

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.

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 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