

US Digital Trade



**TESTIMONY OF SUSAN ARIEL AARONSON
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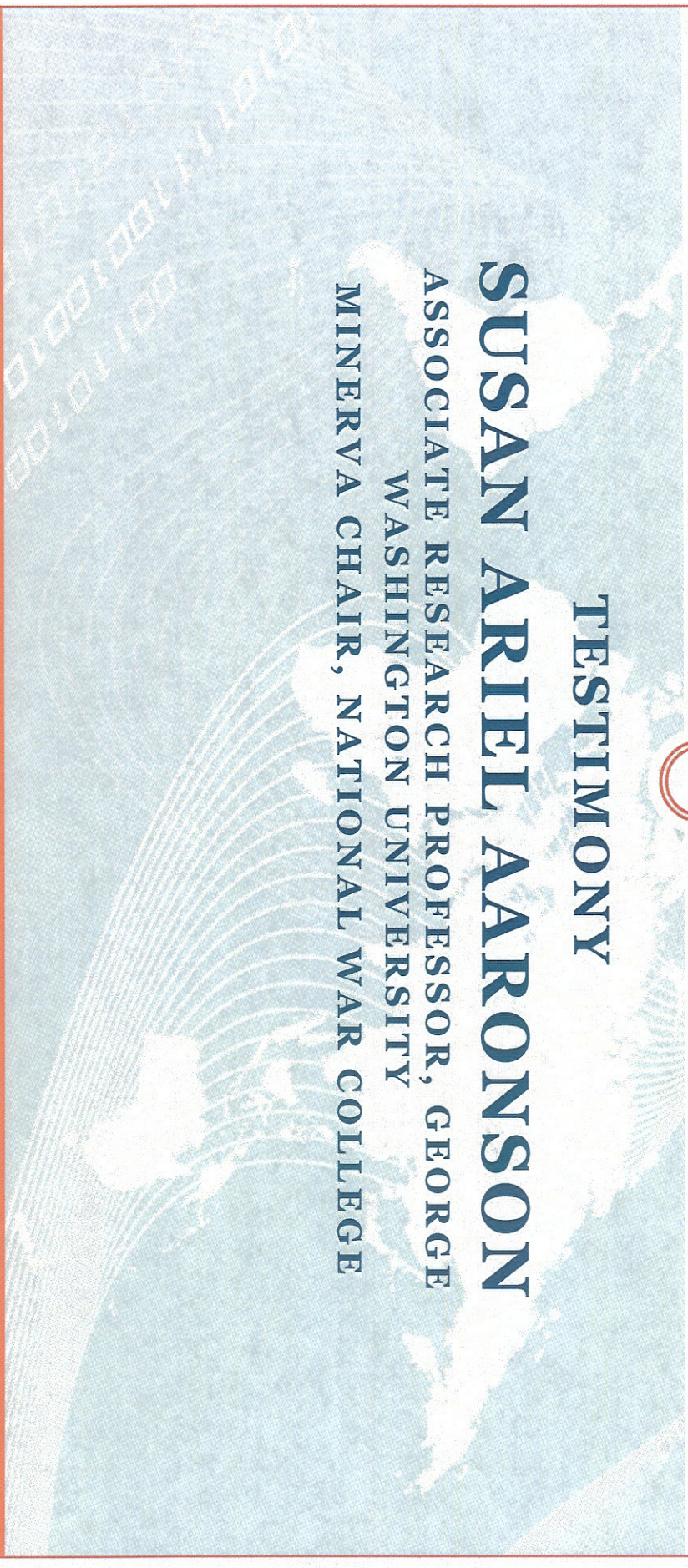


TESTIMONY

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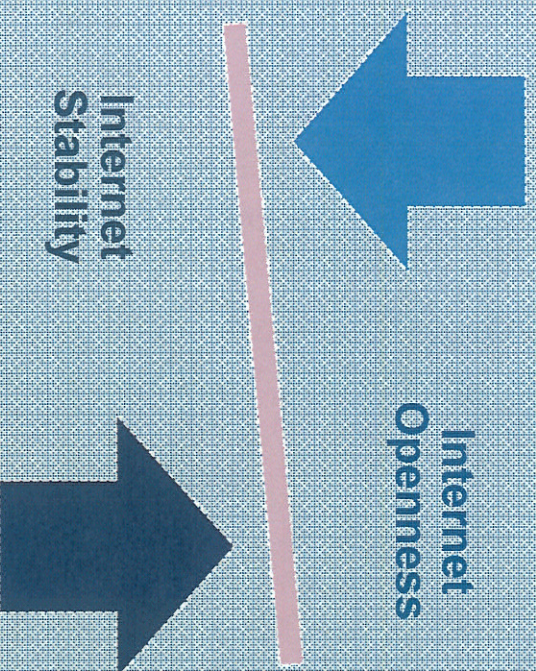
Key Points of Aaronson testimony



- Ford, MacArthur project comparing US, EU, and Canadian Internet trade policies and their effects on Internet freedom.
- Other governments see US firms and USG dominating the Internet. They don't see USG as consistently facilitating an Open Internet.
- US trade policy should aim to keep the Internet **open and stable**
- **Trade policy objectives and strategies are incoherent because policies are developed in separate silos of IPR, free flow etc... .**
- US should focus on building **international norms at the WTO with the default in favor of internet openness**. US/EU FTA may be helpful.
- USG should challenge censorship and cyber-hacking as barriers to trade through a WTO trade dispute.

Paradox at the Heart of Internet

There is a paradox at the heart of the Internet.



On one hand, internet makes free flow of information possible, providing millions of people with access to information, opportunities, and political voice .

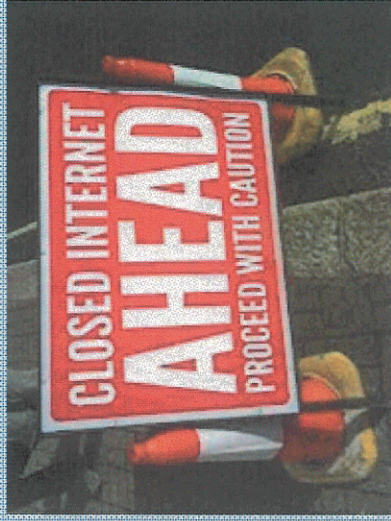
However, governments increasingly intervene in the free flow of information using rationales like cyber-security, privacy, public safety etc....

Trade strategists must keep this balance of openness and stability in mind.

US trade policy does not achieve this balance of openness and stability



- US trade policymaking still too closed and secretive; not consistent with the ethos, transparency and timeliness of the web.



*Many netizens see US policies (especially trade policies) as inconsistently supportive of an open web.
Can you say ACTA?*

Failure to think holistically: Trade Policy Objectives and Strategy

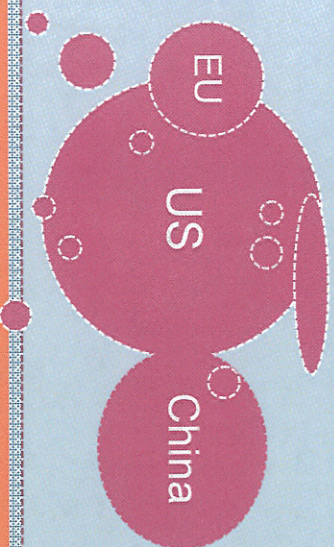
Officials make policies in silos
—fail to think holistically

IPR
Privacy
Free Flow

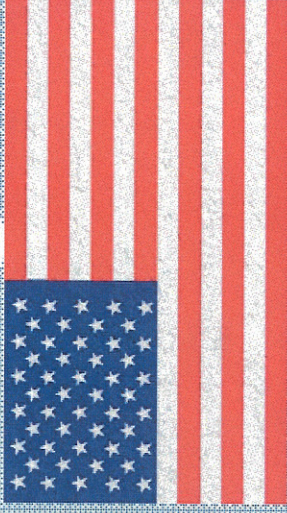
Trade policies and foreign policy goals (Internet openness) are sometimes at odds leading to incoherence.



Over time, US and other countries focus on bilateral/regional agreements could lead to fractured and less open Internet, precluding shared language and norms



EU, US and Canada FTA Discrepancies on Digital Trade



All three countries:

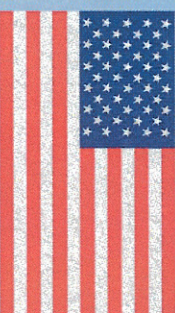
- Use trade agreements to encourage commerce, reduce barriers, and develop shared policies
- Use export controls, trade bans, or targeted sanctions to protect user rights
- Can use WTO to challenge other governments' rules and policies as trade barriers
- However...

EU, US and Canada

FTA Discrepancies on Digital Trade

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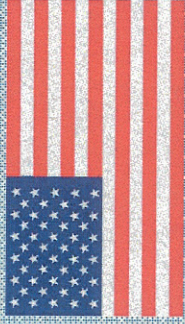
Internet provisions in FTAs



Intellectual property rights provisions	Strong enforcement	Strong enforcement	Encourage cooperation: no binding language
Privacy	Human/consumer right No binding language	Consumer right No binding language	Human/consumer right No binding language
Free Flow		Free flow: Proposed binding language	Cross border data flows: No binding language
Server Location		No restrictions: Proposed binding language	

IPR Provisions

The **US** and **EU** both require ISPs to take down infringing material:



- Main force behind ACTA
- Names and shames countries for inadequate enforcement
- Sues middlemen
- Has not exported due process provisions



- Individual countries decide notice and takedown policies
- Now trying to develop union-wide policy

US focus on IPR protection gives impression that US values monopoly rights and rents for IPR holders more than access to information.

US should examine **alternative strategies**, including:

- Building greater demand for IPR protections
- New models of revenue generation for content providers

Privacy and Trade



So far, trade agreements have only aspirational language on privacy. Language has not been made interoperable among nations and FTAs.



The **US** is behind the curve on linking privacy and trade policy.

Many other countries (EU, Canada, New Zealand, Australia, others) consider privacy a **human and consumer right**, placing it **above** the free flow of information.

The **USTR** has argued that this strategy is a trade barrier.

TPP Free Flow Provisions: Incomplete



Trans-Pacific Partnership could encourage cross-border data flows if signatories agree.



However, to maintain openness and effective Internet governance, it should also include language related to the broader regulatory context:

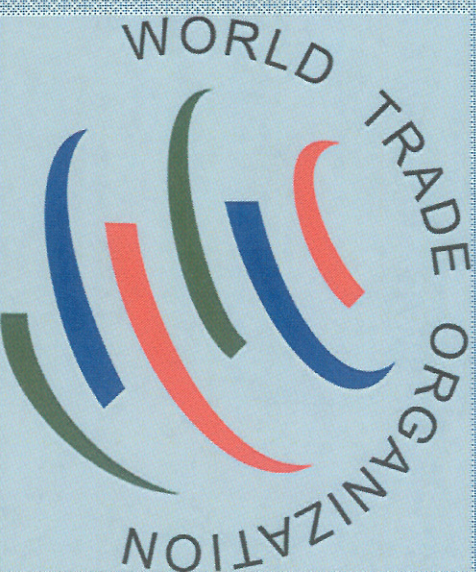
- Free expression
- Fair use
- Privacy
- Due process

National Internet Policies as Barriers to Trade



US and EU have both released reports describing the others' policies on privacy, censorship, server location, and security as barriers to trade.

Trade policymakers should seek clarity by asking WTO Secretariat to analyze if such policies distort trade, or by pursuing a trade dispute.



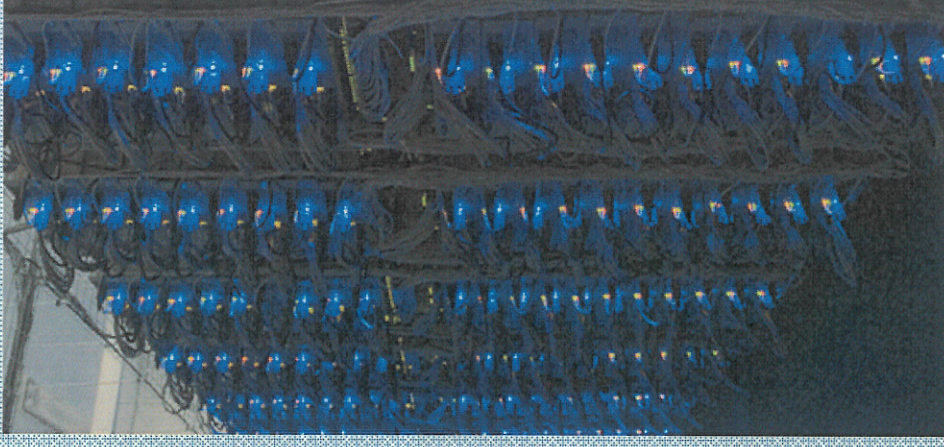
Server Location Policies can Distort Trade



Some countries (Germany, India) are increasingly erecting server location and performance requirements.

They argue these policies are needed to protect national security or privacy.

These policies may distort trade and harm US cloud providers, but **may qualify under WTO exceptions.**



Cyber-security Measures Can Distort Trade

US has threatened retaliation against China over its hacking activity.

But in the absence of **international rules**, this strategy is unlikely to reduce threats.



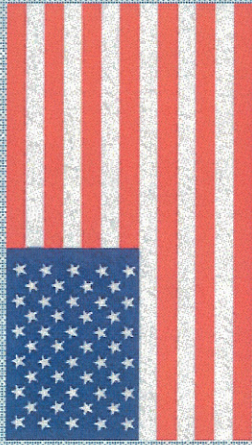
China has pledged to develop rules in light of recent allegations.

Let's hold them to it.

International rules are in China's interest as well (it is being attacked, too).



Trade policies are creating a Patchwork of Internet Governance



- US, EU, and Canada have concluded many bilateral trade agreements with diverse e-commerce language, creating a **patchwork** of Internet governance. Much language aspirational.
- Instead, US and likeminded nations should collaborate on digital trade policies with shared language, compromises re. privacy, cyber-security etc at WTO.
- However, EU/US FTA could lead the way.
- US providers will benefit from a broader, more plurilateral approach.