USCIB

UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

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Special Adviser to the Secretary General
   on the Preparations for the Commemoration of the Seventy-Fifth
   Anniversary of the United Nations
United Nations
New York, New York

Sent via email to: digitalfeedback@un.org

Dear Mr. Hochschild:

Thank you for reaching out to the U.S. Council for International Business (USCIB) for further feedback on the final report of the High-Level Panel on Digital Cooperation (HLPDC).

USCIB members agree with a theme that runs throughout the report that digital technologies and the online environment enabled by them present unprecedented opportunity to raise productivity, foster creativity and innovation, generate economic growth, build trust, and enhance social prosperity. We also are pleased that another pervasive theme recognizes the complexities of the emerging digital ecosystem and, in turn, underscores the importance of informing policy development through multistakeholder processes. It remains our view that the global digital ecosystem benefits when government policymakers work in close cooperation with business and other stakeholders to develop and ensure that the legal, policy, and regulatory approaches adopted and implemented result in a holistic framework.

USCIB reiterates its thanks to the HLPDC for its hard work in developing the final report. In order to further enhance the HLPDC's report and inform the subsequent implementation efforts, USCIB provides the following comments aimed at:
1. Providing business perspectives to help fine-tuning the analysis;
2. Proposing refinements to the proposed the IGF Plus global digital cooperation architecture model;
3. Flagging concerns about certain elements of the Recommendations; and
4. Highlighting relevant work already underway in other intergovernmental organizations that we feel if would be wise to leverage.

We have organized our comments according to the chapters, with the related recommendations.

I.   Introduction: Interdependence in the Digital Age

- The nine values shaping the development of digital cooperation (p. 12)
    - We appreciate that you identified the nine values, drawing upon the extensive response to your call for public contributions. We agree with all of them and believe these nine values should form the basis of the proposed Global Commitment on Digital Cooperation. However, we urge you to consider revising the final value – "harmony" – as follows:

Harmony *and Cohesiveness* – The use by governments and businesses of digital technologies in ways that earn the trust of peers, partners and people, and that avoid exploiting or exacerbating divides and conflicts and *causing the Internet to fragment.*

- ▪ The italicized revision reflects our view that policies must ensure an open, safe, highly secure, stable, *interoperable, seamless,* and sustainable global Internet to fully realize the economic and social benefits of digital transformation.

II.   Leaving No One Behind

- *Recommendation 1B.* We recommend that a broad, multi-stakeholder alliance, involving the UN, create a platform for sharing digital public goods, engaging talent and pooling data sets, in a manner that respects privacy, in areas related to attaining the SDGs.

   And related text from Chapter 2:
- Harnessing Data and 'Digital Public Goods' for Development (p. 17)
   "==Similarly, the development of== ~~Many types of~~ digital technologies and content – from data to apps, data visualization tools to educational curricula – ==also== could accelerate achievement of the SDGs. ==Development of such tools are== ~~When they are~~ freely and openly available, with minimal restrictions on how they can be distributed, adapted and reused, ==could be supported==. ~~we can think of them as "digital public goods". In economics, a "public good" is something which anyone can use without charge and without preventing others from using it. Digital content and technologies lend themselves to being public goods in this respect."~~ ~~See also --~~ https://digitalpublicgoods.net/public-goods/

   o   We are not comfortable with the report's use of the concepts of "Digital Public Goods" and the creation of a "Digital Commons." In particular, we note that the definition of 'public good' as used in the paper is not how the term is commonly used. Public goods are not items that are used "without charge," but rather goods that are non-rivalrous and non-excludable.
   o   A better way to frame this concept would be to focus on the need for seamless data flows to facilitate achieving the SDGs. It also would be valuable to explore ways to enable responsible sharing of data to further innovation without adversely impacting investments.
   o   We also propose some edits to the above text (highlighted).

      The report also states on page 17, that "Gaps in the data on which algorithms are trained can likewise automate existing patterns of discrimination, as machine learning systems are only as good as the data that is fed to them."

   o   This argument can be made even more explicit, talking about limitations in the data on which algorithms are trained on, rendering non-representative of the population they are acting upon.

      The report goes on to say, "often the discrimination is too subtle to notice, but the real-life consequences can be profound when AI systems are used to make decisions such as who is eligible for home loans or public services such as health care. The harm caused can be complicated to redress. A growing number of initiatives, such as the Institute of Electrical and Electronics Engineers (IEEE)'s Global Initiative on Ethics of Autonomous and Intelligent Systems, are seeking to

define how developers of artificial intelligence should address these and similar problems."

- o To this could be added the need to better define the real-life consequences of AI systems and their decisions/actions. In order to better govern these systems, we need to better define the harms that these systems may cause and want to avoid. Algorithmic accountability should rely on a clear stipulation of harmful or negative effects derived from automated decision-making processes and be based on risk assessment methodologies that define which types of ADM should be subject to more stringent legal requirements.

III.   <u>Individuals, Societies and Digital Technologies</u>

Recommendation 2: We recommend the establishment of regional and global digital help desks to help governments, civil society and the private sector to understand digital issues and develop capacity to steer cooperation related to social and economic impacts of digital technologies.

- We are concerned about the UN attempting to replace the best judgment of private industry, civil society, and local governments who are experts in these issues. The proposed "regional help desks" also sound redundant given existing regional offices of the ITU and other multilateral bodies.

Recommendation 3A: Given that human rights apply fully in the digital world, we urge the UN Secretary-General to institute an agencies-wide review of how existing international human rights accords and standards apply to new and emerging digital technologies.

- In addition to the broad call for a complete UN interagency review on updated guidance related to a digitally interdependent world, we see value in the following:
  - o Working with the OHCHR to ask the Human Rights Committee to update its general comments related to ICCPR articles on privacy.
  - o Ensuring that special procedures, prevention, and peacebuilding-related offices are effectively resourced and fit for purpose in terms of analysis, communication, and swiftness of action in a digital age.
  - o Encouraging the OHCHR technical team, and other relevant UN centers of expertise, to aggressively deploy resources to educate companies and the general public on how fundamental HR instruments can be applied and interpreted in the digital age.

Recommendation 3C: Use of autonomous intelligent systems and Artificial Intelligence

Overall, we would stress that any risk assessment of new and emerging technologies should be based on a benefit-risk analysis. The report tends to stress only the negative without connecting it to the good and positive that such technologies may bring about.

And related text from Chapter 3:

- Human Dignity, Agency and Choice (p. 24)
  - o This section considers how the use of Artificial Intelligence (AI) can free up time for certain activities we find more important. We recommend citing the OECD's report, *[Artificial Intelligence in Society](#)*, as it provides a high-quality and comprehensive

overview of the technical landscape, the economic landscape, AI applications, and public policy considerations.

- o Complementing the above recommendation, we urge a citation of the [OECD Principles on Artificial Intelligence](#), which promote AI that is innovative and trustworthy, promotes sustainable development and inclusive growth, and respects human rights and democratic values. The principles also underscore the importance of holding organizations and individuals who develop, deploy, or operate AI systems accountable for their proper functioning. They were adopted on 22 May by OECD member countries when they approved the **[OECD Council Recommendation on Artificial Intelligence](#)**. Most important, the principles were endorsed by several OECD non-members -- including Argentina, Brazil, Colombia, Costa Rica, Peru and Romania – which is a testament to the applicability of these principles to countries at all stages of economic development.
- o We also urge recognition of the OECD's AI Policy Observatory, which will "combine resources from across the OECD with those of partners from all stakeholder groups to provide multidisciplinary, evidence-based policy analysis on AI and to facilitate dialogue."
- o It also is worth noting the [EU Ethics Guidelines for Trustworthy AI](#) published by the European Commission.

- AI-related Accountability

  The report also states, "the Panel supports, as stated in Recommendation 3C, the emerging global consensus that autonomous intelligent systems be designed so that their decisions can be explained, and humans remain accountable. These systems demand the highest standards of ethics and engineering. They should be used with extreme caution to make decisions affecting people's social or economic opportunities or rights, and individuals should have meaningful opportunity to appeal. Life and death decisions should not be delegated to machines."

  - o Here it is possible to be more nuanced and introduce the caveat that accountability and explainability requirements (amongst others) should not be applicable to every single autonomous decision, but only to the ones exerting a negative and harmful impact. This should be made clearer and, more importantly, it should be made operational through reference to impact assessments that companies should make by taking into consideration factors a, b and c.

- The Right to Privacy (p. 26)

  "There are emerging ideas to make data transactions more explicit and share the value extracted from personal data with the individuals who provide it. These could include business models which give users greater privacy by default: promising examples include the web browser Brave and the search engine DuckDuckGo.137 They could include new legal structures: the UK138 and India139 are among countries exploring the idea of a third-party 'data fiduciary' who users can authorize to manage their personal data on their behalf."

  - o The concept of a "data fiduciary" is not widely understood or supported among UN countries and US business. Until this concept is more fully developed and clarified by

countries and organizations exploring the data fiduciary concept, we do not support the reference in this report.

- Trust and Social Cohesion (p. 26 in the box "How can trust be promoted in the digital age?')

"Accepting oversight from a trusted third-party: for the media, this could be an organization that fact-checks sources; for technology companies, this could be external audits of design, deployment and internal audit processes; for governments, this could be reviews by human rights forums."

  - o In general, AI technologies are still at a developmental stage and, rather than looking at certification or auditing, a better approach would be to focus on guiding a human-centered development of these emerging technologies. This could be done in two ways: (1) by sharing and discussing best practices in the way that AI is being applied across different sectors; and (2) by encouraging multistakeholder and multidisciplinary thinking about the more difficult governance challenges in this area so that companies can operate with sufficient accountability in ways that foster trust and confidence.
  - o Business clearly recognizes the trust gap and is proactively endeavoring to bridge this through development and use of privacy-by-design technologies, among other measures. The report should acknowledge this. The following examples are illustrative:
    - AT&T: AT&T incorporates privacy into the development of new services and capabilities. AT&T's advanced privacy protections in many cases have been reviewed by AT&T Labs and/or by external technical experts such as our Data Advisory Board — a group of leading experts from academia and consulting who collaborate and consult with our internal experts on the implications and risks of emerging technology. They have expertise in re-identification and other key topics, and they help AT&T set privacy-related guardrails that have a scientific and mathematical foundation. See this link about AT&T's customer privacy protections.
    - Amazon: Recognizing that new transparency techniques are needed for a device without a screen, Amazon designed its light ring on top of the Echo device to turn blue to alert the customer that the device is streaming the customer's voice recording to the cloud.

IV.   Mechanisms for Global Digital Cooperation

- Values and Principles (p. 30)
  - o As mentioned above, we agree with the values outlined in Chapter 1 for global digital cooperation, albeit with a recommended revision addressing the need for "cohesion." USCIB also supports the need for operational principles, most of which align with the OECD's AI Principles, which USCIB members helped to shape.
  - o We concur in principle that "values-based cooperation approaches can play a vital role" when the long-term impact of technologies is hard to predict. USCIB also respects the creative thought behind some of the proposals aimed at operationalizing values and principles at each step in the design and development of new technologies.
    - Again, we note that several leading tech companies already are endeavoring to help institutionalize a business culture based on the values in this report. In addition to

the AT&T and Amazon examples cited above, we note Microsoft's AI for Accessibility program, which leverages the power of AI to amplify human capability for the more than one billion people globally with a disability. Plus, Microsoft's AI for Humanitarian Action initiative partners with nonprofit and humanitarian organizations working to support disaster recovery, address the needs of children, protect displaced people, and promote human rights.

▪ In general, however, we feel that the time is not ripe for international agreements or recommendations on values/principles. National efforts need more time to mature before exploring international agreements.

<u>"Internet Governance Forum (IGF) Plus"</u>

In USCIB's earlier submissions, we highlighted the IGF's value as a venue to enable thoughtful discussion and dissemination of best practices for the express purpose of enabling more countries to realize the economic and societal fruits of digital transformation. As a well-established and recognized Internet governance entity convened under UN auspices, we believe the IGF is ripe for transformation into a stronger, well-financed mechanism for global digital cooperation.

We have some concerns about the so-called "IGF Plus" proposal, however. As a starting point, we believe that the proposal (particularly the Policy Incubator, Policy Observatory, and Help Desk) is materially different from the existing IGF so that the name "IGF Plus" is misleading and worthy of reconsideration. Specifically, we note the following:

- *Actionable Outcomes* -- We recognize that some participants believe the IGF falls short of its potential by not providing "actionable outcomes." USCIB members do not hold that view. To the contrary, we remain concerned that shifting the IGF's focus to producing policy outcomes would effectively tie up stakeholders in extensive negotiations about text and greatly limit the focus of the annual event. The NetMundial, for all intents and purposes, was an extended negotiation over non-binding text. An important feature of the current IGF – serving as a venue for the free exchange of ideas and informal relationship-building -- would be greatly diminished.

- *IGF Trust Fund* – Innovations such as the Cooperation Accelerator, Policy Incubator, and Observatory/Help Desk will require resources to be effective and truly transform the IGF. USCIB appreciates that the report states that "all stakeholders" would be encouraged to contribute to the IGF Trust Fund. All business sectors have been affected by the digital transformation of the economy. For example, the agricultural sector, which is using cutting-edge technologies to improve crop yields and realize other efficiencies, has a significant stake in global digital cooperation. Thus, encouraging "business stakeholders" to contribute to the Trust Fund – and not calling out a specific sector – would better serve the objective.

  At the same time, however, we highlight that the IGF Trust Fund has never garnered enough funds to support the existing IGF. Thus, we remain skeptical that – notwithstanding the report's call to *all stakeholders* -- that the Trust Fund will generate enough funds to support the IGF Plus with its additional functions. Other options should be explored. For instance, if accompanied by a commitment to full transparency with respect to budgeting and programming decisions, including regarding meeting site selection and any commitments to and support from host governments, it may be effective to have the United Nations assume responsibility for directly funding the Forum. This would be consistent with the report's

recommendation that recognizes a bigger role for the multistakeholder model in the UN system and proposes moving the IGF Plus to the UN Secretary-General's office.

- *Cooperation Accelerator and Policy Incubator* – USCIB sees the potential of the Cooperation Accelerator and Policy Incubator to retain the brainstorming, sharing of best practices, and other informal aspects that we have come to value from the current IGF. But we have questions about how the incubator would be staffed and how stakeholders would be permitted to join the "policy groups." Further, we are concerned that government stakeholders might question the legitimacy of the Policy Incubator proposing regulations for their adoption. We do not foresee how such bodies would be sufficiently expert or reflective of key stakeholder interests.

- *Observatory and Help Desk* – USCIB understands the practicality underlying these two IGF innovations. We urge active consultation with the OECD as they are being designed because some of the functions proposed -- providing an overview of digital policy issues, identifying emerging issues, and providing data on digital policy – already have been developed or are on track to be developed as part of the [OECD's Going Digital Toolkit](). Rather than replicating the Going Digital Toolkit's functions, the Observatory and Help Desk should, as described in the report, focus on directing requests for help on digital policy to appropriate entities and coordinating activities provided by other organizations. A properly funded Help Desk also could tap the wealth of written information provided by IGF workshop reports, Best Practices Forums, and Connecting the Next Billion recommendations.
  - We would appreciate more clarity about how the Help Desk would "coordinate the capacity development activities provided by other organizations," particularly those unaffiliated with the UN.

V. Recommendations

1. An Inclusive Digital Economy and Society

2. Human and Institutional Capacity
   - With respect to the call for establishing regional and global help desks, we reiterate that such efforts would benefit from leveraging rather than replicating the ambitious effort already underway in developing the OECD's Going Digital Toolkit.

3. Human Rights and Human Agency
   "…..[C]ompanies should consult with governments, civil society, and academia to assess the potential human rights impact of the digital technologies they are developing."
   "….[C]ompanies providing social media services need to do more to prevent the dissemination of hatred and incitement of violence, and companies providing online services and apps used by children need to do more to ensure appropriate design and meaningful data consent."
   "We also emphasize our belief that autonomous intelligent systems should be designed in ways that enable their decisions to be explained and humans to be held to account for their use."
   - We cite the above text to highlight that business not only recognizes the human rights impact of technology innovations, but also has actively sought to address those impacts through various company-specific and coordinated initiatives.

- o For one, representatives of the leading high technology companies played an active role in a special AI Experts Group convened by the OECD to develop the [OECD Principles on Artificial Intelligence](). The principles underscore the importance of holding organizations and individuals who develop, deploy, or operate AI systems accountable for their proper functioning.
- o The leading business producers of digital content actively contributed to the development of the [OECD's 2012 Protection of Children Online Recommendation]() and are involved in current efforts to revise and update that recommendation. These companies also worked closely with U.S. lawmakers on the 1998 Children's Online Privacy Protection Act (COPPA).
- o With respect to the prevention of the online dissemination of hatred and incitement of violence, efforts to address this issue should be informed by a clear understanding of the efforts of tech platforms to take concrete steps to address the abuse of technology to spread terrorist and violent extremist content. [The Global Internet Forum to Counter Terrorism]() (GIFCT) members have committed to ensuring cross-industry efforts are coordinated and robust and plan to invest in and expand the GIFCT.

4. Trust, Security and Stability
   - We would support voluntary commitments from industry to promote norms that are generally consistent with the voluntary norms set forth in the 2015 report of the Group of Governmental Experts (GGE) and other efforts to develop or recognize voluntary norms, such the 2019 GGE process.
     - o USCIB members feel the most effective approach to standards development is to involve the participation of all stakeholders. In particular, we note the U.S. National Telecommunications and Information Administration's (NTIA) multistakeholder work aimed at developing norms/standards on software transparency. The participation of stakeholders from business and the technical community will ensure that such any standards resulting from this work will be both technically and commercially feasible.

5. Global Digital Cooperation
   - USCIB would support marking the UN's 75th anniversary in 2020 with a "Global Commitment for Digital Cooperation," using the nine values outlined in the report as the foundation and identifying the IGF Plus model as the mechanism (see comments above).
   - In the spirit of support for the multistakeholder model, we urge an open consultation process that would enable all stakeholders to comment on the values, principles, understandings and objectives for an improved global digital cooperation architecture prior to their being "enshrined" by the Commitment.
   - We appreciate the "holistic systems" approach proposed, aimed at bringing together government bodies and stakeholders to enable more agile response to issues, including, for example, use of regulatory sandboxes.

Again, USCIB members express our sincere appreciation for being invited to provide comments on the final HLPDC report. In the coming months, we look forward to working with the HLPDC Secretariat to help host technical roundtables aimed at implementing the report recommendations.

Sincerely yours,

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