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INTERNET POLICYMAKING: NEW GUIDING PRINCIPLES

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Closing Address: Internet Policy Principles From an International Perspective

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P R O C E E D I N G S

MR. FRIEDMAN: As we come to the close of the event it's nice to have Ambassador Kornbluh here to remind us that the Internet is, in fact, not just American, and lots of other people use it as well.

With just a very brief introduction, Karen has done an incredible amount of work on both making policy and also framing it intellectually. She has worked for then Senator Obama as his policy director. She was at the FCC in a number of different offices, internationally and domestically. She's had fellowships at the Center for American Progress and the New America Foundation, and she's written extensively on broadband deployment international investment produce. So, Ambassador?

AMBASSADOR KORNBLUH: Thank you. Thank you, Allan. Good morning.

I just have -- before I get started, I just wanted to compliment and commend all the administration folks who are putting together this examination. I think there's this cadre of tech experts right now in the administration whose work is incredible important and really under --

SPEAKER: I can't hear you.

AMBASSADOR KORNBLUH: You can't hear me. Can you hear me now? Is that better?

SPEAKER: Move closer.

AMBASSADOR KORNBLUH: Can you hear me now?

SPEAKER: That's better.

AMBASSADOR KORNBLUH: All right. So I was just complimenting and commending the tech experts in the U.S. Government right now because I think the work that they're doing is really making good on President Obama's promise to create a smart government. And I think what they're doing is also helping to lay this foundation he's talked about for a better economy that's going to have growth in the future. I think a lot of the work that they're doing, those of us who are sort of wonky can see the value of it in the wonk space. But I think in the much bigger space of remaking, reinventing government and also creating a foundation for a

strong economy, I think it's undersung.

So I'm going to talk about the international component of what we've been talking about a little bit, and then I'd love to have a discussion. As you remember, the Clinton Administration framework for global electronic commerce listed as Number 5 of its five key principles, electronic commerce over the Internet should be facilitated on a global basis.

Today the U.S. has an enormous stake in the global, single, open Internet first in growth and jobs. I just want to talk about this for a second. The most recent OECD *IT Outlook*, which came out on Friday -- this is the 2010 outlook -- show that of the top 250 IT firms, 75 are U.S. companies. The U.S. has 8 of the top 10 Internet firms, 7 of the top 10 in software, 6 of the top 10 in IT services, and 4 of the top 10 in equipment and systems. And I could go on. This sector is obviously huge. It's already recovering from the recession, and the market should grow by three or four percent just in 2010 alone.

The number of jobs in the IT sector alone grew by 26 percent in the U.S. from 1998 to 2008, 4 times faster than the U.S. employment rate as a whole. But that's sort of understating the case because the Internet is, as you know, and as has been discussed here, not just another industry. It's a platform, it's a technology enabler. As such, it can drive productivity growth in jobs.

So I remember when I was working at the FCC in the mid-'90s, there was a lot of talk about how companies had been buying computers, but it wasn't showing up in the productivity statistics when economists said computers are everywhere except in the productivity data. But then once the Internet took off that completely changed. And starting in the late '90s you saw productivity which had been stuck start to climb. You saw jobs grow, you saw incomes go up, and that was because these computers were connected and so suddenly people were doing things more efficiently.

According to the OECD again, the impact of the Internet on productivity may be greater than that of other so-called technology enablers, including electricity and the internal combustion engine. It lowers barriers to starting and operating a small business, improves quality and quantity of information available at a far lower cost.

The Internet also facilitates trade according to the OECD because it allows the expansion, aggregation, and globalization of markets as well as the customization of goods and services, and this is also important to innovation. There's recent research that shows that firms that are exporting are more likely to innovate.

So in addition to the economics stakes, we've heard a lot today about the social stakes in the Internet, but the U.S. also has a political stake in the Internet, and I'm sure a lot of you have been following the work that the State Department has been doing, incredible work, to support those who would use the Internet to empower themselves politically and to exercise values such as freedom of speech. So, internationally, we have a huge stake in getting this thing right.

And the same what I'd like to make is that the success of this global Internet and the benefits we've been able to achieve is no accident. Just as we set in place a framework in the mid-'90s for the domestic evolution of the Internet, this framework was adopted internationally as well. It had an international component. The U.S. principles were echoed by Europe which took a similar though distinct approach to the EU's electronic commerce directive.

The U.S. and the EU developed a privacy safe harbor for data transfers. This allows data to be transferred to the U.S. as long as the company doing the transferring is regulated by the FTC or the Department of Transportation. and the company follows a less regulatory version of the EU data protection principles.

The OECD socialized this approach. It had a 1998 auto administrative which called for an industry-led approach. It created a framework through its privacy and e-commerce guidelines -- which I'll talk about in a minute -- of high-level principles, transparency, cautions against practices that create unreasonable risks of harm to consumers, and these helped e-commerce to expand by balancing protections as freedom of commerce.

The general thrust of these policy strategies was away from placing the onus and policing content on the entities that sit on top of the physical infrastructure, the Internet intermediaries, and the result was this ecosystem that we've been talking about that fostered openness, decentralization, and created a trust environment. It meant the Internet could be a

conduit for freedom of information, and it gave rise to the participative web. It mean everyone could be a speaker, a producer, and a consumer of information goods or services. So that's the good news.

The bad news is, Number 3, that today the need for a single Internet is increasing, increasing data flows, cloud computing, new applications. But the consensus that was agreed upon internationally is fraying on a whole number of fronts.

And I'll just take through them because I think a lot of you are really familiar with this and it's been in the liturgy before, so there's regulatory divergence, different rules and privacy, data retention, and law enforcement access in the liability intermediaries. And, as you know in Italy, three Google executives were thrown in jail because of a video posting.

German regulators issued a resolution disapproving of the US-EU safe harbor and asking the EU to reconsider it. China has censored content of L-1 Chinese Internet portals, and on occasion ordered that access to major U.S. e-commerce platforms be blocks. So there's regulatory divergence.

There is also actual property infringement issues that have been rising up. German courts have ordered monitoring by Internet marketplaces after a counterfeit good has been found to be sold in their state. Neely Croyce, the EU Commission for the Digital Agenda, recently said that European copyright rules are out of date and require a major overhaul because they have given "a more prominent role to intermediaries than to artists," a censorship. As you all know, it's been in the news a lot.

Secretary Clinton has said that we in the U.S. stand for a single Internet where all of humanity has equal access to knowledge and ideas, and we recognize that the world's information infrastructure will become what we and others make of it when in the last few years we've seen unfortunate spikes and threats to the free flow of information. And then a lack of consensus, as you've heard about how U.S. companies should respond.

And then there are also a bunch of new fora that are coming into play, a number of entities in putting the ITU that are looking at the Internet and considering frameworks to regulate it. So the bottom line of all this is that this consensus that we had is fraying, and we run

the risk that the Internet will be atomized, and that you'll wind up with state-by-state regulations, and that the growth of entirely legitimate Internet-related businesses will be chilled as intermediaries attempt to comply with the most stringent of the new rules.

And so I think what a number of people are talking about now is how can we start to have a discussion to rebuild a consensus for an Internet that is on the one hand both safe, curbs illegal behavior, but is also predictable and safeguards freedom of expression and lawful commerce.

So how do we have that discussion, and I would like to submit to you that the OECD is not a bad place to have it. So what is the OECD? It's the Organization for Economic Cooperation and Development. It has 33 member countries. It has partnerships with the developing world with what's called "enhanced engagement countries" which are basically the big emerging economies, and it's not where you go if you want hard lots. It's not where you go if you want a treaty that's legally binding, that you can enforce with sanctions, but it is a place where regulators come to share best practices, develop soft lot agreements such as principles, guidelines, and conventions. It's starting to sound a little bit like that new governance model that we were talking about.

In the case of the Internet, the OECD is the home of the 10-year-old OECD e-commerce guidelines and the 30-year-old OECD privacy guidelines. It's also the source of the definitive data on the Internet, the broadband rankings which are being released today, actually; *The IT Outlook*, which I said, it was just released on Friday. The OECD has done extensive work on security, and then maybe most important, the OECD is a forum for multi-stakeholder dialogue.

So it works with volunteer groups and Internet intermediaries, child protection privacy and e-commerce. It has business in labor advisory groups that have a formal role, and, as I said, the nonmembers have a direct way to participate. And the OECD happens to be working on a study of Internet intermediaries that comes out of its last ministerial and so I was told to look at the role of Internet intermediaries.

So the Obama Administration has proposed working with other OECD members to organize a high-level meeting at the OECD in June on the Internet economy generating

innovation and growth, and we think this is going to happen, and we want you all to participate. The objective is really to just reinvigorate a conversation among OECD members as well as other key players about how to build trust and while also safeguarding these qualities that we've talked about.

And really, what's as important as the actual summit itself is what leads up to it and how much involvement there is. And then what we want to do at the summit is adopt some principles that are a little bit apple pie, but cutting enough, sharp enough to actually be meaningful in terms of the kinds of concerns that countries should weigh in terms of creating some kind of interoperability framework.

So the meeting would underscore the importance of broadband and Internet intermediaries to the Internet economy so that we could remind ourselves and the broader public not to take this medium for granted

Second, it would review the shared experiences of countries in promotion of broadband access and deployment, and agree to improve our metrics on that front.

Third, it would review the success of the existing framework and some of the new realities.

And fourth, it would come to some kind of political agreement, as I said, on principles to maximize the benefits of the Internet and create these interoperable regulatory schemes.

The specifics are still being discussed so I can't really tell you what they are yet, and I want you all to help us figure out what they are. But some of the things we'd want to see in the final principles are just what we've been talking about today. So empowering media institutions, due process, transparency, and education, government as a convener and facilitator of best practice, government articulating principles and technology-neutral performance standards to be realized by the private sector rather than rigid commands and control regulations, creating rules that are predictable and understandable, finding ways to build trust in the Internet, and safeguarding freedom of expression.

So this is what we're planning to do there. Obviously, this is only one piece of a

big hole that there's got to be a key role for the U.S. Trade Representative's Office in terms of looking at trade issues. In the EU, Bill Kennard, who's the U.S. ambassador there, is engaged in a dialogue with Europeans. Leslie Harris just talked about GNI, so there's the Internet. The IGF so there's a lot that's going on. This is one piece of the puzzle, but I would just hope that we could take a look at this idea of having a June summit where some of the like-minded countries that have been involved in building this consensus can come together and restate what a new consensus is on some principles going forward. And I hope that you'll all be involved in helping us think through what we want to get out of that, and then come to Paris in June and participate,

So I look forward to having a discussion right now.

MR. FRIEDMAN: So thank you, Karen. Ambassador, you highlighted as the cross of these issues there's sort of a different types of organizational models. You have direct state-to-state bilateral discussions, safe harbor. We have the official government body organizations, ITU and various UN approaches as well as to some extent the OECD. And then we have the multi-stakeholder organizations of ICANN and IGF, et cetera.

How well do you see them playing together, and what do you think are some of the main hurdles that we need to avoid as all of these different groups work together on Internet governance issues?

AMBASSADOR KORNBLUH: Gosh, that's a neat question. I mean I guess one of the things that we're hoping to do with these principles is, you know, state that the more the better in terms of entities that are involved, but that there should be some basic approaches that you take that you make this trade-off really clearly, and that principles that -- I mean, that regulations that governments come up with are clear and transparent, and there's due process and that they work together so that the company doing business can do business worldwide, and a consumer who wants to purchase can purchase easily on the Internet and at work speak easily on the Internet.

And so I think that's the main goal. I think the main goal is sort of the output and making sure that everybody can participate. But I don't think we want in any way limit the entities that are involved.

MR. FRIEDMAN: All right, we'll turn it over to questions. The one in the front there.

MR. SMITH: Bruce Smith, George Mason and Brookings. I think there's a certain boosterism for high-tech here, certain high-tech snobbery which we should really call attention to. Having experience now with undergraduates a little bit, the Internet has not fostered learning, it's perverse, and it's the enemy of learning because students seem to have a mentality that if they can't grasp it in six minutes, they don't pay any attention to it. They've diverted into narrow casting, to use that term of Cass Sunstein: Instead of broadcasting, look at common themes.

Is there a kind of -- and when we talk about here the need for a digital infrastructure and for broadband policy, this is Clinton era technology policy, industrial policy. Why do we need a broadband policy? Why don't we allow sort of the economy to develop without attempting to force it in one direction? You don't really promote jobs through high tech?

MR. FRIEDMAN: Sure you do. Let me --

MR. SMITH: There's only -- there's 5 percent of jobs in this country are high tech.

AMBASSADOR KORNBLUH: So what I was trying to say, and I guess I didn't -- maybe I said it too fast, I'm from New York so I speak quickly. But the Internet is a technology enabler. It's a platform for innovation and growth, so not only is it, you know, a huge industry globally where the U.S. has a big advantage at least for now, but also it allows small businesses to sell broadly. It allows, you know, it allows me to buy books easily from Amazon.

Before I moved to Paris, and I thought at the last minute, oh, my god, I have to get my kids a ping pong table, I went on Craigslist and, you know, was able to buy it. So it's really -- it's a nice place to -- for consumers. It's for efficiency, it's a great place for small businesses, it's a great place for innovation and, you know, what role did the government have in making sure that electricity got to rural communities and making sure that the railroad got across the country? Highways. I mean, it's -- broadband is equivalent.

And that data is there to show it. I mean I'll send you a copy of the OECD *IT*

Outlook. The data is pretty compelling.

MR. SMITH: I'll send you some of my work.

AMBASSADOR KORNBLUH: All right, I'll read it.

SPEAKER: I just had a quick question in regard to a kind of composition that the -- of the conference. I think that the global aspect of this is incredibly important, and better we're focusing on it.

We have two kind of large players, one on the state side which is China, and another -- others on the side of industry, including (inaudible). And I just wondered why the OECD is a place which could attract the interests that these parties represent as a forum for the type of work (inaudible).

AMBASSADOR KORNBLUH: I'm sorry, but I didn't quite understand what you were saying. Why not bring the industry in?

SPEAKER: Well, industry I think was the (inaudible) about industry.

AMBASSADOR KORNBLUH: Yeah.

SPEAKER: I'm really thinking more about China at this point.

AMBASSADOR KORNBLUH: Oh, I see. Well, that's actually one of the things that's interesting to me about this is that so China's not a member of the OECD but it has a partnership with the OECD. So one of the things that can happen with the summit is that we can engage them in a conversation, but they quite frankly don't have veto power over what comes out, that the countries that are part of the consensus-based decision-making process at the OECD are the membership of the OECD.

So we, to the extent that the countries of the OECD are the more developed countries -- and I mean that loosely -- I mean, Chile just became a member, so it's countries that really have adopted a market-based, rules-based economy. To the extent that they can agree on some principles that make sense, they can talk to China, talk to these other countries, try go get them involved. And at the end of the day I think it's a benefit that it's driven by those countries because we still, you know, for all our differences with Europe and elsewhere, we still basically have a similar approach.

What would be nice is at the end of the day we've got a set of principles out of this that says, no, this is

-- this is important for your growth, this is important for your growth, this is important for innovation, let's educate you about why this approach makes sense, and also let's clear up any misconceptions about what it is that a free market economy does when it approaches the Internet, and I think that would be very useful in this debate.

We're not going -- the OECD is a purely economic forum, so we're not going to talk about it from a human rights point of view. We're going to talk about it from the innovation, economic. The freedom of expression is important to that. If you have freedom of expression, that allows the development of the Internet the way it's been developed. So I think really, really clear to state what kind of approach countries that have been successful have taken and will take.

SPEAKER: You're not really including critical issues and human rights issues in the discussion at all, although those are extremely important such as China.

AMBASSADOR KORNBLUH: Yeah, I mean, to the extent -- I mean, freedom of expression is right at the heart of it, so I wouldn't say we're not including it. But the slant, the focus is more of the economic. And I think that's -- you know, there are the human rights conversations going on, and those are incredibly important. But I think to have this other conversation that says, look, in your self-interest if you want to grow an economy, if you want innovation, you know, you have to be a part of this world that says there's a single open Internet, and this is what it looks like and this is why it's been successful. And you start to vulcanize that and cut it up, it's just not going to be the same thing.

MR. FRIEDMAN: It's also interesting to note, by the way, that sometimes economics actually works quite well for promoting human rights. So, for example, efforts to legalize cryptography was, I think ultimately one to the benefit of the human rights community but for economic interests to create e-commerce.

MR. HOWARD: Alex Howard, O'Reilly Media. With respect to photography, of course, many companies are asking for access now to the servers, whether it's Blough Graham or any other company to get around that precise issue, right, and so there does seem to be a

tension to entering an economic market in terms of exceeding to the individual government's demands for the company itself, right?

And I suppose the question is with regards to vulcanizing policy, how are you seeing companies amend their terms of service or their standards to enter certain markets? Others are certainly, if you know in this news, Google made some real tough choices in China. To what extent are other technology companies changing the way that they operate, which in turn will have an impact upon the development of the Internet?

AMBASSADOR KORNBLUH: Yeah, I think that's a real interesting question. I don't know if our principals will get into that, and that will be part of, I think, the discussion we have, you know, in the U.S. and then with other countries about whether it should get into that kind of thing. But certainly, I think that's part of what GNI is looking at.

I think that Aspen Project is going to be looking at that kind of thing, what kind of norms should we expect from U.S. companies, you know, and other companies about what to do when those kinds of requests come in, what kind of procedures do you face? I think there's a lot of real interesting work and very needed work being done in this, that area. And companies are saying, you know, we need that.

MR. FRIEDMAN: In the back.

SPEAKER: Thank you. Ambassador, my question is a bit of a follow-up on the lady in the front and also perhaps a bit to the gentleman who just spoke. And it regards a dialogue that's been happening within the Council of Europe regarding the role of Internet service providers, the Council having defined them as critical to a participatory democracy in the 21st century, therefore the Council suggests that ISPs may be the best ones to assure fundamental and human rights.

So I'd like to ask from an economic perspective, from your organization's perspective, any thoughts that you may have on that. Thank you.

AMBASSADOR KORNBLUH: Sure. First I should qualify and explain that I work for the U.S. Government, so I'm the U.S. representative to the OECD, so the OECD is not my organization, it's all of our organization. We pay a lot of the bills over there.

I think -- I mean, and that -- and part of where this -- you know, I think it's hard to sort of separate off human rights from the economics because, as I said, free expression is just so important to why the Internet works from all perspectives.

And, as I said, the U.S. has a big economic stake in the Internet, but it also has a political stake, and that's a sort of enlightened stake because, you know, what we get out of the Internet and what we want to protect is good for the rest of the world as well.

So the OECD has been doing these studies on the Internet intermediaries coming out of its sole (phonetic) ministerial. And part of what it's laying out is why Internet readers are so important and the role they play. And most people are not aware of them, you know, that this separation that there's this layered structure to the Internet with the fiscal layer and then the Internet intermediaries in the middle and the incredibly important role that they play.

And we think that maybe there's a role for education about the role of these different players, different layers, and that maybe that will help inform the regulation that's going on. Maybe if people start to understand that they could be killing the goose that lays the golden egg, not only economically, but in terms of free expression.

MR. FRIEDMAN: I guess I can dive in again and ask you, sort of prognosticating to the future, are there issues that you think we're going to hear a lot more about coming up that you think, you know, institutions and other organizations start spending a little bit more time researching both, and so that we can shape up for the coming debates?

AMBASSADOR KORNBLUH: Yeah. Well, I just think that the issue that came up before about -- and that Danny raised in his testimony about, you know, what's the role of government, and I'm feeling that a little bit in this international realm. What's -- you know, where should you -- I just -- let me just tell you the story.

So I met with people from the American steel industry last week, and they said we'd love coming to the OECD. We have these wonderful conversations. We've talked to the Chinese.

And I said, well, do the talks lead anywhere? You know, how good is it to talk?

Do you see change in the action?

And they said, well, yeah. I mean, we've educated them. They're -- they are talking differently. They do understand some of our concerns more. They do -- you know, we've educated them about how to use scrap metal, so they're more energy-efficient, and how they have to do this and that.

But then as it came out, what they've also done is the steel workers have filed a complaint, a 301 complaint with USTR, and that sort of helps the conversations if you have that threat hanging out in the background of a possible 301 violation and possible sanctions.

Now, you know, will the U.S. really put sanctions on Chinese to steel imports? You know, your guess is as good as mine, but having that threat out there certainly helps conversations. And so in this space, too, you know, I think these principles are great, a great way to educate us and to have a discussion and, hopefully, they'll create -- one of the things the OECD is really good at is creating, naming and shaming. So it just had this big success with tax havens where it put out a blacklist of countries that weren't sharing tax information. And just the shaming factor of it made it made a whole bunch of countries -- so I think there have been 600 tax treaties signed since a year and a half ago when they put out this list. It's amazing.

So there is a big advantage to countries signing up to principles and then being held to account for them. But how much do you need behind that in terms of some kind of threat of trade violations or, you know, other kinds of a stick, as people were talking about at the end? How do you get citizens and stakeholders involved in holding people accountable?

So I think there's a lot of fascinating work to be done in that area that we've heard about all day. And, you know, I think this is a great conversation that's been started, and thank you to Brookings for hosting it and to the administration folks who organized it. I think it's been tremendous.

MR. FRIEDMAN: And I think on that note I would like to thank again all of the panelists and all of you for spending the morning with us. (Applause)

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I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

/s/Carleton J. Anderson, III

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