

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

May 29, 2012

To: Subcommittee on Communications and Technology Democratic Members and Staff
Fr: Committee on Energy and Commerce Democratic Staff
Re: Subcommittee Hearing on “International Proposals to Regulate the Internet”

On Thursday, May 31, 2012, at 10:15 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Communications and Technology will hold a hearing titled “International Proposals to Regulate the Internet.” The hearing will examine the status of upcoming measures before the International Telecommunication Union (ITU), including the World Conference on International Telecommunications (WCIT) in December 2012. This memorandum provides background about the ITU and the likely topics for consideration at the WCIT, along with other proposals addressing the international governance of the Internet.

I. BACKGROUND

The ITU is a specialized agency of the United Nations focused on telecommunications regulation. The scope of the ITU’s regulatory authority is delineated by a major 1988 treaty known as the International Telecommunication Regulations (ITRs). The ITRs set the basic terms for interconnection of international telephone networks. They have not been updated since 1988.¹

Some ITU member states – including the United States – believe that the ITU should adopt only minor changes to the ITRs and should do so only as necessary to modernize the

¹ National Telecommunications and Information Association, *Remarks by Assistant Secretary Strickling at the Brookings Institution’s Center for Technology Innovation* (Jan. 11, 2012).

existing provisions of the treaty.² Specifically, the United States has advocated the continued use of “multi-stakeholder” models that have historically governed the Internet.³ Multi-stakeholder approaches – as embodied through organizations such as Internet Corporation for Assigned Names and Numbers (ICANN), the Internet Society, the Internet Engineering Task Force, and The World Wide Web Consortium – played a major role in designing and operating the Internet as we know it today.⁴

Other ITU member states, however, have argued for more extensive changes to the ITRs, particularly with respect to IP-based networks.⁵ In the early 2000s, global pressure to assume a stronger intergovernmental regulatory role over the Internet culminated in the ITU’s 2003 World Summit on the Information Society (WSIS). A key point of contention at the 2003 WSIS, and its follow-up conference in 2005, was to address what was seen as U.S. dominance over ICANN, a private non-governmental organization tasked by the U.S. Department of Commerce with managing and assigning Internet addresses.⁶ As a result of negotiation at the WSIS, a new multi-

² See David A. Gross and Ethan Lucarelli, *The 2012 World Conference on International Telecommunications: Another Brewing Storm Over Potential UN Regulation of the Internet* (Nov. 2011) (online at www.whoswholegal.com/news/features/article/29378/the-2012-world-conference-international-telecommunications-brewing-storm-potential-un-regulation-internet/).

³ See National Telecommunications and Information Association, *Remarks by Assistant Secretary Strickling at the Brookings Institution’s Center for Technology Innovation* (Jan. 11, 2012); Ambassador Philip L. Verveer, *Internet Must Stay Free of Intergovernmental Control*, (EA Jan. 2011) (online at www.europeaninstitute.org/EA-January-2011/internet-must-stay-free-of-intergovernmental-control.html).

⁴ See, e.g., National Telecommunications and Information Association, *Remarks by Assistant Secretary Strickling at the Brookings Institution’s Center for Technology Innovation* (Jan. 11, 2012).

⁵ See David A. Gross and Ethan Lucarelli, *The 2012 World Conference on International Telecommunications: Another Brewing Storm Over Potential UN Regulation of the Internet* (Nov. 2011) (online at www.whoswholegal.com/news/features/article/29378/the-2012-world-conference-international-telecommunications-brewing-storm-potential-un-regulation-internet/).

⁶ See Internet Corporation for Assigned Names and Numbers, *Welcome to ICANN!* (online at www.icann.org/en/about/welcome); see also Internet Corporation for Assigned Names and Numbers, *Contract Between ICANN and the United States Government for Performance of the IANA Function* (Mar. 17, 2003) (online at www.icann.org/en/about/agreements/iana/iana-contract-17mar03-en.htm).

stakeholder organization called the Internet Governance Forum (IGF) was created to give the international community an opportunity to provide input on public policies related to the Internet.⁷

Some member states sought again to expand the ITU's role in the 2010 Plenipotentiary Conference in Guadalajara, Mexico, but the United States and other countries successfully maintained a limited role for the ITU. Since then, however, member states have continued their efforts to expand the role of the ITU in regulating the Internet. For example, ITU Secretary-General Hamadoun Touré recently stated “[w]e need updated ITRs because without them we risk the collapse of the [information and communications technology] networks which underpin all communications technologies, including the Internet.” Similarly, in a meeting in June 2011 with Secretary-General Touré, Prime Minister Vladimir Putin recognized “establishing international control over the Internet using the monitoring and supervisory capabilities” of the ITU as an important topic for discussion.⁸

II. WORLD CONFERENCE ON INTERNATIONAL TELECOMMUNICATIONS (WCIT)

In December 2012, the ITU will host the World Conference on International Telecommunications (WCIT) in Dubai, Arab Emirates. The WCIT is a major treaty-writing conference and represents the first time member states will be able to revise the ITRs since 1988.⁹ A simple majority of member states is required to approve changes to the ITRs.¹⁰

⁷ Internet Governance Forum, *About the Internet Governance Forum* (online at www.intgovforum.org/cms/aboutigf).

⁸ Government of the Russian Federation, *Prime Minister Vladimir Putin meets with Secretary General of the International Telecommunication Union Hamadoun Touré* (Jun. 15, 2011) (online at premier.gov.ru/eng/events/news/15601/).

⁹ See David A. Gross and Ethan Lucarelli, *The 2012 World Conference on International Telecommunications: Another Brewing Storm Over Potential UN Regulation of the Internet* (Nov. 2011) (online at www.whoswholegal.com/news/features/article/29378/the-2012-world-conference-international-telecommunications-brewing-storm-potential-un-regulation-internet/).

¹⁰ See Robert M. McDowell, *The U.N. Threat to Internet Freedom*, *The Wall Street Journal* (Feb. 21, 2012).

The U.S. delegation anticipates a number of proposals to modify the ITRs.¹¹ Although an ITU Working Group is preparing a draft of the initial treaty text and regional working groups are meeting to reach common positions on treaty proposals, member states do not need to submit proposals to the ITU until early August.¹² While there are a number of potential modifications from a number of member states, the proposals largely break down into two categories: (1) proposals to bring the Internet under intergovernmental control and impose a top-down, command-and-control management regime to the Internet, and (2) proposals to address changes in technology.

A. Proposals on Internet Governance

The first category of proposals would expand the ITRs to bring the Internet under greater intergovernmental control. While the specifics of the proposals differ, some member states are concerned that they would abandon the successful “hands-off” decentralized approach to the Internet that has prevented centralized governmental control of the Internet.¹³ For example, some proposals would move oversight of critical Internet resources into the ITU.¹⁴ Many of these critical functions, including naming and numbering authority, are currently performed by non-governmental multi-stakeholders like ICANN. This approach would fundamentally upset the current model which has enabled the expansion of the Internet as we know it today.¹⁵ Furthermore, some proposals at the WCIT would make ITU recommendations mandatory.¹⁶ Doing so would make these “recommendations” enforceable as treaty obligations and represent a

¹¹ National Telecommunications and Information Association, *Remarks by Assistant Secretary Strickling at the Brookings Institution’s Center for Technology Innovation* (Jan. 11, 2012).

¹² See International Telecommunication Union, *Remarks by Malcolm Johnson, Director of Telecommunication Standardization Bureau at Americas Region Preparatory Meeting for the World Conference on International Telecommunications (WCIT-12)* (May 14, 2012).

¹³ The White House, Office of Science and Technology Policy, *Ensuring an Open Internet*, Lawrence Strickling, Philip Verveer, and Daniel Weitzner (May 2, 2012) (online at www.whitehouse.gov/blog/2012/05/02/ensuring-open-internet).

¹⁴ See National Telecommunications and Information Association, *Remarks by Assistant Secretary Strickling at the Brookings Institution’s Center for Technology Innovation* (Jan. 11, 2012).

¹⁵ Vinton Cerf, *Keep the Internet Open*, New York Times (May 24, 2012).

¹⁶ See National Telecommunications and Information Association, *Remarks by Assistant Secretary Strickling at the Brookings Institution’s Center for Technology Innovation* (Jan. 11, 2012).

departure from their current voluntary status.¹⁷ Similarly, other proposals to incorporate cybersecurity and cybercrime provisions into the ITRs could permit the ITU to impose new regulations and allow it to become an operational authority on international cybersecurity.¹⁸

The Administration opposes these attempts to replace the Internet's decentralized and open system, noting that allowing a top-down governmental approach to controlling the Internet would "slow the pace on innovation, hamper global economic development, and lead to an era of unprecedented control over what people can say and do online."¹⁹ In addition, these efforts could subject the technical decisions currently made by stakeholders to unwanted political intrusion, and threaten to disrupt the smooth functioning of the Internet by allowing individual countries to create barriers to the free flow of information under the pretext of protecting cybersecurity, social stability, or local economies.²⁰

B. Proposals to Address Changing Technology

The second category of proposals addresses the application of traditional telecom regulation to IP-based networks. ITR modifications that have been proposed for discussion at the WCIT include allowing Internet carriers to charge fees for relaying Internet traffic ("peering" fees), as well as termination rates for delivering Internet traffic to its end destination.²¹ These changes would be similar to the existing settlement fees charged by foreign carriers for voice

¹⁷ *Id.*

¹⁸ David A. Gross and Ethan Lucarelli, *The 2012 World Conference on International Telecommunications: Another Brewing Storm Over Potential UN Regulation of the Internet* (Nov. 2011) (online at www.whoswholegal.com/news/features/article/29378/the-2012-world-conference-international-telecommunications-brewing-storm-potential-un-regulation-internet/).

¹⁹ The White House, Office of Science and Technology Policy, *Ensuring an Open Internet*, Lawrence Strickling, Philip Verveer, and Daniel Weitzner (May 2, 2012) (online at www.whitehouse.gov/blog/2012/05/02/ensuring-open-internet).

²⁰ *Id.*

²¹ See Council Working Group to Prepare for the 2012 World Conference on International Telecommunications, Arab States Proposed Revisions, *CWG-CIT12 Contribution 67* (Feb. 1, 2012). See also David A. Gross and Ethan Lucarelli, *The 2012 World Conference on International Telecommunications: Another Brewing Storm Over Potential UN Regulation of the Internet* (Nov. 2011) (online at www.whoswholegal.com/news/features/article/29378/the-2012-world-conference-international-telecommunications-brewing-storm-potential-un-regulation-internet/).

communications.²² Efforts to levy fees on Internet traffic will only “balkanize the Internet by establishing barriers to the free flow of information”, an outcome “contrary to President Obama's vision of an Internet that is interoperable the world over.”²³ Such proposals would significantly alter the communal nature of the Internet and restrict its unique ability to permeate international borders, and should be prevented to maintain the Internet as a tool for the global dissemination of ideas and information.

III. EFFORTS IN OTHER INTERNATIONAL VENUES

In addition to efforts at the ITU, member states have used other international venues to push for more centralized control over the Internet. In September 2011, Russia, China, Uzbekistan, and Tajikistan introduced a U.N. General Assembly resolution proposing a “code of conduct” for Internet Security establishing that “policy authority for Internet-related public issues is the sovereign right of states and not the multi-stakeholders.”²⁴ In October 2011, India submitted to the United Nations a proposal to create a 50-member Committee on Internet Related Policies (CIRP), which would develop international public policies related to the Internet and usurp the role of the ICANN.²⁵

²² See Federal Communications Commission, *In the Matter of International Settlement Rates*, IB Docket No. 96-261, Report and Order, FCC 97-280, 12 FCC Rcd 19806, 19904-05 (1997).

²³ The White House, Office of Science and Technology Policy, *Ensuring an Open Internet*, Lawrence Strickling, Philip Verveer, and Daniel Weitzner (May 2, 2012) (online at www.whitehouse.gov/blog/2012/05/02/ensuring-open-internet).

²⁴ Jerry Brito, *The Case Against Letting the U.N. Govern the Internet*, Time Magazine (Feb. 13, 2012) *citing* United Nations General Assembly, *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* (Sept. 14, 2011).

²⁵ See, e.g., Samir Sachdeva, *A thin line between governance and control*, (May 21, 2012) (online at www.governancenow.com/views/columns/thin-line-between-governance-and-control) (Note that this proposal met with some opposition within India.). See also *Chorus rises against net ‘nanny’ plan as critics claim it will restrict freedom of expression*, Mail Online India (May 16, 2012) (online at www.dailymail.co.uk/indiahome/indianews/article-2145484/Chorus-rises-net-nanny-plan-critics-claim-restrict-freedom-expression.html).

IV. WITNESSES

The following witnesses have been invited to testify:

Panel I

Ambassador Philip L. Verveer

Deputy Assistant Secretary of State and

U.S. Coordinator for International Communications and Information Policy

Commissioner Robert McDowell

Federal Communications Commission

Panel II

Ambassador David A. Gross

Former U.S. Coordinator for International Communications and Information Policy

U.S. Department of State

On Behalf of the World Conference on International Telecommunications Ad Hoc Working Group

Ms. Sally Shipman Wentworth

Senior Manager, Public Policy

Internet Society

Mr. Vinton Cerf

Vice President and Chief Internet Evangelist

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