



The Committee on Energy and Commerce

Memorandum

April 5, 2013

To: Members and Staff, Subcommittee on Communications and Technology

From: Majority Committee Staff

Re: Subcommittee Markup of H.R. ____ Affirming the Policy of the United States Regarding Internet Governance

The Subcommittee on Communications and Technology will meet Wednesday, April 10, 2013, at 4:00 p.m. in 2123 Rayburn House Office Building for opening statements on H.R. ____, a bill to affirm the policy of the United States regarding Internet governance. The Subcommittee will reconvene on Thursday, April 11, at 2:15 p.m. in 2123 Rayburn House Office Building in open markup session on the legislation.

In keeping with Chairman Upton's announced policy, Members must submit any amendments they may have two hours before they are offered during this markup. Members may submit amendments by email to: peter.kielty@mail.house.gov. Any information with respect to an amendment's parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

I. Overview

If Congress sits idly by, attempts to drag the Internet within the ambit of international regulatory bodies just might succeed. In 2012, the House and Senate unanimously passed resolutions opposing treaty proposals at the World Conference on International Telecommunications (WCIT-12) to subject the Internet to regulation at the hands of the International Telecommunication Union, a United Nations agency. The resolutions are credited with emboldening more than 50 nations to join the United States in refusing to sign the treaty. Unfortunately, this is likely the start, not end, of international efforts to regulate the Internet. That is why the subcommittee will consider legislation taking the language of last year's resolutions and making it the policy of the United States "to promote a global Internet free from government control and to preserve and advance the successful multi-stakeholder model that governs the Internet."

Governments' 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 the world has ever known. Under the current multi-stakeholder governance model, non-regulatory institutions manage and operate the Internet by developing best practices with public and private sector input. 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 and operation of the network or the content it carries. By strengthening last year's legislation from a resolution opposing a particular treaty proposal to the official policy of the United States, Congress will demonstrate its commitment to Internet freedom and push back on those nations that might subvert the Internet for their own purposes.

II. Background

Many of the world's nations went to Dubai from December 3-14, 2012, for the WCIT-12. The purpose of the conference was to update the International Telecommunication Regulations (ITRs), a treaty adopted in 1988 to govern certain aspects of international telephone service. On the agenda were provisions regarding the interconnection of phone networks, charges for completing international calls, and roaming terms for wireless subscribers using their phones abroad.

Because the ITRs were designed to regulate the world of international calling that existed in the 1980s, modern Internet traffic and networks fell outside their scope. Drafted and agreed to in Melbourne, Australia, the ITRs were conceived in an era when most countries still had monopoly, government-owned telephone networks. They are not well suited for application to the Internet, and organizers of the Dubai conference gave assurances that WCIT-12 would not address the Internet. In the lead up to the conference, however, a number of member nations attempted to incorporate Internet-related issues.

Countries such as China, Russia and Iran sought to add language governing unwanted messages (spam), miscellaneous "security" and "cybersecurity" issues, assignment of Internet domain names and addresses, and verification of users' online identities. Other proposals sought to expand application of the ITRs from "recognized operating agencies"—telephone companies offering international telephone service to the public—to "operating agencies." A proposal by the European Telecommunications Network Operators' Association (ETNO) would have mandated "sending party pays," a particular system of compensation for international Internet traffic, rather than allow parties to experiment with, negotiate over, and possibly compete based on different cost recovery and payment methodologies. Moreover, many member states objected when others sought, successfully, to add language to the ITRs preamble granting nations, not people, a right of access to international telecommunications services.

Some parties advocated regulation because they see a revenue opportunity through tariff-type rules to fund their own communications and non-communications objectives. Others advocated it because they want to control the flow of information. Although couched in terms of broadband deployment and cybersecurity, at bottom such proposals could be used by countries as excuses to impose economic regulation on the Internet, and possibly even to censor speech their governments find threatening.

Many in the U.S. government voiced reservations that these issues were beyond the stated scope of the conference and would inappropriately expand the ITRs beyond traditional phone service into Internet regulation. To express its concerns, last Congress the Energy and Commerce Committee marked up H. Con. Res. 127, a concurrent resolution supporting the multi-stakeholder model and opposing international attempts to regulate the Internet. The House of Representatives passed H. Con. Res 127 on August 2, 2011, by a vote of 414-0. The Senate passed a nearly identical measure, S. Con. Res. 50, on September 22, 2011, by unanimous consent. The House agreed to the Senate version on December 5, 2011, by a vote of 397-0.

As the WCIT drew to a close, however, the delegations were presented proposals that recognized an international regulatory role in the operation and governance of the Internet. While it did not include the ETNO proposal, it did include a version of the spam proposal as well as a new term of "authorized operating agencies." The impact of these changes is not yet clear.

Consistent with Congress's resolution, Ambassador Terry Kramer, head of the U.S. delegation, opposed the expansion of the ITRs to Internet issues and the United States refused to sign the treaty. Fifty-four other countries—including Great Britain, Canada, Australia, New Zealand, Poland, the Czech Republic, Italy, Switzerland, Sweden, Denmark, Finland, the Netherlands, Greece, Japan, Kenya, Chile, Portugal, and Costa Rica—joined the United States either in outright refusing to sign the treaty or indicating they would need to consult with their governments. Eighty-nine countries did sign the new ITRs, which will take effect in January 2015.

The Subcommittee held a joint hearing with the Foreign Affairs Committee on February 5, 2013, that included discussion of draft legislation converting last year's unanimous resolutions into the policy of the United States. The draft legislation is virtually identical to those resolutions, with small changes to convert it from a resolution to a statement of U.S. policy and to revise the findings to reflect the results of the WCIT-12.

III. Section-by-Section

Section 1: Findings

This section makes a number of findings related to the governance of the Internet and the Internet's importance to society, including that:

- The Internet must remain stable, secure, and free from government control;
- The world deserves the access to knowledge and economic benefits that the Internet provides and that are the bedrock of democratic self-governance;
- The structure of Internet governance has profound implications for competition and trade, democratization, free expression, and access to information;
- Countries have obligations to protect human rights, whether exercised online or offline; and
- Proposals to fundamentally alter the governance and operation of the Internet would diminish freedom of expression on the Internet in favor of government control over content.

Section 2. Policy Regarding Internet Governance

Section 2 states: "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."

If you need more information, please call Neil Fried or David Redl at (202) 225-2927.