Outcomes Report

Topics in Law & Technology (TILT) Flagship Conference
"Trust and Trustworthiness in the Tech Sector"

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**For Sherwin. Thank you for sharing your wisdom with us. You will be missed.
Sherwin Siy, 1980-2021**

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Introduction and Summary

On February 10-12, 2021, the Silicon Flatirons Center for Law, Technology, and Entrepreneurship at University of Colorado Law School virtually convened its annual flagship conference, Topics in Law and Technology (TILT). The inaugural event hosted over 50 leaders in government, business, academia, and civil society, as well as students from the University of Colorado, including the University of Colorado Law School. Experts gathered to discuss trust and trustworthiness; how these concepts have been approached in other sectors, and how those lessons might be applied in the tech sector to improve policies, practices, and communications.

Speaker Lineup

Keynote Interview
Angelique Carson – Director of Content, Osano
Dr. Nicol Turner Lee – Director, Center for Technology Innovation, Brookings Institute

The Role of Law and Ethics
Casey Fiesler – Fellow, Telecom & Platforms Initiative, Silicon Flatirons; Assistant Professor, Information Science, University of Colorado Boulder
Jasmine McNealy – Associate Professor and Associate Director, Marian B. Brechner First Amendment Project, University of Florida
Duane Pozza – Partner, Wiley Rein LLP
Katie Shilton – Associate Professor, University of Maryland College Park
Martin Tisné – Managing Director, Luminate

Dark Patterns: How Design Impacts Policy
Caroline Sinders – Research Fellow, Weizenbaum Institute, Founder of Convocation Design + Research

The Modern Dilemma: Dis-, Mis-, And Mal-Information
Naima Green-Riley – Non-resident Fellow, Digital Forensic Research Lab, Atlantic Council

Measuring Trust and Public Sentiment
Sherwin Siy – Lead Public Policy Manager, Wikimedia Foundation

Daniel Castro – Vice President, Information Technology & Innovation Foundation
Catherine Bannister – Tech Savvy/Ethical Tech Leader, Deloitte LLP
Shepherd Pittman – Founding Partner, Storyline Strategies
Ellery Roberts Biddle – Editorial Director, Ranking Digital Rights
Cobun Zweifel-Keegan – Deputy Director, Privacy Initiatives, BBB National Programs

Deep Fakes in the Courtroom
Riana Pfefferkorn – Research Scholar, Stanford Internet Observatory

Keynote Address
Maura Corbett – Founder & CEO, Glen Echo Group

Building Trustworthy Hardware: Devices and Systems
Harry Surden – Associate Professor, University of Colorado Law School; Artificial Intelligence Initiative Director, Silicon Flatirons
Jennifer Roberts – Deputy Director, DARPA Information Innovation Office
Brian Scriber – Distinguished Technologist & Vice President, Security Technologies, CableLabs
Kim Wachtel – Vice President of Growth Engineering & User Exerpience, JumpCloud

Jessica Wilkerson – Cyber Policy Advisor, FDA Center for Devices & Radiological Health

Trust in Data and Data Governance
Amie Stepanovich – Executive Director, Silicon Flatirons
Erika Brown Lee – Senior Vice President & Assistant General Counsel, Global Privacy and Cyber Advocacy and Privacy and Data Protection, Mastercard
Sylvie Delacroix – Professor in Law and Ethics, University of Birmingham
Sarah Holland – Public Policy Manager, Google
Chris Lewis – President and CEO, Public Knowledge
Hugo Teufel – Chief Privacy Officer, Lumen Technologies

Keynote Interview
Kristelia García – Associate Professor, University of Colorado Law School; Intellectual Property Initiative Director, Silicon Flatirons
Andy Sturt – PhD Student, Journalism, University of Colorado Boulder

Debate: Today's Distrust in Big Tech is Healthy
Pierre de Vries – Spectrum Policy Initiative Co-Director and Distinguished Advisor, Silicon Flatirons
Paul Ohm – Professor of Law; Associate Dean for Academic Affairs; Chief Data Officer, Georgetown University Law Center
Deven Desai – Associate Professor, Area Coordinator for Law and Ethics, Georgia Institute of Technology
Jane Bambauer – Professor of Law, University of Arizona
Siona Listokin – Associate Professor, George Mason University

Keynote Panel
Jack Gillum – Senior Reporter, ProPublica

Commissioner Geoffrey Starks – U.S. Federal Communications Commission
Honorable Phil Weiser – Colorado Attorney General
Commissioner Christine S. Wilson – U.S. Federal Trade Commission

Innovating for Trust
Brad Bernthal – Associate Professor, University of Colorado Law School; Entrepreneurship Initiative Director, Silicon Flatirons
Jeremy Grant – Managing Director, Venable LLP
Frank Torres – Director of Public Policy, Office of Responsible AI, Microsoft Corporation
Danielle Varda – CEO, Visible Network Labs; Associate Professor, University of Colorado Denver School of Public Affairs
Molly Wilson – Senior Researcher and Designer, Simply Secure

Legislative and Regulatory Priorities to Codify Trust
Blake E. Reid – Clinical Professor, University of Colorado Law School; Telecom & Platform Initiative Director, Silicon Flatirons
Jesse Blumenthal – Vice President, Technology & Innovation, Stand Together and the Charles Koch Institute
Dirk Hensel – Head of Communications & Executive Office, German Federal Commissioner for Data Protection & Freedom of Information
Marianela López-Galdos – Global Competition & Regulatory Counsel, CCIA
Gabrielle Rejouis – Senior Policy Manager, Color of Change
Jeff Turner – Partner, Squire Patton Boggs (US) LLP

Keynote Address
Afua Bruce – Chief Program Officer, DataKind

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The first day of the conference provided insight into the concepts of trust and trustworthiness, focusing on how trust is thought about and measured, particularly within the tech sector. Specifically, discussions developed around the definition of trust, to the extent one is available. In the first panel, Casey Fiesler put the question into context by explaining the many ways to think about trust, including "trust of individuals and of communities, trust in a technology to work properly, trust in a technology to not be biased, trust in a platform or a company to protect your data, or for researchers to use your data properly." Later in the day, Shepherd Pittman added even more detail, explaining how "trust is an enormous idea; it contains all sorts of constituent concepts and behaviors and conversations." Daniel Castro added, "there was a 2011 study that reviewed 171 papers over 48 years and found over 129 different measures of trust." Notably, many speakers across the day raised questions about the intersection between the tech sector and marginalized communities.

With this framework in place, day two built upon these conversations but took a more direct look at practical applications and common practices built around increasing trust. Maura Corbett discussed the story behind trust and explained, "[t]rust is an important enough thing that lots of high-priced consultancies all over the world track it and analyze it and try to assess its value, even though it's usually a moving target, and often it's like trying to hold water." Speakers examined how trust fits into everyday conversations at businesses and institutions and coalesced around its general importance. As Hugo Teufel explained, "the global information society and global information economy require trust to succeed." However, during a lively debate on the question of if today's mistrust in big tech is healthy, Siona Listokin, arguing in opposition to the premise, observed, "distrust makes us myopic," and questioned if it is a lack of trust and not a more emotionally detached engagement on the issues that will ultimately lead to better outcomes.

Day three put everything together in order to look ahead at potential responses and actions to increase trust as well as to mitigate potential problems after trust is damaged or lost. The final day kicked off with a panel of top state and federal regulators reflecting on their own roles within the ecosystem. U.S. Federal Trade Commissioner Christine S. Wilson reflected on lessons she learned from former Federal Trade Commision (FTC) Chairman Tim Muris, whom she worked for as chief of staff during his tenure; "he always noted it's important to underscore that enforcers and regulators are referees, not star players."

The conference was rounded out by a duo of panels considering both technical and innovative solutions around building trust as well as legislative and regulatory approaches. Afua Bruce laid bare exactly how difficult it will be to arrive at a solution, "trust and trustworthiness are wicked problems," she explained, adding, "they are problems that have incomplete and contradictory information and have a lot of stakeholders you have to manage."

The thought-provoking conversations surfaced several key themes that were interwoven across the three-day event, such as:

1. Trust flows from a relationship and is strengthened when individuals are empowered but weakened by concentrations of power and a lack of inclusive decision-making.

2. Certain behaviors inherently contradict trust and undermine the creation of a trustworthy ecosystem.
3. Ethics policies can help drive trust but can't stand alone: checks and balances may increase trust.
4. Communication is crucial, and affects perception, which can distort trust and trustworthiness.
5. Proper design and structure make tech and policy usable, understandable, and therefore more trustworthy for consumers.

Speakers referenced ideas and discussions from prior days to tie later discussions back to earlier topics, creating a thought-provoking dialogue that spread across all three days.

Ideas, Questions, and Solutions

Theme 1: Trust flows from a relationship and is strengthened when individuals are empowered but weakened by concentrations of power and a lack of inclusive decision-making

Discussions around trust and power imbalances bookended the conference, with discussants noting how trust is most important for those in positions of vulnerability. In the first panel, Jasmine McNealy noted "trust is about a relationship," and warned that "concentrations of power are really valid reasons for people not to trust." In her closing keynote presentation, Afua Bruce posited that it is "critically important" when thinking about how to build trustworthiness to consider "how do we do it in a systematic way so that it's not just a single person, it's not just a single group, but it's actually built back into a system so that that change, that increase in trust and trustworthiness, continues on past specific individuals, past a specific moment in time."

The concept of trust is inherent to relationships, and mistrust is more likely to thrive in situations where a direct relationship doesn't exist or hasn't been properly fostered. As Cobun Zweifel-Keegan explained, "trust can't exist in a vacuum … the words and actions of a company certainly play a role." These dynamics become particularly important in context, where, as Paul Ohm reminds us, technology has helped fuel racism, racial inequities, economic inequalities, and other forms of subordination. Bad market conditions may make trust deficits seem like the cost of business to some organizations. As Jeremy Grant explained, "I think all too often you see companies come to market, and there are perverse incentives for them to do some things that all of us might find a little bit despicable, but that's how you quickly build market share. And then you come to the lawyers and regulators and figure out how to fix it later … that's a pretty depressing cycle, but it is one that's pretty common."

Finding ways to break that cycle may be difficult. Chris Lewis reminded people to think of "the different dynamics at play with data and its use; the power dynamics, the market dynamics." In considering these relationships, Katie Shilton specifically identified a need for a "cultural and regulatory change" to incentivize the development of better community relationships, which may increase trust. Also from the external perspective, Sylvie Delacroix called for "bottom-up

empowerment structures" while looking internally, Dr. Nicol Turner Lee endorsed "interdisciplinary, multicultural work teams."

Trust has a lot to do with community. As Sylvie Delacroix put it, "most data pertains to many people, so we need to have structures that empower groups, not just individuals." However, for many, the relationship necessary to foster trust can be very personal. Molly Wilson provided an example by explaining "the things that I trust are very different from the things that my dad trusts, the technical tools … and even within certain tools, like the parts of Facebook that I trust and the parts of Facebook that he trusts are probably very, very different." Andy Sturt called back to his own authenticity as a reason people connected with him and his social media accounts, a lesson that could be applied upwardly. Danielle Varda encouraged organizations to listen and "actively show consumers that their concerns are being taken seriously and change is happening."

Theme 2: Certain behaviors inherently contradict trust and undermine the creation of a trustworthy ecosystem

Throughout the conference, specific practices were named and discussed as being antithetical to the development of trust. For instance, on day one, Caroline Sinders, Naima Green-Riley, and Riana Pfefferkorn presented on dark patterns, mis-, dis-, and mal-information, and deepfakes (respectively), three practices that cut at the heart of trust. Each presentation touched on the fact that these are not new developments – in fact, Pfefferkorn used a photo from the days of Abraham Lincoln to show an early example of a deepfake. Additional practices were highlighted that also negatively impacted trust, such as Hugo Tuefel's observation that distrust has historically stemmed from the "ways tech companies have used data."

Just as the practices that contradict and undermine trust are not new, neither is the industry response to the loss of trust caused by implementing any of these practices or other incidents that degrade trust. As Corbett put it, "out of terrible times, industries and even revolutions are born. They grow and they mature. And we've seen this movie before." For organizations looking to do the right thing, Catherine Bannister asked, "how do you infuse and embed an ethical tech mindset so that you can elevate trust, both internally and externally?" and provided a three-part answer: "you have to look at your technology, you have to look at your processes, and you have to look at your people."

In the world of digital security, avoiding pitfalls may even be particularly difficult. As Brian Scriber put it, "it's kind of the gambler's fallacy with security; there is always an opportunity for that device to do something wrong." As Jessica Wilkerson observed, "there's other considerations" that must come into the analysis in heavily regulated industries, which can compound difficulty. This leads many security professionals to think about "zero trust" environments, as Kim Wachtel describes them, where zero trust "is verifying the person is who they say they are, the device is secure, and the network and location make sense and are secure for that device."

Theme 3: Ethics policies can help drive trust but can't stand alone: checks and balances may increase trust

Corbett observed in her keynote that "(t)rust in business still relies heavily on ethical behavior." She pointed to the Edelman Index to explain that "people grant their trust based on two distinct attributes: competence and ethical behavior" and argued that people didn't seem to find "that any of our central institutions – not government, business, media, or NGOs – were very competent or ethical." Many speakers theorized on the different ways we got to this place. "There is an entire industry now of entities that wish to propagate false information, because it's lucrative," explained Naima Green-Riley.

While the topic of ethical policies and guidelines came up frequently, speakers tended to focus on the necessity of legislative and regulatory checks and balances to ensure there are minimal unattenuated consequences with the development of systems and processes. As Turner Lee stated, "we will see much more deception than we will see proactive activity to remedy these harms without some type of intervention." Frank Torres put it another way, indicating "regulation is going to be needed … if we want to see trust. It'll make sure that there's compliance enforcement and kind of clarify what the rules are." For Attorney General Phil Weiser, it's not only about the existence of laws but how they are enforced. Weiser stated, "the concept of the rule of law is that we have legal rules that themselves are fair and applied fairly and transparently." Erika Brown Lee summarized, "as you're embedding privacy into products and services or activities … that also validates the [Fair Information Practices (FIPs)] or whatever legal construct applies. And then that's also what you're using to inform the conversations or consultations that are put out by regulators."

In determining regulatory priorities, risk was a common north star. "In thinking about regulatory or other approaches to encouraging trustworthiness and good outcomes in tech, think about risk and identify the things that appear to be high risks," encouraged Duane Pozza. Jessica Wilkerson also referenced risk, "whether it's a cybersecurity component, it's a hardware component, whatever it is, it has to take into account the cybersecurity risks that could be faced and potentially mitigate for them."

Challenges around the use and regulation of data were specifically referenced. Martin Tisné, challenged others to think about "the degree to which the collective nature of data means that people are as impacted by other people's data than by data about them." However, he also cautioned "not to over focus on the data only and to look at this as a data protection problem." When it comes to regulations, conference speakers agreed that nothing is black and white, and of course there is a lot that is left in the details. "As we talk about legislation or the use of data, it's not all the same," explained Sarah Holland.

Above all, a common thread in this line of discussion focused on transparency. Consumers need to know the existence of, training, and purpose of algorithms and company processes in order to create trust. However, as Tisné explained, "transparency is important [but] means nothing if people can't do anything about it."

Daniel Castro offered a contrasting view to the call for regulation: "The relationship between regulation and trust, and the relationship between regulation and adoption, is not this kind of

purely linear relationship that I think sometimes policymakers have oversimplified it to be. So, more regulation doesn't necessarily lead to more trust, and more regulation doesn't necessarily lead to more adoption."

Theme 4: Communication is crucial, and affects perception, which can distort trust and trustworthiness

For organizations looking to encourage and promote themselves as trustworthy, communicating openly and honestly to the people and communities they impact was a common call to action across the conference. "In a lot of cases with technology, there's this whole layer of stuff happening that the average user really doesn't understand," explained Ellery Roberts Biddle. Corbett provided some narration, "your brand tells your customers what you stand for and what they should expect from you; as you deliver on that, you begin to build their trust, if you do or if it appears that you do something to break that trust, you are in trouble." Sherwin Siy broke it into two distinct stages, "first, you need to ensure that the organization that is to be trusted is worthy of that trust. And then you have to make sure that trustworthiness is communicated to the people who are doing the trusting."

The audience for a given communication was also particularly important, both in terms of cultural indicators as well as in regard to the larger significance of ensuring inclusive decision-making. Shepherd Pittman described how a person in Germany may come at a question of trust in companies "starting from a standpoint of skepticism" while another person in Tokyo, in a response to a survey, "typically assume[d] companies are acting in good faith." When thinking through how to make products more trustworthy, McNealy provided, "there's a fallback in saying, if we just allow more people in the room, or allow more people from marginalized or vulnerable communities in the room, that would change anything. That's absolutely rubbish." Instead, she encouraged organizations to remove limiting factors for participation in processes and provide pathways to effectuate meaningful changes.

The very title of the conference referenced the distinction between trust and trustworthiness. Within the space between the two concepts, several speakers referenced that organizations could potentially use communications in an attempt to increase trust without actually taking steps to improve their trustworthiness. "When it comes to trust, perception is reality," asserted Corbett. This "trust gap" may be exacerbated by a lack of individual understanding about the way tech operates. Commissioner Wilson explained, "it's just literally impossible for consumers to quote 'control' where their data goes in a knowing way, and we lack the transparency to understand, given the inability to read all of those privacy policies, how our information is being collected, used, shared, monetized, sold."

Theme 5: Proper design and structure make tech and policy usable, understandable, and therefore more trustworthy for consumers

Sinders was direct in asserting, "today, across many industries, companies are using digital design practices that harm consumers, erode privacy, and harm competition." Factors, assumptions, and norms factored into the development of models starts from the ideation and design phases. Watchel noted the importance of "understanding that expectation that the

humans who are interacting with the device have." "Just technically trying to figure out who's who and what's what can be much harder online than it is in person," explained Grant. Zweifel-Keegan tied it together, "trust is not the product here, but trust emerges from those systems when they are appropriately designed."

Because of the stakes involved with cybersecurity, risky design decisions are perhaps even more dangerous. As Jennifer Roberts explained, "our sense of trustworthiness really needs to expand, and our technology for making sure that systems perform in the way we expect needs to expand as well." "If you are aware of problems in your device, you should be updating that," Scriber plainly asserted.

Privacy is another area where design is considered. As Erika Brown Lee explained, "I think it's just as important to have buy-in from internal stakeholders with respect to how the data is used. And so, from a privacy program, what that means is essentially privacy by design … working through these principles into the products and services and activities of the companies, making sure that we're keeping those foundational beliefs always at the forefront."

Sinders discussed the important impacts of design and provided that "design can be an equalizing action that distills code and policy into understandable interfaces." However, responsibilities need to shift from individuals to organizations. As Molly Wilson indicated, "there is no law of nature that says people have to be treated like they have to be tricked." Ultimately, several speakers agreed that choices that make technology usable and understandable will best empower individuals to take actions that are best for them.

Conclusion

Questions around trust and trustworthiness will pervade the technology sector for years to come. Hopefully, conversations like the ones driven by the conference will continue to pull out common threads and themes that will help researchers, academics, practitioners, and experts consider how to act regarding these issues and ways that they can best serve their communities, both internal and those they impact.

This report does not cover all the themes or topics covered during the conference. For instance, several speakers questioned the relevance of trust as a topic for consideration at all, either because it distracted from questions of innovation or since a lack of choice made an organization's trustworthiness less relevant in an individual's decision to interact with it.

The transcripts and videos from the event are available online or upon request. Silicon Flatirons would like to thank our staff, affiliates, speakers, supporters, students, community members, and everyone who attended and participated in this inaugural event. It could not have been possible without you.

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Our Mission

Silicon Flatirons' mission is to elevate the debate surrounding technology policy issues; support and enable entrepreneurship in the technology community; and inspire, prepare, and place students in these important areas.

About the Privacy Initiative

Information privacy has emerged as one of the most vital, contested, and important areas of debate in technology law and policy. Silicon Flatirons regularly hosts events focused on information privacy and cybersecurity and trains students to become the next generation of lawyers, advisors, and policymakers in the field.

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- Brad Bernthal – University of Colorado Law School, Associate Professor; Silicon Flatirons Entrepreneurship Initiative Director
- Eileen Brown – Program Coordinator
- Kristelia García – University of Colorado Law School, Associate Professor; Silicon Flatirons, Intellectual Property Initiative Director
- Dale Hatfield – University of Colorado, Adjunct Professor; Silicon Flatirons, Spectrum
- Policy Initiative Co-director and Distinguished Advisor
- Margot Kaminski – University of Colorado Law School, Associate Professor; Silicon Flatirons, Privacy Initiative Director
- Delaney Keating – Startup Colorado, Managing Director
- Katherine Koebel – Engagement Associate
- Nate Mariotti – Managing Director
- Blake E. Reid – University of Colorado Law School, Clinical Professor; Silicon Flatirons, Telecom & Platforms Initiative Director
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