



Transcript

2023 Flagship Conference The Internet's Midlife Crisis

February 5–6, 2023

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Day 1 – February 5, 2023

Keynote: Senator Michael Bennet

<https://youtu.be/7hFO72BDODU>

[00:00:01.20] SPEAKER 1: So for the professionals in the room, one of the most important Silicon Flatirons traditions, and one I hope you'll all take part in today, is engaging with our students sharing your wisdom, and your work, and helping our students network, and find their way into shared communities. So please do that at the reception in breaks.

[00:00:20.01] And of course, under the longstanding Phil Weiser rule, the first question in each Q&A will go to a student. With that, I'm happy to turn things over to Colorado Dean Lolita Buckner Inniss for some opening remarks. Ms. Inniss.

[00:00:37.70] LOLITA BUCKNER INNIS: Thank you so very much. Can everybody hear me? Excellent. OK. Well, first of all, welcome, welcome, welcome this Sunday morning. It is a pleasure to see you all especially on a day when perhaps some of us might still be snuggled up in front of a fireplace.

[00:00:53.87] It is really, really my pleasure, and honor to be here to welcome you all to Silicon Flatirons Center, and to the University of Colorado Law School. As many of you know, Silicon Flatirons was founded in 1999 by Phil Weiser, a former professor, a former dean at the University of Colorado Law School, and now our Colorado Attorney General.

[00:01:19.55] For over two decades, Silicon Flatirons has worked to initiate, sustain, and elevate the conversation about technology law, policy, and entrepreneurship among other topics. Conferences like this have proven critical to these goals by bringing together academics, government officials, and industry leaders to discuss emerging issues that are having, or will have significant impact on our lives.

[00:01:51.54] Before I go any further, as I reflect on the wonderful work that Silicon Flatirons is doing, I want to take just a few moments to welcome our newest executive director, Professor J. Brad Bernthal. We are so delighted to have Professor Bernthal. As many of you know, he has a specialist specialization in entrepreneurship, innovation, and other areas that look to the future. And I just want to give a hand.

[00:02:28.30] Thank you so much, Mr. Bernthal, for taking on this important, this vital, and this incredibly time-consuming work. We owe you. Thank you so very much.

[00:02:40.28] Silicon Flatirons, besides serving the public in a number of ways, has as a central goal to educate our Colorado law students, and provide them with opportunities to learn about work on some of the most pressing issues of our times. On the topic of students, I'll take

a moment to acknowledge the Colorado Technology Law Journal, a Colorado student run journal, that often publishes pieces that come out of conferences like this. I also want to acknowledge the Silicon Flatirons student group, which has worked to increase student engagement in this event, including leading a primer session later this week.

[00:03:19.76] Today, we begin a conference on the topic of the internet's midlife crisis. Now, when I say midlife crisis, I'm sure that might be a familiar phrase to many of us, more familiar than we might like to think, in fact.

[00:03:33.25] When we talk about midlife crisis in humans, we often describe it as a time of intense introspection, stress that often occurs a few decades after entering adulthood. Now, people going through a midlife crisis may, on the one hand, be very proud of their accomplishments, it's a great opportunity to pause, and look back at the things that one might have done since entering adulthood.

[00:04:00.68] But on the other hand, midlife crisis can also be a time, where you consider feelings of dissatisfaction, with the realization that your stated goals in your early youth might not have been achieved. Midlife crisis is a very apt metaphor for looking at the internet, and for the discussion that we're going to have over the course of this conference.

[00:04:24.51] The history of the internet can be traced back to the 1960s, when the US Department of Defense introduced the concept of a global network of computers to share information. By the 1990s, the World Wide Web, a system of interconnected documents, and other resources were created, allowing for easy access, and the sharing of information via the internet.

[00:04:51.59] Now, some of us in this room can remember those early days of commercially available internet in the 1990s, when early interactions were achieved by dial up connecting with an existing landline. Meaning that for some of us, no one else in the house could use the phone if you were dialing up to the internet. Remember those days? Some of us do.

[00:05:11.29] Now, at my home, we had a unique situation. Because my husband is a telecom scientist, who works in fiber optics research and that meant that we were always the very first in our block to adopt anything. We had half a dozen phone lines, we were the first people with a 56k modem that we knew.

[00:05:29.40] Still, service was at a snail's pace. And I totally remember getting ready to download some software, and then going to bed, because it was going to take all night for that to download. Some of us remember those days.

[00:05:45.21] There were providers like CompuServe, America Online. Who remembers that? Prodigy, EarthLink, the widespread adoption of the World Wide Web, and a development of browser software led to a significant increase in people using the internet.

[00:06:03.42] And so it's not surprising that since its creation, the internet has had a profound impact on the way that we communicate, access information, and do business. It's enabled globalization. In fact, to the extent that we understand that word, I think implicit, for all of us, is the idea that we can eliminate geographical barriers because of the internet. It's created new opportunities for people to engage, to collaborate on projects.

[00:06:31.74] It's also had an important impact on the economy fueling growth of the technology sector, and changing the way that we work, and consume products and services. We are all in many respects, not just consumers of information, but purveyors of information.

[00:06:49.93] I am sure. But many of us, if not all of us in this room have thought about what it would have meant if the COVID-19 pandemic had occurred in a pre-internet world. What would that have looked like? Without the internet as a means of keeping commerce, education, and other key functions going, we would have seen very different social, and economic outcomes.

[00:07:14.81] Now, having said all that, it's also true that the internet has brought new problems, such as the spread of misinformation, cybercrime, and privacy issues. So how do we reconcile those challenges along with the benefits, and who's responsible for thinking about it, and reconciling problems? Over the course of this conference, we'll take up some of those questions and hear from a number of experts.

[00:07:43.32] As we begin, I want to start off our program by introducing an honored guest today. I have the distinct pleasure of welcoming Senator Michael Bennet, who has represented Colorado in the United States Senate since 2009. Senator Bennet earned his Bachelor of Arts degree from Wesleyan University, and earned his JD from Yale Law School, where he was the editor in chief of the Yale Law Journal.

[00:08:10.23] Senator Bennett worked for six years in Denver as managing director for the Anschutz Investment Company, and later worked as chief of staff to then mayor, and now Senator John Hickenlooper. Before serving in the Senate, Senator Bennet worked as superintendent of the Denver Public Schools, where he was responsible for a number of advances in the school system.

[00:08:29.58] Throughout his career in public service, Senator Bennet has been known for his commitment to promoting economic growth, addressing income inequality, and expanding access to quality education. With a long record of advocating for important, and

meaningful policies, he continues to be a strong voice for change in Washington, and a champion of important causes in Washington nationally, and especially here in Colorado.

[00:08:56.69] Throughout his career, Senator Bennet has demonstrated a commitment to excellence, and a passion for advancing the needs of Colorado's people. He is a true asset for our state. And so friends, I give you without further ado, Senator Michael.

[00:09:24.32] MICHAEL BENNET: Good morning, everybody. Good morning. And thank you, Dean Inniss for those very, very kind words, and to Colorado law, and especially the students that are here today for hosting all of us. I'm deeply, deeply grateful to be here.

[00:09:38.90] I don't think is Phil Weiser here yet today. I don't mean to call them out in his absence. Phil. He said, let me time this in a way that I missed Bennet's speech. And that'll be up.

[00:09:51.43] I know him quite well. I've known him since before the two of us moved to Colorado. But let me just say in his absence and I'll deny it if he said when he gets here, that Colorado is so fortunate to have someone who fills intellect, and integrity on our side. And I wish you'd give him round of applause for his public service.

[00:10:14.92] I also want to thank those who have traveled everybody, who's traveled here today. Welcome to Colorado. Welcome to the most beautiful state in America, including Tim Wu, who I think is here. May not be here this morning.

[00:10:29.68] Commissioner Wheeler who's here in the front row. I deeply appreciate your presence here. And is Assistant Secretary Davidson here somewhere?

[00:10:38.68] Thank you for making the trip as well. He's managing the biggest investment to deploy high-speed broadband in US history based on the Bridge Act, a bill that was written. We wrote here in Colorado, and to put an even finer point on it on the Western slope of Colorado, and dean were the dean go.

[00:11:01.34] As I know, there are still communities, and neighborhoods all over America, including in our state, where they'd have no access to high-speed internet. And where if there is one person on the internet, nobody else can be on the internet. 30% of the kids in Aurora, Colorado have no access to high-speed internet not because it doesn't go by, but because their families can't afford it.

[00:11:24.40] The Bridge Act, which I wrote with Rob Portman, a Republican from Ohio, and Angus King, an independent from Maine a truly tri partisan bill ended up in the infrastructure bill. And I'm glad, very glad it's being administered, and implemented today.

[00:11:43.45] As dean has said, and as I already know, I understand that the theme for this year's conference is the internet's midlife crisis.

And for all the reasons that the dean said as a 58-year-old senator, I am highly qualified to address the second half of that idea. Not as much the first.

[00:12:05.97] But instead, I do want to share some broad observations about the internet's dominance, and in particular, the dominance of the biggest digital platforms over our economy, our society, and our democracy as we meet here on this beautiful day this morning. It's easy to forget how different the world was just 20 years ago, when Phil Weiser organized the first of these conferences.

[00:12:34.81] At the time, General Motors topped the Fortune 500 list. Apple was 285 on that list. And Amazon didn't even make the cut.

[00:12:44.86] Twitter was still an idea somewhere in the recesses of Jack Dorsey's head. Mark Zuckerberg wasn't old enough to vote, even though he'd likely already acquired the undeveloped view of the First Amendment that he holds to this day.

[00:13:04.33] No one on this planet had ever heard of Gmail, or YouTube, or TikTok. That was only 20 years ago. But it might as well have been 200.

[00:13:19.27] Today, Americans spend over two hours a day on social media, more time socializing online than in person. The average TikTok user in our country spends over 80 minutes a day on the app. That is three weeks of every year.

[00:13:39.44] I'd say speaking as a parent and a citizen, that you could probably learn almost anything, but Mandarin if you focus on it three weeks out of the year. We're using that for TikTok.

[00:13:52.10] Facebook now hosts 2.7 billion friends. 0.5 billion more souls than Christianity. Twitter has fewer followers, of course, than Facebook. But those followers include every single politician, every journalist, every TV producer in America, withering our political debate to 280 characters, and to those effervescent posts.

[00:14:20.36] In just two decades, a few companies have transformed much of humanity's daily life. How we amuse ourselves? How we discover, learn, and shop? How we connect with friends, and family, and our elected representatives?

[00:14:37.28] How we pay attention? How we glimpse our shared reality or how we don't? This transformation is a staggering testament, of course, to American innovation.

[00:14:49.28] And we can all think of a dozen ways these platforms have improved our lives. I for one have been entirely relieved of the stress, the tremendous burden. And for me, it was one of sitting in rush hour traffic wondering if there is a better route.

[00:15:07.64] I am now confident that Waze is guiding me, my own personal North Star. But this dramatic shift from our analog to our digital human existence has never been guided, or even informed. I would argue by the public interest.

[00:15:28.34] It's always been dictated by the unforgiving requirements of a few gigantic American enterprises, and their commercial self-interest. And what are those interests? To make us better informed citizens, to make us more productive employees, to make us happier people. Of course, not.

[00:15:49.37] It's been to turn a profit, and to protect that profit through economic dominance. And they have succeeded beyond their wildest dreams. Until their recent battering, the market capitalization of the biggest tech companies equal 20% of the entire stock market, a fifth of the entire stock market, a share that one sector has not seen in our nation for 70 years.

[00:16:18.54] And through it all, unlike almost any small business, whoops, sorry. Down the street in Boulder, these digital platforms have remained almost entirely unregulated moving fast, breaking things, and leaving the rest of us to glue something of our world back together. There's another way these companies are really different from the brick, and mortar companies in Boulder. Digital platforms aren't burdened by the fixed costs of an analog world.

[00:16:53.96] Beyond the blinking lights of their energy intensive server farms, their business is in the cloud, a place where no one works, and there requires little physical investment. They have no need to use their profits to invest in America by building infrastructure. Unlike their industrial forebears, today's partners, today's platforms have devised a new digital barrier-- sorry. New digital barrier to entry to protect their profits, and their economic dominance.

[00:17:26.65] We know that digital barrier as the network effect, as everybody here knows in this room, the network effect means that platforms become exponentially more valuable as more people join, and spend more of their waking moments. They're more valuable to users because their friends and family are on it. More valuable to the platforms, who Hoover up our identities for their profit. More valuable for advertisers, who pay the platforms for our identities to barrage us with that.

[00:17:59.51] And so valuable to the markets, that the top five tech companies now have a market cap, greater than our entire aerospace, defense, construction road, and railway industries combined. In the name of building, this barrier to entry, this network effect, they have stolen our identities, and our privacy, and addicted us to their platform.

[00:18:24.62] The platform's imperative to grow big and stay big post a basic question. For them, how do you get people onto your platform, and keep them there? For platforms like Apple and Amazon, it's to sell

products people want, offer subscriptions. And if you're lucky, and mesh them in their closed ecosystem.

[00:18:45.26] For social media platforms with free services like Meta, Twitter, and TikTok, the answer is more sinister. Harvest as much data on your users as you can. Feed that data to your algorithm to serve up whatever content it takes to keep people hooked, so you can keep selling ads. That is their core business model.

[00:19:08.42] And although this particular business model has bestowed enormous value on a few companies, it has imposed profound costs on everybody else. Millions of Americans have surrendered to private companies and endless feed of data on their every movement, interest, communication, and contact, along with their voices, faces, and fingerprints. All for the convenience of being able to be served up self-gratifying political content on YouTube less traffic, or better movie recommendations.

[00:19:45.35] And most Americans have made that trade without even really knowing it. Any suggestion that we have made that trade fairly is ludicrous. It mocks consent. The lawyers in this room No contracts of adhesion when they see them.

[00:20:04.20] And as a society, we have never asked how much of our identity, or our privacy. We were willing to trade for convenience and for entertainment. And until today, those questions have been resolved entirely to the benefit of the platform's bottom line.

[00:20:23.12] I suppose it would be one thing if-- there is the grateful wiser right there. So another round of applause for-- Not missing my entire speech.

[00:20:41.67] I suppose it would be one thing if the only consequence of digital platforms use of our data were to sell better advertising, even if that would be a fairly pathetic concession of our own economic interests in this world. But as every parent knows, and every kid suspects, better advertising is not the only consequence of these business models. Over the years, digital platforms imported features from gaming, and from gambling, from brightly colored displays, to flashing notifications, to likes, to perniciously random, and incessant dopamine hits.

[00:21:23.85] And they unleashed secret algorithms to reverse engineer, our most basic human tendencies to seek out tribe, approval, conformity, threat, to curate an almost irresistible feed of content. Americans now spend 1/3 of their waking moments on their phones, which we check an average of 344 times a day. Speaking as a parent, who's raised three daughters in this era, we certainly have not agreed to run a science experiment on our children. With machine learning algorithms, the effects of which almost no employees at the social media companies themselves even understand.

[00:22:08.19] And while we're still coming to understand the specific role, that social media plays in the epidemic of teen mental health, the early evidence gives us a lot of reason to worry. Here's what we do know. By 2018, 1/2 of American adolescents said they were online almost constantly. And as social media took off teen mental health, took a nosedive, especially among teenage girls, like my girl.

[00:22:36.34] Teen anxiety, depression, self-harm, surge, not just in our country, but in Canada, and Britain. One in four teens reported that social media makes them feel worse about their lives. Girls who use social media heavily are two or three times as likely to say they're depressed compared to those who use it less often, or who use it not at all.

[00:22:59.80] In 2018, suicides for kids, 10 to 24 increased 60% compared to 2007. So did adolescents reporting a major depressive episode. Meta's own research found that Instagram made body images worse for one in three teenage girls. And the teens social media is bad for their mental health, but feel unable to stop using.

[00:23:30.30] And as America's kids spend more time online, they're getting less sleep, exercise, and in-person interaction. They're less happy. They're the most connected generation in human history, and they're also the loneliest.

[00:23:47.33] The parents I've met all over Colorado have deep concerns about what social media has done to their kids. I say here, and I don't put all of this epidemic at social media's feet. But I was with some people this week.

[00:24:04.06] And I said to them, when I hear that a child, or a young person, the age of my kids has died in Colorado, I find myself no longer asking, what was the accident they had. What did they have leukemia, or cancer? I find myself asking, was it fentanyl? Was it suicide? Was it guns?

[00:24:27.77] That's the country that they were threatening to pass on to the next generation of Americans. That's not the country that I grew up in. All of my young staff, and my two eldest daughters, universally say how lucky they were to avoid middle school in the age of social media. Their young siblings, like our youngest daughter have not been so lucky.

[00:24:57.24] I've heard many expressions of concern over the years about this. But I have to say the most poignant expression of this concern were the moms that I met in the Mississippi Delta where, my wife Susan, grew up, one of the poorest places in America. One after the other told me their kids don't read anymore because no book can compete with their phone.

[00:25:22.04] Even as Silicon Valley executives who design these phones, sometimes send their kids to digital detox camps each summer. These parents work two or three jobs. Can't afford childcare.

[00:25:35.89] And they have to compete for their child's attention against this algorithmic poison. They've never stood a chance. My constituents are most worried about their kids, and about their families, but they also worry a lot about our democracy in this era of social media dominance. And they've got a lot of reason to be concerned.

[00:25:58.75] When I first joined the Senate in 2009, it was the summer of the so-called Twitter revolutions in Egypt, and Libya, and Tunisia. We then heralded as the Arab Spring. At the time, people in Washington, and all around the world hailed social media as a powerful tool for democracy.

[00:26:18.60] It didn't take long for tyrants to turn it against democracy. The dictators who once feared social media soon harnessed it for their purposes, to track opponents, to dark cities, and flood the zone with propaganda. Nobody understood this better than Vladimir Putin himself.

[00:26:36.51] He saw the vast and unregulated power of America's social media over our democracy. And he exploited it ruthlessly ahead of the 2016 elections. Putin flooded our social media with disinformation.

[00:26:52.16] According to the Mueller report, the Russians quote conducted social media operations with the goal of sowing Discord in the US political system. They sought to fracture America across every conceivable line, race, religion class, sexuality, and politics playing both sides with over 10 million tweets, and nearly 4,000 fake accounts.

[00:27:15.44] Some of which actually inspired Americans to show up, to gather, to protest their own government. And we let it happen, in large part, because we struggled to distinguish. In fact, we couldn't for 1 year and 1/2 distinguish between the Russian propaganda, and our degraded online political conversation. Just ask yourselves, what that says about the nature of our political conversation?

[00:27:49.29] I was running for election that you're here in the state of Colorado. And when I later joined the Senate Intelligence committee, I began to realize that this problem extended far beyond our borders why three years ago. I wrote to Mark Zuckerberg. Warning him that Facebook had become authoritarians what I call platform of choice to suppress their opposition.

[00:28:11.16] I also warned him that Facebook's insatiable drive for growth had given the company power over countries, that they barely understood. And the consequences have been horrific, horrific. In Myanmar, the United Nations name Facebook a significant factor in stoking communal violence against the Rohingya after it repeatedly

ignored calls to remove hate speech, and hire more staff who actually knew the country.

[00:28:39.60] Around the world, we've seen fake stories on these platforms sparked violence in India, Sri Lanka, and Kenya, just to name a few. And on January 6, 2021, here in the United States of America, in the weeks before January 6, President Trump, our first president who ran his campaign, and his administration almost exclusively through. The social media platform of Twitter incited a mob to invade our capital. It would never have happened without social media.

[00:29:17.48] Social media is where the big lie caught fire where platforms gave the big lie, the ring of truth, through sheer repetition, where algorithms, mix cocktails out of pedophilia rings, and Jewish cabals, and QAnon rumors intoxicating dentists, and soccer moms with a seditious rage.

[00:29:38.65] I remember sitting in a windowless basement on the capitol, on the sixth. We watched CNN as our fellow citizens invaded the US Capitol with their racist banners, flags, and their anti-semitic t-shirts to save an election that had never been stolen, that had not been stolen. While the Senate was in that embarrassing position, unable to certify an election for the first time in American history, Moscow and Beijing transformed those images into propaganda, as I knew they would in their campaign to discredit democracy in the eyes of the world.

[00:30:21.05] Beijing claimed the riots were a sign of internal collapse. Moscow observed that American democracy was limping on both feet. In these moments, we cannot bury our heads in our digital feeds. We are called upon to defend democracy, and burnish our example at home.

[00:30:43.36] And we can help by reining in the vast power of digital platforms, and reasserting the interests of the American people, and our public interest. The Americans who came before us would never have known about algorithms, and network effects. But they would have recognized well the challenge that we face, and their example should guide our way.

[00:31:08.82] The founders themselves as everybody in this law school knows devised, an elegant form of checks, and balances to guard against tyranny. After Upton Sinclair exposed ghastly conditions in meatpacking facilities in 1906, Teddy Roosevelt joined Congress to create the Food and Drug Administration as broadcasting became more central to American life.

[00:31:34.97] And 1934, FDR and the Congress enacted the Federal Communications Commission. And after the 2009 financial crisis, in our own time, President Obama, and Congress established the Consumer Financial Protection Bureau. In each case, Congress knew it lacked the

expertise to oversee complex new sectors of the economy. So it created independent bodies to empower the American people.

[00:32:05.47] Today, we have no dedicated entity to protect the public interest, and we have been powerless as a result. And that's why last year, I proposed to create a federal digital platform commission. It's essentially an FCC for digital platforms, an independent body with five Senate confirmed commissioners empowered to protect consumers, promote competition, and defend the public interest.

[00:32:32.05] The commission would hold hearings, conduct research, pursue investigation, establish common sense rules for the sector, and enforce violations with tough penalties that could make a difference. Some may say we don't need it. We already have the Federal Trade Commission and the Department of Justice.

[00:32:51.12] And these agencies are staffed by hard-working public servants. I used to work at the Department of Justice. And I know that.

[00:32:57.84] But they don't have the expertise. They don't have the tools or the time to regulate this new sector. And as we fight to empower the American people, there are other important steps that we can take now from limiting targeted ads to kids reforming Section 230 pursuing antitrust remedies, establishing a digital bill of rights for parents and kids, and compelling more transparency from platforms to allow policy, and research to be done.

[00:33:31.94] And in the case of TikTok, Apple, and Google should remove it from their app stores. Today, it stopped Beijing from hoovering up more data on hundreds million Americans. Whatever we do, we cannot accept another 20 years of digital platforms transforming American life with no accountability to the American people. We still haven't come to grips with the full cost of our inaction so far, the cost to our privacy, and to our identity, to our time, and to our attention.

[00:34:07.20] The trust in our democracy, and the faith in our fellow citizens, the self-confidence of millions of American teens, and the lives of far too many. None of the problems that I've described today are unique to America. But America Bears a unique responsibility to solve them.

[00:34:27.69] After all, it was American companies that blazed the trail into the digital age, and invited all of humanity to follow. We now live in a world they created with its wonders, and conveniences, but also its risk, dangers, and difficult questions. The same platforms that amplify a protesters cry for freedom in Iran. Also, quipped tyrants around the world to suppress democratic movements.

[00:34:59.65] The same technologies that liberated anyone to say anything also unleashed a perpetual cacophony, leaving us all screaming louder to be heard. The dazzling features that brought the

world online have also trapped us there. More connected, but more alone. More aware, but less informed. Enthralled to our screens, growing more anxious, and angry, and addicted every day.

[00:35:30.48] Overcoming all of this will not be easy. But we can't simply hide under the covers, scroll through TikTok, and hope these problems solve themselves. That is our job. The health and future of our children lie in the decisions that we make, whether we fail to make.

[00:35:56.71] Our objective, my objective is not to hold the world back. In Colorado, as Phil knows, as this faculty knows, students know, we have always embraced innovation, but we also understand that not all change is progress. And that it's our job to harness those changes toward a better world. We are the first generation.

[00:36:24.60] The steer our democracy in the digital age, and it is an open question whether democracy can survive in the world digital platforms created. I may be wrong, but the evidence so far does not fill me with confidence. It fills me with urgency.

[00:36:42.80] Urgency to reassert the public interest, to reclaim our public square and our exercise in self-government, to level the playing field for America's teens, for our parents, for our teachers, for small businesses, who for 20 years have battled alone against some of the most powerful companies in human history.

[00:37:07.19] Success won't be easy. But this is a fight worth having. It is a fight worth winning. And if we succeed, we may not just help to save this democracy, we may help to serve it all over the world.

[00:37:23.64] Thank you for having me today. I really appreciate it.

[00:37:35.00] SPEAKER 1: Senator Bennet, I think if we've got a few minutes for questions. Now, that Phil Weiser is here, we'll have to enforce the Phil Weiser rule, which means that the first question goes to a student. So a question from a student.

[00:37:50.06] I think I see Jackson back there. Jackson, and if you could wait for the mic to get to you, and introduce yourself

[00:37:59.66] AUDIENCE: Hello. My name is Jackson. I'm actually here at Colorado Law. I'm in Blake's Tech Law and Policy Clinic.

[00:38:06.11] Senator Bennet, thank you so much for taking the time to come talk to us today. In the wake of West Virginia versus EPA, and the Supreme Court's decision there, do you think establishing a new commission poses unique challenges, particularly in this atmosphere?

[00:38:16.76] MICHAEL BENNET: You mean for [AUDIO OUT]

[00:38:20.97] AUDIENCE: Yeah, correct.

[00:38:23.47] MICHAEL BENNET: Yes, I do. But look, I mean, I live in a world where we're all going to have to understand that we live in. Neil

Gorsuch's view of the Chevron doctrine, and all that stuff, that does not mean that we should roll over, and give up. I don't think.

[00:38:41.86] One other thing I'll say about this is that it is unusual for a western politician, even a Western Democrat to call, for a new federal agency. We don't typically like those. And I there are lots of federal agencies I don't like.

[00:39:00.08] But the reason I reached the conclusion is that there is nobody else to do this work in Washington today. And I know Congress can't do it even. If we pass one bill on antitrust, or something like that, that'll mean that we never get to teen mental health.

[00:39:18.31] I don't mean we'll never get to the Russians using these digital platforms to divide us from one another. And that's why I think we really do need, an administrative agency to do it.

[00:39:29.50] SPEAKER 1: All right. Next question from the audience. That's a hand up there.

[00:39:37.98] JOHANNA BLUMETHAL: Johanna Blumenthal. I'm a civil law alum, and current master's student at Regis University in software engineering. Thank you for coming again, Senator Bennet.

[00:39:48.45] You said there's no other way, but another administrative agency. What is the role of the computing professional organizations here to reign in their own just like we have for law, and medicine, and so many other professions?

[00:40:02.40] MICHAEL BENNET: I do think there is a role. I do think there is a role for the society at large here. I mentioned at the very end the notion of having a Bill of Rights for parents and for kids.

[00:40:12.69] I don't imagine that being something that the federal government creates. I imagine that a world where maybe you have some version of something that didn't exist when I was a kid. Mothers against drunk driving that takes the view that they have not made a trade to subject their kids to these platforms in the way that they have, and that kids are entitled to a set of rights when it comes to their privacy, when it comes to their content, their identity, their freedom.

[00:40:45.06] And that I think could be societies rule. Even more broadly understood than a professional organization. I think we have a role to play.

[00:40:59.67] Mark Zuckerberg's answer to all of this seems to be always more speech is better, more speech is better. And he has no conception of trying to regulate this himself, or to deal with these issues himself. So I don't have a lot of hope that the digital platforms themselves are going to do it.

[00:41:21.03] But I continue to have some. That's why I sent them a letter the other day asking them to take TikTok off the App Store, and

Apple, and Google. So it's an important point that you make. This is not an issue for government alone.

[00:41:37.97] SPEAKER 1: I think we've got time for two or three more questions. Then we'll go to another student.

[00:41:43.52] MICHAEL BENNET: That's good. That's another Bennet rule, which is we get student after student after student here.

[00:41:49.41] AUDIENCE: Hi. Thank you so much, Senator Bennet. My question is, with the FDA, with the FCC, with the CFPB, there was an acknowledgment from both sides of the aisle in terms of the, I guess, there is a crisis that we need to solve. Whereas with digital platforms commission, at least one side of the political aisle doesn't seem to necessarily admit that. How do you see us kind of moving forward?

[00:42:18.54] MICHAEL BENNET: I think that, first of all, nothing will get done here. Let me make a prediction. We will not pass this in a partisan way. This is going to need bipartisan support to pass it

[00:42:31.92] And Tom Wheeler and I have an old friend. We were talking about this morning. And Dick Celeste, who is the governor of Ohio, who over the years has said to me the importance in order to make change in America. The effort that we must be engaged in is an effort to build a constituency for change.

[00:42:52.20] And that's what we have to organize. That's what we have to build. The change isn't going to come from Washington itself. It never does. It always comes from people that are organizing themselves.

[00:43:01.68] I would think that law students all across America would have a strong interest in what I was talking about today. Some people may totally disagree with my position, and that's totally fine. In my world, but I'll bet you there are people that see the dangers that we're talking about here, and could help begin to organize people around these issues, just with voices, by the way, more credible than my own.

[00:43:26.97] I refer again to the midlife crisis issue that we were talking about earlier. But I think that that's very, very important. And the final point I'd make to you is, don't give up just because today there's a partisan divide here. We can build a bipartisan consensus I think on this as we can with so many things that this democracy is facing today.

[00:43:55.78] CATHERINE KELLY: Hi, Senator Bennet. Thank you for being here, and thank you Silicon Flatirons for organizing this. I'm Catherine Kelley. I'm a 2L at Colorado Law.

[00:44:03.52] My question is about your recent remarks that you mentioned or alluded here alluded to here today about Google and Apple taking TikTok off the App Store. I was wondering if you think that sets a dangerous precedent in government officials calling for apps to

be removed by private companies? I agree with doing that, but I'd want to know how you envision cabining it, so it doesn't.

[00:44:28.12] MICHAEL BENNET: I'll give you one way of cabining it. I'm not saying this is the only way of cabining it. But I'll give you one way to cabin it is, apps that are owned by companies, by dance, in this case, that's based in Beijing, that's subject to Chinese law, that says when we ask you to cough up data on the American people, you have to cough up data on the American people.

[00:44:53.57] That's one place we can tap on this. I'm not sure that's the only place I think. In other places, it may be less about banning things than about trying to modulate them.

[00:45:03.73] I have in mind the really pernicious effects that I've seen among young kids in Colorado about their sense of self-worth, sense of their own bodies, that kind of stuff. Surely there are ways we can regulate that just as we do in the context of broadcast television. And that's a place where you might not ban something, but you might have something to say about what the content looks like, whether the algorithm actually is something that we want oppressing our children, or whether we want some other means of interaction between these digital platforms, and our children.

[00:45:49.71] SPEAKER 1: All right. We've had the Bennet rule now, the newly coined Bennet rule. We've had the Weiser rule. Now we're going to have the corollary to the Phil Weiser rule, which is that the last question goes to Phil Weiser.

[00:45:59.64] MICHAEL BENNET: Oh. Friendly Amendment to that rule?

[00:46:05.13] PHIL WEISER: No. It's great to be here. And you made a point about crisis triggering the regulatory response you're calling for. And you mentioned 2009, you could add to that Enron. What type of crisis will unite people's attention to spur the type of change that you have in mind?

[00:46:31.35] MICHAEL BENNET: I think we're in it right now. We may not know it, but I believe we're in it right now. When the positive or pollyannish optimistic, Michael Bennet chooses to believe that we have realized that we've played out the string on Ronald Reagan's trickle down economics, that we've played out the string on that supply side, economics, and on a society that has created the worst income inequality that we've had since the 1920s.

[00:47:04.88] The least economic mobility that we've had since the 1920s. And I think we perceive that this is a threat to our democracy, and it is. Because when people lose a sense that their families or their kids if they work hard, can find a place in the economy, can find a place in a democracy.

[00:47:24.07] That's when inevitably somebody shows up in human history, and says, I alone can fix it. You don't need a democracy. You don't need the rule of law the stuff these people [AUDIO OUT] studying is worthless.

[00:47:37.16] You should expect your public sector and your private sector to be hopelessly corrupt hopelessly bankrupt. And you're a sucker, if you [AUDIO OUT] that's who we have to stand up for in crisis.

[00:47:50.82] And Bill and I are both now elected officials. We hear people say all the time. This is the important election of your lifetimes.

[00:47:58.38] Having seen Donald Trump elected president, having been there on January 6, when our fellow citizens attacked the Capitol of the United States. So unimaginable when I was the age of the law students here, were a student, or a kid. To me, that's a sign that every election between now, and when we expire is the most important election of our lifetime, and we have to treat it that way.

[00:48:22.54] And that we can't accept this notion that our democracy is a failure. That's what China believes, or to put it another way. That's what Beijing believes.

[00:48:32.98] After what they saw January 6, they believe it. That's what Russia believes. They believe in.

[00:48:38.32] And what I choose to think about in the wake of is the mistakes that Vladimir Putin made on the way to invading Ukraine as a consequence of being a totalitarian, running a totalitarian society. It turns out that way of organizing humans is a terrible way of preparing for war, terrible.

[00:49:02.71] Because there isn't anybody to tell you that your army actually is lousy, or that the money that you spent on it was stolen by corrupt actors, or that the Ukrainian people are going to fight you to the death, or something I think he didn't see, and maybe we didn't even perceive that free people living in these countries all over the world would be so inspired by the bravery of the Ukrainian people, that they would rise up in their countries, and demand of their elected officials do more, do more, do more.

[00:49:33.47] So I think before our eyes in the wake of the crisis that we've had, we're seeing democracy reasserted. And I think our job is to build on that step things as they are. The students that are here may be the first generation of Americans really are the ones just below them maybe.

[00:49:55.71] The first generation of Americans to grow up without any consciousness of what the analog world before this digital world came. And I think we owe ourselves before we leave the stage. We owe ourselves, and we owe the next generation.

[00:50:13.81] The fulfilling a responsibility that says we're going to straighten this stuff out. And I think we can do that. Phil, thanks for having me.

[00:50:21.67] PHIL WEISER: Big round of applause for Senator Bennet.

[00:50:22.52] MICHAEL BENNET: Thanks, everyone.

Panel: The Future of Agencies

<https://youtu.be/F6FaxvGYv8E>

[00:00:00.65] PHIL WEISER: And the aforementioned Tom Wheeler, former--

[00:00:04.49] SPEAKER 1: There he is.

[00:00:05.39] PHIL WEISER: --chair of the Federal Communications Commission. We have two other experts on these commissions. Former Commissioner Julie Brill, who's now at Microsoft. Former chair, Maureen Ohlhausen, who is now at a law firm in Washington, Baker Botts. And, of course, this is Silicon Flatiron, and so we have a law professor with us as well. He teaches at Berkeley Law School, Boalt Hall, as it's still known as. And finally, a double threat, both economist and a lawyer, former chief economist at the FCC, Babette Boliek, who's right next to me.

[00:00:50.14] This is truly a all-star panel. And it is great to be back at Silicon Flatirons with such tremendous folks in the room. I want to jump right in, picking up on the senator's premise. And I just want to see if there's maybe some polite pushback or elaboration. I know we're going to hear some elaboration from Tom Wheeler. I'll let him go first.

[00:01:17.44] But the premise is the existing tools, the Sherman Antitrust Act, the Federal Trade Commission's current consumer protection authority, are insufficient to meet the challenge of internet platforms. And I think, to touch on the theme Senator Bennett hit so beautifully, protecting our democracy, teen mental health, privacy, competition, and the advent of algorithms with impacts that we can't glimpse.

[00:01:50.12] So first, to amplify that, Senator Wheeler, anything-- or Senator Wheeler-- Tom, any former experiences you want to call on or present thoughts to Marshal this case? Why are the current tools insufficient?

[00:02:07.55] TOM WHEELER: [INAUDIBLE]

[00:02:16.20] That would invite [INAUDIBLE]

[00:02:22.27] for this kind of discussion. Because if I can add a code-- [INAUDIBLE]

[00:02:39.74] It's going to start with understanding, start with discussion and organizing that begins at places like Colorado Law and is made possible back in Silicon Flatirons, created by our friend, Mr. Weiser, who created that forum.

[00:03:01.00] Now, after having filibustered, let me specifically respond to your question. Oh, good. So all right, so we tried today. Good.

[00:03:16.80] The challenge that we have-- I'm obsessed right now with a concept that we must change in order to preserve. And those are two concepts that seem to be opposites. If we want to preserve the kinds of things that have made America great, basic things, like individual rights, consumer protection, competition, markets that work, we have to change the way in which we have the structure that counterbalances the power that the digital technology has created in one component of the economy.

[00:04:09.48] Here, I am sitting between two FTC commissioners. God bless the FTC. What a job that agency has done. And how unfair to them to expect them, in addition to everything else, to shoulder this whole new responsibility, while at the same time dealing with the rest of the economy.

[00:04:39.32] And the challenge that we face is that the rules that created the statutes-- the concepts that created the statutes and the structures that are the countervailing force to economic power in this economy were designed in an industrial era, around the challenges represented in the industrial economy, which I submit are different from the challenges created in the digital economy. And, therefore, we need to have the ability to say we must change the way we protect these basic concepts that we want to preserve.

[00:05:28.43] PHIL WEISER: So I want to have our professors go first and our practitioners go second. So first, Tejas, that is a important concept, that the digital economy is fundamentally different. And the tools for what Senator Bennett called the analog economy are just insufficient. What do you think about that proposition?

[00:05:51.02] TEJAS NARECHANIA: So I think it's a really nice way of encapsulating some of the challenges we face today. I might modify it slightly to say that while many of the challenges that we face today are new, they find echoes in some of the challenges that we've seen before.

[00:06:11.28] So I think a lot of the problems that we see with modern internet platforms are problems that we've seen in the past. So we've seen a tendency towards market concentration. And standing alone, that's not so problematic. But where that concentration is a function of things that we have traditionally assessed under a rubric of natural monopoly, things like economies of scale or network effects, we have

tried to regulate them in order to address those problems of concentration.

[00:06:39.59] I think we're also seeing increasingly, and this relates to some of the things that Senator Bennett talked about in terms of mental health and issues of body images with teens, and I think also digital discrimination, that these private platforms are not really responding to market incentives. Or the market incentives are not there to respond to these sorts of problems that are specific to teens or historically disadvantaged populations.

[00:07:05.72] And lastly, and I think the most important thing about the case for an agency-- and we'll talk a little bit more about whether it's a new one or this one-- is that there's a real lack of democratic voice in the way these governance decisions are being made. If we think of what Twitter, Facebook, or any of these large platforms, of what they're doing as largely about democratic governance-- speech, the way we communicate, in the run up to an election, for example, it's made in private halls, in executive chambers. And there's not a lot of opportunity for us to participate. And I think an agency model gives more democratic voice to these essential facilities of democratic governance.

[00:07:50.63] PHIL WEISER: Babette.

[00:07:54.58] BABETTE BOLIEK: So like a good professor, I'm not quite satisfied with the question posed to me. So I'm going to redo it into a question I want to answer. And that was the first one, which was basically do we believe that there are insufficient laws to deal with this new-- or characterized as new industry? And perhaps, surprisingly, I am going to say, yes, I do think there are some insufficient laws. That might be surprising to people who know my background and where I am.

[00:08:28.40] But that said, the reason I can say that is the proposal made is so profoundly broad. We're looking at proposals that deal with privacy, that deal with mental health, that deal with competition law, that deal with strong democratic traditions of free speech, and even up to First Amendment concerns.

[00:08:53.19] So given the breadth of the different concerns that are being enunciated, I can firmly say, yes, something is not covered by the laws. I'm on the record, personally, of being very concerned about the lack of privacy laws. They have not been [INAUDIBLE] since 1970. And even then was for a very different sort of character of privacy-- dissemination. So I do firmly believe that we should revisit privacy laws and have some direction in that case.

[00:09:24.47] However, the breadth of this is also, I think, it's failing. It's so broad, as it could fall apart under its own weight. There's too much that would lend itself to disagreement. I actually agree, as well, that many of these questions that we're looking at, that are being raised as concerns-- and I think they are legitimate concerns. You see them

written in various different news sources and everything. So there is something bubbling up, a disquiet of the public with regard to our relationship with these large platforms.

[00:10:03.46] But I do think many of these problems we definitely have seen before. And we can echo-- we hear those echoes and we can deal with them in very clear ways. To merge all these concerns together, I think we lose the plot. These are very different platforms. A concern of Amazon may not be the same concerns that we have with Facebook. And the moment we start talking about Facebook, and YouTube, and others that deal with content, you are in a different ballpark than you are with antitrust or other privacy concerns.

[00:10:40.00] Because as we know, the term, for example, misinformation is not a self-defining term. And we have seen that misinformation and using that moniker can basically be used to stifle free speech of things which are merely controversial, things that need to be said, whether it's in the scientific realm, even as we've seen with the rise of COVID and the use of vaccines, and concerns with those, and real public concerns about what that impact may be. The policies that have come forward, those have been deemed misinformation.

[00:11:18.82] And we know that current agencies have done what they could to try and influence the rise of content that would be opposed to public policy. And that's without creating a hammer of an agency that is directly looking at that nail. So I am concerned by the breadth of this. But, yes, to circle back, I do think there's insufficient laws.

[00:11:49.87] PHIL WEISER: All right, so Maureen and Julie, Senator Bennett made a point that may have been a little bit of a sore spot, or at least a painful memory. Because when the Consumer Financial Protection Bureau was created, a lot of its authority literally, and some of its people, I think too, came from the Federal Trade Commission.

[00:12:12.22] The premise was the FTC was not positioned to do that. We need a new agency. Having lived through that experience, what is your thought about that analogy? And how does that apply here, to the question, do we need a new agency? Julie, you want to go first, and Maureen can go second.

[00:12:29.44] JULIE BRILL: OK, but that's kind of a boring question, Phil. I mean, I'm happy to answer it. Look, I think the point about the CFPB is the same point about the Department of Homeland Security. In the last 22 years, two agencies have been created. They've both been created in a crisis.

[00:12:48.93] And so the question that I think the Senator was raising was, are we in a crisis now? And do we have the political will, as well as the policy chops, to carve out a remit for a new agency to address these crises? So I'm going to answer that question, OK? Thanks.

[00:13:12.14] So look, whether or not we want to get into an agency, or what agency it should be, or whether we augment the current powers, I think we need to think about four predicates to this conversation. And the first one I would say is something that the Senator talked about, which is you have to recognize that we do have a crisis now.

[00:13:34.82] And the tech industry, in particular-- and frankly, I would say all of the business community needs to recognize that there is a crisis. Because what is tech now? Are cars technology? Are pharmaceuticals technology? The answer actually is, yes. But there are clearly problems with certain types of technology that we do need to address.

[00:13:59.46] And I think the two crises that I see are, one, that the Senator talked about, which is mental health of youth. And that, I think, should allow us to move forward to handle some of the kinds of First Amendment issues and speech issues that Babette was talking about.

[00:14:17.30] And the second one, which people don't like to talk about because it's deeply uncomfortable, and yet, it is also vastly important, and that is what is happening to children online in terms of sexual and abusive material. So when you think about the spectrum of speech, and you worry about things like misinformation, disinformation-- yes, I get that there's going to end up being a debate about that-- when you talk about the mental health of kids and suicides on the one hand, and you talk about very, very young children being sexually abused on video, there's just no question there that that is, number one, not speech. It's just harm.

[00:14:57.69] And number two, that there's a lot that governments can do about it. We're doing some, but we could do a tremendous amount more. And there's a lot more that the tech community can do about it. So I think that's the first predicate, just what is the crisis? Let's define it. Maybe not chop off everything in the world. Let's just talk about the really horrendous stuff and see if we can even address that.

[00:15:21.09] I'd say the second predicate is getting back to the job of compromise. I really think that one of the difficulties we have in terms of this space, in terms of any space in the United States, about what we want to do with respect to regulation, what we want to do to progress as a society, in whatever form, regulations, laws, or otherwise, is we just have lost the ability to compromise. And that's on both sides. I'm not trying to say that that's one or the other.

[00:15:52.17] But unless you can have a conversation about what's really harmful-- do we want to iterate? Do we want to focus on the worst stuff? Do we want to try to swallow everything? That's a worthwhile conversation to have. But understanding what the debate is and then trying to talk about it, it's just a lost art.

[00:16:08.59] And I think it was Babette who mentioned the privacy situation. It's absurd. 150 jurisdictions around the world have

comprehensive privacy laws. The United States joins North Korea, Somalia-- there's a handful of countries that do not yet either have a privacy law or a serious discussion about their privacy laws, as is happening in India. And I think it's just because we've lost [INAUDIBLE] to compromise.

[00:16:39.46] And the fact that we don't legislate doesn't mean that the rest of the world isn't legislating. The rest of the world is legislating. It just means that the US isn't part of the conversation. We're not setting the norms. The rest of the world is setting the norms.

[00:16:50.23] OK, quickly, the two other things that I think that we need to think of as predicates to just this conversation is that democracies need to work together on this. That there's a lot we can learn from Europe. And I look forward to that part of the conversation. Because they are eons ahead in terms of dealing with a lot of these issues. And I think the United States should learn a lot from their approaches.

[00:17:13.93] And then I think we need to think more creatively across domains. So I already mentioned-- well, there's privacy and safety. There's cybersecurity and privacy. There's protection of public health in all of these domains. And we need to think about how do we balance the concerns in each of these domains so that we come to the right outcome. So it's a more expansive way of thinking.

[00:17:40.40] PHIL WEISER: And Maureen, feel free to lean into the next point, which is, to the extent we need new tools-- for example, privacy-- one proposal is just give the FTC that authority, as opposed to create a new agency. And there are certainly a fair bit of critique that sometimes these new agencies-- the Department of Homeland Security being another one-- may not actually accomplish all that much new as opposed to giving a new agency. So what are your thoughts on do we need new tools and who do we give them to.

[00:18:07.46] MAUREEN OHLAUSEN: Yeah, thanks, Phil, and thanks for having me. I'm delighted to be here to talk.

[00:18:14.21] So I do think we are at a point where it makes sense to create a new federal privacy law. Often, people talk about we've never faced this kind of situation before. That's not actually true.

[00:18:28.91] When you go back and you look at the debates around the enactment of the Fair Credit Reporting Act, which had to do with the collection, and use, and sharing of very sensitive data, where people said, there are big computers, and they're making decisions about me, and I feel it's outside of my control, Congress stepped in, and said, well, we're going to create the Fair Credit Reporting Act, which has rules and restrictions about how that type of data can be used and shared.

[00:18:57.47] It gives consumers the ability to have insight into it, to challenge it for correctness. But it also has the ability for that data to

still be used for very beneficial purposes for society overall, which is accurate credit decisions. While individual consumers might say, well, if I have bad credit, I wish they didn't report it accurately. But overall, we're better off for that.

[00:19:28.23] So I think it's important to look at what has worked in the past and not miss that wisdom. But moving forward, I think we do need a new federal privacy law. And I think it is incumbent on Congress to enact that.

[00:19:42.03] One of the challenges that I think we keep hearing about is, well, if Congress won't act, ergo, we should have agencies step into the breach. And we had a question from a student about West Virginia versus EPA. And I do think it really is up to Congress to make these very difficult tradeoff and these hard political decisions.

[00:20:05.61] But then, I do think the FTC has done a pretty good job in the past using its very general authority over unfair and deceptive acts or practices to address privacy. So I find there's a little bit of this disconnect to say, well, yeah, they did a good job, they did that. But if we're going to give out new tools, we're going to give it to somebody totally different rather than the agency that I think has really tried to be smart about it and to be forward thinking.

[00:20:39.72] I also think one of the challenges is that the boundaries of who competes with whom and things like that are very amorphous these days. And the idea that if we draw a box around certain tech companies and say, OK, they're in a different category. They're going to be regulated differently than others in the economy. I'm not sure that's accurate anymore. I see a lot of competition across different dimensions.

[00:21:13.94] So I think one of the things we need to pay attention to is what is going to be the competitive impact of how we do these things. Like, for example, GDPR in Europe took a certain approach. A lot of the concerns about GDPR were driven by the idea that we have big companies, big tech companies. They have information about citizens. We're concerned about how they use it.

[00:21:38.92] And then the way they implemented that, it actually had a competitive impact that drove some of the smaller players out of the market. So we do really need to pay attention to that. And I think that was one of the benefits of having an agency like the FTC, that has a competition lens, also pay attention to these issues.

[00:21:58.03] And one other thing that I want to mention-- I think Babette touched on this-- is there's a lot of concerns about misinformation. But I think everyone has this idea of the other guy is the one who's engaging in this. it's not the people I agree with.

[00:22:15.04] And I think one of the things that we've seen from the release of the Twitter Files, and a whole bunch of reassessment that's

going on about what happened during the pandemic, is this government influence over the debate I think has created a sense that it led to a little bit of maybe a mono thinking, that perhaps society would have been better off if more voices had been able to talk about these things. So I do have some concerns about having a government agency play an even more explicit role in that.

[00:22:52.32] Because right now, we're at a point where I think trust in information from any source, whether it's the government, or whether it's from media, is at an all-time low. So I think we really need to be careful about doing something that exacerbates that. Because it's definitely not a good environment.

[00:23:16.57] So with that, I will stop and look forward to the next question.

[00:23:20.70] PHIL WEISER: Well, thank you. I was going to go to you next, Tom. So we're not going to do justice to this whole topic, unfortunately, including the dimension that a number of states, including Colorado, have adopted privacy laws in the absence of federal leadership.

[00:23:33.36] So, Tom, you actually deserve a right of reply here, which is, you've got, I guess, a consensus on the panel that we need some new tools that are in existing law. But I think you may have some skepticism that it should be a new agency, as opposed to picking up Maureen's point for the Federal Trade Commission. Why not, whatever new authorities we're going to have, why not just give them to the FTC?

[00:23:57.57] TOM WHEELER: Well, a couple of things. I want to associate myself with Julie's point number two, which is that we need to find ways of discussing things, and agreeing, and compromising, rather than is my way or the highway. So let's start with that as a given. I also need to point out that Brad Smith, who was one of the great leaders in the tech space, he had a wonderful blog that I was actually [INAUDIBLE] And she said we need some kind of an agency to be dealing with this.

[00:24:38.04] PHIL WEISER: Did Brad call for a new agency?

[00:24:39.48] JULIE BRILL: He said, we should [INAUDIBLE] You can say what you want.

[00:24:44.27] TOM WHEELER: It was close enough for me.

[00:24:48.17] JULIE BRILL: We have a problem and we need to address it.

[00:24:52.05] TOM WHEELER: But look, here's the issue. I want to-- [INAUDIBLE]-- got to be working together here. There are n-plus-one reasons why this won't work. All right, let's stipulate to that. It is really

simple to come up with all of the-- oh, well, what about this? Oh, this is terribly complex. Well, what about this?

[00:25:17.79] The effect of that is agency capture. Everybody worries about-- oh, well the agency is captured. The ultimate agency capture is when nothing happens. And if we spend all of our time saying, well, there's this problem, or there's that problem, or whatever, then we're going to be succumbing to that problem-- point one.

[00:25:47.45] The other point that I would make, however, is that what we haven't discussed here. Is that the headline in Senator Bennett's bill is new agency. I think the real substance of the bill is he talks about a new procedure for that agency that moves from the old kind of regulatory micromanagement model to a more agile risk management model by proposing a new structure, that-- whoever it was back here that asked about industry standards groups-- but rips off that kind of idea. Puts some teeth into it. And gives it to an agency to A, initiate, B, oversee and participate in. C, make a judgment about the ultimate outcome, and D, then enforce.

[00:27:03.09] There is right now a-- again, there is a multitude of industry groups working on standards. I'll just pick on one. All of our homes are full of devices that talk to each other and report on us. Industry, as a group, working on standards, make sure that they can all interconnect. And they're all working on it. Hooray, we need that.

[00:27:48.69] Nowhere in the agenda is how are you going to deal with privacy. Who's going to address that in the industry if there isn't a body that says, hello, I'm going to bring together a group of subject matter experts that will have a defined function over a defined period of time, in which I, the agency, will participate. And then, we'll make a decision as to whether this is a potential solution. And we maintain agility throughout that process.

[00:28:35.02] How did we get from 1G, to 2G, to 3G, to 4G, to 5G, and now we're working on 6G? How was that agility created? It was created by the standards process. And we need to hijack that kind of idea and bring it into government.

[00:28:51.99] One last point. The way government works today, or at least in my experience, is that we are practicing governmental Taylorism. Now those of you-- I didn't go to law school. I went to business school. And they taught us there about Frederick W. Taylor. And Frederick W. Taylor was the father of modern corporate management.

[00:29:23.99] And his-- this was in the late 19th and early 20th century. And his model was we take all choice out of behavior of employees and dictate everything from above. So you had a guy on the production line-- and they were guys-- a guy on the production line, overseen by a supervisor to make sure that half a dozen of these guys

are all doing the right thing, who is overseen by a manager. And worked its way up in a bureaucratic rules-based process.

[00:30:08.05] And we're surprised that we have a rules-based bureaucracy in government that so many companies, and I think legitimately, are complaining thwarts innovation and thwarts investment? Companies aren't managed that way anymore. But we manage government that way.

[00:30:32.00] And so one of the key concepts in Senator Bennett's bill is that we need to have this new structure. And we need to have a debate about this new structure. But continuing to do things the way we are right now, not an answer for the future.

[00:30:53.60] PHIL WEISER: Julie, a quick point on that, then I've got a follow-up question for--

[00:30:56.51] JULIE BRILL: Go ahead, Phil.

[00:30:58.51] PHIL WEISER: Tejas, you have-- [INAUDIBLE] you knew this question was coming. Let me pick up Tom's point. If you have a new type of regulatory strategy, can you teach an old dog-- for example, the Federal Communications Commission-- to do new tricks? Because one of the arguments could be, hey, these agencies, the FCC notably, has its own culture. If you're going to try to do things different-- just take one example, algorithmic audits, or working with standards bodies-- are we better off starting from scratch?

[00:31:29.06] TEJAS NARECHANIA: Well, it's a good question. It's a hard question. I don't think I have a direct answer for you, because I think it depends a lot on how that authority is conferred, the sorts of resources that you're willing to grant. So if I step back a little bit and look at the problem, and then look at the political economy of getting to either a new agency or to move it to FCC, it's really complicated.

[00:31:55.13] So the institutional design problem is really complicated, I think here, for reasons, Maureen and Julie, you alluded to. That there is a lot of sectoral expertise that might be required. There are things like automotive things that are specific to electronics. But there's a lot of cross-cutting problems. And so how do you develop an agency that is both agile enough, but deep enough across these sectors?

[00:32:21.56] And I don't know whether you do that best by giving it to the FCC or the FTC, by creating a new agency, or vesting a bunch of powers across the administrative state with a coordinating agency. There are lots of institutional design options there.

[00:32:34.55] I guess-- and so this is not directly responsive to your question, but I think follows off of that, which is, so then what do we do, given the complexity here? And to pick up on what Tom said, to do nothing is itself a policy choice. And so we have to decide whether or not we are OK with the status quo or whether we at least try an option. And which option we try is a political economy option.

[00:32:59.36] So I would defer to you, and to Senator Bennett, and to all of you as what's going to get something done? Is it a flashy new agency? Is it trying to give power to an existing agency? Whatever it is that gets something done I think is likely to yield a better outcome than where we are today.

[00:33:15.16] PHIL WEISER: Babette.

[00:33:18.16] BABETTE BOLIEK: So, to follow up on that, I agree with you 100%. It is very important to ask how is authority conferred. So I'm a strong believer that it has got to come through legislation and Congress. When you look at the FCC, you're looking at a very-- yes, broad statute in some ways, but directed.

[00:33:41.07] So when you talk about something like a public interest standard, you have some direction in the FCC of how to calculate that. Now it gives some breadth, but it shows what legislative concerns is. There's a way of cabining that, so it doesn't just automatically overstep its boundaries.

[00:33:59.91] And then that said, again, agreed to do nothing itself is a policy choice. But remember, there are other factors that discipline these industries. There is the market. There are consumers. There are local-- not only local institutions, whether they're private groups of concerns, whether it's the mothers that Senator Bennett talked about, or as Phil talked about, we have legislation for privacy, et cetera. We have one in California too. Thank you very much.

[00:34:34.26] So we do have those other ways of dealing with it. And I will push back strongly on saying that the ultimate agency capture is when nothing happens. I think that really puts to the side what government can do wrong. There's quite a lot of conversation about how government can best solve the problem.

[00:34:57.27] But I'm not hearing much about how government itself can create the problem. Or can, in the case of agencies, as is often the case, really solidify incumbency in a way that we do not want, in a way that pushes the problems forward without the disruptive effect of newcomers and innovation.

[00:35:21.37] So there has to be quite a bit of conversation over that. And talking about the FCC, an agency I am quite fond of, and I think is highly well functioning, it does not have the best of history when it comes to dealing with new innovation. It has helped, arguably, solidify monopoly power and concentration in the industry it was supposed to protect us from as the public and protect us from market failures. It's rather institutionalized that and probably carried them further, entrench those interests much longer than they should have been. Because government is powerful.

[00:36:01.42] So let's be very clear about that as well when we're discussing how effectively we want to deal with this, that we're not

falling victim of the Nirvana fallacy, that somehow government is going to be able to solve this seamlessly and without any cost. So I would caution us, as we go through that.

[00:36:21.90] When it comes to different-- again, I'll return to what I signaled, this is where I'd like to see more legislation, and that's in the privacy realm. I agree with Maureen, that you would want to see that to the extent we give it to an agency to help with the enactment, to an agency that has some experience with that. And the FTC is the obvious play for that. And whether that means adding different skills and tools to that, that can be discussed. But to exclude that experience I think is not necessary.

[00:37:00.58] I also find it very telling that when looking just at the proposal of this new agency, it talks a lot about expertise, about the tax expertise, and looking at algorithms, but it doesn't talk to the balance that Maureen and Julie talked about. Because-- and again, yes, I am speaking in self-interest-- there's not one economist mentioned, that we should hire economists and have that internal balancing. Again, I think it's better to be in an agency where that type of-- a combination of statutory direction, plus to the extent rules need to be made, that it be made with that inherent balancing, that both the tech people and economists working together can bring to light.

[00:37:49.15] PHIL WEISER: Julie.

[00:37:51.29] JULIE BRILL: So I think the question was what are the tools that we should be thinking about and would those best be deployed by a new agency? I want to echo something Tejas said. I do think there is a certain amount of energy when you have a new agency. But I really don't think that's going to address the problem.

[00:38:10.70] When I think about what is happening around the globe, one of the issues that I find missing from the current debate in Washington, from the current discussions around FCC, FTC, et cetera-- CFPB, is the agencies are not really working together. And I think there's a real value-- and again, looking across the pond-- the other pond on the other side of the country-- and looking a little bit at what the UK, the French, and the Dutch are doing.

[00:38:43.74] So the UK, about two years-- actually, three years ago now, instituted an organization that they call the Digital Regulation Cooperation Forum. And it brings together the privacy regulator, which is known as the Information Commissioner's Office, the Competition Regulator, which is the CMA or Competition and Markets Authority. The OFCOM, which is basically their FCC, as well as the Financial Conduct Authority, which regulates banks.

[00:39:16.19] And it brings these organizations together to develop an approach to big problems. So what they're doing is looking at things like AI, looking at other issues, and saying, how can we work together?

What are the different tools that each of us has? And how can we come up with solutions?

[00:39:41.40] So again, something I said earlier, recognizing a problem and focusing on how to solve it. I first talked about this, that the tech industry needs to do this. Actually, all of the business community needs to do it. I think regulators need to do that too. What is the problem? What are the tools we have? How can we work together?

[00:40:03.57] So I think that this was a really innovative approach that could absolutely be mimicked in the United States like that. And it wouldn't-- it doesn't require legislation. It doesn't require necessarily a whole bunch of funding. And it is something that I think could move the ball forward quite significantly.

[00:40:20.61] I also think a big part of the Senator's proposal-- and we just need to talk about it. Yes, he does talk about a new structure, a new way of thinking about things. And I want to come to standards in a second. But what he really is talking about is funding. When you stand up a new agency, it's money. It's people. It's resources.

[00:40:44.60] I mentioned the ICO in the UK-- 1,000 employees to cover privacy. At the FTC, what do we have, maybe 100? And think about the difference in the economies. Think about the difference in the oversight of-- the nature of the businesses at stake, and what is being done in the United States, both in a very positive way, and also creating some problems.

[00:41:14.13] You can't start to address problems unless you develop a path to solutions. And some of that, frankly, if you're going to bring in expertise, whether it's economists, or technologists, people who really can explain what is the cloud? How does that really work? That is a very complicated issue.

[00:41:39.26] You need to have resources. So look, in the current environment, unfortunately, I think a lot of agencies are largely starved for resources, certainly compared to the scope of the problem. So I just think we need to put that on the table. So whether it's adding more resources to one or the other of our current agencies under discussion, or whether we bring them together to talk more cooperatively about developing solutions, and give them both resources, or create a special body within these organizations, one way or the other, to me, ultimately, the format isn't as important as recognizing that funding is needed, and we are starving these agencies.

[00:42:22.23] The other thing that I just-- oh, and I'll also point out that in Europe, they are-- like the competition unit of the European Commission, their FCC equivalent in the European Commission because of these new laws, which we'll probably talk about soon, they are hiring like mad. There are huge amounts of resources that are going into this issue in Europe-- [INAUDIBLE] resources.

[00:42:50.36] OK, the last thing, I want to just touch on standards for a second. So I do agree with the examples that you've given, Tom. I thought those were really interesting. ISO actually has done privacy standards. It actually is about to consummate an AI standard. There's a foundational privacy standard, which I won't give you the name, because it's basically known by its numbers. And then there's the privacy information management system. And similarly, on AI, it's called an AI Management System, or AIMS.

[00:43:19.70] And what these standards are doing in the real marketplace with respect to entities like Microsoft-- because what we do is we provide cloud and other productivity services to other businesses. So why they're impactful is our customers come to us and they say, are you complying with PIMS? Or will we have the right to do an audit against PIMS, against the Privacy Information Management System.

[00:43:46.22] Now, I don't think this gets to the issues that we're talking about with user-facing platforms. And that's been a lot of the discussion today. But there is a lot of work that's happening in the marketplace, in the absence of legislation, to allow businesses to communicate with each other about privacy practices. And there will be something also in place with respect to AI practices. And I think that's pretty--

[00:44:11.99] PHIL WEISER: Does any federal agency have engagement or oversight of that type of work?

[00:44:17.39] JULIE BRILL: Not at this point, unless you go across the pond. And across the pond, they have audit rights that are going to be imposed upon more of the consumer-facing platforms. But the audit rights that do happen, those are pretty significant audits in the United States.

[00:44:37.49] PHIL WEISER: That would be, I think-- to take Tom's point-- and in Colorado's privacy law, there's a requirement that businesses have a data assessment.

[00:44:43.64] JULIE BRILL: Exactly.

[00:44:44.12] PHIL WEISER: And we have an ability to oversee that.

[00:44:45.64] JULIE BRILL: Right.

[00:44:45.86] PHIL WEISER: So I think that architecture. I'm going to get the questions from the audience, but Maureen, let me give you the last look at this. We talked earlier about the Federal Trade Commission, its tools. If Congress were looking at a bill with things like new privacy authority, overseeing AI, algorithmic audits, and you're asked to testify, is your view the FTC can handle all this? Maybe some goes to the FCC? Or create a new agency? How do you see it?

[00:45:10.80] MAUREEN OHLAUSEN: So if there's going to be new authorities-- and Julie makes an excellent point, and I think others have too-- the resources. So the FTC's budget-- when I was the chairman of the Federal Trade Commission, their budget is at most maybe \$340 million. That's really tiny. And that's between consumer protection and antitrust.

[00:45:30.59] So I think if the FTC were given more resources, more clearly defined tools, where Congress has laid out the appropriate guidelines, I think the FTC could be a really good home for that. But I do think some of the issues that we're seeing at the FTC now will need to be addressed. Reinforcing bipartisanship at the FTC, making sure there's due process, all those kinds of things.

[00:46:02.64] But one of the things that, Tom, you mentioned, that I really, really liked, is the idea of avoiding micromanagement and avoiding utility style regulation. I have great concerns when I hear people say, we should have railroad style regulation. It's like, that just is not-- it's just not a good idea for many, many reasons.

[00:46:28.13] And traditionally, that's not a route the FTC's taken. So it's had this very general authority. And it has looked at how the impact is on consumers for the consumer protection, and competition, and consumer welfare standard, and antitrust. And so it's been much more goals oriented than how you get there oriented. And I think that is an important thing to keep in mind.

[00:46:56.04] So given some of the great successes that I think the FTC has had in deploying its authority to date, to me it seems like with more money, more guidelines, more care in how some of these new powers would be given, the FTC would be a good home for that.

[00:47:17.42] TOM WHEELER: One second on the money side.

[00:47:19.00] PHIL WEISER: Sure.

[00:47:19.49] TOM WHEELER: Violent agreement with my colleagues here. I remember testifying in behalf of the FCC's budget and being told by the chairman of the Appropriations Committee, Mr. Wheeler, you don't understand, I want you to do less with less. OK, [INAUDIBLE], folks.

[00:47:47.97] PHIL WEISER: He said he didn't go to law school too. All right, so we have a lot of great students here. I'll need some help from Blake, who's already pointing to one, to follow the so-called Weiser rule for the first question. Yes.

[00:48:03.48] AUDIENCE: Hi, everyone. Thanks so much for coming to have this conversation. My name is Brielle Baines. I am a senior at the University of Colorado, Boulder. And I'm also a former startup summer participant.

[00:48:14.20] So we are currently in the midst of Colorado Privacy Act rulemaking. And there are also other state laws, such as California, Utah, and I think Virginia. I'm wondering how those state level actions for laws and regulations regarding data privacy have influenced federal action or inaction within this space.

[00:48:38.55] MAUREEN OHLAUSEN: Is that I think it's gotten a lot more people seriously to the table about getting a federal privacy bill passed. We've had discussions over time that didn't go anywhere. And now, as the states have really started to step in and make their own laws, I think it's created a lot more momentum and seriousness.

[00:49:00.48] I don't know if it'll get us over the line, but I do think it's been a useful spur. And some really great thinking in the states that a federal bill can build upon.

[00:49:09.76] JULIE BRILL: I think that's such a great question. So thank you for asking it. I would say it has both accelerated-- the advent of these five, six state laws, Connecticut as well, which are very good laws. And they've improved, building upon each other. Very similarly to what we saw in the data breach notification space, where California went first. Other states adopted. They looked at each other.

[00:49:35.22] The end result is no federal law in that space, of data breach notification. And I think there's going to be a tension. I agree with Maureen that these several laws that have been adopted in the states have motivated some to come forward and say, we need a privacy law at the federal level.

[00:49:54.69] At the same time, it has also highlighted the obstacles to doing so, particularly around preemption and private right of action. And I think that is one of the core areas where I feel like I want to go back to what I said before, we need to get acclimated once again to the old custom of learning how to compromise.

[00:50:14.31] I do think that there are compromises in both of those spaces, of preemption and private right of action. It would be a first run at it. See if we can get compromises in both of those areas. And if it doesn't work, again, remembering that we actually can iterate.

[00:50:34.38] I think one of the problems is right now, there's been so much deadlock at the federal level that people are worried that if they don't get-- we don't get it right the first time, that's it. That's the last opportunity we'll have. And you can't discount that. There is a certain reality to that. Although, you can also build provisions into a law that require revisiting, whether it's sunseting, whether it's reconsidering certain provisions-- or sunseting particular provisions. So there's a lot more creativity, I think, that can be brought to the conversation.

[00:51:07.15] So I see the state-- we're deeply supportive of the state laws. I spent many, many years at two state attorney general's offices. I pushed forward for these laws, I think, at that time. And I still think that

they're great. I just think the reality is that there's complications now as a result of them.

[00:51:29.12] AUDIENCE: Thank you so much for your--

[00:51:30.05] TOM WHEELER: I have two quick points. [INAUDIBLE] Oscar Wilde, in *Lady Windermere's Fan*, says there are two great tragedies in life-- not getting what you want and getting it. The reality for the industries that would be affected by privacy legislation is that they have gotten what they want, which is nothing.

[00:51:53.13] The second point is that my experience in 40 years of representing industry before the Congress and the commission is that you have to go back to the point that both of my colleagues are making here, about you've got to find something that's a get for everybody. The reason why we got the Communications Act in '96 was only because the elects got something and the IXEs got something. That's how you put legislation together.

[00:52:27.05] And the problem is that everybody's sitting there right now and saying, I don't have it. And I'm hopeful. And I think what I've heard from these two is that if there are enough states that balkanize the way in which interconnected companies operate, that they will be forced to say, no, wait a minute, I need one set of rules. Let's come to the table and deal.

[00:52:52.04] PHIL WEISER: So a couple thoughts. Unfortunately, in data breach that has not happened. We have 50 states with slightly different standards in data breach. It is not prompted Congress to act. When Tom Wheeler was working at the National Cable Television Association, and Tim Wirth and Tom Tauke were the respective leaders, minority leaders in the House Telecom Subcommittee, they actually made policy in processes like you're seeing here.

[00:53:20.36] Part of the problem is that Congress has lost that ability. The State. Of Colorado did that in creating a privacy law. We're doing that with rulemaking. I really hope our federal government can start legislating. I agree with Maureen, it is a abdication of Congress's responsibility on privacy with widespread concern. Teen mental health, a widespread concern.

[00:53:41.66] If we can't get that leadership from Congress, we're going to live in what I've called the second best world, which is the states will keep doing it. And they'll do it slightly differently. And then it's on us to try to figure out how to be interoperable with one another so we don't put companies into the impossible position that Tom is warning about, where one state says you have to do it this way, x, and the other state, you have to do it this way, y. And you can't comply with both. All right, another question? Is there another student out there first? Yes, there is. All right, next student.

[00:54:11.85] AUDIENCE: So my name is Graham. I'm a 3L. I want to preface-- back to the question of a new agency, and preface that I love that idea because it's just more job opportunities. But one concern that I have in terms of looking at current examples with the creation of a new agency is, obviously, there's the possibility of jurisdictional overlap or content overlap. And I we've already seen a lot of issues with coordination problems in existing agencies.

[00:54:43.07] And I'm wondering if you guys have any thoughts on how those might be addressed if we were looking at either expanding jurisdiction of existing agencies or creating a new agency. And how we could promote coordination and cooperation between them. Thank you.

[00:54:56.57] PHIL WEISER: It's a really great point. It picks up on what Julie talked about what's happening in Britain. And let me ask Julie to start with this. Which is, in the US, having independent agencies that function differently in kind, and executive branch agencies, coordination led by the White House, for example, on things like artificial intelligence is a little trickier. How would you envision the US doing what you are seeing doing so well elsewhere?

[00:55:24.14] JULIE BRILL: Yeah, the agencies that are cooperating in the UK, and in France, and the Netherlands, most of them are independent. They have to be. Independence is an elastic term, shall we say. But they largely are independent.

[00:55:42.80] Look, I think it goes-- I think it's a great question. I do think it requires a new mindset around agencies, which is your victories aren't the number of cases you bring or the number of dollars that you, individually, as an agency, bring in, but really are you solving a problem? And are you creating new approaches to dealing with new problems, like the Senator was talking about, mental health? Like I am bringing up with respect to child sexually and abusive material.

[00:56:20.09] Are we really trying to get at problems? And I think that if we can change the balance sheet in the sense of wins and losses for agencies, so that it's not so much that they're judged individually, but they're judged as a group, whether it's by society, by the media, or by Congress, I think that would go a long way to helping. I do think that there is a territorialism, as you say, but I think it largely comes from some of those issues around how do you prove your own worth, which we see among human beings just generally. And I think if we start thinking more about the collective problem and solution, we get closer to that.

[00:57:00.86] And clearly, that's been happening in Europe. Because they are, much more than we are, focused on the bigger problems and how to create structures that will more easily than currently available, new structures to try to address those problems.

[00:57:20.48] PHIL WEISER: Let me see if I can leave our remaining panels with their final thoughts in 30 seconds or so. So Tejas, first.

[00:57:28.41] TEJAS NARECHANIA: OK, well, on the question, I just want to say that we have examples of White House coordination even among independent agencies. So the FTC and the FCC have been at it for some time over net neutrality, in 2015, over do not call before then. And the White House has stepped in and has done-- and has done some tacit coordination in ways that are maybe not as direct as it is with executive agencies. But it's still evidence of the political accountability that we should want and would want from the administrative state.

[00:57:59.74] So in the spirit of the last word, I guess the thing that I want to say is, responding quickly to Babette, to what you said, I can conceive that the government might get it wrong, just as the companies I think have gotten it wrong. And so we have to do an error cost analysis. And decide which error is worse and which error is more easily addressed.

[00:58:17.27] As for worse, I don't know, I'm more confident in an agency that has the likes of Commissioner Brill, Chairman Wheeler, Commissioner Ohlhausen than governance by Elon Musk and Mark Zuckerberg.

[00:58:29.96] TOM WHEELER: What a vote of confidence, guys.

[00:58:31.42] [LAUGHTER]

[00:58:33.77] TEJAS NARECHANIA: And as for whether we can rectify those errors, I think that Democratic governance is more likely to succeed in this context than market discipline.

[00:58:44.77] PHIL WEISER: It sounds almost like you're saying some of this is affected with the public interest, to quote from a case involving-- I think it was grain elevators, back in the day. Babette, final thoughts.

[00:58:58.11] BABETTE BOLIEK: Final thoughts, just to the question, again I do think there's a lot of examples of interagency agreement. Sometimes I think that would be surprising in a good way to the general public. So the FCC, the agency that I have the most experience with, actually works quite well with others, plays well in the sandbox. And has a very fluid coordination, even to the point of exchanging experts.

[00:59:27.90] As you might imagine, the FCC has key engineers and other assets, which are not common in other agencies. So you'll see that kind of sharing of resources, as well as of jurisdiction.

[00:59:40.75] So I do think that is overcomeable. Now, in a new agency like this, which is going to enter into so much of the economy, that's potentially far more problematic because it's not as well defined what the parameters might be when you're thinking about your car, self-

driving, and IoT, and all of those different things. So that might raise new concerns that would not be a concern of they're put together in other agencies.

[01:00:07.66] And I do think that this comes down to some things in error costs. I agree with that 100%. I might come down on different ways, but I do think that I find that the first step should be with Congress laying out the groundwork.

[01:00:26.70] I agree 1,000%, it should be on the things most common, low hanging fruit-- I love that-- which is both privacy-- I do think that's percolating-- and absolutely with children on the internet. For goodness sake, those things are already illegal and look at what we have. So why are we not working with that and developing those laws even further to protect the new dangers online that we are seeing?

[01:00:55.56] I find it very interesting too that in a strange-- TikTok has been incredibly unresponsive to its consumers, who are self-identifying predators online. And TikTok does nothing. That's low hanging fruit for a government agency to deal with. And that should not stand.

[01:01:18.15] And to its credit, Facebook is trying to respond, at least in the marketplace, to do something different. Hopefully, they will put in better restraints. But if not, then a government agency would be well used in that space.

[01:01:32.07] PHIL WEISER: Maureen.

[01:01:33.23] MAUREEN OHLAUSEN: So before [INAUDIBLE] and concerns about democracy. I think it's also important to keep in mind that our constitutional structure is meant to protect this. And that includes having the right decision makers make the decisions. So we need really Congress to act.

[01:01:52.27] But it's also respect for the First Amendment. And I'm a little worried that some of that is getting a little bit lost. So we really do need Congress to act in this space, particularly on privacy. But not lose sight of the fact that using data for consumers-- that using data is good for consumers and it's good for competition. And that's often why I refer back to the Fair Credit Reporting Act, that struck that balance so effectively.

[01:02:21.88] And that we shouldn't disregard that and lose sight of that when we're often being swept up in a lot of anti-tech rhetoric. I think that there's a very fundamental value to striking the balance correctly for the benefit of consumers, and for competition, and for economic growth in the US.

[01:02:44.72] So whether it is a new agency, or it goes to an agency like the FTC, I think those are some really important guiding lights that we need to follow-- constitutional structure, respect the First Amendment, and understanding the value of data, and the benefits of data usage.

[01:03:02.84] PHIL WEISER: Tom, do you want to get the last word?

[01:03:05.29] TOM WHEELER: Julie.

[01:03:06.70] PHIL WEISER: Julie got the first word on this.

[01:03:08.35] TOM WHEELER: No, no, I'm saying, I'm happy. Yes, I'm not the last word. Julie will get the last word then.

[01:03:12.85] PHIL WEISER: All right, Julie-- Tom and Julie. OK, Julie and then Tom.

[01:03:18.19] TOM WHEELER: Because I'm-- Julie, I'm just going to close with shameless self-promotion.

[01:03:23.26] JULIE BRILL: OK.

[01:03:24.97] TOM WHEELER: That I've got a book coming out later this year, and the title says it all. The title is Tech Lash: Who Makes the Rules in the Digital Gilded Age? And we've talked a lot today about, hey, we've been here before. That's the first half of the book. We've been here before, when we set up rules for the industrial.

[01:03:49.92] The second half of the book is, and are we going to do anything about that when we're living through the digital era that is based on different concepts and different market economics? And what today we're seeing is we're seeing that the digital marketplace, the rules for the digital marketplace are being made by a handful of autocrats, digital autocrats. And it's time for we the people to step up and say, no. We need a countervailing force in here that is going to look out for the public interest and the rights of individuals.

[01:04:36.02] PHIL WEISER: Julie.

[01:04:37.89] JULIE BRILL: So real quick, Brad Smith also has a book, which he calls--

[01:04:42.51] TOM WHEELER: Great book.

[01:04:42.99] JULIE BRILL: It is a great book. It is a great book. It's called Tools and Weapons. And I think that the title is a really apt one because it talks about how technology has done remarkable things for us. And we haven't spent nearly any time today talking about some of the remarkable things that technology brought for us, whether during the pandemic, whether helping with the Ukraine war, whether dealing with climate change. And I think it is important to focus on that as you're trying to develop an appropriately balanced regulatory approach.

[01:05:18.79] So the other thing that I think I would like to close with is just I think the United States is so accustomed to being the big, bad bully in the global space, in terms of we get what we want because we're the biggest and we're the best. And we do have the biggest

economy. But we-- a monetary economy, but we do not have the biggest regulatory economy.

[01:05:43.53] Our economy-- and by that, I mean we just don't embrace thinking really creatively anymore about how to develop approaches to hard problems. And so I would suggest that the United States should approach this issue with humility. And say, OK, we're not there right now. Let's look at what Europe is doing. Let's look at what Japan is doing. Let's look at some of the organizations [INAUDIBLE] that are coming together around some of these issues and try to learn from them.

[01:06:18.19] It doesn't mean by any means that we want to adopt what they do necessarily whole hog. But there's a lot of goodness in thinking through, in a scalpel-- with a scalpel approach, what are the ex-ante rules that we want to bring to technology? Because that is indeed what Europe is doing. That's what Australia is doing. And it is what the UK is doing.

[01:06:40.63] And those are global centers of regulatory thought right now. So is China. And the United States needs to be there too. And so we need to join in the conversation. Because by not doing something, the rest of the world is moving forward. And global companies that are trying to operate everywhere, we're aligning with what other countries tell us to do. Because those are the guardrails we have.

[01:07:03.93] So I just think a little bit more humility and saying, yeah, we actually do have stuff to learn. We're a little bit behind in 2023. I think that would go a long way here.

[01:07:13.70] PHIL WEISER: Can we thank our panel for a great conversation.

[01:07:15.39] [APPLAUSE]

Panel: The Tech Journalist Perspective on Tech Policy

https://youtu.be/j19Pcb_mLRI

[00:00:00.51] BLAKE REID: Welcome back. It is good to see everyone again. Before we get to our next panel, I want to take a moment to acknowledge a few of our student leaders here at the law school. First, the Colorado Technology Law Journal, which Dean Inniss mentioned, is long published scholarship coming out of this conference, including the work of tomorrow's keynote speaker, Tim Wu, on net neutrality, published in the Journal.

[00:00:31.92] FCC Chair Michael Powell is famous for freedom speech and a wide range of other scholarship. We're really proud of this year's board for all of their hard work. And I wanted to recognize the leadership and dedication of the Journal's outgoing editor in chief, Cassandra Pankey, and to congratulate the Journal's newly elected

incoming editor in chief, Marlina Pinto. Please, join me in giving them a hand.

[00:00:56.18] [APPLAUSE]

[00:01:02.20] Second, I'd like to acknowledge the Silicon Flatiron student group, which I learned has 143 members. We've only got something like 500 and some students here at the law school, so a really amazing student group. And several of the members of the leadership are here with us. So I wanted to acknowledge the president Madi Carr, the secretary Isabelle Dean, the treasurer EB Bollendonk, and the program director Sidney Weigert. Thank you guys for all you do.

[00:01:30.90] [APPLAUSE]

[00:01:34.17] With that, I am delighted to hand off to our next panel. This is an experiment. I am so excited for. We are going to turn the tables on some of our favorite technology, law, and policy journalists. And with that, happy to hand things over to my colleague Casey Fiesler, who's the Associate Chair of Graduate Studies and associate professor in the Information Science Department. Casey.

[00:01:57.72] CASEY FIESLER: Thank you, Blake. Hello, everyone. So the internet's midlife crisis, a lot of us have watched the internet grow up. Most people, however, do not read law review articles or policy briefs. So we have a group of folks here I think are an interesting example of people with a bird's-eye view of the technology and internet policy landscape.

[00:02:25.00] So I'm going to-- well, actually, here, let me briefly introduce folks. We have Steve Heuser, who is the global technology editor at Politico, Cristiano Lima, who is a reporter at the Washington Post, and Adi Robertson, who is a senior reporter at The Verge. So feel free to say more about yourselves as we start off here. But I would like to start with a pretty simple question. Nice to be able to ask journalist questions for once. What do you think is one of the most important issues in technology or internet policy right now that people should be thinking about?

[00:03:06.52] STEVE HEUSER: Would you like me to start?

[00:03:07.32] CASEY FIESLER: Sure, yes.

[00:03:09.24] STEVE HEUSER: I'm Steve Heuser from Politico. I'm relatively new to the tech policy landscape, so I don't speak with Vatican authority on these topics. I'm speaking a little bit as a citizen editor and an interested reader.

[00:03:20.79] I don't think there's-- there's a number of things I'd say that are huge issues right now. But I feel like the one thing that might have a chance of successfully getting litigated in the regulatory and political environment is the data privacy stuff we've been talking about.

A lot of, I think-- I work for Politico, which is a very pragmatic organization that covers real-world debates.

[00:03:44.93] And in the wide range of topics that we could be addressing and some of the political theatrics that we are going to see this week when it comes to Congress and oversight and so forth, the one that seems to have a lot of granular interest right now, actual pathways developing for things to happen, is data regulation, data privacy, data ownership questions.

[00:04:06.69] It's happening at the state level, as everybody here knows. Whether or not there's real progress at the federal level, it's hard to say. But I feel like that's-- if we're paying attention to one thing right now in that environment, it's that. I'm sorry. Competition and antitrust is not trivial right now, but I would say the data one is very interesting.

[00:04:25.20] CRISTIANO LIMA: Yeah, so I won't speak to importance. I think all these things are important, but in terms of some of the most striking changes that we've seen over the past decade, I think, whereas an issue, privacy has been a slow build, right? The Obama administration had the Privacy Bill of Rights in 2012. And we've seen action trickle to the states and in Europe. I think something like competition and antitrust has been really interesting because that has been a more sudden surge. And certainly, we're seeing that translate in some of the enforcement actions, which have been getting increasingly aggressive.

[00:04:59.01] But I think it's also translated a little bit in interesting ways in terms of the politics. I think the privacy debate, it's mostly still debated along partisan lines. Whereas, the antitrust and competition discussion is much more fluid. And there's a lot of alliances between the populist right, the populist left. And so seeing how those progress and the ability that they're able to impact change is something that I've been watching very closely.

[00:05:30.61] ADI ROBERTSON: I think that a really broad level, the thing that I really wish more people would focus on is the internet outside quote unquote "big tech," that there's a lot of focus on the idea that we need to rein in it's mostly Facebook, Google, Amazon maybe, Twitter, that I think that, first of all, when you're trying to make policy changes, this ends up really neglecting the impact that any of these changes would have at the large scale, something like an infrastructure provider, like a hosting company that hosts a newspaper, or at the small end, a community, like a small mastodon instance or a subreddit that has a small group of moderators who are vulnerable to lawsuits if section 230 gets reformed.

[00:06:10.08] I think that, at the same time, there are also a lot of bad actors outside the ecosystem of these really large, very heavily algorithmic suggestion-oriented social platforms, that there are a lot of

huge harassment issues with, say, small forums, that a lot of spam and a lot of financial scams and a lot of, honestly, violence takes place just on basic mass communication platforms, that WhatsApp is not an algorithmic platform. It's not even something that, even though it's owned by Meta, is often considered big tech. It is also a thing that has produced lynchings in India.

[00:06:48.62] So I really wish that, while people were talking about a lot of companies that have a lot of power and are very important, that we would try to figure out how these things impact the internet as a whole, and how we can foster parts of the internet outside these ecosystems that we all agree have these huge problems.

[00:07:06.80] BLAKE REID: Great, Thank you. So Cristiano talked a little bit about some of the changes that we've seen. And I also think something that Adi points out-- and that I think we've heard a lot about already-- is that, when we talk about the internet, especially policy issues, there's a lot of focus on the negative.

[00:07:30.22] Now, if you go to Google News and you type in Facebook or AI or privacy, you're going to see more bad stories than good. And I think a lot of this discussion about the internet's midlife crisis gets at that. So I'm curious how you think we've gotten to where we are. Do you think that's a valid change that we've seen? Or are we just noticing it for certain reasons? But how did we get here? Any thoughts?

[00:07:58.12] STEVE HEUSER: I would ask Adi that question.

[00:08:01.64] ADI ROBERTSON: I think that there are two issues. The first issue is that the internet as it was created in a lot of ways was not designed for living on. It was designed for going on and being a second space and having fun. And as a result, a lot of the infrastructure that was needed for a world where we couldn't leave the internet was never really built, including a lot of privacy issues and other basic consumer protection issues.

[00:08:25.93] I think the other issue is that really everything outside the internet eroded. There's a lot of focus on, say, the effect that big tech platforms are having on kids. But part of the reason it's having these effects is because there are increasingly fewer other spaces for kids to be. And it's increasingly difficult to get child care that's not just a screen.

[00:08:45.32] And so I think that we saw the systematic breakdown and corruption of everything outside the internet while the internet itself wasn't really built up to support the weight that we ended up putting on it.

[00:08:56.80] CRISTIANO LIMA: So a part of your question is talking about scrutiny, and so I'll talk about political scrutiny and how we got here. A couple of phrases that I've heard from lawmakers a lot on the

hill in terms of the past decade is that the tech industry used to be the golden goose. But lawmakers have come to see it as the wild west.

[00:09:16.15] And so there's this sense that there hadn't been enough scrutiny of practices across the industry. And I think 2016 was really a turning point with Cambridge Analytica, with, of course, Russian interference on social media, where lawmakers started paying a lot more attention to this.

[00:09:34.06] And so you saw that suddenly surge. And I think part of what we're seeing is that scrutiny running into the hurdles of our bureaucracy and policymakers struggling with trying to turn their concerns into constructive action, dealing with all the hurdles on the hill, at agency level and the courts.

[00:10:00.08] And so I think that's part of why what you're saying is that there's this built up resentment and frustration, but there's also been hurdles to action and to change. And so I think that compounds that problem.

[00:10:16.56] STEVE HEUSER: Yeah, when I look at the audience here and I see there's people who are OGs and have been doing this for a long time and followed the whole debate, and then I see a set of people who are students and are becoming part of the debate, right, and are preparing to enter the world that our last panel is living in right now. And for the second set of people, it's nearly impossible to even imagine this.

[00:10:35.44] In 2011, Barack Obama, the President of the United States, went to Facebook and held an hour long town hall with Mark Zuckerberg. And in preparation for this event, I actually went back and watched it on YouTube. And I recommend this because he was the coolest president. And he went and literally sat next to Zuckerberg, and the two of them shared-- had microphones, and they kind of bro'd out. And Obama bragged about how he made Zuckerberg wear a tie for the first time. And Zuckerberg's like, second time.

[00:11:05.05] And then they both took their coats off. And I'm like, oh, my god. This is 11 years ago, or 12. It's unthinkable in today's political environment. And as Cristiano was saying, a set of things, right? Cambridge Analytica, which incensed people on the left and the earlier scandal about Facebook demoting conservative content, which broke a couple of years ago-- and this is in the mid 2000 teens, right, incensed to the right.

[00:11:28.70] And so basically, suddenly big tech has genuine political enemies. And it completely transformed the debate, and it made the conversation we're having here even possible, right? I got to hear well, these are the fundamental flaws that are living inside these platforms that I live on. And the only reason we're talking about that is because we went through a two year period in which everyone realized they could hate big tech, and it could be incredibly productive to hate big

tech. And they can't do anything about it, as Cristiano said, for political reasons. But hating it is great politics. And that's the moment we're in.

[00:12:00.90] [LAUGHTER]

[00:12:02.14] BLAKE REID: Yeah, so speaking of today's political environment or hurdles on the hill, this also is a global policy issue. What is your perspective on the battle for power right now in this space? And how do you think that is impacting policy? Who wants to start?

[00:12:25.10] [LAUGHTER]

[00:12:26.12] ADI ROBERTSON: I think it depends on so many axes of the battle for power. You mentioned global. And so I think that right now there's a question about what countries the internet is going to be for because, for a long time, there was this sense that whoever made the most restrictive rules was going to get the platforms to work to whatever they had created. And the US, it was like, whatever California does sets the standard for what internet law is.

[00:12:52.13] And I think that that's broken down in recent years. I think we're seeing these companies try to tailor their services to a specific country or a specific region.

[00:13:05.19] And I think that there's going to be a lot of fighting over whether that continues to be sustainable or whether we end up having countries that are trying to push these platforms to work the same everywhere, or whether we're going to have what's-- I forget who coined the term-- the splinternet, which is that you end up increasingly just having services that only work in one place. And so there's a balance of power, but that balance of power is just that the internet doesn't work the same way anymore.

[00:13:35.65] CRISTIANO LIMA: Yes, if you're looking at the broader ecosystem, as Adi was alluding to, certainly, at the global level, there's questions about fragmentation of the web. There's also this tug of war between western values and more restrictive countries, as you were alluding to, authoritarian nations cracking down on the internet and what the future of that will be. And that's a bit of the subject also of a lot of the policy discussions happening in Washington is to what extent do we want to kneecap our own companies as they're competing with companies overseas.

[00:14:14.02] In terms of, if your thought of what the central theater is, as Senator Bennett was talking about earlier, is this tug of war between the largest tech companies and regulators, then I think you'd say that the largest tech companies are doing fairly well. In the US, there's not a privacy law. There have not been significant updates of antitrust law. Some of the competition antitrust lawsuits are running into hurdles in the courts, we just saw with the Facebook FTC decision.

[00:14:45.98] And so in the US, there's a lot of challenges to those efforts to bring regulation into the digital age. Yeah, but also, I'd be remiss to not say that some of the most significant policy making happening, it seems to be in Europe. And I think time will tell how successful those efforts will be.

[00:15:12.19] STEVE HEUSER: I feel like that's a barrier. We've talked about it here, but that's definitely a barrier, the aspect of the power dynamic. At least, it's off the radar for a lot of people in the US, which is the extent to which the battle to control tech or to regulate tech in some way is being waged between DC and Brussels and then California and Colorado, right, who have meaningful state regulations. And the tech companies don't know right now who they need to really worry about the most. And they're sending a lot of lobbying money to Europe right now.

[00:15:39.55] We have a big office in Brussels, and the reason Politico has a big office in Brussels is for this exact reason, which is that the European Union is a really serious regulatory body that big companies have to think a lot about. And the tech universe is getting more and more ambitious.

[00:15:55.78] And so the de facto battle to figure out who's going to write the rules is being waged on the regulatory side while the bigger one between the tech industry and the regulators has been joined.

[00:16:11.26] CASEY FIESLER: I think a lot of this is really complex too. The types of topics that were coming up on the last panel, for example, I think there are a lot of things that the average person on the street wouldn't necessarily know about. So as folks who do a lot of translational work, what are some things that you think in this space and internet tech policy are challenging for the average person to understand? And how might that be impacting public opinion or how people are using technology or these kinds of political battles that we're seeing?

[00:16:51.65] ADI ROBERTSON: I think that one thing that I alluded to earlier that's really hard for a lot of people to understand is how many of the things they think they hate about big tech are actually things that huge numbers of companies, including many that we don't associate with the internet, are doing, that if you're upset about algorithms, one of the things maybe you should be upset about is credit agencies that are using these really arcane, opaque systems to decide effectively who gets jobs or who gets houses.

[00:17:19.27] And I think that the DMV is selling your data. There are all of these other platforms that really have a huge impact on people's lives that I think that, when people think about a thing they really don't like some company they don't like doing, I really wish they would take a more holistic view of what is the actual problem and who is contributing to that problem.

[00:17:44.41] And then that's also how you figure out how to solve it in a way that's not just, we find somebody who's bad that we don't like, and we punish them. And we don't worry about what the fallout to anybody else would be.

[00:17:56.85] CRISTIANO LIMA: Probably the thing that is hardest to convey and write about is section 230 platform regulation, online harms, the intersection with the First Amendment. And these are things that get conflated a lot by our public officials and are discussed sometimes interchangeably. As we've heard today, there's a lot of concern about how platforms are impacting kids. I get perhaps the most interest when I write things related to kids.

[00:18:33.73] And so there's a lot of public-- and it's also something that's very visceral. A lot of people here in the room and around the country, of course, have children, are on social media themselves. And so it's something that everyone has access to. But understanding how the legal mechanisms work, I think, is difficult.

[00:18:55.59] Whereas, something like competition, the consumer welfare standard, these are things that are a lot more opaque to consumers where there's not a-- they can't necessarily understand it quite as viscerally.

[00:19:10.71] STEVE HEUSER: I feel like we have-- I promised not to talk about actual journalism but just use our experience as journalists as a lens onto the world that we're talking about here, which I think is the correct approach. And it's the kind of thing I tell people all the time on panelist very gently. I don't actually care what you do. I care what you know.

[00:19:27.12] But in my little universe, right, we write for a couple of different sets of people when we talk about the public awareness, right? And one set of people is highly specialized. And they follow this stuff. And for them, this conversation is very interesting. Set of people that we have here, is like there are people you need to know what they are saying and thinking. And there's a second set of people, and we actually write for them. And you guys at the Post write for them more, right, which is like the general public.

[00:19:48.90] And none of this makes would make any sense to a regular person. Nothing we're talking about here would make any sense. The idea that these specific data flows have to be administered by this particular committee, and if you staff it this way, then one thing happens. If you do it this other way, and can [INAUDIBLE]? And the main thing that matter-- and they don't need to know this. I'm not arguing that the regular, the average citizen needs to be informed at that level about how the government works.

[00:20:12.93] The thing they don't get and the thing that I think is important about this is that a very large number of people can agree that something has to be done. And a very large number of experts

can even agree, even across party lines, can agree on sensible pathways to achieve those things. And then nothing will happen, period. And that's politics, right?

[00:20:31.86] And that is the voter's fault. And the reason it is because they don't care enough about these individual issues to hold their elected officials accountable to this stuff. They care about other stuff. They care about shooting down the Chinese spy balloon/weather thing, or whatever it is, the issue of the day. And that tends to be what people are responsive to.

[00:20:49.56] And so people aren't responsive enough to even very, very important issues like this to hold people accountable. If that doesn't happen at the electoral level, then there's no political pathway or no political impetus for this stuff to happen. And I would say, if regular people need to understand stuff, it that.

[00:21:05.91] If they care enough about this, then they have to care enough about it to hold the officials accountable for doing something rather than just yelling about it and being excited there's a hearing where the Twitter executives get flamed or whatever happens.

[00:21:17.91] CRISTIANO LIMA: If I can add something to that really quick.

[00:21:20.01] BLAKE REID: Yeah.

[00:21:20.25] CRISTIANO LIMA: Yeah, I get sent a lot of surveys from interest groups, industry groups saying, oh, here we found that 75% of voters would support there being federal privacy protections. I don't get a lot of surveys saying this is a top five issue for voters.

[00:21:37.96] And I think, as Steve was alluding to, it can be politically beneficial to attack the tech giants, the industry, but it's certainly very difficult for the public to have enough visibility in terms of what the policy making actually looks like to try to hold their feet to the fire when they're trying to execute something that's going to actually help.

[00:22:01.92] ADI ROBERTSON: Yes, Cristiano, I think you are also completely right about Section 230. As an add-on, I think a lot of people in the US do not understand the First Amendment at all or how it relates to Section 230. There are a lot of people who believe that Section 230 is going to just ban everything they don't like because they don't understand that it applies to illegal content. And so yeah, it's incredibly confusing and difficult and frustrating.

[00:22:28.12] CASEY FIESLER: Yeah, I will say the only time that I've ever gotten actual hate emails in my inbox was when I explained the First Amendment on local news--

[00:22:34.75] [LAUGHTER]

[00:22:36.16] Very simplistically. And so there's the complexity of some of these policy issues. And I would like to think that most of our policymakers understand the section 230, for example. But there's also the complexity of a lot of the technology that we're talking about here, right? And I'm glad that we have interns feeding Congress people Taylor Swift lyrics.

[00:23:01.47] [LAUGHTER]

[00:23:02.53] But I also think that there might be some topics that not all of our policymakers or regulators have a great technical understanding of. So I'm wondering if there are any of these things that you think that policymakers might be struggling to understand too from the more technical perspective?

[00:23:23.08] CRISTIANO LIMA: So I don't know if it's a lack of comprehension, but something Adi was alluding to earlier is, as we've been talking about, a lot of the rhetoric is targeted at the largest companies. But a lot of the policy making, especially legislation around Section 230, is going to impact a lot more companies than what they're talking about when they're doing stump speeches. And I feel like that's something that gets lost at times in the discourse.

[00:23:51.14] ADI ROBERTSON: I think that a lot of members of Congress, for instance, know a lot more about the internet than maybe they let on. But I think one of the things that is persistently frustrating for me is that I think that bipartisanship doesn't work if the policy solution you've crafted involves two parties that are both trying to get opposite things out of the same piece of legislation, that I think you're not going to get a good section 230 reform bill if it is simultaneously requiring companies to take everything down and leave everything up. That's just not possible.

[00:24:22.22] [LAUGHTER]

[00:24:25.38] STEVE HEUSER: There's an interesting argument that bipartisanship is totally overrated, right, and that issues only move when they become radically partisan. And then a party gets full control of that and just runs the damn thing through, right? Everyone loves to [INAUDIBLE] themselves in bipartisanship, but I don't know. I'm now getting partial to the argument that things just have to become super partisan if anything is going to happen. And then the other side complains about it for a whole generation, and that's who screwed it up.

[00:24:48.49] But that's possible-- the thing you're saying is completely true, right? And that suggests that, in this environment that we're in right now, bipartisanship is a little bit of a canard if you're thinking about actually doing regulation. I'm sorry, to interrupt you. I actually want to totally endorse the thing you just said, which is a rare moment of being nice to politicians.

[00:25:10.23] People understand a lot of stuff. I'm guilty of this, right? In 2015, I sent a reporter through Capitol Hill with a microphone and an iPhone asking members of Congress what the internet of things was. And ha-ha! A lot of them didn't no. Surprise. It was new. We didn't know what it was.

[00:25:27.30] [LAUGHTER]

[00:25:29.10] But actually, who's on the staff? Who's on-- what's-- Al Franken stuff, Alvaro Bedoya it was doing data prep. And that dude is really smart. There are a lot of people on the hill who are very, very bright. And people doing policy, 15 years ago, I was at the Boston Globe's ideas section. And if you knew who Tim Wu was, you were cool because it was like--

[00:25:47.67] [LAUGHTER]

[00:25:48.45] It was obscure insider knowledge. But you knew they--
[INAUDIBLE]

[00:25:52.65] [LAUGHTER]

[00:25:54.09] Now, he's a regulatory celebrity. And I'm like, I am sitting next to Tim Wu. And that's actually, that's a meaningful-- the amount of knowledge that is actually existed in these DC [INAUDIBLE] staffs and stuff is pretty-- that's not the problem, actually.

[00:26:09.72] CRISTIANO LIMA: And I think it's gotten a lot more specialized too. I think a lot of us groan when there's another tech hearing, and some are a lot more targeted and refined than others. But there have been investigations, the house antitrust investigation, that were very substantive, very focused. And you could see that the lawmakers on the panel over time developed very specialized expertise. And then they become the thought leaders in terms of what reforms look like because-- you might be able to tell that I focus a lot on Capitol Hill.

[00:26:42.96] But it's just a matter of fact that a lot of these discussions happen at the committee level, and they are the ones with specialized expertise. And then other lawmakers will take their cue from party leadership about when that idea that's generated at the committee level is ready to move up.

[00:26:59.85] So yeah, if you walk around Capitol Hill and you're asking about IoT, you're going to get some people that don't know. But I do think that it's gotten a lot more refined over the years.

[00:27:07.41] STEVE HEUSER: We had a panel last year with Cynthia Lummis in Wyoming and Kyrsten Gillibrand in New York, just talked about crypto, right? And they have introducing a bill. It's a bipartisan bill to regulate crypto. They were really good at it. We had reporters grilling them on stuff, and they knew their stuff, or at least as much as you need to know if you're a senator, which is a bunch.

[00:27:26.04] You don't need to infinite things about the Satoshi Nakamoto, right? You [INAUDIBLE]. You just need to know how this is supposed to get regulated. And they were really good at it. And they introduced a bipartisan bill. And has anything happened? No. And that is the thing. I honestly feel like that's the thing that you just need to talk about if you're worrying about the stuff in Washington.

[00:27:44.71] CASEY FIESLER: And I think that Adi brought up something really important, it was like, how do we take everything down and keep everything up at the same time? So are there other types of things that you think are major trade-offs that are having to happen right now or being discussed that you think are important?

[00:28:02.99] ADI ROBERTSON: I think, for me, one of the big trade-offs is between something like antitrust and trying to limit the power of really large platforms, and the fact that that ends up often creating privacy and security trade-offs at the smaller scale.

[00:28:16.58] There was a speakers dinner last night, and we were talking about the fact that if, say, you want to let smaller companies get access to the data that, say, Facebook has or you want to be able to tie into Facebook's network and let people move their information off that service, that then you also end up getting into a sort of Cambridge Analytica situation where you are creating this huge ticking time bomb potentially if a bad actor uses that system.

[00:28:46.31] And so I think it's really, really difficult to simultaneously limit the power of these gatekeepers and to deal with the fact that gatekeepers often-- they keep things out. They do actually serve a purpose, and that you have to find a way to deal with the fallout created by removing that structure.

[00:29:11.54] CASEY FIESLER: I can move on.

[00:29:13.91] CRISTIANO LIMA: Well, so I would also say that I think that's a great point. And certainly, that's something we've heard a lot in terms of the debate over antitrust legislation on Capitol Hill. There's also been friction between how competition and antitrust standards might intersect with content moderation.

[00:29:31.70] We saw this come up a lot in the debate around iKoa, the Open App Markets Act. There were a lot of advocacy groups expressing concern about how these regulations that are meant to rein in alleged anti-competitive uses by these companies might also impact their content moderation efforts and their efforts to crack down on things like hate speech and misinformation.

[00:29:54.57] So I we're increasingly seeing these different efforts grind against each other and lawmakers trying to find, and policy makers trying to find the right balance between them.

[00:30:05.95] CASEY FIESLER: So this is actually going to be my last question before I open it up to others. And that is, given all of this, if

we're in the internet's midlife crisis, as it gets older, where do you think we're going next? What do you think are going to be the next big topics? And I will give you a bonus question, which is, if you like, give us a headline that you think you might write in, say, five years.

[00:30:34.44] STEVE HEUSER: Can I-- I'll start. So we totally-- it's practically illegal for people in my [INAUDIBLE] to prognosticate, and we're not supposed to be pundits. But I'd say the headline is obviously Congress Still Stuck On--

[00:30:48.57] [LAUGHTER]

[00:30:50.82] I promise to you, if I am in this job in five years, I will publish a story that has that headline. I'll email it to you-- because I am an editor. I can actually write the headline. I just-- I'm not able to do that. So that's real.

[00:31:06.56] Broadly speaking though, I'm cynical about potential-- maybe cynical is the wrong word. I'm skeptical. I share the skepticism of the earlier panellists and the potential for the current Congress to move on a lot of these issues. But it is not-- it is a real thing that we are seeing the development of a thicker regulatory apparatus around an industry that is used to skating on this stuff.

[00:31:34.13] I can tell you. This is benefits of being inside a newsroom. It's like, the energy business, the pharmaceutical industry. These are relatively high margin, very profitable, as it is full of smart, innovative people that have been living for a really long time with an extremely thick regulatory layer. Kind of works, right?

[00:31:49.97] American pharma is still, last I checked, by far the global leader in this. And tech industry has been the massive beneficiary of federal largesse in many ways, continuing, right? We're sloshing money into infrastructure, literally, and proud of it, without any particular oversight or expectation of responsibilities. That's changing. That is genuinely changing. The conversations we're having now, they just weren't happening 10 years ago outside of really granular events.

[00:32:16.64] And so we are watching this happen, and maybe it's happening at the agencies at this point. Agencies are getting smarter. They're working with Europeans. The states are doing this. But the layer is thickening. The amount of regulatory, there's a trade-off between that and innovation. That's a real trade-off, but it's not unreasonable to expect that an industry of this scale is going to, in five years, be dealing with something not at the energy industry level, but something it hasn't had to deal with before.

[00:32:43.87] CRISTIANO LIMA: So I'm going to cheat a little bit and use a past headline and actually one that was published in Politico when I used to work there. I did not write it.

[00:32:52.02] STEVE HEUSER: Was it your story, Cristiano?

[00:32:52.65] CRISTIANO LIMA: Yes, it was my story, yeah.

[00:32:53.91] [LAUGHTER]

[00:32:56.10] But an editor wrote it. I didn't write it. But echoing what Steve said, I think the headline was-- Zuckerberg was testifying, I think it was around when they were trying to launch their own the Libra-- what was the [INAUDIBLE].

[00:33:09.90]

[00:33:10.29] CRISTIANO LIMA: Yeah, yeah. But the headline was like, Congress Whacks Big Tech But Don't Expect Much Action.

[00:33:17.15] [LAUGHTER]

[00:33:17.97] And we had a running joke that this was a headline that we could maybe repurpose over time.

[00:33:22.29] STEVE HEUSER: That's weird. We ran that story this fall about something totally different.

[00:33:25.29] CRISTIANO LIMA: Oh, there you go. I did see that. I flagged that.

[00:33:27.30] [LAUGHTER]

[00:33:28.57] So there's that. But seriously, one thing that's clear is states are acting. States are moving. We've already seen dozens of privacy bills introduced. And from speaking to experts, they expect every year we'll see more and more of those actually converted. We're seeing more and more states take up potential app store legislation. I think this could be a big year for children's safety standards at the safety level.

[00:33:55.63] And so I think that's something that's going to continue, and it'll lead to more of these questions about fragmentation and patchwork that we've been talking about for years. So I certainly see that in the short term as one of the biggest stories that we'll continue tracking.

[00:34:13.17] But then also, of course, a lot of the regulators, particularly in the US, they're just starting to gear up with a lot of these antitrust lawsuits, competition lawsuits. And we're going to be tracking those battles at the court level for years. And eventually, with the DSA and DMA coming into force, I think we're going to see some likely significant enforcement actions out of that the we'll be tracking the effectiveness and comparing it to the enforcement of GDPR, for example. So I think those are some of the things that we'll be watching.

[00:34:48.81] ADI ROBERTSON: My headline is a little bit hyper specific, which is, I don't if the agency is the FTC or the DOJ. But one of them is investigating collusion in fixing the data sets for artificial intelligence, which is definitely probably going to happen because, if

you can get an AI that recommends Amazon products 95% of the time, Amazon is going to do that.

[00:35:09.51] But more generally, I think one of the most interesting things of the past few years has been the understanding that a lot of policy now is happening at this really hyper-- and the internet now is happening at this hyper community level, that Elon Musk buying Twitter has done some really interesting things for, say, people realizing they can run their own social networks. States are coming up with-- and very local governments are coming up with these rules that are going to restrict access to what libraries can stock.

[00:35:39.18] And so I think a lot of what we're going to be covering in the next years are probably going to be things that are happening at a scale way, way smaller than big tech, even though it still has a huge impact on what those people can do.

[00:35:52.30] CASEY FIESLER: Well, and being in my eighth year of Silicone Flatirons, I know the rules. Do we have a question from a student for our panelists? I see someone over here.

[00:36:10.70] AUDIENCE: Thank you all for this great talk. My question is, so you guys are predicting that everything will be happening on a more local level. Do you think the ramifications or implications of these local rules, laws will somehow push this big tech to then push for a federal law, to preempt the-- or I don't know. Maybe it will be like a floor, maybe it will be a ceiling of some sort. But that would then somehow speed up of passing a federal privacy law?

[00:36:48.38] CRISTIANO LIMA: Yeah, that's been happening, right? We've been hearing from industry groups for a couple of years after CCPA was passed that the patchwork is going to make it unsustainable for businesses, big and small, particularly potentially for smaller businesses.

[00:37:05.06] And so yeah, but I could also see that argument could be made as well if we start to see more states take up children's online safety standards or they start to take up app store legislation or they start to take up digital taxation. I think you're going to see that definitely be one of the main criticisms and will hasten calls for action at the national level.

[00:37:30.28] CASEY FIESLER: Oh, gosh, so many questions. How about over here.

[00:37:38.38] AUDIENCE: Because I'm sitting next to Tim Wu, which makes--

[00:37:39.82] CASEY FIESLER: Yeah, I was going to let you guys choose instead of me picking one of you.

[00:37:43.48] AUDIENCE: So you didn't say much about courts. And two weeks from Tuesday, right, I'm curious if you all think Gonzalez is

an opportunity to educate the general public, or instead you fear that it's just going to become well-funded op-eds on both sides, or it'd be a telling answer if you said, that's not my beat. I don't care about courts, or I don't do courts, or that's someone else. So what do you think about Gonzalez coming up?

[00:38:08.83] ADI ROBERTSON: I am going to be covering Gonzalez closely, but I have had increasing problems trying to explain court cases to people because I don't feel like I understand what courts are doing anymore. I used to try to be able to explain well. Usually court cases, like all these precedents, mean this, and that means we're likely going to be able to see this. And then I think maybe it was the Texas Fifth Circuit decision on the Texas social media law that really just broke me.

[00:38:36.49] Look, the Supreme Court makes the rules. How am I supposed to tell people what courts are going to do if it's just going to just throw everything out?

[00:38:46.60] CRISTIANO LIMA: Yeah, no, I think the courts are huge. We're watching that case very closely. So I write a newsletter that's [INAUDIBLE] subscribe. And I did a series of previews, the first week of the year, and the first one I did was on the Supreme Court case because I think that might be the biggest story of the year. But I don't think it's limited to that. There's already a challenge to the California age-appropriate design code.

[00:39:09.13] I think, as policymakers start to actually get more rules on the books, how those are actually litigated on the courts I think is going to be defining as far as tech stories go.

[00:39:25.99] AUDIENCE: [INAUDIBLE]

[00:39:26.91] AUDIENCE: A lot of pressure all of a sudden.

[00:39:28.12] [LAUGHTER]

[00:39:30.17] I have a question about coverage. I'm just coming out of the White House, and I have to say, in the job, I was impressed very often at the amount of access that the reporters got and things that they covered. But one thing I thought got less attention than I thought it might was less the question of who introduced a bill-- and I'm talking about congressional coverage in particular-- and more effort to ferret out who killed it. There's a lot of passive voice.

[00:40:15.04] I spent a lot of time wondering why Congress doesn't do-- I think we're all interested in something supported by 95% of the public, something like children's safety online or something like that, [INAUDIBLE] bill. I don't think anyone would have voted against it. And there is quite a amount of coverage of stuff getting started, but that almost question of who really in the end killed it, I think is very rarely covered.

[00:40:41.93] Now, I know that it's not exactly like senators are volunteering to give an interview about why I killed children's online safety. But I started thinking maybe they need to wear body cams or something.

[00:40:53.44] [LAUGHTER]

[00:40:54.55] But that is sometimes something that they get away with frequency. I think probably it was mostly Pallone who killed that bill. I never saw it reported. I think McConnell had a big role in it, not very, very much reported. Just kind of-- and it always comes-- well, Congress didn't do something. Congress didn't-- so I wonder if that is something you try to do and its impossible, or any comment on that question.

[00:41:18.94] STEVE HEUSER: Didn't Ken Buck throw McConnell under the bus in your newsletter?

[00:41:23.41] CRISTIANO LIMA: Yes, yes, but he said--

[00:41:25.93] STEVE HEUSER: It didn't work out very well for him, did it?

[00:41:27.63] CRISTIANO LIMA: Yeah, but he said they were being pressured by industry and Republicans [INAUDIBLE]. No, I think that's a terrific point. I think that is a prime target always. And I think that's something that we try to get to the bottom. Of course, it's a harder thing to report out, to get the data points to be able to show it.

[00:41:48.16] It's easy to show groups spending x amount of lobbying. But I think sometimes, causality is something that's very tricky in journalism, right? So I think we try to find data points that we think reveal a story. But it can be hard unless you have just extremely good intel to actually draw that causal link.

[00:42:11.68] STEVE HEUSER: So that's one of those questions where it's like you're asking why we don't do it, but you're really saying I would like you to do more of this.

[00:42:16.70] [LAUGHTER]

[00:42:17.98] So to that effect, I'll give you my cell phone number.

[00:42:21.13] [LAUGHTER]

[00:42:22.30] You will text me. That is how Washington works. And I will share that with my reporters who will think I'm a badass when that happens. But speaking of as an editor, you're making excuses for or taking credit for the work of your reporters when you answer a question like this. So that's with that caveat, it's a very hard question to answer a lot of the time.

[00:42:39.49] You do see hints and allusions to it if you read carefully and pick up these gossipy things. And another really hard one is, who stuck this thing in, right? You'll read these bills, and one bazillion

pages, pieces of legislation show up at 10:14 PM, and everybody has to read it really quickly.

[00:42:55.27] And then you're like, oh, my god. Subsection eight has this crazy thing, and who put that in? And that's really hard to do, actually. And we are super curious about it, and we ask this question a lot. But it's actually, the legislative process of the United States of America is like, anybody can walk into Congress. Reporters can hop on the elevator with an elected representative.

[00:43:17.92] But literally, nobody knows. Nobody-- and there's some really crazy language that showed up in some of the bills that were moving at the very end of the year. And we were literally trying to answer these questions, and we couldn't figure out whether it had accidentally been left in from an earlier draft by a junior staffer or if it had deliberately been inserted at the last second. And you can't always answer these questions. And these are really important multibillion dollar federal bills. I would argue for more transparency in this process.

[00:43:44.81] CASEY FIESLER: So we have time for one more question. We have one over here.

[00:43:48.55] AUDIENCE: Thank you. This is a rare opportunity that we don't often get. So thank you. I'm Christopher Yu at the University of Pennsylvania. At least one person is told-- on a previous panel, they said there's very little positive about big tech these days. And I'm curious about how the dynamics work in the newsroom on reporting. And I'm going to give you an anecdote.

[00:44:09.39] One person had told me that they couldn't get certain stories through because of an editorial message where the negative message was selling stronger. Do you think this is-- I don't mean to generalize. I don't know how general it is, and I'd love to get your reactions. Does this dynamic happen? Is this a concern in how the reporting comes out?

[00:44:29.87] ADI ROBERTSON: I feel like the answer for me might be very different from the answer of you two because we're in an unusual position where we might be critical of a lot of these companies. We're also actively reviewing their products. We're covering them as consumer goods.

[00:44:41.99] And so to some extent, unless we, I don't know, declared we're never reviewing an Amazon device or we're never reviewing an Apple phone again, there's probably going to be something positive no matter what. I think that also the consensus in a lot of places was that the tech industry-- the enthusiast press was very uncritical of quote unquote "big tech" for a long time.

[00:45:05.37] But I don't know. I think there's this constant balancing act where we're trying to discuss these things as things that people use every day constantly, and we're weighing the costs and benefits of.

And we're also treating them like these entities that are having these very large arcane effects on politics. And I think that maybe the difficulty is trying to bridge that gap.

[00:45:26.79] CRISTIANO LIMA: I'll say this is not a criticism that's unique to tech journalism, right? I think you hear a lot, local news, they're always covering the car crashes and the robberies. And there's this sense that, as reporters, we fixate on the negative. From my vantage point, I focus largely on what policymakers, what regulators, what legislators are doing.

[00:45:51.54] And as we've been talking about, a lot of the tenor of that discussion right now is not particularly positive. And so from my vantage point, I think that might be why that's reflected to a degree in the coverage. But I think that's a legitimate criticism. And perhaps, there are times where it's policymakers and journalists have overcorrected.

[00:46:17.58] STEVE HEUSER: I don't ask my people to cover things a particular way. And I don't expect them to be harder on big tech than they are-- or harder on Democrats or Republicans or anything like that. But you hear rumors, like oh, yeah, such and such a place. This reporter actually left because they just felt like they were being dragged. And I don't even know if I believe-- I can see that in the patterns of coverage.

[00:46:37.17] But to me, a lot of it is explainable by journalism as a culture. People do this job because they think some stuff is wrong out there, and they want to find out what it is and tell people about it. It's not crusading, but it's sort of people who they're curious because they think stuff could be better.

[00:46:50.91] And so the general tenor of coverage tends-- of not product reviews, but serious digging does tend toward something's wrong. Rather something's wrong with the process in Congress. Something is wrong at Facebook, and we want to reveal it. So there's a self-selection. I don't think it's necessarily programmatic or you're directed to cover things a certain way. But I'm only speaking from the places I've worked where I haven't had that experience.

[00:47:20.17] CASEY FIESLER: So I was very excited to see all of those raised hands. And despite not being able to get to all of the questions, I believe we are going into lunch. So I would encourage folks to find our panelists to have more of a chat. And thank you very much for the excellent questions and for the attention.

[00:47:34.83] [APPLAUSE]

Panel: Implementation of Platform Regulation in Europe

https://youtu.be/_C79PITUjEE

[00:00:00.09] SPEAKER: OK. Welcome back. I hope everybody had an excellent lunch and you're all fueled up for this afternoon's content. My name is Nicole. I am a first-year law student here. So I'm very excited to announce our next panel.

[00:00:16.24] So we'll be talking about the implementation of platform regulation in Europe. This should build really nicely off of this morning's panel where Julie Brill concluded that we should learn from the EU work that's been done in this area. So now is a really good chance for us to all learn a bit about that. So with that, I will hand it off to David Sullivan, who's the executive director of Digital Trust and Safety Partnership. And he will be the moderator for this panel

[00:00:44.04] DAVID SULLIVAN: Thanks very much. Welcome back, everyone. Good afternoon. It's a great pleasure to be here moderating what I think is a truly exceptional panel that has been sort of inaugurated with so many references to the import and consequence of developments on the regulatory front in Europe in the recent period.

[00:01:05.95] So I'll just quickly introduce our panel. Going down the line here, we have Emma Llansó, who directs the Free Expression Project at the Center for Democracy and Technology; Gerard de Graaf, who I need to apologize for mispronouncing his Dutch name, who is the Senior Envoy for Digital to the United States, and head of the new EU office in San Francisco, part of the EU delegation to the United States.

[00:01:33.72] And then at the end we have Chris Riley, who wears a number of hats in this space, but is here as a Distinguished Research Fellow at the Annenberg Public Policy Center at the University of Pennsylvania, and is also leading a new initiative called the Data Transfer Initiative that he's going to be telling us about. And then we should be joined virtually by Julie Owono, who is the executive director of Internet Sans Frontieres, as well as a member of the Meta Oversight Board. I think hopefully we'll make that connection happen, and she'll join our conversation in due course.

[00:02:05.40] So when it comes to platform regulation in Europe, there is a long list of initiatives, regulations, and directives that have taken shape over the last few years, those that are very well known here in the United States just by their acronym, like the GDPR. And some that will soon be very well known-- the Digital Services Act and the Digital Markets Act, which is what we're going to focus our comments on and discussion on today.

[00:02:35.38] So Gerard has previously worked at the European Commission for, I think, 30 years, including on the development of the Digital Services Act and the Digital Markets Act. He is, I think-- I learned recently, Henry Kissinger is credited with this quip that he may or may

not have actually said about, when I want to talk to Europe, who do I call? The answer for the tech industry is Gerard. And so we're delighted to have him here to tell us about the state of EU platform regulation and to kick off the conversation.

[00:03:07.18] GERARD DE GRAAF: Thank you so much, David. It's really nice to be here. And when I say here, it's not just in Colorado, here in Boulder with the beautiful-- I mean, still snow, and et cetera. But it's here in the US. I arrived some five months ago because the European Union decided to set up an office in San Francisco and then asked me to head it. And it's been a fascinating ride so far-- very interesting and positive.

[00:03:33.72] I'm very pleased also to be here because the quality of the debate is incredibly high. I mean, how fortunate we are to have these kind of excellent panels and excellent discussions. I mean, this kind of-- we need more of those, and we need more of those also in Europe.

[00:03:53.40] Senator Bennet-- I mean, I was very impressed by what he said. He talked about we're in a crisis. And if you look at Europe, I mean we're in multiple crises. We're in a security crisis. We're in a democracy crisis. We're in an economic crisis, in an energy crisis, in a climate crisis, and we're in the digital crisis.

[00:04:12.27] And what you expect of your political leadership is when, say, your continent and the world is in crisis, they need to stand up and show leadership-- why we have elected in the first place. And I'm-- of course, I'm partisan here. But I think in Europe, the leadership is standing up. And also to say that the digital, which is a priority in the European Union, it remains a priority. Because often, of course, what happens other crises come and then it's forgotten. Priorities get shifted, but not here.

[00:04:42.75] And I think overall-- and we talked about that-- Senator Bennet talked about that a bit earlier. We, as democracies-- because we've got a democracy crisis. Democracy is under threat. We have to show that democracies offer better solutions to our citizens-- a higher quality of life, better protections than the nondemocracies-- the authoritarian state. So there's a lot at stake here. This is a very important debate that we need to have.

[00:05:10.89] And there's a lot of positive about tech platforms and the internet. And we recognize it in Europe. And so we're going to maybe focus a bit more on the dark side. But we must not forget that there's a lot that our economy could not do without big techs. I mean, we could not as citizens interact with our friends and lead a meaningful life without the internet. But I think the romanticist view of the internet-- I think that's something that we are now leaving behind.

[00:05:42.96] And so-- I mean, I also heard a bit-- I mean, kind of, can you give this to an agency or to-- I mean, in Europe, no politician would

ever give these responsibilities to an agency. They would set a framework. They would set kind of what powers that agency should have, what the agency should do and not do. And so you can't just delegate these issues to unelected officials. That would be the line in Europe.

[00:06:07.74] And the same-- you can't just leave it to the courts. I mean, very interesting what's going to happen at the Supreme Court. But European politicians would not be comfortable with the idea that the court is going to set the direction of the policy. This is something that the politicians have been elected to do.

[00:06:23.67] Now maybe, just now go into what is Europe doing-- European platform regulation. We asked ourselves two questions, or actually three. And I think many of these questions are asked by people around the world is, how do we make the internet safer? And how do we protect and reinforce our fundamental rights and freedom of expression? That's the question that European politicians, citizens, NGOs, industry have asked themselves.

[00:06:51.19] And the answer to that question is the DSA, at least the Digital Service Act. This is part of the answer to the question, not all of the answer to the question. The other question we've asked ourselves, and it came up earlier this morning, is how can we make sure in a situation where there's network effects and economies of scale, that is digital markets remain competitive.

[00:07:10.71] That if you are a new company, you're a startup, you've got superior technology, you have a chance to get a fair market share. You can grow. You can succeed. You can yourself maybe dislodge at some point these powerful companies. So that's the second question that the European Union has asked itself. And the answer to that question is the Digital Markets Act.

[00:07:30.57] And then the third question is-- I think relevant also here-- how do we avoid fragmentation? Because if the European Union doesn't regulate well, the member states will and do. And then you get a bit the situation that you see here. Increasingly in the US, you get a very fragmented market, a patchwork.

[00:07:48.93] And if there's one reason-- I often get the question, why do you have so few, say, big platforms in the European Union? There's many reasons for this. But one is it's just very difficult to grow in the European Union if the rules are different between the member states.

[00:08:03.06] Because if you're successful in the Netherlands, you go to Germany, you've got to change your business model. You go from Germany, you go to France, again, you change your business model. It takes a lot more time, and it is much more costly. The first person you need to hire in Europe if you are going to expand is a lawyer. And you don't want to hire a lawyer, with all respect here to the lawyers. But you want to hire an engineer.

[00:08:24.10] [LAUGHTER]

[00:08:25.91] So where are we? I mean, 205 days then the Digital Services Act will enter into application. Less than a year, about a year, for the Digital Markets Act. Well, if you-- as I asked David, how much do people know about the European framework, and maybe underestimated your-- certainly, not your intelligence, but certainly the information you have, he said, not much. So please start with chapter 1.

[00:08:52.82] So I'll start with chapter 1. How do you-- I mean, what is the DSA, the Digital Services Act, that will become and is becoming quite a well known acronym, not just in Europe, US, but around the world. It is an effort to make the platforms more accountable, more responsible.

[00:09:12.28] And we do that by imposing a certain set of obligations. We call these due diligence obligations. And these due diligence obligations are intended to give us confidence, all of us, that these big platforms have set systems in place that kind of avoid or kind of prevent problems from happening and detect them and then mitigate them. So we take a systemic approach.

[00:09:37.16] It's a bit like how banking regulators regulate banks. I mean, there are problems. There are bad loans. There is some misselling going on. There's money laundering. What the regulator looks at, the financial supervisor looks at, does the bank have systems in place-- solvency systems, risk management systems, audit systems, et cetera, that minimize these problems?

[00:09:58.02] So that's the approach that the European Union is taking. We don't regulate speech. We regulate systems. We want to be confident that these companies have thought about these issues and act. And we do it in an asymmetric way.

[00:10:11.36] So we don't impose the same rules on everybody. If you're big, you're powerful, I think somebody used the term you are a public square, so your powers are actually systemic, should shoulder many more obligations than if you are a small or a nonuser-facing. If you're part of the basement of the internet, you don't need to be kind of having or carrying so many obligations.

[00:10:33.93] So what are these obligations? Well, terms and conditions-- they need to be simple. I have never read terms and conditions of a platform before I sign up. I've never. There's an opera in Germany-- it's about 2 and 1/2 hours opera where they sing the terms and conditions of Facebook.

[00:10:50.91] [LAUGHTER]

[00:10:52.82] I don't know. Maybe the music is very good, but I wouldn't go necessarily to listen to it. But we are asking that these to be simple. Also, simple for minors, for example, so that they can understand what they're signing up to.

[00:11:05.41] Legal representative, reporting transparency-- there is so little we know about these platforms, which is a big challenge for us as regulators. What do we know about how do algorithms work, how they kind of moderate content? There's little we know. Bring it out. Bring it out in the open.

[00:11:22.50] Notice and action-- if I see something, if European users see something, they should be able to notify the platform. There's a problem. You look into this. I think it's illegal. Check it. And then the platform kind of comes under an obligation to act. We call it notice and action-- not necessarily to remove, to check it out.

[00:11:40.89] Because also in Europe, we have our own Section 30-- 230-- but it is conditional liability exemption. There is a knowledge standard. So as soon as you get information from somebody there might be something illegal on your platform, you can be liable if you don't act expeditiously. So it triggers the liability. So notice and action will make these platforms much more sensitive to what happens, but also to protect our fundamental rights. Because we are very concerned about overremoval.

[00:12:11.92] So they need to kind of-- if they remove something that you've posted-- the prime minister of the Netherlands is an idiot-- which I don't agree with, but I can say if I want to under my freedom of speech, they cannot remove that. They have to tell me, we're removing it on those and those grounds. And then we have to say, well, put it back. Because this is my-- exercising my free speech.

[00:12:32.97] There's more risk assessment. You see a lot of these terms actually come from the banking regulation. We've looked very carefully at banking regulations. So know your business customer. If you're Amazon, your third-party sellers-- check them out that they're not going to rip off your customers.

[00:12:48.12] The risk management-- look at what risks your systems pose for mental health, for minors, for violence, gender-based violence, for many other-- for disinformation, for election interference. Check that out. And then have-- and publish it. Make it public.

[00:13:07.35] Access to researchers-- so researchers should be able to go in and check, which is very important because they have all this knowledge. And they can find out things that we, as general citizens or policymakers, will not find out.

[00:13:22.48] External independent audit-- let an auditor go in and check all these systems and give them a clean bill of health or notice if there's problems. Crisis protocols-- if we get in these exceptional situations like we've just lived through with the Russian invasion in Ukraine, and you see a lot of disinformation driven by Russia-- what are they doing? This is not a normal routine situation. How are they going to step up their content moderation? So that's the Digital Services Act.

[00:13:48.79] VLOPs-- Very Large Online Platforms-- think about this. We are going to designate-- the European Union will designate VLOPs. We think there'll probably be 20, 25, maybe 30, that those are the big tech companies which will be under the full set of due diligence obligations. So there are about 18 to 20.

[00:14:06.61] I'm just going to speed up. The Digital Markets Act-- gatekeepers. That's the term there. Asymmetric-- this piece of legislation only applies to gatekeepers, to nobody else. There'll be 10 or 15. For different services, they'll be designated as gatekeepers. It's essentially dos and don'ts.

[00:14:23.47] We think in Europe that competition policy is not enough. We need ex-ante measures. We need to intervene before. We need to define what are unfair practices.

[00:14:33.61] You come, and you can compete in the European Union, but not by kind of moving the goalposts or tripping up your opponent. I mean, we don't accept that in sports. We should not accept that in commerce.

[00:14:44.56] So we are setting out a number of dos and don'ts. Don't self-preference. Don't tie consumer or user into kind of different services. Don't impose MFN clauses. I mean, open up your walled gardens. Allow sideloading.

[00:14:59.38] So if you're an app store, people who kind of want to download apps, they shouldn't just be downloading-- allowed to download it from your app store-- should be able to download it from competing app stores, or even from the internet. So there's a lot of these interoperability of personal messenger services.

[00:15:15.10] So if you have WhatsApp, should be possible to send messages to people who are not on WhatsApp, but on other personal messenger services. So that's the DMA. I think enough for today.

[00:15:26.65] Just very quickly on the global. I mean, we are regulating for Europe. So we are basically requiring these companies-- and many of them are in the US, but not all of them-- to comply with European rules. We don't regulate for the world. We don't-- certainly, not regulate for the United States.

[00:15:43.24] But, of course, a lot of countries are looking at what the European Union [INAUDIBLE] as well. I mean, we've had-- I don't know where Tim Wu is. But we've had very, very in-depth discussions when I was still in Brussels about the DSA and the DMA. So there'll be a global effect. We call that the Brussels effect.

[00:15:59.15] We would like to see more, also, of a Washington effect, but we're not yet seeing it. And many countries, half of the time-- I was involved very much in the negotiations of the DSA and the DMA. Half of the time was spent talking to third countries, from Japan, South Korea, Australia, Canada, US, Latin America.

[00:16:16.98] Of course, we need to show it works. So this is-- it's nice on the books. People kind of generally like what's on the books. Now, we have to make sure that in practice it works.

[00:16:27.98] For the world, we have three models at the moment, in terms of internet governance. We have a human-centric model. I'd like to think it's a European model.

[00:16:37.04] We have a more or laissez-faire model, which is the American model. Although, I think in terms of direction, there's a lot of support for the human-centric model, but it's not possible politically to turn that into action for reasons which we discussed this morning, and I think we all know.

[00:16:52.67] And the third is in authoritarian, repressive model. If we look at the world, a lot of countries are now kind of asking themselves the same questions that the European Union asked itself five years ago, the questions I mentioned. We want these countries, or at least most of them, to join the European-- I'd like to think European/US model, rather than the Chinese, Russian, Turkish model.

[00:17:14.06] So there is a lot at stake. We don't want to kind of-- I mean, we want to protect democracy. And we think that the DSA and the DMA are important tools to achieve that. We have a declaration for the future of the internet, which we worked on together with the White House. Tim had a great role in that. So there's more at stake than just the EU.

[00:17:32.93] Leave it here. I hope I did not abuse-- you can subtract some of that time from the [INAUDIBLE] I have. Maybe I've just given up all the opportunity [INAUDIBLE]--

[00:17:41.16] DAVID SULLIVAN: No. This is a terrific--

[00:17:41.92] GERARD DE GRAAF: --questions.

[00:17:43.22] DAVID SULLIVAN: --crash course on the European platform regulation regime, and really tees up, I think, some of the themes we want to unpack, whether that is moving to implementation-- what does that look like?

[00:17:55.08] What are the lessons from the European experience, thinking about fragmentation? And then what are the risks and opportunities for the rest of the world as these regulations come into effect? We also have some key words that I think people will start to pick up on-- systemic risk, gatekeepers, very large online platforms.

[00:18:16.41] So let me also welcome Julie Owono joining us virtually. Julie, I'm glad the technology has allowed you to join us, and looking forward to joining the conversation.

[00:18:25.35] But now I want to turn to Emma to really talk about the opportunities and challenges in the viewpoint of civil society. Where--

and civil society is not-- is never a monolith. But where do you see the sort of opportunities, as well as maybe those challenges for folks looking to hold both governments and companies accountable and to make them more transparent when it comes to online speech, in particular?

[00:18:51.71] EMMA LLANSO: Yeah. Thank you, David. And thank you to everyone for such a great set of conversations so far. And yes, if there's one thing I've learned in years working in civil society it's you never claim to speak for all of civil society.

[00:19:02.79] But I would say, I think in general, and if you look at the statements across a lot of EU-based civil society organizations, in particular, there's a sense of, I think, cautious optimism with sometimes a lot more emphasis on the caution than the optimism.

[00:19:19.34] But I think people have been generally welcoming of the Digital Services Act, in part because through a lot of advocacy in the many years that the act was under development. It really does have a focus on human rights as the core goal and driving motivation of the regulation.

[00:19:39.23] And it carries through important elements of the prior intermediary liability framework in the European Union, the e-commerce directive, including, for example, the prohibition against general monitoring obligations. That's basically the long-standing EU prohibition on filtering mandates, and on the idea that intermediaries could be required to filter content.

[00:20:01.73] That's always a top priority for civil society organizations, especially free expression advocates. Because we know that if there are legal mandates for companies to filter content, that is going to lead to overbroad removal locking restriction of lawful protected speech.

[00:20:18.21] So I think there were some elements ported over from the e-commerce directive that were kind of core to that legal framework that made it through to the DSA. Also, the new elements that Gerard was talking about of a lot more mandatory transparency from tech companies of all sizes, including the kind of extensive risk assessments that very large online platforms and very large online search engines will have to put in place.

[00:20:44.49] So a lot of things that I think civil society is welcoming of, and we're seeing could be put to a lot of different kinds of use for holding online services accountable for how they impact users' rights. But I also think a lot of this is going to bear out-- kind of the pros and cons of the DSA will bear out in the implementation of it. The proof will be in the pudding.

[00:21:06.59] Because I think the shorthand version of Gerard's overview of what's in the DSA is basically any idea you can think of, or that you have heard of in the past four or five years about how one

might regulate online platforms, is probably reflected somewhere in the DSA. It's really trying to cover everything from systemic risk assessment to transparency, but also kind of core intermediary liability questions about liability for illegal content.

[00:21:32.21] It's got elements in about users challenging companies for wrongful takedown of their speech under terms of service. It's really a lot of the different ideas that we've heard here in the US discussed about how you might hold companies accountable. And there's a framework now in Europe that tries to fit all of those pieces together. But exactly how those pieces fit together, I think, is where we're really going to see how the DSA ultimately affects users' rights.

[00:21:58.37] So going back to this idea of the prohibition against general monitoring, it's great to have that written in text in an article in the DSA. But there are a lot of elements in the DSA where the idea of filtering, if not legal mandates for filtering, at least a strong encouragement of companies to do more filtering, might come into play, including through those things like the risk assessments.

[00:22:20.18] When online services do risk assessments, they are asked in the text of the legislation to look at the risks that their services could be used to distribute illegal content, or what impact their services will have on civic discourse, or minor's mental health, or online gender-based violence-- a lot of different very content-focused concerns. And I think there's a lot of ways you could approach a risk assessment analysis there, and a lot of different outcomes that companies might reach in conclusion about the risks that their systems pose.

[00:22:52.49] But the big question is also, how will regulators respond? Will they think that whatever mitigation mechanisms that different services describe and put forward are adequate? Or will we see responses from regulators that push more towards, you should just be systematically blocking this sort of content. You should be systematically removing it from your services.

[00:23:13.31] I hope that the text of the DSA with that prohibition against general monitoring would be a strong signal to regulators that filtering is not the tool that they should necessarily expect online services to implement to mitigate risks. But all that's going to have to be negotiated.

[00:23:29.33] All of that is going to, I think, in the next couple of years really bear out in the conversations that we see in the systemic oversight aspects of the DSA between platforms and regulators. And ideally, with a strong role for civil society to kind of continue informing those conversations. So a lot more we could talk about, but I'll stop there for now.

[00:23:49.31] DAVID SULLIVAN: No. That, I think, really sets the scene in terms of just how much there, and how much the implementation of

this, which is what I want to get turned to Chris to talk a little bit about. And this is with regard to both the DSA, as well as the DMA, when it comes to competition and the restrictions on gatekeepers.

[00:24:10.01] Here, we're really, I think, moving from-- I think it was mentioned a couple of times this morning, the notion that tech companies and internet companies have not been a regulated industry. And now that is changing. And so what kind of relationship do we want to see between the regulators-- in Brussels, in this case-- and other member states and the regulated to actually implement some of these requirements and see how this actually sort of starts to take shape? Chris.

[00:24:41.90] CHRIS RILEY: Thanks. To get into that, what the relationship should be, let me walk through what I see as the steps ahead over the next few years for this. And I want to tease out one thing that Gerard said and one thing that Emma said as precursors to that are very well-articulated

[00:24:54.14] Gerard said these are not regulations for the EU, but these are GDPR level, in my opinion, in terms of the global echoes that they will have. I've been saying that for years about the DSA. Increasingly, I think that's to be true of the DMA as well.

[00:25:08.28] I think of this as sort of the start of a-- oh, I'm sorry-- Emma's point-- well, I'll get to that in a second. I think of this as a three-stage process. I call the stage right now stage zero. You have to pass the laws. We have passed the laws. They are on the road to being adopted and implemented. And both the DMA and the DSA include provisions in them designed for sort of forward-looking flexibility.

[00:25:31.43] This is a generic-- I'm just-- I'm using a euphemism here. But I think this is a feature, not a bug. It's needed to reach the goal that Gerard articulated of accountability. And Emma's comments articulated, I think, quite a lot of examples of this-- ways in which the DSA-- the proof is yet to be in the pudding about how that will work out in practice.

[00:25:49.70] As a result of these, I think, intentional design decisions, the EU is doing what I believe it should do, which is not let the perfect be the enemy of the good, where it knows the contours of what it wants to have happen, put it in the law, build out future processes to advocate further.

[00:26:02.96] That takes us to stage one, which is the next stage. From the governance perspective, stage one, which we're in right now, hosts multi-stakeholder conversations, expert roundtables, dig into each of the specific issues that needs to be implemented within these laws. For the DSA, I know the European Commission is working on conversations around crisis protocols, and that we've had at least one conversation around risk assessment and how you start to elaborate on similar practice.

[00:26:27.32] Similarly, the DMA context, the European Commission is holding a number of public multi-stakeholder conversations. The next one, coming up on February 27, is on the language within the DMA that requires interoperability for messaging applications. So having these kind of conversations from the government perspective allows them to draw a number of perspectives in, and puts them in a place for that next phase.

[00:26:47.87] Now, stage one from the advocates perspective, which I think is equally important to look at as well, is to engage with these processes and develop and offer solutions that attempt to realize the goals of the legislation that are workable. All too often, stage one from the advocate's perspective is, I don't like this. We need to figure out how to shut down the part of it we want.

[00:27:08.06] And, I mean, there's a place for that in lots of different circumstances. But I always like to emphasize the place in stage one of coming to the table with constructive ideas and how you engage with that.

[00:27:17.28] So a brief sidebar before I get to stage two on my work and the things that I'm doing in that space. So David mentioned-- thank you-- the newly created Data Transfer Initiative. This was set up as a sort of continuation of an established effort called the Data Transfer Project, which was put together by a few technology companies to build tools to take advantage of data portability obligations and mandates, to directly connect your data as a user from one service to another.

[00:27:41.40] So if you want to get your photos out of Facebook and into Google Photos, you don't have to go into an export tool, download it over what may be a very slow or mobile or satellite internet connection, to a device that may not have storage available for it, and then upload at the other end, and cross your fingers and hope that it works. But you can click one link and have those photos go in the back end.

[00:28:00.38] So I get the, I think, exciting opportunity to try to build more of these tools. And this is part of that stage one process for one very small piece of the DMA. Article 6, paragraph 9 of the Digital Markets Act requires data portability to be offered by the very large platforms continuously and in real-time, and to include data not just contributed by the user, but also about the user.

[00:28:25.83] So I offer this as an example to say, there are a lot of details that need to be worked out. And we need a lot of efforts, like the one that I'm doing, on all of these different pieces to bring their expertise to the table, to work with the commission, to translate this into the next stage.

[00:28:40.68] So stage two is the subsequent legislation and rulemaking that will come from the European Commission-- the

processes that are put in place to enforce these and implement these in practice and in details. From the advocate's perspective, this implementation of functional pieces of what is effectively, if all goes well, a co-regulatory model of governance. So it's pieces that you can build out.

[00:29:02.09] So I'm putting on my other hat, now my Annenberg hat, where I've had the pleasure of working with former FCC Commissioner Susan Ness, well known to many in the Silicon Flatirons Community, on what we call modularity, which is an overarching framework to bridge these collaborations together.

[00:29:16.64] We recognize that as the DSA has passed, as the UK looks at its online services bill, as the US moves forward something, as New Zealand, Canada and other jurisdictions move these things forward, there are a lot of these fine-grained implementation operational tasks that will be common across these laws.

[00:29:32.82] So how can we go one step further at implementing these, and not only try to really bring in expertise from one other stakeholder segment, but from different countries as well, as a means of helping the commission implement its law by taking some of these tasks-- the ones that we've used in the past a lot are platform to research or data access mandates, an important part of the Digital Services Act. There's a step in that for vetting researchers.

[00:29:56.78] Now, we would never say that our goal is to take away the commission's ability to enforce that law and to imply its guidelines in the way that it sees fit. But if we can help make it a little bit easier, set up a process that does some of the legwork of that vetting according to a standard or a set of guidelines, we think there's a lot of work to be done in that bridging from stage one of the seeking lots of input, to stage two and how we apply these things.

[00:30:20.76] So just to recap very briefly. Stage zero laws are adapted. I think one of the reasons why we're having these conversations around Europe is that they just went ahead and passed the laws.

[00:30:27.87] [LAUGHTER]

[00:30:28.58] Stage one-- conversations are happening with lots of different perspectives and stakeholders, and we're trying to build these different structures together. And then finally, there will be subsequent rules and guidance that come out that, in my opinion, I hope support a lot of collaborative work, both within and without government agencies. Thanks.

[00:30:46.71] DAVID SULLIVAN: Thanks, Chris. Yeah. So you have to pass a law to start the process-- one of the key takeaways. So we've talked already, and Gerard has mentioned, the Brussels effect.

[00:30:55.50] And that-- whether it is actually in the US Congress, where bills were introduced last year that looked a lot like some of the

provisions of the Digital Services Act, to many countries around the world that have also started to look at some of these similar methods. And Chris, I think, eloquently spoke to the need of thinking about, how can these kind of types of regulatory requirements apply across jurisdictions.

[00:31:20.34] I want to turn now to, Julie. Thank you so much for joining us. You've done a tremendous amount of work advocating and thinking about how these kinds of regulations play out in other parts of the world. And you've also looked at the individual decisions made by one particularly important platform through your role with the oversight board.

[00:31:40.15] So how do you-- would you say the EU regulations in this space, and particularly, the Digital Act, are being perceived around the world? And what do you see as the opportunity there for a more human rights-based approach to content regulation?

[00:31:56.25] JULIE OWONO: Yes. Thank you very much, David. I wanted, first of all, to thank Silicon Flatirons for allowing me to join you virtually. Unfortunately, for personal reasons, I wasn't able to travel.

[00:32:09.09] But to respond to your question, to your first question, on the potential international effects to which Gerard has already alluded to in his initial remarks, I would say that there has been definitely a shift. We all remember in 2018, when Germany was the first ever European country taking the lead on adopting a regulation with regards to online speech. And at the time, there was a lot of criticism.

[00:32:44.01] One of the reasons for the criticism is because this particular regulation had been praised by leaders such as Vladimir Putin. I don't think you would want to be praised by Putin. I don't think it's a good sign, but we can discuss that.

[00:33:00.45] And now, here we are, fast forward five, six years later, and we have this very robust piece of legislation, pieces of legislation-- it's a whole ensemble-- pieces of legislation that Emma rightly reminded us, is a very-- the most comprehensive document that summarizes basically what the principles and values that many organizations, many stakeholders, governments, and also companies, but also civil society organizations, have thought in the past six, seven-- six to five years-- that these are important to preserve a democratic online space, where freedom of speech and human rights in general are the principle, and where safeguards exist.

[00:33:48.34] So I do think-- I really do believe that this regulation will kind of help repair some of the errors that have been made in the past because of the urgency we were facing with dealing with very novel issues that brought so much change in a very short amount of time.

[00:34:08.76] Now, on the issue of how this could help impulse or support an impulse for further protection of human rights online, I

really, truly believe that this is still-- that it's going to be the case with the DSA and the DMA, provided, of course, that, as you rightly said, Chris, we really look into the details and make sure that we give a body, we give flesh, to all these very beautiful principles and values that we've summarized in the DSA and DMA.

[00:34:40.68] But I want to speak specifically, because you asked me about it, David, and I think it's a good opportunity to talk about that, I want to speak specifically about the way some initiatives could absolutely not only inspire themselves from the DSA and the DMA, but also could provide some of the flesh that I was just talking about. What does it look like to have mechanisms to redress the rights of users whose speech has been unjustly deleted from platforms?

[00:35:13.98] And that's absolutely what we've been doing at the Oversight Board for the past almost three years now. We have been trying to model or to offer some answers to some of the big questions. How do you that at scale, in the same scale as the content that we are seeing every day being published on those platforms?

[00:35:35.82] How do you do-- how do you do that? How do you offer mitigation to human rights violation in a way that is not interested in business, that is totally devoid of any business consideration, but that really place at heart the rights of the users, and particularly, their human rights?

[00:35:55.67] And to that I would say that the Oversight Board, although this is absolutely not a way to say this-- the grand solution? Absolutely not. But we have been trying a lot of things in the recent years, not working just among us, among ourselves, but really collaborating, including with European authorities to better understand this environment where we are evolving, better understand what type of answers that we have proposed can be interested to integrate or to look at when trying to implement the Digital Services Act in the month and years to come.

[00:36:40.85] And I really do believe that these parallels between the DSA framework, specifically on the ability for users to seek redress from platforms, from very large platforms, there are parallels between the DSA framework and our role at the Oversight Board, which is fundamental rights are at the heart and at the forefront of all the board's decision.

[00:37:06.00] If you look at them-- I really encourage you to do that when you have time-- you will always see an international human rights analysis of what is at stake, not only with regards to the policy of the company, but also with regards more largely with the way the policy of the company and the company itself has enforced or protected the set for the mental rights.

[00:37:26.30] At the same time, we know there are concerns. And I think Emma rightly reminded us of many of them. One of our big

concern, I would say, at the OSB, and personally as a human rights and free expression advocate, is the issue of overenforcement and removal of content which should not be, precisely because companies do not want to face, or will not want to face, potential liability for things that they may have let available on platforms.

[00:38:00.38] There is also the issue of adapting this model based on the size of the company, of course, based on the ability of the company to invest in such system that would allow users to seek redress for their human rights. That is also a very interesting conversation that needs to continue between, of course, the European authorities and companies, but also civil society organizations.

[00:38:28.61] There's a lot of things that have been tried and that are still being tried to try to answer this daunting question. Can we do a user redress mechanism at scale the same way we can do that-- the same way we can moderate content at scale?

[00:38:44.09] All this to say that this will absolutely require-- I don't think that the European Union itself can do it-- can do all of this all alone. And I think the European Union is absolutely aware of that. We've seen a very unique exercise of collaboration, of dialogue with different stakeholders, including the international stakeholders, including different nations, on this issue of how to make this democratic online speech space real.

[00:39:14.84] But just to close this set of remarks, the Oversight Board is just one example of how a company can transfer decision-making power to an external body of independent experts in a way that still prioritizes and places at the forefront users' rights, and the leaks-- the decision on speech from financial interest of the business.

[00:39:39.11] Regulation absolutely plays a very critical role. I personally believe in that. I'm not the one who will tell you the laissez-faire approach is the best one. We've seen that we need to provide answers at some point, whether we are governments, whether we are companies, whether we are also [INAUDIBLE] organizations. But this will require a multistakeholder collaboration. And the social media landscape changes so rapidly, that there is absolutely no way that only one set of actors gets it right from the beginning.

[00:40:13.38] So just to summarize. Yes, I do think that the DSA/DMA are a leap forward, an important leap forward, from where we were six years earlier. And, on the other hand, how it's going to impact internationally. I trust that it's going to, and it's opening already, very interesting conversations, very interesting trials of what could be possible in terms of implementing this very ambitious set of regulation. Thank you.

[00:40:46.51] DAVID SULLIVAN: Thank you, Julie. I think just to also kind of situate us in where things are right now. So we've talked about in several different respects, with both the Digital Services Act and the

Digital Markets Act, which companies, which products and services are affected by the more stringent regulations is about the number of users, the number of users in Europe, in particular.

[00:41:09.86] A very large online platform is one that offers a public service and has more than 45 million users in Europe because that's roughly 10% of the European population. Right now, at this very moment, many companies are, I believe, based on guidance that has been issued by the commission, counting their users.

[00:41:30.71] And there's a lot of questions about how do we count users the right way? How do we not double-count users, in order to figure out which companies will be very large online platforms. The deadline for that-- for publicly releasing those numbers is this month, February 17. And that will then trigger what kinds of additional requirements, transparency reporting, risk assessment, risk mitigation, audits, and much more companies will have to do as part of their compliance.

[00:42:03.08] Gerard, you've been in San Francisco for a few months now. What's been the reaction from the technology companies? And where do you see them at this stage of beginning these kinds of collaborative discussions, not about what the law should be, but what about what does compliance with it look like?

[00:42:25.32] GERARD DE GRAAF: I mean, it's hard to in one word to summarize what the reaction has been-- kind of a great variety of big tech platforms also operating in different areas. But I mean, I think, in general, they are taking it seriously. And I think they do recognize that the negotiations are over. There's no point in reopening discussions. We're in implementation mode.

[00:42:49.49] And the regulator-- and the European Commission is the regulator, both for the very large online platforms for the Digital Services Act, as well as for the gatekeepers for the Digital Markets Act. I mean, this is a kind of internal. That's-- I think, Julie said this morning, we're hiring like crazy. And so anybody who's looking for a job-- you need to have a European passport I'm afraid to add. But you'll be very welcome to come and join a very fast-growing team.

[00:43:15.53] I think the discussions are-- I mean, we have had a lot of what we call predesignation discussions because these companies will be designated. There will be official kind of decisions, so to say, look, you are a very large online platform, so that there's no doubt about it. And this will, of course, depend on the user numbers, which we will receive in 12 days. The same for the gatekeepers. They will be designated on the basis of a slightly more complicated set of criteria.

[00:43:44.51] So we've had many of the discussions predesignation. I mean, I think there was a little bit more attention initially maybe on the Digital Markets Act because this is, of course, something that goes quite to the heart of the business model.

[00:43:57.48] I think on the Digital Services Act-- because, I mean, companies tend to think that the interests are aligned-- I mean, who wants to be a purveyor of this information? Who wants to be kind of a channel for terrorist content? I mean, no platform would want to have that.

[00:44:12.53] So here, we want the same thing. I mean, maybe with the Digital Markets Act, there's a bit more differences of view about what we want. And some platforms are clearly unhappy with the Digital Markets Act. Interestingly, there's also very big companies and other companies who are very happy about the Digital Markets Act.

[00:44:30.77] So it's definitely also not like a one size fits all. We get companies coming to us and say, ooh, I really hate this provision. I mean, how can I comply, but I still hate it? And then they say, but that other provision, we really love it. But can you please make sure that the other company kind of fully complies with that other provision? So it's quite an interesting discussion.

[00:44:49.79] On the Digital Services Act, I think the-- I mean, we will-- I mean, it will enter into force on the 1st of September. By that time, we will see also risk assessment. So they will have to kind of send us the risk assessments.

[00:45:03.50] I think what is interesting is also that-- I mean, we're not regulating for the world per se. But, of course, what is coming out of the regulation is of great interest to the world. Because like Emma and colleagues will have access to the transparency reports, to the risk assessment reports, I mean, auditing reports. I mean, we will try to be as generous as possible for American researchers to benefit from the legal base under the DSA to get access to platform data.

[00:45:30.17] I mean, of course, there is still the criteria that it must be within Europe. So if you do research on, well, US election interference, that's not something that you can get access to. But you do research on risk of election interference more generally. I think we'll be quite glad to have many American researchers who are outstanding in the conversation.

[00:45:52.74] So there will be benefits here more generally. Because this-- I mean, for example, in the transparency reporting, we don't know who the decisions-- how decisions are taken. Who takes the decision that, for example, Trump can get back on Twitter? We do not know how these decisions are taken. Be quite useful to know how these decisions are taken, how kind of particular cases are escalated.

[00:46:14.36] What are the internal protocols? Who kind of-- how-- what are the checks and balances in these systems? Companies will be required to report on that. How do they operate internally? So that's information that also for all of you, you can see.

[00:46:27.41] I think one question will be to what extent will the platforms themselves, which is also the question that we had with the GDPR, extend the benefits? Because these are benefits. I mean, better treatment to Europeans. To what extent will they extend these benefits voluntarily to American citizens and other citizens of the world? That, we don't know.

[00:46:46.73] I mean, there are certain requirements, for example, under the Digital Markets Act. Sideloaded-- these app stores will have to give an opportunity to download apps from not necessarily the app store that kind of is linked to your device. Will that kind of facility be made available to Americans? Or will there be app stores for Europeans? That, we don't know. We'll have to see so.

[00:47:09.20] And that will, then, I would guess, build up a little bit of pressure domestically, where you will find out that kind of the big tech companies that are headquartered in the US territory is giving better treatment to Europeans kind of about-- whatever-- 10 hours flight away, at least from here. So that will create an interesting dynamic.

[00:47:29.34] But the discussion with the platforms are constructive. I think all of the platforms want to have a positive relationship with the regulator. I would be asking for the same, or working towards the same. You don't want to be on the wrong side of the regulator, I think.

[00:47:43.97] But there are, of course, going to be issues. There are going to be some problems. I mean, that's inevitable. And then we'll get into an enforcement situation. And then, of course, some of these companies might be less happy with what happens next. But that's for the future. That's not today.

[00:47:57.80] CHRIS RILEY: Can I just add a quick note to that, David?

[00:47:59.45] DAVID SULLIVAN: Please.

[00:47:59.93] CHRIS RILEY: I fondly-- there was commentary earlier about this sort of, I think, steady improvement in quality and congressional hearings on issues related to tech. Admittedly, there are still gaps and variability within that.

[00:48:09.32] But I think an early instance of that evolution four or so years ago, I very much remember a congressional panel with a bunch of big tech executives on the dais. And a member of Congress asked them, what about your implementation of the GDPR? Could you not just flip a switch and do for the United States? And there was no answer. Like, they couldn't give an answer. It was almost an impossible question answer.

[00:48:31.31] But I think that we're going to see that same reality play out as implementation mechanisms are built for these laws-- the DSA and the DMA. And we're going to see that same soft pressure, even in the absence of a law in the United States, to deploy many of those same things.

[00:48:44.51] And I want to pair that with Gerard being in San Francisco. Like, the time is now to start talking to them and trying to start helping with that implementation phase. Because it's going to have echoes here and in other places as well.

[00:48:59.12] EMMA LLANSO: I think that that-- I would chime in and say, I think for things like risk assessment and transparency, and hopefully, even research or access to data, that that very well may bear out. Those are kinds of internal systems and processes that a company could create that might be relatively easy, although relatively expensive, to kind of do for the US as well, or for the rest of the world.

[00:49:20.93] I think we might see a very different response on the parts of the DSA that are about liability for illegal content. Because what is illegal in different jurisdictions can actually be quite different. And there is a risk, I think, especially depending on how things go with the state social media laws that we've seen in the United States, that some of these services might find actually competing legal obligations around the same piece of content, where in the EU there are codes of practice and expectations that content that is illegal, or very likely to be illegal, should and ought to be taken down promptly, even without a court order.

[00:49:56.00] And that same content might be lawful in the US and expected under the law of Texas to remain on the service because it is not, in fact, illegal speech in the United States. We might see companies just respond the way they have for many years now of trying to do geo-blocking and limit the access to illegal content in Europe, but leave it online in Texas and other parts of the US where they're required by law potentially to do so.

[00:50:20.48] But if European regulators push it and say, it's like, yeah, but geo-blocking is easy to circumvent. And our law says you need to actually restrict access effectively in Europe to this content, we'll start seeing this kind of extraterritorial impact of the DSA on exactly what content is available to whom and where.

[00:50:39.32] So that is, I think, a big tension that we might expect to see, especially if the-- I mean, who knows what the Supreme Court's going to do if and when it looks at the Texas social media law? But that is a tension that I think could create a lot of challenges for online services, and also, users trying to figure out where can they actually post speech that is lawful in their country.

[00:51:02.92] DAVID SULLIVAN: So I think one thing that's important to keep in mind because this is such a voluminous set of package of regulations, that for folks who are not steeped in the DSA and the DMA to focus in on those components that have-- that resonate with proposals that have been discussed, whether in Congress at the state level, when it comes to things like transparency reporting, when it comes to research or access to data, when it comes to risk assessments

and audits. There's a lot of individual pieces of this regulation that I would encourage folks to look at.

[00:51:37.68] That said, this is a fairly onerous, fairly heavyweight set of regulations, in that-- and there is also, of course, the commission will have supervisory fees based on the size of platforms to help fund all of those teams that Gerard just mentioned-- they're hiring. Is this approach, is this amount of volume of oversight, something that is replicable elsewhere?

[00:52:06.46] I believe that Taiwan last year actually considered some legislation or regulation that looks a lot like the DSA, and then opted not to pursue this approach. Because hearing from domestic industry in Taiwan that this was going to be too much for them to handle. I'm just curious whether you think that there are any challenges around the replicability of the kind of level of capacity that the commission will bring to this, but that others may be challenged to bring to these issues-- for the panel.

[00:52:35.86] GERARD DE GRAAF: I mean, this sophisticated reg-- I mean, again, you would expect me to say this. But, I mean, this is complicated, sophisticated regulation. This is not regulation that kind of you can give to a country like Indonesia, or a country in Africa or Latin America and say, now you implement. This is just-- I mean, the capacity is not there.

[00:52:55.44] I mean, the European Union can do that. That's why we are kind of quite as modular approach, as you sketched it. I mean there are certain elements that definitely I think make sense, I mean, and not so complicated, like the transparency, the risk management.

[00:53:08.07] I mean, we've seen some bills on the Hill were actually taking our language-- quite happy. There's no copyright on it-- on these issues. So that, I think, is probably the way forward globally. I don't think any country will very-- I mean, in the near future, take this to DSA lock, stock, and barrel and put it on the national statute book because it's complicated. And you need to have the capacities in place.

[00:53:30.75] Also, regulatory enforcement capacity-- we're building this up. We must also not underestimate. We are going to be the first regulator in the world to do this kind of stuff. So we are not-- certainly, not underestimating kind of the challenge for ourselves.

[00:53:43.26] I mean, in terms of administrative burdens, I mean, yes, of course. I mean, but we're talking about very important issues. I mean, you look at pharmaceuticals, banks, and everything. There are some administrative burdens. But it's important that these industries are regulated.

[00:53:55.44] Because we don't want the burdens to-- as we have seen with the financial crisis. I mean, if you don't regulate them, then the

burdens kind of affect the whole of society and all of our economies. If people wouldn't feel secure about the safety of drugs, we'd have a major problem here. So this is-- it's absolutely-- in our view, as Europeans, it's absolutely kind of proportionate and necessary.

[00:54:18.78] These companies are also not poor exactly. So they can-- I mean, you talked about the supervisory fee. I mean, we're talking about 10, 12 million euros per year. I think that Facebook and all the others will probably survive. I don't think it will be noticed. This is pocket money for these companies.

[00:54:35.10] And it's in their own interest in a way. I mean, these companies, we talk a lot to them. And they say we want to be trusted. Because if the users don't trust us, they don't come to us. If the advertisers don't trust us, we don't sell any advertising anymore-- our whole business model.

[00:54:50.83] So maybe on the DMA, again, it's different. But here, we zoom in on a very small population, probably of 10, 15 gatekeepers. And this is where the consumer welfare is much greater, and the innovation-- I mean, this sector is not as innovative as it used to be.

[00:55:08.17] I mean, look at the way the-- I mean, look at-- I mean, the interpersonal kind of communication services. I mean, what's the innovation in like WhatsApp, et cetera? It's not-- there can be a lot more innovation in this sector if you open up the market and others can compete. This is a market that is not competitive. So the benefits far outweigh.

[00:55:29.97] And, of course, you need to look at costs always, which we've done. But it's equally important to look at the benefits. And we are convinced that the benefits far outweigh the costs.

[00:55:38.35] DAVID SULLIVAN: So I'm mindful of the time, and I want to make sure we save time for audience questions. I want to just check and see if anybody has any-- a quick response to Gerard on that, including you, Julie.

[00:55:50.61] JULIE OWONO: Yes. No. No. Thank you. That question is extremely central because there is one aspect that I probably didn't insist enough in my previous response, which is why it is important that there is at least a common agreement on what can be done, what should be done, when it comes to limiting the negative effects of the current status quo?

[00:56:18.34] It is even more important because when you think about it, the international interconnectivity of harmful content in European Union and other places of the world, and one very good example of that, I think, is the-- what is happening-- what has happened with the war in Ukraine.

[00:56:40.99] Here, we had a very united European Union that offered responses to waves of disinformation, false narratives about the war.

But at the same time, that same power was offering false narratives too, to international partners-- very important national international partners of the European Union, which are located further south on the African continent.

[00:57:13.95] And it came to a situation in which you had-- it was important-- it is still important-- for allies of Ukraine, for Ukraine itself, to make sure to have allies beyond the European Union borders. Because this war is, of course, happening on the European territory, but it concerns us all.

[00:57:36.34] And so we had the situation in which the Russian propaganda and disinformation is thriving in several markets, several countries, in sub-Saharan Africa, for instance, which have very real consequences on the international front, and particularly, on the issue of this conflict of the Ukrainian war.

[00:57:56.94] So hence, the importance of having-- and that is where probably some of the challenges that you were alluding to, David, might come to play and require this international cooperation, even on the understanding of what is behind the DSA, on having the possibility of being modular about it. Because obviously, a regulator in Niger, for instance, probably cannot implement everything. But yet, this regulatory Niger is facing exactly the same questions as the regulator in France, for instance, with regards to content that is disrupting peace, security, including international security, by targeting this very small country in Africa. So I just wanted to, yes, to tie this to this broader question.

[00:58:47.26] DAVID SULLIVAN: Very well said, Julie. Really appreciate you spelling that out for us and the interdependencies among countries here.

[00:58:54.12] So we're pressed for time, and I think we have time for one question. So we are going to invoke the Phil Weiser rule once again, and look for a question from a student. Yes.

[00:59:09.09] AUDIENCE: Hi. My name is Christine. I am a PhD student in computer science here at CU Boulder. My question does assume that there exists some urgency in implementing regulations. But given that, if your three-stage process is accurate, and even if it's not, there might be incentive for other governments to kind of wait and see how things play out before they really take concerted action, even though we are decidedly in the middle of multiple crises.

[00:59:39.94] So what do you think is necessary to motivate other governments to take action? Or if perhaps there's not urgency, I would love to hear that. And yeah. Like, should the US just wait for the DMA and DSA to kind of play out and see what happens?

[00:59:56.26] DAVID SULLIVAN: I think that's a great question, and one that we can perhaps use for all the panelists to give their sort of parting 30 seconds.

[01:00:02.35] CHRIS RILEY: Perfect. Yeah. Totally agreed. I will note for context that next year, in 2024, there are elections in the US, the EU, the UK, India. I mean, a significant number of countries are facing really interesting and challenging political moments right now, and that is a factor in these conversations as well.

[01:00:20.05] But to build in and respond as well to what Julie so helpfully articulated and what Gerard said, the more that we can build structures of collaboration and alignment in this space, even in advance of other laws besides the DSA being adopted, the more we can reduce some of those forward-looking enforcement costs that are otherwise going to be a real burden for both governments and companies going forward, and the better the outcome will be.

[01:00:44.37] Because we will reinforce more of the idea that the internet is global, is supposed to be global, and the better version of what that global, open, accountable internet sort of picture and system we can present to the world, as a contrast to the authoritarian vision. Because I think that we have so much more in common in the problems we're trying to solve and the ways that we're trying to solve them than we have different in many of these countries, including very much in Niger.

[01:01:08.64] And anyway, there's a lot of opportunity now, and I think very much a moment of crisis to start collaborating more than necessarily to rush to put a whole bunch of different laws out there, but to start collaborating in a shared problem space.

[01:01:26.48] GERARD DE GRAAF: We're collaborating enormously with kind of-- we've spent so much time kind of-- I mean, of course, on the DSA and the DMA because, indeed, it probably makes a little bit of sense to make sure that it works. I mean, if I were another government, I'd probably also kind of see, well, how is this pudding tasting?

[01:01:43.13] And it's not going to be long. I mean, we're talking here about 205 days before it enters into force. And so I think by the end of the year, the middle of next year, pretty good idea how it's working, and we'll try to continue to improve it.

[01:01:56.15] So we're working very closely with governments around the world. We have digital partnerships with a lot of countries around the world. I mean, just by way of example, we will have FTC staff. We're offering them to join.

[01:02:08.81] Also, the European Commission-- we do staff exchanges-- so any possibility to kind of have this cross-fertilization to talk to countries around the world, so that we don't invent or reinvent the wheel if there's already a wheel. And when we come up with different

approaches, at least we try to make them as consistent as possible. So this is the approach we take, and we'll have to see what-- we will first have to make a success of the DSA and the DMA.

[01:02:35.25] EMMA LLANSO: So I will send a note of caution against countries kind of racing to just implement the DSA framework. I think it's really important to recognize that the DSA is coming in a very particular legal framework in the European Union around the kind of structures promoting the rule of law in the EU.

[01:02:53.64] And also, respect for human rights, and the European Convention on Human Rights setting out a relatively clear with a very robust set of case law from the European Court of Human Rights that is essential legal foundation for what the DSA is building on top of. That structure does not exist in all countries around the world.

[01:03:13.57] It's not even-- we're not even going to get the same answers on some of the questions of fundamental rights like freedom of expression, for example, in the United States. There are absolutely aspects of the DSA that would just, at least under current understandings of the First Amendment, be unconstitutional.

[01:03:26.65] So I think there are some significant limits and necessary limits to exactly how can different countries transpose aspects of the DSA into national law. And some elements of the DSA that, frankly, in Europe, I am concerned about how they will play out, including things like the local presence obligation that's part of the DSA, requiring there to be staff based in Europe.

[01:03:48.72] Very understandable. Also, part of the GDPR. It's all about ensuring that Europe can actually enforce its laws on companies that have their headquarters in the United States, but having potential liability for individual staff, and requiring them to be within the reach of law enforcement in a country is something that we have seen Russia use to great effect in making sure that the Alexander Navalny smart voting app got kicked out of app stores days before the Russian elections about two years ago.

[01:04:18.88] It's something that we're seeing the Indian government use in the similar provision in their IT rules, to try to coerce certain content moderation decisions out of Twitter and other social media services. So some of these ideas, when exported out of the European context, and even potentially, as used in the European context, start raising enormous human rights concerns. And so that's where I think some caution is also very much warranted.

[01:04:42.51] CHRIS RILEY: Julie, 30 seconds.

[01:04:43.84] JULIE OWONO: Yeah. 30 seconds. Building up on what my colleagues, Emma and Chris have already said, I think there was absolutely room for adaptability and modularity. And what would be extremely encouraging is providing answers in the form of, I don't

know, a declaration, an agreement on specifically what makes a democracy content moderation? What gives the impression and the reality of rule of law on online spaces, so that any country can inspire themselves from this set of declarations and principles, and then transform them into their national-- within the national realities?

[01:05:21.15] That is a conversation that I hope the DSA, the DMA, and the European Union will start with counterparts in the United States. And also, of course, in what is called the rest of the world. Thank you.

[01:05:32.58] DAVID SULLIVAN: Thank you, Julie. And let me just say with one tiny bit of self-promotion. So in order to have the type of global conversation that we've talked about, we need to have a common vocabulary. My organization, the Digital Trust and Safety Partnership, has published a glossary of trust and safety terminology, content moderation terminology, so that we understand the terms that we're using. We published that for public consultation.

[01:05:53.92] So I want to encourage folks to take a look at that. Tell us what you think about how we've defined terms. And then, with that, thank you to our panel. This was terrific. I learned a lot. I hope the audience did as well. And thanks very much.

[01:06:07.89] [APPLAUSE]

Panel: Making Sense of U.S Platform Policy in Congress & The Supreme Court

<https://youtu.be/IXrw2RsE9dY>

[00:00:01.00] BEN FERNANDEZ: All right, I think we're going to go ahead and get started. Thank you for allowing me to come present this award. My name is Ben Fernandez. I'm an intellectual property partner at WilmerHale in Denver. Each year, we've been accepting submissions of papers written about a topic involving law and technology. This year's papers were read and judged by a panel of attorneys at WilmerHale.

[00:00:26.61] Why do we sponsor this contest? We sponsor this in order to promote and encourage among students the continued pursuit of the research, the planning, the organization, the writing, the editing of scholarly papers in this field. The winner receives a check for \$1,000 and an opportunity for publication in a future issue of the Colorado Technology Law Journal.

[00:00:52.19] This year marks the 19th year of the contest and the 18th year of which I've had a privilege to be involved in the judging. WilmerHale is pleased to sponsor this competition.

[00:01:04.56] Once again, we thoroughly enjoyed reading all the submissions, and it was a challenge to pick a single winner, but as all

judges must do, we picked one. And so at this time, I am pleased to announce that the winner of this year's WilmerHale writing competition is Richard Koch. Richard, if you'd like to come forward, please.

[00:01:21.93] [APPLAUSE]

[00:01:30.14] So Richard wrote a paper entitled, "What are you looking at? Emerging Privacy Concerns with Eye Tracking in Virtual Reality." So we commend Richard for the research and the thought that went into this paper. Please join me in congratulating Richard once again.

[00:01:45.34] [APPLAUSE]

[00:01:59.18] BLAKE REID: --to our sort of penultimate session here in this. The title of this panel, for which I have only myself to blame, is Making Sense of US Platform Policy in Congress and the Supreme Court. And we have the special misfortune of trying to do that and returning to the US after the remarkably organized, framework-oriented, adult conversation that just happened about the European Union.

[00:02:31.07] I regret-- I have taken my tie off. We have got to come back to the United States and make some sense of this. Fortunately, I have a wonderful crew of folks here to do that with me. Going from my left, we have Corynne McSherry, who is the legal director of the Electronic Frontier Foundation, Chris Lewis, who is the president and CEO of Public Knowledge, Jennifer Huddleston, who is now a research fellow at the Cato Institute, and finally, Derigan Silver, who is the associate professor and chair of the-- or an associate professor, the chair of the Department of Media, Film, and Journalism Studies down at our neighbors at the University of Denver.

[00:03:17.61] So I am going to turn it over to Chris to have the especially unenviable task of starting us off with the landscape of what we're actually doing here in the United States. And as Chris gathers his thoughts in a moment, I will say, after we try and look at some of the legislative proposals, we're then going to shift to the conversations about Section 230 and the First Amendment that were teed up in previous panels. But, Chris, try and make some sense for us of what is going on in the United States. Good luck.

[00:03:50.48] [LAUGHTER]

[00:03:52.85] CHRIS LEWIS: Thanks, Blake.

[00:03:53.66] [LAUGHTER]

[00:03:54.98] BLAKE REID: You're welcome.

[00:03:56.63] CHRIS LEWIS: I'm going to unbutton a button, not just my tie. We have a lot of work to do, is the short answer. When I think about the landscape of tech policy in the US, we have a lot of work to do because we have a lot of fights that weren't really resolved going

back a decade or so, when you're thinking of things that maybe haven't been talked about a lot. And in this first day, there's a digital divide for protecting an open internet or balance copyright and privacy protections.

[00:04:31.61] And then pile on top of that the stuff that we've heard a lot about today, the things that Europe is ahead of us on. And much of that work feels often like it's a repeat of some of the same values, some of the same dynamics, slightly tweaked or flipped on its head, for the new innovations that we've seen over the last decade.

[00:04:57.93] So we're still talking about privacy, even though we were talking about privacy in broadband before, but now we're talking about it across the entire internet. We're still talking about content moderation, as we have talked about with all media in the past. We're still talking about gatekeepers like we were in net neutrality, but it looks different with digital platforms, and how it looks different is very important to how you regulate it. And, of course, we're talking about free expression. And you said we'll get to 230 and all of that fun. So we have a lot of work to do.

[00:05:30.36] And I think a lot of us are worried because-- I think it was Gerard on the last panel talked about the quality of the debate in this room. We do not have the same quality of legislating going on in Washington. And that's what we need to deal with these complex issues. We have a polarized environment. We have, for my money, a very deregulatory environment. And yet, we hear calls from folks who are both very regulatory and deregulatory for accountability, and that just doesn't square. We've got to wrestle with that.

[00:06:12.56] And to do that, I think it will take higher quality legislating and policymaking, and that looks like wrestling with expertise and data and facts. I think that's true for policymakers and those of us who visit them and advocate to them. I think it's true of the press, who will cover a bill when it comes up for a vote, but maybe not when it's getting marked up, and the details are very important.

[00:06:41.36] And we need ongoing oversight and authority to deal with the technology as it innovates faster than Congress can keep up with it. And lastly, I think we need a will and determination to see these fights through on behalf of what is right for the public, not just for our one constituency that we represent.

[00:07:02.36] And were just talking-- Corynne and I were just talking about if you're a public interest advocate, we think you have to be an optimist by nature. That was not very optimistic. Here's where I'm optimistic-- there's good work. Some good work has been done. If you don't feel optimistic about the hard work that's been done to find compromise on privacy in the US Congress over the last four years, then I don't think you're paying attention.

[00:07:31.52] If you don't feel optimistic about dealing with gatekeepers in the United States after watching the House Antitrust Subcommittee go through an 18-month study, which then led to legislation-- like, Congress used to do lots of hearings and reports and facts, agree with their outcomes, with their assessments, or don't. But that's good legislating. We need to see more of that on these tougher challenges that haven't been tackled, especially around free speech.

[00:08:03.41] BLAKE REID: So what I'm hearing is Congress managing to do some bipartisanship is sort of the red Corvette of the internet's midlife crisis. Hopefully, we can--

[00:08:14.45] [LAUGHTER]

[00:08:14.90] That's how we're going to sort of move forward. So, Chris, I want to take this historical frame that you started with and open up to the rest of the panel just for their thoughts. And I think everyone on the panel is a veteran of the battles that you have talked about or is deep on the history of them. I want to open up the panel.

[00:08:36.80] Where do we sit now? Do you all share Chris's view that we have litigated a bunch of this already and just sort of failed to solve all of these old problems and are now seeing Europe tackle them? Or at least situate us in your view of the kind of history, and I'll start with you, Corynne.

[00:09:00.45] CORYNNE MCSHERRY: So I think that where we are right now with respect to legislation in particular is that, to the extent that there's movement in Washington, it's because there's movement in the States. I mean, I'm not saying all of it is that, but I think that-- and I think other panelists have mentioned this a little bit, but I think it's important-- for good or ill, the states are taking on a lot of the tasks that we might want have looked to Congress for. Again, for good or ill. So we, after fighting for net neutrality for decades, it was upended overnight, seemingly. At least, it felt like that.

[00:09:41.61] And so California's got an net neutrality law, and effectively that ends up influencing lots of other states. After trying to get good federal privacy legislation for decades, California passed its own. Now, it's not perfect, but the fact that it got passed has now spurred the conversation in DC because everyone realizes, like, I don't really want a patchwork of different potentially rival privacy obligations.

[00:10:10.95] So I think this is going to continue to be true. We're going to continue to see states sort of stepping in to fill a perceived gap. And I don't think that's always going to be great. I don't think that states are necessarily always the best ones to make these kinds of decisions. And I think with respect to online speech in particular-- we'll probably get to this a little later-- we've seen some terrible, very terrible, and directly contradictory state laws passing.

[00:10:38.75] So this isn't great, but it is, I think, a reality. And I think one of the things that I think about as an advocate and I think many advocates should be thinking about is, so how do we engage states, and how do we engage in this dynamic process in a way that's reasonable and practical when we aren't located in every state, and we don't necessarily have the ability to influence legislatures in every state? And there are powerful entities that do.

[00:11:07.67] JENNIFER HUDDLESTON: So to kind of build on what Corynne was saying, I think that we certainly are seeing a lot of action at a state level. The other example I think of is what we've seen in privacy. And I think that is part of why, as we start to see the privacy patchwork, particularly this year, with effective dates coming into play in more states become less theoretical and more a reality, that that is why you are seeing a push on both sides of the aisle for potential federal privacy framework.

[00:11:38.09] Now, we may all disagree on what that framework should look like and on some very important issues around things like private rights of action. But you are seeing the discourse grow very early in this Congress. And so I think that is probably the thing I'm most optimistic about that Congress could create both a privacy framework that responds to a lot of the concerns that consumers have, to concerns that businesses and innovators have, as well as to something that maintains an approach that allows innovation to continue to flourish.

[00:12:15.80] When it comes to what we're seeing happening in the speech debate, it's really interesting because we're seeing calls to, say, change laws like Section 230 from both the left and the right. But we're seeing them often for diametrically opposed reasons. So on the left, there's often expressed a concern about there's too much of certain kinds of speech online, too much hate speech, too much violent content, things of that nature. On the right, there's often a concern expressed that they feel that conservative voices are being silenced, or that too much content is being taken down, or that the wrong types of content are being taken down.

[00:12:56.78] As a result, I think we haven't really seen a convergence on an idea to lead to Section 230 reform more broadly, and I think that's actually a good thing. I think Section 230 in and of itself has really supported innovation online. And so as we look at what the states are doing there and how that could impact the patchwork of potential speech, I think that's important to consider as well.

[00:13:23.19] The other thing I would like to respectfully disagree with Chris on is when it comes to the European approach and the idea of Europe as a leader that the US should perhaps be looking to follow in terms of regulation. Or I'm concerned that the European precautionary approach is becoming more considered in a lot of the US policies we're seeing in Congress and that we're not considering fully the consequences that some of those policies, such as the competition

bills that were mentioned, could have to consumers, could have to innovators, beyond just the idea of an idea of a more precautionary regulation, and looking at how many of these proposals would impact much more than just what we think of as tech companies, but a wider legal regime and a wider economic regime as a whole.

[00:14:19.86] BLAKE REID: Derigan.

[00:14:22.43] DERIGAN SILVER: So much.

[00:14:22.99] [LAUGHTER]

[00:14:24.56] I'm a little bit of a old wine, new bottle kind of guy. So I teach copyright law, First Amendment law, and privacy law, three areas that frequently just clash with each other and make no sense when you're trying to explain how copyright law and the First Amendment coexist in any coherent system whatsoever, because they can't.

[00:14:46.91] And so what I always tell my students is, in those three areas of law, particularly, there's this inherent tension between technology and the law. So for example, in the 1970s, we had to have day-long, multiple-day hearings, about this amazing new technology that we weren't sure how the law should handle it, and what should we do about it? And I always ask my students-- I'm like, what technology am I talking about? VCR. No. The internet. No.

[00:15:14.42] Photocopiers, right? Like, we did not know how to handle photocopiers in libraries. You see the same thing with privacy law. I mean, privacy law is just over a hundred years old. Depending on which scholar you talk to, a lot of it was spurred by the development of the instant camera, the Polaroid camera. So we have this technology that's pushing the law.

[00:15:32.57] In terms of content moderation, which is what I spent a lot of time talking about, every time we've had a technology that has democratized communication, we've had this huge panic over the results. So if you look at the printing press, oh my gosh, the commoners can read. What are we going to do?

[00:15:50.13] And then you look at the penny press in the 1800s, when we moved from a partisan press model to a model that was driven by advertising dollars. So suddenly, we needed a wider audience. So we're like, oh, objectivity. That's a cool thing. Like, oh no, now the masses are going to read the newspapers. What are we going to do? Radio, television, internet.

[00:16:08.69] And so this kind of inherent conflict between technology and the law has been around for a really long time, and we've yet to figure it out, how to handle it. And we were just in this really wonderful, super nerdy conversation about the benefits of common law versus statutory law when it came to technology law, which I really enjoyed. But I don't know if you guys would, so we won't go into it here.

[00:16:30.73] JENNIFER HUDDLESTON: [LAUGHS]

[00:16:32.01] DERIGAN SILVER: So I'm a little bit-- you know, these are things we've grappled with before. In terms of our comments about Europe and regulation, whenever I'm teaching my students, they're generally very in favor of regulation that benefits what they see as "right." And then they're against regulation that they see as wrong.

[00:16:51.92] And we frequently like regulation when we think that there's a benevolent force in power, and we think that there are some greater good to happen. And so if you talk to my students, removing hate speech from the internet is their biggest priority. And they say the government should have the right to regulate the internet. I'm like, cool, like Florida, like Texas? No. No, no, no, no, no, not like that.

[00:17:13.40] [LAUGHTER]

[00:17:14.60] That's bad regulation. I want good regulation. And so I say, regulation is only as good as the people who are enforcing it.

[00:17:22.70] BLAKE REID: Chris, a quick rejoinder?

[00:17:26.05] CHRIS LEWIS: I don't think a regulation can be good also if it balances values, and I believe in a thing called the public interest and the public good. Determining that is hard because we have a diverse society who balance different values. Take your pick-- free expression, content moderation, fighting hate speech, fighting misinformation. Different people answer that question differently.

[00:17:55.62] What we've been able to do at times with other media is we've been able to have regulatory bodies that are nimble and that can make mistakes but then recalibrate. That can be a good thing. We've been able to bounce values by talking about them when we're going after a specific harm but knowing that, if you go after that harm with a remedy that will hurt another value, that we figure out ways to either address that or acknowledge the consequence of that choice.

[00:18:30.14] So you could have-- can't in the US, but if you had the government say that all hate speech is banned online, which is not legal to do right now, that's one approach. You could also find other ways to limit hate speech online. You could look at how competition policy contributes to limiting hate speech on dominant digital platforms, where most people would see it. That's how it worked with the printing press.

[00:19:03.18] You know, growing up in Northern Virginia, I knew where the skinheads were because when you went to that neighborhood and parked in-- there, they would put flyers on your windshield. I didn't have to like it, but it was their right to do so. So there are ways to balance it, especially when you're trying to get at one harm or the other.

[00:19:25.15] BLAKE REID: So let's pick up on this note of balance, and I want to shift us over to thinking about Section 230. One of the unique things about the US approach to all these issues that we're talking about is, for the last 25-plus years, we have operated from a starting point of Section 230 that says that when it comes to these issues, we're going to leave the decisions in the hands of the platforms to decide what sort of speech is going to flow.

[00:20:07.42] So, Corynne, we heard earlier that no one understands what Section 230 is, the most misunderstood issue among-- perhaps intentionally so, among politicians and the public. I wonder if you could give us a sense of what's the nonfolk law, like real version of Section 230? And then we can get into how the Supreme Court might be deciding to mess with it.

[00:20:35.33] CORYNNE MCSHERRY: OK, yes. So it's also-- I think it's important, especially for our Supreme Court conversation, that we're talking about Section 230 and the First Amendment. And there are ways in which they overlap and those ways in which they don't, but both of those are in play, or both of those laws are in play.

[00:20:51.76] So I would not normally ever do this, but I'm actually going to read the key language from the statute. I promise I never do this, but you'll see why. "No provider of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." You know why I can read it? Because it's freaking short. It's really short, and it's really powerful. There's another part of Section 230, though, that's also important, and I'm not going to read it because it's not as short.

[00:21:22.21] So one of the-- one part, (c)(1), protects platforms and also many, many kinds of services, which we should talk about, from liability, basically for content generated by their users, for hosting content, or otherwise providing the service, right? Probably everyone in this room knows this.

[00:21:40.39] Often forgotten in the discussion is it also protects them from liability if they decide to take content down. So that provides them some freedom to do the content moderation that everyone and their mother seems to want them to do in exactly opposite ways. But that's the basic structure of the statute.

[00:22:00.25] And that plus the First Amendment protects content moderation sort of generally. It protects the ability to engage in content moderation without being held liable for what your users do. So what we all know is if companies were held liable for all the speech that they host, well, first of all, many of them wouldn't exist, and some people would like that, perhaps. We'd like a world without Twitter, but we wouldn't have it if it wasn't for Section 230 and the First Amendment, because the First Amendment provides additional protection for curation decisions.

[00:22:35.20] And this dates well before the internet, and Derigan can talk more about that. But it's a longstanding idea that publishers should be protected, and platforms of all kinds should have the First-Amendment-protected rights to make editorial decisions about what speech they're going to host, what they're not going to host. So those two things protect those two things, protect the full spectrum or most of it. For content moderation at the platform level but also for all kinds of services, like email-- email relies on section 230 too.

[00:23:11.43] The last thing to note, just to set up, and then I can talk about Supreme Court if you want, about those cases-- there are exceptions in Section 230. There are exceptions for intellectual property, federal criminal laws, and now, thanks to an unconstitutional law called FOSTA that we're going to get overturned really soon--

[00:23:30.45] [LAUGHTER]

[00:23:31.21] --but for now, speech that violates--

[00:23:33.66] BLAKE REID: I thought we were trying to make new laws to hold a conversation.

[00:23:36.39] CORYNNE MCSHERRY: Sorry.

[00:23:36.65] BLAKE REID: So, so-- OK.

[00:23:37.79] CORYNNE MCSHERRY: Sorry. Sorry.

[00:23:38.47] [LAUGHTER]

[00:23:38.94] OK, but if you talk about sex, regular speech that talks about sex, you might be in trouble, which led to a consequence that we should talk about, which is that when platforms don't have that protection, when they're at risk for liability, they do what you might expect they would do, and they over censor and take down any content where they might be risk because they don't want to pay lawyers to litigate.

[00:24:02.70] BLAKE REID: So before we move on to the Supreme Court's impending treatment of this, I wonder if I could get just a lightning round of reactions to Corynne's description of Section 230. This is pretty important for platforms-- obviously shaped how platforms have grown up in the United States over the last 25 years. How do folks feel about that? Is that something we should be proud of relative to the European tradition, which doesn't have Section 230? What's the valence of Section 230 over the last quarter century?

[00:24:37.61] JENNIFER HUDDLESTON: When we're talking about Section 230, you often hear it brought up in the context of, quote unquote, "big tech," of the largest platforms out there, the Googles, the Facebooks, the Twitters, which, if you actually look at numbers, is surprisingly small compared to many of these other platforms.

[00:24:54.23] But the reality is that Section 230, and particularly section 230 liability protection, benefits users by providing them more opportunities to speak and also benefits innovation by creating this kind of level playing field, in my opinion, for startups that want to carry user-generated content, because now, there is equally protected. If something goes awry, and somebody uses your new messaging service, your new review site, your new alternative encyclopedia that's completely created from user-generated content for something you never imagined, your second hire doesn't necessarily have to be a lawyer.

[00:25:33.26] Now, that may be against the self-interest of some of us in the room who are lawyers, but the reality is that it's the benefit to the users to have those opportunities for speech. And it's the benefit to all of us to have more choices, in this case at times, to find that right type of information that we're looking for. We're not just talking about social media platforms in this case.

[00:25:56.22] When we're thinking about what we're seeing right now in the dynamics in this industry, Section 230 may come up in the context of those large platforms, but this is also critical when we're talking about the emergence of new platforms. So when we're seeing things like people who are looking to alternatives to Twitter because maybe they aren't happy with how Musk is engaging in content moderation right now, and so they're looking for things like Mastodon.

[00:26:20.03] We also see this with some of the new right-leaning sites, for example, when Trump got kicked off of social media, and he created his own social media platform. In part because you have a culture that allows user-generated content to flourish, you're really seeing an ecosystem for a variety of online opportunities for speech.

[00:26:41.75] BLAKE REID: So, Chris, I want to come to you, and I want to link to Senator Bennet's remarks this morning.

[00:26:46.93] CHRIS LEWIS: Yes.

[00:26:47.56] BLAKE REID: Senator Bennet talked about, I think, what Jennifer just described as something a little more sinister in his words. He used the words "algorithmic poison," talked about authoritarian's platform-- it makes these platforms the authoritarians' platforms of choice, something along those lines, and that 230 is perhaps kind of at the heart of that. Your thoughts?

[00:27:13.13] CHRIS LEWIS: Thanks. I have to admit, I didn't catch his speech. So those are stock quotes. I don't want to necessarily attribute my thoughts to the Senator, but I will say that what I know the Senator believes in is having accountability and regulation of these platforms. I would agree with that. I don't think that has to conflict with preserving Section 230, which I think is, on the whole, a good piece of policy.

[00:27:49.35] Authoritarianism-- I think putting the power to moderate in the hands of the platform was the right choice. In the United States, we have a tradition. We don't want it in the hands of the government. If we put it in the hands of the government, it's very limited. I would encourage that for the internet.

[00:28:11.73] And with a piece of media like the internet that is so powerful and for democratic speech but just diffuses accountability across the entire user base, you don't have a lot of other places to turn. I think it requires, then, us to look at, certainly, competition policy to make sure that those who don't like the choices that they get in content moderation can go elsewhere. We're certainly seeing that on the right.

[00:28:43.30] We see market pressure from the left to try to address the lack of content moderation from their perspective. I don't think it's been very effective because we don't have great competition, especially on social media. And so doing more to promote competition, I think, could go a long way to supporting the free expression goals that we've traditionally had in this country without getting rid of 230.

[00:29:10.17] BLAKE REID: OK, against the backdrop of views on 230, Derigan, I wonder if I could turn to you to talk about an entity that rarely makes an appearance at this conference. But I think we got to go there, which is the Supreme Court. What does the Supreme Court poised to do with Section 230? And what could the consequences be?

[00:29:30.30] DERIGAN SILVER: Who knows what they're posed to do?

[00:29:31.95] [LAUGHTER]

[00:29:32.88]

[00:29:33.81] So, again, you have to remember that, sometimes, the First Amendment and Section 230 overlap. Section 230 was really-- if Tim is still here, Tim Wu has a really great article from 2018 called "Does the First Amendment Matter?" And in the article, the thesis is that you have to understand the First Amendment, not as an originalist, but really understand what it was designed to do and what was the reality that was going on at the time.

[00:30:01.35] And I think you have to do the same thing with Section 230. You have to take yourself back to the late '90s. You have to think like, what was the goal of this legislation? What were they trying to do?

[00:30:09.96] For a couple of common-law cases that were coming up, there was a debate about something called the republication rule. And one important thing to remember is that Section 230 protects internet service providers not because they're publishers, but because they are not considered publishers. Under the common law, there is something called the republication rule. It basically means that anybody who spreads a lie is liable for that lie as the person who originated the lie, or the teller of tales is as guilty as the originator of tales.

[00:30:38.37] In the late '90s, we had two competing internet service providers that my students have never even heard of before, one of them being Prodigy. And under the common law, if you were somebody who edited your material, if you were a newspaper, you were responsible for the content that was in that newspaper, regardless of who generated that quote.

[00:30:57.52] So if I am a reporter, and I'm covering Senator Bennet, and he defames somebody, and I write in my newspaper his word for word quote that he defamed somebody, Senator Bennet can be sued, and I can be sued. If I get a letter to the editor, and I publish the letter to the editor because I'm making that decision to publish it, I am now a republisher of the letter to the editor. The person who wrote the letter to the editor can be sued. I can be sued.

[00:31:19.95] There's these two internet service providers who had different business models. One was sort of the laissez-faire, publish whatever you want to publish. The other one marketed itself as the family-friendly internet service provider. And they said, we edit the content. We make sure that everything's going to be safe. The court took that different ways and said, well, you are a publisher. You are not a publisher. You are liable for defamatory contents. You are not liable for defamatory content.

[00:31:46.63] So when there was this discussion about having internet service providers help to moderate content, internet service providers were like, no, thank you. We do that, and we are now liable for everything that we publish-- every email that we send, everything. Under the common law, a telephone line, a bookstore, a newspaper, or a newsstand-- these are considered common carriers-- that requiring a telephone company to monitor every single phone call that is ever made on a telephone line would drive them out of business. Asking a bookstore to do the same thing would drive that bookstore out of business. So you had to decide, what are these internet service providers?

[00:32:22.68] Since then, courts have really interpreted that term, "internet content service provider," very broadly, and it has been applied to a wide, wide range of websites for just about every tort. So it's gone-- republication rule has its basis in defamation law. It's now gone to privacy law. It's gone to defamation law. It's gone to even other areas of content. And this concept of who is an internet service provider has been interpreted fairly broadly.

[00:32:52.72] One of the only big losses that I'm aware of comes from a case involving roommates.com, where they had a dropdown menu that forced you to choose the preferred race of your roommate. And because they were forcing you to make this choice, the courts basically said, OK, you are now a publisher. You are now forcing people to break the law. You are liable under Section 230 for this dropdown menu.

[00:33:15.49] In most other cases-- there was one other-- I think it made it to the circuit court level. Maybe it didn't quite make it to circuit court level. I think it got overturned en banc, involving thedirty.com, which was held liable for about \$500,000 in damages from a former cheerleader of the Cincinnati Bengals. That was actually, oh, Section 230 is ending. The courts have had it. They're tired of this. Like, TheDirty is an example of a bad Samaritan, and Section 230 is going to end. It ended up getting overturned on appeal.

[00:33:44.50] But now there is a case going up before the Supreme Court, Gonzalez versus Google, where the argument is Google is making the argument that-- and help me if I'm getting this wrong, guys-- the algorithm that Google uses to select ranked choices should not be protected under Section 230 of the Communications Decency Act. And there is this debate about how much of the internet and how much of this technology is actually protected by the First Amendment. Is code speech? Is code content? Is selecting the ranked order of websites protected by Section 230, or is it not protected by Section 230?

[00:34:27.28] So we all have to remember that, in the United States, statutes are the creation of the legislative branch. But statutes, just like the Constitution, are subject to legislative interpretation. And you have at least one justice who has openly said that he believes Section 230 has been wrongly interpreted by the lower courts. That's Justice Thomas. You have another justice, Justice Alito, who basically doesn't trust anything you have to plug into the wall. If you plug it in, he wants to take a second look at it.

[00:34:57.56] And so there's this real question that we have, this really large body of case law in the lower courts. And for now, it looks like the Supreme Court will decide some of these questions about how broad is Section 230. Did I get Gonzalez versus Google right? Did I miss anything?

[00:35:10.72] JENNIFER HUDDLESTON: Except that Google is arguing that the algorithm is protect--

[00:35:15.24] DERIGAN SILVER: Is protected by Section 230. Did I say it's not?

[00:35:17.49] JENNIFER HUDDLESTON: Not.

[00:35:17.62] DERIGAN SILVER: They're saying, they are not liable--

[00:35:19.40] JENNIFER HUDDLESTON: --liable under Section--

[00:35:20.41] DERIGAN SILVER: --under Section 230 for the algorithm. So, for example, if Google returns searches that you don't agree with, or you don't like, or whatever the case may be, could you sue Google for the search results? Or are the search results protected by Section 230? And there's a really famous law article that came out a few years ago, which actually turned out was commissioned by Google, arguing

that this particular computer code is actually speech. So there could be both a Section 230 argument and a First Amendment argument involving Google code.

[00:35:56.35] BLAKE REID: I want to turn things over to Corynne and then back down to Jen.

[00:35:59.98] CORYNNE MCSHERRY: Yeah, so just to fill in a little bit more context for Gonzalez and also for the earlier case, Taamneh versus Twitter, both of these cases are going to be heard in a couple of weeks, so stay tuned for that-- late breaking news. I think it's important to know that, in both of these cases, a number of us are concerned because the facts of the cases are terrible. Both of them-- so I'll just back up and do Taamneh real quick just because we haven't talked about that yet, but there's sort of a pair of cases that the court essentially decided to take both. And who knows why, but probably not great.

[00:36:36.82] Anyway, so Taamneh arises out of-- there's an ISIS attack at a club in Istanbul. And family members later sue Twitter and other platforms under the Antiterrorism Act, which allows a US person to sue an entity that knowingly provided substantial assistance to an act of terrorism.

[00:37:01.19] So the question there is actually not, strictly speaking, a 230 question. It's much more of a First Amendment question, which is, how do we interpret the ATA? Could Twitter have been sort of aiding and abetting by not being aggressive enough in terms of trying to take down terrorist content? And related, is general knowledge that ISIS people use your service to try to get the word out and radicalize and so on-- is that generalized knowledge enough to be knowingly providing substantial assistance?

[00:37:33.97] And there's one analysis that says, you can't interpret the statute that way consistent with the First Amendment. That is not-- but that is where that is sort of squarely presented. But it relates to the second one because both of them have to do with, how are we going to think about the liability of platforms for the content that they host? So that's why people sort of put them together in obvious ways.

[00:37:56.79] A concern I have, by the way, is that whatever ruling we get out of here is not going to be confined just to platforms. It's going to be a ruling that's going to affect services up and down the stack. Anybody who relies on 230 is going to be affected by this.

[00:38:10.63] And then the other thing I would say that I think it is important to think about-- so Google is saying, look, our recommendation algorithms-- that's the same as curation. That's same as editorial decisions that are protected by the First Amendment, as well as 230. But there, too, the facts are terrible. So we've got radical ISIS videos being shown and recommended by the algorithm, and the

argument is that that was used to radicalize people and ended up supporting another ISIS attack.

[00:38:44.52] So those are sort of-- it's just these are the worst facts possible, right? Because it's terrible. What happened to the women to the people who are suing-- they all lost family members directly. And they are trying to say, look, the social media platforms have a responsibility here. They are part of-- they are part of the algorithmic poison, and they shouldn't get off the hook. And I think that there's justices on the court that are going to be very sympathetic to that.

[00:39:13.16] On the other hand, as a matter of law, it's very difficult to figure out how they are going to rule the way their hearts might want them to without rewriting Section 230, probably, and interpreting the First Amendment in a way that may have really far-reaching consequences.

[00:39:30.89] BLAKE REID: OK, so I want to get back to the ramifications of this as our closing question. But before we do that, I want to make sure we also get the First Amendment cases that the Supreme Court is going to take, or probably going to take on the table. So, Jen, I wonder if I can come over to you to tell us, what's going on at the Texas and Florida legislatures? I mean, not generally, but, you know--

[00:39:53.59] [LAUGHTER]

[00:39:54.90] --specific to these laws, and then--

[00:39:56.69] JENNIFER HUDDLESTON: [INAUDIBLE] again.

[00:39:58.90] BLAKE REID: How are the courts going to deal with that? And how is that going to head up to the Supreme Court?

[00:40:03.05] JENNIFER HUDDLESTON: So what we have seen are two state laws seeking to regulate social media speech. And these are two laws out of Texas and Florida. They vary a little bit from each other, but in both cases, they're concerned with what they consider political speech and with the removal of political speech, largely for conservative candidates or conservative points of view.

[00:40:32.46] What we ended up seeing is that there was a circuit split. The Eleventh Circuit, which handled the Florida case, found that the Florida law was unconstitutional on First Amendment grounds. The Fifth Circuit upheld most of the Texas law. There are preliminary injunctions in place in both of these laws.

[00:40:55.40] Because you have a circuit split, it does look likely that the Supreme Court will take it. However, when it was reviewed in conference, recently, they asked for the opinion of the Solicitor General, so it looks like if these cases are heard, you will not see them on the docket most likely until next Supreme Court term.

[00:41:13.79] But with that in mind, while you often hear, because these cases involve large social media platforms these brought up in the context of Section 230, at their heart, both of these cases really are First Amendment cases. And, in fact, the questions posed to the court are First Amendment questions, not Section 230 questions, which distinguishes them from the two cases we were talking about involving the Gonzalez case and the Taamneh case, where Section 230 is directly in the question presented to the court.

[00:41:43.04] These really are questions about First Amendment speech and how that interacts with the broader kind of questions of the state getting involved in telling platforms whether or not they have to carry certain types of speech or certain speakers.

[00:41:59.82] DERIGAN SILVER: I would just-- the one thing I would add is that both of these laws, under existing precedent, are blatantly unconstitutional, like blatantly. This is something that you learn-- right? There's a case called Miami Herald versus Tornillo, which basically says, you can't do this.

[00:42:18.96] And I think-- so there's, in the political science literature-- and this would be a whole other interesting debate if we're going to talk about Congress in the courts. In the political science literature, there is a theory that frequently legislatures will work with the courts as a backstop. So basically, I can pass laws that I don't think are really good laws, but they're politically popular. And I know that the court will act as a backstop, right?

[00:42:43.77] When I pass this law, there is no way that the Texas State legislature-- that people didn't come up and be like, you know this is unconstitutional, right? They passed it anyway, maybe or not thinking, well, this is not going to go anywhere, but, boy, it looks really good to our constituents. I mean, in my opinion, anything that comes out of the state of Florida or anything that comes out of state of Texas has as much to do with the 2024 presidential election as it has with being a good idea.

[00:43:07.92] But the Fifth Circuit really was like, no, we're going to let this one stand. We think this is actually a pretty good idea. And the Eleventh Circuit was like, have you read case law? Like, this is just blatantly unconstitutional.

[00:43:24.28] And so in addition to the Solicitor General asking for-- or in addition to the court asking the Solicitor General to brief the case, in the denial of the stay in the Fifth Circuit case-- was it the Fifth Circuit or the--

[00:43:41.67] BLAKE REID: Yeah.

[00:43:41.93] DERIGAN SILVER: --Eleventh Circuit? Alito wrote a dissenting opinion, where he kind of starts it off being like, I'm not saying how I'm going to decide this case, but I don't really think the

First Amendment applies to large social media platforms. I'm not saying it does. I'm not saying it doesn't, but it is a question the court should answer, whether the First Amendment applies to these entities.

[00:44:06.18] BLAKE REID: OK so I want to take our last five minutes here with this framing, and it's a pretty stark framing because I think we heard during the journalist panel pretty much a consensus-- not much is going to change in Congress in the next few years. We're going to be reprinting the heading about Congress not doing that much.

[00:44:26.34] But we have some pretty significant changes to the backdrop against which Congress is going to legislate. Potentially, Section 230 is immunity for editorial decisions that platforms are making either to filter or to leave up content might not be protected in the same way. Potentially, the understanding of how the First Amendment constrains states from legislating when it comes to the carriage and filtering decisions of platforms could be changed pretty radically.

[00:44:58.83] So let's say that we are in a world-- and this is the question I want to close with, and I want to turn to everyone in turn. If we're in that world in a year, where the Supreme Court swings for the fences on 230 and the First Amendment and changes them in all the ways that folks have worried about on this panel, what are the worst fears you have about that? And do you see any silver lining? Corynne.

[00:45:24.85] CORYNNE MCSHERRY: Oh, the fears I have. Yeah. I mean, I have some pretty serious fears based on what we have seen after FOSTA was passed I think that if-- to the extent that we limit First Amendment and Section 230 protections for service providers, big and small, it's pretty much inevitably going to lead them to take the safest course, which is to take down as much content as possible that might lead to liability, and that's going to affect users around the country.

[00:46:02.49] And there is a context of this that I want to flag that I don't think we've talked about, which is that the other thing that has changed in the landscape in the past year is obviously the Dobbs decision. So what that means-- we have a world in which people rely on the internet to get [INAUDIBLE], including about their reproductive rights, and about reproductive justice, and access to medicine, and so on.

[00:46:26.38] We could have a world in which it is illegal to provide that information or to host that information. This is not remotely fetched, and I think, actually, there's laws on the books that already could be interpreted this way. And there's going to be a lot of state difference about this, right? We're going to have different states with different laws, and service providers are going to have to figure out, who we know are national, usually in reach, or international reach. They're going to have to figure out what are they going to comply with.

[00:46:52.01] So our sort of arcane little discussions over here about the internet-- not that they're arcane, but you know what I mean. I actually have much, much broader public policy implications that I don't think are being thought through or discussed. And, I mean, I guess, full employment for lawyers, so for the law students in the crowd, you'll have lots to do. But I'm really worried about that. I'm really worried about how courts are going to come out, and especially if it gets litigated in state courts, again, with competing constituencies and competing allegiances.

[00:47:25.22] BLAKE REID: Oh, and just to tag, that's an institution, as we debated in the first panel, about, where's the right agency to be handling this? The FCC? The FTC? Is it a new agency? We haven't talked about state legislatures and courts. Interesting addition. Chris, your thoughts.

[00:47:41.32] CHRIS LEWIS: My biggest fear would be that we then have to test Congress to be better than Florida, you know. And it's--

[00:47:52.83] CORYNNE MCSHERRY: Silver lining?

[00:47:53.58] CHRIS LEWIS: It's scary right now. No, it is frightening because state legislators passing laws they know are unconstitutional, and then just saying, the courts will fix it. We see way too much political grandstanding about content moderation in Congress these days. We've started to lose our well-established consensus that we had for generations around what the First Amendment actually protects, and it was worked out over time.

[00:48:25.97] Now we have folks saying that their free speech rights means that they don't have to be criticized, or that they have a right to be on every media platform that they choose to. That's never been the understanding of free speech. And so if we don't have a Congress that's better than Florida, then I worry that we're not going to have smart solutions to deal with what we're left with from the courts if that happens.

[00:48:53.99] And who gets hurt by that? I worry about marginalized voices, marginalized communities, the folks who benefited from having a low barrier to access this wonderful media that's called the internet because they didn't have to have a license for a TV station or a radio station to be heard. We're talking about communities of color and other marginalized communities that have benefited, have been able to organize and build communities online. If they lose that because of what Corynne talked about over moderation-- if we lose that, then folks out of power getting hurt, I think, is the worst sort of outcome for this sort of court decision.

[00:49:36.62] And I had a friend say to me once recently that, oh, well, marginalized communities have always found a way to survive and communicate. But I'm like, yeah, but should we have to? I think that's ridiculous. We have a wonderful technology that if we only regulate it

properly can continue to benefit all of us to speak in ways we couldn't do decades ago.

[00:50:03.10] BLAKE REID: Jen.

[00:50:04.40] JENNIFER HUDDLESTON: I think it is very concerning the impact that some of the proposed changes to Section 230, whether they come from the courts, the Congress, or state legislature could have on all voices, on the voices that, as Chris pointed out, have traditionally struggled to find a place to speak, to find a place to connect with each other, who have been able to build wonderful communities through a shared connection, and for all of us who have benefited from being able to have access to a wide range of perspectives from around the world.

[00:50:39.53] When we're looking at what-- particularly with the courts, I think there are two things, and I think when this conference is held next year, it'll be very interesting to see what the equivalent panel has to say. With regards to the Gonzalez case, I'm really interested and concerned about how algorithms could become something that are much more difficult for platforms to use.

[00:51:05.84] I highly commend-- there's a brief that was filed in that case by a group of anonymous Reddit moderators-- had to get special permission from the court to file anonymously about how they're able to be volunteer moderators in part because of the algorithmic tools they have to engage in content moderation. This is a very different type of style of content moderation than other platforms have that, without algorithms, would be nearly impossible for them to do, particularly as volunteers. So I think it's very important that we very much pay attention to algorithms and the debates that are going on, or to debate about algorithms and particularly the potential regulation of algorithms.

[00:51:51.32] Secondly, when it comes to the states and to the question of the First Amendment-- and we're looking at the Florida and Texas laws, if those are considered. I think it's very-- I'm quick to point out that, while it's been Florida in Texas so far, Florida and Texas probably have a very different view of what content moderation they would like to enforce on platforms than, say, California does, than, say, New York does.

[00:52:19.85] And inevitably, if you start to allow these kind of laws to occur at a state level, you're going to have a patchwork that, again, is going to really make it hard for users to speak and is really going to make it hard for there to be a wide range of places for that speech to occur.

[00:52:36.19] BLAKE REID: Derigan?

[00:52:37.01] DERIGAN SILVER: To Chris's point about marginalized communities, I think that's a really important point to remember

because, frequently, these laws are talked about as ways to protect marginalized communities. But almost in every situation, as soon as you give the government power to censor, they censor the speech that is designed to benefit marginalized communities.

[00:52:55.18] So I would say, if these changes happen, be ready very quickly for a law that bans access to all critical race theory internet websites, and that bans professors from accessing journal articles that reference critical race theory. I would say be ready for laws that ban all websites that talk about transgender individuals, that ban all research using the internet on transgender individuals. I mean, these are not the-sky-is-falling scenarios. These are real scenarios of what could happen.

[00:53:26.76] In terms of, will it happen, I don't know. You have definitely Alito and Thomas, who have signaled their willingness to rethink everything. I was thinking my worst-case scenario, Sullivan gets overturned, right? That's as it--

[00:53:41.37] BLAKE REID: For folks that are not familiar, can you [INAUDIBLE]--

[00:53:43.11] DERIGAN SILVER: Oh, New York Times versus Sullivan, the actual malice standard from defamation law, which has also been put on the blocks is something that needs to be-- we need to "rethink."

[00:53:51.99] But you also have some of the justices, if you read a case called Packingham versus North Carolina-- this was a North Carolina law that sought to ban anyone who was a registered sex offender for any reason whatsoever for life from any social media website. But it was written so broadly that it applied to The New York Times, The Washington Post, eBay, Facebook, a litany of different websites that were not social media sites, but that's the way the law was written, which goes back to my case about statutory law not being the answer.

[00:54:21.96] But the majority of the court writes a very flowery opinion that reminded me of Reno versus ACLU, the 1997 opinion by Justice Stevens. And it talks about the internet as being the new public sphere. Now, that's not just rhetoric that the court throws around. In legal terms, that means something.

[00:54:48.09] This doctrine basically says that there are certain areas that are long-held bastions of freedom of expression-- public parks, streets, places where people gather. And these are places where the highest First Amendment applies. And the court actually says that the internet is the new public sphere. And that's not just rhetoric when the Supreme Court throws around. It means something legally.

[00:55:10.32] So you do have some of the justices who really expressed this, that they still have hope, that they still believe in this marketplace of ideas, as messy it is, as crazy it is, as bad as it may be it

sometimes, that it really is a place where debate can thrive and things can happen.

[00:55:27.45] So I haven't done my justice counting yet in any of these cases, which is something they tell you not to do in law school, but you do it if you ever practice law [INAUDIBLE]. So those are my thoughts about where we'll be next year when this panel happens, and you don't invite me back.

[00:55:43.08] BLAKE REID: [LAUGHS] I fear we will have reason to. With that, happy to open it up to the audience for Q&A. And as always, the first question goes to a student. And you all have the misfortune of - I know who the students are here, so it's Sunday afternoon, but we'll still cold call if we have to.

[00:56:02.85] [LAUGHTER]

[00:56:03.84]

[00:56:06.32] Why don't we go to Rich, who was actually up at the front of the room here at the beginning? So I know he's here. Rich.

[00:56:13.73] RICHARD KOCH: Thank you. That was a great discussion. I want to come back to Gonzalez because I almost feel like it's significant-- it is almost downplayed in some ways. I mean, as of last night, it's the number of amicus briefs the court has received are approaching Obergefell levels. I mean, they're almost there.

[00:56:45.34] And I see the case fundamentally about personalization as the future of the internet. And I've begun to question the value of personalization and targeted content generally. And especially in the case of terrorist content being promoted, recommended-- you can think about TikTok and the way that targeted content is part of the mental health issue there as well. Why not hold the companies responsible for amplification, for targeting? And it's so impactful, I feel like there should be some legal liability at some point. I mean, at what point should they be liable for that activity?

[00:57:42.25] BLAKE REID: So just to put a gloss on it, to what extent is Section 230 preventing accountability for the platforms in making recommendations that, to Senator Bennet's remarks this morning, arguably contribute to pretty serious social harms?

[00:57:59.41] CHRIS LEWIS: Yeah, I don't think you need to eliminate Section 230 protections to try to target some of those issues. Certainly, some of the privacy and data protection proposals get at it a little bit, but not much.

[00:58:15.99] I would love to see-- again, Senator Bennet, you want to have an expert digital regulatory agency. So do I. I would love for the agency to have the power to deal with wrestling with algorithmic oversight and what that should look like. And you can target some of that to the harms that you're concerned about without eliminating the

thing that promotes free expression for individuals on the internet. That's where I start. There's probably others, but that's where I start.

[00:58:48.71] DERIGAN SILVER: So I'm not Section 230 absolutist. I was getting some griefs from some comments I was making about Section 230 before we got on hot mic. But there is a smart way to amend it, and there is the ham-fisted way that we want to now because it's a political issue.

[00:59:07.66] There's a law professor-- for all you law students out there, read everything she writes-- Kate Klonick out of St. John's University Law School. I always joke she was writing about Section 230 before Section 230 was sexy. And these were debates that people who teach in my area have been having for 10 years. And it's just when Donald Trump came into office, and he said, Section 230, then it became hot.

[00:59:32.20] So the two things that really upset me-- my kids know this-- Section 230 and critical race theory because nobody knows what it is, but everyone likes to throw it out there as something we need to be concerned about. And I say, OK, explain to me what it is before I take your word that we should be concerned about it. But she's done some really great writing about the smart ways that we might be able to edit it. And then Eric Goodman-- is Eric a-- I think he's on the EFF board, maybe, from Santa Clara--

[00:59:59.26] CORYNNE MCSHERRY: Eric Goldman?

[00:59:59.74] JENNIFER HUDDLESTON: Goldman.

[00:59:59.94] DERIGAN SILVER: Yeah, Goldman. Sorry, Goldman.

[01:00:01.36] JENNIFER HUDDLESTON: Nope.

[01:00:02.44] DERIGAN SILVER: No?

[01:00:03.01] JENNIFER HUDDLESTON: He's just awesome.

[01:00:03.79] [LAUGHTER]

[01:00:05.50] DERIGAN SILVER: He is awesome-- from Santa Clara University. So two shoutouts to Kate and Eric. Read their work. It's fantastic.

[01:00:13.49] JENNIFER HUDDLESTON: Well, I will echo Derigan in remembering back before everyone had an opinion on Section 230, back when it was this little corner, and you had to explain to people what it was instead of them assuming that they knew what it was.

[LAUGHS] And I also very much second both those recommendations of excellent people to read if you're looking for further reading on that topic.

[01:00:37.73] Content moderation is hard. Let me just start with that. This is a difficult task regardless of the size of the platform and

regardless of how narrowly focused on a particular topic you may think a specific platform is. One of the difficulties in some of the calls for content moderation and regulation, whether it's in the form of changing Section 230-- we've seen this to some degree with FOSTA-SESTA when it comes to conversations around sex in general and what we've seen platforms do with that-- but is, oftentimes, these things that may seem easy to define are very difficult to define in practice.

[01:01:19.23] So if we say the debate that's going on about mental health content, for example, defining mental health content can be very difficult. What do we do about things that are there to help people that are trying to get mental health help, and so on, and so forth. It can become very easy to silence voices, as we've seen with SESTA-FOSTA.

[01:01:44.39] Or to have the opposite approach in a world without Section 230 protection, where some of the good content moderation that many people want online to keep certain types of content that most users don't want to see gets eliminated, and you get a world that looks a lot like 4chan and certain other places on the internet where you can find those things. That's not what most of us want to see when we open our apps on a daily basis.

[01:02:13.24] When we're talking about policies intervening, the problem is, then, we're trying to dictate a one-size-fits-all approach, often from the government intervening in the speech of private actors. And that should be concerning, in my opinion, from what it means for the First Amendment. And I just always ask, when you think about the government being the one to define mental health content, hate speech, terrorist content--

[01:02:38.92] DERIGAN SILVER: Terrorist organizations.

[01:02:39.97] JENNIFER HUDDLESTON: --terrorist organizations, imagine the person you most politically disagree with in the world being the one with that power. And then ask yourself, are you still OK with giving them that power?

[01:02:52.51] DERIGAN SILVER: Let me give you something a little bit more concrete. Donald Trump is re-elected president in 2024. How fast until Black Lives Matters is now a terrorist organization?

[01:03:02.51] AUDIENCE: [INAUDIBLE] be an advocate [INAUDIBLE] third order [INAUDIBLE].

[01:03:04.99] BLAKE REID: All right, just keeping an eye on the clock, I think we've got time for a closing word from Corynne, and then we'll head to our break.

[01:03:11.59] CORYNNE MCSHERRY: Yes, so I think that, just to sum up, the reason that some of us are Section 230 absolutists is because of what we've just been talking about, is that it actually is kind of hard to tweak in a way that is actually going to target the thing you are trying to target. So what violent content-- OK, you have to keep violent content

off your service. That's one that people often like, and no amplifying violent content.

[01:03:37.10] Well, I think we've seen a lot of violent content that we absolutely want amplified coming from, say, bodycam, police body cameras, right? I mean, it's awful, and it's terrible, but it's actually been really, really important that some kinds of violence have been made available to people. And it's hard to write the algorithm that's going to perfectly not-- that's going to differentiate.

[01:04:02.28] Then you say, well, you need to get a human involved. Well, now, those are human people who are going to have to watch hours and hours and hours of awful content every day. That's not a great answer either.

[01:04:11.82] So these are-- to me, the closing remark I would make is that, too often, what is a very complicated and hard conversation is getting reduced-- I think echoing what Chris said earlier-- getting reduced in legislatures to black and white, and it doesn't work. It's just the way that the content moderation happens in this moment can't be reduced to on/off switches, and it's a real mistake if we try to treat it that way. We actually have to do policy in a way that makes sense.

[01:04:46.05] And I would say, last thing, the reason I know this in particular is because FOSTA. Barry, one of the reasons FOSTA is unconstitutional is also because it was rammed through and not thought through. It's a bad piece of legislation, even if you like what it was trying to accomplish, which was to limit sex trafficking and get platforms out of the business of facilitating sex trafficking in any way, especially child sex trafficking. But they wrote this bill way too fast in order to sort of score political points, and now we have something that's not going to accomplish what anybody wants but caused a lot of collateral damage.

[01:05:22.46] BLAKE REID: Well, I think we've solved it. The conference is over. No, just kidding, but we are-- first, join me in thanking our panel for the wonderful discussion.

[01:05:31.94] [APPLAUSE]

Fireside Chat: Alan Davidson & Anna Gomez

<https://youtu.be/LY-2A7i88m8>

[00:00:01.40] MADI CARR: Hi. I'm Madi Carr. I'm a 2L here at Colorado Law. Nice to see some familiar faces. And I'm happy to welcome you here for our fireside chat with Alan Davidson, the assistant secretary of commerce for communications and information at NTIA and Anna Gomez, the former deputy assistant secretary of NTIA. And I'll hand it over to you.

[00:00:23.49] ANNA GOMEZ: Thank you, Madi. Hi, everybody. I am delighted to have the opportunity to be here to speak with administrator Alan Davidson. We only have a brief moment, so I'm not going to go through his whole bio, it is online.

[00:00:36.47] But I should point out for purposes of this conversation that he has extensive experience with internet policy, and of course, currently helms NTIA, who is the principal advisor to the president on communications and information policy, which of course, includes internet policy.

[00:00:53.96] ALAN DAVIDSON: Extensive experience sounds old. It's great to be here with you, a former deputy administrator and current state department, congratulations.

[00:01:03.98] ANNA GOMEZ: Thank you. I appreciate it. Well, let's get started. As I mentioned, you have this extensive experience. You have a robust and impressive resume in tech having served in industry and government in academia in the Biden and Obama administrations.

[00:01:20.69] So we've been listening all day, almost a depressive litany, of where we are with the internet, our supposed midlife crisis. What has amazed you about the evolution and development of the internet?

[00:01:41.12] ALAN DAVIDSON: That is a great question. There are some things that have been amazing, things that have been surprising, maybe some things that leave me a little hopeful still even after a full day like this. And thank you. It is really great to be here. And I think in the category of what's been amazing, I do think-- so I started in this space as at the Center for Democracy and Technology back in 1995.

[00:02:06.01] And when I started there, there were 40 million people on the internet and now we have 5 billion people. And I think what is pretty hard to-- it would have been hard to imagine back then, but our dreams came true in a lot of ways that the internet has become the essential communications medium of our time.

[00:02:25.85] And I think back then we hoped it would be true, we dreamed it might be true, but that is a pretty amazing thing that we have created this network of networks really, and it has taken off, and it is now the thing that so many people use to stay connected, to get information, to stay in touch with their loved ones.

[00:02:47.63] So that is amazing. And I have to say there's a lot of moments as a fallen computer scientist where I stop and say, this is incredible. We're doing high quality streaming video conferences from our homes. We're carrying around these supercomputers in our pockets. And I do think that relative to where we were in the mid-'90s that is amazing.

[00:03:13.66] I mean, there are some things that have been surprising including the fact that I think we've been slow to figure out some of

these hard problems, which we'll talk about, I guess, and we've been talking about all day here. But I come away still pretty optimistic about where we're going in part because we have gatherings like this and a lot of young people who care about these issues.

[00:03:35.78] ANNA GOMEZ: So what would you say we could do better or differently?

[00:03:42.38] ALAN DAVIDSON: There's probably a lot. And I think that I probably I would say probably three things that jump to mind for me. The first is we really have to finish taking on some of the big issues that we've not tackled yet. And what I mean by that is there's issues like privacy, cybersecurity, what are we doing about harmful content? All the conversation in the last panel, competition.

[00:04:07.03] There's a whole litany of issues that honestly we need to do a better job in government of taking on we're trying to do our part at NTIA, but that's a big one. Two other quick things that I think jump to mind. One is we should be a little bit more engaged in thinking about what is the technology that we're building and deploying. I think that's been an undercurrent here. Certainly Senator Bennett talked about it.

[00:04:31.72] Policymakers tend to take technology as a given, but actually the internet that we have today is a product of a series of choices about what those standards would look like, what network we would build. Even the services we use, those are choices made by companies sometimes, by government, sometimes a complex system.

[00:04:51.32] But being more engaged in not letting technology be some ambulant like that. We're not saying to an ambulant as to technology is a term that people use, like we don't sleepwalk through it, we engage in how technology is built. And then the last thing is I think we need a lot more capacity in government to tackle these hard problems, and that's going to be a big ongoing thing for us. And we're trying to build that capacity at NTIA.

[00:05:16.11] ANNA GOMEZ: All right. And I was going to ask you, what is NTIA's role then in all of these issues that you've talked about?

[00:05:23.15] ALAN DAVIDSON: So you said it right at the beginning, you remember it well, and I was a very distinguished deputy administrator from the early years of the Obama administration. Our role is primarily to serve as the principal advisor to the president on telecommunications and information policy.

[00:05:45.14] And in that role, we have a chance to think about what policy ought to look like. So we're not a regulator, we're not the FTC, we're not the FCC, we don't set the rules, but we are charged with helping think about policy. So not just what the law says today, but what the law ought to say.

[00:06:08.64] And so we've had the opportunity to engage, we get a lot of requests, we engage with Congress about laws that are on the books or potentially on the books those bills that are being introduced. We consult with the White House on the policies that it's setting. We have a lot of tools in our toolbox. We write reports. We do consultations. We convene around these issues. And I think those are the things where we expect to engage.

[00:06:38.01] ANNA GOMEZ: And you just recently issued a report that came out of one of these processes.

[00:06:41.49] ALAN DAVIDSON: Yeah. So these are two good examples of the kinds of things that we do at NTIA and I hope we'll do more of. One is a report that we just released on mobile app competition. So for those who missed it, it just came out this week, and it's a good read.

[00:07:01.78] And certainly the executive summary is an easy read. And I see Tim Wu here. I think I can say he's a co-conspirator in this process. We were given a homework assignment in the executive order on competition that the White House put out in 2021. He asked us to do a report on competition in the mobile app ecosystem.

[00:07:24.25] And what the report basically finds is that there are real problems with competition in mobile apps, this is not surprising for you all that really two firms control the way that most of us get the apps on our phones. And because of that, there are higher prices for consumers and less innovation in the space.

[00:07:44.80] And we have a series of recommendations that we put out about what most of them would require action by either legislators or enforcers, but to give consumers more control of the apps that they have on their phone, to give developers more opportunity to reach consumers. And we think those are really important. We know that the Europeans are looking at those as well.

[00:08:04.49] So that's an example of the work we're doing and I'd like us to do more because we need that engagement on these hard issues. We also just released a request for comment on privacy, equity, and civil rights. This is another example of work that we're doing where we feel there's a lot that needs to be done on privacy. But the civil rights and equity angles on privacy are something that need extra attention and we're doing a request for comment will ultimately write a report on that.

[00:08:31.27] ANNA GOMEZ: And what are some of those civil rights and equity angles?

[00:08:34.78] ALAN DAVIDSON: Well, I think one of the things that we've seen and again, not be a surprise to many of you, but we did a series of listening sessions about a year ago with different vulnerable

communities, minority communities about their experiences of privacy and security.

[00:08:53.02] And one of the things that's really clear is that these privacy and the harms that come from privacy and security risks are often most starkly felt and most highly impactful on these vulnerable communities, on minority communities, the elderly, the poor.

[00:09:10.33] And some of the practices that are out there already that we've seen digital redlining, the bias in artificial intelligence, machine learning algorithms, are having these kinds of outsized impacts on those communities. So we're really quite excited to be able to launch that project.

[00:09:33.73] I think, it's going to be really impactful. It fits with what the administration is trying to make us-- the way that we're trying to make equity a centerpiece of all of our work. And stay tuned for more. I hope people will contribute to the request for comments and look forward to putting a report out on that.

[00:09:50.23] ANNA GOMEZ: Yeah, I was going to point out that the Biden administration has put a particular emphasis on advancing equity and supporting underserved communities. What other ways is NTIA addressing equity in the internet policy arena?

[00:10:05.29] ALAN DAVIDSON: Well, probably the biggest thing that we're doing, and that is totally true. And I will say if anybody who's met our Secretary of Commerce, Gina Raimondo would be able to tell you she cares a lot about these issues of equity and gender equity. Our deputy secretary, Don Graves, who's-- I don't know if he's the first person of color to be our Deputy Secretary, but he's deeply engaged on these issues. And it's a part of everything we do.

[00:10:32.26] Probably the biggest thing we're doing right now is in broadband where we're really talking about making sure that we reach everyone with high speed, reliable, affordable internet service, and we're investing huge amounts in digital equity.

[00:10:45.07] We have a \$3 billion digital equity fund that's probably more money. That's being spent on digital equity in the coming years and has been spent in the history of us talking about digital equity certainly by government. And so leaning into that work, so it's beating heart of our broadband and is a big piece of it as well as this work on privacy.

[00:11:05.71] ANNA GOMEZ: And another way that you are engaged is you also advocate before the FCC.

[00:11:09.94] ALAN DAVIDSON: Right.

[00:11:10.57] ANNA GOMEZ: So the FCC has had--

[00:11:11.47] ALAN DAVIDSON: Good reminder. Yes, thank you. We do that too, yes.

[00:11:15.01] ANNA GOMEZ: And the FCC put out for comment, questions about digital discrimination. And I believe I'm right that NTIA filed comments in that proceeding.

[00:11:23.26] ALAN DAVIDSON: I believe so. I'm looking at Russ Hanser, who's here. And he's giving me the nod. He's head of our policy development shop and a good person for you all to know as well. Newly the head of our policy development.

[00:11:34.93] ANNA GOMEZ: Congratulations, Russ.

[00:11:35.89] ALAN DAVIDSON: Yes.

[00:11:37.21] RUSS HANSER: Yeah, thank you.

[00:11:42.01] ALAN DAVIDSON: For the folks online he says we have filed some comments and we will be filing more in the near future.

[00:11:49.31] ANNA GOMEZ: Well, we just recently saw the international panel, that the discussion about what's happening across the pond. And international plays a significant role in where we are on internet and internet policies. This gives me a nice opportunity to give a shout out to Doreen Bogdan, who you supported, and won the election for ITU Secretary-General and is the first woman to be elected Secretary General in the ITU's 157-year history. Cheers to her.

[00:12:22.07] ALAN DAVIDSON: Yeah.

[00:12:22.43] ANNA GOMEZ: So what does it mean for the United States and for our engagement going forward that Doreen is the head of the ITU?

[00:12:29.27] ALAN DAVIDSON: This was actually a legitimate big deal. The election of Doreen Bogdan Martin was hugely important for our international agenda. And starts by saying what happens at the ITU is actually quite important for our international agenda.

[00:12:43.47] And I think there was a stark choice in the election for the next Secretary-General. On the one hand was a Russian candidate, former Huawei executive, somebody who is really, I think, would have promoted a much more closed vision of what the internet could be and the ITUs role in the internet.

[00:13:09.15] On the other hand Doreen Bogdan Martin, an NTIA alum, I should say also, as well as a historic candidate and somebody who has had a huge amount of experience at the ITU, and 20 years really working at the ITU, and working on development particularly making sure that the internet reaches everybody around the world.

[00:13:30.71] And in the end, we put a huge amount of energy. And I have to say as a federal government to try and make sure that Doreen

got elected, it was I think 139 to 25 was the final vote. It was a goosebump moment in the room. I was there in Bucharest when she was elected and I think for a lot of reasons, first of all, I mean I think it was a huge statement of support for this democratic vision and development-oriented vision of the ITUs future.

[00:14:00.50] But also I think for a lot of people to see that glass ceiling broken and see finally a historic pick like that was extremely important. So it was great to be able to be there and to be part of that, yes. Seriously.

[00:14:13.82] [APPLAUSE]

[00:14:16.02] And Doreen is amazing and she's going to be an incredible leader for the ITU.

[00:14:20.33] ANNA GOMEZ: Yeah, it was definitely a wonderful moment, I agree. But some countries have argued for national sovereignty when it comes to internet governance and for more direct involvement by the ITU. Is there a role or international organizations in internet governance?

[00:14:41.63] ALAN DAVIDSON: There absolutely is, but we need to be thinking carefully about what that role should be and how we keep it appropriately cabinet as it were. As a starting point, the US government continues to be a major believer in the multi-stakeholder model of internet governance.

[00:14:59.96] It's been incredibly successful in many forums. It's still the right way for us to manage a lot of the key resources, the standards and protocols that underlie the internet, the I can system, the domain name system, and numbering system, and we still believe quite a bit in that.

[00:15:17.06] That said, of course, there is going to be a governance role for nation states or international organizations. The ITU, Doreen has set forth a pretty important agenda around development, around investment. I think we'll see other places where it's important for us to be coming together and we're highly engaged, the TTC, the Quad, the ASEAN.

[00:15:43.73] There's a lot of international fora where you see the United States engaged at the UN and other places, putting engaged on standards where appropriate, thinking about promoting our common vision that we see of a free, open, reliable, trusted, and accessible internet for all.

[00:16:05.60] And we have pushed the declaration for the future of the internet as an important tool in getting countries to sign up for that vision as well. So there is a role, we just need to make sure that we're calling it out when, for example, some countries try to use organizations like the ITU to overstep and promote a very different vision of the internet.

[00:16:26.90] ANNA GOMEZ: So we should turn to broadband because that's a big thing that NTIA is doing. I like to say the reward for good work is more work and you got that by a huge amount. You've been given upwards of \$50 billion in new grant programs this year, including those under the internet for all and the Innovation Fund initiatives. How are they doing?

[00:16:53.11] ALAN DAVIDSON: Well, they're doing well. Let's start. I will say it's a really historic moment at NTIA. I'll say it's probably the best time in history to be the NTIA administrator. And we stand on the shoulders of giants, and that's the reason. Of course, it is the reward for good work is more work and that's what we've been given.

[00:17:19.49] It's a historic moment because we have been talking about the digital divide in this country for over 20 years, for longer than that. Many of you who've been part of that conversation for years. And thanks to the bipartisan infrastructure law, thanks to these other statutes, we have been finally given the resources to do something serious and structural about that, and that is huge.

[00:17:43.34] We've got \$50 billion under management in grants at NTIA there are other agencies the FCC, USDA, Treasury that are doing grant making are going to spend tens of billions of dollars in the coming years to make sure we meet President Biden's goal, making sure that everybody in America has high speed, affordable, reliable, internet service, and that we're not leaving anybody behind.

[00:18:10.61] And it's a lot of work. We had a lot of success last year. We put out our notices for funding. We gave out \$1.7 billion in funding to tribal communities, the biggest investment in history in terms of tribe investments in native community connectivity. We're going to give out another billion in the coming year on tribal. So we're doing a lot already and there's more to come.

[00:18:37.67] This year, we'll do \$1 billion in the Middle Mile fund. We have more tribal grants coming. And then these big state grants that people have been talking about, over \$42 billion in our state grant connectivity program, the B program as some call it. And the action is about to turn to the states. And that's something for all of you where we're going to need help.

[00:19:02.99] The states are going to be developing their plans for how they will spend that \$42 billion and we really-- some states are in better shape than others. And Colorado is a great state here. It's been invested a lot in this. But making sure that the state plans come out right, that's where the action is going to be in the coming year, and we're really going to need attention.

[00:19:23.18] But I will say I know this can be an audit, I don't want to say jaded audience or cynical audience, let's just say realistic audience. But this is a once in a generation thing. And I always say there were

generations before us that brought electricity and water to everybody in America. They built the interstate highway system.

[00:19:51.76] This is our generation's big infrastructure project. This is our chance to connect everybody in the country with what they need to succeed and thrive in the digital economy, in this modern economy. And it's going to take a lot of work. It's going to take years to do it. But I do think that we will look back 10 years from now, 20 years from now and say, this was the moment where we finally stepped up and connected everybody, and that's big.

[00:20:19.88] ANNA GOMEZ: That is big. Now that we're turning to the states, how should people think about engagement with these funds?

[00:20:28.73] ALAN DAVIDSON: There's going to be-- there are a lot of different pieces to it. There's digital equity work, which I think is going to be very important in making sure that we're reaching all of the communities and helping people not just with connectivity, but with affordability, with devices, with skills.

[00:20:44.20] The big attention is going to be on the state plans. So state broadband offices are going to be working on their plans for how they will spend hundreds of millions, in some cases, it's going to be billions of dollars that states are going to be giving out to providers to connect everybody.

[00:21:01.76] So it's all hands on deck. It's making sure those plans look good. States are required to consult with local communities in their state. We're going to be holding their feet to the fire on that, so that's another opportunity to be engaged. Some of you work with providers or at providers who are going to be building these networks. We need you. We need you on the field.

[00:21:21.84] And so I just say this is a plea for help. This is a plea to engage. This is our moment. In the next few years we will be spending this money. And if we're going to do it right, we need everybody, all of you to be part of that conversation.

[00:21:35.51] ANNA GOMEZ: And then internally, you had to ramp up and staff up. Are you still hiring?

[00:21:41.12] ALAN DAVIDSON: We are still hiring. If any good people. Students, please keep us in mind for your post-graduation plans. We've grown a huge amount and we have to grow more to do this work well. I just had my one year anniversary at NTIA, so--

[00:22:01.49] ANNA GOMEZ: Happy anniversary.

[00:22:02.12] ALAN DAVIDSON: Thank you. It's been a whirlwind. But since I joined on January 14 of last year, over a third of NTIA is brand new. So we've hired a third of NTIA since I joined in last year. And those of you who know anything about hiring government, that is a

miracle. And we've worked really hard at it, but we still have a long-- I would say we have a long way to go, we still have a lot to do.

[00:22:28.59] I'm excited about the coming year because we've been building this huge program and we haven't had the resources. Now, we finally have the staffing in place and I think the next year we're going to be doing even more. But we need to bring on more resources. We've got a lot of homework assignments from Congress.

[00:22:47.93] We're building out a new wireless Innovation Fund to think about open round deployments. We're doing a lot of policy work as I've described. And there's a huge amount to do in the broadband space. All of our spectrum work, we've got openings in all of the places the office of spectrum management, our Institute for telecommunications sciences here. So we need help and we need more people in the field, which is why it's so important to be here with you all.

[00:23:15.54] ANNA GOMEZ: So everybody heard, get your resumes in.

[00:23:17.78] ALAN DAVIDSON: Yes, send them to Russ, send them to me. We have a lot of need.

[00:23:25.37] ANNA GOMEZ: But I absolutely sympathize. I know what it's like to try to stand up a program. And our program was more than 10 times smaller, so it's a lot.

[00:23:33.86] ALAN DAVIDSON: Yeah, it's a huge challenge and we're moving. It's like doing a startup in government, honestly, which is exciting, but also terrifying. And I think the great thing about it is it's given us a chance to bring on a lot of great people, also build a culture, which when you're building an organization you can have a chance to impact the culture.

[00:23:56.39] And so I'm intensely proud of the people that we've been able to attract and the work that we've been able to do in this last year. And I'll just say, this need for more engagement isn't just an NTIA thing, I think it's across government and really at all levels of government.

[00:24:12.67] I mean, part of what we need is more people to be in-- these state broadband offices all need to staff up the public interest groups and the philanthropies that are supporting work in this field. We got our friends at pew up there. Everybody needs more capacity because of the resources that we're going to be pouring into this field in the coming years. So yes, please engage, that's our-- we need the help.

[00:24:42.17] ANNA GOMEZ: All right. It's time to ask a student to ask us a question. Do we have a student? I see a hand.

[00:24:52.18] ISABEL DEAN: Hi. My name is Isabel Dean. I'm a 2L at Colorado Law. My question is about the spectrum coordination initiative that was announced a year ago today. And I'm wondering how those efforts have been realized over the past year and how agencies can really align their efforts together to work towards closing the digital divide.

[00:25:19.81] ALAN DAVIDSON: That's such a great question. And the funny thing is I could have spent the last 20 minutes talking about spectrum and I didn't because it gives you-- it's a sign of the times at NTIA that there's a lot going on. And of course, our spectrum work is hugely important.

[00:25:34.40] We have this scarce resource that is becoming more and more valuable. And if we want to meet the needs of having the best wireless industry and technology in the world coming out of the United States, we need to be able to make sure that spectrum is available to power those networks.

[00:25:52.96] At the same time, we also have incredible needs from our federal users and federal communities to defend the country, whether shoot down balloons somebody is saying in the front row. Do weather, do research on climate change, all of that relies on spectrum. So it's a huge amount of work at NTIA on those issues out of our office of spectrum management.

[00:26:18.43] We have this incredible crown jewel of a lab here in Boulder at the Institute for Telecommunication Sciences, our facility at a Table Mountain. So there's a lot of work. But to do this right, it's all about coordination within the federal government and making sure that we are working together closely with the FCC and our sister agencies in making sure that we've got a vision of what we're trying to do as a country on spectrum and that we're managing some of these live fire conflicts at times well together.

[00:26:51.38] And so we did-- one of the first things that I did a year ago was to work with the FCC on a spectrum coordination initiative, as you said, and it's been going really well, it's made a huge difference already. I will say that the FCC chairwoman has been incredibly gracious, a great partner for me.

[00:27:11.42] She called me on my first day in the office, we spoke, and we-- and certainly probably not a week goes by that we're not in touch. And being able to work on that initiative was important to kick us off in the right way.

[00:27:24.85] Since then we did an-- we updated on MLU between the FCC and NTIA that hadn't been updated in nearly 20 years, that was really important. And we're working together on a lot of different things, including getting ready to launch a big initiative on the National spectrum strategy. So all of this is a way of saying that coordination is really important and so far so good.

[00:27:49.76] ANNA GOMEZ: Thank you for that great question. I love a spectrum question. Now, Blake, are you over there because it's time or do we have time for one more question? Right, we're out of time. OK. So thank you, administrator Davidson, for your thoughtful comments.

[00:28:04.99] ALAN DAVIDSON: Thank you. And I'll just say one last thing, I'll plug again on the broadband side and I'll plug again on building capacity here in the young people who are here, students who are here but really all of you. I think the biggest thing that we need is more people in government who are bilingual, who can understand the technology and understand the policy implications of what we're working on.

[00:28:31.80] And programs like Silicon Flatirons are critical in building that capacity and we need more of that in government. And if we're going to do things like make sure that we're connecting everybody in America, it's going to take all of you and we want to be partners with you in that. So thank you.

[00:28:51.63] ANNA GOMEZ: Thank you.

[00:28:52.29] [APPLAUSE]

Debate: Promote Tech Giants or Startups?

<https://youtu.be/0kSd94J3c8A>

[00:00:00.18] JP DE VRIES: Yeah. So what we're going to do-- we have this debate. It's an artificial choice. And what we're going to do is we are going to try and see if these two sides can change your mind. We're going to have a vote at the beginning before you've heard the debate. We'll see what the percentages are on the two sides. Then we're going to have the debate [INAUDIBLE].

[00:00:23.26] There is going to be opening comments. There is going to be cross examination. There are going to be closing comments. Then you're going to get to vote again. And then we'll see which side shifted the percentages. So if you could bring up the screen, we're going to use an app called Slido. In a moment, hopefully you will see the URL slido.com and a QR code.

[00:00:49.63] So photograph the QR code or just go to slido.com. There will be a text box on the web page if you are doing it that way. Enter in the word "debate." And we are going to have a debate. And the topic-- could you please bring up that slide? There are the questions. And as you vote, you should see the percentages change. So please vote now. And while you vote, I will try and make sure we don't have dead air.

[00:01:24.30] So the topic that we have is we should prefer a system that either promotes one of the two things. OK. [INAUDIBLE] the sound

effects. They're all around us. And so one side clearly is going to have an easier time of it than the other. That started with Senator Warner's remarks this morning.

[00:01:48.34] But get your votes in. A debate topic like this is necessarily brief, so it's ambiguous. We're going to have you decide what you mean by startups and what you mean by tech giants. For my money, the debaters will probably tell you differently. Prefer a system means, where would you put your finger on the scale?

[00:02:13.58] If you had to choose the egg, which one would you choose? And promotes could be all sorts of things like, do we want to be biased towards-- do we want to protect? Do we want to support? Do we want to foster? All those kinds of things. As you keep voting-- and I see we've got some more coming in.

[00:02:35.39] Just a note on advocacy. For those of you who are in the media, either the news media or on social media, the opinions expressed by the debaters are for the purposes of debate. So you shouldn't necessarily hold them to their comments. If you want to quote them, check with them beforehand. For the intros, I will direct you to the deck. But one thing that I've just realized is I forgot something. And I will be back in one minute.

[00:03:15.31] BRAD BERNTHAL: I don't know [AUDIO OUT] possibly be.

[00:03:24.19] ORLY LOBEL: Chicken and an egg.

[00:03:25.39] BRAD BERNTHAL: Yeah, exactly.

[00:03:27.39] JP DE VRIES: Yeah, [INAUDIBLE]. We have Paul Ohm. He is professor at law and chief data officer at Georgetown University Law Center. Flatirons is all about "and." And so he builds bridges between computer science and law. Meg Leta Jones is an associate professor of communication culture and technology. She [INAUDIBLE] is that you also looks at the history of technology. Both of them, as it turns out, are at the eastern branch campus of Colorado law. [INAUDIBLE] Then on this side, we have Brad Bernthal. He's the associate professor and big cheers. We all now know [INAUDIBLE].

[00:04:21.98] [APPLAUSE]

[00:04:23.09] Silicon Flatirons, which is, for me, [INAUDIBLE] specializes in startups, entrepreneurial or early stage finance. And last but certainly not least, we have an award-winning author, a scholar. And when I ask you, what does JP have in common with Trevor Noah? You'd probably say nothing.

[00:04:48.15] There are, in fact, two things I have in common with Trevor Noah. But first, I was also born in South Africa. But second, I get to promote Orly's new book. So like a talk show host, thank you very much. This is Orly's new book, *The Equality Machine*, just out to rave

reviews. Among other things, it's an economist best book of 2022, highly recommended.

[00:05:14.98] So with that-- and let's just make a note of where we are [INAUDIBLE] for startups. And tech giants are at 32%. We'll see where we end up after the end of this debate. We'll start now. We'll go with the principles. We'll go with Paul, and then Orly, and then Meg, and then Brad. So, Professor Ohm, over to you. You have five minutes.

[00:05:45.31] PAUL OHM: All right. Hi, everyone. It is a delight to be back. This is, in many ways, the origin myth of my life as an academic. I started in Silicon Flatirons when this kind of crazy Professor Phil Weiser said, yeah, come here and do 10,000 more things in academic [INAUDIBLE] be doing, often around this topic series.

[00:06:04.65] And I have been the only constant with JP debates. I've won a few times. I've lost a few times. Given the fact that we're starting at a deficit, I'm not sure [INAUDIBLE]. When I look at the panel, one thing that strikes me is I've heard the word midlife crisis about 152 times today.

[00:06:27.25] And I also turned 50 about six weeks ago. And I look at my compatriots up here. And I realize that I am the only embodiment of midlife crisis. This is an unusually hale, and hearty, and good-looking, and active panel of people. And then there's me, this schlubby pile of whatever I am, sitting on the corner.

[00:06:54.19] And so I'm going to lean into that. I am going to tell you why middle age is a wonderful thing, that if we had a choice to be the kind of wisdom and growth that comes with experience and age, versus the impetuousness and irrationality of youth, one, this world that we're living in today, we should should choose age every single time.

[00:07:18.55] And so I would like you to understand that anyone who knows me in this audience knows what a series of screeds I like to do in vain at giant corporations. This is a weird side for me to be on. I am going to disavow the idea that maybe all I'm doing is shilling for donations from companies who want to support my research.

[00:07:39.86] But I really have, in the last week and a half that we've been plotting our strategy, begun to convince myself that there really is a silver lining in the world we live in today where tech giants really are running roughshod over everything that we care about. And so the one thing that I think is really important for you to understand is we are not advocating for the tech giants we have today. Right?

[00:08:03.39] And if you looked at the wording that we were carefully negotiating, we said [INAUDIBLE] if we can regulate them. We're arguing for a future state of the technological landscape where there's rules of the road. There's meaningful enforcement where we funded the enforcers at adequate levels.

[00:08:24.26] So, in short, we are advocating for a world we imagine the entire relationship that we, as kind of a polity, have with the technology companies. I think if we can get to that future world. And I know that's far fetched. And I know we've talked a lot today about whether or not we're going to be able to get there.

[00:08:39.78] I would rather have a world with five tech giants, instead of 500 startup companies. So let me just give you two reasons. And then I'm really excited to get into the back and forth of the Q&A. One, I've been a government regulator three different times. And I have to be clear that nothing I'm saying now has anything to do with the Department of Law of the state of Colorado for whom I receive a little bit of pay.

[00:09:04.70] And I've noticed that interacting with companies really is a different experience, based on where they are in their lifecycle, and that the older and more mature [INAUDIBLE], the more likely you are to have a connection about important human values. That really does point to the future world we want to live in.

[00:09:24.56] So I remember at the time. So I was [INAUDIBLE]. And I see Joni Lupovitz who is one of the big reasons I was at the Federal Trade Commission. And I would remember bringing Microsoft in. And Microsoft [INAUDIBLE]. These are people who had kind of tangled with the government in their impetuous younger age. They literally had older people who were there to have conversations with you, [INAUDIBLE] issues.

[00:09:52.52] And there was a stark contrast to the experience you would have [INAUDIBLE] Facebook who were still in that troubled teen age. And there was just something to be said for having a maturity and [INAUDIBLE] about the larger companies that I think really pointed a way to a much more productive conversation.

[00:10:15.51] Secondly-- and I'll be honest. This is one of the main reasons I wanted us to debate this topic. I'm a privacy scholar. And we're in this age where-- I mean, privacy has come on every panel [INAUDIBLE] fascinating. And we're in this age where we have no control over the data about us. And the large tech giants are [INAUDIBLE].

[00:10:36.31] And so one of the things that we often hear is, well, antitrust and privacy are two ways to get to the world we want. And so the antitrust people would have you believe that if all we did was we took Facebook and we split it up into hundreds of competitors, that'd be so much better for privacy.

[00:10:49.88] This would be a wonderful thing to have all of our data stored in the hands of all of these companies all of the time. I disagree. I would rather have a few companies, as troublesome as they are, under our watchful eye than I would [INAUDIBLE] dystopia to me. Thank you.

[00:11:06.40] JP DE VRIES: Thank you very much. And over to Professor Lobel.

[00:11:09.34] ORLY LOBEL: Thank you. Thank you for having me. So I actually also thought of Paul as the seasoned chicken here, not because of age. I think we're pretty much the same age. But Paul has been doing this for a while. And he really does embody what we're trying to do when we keep a system fresh, and we bring in new eggs, and we bring in new blood of a director. We keep him looking good, because he has to compete. He has to respond. He has to still be fresh in midlife.

[00:11:51.55] I mean, this is an exciting time and topic, not just because of everything that we've heard today about the crisis, the problems of digital big tech. But really, we're also at an exciting time from the research perspective. So we know much more about the value of entrepreneurship, the value of competition.

[00:12:18.28] We really have so much evidence to support what we have long known intuitively. So we've long known that we need a variety of nutrients to keep healthy. We need diversity for a healthy society. We need checks and balances for a democracy. And we need competition for a healthy market, a healthy economy.

[00:12:42.49] And all of those are deeply connected. So it's not just analogies. But it's really that we know that competitive markets also support democracies. And conversely, the more markets become consolidated, the more there are very few positions of power. That is a threat.

[00:13:03.58] And you can look at this historically. You can look at what's happening now. It's a threat to, again, not just the quality in consumer welfare, a quality of products, but in services, but also to the very values of democracy in keeping the rules of the game in place. That's really important.

[00:13:23.65] Also, really important-- and I want to say this at the outset of our discussion is to keep this question that is set and presented to all of us, to present it to you about what we're really voting about. So it's not that we're not going to have big companies when we have a system that supports new entry.

[00:13:46.90] Actually, it's exactly the opposite. What we know-- and we see this. And this is even more true than ever before that natural incentives is for everybody to grow. So power wants to grow. Incumbents want to kill the competition. They want to stay in their positions of power. They accumulate. We see how much they're swallowing up in unprecedented numbers. The competition.

[00:14:14.11] A lot of it is catch and kill acquisitions that are really just done to get rid of the innovation so that they maintain whatever products that they already have, whatever, value they already have.

And then they start having less and less of incentives to innovate, to have competitive pricing, to have consumer welfare.

[00:14:42.76] So what we need to do is to offset that system. We have the natural incentives from an individual perspective, from a firm competition perspective to grow, to not want competition. And then we need a system to support this new entry, to support entrepreneurship, to support a vibrant startup culture.

[00:15:06.97] So on the consumer side, we know this intuitively. I think it's Kenneth Arrow 101. What we also know much more these days and far too late-- this is something that's really near and dear to my heart. Far too little, far too late. But actually, right now is a really important moment.

[00:15:25.75] We also know that on the talent market, on the labor side, the markets have become very, very concentrated. We have labor market monopsonies that depress wages, that have a disproportionate effect and harmful effect on women and people of color maintaining the gender and race pay gaps.

[00:15:51.73] And we're losing. We're losing really that vibrancy of what we can call the Medici Effect, that talent that connects. And really, when we do have entrepreneurship, when we do have competition over our talents, over our pockets, we each become more productive, more excited, more creative. And I think I'll stop here and happy continuing to the discussion with Meg. Thanks.

[00:16:21.22] JP DE VRIES: [INAUDIBLE]

[00:16:24.22] MEG LETA JONES: Yes. Thank you for having me. I have never been in a debate before. Surprise. Thanks for inviting me. Yes. I'm actually going to compliment Paul's big and old is beautiful argument with three very subtle points. Innovation is for the birds. Choice is a scam. And decentralizing solves nothing.

[00:16:52.69] So let me get into those. When I think about 500 or 5,000 startups, to me I think another decentralizing effort. We're doing this again? There's a problem. It's real. And we're going to decentralize it. We're going to decentralize the web. But didn't we just do that? Didn't we just decentral? Wasn't that what the web was? There was AOL and Prodigy. And we decentralized. And there were thousands of ISPs.

[00:17:21.73] Just feels like we're reshuffling the same deck of cards. And you go make a sandwich, and you come back and the cards are in a bunch of mansions again and 500 startups. The startup mentality seems to be the same reshuffling of the same deck.

[00:17:40.63] And it's a ride that I would like to get off. And the ride was supposed to be fun, because it was about choice. But what is so great about choice? Choice isn't that fun when it's not real choice. And we keep pretending like it's a real choice. But it doesn't feel like a real choice when it's a platform that doesn't really bother with death

threats. It does, however, have a privacy policy that references California, verse a platform where I can't talk about breastfeeding. But they fired the entire security team.

[00:18:20.34] This isn't fun. This isn't a fun choice. I would like some rights. I would like more rights, fewer choices. So I would like privacy rights. I would like data protection rights. I would like some accessibility rights, some rights to be forgotten, some rights to have some real humans to call.

[00:18:36.72] And the ride was supposed to be new and exciting, but that's all that it was. And I don't care about innovation anymore. I just want maintenance. So I just want to maintain the stuff. I want to clean up all the stuff we were supposed to do in our 20s. I want to go back and finally learn Spanish. I want to do all of these things.

[00:19:04.41] And I really do think when we think about innovation, I think about the midlife crisis character with the new business venture, new hair plugs, and the new car, and lots of new things. And you haven't changed. You're still the same guy in the convertible. He needs therapy.

[00:19:30.68] [LAUGHTER]

[00:19:31.89] And that's the maintenance I want to go, and I want to do. So we haven't done the hard work that we need to do. And instead, we've been lured by the shiny. And I want to stop moving on to the shiny. And I want to stop ignoring the maintenance that we need to do-- the social, institutional maintenance, the technical, the ethical debt that we've seen. The legal debt is just immense. It's just decades deep now. And I'm ready to pay it off. My set was a little bit short. And I'm out of things to say, and I've still got a minute. So I can kick it off to Brad.

[00:20:14.61] JP DE VRIES: Oh, no, no. I think we go for quality. Quantity really doesn't matter.

[00:20:17.61] MEG LETA JONES: Oh, thank you. Yeah.

[00:20:18.18] JP DE VRIES: Yeah. Actually, the thing is welcome to being a boomer. I mean, you made it early.

[00:20:23.28] [LAUGHTER]

[00:20:24.15] So we will move over to Professor Bernthal for the last comment on the first round.

[00:20:31.44] BRAD BERNTHAL: Yeah, thanks. [INAUDIBLE] I just keep thinking debate [INAUDIBLE] say that at the end. But I better say it now. Because I'm not sure it's going to be as convincing as Will was [INAUDIBLE]. So I'm going to make two arguments. [INAUDIBLE] predictable grain set of companies.

[00:21:16.94] And on that, I'm going to make two arguments, one of which I'm sure everybody is probably already thinking of, which relates to some of the economic case behind a multitude of startups. But then the second is something a little bit more out of my lived experience. And I'll bring some of this local to geography in terms of how startup seems-- affect the people involved, so a little bit more of a human argument on the second.

[00:21:38.09] On the first, in terms of the economics, as Paul started, we, of course, are thinking about powerful incumbents of today. But what we really need to think about are, what are the emerging technologies, the emerging industries, the emerging markets that are really going to be vital over the next 5, 10, 15, 20 years?

[00:22:02.49] Whether that's the problems of our time-- climate tech, and things like solid state batteries, and other things that are hopefully going to be playing a role there, the emerging role of different pieces of technology that are already here and are only going to get more important, like artificial intelligence or around the corner, like quantum computing and the world of bio-- proteomics, for example.

[00:22:24.78] So in those areas, there is a tremendous amount of uncertainty. And here, I mean uncertainty in a very specific sense, the Frank Knight sense. That is things that-- there are so many things that we don't know, that you can't even put this likely success or failure in probabilistic form. Right? These are the things that are highly uncertain.

[00:22:46.85] And when it comes to navigating uncertainty, incumbents aren't that great at it. This is a world that startups are engineered for a couple different reasons. One is startups come at it from a lot of different perspectives as opposed to one approach or one or two approaches within a large company.

[00:23:06.48] You can have a multitude of startups taking different approaches to the problem. Because we don't know which one is going to work. And collectively, we're better off for having a system in which you get a lot of shots on the goal. And hopefully, one or two emerge as successful.

[00:23:21.66] Moreover, startups don't have the classic innovator's dilemma. That is larger companies tend to be really good at incremental and sustaining innovation. They know their existing customers. They are loathe to piss their existing customers off. And therefore, they play to those customers.

[00:23:40.47] Startups don't have customers. Startups are willing to take a shot at something brand new. And therefore, they're less constrained by the status quo. So that's the economic argument, probably not a whole lot of news there. But I tried to say it with great enthusiasm.

[00:23:55.25] [LAUGHTER]

[00:23:56.76] And it does have the benefit of being right.

[00:23:58.41] [LAUGHTER]

[00:23:59.18] Second is the role of community. And on this, I see that I've already been long winded. So I'm going to have to shorten this up a little bit. But we are lucky here in Boulder and Denver to be part of a startup ecosystem. You think about 10 best places on Earth to start a business. Boulder, Denver is right there on the list, right?

[00:24:17.49] And by necessity, startups are such fragile little things. You have to work collaboratively in a startup community. And across so many vectors of our society, social capital is in decline. That is, the connections between people, the level of trust between people is in decline.

[00:24:39.63] And startup communities are such interesting counterbalances to that where, by necessity, because a startup is such a fragile little thing, you have to share information. You have to bring in people from outside the boundaries of the four founders. And that builds social capital. And if you think about an additional problem of our time in terms of geography, it's in digital dust bowls right now.

[00:25:05.31] How do you have hope that you're going to have jobs in areas, especially vast parts of rural America right now? And I think the multitude of startups approach allows for the hope of new companies, new jobs, gives that kid in rural America or a very urban environment the hope that there'll be a new company coming along that they could start or that they can join. An economic opportunity will follow.

[00:25:30.46] JP DE VRIES: Thank you very much. There's a job in broadcasting for you, because you ended right on time. Thank you very much, Professor Bernthal. We're now going to go to the tag team wrestling phase. Could I please have 10 minutes on the clock for cross examination?

[00:25:42.63] So each side will have a chance to poke holes in the other side's arguments by asking pointed questions. Since we only have 10 minutes, please keep the questions brief, keep the answers brief. Because that means you get a chance to poke holes. Tech giants, would you like to start, please?

[00:25:58.48] PAUL OHM: Sure. You OK if I go first?

[00:26:00.79] MEG LETA JONES: Yeah.

[00:26:02.04] PAUL OHM: So, Brad, I found that super compelling to think about social capital in decline. And I'm all for that, right? I mean, I was a child of a born again, evangelical set of parents. And church was really [INAUDIBLE] of where we found that social capital. I worry a little

bit if the startup culture is really where we want to rebuild that social capital. Right?

[00:26:23.92] I mean, to me-- so notice the move I'm about to make. We want tech giants who are nothing like today's [INAUDIBLE]. But Brad wants a startup culture that's just like today's startup culture [INAUDIBLE] fairly homogeneous. And I love the idea of speaking [INAUDIBLE] and the global south. But I'm not sure that's what the kind of VC [INAUDIBLE]. And instead, it seems like it's uncomfortably homogeneous. And it benefits a certain kind of person. And it leads to-

[00:26:52.12] JP DE VRIES: What's the question, please?

[00:26:55.40] PAUL OHM: That's the question. Is there a way we can get out of that trap and build this social capital that you're yearning for?

[00:27:00.94] JP DE VRIES: So, Brad, you can answer just about whatever question you want to answer after that.

[00:27:04.52] [LAUGHTER]

[00:27:06.13] BRAD BERNTHAL: But I will provide a quick answer to them and invite Orly to talk a little bit about human flourishing, which she alluded to before. And I think I just start by-- and here, it's hard for me to pretend, just to argue for a side.

[00:27:19.36] The concession that I'll make is I think the version of social capital that we've seen since the last 15 years is evolving and needs to continue to evolve. Because some of the things that we have valorized in terms of networks and the power of doing things outside of the boundaries of a formal contract have replicated a certain power structure that's problematic. So I'll just make your point even more strong. That didn't work very well for me.

[00:27:49.18] JP DE VRIES: OK. So what's your point?

[00:27:50.65] [INTERPOSING VOICES]

[00:27:50.92] JP DE VRIES: So now, you guys get a chance to ask a question.

[00:27:53.27] BRAD BERNTHAL: Yeah. But the answer to that is not to minimize the power of networks and grassroots startup activity. The answer is to intentionally include more voices in those networks in my estimation. And I really think it is a powerful part of our community. And there is a lot of value in social capital. We just need to make that move in my estimation.

[00:28:17.00] JP DE VRIES: So I think we'll take that as an answer. We'll come back to you, Orly. Why don't you guys ask a question of that side? And if you want, you can address this question second time around.

[00:28:28.09] BRAD BERNTHAL: You want to go first?

[00:28:29.06] ORLY LOBEL: [INAUDIBLE]

[00:28:29.54] BRAD BERNTHAL: OK, so I have a question in terms of the notion of startups as less regulatable than larger companies for you guys. And that is, in particular, it seems to me that not only do large companies do product at scale. But they win the regulatory process and in some respects, engage in sophisticated lawbreaking at scale. And whether it's asbestos or cigarette industry, we've got industries that don't have a great record. What about your anxiety about that?

[00:29:05.46] [LAUGHTER]

[00:29:07.38] MEG LETA JONES: [INAUDIBLE]

[00:29:10.79] PAUL OHM: I think your critique of Uber is spot on.

[00:29:13.13] [LAUGHTER]

[00:29:14.89] Right? I mean, you look at the entire gig economy. And here, you have an entire part of the market that said all we have to do is engage in general lawlessness to the extent where they were using algorithms to figure out where the regulators were and then give them ghost rides that would disappear.

[00:29:30.66] And so you're right that in the long arc of industrial history, it often was the giants that played around with the law in this way. But now, it's a business model. It's the way to exit really quickly by breaking as many laws as you can and having a real hostility to the legal. And so I agree. Thank you for that wonderful point [INAUDIBLE].

[00:29:50.66] MEG LETA JONES: I don't know what kind of debate style this is that you two are engaging in, where you tee each other up to agree. But I think a huge [INAUDIBLE].

[00:30:00.86] JP DE VRIES: So we'll count that as an answer.

[00:30:02.36] MEG LETA JONES: OK. Yes.

[00:30:03.35] JP DE VRIES: So what's the next question?

[00:30:07.48] MEG LETA JONES: I would love-- this is a real question. Can startups afford to protect my rights in general if they look like the rights that we talked about earlier over the course of the day? Can startups afford to do that as you have described startups?

[00:30:28.40] ORLY LOBEL: Yeah. So startups have to compete on all levels to become the next big thing. And it's absolutely true that it is the interest of big techs to design the regulations and define the rules of the game, including different rules and legislation in ways that will be barriers to entry.

[00:30:59.73] So we have to be sensitive to that. I actually see the very question that we're asking about that, including looking at barriers to

entry by rules that just don't allow these kinds of new firms to come in. We've seen this all the time. We've seen this with Amazon striking deals with the legislator and now Uber.

[00:31:27.74] I mean, Uber is a great example. Uber is a dominant company. So we need actually stronger antitrust rules. And we need to talk about predatory pricing. Uber is no longer a startup. It has 80%, 90% share of the market. So it actually did wonderful things at the beginning, so you see this.

[00:31:47.67] And we see this lifecycle of startups, right? So Apple was a startup, all of these companies. They thought about the better product, about protecting rights in more creative ways using technology. There's actually so many opportunities right now when I think about privacy as well. And I think, actually, a lot of the tensions that we talk about between privacy, and fuller knowledge, and fuller data sets, and innovation, and better health, technology actually can help mitigate these.

[00:32:23.78] But the creative things that are happening and doing that hard work of those tension-- solving those problems of the many different values that we have in a democracy and wanting to protect a lot of different things-- that's happening actually in the startup culture. I can give you a lot of examples, actually personal examples from pharma and other things.

[00:32:48.98] JP DE VRIES: Yeah, I think that was very compelling. So next question for this side.

[00:32:53.99] BRAD BERNTHAL: That's [INAUDIBLE] us then, right?

[00:32:55.40] [LAUGHTER]

[00:32:55.61] You said [INAUDIBLE] scorekeepers.

[00:32:56.78] ORLY LOBEL: Yeah, yeah. Ping.

[00:32:59.33] JP DE VRIES: Yeah, of course. By the way, audience, these guys are not at all competitive about this. Right?

[00:33:04.35] [LAUGHTER]

[00:33:07.04] BRAD BERNTHAL: Let's talk about-- let's take a scenario in which we do want to favor a certain number of incumbents and play that out. How do you envision, as a matter of competitiveness, a world in which, say, the United States starts to tip policy towards four or five winners and the rest of the world is trying to allow for a multitude of startups?

[00:33:33.83] To my mind, what comes to mind is Detroit, 1950, right? You've got a couple of big automakers. They don't really compete with each other. And the next thing you know, the innovation is coming from Europe and Asia. And if you don't compete-- innovate here, it's going to help work elsewhere. What say you about this?

[00:33:51.93] MEG LETA JONES: Yeah, I think history is full of a bunch of different versions of that story. So IBM comes to mind as a big giant that was central to the global computer industry. And every country tried to put forward. startups, versions of their own winners. Right? They tried to take down IBM. And it just reigned for decades. And then it was sort of eaten by its own startups-- Silicon Valley version of that story.

[00:34:22.09] So I think that's one of the things that I find challenging about economics. Because history is not always aligned with economic theory. There's always these examples where the theory gets holes in it. And that's one of those where I think, oh, yeah, we've got examples of big US. Right?

[00:34:46.67] One of the great things about being in the US is all of these other things that come along with being in the United States and can support giants to achieve a diversity of values, whereas giants in other places are startups in other places. I'm not that scared of startups in other places. I don't know. I love America. Go USA. [INAUDIBLE], right?

[00:35:08.40] JP DE VRIES: All right. I think both sides have had a chance. I could sit and watch this for another half an hour for sure. I hope you could, too. But we are now going to move to closing arguments. Each of the speakers are going to get two minutes and only two minutes to try and persuade you of their case. We are going to reverse the order in which we went. So we're going to start with Brad, Meg Leta, Orly, and Paul. So, Professor Bernthal, over to you.

[00:35:37.16] BRAD BERNTHAL: Yeah, I should not have agreed to go first on that. This is totally going to be on the fly. Extemporaneous speaking is one thing. But impromptu is a whole different deal for me. So I think at the end of the day, you got to ask yourself, do we really want a world of the status quo that tries to cement what's in place versus, do you embrace the fact that the future does not repeat the past? And do you lean in to an environment in which there's going to be a multitude of solutions? It's messy. But at the end of the day, new things emerge which, otherwise, it would be a real cost to miss out on.

[00:36:34.85] MEG LETA JONES: Yeah. The startup model that these young bucks are promoting is an accessible and realistic avenue for such a tiny portion of the population and such a small portion of society. It's a terrible way to distribute resources and opportunities.

[00:36:59.07] And I want people to have health care, and child care, and elder care, and the prospect of wealth in buying a home. And I want them to have better ways of getting those things than being a TikTok influencer, or selling an app, or investing in Bitcoin. We should invest where people are. And it's not rubbing elbows with venture capitalists at the World Cup.

[00:37:25.91] I don't want my library to have to pivot. And I don't want my kids' school to need a GoFundMe page. I want to stop pretending there's choices in the apps that my kids use in the classroom or the enterprise software that my employer buys. I want real rights, even if they're expensive.

[00:37:43.73] And structural change is big. And we should stop investing so much in a small group's efforts to innovate our problems or their perceptions of our problems away and instead pay the social, legal, and technical maintenance that we've accrued using the startup model.

[00:38:09.64] ORLY LOBEL: Yeah, I think-- so not to confuse everybody with facts. But what you just said was just factually not true, that when we think about distributive justice, and job growth, and income inequality, it's really the startup and entrepreneurial culture that has this outsized positive effect on creating more jobs not just by the founding of the startups, so in a place like Silicon Valley or here in Colorado.

[00:38:42.96] When there is a vibrant startup culture, actually the incumbents also grow more rapidly and create more jobs and more income opportunities. That's just in the research. I want to close, though, with, I guess, two personal examples. And it's a response really to this question-- why do we need choice?

[00:39:04.62] So one may seem silly, but it actually is something that I spent quite a bit of time looking at, which is the structure of the toy industry and whether we have choice there. And I investigated why we had one fashion doll for 60 years that couldn't be knocked off her pedestal-- Barbie. She was white. She was vanilla. She was overly sexualized.

[00:39:30.36] And no competitor could come in, because Mattel was so big. It was the largest toy company in the world. It had 90% share of the market. And it engaged in frivolous litigation. And nobody could just-- it just chilled all effects-- new entry. And it was really by one crazy-- calls himself a crazy entrepreneur that fought all the way to get good-- get the laws of the game here again to allow competition.

[00:40:06.59] The second one is deeper which is, again, personal to me so. We're a type I diabetic family. My middle daughter-- I say she's bionic. She has an insulin pump and a GCM-- a Continuous Glucose Monitor. And you see this in the insulin industry.

[00:40:26.76] And you see this in all of these other examples where once you have these incumbents that profit from a certain patent that they have over insulin, that they renew in all kinds of ways, or one medical device that is not that great, but they have the market, there is really no incentive to cure the disease, which actually we should have been doing.

[00:40:46.59] And when you talk to people in the industry, it's always-- for a hundred years, it's been 5 years away-- actually cure. And you see-- and I'm very hopeful in the Biotech Beach, what I call in Southern California where I live in San Diego. You see it's the startups that are working on solving the problem. So why do we need choice? Why do we need innovation? That's why we need an innovation, because it's life saving.

[00:41:11.01] JP DE VRIES: Very good. Thank you. And--

[00:41:12.65] ORLY LOBEL: You're welcome.

[00:41:12.90] JP DE VRIES: --we have now the closing comments. He tries to maintain order and fails. Paul?

[00:41:21.18] PAUL OHM: Two points. Number one, they have talked about some kind of monumental problems for our day-- climate change, fighting diabetes, improving the lives of kids. And I think we're just in a world of such complexity that the way you have to tackle problems like that is with resources, and concerted effort, and a kind of plurality of voices and input.

[00:41:43.23] You're not going to get that from three people in a garage who are just trying to scratch by until they can get bought out by one of the tech giants. You're going to get that through the agglomeration of resources that can come from giant companies. But the last point I want to make is I don't wish this on anyone soon. But at some point when you are toward the end of your life, and you're looking back, and you're going to say, what did I do that was significant? One thing you're going to say is I cast that vote [INAUDIBLE].

[00:42:08.73] [LAUGHTER]

[00:42:11.46] And it might be 70 years from now or if you're a transhumanist venture capitalist, 300 years when your disembodied personality is living in a supercomputer somewhere. And as you look at the choice you made, I want you to have two mental images in your head right now.

[00:42:28.11] So if you vote for my wonderful friends on the other side, you're voting for the world of Mad Max-- Fury Road. You remember this lawless society of tiny gangs? And one of the gangs depicted was the string-haired, skeleton-faced Immortan Joe. I mean, that's who they represented. And in that world, you had your Furiosa. So that's your Ruth Bader Ginsburg. And you had your Mad Max Lena Khan and were trying to get by. But instead, we're Starfleet, right?

[00:43:00.72] [LAUGHTER]

[00:43:01.66] We're representing a more enlightened future world where there is society coming together in these giant agglomerations. And all is not perfect. So we have the Mark Zuckerberg borg. And we

have the Elon Musk Q. So that's it. This boils down to a simple choice. Would you rather have Immortan Joe or Jean-Luc Picard? Thank you.

[00:43:21.93] [LAUGHTER]

[00:43:22.69] JP DE VRIES: All right.

[00:43:23.35] [APPLAUSE]

[00:43:27.14] So could we have the poll up so that you can go back to Slido where you were? And as you vote, you gave one round of applause. But I want you to give another round of applause before we know the results. Because it doesn't matter what the results are for our amazing debaters.

[00:43:45.52] [APPLAUSE]

[00:43:54.10] So as you vote, we'll just give you a couple of minutes to vote. And I will try and fill the air. And I think we are pretty much close. We pretty much have a result. And we are going to-- Nate is going to actually tabulate the results. And there are some people there who are closely observing the tabulation.

[00:44:23.03] [LAUGHTER]

[00:44:24.63] But I think we can certainly say that the tech giants have--

[00:44:28.59] BRAD BERNTHAL: Yeah, Andy?

[00:44:28.95] JP DE VRIES: --successfully moved.

[00:44:30.00] BRAD BERNTHAL: Have my daughter vote at--
[INAUDIBLE]?

[00:44:32.97] [LAUGHTER]

[00:44:35.42] JP DE VRIES: Yes. Yes. And so the voting was close. No.

[00:44:40.65] MEG LETA JONES: Yeah, that's the right [INAUDIBLE].

[00:44:44.62] [APPLAUSE]

[00:44:51.62] JP DE VRIES: So, please-- the last thing is the Wolf Law Building is going to be locked up at 7 o'clock. So if you are heading over to Kittredge, please take all your belongings. Don't leave anything behind here. Because you won't be able to get back in here. See you back here tomorrow morning at 8:30.

Day 2 – February 6, 2023

Keynote: Tim Wu

<https://youtu.be/89UfDmgL8q4>

[00:00:00.09] BRAD BERNTHAL: Welcome. Good morning, everybody. My name is Brad Bernthal. I'm the executive director here at Silicon Flatirons and welcome back to Silicon Flatirons and Colorado Law School. We are grateful that you've taken the time to come here, many of you traveling from across the country and, in some instances, even further.

[00:00:23.67] This, as I think everybody appreciates, has been a super important and powerful couple of days for Silicon Flatirons, especially coming out of the pandemic. The regular routine of making this migration to Boulder in February had been interrupted. And wow, thanks to all of you participants, speakers, everybody here at the Silicon Flatirons team for making it a success.

[00:00:49.89] If you've enjoyed the conversations yesterday and those to come today, I encourage you to take a look at our website in terms of upcoming events. We've got a new series this year on ethics and artificial intelligence. That next event will be available virtually as well on February 27. And more locally, as some of you in the area know, we host a variety show, which brings five or so new ideas to the spotlight. The next variety show is going to be February 28.

[00:01:23.37] And then my colleague Professor Harry Surden in April is going to be doing a full conference on generative artificial intelligence. Look for that to follow later this spring. That should be a lot of fun.

[00:01:37.03] Yesterday was fabulous. We are still recounting the votes from the debate. I'm not fully sure what happened. Nonetheless, it was an intellectual feast, which inspired a friend of Silicon Flatirons-- is Patty Limerick here?

[00:01:53.38] Patty has been part of Silicon Flatirons conferences over the years, and she wrote a limerick inspired by yesterday's discussions by which Blake responded by running, hey, ChatGPT, would you produce a limerick on this. I'm happy to report that Patty won. Her limerick goes the internet has entered midlife immersed in conflict and strife. It is rattled and tense and deficient in a sense. So doubt and distrust are now rife.

[00:02:30.85] [APPLAUSE]

[00:02:35.50] If I'd known Patty wasn't going to be here, I'd claim it myself. All right, before introducing Tim, I want to acknowledge the yeoman's work that Blake Reid along with Lisa Hone did to set up the intellectual framework for this conference and attract what's really been an all-star cast.

[00:02:57.83] Thank you, Blake. If you don't mind please help give Blake and in absentia Lisa [AUDIO OUT]. All right, Professor Tim Wu, it is such a delight to have you back here at Silicon Flatirons. He graduated from Gill University, Harvard Law School. He's a triple threat working in academia, government, and really shaping views as an author and public intellectual.

[00:03:24.62] Today he is Columbia's Julius Silver, professor of law, science, and technology. In public service, Professor Wu has served in roles at the state and federal levels. He served as enforcement counsel in the New York AG's office, worked on competition policy for the National Economic Council during the Obama administration, worked in antitrust enforcement at the Federal Trade Commission, and most recently, Tim served in the White House as special assistant to President Biden for technology and competition policy.

[00:03:59.93] His books include *The Master Switch*, *The Attention Merchants*, and most recently, *The Curse of Bigness*, *Antitrust*, and *The New Gilded Age*, and as if that is not enough, has twice won the Lowell Thomas Award for travel writing. It's pretty cool. This is not Professor Wu's first Silicon Flatirons rodeo.

[00:04:22.29] Indeed, back in 2003, 20 years ago at this conference, he introduced a little concept that got some traction called net neutrality. The following year then Chairman Michael Powell came back to Silicon Flatirons at this conference and addressed that topic in his four freedom speech. And continuing that forward in 2015 FCC Chairman Tom Wheeler, who was here yesterday, announced the FCC's plans to institute new rules just days before the FCC approved them.

[00:04:57.09] Last night, Tim told me something really powerful. He said that some of his best work over the years has been directly tied to this conference. And for all of us who have been here yesterday and today, I don't think that's totally a coincidence.

[00:05:11.58] Listening to great conversations when you're in proximity to terrific minds who are having principle discussions, these things are intellectually nourishing. And I think we're in for another intellectually nourishing day today, and I am delighted to welcome back Tim Wu to get us started. Tim?

[00:05:33.48] TIM WU: Well, they say you can never come home, but I feel differently about that here. I love coming here. It is truly wonderful and, in fact, kind of, moving to be back. I realized I knew exactly how to drive past the pylons to get to the law school or whatever you need to do. And in my head, you do something 20 years, it, sort of, becomes a habit.

[00:06:00.21] And as was referred to, I, sort of, owe a great debt to this conference. I started my academic career here really in a sense. I mean, I was at Virginia, but my first academic conference was here. Phil

Weiser invited me. I think he made me pay my own way because I was - it was reasonable. And I started there.

[00:06:24.91] And as I was saying, I was looking back at some of the stuff I've written over the years. And in fact, I think my pieces for what used to be called the Journal of High Technology Law, I believe, now the Colorado Tech-- I don't remember the exact title-- have been the most influential things I've written maybe outside of the books. Not only the initial work and founding theories relate to net neutrality, but the White House's competition counsel, I think, traces its existence to work done here as well. And so I think this has just been a formidable place for me at least.

[00:07:06.75] And the organizers-- and I hope you keep this going-- do a great job of getting right this balance between federal and state officials, policymakers, academics, practitioners, students, and the people who come back over and over and over again. It's like a reunion.

[00:07:26.91] So eventually I'll get to the speech. Sorry about this, but there's coming back I was seeing old friends, Phil Weiser, Chris Yoo, Julie Brill, Paul Ohm, Howard Shelanski's been coming here for more than 20 years. I'm sure I'm going to-- Dale, of course. There's so many people. I'm afraid I missed people. Harold Feld, Hal Singer. So it is a-- it's a gang of people who are thinking of stuff, and this place is-- this is an amazing conference.

[00:07:55.81] All right, so I, to be candid, I had a completely different idea for this speech at the beginning, which I thought I'd reflect on the other panels where I was, sort of, jumping up and down wanting to say stuff. But a student, Richard Koch, who's in the audience, he convinced me that I should talk about something different than anyone else been talking about. And I thought that was good. Those reflections things actually never go well.

[00:08:23.62] So I wanted to talk about something that I'm thinking a lot about my academic work now, at least the last two weeks of it, and something we thought a lot about in the White House, which is the challenge of getting industrial policy, right. As many of industrial policy is no longer debated. It's back. We're spending tens, hundreds of billions of dollars. Everybody is meaning everybody, the United States, China, Europe. So there's a little bit less of a question of whether, so much as how to spend.

[00:09:07.67] Now I want to put that also in the context of the theme of this conference, which is the midlife crisis of the internet maybe because the traditional response to mid-life crisis, particularly, for middle aged men is to spend a lot of money on things. And it seems like maybe that's part of-- it's a little too fanciful, but maybe that's related to in some ways how we can deal with the midlife crisis. So I

agree with the premise. I agree the internet has reached what you might call a middle age, at least shows those signs.

[00:09:49.72] The internet by one count is 53 years old if you count it from the ARPANET. If you count from the adoption of the TCP/IP protocol in 1983, that would make it 40 years. It's hard actually to believe that 40 years-- 20 years ago was the beginning of Silicon Flatirons and/or sorry around that period and that first paper. So we've, kind of, been here for half of it academically.

[00:10:17.05] Anyway as a younger man, I was very interested in the long cycles. I'm still interested in this of information technology centered on disruptive technologies. And they tend to have similar patterns when you over the 20th century early stages of great uncertainty but enormous amount of optimism, a tendency towards consolidation, that, kind of, earlier two, kind of, potential golden ages, one the sort of open period of great flourishing and optimism and a lot of market entry and competition.

[00:10:56.63] And then often even after consolidations, the early stages of monopolization, dominance, still things are often quite good, but in the long term, stagnation. And one of the things I was very interested in that book was this question of how you reboot the cycle once you've reached something like the AT&T monopoly, which, as many of you know, lasted 70 years. How do you-- maybe roughly 70, 50-- how do you start knowing what can reopen consolidated industry?

[00:11:30.22] And there's a lot of signs that we have not same as the AT&T monopoly, but some level in the internet platform space reached a level of sustained consolidation. It's been like that for some time, somewhat resistant to the logic that many thought in the 2000s, I think, if we were here 20 years ago, it would have been the conventional wisdom, the Google, Facebook. These didn't exist yet, Facebook. But Google, Amazon, eBay, whatever these companies would surely be around 5, 10 years, but surely replaced and overcome. But that didn't happen and they've stuck around and achieved a certain dominance and entrenchment.

[00:12:14.53] So the question is what shakes things up. And it's a big topic. What I want to focus today is on the potential of government funded research projects. At some level, it was ultimately the internet that did the most to shake up the telecommunications sphere, and that began its life, as we all know, as a government funded project.

[00:12:41.03] So let me turn to that question of what means and what a good industrial policy looks like. I'm going to try not to spend too long. I wanted to leave-- I want to say at this at the beginning, and I forgot-- that I wanted to leave time for questions and to talk about, but I also am open to any questions about stuff we try to do during the Biden administration. So no limits on questions.

[00:13:07.25] So we are clearly in an era of a renewed interest in industrial policy, as I said, earlier. I think in the White House we didn't quite use the word industrial policy. We called it, quotes, "a new industrial strategy for the 21st century." That's pretty close to industrial policy.

[00:13:28.49] I'll quote Brian Deese, my old boss at the National Economic Council. "We need to show that smart public investment can help unleash innovation, unleash the capacity of our private sector, deliver strong, resilient, and inclusive growth. We must show that our Democratic system of government can serve working people in this country better than other forms of government."

[00:13:48.72] So I want to get into what a new industrial strategy might look like. And you know I say that with a certain-- I begin that with a sense from having read the history and noticed the fate of some of these other projects, a sense of caution. There is a track record that many of us are familiar with of countries with big ideas, choosing or finding a company or an industry that they're sure is going to be the winner, investing a lot of money in it only to have it not go as planned.

[00:14:43.01] Probably the most famous examples of this are the European and Japanese computing industries over the '70s and '80s. As many of you in this audience or some of you in this audience at least will know that the Europeans bet hard on firm like Bull, ICL, Olivetti, NORS Data. These firms are not the world's dominant firms today.

[00:15:13.18] The Japanese made a strong bet in the late 70s or early 80s on something called the fifth generation of supercomputing. People were sure that supercomputing at the time was-- I mean, it was based on the best analysis. It was going to be the future. And everyone could see that whoever won the race to supercomputer was going to win the future.

[00:15:39.10] And they did, in fact, build a fairly impressive supercomputing technology, but it turned out the personal computer had become where the action had moved to. And Japan also invested pretty hard in Mobile phones. But and that was success for a while but ended up missing out on personal computers, on the internet, on smartphones and, ultimately, is not-- it's still important to the economy, obviously, but it's hard to describe as a technological leader.

[00:16:12.70] So things can go wrong when you make these bets. You can certainly bet on the wrong horse. And if you study technology at all, it's full of surprises. Who would have thought, not very romantic, but who honestly who would have thought that these guys like Steve Wozniak and Steve Jobs, who in the '70s look like a bunch of weird looking hippie dudes, are going to actually build something that challenges companies like the French Bull or Italian Olivetti and not to mention IBM and so forth.

[00:16:44.86] So these dudes really seemed unlikely. That said, there is-- and I'd say in Washington right now-- a real fear and sense of urgency, some of that driven by national security concerns that to just, sort of, sit around, hope that private investment will take care of everything is risky. By some count, if you think about AI, for example-- well, semiconductors is a good example.

[00:17:24.32] Obviously, the United States, as many of you know, had essentially outsourced all its fabrication, most of it to Taiwan. Taiwan is-- I mean, my family members are from Taiwan. I can tell you it's extremely close to mainland China. And you don't have to be a military strategic genius to notice that's it's a strategic vulnerability to be entirely dependent on Taiwanese chips. After that, you have to be dependent on Chinese chips, and then you're in a different situation.

[00:17:57.21] So there's that sense. There's a sense that maybe the contest for the future really will be about a few high impact contests. Maybe AI is one of them, maybe cloud computing. Who knows? And if you, sort of, sit on the sidelines, twiddle your thumbs, there's a risk of maybe befalling the fate of China 18th and 19th century, where they, sort of, stayed away from things and missed out on modern armies and so forth and became a very subservient power. I think that's one of the things that motivates China in the competition of United States that not acting not being ahead was a huge disadvantage to the Chinese empire in earlier times.

[00:18:46.45] So that's why I think I am genuinely mixed on the problem. But I want to approach this not as-- it's clear there's going to be industrial policy. It's already been clear for a long time based on military spending that we're going to be spending. And the question to my mind is how you can be smart about it.

[00:19:09.19] And I think it's worth returning to conference on the internet, returning and studying carefully the periods in the '60s and '70s, which was, sort of, the last golden age. I think we need to do more on this. I encourage the scholars in this room to do some hard thinking about this era.

[00:19:28.73] I want to not spend forever on it but talk about a few of the projects during that time and what we did and what we didn't do. So one thing we invested in was the Apollo moon mission, which was obviously a success. Sometimes that's held up as an example of what should be done, and it cost about \$152 billion in today's dollars.

[00:19:56.04] But it's hard to compare that success with the internet, which it's almost unfair. But when you look into how much was spent on the ARPANET and NSF net and the entire investment that came out of the internet, it was, I think, in dollars at that time a grand total of \$124 million, so less than the budget of a random federal agency for one year was the whole thing.

[00:20:26.49] The return on that investment-- I don't know how you would measure it in terms of total economic productivity, but it must be hundreds of billions, if not trillions of dollars. So that one worked out. And I think there's something learned even from those two examples to begin with.

[00:20:45.10] There was-- while the Apollo moon mission, obviously, landed on the moon and there was a lot of advertising about the spinoffs-- I think Velcro came out of the moon mission and maybe better missile technology. But it was very directed, very specific, a lot of single use technology that really hasn't been ever used again, right. We don't have our own individual space rockets or anything. There's been efforts. Obviously, SpaceX is a private version of this, but it was, sort of, a single use and not very broad or foundational and not an input into a lot of other industries.

[00:21:27.98] The interesting thing about the internet invention, I think, very important is there were firms involved, but it didn't involve, essentially, a specific or directed target. It was broader. It was for, I would say, foundational.

[00:21:42.96] Ultimately, I don't know if they think it's the time, it was-- it ended up creating an ecosystem as opposed to an industry. And this leads me to what we didn't do in the '70s and 80s, which you might have thought, given that was an era of industrial strategy. We did not decide that IBM and AT&T were going to have a free ride and have all the love and support of the federal government. Obviously, a lot of government contracts and a lot of government spending, but they also had the Justice Department hunting them down and trying to break them into pieces.

[00:22:22.95] And in fact, the Justice Department did break AT&T into pieces in the height of this period of competition with Japan. And that might seem completely backwards to someone who believes in national championship supporting an industrial policy. Wait. You're going to take the most valuable and one of most advanced tech companies on Earth and break it up.

[00:22:48.72] Similarly, with IBM, the Justice Department sued in 1969, I believe, seeking the breakup of IBM. So throughout the '70s and early '80s, IBM was under an antitrust suit, was in the midst of antitrust litigation. The court case took 13 years or something.

[00:23:11.35] And one of the things they did early on IBM hoped it would settle it is they unbundled software and hardware right at the beginning. Maybe one of the most consequential things the Justice Department ever did for tech was making it that you could buy software or software to operate with a computer separately.

[00:23:33.83] I don't know if it would have been that way, but it's possible maybe software would still be bundled with or inseparable from hardware. I don't know. Maybe it would happen, but they're

certainly happened faster. And that's its own kind of industrial policy when you think about it because I like to think of it that way.

[00:23:51.08] In the '70s, the FCC of actions that sought to protect the companies operating over AT&T lines from AT&T. These were called the computer inquiries leading later to net neutrality ideas. That was, in my view, its own form of industrial policy as well. In a sense, I don't know if subsidy's the right word, but certainly support or the nurturing or the giving of space for an industry on top of the lines. Now that would also blossom, but not only-- and I think all they had in mind-- this is a good example how you can't know the future.

[00:24:35.61] I think if you go back and read that, people thought, well, we'll have these online-- they will have online service providers who offer, kind of, at the time, they'd say things like data processing services over AT&T. And then later well maybe they'll be like CompuServe AOL. I know it's ancient history for some of the people in the room, and they may not even know what I'm talking about, but I think a very limited idea of actually what they were trying to do.

[00:25:00.28] But it turned out that you, sort of, create a garden and things grow that you don't expect. And frankly, the whole internet and web industry, in fact, the web itself grew on top of that foundation. So that's what my view and good industrial policy you're aiming for. You should be aiming ideally to create ecosystems, not support companies. I guess that's the most straightforward, kind of, line that I draw.

[00:25:28.50] Maybe I have a few criteria for it be good or bad. Ideally it should be aimed at creating an ecosystem. The subsidies ideally go to foundational technologies. That is those that are inputs into a broad range of other economic activities, like, broadband electricity or the internet as opposed to sort of the end product the consumer gets.

[00:25:54.10] The money should be time limited forever, not like a constant, not a opening the tap. And of course, you have to choose the right technology, and that's the hard part. But I think some of what I've said gets into what the right technology is.

[00:26:13.90] Let me finish by ranking some of our own investments, the federal government by this criteria. So one of the things we did was invest in a tech industry that's more than middle age level even beyond middle age. The airline industry gave them \$56 billion during the COVID crisis. Now they were suffering, and some of that was to maintain employment.

[00:26:43.33] But it's hard to see that as a great industrial policy, basically supporting a given number of companies. As far as I can tell, they made exactly no innovations in response to that infusion of money. And, in fact, there's a lot of trouble seeing what actually happened to that money.

[00:27:01.33] And it's also created, I talked about time-limited or not-- the airline industry is now confident if it's in real trouble, another \$50 billion will be waiting for it so it can return to not saving money or pursuing the same policies it has before, which amounted to a massive amounts of stock buybacks and purchases of debt and running-- and not having to worry because it knows it's backed up.

[00:27:28.51] So that is not, in my mind, good industrial policy. I think we do a lot better with the broadband project, which is currently being overseen by Alan Davidson, \$65 billion broadband. Now, it already exists, ecosystem.

[00:27:45.83] It's not like it doesn't. But it's easy to see that's their foundation, bring more people in and so forth. Alan Davidson and the NTIA was our speaker yesterday.

[00:27:55.30] CHIPS bill, also not bad. I don't know if it's perfect by my criteria, but nothing is. But somewhat broad semiconductors are obviously an input into a huge number of industries, not an end product. That's still ongoing.

[00:28:13.01] I think the challenge there is going to be to create an ecosystem as opposed to give the money to, let's say, Intel or something, which is very tempting, particularly when they say they're going to give this much. And we're also spending a lot of money on environmental technologies. So those are some of my criteria.

[00:28:34.42] This is an ongoing project. I think people need to think more about it. I think we need a broader sense of what counts industrial policy, including some of the rules.

[00:28:44.56] We should maybe, depending on the instance, take it as a condition. Broadband project has some of this that if you are going to provide this service, you're not creating a private empire. You want-- public resource can be drawn on by all the companies, or all the companies that are taking inputs from this space, as we did with the internet.

[00:29:07.61] And if we do right, maybe we can, by spending money, shake off a little bit of middle age. Obviously, there's a lot of other stuff to do. We talked about the regulatory issue. But let me leave it there. Thank you very much, and I hope we have some time for questions.

[00:29:20.20] [APPLAUSE]

[00:29:27.15] SPEAKER: All right, as always, the first question will go to a student. Christopher, I know you were-- well, you're a student of life, but we'll come back to you next.

[00:29:35.66] AUDIENCE: All right. [INAUDIBLE].

[00:29:36.72] SPEAKER: Current students for the first question. I spy a couple of folks in this quadrant who I'll cold call in a second [INAUDIBLE].

[00:29:47.49] AUDIENCE: [INAUDIBLE].

[00:29:49.14] SPEAKER: Rich.

[00:29:55.26] AUDIENCE: Hi, Mr. Wu. Thank you again for coming to speak and the shout-out. I appreciate it. Today's is much--

[00:30:05.57] TIM WU: [INAUDIBLE] was kidding.

[00:30:06.17] AUDIENCE: Yeah.

[00:30:06.50] TIM WU: I was just kidding.

[00:30:06.97] [LAUGHTER]

[00:30:08.30] SPEAKER: That's [INAUDIBLE].

[00:30:10.13] AUDIENCE: Today's information economy is, I think you could say, uniquely American export, at least its current form. Yet, in some ways, on the-- at least the information privacy side, the EU has set a majority of the industrial policy. And I wonder, from your perspective, A, are there any historical analogs to that? And B, do you see any risks of continuing that course, and allowing the EU to set the standard, so to speak, of the industry in certain respects?

[00:31:00.78] TIM WU: That is a good question. And I do think it's a challenge or a problem. The conventional wisdom, which I think is probably right, is that, in some sense, sovereignty matters. And playing by your own rules, in ways subtle or even less so, is more likely to lead to success of your own industry.

[00:31:39.08] And the United States is usually, particularly overseas, wanted to play by its own rules. And you can see this in areas like the export of intellectual property and so forth. [COUGHS] So there's always the sense that a rule which may seem facially neutral will, in fact, end up disadvantaging American companies.

[00:32:05.36] Certainly, it's what American companies think about the DMA, Digital Markets Act, which names a limited number of companies, which in some forms, they haven't, I don't think, settled on the total number of companies that are subject to that law, but in some versions it was just American companies. It's facially neutral but disadvantageous. I think in the end, it's-- that law doesn't apply worldwide. Applies in Europe.

[00:32:31.70] But I do think it's a long-term risk. But I think maybe, not just in terms of economic performance but also in terms of reflecting the democratic will of American voters. There's something vaguely colonial about being ruled by another country's laws and your

preferences. And we generally agree with the Europeans on many things, but many other ways are subtly different.

[00:33:05.18] So yes, Congress's continued inability to exercise the will of the people in the space does leave us in a position where we're, to some degree and something that seems to matter a lot, which is platform policy, subject to strong influence, if not rule from overseas.

[00:33:26.28] SPEAKER: Christopher.

[00:33:26.91] TIM WU: Good to see you, Christopher, again, yeah.

[00:33:32.30] SPEAKER: Microphone is down there [INAUDIBLE].

[00:33:34.54] TIM WU: I should say, historically, Chris, that I-- and I, in the early days of this conference, had a long-running series of pieces on net neutrality, which were [INAUDIBLE] classics, yeah.

[00:33:44.35] AUDIENCE: The speech that you gave in 2003 I responded in 2004, published in this journal. And you rebutted. And then it's off to the races.

[00:33:52.34] Yes, so both have a role in getting this fight started. I refuse to take the blame for how long it's gone on. So I'm fascinated by this move.

[00:34:02.83] And it's very clear that industrial policy is a much bigger thing now than it's ever been. And it used to be anathema for a lot of people. But I find myself-- you're inviting us to try to do more scholarship. And I want to bounce it back at you.

[00:34:14.92] TIM WU: Sure.

[00:34:16.51] AUDIENCE: The example you gave of the moon mission reminds me-- it was a Cold War thing. Sputnik's launched. It was clearly tied to ballistics.

[00:34:26.40] And I'm reminded of an article that Roger Noll wrote about, will National Laboratory survive the death of the Cold War? -- because national labs are by the Department of Energy, which is the reason they don't have an energy policy. It was always about strategic defense. And his answer was no.

[00:34:42.37] And so there's an argument that necessary-- one of the success stories is the Manhattan Project, which is like 4% of GDP, was mobilization by this need. And I'm also struck by Shane Greenstein wrote a book on the history of the internet where he said-- his argument is that this is not a model for industrial policy because if you actually talk to the people they weren't actually making industrial-- they didn't have any--

[00:35:04.83] Any of the benefits that you correctly see were not in their minds. They were lucky. And I keep thinking.

[00:35:10.77] You made fun of supercomputing as industrial policy. There's a wonderful paper by a guy named Juan Rogers that looked at - we had ARPANET that pissed off all the CS people because there were defense contractors who couldn't get in. CSNET failed.

[00:35:23.73] The NSFNET background was created to link together 13 supercomputer centers we created for industrial policy to compete with the Japanese when this in the '80s looked like what we had to do. And again, it sort of confirms this idea. There was industrial policy behind the NSFNET, but this wasn't it. It was exactly the supercomputing supposed revolution that never really came.

[00:35:45.69] So the question is, can we get any insight onto when this works? We can't just throw money at it and think it's going to work blanketly. Do you have any initial thoughts on when you do industrial policy and what it's most likely to succeed?

[00:36:00.03] TIM WU: In theory, that was the topic of the speech. It doesn't seem to have succeeded.

[00:36:02.97] [LAUGHTER]

[00:36:06.12] But first, I take your point about-- that's why I think it's a good topic and something that policymakers really need to hear more from us on-- I kind of think I should-- I agree with that I maybe I need to drop this super--

[00:36:27.95] Supercomputing has, obviously, come back. I think I mentioned that to Mark Warner, the senator. And he's a very avid industrial policy advocate. And he mocked that is ridiculous.

[00:36:40.67] So all I can say is what I said already, that we should-- it's happening. We should be cautious.

[00:36:51.50] There's obvious low-hanging ways in which you can make, I think, big mistakes. And I think that is usually about-- it seems simplistic, but it can happen very easily, subtly or less subtly, choosing one company, putting them on life support forever as their winner. We know that's bad. And then we know we have these good examples, but sometimes they are quite random.

[00:37:13.08] And I talked to-- I was talking to one fellow who does a lot of this. And he's like, yeah, I know, it's not going to-- it was going to be waste.

[00:37:22.16] Some it's, not Europe, China that waste. But then they do many things that are wasteful. And you do get somewhere. And this is-- that we're at high risk.

[00:37:32.42] Manhattan Project was a good idea. Is there something that's like the nuclear bomb right now, which, if China gets it, we'll feel like we really sort of-- if we hadn't got, if we had lagged 10 years in

getting nuclear weaponry, it might have been a completely different future. So there's always that kind of thing hanging out.

[00:37:49.89] And certainly, the Defense Department will scare the hell out of you and say a lot of stuff like that. Let's keep, keep going, yeah.

[00:37:56.15] SPEAKER: I'm going to take a quick moderator's privilege, if you don't mind, Tim, and ask you a question. So you invoke the metaphor of ecosystems several times in your remarks. And I wanted to read a provocation from Maria Ferrell, who's critiqued this notion of the internet as an ecosystem.

[00:38:13.46] And she says, "An ecosystem is a set of unbidden organisms in the physical environment within in which they interact. It's constantly evolving. And the real interest, value, and drive for change all come from the emergent properties of the relations of things, many parts. And ecosystem is not the plaything of a pampered princeling, like meta, but a set of living, striving things both competitive, cooperative, and the place they live."

[00:38:38.96] And so I wonder about this in this frame of industrial policy and then thinking about industrial policy for the internet. What's missing from it that is required to treat the internet genuinely as an ecosystem to involve its human participants in its outcomes?

[00:38:58.22] TIM WU: Yeah, I think the ecosystem metaphor-- is a metaphor or not, obviously, literal. I haven't read that full since that I'm interested in the critique of it. Maybe I'll explain, without trying to defend the metaphor, that what I think I have in mind is the government investing in something that ends up being a common resource for a lot of economic entities and people.

[00:39:29.18] But let me just focus on the producers at this point, producers or businesses. In a classic platform or infrastructure setup, you have a central business, and then you have the dependent businesses on top of it. And I think some of what we want to see is--

[00:39:55.37] And when you really are successful, that input is provided at a very low cost or in a very easily accessible way so that businesses can exist without being fully vertically integrated. This might seem like a ridiculous example, but I think it's important to demonstrate what I mean. If you didn't have a road system, so every company had to also build their own roads, it'd very--

[00:40:22.76] The barriers to entry, you couldn't open a store unless you build a road. It would be very, very challenging to do so. The challenge I think we face on the internet just sort of reduced as we think used to.

[00:40:37.61] And if you think about also, operating systems used to have an environment where, particularly though, with the internet and HTML being the best example, the web and TCP internet, where you had low-cost open input that made it possible to start a lot of

businesses earlier and thrive, and so forth. So that is only the sense in it. And that often ended up with a lot of economic activity that no one could have predicted, which is why I sort of bring in an organic metaphor.

[00:41:10.70] I think there's-- maybe I could call it [INAUDIBLE] fund gardens or something. It starts to make me sound business school professor. But like you should fund a garden, you should fertilize it and see what grows, as opposed to trying to grow one prize orchard, I guess.

[00:41:26.93] So I know these are all very metaphoric. But we need-- there is a desperate need to do this. And it is very easy to get caught, especially in government, especially when the government relations people are reassuring you that you have to give them this money in order to face off the Chinese threat that we need to sort of hold the line a little, yeah.

[00:41:47.12] SPEAKER: Let's go for a closing question to David.

[00:41:54.92] AUDIENCE: Thanks, [? Blake. ?] I was curious how you would apply some of the principles and thoughts you've laid out on industrial strategy here to the climate crisis because that seems to me like one of the places where there's the most urgency and a lot of interest.

[00:42:15.18] TIM WU: Yeah, it's a good question. I didn't work on that in the White House. So I'll take some--

[00:42:21.20] And I know the Europeans were really mad about the law that we were-- so happy about it. But I think I would take the same general approach was that it's better to subsidize categories of things as opposed to individual companies. I'm not sure of the degree to which we are doing that now.

[00:42:44.81] In that, I feel like I'm-- because it's not my area, I'm going to say something stupid. But I feel that there's a sense that you have, obviously, another value that you're bringing in here.

[00:42:58.27] And maybe I can talk about something that-- I'll talk with something I do know about. It's related to that.

[00:43:02.07] So one of the things we funded was, I called it, internally, net neutrality for electric chargers. So we spent about \$8 billion to fund a network of electric chargers. This is, and obviously, that's climate-related-- electric chargers for cars, sorry, electric vehicles.

[00:43:23.17] But not only cars. We thought it could be any. We wanted to-- and we worked--

[00:43:27.88] And it seemed very important to us that that network be open to any car, that-- even any kind of vehicle and not be locked down a set of things so if we're going to throw this kind of government

money into it. We managed to get Tesla to agree to open their network to other cars as a condition of getting some of this money, which seemed like a big step forward.

[00:43:50.26] And I think the thinking there-- also proud of that project as long as it succeeds. The thinking is we wanted to incentivize two types of groups.

[00:44:00.37] First, potential entrance into, or already existing, car manufacturers. We're going to do electric vehicles, but we're like, but we're going to have any network to build too. And also consumers who might be thinking about buying electric car but be, well, I don't know. We can buy a Tesla. We know they have a network, but if we're going to buy this other one, or we're just going to get stranded on the road somewhere.

[00:44:23.17] So there's an effort to try that. And that's an example of the kind of-- that was an example. We thought it was good industrial policy. Put it that way. All right, thank you so much. I appreciate being invited back.

[00:44:34.66] [APPLAUSE]

Panel: The Role of Competition Policy in Mediating the Crisis

<https://youtu.be/M1CA3P0VSFU>

[00:00:00.84] KRISTELIA GARCIA: OK, good morning. Welcome back to day 2. I am very excited to be hosting this panel this morning. We are the panel on The Role of Competition Policy in Mediating the Crisis. So I'm going to start with really brief introductions of folks who need no introductions. But I'll go down in any event in alphabetical order.

[00:00:25.74] We have with us today Elettra Bietti, Professor Bietti is currently a joint fellow at NYU and Cornell Tech and will be starting this summer as an assistant professor at Northeastern School of Law. Prior to joining academia, she was an antitrust lawyer at Allen and Overy in both London and in Brussels.

[00:00:47.04] We also have Renata Hesse. Ms. Hesse is a partner at Sullivan & Cromwell where she co-heads their antitrust group. And prior to that, she led the antitrust division at the Department of Justice as acting assistant attorney general.

[00:01:02.43] Professor Singer, Hal Singer is with us. He's a professor of economics at the University of Utah and the director of the Utah project. And he has testified and served as an expert in many matters, including most recently serving as an expert for the FTC.

[00:01:17.94] And last but not least, Professor Yoo is the John H. Chestnut professor of law, communication, and computer information science at Penn Law, where he is also the founding director of that institution center for technology innovation and competition. Professor Yoo frequently testifies before Congress and recently served as a member of the FCC's broadband deployment advisory committee.

[00:01:43.56] So without further ado, I think I'd like to kick off before we go through questions that I throw out to the panel by noting our unique position toward the latter part of this conference and the title of our panel, which, as I mentioned, is The Role of Competition Policy in Mediating the Crisis, to note that our title assumes that there is a crisis.

[00:02:05.88] And in our time together yesterday, we heard lots of esteemed folks make the case that indeed, there is a crisis of some sort or other. And I'd like to start by asking our panelists if they agree or not and why. And if so, in what sense. And I'll start with Renata and then open it up. Thanks.

[00:02:27.92] RENATA HESSE: Great, thank you. It's great to be here. This is my first time at the conference. So it's very exciting for me. So I guess I would say I'm not sure the internet's having a midlife crisis. I think maybe all of us are having a midlife crisis about the internet being midlife.

[00:02:48.66] And maybe that's perfect for me since I'm an old person. So it all seems to me pretty natural that as Tim just noted, the internet's been around for quite a while and is middle aged. And I think it's taken on a role in our lives that many of us both welcome and don't welcome at the same time.

[00:03:17.22] And I think as a panelist yesterday noted that the internet surged at a moment when other support systems, particularly for kids, which is where she was focused, had really preceded a fair amount. And the digital platforms have become, I think, very powerful as a result. And I think that scares a lot of people.

[00:03:41.37] And to me, that fear of the digital platforms actually just intuitively make sense. As I said, technologies change the way that we live in good ways and in bad ways. I don't actually love being reachable 24 hours a day. I would prefer not to be reachable at some points of the day.

[00:04:06.95] Now, I shouldn't probably be quite so glib because some of the concerns that average Americans and citizens in other countries have and the political power that's really amassed in order to do something about the power of big tech, I think, will have an impact on the technology companies themselves and the platforms.

[00:04:32.49] But what kinds of changes the political forces in the US in particular can reach consensus on remains really unclear to me at least.

But the Europeans are moving, both at the EU level and at the member state level. And the states are moving as well.

[00:04:52.28] And those movements are going to change, I think, the relationship between technology companies of all sizes, not just big technology companies, and government. And I think they will start to feel regulated in ways that they haven't really up until this point. As an aside, I'm not a person who buys into the idea that the technology companies have gotten a free pass for the last 20 years. I think there's been a lot of work that's been done in that area.

[00:05:24.63] And Tim did not mention US v Microsoft, which I think if you're going to do IBM, AT&T, you have to think about US v Microsoft as a technology-focused antitrust action designed at that time to really open up the operating system space. And I think that had some very good-- you can call them industrial policy effects on the technology space.

[00:05:58.23] But this is not a country that loves regulation. At least in our history, we aren't big on regulation. We've had periods of time with significant regulation. And at least in my experience, the antitrust enforcers haven't thought of themselves as regulators.

[00:06:15.31] So it was interesting listening yesterday to people saying, the regulators in the US and the regulators in Europe. The antitrust folks at the division and the FTC don't call themselves regulators. They're really about law enforcement, at least that used to be the case.

[00:06:35.20] And I think part of what we're seeing in the antitrust space is a shift of that kind of thinking or at least a push to change that view, for the US to be more receptive to regulation, again, at least in the technology space; to engage more in industrial policy in the way that Tim described, much of which I agree with 100%; and for the enforcement agencies to be more involved in the economy in a way that looks more like-- and sometimes actually is. So you can talk about the non compete proposed rulemaking at the FTC is something that really does look like and I think is regulation.

[00:07:20.94] But the wheels of justice don't move particularly quickly. And so that process, at least if you're going to rely on the antitrust space to solve some of these problems-- and my own view is that many of these problems can't be solved by antitrust-- then that's going to take-- that's going to take a long time. And I don't think we're going to see a lot of regulation.

[00:07:47.03] But I love the question that Tim asked at the beginning. What shakes things up? So I'm hoping we'll get a chance to talk about that.

[00:07:52.85] KRISTELIA GARCIA: Great. Any other thoughts on our crisis?

[00:07:57.49] HAL SINGER: OK, I'll go. You want to go down in order? I'll address that. And I appreciate how you're keeping us on our toes. I was expecting a different first question about the role of regulation. But hopefully, we'll get to that.

[00:08:09.89] But I first want to just thank Blake for inviting me. He's very gracious to have me here, particularly in light of the Twitter spats that we've had over the years, including over the news bill. But it's very gracious for you to be here and magnanimous. And I should do the same when I'm constructing my panels at Utah. Maybe I should invite some Chicago School defenders or consumer welfare standard defenders for the next panel.

[00:08:33.83] On the crisis, I just say that I don't like that word. I think it should be reserved. I'm personally going through a midlife crisis as evidenced by the car I'm driving. And I think a crisis is if my barista screws up the heart that she makes me in the morning. I mean, that's a personal crisis.

[00:08:50.90] But I don't want to-- I don't think that we should use the word "crisis" to motivate policy or legal opinions. I don't think you'd want your economist at least to go into a courtroom and start screaming crisis at the top of his lungs. And I wouldn't do the same in front of Congress as well.

[00:09:07.86] So we have problems. We have problems that need addressing. Hopefully, we'll get into some of those. But I want to-- I want to leave the word "crisis" out of the discussion, if we can.

[00:09:15.88] ELETTRA BIETTI: All right, OK. So I'll put a plug for the crisis. And so I was looking at the-- I don't know-- some Google search results on midlife crisis. Hopefully, I'm not yet there. So some of the causes of midlife crisis are apparently the maturation of children. And clearly, some of the internet's children, early start-ups have matured.

[00:09:49.11] And then another cause is physical changes associated with aging. And here too, if we look at the internet, the morphology of the internet has changed dramatically over the last 30 years approximately. So we went from a very decentralized space that was celebrated for being extremely free and emancipatory and that afforded egalitarian relations between individuals and small businesses toward today, an internet that is primarily controlled and dominated by a few commercial actors and then all sorts of other smaller for-profit actors.

[00:10:38.37] And so as a result, our experience of the internet has changed from an internet that perhaps included some pockets that were immune from profit logics to an internet that is today, in the words of Charlie Warzel, "soulless and monetized to death." So I would argue that there is a midlife crisis here.

[00:11:06.28] CHRISTOPHER YOO: So we're in an academic institution. And so the question immediately wants me to go where Tim wants to go with the other question. How do we think about this? I mean, it's easy to talk about crises. I mean, we're-- we'd love to blame things on Cambridge Analytica and Mark Zuckerberg and now Elon Musk.

[00:11:26.19] But I think that that's a bit too easy. I mean, if you actually-- the empirical work on the election say that Cambridge Analytica had no impact whatsoever. And so you could plug that hole in the dike, and you still have a raging problem. So in a way, that's a substitute for analysis and a substitute for real solutions.

[00:11:46.26] And also, I think there's also a lack of a sense of history. Someone once said, every generation thinks that it invented sex. And so we have this whole idea. And I'm thinking, oh, economic power, things like the railroads back in the 19th century weren't a big problem. Media, William Randolph Hearst in the early 20th century wasn't a big problem. They had tremendous control over lots of things. And they created their own responses.

[00:12:12.15] But sort of a-- I still remember-- so when Tim and I started teaching, 1999 was my first year. The big thing was the AOL-Time Warner merger. And everyone acted like it was the end of history. It was actually just the end of \$200 billion in Time Warner shareholder value, which is not a policy problem. We're not here to save people from catastrophic business mistakes.

[00:12:32.45] But I mean, there's a tendency-- why don't you-- now, I am feeling like a midlife crisis. Once you've been doing this long enough-- god, I sound like an old man-- you see this stuff come around where it does seem like that sometimes. And so what it seems to me is, we should think about this.

[00:12:46.53] The other thing I thought-- I was asked to write on the 40th anniversary of the Journal Telecommunications Policy. I was asked to write a retrospective. So I flipped back. And I said, 40 years ago, what were our issues? Monopoly voice, triopoly television networks, and emerging worries about a monopoly multichannel telecommunications distribution via cable. All three of those problems are solved. And there were big problems.

[00:13:10.76] And so what's fascinating is just to get a little bit more framework on it, what I play is, if we're going to call it a crisis, let's develop a framework. And in the spirit of flattering Silicon Flatirons, there is a fantastic article published by Shane Greenstein in this journal where people are worried about innovative health. And he actually said, let's create an analytical framework for diagnosing when a market is inevitably healthy.

[00:13:36.50] And some of them still raised concerns. But two of them were looking for economic experiments and vigorous standards competition. And many people would look at the standards

competition and say, that's a sign of a problem that's a monopolist trying to take over. And Shane said, that's a sign of a vibrant industry that's pushing at its limits.

[00:13:55.19] And so taking a step back and figuring out how to think about this in a little bit more objective and systematic way instead of responding to headlines and anecdotes that makes great sound bites, I think, is what universities ought to be doing.

[00:14:07.79] KRISTELIA GARCIA: Great. Thank you so much. So I want to turn us next to talking about a theme that we've seen come up a few times and some pushback against that theme. So I'm interested to see what the panelists think.

[00:14:21.98] This notion of tech lash or this backlash against big tech with something of a contemporary resurgence of interest and that sort of thing. And we've also had a few participants here and panelists. We had Julie Brill yesterday mentioning, hey, these problems are real. But also, we should think about all the wonderful things that have come as a result of this technology.

[00:14:44.54] And Orly Lobel, who came and did a faculty colloquium for us on Fridays, also got her new Equality Machine book out. And she presented a bit about AI for good, I think is what she's calling it, which is saying, we're all so hunkered down on all the bad things that AI is doing, that maybe it makes sense to balance that out with all of the advantages that AI might provide us.

[00:15:09.03] So the question I'd like to pose is about this contemporary backlash against big tech and whether it's well founded or potentially well founded. Are large platforms like Amazon, like Facebook, are they really monopoly concerns? And if so, what's the proper regulatory response? And I'll turn to Hal and let him kick us off there.

[00:15:31.25] HAL SINGER: Thanks. So your question, you raise this phrase monopoly concerns. And let me just start right off the bat saying that antitrust really doesn't have a problem with monopoly, per se. Monopoly is a predicate for harms. But we're actually looking for the bad act where a firm leverages its monopoly to engender some kind of competitive injury.

[00:15:53.42] And I point out that even regulation like something you might consider radical like structural separation, if we were to hypothetically require Amazon, for example, to sever off its merchandising arm, even that would condone its remaining monopoly in e-commerce. So I think that monopoly by itself isn't really the problem either for antitrust or regulation.

[00:16:17.90] Now, your question also concerns Facebook and Amazon. And for delicate reasons, I'm going to-- I'm going to just

ignore the word Facebook for now. Else, my handler's would be very upset other than to say they're a terrific company.

[00:16:31.39] But with regard to Amazon, I think that a case-- there are some possible pathways there for antitrust to provide the solution for the problems that Amazon poses. For example, I think that Amazon's tying requirement that requires merchants to take Amazon's fulfillment service as a condition of getting access to the platform is something that's ripe for antitrust scrutiny.

[00:16:55.64] I think that Amazon's use of MFNs, Most Favored Nations clauses, that prevents merchants from offering discounts to customers to go buy their wares at a lower cost platform is ripe for antitrust scrutiny. There's academic economic literature that explains how MFNs is wielded by firms with monopoly power can engender all sorts of horrible things.

[00:17:17.57] Now, regarding the proper regulatory response, I have a thesis I'm going to try to sell you on. And that is this, that I think that regulators should limit their interventions to those areas where antitrust cannot reach or where antitrust gets in the way. So let me try to give you some examples.

[00:17:38.87] Antitrust can't reach the harms flowing from self-preferencing in my opinion, which is why I support the self-preferencing ban. Now, economists have documented that independent merchants tend to exit Amazon's platform after Amazon clones the product and then steers searches to the clone. But I don't think that evidence of rival exit alone would be sufficient to prevail in an antitrust case where plaintiff's economist must show a cognizable harm typically from the consumer's perspective.

[00:18:11.33] Just imagine sending me into a courtroom and explaining to the judge that you can't see the price effect now, Your Honor. But trust me, in a future period, when there's fewer merchants on the platform, choices will be degraded, and prices will be higher then. I don't think that's going to go down well in antitrust court.

[00:18:27.99] Moreover, antitrust tends to give great deference to conduct that stays within the firm's boundaries. And so when Amazon engages in self-preferencing, there's no contract. It's not conduct that escapes the boundaries that involves, say, an external supplier or a client. And for those two reasons, I think that this area, this notion of self-preferencing is very ripe for regulation.

[00:18:55.07] Now, when the conduct in contrast goes outside of the firm's boundaries, as it does in the Google Play Store case-- and big disclaimer here, I'm a consumers in the states expert in that matter. I'm a bit partial. But here, you have conduct that clearly goes outside of the firm's boundaries. The plaintiffs are alleging that Google put exclusionary terms in contracts with OEMs and with the mobile carriers.

[00:19:18.91] And when the harms are measurable in the short run, I think that it falls squarely within the ambit of antitrust. And we don't need-- I don't see a need for regulation. And so why I'm a bit ambivalent as to these two bills in Congress right now. One would compel Google and Apple to allow merchants to use third-party payment systems. And another would try to break apart the ad tech structure.

[00:19:44.17] I feel like in both of those cases, the conduct there and the types of harms that are being discussed or being alleged are much more amenable to antitrust scrutiny. And in that case, we should lean more heavily on antitrust. And then finally-- I promise I'll surrender the mic after this last point-- I said another condition for a regulation is when antitrust gets in the way of good outcomes or competitive outcomes.

[00:20:12.35] And so here, I point to the newspaper bill as a good example of a case that's ripe for regulation. We know that if any individual newspaper were to try to demand a positive payment from Facebook or from Google for the right to access the newspaper's content, Facebook or Google could easily just slap them away. And that's why the market price, given that tremendous power imbalance, is always going to be 0.

[00:20:38.74] And I realize that makes a lot of people probably in this room happy. But if you're a social planner or you're worried about what the returns are to investing in the news industry, that's troublesome. And so the idea behind that bill, that there's more to it than this, but the primary idea is that we would grant an exemption to the news publishers so that they could bargain collectively.

[00:20:59.14] And who knows? Maybe collectively, the balancing of the power and that bargaining game might result in a positive payment for the rights to access the newspaper's content. That would be something that, I think, most economists would recognize as being closer to the competitive price as opposed to 0, which I don't think is the competitive price.

[00:21:19.79] And by the way, a disclaimer, I should say too that I wrote about my support of that bill before I was retained. But I ultimately was retained by the News Media Alliance. So I just thought I should get that on the table too.

[00:21:35.87] RENATA HESSE: All right, I'll go. So when I think about this discussion about the tech lash, I'm always feel compelled to start where I think Julie started, which is to say, technology has done a lot of good things. And I think it's important to acknowledge those things and to be aware of the positives that technology has brought to our lives.

[00:22:05.87] On the other hand, I also think we need to be clear that it's not like the technology companies are curing cancer. We're making

it easier for people to find things and buy them, to find people, to share things, and to make certain things in life more efficient and to solve some social problems-- proximity to grocery stores, telemedicine. I mean, there are lots of things that tech companies have made much easier that have really improved the lives of people.

[00:22:40.62] But, again, we're not curing cancer. And I think part of the problem-- the reason why we see so much angst and anxiety around the tech companies but relatively little actual action in terms of Congress-- the antitrust agencies have brought some litigation recently. Some unsuccessfully. Some still being litigated-- is that the reason why people hate big tech really has to do with speech and with content moderation and with the language and the information, depending on which side of that discussion you're on, whether or not that's fair or dangerous or representing views that should be spread out to people.

[00:23:40.96] And that's a really hard problem to address through regulation. We have done it in the past. I think of the fairness doctrine, for example, which is old these days. But it's really messy. And so people like to yell and scream about it and say how mad they are about it. But they're not really talking about an issue that I think the antitrust laws are designed to solve.

[00:24:05.84] And when I think about that problem, I think about effectively pipes. Fiona Scott Morton used to always say when we were talking about broadband, it's the wires into the home. Like, how many wires-- how many potential wires into your home can you have for broadband? And, Chris, I'm not sure we've solved the broadband issue, by the way.

[00:24:28.41] So I think the pipes access to effectively what our essential facilities-- and that's another-- that's really what you want to think about in the antitrust world. Is someone doing something that's cutting off either access to a consumer or a customer that you need or a group of customers that you need or to customers writ large? Are they cutting off your access to a facility that you need to reach those people?

[00:24:57.08] So that's what net neutrality is all about. Are we going to make sure that the pipes are open for everyone and that everyone gets the same speed from the edge of the internet into the consumer's home? And so I think to the extent we're going to see action in antitrust that's going to be successful, it's going to be in that kind of space.

[00:25:23.03] And, again, these are essential facilities, duties to deal. If you have been active in the antitrust world for the past 20 years or so, those are doctrines that have really been pushed. I was thinking-- I was going to say beaten into submission by effectively the-- I think the most successful administration at doing that was the Bush administration.

[00:25:54.83] There was just-- and this is, I think, in some way, the influence of the Chicago School to say, we don't want to get it in the way. We don't want to force people to have to deal with their competitors. We don't want to force those kinds of relationships on people. And you're going to have to find some way to roll that, I think, thinking back in order to make progress on some of those issues.

[00:26:23.19] ELETTRA BIETTI: Great. Good. I have something super quick to say about the regulatory responses. And just to have a little debate, I think the approach of saying where antitrust can intervene, we don't need regulation is not necessarily the right approach. So I think we need to think about antitrust and exon deregulation as complementary in a variety of ways and as operating on the same market segment at the same time and doing things that might be similar or different. And there needs to be a lot more discussion on that.

[00:27:06.91] KRISTELIA GARCIA: Great, all right.

[00:27:08.36] HAL SINGER: I thought she was supposed to be the leftie who was going to agree with me on this one.

[00:27:11.54] KRISTELIA GARCIA: [LAUGHS] Surprise.

[00:27:12.86] HAL SINGER: Right, OK. And she kindly--

[00:27:14.14] [LAUGHTER]

[00:27:14.60] ELETTRA BIETTI: Right, you know?

[00:27:15.79] KRISTELIA GARCIA: A little agreement, a little disagreement. OK, so this is interesting. So we heard Tim talk a bit about the internet's origin. And as Brad mentioned at our opening yesterday, this conference is indeed ground zero for net neutrality. Renata just mentioned this notion of the pipes, the essential facilities.

[00:27:39.41] Today, the contemporary focus is on an open internet. So I want to ask our panel whether they think competition policy has a role to play in securing an open internet. And even before we get to that question, I'd like to know, how do we define it? How do we know when we have an open internet? What does that look like? And maybe moreover, is this a worthwhile goal, right? What do we have to give up in order to achieve that? And how do we know that this is the right thing to be striving for? So I'll start with Christopher.

[00:28:12.20] CHRISTOPHER YOO: So the first question-- and no offense, Renata, it was about 40 years ago. So unless we were using broadband in the late '70s, it's a new problem. Not solved.

[00:28:23.61] RENATA HESSE: Fair enough.

[00:28:24.33] CHRISTOPHER YOO: But anyway. So what's fascinating to me is, does antitrust have something to teach us here and is regulation to the right frame? I think there's a critical difference, which

is, regulation, particularly as it's in the DMA and in the Klobuchar bill, really makes liability turn on structure and size.

[00:28:45.09] And antitrust traditionally looks at effects and conduct. And what we've learned over the years is that structure is a really imperfect measure of actual consumer welfare. In fact, we used to believe in it. We had this thing called the structured performance paradigm that reigned in the 1960s-- until the 1960s where we assumed structure necessarily implied certain conduct, which necessarily implied certain behavior and a market performance.

[00:29:19.38] And this is important because we couldn't actually measure market performance. And we couldn't actually measure price effects in these things empirically. And that died along-- not that long, a fairly short cataclysmic death. As a matter of pure economic theory, a contestable market tells us that large market share doesn't necessarily lead to bad performance when entry barriers are low.

[00:29:39.68] We learn from Stackelberg price leadership is that low market share doesn't necessarily lead to good outcomes and certain market structures can be a problem. And that we moved away from this idea to actually looking at measuring the actual conduct. Because in the old structure conduct performance paradigm, conduct didn't matter. It fell away as a variable of interest. It was just-- the structure was there. You don't have to know what you did on top of that.

[00:30:04.65] And if you look at modern monopolization doctrines through the rejection of the Neal commission report through the rejection of the Areeda and Turner no fault monopolization proposals in the 1970s, is we've consistently said that there's a problem there, which is, ultimately, success in large share is an ambiguous fact, . It can be the result from successful competition on the merits.

[00:30:26.66] To quote Alcoa, if the successful competitor invited to compete eventually prevails, it can't be turned upon when it wins. So the problem is antitrust has traditionally looked for doctrines that separate outcomes that are the result of stuff that's inconsistent with competition on the merits and stuff that's consistent with it. And for that, we've always required the conduct element, which is essentially what's being taken away by the DMA and the Klobuchar bills, is they look at the size. They look at the market, the number of subscribers you have. And that is inconsistent with this idea, the traditional notion of antitrust law.

[00:31:05.32] Now, to pick on the specific example that Hal gave, self-preferencing to me is ground zero. So you can look at a large firm and look at the practice and just say, OK, that's a problem. They can't do that. My colleague, Herb Hovenkamp, has a riff on something that Elizabeth Warren did.

[00:31:23.18] Elizabeth Warren was really complaining about self-preferencing. And her targeted choice was batteries, old-fashioned

alkaline batteries. This is dominated by Duracell and Eveready. And her picked up an Amazon private label battery and said, this is a half to a third of the cost of Duracell and Eveready. And he said, if you look at it economically, this category has the highest price cost margins of just about any consumer product.

[00:31:51.16] And so the idea that-- what he said-- and I agree with-- is that in this case, self-preferencing for a private label goods would be immensely good for consumers. And without an analysis of actual effects in particular markets, you won't see that. And that, in fact, we need to do-- in fact, I used to-- before I went to law school, went to business school, worked in branded products.

[00:32:13.24] Private label was the bane of trendy products existence. My wife did the same-- worked in cereal. Gross margin in cereal is 55%. And you think that the Rice Krispies and the Cheerios you get in the bags from private label, they were killing them. And so it's one of these things where looking at the individual markets actually matters.

[00:32:31.66] Antitrust also has another lesson to teach us. This is per se illegality. You do that when you know the category well, you have a lot of experience with it so you can draw the inference that categorically prohibiting it. You don't lose much. When you're inexperienced or it's complex or ambiguous, you do rule of reason.

[00:32:50.00] And, again, that seems to be very much consistent with the antitrust paradigm and answer direct question. It's how I've argued that I actually think an exposed case by case regime for network neutrality would capture the variations that we've seen in a world with a number of business practices and how we're delivering services to people via the internet is becoming incredibly heterogeneous. It's not an email and web browsing world anymore. It's 55% video, streaming video. And with Zoom and interactive video and all these intensive uses, smart homes, and you name it, it's demanding very different things in terms of clusters.

[00:33:23.82] A couple of things just really quickly. I'm not fan-- Renata was cheering the curing cancer analogy. Because in one sense-- I say this as a person whose wife is a cancer survivor-- fortunately, it's not-- it's something that's catastrophic when it happens. But it doesn't affect that many people, thankfully.

[00:33:43.27] Although ad for the moment, I found out that one in eight women will develop breast cancer during their lifetime. So it's still a very, very high number. Things like Amazon that help us get through the pandemic or even not in the pandemic, just deliver services in a way that many people find more convenient, aren't large value. But they benefit far more people.

[00:34:02.99] And so in the grand calculus of how this all works, the question is, is that something that useful to frame it that way? I think you put your finger right on it when it's about speech versus

economics. There's a long history of criticizing the fairness doctrine. So I'm not crazy, but I'm happy to go into. But I do find us moving back and forth than that, which is people who are very upset about speech end up targeting companies based for economic concerns.

[00:34:26.62] Lastly, one thought about regulation and antitrust being complements versus substitutes, that's what Europeans think. They think they're complements. In a post Trinko where price squeezes don't work in the US, we think it's one or the other, where basically that, if you got a regulatory regime, the antitrust falls away. And so, in fact, it's consistent. It's a difference between the European system and the US system about how we view those.

[00:34:50.37] KRISTELIA GARCIA: Thank you.

[00:34:51.16] RENATA HESSE: So just one thing quickly. The reason why I think the curing cancer analogy is important is because I think Congress is spending tons of time talking about something that is really important to people. But there are many, many other issues and many, many other things that Congress could be doing that involved life or death-- funding education in the country, for example.

[00:35:16.36] And I feel like it-- the tech companies are like a convenient foil for them to talk about in order to avoid actually addressing some of the hardest problems that we have in the country. So that was the only reason why.

[00:35:30.76] CHRISTOPHER YOO: One quick thought, Tim, on curing cancer. NIH is probably one of the best examples of industrial policy in the US.

[00:35:39.75] KRISTELIA GARCIA: Great. Hal.

[00:35:40.93] HAL SINGER: I'd like to say a few things back to Christopher's point respectfully because I think he got some things wrong about Klobuchar's bill, assuming we're talking about the self-preferencing bill. And that is, I think you said that it turns entirely on structure and a firm size. And you're partially right in that you have no liability on the bill if you don't meet the size thresholds.

[00:36:00.70] But just having the size doesn't expose you to finding that you violated the bill. It does turn on conduct. You do have to engage in self-preferencing. Someone does have to bring a case against you. So in that case, it is closer to case by case adjudication.

[00:36:17.23] The presumption is flipped from what a typical rule of reason is. It's not the presumption now is going to be against the platform. Whereas in an antitrust cases, as you know, the presumption is in favor. It's the burden of proof is on the plaintiff to show. But it's something-- it's some hybrid. So I think it's a little unfair to say that it's per se. And I think it's also unfair to say that in terms entirely on structure. There is a conduct element. You've got to-- the plaintiff has to demonstrate that there was self-preferencing.

[00:36:42.76] Now, finally, Christopher used this example of Duracell. And I think that the example is probably chosen intentionally because none of us are going to lose any sleep over Duracell getting beat up. But you can imagine an independent merchant who's come up with an idea, not some Titan of industry, but an independent who's come up with a good idea.

[00:36:59.23] And Amazon clones the product. And it starts steering its searches to the clone. The problem, Christopher-- I hope you can acknowledge-- is that if enough independents observe this cloning, observe this appropriation and they realize that either I'm going to come up with a crappy product and die or I'm going to come up with a good product and Amazon is going to clone it and die, then in future periods, a bunch of independents are going to start throwing in the towel.

[00:37:22.54] And that's the danger. It's that we want them to keep coming to the platform. You'd think Amazon would want them to come to the platform as well. But Amazon is internally conflicted in that they're trying to generate revenue growth in each quarter to satisfy shareholders.

[00:37:35.98] I'm sure they understand the problem. But they are in the favor of appropriation, too much appropriation relative to the socially optimal level. So that's what we're trying to solve with that. And I'll just leave it at that.

[00:37:46.96] CHRISTOPHER YOO: So the only thing I would reframe-- I actually do think it is penalizing size. If you think of the ban on self-preferencing not as an element of the defense but the remedy being applied, then basically, if you're a certain size, you have certain remedies applied to you, which is, you can't do certain things as a business practice.

[00:38:07.57] And this is much clearer in the DMA. Because if you hit the size threshold, you're subject to like 10 mandatory and another half dozen second order possible things, where-- oh, none of which are necessarily tailored to the particular case you're in. And they say maybe they won't apply all of them. But we still have a wait to see. And this is the law on the idea that it's clearer to get rules in advance. There's still so much to be worked out in the DMA.

[00:38:29.29] But just thinking about the global tribunal [INAUDIBLE], basically, if you have a size, you are subject to a remedy where you are barred from doing a certain business practice. And in that sense, you don't actually have a filter of anything else you need, except for hitting those thresholds.

[00:38:45.28] HAL SINGER: And I don't think you're quite barred, Christopher, because you can do it, of course, until someone brings the case. And then even after they bring the case, if you can demonstrate, if you can flip that presumption, you can continue doing

it. So I don't think it's fair to characterize it as a complete and outright ban.

[00:39:00.97] CHRISTOPHER YOO: Oh, but, again, it's-- well, you can have this argument. But anyway. I won't go there.

[00:39:07.30] RENATA HESSE: Can I actually answer your other question?

[00:39:08.80] KRISTELIA GARCIA: Yes.

[00:39:09.09] RENATA HESSE: The question that you began with?

[00:39:10.72] HAL SINGER: I ask [INAUDIBLE].

[00:39:11.50] RENATA HESSE: Which, I do think competition policy has a role to play in the open internet. And we worked incredibly closely during the Obama administration with both the FCC and the White House on the open internet and pushed very hard for-- when I was at the Antitrust Division-- pushed very hard for the open internet because we thought it was very, very important for competition.

[00:39:41.02] And we also worked incredibly closely with the FCC, with Tom Wheeler and Jon Sallet on the Comcast-Time Warner transaction. And we really-- as we thought about it-- and this is all public. The big issue that we saw there was the potential for that transaction to result in a less open internet, less access from the edge to the customer's home. So I do think there is a real role there.

[00:40:10.64] CHRISTOPHER YOO: And you remind me that one of the first hearings we saw on this was convened by then head of Office of Plans and Policy at the FTC, Maureen Ohlhausen, where Tim and I both spoke way back then. And it was-- the antitrust people were the first people to do that. I also remember testifying at a hearing on the Hill where the judiciary committee was fighting for jurisdiction with the commerce committees. And so that's a whole different level of this.

[00:40:35.58] HAL SINGER: Did you want to say anything in open internet?

[00:40:37.47] ELETTRA BIETTI: No, I think I'll wait.

[00:40:38.94] HAL SINGER: Can I just get--

[00:40:40.05] ELETTRA BIETTI: I'll weave it into my--

[00:40:40.96] HAL SINGER: Let me just give one quick plug idea and throw on the open internet before we leave the topic?

[00:40:45.41] KRISTELIA GARCIA: Yes, absolutely.

[00:40:45.80] HAL SINGER: Because I want to be on record as saying that I-- oh, want to be on record as saying that I support it. But the question is, how do get there? And I would like people to consider the

idea of not trying to do this solely through the FCC but instead through legislative fix, through Congress.

[00:41:03.53] I think that there would be vast support for a bill that did exactly what the most recent open internet order sought to do but to do it through a different source of authority outside of Title II. I think you would completely neutralize the telecoms' attacks if you took it out of Title II. And because the policy is popular. I think it enjoys wide consensus among policy ranks. So I just leave it at that.

[00:41:30.02] KRISTELIA GARCIA: All right, thank you so much. So we'll keep on the topic. But I want to introduce another topic here. Many platforms today deal for being honest primarily in data. And many of us when we hear data immediately think privacy. But I think that Paul and Meg completely assuaged all of our concerns about big tech's privacy yesterday.

[00:41:55.49] So with that problem solved, we'll just put that aside for now and ask what competition policy might have to say about data collection and utilization. And Professor Bietti has done a bunch of work in this area. So I'll let her kick us off. And then we'll open it up to the rest of the panel.

[00:42:14.96] ELETTRA BIETTI: OK, thanks so much. I was going to say actually, I haven't heard perhaps enough about privacy and data at this conference. So I'm happy to compensate.

[00:42:24.18] KRISTELIA GARCIA: Because they solved it already.

[00:42:25.52] ELETTRA BIETTI: Right, so I wanted to say a brief thing which actually connects to what I'll be saying about data around the open internet. And a question is, what is the open internet? And I think when we think about the open internet, we think about having access to all sorts of services, no barriers to entry, being able to opt in and out very easily.

[00:42:52.70] But that also happens because companies are tracking us, because companies are taking something in exchange. And that could be data. It could be our attention, our behavior, whatever else we want to call it. But it's never completely free.

[00:43:08.13] And so I think when we talk about open internet, we also need to think about what's behind it. And so this brings me to the question of data. And I'll say three things. There's a lot to say about data and antitrust. But I'll limit myself to three.

[00:43:24.32] So the first is, what do we mean when we say data? And I think we're pretty confused is we think of it as an object. It's a set of 1s and 0s. Particularly for privacy and data protection experts, data is an extension of the person. It embodies certain characteristics of individuals. Or it materially represents populations, the relations between different people and different populations.

[00:43:59.04] And my view on data is that data is always the informational product of a context. So it acquires and reflects the shape, the functions, the purposes of those that collected, of those that store it, process it, organize it, use it. And so I think that when we talk about data as an object that is out there, that is exchanged, that is shared, we're missing something. There's data all over the place often when we don't notice it, often when we don't even see it.

[00:44:31.13] OK, so secondly, so what have antitrust regulators been doing about data? So for a long time, they haven't been doing much about data. In the US and in many regions of the world, antitrust regulators have tended to dismiss questions of data and privacy as not relevant to competition analysis.

[00:44:56.62] So a salient an example is the Google-DoubleClick merger case where the FTC decided not to investigate the case. And although they recognized that there were some privacy concerns attached to the merger, they expressly said that privacy was not-- or data-related questions were not a competition concern.

[00:45:21.27] Today, things have changed particularly in Europe, I must say. With the GDPR, I think there's been a huge awakening to data as a phenomenon in Europe and for European regulators. And so antitrust authorities in Europe in particular have been really focusing on data as part of several cases, merger investigations like Apple-Shazam, Google-Fitbit, Facebook-Giphy in the UK.

[00:45:56.07] And also, a case that some of you might have heard of by the German Bundeskartellamt against Facebook, which basically held Facebook liable under antitrust for abuse of dominance because they had basically forced their users to consent to data collection across several business segments. And so the remedy that the authority imposed was the need to unbundle consent across different services. When you consent to data collection and use for Instagram, you're not consenting to data collection and use for Facebook, et cetera, or WhatsApp, or whatever else.

[00:46:35.47] So cases of this kind have considered data relevant in at least two ways. So data has been considered a price equivalent quality factor relevant to competition analysis. And I can say more about this in Q&A, just not a lot of time to elaborate.

[00:46:56.16] And then also, data has been considered an element of market power. So being able to collect, control, use, process data does give a company more power on a given market segment than its competitors. So it provides market actors with more knowledge about their customers, about users, about their competitors, themselves, than other players on the same market. And it also allows them to have strategic knowledge that allows them to make purchases that might advantage them on certain market segments. And that was one of the allegations in the Facebook-Giphy case, actually.

[00:47:37.77] And so these findings have led to a number of very interesting measures being considered and in some cases being imposed by antitrust regulators. And these include things like the unbundling of consent that I have mentioned; more opt ins and opt outs from data collection and data use and processing; data silos, which is something that was imposed in a couple of mergers where companies are asked to separate out certain databases relating to different services.

[00:48:09.96] There are things like data pools, data sharing arrangements. Data reuse is now a term that is being considered in Europe. So the reuse of data for public purposes and more. There are possibilities for competitors to request access to certain databases or certain anonymize data.

[00:48:34.62] And so we could talk more about all this. I'll say, I think one of the goals of thinking about regulating data from a competition perspective is trying to separate out two things. So on the one hand, there are the rents attached to control over infrastructures, to control over essential facilities, pipelines, things that other competitors need to have access to.

[00:49:00.34] And then there's data that is processed, created through what might be called skill and labor through particularly good engineering processes. And so that needs to be incentiv--

[00:49:16.42] --vized.

[00:49:16.71] Sorry --vized. OK. And so [AUDIO OUT] part of my work has been about. And that's the fact that I think when regulators-- we've come to a point where we realize that data is a competition concern. And we've come to the point where we have thought about several types of remedies.

[00:49:42.62] But ultimately, what agencies, courts tend to end up with is with solutions that delegate more choices and more decision-making to users. So in the end, we always say, oh, yeah, it's good for users to be able to decide, to opt in or out of certain data collection schemes, certain data usage processes, et cetera.

[00:50:11.69] And I think what's missing is more thinking. And maybe that's really what goes to this industrial policy question as well, thinking more about who is making decisions on how data is collected, used, processed in the data economy? And we need less individualized, distributed, networked decision-making on these things and a little bit more thinking about how groups of people, agencies, regulators, but also just individuals coming together can determine some of these questions.

[00:50:46.49] KRISTELIA GARCIA: Great, thank you so much.

[00:50:50.12] CHRISTOPHER YOO: So the way the US deals with data and antitrust is probably the best developed in mergers. When data is

a separate project-- and like the Arbitron cases, it's actually pretty straightforward. It's just the same. It's, you look at it; you understand them; you define your product market, your geographic markets; and you go. And that's pretty much unremarkable.

[00:51:12.36] What's really the more interesting problem is some stuff that Professor Bietti is talking about is when it's not a product in and of itself but when it's an input into another product, which is the far more common use of data today. And actually, like a good academic, I've got a paper on this. Unfortunately, it's not ready. It's one of those 80% done.

[00:51:31.41] This is not the first time we've looked at the uses of input markets in merger analysis. There was a move in the 1990s to look at what we call innovation markets, where if you looked at R&D and other key input into innovative processes, if a company at a 10 firm industry but the two firms that were merging controlled 90% of the R&D should be analyzed that as a separate market.

[00:51:52.65] And Rich Gilbert and Steve Sunshine came up with a really analysis of this. And it's very complicated, not the least, which is five fairly restrictive conditions. Just to throw a couple at you, it's like, one, are all data fungible? In other words, you just count up the amount of data and the resulting company and be concerned. And the answer that's almost certainly no.

[00:52:14.49] R&D isn't fungible. It's along different lines. But the reality is, I've got a whole-- part of this is talking about the use of structured versus unstructured data and the roles they play in business models. And they're very different. And in structured data, the scale economies are very small.

[00:52:29.38] And so this is something that's sort of overlooked. It's why I dislike the term "big data." Because it just encourages us to simplify and lump it all together with actually analyzing it in terms of a specific market.

[00:52:40.74] The other side is supply side substitution is a basic one. A lot of the data that is the most valuable is used for advertising profiles. And that data is widely available from a wide range of sources. And so you actually have to grind your way through an analysis even under the people who are proposing this in the R&D side to actually figure out when it's going to happen.

[00:53:01.71] What's interesting is, if you move the bigger thing that [INAUDIBLE] is getting to is beyond mergers monopolization cases. And generally, if you go back to even cases like Philadelphia and National Bank, which we don't really think of a good law anymore-- but they said, hey, grow it yourself. And if someone grows it themselves through competition on the merits, generally, monopolization under traditional law doesn't have a lot to say about it.

[00:53:26.92] And so what's interesting to me about California Privacy law, it's really aimed at third-party transfer. Not only is it made it very hard for small- and medium-sized enterprises to deal with the raw compliance, it's killed the data broker industry. So if you're not collecting it yourself, you really have fewer options. And it's not entirely clear that this is working out the way people intended.

[00:53:47.22] It is different in Europe. They have an essential facilities doctrine represented in the data space by a decision called IMS Health. The Supreme Court has had three chances to acknowledge this. It lives in many courts of appeals. It's never been endorsed by the Supreme Court. And many people think cases like Trinko cut the other way. So we'll have to wait and see how that all turns out.

[00:54:08.41] The one thing I will say is the German Facebook case is a good example of the difference between the US and EU approaches to the relationship between competition law and regulation. They're basically saying, Facebook, they're bringing them up on an antitrust case for violating privacy policies. There's a lot more to it. But it's pretty simple-- in a simple form, that's one way to think about it.

[00:54:30.66] The way the US would think about this is probably, we have a privacy law regime designed to prevent violations. And the proper first order by far first order response is to let that regulation apply. Now, is it possible that this systematic-- you would have to affect markets before it becomes an antitrust problem.

[00:54:52.26] In other words, there's securities fraud. We go after the people who are defrauded. And they hold the people who committed the fraud. We may call the people defrauded. But until you get to a systemic level effect, you don't do antitrust.

[00:55:05.46] And the worry we have about-- I have about the German Facebook case, it's going to take garden variety privacy cases and turn them into antitrust cases with all the problems and the trouble damages and you name it that go along with it. And this is public enforcement. So that doesn't really apply. But even so, we have regimes that are fit for purpose for different things.

[00:55:25.12] And the question is, do what-- the Trinko would say, we don't gain that much by overlaying antitrust on top of them if we have a functioning regulatory regime. And the idea there is to make privacy regulation effective and remedial.

[00:55:37.52] KRISTELIA GARCIA: OK, thank you. Any short responses to that?

[00:55:41.08] HAL SINGER: Yeah, I'll try to make it short. But I'm going to weigh on this one. And sorry, I have to have my glasses on because I just scribbled these notes. But I think the way to think about this question-- let me just try to put a question to the audience, which is,

can market forces be trusted, market forces driven by competition to bring about the right level, socially optimal level of privacy protection?

[00:56:05.09] I think that's the question that we have to grapple with. And I'll give you my answers. But you don't have to agree. But I think certainly, under monopoly, the answer is no, we don't have the right level of privacy protection right now. That's obvious. But a harder question is, would we get the right level of privacy protection under perfect competition?

[00:56:27.16] Suppose we split Facebook into 20 pieces. And I know I wasn't supposed to mention Facebook today. I'm sorry. I'm sorry, handlers. Would we then get the socially optimal level of privacy protection? And even there, I'm skeptical. And if you're skeptical like me, then it seems like competition, while it's wonderful in many aspects, it may not be the elixir that we need for privacy protection.

[00:56:54.45] I think that argues in favor of some sort of regulation. And I just-- if I could just say a shout-out to something that Tim Wu said earlier today, I think this is almost like asking the question you're asking about how do we guide-- what kind of questions or principles would guide our industrial policy. And let me submit that we probably want to go to the places where we think the market is going to fail us.

[00:57:15.57] So I don't think that the market is going to generate the right investment, say, in green technologies. Dan doesn't like this answer. And so, right, because market private forces are not going to be able to capture all the benefits of cleaning up the environment. So this seems like an obvious place that government should be spending money in green technologies.

[00:57:34.17] And so the question that I just posed to you-- I can pose it here-- can we count on market forces even under competition to induce firms to make the right level of choices with respect to pollution or carbon emission or green technology? I think the answer is no, we can't. And for that reason, it's a good basis for government intervention.

[00:57:54.80] KRISTELIA GARCIA: Great. So before we turn to audience Q&A, which we will do in two minutes, I want to pose one last question to the panel for short answers only. And that's the quintessential Silicon Flatirons question of, what's next? Any predictions for competition and the internet? Next big cases, what the policy is going to look like, what we should be focusing on. And I'll start with Christopher, and then we can go down the line for anyone who has some thoughts.

[00:58:26.30] CHRISTOPHER YOO: A couple quick predictions. One, the Klobuchar came close last Congress. It's dead this Congress. Jim Jordan has no interest or appetite for antitrust reform. And so it'll never hit the floor of the House. It just won't. And that is a change. And I think

that means that in terms of doctrinal stuff, you're not going to see changes.

[00:58:47.63] Second prediction is we've seen this now. We have a judicial enforcement system, which I actually think is a good thing. But it does mean even if change were going to happen, it's going to take 10 years because you've got to litigate it all the way up to the Supreme Court. Because the lower courts are all bound. They could write the opinions, I don't think this is true anymore. But the doctrine says this. And I don't get to overrule them until they say it's OK.

[00:59:08.81] And so the reality is, the idea that no matter what happens, we're not going to see a lot of dynamic change coming out of the US, although Lina Khan is trying a lot of innovative things in the FTC and Jonathan Kanter. So we'll see.

[00:59:19.70] KRISTELIA GARCIA: All right, thank you. Elettra.

[00:59:22.67] ELETTRA BIETTI: So I think-- so yesterday, we've been talking about the US and other regions of the world. And it's really interesting that there are different things happening in different places. In general, I think we're moving towards a time when we are recognizing that the digital economy is becoming a regulated industry.

[00:59:46.26] Now, I think there are several questions about that. What kind of regulated industry? Is it going to be several different, little, regulated industries, depending on what companies are active in and how their services will be regulated? So, for example, speech services, content-based services, attention platforms might become a very separate kind of economy.

[01:00:10.80] But we're certainly moving towards a climate for more ex ante, pre-emptive, structural intervention in digital markets. And I'm a supporter of that. And I think that's great. I had something else to say that I forgot. So I will leave it here.

[01:00:28.83] KRISTELIA GARCIA: All right, thank you. Hal.

[01:00:30.54] HAL SINGER: Oh, I wasn't prepared for prediction. I think it's probably dangerous for me to make a prediction. So I'm just going to-- I'm going to pass and wait for another question from the audience.

[01:00:38.10] KRISTELIA GARCIA: All right. And finally, Renata, any thoughts?

[01:00:40.83] RENATA HESSE: I mean, I think we are going to see a different landscape. I'm not sure if the companies will be different or if what they're doing will be different. I do think these industries, I think they are dynamic, regardless of what people like to say. And I think they do change. And they change relatively rapidly. So I think we may be talking about different kinds of issues. AI is a big one that we'll probably be talking about going forward and what the impact of AI is,

for example, on the world. I don't know. It's going to be-- but I think it's going to be different. I think we're going to see some change.

[01:01:28.98] KRISTELIA GARCIA: Yeah, and you can join us in April to talk more about AI. [LAUGHS] Yes, audience Q&A.

[01:01:34.77] SPEAKER: Student first.

[01:01:35.41] KRISTELIA GARCIA: Is that-- student. Are there any students in the audience with a question for our panelists?

[01:01:45.27] AUDIENCE: Yeah, I'll go for it because I have the mic.

[01:01:47.55] KRISTELIA GARCIA: Excellent.

[01:01:48.69] AUDIENCE: Oh, I'll stand up too. Hello, I'm [INAUDIBLE]. Introduced myself yesterday. And my antitrust professor is not in the room. So I feel a little safe for asking this question. Talking about potential antitrust action against Amazon, which has been in the news as the FTC is investigating, how does it complicate the analysis talking about looking for harms in the sense that for every person who suffers from Amazon Web Services establishes and guarded walls, the average American consumer who wants to buy one of five different silicone spatulas on the marketplace still is appreciative of the ability to buy those five different ones?

[01:02:23.01] I think it's kind of a curious, like, I'm not sure how to work out the difference in those harms where you have people in the marketplace who suffer for the strictures of the marketplace but then consumers who just want to purchase from Amazon or watch a movie don't suffer those harms. How does that affect the analysis?

[01:02:41.40] CHRISTOPHER YOO: Go to a slightly different shopping case. One of the best ones we have is the comparison shopping case against Google, which was led to, what, the second largest multibillion dollar fine in history in Europe. And the US, you look for a metric that separates whether it's good for consumers or bad for consumers. And in that case, it was a click through on-- its transactions.

[01:03:05.16] And if you have a different way of distributing and more people buy, that's a very general regard in antitrust law, a very good indicator that this is probably creating benefits. Now, it's not dispositive. You can be delivering more value to a smaller number of customers.

[01:03:22.63] But we saw this in the Uber case in the Third Circuit, where they were actually looking at the taxicabs brought an antitrust case against Uber. And if you think about the irony of that, just enjoy that for a little bit. And the judge said, there are more rides now than there were under taxis alone. You lose.

[01:03:38.95] And so this is the thing with antitrust law, does it? It looks for filters that try to identify when it's going to be good for consumers,

when it's bad, and try to use those to separate different conduct, which is, you can tell good stories about and bad stories about. But you really want to know how to settle it. And that generally requires some sort of empirical evidence and test.

[01:03:56.55] HAL SINGER: Can I answer? Because the question was, consumercentric. And Christopher took a jab at the structure conduct performance paradigm. So I'm going to take a jab at the consumer welfare standard, which I think-- if I had to make a prediction-- I was five minutes late to my prediction. But now, it's that I think consumer welfare might not be the way that governs the future of antitrust as evidenced by, for example, the DOJ's challenge of the merger-- of the book merger-- the book publisher merger.

[01:04:22.83] It was not about consumers there at all. It's about the writers, which was really energizing to see that other actors in the economy could actually be represented and cared for outside of consumers narrowly. And so what I would tell the student, if you're still listening is--

[01:04:44.45] [LAUGHTER]

[01:04:46.44] --the two theories of harm that I just laid out, the principle injured party in both of those is the merchant. And I understand that you've probably been so indoctrinated in the consumer role for standard. It's hard to think about how anyone could matter besides consumers.

[01:05:02.38] But I think that if the plaintiff could demonstrate that merchants have to pay, say, a higher take rate on Amazon because of the most favored nation clause-- that is, in the absence of the MFN, the merchant would try to steer users outside of Amazon to a lower cost platform. That, in turn, would cause Amazon to have to reduce its take rate-- that's an injury to a merchant that might be cognizable under antitrust as it's going to be practice going forward.

[01:05:32.86] KRISTELIA GARCIA: Great.

[01:05:34.11] HAL SINGER: Tim had a question. I know. But I don't know if she saw. He's a VIP. Good.

[01:05:44.00] AUDIENCE: Hi. Thanks. I was calling my-- I wanted to make a comment then ask a question. Well, just the comment first is that, yeah, I certainly agree Microsoft belongs in the trilogy of industrial policy like antitrust decisions. And I have long felt that there is a very important sense in which most of the giants today owed a lot of their continued existence or vibrancy to the Microsoft decision.

[01:06:16.96] I don't think it was out of charity that Microsoft allowed Explorer to be a launching pad for so many other companies. I think they were under scrutiny, which does get something that, Chris, where you said, there's this question, antitrust does take a long time. One of the interesting questions is whether in the course of antitrust

investigation, there is an effect on conduct, the so-called policeman at the elbow effect.

[01:06:41.62] So IBM was under pretty intense scrutiny for 13 years by the Justice Department during that key period, actually, when Microsoft, to bring them back, was being created. Once I cornered Bill Gates and asked him-- that period when IBM was doing these deals, it's like, I was very surprised they didn't kill us or buy us. And it's hard to know exactly.

[01:07:10.12] But there's this moment where they're like-- I don't know-- if we buy Microsoft or kill IBM, do they end up with new antitrust problems? So there's some effect there. I'm not going to say it's everything. And maybe today's tech platforms are more inclined to just ignore the case and throw their lawyers at it.

[01:07:26.87] But I think sometimes-- some of you on this panel are lawyers or counsel to companies and maybe would know more as to whether that affects conduct. Unfortunately, I did have a question. Sorry, I don't want to go on forever.

[01:07:38.59] But I think it's up for grabs what antitrust is for right now. I agree with Hal that cases like the NCAA case and also the Random House case suggests a different story here. And I want-- I guess this is a question for Renata in a sense.

[01:08:04.47] You were talking about the sense in which there'd have to return to some of the rules that overcome what you can call the Colgate presumption or more specifically the natural right of a business not to deal with anyone else, forced them to deal with others. That, to my mind, is, I guess, what I'd call the rules of the road approach to antitrust. It's more interest in a competitive process as opposed to strictly focused on, can you show a cognizable harm to-- cognizable harm to consumers.

[01:08:42.14] And so I guess the question-- maybe this is for the whole panel-- is whether if antitrust takes that more rules of the road approach, do we think-- A, do you think that is a desirable direction for it to go in terms of-- I guess we're talking about the internet or antitrust and in general? And is it really so perilous? That's I guess what I want to ask your opinion on going to more of the rule of rose competitive process style of antitrust. Thank you very much.

[01:09:18.39] RENATA HESSE: So I'll jump in. I actually am not a big believer in the rules of the road form of antitrust because I think it causes antitrust enforcers in particular to feel too constrained in terms of what they can do. And I know that Bill Baer and I during the Obama administration really spent a lot of time talking to people about, don't tell me what doctrinal box this fits into. Tell me what's happening, who's being harmed, how are they being harmed, and what's the competitive mechanism that's creating the problem, and how do we fix it.

[01:09:56.62] And I really think that's the best role for antitrust. I think that's how we should think about it. Because when you start-- the boxes can be very convenient. And they can be very helpful in terms of-- particularly if you're counseling companies, telling them, well, this looks like it's this kind of case. And these are the kinds of things you should be concerned about in that kind of case.

[01:10:16.98] But when you're thinking about particular, either conduct or transactions, it's really important just to think about what's really going on and how to explain that to someone, particularly if you're thinking about a lawsuit, whether you're the government or a private party. Because I find sometimes people get too bollixed up and trying to fit things into these doctrines.

[01:10:43.07] And courts have lists of factors. And I think that's part of what happened to Epic in the Apple case. They were just too hung up on the law as it was written down and the law about single brand submarkets. And I just think the court didn't really understand what they were-- what the problem was exactly. And I think the opinion reflects that, so.

[01:11:10.98] CHRISTOPHER YOO: So what's ironic to me is Brandeis himself did not like rules of the road. He took them all out of the FTC Act. And he went to a more effect. It's just one of those interesting-- I'm doing some work on the historical roots of Brandeis's thought. And it's fascinating.

[01:11:25.90] But what I would say is, the one thing I worry about-- and to some extent I move away from the consumer welfare standard. You risk protecting competitors, not consumers, and inefficient ones at that. And so one of the things, my takeaway-- and this involves the network neutrality issues and something I'm sure Hal will disagree with me on.

[01:11:46.77] But the learnings we have over vertical integration over the years is that the vision of which each leg maximized its choices was actually a bad way to organize certain industries. [INAUDIBLE] I teach [INAUDIBLE] my students. In Toyota, in Japan, there's a thing that called Toyota city where there's a bunch of parts manufacturers who only make for Toyota.

[01:12:07.65] And the question is, is the car industry uncompetitive? And the answer is, as long as you have-- even if they're all vertically integrated, do you have enough brands of cars? Interbrand competition will be fine. And that the teaching of vertical integration the last 50 years of the economics of this is that this is often-- and the empirical evidence backs it up. It tends to be at worst neutral and like 90-plus percent of the time neutral or beneficial.

[01:12:32.50] And so a reflexive hostility towards it. And this is done by Francine Lafontaine and Margaret Slade, one of whom was the chief economist during the Obama administration. The later half said, we didn't expect this result when we went to this survey of the literature.

But if the inferences are there, categorically banning things because of these-- if it's possible outcomes, you go to the empiricists. And they came to the conclusion that it was not appropriate.

[01:12:55.65] I know there's a lot of people who are-- there's a lot of academic discussion about the consumer welfare standard. I have my own opinions on that. But what I would say is a purely descriptive matter. In a judicially driven system, without new legislation, it's going to be the Supreme Court. And this court does not seem likely to overturn that standard. So as a matter of pure prediction--

[01:13:18.17] AUDIENCE: [INAUDIBLE]

[01:13:21.22] CHRISTOPHER YOO: It actually--

[01:13:22.66] AUDIENCE: [INAUDIBLE]

[01:13:24.46] CHRISTOPHER YOO: NCAA is actually one of the cases that explicitly cites the consumer welfare standard and adopts it. But this is-- we'll read the cases. But even regardless what the cases say, my prediction is that this court will. And I have heard other people make it. And I've heard other people disagree with me too, so.

[01:13:40.99] And we all know that predicting what the Supreme Court is going to do is extremely hazardous business at best. But in the-- let me put it this way. It's in their hands. And if you think that's going to change, it's going to largely turn on your belief on whether they're likely to abandon the standard.

[01:13:56.81] KRISTELIA GARCIA: Thank you. Who couldn't talk about antitrust all day, really? But our time has come to a close. Please, let's take this conversation to our break. I'll turn it over to Blake for instructions.

Panel: The Aches and Pains of Broadband Deployment and Adoption

<https://youtu.be/gTf74LMzGnU>

[00:00:00.33] KEVIN NGUYEN: My name is Kevin Nguyen. I'm 1L law student, here, at the University of Colorado. I'm very honored to have the privilege of introducing this next panel. The Aches and Pains of Broadband Deployment and Adoption, moderated by Gabrielle Daley.

[00:00:15.56] GABRIELLE DALEY: All right.

[00:00:15.88] KEVIN NGUYEN: Thank you.

[00:00:17.24] GABRIELLE DALEY: Welcome, everyone, to the last panel of the conference. I am just thrilled, that we get the chance to nerd out, about one of my favorite subjects, broadband, specifically, broadband adoption, and deployment. I'm grateful to be joined today, by this

wonderful group of panelists, that I'm going to go down and introduce.

[00:00:35.12] We have Nirali Patel, Senior Vice President, Policy and Advocacy at USTelecom, The Broadband Association; Justin Faulb, Chief of Staff and Wireline Advisor to Commissioner Geoffrey Starks, of the Federal Communications Commission; Brandy Reitter, Executive Director of the Colorado Broadband Office, from the Governor's Office of Information and Technology; Kathryn De Wit, Project Director of Broadband Access Initiative, from Pew Charitable Trust; And Francilla Ochillo, Executive Director of Next Century City. Thank you all so much for joining us, today.

[00:01:07.61] I'll refer everyone in the audience to the conference literature, for any additional details about our esteemed panelists. So yesterday, during our afternoon session, Alan Davidson, of the National Telecommunications and Information Administration, called on us all, to pay close attention to what's happening with broadband policy, saying that it was this generation's big infrastructure moment. So Kathryn, could you start us off with some background, on what's happening with that moment, with broadband adoption and deployment?

[00:01:39.05] KATHRYN DE WIT: Sure. So thank you so much, for inviting me to be here. It's always a pleasure, and always great to join folks like this, on panels. So I really appreciated Assistant Secretary Davidson's remarks yesterday. Particularly, when he referred to the implementation of the B and DEA programs, as finally having the opportunity to do something structural and serious, about broadband deployment, digital equity.

[00:02:07.94] And for the purposes of this conversation, I am going to include availability. So when we talk about deployment. But availability under digital equity. And that's because, all of their efforts, whether we're talking about affordability, digital literacy, access to devices, you name it. The long list, whether you define it as a three, or five legged stool. Availability, none of that matters, if those connections aren't available.

[00:02:33.84] And so when we talk about the opportunities that we have at hand, it's not just the significant resources, of which, they are significant. Let me be very clear about that. \$42.5 billion in the Bead program. \$3.75 billion, that's all with a B in the DEA programs.

[00:02:53.42] This also does not include funds that are available through the American Rescue Plan Act. Specifically, the Capital Project Fund, as well as the State Local Fiscal Recovery Fund. As well as other funds that states have already put forward, towards broadband.

[00:03:08.39] But when we talk about moving ahead, and implementing funds from IJJA, we are really talking about the whole package here. It's not just availability, affordability, access to devices,

skills, and training. It's also about enabling states to really create frameworks within government, to institutionalize these efforts, moving forward. And it's also about giving the authority to state government. And also local government, and other partners at the local level, to engage in these funding and planning processes, in ways that they have never had the authority to do before.

[00:03:44.18] And those may seem like small changes, but they are actually incredibly significant. Because we are at the hardest part of closing the digital divide. And a personal pet peeve of mine, is people say, oh, COVID changed the way we think about the digital divide. COVID didn't change the way we think about the digital divide. What it did was, it added a lot of texture and context to what had previously been treated as a very binary discussion, particularly, when it comes to policy. Was broadband available, or was it not?

[00:04:16.85] But during COVID, what we really got into was understanding, well, how many Americans have access or don't? Why can't we really calculate that number? When we talk about the number of Americans.

[00:04:31.29] So that's availability. OK. Let's talk about speed quality, reliability, more conversations around that. When you have that connection available, the presence of a connection that may or may not, meet speeds, that's not enough for us, to really understand, whether or not that connection is meaningful for people.

[00:04:46.14] Now, let's talk about cost. 45% of non-adopters cite the cost of a subscription, as the primary barrier, to the reason that they don't adopt at home. And 4 in 10 non-adopters cite the cost of a device. Those are really important factors. Finally, when we look at the distribution of folks who don't have access, whether that's because it's not unavailable, or they can't afford it. The statistical significance is in income. If you are low-income in America, you are less likely to have a broadband connection available. And you are less likely to adopt at home.

[00:05:24.36] To put that in numbers, if you're making 75-- 92% of households making \$75,000 or more, have access, and adopt, versus 57% of households making \$30,000 or less. So when I talk about what COVID did, and what drove us to this moment that we're in. And I promise I'll wrap it up, so we can-- other people can weigh in. It added that texture, and an added momentum, to what was already happening, particularly, at the state level.

[00:05:52.86] So it enabled us to really refine policy. To not only say, OK, are we just getting broadband out, but are we getting it to the people who need it, most? Are we being thoughtful about the policy measures that we are adding to this, to ensure that we're getting to those people? How are we thinking about enforcement? How are we thinking about structuring both supply and demand side policies and

interventions, to meet both the capital expenditure challenge here, but as well as the challenges that face consumers, in their ability to adopt, what is a very, very important connection in our daily lives.

[00:06:29.07] So we've really heard kind of the overview of the cost and, or the spend, of what's coming with IIJA. And I think that looking ahead, as we think about, and we talk on this panel, it's going to be really important for you all, to pay attention to a couple of things. First are the plans and the proposals that states are putting forward.

[00:06:52.58] What are they saying, and their priorities for spending? And how are they going to get folks connected, to those minimum speed and technological standards, that Congress has set forth? How are they going to work with those historically disadvantaged populations, to ensure that they have a seat at the table? How are they working with local leaders? OK, statements are one thing. Then what's the follow-through?

[00:07:16.55] Because we can write great policy. We can say that we have these structural changes. We can put the money forward. But if we don't have the enforcement associated with it, we don't have the follow-up. That's with the public sector. That's also with the folks who are receiving funds. None of this actually matters. So that's a really uplifting way to start the panel.

[00:07:36.65] GABRIELLE DALEY: Perfect. Thank you for that.

[00:07:37.85] KATHRYN DE WIT: You're welcome.

[00:07:38.65] GABRIELLE DALEY: [INAUDIBLE]. OK. So before we dive into our main discussion, I'd like to ask each of you-- and we can just go down the line-- to say just a little bit about, why this subject matter is so important to the advocacy and the constituencies that you represent? So Nirali, can kick us off with that?

[00:07:55.22] NIRALI PATEL: Sure. This matters to USTelecom, certainly, because our members include broadband providers of all sizes. From the largest providers spanning the country, to local and regional providers that have been serving the hardest, to reach rural communities for decades. And we look forward to working with our partners in the public sector, in the community, and the private sector, to really reach our shared goal of connecting everyone. Particularly, during this historic opportunity presented by the Infrastructure Act.

[00:08:28.35] GABRIELLE DALEY: Great.

[00:08:29.64] JUSTIN FAULB: Yeah. And for the FCC, I should probably start with the caveat. That's super fun, when you're a government staffer. I am speaking for myself. I [INAUDIBLE] FCC or for Commissioner Starks, on this. These are just my views.

[00:08:41.74] But for the FCC, we've been working on closing the digital divide for much longer than I've been practicing, as a lawyer,

which has been quite a long time. And so it's really exciting for us, to see this much of a resource push now, to try to close the digital divide. And continue the goals of universal service that are contained in the FCC's founding statute.

[00:09:02.54] BRANDY REITTER: Yeah. So for the State of Colorado, this subject is really important, statewide, for a number of reasons that existed way before COVID did. But we're exacerbated by COVID. Is just access to internet. I mean, broadband is at the intersection of everything we do. And when you don't have access to it, you don't have access to adequate education, health care, economic vitality and development, and public safety.

[00:09:30.87] Those are the big pillars of why great connectivity to broadband, or at least having access to it, is really important. Because when you don't have it, you're being left behind. You can't participate in the economy. And you can't move your communities forward.

[00:09:45.45] And so during the pandemic, this was absolutely what brought awareness to these issues. There were a lot of people that could not work. They couldn't become educated. They couldn't attend school online. They couldn't access health care.

[00:09:59.51] And public safety, for the State of Colorado, is a big deal, as well. Between fires, and blizzards, and floods, when you don't have connectivity, you can't even respond to critical incidences. And I've seen that, just firsthand, in communities where we have a fire, and first responders can't-- they can't talk to each other. And it's a huge safety issue. So that's why it's important to the State of Colorado, and to many in this room, and in our communities.

[00:10:27.91] KATHRYN DE WIT: I'll let you go. No, you go.
[INAUDIBLE].

[00:10:31.42] FRANCILLA OCHILLO: Good morning, everybody. First, I want to also say, thank you, Kevin, for the warm introduction and also, Gabriel, for all the work that you put into this discussion, just outlining it. My name is Francella. I'm Executive Director of Next Century Cities. And if in a snapshot, I could say why it's important, for us, to be involved in this debate, it's that we work on making sure that local leaders have a voice in policymaking, at every level of government. Whether we're talking about county level, state level, federal level, we want to make sure that they're a part of the conversation.

[00:11:03.37] And historically, they have not been included in the proceedings, where broadband policies are made, and funding is assigned. But just as a human, I think, maybe, it's more important for me to say, why I'm in this room. I'm looking around the room, and seeing people who know-- I think, honestly, have forgotten more about tech policy than I will ever know. There are people in this room, who have been working on these issues, since before I was in law school.

Since back in the days, when I was working on-- trying to reconstruct mortgage backed securities, and looking at very, very different issues.

[00:11:40.54] I want to acknowledge that even us, having this conversation, is because we stand on their shoulders. Of whether it's the academic prowess, the ideas, the work, we stand on their shoulders, to even have this conversation. But for the students in this room, the reason why I'm here, is because I don't want you to be discouraged that other people's tenure makes your ideas any less important. And I think that when we're having these conversations, sometimes we forget about having to have imagination.

[00:12:11.44] We forget about having to have accountability with people, who aren't as entrenched and indoctrinated in the way we think about it, to come to the table and say, hey, if that hasn't worked for the past 15 years, why don't we try something new? And for them to be able to say that, without that being a threat to everyone else's tenure. So I encourage everybody, in these conversations, today. And I know that it's the last conversation in this conference. But to really ask yourselves, not necessarily about the things that came up today. But what are you going to do about it?

[00:12:41.74] Because I think, so many times, we come into these rooms, to high five each other on what's working, or maybe what we've abandoned, and give ourselves a little bit of credit for that. And we haven't made room at the table for people who might have some of the most extraordinary ideas. But they aren't necessarily cloaked in the organization that gets airtime. They don't have a platform to share it. And I just, maybe think, me, even being here, is just to make sure that they have a way in.

[00:13:07.42] GABRIELLE DALEY: Thank you for that. OK. So I want to move us into our first main question here, which is to start talking about some of these impacts. Right? So what are the impacts that you are seeing, of digital inequity on individuals, on communities? And to tie that to this motivational piece, that we just touched on? Actually, Francella, could I ask you to start us off with this one, and then we'll open it up?

[00:13:33.85] FRANCELLA OCHILLO: So maybe if I could focus on-- because I know that other panelists are going to focus on, what's at stake. And specifically, like harms, and what are the things we should be thinking about. But my scholarship, outside of NCC, focuses on what's the collective effect on people who are connected. I think we don't talk about that often enough. That when we have high populations of people that do not have direct access to connectivity, or don't have reliable connectivity, there's actually a tax on their entire community. And an actual indirect cost to the connected populations.

[00:14:06.22] So, for example, if you are in a place for example, like St Louis, Detroit, Philadelphia, Baltimore, Stockton, California, places like

that, where you have high concentrations of blocks after blocks. Where you have people that do not have reliable access. The issue isn't just getting them connected with a low-income plan. Or saying, let's provide some sort of access at a school or a library.

[00:14:31.56] We should be also talking about what is the cost for everyone else in the County, when you have high populations that are concentrated? That essentially, not only are going to pay more, for service that isn't as good. They don't necessarily have computing devices or the digital literacy, to be able to take advantage of those advances in technology.

[00:14:52.38] What happens to their wages when it's slightly lower, in that center pocket? Because everyone else who's connected to them, pays a little bit more, doesn't make as much money. What does it cost, in our social service costs, when we pay more because they don't have preventative care?

[00:15:07.08] If you go to Washington D.C. If you're in Anacostia, there is no hospital for people to give birth. So what happens? Most of those women get no preventative care. And the first time they see a doctor is when they go to the hospital.

[00:15:19.56] So all of us, who are in my ZIP code, on the Fifth Ward, we all pay more money, because that hospital is in my neighborhood. And so people aren't talking about the fact, that I still pay something for them to not be able to get on, maybe, a Telehealth appointment that could have avoided some complications. We pay for it.

[00:15:37.75] So I do want us to be mindful of the fact, that it's not just the cost to the household, that's disconnected. There's actually a cost to [INAUDIBLE], to all of us who are connected and adjacent to them. And so that cost might show up in reduced academic rigor. It might show up in higher health care or other costs. It might show up in us having less competitive workforce, whether it's at the state or the domestic-- or the national level. It also shows up in us not being as competitive with other countries.

[00:16:07.08] Because essentially, when we don't have that type of training. And when we think about, who are the people who are digital natives. who are going to have very different career options, and also higher earning power, as opposed to people who might be getting emails for the first time, last year, during the pandemic. Those people might always work in hourly jobs, where they work with their bodies. They don't necessarily have access to the same assets, and the same income, that we have.

[00:16:35.65] And so as long as they work in hourly wages, there's always a cost, for all of us. So I do want to make sure that that's part of the conversation, because it very rarely gets any headlines.

[00:16:47.25] KATHRYN DE WIT: Before-- I think, as several of you-- many folks, may be taking furious notes, right now. Let me also be clear. Plus, I want to reference what Francella said. But also, let's be very blunt about this. Access to a broadband connection, and your basic digital literacy skills. Access to devices. These things are not going to solve structural inequality.

[00:17:11.34] They are not going to solve structural societal issues. They can't do that by themselves. That's not what they can do. But when we think about this, in the context of how we are applying these investments in technology, in skills, in access to devices. How are we pulling those investments, and pushing them towards work, and workforce development? Thinking about increasing access to health care.

[00:17:35.22] How are we looking at other systems that rely on these connections? That rely on folks needing basic digital literacy skills? This is the bridge that we need to start building, between the field that we work in, and all of these other industries and disciplines, that rely on the work that we are all doing on a day-to-day basis.

[00:17:58.63] And so as we think about, looking at the impacts of digital equity. One, when we look at measurement, the first question is always, did we achieve what statute told us to do? First order of importance.

[00:18:12.91] The second is then, how are states talking about their priorities and spending? What are they tying that to? And how can we really measure that? And how can we measure that in a way that's meaningful, recognizing that it is really difficult to draw a macro conclusion around the economic impact of broadband, on GDP?

[00:18:37.98] But can we talk about it at the local level? Can we talk about it at the neighborhood level? That's what we talk about with digital equity programming. Take it to the locals. Let it reflect local need, local priorities.

[00:18:48.97] So we have to implement our evaluation plans and evaluation strategies, to reflect those priorities, and tie them accordingly. I think that the other thing too, to Francella's point, one of the benefits of COVID did help, again. And help us ask better questions, in our understanding around cost affordability. And more importantly, cost burden on households.

[00:19:15.94] One study that came out from the California Emerging Technology Fund, found that about a quarter of those surveyed, said that they cut costs on monthly household necessities, in order to pay for broadband. That doesn't tell [INAUDIBLE]. But that helps us ask better questions.

[00:19:32.80] So to the students in the room, I think it's also important to look at research, not always as, OK, this is going to provide us the

answer that we need. It's going to give us the direction that it needs. But how are we asking? How are we collecting data? How are we asking better questions that will eventually lead us to the outcomes, that we need to identify?

[00:19:53.59] GABRIELLE DALEY: Brandy, can I invite you into the conversation? So what are some of the impacts of digital inequity, that you were seeing on individuals and communities here, in Colorado?

[00:20:01.54] BRANDY REITTER: Yeah. Thanks, Gabrielle, for that question. The State of Colorado, we're pretty tuned into the digital equity conversations. It's a huge part of the digital divide, connecting our communities. And what is it? It's access to internet, but it's also affordability. It's devices. It's literacy, as my colleagues mentioned. For the State of Colorado, we did a strategic plan last year. Because you have to know where you are, before you know where you can head.

[00:20:32.68] And so data collection is a big piece of understanding how to prioritize, and what's important to communities. Also, understanding from a stakeholder perspective. Engaging stakeholders across communities. And even within the state agencies, we did a lot of outreach. We talked to over two thousand residents, 180 local governments. And talked to nonprofits serving marginalized communities, to get to collect the data that we needed to figure out, how big is the digital equity gap.

[00:21:06.31] And so I was kind of surprised by the results, but not surprised. For us, we know we have about 166,000 households that are not connected to high speed internet, or adequate internet. And a little over half was just physical infrastructure. Like we don't have fiber. We don't have wireless. I just use my cell phone when the cell tower works.

[00:21:28.90] But the other half, which was around 44%, digital equity was the reason why they could not connect. They literally have those assets sitting outside their house. They cannot connect, because they can't afford it, which was the number one response. They could not afford their internet bills.

[00:21:44.47] And so when you're looking at prioritizing your household budget, internet, depending on how your situation, you might not pay for it. Thankfully, with programs like the Affordable Connectivity Program, and other programs, subsidies that we provide at the state, we're able to provide a little bit of relief for residents. I feel like it could be more. But it's super helpful. We have around 24% of eligible households in the state, signing up for those programs. And so we're doing a lot of outreach.

[00:22:15.73] As a state, you have to do a lot of outreach to promote these programs. Residents in our communities are not-- they don't live in our world every day. So you have to figure out, where they are. A long time ago, I used to think that the local newspaper was a thing of

the past. It was a relic. But then I realized, over the years, that that's how most people, a lot of people, get their information.

[00:22:39.35] And so we figured out a really great way to cross-promote, and have our materials promoted by other local media outlets, to advertise for a lot of those programs. And we've saw-- we saw an [? uptick ?] those programs, because they're just not readily available. Or they're not readily advertised.

[00:22:57.88] Devices. We're looking at devices. We partner with our library district, our school district, to figure out how to get people to devices, they need. Nonprofit partners, and other really great option that we have, there's one that I particularly like. It's PCs For People. They're a local nonprofit. They refurbish outdated PCs that people cycle out through the businesses. We have a three-year replacement cycle.

[00:23:25.51] A lot of those devices are pretty-- can still use them. And so it was really great. Because I ran across them, several weeks ago. And they saw their demand increase significantly. I mean, they literally quadrupled their business during COVID. And they continue to see requests. So really partnering with those local providers, to provide these low-cost devices, has been helpful.

[00:23:49.51] Digital literacy is a tough nut to crack. That's what I tell people. And so what we have done, as a State of Colorado is, we partner with the Office of Future Work and the Colorado Department of Labor and Employment.

[00:24:04.00] And what we do there is we did a pilot of digital navigators in the Southwest part of our state, around Durango. And we leveraged Fort Lewis State College. We also leveraged the tribal nations down there. And we hired some digital navigators to go into community, again, at the local level.

[00:24:23.92] Because you know what? You're going to know your neighbor. You're going to be the most comfortable with your community member, your fellow citizen, and maybe, somebody at the State of Colorado. And so we hired a bunch of local navigators to work with those vulnerable populations.

[00:24:36.79] To help them skill up, learn how to use the internet. Get access to devices that they didn't have otherwise. And a really great part about that is, from a workforce development perspective-- and this goes back to my earlier statement, about participating in the economy.

[00:24:52.63] A lot of jobs, they're technology-based. You have to use a computer. Now, there's jobs that you don't. But even then, you still have to clock in, using a time sheet. Right? So you're using technology, regardless of what your role is. And so through our Digital Navigator program, teaching people how to use the internet. We're indirectly

helping them skill up, for some of those jobs, that are existing in their area. So it helps them prosper economically, financially. And participate in their local economy. And so those are some of the things that we've done.

[00:25:26.05] For us, the affordability access. We had at 166,000 households, 93,000, it's physical access to internet. The other 73,000-- or 75,000 is for digital literacy. So we have a lot of households we have to serve. And part of the state's role is to hear from communities, design local solutions. It's not a one size fits all in Colorado.

[00:25:53.56] The geographic areas are very different, the topography. Our communities are very different. We have urban. We have rural. We have Eastern plains. We have resort towns. You name it. We have it.

[00:26:04.79] And so we work really closely with our local communities, to design those local solutions. Libraries play big p-- a big key. They're a big partner in the digital equity space for us. A lot of the folks that don't have internet do go to the library. So we focus really intently, on our community anchor institutions in these communities, especially, the really rural ones. Our school districts. So we use our libraries, to deploy resources and digital literacy programs, to those communities that don't-- they're pretty remote. Or not remote. Because even in the urban areas, we have issues.

[00:26:42.07] Partnerships are key. The Carter Broadband Office, we can't do the work that we do without Carter Department of Labor and Employment, the Department of Local Affairs, which is our local government liaison agency. As well as libraries, and the Department of Education. And our local nonprofits. So we leverage a lot of folks to get this work done. And then the other piece to it, as well, which we were working on last year. And we're rolling it forward, especially with all of our digital Equity Act planning and distributions of funds, is evaluation.

[00:27:15.52] Going back to those interventions that we prioritized over the last couple of years. And evaluate, how did it work? Do we actually serve-- do we serve and meet the needs of the community? For people more literate on the internet, how many devices did they get? And so the evaluation piece is key. I always talk about that. Because I think sometimes, in government, we have a lot of whiz bang ideas. And then we forget to evaluate, after the fact. And then we have to respond to our local elected officials, how did we do.

[00:27:46.43] And then when you learn something. Lessons learned? We've had a lot of lessons learned over the last 12 months. I've been in my role, 12 months. That what works, and what didn't work. And how do we tweak those interventions and solutions, to make them work better for our communities? And then, the one thing that I'll let you guys know, on a personal note. For digital equity, I was a recipient of digital equity back when I was in college.

[00:28:14.50] I was at the University-- I was at the University of Southern Colorado, before it was the Colorado State University of Pueblo. And I was a low-income student. And I did not have a computer at all. And so I didn't know what to do. But I found this program through the university. And this goes back to partnerships. They were advertising in our dorm that you can get a computer for free, or donate \$75.

[00:28:40.06] So I gave \$75 for my first PC. I mean, it was a huge PC. Everybody had some really slick ones. But I was on my-- I used that computer the whole time I was in college. And if it weren't for that, I wouldn't have had that computer. So it's not just people that you don't know. But it's people like me, too. And so those devices, and helping folks that just don't have the resources, participate successfully, is very important.

[00:29:09.71] So those are some of the things that the State of Colorado is doing, and we continue to do. And quite honestly, this digital equity is an ongoing effort. It's not something that just starts and stops with the IJA funding, or any other funding. It's an ongoing process. And the state of Colorado is really putting a lot of resources behind it.

[00:29:30.20] GABRIELLE DALEY: [INAUDIBLE] talk about digital equity, from what you're saying, at the federal level?

[00:29:34.63] JUSTIN FAULB: Sure. It's very hard to follow these three, who have been so eloquent about the importance of digital equity. I think the only thing that I'll maybe add, on top of their comments are, really, in the modern economy, you have to be online. If you want to have a job, let alone, skills for a job. You have to apply online. If you want to get health care. Generally, you set up an appointment online.

[00:29:56.63] If you want to go to school. And there's a snow day. There's no such thing as snow day anymore. You have to go to school remotely. You can take classes on nights a week. And so it no longer is a thing, where you can get away with participating in our modern economy, without it. I also want to throw a little credit to Andy Schwartzman, who I was talking to with this weekend. And he had made a really good point.

[00:30:17.57] And he has said, oftentimes, we think of digital equity programs as a welfare program, when it's really not a welfare program. What it should be, we should be talking about it, and a way we should be looking at it is, really, a stimulus program. Or a program that raises the boat for everybody because as soon as you get somebody online, you're educating them. They are participating in the economy. Maybe they're spending money.

[00:30:37.34] They're adding value to the country, to the discourse, in a way that brings everybody positively-- a positive reaction, or a positive benefit. So I think that's a really important point. And a great way to look at it, that we should all keep in mind. But I can't take credit,

myself. I do also want to add, from a nationwide scope, for me, what the problem is. If we look at ACP eligibility, we're looking at about 48 million households that are eligible.

[00:31:01.73] ACP eligibility is based upon 200% of the federal poverty limits. It's about \$54,000 for a family of four, give or take a little bit of money. So you're looking at a large number of people. And right now, we have approximately 60 million households signed up in the ACP program, through the FCC. So there are a lot of people that are getting helped. But that is a big number that we're still looking to try to help, and get connected. So there's a lot of work to be done.

[00:31:30.55] GABRIELLE DALEY: Nirali, you want to round us out? From your perspective, what are some of the impacts of digital inequity on individuals and communities, that you're seeing?

[00:31:36.91] NIRALI PATEL: I was just going to touch upon, hopefully, something that I think each of the panelists have said. But with Kathryn mentioning that the COVID-19 pandemic did give us an added understanding of the digital divide. Is showing us, both the promise of broadband, as well as the urgent need to connect everyone.

[00:31:56.44] Broadband providers invested heavily in their networks, in the two decades preceding the pandemic. And that enabled our networks to really be there for the country. And enable the country to keep going, with working from home, schooling from home.

[00:32:13.55] But then the pandemic also highlighted the persistent gaps in deployment and adoption, that need to finally be closed. So that everyone can participate fully, in the digital economy. Take advantage of the opportunities-- access to Telehealth and better health outcomes, educational opportunities, the other pillars, that Brandy was mentioning. And I think this is all the more important now, that so many, as Justin was saying, critical government services have moved online post-pandemic. So it's all the more important now.

[00:32:45.01] GABRIELLE DALEY: Now that we've talked a little bit about the issues, whether that's trust in the programs, getting information out about them, lack of digital skills. Problems with access to infrastructure. Access to devices, or affordability. We've got a big problem to solve. So let's talk about the solution a little bit. Let's talk about universal broadband.

[00:33:06.53] So I'm going to open this up for the panel. What could universal broadband availability and adoption look like, in the United States? Francella invited us to use our creativity. So let's put our thinking caps on.

[00:33:23.62] FRANCELLA OCHILLO: I think when we talk about universal broadband, one of the things I also want to make sure is, we're thinking about whatever that is, however you finish that sentence. Whatever it is needs to be sustainable. And so this idea of

injecting billions of dollars into a problem, to say, oh, we solved it, everybody high five, is just unrealistic.

[00:33:42.20] And so if we know that we're going to have to come up with lasting solutions, we have to think about, well, who are the partners that are going to ensure that whatever program you started today, can outlast the mayoral administration, the governor, the gubernatorial administration, the presidential office. Those programs have to outlast those administrations.

[00:34:01.90] So we have to make sure that we have local partners, that are not only part of the implementation, but also part of the ideation. And we don't often enough ask them, to actually contribute. To actually talk about what their communities need. I think, very often, there are assumptions made. One other thing that I do want to point out is, when we're talking about-- Justin brought up something. And Andy-- I mean, a tech policy Titan. I'm so glad you guys were talking about that.

[00:34:31.54] It worries me when I visit cities. I visit a lot of cities. I was just in El Paso. A place where on average, most households of four, only make around \$51,000 a year. That doesn't get you as far-- very far, and especially, in terms of food cost, housing, all sorts of other things. And when we think about the fact that, literally, it's something like, around 2/3 of their population is either struggling with affordability devices, or even just knowing how to use whatever technology is available to them.

[00:35:03.05] So that's something that everybody has to be thinking about, all the time. Us injecting money into the state of Texas isn't necessarily going to reach that population. Because there are a whole list of political reasons why it's like, ah, I don't think so. So what are we doing to equip those local leaders, to be able to generate solutions for themselves? And to also make sure that it goes beyond politics? Because it's very real. It's a very acute problem for them.

[00:35:28.76] And when we also look at cities, whether we're talking about Rochester, St Louis, West Monroe, Louisiana. All sorts of places. Outside of the suburbs of Milwaukee. I mean, when you go to these places and show up. When we talk about low income programs. Let's remember the digital divides that we have. Many of the low-income areas that were passed over in deployment, contributed to the deployment in affluent areas nearby.

[00:35:55.89] We use some of their tax dollars, to invest in other places that were more profitable. So when we are creating programs, to make sure that they can catch up. That is not charity. That is equity.

[00:36:09.64] And so I want to make sure, when we're framing that, we acknowledge the fact that they contributed to this. And so when we are going back to say, maybe this community needs a little bit more

tenderness, a little bit more resources. Whatever it is, that's just out of fairness, not because it makes us feel good.

[00:36:27.18] And my last note about just the idea of universal broadband. I worry that when we are in a process of reimagining, what goes into that. Not just getting everyone high-speed access in their neighborhood but making sure that they can actually get that connection across the threshold of their front door. What goes into actually making sure, every single one of those residents, can benefit from technology? We're going to have to come up with a better plan, than hoping they have a school or a library, nearby.

[00:36:56.64] Because that works in places where they have it. But if you have been to some places, that do not even have a library in their area. And those aren't just urban places. Those are rural places, as well, that depend on their community colleges and other places, to plug in. What happens when they don't have an option?

[00:37:15.84] So we do need to think about this [INAUDIBLE] of us pumping money into access, acknowledging that adoption is a problem but having this imbalance, the way that we're investing in it. We're just still continually looking at a problem of adoption, and saying, we hope the local and state officials work it out. And there aren't enough people, like Brandy, with stories that are very close to this issue, that actually have an incentive to bring other people into the problem-solving.

[00:37:44.96] And so I think it's really important for us to be aggressive and deliberate, about making sure, that when we are crafting programs about universal adoption for low-income populations-- I'm going to say this, and this is going to blow your mind. Maybe we bring low-income residents into that program, that conversation. That's an easy way to get ideas. Instead of just having people who have, make assumptions about low-income households.

[00:38:09.31] And so these are the things that shouldn't be these-- I'm not saying that to disrupt the way people have always done things. What I'm saying is, that's the only way for us to do something transformational. Otherwise, we are putting lipstick on a problem, that's just going to revisit-- we're going to have to revisit in different ways, five and 10 years from now.

[00:38:32.74] KATHRYN DE WIT: [INAUDIBLE]?

[00:38:34.21] NIRALI PATEL: No, you go ahead, [INAUDIBLE].

[00:38:37.07] KATHRYN DE WIT: My standpoint, the universal broadband, to Francella's point is, we need to, one, be thinking about sustainability. But if you're looking at this purely from the perspective of public administration and governance, which is what I do. We are going to be looking for a couple of key things. The first question.

[00:39:01.53] If I'm working with a state legislator, the majority of which, actually, are rural and conservative. Those are the ones that we worked with, leading up to a lot of the work pre-COVID. And through COVID. And now, quite frankly. Because they said, we need to focus on this. And we need to fix this problem, because our towns are dying. So when they come in. And we sit down, and we say, OK, let's talk shop here. What are we going to do? It always comes down to policy.

[00:39:29.82] It comes down to money, enforcement. And then, also remembering, to Francella's point, and I think all of us have made some version of this point. Politics matters here. So we may not always be talking about it as digital equity.

[00:39:45.30] It may be digital opportunity. It may be talking about agribusiness. It may be talking about health care access for seniors, aging Americans. Think bigger, and think broader, about how folks are talking about the implementation and use of these funds.

[00:40:07.41] And remember to-- I'm stealing your point, and tweaking it. Sorry. But we need to be inclusive. Creating inclusive policies means being inclusive.

[00:40:17.26] And so when we are looking at these things of, how are we going to get to-- what does universal access look like? It is, how do we achieve the metrics that we started out to achieve? How have we continued evolving policy, and funding, and resources, and enforcement, to meet those needs? And then, how have we evolved strategies, to continue meeting the ever-changing needs of our communities, and our economies?

[00:40:42.30] Because that's not static. And nor do we want it to be static. So be open-minded when you are talking to legislators, and when you are talking to other stakeholders, about why they're interested in working on these programs because they may not talk about it in the same language that I do, or anybody else, up here, does.

[00:40:59.29] But take that step back. And really think about, OK, well, how does this connect to the work that we're doing? And bring them to the table. And figure out, how you can work them into the solutions that you're trying to solve for.

[00:41:11.89] NIRALI PATEL: And I think we're going to be talking about, some of the attributes of successful digital equity programs and collaboration efforts, later. But just going back to the beginning, of one of Francella's comments, to this question. I think, when it comes to availability, what universal broadband availability looks like, and whether we can get there, is going to depend on making the most of this historic \$42.5 billion of V funding.

[00:41:39.13] And there are so many complex issues that NTIA, and the states, have to tackle, in standing up this unprecedented program. But

I think one of the more straightforward keys to success will be, insisting on partners with a proven track record of experience. And so with deployment, the Infrastructure Act has requirements around financial, technical, managerial capability. And for good reason.

[00:42:04.47] Experience matters. And getting everyone connected as efficiently as possible, means prioritizing those providers that have the expertise to build and sustain-- excuse me, sustain these networks, for the long haul. And so it's just-- that's going to be critically important.

[00:42:21.39] JUSTIN FAULB: Take a turn, real quick?

[00:42:22.41] GABRIELLE DALEY: Yeah. Go on.

[00:42:24.18] JUSTIN FAULB: And so from the FCCs perspective, I think the answer has to be a combination of technologies. We talk a lot about fiber, right now. But if you look at the way that we study broadband deployment in the United States, at least to the FCC. And things like our 706 report, which studies whether broadband has been deployed, or advanced communication services, [INAUDIBLE] real-- a techie term-- or our CMR report, which is the communications marketplace report. Which is a gigantic, broad scope report, we put out every two years.

[00:42:53.67] We study fiber. We study cable deployment. We study satellite. Fixed wireless and mobile wireless. So there's probably going to be some sort of combination of all of these services, to make sure that people can be connected. And it's something that, I think, we need to keep in mind, as we're discussing the solutions because \$42 billion, if we deploy fiber everywhere, is not going to go as far as if we deploy it in places where it's reasonable to deploy, and look at other solutions, elsewhere.

[00:43:19.69] And for the students, I wanted to take a sub-point, but not actually take the panel the point. There is a proceeding of the FCC on digital discrimination right now. And that is a proceeding to look at, and try to determine whether, in the past, maybe digital discrimination has occurred or hasn't.

[00:43:35.25] But also, how to ensure it doesn't occur, going forward. Especially, given some of the funds that are being spent. And so that's a really important topic. It's open. So I want to talk about it. But it's a great thing for you all, to look at, as you're looking to see, what are the big issues that are industry is going to be looking at, going forward. And something you might want to be focusing on.

[00:43:55.39] BRANDY REITTER: Just one last point. Yes. So all of that, obviously, and for Colorado. And I'll just be quick. Universal broadband coverage for the state looks like closing the gap of 14% of our locations. That 14% of our locations will probably make up 80% of the funding that's going to be deployed. And so we have approximately 360,000 locations that are unserved or underserved. So

universal coverage, it means closing the divide of 14% of those locations.

[00:44:27.64] One thing that I just wanted to add to the panel. Because everybody had really great points that I agree with, and make a lot of sense, in universal coverage and bridging the divide for good. Is the community education is really important. And going back to finding what language works. Equity is a trigger word in half the state of Colorado. And I love the idea of digital opportunity, and why is it relevant.

[00:44:51.50] And so when we're going to communities that don't necessarily have the sophistication, or understand why it's important. I think, finding those little pieces of relatable action that you can help them address. So agriculture. You have to run all your ag-- a lot of your ag equipment, off of internet. And one of the things that I talked to communities about, especially, really rural ones, is what can you do to participate in closing the digital divide.

[00:45:18.34] Because half of it's fun. And the other half is when they show up to your office for a permit. And so we can't have one without the other. And so when we're talking to communities as a state, we set up a broadband community ready program, which is a volunteer program, which helps educate communities that don't know. Because being in community, I used to be a city manager. And I've been in those communities, where I didn't know much about broadband, and how it works.

[00:45:47.02] Reaching out to them and saying, hey, this is why, when ISPs come to you, this is what you need to do to make sure you're ready to receive them. Because if they get funding, and you have to wait two or three years to deploy it, you're not going to achieve the results. So working directly with those communities that we know, that lack that education, has been something that's been really helpful.

[00:46:09.14] We've talked to mayors, city council members, board members, commissioners, and everything. They're like, what can we do to help you? It's like, well, let's take a deeper dive in your own backyard, and figure out how you can become ready, so that you can serve your community. And finding that common language, and breaking it down, so that they can understand it. Because it is complex. And there's a lot of moving pieces and stuff. So that was just one thing that I would add, is just the community education piece.

[00:46:38.09] GABRIELLE DALEY: So I want to pick up this piece about successful digital equity programs. And you've talked about what Colorado is doing. So I want to transition now, to Kathryn, and say-- or to ask, really. What are the examples of successful digital equity programs, that you are seeing in your research? And what lessons or scalability can you learn from that?

[00:47:01.87] KATHRYN DE WIT: Yeah, I think, going back to the point that I made earlier, about how we look at this. It really is about, how is the state defining digital equity? And one is starting with that. What's our goal for universal coverage? And to Brandy's earlier point-- thank you for making this-- it's going to look different in each state. Yes, they may all be shooting for 100%, 98%. But it's going to be more granular and specific than that. So that's really where we start.

[00:47:27.79] But it does come back to policy enforcement, funding. And how are they really tying it to other policy priorities. And I think, to that point-- well, I'll come back to that. But specifically, we were still looking at the implementation. I work for a research organization. So this stuff takes time. But looking at the initial research that we did on state programs, we really did find that the most successful programs were ones that took deliberate steps, in these areas of policy enforcement funding.

[00:48:00.54] Colorado is one such example. An example is converting the high cost fund, and being able to use that for deployment. California is really the state that not only had the most comprehensive approach, but it also has been doing it for the longest. They have a task force that is separated into subcommittees, that focuses on specific issues of importance. Whether that's tribal connectivity, affordable housing, or really planning for the future.

[00:48:30.21] Because the state had taken this digital equity is important for the overall health, and sustainability, of the state. Because they have been taking that approach for so long. That's really why you saw, Governor Newsom, taking the steps that he did. And setting up such a bold strategy, with the federal funding, that they're implementing now, particularly, for the open access model program-- or Open-Access Middle-Mile Program.

[00:48:54.54] Looking at things, like the spend, and then enforcement. A state like Virginia, they've got a pilot program on affordable housing. So how are their end-line extension? So how are they really getting to the hardest and most expensive communities, to serve? By setting aside funds for specific uses, and for specific communities. Again, rolling in that affordability piece to this. Because this is about the business case. And if you think you can divorce the two, you cannot.

[00:49:24.51] The last piece is enforcement. It's reporting. It's super sexy. So are you asking for the right information? Are you sending people out in the field, to do the field verification? And are you also getting feedback from community members? Are you really testing and probing against what is being reported, to verify that it is accurate? So I think that that's really what we will look for, generally, moving forward. And really, how is it embedded in the state's operations? And what are the goals that they're laying out?

[00:49:52.78] GABRIELLE DALEY: Nirali, did you want to weigh in, here, on the provider perspective on successful programs here?

[00:49:58.72] NIRALI PATEL: Sure. Just to add on. Our members have been working with public sector, and also nonprofit partners, to really focus on programs that tackle multiple barriers to adoption. And rely on trusted voices in the community to help address those. So examples include working with local public housing officials, and nonprofit partners. Not only to raise awareness about the Affordable Connectivity Program, and help residents sign up, but then also having techs on hand, to help them set up their Wi-Fi.

[00:50:35.29] Having learning centers that provide access to Wi-Fi and devices other than smartphones. But then, also, having access to digital skilling content that's been created in partnership with public libraries. Things like that. And then, to a point Brandy was making, earlier. Beyond adoption, workforce development programs are so important to advancing digital equity.

[00:50:59.77] Our members have partnered with high schools and community colleges, to develop STEM curricula, to prepare students from underrepresented communities for jobs in tech. And they've partnered with tribal organizations on apprenticeship programs, so that residents can develop skills to deploy and maintain broadband in their communities. So things like that, I think, are going to be really important, going forward.

[00:51:28.52] GABRIELLE DALEY: Thank you. So I want to get us to our discussion on broadband subsidies. But before we do that, Justin, could I ask you to weigh in, about the FCC's role on deployment and adoption, zooming back out to the federal level, again, now that we've had this great discussion of local efforts?

[00:51:44.75] JUSTIN FAULB: Sure. I feel like some of the students probably have a whole class on this. So I'm going to go quick, because I know we want to leave time for other questions. So the FCC, historically, has been that agency dealing with broadband deployment. It's really great that we have now had so many partners, with so many different viewpoints and expertise, coming in. Including NTA, and Allen, which you all heard yesterday.

[00:52:05.56] RUS has long been a group that has worked with the FCC, to ensure that broadband deployment is going out. And one of the reasons why the FCC is so important in this, is we control and collect a lot of data. So we put out the reports, I talked about earlier. You may have heard, if you're in this industry, there are some maps that the FCC is putting out, that are very important to the BEAD programming, to everybody else. And that will determine, and help show, where underserved and unserved communities are.

[00:52:32.95] The FCC also, for a long time, has set the stage, for what broadband is through different reports. As well as our universal service

fund, which helps support schools and libraries. Help support telehealth. Help support deployment in high-cost areas. And it also helps support service for a program called Lifeline.

[00:52:52.30] But as part of that, we would help identify where it's unserved and also, the speeds that are necessary for companies to receive the funding, which sets the baseline that other companies would be trying to compete, going from things back in the day, like a [? 4.1 ?] to [? 25.3 ?] and now 120, which is also in the BEAD program. So the FCC has long been working on this, and has been the agency because of our expertise with the telephone system going back to 1934 and the natural transition of technology into broadband that people are looking at.

[00:53:25.60] On affordability, that has been a little bit more of a recent program with the ACP funding that we've been really able to get out. While NTIA is focusing on let's make sure broadband is everywhere, we are really trying to focus on let's make sure if it's everywhere that you can actually get to it. And some of our panelists have talked about, look, if you are a low-income household, you have other expenses, broadband is really hard.

[00:53:49.30] And I think the better way to look at it is, if you are a low income household and you can't afford broadband, if you can't afford for food or your housing or heat, then you really don't have a choice at all. So we're trying to find ways where we can eliminate that choice. And through a lot of [INAUDIBLE] there are a lot of Nirali's and other industry partners-- technology literacy is very important too.

[00:54:14.83] [LAUGHTER]

[00:54:20.46] But there have been a lot of companies that have come together to ensure that they're offering broadband at a \$30 a month price, which is the exact amount of the ACP subsidy-- to ensure that broadband is either free or subsidized to a very low amount of money, so that we can get as many people signed up. So that's some of the work the FCC has been doing. I'd be happy to talk more after this, but I want to make sure I don't tie it on the program,

[00:54:41.64] GABRIELLE DALEY: [INAUDIBLE].

[00:54:45.95] FRANCELLE OCHILLO: --just about the FCC, because I think I want to give credit where credit is due. I think the FCC particularly is recognizing the importance and urgency of making sure that it fulfills its promise of universal broadband. I totally agree with that.

[00:55:02.13] But there are a lot of things that are just not structurally a part of the FCC. For example, the FCC has always had very, very lopsided power dynamics. And so there is overrepresentation of companies and underrepresentation of residents who aren't connected.

[00:55:20.42] So the problem is that the voices that are constantly being piped into the FCC that, eventually, really, sometimes, their voices are adopted verbatim as orders-- the issue is that the people who don't have agency, who aren't on the workgroups, who don't know where to file digital discrimination comments are never a part of the dialogue. And so that's the part where I think that we're at a moment where people are seeing how insidious that has been in terms of how that actually shows up in a community, because for a long time, we could hide behind the internet's new and it's really a luxury. And it was really very strategic to even use that language, to call it a luxury, because then it made it OK if everybody didn't have it.

[00:56:03.00] And I'm not saying that that's intentional. I'm saying that that's just real. And whether or not it's intentional, that was the impact.

[00:56:09.03] And so when we're in a moment where we have to start questioning structures, and thinking about why have we been doing it that way for that long, when we're thinking about examples-- Gabrielle, you just asked about places that are doing it well. When I think about how brave it was for the state of Wisconsin to, in the middle of a pandemic, say we are going to take mapping into our own hands, and literally asked residents to go outside, use this speed test, and send us your information, just because they felt like they didn't know what else to do. And so that was really brave, because they started a whole bunch of other states saying, hey, well, we could do something more.

[00:56:44.81] Places like Fort Collins, Colorado, used to have a meeting. Once a year, they had a meeting where they just dream about what they can do with broadband. That is outrageous, that they literally ask a representative of every single city department to come to a meeting, so they can dream about how they can do it better. And then they have to report out on what they are doing to advance universal broadband goals.

[00:57:05.78] When you go to Arlington County, Virginia, one of the places it's one of the most connected counties in the United States, they still have a problem with low income households being able to adopt in their home that rely disproportionately on libraries and schools. And even they say, you know what, it's not enough for us to have a broadband office working on it. We need to make sure that we have people who are tasked with this as part of their area of responsibility in housing, in education, in the library services, in social services where we hand out food coupons, and think about who's getting housing coupons. They want everybody thinking about it.

[00:57:40.08] And so I just want to encourage people in this room that it is not enough for us to just think about the way the structures are set up right now and say that's enough. We have to be in a place where we're OK with saying, yes, we need to do all of these things with the money that's coming in and we need to do something else. Because very often, when we talk about government agencies, we say, yes, but.

[00:58:03.92] Yes but-- so hard. Yeah, we need this, but it's too hard. It's too expensive. We don't enough resources.

[00:58:09.15] But if we were talking to a company, we'd say, yes, you should do it. Yeah, we'll give you money to experiment. Sure you should get those subsidies. If you didn't get it right try again. And we don't mind.

[00:58:20.04] So I'm saying maybe we're at the moment where we can say to our government agencies, "yes, and." Yes, I need you to do this, and I need you to rethink why we do it the way we do it. And so that's why I think it's inadequate for us to just stop at "yes," and then talk ourselves out of what we should be doing with "but."

[00:58:37.79] And I think just to bring it back to one example-- I don't know if it's appropriate for me to bring it up, Gabrielle, in a different capacity when we were working with the University of California Berkeley Law School, working on a report that was so incredibly important to me. I think it's an important way for states to hold themselves accountable, to actually partner with an academic institution that keeps them accountable on an ongoing basis. Look at Indiana and what Purdue economic development's department is doing. That holds them accountable to actually say how are you investing, and are the people who need it getting the money. So we were working on low-income programs last year with a program that Gabrielle was involved in.

[00:59:19.07] One of the questions that came up from the students was, what happens when you have people, all of the court hearings were being translated, basically converted to being online. And what happens when you have one person in the room, the defendant, who is the only person on the phone, and everybody else is on video? What happens then when we are making decisions for people and cutting them out of it?

[00:59:44.11] And so we ended up doing this entire access to justice report. The students actually went out, questioned social service providers. They questioned public defenders, all of these other people. And shockingly, most of them didn't even know about low-income broadband programs. They were talking to the very population that needed it, and didn't even know about it.

[01:00:04.34] And so it goes back to maybe that's a cue for us to say, yeah, the ACP program's awesome. But we also need the FCC to do more community engagement. It can be both. And there's something at stake for the people who are on the phone for us to get it right and to ask hard questions and to be uncomfortable with the answer.

[01:00:24.23] And so I think just in general, when we're having these conversations, it's hard for this to be clinical for me because I show up in town hall meetings. I sometimes help people with their slide decks. I talk to the constituents.

[01:00:35.62] And all the time, what they tell us is that we don't know where to go, but we know this is a problem in our neighborhood. And so it behooves all of us to find a way that, even if we don't know how to get to that neighborhood, that we go into our own meetings and ask about who is at our table. And have we done enough to stretch in our office, in our organization, and our constituencies, instead of making assumptions about the people we say we serve?

[01:01:05.36] GABRIELLE DALEY: [INAUDIBLE] go ahead, Nirali.

[01:01:07.16] NIRALI PATEL: If I could just add to the comments Francella was making. Of course, there is more to be done, I think, by all stakeholders involved as far as continuing to raise awareness about the ACP program, and getting digital navigators to help eligible consumers sign up. But I think the other thing I wanted to just touch upon is that the program, having nearly 16 million households enrolled as of last week and more than 1,300 providers participating in it, does need to continue.

[01:01:42.42] And yet, funding for the program could run out early next year. And so it's going to be critical that Congress provide additional funding for ACP. Broadband prices have been falling and running counter to inflationary trends, but the ACP program needs to continue for those who need it most. And it's just going to be something that must be done in order to continue addressing all of the issues that we've been discussing today.

[01:02:12.71] GABRIELLE DALEY: I want to use this to transition now to our last question, so that we can start to tie some of these threads together-- whether that's subsidies, whether that's affordability, whether that's digital skills, whether that's knowledge and trust, all of these problems that we're still facing, and all of the creative solutions that folks have talked about and the need and the work that still to be done. So where do we go from here? What advocacy, policy research, or other work is on your wish list for making progress on these issues for you for the constituencies that you're serving. And I'd love to hear from everybody on this

[01:02:52.78] NIRALI PATEL: Would you like me to start

[01:02:54.12] GABRIELLE DALEY: Please dear kick us off.

[01:02:55.54] NIRALI PATEL: Sure. I'll mention two things-- one with respect to Universal Service Fund and then one with respect to BEAD. So having a sustainable universal service fund is going to be really important for things like maintaining broadband networks that are built in the most remote and hardest to reach rural areas of this country. But the current contribution system for the USF is outdated and regressive.

[01:03:19.40] It's based on a dwindling number of landline telephone lines, and that isn't sustainable. And so the USF contributions base does need to be expanded to include those companies who benefit

the most from universal broadband, but don't contribute today, so that all major online players are paying their fair share.

[01:03:41.46] With respect to BEAD I just wanted to mention that NGIA and the states are going to have to balance a number of policy goals of the program with the realities of deployment on the ground, including the time it takes to ramp up more domestic production, supply chain issues, skilled workforce shortages. And so those are all going to be hurdles that need to be tackled as we try to get broadband deployed out to everyone as quickly as possible. And so balance and flexibility on a number of fronts, with respect to NTIA in the states' implementation of BEAD, is going to be critical to maximize participation from broadband providers of all sizes throughout the country.

[01:04:28.23] GABRIELLE DALEY: Thank you for that.

[01:04:28.67] JUSTIN FAULB: Yeah, excellent. Yeah. I think going forward, the issues that-- [INAUDIBLE] going at one that Nirali wisely mentioned is ACP funding is going to be a big question. That is likely to run out next year. We'll run out quicker as we get the program more successful, which is a strange situation that we're facing. But that's a good problem. The more people we can get in there, the more we can help, the better will be for funding. So that's something we'll certainly be looking at.

[01:04:54.75] Universal service going forward is a really important question for the FCC and for Congress. As Nirali said, contribution reform has been on the agenda for a long time. I wrote comments for it in 2008, and we're still working on it. And the problem has gotten worse.

[01:05:10.21] And the other thing, especially for law students to be looking at, there are some very interesting court cases in the Fifth Circuit, Sixth Circuit, and I believe the 11th, challenging the constitutionality of the Universal Service Fund. And the Fifth Circuit in particular is a circuit that's very comfortable blowing things up. And if that happens, that's going to be quite a change for what has been going on with universal service and broadband and voice support for the last 20 years. And it's going to be something that we're going to be looking at a lot, so that's something I think going forward that's going to be receiving a lot of advocacy from the FCC.

[01:05:45.92] And ultimately, as BEAD is deployed, once we have an idea of what BEAD looks like, how successful it is, and what remains after BEAD funding has gone out, what is the role of the FCC in this area? Is it something where we should be transitioning USF because we don't need a high-cost fund in to supporting affordability only? Is it something where we're always going to need to be working to replace fiber?

[01:06:09.35] Because ultimately fiber, while more futureproof, is not legitimately futureproof. It is a piece of technology. Like anything else, it will need to be replaced over time. What is the role the FCC should be playing in this? And that's something that we'll be looking for advocacy on [INAUDIBLE] coming years.

[01:06:25.88] BRANDY REITTER: Yeah, so from the state of Colorado's perspective, just to keep it high level-- because we are heavily involved in planning and implementation right now of the various federal-funded programs. But if I were to say what we're going to be doing going forward is-- making funding and broadband-friendly policy permanent in our state. We talked a little bit about the high cost support mechanism funds. Some states are looking at a sunset review of that program next year. And so really advocating to convert it into a broadband sustainability fund, as well as looking at digital equity.

[01:07:07.06] There's still a lot of work that has to be done, though. Sunset reviews are really heavily involved. But where can we identify resources that make these investments permanent? Because what I'm really worried about-- and government does this all the time, is we set it and forget it, and then we pay for it three times. And so my work will probably be mostly dedicated to figuring out how do we maximize this investment, and make sure it lasts for generations from a funding and policy perspective.

[01:07:37.64] The other thing is funneling resources to parts of Colorado that have lacked investment by the private sector, and really subsidizing investment in those areas. Again, going back to business case, there is really no business case in some parts of Colorado. That's just a fact.

[01:07:54.89] And so really, really targeting those resources over there so that we can encourage providers to invest, or even support community broadband networks. There's a few in the state-- not many. But I don't want to take a one size fits all with our communities. I want to fund what they see as sustainable and it's going to work for their community.

[01:08:14.62] And then, also accountability to funding. I always tell groups, these federal programs are really robust. They're complicated. There's no such thing as ask for forgiveness later.

[01:08:28.66] You want to pay for that? That's fine, but we don't want to see that. So we're really looking to fund providers and communities that can make sure these investments are spent the right way, and that they're lasting, they're doing what they say they're going to do, because there's a monitoring piece around all of that. So making sure we're holding folks accountable to these really, really important dollars because we will not see them again.

[01:08:50.44] And then, obviously, partnerships continue to be the name of the game for the Colorado Broadband Office, whether it's

workforce development, working with industry to make sure that we're crafting the best approaches, and then matching communities to the private sector. There's a lot of communities that don't even know what providers are in their community. And so every time I start a call with [INAUDIBLE] I'm like, well, do you know who your providers are? Well, no, we just have bad internet. And it's like, well, there's providers on the call.

[01:09:16.78] So really being the matchmaker for community and the private industry to make sure that we're leveraging those partnerships, and that people feel good about their partnerships, because there's a lot of fly-by-night CD operations out there. And we're going to be looking at those. We're going to be looking for those folks that can make this happen on behalf of the community, and on behalf of the state of Colorado and our federal government.

[01:09:40.57] So that's where we're going to be doing over the next couple of years. Of course, that's the tip of the iceberg. But those are the high-level things.

[01:09:49.46] KATHRYN DE WIT: Folks have hit on a lot of the points that I would also like to make. I think what I would add, or what I would say specifically, is really looking at this about vision and sustainability. So first, we've got a lot of work to do, I think, at the federal level when it comes to clarifying what is our goal for digital equity? What does that mean? And more importantly, [INAUDIBLE] how is that reflected in implementation across the many, many programs that focus on broadband and digital equity within federal government?

[01:10:21.70] To the point that I think everyone has made, these programs that we are looking at, particularly with BEAD and DEA, they are going to be very complex to implement. They're going to involve a lot of actors and streams of funding that states have some authority over, and many more that they don't. And so we are going to learn a lot over the next few years about where things are going well and where there can be room for improvement.

[01:10:46.87] And getting to that point, sustainability is the really important thing here, because that work starts today, whether we're talking about sustainability through state funding, whether we are talking about really looking at the subsidies, again, supply or demand side because we need both, because the internet service providers are right. It's expensive to maintain and to deploy networks. We are always going to need those subsidies if we want to achieve and maintain universal access, and ensure that those connections are improved over time, in the same way that we are always going to need subsidies for affordable access, like we need subsidies in other areas. But those subsidies don't matter if they, one, aren't achieving what they are supposed to, and if we don't really take that step back to evaluate what is working well and why.

[01:11:41.52] And the biggest lesson from the rollout from a lot of the emergency programs in COVID was, yes, the demand for those subsidies is high, the need is high. But we have a lot of work to do when it comes to understanding the barriers that stand in the way of folks signing up for those programs. And that's feedback that we have heard from providers, from community members, and state and local officials. So from my standpoint, always looking ahead to implementation, what are we building to and why? But more importantly, how are we really thinking about embedding this in government, and learning to build towards a more sustainable system?

[01:12:24.26] FRANCELLA OCHILLO: A few notes about, I think, what we can do at different levels of government. At the federal level, I think there are a lot of agencies that are working on broadband that aren't talking to each other. And so I think that if the FCC wants to be the central lead, it should flex.

[01:12:36.29] Like, we're in charge. This is what we're doing. I think that it's difficult to do things that are ambitious, as long as there are only four commissioners. So we're not able to actually achieve visionary policy, I think. So it'll always be a tepid response as to what say what we're able to do.

[01:12:50.22] But I think that the FCC in particular is always in a very reactive posture to a problem that is incredibly dynamic and needs visionary solutions. So that existential conundrum, I think, is something we need to think about for NTIA that I think is rightfully the steward for handing out IJJA funds. I think that we need to think about the fact that their requirement under IJJA is disclosure-- like, how did they just distribute the money, not to evaluate effectiveness. And so if we won't know, really, how this money has been filtered through states, how effective it was for really maybe five to 10 years from now, what do we do in-between to make sure that we're staying on course for our goals?

[01:13:34.43] At the state and local level, I hope that local leaders and state leaders are doing more of what I see them do more frequently now. And that's really take hold of this being an issue that is going to determine which states have increased populations, which states have more tax revenues. Like, they are thinking about this as a workforce development issue-- an issue to make sure people can live longer. So they are taking a very forward-looking approach to developing broadband policy in a way that does not exist in federal conversations. So I think that that's something really important.

[01:14:08.51] And at the local level, I mean, local leaders are some of the scrappiest, most resourceful people I have ever met on the planet. A lot of them do not have the resources to do the things that they need to do on a daily basis, and they still have to be accountable to their constituents. I wish we had that same level of accountability at the federal level. And I think that sometimes, we talk about the things that we're putting in place to set up parameters of programs. But there's

very little follow through in terms of enforcement, and really doing periodic checking to make sure everybody is doing what they're supposed to.

[01:14:41.96] And maybe as a last point for people who are working on this issue, I think that we need to think in longitudinal ways about how does this change people. I've been part of a research study from a university in North Carolina, and they have followed maybe about 50,000 of us across the country since I was 11. And so they can tell us in our population set-- depending on where we were born, based on our ZIP Code, how much money we make today, they can estimate.

[01:15:12.92] They can estimate how long I will live. They can tell you with granularity all sorts of things about me that I had never even thought of. And part of it is that they test us. They check up on us every three to five years. They have ongoing datasets to understand how did we migrate around the US, what were our outcomes, both economic and also health.

[01:15:32.27] We know that broadband is an underpinning of all these programs we care about, and we can't talk about what happens when people don't have it. And so maybe this is a moment where we need to start asking questions. What happens when you're born into a household or a ZIP Code that's unlikely to have access? What are your outcomes like?

[01:15:49.37] How are your economic outcomes different? Do you live longer? Do you live shorter? Do you work with your hands, or do you have a 401(k)? There are a lot of questions that we just don't know the answers to that I think we can do better on research.

[01:16:01.21] GABRIELLE DALEY: With that excellent set of questions, I think that we are at time. So please join me in thanking our panelists.

[01:16:07.13] [APPLAUSE]

Lunch & Learn: Digital Crossroads Revisited

<https://youtu.be/VsWOWiBtSNQ>

[00:00:00.00] BRAD BERNTHAL: [INAUDIBLE] the panel. It is wonderful to have Travis Litman back here, proud alum. 2007?

[00:00:06.06] TRAVIS LITMAN: '06.

[00:00:06.51] BRAD BERNTHAL: 2006. Cheating him a year. Many of you know Travis has had a very proud record of public service, most recently serving as the chief of staff to the chairwoman of the FCC. And with no further ado, I will turn it over to Travis for our conversation. We're all very much looking forward to it. Travis, welcome back.

[00:00:23.37] TRAVIS LITMAN: Thank you, Brad. Thank you for [INAUDIBLE]. So I am joined by two luminaries in the telecom field. To my immediate right is Jon Nuechterlein, currently a partner at Sidley Austin, but has a distinguished career of public service himself, having spent time as the general counsel of the FTC, in the general counsel's office at the FCC, time in the Department of Justice and working with the Solicitor General's office. So welcome, Jon.

[00:00:50.07] And then to Jon's right, Howard Shelanski, currently a professor at Georgetown, a partner at Davis Polk. Also has a distinguished history of public service, having spent time in the FCC as a director of their Bureau of Economics, as the administrator of OIRA within the White House, and his time at the FCC as chief economist there.

[00:01:13.00] So please welcome our distinguished persons here who are going to reflect on Digital Crossroads, which is now almost going to be celebrating its 21st birthday. It can almost buy itself a drink. But let's rewind back in time, close to 20 years ago. Jon, that was when the first edition of Digital Crossroads was published. And there had been books about telecommunications law before, but Digital Crossroads quickly found its niche by combining history, policy, law, economics in a reader-friendly fashion.

[00:01:50.17] So what inspired you and then Professor, now Attorney General Weiser to write the book in the first place? What was the lay of the land technology wise, and what [INAUDIBLE]?

[00:02:03.70] JONATHAN NUECHTERLEIN: So there was a bit of a market vacuum. The only book that people new to the field could read was a horn book. It was almost a treatise put together by lawyers at Howard's old law firm, and it was very much a legal treatise. And one of the things that I discovered after I left the Solicitor General's office to go to work with the FCC is that you can't really understand the field of telecom law and policy without understanding the economics and technological, political dimensions [INAUDIBLE].

[00:02:41.61] And so the idea that Phil and I had-- actually, my first-- I can still remember this, 2002. I'm sitting in the tutorial about how certain next generation networks work. And I was thinking back to when I was at the FCC, this was 2002. Dale Hatfield [INAUDIBLE] how TCP/IP worked. And I was thinking, you know, I can do an interdisciplinary book that merges law, economics, and technology. And I didn't have a time for it yet, but I knew it was going to be me and three lawyers. It would be me and Phil Weiser and Dale Hatfield.

[00:03:20.58] And somehow I think you must have found out at some point, Dale, but Phil and I ended up being the sole authors of that book. And it did what I hoped it would do, which is to explain the intricacies of the field for people who are genuinely new to it-- so engineers who don't know anything about law, our lawyers who don't

know anything about telecommunications networks, and economists as well who might be interested in the field. We wrote it for those people in mind.

[00:03:59.61] And in a way, we also wrote it for our prior selves, because I was one of those people at the FCC in the late '90s who was trying to figure out what this is all about. Sounded really interesting. But I doubted that, as a lawyer, as sort of a lawyer's lawyer, I didn't really understand as much as I wanted to about the economic and technological underpinnings. So that's what gave rise to [INAUDIBLE].

[00:04:26.23] TRAVIS LITMAN: Well, as a former FCC staffer, anytime someone new would join the agency, the first thing that sort of became a regular course was, you have to go get Digital Crossroads because that's going to set the foundation for your understanding of the agency, for your understanding of the environment. So I think the legacy-- one of the legacies of the book is certainly that we found [INAUDIBLE].

[00:04:49.11] Another legacy-- and, Howard, I'd like you to speak to this and then, Jon, maybe reflect on it, too-- is when you think about the intersection of economic theory and telecom, where the rubber hits the road and you have concepts that might be new to some of the students in this room but things like network effects, monopoly leveraging, economies of scale, creative destruction-- as you reflect back on the legacy of this book over the last two decades, how relevant are those concepts to the world of telecom today? How relevant are they to the world of big tech today and in the future? Can you give us your perspective?

[00:05:26.57] HOWARD SHELANSKI: That's a great question, Travis. The book was really prescient in the sense that it had gotten ahead of the transformation in the kinds of economics that were most relevant in telecom policy [INAUDIBLE]. So just 10 years before the book came out, what we were thinking about were things like Ramsey pricing, where you most optimally allocate subsidies, and price controls and budget caps, and what are the best incentive networks for regulating a monopoly. And then what might be some incentive programs that induce entry as we were opening up the market?

[00:06:03.01] But concepts like network economics and a lot of the-- monopoly leveraging is an old concept that, in fact, has sort of risen and died and coming back a bit. But the whole way that network economics would factor in and where network barriers of entry, switching costs, demand-side externalities would arise, that was something that was really just emerging with the rise of broadband, with the rise of a layer above the infrastructure that was pulling users into various kinds of services and other various kinds of networks.

[00:06:36.37] And if anything, those concepts have only become increasingly relevant and are increasingly part of the story of how we

think about what telecommunications policy or network policy or, indeed, big tech platform policy should be going forward.

[00:06:52.73] TRAVIS LITMAN: Jon, any reflections on how the lifeblood of the economics is a through line through both editions and [INAUDIBLE]?

[00:07:03.91] JONATHAN NUECHTERLEIN: Absolutely. And I think one of the fascinating things about telecom policy is many of the concepts are critical to understanding competition issues for big tech as well. So when you think about core concerns that underlay the Telecommunications Act of 1996, those same concerns are also applicable with tech players as well.

[00:07:27.62] So you had network effects, which the '96 Act dealt with through interconnection obligations. You had switching costs, which '96 Act dealt with through a number of protocols. And you had enormous scale economies with the difficulty of new entrants replicating the essential facilities of the [INAUDIBLE] incumbents that we dealt with through unbundled network elements [INAUDIBLE].

[00:08:02.11] All those things have counterparts in today's debates about how to address competition issues [INAUDIBLE]. So just to take a couple examples, you hear a lot about legislative proposals, mainly for interoperability among platforms. That has kind of a direct conceptual connection to the interconnection debates that you remember from 20 years ago. Data portability offers a very strong resemblance to number portability. And the list goes on.

[00:08:38.39] And so the basic policy issues have kind of distinct counterparts in today's debates as well. And I think as we look forward to the third edition of this book, one of the things we're going to do is try to make those connections more explicit [INAUDIBLE] editions.

[00:08:57.56] TRAVIS LITMAN: So first edition of the book published 2005. Is that right?

[00:09:00.52] JONATHAN NUECHTERLEIN: Yeah.

[00:09:01.75] TRAVIS LITMAN: Second edition published 2013. Take us back in time. What were the decision points for you in terms of FCC regulatory issues of the day, broader thinking about the impact of the book writ large in that 2005 to 2013 time frame? And as you think about 2013 to present, what's sort of front of mind for what could come next in the third edition?

[00:09:31.45] JONATHAN NUECHTERLEIN: Sure. So--

[00:09:34.60] HOWARD SHELANSKI: So the third edition is-- will happen at some point.

[00:09:38.61] [LAUGHTER]

[00:09:40.57] Phil Weiser has another job so I'll stand in for him the best I can.

[00:09:46.19] But look, I think that there's-- and we'll have to see what the FCC does in the next couple of years, because there's a big policy agenda. To the extent that that goes forward, it will determine a lot of what gets discussed.

[00:10:02.92] But I think a lot of the big questions are going to be to ask, to what extent are some of the big debates and policy issues of the early 2000s and even 2013. How have those evolved? How have those changed? How has the market structure changed the questions underlying those debates?

[00:10:21.06] So there's still access and affordability issues. And to what extent are some of the regulatory programs that were talked about in the previous editions going to be relevant? How will they transform? How will we think about them [INAUDIBLE]?

[00:10:35.28] So there will be echoes of all of those themes, I would imagine, depending on what the FCC does. There's been a lot of good thinking about them. I see [INAUDIBLE] here, who's probably one of the panelists, who's written very interesting work about where there's this space for an affordability, regulatory regime but in a very different way than we used to see.

[00:10:57.28] And then I think a big question is going to be, what are we talking about when we're talking about telecoms in 2023 or 2025, whenever the third edition comes out? Because to the extent that there is a melding of infrastructure and big tech and how those things interoperate, I think we're going to be talking a lot more about the kinds of network economic ideas, how do we take sort of light-handed interoperability regulation, a kind that was incredibly helpful for wireless competition and for various other areas? How do we transport that and talk about that in the context of big tech?

[00:11:38.82] Again, people are writing about it. So there's an intellectual infrastructure that we're going to get to build on, but I think we're also going to want to look very hard at what does the world look like, what has the FCC done, and then bring these tools to bear on [INAUDIBLE].

[00:11:56.82] JONATHAN NUECHTERLEIN: So you asked if I brought myself back 21 years now. So 21 is the age of the concept of the book. And then in 2002, we had a very different set of issues that people at this conference were discussing. And people were-- it's fun to think about now. It seems ridiculous.

[00:12:17.61] But people were arguing about the terms on which new entrants into the all-important market force circuits, which landline phones take hold in the US. And all the debates were about unbundled network elements. Is the UNE platform really a good idea

for entry? And the earliest incarnations of the manuscript tended to focus really hard on those legacy questions about the landline circuit-switched telephones.

[00:12:57.99] Between 2002 and the end of 2004 when we submitted [INAUDIBLE], it became obvious that those were yesterday's debates. And so we started condensing the discussion of the '96 Act in the book and expanding the discussion of the internet, the broadband policy, open access, and net neutrality, a concept that in some ways got one of its first public hearings here at Silicon Flatirons in 2004, when Michael Powell came by to discuss his views on that topic. So we used to have this long chapter on [INAUDIBLE]. Does anyone [INAUDIBLE]?

[00:13:45.83] [LAUGHTER]

[00:13:48.67] That ended up [INAUDIBLE] because we realized that it wasn't going to play a big role anymore. And then it vanished altogether in the second edition.

[00:13:57.60] In the second edition, we sort of followed the same trajectory. We significantly reduced the discussion of landline altogether [INAUDIBLE]. There's still some discussion about it in there, but we focused much more on spectrum policy, on net neutrality, and on issues relating to the regulation or forbearance of regulation over broadband providers.

[00:14:33.04] And I think for this next edition, one of the things that makes it exciting for us-- because we don't want it to be just an update. We don't want it to be a pocket part for the second edition. The thing that's exciting for us is to think more broadly about how the themes of the first two editions translate into today's policy debates. And I see that Rick [INAUDIBLE] is here. I'm going to give him a shout out because this is the guy who popularized the notion of aligning tech and telecom regulation with the layers of the internet.

[00:15:13.85] One of the theses that we'll try out, and we'll see how it writes, is that, at the end of the day, you want the same types of policy calls to be made at different layers of the internet ecosystem. So questions of market power, or questions of network effects-- to the extent they arise on any layer, that you can rise to analogous policy solutions as [INAUDIBLE]. That is a particularly controversial thing to say. And as I say, we'll see how it writes. Specific considerations require different treatment from one layer to the next, but we'll get into that statement.

[00:15:56.21] TRAVIS LITMAN: So to pick up on that, the title of this weekend's conference was "The Internet's Midlife Crisis." And a lot of the debate yesterday and to some extent today focused on the tech titans in Silicon Valley who sort of followed a different position in the layered stack.

[00:16:12.23] When you think about the concepts that have been in the first two editions of Digital Crossroads, do they foretell a future where traditional providers of connectivity, or the subject of the first two editions, are less important going forward? Or with what you just raised out, the concepts of regulatory parity, how does this all play out?

[00:16:39.35] JONATHAN NUECHTERLEIN: Well, the physical layer is always going to be important because there's no other way to get the applications to people. And so I don't think that will become less important. I do think that the industry dynamics might change to the extent that-- this is still an open question-- to the extent that you have genuine competition between fixed broadband providers and global broadband providers.

[00:17:07.79] We have the potential for a degree of competition in the physical layer that we haven't previously had. And I think we've had some competition over the last 20 years. But what T-Mobile, for example, is doing with offering home broadband-- maybe it's not quite ready for prime time yet. I don't know.

[00:17:31.10] But to the extent that policymakers and carriers can find creative ways to deliver high bandwidth connectivity to people in their homes so that you can support your home Wi-Fi network with mobile carrier connections, it has the potential to double the number of competitors in any given area. And that is a potentially exciting development if it happens.

[00:18:01.44] HOWARD SHELANSKI: And obviously that will connect to spectrum policy and a variety of other issues that we're talking about. The history of telecom is littered with the promise of new competitive technologies that would allow bypass of incumbent access points. Some have worked. Some have not. And I think one of the exciting periods that we're in right now is we'll get to see, does the T-Mobile experiment and things like it-- will that really be a game changer?

[00:18:31.80] But I think, Travis, to your question, sure. I mean, access is incredibly important. But it's gone from being the dog to being the tail, because if you look at the value creation, the value chain, it's in all the layers that Rick was focusing us on 20 years ago.

[00:18:49.16] That is really where you get-- the reason you have big public policy debates now. And if you ask people on the street, what do you think of big wireless, you get a yawn. I mean, who cares, right? Ask what they think about big digital platforms, and we heard all kinds of stuff yesterday.

[00:19:09.77] But you can't say people don't care. They have very strong views. And that's because that's where the bulk of the value is, the bulk of the activity, the bulk of the audience focus.

[00:19:20.67] So I think that, to Jon's point-- and there are a lot of people who keep reminding us, don't lose focus. With all the choice that appears to be out there and all of the capability that appears to be on our hands, once you have access, don't lose focus on the access, the distribution of access, the affordability of access. That will remain important. But just as a matter of the amount of value that's being created, it's going to be a lesser public policy [INAUDIBLE] going forward.

[00:19:48.92] JONATHAN NUECHTERLEIN: Except with respect to spectrum policy.

[00:19:50.88] HOWARD SHELANSKI: Similar-- I think that that's probably right. Yeah.

[00:19:55.25] TRAVIS LITMAN: So we heard yesterday from Senator Bennet and others about the need for a new regulatory construct to deal with big tech or privacy issues. And the last chapter of the first two editions of Digital Crossroads sort of seized on the question of, going forward, should the regulatory construct of FCC, NTIA, others be different? Should there be a favorite antitrust policy and the like?

[00:20:26.35] So with the benefit of hindsight now, looking back on the first two editions of the book and looking at sort of the debates that are playing out today in our conference, how does that all meld together? What did the book get right? What did it get wrong? What were the questions asked? How do you see the tension in terms of regulators in Washington versus antitrust policy? Can you reflect on those thoughts?

[00:20:55.64] JONATHAN NUECHTERLEIN: Sure. I mean, I think one of the things that we got wrong in the very first edition was that we missed the role of externalities to some extent. And what I mean by that is there are two potential justifications for regulatory intervention to ensure [INAUDIBLE]. One of them is a lack of full competition, sufficient to impose competitive discipline on the players. But the other is also the benefit that society gains from having a neutral platform for innovation and free expression, civic engagement.

[00:21:44.43] And this doesn't necessarily mean that the result of the debate should be any different. But I think that, in the first edition, we focused too much entirely on the competition. I think there's a passage in there where we say something like, if there were 10 broadband providers in a given area, there'd be no plausible basis for regulatory intervention. I think that's simplistic. I think that if there were 10 competitors, there might still be a basis for regulatory intervention if you were concerned that the internet was going to fragment as a result of a lack of public oversight.

[00:22:25.53] So really, the question is, is there enough competition? And do we need to worry about internet fragmentation? Those are separate questions, and I think we focus a little more on the second of

those questions in the second edition. I think we're going to focus even more on it in the third edition.

[00:22:42.69] HOWARD SHELANSKI: And I think that's exactly right. Well, look, I think that there were certain things in telecom that we would always talk about as being appropriate for ex post kind of antitrust-type enforcement. There were other things that I think were well understood to fall more on the basket of traditional common carrier regulation or monopoly control regulation.

[00:23:05.70] I think that the boundary has become much more porous in people's thinking about that. I see [INAUDIBLE] got a nice paper talking about bringing competition and regulatory approaches and sort of a comprehensive approach to a lot of big tech regulatory questions. I think that we will definitely look at that, but I'll just give you an example.

[00:23:26.71] There's a real developing sense that you can simultaneously have ex post antitrust enforcement for certain kinds of monopolization activities, for merger activities, for things like that, but still have an interoperability regime confined to those same enterprises. And I think that, seeing how interconnection, interoperability access apply and how you can actually have workable rules so that you get a blend of ex post for certain conduct but ex ante rules of the road for how these networks will interoperate with new entrants, with new platforms is going to be a big part of what we're going to be thinking about in the book.

[00:24:10.53] And to Jon's point, it brings back a lot of old themes from telecom. When you're thinking about the internet splintering, what are you worried about? What you're worried about is that people will be talking through different pipes, different silos, not cross communicating.

[00:24:25.99] And if we're in a world where broadcast is more or less dead, that the idea of a shared set of a [INAUDIBLE] content networks that we're all getting information from is sort of ebbed, do we really want a completely splintered internet where people are communicating and sharing content with information or misinformation in ways that never see different viewpoints, different information? It may not even be monitored. That's a concern that a number of people have read, if you do start to see the internet splinter, is a way of getting around that, having interoperability amongst these different networks.

[00:25:04.35] And to Jon's point, the traditional antitrust view that eight or seven, or something like that, networks is enough, sure, for price and output, that's probably right. If you have these other kinds of social objectives and you're worried about splintering and you're worried about misinformation and access and communication,

probably not. And then you might want to have an interoperability vision on top of it, regardless of the competition.

[00:25:26.22] JONATHAN NUECHTERLEIN: Or net neutrality regime as well. But the challenge there is to tailor the net neutrality regime to the externalities you're trying to preserve. And that means focusing on what rules are necessary to keep the really bad things from happening as opposed to what rules are necessary to promote abstract notions of neutrality for its own sake.

[00:25:50.04] TRAVIS LITMAN: Now, you both recently authored an article in The Federal Communications Law Journal. And one of the subheadings in the article was "Reconciling Competition Policy with Social Equity." Can you unpack what that means for the audience and what your views are?

[00:26:06.03] HOWARD SHELANSKI: Did I put my name on that?

[00:26:06.84] [LAUGHTER]

[00:26:13.35] JONATHAN NUECHTERLEIN: Well, so the book-- the first two editions of Digital Crossroads were almost entirely about competition policy. And even then, those divisions address universal service. Each one had a chapter entitled "Universal Service." The focus was, how do you reconcile universal service with competition policy? So it wasn't really about the underlying social equity goals. It was more, how can you administer a universal service program in a competitively neutral way so as not to create undue market distortions?

[00:26:49.62] And I think we're going to broaden the focus this time. The first step is to retitling the chapter "Digital Equity" rather than "Universal Service," because obviously the concept today encompasses much more than simply funding for Lifeline and for broadband networks in rural communities and much broader societal issues at stake.

[00:27:19.07] HOWARD SHELANSKI: Yeah, and just add to that, Lifeline was important. You needed to be able to get a connection in case of emergency. The what's at stake is so much greater when you see kids sitting in the parking of a fast food restaurant just to use the Wi-Fi area code. The equity notion goes a lot broader than, I might need access to a line to call the fire department, to, this is now essential to education. The access is now access to something much bigger than a point-to-point communication.

[00:27:48.27] And so equity is definitely the concept. The question is, what does that mean? What is needed? It's a much more dynamic definition now, I think, as we're moving into the ways in which that kind of access is essential. When the Department of Veteran Affairs thinks about going to a fully online network and you're talking about homeless veterans, where's the access? Where is the ability to get

benefits to which you are entitled and that people want to reach you? So we have a much richer, I think, set of issues to think about.

[00:28:22.11] TRAVIS LITMAN: All right. I want to save a few minutes for audience questions. We're going to go to a lightning round. So I'm going to ask you to keep your answers very brief. First one and why FCC, NTIA, or FTC?

[00:28:34.08] JONATHAN NUECHTERLEIN: [INAUDIBLE]

[00:28:36.00] [LAUGHTER]

[00:28:38.40] TRAVIS LITMAN: Well, that's [INAUDIBLE].

[00:28:45.85] JONATHAN NUECHTERLEIN: I'm going to go with my most recent agency, the FTC.

[00:28:48.43] HOWARD SHELANSKI: All but spectrum FTC.

[00:28:51.58] TRAVIS LITMAN: You're kind for a day. What one thing could you change about telecom law regulation?

[00:29:02.72] HOWARD SHELANSKI: [INAUDIBLE]

[00:29:03.69] [LAUGHTER]

[00:29:10.02] Wow.

[00:29:10.78] JONATHAN NUECHTERLEIN: I went last time. [INAUDIBLE].

[00:29:16.03] HOWARD SHELANSKI: I'm stymied.

[00:29:16.63] TRAVIS LITMAN: All right. We'll pass on that. All right. Before we open it up to audience questions, you both have been frequent flyers when it comes to the February conference. We're back in person for the first time in quite a while. Are there favorite-- I'm asking for your favorite memory, either this weekend or years past.

[00:29:33.40] JONATHAN NUECHTERLEIN: I don't have anecdotes for this, but I do have people in mind. And Phil, obviously, is essential to anyone's conception of this conference. And one of the great things about writing the book with Phil was that I had an excuse to talk to Phil every day. And there's really nothing better than talking to Phil every day.

[00:29:53.23] But the two other people that immediately come to mind here are Dale Hatfield, which-- and Dale is, in many ways, the inspiration for this book. Every time someone talks about Dale's legacy here, Dale does this.

[00:30:09.61] [LAUGHTER]

[00:30:12.24] HOWARD SHELANSKI: You were vaguely disapproving of the book.

[00:30:14.26] [LAUGHTER]

[00:30:16.70] JONATHAN NUECHTERLEIN: But Dale's the other reason why this program has been such a success.

[00:30:21.98] The third person I want to mention, and it's in memoriam, is Judge Stephen Williams, who came almost every year. Both Howard and I clerked for him. What a fun intellectual experience it was to have any kind of [INAUDIBLE]. And he is sorely missed.

[00:30:42.94] HOWARD SHELANSKI: I can't say it any better.

[00:30:44.80] TRAVIS LITMAN: All right. So we have just a few minutes, so we'll open up for audience questions. Students, if you're in the room, please [INAUDIBLE] go first. Jump in.

[00:30:56.00] AUDIENCE: So I'm a 2L here at Colorado Law. As someone who has gotten into telecom law in the last year, this book is recommended by lots of people to me constantly. What I would ask is, in the 10 years since the second edition came out, what's the biggest context that I should kind of read with a grain of salt because of changes that have happened since it's come out?

[00:31:15.91] JONATHAN NUECHTERLEIN: The Universal Service chapter.

[00:31:17.28] [LAUGHTER]

[00:31:18.84] Don't read it. It's so long to begin with.

[00:31:21.52] [LAUGHTER]

[00:31:23.30] And it's not that relevant.

[00:31:25.18] AUDIENCE: Phil wrote that part.

[00:31:26.26] [LAUGHTER]

[00:31:28.90] TRAVIS LITMAN: All right. Blake is giving me the X, so I think we need to clear the room. I want you to join me in thinking Howard and Jon for--

[00:31:36.04] [APPLAUSE]