

**Before the
DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
Washington, D.C. 20554**

In the Matter of)	
)	
International Internet Policy Priorities)	Docket No. 180124068-8068-01
)	
)	RIN 0660-XC041
)	

COMMENTS OF THE INTERNET GOVERNANCE COALITION

The Internet Governance Coalition welcomes the opportunity to comment on the National Telecommunications and Information Administration’s (“NTIA”) Notice of Inquiry (“NOI”)¹ on international Internet policy priorities for 2018 and beyond.

I. INTRODUCTION AND SUMMARY

The Internet Governance Coalition (“Coalition”) is an industry association representing companies from across the Internet ecosystem. Members include Amazon, AT&T, Inc., Charter Communications Inc., Cisco Systems, Inc., Comcast NBCUniversal, Facebook, GoDaddy, Google Inc., Juniper Networks, Inc., Microsoft Corporation, Telefónica, S.A., The Walt Disney Company, Twenty-First Century Fox Inc., and Verizon Communications Inc. The Coalition advocates for policies that ensure a safe, secure, open, interoperable, and global Internet as the underlying foundation for sustainable economic and social development.

The Coalition shares NTIA’s view that the advancement of Internet and digital communications is critical to “innovation, prosperity, education, and civic and cultural life.”²

¹ *International Internet Policy Priorities*, Notice of Inquiry, Docket No. 180124068-8068-01, RIN 0660-XC041, 83 Fed. Reg. 26036 (June 5, 2018) (“NOI”).

² *See id.* at 26036.

The Internet drives the global economy. Some experts estimate that Internet-related activities represent approximately 6% of the total U.S. economy and over 5% of GDP in G-20 economies.³ And in developing countries and rural areas, the Internet enables electronic commerce and telehealth services, modernized business services, distance learning, social and political engagement, government services and public safety information, as well as much more.

The Coalition supports NTIA's efforts to promote open, interoperable communications and to reduce barriers to the global exchange of information and services. A thriving Internet depends upon a transparent governance structure representative of all stakeholders. The existing multistakeholder model for international Internet governance and reliance on private sector investment and innovation enabled the economic, social, and political developments of today. And the Internet's decentralized structure allows individuals worldwide to access information and services, to connect and to communicate, and to share knowledge and ideas.

Private sector investment and innovation play a key role in driving the Internet ecosystem. Continued innovation and expansion in global connectivity requires policies that promote additional private sector investment and foster the long-term growth of the Internet economy, rather than chilling investment and innovation through heavy regulation. The United States must therefore advance a forward-looking agenda acknowledging the realities that enable the development of new technologies and the continued expansion of global connectivity in the current dynamic, competitive, and interdependent global digital economy.

NTIA should advance these principles in bilateral and multilateral engagements with other nations regarding Internet policy issues, including on matters involving the free flow of

³ Christopher Hooton, *Refreshing our Understanding of the Internet Economy*, Internet Association (Jan. 12, 2017), <https://internetassociation.org/reports/refreshing-understanding-internet-economy-ia-report/>.

information and jurisdiction, privacy and security, promoting investment in connectivity, and emerging technologies. As governments develop policies related to the Internet and digital communications, they should take care to avoid inadvertently discouraging industry investment and innovation in Internet and digital communications. NTIA should encourage governments to consider the economic and social costs and benefits of regulation.

II. NTIA SHOULD CONTINUE TO PROMOTE THE MULTISTAKEHOLDER APPROACH TO INTERNET GOVERNANCE AND POLICIES THAT ENCOURAGE GROWTH AND INNOVATION OF THE INTERNET.

To aid in developing its Internet policy priorities, NTIA seeks comment on four key topic areas: the free flow of information and jurisdiction; the multistakeholder approach to Internet governance; privacy and security; and emerging technologies and trends.⁴ The Coalition offers its recommendations for enabling growth and innovation of the Internet ecosystem with respect to each topic.

A. The Free Flow of Information and Jurisdiction

NTIA should discourage policies that would restrict the free flow of information. Although the Coalition recognizes that restrictions on the free flow of information may sometimes be justified to protect the rights of others, such restrictions should be imposed consistent with international treaties and democratic principles. Many governments are imposing restrictions on the movement of data. Both Russia, the largest country by area, and China, the largest country by population, have passed strict forced localization measures.⁵ Other countries

⁴ *NOI*, at 26037.

⁵ *See* Cybersecurity Law of the People's Republic of China, Order No. 53 (issued Nov. 11, 2016), *available at* <http://www.lawinfochina.com/display.aspx?id=22826&lib=law>; Federal Law No. 242-FZ of July 21, 2014 on Amending Some Legislative Acts of the Russian Federation in as Much as It Concerns Updating the Procedure for Personal Data Processing in Information-Telecommunication Networks, *available at* <http://wko.at/ooe/Branchen/Industrie/Zusendungen/FEDERAL%20LAW2.pdf>.

have enacted industry-specific laws requiring certain data—such as financial, or health and medical information—be stored on local servers.⁶

Restrictions on the free flow of information stymie Internet growth. Businesses, governments, researchers, and consumers alike depend upon the free flow of data across national borders and around the world. Data localization measures often force industry to open new data centers or modify their network architecture and data traffic. Countries adopting such measures operate under the mistaken assumption that the Internet can be managed and conformed to fit within local laws. But as Assistant Secretary David Redl has aptly explained, “global companies end up getting caught in the middle of these conflicting policies, and as they work to address competing and inconsistent legal demands, the inevitable result is that *users* suffer diminished access and benefits from the network.”⁷

In addition to addressing the proliferation of data localization laws, NTIA should continue to combat Internet censorship activities, such as Internet shutdowns or blocking of applications or websites for political purposes,⁸ as such policies restrict the free flow of information and stifle the Internet economy.

B. The Multistakeholder Approach to Internet Governance

NTIA should continue to champion the multistakeholder model of international Internet governance. Internet governance and policies are best developed through a bottom-up,

⁶ See, Nigel Cory, *Cross-Border Data Flows: Where Are the Barriers, and What Do They Cost?* Information Technology & Innovation Foundation (May 1, 2017), <https://itif.org/publications/2017/05/01/cross-border-data-flows-where-are-barriers-and-what-do-they-cost>.

⁷ Remarks of David J. Redl, Assistant Secretary of Commerce for Communications and Information, Global Internet and Jurisdiction Conference, Ottawa, Canada (Feb. 28, 2018), <https://www.ntia.doc.gov/speechoestimony/2018/remarks-assistant-secretary-redl-global-internet-and-jurisdiction-conference> (emphasis in original).

⁸ This can be distinguished from the use of website blocking to address, for example, child sexual abuse or intellectual property infringement under the protocols that exist in many jurisdictions today and operate consistent with human rights principles and International law.

transparent, and consensus-driven process. Open forums bring viewpoint diversity, and input from government, industry, academia, the technical community, and civil society is necessary for Internet stability and reliability. And transparency provides for informed stakeholder engagement.

In the face of increasing challenges to the multistakeholder model, it is important that NTIA encourage countries to join the United States as an active participant in collaborative bodies such as the Internet Governance Forum (“IGF”). The IGF serves as a global multistakeholder platform for discussion on Internet public policy issues. It differs from other Internet policy forums in that it is led by the multistakeholder community, not government. The IGF facilitates the sharing of ideas and information, and develops voluntary best practices and guidance on a range of Internet-related matters. Increased country participation, ideally including high-level officials, would enhance IGF discussions and resulting outputs, as well as encourage more widespread adoption of voluntary best practices.

NTIA should additionally promote increased participation in venues like the Organisation for Economic Co-operation and Development (“OECD”) that encourage stakeholder engagement. The OECD provides businesses a meaningful opportunity to be heard on the feasibility and potential effects of Internet policy decisions. Inclusive and collaborative processes elicit informed decision-making, and ultimately broader stakeholder and government support.

This model for stakeholder participation should be encouraged in other multilateral settings as well, including at the International Telecommunication Union (“ITU”). NTIA should emphasize the importance of pursuing inclusive, consensus-based decision making at the ITU on

an issue-by-issue basis.⁹ If participants of a given study group or conference have not reached consensus on a final recommendation or output document, it should not be finalized and discussion must continue. In circumstances that demand a final outcome document, the document should note prominently that consensus was not reached and explain the basis for the disagreement. ITU members should be allowed ample time to review and provide feedback on policy papers, especially technical papers. The ITU would also benefit from greater openness and transparency. Every meeting—including regional study group meetings—should be open to all members, and ITU sector members should be allowed to actively participate in all meetings held by their respective sectors.

It is also important that the United States lead by example. Nations often look to the United States for guidance on Internet governance issues, and the United States should not undermine its leadership by endeavoring to undo the 2016 transition of the Internet Assigned Numbers Authority (“IANA”) functions to the global Internet community.

Attempting to undo the transition would undermine not only the multistakeholder approach to Internet governance, but also the United States’ leadership role on these critical issues without garnering any countervailing benefits. Completion of the IANA functions transition was a significant achievement for the multistakeholder model. And the transition, as a technical matter, was successful. The global Internet community worked for nearly 20 years using a bottom-up, multistakeholder approach to develop and implement a consensus-based proposal for the transition. The final proposal included robust safeguards and accountability

⁹ This should not be interpreted as an endorsement of the ITU expanding its traditional remit into broad Internet policymaking.

structures. Reversing the IANA transition would therefore weaken the United States' arguments for multistakeholder model adoption without providing any benefits.

Finally, it should be acknowledged that NTIA has continued since the IANA transition, via its representation on the Internet Corporation for Assigned Names and Numbers ("ICANN") Governmental Advisory Committee ("GAC"), to remain a vocal and engaged participant in ICANN's multistakeholder community. Such engagement is evidenced by NTIA's recent work related to the privacy and security implications of the interplay between the European General Data Protection Regulation ("GDPR") and ICANN's domain name registrant database ("WHOIS"), as well as its interventions in ICANN policymaking regarding the proper treatment of "geographic" domain names, which has implications for free expression and trademark protections globally.

C. Privacy and Security

The Coalition urges NTIA to support flexible, interoperable, and collaborative approaches to privacy and cybersecurity issues. There is no one-size-fits-all resolution to these challenges.

Approaches to protecting consumer privacy should not impede global commerce. And given the recent adoption of the European Union's GDPR and growing implementation of the Asia-Pacific Economic Cooperation ("APEC") Cross Border Privacy Rules ("CBPRs"), several nations will likely push to make privacy a key issue at ITU Plenipotentiary Conference 2018 ("PP-18") and elsewhere. NTIA should insist that privacy is an issue to be dealt with at the national level. And it should also highlight that qualified organizations like the OECD—whose

privacy guidelines serve as the basis for many privacy regulations worldwide¹⁰—already take the lead on privacy policies.

Policies must be flexible to address evolving technologies and end user expectations. Nations should engage with businesses throughout the Internet ecosystem to develop consensus-based policies and principles. Any privacy laws should be evidence-based and implemented in a manner that is nondiscriminatory and least restrictive on trade.

Cybersecurity is a global problem, and risk management requires flexible, consensus-based approaches. Threats to Internet security can weaken consumer confidence, and hinder economic growth and innovation. It is therefore imperative that nations work collaboratively with one another and the broader Internet stakeholder community to share information and develop voluntary, risk-based standards and best practices.¹¹ Attempts to regulate security will quickly become outdated. Global standards work through channels such as those described below is the best way to develop evidence-based, technology solutions that are adaptable over time and across borders. Such standards should be open, transparent, and technology neutral.

As with privacy, NTIA should oppose calls to further expand the ITU mandate to address cybersecurity. Cybersecurity threats present difficult challenges that demand flexible solutions from technical experts. NTIA should hold up voluntary, risk-based approaches like the Cybersecurity Framework developed by the National Institute for Standards and Technology

¹⁰ See OECD, *The OECD Privacy Framework* (2013), http://www.oecd.org/sti/ieconomy/oecd_privacy_framework.pdf.

¹¹ See *A Report to the President on Enhancing the Resilience of the Internet and Communications Ecosystem Against Botnets and Other Automated, Distributed Threats*, Transmitted by the Secretary of Commerce and the Secretary of Homeland Security, 25-26 (May 22, 2018) (recommending the use of “industry-led inclusive processes” to “establish internationally applicable IoT capability baselines supporting lifecycle security for home and industrial applications founded on voluntary, industry-driven international standards.”).

(“NIST”) through a multistakeholder initiative.¹² Similar capacity-building initiatives, including those led by the Global Forum on Cyber Expertise (“GFCE”)¹³ and the Global Commission on the Stability of Cyberspace (“GCSC”)¹⁴, and the Messaging Malware Mobile Anti-Abuse Working Group (“M3AAWG”)¹⁵ should also be promoted. Recommendations to develop an ITU treaty or framework on cybersecurity, meanwhile, would lead to the adoption of policies that stall Internet growth and investment. Some countries might also improperly try to use this process to legitimize policies that enable data localization and information flow restrictions, website blocking, and content censorship.

D. Emerging Technologies and Trends

The Coalition recommends that NTIA encourage nations to apply the decentralized structure that has formed today’s flourishing Internet to emerging technologies. Industry is continuing to develop and find new applications for transformative technologies and services, including higher-speed broadband, artificial intelligence (“AI”), the Internet of Things (“IoT”), over-the-top (“OTT”) content, applications, and services, and blockchain. The policies that governments adopt will have a profound effect on the pace and path of innovation of these new technologies and services.

NTIA is right to “advocate[] for policies that enable entrepreneurs and innovators to take risks and to find global markets for new digital products and services.”¹⁶ AI, OTT, and

¹² NIST, Framework for Improving Critical Infrastructure for Cybersecurity, Version 1.1 (Apr. 16, 2018), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf>.

¹³ See Global Forum on Cyber Expertise, All Initiatives, <https://www.thegfce.com/initiatives> (last visited June 2018).

¹⁴ See Global Commission on the Stability of Cyberspace, Research, <https://cyberstability.org/research/> (last visited June 2018).

¹⁵ See Messaging Malware Mobile Anti-Abuse Working Group, Best Practices, <https://www.m3aawg.org/published-documents> (last visited July 2018).

¹⁶ *NOI*, at 26038.

blockchain have the potential to provide tremendous consumer benefits and economic growth. But top-down regulatory approaches will inevitably have unintended consequences. They are inadequate to keep pace with the evolution and growth potential of emerging technologies, and may therefore slow development and innovation. Governments should instead look to partner with industry stakeholders to develop voluntary, consensus-based frameworks for emerging technologies to address challenges and to ensure responsibility of all stakeholders.

The United States can help safeguard advancements in and deployment of emerging technologies by continuing to urge the ITU to adhere to its traditional roles of developing technical standards, allocating global radio spectrum, and supporting development activities. The ITU is an inappropriate forum to adopt policies on emerging technologies, such as AI, IoT, OTT, and blockchain. These nascent technologies are best addressed—as needed—in multistakeholder forums with appropriate subject-matter expertise like the OECD, which is examining many of these issues as part of its “Going Digital” project, the IEEE, and others.¹⁷ Similarly, oversight of digital financial services is best left to multistakeholder forums with finance, banking, development, and trade expertise.

NTIA should encourage the ITU to instead facilitate information sharing between member states to support innovation, as well as to support multistakeholder efforts led by subject-matter experts.

¹⁷ See OECD, *Going Digital: Making the Transformation Work for Growth and Well-Being*, <http://www.oecd.org/going-digital/> (last visited June 2018); IEEE, *The IEE Global Initiative on Ethics of Autonomous and Intelligent Systems*, https://standards.ieee.org/develop/indcomm/ec/autonomous_systems.html (last visited June 2018); The Partnership on AI, <https://www.partnershiponai.org/> (last visited June 2018); GSM Association, *GSMA IoT Security Guidelines & Assessment*, <https://www.gsma.com/iot/future-iot-networks/iot-security-guidelines/> (last visited July 2018); Internet Engineering Task Force, *IETF The Internet of Things*, <https://www.ietf.org/topics/iot/> (last visited July 2018).

III. CONCLUSION

Continued growth and innovation of the Internet is critically important for economic development and public welfare. To achieve these important public interest benefits, the Internet Governance Coalition encourages NTIA to continue advocating for a safe, secure, open, interoperable, and global Internet. NTIA can have the greatest impact by advancing pro-investment and pro-innovation policies, and by urging the international community to pursue solutions through transparent, inclusive, and collaborative processes. The Coalition looks forward to working with NTIA to further develop and implement its international Internet policy priorities.

Respectfully submitted,

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July 17, 2018