

Testimony of Sally Shipman Wentworth, Senior Manager of Public Policy for the Internet Society before the House Energy and Commerce Committee's Subcommittee on Communications and Technology
“International Proposals to Regulate the Internet”
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Introduction

My name is Sally Shipman Wentworth and 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, and our more than 55,000 members worldwide, I would like to sincerely thank Chairman Walden, Ranking Member Eshoo, and all of the members of the Subcommittee for the opportunity to testify on this issue of critical importance to the future of the Internet.

In December of this year, the United Nations International Telecommunication Union (ITU) will hold the World Conference on International Telecommunications (WCIT) in Dubai, at which, Member States will review a 1988 treaty called the International Telecommunication Regulations (ITRs). The ITRs were developed to facilitate “global interconnection and interoperability” of telecommunications traffic between countries, and were negotiated by governments when the majority of global telecommunications networks were state-owned. The ITU administers several critical aspects of global telecommunications policy, including radio frequency spectrum allocation, satellite orbital slots, and the development of voluntary international telecommunications standards.

While ITU meetings are commonplace, this conference has rightfully drawn increased attention from the global community, as some ITU Member States have proposed amendments to the treaty that would impact the global Internet architecture, operations, content, and security.

The Internet Society is a Sector Member (i.e., nongovernmental, nonvoting member) of the ITU, and an active participant in its Telecommunication Standards and Telecommunication Development Sectors. As a Sector Member, we have significant concerns that, rather than enhancing global interoperability, the outcome of WCIT could undermine the security, stability, and innovative potential of networks worldwide.

In short, we are concerned that some government proposals would threaten the viability of the existing and successful global multistakeholder model for standards-setting and Internet policy development, and, by extension, would pose a direct threat to the innovative, collaborative, and open nature of the Internet itself. We appreciate the opportunity to address these concerns before the Subcommittee.

The Internet Society's Role: Education, Collaboration, and Engagement

The Internet Society was formed in 1992 by many of the same pioneers who developed the technologies and protocols that eventually became the Internet. Since that time, the organization has served as a global resource for technically vetted, policy-based, and ideologically unbiased information about the Internet; as an educator for technologists and policymakers worldwide; and as an organizer and driver of community-based Internet initiatives around the world.

The Internet Society serves as the organizational home for the Internet Engineering Task Force (IETF) and its related organizations: the Internet Architecture Board (IAB) and the Internet Research Task Force (IRTF). The mission of the IETF and its related organizations is to make the Internet work better by producing high-quality, relevant technical documents that influence the way people design, use, and manage the Internet. These technical documents include the key standards (protocols), guidelines, and best practices that created and continue to shape the Internet.

In addition, the Internet Society has more than 55,000 members and 90 Chapters around the world. We have more than 130 member organizations, comprising leaders of the global communications industry, academic, and Internet organizations. In the United States, the Internet Society has more than 11,800 members and five Chapters.

The Internet Society champions public policies that support the free and open Internet, and facilitates the open development of standards and protocols in support of the Internet's technical infrastructure. The Society provides educational and leadership programs, including training workshops in developing countries, and supports local Chapters that serve the needs of the growing global Internet community. For example, the Internet Society provides grants and awards to initiatives and outreach efforts that address humanitarian, educational, and societal issues related to Internet development and online connectivity.

An active contributor to a range of global and regional organizations, the Internet Society is a Sector Member of the ITU Telecommunication Standards and Telecommunication Development Sectors. As such we are able to participate and contribute in the ITU Group that prepares for the WCIT. However, as is the case for all nongovernmental Sector Members, we will not be permitted to participate in the actual policymaking process of the WCIT.

Proposed Regulations May Not Be Compatible With Internet Multistakeholder Model

It is understandable why some of the ITU's Member States would turn their focus to the Internet and its infrastructure. The Internet has fundamentally changed the nature of communications globally, and many nations view those changes as falling under the auspices of the ITU. But it is not clear to the Internet Society that the international treaty making process represents the most effective way to manage cross-border Internet communications, or that some of the proposals currently being floated are

consistent – or even compatible – with the multistakeholder model of Internet governance that has emerged over the past 15 years.

This evolutionary model vests authority in the hands of Internet users from around the world, who collaborate through standards-setting bodies like the IETF and multistakeholder organizations like the Internet Corporation for Assigned Names and Numbers (ICANN) and the UN-based Internet Governance Forum (IGF). This multistakeholder approach has proven to be nimble and effective in ensuring the stability, security, and availability of the global infrastructure, while still giving sovereign nations the flexibility to enact and enforce relevant Internet legislation within their borders. This model has been a key contributor to the breathtaking evolution and expansion of the Internet worldwide. Despite a formal 2005 consensus by ITU member states that Internet governance should follow a multistakeholder model, the very nature of the WCIT negotiations, which vest discussion and decision-making in the hands of only government stakeholders, runs counter to that multistakeholder model, and threatens to undermine its effectiveness. Furthermore, the substance of the WCIT negotiations, which will likely include efforts to apply old-line, legacy telecommunications regulations to Internet communications, could lead to a more fragmented, less interoperable global network.

The global communications environment has changed significantly since the 1988 World Administrative Telegraphy and Telephone Conference (WATTC) that crafted the most recent version ITRs. Since 1988, people around the world have come to interact and communicate in fundamentally different ways as a result of those changes. In particular, the Internet has grown from being a little known research project to become a major force in the world's economic and political systems, as well as in how people live, work, and play in their daily lives.

With more than 2 billion users worldwide, the Internet still has enormous capacity for growth. And given the open nature of the technology, users worldwide continue to have tremendous opportunities to innovate in ways that evolve and improve the Internet for all users. In economic terms, a recent report from McKinsey noted that the modern Internet is integral to GDP growth, economic modernization, and job creation, generating over 10 percent of GDP growth in the past 15 years in the countries studied.¹ And it's not just the Internet that has changed the way we communicate. Even "traditional" telecommunications services have undergone dramatic changes in the intervening years since the ITR negotiations. A wave of privatization and competition has replaced many of the traditional government monopolies that dominated the international telecommunications landscape in 1988.

At its plenipotentiary meeting in Guadalajara, Mexico in 2010, ITU Member States passed Resolution 171, which notes "advances in technology have resulted in an increased use of IP-enabled infrastructure and IP-based services and applications presenting both opportunities and challenges for Member States and Sector Members." The resolution asserts that it may be necessary to update the ITRs in light of these changes. While the ITU Membership is still in the preparatory process for the WCIT, the Internet Society has identified a number of draft treaty proposals that could have impacts for the Internet. In general, we have serious concerns about the negative impact of some of these proposals, which seek to fence off the Internet within the constraints of national telecommunications regulations. Applying these old rules to the way Internet traffic moves between borders could have wide ranging effects on interoperability and security, and could foist new costs on end users.

From a process standpoint, the Internet Society is concerned that these major decisions are being made in a purely intergovernmental setting and will therefore lack the broad range of input and collaboration that are the hallmarks of multistakeholder policy development. It is not simply that the treaty

¹ McKinsey Global Institute. *The Internet Matters: The Net's Sweeping Impact on Growth, Jobs and Prosperity*. May 2011.

negotiation process excludes nongovernmental stakeholders from decision-making, but that it dramatically limits the extent to which participants from industry and civil society can even be meaningfully heard. In the United States, in contrast, the administrative process contains a wide range of checks and balances, including comment periods and public meetings that collect, record, and in many cases, incorporate public opinion into the rulemaking process. The WCIT lacks any similar structure to bring in expert advice, which makes it prone to making closed-door decisions without the benefit of the widest possible range of external input.

The Internet is characterized by several essential properties that make it what it is today – a global, unified network of networks that is constantly evolving, that has provided enormous benefits, that enables extraordinary innovation, and whose robustness is based on a tradition of open standards, community collaboration, and consensus. As the Internet grew and flourished, Internet policy development at the global, regional, and national levels has continued to evolve to work harmoniously *with* the Internet to assure its ongoing development. This process has provided the capacity to cope with the necessary and fast paced technological evolution that has characterized the Internet to date. We do not yet know where this innovation will take us.

Today's unique policy development process is reflected in the existing model of Internet governance, which has been the topic of intense discussion by governments, private sector, civil society, and the Internet technical community for nearly a decade. The 2005 United Nations World Summit on the Information Society (WSIS) formalized an agreement that each stakeholder group has a role and responsibility in Internet governance, and affirmed a commitment to the use of open, transparent, and pro-competitive regulatory frameworks in Internet governance. Discussions of Internet governance have continued at the annual IGF and a growing number of related national and regional events, where participants have come to understand and increasingly support the multistakeholder model.

Yet despite this broad consensus, some governments continue to press to develop new, binding international, intergovernmental regulation for the Internet. They have not been successful thus far, in part because knowledgeable stakeholders have been fully engaged in the discussions, and have been able to demonstrate the benefits of allowing the Internet to develop in a relatively permissive environment where innovation and use are encouraged rather than constrained.

A recurring motivation for these regulatory efforts, including some of the proposed changes to the ITRs, stems from the very real economic pressures that developing nations face as they seek to update their national policy frameworks to allow them to engage fully in the global information economy. While we often cite the Internet's low barriers to entry as one of its prevailing virtues, this is less of a reality in developing nations that lack an effective broadband infrastructure. Some of these nations view bureaucratic and regulatory tools as a way to make up that shortfall, by allowing them to reap financial benefit from the traffic that crosses their borders. While the Internet Society disagrees strongly with this approach, we believe it is important to acknowledge the very real pressures that drive it, and wherever possible to provide alternative methods for developing nations to build their own Internet capacity. We are particularly proud of our global work in supporting the development of Internet Exchange Points, which can dramatically improve Internet performance and drive down connectivity costs in developing nations. We urge all stakeholders concerned about the current discussions at the ITU to get involved with development efforts, which could serve as a far more productive focus for global cooperative efforts on the Internet.

The Internet Society sincerely hopes that the results of the upcoming ITU treaty negotiations will enable continuing growth and innovation to support the future of global communications. We are

concerned, however, that the successful multistakeholder approach may be undermined in a forum where only one stakeholder group – governments – are permitted to speak.

A Productive Path Forward on International Telecommunications Regulations

While we find good reason for concern about the agenda of the WCIT meeting in December, there is no reason why it cannot produce thoughtful, worthwhile policy developments that advance the mission of the ITU and the ongoing expansion of global communications without imposing dangerous and unnecessary burdens on the Internet. Many ITU Member States, including the United States, understand the value of the Internet and its unique multistakeholder model. Those delegates are in a critical position to advance an agenda at WCIT that respects the Internet and its global contributions while continuing to evolve pro-competitive policy approaches that have clearly worked in the field of international telecommunications since 1988.

The last twenty years has demonstrated that an open and transparent environment promotes the development of world-changing new ideas and innovations. Any revisions to the ITRs should require Member States' commitment that their decision-making processes will be open, transparent, and include direct multistakeholder participation, including civil society, which is consistent with the principles established at the WSIS. Those principles represent not only a consensus opinion of the heads of ITU Member States, but also a proven, productive approach to Internet management, engagement, and oversight. The Internet has thrived since the WSIS concluded in 2005, as has the institution it created: the multistakeholder Internet Governance Forum (IGF).

Further, any expanded regulation at the infrastructure level is likely to have an impact on growth and innovation and should be undertaken with the greatest care. In cases where a regulatory measure is needed, Member States should commit to ensuring that these are justified, and consist of high-level

principles, rather than granular, operational regulations that would endanger global interoperability of networks. Regulation should not interfere in commercial decisions, be based on specific technologies or business-models, or seek to substitute government action for the private sector.

The ITRs should enshrine a commitment to the use of open and voluntary international standards. Interoperability, mutual agreement, and collaboration are invariable requirements for the Internet's survival. Many standards development organizations (SDOs) contribute to the smooth functioning of the Internet, and new SDOs have emerged over time, so it is potentially damaging to impose a preference for some SDOs over others. The ITRs should reflect the substantial evolution and advancements in the area of telecommunications policy in the 24 years since the WATTC. In particular, its text should seek Member States' commitment that their regulatory regimes be independent, non-discriminatory, transparent, technology neutral, and encourage competition.

Since 1988, the technology, providers, users, and regulators of telecommunication networks and services have changed in ways that would have been unimaginable for delegates to the WATTC. Yet, the ITRs have served the Member States of the ITU for nearly a quarter of a century without being revised. To the extent they have been a success, it has been a result of their addressing issues at a suitably high level. When deciding the eventual outcomes of the 2012 WCIT, it is vital to understand and to respect the basic properties that have allowed global communications networks to flourish for the betterment of everyone.

Conclusion

The Internet Society applauds the Subcommittee for addressing the critical and oft-misunderstood issues surrounding the upcoming WCIT and the renegotiations of the ITRs. While somewhat esoteric to outsiders, these proceedings could have a dramatic impact on the global Internet.

The Internet's core properties of openness, innovation, and interoperability, which we all value so dearly, are supported by a carefully crafted global management and standards-setting model that fully engages the stakeholders who build, maintain, and rely on the global Network of Networks. What may seem like small changes to the ITRs could have a far-reaching impact on the Internet – indeed, some of the changes likely to be contemplated in Dubai are anything but small.

Like many ITU Member States, the United States has long demonstrated its appreciation for the Internet and its unique management and oversight structure. Working with like-minded allies from around the globe, the United States Government delegation has an opportunity to help chart a productive course forward at WCIT, and to ensure that the value of multistakeholderism, and light-touch regulatory involvement is highlighted.

Meanwhile, Internet stakeholders from around the world in industry, civil society, academia, and the technology community have a critical role to play in the months leading up to WCIT. We welcome the opportunity to participate in open, national preparatory processes as we do in the United States. And while nongovernmental stakeholders cannot directly participate in the negotiations, we can make our voices heard about the value of the open, innovative Internet, and the effectiveness of the multistakeholder model. The documented successes of that model – and of the Internet itself – comprise the most compelling argument for treading lightly with new policies and regulation. The Internet Society stands ready to play its part in this process, and to assist the Subcommittee in any way it can.