

Notice of Inquiry on International Internet Policy Priorities

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The internet is in transition, politically and technologically. The future internet will blend autonomous devices, massive data sets, and a mobile, cloud infrastructure. Politically, the internet now serves a global population, with different values and different expectations regarding culture, the role of government, and economics. The 1990s conceptual framework that underpins internet policy and governance is under immense pressure and the U.S. will need to reconsider its international internet policies if they are to be more persuasive for a changed international audience.

The internet's transition takes place in the context of a larger reshaping of international relations where the influence of the West and its values are challenged. There are obvious challengers in authoritarian regimes that would prefer a more government-centric internet. The more important audience lies with the rising power and the non-aligned, whose political elites remain generally inclined towards markets and democratic values, but who seek a larger role for themselves in global governance.

This reshaping is also the result of powerful political forces - resurgent nationalism and challenge to democratic values. A new international agenda for NTIA needs to take these challenges into account and focus on three goals: better coordination among like-minded nations to advance democratic principles, a more coordinated international strategy for engaging "swing states" and new partners, and development of a more persuasive narrative for a global audience attuned to today's international environment rather than 1998.

Nationalism will define international relations for the foreseeable future. Resurgent nationalism is in good measure a reaction to the U.S.-ordered world that emerged after 1989. Opposition to globalization can be seen as opposition to U.S.-led globalization. The internet was an important part of this. The internet is intrusive. It injected American culture and values into previously insulated societies. It creates new risks for national security. Many nations have responded by asserting sovereign control over content, data, and networks through the gradual extension of national regulations and law. To call this "fragmentation" discounts the beliefs of other states that they have a responsibility to protect their citizens and advance their national interests.

The 2013 WCIT showed divisions among nations over internet policy that are certain to reappear. The decision by NTIA to end its contract with ICANN successfully defused the most explosive issue in internet policy, but it did not end the extension of sovereign control by many nations, nor the desire of Russia and China for a fundamental reordering.

WCIT showed the need for a new and more persuasive narrative and a positive agenda focused on development, opportunity, and accommodation of sovereign concerns. This means replacing policies based on millennial views of governance and drawing on other models, such as the international financial system, to define rules and structures for data flows, privacy, and security. This new narrative does not exist and must be created among a core group of likeminded nations.

Our western partners form the bedrock of a new agenda, but the U.S. will need to persuade new powers like Brazil or India to support a new vision for the internet.

The Need to Redefine Open and Free

The U.S. has been using the slogan “open and free” to describe its internet policy goals for two decades. An “open and free” internet is often interpreted by both our opponents and others, particularly non-western nations, to mean an American-controlled internet, where American companies dominate. A new agenda that relies on old concepts and phrases will be ineffective.

We can define an open and free internet in several ways. One common element in most definitions is an absence of centralized control over internet content and structure. Of course, in this sense, the internet is much less “open and free” than it was at first, since service providers and technology companies seek to lock in customer revenue by acting as gatekeepers, albeit for commercial rather than political reasons. Most of the world connects to the internet via mobile phones and in many instances, operating systems have become increasingly difficult to modify and applications can only be purchased from a company store. “Closed” internet technologies for consumers produce great value for the leading companies and the internet is moving in the direction of being closed, not open. Most consumers are comfortable with these arrangements, but “open and free” does not provide a useful guide on how to structure a new policy that will ensure equal and non-discriminatory treatment for American companies while protecting the rights of individuals.

It must also address the issues of resurgent nationalism and the challenge to western principles and institutions. China and Russia argue that universal values are in fact western and inappropriate for non-western societies, but they are not alone in making this argument. There is a growing, nationalist (and authoritarian) opposition to these principles. Turkey and Hungary are salient examples. The belief that the end of the Cold War meant the triumph of market democracy, the decline of the Westphalian state, and the emergence of a new mode of governance that depended on a multi-stakeholder approach rather than sovereign states was right for its time, but that time has passed. A new agenda will need to take this into account.

Many new internet user nations believe that internet is best entrusted to formal governmental bodies anchored in the UN, but there is reasonable concern that changing a system that has worked so well as the internet expanded to encompass billions of users for one that may be less flexible or more politicized is not in the global interest. As states assert a greater role over their national networks, there will be an almost tidal pull towards assigning the UN increased responsibilities. Clarifying the role of the UN is a key issue for internet policy and if our policy is simply to defend the status quo, it will be a lost opportunity. The U.S. has an opportunity to promote international cooperation, facilitate expansion in the use of internet for trade and development, and promote stability if it can reconceptualize outdated policies.

Russia and China will continue to use the UN and the ITU as vehicles for advancing a competing vision of cyberspace. The existing multi-stakeholder model faces skepticism (outside the internet community) regarding its adequacy to govern what has become a global infrastructure – this skepticism does not translate into endorsement of Russian or Chinese alternatives. Most

nations are in the position of “fence-sitters,” undecided and still calculating which approach best serves their larger interest in development and economic growth. The U.S. needs a new and persuasive narrative and a positive agenda to retain support for the multistakeholder model of governance. For smaller nations, there will be a need to consider assistance not only in cybersecurity but in the development of domestic internet capabilities. A new narrative must focus on the centrality of development for many nations, and capacity building must be embedded in a larger story of development for economic growth. This new narrative does not exist and must be created among the core group of likeminded nations.

The Myth of Balkanization

Balkanization is a pejorative term applied by the defenders of the status quo to delegitimize the extension of sovereign control through regulation and law. It is unlikely to occur; the commercial damage that could result will deter most countries. A nation could “fracture” its connection to the global internet, but only at serious economic cost. Almost all will avoid this, but that does not mean they will not extend sovereign control. If the goal is to manage political risk, countries can do this without “Balkanization.” China has shown that countries can allow access to commercial information while managing and restricting access to politically or culturally sensitive information. Being “open for business but closed for politics” turns out to be difficult, but not impossible. A discussion of localization should avoid simplifications as countries are unlikely to wall themselves into “digital blocs.” It is not persuasive for those whose support we will need.

Localization, e.g. government measures that compel companies to store digital data local within their jurisdiction, provide procurement preferences for national companies and indigenous technology, and restrict the ability of foreign companies to compete in their markets, does not mean that the internet will be “broken.” It means that countries will not extract the full economic benefit from digital connectivity. In some cases, other priorities (security, privacy) will trump income. Countries will make a political decision to balance the economic cost against the benefit to these other concerns, but will avoid actions that lead to fracturing.

What we are seeing is the extension of sovereign control, and just as nations can have different political systems and yet still do business with each other, the internet will continue to serve as a platform for global commerce. Airspace is split along national lines, but international air travel remains possible, in part because there are international agreements on standards and safety (under the auspices of a UN organization).

As states assert a greater role over their national networks, however, there will be an almost tidal pull towards assigning the UN increased responsibilities. Defining the scope of any new responsibilities and differentiating responsibilities will be an ongoing process. This process can be shaped by greater clarity in the transatlantic community over goals and principles for an acceptable evolution of governance.

NTIA’s policy agenda could promote an open, interoperable, reliable, and secure Internet operated by the private sector, within the framework of a modernized multi-stakeholder approach to governance that divided responsibilities more clearly among the state and private sector. This

would be appealing to an international audience.

Setting A New Agenda

Change does not mean a wholesale scrapping of existing policies, but their modernization to reflect a different global environment. A new agenda should emphasize that operational and technical aspects be left to existing non-governmental groups like the IETF (as is done in other global infrastructures, such as finance, air travel or shipping). Agreement that existing commitments on trade that emphasize the importance of competition and non-interference by states in the market apply to cyberspace provide a basis for an expanded approach to internet governance.

The core of the problem NTIA is addressing is political. Economic or technological arguments are unpersuasive, and can be seen as a stalking horse for continued American domination of the internet. China has done well (so far) when it comes to growth with an open internet and other nations have noticed. What should the U.S. seek? A defense of the status quo or of commercial interest will not work. We are seeing a new challenge to democratic ideals and more than defending these ideals we should push for their expanded applicability in a world shaped by national sovereignty. The principles that NTIA should use to guide the development of policy are:

1. The commitments nations have made to each other apply equally to the internet.
2. Individuals have the same rights on the internet as they do in the physical domain.
3. National laws or international agreements should not constrain the potential of the internet for innovation and experimentation in economic, political, or social fields.
4. National internet policies should be based on reciprocity and equality of treatment.
5. Nations should commit to use the internet as the central vehicle to promote economic development and growth globally.
6. Action and governance in cyberspace must be based on commitments to democratic values.

A principles-based agenda can build legitimacy of action for the U.S. and point the way towards greater international stability. The traditional U.S. approach to collective action in cyberspace minimized the role of governments, but this needs to change as non-Western audiences with differing views of governance gain more influence. Finding a way to expand the governmental role without losing the benefits of private action is a central problem, but agreement among states will lay the foundation for action by private actors. A statement by democratic states on the principles could guide international cooperation.

The existing “state of nature” in cyberspace is too Hobbesian to be sustained, as the Internet and the other digital networks that comprise cyberspace become the essential global infrastructures. How the new global infrastructure is governed and secured will help determine if the future is

more democratic and peaceful or riven by conflict. There are legitimate reasons for governments to want a greater and more directive role in cyberspace, but there are real risks that expanded roles for governments will, intentionally or inadvertently, damage the rights and opportunities cyberspace now provides. In this changing political environment, the United States has an opportunity to advance fundamental transatlantic interests in the rule of law, open and equitable arrangements for trade, and commitments to democratic government and human rights.

There has been little new thinking on how to move beyond the internet's original orthodoxy. If our goal is to persuade the developing world that the internet should follow certain values, we need a new rationale. A modified multi-stakeholder governance structure based on democratic principles remains achievable, but this task would be easier if our arguments were more convincing. Between Brussels and Beijing, the internet will be regulated. Neither approach is likely to best serve the interest of the U.S. A new U.S. strategy must accommodate sovereignty and an increased role for states while insisting on democratic values. NTIA's goal should be to guide and shape this evolution in ways that are favorable to American interests.