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Fiona Alexander
Office of International Affairs
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Room 4725
Washington, DC 20230

Re: Notice of Inquiry on international internet policy priorities for the National Telecommunications and Information Administration

Dear Ms. Alexander:

Thank you for the opportunity to comment on the future international internet policy priorities of the National Telecommunications and Information Administration (NTIA). We very much appreciate the role of the NTIA in ensuring that international policy is considering the incredible role of the internet, within and outside of the US.

Mozilla is deeply invested in creating a healthy global internet, and the NTIA has a deep knowledge and role in protecting the internet. We have worked together fruitfully in the past and look forward to continuing to do so under your new leadership.

Mozilla's role

Mozilla develops and distributes the Firefox web browser, adopted by hundreds of millions of individual internet users around the world. Mozilla is also a foundation working to educate and empower internet users to be the Web's makers, not just its consumers. Finally, Mozilla is a global community of technologists, thinkers, and builders who work together to promote openness, innovation and opportunity on the Web.

Through our policy and advocacy work, as a corporation, a foundation, and a global community, we focus on advancing key characteristics of the open Web. We seek to build online trust so we can collectively create the Web our users want – the Web we all want.

We are glad that the Department, and NTIA, are exploring these important questions. We do not intend to answer each of your questions individually, but rather comment generally on the priorities that we believe the NTIA should focus on.

Internet health

Mozilla, as a mission driven organization, is deeply invested in the health of the internet. We are an open source initiative that was launched to create competition, trust, and __ online.

The strength of the Web and its economy rests on a number of core building blocks that make up its foundational DNA. The internet is an ecosystem that billions of people depend for their lives and livelihoods. It adapts to our behavior and actions from one end of the globe to another.

Our work on internet health - which is published in the Internet Health Report - closely tracks the work that NTIA is investigating across each of these topics. We are concerned by global impediments to the free flow of information,

The free flow of information and jurisdiction

One of the key elements that makes the internet an incredible global resource is its openness. “Open” means that anyone can publish or invent online without asking for permission, and that the technologies used to run the Web are transparent and understandable.

The big question now is: will the openness of the internet last or wither? Policy threats in areas like copyright are multiplying, and new technologies, like machine learning or the Internet of Things, are not based on the same model of open standards as the World Wide Web.

We need to push for open source practices, transparency and standards for all new internet technologies, including virtual reality, artificial intelligence and machine learning (including training data) – not least to ensure that they also function properly on the Web.

Copyright

Intellectual property laws stifle creativity and innovation if they are too restrictive about sharing and remixing - particularly for educational and non-profit use, which would be permitted under “fair use”. We need to reform laws that are outdated, and support the growth of licensing alternatives like the Creative Commons. Copyright laws - both in the EU and in the United States - have not kept pace with the internet and the creativity that it has fostered.

Creative practices of sharing, remixing and forwarding content online are growing. The open copyright licensing organization Creative Commons estimates there are now 1 billion CC-licensed works online that encourage reuse, including texts, photos, and music.

Internationally, the NTIA and Department of Commerce should support efforts to keep the internet open. Open innovation on the internet is threatened by bad policies, the devaluation of common

standards, and the fragmentation of the global internet. It is clear that leadership is necessary; the EU is currently in the final stages of negotiation on a copyright proposal that would threaten the future of the internet. The law would allow press publishers to demand a license fee for snippets of text online. This means that anyone linking to any news source on their personal blog or website could be charged a fee, dangerously undermining access to knowledge and the sharing of information. Possibly even more damaging, this proposal imposes copyright monitoring obligations onto platforms. This means that any platform that allows content to be posted would need to use automatic content filters to prevent copyrighted material from being posted without a license -- a death knell for content creation, remixing, and sharing, in particular. It would also establish barriers to entry for newcomers and smaller players, as only the those platforms with the resources to develop their own tailored filtering software and manage the legal liability would survive in such an environment.

Intermediary liability protections

The regulation of speech necessarily calls into play numerous rights and freedoms - free expression, privacy, and due process are just a few. This is, of course, no different online. Additionally, online speech involves consideration of the internet's architecture and what is technically feasible. Any regulatory solution must put the interests of users first, and allow creation of content without onerous restrictions on categories of speech.

Many jurisdictions across the world are currently exploring regulatory interventions to enhance the fight against illegal content online. While well-intentioned, many of these interventions - especially at EU and EU member state level - have increased fragmentation in enforcement regimes for different types of content and different types of service providers. The NTIA should continue to push for sustainable policy solutions that do not undermine the fundamentally generative nature of the internet.

Access

The Internet is most powerful when anyone–regardless of gender, income, or geography–can participate equally. However the digital divide is a clear and persistent reality for the more than 4 billion people who cannot avail of the social, economic, and civic benefits resulting from access to the open web.

50% of the world is still offline. 3.6 billion people are online. That's a lot, but we need more policies to bring rich and poor online affordably and in meaningful ways. People who only have mobile Web access, can't as easily do things like write essays, apply for jobs, or other things that can influence economic growth.

The NTIA should work with international partners to connect the unconnected, in order to ensure that the internet is truly a global, public resource for all, whether that is an American entrepreneur selling goods overseas or children in India using remote learning.

Multistakeholder approach to internet governance

IANA transition

In September, management of IANA transitioned from the NTIA to a global, multi-stakeholder community. We joined several other champions of a global, open internet to oppose an extraordinary last-minute attempt in the Southern District of Texas to halt the planned transition through a temporary restraining order. The four states of Arizona, Texas, Oklahoma and Nevada mischaracterized IANA's transition as tantamount to ceding control of the internet to China, Russia, and the United Nations. Fortunately for the continued health and very functionality of the internet, the judge immediately denied the motion and the case was voluntarily dismissed.

U.S. government management of IANA was a vestige of an older framework when the U.S. made most decisions about the internet. That's no longer appropriate today. It does not reflect the technical reality of the internet, and artificially imposing limitations now would have severe consequences for the internet's power as a global resource, and the accompanying benefits felt by countless American businesses and individuals. We're glad IANA is in the hands of an open, transparent model supported by virtually every major stakeholder involved in the internet.

Privacy and security

Privacy

A healthy internet is private and secure. Internet users should be able to have greater choice over what information they share with what organizations and for what benefit. They should have the freedom to express themselves online without unwarranted surveillance. And, they should be able to safeguard their information against attacks.

Better security – and more choice – is the antidote for a decline in trust of online services. We need to push for more lean data practices, meaning that less personal data is shared and logged in the first place.

Public awareness about privacy being under threat in the digital sphere has been growing through the enactment of GDPR and the various privacy scandals that have resulted in headlines, and this is a helpful precursor to pushing for better rights and services. Lawmakers in many jurisdictions are engaging positively with online privacy issues, from the EU to individual US states. The EU is looking to other countries - especially the US - to demonstrate that data from EU residents and citizens is adequately protected. The lack of a non-sectoral privacy law in the US makes that commitment to consumer protection hard to demonstrate. The NTIA should support a suitable Federal privacy law to protect users privacy.

Encryption

Security of users is paramount. Technology companies need to do everything in their power to ensure the security of their users and build products and services with strong security measures in place to do that. Increasingly, messaging apps, such as WhatsApp and Signal, offer end-to-end encryption, meaning that conversations are protected from eavesdroppers, including the service provider.

Web traffic encryption is rising too. One factor is the launch of Let's Encrypt, a new certificate authority that makes it easy and free to add HTTPS to any website. This helps protect the privacy of users, and offers some guarantee they are not looking at spoof pages. Also driving adoption, search engines and browsers are now subtly rewarding HTTPS websites.

Unknown to most, internet communication will be more private, and possibly also faster, due to an upcoming new version of the cryptographic protocol called Transport Layer Security (TLS 1.3) that is used to secure all communications between Web browsers and servers.

All these technologies serve to protect online trust and personal information, but there are global threats to widespread use of encryption. The NTIA should support encryption technologies globally in order to ensure that law enforcement "backdoors" are not used for nefarious purposes, and encourage US policy around protecting user data at rest and in transit.

Vulnerability disclosure

Last year, the White House updated (and mostly declassified) the Vulnerabilities Equities Process (VEP). The VEP is an interagency process among a broad range of government stakeholders balancing equities to determine whether to disclose software vulnerabilities to the companies who can fix them. This leads to better cooperation between the government and private companies in protecting users from data breaches and hacks.

The EU currently does not have such a procedure, but Mozilla is one of many organizations advocating for an EU vulnerabilities process that would encourage cooperation between the government and private sector in identifying and addressing vulnerabilities that harm users. The NTIA should support a similar process as the European Parliament enters negotiations with the EU Council on the amendment empowering ENISA to support member states in establishing and implementing government vulnerability disclosure review processes.

Data localization

An increasing number of countries are calling for data to be stored locally in an attempt to keep it more secure. This could harm users if the countries storing data locally do not also have strong data protection laws and enforcement mechanisms. For example, in India, biometric data from the national Aadhaar program is already required to be stored in India, and some stakeholders are calling for other sensitive data to be stored locally as a matter of law. However, the local Aadhaad

database has already been breached multiple times (see here, here and here), potentially harming users. Strong data protection laws are a critical component of data security-- any attempts to keep data safe by storing it locally are rendered null without them. Additionally, data localization mandates impose barriers to entry that will impede startups who cannot operate within any data localization mandate as well as mature companies can. The NTIA should oppose broad data localization mandates while supporting data protection laws.

Emerging technologies and trends

Ten years ago, we never could have imagined the potential of the global, public resource that the internet has become. The open, global internet is the most powerful communication and collaboration resource we have ever seen. It embodies some of our deepest hopes for human progress. It enables new opportunities for learning, building a sense of shared humanity, and solving the pressing problems facing people everywhere.

Over the last decade we have seen this promise fulfilled in many ways. We have also seen the power of the internet used to magnify divisiveness, incite violence, promote hatred, and intentionally manipulate fact and reality. As usage of the internet and connected devices continues to grow for mobile users, voice-controlled devices, smart cars, and other yet-to-be-invented technologies, it's essential to support the principles we use in all other areas of internet policy - openness, data protection, security, and access - must be protected. We urge the NTIA to continue their work on emerging technologies, and ensure that policies in the United States and globally support continued innovation using the internet and online services.

Misinformation

The emergent trend of so-called ‘fake news’ and online misinformation has become a global political issue. The complex and multi-factor nature of the phenomenon – both in terms of its causes and impact – make one-size-fits-all regulatory solutions inappropriate. The true solutions lie in greater investment in media literacy, trust, and a multi-stakeholder approach.

In any conversation around political and social issues, framing is essential. As the NTIA, Congress, and governments globally consider how to restore trust online, =a nuanced definition of misinformation must capture the the design intent, legality, and purposeful nature of misinformation content on the internet.

Linked to this, to make meaningful progress against the spread of misinformation online it is necessary to understand that this is a constantly evolving threat, which manifests in different ways, and is the result of a range of causes. From interaction with a broad variety of stakeholders across the Internet community, we have identified a broad mix of technological, economic, literary, and psychological factors which can contribute to the phenomenon

The fluid and interdependent nature of these contributory factors mean counter-actions must be targeted, proportionate, and multi-stakeholder in nature. In that context, we have used the

consultation response to advise against sweeping one-size-fits-all platform regulation and government regulation of legal speech, and instead stress the importance of media literacy education, trust-building exercises, and continuous dialogue between all stakeholders involved. The NTIA should work with international stakeholders on similar endeavors.

Internet of things

Internet of Things (IoT) devices have become more popular over the last few years.

Consumers should not be locked into a specific product, brand, or platform. This will only lead to paying premium prices for something as simple as a “smart light bulb”. We have released a framework, called Project Things, to help build an open, decentralized ecosystem of connected devices. We believe the future of connected devices should be more like the open web. The future should be decentralized, and should put the power and control into the hands of the people who use those devices. This is why we are committed to defining open standards and frameworks for the Internet of Things.

Conclusion

Thank you again for the chance to comment on the international policy priorities of the NTIA. The new challenges we face are complicated, but can be tackled through collaboration among all stakeholders to find the right solutions. Thoughtful and proactive digital policies are needed to reap social and economic benefits for all, both in the United States and internationally. The NTIA’s digital agenda can help address the challenges facing the health of the internet, the future of the web, and trust in our digital lives.

We look forward to continuing to work together and are happy to answer any questions you may have.

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