffic and we have established a National Computer Security and Incident Response Team (CSIRT) that deals with potential security threats and vulnerabilities to its members. Regulation should be approached from the perspective of creating an enabling environment to encourage growth and innovation.

What do you think are the greatest challenges that supporters of the current Internet governance model will face in Geneva at the WTPF and the 2014 plenipotentiary?

Kenya is committed to remaining engaged in global dialogue on the role of governments and other stakeholders in the growth, development and evolution of international telecommunications and the Internet sectors as we expect these discussions will continue at the WTPT and 2014 Plenipotentiary.

The agenda for WTPF is broad, encompassing a range of Internet governance and policy topics, these issues are important for Kenya. We therefore hope that the WTPF will explore ways and means for greater collaboration and coordination in the development of and the future of the Internet economy in these areas.

Kenya will continue to work with various organisations including the ITU, ICANN and others in supporting multistakeholderism in Internet Governance processes.

The Honorable Anna Eshoo

How will Kenya seek to harmonise the different positions adopted by the African block

Kenya has a similar environment and similar challenges (cybercrime, spam, interconnection, etc) with other African countries. We have several regional organisations/institutions and regional economic blocks (e.g EAC, COMESA, etc) working to address some of the challenges we face including cross border interconnection, cyber crime, among others, we hope that these regional discussions will support the development of common guidelines to address some the new areas.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (203) 225-6927
Minority (203) 225-3641

March 5, 2013

The Honorable David A. Gross
Former U.S. Coordinator
International Communications and Information Policy
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006

Dear Ambassador Gross:

Thank you for appearing at the joint hearing with the Subcommittee on Communications and Technology, Subcommittee on Terrorism, Nonproliferation, and Trade, and Subcommittee on Africa, Global Health, Global Human Rights, and International Organization entitled "Fighting for Internet Freedom: Dubai and Beyond" on February 5, 2013.

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

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To facilitate the printing of the hearing record, please e-mail your responses, in Word or PDF format, to Charlotte.Savercool@mail.house.gov by the close of business on Tuesday, March 19, 2013.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Anna Eshoo, Ranking Member,
Subcommittee on Communications and Technology

Attachments

The Honorable Ted Poe

1. **So my question to you is, should there be, first, on one end and I am just asking for your opinion any consequences for countries that seem to want government control of the Internet, or not? And, second, a little more specific: how we can be prepared to communicate better to these the vast majority of countries, as Ambassador Gross has mentioned, that still haven't made up their mind.**

I believe that we should continue to make clear both to those countries that signed the revised ITRs and to those countries that "still haven't made up their mind" whether to sign, the reasons why the United States decided not to sign and why that decision also makes sense for them. There are a variety of methods that we can use to communicate that message, including direct bilateral dialogues (using various avenues such as our embassies, our country-specific government ICT dialogues, as well as through private sector and civil society outreach) and indirectly through international meetings hosted by the ITU and other organizations. I believe that the key is not just to approach these discussions as a "top-down" government-to-government exercise, but rather to focus also on a bottom-up, people-oriented process so that the correct decisions can be made by those governments with the knowledge that they will be supported by their people because it is the right thing to do. I also believe that we should make it clear to other governments that the core of this issue is about the ITU and other multi-lateral organizations involvement with Internet governance and related matters. The issue is not about the appropriate role for governments acting in their individual sovereign capacity to protect their citizens from harm. As Chairman Walden noted, "[t]his is not to say that the Internet operates outside the law. To be sure, illegal activity should be no less illegal simply because someone has used digital tools rather than ones of brick and mortar."

The Honorable Brad Sherman

2. **Should we have done more to tell countries that, to use the language here in Congress, we are scoring the vote? That is to say, that those making other important U.S. foreign policy decisions are taking note of how countries vote at the ITU? Is that undue pressure or a demonstration of how important Internet freedom is?**

I believe that it is useful and important that all countries understand that the United States takes these issues very seriously and, as we do with many other important issues, that we consider what other countries do when making decisions about foreign policy. Over the course of multiple Administrations, the United States consistently has made clear that Internet Freedom is a foreign policy priority and I believe that should continue.

The Honorable Greg Walden

- 1. The United Nations does have a place for countries to discuss governance of the Internet – the Internet Governance Forum. What are your thoughts on the IGF and how can the U.S. help develop the IGF as part of a true multistakeholder process?**

The Internet Governance Forum (IGF) has been a remarkable success, as demonstrated both by its popularity around the world and by the number of countries that seek to host it.

There are numerous ways that the U.S. can help develop the IGF as part of a true multistakeholder process. For example it can, among other things, provide (directly or indirectly) some financial support to help ensure its survival, as well as continue to send high level government delegations who (as they have in the past) demonstrate a willingness and enthusiasm to discuss all Internet policy-related issues in a full and forthright manner with other governments, the private sector, civil society, and other interested parties.

The Honorable Anna Eshoo

- 1. Having served in the role of U.S. Coordinator for International Communications and Information Policy at the State Department, you have unique insight into the delicate nature of treaty negotiations. In your testimony you suggest that the U.S. should “sustain and, in fact, increase its international engagement... on the important technological and economic issues discussed at WCIT and elsewhere.” What exactly would this entail?**

There are many important things that can be done. Primarily we should continue to listen carefully to others and to engage in spirited, respectful dialogues with both those who support our positions but even more importantly with those who, at least initially, have different views. These engagements can and should take place bilaterally, regionally, and in multi-lateral forums such as the ITU, OECD, APEC, CITELE, various African organizations, and many others. The issues raised at WCIT are important and will continue to be the basis for debate and decisions for at least the next few years.

- 2. You stated in your testimony that the ITU continues to play an important role for both the United States and the rest of the world, including on spectrum management issues. Could you elaborate on the ongoing importance of the ITU and why the United States should choose to engage in such forums going forward?**

Because the ITU is the forum for technical discussions and decisions regarding global spectrum allocations it is critically important to our economic and national defense interests. There is simply no substitute for the ITU on these issues. In addition, the ITU is an important convener of governments and others to discuss and debate telecommunications policies. These discussions have often provided the United States (both government and non-governmental interests) a forum to advocate for telecoms market liberalization and the importance of the free flow of telecoms goods, services, and ideas to economic and social progress globally. I believe that we should remain engaged in all such forums where we can effectively advocate for telecoms policies that will help the people of the world.

The Honorable Henry Waxman

- 1. Please share with the Committee your view on the draft legislation circulated prior to the hearing, which states that “it is the policy of the United States to promote a global Internet free from government control and to preserve and advance the successful multistakeholder model that governs the Internet.”**

I believe that it has long been the policy of the United States that global Internet governance should be handled by various relevant multistakeholder groups and that such an approach should be preserved and advanced.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (201) 225-2927
Minority (202) 225-3641

March 5, 2013

Ms. Sally Shipman Wentworth
Senior Manager, Public Policy
Internet Society
1775 Wiehle Avenue, Suite 201
Reston, VA 20190

Dear Ms. Shipman Wentworth:

Thank you for appearing at the joint hearing with the Subcommittee on Communications and Technology, Subcommittee on Terrorism, Nonproliferation, and Trade, and the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations entitled "Fighting for Internet Freedom: Dubai and Beyond" on February 5, 2013.

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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Anna Eshoo, Ranking Member,
Subcommittee on Communications and Technology

Attachments

Attachment I - Member Requests for the Record

During the hearing, Members asked you to provide information for the record. For your convenience, relevant excerpts from the hearing transcript regarding these requests are provided below.

The Honorable Ted Poe

1. So my question to you is, should there be, first, on one end and I am just asking for your opinion any consequences for countries that seem to want government control of the Internet, or not? And, second, a little more specific: how we can be prepared to communicate better to these the vast majority of countries, as Ambassador Gross has mentioned, that still haven't made up their mind.

So three questions: ITU procedure; any consequences; and what can we specifically do?

1. ITU Procedure

The ITU processes and membership structure is set out via international treaty, the ITU Constitution and Convention, that is approved by governments. While there have been efforts within the ITU to allow for more multistakeholder input and participation, in the end, only Member States have the right to vote on major policy ITU decisions. This is, of course, a critical shortcoming. From a process standpoint, the Internet Society is concerned that major Internet-related policy and technology decisions could be made in the ITU's intergovernmental setting – this is contrary to the multistakeholder model. It is not simply that treaty negotiation process excludes nongovernmental stakeholders from decision-making, but that it dramatically limits the extent to which participants from industry and civil society can even be meaningfully heard.

During the WCIT meeting in Dubai, the ITU did take a number of steps to make the WCIT more transparent. The ITU should build on these steps to make its processes more open and more meaningfully inclusive to more stakeholders. It is also a responsibility of Member States from around the globe to make their national processes to prepare for ITU meetings and conferences more transparent and more inclusive. The United States has a long tradition of doing this and a number of governments allowed for greater input into their national preparations for WCIT. This is a trend that clearly should continue.

2. Are there any consequences should governments control the Internet

The key to the success of the Internet is the bottom up, consensus-based processes that drive technology development, permission-less innovation, economic opportunity, and the free flow of information. This model has been a key contributor to the breathtaking evolution and expansion of the Internet worldwide. Clearly, the consequences to top-down, government-driven Internet policy development are profound. At a very fundamental level, this governance model would likely choke off the cycle of innovation that the Internet enables.

Importantly, the Internet's technology does not, inherently, recognize regional political boundaries, like nation-state borders. While it can be deployed in ways that keep a number of control points within a jurisdiction, this is not in accordance with basic best practices for deploying a robust, resilient Internet infrastructure that supports heavy usage on a regular basis, or withstands natural disasters. Based on this, proposals to institute government control over the Internet infrastructure would undermine the basic stability and resiliency of the global Internet.

3. Are there any consequences should governments direct the ITU to play a role in controlling the Internet

A broad set of diverse organizations and stakeholders with differing roles and responsibilities make the Internet work and grow at a global level. This is often referred to as the "Internet ecosystem" and includes functions like IP addressing, domain name system, standards and protocols, connectivity provisioning, public policy development, etc. These technologies, resources, and services are all highly interdependent and require a significant amount of coordination. The organizations responsible for coordination, administration, and day-to-day management in the Internet sphere include ICANN, the IANA function, the RIRs, and many others. Each organization has a specific role and provides fundamental value to the overall functioning of the Internet. These organizations have a proven, long-standing relationship in coordinating the technical infrastructure of the Internet and have contributed to the incredible growth and stability of the Internet today. There are well-established mechanisms, including open, public meetings, mailing lists and bottom-up policy development processes that enable direct participation by any interested party. To find out more about the Internet Ecosystem, please see: <http://www.internetsociety.org/internet/who-makes-it-work>

In short, the Internet ecosystem is complex and diverse – no one organization or stakeholder "controls" the Internet. Rather, a series of open, collaborative, and community-based processes help ensure coordination, innovation, growth, stability, security and global interoperability. Attempting to transfer control of any or all of these multistakeholder processes to an intergovernmental context would be extremely problematic and would undermine the continued efficiency, stability and global interoperability of the Internet.

4. How can the United States better communicate to countries who have not made up their mind regarding support for WCIT-13 treaty language

We can only speak to our own experience and also express our willingness to work with the United States to achieve common objectives in support of the Open Internet. The Internet Society's approach post WCIT is to work with countries to address the very real questions they have about the Internet technology, principles and processes. Countries have important questions about how different aspects of the Internet technology work (e.g., IP addressing, traffic routing, security protocols, standards). Many developing countries want to know how to make smart Internet technology investments and how to bring down connectivity costs. Governments are also looking for clearer ways to engage with Internet organizations like ISOC, IETF, ICANN, and the RIRs. We are hopeful that, in demonstrating the positive role that the multistakeholder model can play in addressing these concerns, we can gain clear backing at the global and regional level for public policies that support and sustain a global, open and interoperable Internet. More engagement, motivated by a desire to understand and address the concerns of countries, is, in our opinion, the best way forward for all of us (governments, industry, civil society, the technical community).

The Honorable Anna Eshoo

1. For what lies ahead, what do you think the United States should do in working with developing nations to help turn them around? What are the ingredients?

We can only speak to our own experience and also express our willingness to work with the United States to achieve common objectives in support of the Open Internet. The Internet community has an excellent record of working with individuals, institutions, universities, and countries to advance connectivity worldwide. In fact, this is very heart the Internet Society's vision that the "Internet is for everyone" and underpins our mission and aim to foster a ubiquitous, reliable, and sustainable Internet infrastructure around the world. For over twenty years, the Internet Society and other Internet experts have been working to build human infrastructure (training, capacity development), technical infrastructure (the IP based infrastructure), and governance infrastructures. These are the ingredients for a successful and sustainable Internet strategy. For example, our Internet development activities worldwide focus on these key areas:

- *Interconnection and Traffic Exchange (including the deployment of Internet Exchange Points and*

- network operator training);
- Country Code Top Level Domain Name (ccTLD) Development and Domain Name System Security (DNSSEC) Deployment;
- Networking Skills Capacity Building;
- IPv6 Deployment in Emerging Regions;
- Advancing Internet Development Thought-Leadership and Engagement.

Our goal is that, at the local, national, and regional levels, countries integrate an open approach into their national Internet strategy so that all their citizens benefit from the global Internet. Each country is different: they may need policy development assistance, technical training, civil society engagement, or capacity building. The bottom line, however, is that communities need a sustainable approach to Internet development that propels them into the global information economy. It is critical that we listen to the needs and expectations of local communities – we cannot and should not impose a one-size-fits-all set of solutions. As we have for two decades, Internet Society stands ready to support this goal at the technical, development and policy levels.

The Honorable Brad Sherman

1. Should we have done more to tell countries that, to use the language here in Congress, we are scoring the vote? That is to say, that those making other important U.S. foreign policy decisions are taking note of how countries vote at the ITU? Is that undue pressure or a demonstration of how important Internet freedom is?

Clearly Internet freedom, Internet growth and Internet openness are essential for national and global economic growth, free flow of information, and community development – we would hope that these would be priorities of all nations.

From the Internet Society's view, our objective in the run-up to WCIT was to demonstrate for policymakers that the Open Internet was at stake in the decisions that they made with regards to the treaty. This is no less important in the post-WCIT environment. It is important to understand that government positions at the WCIT were grounded in their national Internet public policy priorities. While some countries, indeed, aimed for greater governmental control or oversight, many have important questions and, in many cases, legitimate concerns. They have concerns about the high cost of connectivity, privacy, and consumer protection. They have a desire for more information in the areas of IP addressing and numbering. Developing countries have a desire to drive more local traffic and content. Many countries aim to make smart infrastructure investments, to get answers to weighty questions surrounding censorship and human rights, and to have their experts represented in technical standards setting bodies and international policy processes. The challenge for all of us is to help countries address these important questions in a way that that support an Open Internet rather than restrict it.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (702) 225-2927
Minority (202) 225-3841

March 5, 2013

Mr. Harold Feld
Senior Vice President
Public Knowledge
1818 N Street, N.W., Suite 410
Washington, D.C. 20036

Dear Mr. Feld:

Thank you for appearing at the joint hearing with Subcommittee on Communications and Technology, Subcommittee on Terrorism, Nonproliferation, and Trade, and the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations entitled "Fighting for Internet Freedom: Dubai and Beyond" on February 5, 2013.

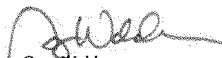
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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Anna Eshoo, Ranking Member,
Subcommittee on Communications and Technology



April 9, 2013

The Honorable Greg Walden
House of Representatives
Subcommittee on Communications and Technology
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden:

Thank you again for the opportunity to appear at the February 5, 2013 joint hearing entitled "fighting for Internet Freedom: Dubai and Beyond". At your request, I have submitted (below) responses to the additional questions for the record submitted by members of participating subcommittees.

Please do not hesitate to contact me if there are further questions we can answer or assistance we can provide on this topic.

Sincerely,

A handwritten signature in black ink, appearing to read "Harold Feld".

Harold Feld
Senior Vice President
Public Knowledge

cc: The Honorable Anna Eshoo, Ranking Member
Subcommittee on Communications and Technology

The Honorable Ted Poe

So my question to you is, Should there be, first, on one end and I am just asking for your opinion any consequences for countries that seem to want government control of the Internet, or not? And, second, a little more specific: how we can be prepared to communicate better to the vast majority of countries, as Ambassador Gross has mentioned, that still haven't made up their mind.

So three questions: ITU procedure; any consequences; and what can we specifically do?

ANSWER

With regard to ITU procedure, we have concerns that only member states may participate as full voting members. The importance of this distinction between full participation and even participation as a sector member was illustrated when the representative from Iran called for a formal vote on inclusion of human rights language which sought to transform the fundamental individual right to communicate into a "collective" right held not by individuals, but the very states which seek to restrict their freedom. Even if every NGO present had been independent Sector Members, they would not have been able to vote on this critical human rights question.

As Frank La Rue, U.N. Special Rapporteur on the right of freedom of expression, explained in the aftermath of the Dubai meeting, "meaningful participation" by NGOs and all stakeholders is critical to the success of any dialog on Internet governance.¹ While respecting the genuine efforts of the ITU to enhance participation by civil society and to urge member states to consult with their domestic civil society representatives, as long as the ITU remains a traditional multi-national treaty organization in which only accredited representatives of member states may vote and enjoy full privileges of membership, the concerns of members states will continue to drive the agenda.

In response to the second and third questions, it is important that our diplomatic efforts be continuous and inclusive. Perhaps more importantly, we must be wary of falling into the trap set by countries working against the interest of freedom of appearing to be bullies and supporting the narrative that this is not about Internet freedom but about U.S. efforts to "dominate" or "control" the Internet. The challenge for us is to simultaneously demonstrate the firmness of our resolve, while avoiding any appearance that we are attempting to bully, bribe or coerce countries through intimidation tactics.

Developing countries that have not made up their mind need to continue to see our resolve on this issue through normal diplomatic efforts. It is not enough simply to show up at the next international convening without having mentioned the importance of Internet governance in our

¹ Statement of the Special Rapporteur on December 19, 2012. Available at: <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=12903&LangID=E>

 **Public Knowledge**

regular discussions with these countries. The United States can also show its inclusiveness through the continued involvement of civil society groups.

In Dubai, the United States built up significant political capital with countries through our willingness to listen and engage. We must recognize that these issues will continue to be raised in the ITU and elsewhere, and that we must not squander our political capital by appearing to give up on negotiation after the first reversal. Countries that voted against us, or decided to sign the new ITRs, are not irredeemably lost. By the same token, the 55 countries that agreed with our position and declined to sign the ITRs could be driven into the arms of our opponents if we appear to abandon diplomacy for intimidation.



The Honorable Anna Eshoo

For what lies ahead, what do you think the United States should do in working with developing nations to help turn them around? What are the ingredients?

ANSWER

There are several actions that the United States can make to work at turning around key nations in the developing world. First, the U.S. should proactively reach out to these nations through both diplomatic and other government channels. While the State Department remains in regular communication, visits from officials such as the Chairman of the FCC and Congressional leaders on communications policy would bring an added perspective on the state of the Internet economy and the potential for it in these countries.

Second, it is important that we continue to demonstrate our interest in all voices being heard through consistent policies for trade discussions. This includes supporting the Internet Governance Forum (IGF) as well as standing up for transparency and civil society voices in trade negotiations. The IGF is the example of how the multi-stakeholder process should be work and was created explicitly for working around Internet governance issues, as opposed to the ITU. U.S. trade negotiations practices generally have come under scrutiny for their lack of transparency and unequal access to civil society groups. These practices send the wrong message to our allies in developing countries and have even been criticized by members of Congress.

Third, I will reiterate my recommendation that the United States support financially the participation of both smaller developing countries and international civil society groups at international convenings such as the IGF and WCIT. Do not underestimate the inroads that China and others opposing the multi-stakeholder process have made with many developing countries through their long-standing economic development efforts in these countries. The United States can make the same inroads while broadening the attendance at these convenings to more developing counties that embrace the open, multi-stakeholder process but cannot afford to travel often.

Industry financial support can help supplement this effort, but Congress should authorize the State Department to set up a mechanism through which this support could be delivered. Critically, funding from any source must be seen as disbursed in a neutral manner. For this participation to remain credible, it must be clear that funding for participation is not contingent on adopting specific positions or a willingness to vote in accordance with the wishes of the United States or any financial donor.



The Honorable Brad Sherman

Should we have done more to tell countries that, to use the language here in Congress, we are scoring the vote? That is to say, that those making other important U.S. foreign policy decisions are taking note of how countries vote at the ITU? Is that undue pressure or a demonstration of how important Internet freedom is?

ANSWER

I believe that the U.S. delegation, led by Ambassador Terry Kramer, found the correct balance in demonstrating our willingness to negotiate and the firmness of our resolve to avoid any new regulation of the Internet through the ITU. That 53 other countries joined us in not signing the final acts of the ITR demonstrates that our arguments carried weight and earned us support.

Threats to countries that support the ITR will backfire and harm the opportunity win over support from the majority of countries that still have not signed onto the ITR. The United States focus should now be focused on continuing to reach out to these countries using the tools of diplomacy, demonstrated commitment to open forums, and economic support for the participation of developing countries [see above answer to Rep. Eshoo].



The Honorable Henry Waxman

Please share with the Committee your view on the draft legislation circulated prior to the hearing, which states that “it is the policy of the United States to promote a global Internet free from government control and to preserve and advance the successful multistakeholder model that governs the Internet.”

ANSWER

As I stated in my testimony, Public Knowledge and I support the effort of Congress to demonstrate unity around Internet freedom through language similar to the 112th Congress’ unanimous bipartisan resolution, S. Con. Res. 50. Unanimous, bipartisan statements targeted at these global convenings show to the world the resolve of our country to remain dedicated to the multi-stakeholder process.

That being said, I want to make a further distinction between the unifying message of the Resolution of 2012 and the potential risk of applying such language to domestic policies around communications networks. I understand that since the draft legislation was introduced, concerns have been expressed by the U.S. State Department, the FCC, and others that a bill promoting an Internet “free from government control” could point towards invalidating many longstanding protections in domestic communications law that protect consumers, promote competition, and enable law enforcement and cybersecurity initiatives. These concerns are legitimate and were not discussed during our hearing.

My concern is further heightened by the fact that prior to the WCIT, efforts were made by some parties to hijack concerns about the WCIT to advance purely domestic policy purposes.² As I warned in my written testimony, “it is critical that this international process is not hijacked for a debate over domestic rules preserving an open Internet.” Nothing could be more damaging to our international standing than to transform this show of unity into a partisan brawl by refusing to clarify that the proposed legislation is designed to address only “international regulatory bodies,” as suggested by Rep. Eshoo.³

Further, as I noted in my written testimony, “the United States equally opposed consideration of cybersecurity and privacy at the ITU, arguing that these were matters for sovereign governments in the first instance, and multi-stakeholder cooperation internationally.” Those who would seek to leverage the proposed legislation to undermine the policies of the Federal Communications Commission will likewise undermine the privacy and consumer protection authority of the Federal Trade Commission, access to VOIP calls under the Communications to Law Enforcement Act (CALEA), the recent Executive Order on Cybersecurity and any future actions by the Department of Homeland Security (DHS) or other agency on cybersecurity. Such an

² See Gigi Sohn, “Not So Hidden Agendas Threaten ITU Kumbaya Moment,” Public Knowledge Blog (August 17, 2012) available at: <http://www.publicknowledge.org/blog/not-so-hidden-agendas-threaten-itu-kumbaya-mo>

³ Letter of Ranking Member Anna Eshoo to Chairman Walden (Feb. 25, 2013).

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interpretation would require an implied repeal of the provisions of the Digital Millennium Copyright Act (DMCA) requiring Internet Service Providers or providers of Interactive Services to respond to takedown requests and repeat infringers. At a minimum, such an interpretation would affect an implied repeal of the CAN-SPAM Act, given that we cited the inclusion of anti-spam provisions in the ITRs as a reason we could not sign the Treaty in Dubai.

As these examples indicate, the simplistic and self-serving argument that "what is unfit for the ITU is unfit for domestic policy" is absurd. Our opposition to ceding authority to the ITU to decide how to balance consumer protection and free expression is not because we see no role for government in protecting consumers or promoting competition. Rather, we believe those matters are best decided here at home, by a Congress accountable to the people and enforced by a government constrained by the Constitution.

I therefore ask that you refrain from passing the bill as written, despite my initial expression of support at the hearing. Only after incorporating the changes requested by Rep. Eshoo, and otherwise clarifying that the bill addresses only regulation by International multi-governmental entities and does not purport to create a new policy of total deregulation for anything using Internet protocol (IP). Without such a change, I would oppose the proposed bill as potentially undermining critical and long-standing consumer protections and pro-competitive policies.