AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3605
OFFERED BY MR. SMITH OF NEW JERSEY

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Global Online Freedom Act of 2012”.
(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Definitions.
Sec. 4. Severability.

TITLE I—PROMOTION OF GLOBAL INTERNET FREEDOM

Sec. 101. Statement of policy.
Sec. 102. Sense of Congress.
Sec. 103. Annual Country Reports on Human Rights Practices.
Sec. 104. Annual designation of Internet-restricting countries; report.
Sec. 105. Report on trade-related issues or disputes due to government censorship or disruption of the Internet.

TITLE II—CORPORATE TRANSPARENCY AND ACCOUNTABILITY TO PROTECT ONLINE FREEDOM

Sec. 201. Disclosure of human rights due diligence.

TITLE III—EXPORT CONTROLS ON CERTAIN TELECOMMUNICATIONS EQUIPMENT

Sec. 301. Export controls on certain telecommunications equipment.

6 SEC. 2. FINDINGS.

Congress makes the following findings:
(1) The political and economic benefits of the Internet are important to advancing democracy and freedom throughout the world, but the potential benefits of this transformative technology are under attack by authoritarian governments.

(2) A number of repressive foreign governments block, restrict, otherwise control, and monitor the Internet, effectively transforming the Internet into a tool of censorship and surveillance.

(3) A number of United States businesses have enabled repressive regimes to compromise the security of Internet users engaged in peaceful discussion of political, social, and religious issues and severely limit their access to information and communication channels by selling these governments or their agents technology or training.

(4) A number of United States businesses have provided repressive governments with information about Internet users who were the company’s clients or were using the companies’ products, that has led to the arrest and imprisonment of the Internet users.

(5) The actions of a number of United States businesses in cooperating with the efforts of repressive governments to transform the Internet into a
tool of censorship and surveillance have caused
Internet users in the United States and in foreign
countries to lose confidence in the integrity of
United States businesses.

(6) Information and communication technology
companies are to be commended for cooperating with
civil society organizations, academics, and investors
in founding the Global Network Initiative, in order
to provide direction and guidance to the information
and communications technology companies and oth-
ers in protecting the free expression and privacy of
Internet users. Human rights due diligence by com-
panies makes a difference.

(7) The United States Government has a re-
ponsibility to protect freedom of expression on the
Internet, to prevent United States businesses from
directly and materially cooperating in human rights
abuses perpetrated by repressive foreign govern-
ments, and to restore public confidence in the integ-
ritv of United States business.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMIT-
TEES.—The term “appropriate congressional com-
mittees” means—
(A) the Committee on Foreign Affairs and
the Committee on Financial Services of the
House of Representatives; and

(B) the Committee on Foreign Relations
and the Committee on Finance of the Senate.

(2) FOREIGN OFFICIAL.—The term “foreign of-

ficial” means—

(A) any officer or employee of a foreign
government or of any department; and

(B) any person acting in an official capac-

ity for or on behalf of, or acting under color of
law with the knowledge of, any such govern-
ment or such department, agency, state-owned
enterprise, or instrumentality.

(3) INTERNET.—The term “Internet” has the
meaning given the term in section 231(e)(3) of the
Communications Act of 1934 (47 U.S.C. 231(e)(3)).

(4) INTERNET-RESTRICTING COUNTRY.—The
term “Internet-restricting country” means a country
designated by the Secretary of State pursuant to
section 104(a) of this Act.

(5) LEGITIMATE FOREIGN LAW ENFORCEMENT
PURPOSE.—

(A) IN GENERAL.—The term “legitimate
foreign law enforcement purpose” means for the
purpose of enforcement, investigation, or prosecution by a foreign official based on a publicly promulgated law of reasonable specificity that proximately relates to the protection or promotion of the health, safety, or morals of the citizens of the jurisdiction of such official.

(B) Rule of Construction.—For purposes of this Act, the control, suppression, or punishment of peaceful expression of political, religious, or ideological opinion or belief shall not be construed to constitute a legitimate foreign law enforcement purpose. Among expression that should be construed to be protected against control, suppression, or punishment when evaluating a foreign government’s claim of a legitimate foreign law enforcement purpose is expression protected by article 19 of the International Covenant on Civil and Political Rights.

(C) Rule of Construction.—No provision under this Act shall be construed to affect a country’s ability to adopt measures designed to combat infringement of intellectual property.

(6) Substantial Restrictions on Internet Freedom.—The term “substantial restrictions on
“Internet freedom” means actions that restrict or punish the free availability of information via the Internet for reasons other than legitimate foreign law enforcement purposes, including—

(A) deliberately blocking, filtering, or censoring information available via the Internet based on the expression of political, religious, or ideological opinion or belief, including by electronic mail; or

(B) persecuting, prosecuting, or otherwise punishing an individual or group for posting or transmitting peaceful political, religious, or ideological opinion or belief via the Internet, including by electronic mail.

(7) UNITED STATES BUSINESS.—The term “United States business” means—

(A) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship that—

(i) has its principal place of business in the United States; or

(ii) is organized under the laws of a State of the United States or a territory,
possession, or commonwealth of the United States; and


SEC. 4. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected by such invalidation.

TITLE I—PROMOTION OF GLOBAL INTERNET FREEDOM

SEC. 101. STATEMENT OF POLICY.

It shall be the policy of the United States—

(1) to promote as a fundamental component of United States foreign policy the right of every individual to freedom of opinion and expression, including the right to hold opinions, and to seek, receive, and impart information and ideas through any media and regardless of frontiers, without interference;

(2) to use all appropriate instruments of United States influence, including diplomacy, trade policy, and export controls, to support, promote, and
strengthen principles, practices, and values that promote the free flow of information without interference or discrimination, including through the Internet and other electronic media; and

(3) to deter any United States business from cooperating with officials of Internet-restricting countries in effecting the political censorship of online content.

SEC. 102. SENSE OF CONGRESS.

It is the sense of the Congress that—

(1) the President should, through bilateral, and where appropriate, multilateral activities, seek to obtain the agreement of other countries to promote the goals and objectives of this Act and to protect Internet freedom; and

(2) to the extent possible in every country in which they operate, United States businesses should work to—

(A) ensure access to the Web sites of the Voice of America, Radio Free Europe/Radio Liberty, Radio Free Asia, Al-Hurra, Radio Sawa, Radio Farda, Radio Marti, TV Marti, or other United States-supported Web sites and online access to United States Government reports such as the annual Country Reports on
Human Rights Practices, the annual Reports on International Religious Freedom, and the annual Trafficking in Human Persons Reports;

and

(B) promote the security of Internet users and expand their access to information and communication channels by limiting censorship of protected political and religious speech and information.

SEC. 103. ANNUAL COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES.

(a) REPORT RELATING TO ECONOMIC ASSISTANCE.—Section 116 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n) is amended by adding at the end the following new subsection:

“(g)(1) The report required by subsection (d) shall include an assessment of freedom of expression with respect to electronic information in each foreign country. Such assessment shall consist of the following:

“(A) An assessment of the general extent to which Internet access is available to and used by citizens in that country.

“(B) An assessment of the extent to which government authorities in that country attempt to filter, censor, or otherwise block or remove nonviolent ex-
pression of political or religious opinion or belief via
the Internet, including electronic mail, as well as a
description of the means by which such authorities
attempt to block or remove protected speech.

“(C) An assessment of the extent to which gov-
ernment authorities in that country have persecuted,
prosecuted, or otherwise punished an individual or
group for the nonviolent expression of political, reli-
gious, or ideological opinion or belief via the Inter-
net, including electronic mail.

“(D) An assessment of the extent to which gov-
ernment authorities in that country have sought to
collect, request, obtain, or disclose the personally
identifiable information of a person in connection
with that person’s nonviolent expression of political,
religious, or ideological opinion or belief, including
without limitation communication that would be pro-
tected by the International Covenant on Civil and
Political Rights.

“(E) An assessment of the extent to which wire
communications and electronic communications are
illicitly monitored in that country.

“(2) In compiling data and making assessments for
the purposes of paragraph (1), United States diplo-
mission personnel shall consult with human rights organi-
organizations, technology and Internet companies, and other appropriate nongovernmental organizations.

“(3) In this subsection—

“(A) the term ‘electronic communication’ has the meaning given the term in section 2510 of title 18, United State Code;

“(B) the term ‘Internet’ has the meaning given the term in section 231(e)(3) of the Communications Act of 1934 (47 U.S.C. 231(e)(3));

“(C) the term ‘personally identifiable information’ means data in a form that identifies a particular person; and

“(D) the term ‘wire communication’ has the meaning given the term in section 2510 of title 18, United State Code.”.

(b) REPORT RELATING TO SECURITY ASSISTANCE.—

Section 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2304) is amended by adding at the end the following new subsection:

“(j)(1) The report required by subsection (b) shall include an assessment of freedom of expression with respect to electronic information in each foreign country. Such assessment shall consist of the following:
“(A) An assessment of the general extent to which Internet access is available to and used by citizens in that country.

“(B) An assessment of the extent to which government authorities in that country attempt to filter, censor, or otherwise block or remove nonviolent expression of political or religious opinion or belief via the Internet, including electronic mail, as well as a description of the means by which such authorities attempt to block or remove protected speech.

“(C) An assessment of the extent to which government authorities in that country have persecuted, prosecuted, or otherwise punished an individual or group for the peaceful expression of political, religious, or ideological opinion or belief via the Internet, including electronic mail.

“(D) An assessment of the extent to which government authorities in that country have sought to collect, request, obtain, or disclose the personally identifiable information of a person in connection with that person’s communication of ideas, facts, or views where such communication would be protected by the International Covenant on Civil and Political Rights.
“(E) An assessment of the extent to which wire communications and electronic communications are illicitly monitored in that country.

“(2) In compiling data and making assessments for the purposes of paragraph (1), United States diplomatic mission personnel shall consult with human rights organizations, technology and Internet companies, and other appropriate nongovernmental organizations.

“(3) In this subsection—

“(A) the term ‘electronic communication’ has the meaning given the term in section 2510 of title 18, United State Code;

“(B) the term ‘Internet’ has the meaning given the term in section 231(e)(3) of the Communications Act of 1934 (47 U.S.C. 231(e)(3));

“(C) the term ‘personally identifiable information’ means data in a form that identifies a particular person; and

“(D) the term ‘wire communication’ has the meaning given the term in section 2510 of title 18, United State Code.”.

SEC. 104. ANNUAL DESIGNATION OF INTERNET-RESTRICTING COUNTRIES; REPORT.

(a) DESIGNATION.—
(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Secretary of State shall designate Internet-restricting countries for purposes of this Act.

(2) STANDARD.—A foreign country shall be designated as an Internet-restricting country if the Secretary of State, after consultation with the Secretary of Commerce, determines, based on the review of the evidence that the government of the country is directly or indirectly responsible for a systematic pattern of substantial restrictions on Internet freedom during any part of the preceding 1-year period.

(b) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Secretary of State shall transmit to the appropriate congressional committees a report that contains the following:

(A) The name of each foreign country that at the time of the transmission of the report is designated as an Internet-restricting country under subsection (a).

(B) An identification of each government agency and quasi-government organization re-
sponsible for the substantial restrictions on
Internet freedom in each foreign country des-
ignated as an Internet-restricting country under
subsection (a).

(C) A description of efforts by the United
States to counter the substantial restrictions on
Internet freedom referred to in subparagraph
(B), including a description and details of pro-
grams funded under any other provision of law
with the purpose of promoting Internet free-
dom.

(D) A description of the evidence used by
the Secretary of State to make the determina-
tions under subsection (a)(2).

(2) FORM.—The information required by para-
graph (1)(C) may be provided in a classified form if
necessary.

(3) PUBLIC AVAILABILITY.—All unclassified
portions of the report shall be made publicly avail-
able on the Internet Web site of the Department of
State.
SEC. 105. REPORT ON TRADE-RELATED ISSUES OR DISPUTES DUE TO GOVERNMENT CENSORSHIP OR DISRUPTION OF THE INTERNET.

(a) Report.—Not later than 90 days after the date of the enactment of this Act, the United States Trade Representative, in consultation with the Secretary of State and the Secretary of Commerce, shall transmit to the appropriate congressional committees a report on—

(1) any trade-related issues or disputes that arise due to government censorship or disruption of the Internet among United States trade partners; and

(2) efforts by the United States Government to address the issues or disputes described in paragraph (1) either bilaterally or multilaterally.

(b) Sense of Congress.—It is the sense of Congress that the United States should pursue trade policies that expand the information economy by—

(1) ensuring the free flow of information across the entire global network;

(2) promoting stronger international transparency rules; and

(3) ensuring fair and equal treatment of online services regardless of country of origin.
TITLE II—CORPORATE TRANSPARENCY AND ACCOUNTABILITY TO PROTECT ONLINE FREEDOM

SEC. 201. DISCLOSURE OF HUMAN RIGHTS DUE DILIGENCE.

(a) In General.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(r) Disclosure of Human Rights Due Diligence.—

“(1) Disclosure.—Except as provided in paragraph (3), each Internet communications service company that operates in an Internet-restricting country shall include in the annual report of the company information relating to the company, any subsidiary of the company, and any entity under the control of either of such companies, relating to the following:

“(A) Human rights due diligence.—

Company policies applicable to the company’s internal operations that address human rights due diligence through a statement of policy that is consistent with applicable provisions of the Guidelines for Multinational Enterprises issued
by the Organization for Economic Co-operation
and Development, and whether such policy—

“(i) is approved at the most senior
level of the company;

“(ii) explicitly states the company’s
expectations of personnel, business part-
ners, and other parties under the control
of the company, products, or services;

“(iii) is publicly available and commu-
nicated internally and externally to all per-
sonnel, business partners, other relevant
partners, customers, and users;

“(iv) is reflected in operational poli-
cies and procedures necessary to embed it
throughout the company; and

“(v) is independently assessed by a
third party to demonstrate compliance in
practice, which should include—

“(I) whether the assessment was
conducted under the supervision of
any third party organization or multi-
stakeholder initiative;

“(II) a description of the assess-
ment process;
“(III) a description of measures taken to ensure the assessor’s independence; and

“(IV) inclusion of the assessor’s public report.

“(B) NON-COMPLIANCE.—If the company’s policy does not comply with any of the requirements of clauses (i) through (iv) of subparagraph (A), an explanation of why the company’s policy does not meet each such requirement.

“(C) POLICIES PERTAINING TO DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION.—If the company collects or obtains personally identifiable information, the contents of wire communications or electronic communications in electronic storage, or the contents of wire communications or electronic communications in a remote computing service on the Internet, a summary of any internal policies or procedures of the company that set out how the company will assess and respond to requests by the governments of Internet-restricting countries for disclosure of such personally identifiable information or communications.
“(D) Restrictions on Internet Search Engines and Internet Content Hosting Services.—If the company creates, provides, or hosts an Internet search engine or an Internet content hosting service, all steps taken to provide users and customers with clear, prominent, and timely notice when access to specific content has been removed or blocked at the request of an Internet-restricting country.

“(2) Availability of Information.—The Commission shall make all information reported by an issuer pursuant to this subsection available online to the public.

“(3) Safe Harbor.—

“(A) In General.—An Internet communications service company that operates in an Internet-restricting country shall not be required to include in the annual report of the company information described in paragraph (1) if the company includes in the annual report of the company a certification of the Global Network Initiative or a multi-stakeholder initiative described in subparagraph (B) that the company participates in good standing in the
Global Network Initiative or the multi-stakeholder initiative (as the case may be).

“(B) Multi-stakeholder initiative.—
A multi-stakeholder initiative referred to in subparagraph (A) is an initiative that—

“(i) is composed of civil society organizations, including human rights organizations and Internet communications service companies;

“(ii) promotes the rule of law and the adoption of laws, policies, and practices that protect, respect, and fulfill freedom of expression and privacy; and

“(iii) requires each company participating in the initiative to undergo assessments by an independent third party described in subparagraph (C) of the company’s compliance with the standards described in clause (ii).

“(C) Independent third party.—An independent third party referred to in subparagraph (B)(iii) is an entity accredited by the multi-stakeholder initiative to conduct assessments based on criteria that include—
“(i) general expertise in legal and human rights standards; and

“(ii) specific expertise in global business processes relating to information and communication technology, including operations, product development cycles, market segments and industry relationships, information technology privacy, safety, and security standards, data retention systems, and database forensics.

“(4) DEFINITIONS.—In this subsection:

“(A) ELECTRONIC COMMUNICATION AND OTHER TITLE 18 DEFINITIONS.—The terms ‘electronic communication’, ‘electronic communication service’, ‘electronic storage’, ‘wire communication’, and ‘contents’ have the meanings given such terms in section 2510 of title 18, United States Code.

“(B) INTERNET.—The term ‘Internet’ has the meaning given the term in section 231(e)(3) of the Communications Act of 1934 (47 U.S.C. 231(e)(3)).

“(C) INTERNET COMMUNICATIONS SERVICE COMPANY.—The term ‘Internet communications service company’ means an issuer that—
“(i) is required to file an annual report with the Commission; and

“(ii)(I) provides electronic communication services or remote computing services, but does not include—

“(aa) businesses that provide such services as an ancillary service to the provision of lodging, transportation, or food services; or

“(bb) activities conducted by a financial institution (as such term is defined in section 5312 of title 31, United States Code) that are financial in nature, even if such activities are conducted using the Internet; or

“(II) is a domain name registrar, domain name registry, or other domain name registration authority.

“(D) INTERNET CONTENT HOSTING SERVICE.—The term ‘Internet content hosting service’ means a service that—

“(i) stores, through electromagnetic or other means, electronic data, such as the content of Web pages, electronic mail, doc-
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documents, images, audio and video files, online discussion boards, or Web logs; and

“(ii) makes such data available via the Internet.

“(E) INTERNET-RESTRICTING COUNTRY.—The term ‘Internet-restricting country’ has the meaning given such term under section 3 of the Global Online Freedom Act of 2012.

“(F) INTERNET SEARCH ENGINE.—The term ‘Internet search engine’ means a service made available via the Internet that, on the basis of a query consisting of terms, concepts, questions, or other data input by a user, searches information available on the Internet and returns to the user a link to or other means of locating, viewing, or downloading information or data available on the Internet relating to such query.

“(G) PERSONALLY IDENTIFIABLE INFORMATION.—The term ‘personally identifiable information’ means data in a form that identifies a particular person.

“(H) REMOTE COMPUTING SERVICE.—The term ‘remote computing service’ has the mean-
ing given such term under section 2711(2) of title 18, United States Code.”.

(b) Rulemaking.—Not later than the end of the 270-day period beginning on the date of the enactment of this Act, the Securities and Exchange Commission shall issue final rules to carry out section 13(r) of the Securities and Exchange Act of 1934, as added by subsection (a).

**TITLE III—EXPORT CONTROLS ON CERTAIN TELECOMMUNICATIONS EQUIPMENT**

**SEC. 301. EXPORT CONTROLS ON CERTAIN TELECOMMUNICATIONS EQUIPMENT.**

(a) In General.—Section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2405), as continued in effect under the International Emergency Economic Powers Act, is amended by adding at the end the following:

“(t) Certain Telecommunications Equipment.—

“(1) In General.—The Secretary, in consultation with the Secretary of State, the Secretary of Defense, and the heads of other appropriate Federal departments and agencies, shall establish and maintain, as part of the list maintained under this section, a list of goods and technology that would serve
the primary purpose of assisting, or be specifically configured to assist, a foreign government in acquiring the capability to carry out censorship, surveillance, or any other similar or related activity through means of telecommunications, including the Internet, the prohibition or licensing of which would be effective in barring acquisition or enhancement of such capability.

“(2) INTERNET-RESTRICTING COUNTRIES.—Notwithstanding any other provision of law, the Secretary shall prohibit the export of goods or technology on the list established under paragraph (1) to a government end user in any Internet-restricting country.

“(3) WAIVER.—The President may waive the application of paragraph (2) with respect to export of goods or technology on the list established under paragraph (1) on a case-by-case basis if the President determines and certifies to Congress that it is in the national interests of the United States to do so.

“(4) DEFINITIONS.—In this subsection—

“(A) the term ‘Internet’ has the meaning given the term in section 231(e)(3) of the Communications Act of 1934 (47 U.S.C. 231(e)(3));
“(B) the term ‘Internet-restricting country’ means a country designated by the Secretary of State pursuant to section 104(a) of the Global Online Freedom Act of 2012;

“(C) a ‘government end user’ in a country—

“(i) is an end user that is a government of that country, or of a political subdivision of that country, or is an agency or instrumentality of such a government; and

“(ii) includes a telecommunications or Internet service provider that is wholly or partially owned by a government of that country; and

“(D) an ‘agency or instrumentality’ of a government is an ‘agency or instrumentality of a foreign state’, as defined in section 1603 of title 28, United States Code.”.

(b) Regulations.—

(1) In general.—Not later than 1 year after the date of the enactment of this Act, the President shall revise the Export Administration Regulations and any other regulations necessary to carry out the amendment made by subsection (a).
(2) Export Administration Regulations.—

In this subsection, the term “Export Administration Regulations” means the Export Administration Regulations as maintained and amended under the authority of the International Emergency Economic Powers Act and codified, as of the date of the enactment of this Act, in subchapter C of chapter VII of title 15, Code of Federal Regulations.

(e) Effective Date.—Section 6(t) of the Export Administration Act of 1979, as added by subsection (a), shall take effect on the date of the enactment of this Act and shall apply with respect to the export of goods or technology on the list established under paragraph (1) of such section on or after 1 year after the date of the enactment of this Act.