

TO AFFIRM THE POLICY OF THE UNITED STATES
REGARDING INTERNET GOVERNANCE

MAY 3, 2013.—Referred to the House Calendar and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 1580]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1580) to affirm the policy of the United States regarding Internet governance, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

To show the nation's resolve against regulation of the Internet by international governmental bodies and to garner support from

other countries, H.R. 1580 makes it “the policy of the United States to preserve and advance the successful multistakeholder model that governs the Internet.” The bill is modeled after a resolution the House and Senate unanimously passed in 2012 expressing the sense of Congress that the U.S. delegation to a treaty negotiation in Dubai should oppose efforts to regulate the Internet through a U.N. agency. By all accounts, that resolution emboldened more than 50 nations to join the United States in refusing to sign the treaty. Unfortunately, close to 90 nations did sign the treaty, and international attempts to regulate the Internet are continuing to escalate. Just as international advocates of a regulated Internet are redoubling their efforts, so, too, must the United States. That is why H.R. 1580 elevates the language of last year’s resolution from a sense of Congress about a particular treaty negotiation to a law stating U.S. policy on Internet governance.

BACKGROUND AND NEED FOR LEGISLATION

International efforts to regulate the Internet could jeopardize not only its vibrancy, but also the benefits it brings to the world. Nations from across the globe met at the December 2012 World Conference on International Telecommunications in Dubai to consider changes to the International Telecommunications Regulations. Although the treaty negotiation was billed as a routine review of rules governing international operation of traditional telephone service, a number of countries sought to use the treaty to subject the Internet to regulation through the International Telecommunication Union, a U.N. agency.

This development was not unanticipated. That is why leading up to the conference last year, the House and Senate unanimously passed S. Con. Res. 50 expressing the sense of Congress that the Secretary of State and the Secretary of Commerce should “articulate[] the consistent and unequivocal policy of the United States to promote a global Internet free from government control and preserve and advance the successful multistakeholder model that governs the Internet today.” Under the multistakeholder model, non-regulatory institutions develop best practices, with public and private sector’s input to manage and operate the content, applications and networks that make up the Internet.

The Origins of the Internet and Internet Governance

The Internet finds its roots in the Advanced Research Projects Agency (ARPANET), launched in 1969 by the Defense Advanced Research Projects Agency to connect universities and research laboratories working on Department of Defense projects. Over the next two decades, ARPANET transitioned from a government network to include civilian users under the auspices of the National Science Foundation and became the National Science Foundation Network (NSFNET). As the NSFNET grew and standards evolved to connect computer networks, a larger “network of networks” emerged. Then, in 1992, the Scientific and Advanced-Technology Act (P.L. 102–476) allowed the NSFNET to interconnect with other non-governmental networks and opened the door to commercial participation. It was at this point that the network began to grow exponentially, and the modern Internet was born.

When network use was limited to U.S. government purposes, the Department of Defense managed the network. By the 1990s, however, most of the growth was coming from non-military users, and the NSF created the Internet Network Information Center (InterNIC) to manage both numeric addressing on the networks and the databases of sites. As the number of commercial users grew, Internet addressing and domain name management became exceedingly complex. By 1998, these functions were transferred from the control of the U.S. government to the Internet Corporation for Assigned Names and Numbers (ICANN), a California non-profit corporation that manages a number of Internet-related tasks.

A series of ad hoc groups form the engineering corps of the Internet. The Internet Engineering Task Force, the Internet Architecture Board, the Internet Engineering Steering Group, and the Internet Research Task Force are collectively organized under the international non-profit Internet Society. They are run by volunteers, and all work to create voluntary standards for Internet users to make interconnection of all networks easier.

ICANN, as well as the groups that oversee the creation of voluntary Internet standards under the auspices of the Internet Society, receive input from governments, Internet users, those investing in the Internet, academics, and engineers that develop the technology that makes the Internet possible. This bottom-up governance structure, referred to as the “multistakeholder model,” mirrors the decentralized nature of the Internet. This approach has enabled the Internet to grow at an astonishing pace as a driver of jobs, commerce, discourse, and innovation and become perhaps the most powerful engine of social and economic freedom the globe has ever known. It maximizes flexibility and innovation, helping to prevent any one governmental or non-governmental actor from exerting control over either the design of the Internet or the content it carries. That is why the Internet has been able to evolve so quickly, both as a technological platform and as a means of expanding the free flow of commerce and ideas. Deviation from that multistakeholder model weakens the Internet, harming its ability to spread both prosperity and freedom. That is why there is bipartisan agreement that the United States should adopt a policy to preserve and advance the multistakeholder model of Internet governance.

The ITRs and the WCIT

International telecommunications service is governed pursuant to regulations adopted through treaty by the 193 nation members of the International Telecommunications Union (ITU), the United Nations’ specialized agency for information and communications technologies. The ITU was originally chartered in 1865 to organize the international regulation of telegraph service.

The ITU convened the World Administrative Telegraph and Telephone Conference in 1988 to consider a “new” regulatory framework for the international regulation of telecommunications. Among the resulting International Telecommunications Regulations (ITRs) were revisions to the way telecommunications providers pay each other for completing international phone calls, often referred to as “settlement rates.” The United States Senate ratified the International Telecommunications Regulations in 1992. These regulations specifically addressed voice telephony, not data

processing capabilities, and resulted in large payments to telephone companies often owned or controlled by governments.

In December 2012, the ITU convened the World Conference on International Telecommunications in Dubai, UAE, to consider changes to the ITRs. Despite assurances from ITU officials that the conference would not address Internet governance, several proposals from member nations sought to bring aspects of the Internet into the text of the ITRs. A number of the Internet-related provisions, including provisions referencing unsolicited electronic communications and network security, were of particular concern as they appear to enshrine an international cybersecurity regime; could serve as a justification for countries to engage in Internet censorship in the name of national security; and serve as the predicate for international regulation of the Internet, replacing the multistakeholder model that has served the Internet and the world so well.

Buttressed by the unanimous passage of S. Con. Res. 50, the United States and 54 of the 144 other member states that attended the WCIT left without signing the new International Telecommunications Regulations. Unfortunately, eighty nine nations did sign the treaty. The revised ITRs will be implemented by those nations beginning in January 2015. A number of upcoming conferences, including the May 14–16, 2013, World Telecommunication/ICT Policy Forum in Geneva and the Oct. 20–Nov. 7, 2014, ITU Plenipotentiary Conference in Busan, South Korea, will present additional opportunities for countries to pursue international regulation of the Internet. The continued and growing threat of such regulation prompted the House Energy and Commerce Committee to move H.R. 1580, elevating language similar to last year’s S. Con. Res. 50 from a sense of Congress aimed at particular treaty negotiations to a law establishing generalized U.S. policy.

Development of the Language of H.R. 1580

The language of H.R. 1580 is similar to two resolutions introduced in the 112th Congress: H. Con. Res. 127, which unanimously passed the House Aug. 2, 2012, and S. Con. Res. 50, which unanimously passed the Senate Sept. 22, 2012, and the House Dec. 5, 2012. Both H. Con. Res. 127 and S. Con. Res. 50 included a series of “whereas” clauses describing the societal benefits of the Internet and the importance its governance structure has played in producing those benefits. They also both contained a “resolved” clause expressing the sense of Congress that the U.S. Department of State and U.S. Department of Commerce “should continue working to implement the position of the United States on Internet governance that clearly articulates the consistent and unequivocal policy of the United States to promote a global Internet free from government control and preserve and advance the successful multistakeholder model that governs the Internet today.”

Section 1 of H.R. 1580 coverts to findings language from the “whereas” clauses of the resolutions, with minor modifications to reflect what happened at the WCIT and to make them more generalized. Section 2 of H.R. 1580 elevates the “resolved” clauses of the resolutions from a sense of Congress aimed at particular treaty negotiations to a law establishing generalized U.S. policy.

At a Feb. 5, 2013, legislative hearing and an April 10 and 11, 2013, markup, the Subcommittee on Communications and Technology considered a discussion draft of what would become H.R. 1580. In that version, section 2 sought to make it “the policy of the United States to promote a global Internet free from government control and to preserve and advance the successful multistakeholder model that governs the Internet.” That language was lifted directly from the end of the “whereas” clause of S. Con. Res. 50.

During the April 10 and 11, 2013, subcommittee markup, Ranking Member Waxman and Ranking Member Eshoo expressed their belief that elevating from a resolution to a law the language making it “the policy of the United States to promote a global Internet free from government control” might interfere with FCC rules on network neutrality and possibly even efforts regarding IP protection, child pornography, or other government action. Chairman Walden explained that a statement of policy does not impose statutorily mandated responsibilities on an agency, and that just as a policy statement cannot authorize the FCC to adopt network neutrality regulations, it cannot require the FCC to strike them. He also pointed out that the legislation does not make illegal activity any less illegal simply because someone has used digital tools to perpetrate the act. Child pornography is no less illegal if it is disseminated over the Internet rather than in photographs and magazines. But punishing illegal activity is different than regulating the Internet itself. The structure of the Internet and the content and applications it carries are organized from the ground up, not handed down by governments. This allows the Internet to evolve quickly, to meet the diverse needs of users around the world, and to keep governmental or non-governmental actors from controlling the design of the network or the content it carries.

In response, Mr. Waxman clarified that the objections raised by Democrats did not stem from a belief that the legislation would force the FCC to change its Open Internet rules, but rather, it would allow another party to use the policy statement as a basis to challenge the FCC rules. He expressed concern that a court might consider the policy statement differently than intended by the Committee.

In recognition of the importance bipartisan agreement on this issue played in Dubai and on the world stage, Chairman Walden and Ranking Member Eshoo directed staff to try and work out mutually agreeable legislative language before the full committee markup. Based on the Chairman’s commitment to work towards a bipartisan solution, the Subcommittee passed the draft legislation by voice vote, without any amendments being offered or debated.

As a result of those discussions, Chairman Walden and Ranking Member Eshoo introduced H.R. 1580 on April 16, 2013, which contained slightly modified language. In particular, it dropped the reference to promoting a “global Internet free from government control” and focused on the remaining language making it U.S. policy “to preserve and advance the successful multistakeholder model that governs the Internet.”

At the full committee markup the following day, Chairman Walden reiterated that, while statements of policy can help delineate the contours of statutory authority, they do not create statutorily mandated responsibilities. For that reason, he said he did not be-

lieve the language passed in subcommittee would have required or prohibited U.S. entities from taking any particular action on network neutrality or any other matter. He also explained that there is a big difference between government control of the management and operation of the Internet, and punishing use of it to commit illegal acts. Chairman Walden concluded by stating that he still opposes the FCC's network neutrality rules, but was willing to make the changes to send a unified message. He said that governments' hands off approach to the Internet has enabled its rapid growth and made it a powerful engine of social and economic freedom. By elevating from a sense of Congress to a law language similar to last year's resolution, the legislation will show the United States' commitment to the multistakeholder governance model and resolve to oppose efforts by authoritarian nations to exert their grip on the Internet.

Ranking Member Waxman recognized the significance of striking the words "free from government control" from the operative provision of the bill and urged his colleagues to support the measure so Congress could once again send a strong, united signal to the global community. He noted that the modification agreed to was significant because it made clear that the policy statement contained in H.R. 1580 would not implicate the legitimate activities of the U.S. government online or the authority of federal agencies.

HEARINGS

The Subcommittee on Communications and Technology held a hearing February 5, 2013, on "Fighting for Internet Freedom: Dubai and Beyond." The Subcommittee received testimony from Commissioner Robert McDowell of the Federal Communications Commission; Ambassador David A. Gross, former U.S. Coordinator for International Communications and Information Policy with the U.S. Department of State; Ms. Sally Shipman Wentworth, Senior Director, Public Policy at Internet Society; Mr. Harold Feld, Senior Vice President at Public Knowledge; and Dr. Bitange Ndemo, Permanent Secretary in the Kenyan Ministry of Information and Communications and a Director of the Communications Commission of Kenya.

COMMITTEE CONSIDERATION

On April 10 and 11, 2013, the Subcommittee on Communications and Technology met in open markup session and approved for full Committee consideration, without amendment, by a voice vote, a discussion draft of legislation to affirm the policy of the United States regarding Internet governance.

Chairman Greg Walden, together with Ranking Member Anna Eshoo and 31 additional cosponsors, introduced H.R. 1580 on April 16, 2013.

On April 17, 2013, the Committee on Energy and Commerce met in open markup session and ordered H.R. 1580 to be reported favorably, without amendment, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion

to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 1580 reported. A motion by Mr. Upton to order H.R. 1580 reported to the House, without amendment, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 1580 codifies in law the policy of the United States to preserve and advance the multistakeholder model that governs the Internet.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1580, a bill to affirm the policy of the United States regarding Internet governance, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 1580, a bill to affirm the policy of the United States regarding Internet governance, contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

MAY 2, 2013.

Hon. FRED UPTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1580, a bill to affirm the policy of the United States regarding Internet governance.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1580—A bill to affirm the policy of the United States regarding Internet governance

H.R. 1580 would affirm the policy of the United States to preserve and advance a multistakeholder model to govern the Internet. Such a model, currently in practice, involves groups drawn from civil society, the private sector, governments, academic and research communities, as well as national and international organizations.

Based on information from the Federal Communications Commission and the National Telecommunications and Information Administration, CBO estimates that implementing the bill would not have an effect on spending subject to appropriation because the workloads of those agencies would not be affected. Further, enacting H.R. 1580 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1580 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Susan Willie. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 1580 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee finds that enacting H.R. 1580 directs no agency to complete any specific rule makings within the meaning of 5 U.S.C. 551.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Findings

This section makes a number of findings related to the governance of the Internet and the Internet's importance to society, including that:

- The Internet must remain stable, secure, and free from government control given its importance to the global economy;
- The world deserves the access to knowledge and economic benefits that the Internet provides and that are the bedrock of democratic self-governance;
- The structure of Internet governance has profound implications for competition and trade, democratization, free expression, and access to information;
- Countries have obligations to protect human rights, whether exercised online or offline; and
- Proposals to fundamentally alter the governance and operation of the Internet would diminish freedom of expression on the Internet in favor of government control over content.

Section 2. Policy Regarding Internet Governance

Section 2 states that “[i]t is the policy of the United States to preserve and advance the successful multistakeholder model that governs the Internet.”

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

