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# The Role of Leadership In Internet Governance

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The internet is composed of thousands of networks voluntarily interconnected to each other. Data is transmitted over those networks using market-driven standards, delivering services and information to devices and people worldwide. No single government or international treaty controls or regulates the global internet, its workings, the standards it relies on, or the ways people around the world access it.

From a technical and operational perspective, the internet's functioning is coordinated and enabled through the use of multistakeholder organizations and standards-setting bodies. How people, firms, and governments use the internet and what they do on it is governed by laws and regulations in multiple individual jurisdictions. A combination of these activities from operational coordination of domain names to the laws that govern human activity on the internet, constitute internet governance.

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Issues related to internet governance, from digital commerce to cybersecurity, to state-on-state cyberattacks, arise in multistakeholder and multilateral settings as well as in relations between nations. The outcomes of these deliberations touch on the equities of multiple government agencies, industries, firms, and the public interest. It is an incredibly complex, interesting, and interconnected set of policy challenges with significant repercussions for global economic and social development.

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progress; and a vibrant and diverse community of experts is engaged in the effort. The challenging part is that, due to the internet's decentralized nature and largely private sector-led development, any effort at leadership in its governance requires the following: first, cooperation and collaboration across many public and private actors, and second, patience and awareness to acknowledge that at this point, we do not know enough to solve all the challenges the internet is creating. The

exercise of leadership further requires a willingness on the part of policymakers to respectfully engage interested parties within their jurisdictions and abroad in the pursuit of solutions in good faith, from connecting everyone in the world to ensuring that connectivity is safe and useful.

The role of leadership in internet governance is to build consensus among multiple public and private actors on rules, norms, and practices that preserve the internet as a global platform open to participation. Such leaders should facilitate accessibility for people to build services or distribute ideas online while addressing the outstanding challenges the new medium poses.

To change any policy related to the internet or to change the structure of international internet governance, the determinative question should be "does the proposed change feed the networks' democratizing effects or does it diminish them?" In addressing this, leaders should organize coalitions to work towards increasing interest and activity on internet governance-related matters across national and international institutions.

## WHAT IS INTERNET GOVERNANCE?

The United Nations constructed a definition for *internet governance* at the World Summit on the Information Society (WSIS) in 2005:

Internet governance is the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet.<sup>1</sup>

Since 2005, scholars, diplomats, civil society actors, and companies with varying views have debated the meaning of that definition. It is an unsatisfying definition to many, but it is sufficiently inclusive and useful enough to all sides that the UN reaffirmed it in 2015 at the WSIS+10 review.<sup>2</sup>

Having read this definition several times, I have come to the conclusion that it encompasses everything that is relevant to internet governance. Cyber warfare, personal privacy, consumer protection, competition, intellectual property, telecommunications spectrum policy, and the processes that influence policy in each of these areas are all shaping the evolution and use of the internet. The programs and decision-making procedures that governments around the world use to determine how they leverage the internet in the exercise of their power and authority also shape the evolution and use of the internet. Moreover, the wholly private decisions of companies through their chosen terms of service are shaping the evolution and use of the internet. In short, many institutions, people, and organizations are involved in internet governance. It is highly distributed and multipolar, and no one person or organization has control over the ecosystem as a whole. It would be fair to say that we are all involved in it even if we are not conscious of our involvement. We are all stakeholders in the outcome of internet governance decisions.

An example of effective internet governance in action is the Internet Corporation for Assigned Names and Numbers (ICANN). It receives heightened attention from those who actively monitor developments in internet governance because it coordinates the operations of the internet's critical technical components. It also ensures that thousands of networks and billions of devices that use the internet can identify and connect with each other. ICANN's legitimacy to serve such a function has been challenged by several governments over the years. However, largely due to the efforts of the Department of Commerce during the Obama Administration, it is now universally accepted as an imperfect, yet legitimate framework.

Another significant achievement of the Obama administration for internet governance was the release of the contractual authority that the American government had over ICANN's functions, largely under the leadership of former NTIA Assistant Secretary Larry Strickling. It was executed using multistakeholder inclusive processes and won significant global support for recognizing the concerns of the international community. As my former colleague Megan Stifle, previously a director of international cyber policy at the National Security Council in the White House recently wrote,<sup>3</sup> that act of release is, at this time, our best defense against any effort to have the critical functions that ICANN executes transferred under the authority of the United Nations. Transferring authority over ICANN to the UN would have been bad for internet governance because it would have politicized technical issues without adequate technical expertise to assure no damage is done to the platform as a whole.

However, ICANN is only one piece of the puzzle. The individuals who lead any given discussion on internet governance and exercise related to powers of governance differ depending on venue and the specific internet governance activities or issues at stake. At the United Nations and in trade negotiations, for example, governments clearly lead and achieve or deny consensus on multiple matters that have repercussions for the development of the internet as a whole. At ICANN, the process is much more inclusive of a variety of stakeholder groups, including NGOs. Other venues such as the NetMundial Initiative and the Internet Governance Forum (IGF) combine variable processes and decision makers.

A key lesson learnt so far is that the role of leadership in internet governance is to preserve the potential of the platform as a tool for democratizing

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..... opportunity and power in markets and societies. Successful leadership in this space should drive consensus, especially in contentious settings, toward respect for the architecture of the internet. It should also foster respect for the technologists that understand its operations and encourage cooperative solutions rather than top-down mandates to achieve the myriad social and political ambitions we have for the future of the internet. Where cooperation is not achievable and certain elements within the ecosystem are causing harm to others without any repercussions, then law and regulation are necessary.

In some jurisdictions, institutions, and organizations, leadership will successfully bring about consensus on policies and norms that are acceptable to a majority of the population. However, in many others, that leadership will fail. In practice, successful leadership is dependent on the exercise of the same values, regardless of venue. These include inclusiveness, engagement, transparency, respect, and a willingness to respectfully disagree when no consensus or middle ground exists. In situations where these values are not upheld, either negotiations fail or solutions not-representative of the majority's interests are imposed on the whole community by those in power. When that happens, the losing or excluded parties seek retribution through other means, such as national data localization, content regulation, or cybersecurity laws with often highly negative repercussions for the global internet.

#### THE AMERICAN POSTURE AT HOME AND ABROAD

It is too early to judge the new administration on its approach to global internet governance. The first step is to get the right people in place at the White House, the Department of State, the Department of Commerce, the Department of Justice, and other relevant agencies and execute a process by which to establish administrative positions and goals.<sup>4</sup>

However, the new Federal Communications Commission (FCC) Chairman, Ajit Pai, has clarified his agency's deregulatory approach to domestic digital governance. Pai's execution of this approach will require both domestic diplomacy and global explanation. The FCC is not a multi-stakeholder organization and the chairman can force changes to regulation, without consensus, as his predecessors have done. However, the sustainability of any decision he makes will rely on the degree of consensus he can garner. The world is watching, and it will react. In the wake of the last administration's 'Open Internet Order,' multiple jurisdictions around the world followed suit with their own versions of network neutrality laws. It remains to be seen if this administration's decisions lead to similar support in policy and action abroad.

I have known Chairman Pai for nearly two decades. While I agree with him that we should tread carefully and only lightly regulate the internet or its component parts and actors where necessary, I differ with him on how we define "lightly" and "where necessary." Regulating too lightly can concentrate too much power with certain actors, which can distort access to the platform. It would empower such actors to pick and choose winners and losers on the platform, or favor or disfavor specific

content in a way they cannot today. This would distort and fundamentally change the internet in counterproductive ways. Regulating too heavily, however, can halt innovation in its tracks.

Most recently, the Congress used the Congressional Review Act to repeal privacy regulations that were approved under the Obama Administration for internet service providers. Those rules were in the global mainstream of opinion and without a plan of action for replacement. The lack of remaining oversight over ISP privacy practices creates room for criticism of American privacy law from abroad. As Chairman Pai and others in the Trump administration turn to issues of privacy, network neutrality, 5G deployment, taxation, and trade, they will need to effectively communicate abroad how their actions and decisions benefit the greater public interest.

The risk here is that the Trump administration's goal of maximum deregulation through the FCC, the Federal Trade Commission, and other agencies will transfer power away from consumers, users, and content providers and direct it towards large corporate ISPs, giving them new and unique power to determine how the internet develops. This action, combined with protectionist trade policies, could result in a clash of ideas and values at home and abroad that spill over into global internet governance discussions and deliberations. This would unleash a reactionary wave from the community of civil society, academia, other governments, and many in the technology community who may seek corrective action. While

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..... this may be a positive check on the system, it could also cause much harm and heighten tensions rather than build workable solutions.

Moreover, if the Trump administration takes a confrontational approach to the United Nations, reduces American participation in it, and slashes the United States' financial contribution to its agencies (including the International Telecommunications Union), the multilateral community may react to correct

that error in ways that do more harm than good for innovation and consumers, and therefore the public interest. Declining financial support for multilateral organizations and hostility toward those institutions could lead to a waning of U.S. influence over internet governance deliberations internationally.

In short, the new administration's trade and communications policies and its perceived unfavorable views toward international institutions

may lead other actors, in both the public and private sector, to turn to other levers of power at the international level or within their own jurisdictions to overcorrect for what they will view as an “America First” or “American broadband service provider first” strategy. This would hurt the United States’ most innovative firms abroad and deny emerging internet users access to the best the global platform has to offer for economic and social development.

But that is a concern, not a prediction. Personally, I am willing to engage and work with the new administration towards building consensus for policies and solutions that enable them to exercise leadership. Such leadership should ensure that no harm is done to a platform which serves as a vital tool for economic and social development. It should also harness the democratizing effects of a global, open, and interoperable platform. Further, industry can work with civil society, academia, and technologists to provide self-regulatory mechanisms for addressing the concerns of other stakeholders. In the absence of an immediate risk of restrictive laws, industry may choose to do little to address concerns that government will not, but that is shortsighted and will exacerbate tensions between industry and civil society as well as between industry and policymakers in foreign jurisdictions.

Managing the domestic and global conversation on the digital economy, ensuring that it is respectful of diverse views, and creating space for dialogue and debate will be critical to ensuring that we do not feed caricatures of American influence and power as nationalist or purely commercial in interest. There is a strong role for civil society actors from across the ideological spectrum to play in creating that space; Chairman Pai should welcome and engage those discussions. It is also incumbent on those of us who disagree with the new administration to calmly state our case and stay within the traditions and institutions of our democracy. These need not be purely partisan issues. Furthermore, we should engage and pursue non-regulatory solutions with those in industry and other stakeholder groups who are willing to pursue consensus. For example, ISPs can and should work with civil society to self regulate privacy practices in the wake of the recent CRA repeal of the FCC rules. Lastly, strong audit and enforcement capacity should exist under that self regulatory structure to keep everyone honest.

#### **A DIGITAL GENEVA CONVENTION AND OTHER THOUGHTS**

There is growing consensus among the private sector and some important NGOs that at least one significant question of internet governance—the appropriate use of the internet by governments in the exercise

of foreign policy—has yet to be addressed. This is an area in which the new administration has not yet spoken and would be well served to engage in a dialogue on.

Brad Smith, President and Chief Legal Officer of Microsoft, is one of the United States' strongest private sector minds on digital economy, technology, the internet, and their role in our lives as citizens and consumers. Smith has been a leading representative of his company's strategy in front of Congress, and the judiciary, and has collaborated with institutions like the World Bank and the United Nations on issues of internet governance. This year at RSA, an American computer and network security company, Smith presented a proposal for a Digital Geneva Convention.<sup>5</sup> He advocated for the creation of international rules governing the behavior of states in the conduct of international cyber attacks. Smith argued to make attacks on non-state actors off limits in an effort to keep civilians from harm. While I do not disagree with Smith, my experience in Geneva leads me to believe that such rules are unlikely to become a reality in the near future. Such an initiative will require years of building alliances across stakeholder groups and drawing support from other nations for a conversation limited to this scope.

However, several stakeholders disagree with Smith and believe that economic and market issues or cultural and human rights issues of internet governance are of greater importance, therefore envisioning a much broader conversation as part of a Digital Geneva Convention. India, South Africa, and Brazil have argued at the International Telecommunications Union's (ITU) and other UN agencies that economic issues of jobs, taxation, and inequality should be included in the internet governance debate. Further along the other end of the spectrum, are those stakeholders like China and Russia who would seek to frame the conversation around respect for sovereign rights to manage the internet as they see fit within their country, from speech limitations to favoring domestic producers. There is real risk in that conversation but it may be both necessary and inevitable if the world is to accept the global digital economy as just. The risk is that we fail to find consensus and greater polarization results from that failure, but the benefit is that we become better informed about what divides thought leaders and can work toward consensus solutions over time.

Smith's initiative is an act of leadership. However, for this initiative to succeed, it will need to be inclusive of the concerns those that share the view that cyberattacks across borders are a real threat to humanity while also addressing other issues such as economic development and the right to privacy. I expect that U.S. domestic security agencies will push back



on limiting their options and will likely be skeptical of the notion that our adversaries would comply with an agreement that could be effectively enforced. However, through cooperation and collaboration with experts across sectors and fields, these are concerns that can be addressed.

Jared Cohen, President of Jigsaw and advisor to the executive chairman of Alphabet Inc. and Bill Burns, President of the Carnegie Endowment for International Peace, also recently weighed in on global cyber issues. They identified a broader set of internet-related challenges in the exercise of foreign policy and called for a slower, more methodical approach to addressing them rather than a Geneva Digital Convention. They wrote:

Our strategy for leveraging partnerships and alliances in the digital dimension should center on three elements: First, we should rely chiefly on less formal, more flexible structures; second, we should start with our allies, close partners, and other like-minded states to set new foundations and then build from these; and third, we should take the initiative to adjust institutions to accommodate new players, and especially to engage rising powers.<sup>6</sup>

Rounding out this group of big thinkers is Richard Haas, President of the Council on Foreign Relations, who recently wrote about the global need to police cyberspace due in large part to government actions.<sup>7</sup> Haas also calls for a methodical approach to the development of norms and focuses on security related concerns and the actions of governments in the space. He argues that we have to pursue these issues with likeminded friends first and then expand the group as widely as possible from there.

Smith, Haas, Cohen, and Burns make useful points and address critical issues, but none adequately focus on fostering democratizing effects for commerce and citizens of the internet. U.S. policy must unite initiatives that address those needs along with the security issues these men are focused on under the umbrella of working towards preserving and promoting the democratizing effects of the internet.

Much of the world is just as concerned about the potential for corporate or individual abuse or misuse of technology as they are about governmental misuse and abuse. We cannot shy away from these debates or fail to address real risks to users of the internet in areas ranging from privacy and consumer protection to competition in the digital field. If a Geneva Digital Convention cannot address these issues—and I don't believe it can—we must find and create other mechanisms for doing so. The reason I do not believe a single global agreement can solve these challenges is that philosophies differ so broadly from jurisdiction to jurisdiction on appropriate solutions.

## LEADERSHIP IN THE YEARS AHEAD

Over the next two years, the new American administration will exercise its own strategy for internet governance. But it will be only one of several actors in this ongoing global game. For the internet to remain an open and global platform, leadership will have to come from multiple stakeholders representing a globally diverse set of interests and perspectives, possibly organized in new and creative ways rather than along the traditional lines of stakeholder groupings. In this context, the role of leadership will be to temper the heat likely to rise from extremes as the world tries to reorganize itself to better reflect the modern makeup of multinationals, large international NGOs, the declining power of centralized authority, and other tectonic shifts in our global politics.

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I am a strong believer in the internet and its existing governance structure as a force for good. But evolution is inevitable and probably necessary to acquire the trust and support of the world for the continued growth of this global platform. Our mission must be to ensure that, as internet governance and the internet itself evolve, we retain what makes it special and different from all other commercial communications platforms. Its greatest value to date is that it has democratized

opportunity and power much as the printing press once did, making it possible for new entrants into commerce and politics to challenge and force established power to evolve and adapt to more democratic systems. We must preserve that basic utility.

As I have pointed out, the United States will revisit its approach to policy at home and abroad in this space due to a change in administrations. Europe will continue to move forward with its Digital Single Market proposals taking a more regulatory approach. India, Brazil, Mexico, and other emerging markets of the world will continue to investigate and deliberate the path forward that they will choose for their people at home and in their digital relations with the world.

The international community will continue to deliberate these issues through meetings of the ICANN and the IGF in Geneva. Negotiations

will take place at the G-7 and G-20 in Italy and Germany, respectively, on similar issues at a less granular level, both producing Digital Ministerial resolutions. Furthermore, the relationship between communications writ large and the world's economic development will be debated at the ITU World Telecommunications Development Conference in Argentina later this year, with its quadrennial Plenipotentiary Conference next year ensuring internet governance issues are continually on the table for debate.

Internet governance and broader digital economy discussions and debates are not only growing; they are being prioritized by key thought leaders and policy makers. Understanding, managing, and leading the evolution of these conversations is critical to how well or poorly the internet develops moving forward. These conversations will determine whether or not the internet continues to be a force for democratizing power and opportunity, enabling global innovation and helping us tackle some of our most pressing global challenges. Leaders across sectors and nations must work together to engage in this process, invest in it, and educate the public on the importance of an internet that promotes democracy and progress.<sup>f</sup>

#### ENDNOTES

- 1 *Working Group on Internet Governance, Report of the Working Group on Internet Governance*, June 2005.
- 2 UN General Assembly Resolution 70/125, December 16, 2015.
- 3 Stifel, Megan Stifel, "Maintaining U.S. Leadership on Internet Governance," *Council on Foreign Relations*, February 2017, <<http://www.cfr.org/internet-policy/maintaining-us-leadership-internet-governance/p38816>>.
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- 5 Brad Smith, "The Need for a Digital Geneva Convention," *Microsoft on the Issues*, March 09, 2017, <<https://blogs.microsoft.com/on-the-issues/2017/02/14/need-digital-geneva-convention/#sm.00015lyis85pof5qqw420pc21m2wk>>.
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- 7 Richard Haass, *A World in Disarray: American Foreign Policy and the Crisis of the Old Order* (New York; Penguin, 2017).