

April 10, 2013

The Honorable Greg Walden
House of Representatives
Subcommittee on Communications and Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
House of Representatives
Subcommittee on Communications and Technology
241 Cannon Building
Washington, D.C. 20515

Dear Chairman Walden and Ranking Member Eshoo:

We, the undersigned organizations, write to express our serious concerns with the proposed bill to affirm the policy of the United States on Internet governance, scheduled for markup on Wednesday, April 10th and Thursday, April 11th.

Last year, we shared Congress's concerns with specific proposals to amend the treaty of the International Telecommunication Union (ITU) to expand the ITU's role in ways that could present serious threats to freedom of expression online and the openness of the Internet. While the language of H. Con. Res. 127, the concurring resolution passed in August 2012, was approved in that specific context, we fear that this same language as employed in the proposed bill may be interpreted quite differently. Read broadly, the proposed bill could be inappropriately interpreted to overturn existing laws, regulations, and agreements in U.S., as well as important international multilateral agreements abroad. The bill's language currently fails to distinguish between proposals to extend the authority of government-dominated "international regulatory bodies" over Internet governance and content, and the whole range of potential domestic and international policy efforts that might be aimed at, e.g., addressing monopolistic practices, preventing harmful discriminatory behavior, or coordinating among nations and regions to increase the affordability of Internet access across the globe.

In the United States, consumer protection statutes, antitrust laws, and other state and federal regulations have formed a policy framework aimed at protecting users and promoting competition, both online and off. Just as Congress did not want to cede the United States' ability to institute national policy to an international institution, it should not curtail its own ability to address domestic issues through well-considered national legislation developed by a democratically elected Congress and subject to review by courts bound by the U.S. Constitution.

In addition, the ambiguity of the bill's language concerning proposals by international regulatory bodies could signal U.S. opposition to existing and future international agreements, even if voluntary, that concern the Internet and where international bodies play a significant role. For example, the text could be interpreted to signify U.S. opposition to the United Nations Office on Drugs and Crime's intergovernmental expert group, which is

conducting a comprehensive study on cybercrime, or Interpol's Crimes Against Children Initiative. The United States currently participates in these forums, both of which could be considered "international regulatory bodies" under this bill.

Thus rather than being understood as simply Congress's opposition to future proposals that threaten fundamental rights of free expression online and change the nature of Internet governance, the proposed bill would enshrine context-specific language into generally applicable legislation, and may undermine important and long-standing policies of the U.S. government.

Furthermore, while we appreciate Congress's continued support of the multistakeholder model of Internet governance, we caution the Committee to avoid appearing to endorse the existing framework as wholly satisfactory. The existing model has been criticized for failing to represent the full interests and needs of the global Internet community, and the U.S. government should not signal to the world that it finds the status quo acceptable. We believe the existing bodies and institutions that participate in Internet governance activities must be expanded and strengthened to include ample representation from stakeholders from across the globe, including civil society organizations, the technical community, industry, and the public.

Given the bill's ramifications for the public interest, we therefore ask that you not submit the bill for markup. We look forward to working with you to modify the language of the bill to address the above concerns.

Respectfully yours,
Benjamin Lennett
Policy Director
New America Foundation's Open Technology Institute

Emma Llansó
Policy Counsel
Center for Democracy & Technology

CC:
The Honorable Fred Upton
Chairman
Committee on Energy and Commerce

The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce