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RPTS JOHNSON

DCMN HOFSTAD

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, D.C.

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; Debbee 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.

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:]

******** INSERT 1-1 ********

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:]

******** COMMITTEE INSERT ********

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.

[The prepared statement of Ms. Eshoo follows:]

******** COMMITTEE INSERT ********

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.

[The prepared statement of Ms. Matsui follows:]

******** COMMITTEE INSERT ********

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.

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 the U.S. Stock Exchange to disclose to the Securities and Exchange Commission how they conduct their human rights due diligence, including with regards 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 of 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.

[The prepared statement of Mr. Smith follows:]

******** COMMITTEE INSERT ********

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.

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.

[The prepared statement of Ms. Bass follows:]

******** COMMITTEE INSERT ********

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.

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.

[The prepared statement of Mr. Poe follows:]

******** COMMITTEE INSERT ********

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.

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 prepared statement of Mr. Sherman follows:]

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

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.

[The prepared statement of Mrs. Blackburn follows:]

******** COMMITTEE INSERT ********

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.

[The prepared statement of Mr. Barton follows:]

******** COMMITTEE INSERT ********

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.

[The prepared statement of Mr. Latta follows:]

******** COMMITTEE INSERT ********

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.

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.

[The prepared statement of Mr. Waxman follows:]

******** COMMITTEE INSERT ********

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

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 in 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. And the latest, I think, is the push by foreign governments to use the International Telecommunications Union to regulate the ability through the Internet to really exercise free speech.

And I think government regulation of the Internet really had its first big success last December at the ITU conference. And 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, I think, a loud and clear warning of what lies ahead.

Some might wonder why this kind of regulation by the ITU would

be a concern. But, you know, 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, in terms of -- I think we have strength in our ideas here. But I think we had 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. And 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 realized by our Founders. We should keep that in mind today.

Thank you.

[The prepared statement of Mr. Royce follows:]

******** COMMITTEE INSERT ********

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. Okay. 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 letter follows:]

******** COMMITTEE INSERT ********

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 letter follows:]

******** INSERT 1-2 ********

Ms. Eshoo. Thank you.

Mr. Walden. Okay. 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:]

******** INSERT 1-3 ********

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 applications, 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:]

******** INSERT 1-4 ********

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 important 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:]

******** INSERT 1-5 ********

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.

RPTS JANSEN

DCMN HOFSTAD

[11:24 a.m.]

Mr. Walden. 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 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 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:]

******** INSERT 2-1 ********

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 Toure, 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:]

******** INSERT 2-2 ********

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 flippant remark, but that was seen as something quite extraordinary abroad, internationally --

Mr. Walden. And domestically.

Mr. McDowell. -- 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. Yeah.

So, you know, and 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. Uh-huh. That is very powerful.

Mr. McDowell. -- 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. Uh-huh.

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.

[The information follows:]

******** COMMITTEE INSERT ********

Ms. Eshoo. Thank you, Mr. Chairman.

Mr. Latta. [Presiding.] Thank you very much.

And Chairman Smith is now recognized for 5 minutes.

Mr. Smith. Thank you, Mr. Chairman.

Mr. Latta. 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. Reps 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? Is 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 supporting 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. Yeah, 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 now 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.

[The information follows:]

******** COMMITTEE INSERT ********

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.

You know, 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, is 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 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. 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.

[The information follows:]

******** COMMITTEE INSERT ********

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

[The information follows:]

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Mr. Poe. 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 intergovernmental 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.

RPTS JOHNSON

DCMN HOFSTAD

[12:23 p.m.]

Mr. Long. 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. Yeah.

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. Okay.

Yeah, 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.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Latta. 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.]