STATE OF THE NET

**U.S. Trade Policy Changes:
The Biggest Threat to the Internet
Flying under the Radar**

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31 U.S. Trade Policy Changes: The Biggest Threat to the Internet Flying under the Radar

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John Morris

So, we want to talk today about what the Internet Society feels is one of the biggest global threats to the Internet today, and a lot of folks in Washington are expressing concern about it, but it's in fact not being talked about. So, that's one reason why we wanted to come here and talk about it.

We were founded, the Internet Society, in 1992, by Vint Cerf and other leading architects of the Internet, and one of our key goals is to defend an open, global, trustworthy and secure Internet, over which people around the world can seamlessly communicate with other people elsewhere in the world. That Internet has been placed at serious risk by a surprising entity, the United States government, which, prior to last October, was one of the leading defenders of an open Internet around the world.

Since at least the Clinton administration, and during every Republican and Democratic administration since then, the United States has defended the free flow of information around the world, and has resisted restrictions on cross border data flows, and resisted requirements on data localization. That defense has been primarily implemented through trade agreements, for better or worse, and I'll mention that in a second, but through trade agreement that's had specific provisions that supported cross border data flows, opposed mandated data localization, opposed discriminatory data policies, and oppose national requirements that source code be turned over by foreign companies.

In October of last year, completely out of the blue, at least to the civil society folks in Washington, the United States Trade Representative announced the United States would no longer support these policies, would no longer be pushing these policies in the WTO. And the USTR's argument, as we understood it, as we understand it, is that those trade provisions would supposedly prevent the United States from regulating AI and reining in big tech.

We think those arguments are completely unfounded, for two reasons. First, Congress can absolutely certainly regulate AI and big tech without undermining the open Internet, and the relevant trade agreements all have provisions allowing for nations to enact valid public policy and national security provisions if they're needed. And, there's really no evidence that, that trade agreements have in fact obstructed the Congress from enacting these policies.

So, you know, we do appreciate that trade agreements -- certainly for civil society in Washington, where I've been for decades -- trade agreements are a somewhat controversial area for public policy, because at least civil society is largely excluded from the trade agreement process, so it's kind of a black box for us. So, I appreciate some of my civil society colleagues that have concerns about the use of trade agreement. But, for better or worse, the United States has used trade agreement provisions for more than 25 years to defend and advance the open Internet. And, they've took that away in October.

And I'm going to hand the mic over to my colleague, Natalie, who will kind of walk us through the harmful impacts of what USTR has done, and kind of how it is, in fact, having an impact.

Natalie Campbell
 So, the US backing down on protecting and defending the Internet, the open global Internet, is what we see as the biggest threat the Internet is facing right now. It directly undermines the Internet's key promise, and that is that if you can connect to the Internet, you can connect to the

world. The Internet just isn't the Internet without the free flow of information online. It's a fundamental principle. It's what it needs to exist in the first place.

In the past, the US has leadership in defending the open Internet has played a major factor in its rapid growth and success worldwide. The US's early foresight to adopt policies that would support an open, globally connected, secure and trustworthy Internet has also benefited a strong digital economy, not just here, but around the world. It also helped people worldwide exercise rights of expression and self-determination.

But, we can't take that for granted. Over the years, countries have increasingly been trying to assert dangerous forms of digital sovereignty that threaten the Internet's seamless nature. We see both Democratic and autocratic countries wanting to control what flows out and in to countries, and the level of access it has to sensitive information. Until now, as my colleague John mentioned, the prospect of trade with the US has stopped a lot of these dangerous digital sovereignty approaches, through things like mandated data localization rules, and other data flow restrictions.

But, what happens if we lose the strong protection from cross border data flows, and we start seeing things like forced localization? Our ability to communicate with knowledge with one another, in countries around the world, is at risk. I might not be able to call my kids in WhatsApp, in Canada tonight, should we start seeing some of these ideas take hold. Our ability to do business and offer services online is at risk, and our ability to access information on the global Internet is at risk.

What happens if there are added rules to mandate disclosure of source code, on top of that? People, businesses and countries alike will be more vulnerable to data breaches, surveillance, censorship, physical harm.

The US standing down from protecting the Internet from bad decisions such as these is an immediate threat to the Internet, because it just gave everyone, every country, a green light to move forward with their own approach to digital sovereignty that might undermine the single stature of the Internet.

We're already starting to see the impact of this policy shift in different countries around the world. For instance, Indian immediately referenced this policy shift as a validation of its data governance strategy, where it will restrict personal data from within its borders from being transferred and stored. Just last month, members of European Parliament are proposing amendments to align its trade strategy with the US policy shift. And, we are increasingly hearing about government to

government communications and conversations from countries that are expressing a surprise and their big worry about the US's new policy approach.

Without the US's strong leadership to hold countries worldwide to the promise of the Internet, the free flow of information online, both broadly and within trade negotiations, we will see the rapid erosion of the Internet, and we're going to see it in the near future. Every new decision that raises a digital wall over national borders, is splintering the Internet into a collection of networks that don't talk to each other so easily, that don't collaborate with one another so easily, and if the US doesn't reverse course, and do it very, very soon, we will see the rapid erosion of the Internet really soon, and it's going to have devastating consequences on the many benefits of freedoms that we enjoy online.

The United States must reassert its leadership to protect and defend the Internet in policy spaces where it's at most risk.

John Morris
So, let me wrap up by pointing out that it's really striking how broad the concern has been expressed in Washington about these issues. On one end of the spectrum, you have Freedom House, the leading kind of authority on human rights worldwide that very, very quickly, in early November, came out with a very strong statement expressing real concern about this. You have Wikimedia, which is expressing concern that it's not going to be able to operate in the same way, or perhaps even at all, if, in fact, there are data localization requirements and cross border data flow issues. Folks may think that there's a Wikipedia in every little country around the world, but, in fact, that's not how its architecturally served.

Obviously, the technology industry is very concerned about this, and the folks from CCIA can talk more to that, but what's particularly striking to me, as someone has been around Washington for a long time in these tech policy debates, is how broad the concern is with just mainstream American industry. If you look at US Chamber of Commerce letter issued late last year... You see the trade associations, from big pharma, to the entire insurance industry, to the retail industry, to the Motion Picture and RIAA association. It is not ordinary that you have civil rights groups and really mainstream industry raising a concern here.

And, why isn't there more discussion of this issue? Well, I think the reason there's not more discussion of this issue, is that it's not really going to impact the United States very much, kind of no matter what USTR says, policy in the US is going to be policy, whatever it is in the US, but it is already having strong impacts around the world. And so, if you want to follow up more on human

rights, civil rights issues, Jen Brody from Freedom House can talk to you about it. CCIA, I'm sure has folks here at this conference. If you're concerned about the economy, go talk to the US Chamber, and obviously we're happy to talk further.

But, ultimately, the United States, as Natalie says, we desperately need it to reassert a strong support for open Internet.

Thanks so much.