# UK---Round 6---vs. Missouri State GL

## 1AC

### 1AC---Plan

#### Plan: The United States federal government should prohibit anticompetitive business practices in the delegation of generic Top-Level Domains by the private sector.

### 1AC---Internet Freedom ADV

#### Advantage One is Internet Freedom---

#### ICANN, the body governing allocation of internet domain names, shifted its allocation of generic Top-Level Domains, or gTLDs, to allow companies to buy domain names that mirror their trademarks, allowing explicitly anti-competitive deal-making

Nelson Drake 18, J.D. from American University’s Washington College of Law and a B.A. in Political Science from Georgia College and State University, “Going Rogue: The National Telecommunications And Information Administration's Transfer Of IANA Naming Functions To ICANN”, 3 Admin. L. Rev. Accord 83, 2018, lexis

II. THE IANA TRANSFER AND WHY IT MATTERS

As noted above, one of ICANN's powers with respect to the DNS and the IANA functions is its ability to adjudicate disputes about the existence of trademark rights in a domain name via the UDRP. This power was relatively uncontroversial because the UDRP's standard for determining the existence of trademark rights mirrored the USPTO's. However, **ICANN's introduction of its new TLD program has created new problems** because it permits trademark owners to purchase TLDs that mirror their trademarks. This is an issue because the prevailing policy of both ICANN and the USPTO was that TLDs are, generally, generic. 69 For example, under the Legal Rights Objections (LRO) period of the TLD application process, most trademark owners are unable to prevent the delegation of a TLD that matches their trademark. 70 These LRO decisions have since been supported by courts intent on maintaining the current policy. As a result, **plaintiffs have been unable to successfully bring a case against ICANN regarding the delegations of gTLDs.**

A. Image Online Design and the Trademark Perspective

The non-trademarkability of gTLDs was a primary issue in the case *Image Online Design, Inc. v. Internet Corp. for Assigned Names and Nos.*, which revolved around the delegation of the ".web" gTLD. 71 Image Online Design (IOD) is the operator of a registry for the ".web" TLD on a non-authoritative DNS, which means that it is not readily searchable by users without preconfiguring  [\*95]  their web browser. 72 However, this reconfiguration can be problematic because alternative DNS roots are not authoritative for ICANN-delegated TLDs, which could result in domain names that are identical to those on ICANN's root and a "naming collision" as discussed in Part I. 73

IOD's claim stemmed from the fact that ICANN did not consider IOD's 2000 application, and when ICANN moved forward with the ".web" delegation process, IOD sued for trademark infringement under their registered and common law ".web" trademarks. 74 In its defense, ICANN argued that: (1) the .web would not cause confusion because TLD registry services are a different class of goods than those protected by IOD's registrations and (2) that TLD's are not subject to trademark protection because they are generic. 75 Ultimately, the court ruled in favor of ICANN and summarily dismissed all of IOD's trademark claims. 76

The IOD's claim under 15 U.S.C. § 1125(a)(1) 77 and its common law trademark was the most important part of the court's ruling. In its opinion, the court reiterated a long-held standard of trademark law that **"TLDs are not generally source indicators."** 78 The court further supported its ruling by citing the official policy of the USPTO that states "[g]enerally, when a trademark . . . is composed, in whole or in part, of a domain name, neither the beginning of the URL ('http://www.') nor the TLD have any source-indicating significance." 79 The IOD attempted to refute this portion of the ruling by pointing out that the USPTO altered its position to require consideration of "any potential source-indicating function of the TLD. 80 In response, the court stated that the **only marks available for protection as a TLD are famous**  [\*96]  **marks**, such as .apple for Apple, Inc., and that some marks would continue to remain generic even if they are famous. 81 In the court's view, ".web" fell under the latter category because it would indicate a genus of a type of website available on the World Wide Web and not a particular company or manufacturer. 82

Because of the court's decision in Image Online Design, **corporate stakeholders are susceptible to competitive harm if ICANN uses its powers unfairly**, particularly if the harm is propagated at the behest of another stakeholder. The effects of this limitation are particularly acute considering the ICANN's own regulatory policies, which take a similar position on the existence of trademark rights in gTLDs moving forward. 83 Both the UDRP and LRO, ICANN's current dispute resolution policies intended to protect the rights of trademark owners, reiterate the common proposition that gTLDs are generally ineligible for trademark protection. 84 However, both panels governing these decisions have articulated that this general rule may have an exception. 85

While this may indicate that the perception that gTLDs are generic is shifting, in application both policies strongly indicate that trademarkability is the exception, not the rule. The LRO decisions, for instance, demonstrate that to successfully assert legal rights in a gTLD, the trademark owner must either be particularly famous or be able to point to facts indicating bad faith on the part of the applicant. 86 While the UDRP has indicated a departure from this rule, panel decisions are **not subject to precedent.** This means that trademark owners should not expect any consistency between panel decisions, and that these decisions will be extremely fact specific.

B. The Consequences of Image Online Design

The presumably generic gTLDs, the uncertainty of how this rule will be applied, and the amount of fame a trademark owner must possess to state a claim have **created an environment where only the largest private stakeholders can successfully assert a violation** of their trademark rights against ICANN in court. Even then, the success of these claims remains in doubt, especially if ICANN's decisionmaking becomes clouded by undue influence from other stakeholders. For example, in a matter involving Amazon, [\*97]  ICANN denied delegation of the ".amazon" gTLD for reasons of "public policy" following strong objections by Brazil. 87 After failing to have the decision changed using ICANN's appeal processes, Amazon challenged ICANN's decision and requested an independent review that found **ICANN caved to pressure from the Brazilian government and**, more concerningly, attempted to abuse its internal processes to the detriment of Amazon. 88

#### Anti-competitive allocation of gTLDs exponentially increases internet privatization and decks internet freedom

Daniela Spencer 14, J.D. candidate at the UC Berkeley School of Law, “Trademark Law: Much Ado About Nothing: ICANN's New gTLDs,” 2014, lexis

C. ICANN's Section 1 Antitrust Violations

Since there are currently a small number of gTLDs, critics have alleged that ICANN is hindering competition not only among registries, but also among consumers. 120 Since ICANN has unlimited contracts with registries, critics allege that ICANN is assisting in an agreement amongst registries to restrain trade, which is illegal under Section 1 of the Sherman Act. 121 Consumers have limited choices among existing registries, especially since many of them are not open to the public. As such, they are limited to using registries like VeriSign, which are well known and open to the public.

As of September 2013, fifty-three percent of all registered websites had the gTLD of .com, owned by VeriSign. The next highest percentage of websites (5.7 percent) were registered under the TLD of .net, which VeriSign  [\*880]  also owns. 122 In 2006, the Ninth Circuit found that ICANN awarded VeriSign the contract for .com without any bidding. 123 As such, one private company is essentially controlling close to sixty percent of the market with collusion from ICANN. 124

There is no indication that there are any alternative products or possible substitutes to the favorite .com gTLD. 125 Additionally, unlike in a standard market, where the product is relatively elastic and responds to changes in price, in this system, sellers have little incentive to offer low prices in a market where demand is inelastic.126 ICANN has no incentive to discourage or prevent individual registry operators like VeriSign from charging high prices because consumers have nowhere else to turn. In the last few years, the demand for .com has increased, as demonstrated by its growing percentage of use while the prices have stayed stable. 127

 [\*881]  However, despite its prima facie appearance of restricting competition, the agreement between VeriSign and ICANN does not actually restrain commerce in the relevant market. Consumers do not choose .com due to a conspiracy between VeriSign and ICANN to reduce access to other gTLDs, but rather due to outside pressures to use .com. 128 As such, even the advent of hundreds of new gTLDs would not produce an appreciable or effective increase in competition. Despite its claim, ICANN's new program probably will not increase competition in any meaningful way. 129

D. Potential for Other Antitrust Violations Due to gTLDs

In a hearing to the House of Representatives in 2011, Federal Trade Commission chairman Jon Leibowitz said, "We worry that if ICANN goes broadly and doesn't ensure accuracy, it's going to be exponentially worse. There is going to be a burden on businesses, which will have to defensively register. We see a lot of cost but not a lot of benefit."130 Currently, there are a number of worries that big name players will monopolize the Internet. Donuts, Inc. 131 has applied for 307 gTLDs, Neustar has applied for 234, Google has applied for 101, and Amazon has applied for seventy-eight. 132 John M. Simpson, the director of Consumer Watchdog's Privacy Project, wrote to the chairman of Senate Commerce, Science, and Transportation Committee:

If these applications are granted, large parts of the internet would be privatised. It is one thing to own a domain associated with your brand, but it is a huge problem to take control of generic strings. Both Google and Amazon are already dominant players on the internet. Allowing them further control by buying generic domain [\*882] strings would threaten the free and open Internet that consumers rely upon. 133

#### Extinction---internet freedom solves every impact

Tony Blair 21, Former prime minister of Great Britain and founder and executive chairman of the Tony Blair Institute for Global Change, “The Progressive Case for Universal Internet Access: How to Close the Digital Divide by 2030,” 3/2/21, https://institute.global/policy/progressive-case-universal-internet-access-how-close-digital-divide-2030

Today, the internet is the beating heart of the world. And just as the roads, railways and canals provided the arteries for commerce in the Industrial Revolution, today’s network infrastructure is the circulatory system on which much of modern life depends. Without it, the ramifications of Covid-19 would have been far more severe.

That we have been able to use the internet to mitigate the impact of the pandemic is a small relief, but the Covid-19 crisis has emphasised the importance of everyone being connected in the future. Eradicating extreme poverty, solving the global education crisis, building better health-care systems and responding to pandemics effectively all require connectivity. For low-income countries, being largely excluded from the exponential potential of the internet means that they cannot transform their nations. It is extraordinary that today half the world remains offline.

Closing the digital divide by 2030 should be one of the primary global policy priorities. Accelerating internet expansion will drive economic growth and enable progress and – as this report from my Institute demonstrates – the benefits of investment vastly offset the costs. It outlines the urgent action required on stimulating demand, regulatory reform and greater global coordination, and how a new digital coalition needs to be formed to transform opportunity and access for billions of people.

But prioritising internet access is not only about poverty alleviation. During these past years of isolationist and unilateralist policymaking by Western governments, China has been taking a more dominant role in developing economies. It has been investing in digital hardware infrastructure, taking an active role within international bodies and influencing the standards and values that underpin the internet.

This requires strong global leadership. Collaborating with China, as well as competing. Stewarding the right global coalitions around investment to achieve universal internet access. Leadership with the vision, commitment and confidence to establish the internet for a prosperous and inclusive global society.

We’ve lost our way on this in recent years, but an open and connected world will be the lifeblood for our future growth. It’s time that we make it a reality.

#### Corporate control undermines internet connectivity and interdependence

Julius Genachowski & Lee C. Bollinger 13, Former Chairman of the U.S. Federal Communications Commission; President of Columbia University, “The Plot to Block Internet Freedom,” Foreign Policy, 4/16/13, https://foreignpolicy.com/2013/04/16/the-plot-to-block-internet-freedom/

The Internet has created an extraordinary new democratic forum for people around the world to express their opinions. It is revolutionizing global access to information: Today, more than 1 billion people worldwide have access to the Internet, and at current growth rates, 5 billion people — about 70 percent of the world’s population — will be connected in five years.

But this growth trajectory is not inevitable, and threats are mounting to the global spread of an open and truly "worldwide" web. The expansion of the open Internet must be allowed to continue: The mobile and social media revolutions are critical not only for democratic institutions’ ability to solve the collective problems of a shrinking world, but also to a dynamic and innovative global economy that depends on financial transparency and the free flow of information.

The threats to the open Internet were on stark display at last December’s World Conference on International Telecommunications in Dubai, where the United States fought attempts by a number of countries — including Russia, China, and Saudi Arabia — to give a U.N. organization, the International Telecommunication Union (ITU), new regulatory authority over the Internet. Ultimately, over the objection of the United States and many others, 89 countries voted to approve a treaty that could strengthen the power of governments to control online content and deter broadband deployment.

In Dubai, two deeply worrisome trends came to a head.

First, we see that the Arab Spring and similar events have awakened nondemocratic governments to the danger that the Internet poses to their regimes. In Dubai, they pushed for a treaty that would give the ITU’s imprimatur to governments’ blocking or favoring of online content under the guise of preventing spam and increasing network security. Authoritarian countries’ real goal is to legitimize content regulation, opening the door for governments to block any content they do not like, such as political speech.

Second, the basic commercial model underlying the open Internet is also under threat. In particular, some proposals, like the one made last year by major European network operators, would change the ground rules for payments for transferring Internet content. One species of these proposals is called "sender pays" or "sending party pays." Since the beginning of the Internet, content creators — individuals, news outlets, search engines, social media sites — have been able to make their content available to Internet users without paying a fee to Internet service providers. A sender-pays rule would change that, empowering governments to require Internet content creators to pay a fee to connect with an end user in that country.

Sender pays may look merely like a commercial issue, a different way to divide the pie. And proponents of sender pays and similar changes claim they would benefit Internet deployment and Internet users. But the opposite is true: If a country imposed a payment requirement, content creators would be less likely to serve that country. The loss of content would make the Internet less attractive and would lessen demand for the deployment of Internet infrastructure in that country.

Repeat the process in a few more countries, and the growth of global connectivity — as well as its attendant benefits for democracy — would slow dramatically. So too would the benefits accruing to the global economy. Without continuing improvements in transparency and information sharing, the innovation that springs from new commercial ideas and creative breakthroughs is sure to be severely inhibited.

To their credit, American Internet service providers have joined with the broader U.S. technology industry, civil society, and others in opposing these changes. Together, we were able to win the battle in Dubai over sender pays, but we have not yet won the war. Issues affecting global Internet openness, broadband deployment, and free speech will return in upcoming international forums, including an important meeting in Geneva in May, the World Telecommunication/ICT Policy Forum.

The massive investment in wired and wireless broadband infrastructure in the United States demonstrates that preserving an open Internet is completely compatible with broadband deployment. According to a recent UBS report, annual wireless capital investment in the United States increased 40 percent from 2009 to 2012, while investment in the rest of the world has barely inched upward. And according to the Information Technology and Innovation Foundation, more fiber-optic cable was laid in the United States in 2011 and 2012 than in any year since 2000, and 15 percent more than in Europe.

All Internet users lose something when some countries are cut off from the World Wide Web. Each person who is unable to connect to the Internet diminishes our own access to information. We become less able to understand the world and formulate policies to respond to our shrinking planet. Conversely, we gain a richer understanding of global events as more people connect around the world, and those societies nurturing nascent democracy movements become more familiar with America’s traditions of free speech and pluralism.

That’s why we believe that the Internet should remain free of gatekeepers and that no entity — public or private — should be able to pick and choose the information web users can receive. That is a principle the United States adopted in the Federal Communications Commission’s 2010 Open Internet Order. And it’s why we are deeply concerned about arguments by some in the United States that broadband providers should be able to block, edit, or favor Internet traffic that travels over their networks, or adopt economic models similar to international sender pays.

We must preserve the Internet as the most open and robust platform for the free exchange of information ever devised. Keeping the Internet open is perhaps the most important free speech issue of our time.

#### Internet connectivity prevents global war

Dr. Asma Iqbal & Muhammad Rafi Khan 21, Assistant Professor of Political Science, Government Graduate College for Women Samanabad; Lecturer/Research Officer at Minhaj University Lahore, “Power and Interdependence with Internet,” Pakistan Social Sciences Review, Vol. 5, No. 1, pgs. 1142-1153, 3/30/21, https://pssr.org.pk/issues/v5/1/power-and-interdependence-with-internet.pdf

Interdependence

Reflecting a softer image of power and extending its domains to global social structures, interdependence is a multidimensional term, that gained traction with the emergence of the concept of globalization. It refers to a state, or a condition, that compels two or more actors to seek cooperation. For such cooperation, the absence of enmity is not a requirement. There are many examples of interdependence between fierce enemies, like Pakistan and India, China and India, and Russia and the US. The goals of this interdependence are to fulfill domestic and international deficiencies for national interest, and sometimes, international interest. The presence of Russia and the US in the Security Council, where both take decisions together in international interest, and can also veto any move for their own or their ally’s national interest.

The world today has mostly been eradicating the threats of war and becoming increasingly interdependent. Their actions are mostly based on the cost- benefit ratio. For instance, if a state must choose between war and trade and applying the statistical models for a complete understanding of both before deciding, the trade will supersede in choice over the war in most cases. That is why even enemies are doing trade, while the war of words also gains traction. This is because the cost of war is higher, and the benefit of trade is higher. The democratic peace theory and the McDonald Peace theory exist in almost the same domains, where political relationship and economic connectivity, both are eradicating scenarios of a possible war.

As an effective tool of soft power, the interdependence has shattered the isolation of introverted peoples and merged them with vibrant, dynamic, and socially linked societies. It relies on multidimensional mediums to avoid conflicts, increase connectivity, and inculcates multilateralism. Among these, the Internet is the most obvious, effective and resourceful medium that “frees us from geographic fetters and brings us together in topic-based communities that are not tied down to any specific place. Ours is a networked, globalized society connected by new technologies” (Dentzel, 2014).

The internet, coinciding with matters related to power, is a world of unknown depth. It is the most effective tool of connectivity in this modern world. It can also be designated as a doorway between traditional unilaterality and a multilateral world. It boosted interdependence and opened new horizons of connectivity and cooperation. Therefore, the virtual age has cut the distances short and challenged the hardships of the physical world with a counterbalance, depicted in the figure below.

#### Internet privatization is increasing and displaces responsive and legitimate governance

Marietje Schaake 21, International policy director at Stanford University’s Cyber Policy Center, “Big Tech is trying to take governments’ policy role,” 1/27/21, https://www.ft.com/content/7f85a5ff-326f-490c-9873-013527c19b8f

Both events demonstrate an ever-growing trend: technology companies think they should be deciding public policy, not governments.

It is not just social media platforms, either. These days, all kinds of businesses set rules for how technology affects people’s lives. Encryption standards, for example, determine the extent of national security. Facial recognition systems deny the right to privacy.

Since all of society is touched by such digitisation, this puts companies in the position of policymakers — but without the governance mandate, independent oversight or checks and balances deemed vital in a democratic process.

In fact, tech groups’ governance powers are encroaching on the role of the state at ever greater speed. Minting digital currencies, verifying digital identities, even building cyberweapons — it is all under the direction of boardrooms, not parliaments.

One consequence of this private sector digitisation is that governments have, in effect, outsourced cyber security and personal data protection to companies — companies that do not always have duties of disclosure.

We witnessed as much in the hacking of SolarWinds’ networking software, to distribute malware. Had it not been for cyber security firm FireEye, we may never have learnt of the intrusions on companies and many US institutions. Software made by the likes of SolarWinds and Microsoft forms the backbone of digital operations globally, yet a decision to forgo proper security safeguards by SolarWinds was taken without anyone noticing. There are too few processes to ensure the public interest is systematically safeguarded.

That is why laws need to be updated fast. This is not about “regulating the internet” but rather about upholding existing principles, such as democracy — online or offline. And it is surely an erosion of democracy when the agency of an elected government is reduced proportionately to the pace with which private companies are empowered.

For technology groups wondering how they can avoid being accused of failing to protect democracy — as social media platforms have of late — there is a simple solution. Before the ink is dry on new rules granting regulatory oversight of digitised processes, such as search algorithms, companies can embrace the rule of law today.

Aligning with democratic and human rights principles can be done now.

The world over, the power of technology companies is becoming ever more apparent. That is why we must not limit our assessment of potential harms to democracy to just social media platforms or search firms. They may be the services that are most visible to internet users, but they are not the only ones in need of scrutiny. The privatisation of governance in the digital world is now a systems problem.

After the US Capitol riots of January 6, there is a growing awareness of the power of companies in providing a platform for the stagers of a coup. It should make us even more wary of that other coup: the privatisation of governance across the digital world.

#### Extinction---shoring up the US model of public governance is key

Joseph S. Nye 17, University Distinguished Service Professor at the Harvard Kennedy School of Government, January/February 2017, “Will the Liberal Order Survive?,” Foreign Affairs, https://www.foreignaffairs.com/system/files/pdf/anthologies/2017/b0033\_0.pdf

The order will inevitably look somewhat different as the twenty-first century progresses. China, India, and other economies will continue to grow, and the U.S. share of the world economy will drop. But no other country, including China, is poised to displace the United States from its dominant position. Even so, the order may still be threatened by a general diffusion of power away from governments toward nonstate actors. The information revolution is putting a number of transnational issues, such as financial stability, climate change, terrorism, pandemics, and cybersecurity, on the global agenda at the same time as it is weakening the ability of all governments to respond.¶

Complexity is growing, and world politics will soon not be the sole province of governments. Individuals and private organizations—from corporations and nongovernmental organizations to terrorists and social movements—are being empowered, and informal networks will undercut the monopoly on power of traditional bureaucracies. Governments will continue to possess power and resources, but the stage on which they play will become ever more crowded, and they will have less ability to direct the action.¶

Even if the United States remains the largest power, accordingly, it will not be able to achieve many of its international goals acting alone. For example, international financial stability is vital to the prosperity of Americans, but the United States needs the cooperation of others to ensure it. Global climate change and rising sea levels will affect the quality of life, but Americans cannot manage these problems by themselves. And in a world where borders are becoming more porous, letting in everything from drugs to infectious diseases to terrorism, nations must use soft power to develop networks and build institutions to address shared threats and challenges.¶ China is unlikely to surpass the United States in power anytime soon.¶

Washington can provide some important global public goods largely by itself. The U.S. Navy is crucial when it comes to policing the law of the seas and defending freedom of navigation, and the U.S. Federal Reserve undergirds international financial stability by serving as a lender of last resort. On the new transnational issues, however, success will require the cooperation of others—and thus empowering others can help the United States accomplish its own goals. In this sense, power becomes a positive-sum game: one needs to think of not just the United States’ power over others but also the power to solve problems that the United States can acquire by working with others. In such a world, the ability to connect with others becomes a major source of power, and here, too, the United States leads the pack. The United States comes first in the Lowy Institute’s ranking of nations by number of embassies, consulates, and missions. It has some 60 treaty allies, and The Economist estimates that nearly 100 of the 150 largest countries lean toward it, while only 21 lean against it.¶

Increasingly, however, the openness that enables the United States to build networks, maintain institutions, and sustain alliances is itself under siege. This is why the most important challenge to the provision of world order in the twenty-first century comes not from without but from within.

#### Privatization enables large-scale attacks on critical infrastructure

Marietje Schaake 20, International policy director at Stanford University’s Cyber Policy Center, “The Lawless Realm: Countering the Real Cyberthreat,” November/December 2020, https://www.foreignaffairs.com/articles/world/2020-10-13/lawless-realm

THE WEAKENED STATE

For centuries, states enjoyed a monopoly on the use of force. Thanks to the asymmetric power facilitated by digitization and the proliferation of cyberweapons, that monopoly has slipped out of their grasp. Yes, many democratic countries—including the United States—have developed powerful tools to deploy in cyberspace, setting up sophisticated surveillance systems and launching attacks on adversaries. At the same time, developed countries wrestle with a private sector that exercises disproportionate power in the technological sphere, gobbling up data and taking on some key functions of the state, such as the protection of critical infrastructure.

Private companies both build the architecture of the digital world and largely govern its flows of data. They are often the victims of cyberattacks. But they are complicit in these attacks when they fail to protect databases and lose the personal information of their customers and clients. Worse, some companies are even developing and selling new technologies to adversaries around the world. Authoritarian (and several democratic) governments hire the services of hackers and buy commercially sold systems of digital surveillance and control. For instance, a U.S. company called Sandvine is alleged to have supplied the government of Belarus with the technology it used this past summer to shut down its citizens’ access to much of the Internet during antigovernment protests. Nonstate actors, such as militias or criminal gangs, can wreak disproportionate havoc through cyberattacks, hurting much more powerful states, companies, and international organizations.

Authorities often have a tough time understanding cyberattacks and identifying their perpetrators. As a result, attackers frequently act with impunity, using clever tactics and benefiting from a legal vacuum: there are few mechanisms that guarantee international cooperation and coordination in discovering and bringing to justice cyberattackers. “False flag” operations—in which actors conceal their identities and try to pin the blame on others—are common in the digital world. An intrusion directed from the other side of the world can be executed in milliseconds, almost invisibly. The speed of digital innovation outstrips the ability of states to prevent cyberattacks, hold perpetrators to account, and pass the necessary laws on encryption standards, data protection, and product liability (to hold manufacturers or sellers responsible for the goods they make or trade).

States are also unable to control private companies whose actions may imperil public safety; indeed, in some cases, a state finds itself dependent on just such a company. Earlier this year, a breach of a database belonging to the facial recognition company Clearview AI revealed that the firm was selling its technology and databases not just to vetted law enforcement agencies but also to a host of private companies. The breach showed how a private company can secretly share information about citizens without their consent and without transparency, as well as how such a company can be susceptible to hostile actors. And yet law enforcement agencies are increasingly reliant on the work of technology firms such as Clearview AI.

Society’s growing reliance on digitally connected devices creates more general vulnerabilities. A canny and willing attacker can exploit a software-powered fridge in a home or a street lined with data-collecting sensors in a smart city, finding multiple entry points to bring down a broader system. It is enough of a challenge for defense departments and intelligence services to man the ramparts and keep a lookout for such sophisticated adversaries. But the frontlines are now ubiquitous thanks to the pervasiveness of digital technology, and so doctors in hospitals, professors in university labs, and human rights activists in repressive countries—all must now contend with cyberthreats.

Such civilian targets are not always well prepared for this fight. Public institutions often employ poorly protected digital systems even when they process sensitive information. A clinic, for example, cannot be blamed for hiring an additional surgeon instead of a cybersecurity expert. A public university might choose to invest in computers for students but not acquire the more expensive protections to ensure that those new computer systems are safe. And an election board might decide to modernize electoral processes by installing voting machines and dispensing with paper ballots, without knowing the proper safeguards or having the means to invest in the requisite protections. Such well-intentioned efforts are understandable on their face, but they conspire to make societies vulnerable.

AIDING AUTHORITARIANS

The imbalance between the public and the private sector in democratic countries is obvious in another dangerous arena: the sale of cyberweapons to authoritarian regimes. Few laws limit how companies can trade in digital surveillance, blocking, and intrusion systems. Syria is a troubling case in point. As it wages civil war, the government of Bashar al-Assad has used operations in cyberspace to hit both adversaries abroad and opponents within the country. Hackers belonging to the so-called Syrian Electronic Army (which claimed to be acting independently of the Syrian government) gained visibility around the world for defacing the websites of Western media companies, such as The New York Times and the BBC, and for hacking the website of the U.S. Marine Corps. These brief propaganda victories were far less significant than the government’s digitally enabled attacks on domestic opposition figures and human rights defenders during the peaceful protests of 2011. That year, the Syrian government used sophisticated digital technology to collect communications between dissidents, which it then exploited to incriminate and detain the activists.

That one of the most violent regimes in the world engaged in such repression is not surprising; what is shocking is that European companies helped. The Assad government depended on technology and expertise from AREA, an Italian company. AREA sold technology to Syrian authorities that allowed them to monitor communications across the country, collecting and scanning Facebook posts, Google searches, text messages, and phone calls for key words or connections between particular individuals. The ensuing roundup of dissenting civilians led to torture and deaths.

Syria is not alone in receiving technological support from abroad for the purpose of domestic repression. Over the past few decades, companies based in Western countries have designed, marketed, and sold similar technology to a number of other authoritarian governments, including those of Egypt, Iran, Saudi Arabia, and the United Arab Emirates. When democratic countries fail to curb the sale of aggressive hacking systems by companies within their own borders to illiberal governments, they are undermining the worthy ambitions of their foreign policies. But the problem doesn’t seem to be going away. Some estimates predict that annual global sales of these systems will rise to hundreds of billions of dollars by 2021. China is now aggressively entering this market, too; it already is the global driver in developing and exporting technologies that enable repression, including facial recognition technology and predictive policing systems.

These technologies in the hands of nonstate actors is also a concern: such actors can [devastate] ~~cripple~~ far more powerful states, organizations, and companies through cyberattacks. In 2015, a hack of JPMorgan Chase compromised 83 million accounts; four individuals were eventually arrested. In 2017, “Rasputin,” a hacker who appeared to be operating alone, broke into databases of U.S. universities and government institutions, apparently hoping to sell access to the information. Earlier this year, a 17-year-old from Florida and two other hackers managed to take over 130 prominent Twitter accounts, including those of former U.S. President Barack Obama and former U.S. Vice President Joe Biden, and posted messages that convinced people to send money to a particular Bitcoin account. The hackers could have used that account access for far more sinister goals, including attempting to escalate geopolitical conflict or crash stock markets.

Some individuals with such exceptional skills sell their talents to the highest bidder. Among the most notorious companies hiring hackers is DarkMatter. This cybersecurity company, based in the United Arab Emirates, has hired former intelligence officials from the U.S. National Security Agency and the Israel Defense Forces, creating what amounts to a private intelligence service and blurring the lines of agency between companies and states. Such companies with top-grade skills may attract unsavory clients, including authoritarian regimes and even terrorist groups.

Democratic states have struggled to regulate the digital world and the market for cyberweapons, but some technology companies are beginning to take action. WhatsApp, through its parent company, Facebook, filed a lawsuit last spring against the NSO Group, an Israeli mobile surveillance company. The suit alleges that NSO covertly exploited a vulnerability in WhatsApp to illegally extract information from the phones of users. Facebook argues that NSO’s actions were unlawful. NSO is also the target of a lawsuit filed in Israel in 2018 by a Saudi dissident who claims that Saudi authorities used the company’s technology to spy on his communications, including those with Jamal Khashoggi, the journalist who was murdered in Turkey by Saudi operatives that same year. Forty-five countries are thought to be using the same NSO product, including democracies such as Mexico and Spain.

MAKING THE RULES

It shouldn’t be left to private companies and courts to determine the legitimacy of products and services that have the potential to compete with state intelligence services. Democratic countries must extend norms and rules to ensure safety in the digital world. Just as nations agreed to international laws governing the conduct of war and nuclear weapons, so, too, must they establish agreements to fend off threats in cyberspace. Perpetrators of cyberattacks have remained unaccountable for too long. Democratic governments especially need to take a number of steps to rebalance the power between states and private companies, which play too large a role in the digital world.

#### That goes nuclear, even if it fails

Vladimir Orlov 20, Founder & Director of the PIR Center, President of the Trialogue Club International, Head of the Center for Global Trends and International Organizations at the Diplomatic Academy, Ministry of Foreign Affairs of the Russian Federation, Co-Founder and Academic Supervisor of the International Dual Degree MA Program in Nonproliferation and Global Security Studies, MGIMO University, Professor at MGIMO University, author (or coauthor) of more than a dozen books and monographs and more than three hundred research papers, articles, and essays, publishes his views in Russian and foreign periodicals, “‘No Holds Barred’ and the New Vulnerability: Are We in for a Re-Run of the Cuban Missile Crisis in Cyberspace?,” SSRN Scholarly Paper, ID 3538078, Social Science Research Network, 02/14/2020, papers.ssrn.com, doi:10.2139/ssrn.3538078

Not hundred per cent of the dialogue has been frozen, fortunately. Certain informal, mostly offthe-record, meetings of US and Russian experts on cyber agenda continue taking place, both through Track 2 and Track 1.5. One of the most intellectually stimulating meetings, with frank exchanges, took place in Vienna in December 2018. The report produced after the meeting stressed “the significant risk […] that cyber-attacks could conceivably lead to a military escalation that may further trigger a nuclear weapons exchange, a fact that became more explicit with the adoption of the current Nuclear Posture Review. This issue gets complicated given that third parties may have the capabilities to invoke a cyber conflict between Russia and the United States. Whether a country or a non-state actor, they could put the two countries on the verge of an armed conflict by attacking critical infrastructure of either of them and making it look as if the aggressor were the other one”[22]. However, one should have no illusion: such informal meetings may be fully fruitful only when their reports and policy recommendations are utilized by the governments. And for that, a warmer climate in bilateral relations is a must. So far, we see exactly the opposite: mercury falling to freezing levels.

Risk of cyber clashes growing into a chaotic global cyber war has been emphasized by the UN Secretary-General Antonio Guterres in his Agenda for Disarmament: “Malicious acts in cyberspace are contributing to diminishing trust among States… States should implement the recommendations elaborated under the auspices of the General Assembly, which aim at building international confidence and greater responsibility in the use of cyberspace.[23]” However, as the members of the US-Russian Track 1.5 working group on strategic stability recently concluded, “without a constructive dialogue on cyber issues between the United States and Russia, the world would most likely fail to agree on any norms of responsible behavior of states in cyber space”[24].

Do we really have to survive a cyber equivalent of the Cuban Missile Crisis to realize the importance of achieving some kind of agreement on cyber issues, and on the broader agenda of international information security?[25] Or is that kind of talk plain old alarmism?

I don’t want to sound a fatalist, but I am even less keen on sounding like an ostrich that’s buried its head in the sand. We cannot ignore the obvious: whether the world’s most powerful actors like it or not, the world is sliding to another major crisis like the one in 1962. The cyber war is already raging. There are no rules of engagement in that war. The uncertainty is high. The spiral of tension is getting out of control. The cyber arms race is gaining momentum. And there are no guarantees that the next crisis will be controllable, or that it will result in a catharsis as far as international information security regulation is concerned. There’s no telling what will happen once the cyber genie is out of the bottle.

### 1AC---Multistakeholder Governance ADV

#### Advantage Two Is Multistakeholder Governance---

#### Two internal links---

#### First---Norms---the plan uniquely fosters ICANN accountability by establishing its presence within international human rights norms

Monika Zalnieriute 19, Research Fellow and Lead of 'Technologies and Rule of Law' Research Stream at the Allens Hub for Technology, Law, & Innovation, Faculty of Law, UNSW Sydney, Australia, “From Human Rights Aspirations to Enforceable Obligations by Non-State Actors in the Digital Age: The Case of Internet Governance and ICANN,” 21 Yale J. L. & Tech. 278, 2019, lexis

While profitability might not necessarily be the only reason driving corporations and private bodies to adopt human rights policies, it is nonetheless widely accepted to be the most influential. When human rights and profitability conflict, the latter will often prevail. This is well illustrated by the infamous  [\*316] strategic alliance between IBM and Nazi Germany, as well as by the recent complicity of U.S. tech giants, such as Microsoft and Google, in restricting free speech in countries like China. In the case of the latter, even an enormous public outcry has not been enough to reverse agreements made by Google to return to China to expand its customer base. While Google's commitment to human rights were questioned by many people, even a special "China search database" does not seem to prevent Google from branding itself as a defender of "Internet freedom."

Similarly, market forces have not been favorable for human rights protection within ICANN so far, not least because ICANN is not a traditional corporation--it is a non-profit corporation, which has no direct customers in the traditional sense, nor does it really compete with any other organization for market share in the assigned names and numbers of the Internet. Therefore, it seems unlikely that ICANN will pay attention to calls by human rights advocates, such as the CCWP-HR, to embrace its CSR obligations and to respect human rights by adopting new or modifying existing policies to ensure that they comply with human rights standards. ICANN does not have to worry that domain name registrants will no longer purchase domain names, because it is essentially a non-profit global policymaking monopoly that does not have any customers or competitors. It is precisely this non-profit status which has thus far successfully insulated ICANN from societal and regulatory pressure.

Given the lack of a profit motivation on the part of ICANN, it is difficult to see why a non-profit body managing global Internet  [\*317] resources and operating solely in the public interest should be subjected to a lower standard for human rights protection than a public body would be. Indeed, the discussion in Section II supra demonstrates that ICANN has qualities that are much more similar to those of public organizations and transnational policymaking networks than those of transnational for-profit corporations. Increasing involvement in ICANN by states--which are bound by both national and international human rights law obligations--points to the increasingly public dimension of this unique international body. This increasingly public dimension, in turn, suggests that the human rights duties of such a quasi-governmental international body must go well beyond those required of business corporations. While for corporations, it may seem reasonable to accept that there is a narrower scope of human rights obligations when compared to states, the narrower scope of obligations appears not as relevant when considering non-profit corporations such as ICANN, which operate solely in the public interest. Indeed, this unique status and operation for the public interest render ICANN's duties to respect human rights much stronger, because its social mission is not complicated by motivations for profit. Therefore, ICANN's human rights duties should be stronger than those of a standard for-profit corporation.

C. Public Confidence and CSR

As a non-profit organization, ICANN might uphold "soft commitments" and CSR not because of competition in the market, but rather to increase public confidence in its operations and create a better public image. Other factors beyond profit considerations, such as public "naming and shaming" and pressure by regulatory bodies and civil society, might therefore be more effective.

Thus far however, public confidence and public image have not proven to be strong factors for ICANN in embracing its CSR to respect human rights. A potential reason for this is that ICANN  [\*318] is not a widely known organization, and many people are unaware of the human rights implications of its activities. Pressure by NGOs or by data privacy commissioners and authoritative intergovernmental organizations (such as the EU Commission or Council of Europe ), have been ineffective in preventing ICANN from adopting certain policies that seem to strongly contradict human rights law. For example, an outcry from human rights activists over the .gay top level domain name has not motivated ICANN to pay more attention to the rights of freedom of expression and freedom of assembly of the LGBTI community. Similarly, dozens of letters to ICANN from the EU data protection authorities and various NGOS over violations of data privacy rights in the WHOIS policy and in the Registrar Accreditation Agreement of 2013 have seemingly done little to bother ICANN, in terms of any decrease in public confidence or in trust from regulatory authorities. Moreover, ICANN's main accountability mechanism of independent  [\*319] arbitration, which can be used to challenge its decisions, has been employed only once since 2005.

Therefore, public accountability and the informal multistakeholder structure of ICANN have had a limited effect in actually holding the organization to human rights values. Public confidence might, however, become increasingly important, as ICANN is in the process of the IANA transition and is no longer supervised by the U.S. government, with ICANN declaring in its own words that it is "officially accountable to the global multistakeholder community."

D. Voluntary Commitments and CSR as "Social Branding"

A widespread practice by private actors of upholding CSR norms solely for the purpose of increasing public confidence has led some scholars to argue that CSR policies have been captured by business interests and commodified, as these policies are often used as marketing or social branding tools. In the case of ICANN, such CSR commodification does not relate to the promotion of its products (as it does not sell any), but rather to the strengthening of its institutional image in the global Internet governance regime as a relevant, transparent, and accountable institution that respects human rights. While ICANN is a non-profit, quasi-governmental corporation, its income is generated from numerous for-profit entities, such as registries and registrars that it contracts with. Thus ICANN perhaps could be indirectly compared to what some scholars describe as "market-oriented NGOs." These are sponsored by  [\*320] businesses but aim to be associated with civil society organizations; they "disseminate and actualize corporate-inspired versions of 'social responsibility.'" An example of a market-oriented NGO is the International Chamber of Commerce (ICC).

Some have convincingly argued that a powerful platform for "corporate-inspired versions of social responsibility" was created by the UN Guiding Principles. For example, the organization Rights and Accountability in Development (RAID) uses empirical evidence collected during the five years since the adoption of the UN Guiding Principles to argue that corporations endorse the UN Guiding Principles because they "offer companies a way to manage human rights risks, thereby protecting their business reputation, insuring against claims, and managing problems to avoid their escalation. Ultimately, like any other risk management process, it is an approach which protects profits by reducing costs."

E. CSR as a Risk and Information Management Tool

Empirical research by RAID further suggests how corporations might adopt company-based grievance mechanisms to overcome barriers to accessing judicial review, while at the same time introducing numerous controls to monopolize information, such as legal waivers and confidentiality clauses. This essentially channels victims through a review mechanism of the company's own making, which is centrally devised and controlled.

This is relevant for ICANN, as its institutional structure is based on contractual agreements and memoranda of understanding, and is filled with numerous legal waivers and confidentiality clauses. Lack of compliance with human rights laws is often  [\*321] well hidden behind the numerous legal actions and waivers between ICANN and various parties. For example, as mentioned in Section II supra, ICANN is seeking injunctions to ensure that accredited registrars keep collecting and revealing personal information in WHOIS, as required under its contracts, which contravenes the EU data protection framework under the GDPR. Similarly, the incompatibility of the Registrar Accreditation Agreement (RAA) agreement with the EU data protection law is managed via the so-called "data retention waiver" system, exempting several registrars from the specified data retention requirements, so that they can comply with EU data protection law.

It is not yet clear how such "legal management" systems will be impacted (if at all), once the human rights Bylaw comes into effect. The Impact Assessment Evaluation of the new Bylaw by the ICANN staff states, "The area where ICANN will be most impacted is in bringing in tools so that the policy development takes into account human rights considerations." Does this mean that ICANN will adopt ex ante human rights impact assessments for each policy it is developing, and will not simply try to manage incompatibility ex post? It would be naive to expect that when implementing the human rights Core Value, ICANN would act fundamentally differently from other transnational corporations, and without resort to legal management mechanisms, such as the waivers which it has readily employed in the past.

 [\*322]  F. Would Regulatory and Punitive Action Help?

Given the limited ability of multistakeholder accountability mechanisms to hold ICANN to its self-imposed human rights commitments, regulatory action against private actors in Internet governance might provide lessons for holding ICANN accountable for its human rights commitments. In this regard, a relationship between influential Internet platforms and EU regulators (such as the EU Commission and the Article 29 Working Party) could provide such lessons for ICANN, as well as for the business and human rights movement more generally. In particular, Google's market dominance saga and Facebook's Cambridge Analytica scandal suggest that private actors will rarely change their policies and procedures unless threatened with direct legal and punitive actions by influential institutions, such as the EU Commission or the U.S. Department of Commerce, for disregarding and violating fundamental rights norms.

#### ICANN accountability cements international support for multistakeholder internet governance

Megan Stifel 17, Founder and Chief Executive Officer of Silicon Harbor Consultants, “Maintaining U.S. Leadership on Internet Governance,” 2/21/17, Council on Foreign Relations, Digital and Cyberspace Policy Program, https://www.cfr.org/report/maintaining-us-leadership-internet-governance

Challenges for Multistakeholder Governance

The reformed multistakeholder internet governance approach faces significant challenges. The sophistication of cybercrime continues to increase, as does the use of computer attacks for espionage, disruption, and influence by states. In October 2016, unknown actors used thousands of unsecured devices to launch a massive attack that limited many users’ access to Twitter, Amazon, and other major websites. Left unchecked, these growing threats and other technical vulnerabilities could ~~cripple~~ [destroy] the internet. Developing economies are only now beginning to grapple with these challenges as increasing numbers of their citizens go online. If the multistakeholder model is seen as ineffective in addressing the vulnerabilities that enable cybercrime, or being completely peripheral to the issue, developing economies could question its legitimacy and seek answers in the multilateral system.

In addition, authoritarian governments, many of which are increasing their efforts to control internet activity within their own borders, continue to challenge multistakeholder models of governance. These countries cherry-pick multilateral and other standards organizations to find those most likely to promote a state-centric approach to governance. Recent efforts to create a technical standard to catalogue all devices connected to the internet failed, but it can be expected that China, Russia, and others will find new opportunities to promote other standards that could frustrate innovation.

There are also worries that ICANN, the operator of the IANA functions, will abuse its authority and ignore the interests of internet users. In the past, ICANN has been accused of ignoring the views of governments, prioritizing private sector interests, and mismanaging its finances. ICANN recently implemented enhancements to address these and similar concerns. Nevertheless, ensuring that ICANN remains accountable will be critical to demonstrating that the multistakeholder approach works. It will also act as a bulwark against Russian and Chinese efforts at greater intergovernmental control over the internet.

#### Externally---ICANN responsiveness spills over globally, securing a rights-based framework throughout digital governance

Andi Wilson Thompson 17, Senior policy analyst at New America’s Open Technology Institute, “Protect the Free and Open Internet,” 1/19/17, New America, https://www.newamerica.org/weekly/protect-free-and-open-internet/

ICANN: The Internet Corporation for Assigned Names and Numbers (ICANN) is a little-known non-profit organization that helps manage the “inner workings of the internet.” Put simply, ICANN maintains a complex system of naming and numbering that directs people to the right website. The U.S. has had a veto over ICANN decisions since its creation—a responsibility it has never exercised—but the Department of Commerce recently completed the long-awaited process of relinquishing that role. ICANN has matured and can now function as an independent organization. This transition led to strong statements by President-elect Trump, who accused the U.S. of “surrendering control of the internet to foreign powers.” In reality, as our paper points out, the change will make it easier to fight for internet freedom around the world by removing the common complaint that the U.S. is in charge. Given Trump’s critical statements, there is concern that he could take steps to derail the progress that the United States has made toward more global internet governance. We strongly recommend that the incoming administration strengthen mechanisms that ensure the independence, accountability, and transparency of ICANN’s decision-making processes, and work with the private sector and other governments to build independent and accountable financial support mechanisms for diverse global participation.

Rebecca MacKinnon, director of the Ranking Digital Rights project (incubated at New America), said it best during the launch event for these recommendations: Internet freedom starts at home. Domestic policy influences international policy, U.S. policy influences global policy, and threats to internet freedom in the United States embolden governments that are looking to limit the access of their citizens to a free, open, and secure internet. The Trump administration has a duty to assert its unique leadership on policy issues, including those above, and to continue the decades-long, bipartisan support that internet freedom policy has previously held. Further, it must take steps to protect, promote, and strengthen freedom online—at home and around the world—through policies that align with our long standing international commitments to uphold human rights and the rule of law while also strengthening our economy and protecting us from threats to national security.

#### Solidifying human rights as a foundation for internet norms stops nuclear war AND builds capacity to respond to future existential threats

Dennis Pamlin 15, Entrepreneur and Founder of 21st Century Frontiers, Senior Associate at Chinese Academy of Social Sciences, Visiting Research Fellow at the Research Center of Journalism and Social Development at Renmin University, Advisor to Centre for Sustainable Development at Confederation of Indian Industries, Stuart Armstrong, DPhil from Oxford University, James Martin Research Fellow at the Future of Humanity Institute at Oxford University, “Global Challenges, 12 Risks That Threaten Human Civilization: The Case for a New Risk Category”, Global Challenges Foundation, February, https://api.globalchallenges.org/static/wp-content/uploads/12-Risks-with-infinite-impact.pdf

2. Whether poor governance will result in a collapse of the world system.

3. How mass surveillance and other technological innovations will affect governance.

4. Whether there will be new systems of governance in the future.

5. Whether a world dictatorship may end up being constructed.

1. Global coordination between nations is essential for building a good global governance system – but also essential for building a bad one.

2. Global poverty is one of the important problems that are being only partially solved by current policies. In turn, it can contribute to global instability, worsening likely governance outcomes.

3. Smart sensors and mass surveillance can contribute to new systems of governance, but also to large-scale dictatorships.

4. The global system of governance consists of the UN and a wide variety of bilateral or multilateral agreements and norms, constructed mainly according to national self-interests. Thus significant improvements to global governance are currently possible.

5. General mitigation efforts against governance disasters are tricky – most mitigation efforts are the results of governance decisions! However, some efforts can be made – for instance, an increase in recognised human rights across the globe could militate against certain pernicious governance directions. These efforts are of a very different nature to mitigating other risks.

6. Some groups may deliberately seek to construct a world dictatorship, either through self-interest or because they believe it would be the best design for global governance.

7. Undesirable world systems (such as global dictatorships) could result from a worsening of global governance.

8. Many value systems do not distinguish between action and inaction, so a global system that didn’t positively encourage human flourishing would be almost as pernicious as one that blocked it.

9. Global pollution is a problem requiring solutions at the global governance level.

10. Climate change is a problem requiring solutions at the global governance level.

11. Various ethical systems have desirable goals that could be achieved in theory, but would not be achieved under suboptimal governance.

12. It would be a tragedy if absolute poverty were to endure over the generations to come, especially if this outcome were avoidable.

13. A collapse of the world system, for any reason (including revolution) is the most direct way a governance disaster could result in mass casualties.

14. Governance decisions taken at the global level have a high potential to cause disruptions to the world’s political and economic systems.

15. Bad governance at the global level may not be susceptible to improvements and could cause problems for a considerable amount of time.

16. Technological innovations could allow completely new models of government, but could also facilitate surveillance dictatorships.

17. Global instability could result in more pernicious systems of governance, as well as an increased failure to solve important problems.

18. New systems of governance could be developed, using modern communication technology for instance.

19. The political landscape after a disaster will be important in determining whether governance disasters could cause civilisation collapses or mass casualties.

20. How to compare enduring poverty, actual casualties, and repressive governance is a question of values and not just of direct comparison of lives lost.

– Research

In this paper Nick Bostrom, the director of the Future of Humanity Institute, lays out the case for making existential risk reduction a global priority. Existential risks (Xrisks) are the highest category of negative impact in this report, those that threaten the entire future of humanity. The policy implications of the paper are:

– Existential risk is a concept that can focus long-term global efforts and sustainability concerns.

– The biggest existential risks are anthropogenic and related to potential future technologies.

– A moral case can be made that existential risk reduction is strictly more important than any other global public good.

– Sustainability should be rethought in dynamic terms, as aiming for a sustainable trajectory rather than a sustainable state.

– Some small existential risks can be mitigated today directly (e.g. asteroids) or indirectly (by building resilience and reserves to increase survivability in a range of extreme scenarios) but it is more important to build capacity to improve humanity’s ability to deal with the larger existential risks that will arise later in this century. This will require collective wisdom, technology foresight, and the ability when necessary to mobilise a strong global coordinated response to expected existential risks.

– Perhaps the most cost-effective way to reduce existential risks today is to fund analysis of a wide range of existential risks and potential mitigation strategies, with a long-term perspective.

If this paper is right, a general lack of focus on existential risks by governments and other agents can be considered a governance disaster in itself.

19-Apr-13: Multidimensional poverty index diminishes in 18 out of 22 analysed countries 563 – Event

Of 22 countries for which the Oxford Poverty and Human Development Initiative analysed changes in MPI (Multidimensional Poverty Index) poverty over time, 18 reduced poverty significantly.

This confirms other studies, by the World Bank564 and others:565 poverty reduction is possible, and has been successfully implemented in many countries.

05-Jun-13: Guardian leaks NSA spying programme 566

– Initiative

A significant event was the revelation by Edward Snowden of the extent of the NSA’s surveillance programme. This included the mass recording and mining of data across the United States and the interception of foreign politicians’ data.

The revelations caused great controversy567 and raised questions about the NSA’s surveillance oversight.568 The episode established that discrete mass surveillance – an important component of potential totalitarianism – was already possible using current technology and political organisation.

– Policy

To reduce poverty in the future, it is important to maintain and extend past trends in poverty mitigation. The United Nations’ Poverty-Environment Initiative (PEI), launched in 2008, has had a number of success stories from Uruguay570 to Malawi.571 Due to increased demand from member states, the programme has been extended for another five years, 2013-2017, and may add countries such as Myanmar, Mongolia, Indonesia, Albania, Peru and Paraguay. Such programmes demonstrate that the bureaucratic/policy side of poverty reduction is supported by an international infrastructure with a strong emphasis on assessments. The effect of such approaches on overall poverty will depend on the interplay between these policies and the other side of poverty reduction: economic growth572 and trade.573

“We have some idea what might happen if, in the face of other pressing global challenges, we divert our focus from making systemic improvements in public health and veterinary services — and that prospect is frightening.” The World Bank 574

global risks

4. Relations between global risk and their potential impacts between global risks

4.1 General relations Two things make the understanding of the relation between the global risks particularly important.

1. Impacts: The global risks are interconnected in different ways. Often the situation can be described as a set of dominoes: if one falls, many others follow. Even small impacts can start a process where different challenges interact. Higher temperatures due to global warming can result in the spreading of pandemics which increase tensions between countries, and so on.

2. Specific measures to address a risk: Global risks often require significant changes in our current society, from how we build cities to how food is produced and provided. Such significant changes will result in situations where measures to reduce the risk in one area affect the probability and/or the impact in other areas. Depending on the measure chosen to reduce the risk, and other complementary measures, the effect can be positive or negative.

Relations between global risks is an area where surprisingly little work is being done. Most research focuses on individual or closely related groups of challenges. Organisations working on global challenges are almost always working on individual risks. The initial overview below is based on individual studies where different relations are analysed, but no work has been identified where the relations between all twelve challenges have been analysed.

A risk that is natural to start with is future bad global governance, as all other global challenges exacerbate governance disasters,575 and all other global challenges can potentially be exacerbated by governance disasters.

A well functioning global governance system is therefore a key factor to address global catastrophic risks. Conversely, avoiding governance disasters improves all risks, as better institutions are better able to mitigate risks. Governance disasters directly increase the problems of climate change (through a lack of coordination between countries), the risk of nuclear war (by stoking conflict between nuclear powers) and global system collapse (by weakening global responses to systemic risks). All risks exacerbate global system collapse, by putting extra stress on an interconnected system.576 Conversely, a resilient governance system is better able to cope with all risks, and a collapsed global system is more vulnerable to all risks.

#### Second---Foreign Capture---lack of domestic antitrust enforcement over ICANN incentivizes foreign actors to fill the gap---that causes litigation to discredit the body and prompts a shift to state-based multilateral governance

Szóka et al. 16, Berin Szóka is President of TechFreedom; Brett Schaefer is the is Jay Kingham Senior Research Fellow in International Regulatory Affairs at The Heritage Foundation; Paul Rosenzweig is a Visiting Fellow at The Heritage Foundation and formerly served as Deputy Assistant Secretary for Policy in the Department of Homeland Security, “ICANN Transition is Premature,” 9/8/16, http://docs.techfreedom.org/TF\_White\_Paper\_IANA\_Transition.pdf

To the extent that’s true, those who worry that ICANN may be subject to capture and used in anticompetitive ways actually should worry about the Transition, not necessarily because the Transition changes the legal analysis over whether ICANN can be sued, but because if U.S. antitrust law can’t provide an effective remedy (or deterrent), one could legitimately worry that the Transition means giving up the leverage the U.S. has now: the possibility of putting the IANA contract out for re-bid (to an organization other than ICANN) if ICANN misbehaves.

And what about foreign antitrust law? Foreign courts are, in general, not only more willing to allow suit against state actors but also to discount pro-competitive justifications and, frankly, to allow firms to bring suits against their rivals. So it’s entirely possible that, while U.S. antitrust law might under-enforce, ICANN could be vulnerable to antitrust suit in other jurisdictions.

One might think the two would balance out, and that foreign courts would allow valid suits that might fail in the U.S. for whatever legal reason. Maybe. But there are so many potential antitrust suits that could be brought. While they’d all, no doubt, be framed as protecting consumers, some may really have narrow corporate agendas or broader political agendas.

China and Russia have made no secret of their push to gain greater control over Internet governance. And there’s every reason to think they would use antitrust as a weapon to that end. It wouldn’t be hard for them to find (or create) plaintiffs to carry their water. Again, it’s hard to say exactly what the suits would look like, but it’s clear what their basic objective would be: to portray ICANN as a cartel dominated by, in particular, American companies. The fact that U.S. courts might have tossed out such suits would simply help with the political framing. The goal would be to say that the Transition isn’t enough, that Internet governance should be transferred to the ITU, where it would be “democratically accountable” (i.e., dictated by governments).

#### It’s likely---there’s a coming push to displace ICANN and dislodge its model

David Ignatius 21, Associate editor and columnist for The Washington Post, “Russia’s plot to control the Internet is no longer a secret,” 5/4/21, Washington Post, https://www.washingtonpost.com/opinions/2021/05/04/russias-plot-control-internet-is-no-longer-secret/

Russia’s campaign to control the Internet isn’t just a secret intelligence gambit any longer. It’s an explicit goal, proclaimed by Russian President Vladimir Putin as a key element of the Kremlin’s foreign policy.

Putin complained during his annual address to the Russian federal assembly on April 21 that the United States and other western countries are “stubbornly rejecting Russia’s numerous proposals to establish an international dialogue on information and cybersecurity. We have come up with these proposals many times. They avoid even discussing this matter.”

Asking for “international dialogue” takes some nerve, coming from the world’s biggest cyberbully — a country that notoriously meddled in the 2016, 2018 and 2020 U.S. elections, and has engaged in similar Internet mischief throughout the world. Controlling the “information space,” as the Russians sometimes call it, has long been an intelligence priority for Moscow.

Russia is waging its cyberdiplomacy offensive on two fronts: First, the United Nations has embraced Russia’s proposal to write a new treaty governing cybercrime, to replace the 2001 Budapest convention that Moscow rejected because it was too intrusive. And second, Russia is lobbying for its candidate to head the U.N.’s International Telecommunications Union (ITU) and use it to supplant the current private group, known as ICANN, that coordinates Internet addresses.

These international regulatory battles sound obscure, but they will help determine who writes the rules for Internet communications for the rest of the 21st century. The fundamental question is whether the governance process will benefit authoritarian states that want to control information or the advocates of openness and freedom.

Secretary of State Antony Blinken stressed on Tuesday the importance of this contest. “There are relatively few items that are ultimately going to have a greater impact on the lives of people around the world than the ITU post. It may seem dry and esoteric, but it’s anything but. And so we’re very, very actively engaged on this front,” Blinken said in an email message, elaborating on comments he made to me during an April 7 interview.

Russia outlined its ITU game plan in unusually forthright comments by Ernst Chernukhin, the foreign ministry’s special coordinator for political use of information and communications technology. He spoke on April 21, the same day Putin made his speech.

“The optimal option . . . would be transferring Internet management prerogatives specifically to the ITU, as it is a specialized U.N. body, which has the needed expertise on these issues,” Chernukhin said. “This strategic objective may be achieved by electing or promoting the Russian candidate to the position of the ITU Secretary-General in the 2022 elections . . . and by holding the 2025 anniversary U.N. Internet Governance Forum in Russia.”

Russia’s candidate for ITU secretary-general is Rashid Ismailov, a former deputy chief of the Russian communications ministry and a former executive at the Chinese telecommunications company Huawei. In announcing Ismailov’s candidacy on April 7, Maxim Parshin, the current deputy minister, underlined Moscow’s governance takeover plan: “We believe it is important to define an entity, within the U.N. framework, that would develop and implement legal norms and standards in the field of Internet governance. We think that the ITU could become such an entity.”

The Biden administration’s candidate for the ITU post is Doreen Bogdan-Martin, an American telecommunications expert who’s currently director of the ITU’s development bureau. The State Department, which has sometimes been lackadaisical in such international regulatory contests, is campaigning aggressively for Bogdan-Martin, and officials hope she’ll have sufficient support in Africa, Europe, Latin America and elsewhere to win the post. The election will take place at an ITU gathering late next year in Romania.

Internet technical governance today is managed by ICANN, which stands for Internet Corporation for Assigned Names and Numbers. This gathering of engineers and other experts was founded in 1998 to supervise domain names for the Defense Department’s ARPANET system, and it operated under a contract with the Commerce Department until 2016, when it went fully private.

The American roots of the Internet seem to both upset Putin and fuel conspiratorial talk. The Russian leader said during a 2014 interview translated by RT that the Internet “first appeared as a special CIA project . . . and the special services are still at the center of things.” Dmitry Medvedev, Russia’s former president, complained in a February interview: “The Internet emerged at a certain time, and undoubtedly the key rights to control are in the United States.”

Russia is ready to rumble over the rules that will shape the future of Internet communications. Fortunately, the Biden administration seems determined to fight back hard to maintain fair and open rules.

#### Multistakeholder governance is key to fend off authoritarian takeover but overzealous governmental intervention backfires

Joe Kane & Milton Mueller 18, Graduate research fellow at the Mercatus Center; Professor at the Georgia Institute of Technology School of Public Policy, “U.S. government should not reverse course on internet governance transition,” Brookings Institute, 2/7/18, https://www.brookings.edu/blog/techtank/2018/02/07/u-s-government-should-not-reverse-course-on-internet-governance-transition/

ICANN is an imperfect organization with politics and problems of its own. But the transition led to dramatic improvements in ICANN’s accountability and corporate governance. The relevant alternatives at this point are leaving IANA stewardship in the hands of ICANN or, if legally possible, transferring it back to the U.S. government. There are no perfect solutions here, only tradeoffs. Accepting stewardship by ICANN is still preferable to reverting to the NTIA, which would bring injurious consequences for global internet freedom. For those who value global internet freedom, the former is the only option.

The internet protocols are used globally, rendering internet governance a matter of global concern. A free and open internet run by the private sector and relatively free of geopolitics was the reason for delegating authority over IANA to ICANN in the first place.

As global commerce and civil society become increasingly reliant on the internet, committing to private governance, rather than government or intergovernmental control, is more critical than ever. If the U.S. wants to be a legitimate force in combating authoritarian regimes who seek greater control over the internet, it must hold fast to its principle of multi-stakeholder governance by non-state actors, and it must be able to keep moderate countries from abandoning the ICANN regime and embracing governmental control.Reversing the IANA transition would tell the world that we want governments to be in charge of the internet—and China and Russia would not hesitate to assert their respective claims.

The issue here is as much about rhetoric as it is about substance. The IANA functions themselves do not directly impinge on whether authoritarian governments gain more influence over the internet, but how the United States reacts to the transition will nudge diplomatic debates one way or another. If the U.S. government is seen to be grasping at more control over the internet, countries that would otherwise be on the fence might support a greater role for intergovernmental bodies in internet governance.

On the other hand, going through with the transition has improved the United States’ negotiating position. By committing to private governance of the internet, it has been and will be able to augment its credibility in arguing against more government control. Attempting to reverse the transition would undermine whatever influence the U.S. has gained since it took place.

This problem is now especially acute because of this November’s Plenipotentiary Conference of the UN’s International Telecommunication Union, a body that has notoriously sought to establish intergovernmental control over the internet in the past. Authoritarian governments want nothing more than to paint the U.S. as a hypocrite that touts internet freedom while secretly grabbing the controls. How far they seek to go at this year’s conference will partly depend on how far the U.S. goes in attempting to reverse the IANA transition and how many moderate-country votes they can swing to their side.

Of course, it might be that Redl’s promised “panel of experts” was a political ploy. It may never materialize or, if it does, it may return a verdict consistent with his original answer at the confirmation hearing, that “it’s very difficult to put the genie back in the bottle.” Either way, both Redl and Cruz should look ahead to address real internet governance threats from authoritarian governments, like an expanded role for the ITU and ICANN’s Government Advisory Committee, rather than trying to undo the privatization of the IANA functions.

We have been living in a post-transition world for over a year now, and nightmare scenarios of Russia and China somehow being empowered by this change have yet to materialize. Trying to undo the transition only makes these harmful outcomes more likely.

#### A transition fractures global ICT interoperability

* ICT: information and communications technology

Isabella Wilkinson 21, Research Associate at Chatham House’s International Security Programme, “Digital standards are key for protecting democracy,” 5/17/21, https://www.chathamhouse.org/2021/05/digital-standards-are-key-protecting-democracy

Geopolitical tensions in digital technical standards

And it could not have come at a better time. China has proposed a ‘new IP’ within key standards development organizations (SDOs) such as the International Telecommunications Union (ITU), dubbed by one expert as ‘the most important UN agency you have never heard of’.

Proposals for a decentralized internet infrastructure threaten global ICT interoperability and have serious consequences for human rights: China’s proposals may facilitate the implementation of its social credit scheme. And since the launch of its Belt and Road Initiative (BRI), and 2035 Standards Strategy, Chinese proposals to reshape standards have gained momentum, as well as some support from its trusted trade partners.

To complicate matters further, ITU secretary general Zhao Houlin is known to favour China-backed proposals and, with US candidate Doreen Bogdan-Martin likely pitted against Russia’s Rashid Ismailov in the ITU 2022 plenipotentiary, stakes have never been higher. Ismailov is a former Huawei executive and, for Russia, the ITU presidency offers a unique opportunity to champion its vision for closed, nationally-controlled internet; for example, by supplanting ICANN, the current group coordinating internet addresses.

But these threats run deeper than just Russia and China. Globally, there are a diversity of regimes with long-term, vested interests in shaping standards for their own benefit, willing to throw their weight behind China’s proposals. Like-minded democracies must urgently rethink their approach to standards – and a multi-stakeholder strategy could offer a solution.

What more stakeholders bring to the table

To assist G7 partners in their preparation for the Ministerial Declaration, experts at the Chatham House-DCMS workshop (held on 3 March 2021) recognized that multi-stakeholderism encourages coalition-building, nurtures local and cross-border innovation, and bolsters shared normative commitments to safeguarding the transparency, openness and interoperability of ICTs.

For years, industry has dominated efforts to shape digital technical standards, with everyday tech items and their standards, such as USB specifications, developed by coalitions of ICT companies. But new challenges demand new approaches. ICT giants offer technical expertise and digital leadership experience, but it is time to broaden the field.

Governments have always played a role in standards development, with the power to identify policy issues, facilitate partnerships, and provide financial incentives, but the G7 declaration signals a reimagining of government responsibilities vis-à-vis industry’s leadership. At a national level, governments can lead strategic coordination and invest in capacity-building for non-state actors, while internationally, governments can encourage coalitions between stakeholders.

The G7’s declarations on ICTs are steps in the right direction, as are national standards strategies such as Germany’s Standardisation Roadmap on AI, and the UK’s focus on standards in the Integrated Review. But non-state actors also have a legitimate, urgent role to play. In the past, knowledge gaps, financial barriers, and a lack of incentives have prevented sustained engagement from civil society and academia in SDOs.

These actors bring much to the table, such as technical expertise, existing networks, and under-represented voices, such as young adults and children. Plus, they already raise awareness about the importance of certain standards, and serve as barometers for their societal impact.

It may be easy to forget that the SDOs themselves are also stakeholders, setting the tone for inclusion, coordination, and engagement, so their leadership and norms matter. US Secretary of State Anthony Blinken noted there are ‘relatively few items that are ultimately going to have a greater impact on the lives of people around the world’ than the ITU leadership race.

Why multi-stakeholderism matters

From a technical standpoint, the more perspectives involved in determining technical interoperability, the better – especially with the onset of disruptive technologies such as quantum and AI which are likely to have a wide, societal impact. Building deeper knowledge-sharing networks between academia and SMEs can generate resilient standards that reflect policy principles.

But more importantly, multi-stakeholder approaches build cross-sector and cross-border coalitions rooted in normative commitments to open, democratic societies and enhancing shared prosperity. Meaningful engagement on standards with a variety of stakeholders at national and regional levels is even more urgent for technologies with far-reaching societal impacts – such as smart cities and autonomous vehicles – to avoid societal harms.

By championing open, transparent, consensus-based multi-stakeholderism in standards-setting, states bring home more than just majority votes on key proposals. Changing ICT culture by institutionalizing multi-stakeholderism and diverse representation would generate good practices which can be replicated in areas such as the UN cybercrime treaty deliberations proposed by Russia to supplant existing agreements, and negotiations on responsible state behaviour in cyberspace.

There is a long way to go, as states still need to develop effective outreach mechanisms and invest in coordination at all levels, and there are clear trade-offs between stakeholder inclusion and the efficiency of expert groups.

But faced with some states’ aspirations to shape the internet, telecoms, and emerging technologies, like-minded states interested in protecting open, democratic societies cannot afford to adopt a siloed approach to digital technical standards. Multi-stakeholderism is both urgent and necessary – before it is too late.

#### Global ICT interoperability prevents extinction from disease, food, and environmental collapse

N. Kishor Narang 20, Research Advisor at the Institute of Informatics and Communication at the University of Delhi, Member of the Academic Council at D Y Patil International University, Member of the Academic Committee at Electronics & ICT Academy at National Institute of Technology, ““Protecting the Planet with Standards” ... Mentor’s Musings on the World Standards Day 2020.”, LinkedIn, 10/14/2020, https://www.linkedin.com/pulse/protecting-planet-standards-mentors-musings-world-day-narang

It has been observed that the technologies developed by human beings in the last two to three centuries have had a major impact on the earth’s climate and our nature’s equilibrium. Some believe that we have reached a point of no return. This can have a huge impact on life on earth, especially on the human species.

However, while technology has been responsible for most of it, technology also seems to have a solution for it.

The COVID-19 pandemic, a humanitarian challenge, has caused widespread disruption in the global business community. The issues involved in the pandemic are both nuanced and complex. Global business dynamics are going to witness a sea change in the coming times.

The COVID-19 crisis has upended urban life, as we know it. Cities are on lockdown, and the once bustling streets of Paris, New York, London, Rome, Bombay and more now sit virtually empty. Technology and Standards have been critical to the way cities and society have coped with the crisis. Online delivery companies have been essential for getting food and supplies to residents, while their restaurant delivery counterparts have helped keep restaurants up and running during the lockdown. Urban informatics has helped track the virus and identify infection hot spots. As cities begin to reopen, digital technologies are being leveraged to better test and trace the virus as well as to ready urban infrastructure, like airports, public transportation, office buildings, and businesses, to open back up safely.

Safety in the interconnected world - As organizations across the world ramp up their operations and strive to serve their consumers, they are also faced with increased cyber security threat. Cybercriminals can exploit the weaknesses and vulnerabilities to exploit the connected devices and the network itself. This presents a challenge to the cybersecurity teams who must learn to evolve with the evolving threat perception.

As work from home increases, users who don’t have the same quality of security ecosystem as at their offices are finding themselves to be the targets of directed phishing, smishing, vishing and ransomware attacks. Home Wi-Fi systems usually suffer from a low degree of protection and are presenting opportunities for hackers. Since more and more people are working from home, there is a fear that the ever-increasing number of IoT devices in the household are easy targets for hackers, who can use them as gateways to undermine the security of the larger systems they connect to.

Managing disruption during a global pandemic - The current health crisis which has gripped the world can be seen as an inflection point between Digital Transformation and businesses. It has also impressed upon various stakeholders to invest more robustly in digital technologies. It is also a challenge to the security planners who have to guard against security threats and also ensure business continuity. Hospitals must have emergency backup systems which ensure seamless continuity of operations and databases. Rogue nations and intelligence agencies who attempt attacks on healthcare facilities must be warned of immediate consequences.

The question most people would ask is – What do STANDARDS have to do with all this?

Although most people do not realize it, standards and the methods used to assess conformity to standards are absolutely critical. They are essential components of any nation's technology infrastructure—vital to industry and commerce, crucial to the health and safety of citizens, and basic to any nation's economic performance. About 80 percent of global merchandise trade is affected by standards and by regulations that embody standards.

Standards enable us to pre-solve complex problems.

International standards enable and provide society with efficient ways to get work done while maintaining the safety of producers who create and provide goods and services, as well as the end-users receiving the benefits from these goods and services. International Standards are an important instrument for global trade and economic development. They provide a harmonized, stable and globally recognized framework for the dissemination and use of technologies. Standards provide people and organizations with a basis for mutual understanding, and are used as tools to facilitate communication, measurement, commerce and manufacturing. Standards are everywhere and play an important role in the economy by facilitating business interaction.

Standards: details of "Mega" importance - The topic of standards and the challenge of effective standards development can bewilder, by immersing the uninitiated in a blizzard of details. To some degree, this is unavoidable. After all, standards are details. They specify characteristics or performance levels of products, processes, services, or systems.

Standards are becoming increasingly important due to several intensifying trends:

· the pace of technological innovation is quickening;

· trade volumes are growing faster than national economies; and

· business operations are globally distributed.

There is extreme pressure for the standards community to reckon fully with the realities of the brutally competitive, extremely fast-paced global economy. This is because standards are necessary complements of modern products, processes, and services. Standards can:

· promote industrial and market efficiency;

· foster international trade;

· lower barriers to market entry;

· diffuse new technologies; and

· protect human health and the environment.

Hence, it is critical to achieve worldwide use of International Standards and Conformity Assessment Services that ensure the safety, efficiency, reliability and interoperability of electrical, electronic and information technologies, to enhance international trade, facilitate broad electricity access and enable a more sustainable world.

Standardized protocols and regulatory controls will allow seamless sharing of information and data between various devices. This will help in managing security breaches and dealing quickly with them. Adoption of universal standards will result in faster and more efficient response to any future disaster or pandemic.

Since Standardization is a collective churning, deliberation & collaboration process, we need to moderate, as well as, expand our individual thoughts on any subject to make it acceptable globally.

Innovation and technology development are accelerating. Strategic plans and roadmaps are needed to help ensure that the market is suitably served with best practices that is pertinent to the goals and context of this very large market.

Standards support our need to balance agility, openness and security in a fast-moving environment. Standards provide us with a reliable platform from which we are able to innovate, differentiate and scale up our technology development. They help us control essential security and integrate the right level of interoperability. Standards help ensure cyber security in ICT and IoT systems.

The world has never been as competitive as today, yet cooperation is a must to deliver solutions for increasingly complex systems. No technical committee and no standards organization are able to single handedly develop all the Standards that are needed. We all need to work together.

Given the scale, moving forward cannot be successfully, efficiently, and swiftly accomplished without standards. The role of standards to help steer and shape this journey is vital. Standards provide a foundation to support innovation. Standards capture tacit best practices and standards set regulatory compliance requirements.

Covid-19 has brought us face to face with systemic problems, we have long chosen to ignore collectively: Inequalities, environmental degradation, hunger, poverty, oppression, and the digital divide. In this age of technological progress, many of us are tempted by the promising thought of quick technological fixes to these deeply-ingrained issues. But technology alone will not save us. We must put the well-being of people, communities, and the planet back at the centre. We need to ask ourselves: What are the futures we want to create? What do we value? What kind of world do we want to live in?

The socioeconomic disruption caused by COVID-19 will be a lasting one and poses a challenge to planners and leaders globally; a number of fundamental changes in policy and mindset are necessary. As we have already witnessed, because of interconnected trade and business, any future pandemic may spread rapidly globally and infect millions. Some countries may be less geared to tackle the crisis than others. But with challenges come opportunities. Marrying Human Intelligence and labor with Disruptive Technologies to find solutions is the way to go. Necessity is the mother of inventions and hopefully, public-private partnerships can lead to many new innovations. Without a collaborative approach, any global approach to deal with any future pandemic will be compromised. And, Standards shall play a crucial role in providing INTEROPERABILITY, SAFETY, SECURITY, RELIABILITY and last but not the least a comprehensive TRUST in the minds of procurers, users and citizens.

This pandemic has catapulted two diametrically opposite paradigms to the focus of the mankind – ‘Sustainability’ and ‘Digitalization'.

Facing the global pandemic, multiple nations have seen lockdowns, changed social interactions and challenging isolations. But in these testing times, nature has been our constant friend. From our windows to the world, we have been comforted by nature’s presence all around us — we have been delighted by the birdsong we can now hear. We have finally seen the sheen on the wings of a delicately fluttering butterfly, the industriousness of ants as they march by, the green-gold of trees as they sway in a magical breeze, the pink glow of dawn, the night’s coverlet of stars.

However, alongside appreciating nature’s beauty, we must also understand the lesson it is offering us now. The Covid-19 pandemic has been brought about by humanity disturbing nature’s ecological cycle. Similarly, climate change is being driven by humanity’s exploitation of nature as a captive resource — our constant need to consume more and more is consuming the very planet we call our home. As global temperatures, driven by greenhouse gas emissions, rise, we see the science manifest before our eyes. There is no eliding the truth of melting glaciers now, or rising oceanic levels, increasing land desertification, droughts and unseasonal storms. If we persist in damaging the environment in this way, scientists state, the pandemic may look small compared to the impacts of climate change.

This pandemic is a way of the Earth saying she has had enough of years of exploitation and excesses and needs restoring. Then again, it can be seen through another moral lens. It is evident that the pandemic is a counterstrike to our collective human consciousness that has been corrupted by indifference and culpability in sufferings across the world.

We may not yet know how this story ends, but we already know for sure that this pandemic has brought the greatest reversal of our times, turning the world along with its wisdom on its head… This is our freak chance to unlearn and learn. Let’s not blow it. So, why not re-visit our history and re-learn. Maybe we shall get an opportunity to re-calibrate our approach for defining and developing our future ways of leading lives… And, we still have a chance. Indeed, nature has given us an epochal opportunity to transform ourselves. Such transformation is possible at multiple levels.

Be it a drop in pollution & GHG emission or self-healing of the Ozone layer; the last few months have amply demonstrated the resilience of Mother Nature by reversing the damage mankind has done to the planet’s climate in last many decades due to sheer arrogance and complacence. It is now evident that widespread adoption of nature-inspired solutions will catalyse a new era in design and business that benefits both people and the planet. Let’s make the act of asking nature’s advice a normal part of everyday inventing. We can create solutions inspired by nature that even address the United Nations ‘Sustainable Development Goals’ (SDGs).

We need to develop sustainable solutions for a balanced ecosystem by empowering people to learn and apply nature-inspired strategies in design. We need to develop repositories of resources and launch design challenges where people learn by practicing, provide comprehensive support for bringing solutions to market, and create a conducive environment & platform for a global network of innovators. In short, together, we need to learn about, teach, and practice a radically different way to build our world.

We need to change how we think about technology and innovation. Rather than allowing technological advancement to steer our narratives, innovation and technology should help us build bridges between the worlds we inhabit now and the ones we imagine for tomorrow.

#### Splintering ICT interoperability causes de-globalization, hostile economic blocs and hot and proxy wars that go global

Dr. Nouriel Roubini 19, PhD in Economics from Harvard University, BA from Bocconi University, Former Professor of Economics at New York University's Stern School of Business, Chairman of Roubini Macro Associates, “The Global Consequences of a Sino-American Cold War”, Project Syndicate, 5/20/2019, https://www.project-syndicate.org/commentary/united-states-china-cold-war-deglobalization-by-nouriel-roubini-2019-05

Regardless of which side has the stronger argument, the escalation of economic, trade, technological, and geopolitical tensions may have been inevitable. What started as a trade war now threatens to escalate into a permanent state of mutual animosity. This is reflected in the Trump administration’s National Security Strategy, which deems China a strategic “competitor” that should be contained on all fronts.

Accordingly, the US is sharply restricting Chinese foreign direct investment in sensitive sectors, and pursuing other actions to ensure Western dominance in strategic industries such as artificial intelligence and 5G. It is pressuring partners and allies not to participate in the Belt and Road Initiative, China’s massive program to build infrastructure projects across the Eurasian landmass. And it is increasing US Navy patrols in the East and South China Seas, where China has grown more aggressive in asserting its dubious territorial claims.

The global consequences of a Sino-American cold war would be even more severe than those of the Cold War between the US and the Soviet Union. Whereas the Soviet Union was a declining power with a failing economic model, China will soon become the world’s largest economy, and will continue to grow from there. Moreover, the US and the Soviet Union traded very little with each other, whereas China is fully integrated in the global trading and investment system, and deeply intertwined with the US, in particular.1

A full-scale cold war thus could trigger a new stage of de-globalization, or at least a division of the global economy into two incompatible economic blocs. In either scenario, trade in goods, services, capital, labor, technology, and data would be severely restricted, and the digital realm would become a “splinternet,” wherein Western and Chinese nodes would not connect to one another. Now that the US has imposed sanctions on ZTE and Huawei, China will be scrambling to ensure that its tech giants can source essential inputs domestically, or at least from friendly trade partners that are not dependent on the US.

In this balkanized world, China and the US will both expect all other countries to pick a side, while most governments will try to thread the needle of maintaining good economic ties with both. After all, many US allies now do more business (in terms of trade and investment) with China than they do with America. Yet in a future economy where China and the US separately control access to crucial technologies such as AI and 5G, the middle ground will most likely become uninhabitable. Everyone will have to choose, and the world may well enter a long process of de-globalization.

Whatever happens, the Sino-American relationship will be the key geopolitical issue of this century. Some degree of rivalry is inevitable. But, ideally, both sides would manage it constructively, allowing for cooperation on some issues and healthy competition on others. In effect, China and the US would create a new international order, based on the recognition that the (inevitably) rising new power should be granted a role in shaping global rules and institutions.

If the relationship is mismanaged – with the US trying to derail China’s development and contain its rise, and China aggressively projecting its power in Asia and around the world – a full-scale cold war will ensue, and a hot one (or a series of proxy wars) cannot be ruled out. In the twenty-first century, the Thucydides Trap would swallow not just the US and China, but the entire world**.**

#### Proxy wars spill over, draw-in outside powers, and escalate to World War III

David Kampf 20, Senior PhD Fellow at the Center for Strategic Studies at The Fletcher School, MA in International Affairs from Columbia University, BA in Political Science from Bates College, “How COVID-19 Could Increase the Risk of War”, World Politics Review, 6/16/2020, https://www.worldpoliticsreview.com/articles/28843/how-covid-19-could-increase-the-risk-of-war

And by focusing solely on interstate wars, the optimists miss half the story, at least. Wars between states have declined, but civil wars never disappeared—and these internal conflicts could easily escalate into regional or global wars.

The number of conflicts in the world reached its highest point since World War II in 2016, with 53 state-based armed conflicts in 37 countries. All but two of these conflicts were considered civil wars. To make matters worse, new studies have shown that civil wars are becoming longer, deadlier and harder to conclusively end, and that these internal conflicts are not really internal. Civil wars harm the economies and stability of neighboring countries, since armed groups, refugees, illicit goods and diseases all spill over borders. Some 10 million refugees have fled to other countries since 2012. The countries that now host them are more likely to experience war, which means states with huge refugee populations like Lebanon, Jordan and Turkey face legitimate security challenges. Even after the threat of violence has diminished in refugees’ countries of origin, return migration can reignite conflicts, repeating the brutal cycle.

A Yugoslav Federal Army tank.

Perhaps most importantly, recent research indicates that civil wars increase the risk of interstate war, in large part because they are attracting more and more outside involvement. In a 2008 paper, researchers Kristian Skrede Gleditsch, Idean Salehyan and Kenneth Schultz explained that, in addition to the spillover effects, two other factors in civil wars increase international tensions and could possibly provoke wider interstate wars: external interventions in support of rebel groups and regime attacks on insurgents across international borders.

Immediately after the Cold War, none of the ongoing civil wars around the world were internationalized. According to the Uppsala Conflict Data Program, there were 12 full-fledged civil wars in 1991—in Afghanistan, Iraq, Peru, Sri Lanka, Sudan, and elsewhere—and foreign militaries were not active on the ground in any of them. Last year, by contrast, every single full-fledged civil war involved external military participants. This is due, in part, to the huge growth in U.S. military interventions abroad into civil conflicts, but it’s not only the Americans. All of today’s major wars are in essence proxy wars, pitting external rivals against one another. Conflicts in Syria, Yemen and Libya are best understood not as civil wars, but as international warzones, attracting meddlers including the United States, Russia, Saudi Arabia, Turkey, Iran, France and many others, which often intervene not to build peace, but to resolve conflicts in a way that is favorable to their own interests. These internationalized wars are more lethal, harder to resolve and possibly more likely to recur than civil wars that remain localized. It is not that difficult to imagine how these conflicts could spark wider international conflagrations. Wars, after all, can quickly spiral out of control.

As Risks Increase, Deterrents Decline

To make matters worse, most of the global trends that explained why interstate war had decreased in recent decades are now reversing. The theories that democracy, prosperity, cooperation and other factors kept the peace have been much debated—but if there was any truth to them, their reversals are likely to increase the chance of war, irrespective of how long the coronavirus pandemic lasts.

Democracy is often considered a prophylactic for war. Fully democratic countries are less likely to experience civil war and rarely, if ever, go to war with other democracies—though, of course, they do still go to war against non-democracies. While this would be great news if democracy and pluralism were spreading, there have now been 14 consecutive years of global democratic decline, and there have been signs of additional authoritarian power grabs in countries like Hungary and Serbia during the pandemic. If democracy backslides far enough, internal conflicts and foreign aggression will become more likely.

Other theories posit that economic bonds between countries have limited wars in recent decades. Dale Copeland, a professor of international relations at the University of Virginia, has argued that countries work to preserve ties when there are high expectations for future trade, but war becomes increasingly possible when trade is predicted to fall. If globalization brought peace, the recent wave of far-right nationalism and populism around the world may increase the chances of war, as tariffs and other trade barriers go up—mostly from the United States under President Donald Trump, who has launched trade wars with allies and adversaries alike.

The coronavirus pandemic immediately elicited further calls to reduce dependence on other countries, with Trump using the opportunity to pressure U.S. companies to reconfigure their supply chains away from China. For its part, China made sure that it had the homemade supplies it needed to fight the virus before exporting extras, while countries like France and Germany barred the export of face masks, even to friendly nations. And widening economic inequalities, a consequence of the pandemic, are not likely to enhance support for free trade.

This assault on open trade and globalization is just one aspect of a decaying liberal international order, which, its proponents argue, has largely helped to preserve peace between nations since World War II. But that old order is almost gone, and in all likelihood isn’t coming back. The U.N. Security Council appears increasingly fragmented and dysfunctional. Even before Trump, the world’s most powerful country ratified fewer treaties per year under the Obama administration than at any time since 1945.

Trump’s presidency only harms multilateral cooperation further. He has backed out of the Paris Agreement on climate change, reneged on the Iran nuclear deal, picked fights with allies, questioned the value of NATO and defunded the World Health Organization in the middle of a global health crisis. Hyper-nationalism, rather than international collaboration, was the default response to the coronavirus outbreak in the U.S. and many other countries around the world.

It’s hard to see the U.S. reluctance to lead as anything other than a sign of its inevitable, if slow, decline. The country’s institutionalized inequalities and systemic racism have been laid bare in recent months, and it no longer looks like a beacon for others to follow. The global balance of power is changing. China is both keen to assert a greater leadership role within traditionally Western-led institutions and to challenge the existing regional order in Asia. Between a rising China, revanchist Russia and new global actors, including non-state groups, we may be heading toward an increasingly multipolar or nonpolar world, which could prove destabilizing in its own right.

Finally, the pacifying effect of nuclear weapons could be waning. While vast nuclear arsenals once compelled the United States and the Soviet Union to reach arms control agreements, old treaties are expiring and new talks are breaking down. Mistrust is growing, and the chance of an unwanted U.S.-Russia nuclear confrontation is arguably as high as it has been since the Cuban missile crisis.

The theory of nuclear peace may no longer hold if more countries are tempted to obtain their own nuclear deterrent. Trump’s decision to abandon the Iran nuclear deal, for one thing, has only increased the chance that Tehran will acquire nuclear weapons. It’s almost easy to forget that, just a few short months ago, the United States and Iran were one miscalculation or dumb mistake away from waging all-out war. And despite Trump’s efforts to negotiate nuclear disarmament with Kim Jong Un’s regime in Pyongyang, it is wishful thinking to believe North Korea will give up its nuclear weapons. At this point, negotiators can only realistically try to ensure that North Korea’s nuclear menace doesn’t get even more potent.

In other words, by turning inward, the United States is choosing to leave other countries to fend for themselves. The end result may be a less stable world with more nuclear actors.

If leaders are smart, they will take seriously the warning signs exposed by this global emergency and work to reverse the drift toward war.

If only one of these theories for peace were worsening, concerns would be easier to dismiss. But together, they are unsettling. While the world is not yet on the brink of World War III and no two countries are destined for war, the odds of avoiding future conflicts don’t look good.

The pandemic is already degrading democracies, harming economies and curtailing international cooperation, and it also seems to be fostering internal instability within states. Rachel Brown, Heather Hurlburt and Alexandra Stark argue that the coronavirus could in fact sow more civil conflict. If this proves accurate, the increase in civil wars is likely to lead to more external meddling, and these next proxy wars could soon precipitate all-out international conflicts if outsiders aren’t careful. With the usual deterrents to conflict declining around the world, major wars could soon return.

#### The plan is goldilocks---antitrust enforcement over the gTLDs regulates ICANN without undermining its authority

Nelson Drake 18, J.D. from American University’s Washington College of Law and a B.A. in Political Science from Georgia College and State University, “Going Rogue: The National Telecommunications And Information Administration's Transfer Of IANA Naming Functions To ICANN,” 3 Admin. L. Rev. Accord 83, 2018, lexis

CONCLUSION

Since it was created and commercialized, the Internet, and more specifically the domain name space, has been a place for free thought and open competition. This environment was successfully maintained through quasi-governmental regulation by ICANN in conjunction with the NTIA. This model was problematic as the United States became increasingly pressured to relinquish its oversight role. 139 This pressure led to the NTIA relinquishing its control over the IANA functions and transferring them to ICANN, which was already administering them on a day-to-day basis. 140 Following this transfer, **ICANN became uniquely positioned to control the DNS** through one of these functions, specifically the power to delegate gTLDs to  [\*106]  DNS registries in the authoritative root zone. 141 These functions **made ICANN both the judge and jury regarding the delegation of gTLDs.**

This transition also marks the beginning of an era in which **ICANN behaves like a regulatory agency** and creates the potential for abuse by ICANN and its Board. Potential abuses would be difficult to prevent because **ICANN has removed itself from U.S. courts** by requiring disputes to be handled through arbitration. 142 In addition, with respect to trademark owners, trademark law would be an ineffective deterrent because of the USPTO's position that gTLDs are generic and inherently incapable of denoting source. 143

Antitrust law, under **Section 1 of the Sherman Act** or the essential facilities doctrine, could effectively regulate ICANN's power **without undermining ICANN's authority to regulate the DNS.** First, ICANN is not immune from antitrust liability because its actions play an important role in Internet commerce. 144 ICANN is also not immune from liability because of its agreement with the NTIA. Instead, a reviewing court must determine whether the actions at issue were necessary to meet the needs of that agreement. 145 Second, a review of relevant case law shows that a court could find that agreements involving the delegation of gTLDs could constitute an illegal restraint of trade under Section 1 of the Sherman Act. 146 Finally, although it has not been attempted, this paper theorized that ICANN could also be found liable under the essential facilities doctrine provided that a plaintiff could prove the factors laid out in MCI v. AT&T. 147

In addition, though a court can stop the delegation of a gTLD, it cannot force ICANN to award the gTLD to the complaining party. This means that **an antitrust claim would only prevent stakeholders from abusing ICANN's authority, not usurping it.** Thus, ensuring that a U.S. court does not simply replace the NTIA in its oversight capacity. Furthermore, it would not open ICANN to unnecessary lawsuits from corporate stakeholders seeking to unnecessarily challenge ICANN's authority at every turn.

Overall, the Internet is entering a new era of DNS regulation. This era  [\*107]  was entered suddenly and haphazardly, but that does not mean that it will yield negative results. There are upsides to having DNS management out of the hands of the United States government, although they are not discussed here. It would be foolish to allow this transfer to occur without examining possible regulatory alternatives in the absence of a body capable of overseeing ICANN's use of its authority. Thus, this paper concludes that one form of **regulation** would be **through antitrust law** to **ensure that the DNS continues to be a place of open communication, commercialization, and innovation into the future.**

## 2AC

### Delegation CP---2AC

#### Expert agencies are worse than antitrust courts---every metric goes aff

Joshua D. Wright 13, Professor at George Mason University School of Law and Department of Economics; Angela M. Diveley, Associate at Freshfields Bruckhaus Deringer in Washington, DC, “Do expert agencies outperform generalist judges? Some preliminary evidence from the Federal Trade Commission”, 4/1/13, Lexis

Conclusions

Expertise has long been the touchstone of administrative agency performance. In the context of antitrust agencies, like others, the expert inputs are translated into outputs including adjudicatory decisions, rulemaking, consents, advocacy, and amicus briefs. An often overlooked aspect of understanding agency performance and its relationship to expertise is institutional design. The so-called expertise hypothesis posits that the institution with more expert inputs will consistently produce higher quality outputs. That assumption suffers from the Nirvana Fallacy as it lacks a basis without an analysis of the institutions and processes translating those inputs to outputs. Inability of an agency to translate its expertise into high-quality decision-making renders it at best ineffective and at worst costly to society, and institutional design has the potential to hinder the flow of information from an agency’s staff to its decision-makers.

In the context of US antitrust law, many commentators have recently called for an expansion of the FTC’s adjudicatory decision-making authority pursuant to Section 5 of the FTC Act, increased Commission rulemaking, and carving out exceptions for the agency from increased burdens of production facing private plaintiffs. These claims are often expressly grounded in the expertise hypothesis. The relevant question is whether the expert inputs available to generalist federal district court judges through expert evidence, amicus briefs, and economic training, among other sources of such expertise, translate to higher quality outputs and better performance than produced by the Commission in its role as an adjudicatory decision-maker.

Many appear to assume that agencies have courts beat on this margin. To our knowledge, while oft-cited as a reason to increase the discretion of agencies and the deference afforded them by reviewing courts, no one has provided empirical support for this claim. We seek to fill that gap, and contrary to the expertise hypothesis, we find the evidence suggests the Commission does not perform as well as generalist judges in its adjudicatory antitrust decision-making role. Furthermore, while the available evidence is more limited, there is no clear evidence the Commission adds significant incremental value to the ALJ decisions it reviews. In light of these findings, there is little empirical basis for the various proposals to expand agency authority and deference to agency decisions. More generally, our results highlight the need for research on the relationship between institutional design and agency expertise in the antitrust context.

#### Negotiations fail

Cary Coglianese 17, Edward B. Shils Professor of Law, University of Pennsylvania Law School. Professor, Political Science, University of Pennsylvania Law School. Director of the Penn Program on Regulation, "Does Consensus Work? A Pragmatic Approach to Public Participation in the Regulatory Process," Renascent Pragmatism: Studies in Law and Social Science, Chapter 8, pg. 186-189, 07/05/2017, OCR by ShareX. edited for OCR errors.

The Pitfalls of Consensus Building

Not only does the evidence suggest that consensus building has failed to live up to the claims of its advocates, consensus building also presents significant pitfalls that have tended to be overlooked. Although these problems with consensus have generally been neglected, a realistic appraisal of consensus building requires taking into account both its benefits as well as its drawbacks.

First, consensus building increases the likelihood that policy makers will focus more attention on tractable issues to the neglect of the issues that are most important. For example, less than one-tenth Of one percent of all regulations have been esta blished using formal consensus- based rocedures (Coglianese, 1997), a select sample that clearly excludes there ations having the largest impact on the public. After more than a decade of experience with regulatory negotiation, agencies have negotiated only five rules that were classified as "major" or "significant" (according to conventional criteria set forth under executive order) (Coglianese, 1997). Many practitioners advise only using consensus-building when it is reasonably likely that an agreement can be reached, a bias that inevitably tends to emphasize tractability over importance.

Once negotiations are under way, an emphasis on consensus can also lead to a focus on the most tractable issues rather than the most important ones. In 1996, former EPA Administrator William Ruckelshaus convened the Enterprise for the Environment initiative that brought together industry, government, and environmental leaders to forge a consensus on regulatory reform. Although the project initially sought to diagnose problems associated with the current regulatory system, it soon became apparent that the process would never result in an agreement on such a diagnosis, so the participants shifted their efforts to finding agreement on a broad vision of an ideal environmental protection system. What was really needed, of course, was first to identify and understand the existing problems, even though this was a daunting challenge. A similar experience occurred with the EPA's Common Sense Initiative, which the agency initially launched as a major effort to achieve fundamental change in the regulations affecting six industrial sectors, but after becoming bogged down in consensus-building, evolved into a vehicle for developing only modest, incremental projects (Coglianese and Allen, 2001). A emphasis on consensus pushes participants away from squarely confronting the most pressing problems and instead shifts their effort to less important problems where agreement is more likely.

A second pitfall of consensus building is its comparative exclusivity. Consensus in the regulatory process never really reflects agreement of all those affected by regulatory policy. Negotiations take place representatives of different organizations, not between all the consumers, taxpayers, and citizens who will be affected by a policy decision (Rose-Ackerman, 1994). Furthermore, even among those relevant organizations, policy-making by consensus can lead to the relative exclusion of affected organizations from policy decision-making (Rossi, 1997; Harrison, 1998). This is simply because it tends to be easier to achieve consensus among smaller rather than larger groups. Most practitioners of negotiated rulemaking, for example, recommend that negotiating committees consist of no more than a bout 25 members. As a result, it is not surprising that members of negotiated rulemaking committees acknowledge that agencies exclude parties from the negotiations who should be at the bargaining table (Langbein and Kerwin, 2000). Moreover, there have been concerns that even among those groups represented in a negotiation, consensus building disadvantages smaller or less well-endowed organizations, such as citizen groups and small businesses. The disproportionate burdens that consensus-building places on different participants is a subtler, but still a notable form of exclusivity worth considering.

A third pitfall of consensus-based processes is imprecision (Mansbridge, 1980: 167). The Enterprise for the Environment initiative noted earlier is a dramatic example of the imprecision that can result from a search for consensus. The outcome of this initiative was a set of recommendations with which no one could seriously disagree, but which spoke mainly in platitudes, such as that "the environmental protection system of the next century must become as efficient and low cost as possible without compromising environmental progress" (Enterprise for the Environment, 1998: 36). It is a well-known phenomenon, reflected in the ambiguities commonly found in statutes, that negotiators can more readily reach agreement by employing imprecise language. Imprecision is almost always less controversial in than precision (Diver, 1983). Hence, one risk of consensus building is that agreements that are achieved will be forged on the basis of broad, ambiguous principles that paper over underlying conflicts.

A fourth pitfall of consensus building is the lowest common denominator-effect (Rescher, 1993). In the context of international policy making, which is grounded ultimately on consensus, it is common for treaties to require no more than what is acceptable to the country with the most objections. The problem with the lowest common denominator, of course, is that such a minimally acceptable outcome will not be enough when a more dramatic decision is needed. In a recent study of negotiated rulemaking, Caldart and Ashford (1999: 201) found that because industry will not likely agree to regulations that would compel firms to make dramatic changes, "negotiated rulemaking's focus on consensus can effectively remove the potential to spur innovation".

Finally, by making consensus the goal of participatory policy members contribute to a fifth pitfall: the creation of unrealistic and counterproductive expectations. Even if a broad consensus can be forged, holding fast to that agreement, without allowing even minor changes to be made in the resulting regulatory policy, can prove to be extremely difficult. Actors not party to the agreement, such as legislators, other interest groups, and executive branch officials, will undoubtedly try to affect the policy decision (Kagan, 1997). When this happens and the resulting outcome diverges from the agreement even modestly, participants in the consensus proceeding will naturally have certain expectations disappointed, expectations that would have been much less likely to have developed had the process simply sought public input rather than an agreement. In a recent study of consensus building at the National Marine Fisheries Service, it was reported that 60 percent of the participants were dissatisfied with the results of the consensus-based process (Resolve, 1999). The study's authors concluded that much of the dissatisfaction arose because participants expected to dictate the results more than the agency could legally allow. To the extent that government officials enact policies that depart even modestly from what those involved in policy negotiations thought they had agreed to or hoped to achieve, consensus-based processes can foster expectations that will eventually be unfulfilled.

#### AND industries dismantle negotiations

Sidney Shapiro & Richard Murphy 13, University Chair, Law, Wake Forest University; AT&T Professor of Law, Texas Tech University, "Public Participation without a Public: The Challenge for Administrative Policymaking," Missouri Law Review, Vol. 78, Issue 2, Spring 2013, pg. 490-492.

But what if the only members of the “public” who show up are readers of the Wall Street Journal? This concern is far from hypothetical: corporate interests dominate participation in the legislative rulemaking process in the United States.8 As such, we might expect Woody Allen’s observation (our second opening quote) to come into play. If eighty percent of success is indeed just a matter of showing up, then public participation schemes designed to promote accountability or to “democratize” rulemaking have the potential to distort rulemaking into favoring private, special interests. Determining the extent of such distortion presents a terrifically difficult problem— in part because there is no consensus baseline with which to measure departures from the public interest. Still, it seems safe to presume that profit-oriented, corporate interests perceive that they get something worthwhile from their large investments in regulatory proceedings—and we are inclined to trust this perception.9

As Isaac Newton taught us long ago, for every action there is an equal and opposite reaction. To the degree that unelected, unaccountable mandarins rule, the people do not. Regulatory agencies, headed by unelected administrators, can thus create a “democracy deficit” and, at least for those who believe government derives its legitimacy from democracy,, a legitimacy deficit, too. Various polities have addressed this democracy deficit by embedding public administration in “accountability network[s] of rules and procedures[.]”10 A requirement of public participation is one such procedure common to many countries and many situations. Whether public participation serves the public, however, depends on many factors, including the particulars of the public participation scheme, the agency’s regulatory tasks, the agency’s resources and competence to fulfill those tasks, and the resources and leverage of all those persons who may be affected by the agency’s actions.

Bearing the preceding points in mind, this brief Article raises three broad concerns relating to public participation in rulemaking. First, to assess whether public participation serves the public, it is important to understand why such participation is desirable in the first place. In recent decades, two answers in particular have dominated discourse. Following pluralistic conceptions of democracy, one might say that democracy is the way that multifarious private interests that constitute the “public” cut a deal among themselves. Insofar as agency policymaking amounts to coordination of such dealmaking, it is legitimized by its democratic nature.11 A deliberative democracy conception, by contrast, sees public participation as an integral part of a process that requires agencies to consider all relevant interests before acting and to publicly justify their actions with reasoned explanations.12 The debate over which of these conceptions is better remains unresolved, and the word “democracy” is certainly fuzzy enough to allow for both. But, as this Article will develop, these conceptions can lead to very different understandings of what public administration ought to be about, and, given a choice, we will take deliberation over deals.

Second, under either conception, there is an elephant in the room in the United States: corporate clout. Empirical work demonstrates that public interest groups only participate in some rulemakings, and when they do participate, their efforts are overwhelmed by the participation of corporate interests.13 While less certain as an empirical matter, the evidence also suggests that this domination biases the rulemaking process under either conception of public participation. 14

### T Subsets [Antitrust]---2AC

#### ‘Antitrust’ is broad and includes any instrument designed to make markets more competitive

D. L. Rubinfeld 15, Professor of Law at New York University, International Encyclopedia of the Social & Behavioral Sciences, Second Edition, p. 553

Antitrust Policy

The term antitrust, which grew out of the US trustbusting policies of the late nineteenth century, developed over the twentieth century to connote a broad array of policies that affect competition. Whether applied through US, European, or other national competition laws, antitrust has come to represent an important competition policy instrument that underlies many countries' public policies toward business. As a set of instruments whose goal is to make markets operate more competitively, antitrust often comes into direct conflict with regulatory policies, including forms of price and output controls, antidumping laws, access limitations, and protectionist industrial policies.

#### There’s no distinction between ‘antitrust’ and ‘regulation’

Marco Ricolfi 6, Professor of Intellectual Property Law, Torino Law School, LLM from Yale Law School, “The First Ten Years of the TRIPS Agreement: Is There an Antitrust Antidote Against IP Overprotection Within TRIPS?”, Marquette Intellectual Property Law Review, 10 Marq. Intell. Prop. L. Rev. 305, Lexis

What can one make out of this discussion? The careful reader who has been following may have been misled into believing that, by referring to the admissibility of a local working requirement, I intended to reach the promised land of ex ante generalized rules and to contrast their operation to ex post and ad hoc intervention through measures targeting restrictions in international transfer of technology discussed in the previous paragraph. The difficulty with this is that the distinction between ex ante rules and ex post measures is in some way germane to the distinction between regulation and antitrust intervention. It has been said that "unlike antitrust policies, which tell businesses what not [\*348] to do, regulation tells businesses what to do and how to price products." However, the distinction between affirmative and negative, between order and prohibition, is not always that clear-cut, as shown in the case of prohibition of refusals to deal on dominant or monopolistic firms, which may indeed be construed also as an affirmative duty to negotiate. Looking carefully at local working requirements, one will find a similar ambiguity. The requirement has an affirmative side to it: it mandates patentees to manufacture locally. But what happens in the event the patentee fails to do so? The remedy, compulsory licensing, is conceptualized as a consequence of failure to locally work so that we do not know exactly whether we are dealing here with an ex ante rule or an ex post measure. To link with the analysis proposed earlier, we should probably focus on a separate feature by asking whether the legal consequence envisaged by the applicable law is generalized or ad hoc. Here, the operational question is more straightforward. Are we talking about a self-enforcing feature that is automatic in its legal consequences and does not require for its actual implementation a specific intervention by a court or another decision-making body? Or are we talking about a rule that becomes effective only after a decision by the competent authority? In the former case, we are talking about a generalized rule; the latter is ad hoc intervention.

### WTO CP---2AC

#### Everyone says no to a WTO agreement

Paul B. Stephan 5, Lewis F. Powell, Jr., Professor and Hunton & Williams Research Professor, University of Virginia School of Law, “Global Governance, Antitrust, and the Limits of International Cooperation”, Cornell International Law Journal, 38 Cornell Int'l L.J. 173, Lexis

The history of the GATT and its successor, the WTO, illustrates why adding competition policy to the WTO's already significant responsibilities may not work. The GATT's great achievement was postwar liberalization of the international economy through tariff reduction. High tariffs are an ideal subject for international cooperation. This form of protection neither disguises itself nor hides its effects. Tariffs single out goods traded internationally for special excises stated in precise quantitative terms, and quantification of their effects presents no great challenge. Thus, reciprocal tariff [\*200] reduction agreements are easy to negotiate, compliance with them is easily monitored, and generally, they do not produce sore losers.

Conversely, when regulation takes the form of case-by-case application of general standards that are shaped by complex policy goals and that carry significant potential for international wealth redistribution, those affected by the regulation and those who impose it cannot easily commit to a mutually beneficial agreement. The experience of the last two decades illustrates the point. The shift in the international trade regime's focus to nontariff trade barriers, including health and safety rules and environmental regulations, has embroiled the WTO in great controversy. The agreements giving the WTO this authority largely involve ambiguous commitments that raise profound interpretative problems. The efforts of the WTO organs to apply these standards to concrete cases has triggered intransigence on the part of the states accused of violations, sharp criticism of the dispute resolution process within the community of trade experts, and passionate attacks from populist forces.

#### No trade impact.

Joel **Einstein 17**. Australian National University. 01-17-17. “Economic Interdependence and Conflict – The Case of the US and China.” E-International Relations. <http://www.e-ir.info/2017/01/17/economic-interdependence-and-conflict-the-case-of-the-us-and-china/>

In 1913, Norman Angell declared that the use of military force was now economically futile as international finance and trade had become so interconnected that harming the enemy’s property would equate to harming your own.[1] A year later Europe’s economically interconnected states were embroiled in what would later become known as the First World War. Almost a century later Steven Pinker made a similar claim. Pinker argues, “Though the relationship between America and China is far from warm, we are unlikely to declare war on them or vice versa. Morality aside, they make too much of our stuff and we owe them too much money.”[2] His argument rests upon the liberal assumption that high levels of trade and investment between two states, in this case the US and China, will make war unlikely, if not impossible. It is this assumption that this essay seeks to evaluate. This essay is divided into three sections. The first briefly outlines the theory that economic interdependence results in a reduced likelihood of conflict, breaking the theory down into smaller components that can be examined. In the second section, this essay suggests that the premise ‘more trade equals less conflict’ is simplistic. It does not take into account many of the variables that can influence the strength of economic interdependence’s conflict reducing attributes. Within this section, the essay considers: the extent to which conflict cuts off trade, theories arguing that how and what a state trades matters, Copeland’s theory of trade expectations and the differences between status quo and revisionist states. The final section deals with the realist perspective, concentrating on arguments pertaining to the primacy of strategic interests and arguments that economic interdependence will increase the likelihood of conflict owing to a reduction of deterrence credibility. Each section will be related back to the US-China relationship with a view to assessing Pinker’s claim. The essay will conclude that economic interdependence does reduce the likelihood of conflict but is insufficient on its own to completely prevent it. To calculate the likelihood of conflict correctly one would need to factor in the nature of the economic interdependence alongside the strength of the strategic interests at stake. Economic Interdependence and Conflict The theory that increased economic interdependence reduces conflict rests on three observations: trade benefits states in a manner that decision-makers value; conflict will reduce or completely cut-off trade; and that decision-makers will take the previous two observations into account before choosing to go to war. Based on these observations, one should expect that the higher the benefit of trade, the higher the cost of a potential conflict. After a certain point, the value of trade may become so high that the state in question has become economically dependent on another. Proponents of this theory argue that if two states have reached this point of mutual dependence (interdependence), their decision-makers will value the continuation of trade relations higher than any potential gains to be made through war.[3] It is on this argument that Pinker rests his statement that the economic relationship between the US and China precludes war. One can see evidence of this when analysing US views on China as trade rises. A 2014 Chicago Council on Global Affairs survey indicates that only a minority of Americans see China as a critical threat, compared to a majority in the mid-1990s. This number is even higher when analysing Americans who directly benefit from trade with China.[4] As compelling as this argument may be, high levels of economic interdependence have not always resulted in peace. The decades preceding WW1 saw an unprecedented growth in international trade, communication, and interconnectivity but needless to say, war broke out.[5] This instance alone is not enough to disprove Pinker’s logic. War may become very unlikely but began nonetheless.[6] Let us take two hypothetical scenarios, one in which the chances of war is 80% and the other in which trade has reduced the likelihood of war to 10%. Just knowing that war did indeed take place does not tell us which scenario was in play. Similarly, the fact that WW1 took place gives us no information about whether economic interdependence made war unlikely or not. In fact, evidence even exists to suggest that economic linkages prevented a war from breaking out during the sequence of crises that led up to WW1.[7] However, the fact that a war as detrimental as WW1 could break out despite a supposed reduction of the likelihood of conflict gives us an impetus to examine whether this reduction does take place. Additionally, if this is the case, what variables can weaken this pacifying effect? Does Conflict Cut off Trade? Economic interdependence theory makes the assumption that conflict will reduce or cut-off trade. This assumption appears to be logical, as one would expect that the moment two states are officially adversaries, fear of relative gains would ensure that policy makers want to completely cut-off trade. However, there are many historical examples of trade between warring states carrying on during wartime, including strategic goods that directly affect the ability of the enemy to carry out the war.[8] For example, in the Anglo-Dutch Wars, British insurance companies continued to insure enemy ships and paid to replace ships that were being destroyed by their own army.[9] Even during WW2, there are numerous examples of American firms continuing to trade strategic goods with Nazi Germany.[10] Barbieri and Levy argue that these examples and their own statistical analysis suggest that the outbreak of war does not radically reduce trade between enemies, and when it does, it often quickly returns to pre-war levels after the war has concluded.[11] In response to this result, Anderton and Carter conducted an interrupted time-series study on the effect war has on trade in which they analysed 14 major power wars and 13 non-major power wars. Seven of the non-major power wars negatively impacted trade (although only four of these reductions were significant), but in the major war category, all results bar one showed a reduction of trade during wartime and a quick return to pre-war levels at its conclusion.[12] Accompanying this contradictory finding one must take into account that even if war does not radically reduce trade, if a state believes that it does then potential opportunity cost would still figure in their calculations. Variables that Impact the Pacifying Effect of Economic Interdependence The purpose of this section is to demonstrate that the pacifying effect of economic interdependence is not constant. It achieves this via a discussion of the effect of changes in a number of variables pertaining to how and what a state trades. Once it is established that changes in such variables may alter the effect of economic interdependence on the likelihood of conflict, Pinker’s statement (that the level of trade between the US and China makes conflict unlikely) can be considered to be an over-simplification. One variable is the relative levels of economic dependence. Some argue that asymmetry of trade can increase the chances of conflict if the trade is more important to one state than it is to the other; their resolve would not be reduced by the same degree. The less dependent state would be far more willing than its adversary to initiate a conflict.[13] An example is the possibility of the prevalent idea in China that ‘Japan needs China more than China needs Japan’ leading to China becoming more assertive in Senkaku/Diaoyu islands dispute.[14] It is important to recognize that all trade is asymmetric in one fashion or another. It is radical asymmetry that one has to fear, which at the moment does not appear to be the case in the China-Japan or US-China case. Another variable is the specifics of what is being traded. A study by Dorussen suggests that the pacifying effect of trade is less evident if the trade consists of raw materials and agriculture but stronger if the trade consists of manufactured goods. Even within the category of manufactured goods there are differences in effect. Mass consumer goods yield the strongest pacifying results whilst high-technology sectors such as electronics and highly capital-intensive sectors such as transport and metal industries tend to have a relatively weak effect.[15] If it is a sector with alternative trade avenues then embargos and boycotts as a result of conflict will have far less effect.[16] The rule is that the more inelastic the import demand, the higher the opportunity cost and the smaller the probability of conflict.[17] According to these studies, trade still generally reduces the likelihood of conflict however it is by no means homogeneous in its effects. Additionally, the opportunity costs are not the same for importers and exporters. Dorussen’s study suggests that increased trade in oil tends to make the exporters more hostile and the importers friendlier in relations to their foreign policy.[18] Taking this framework into account, in 2014 China’s top five exports to the US (computers, broadcasting equipment, telephones and office machine parts) all fell under the category of electronics,[19] whilst the US’s top five exports to China (air and/or spacecraft, soybeans, cars, integrated circuits and scrap copper) were all either high-capital intensive sectors or raw materials and agriculture.[20] According to Dorussen’s study, these exports should not yield the strongest possible conflict reducing results, which could impact the validity of Pinker’s statement. Copeland presents another variable, namely expectations of trade. Copeland argues that if a highly dependent state expects future trade to be high, decision makers will behave as many liberals predict and treat war as a less appealing option. However if there are low expectations of future trade, then a highly dependent state will attach a low or even negative value to continued peaceful relations and war would become more likely.[21] As an example, he points out that despite high levels of trade in 1914 German leaders believed that rival great powers would attempt to undermine this trade in the future, so a war to secure control over raw materials was in the interests of German long-term security.[22] Via this framework, if the US began to believe that in future years they would be less dependent on China’s economy, or if it became apparent that a US-China trade war was about to take place, there would be a sharp rise in the probability of conflict. The final variable this essay will discuss relates to the differences between status quo and revisionist states. Most empirical analyses of economic interdependence tend to group together states as different as the United States, Pakistan, Australia, Germany and China and assume that variations in their behaviour would be the same.[23] Papayoanou on the other hand, argues that when analysing the effects of economic interdependence it is useful to differentiate the effects on great power states and states with revisionist aspirations.[24] If a status quo power has strong economic ties with revisionist state there will be interest groups who advocate engagement and who believe that confrontational stances will threaten the political foundation of economic links. This will constrain the response of the status quo state.[25] One can see evidence of such an interest group in the US, a group Friedberg describes as the Shanghai coalition, who he argues advocate engagement with China at the expense of balancing.[26] A study by Fordham and Kleinberg backs up this argument as they find that US business elites who benefit from trade with China tend to see little benefit in limiting the growth of Chinese power.[27] A 21st Century revisionist power is far less likely to be a democracy, and therefore, interest groups will influence the leadership far less. This means an authoritarian revisionist power will be working under fewer constraints and will be able to take a more aggressive stance.[28] This appears to be the case in China where rather than having domestic constraints on taking an aggressive stance against Japan, one of their biggest trading partners, grassroots nationalism has made explicit cooperation a domestically risky option.[29] There are many indicators to suggest that China is a revisionist power willing to wage war. Lemke and Werner argue that an extraordinary growth of military expenditures’ reveals when a state is dissatisfied with the status quo.[30] Data provided by the Stockholm International Peace Research Institute certainly indicates that China qualifies as its military expenditure has nominally increased by 1270% between 1995 and 2015.[31] Additionally, the military modernization appears to be aimed at capabilities to contest US primacy in East Asia.[32] Much like German strategists recognized that Britain was operating under significant domestic constraints, China could realize the same of the US.[33] This is not to say that Chinese decision-makers would be cavalier about making a decision that would be to the detriment its economy. A crash in the Chinese economy due to the loss of exports to the US could potentially undermine the legitimacy of the Chinese Communist party and endanger the regime. However, the view that China is a revisionist power indicates that good trade relations alone will not result in a low probability of conflict. Realist Arguments Pertaining to Dominance of Strategic Interests Having established that if the pacifying effect of trade does exist, it can rise or fall depending on changes in a series of variables this essay proceeds to deal with realist theories arguing that trade has a negligible or even negative effect on the likelihood of conflict. Buzan argues that noneconomic factors contribute far more to major phenomena than liberal theorists usually cite to support their theory.[34] There is evidence of the primacy of strategic interests in Masterson’s 2012 study on the relationship between China’s economic interdependence and political relations with its neighbours. The study concluded that as economic interdependence with neighbouring states increased the likelihood of conflict did indeed decrease, but that the impact was minimal when compared to the impact of relative power capabilities. In other words, political and military issues dominated interstate relations. Growth in power disparities were associated with decreases in dyadic political relations that were greater than the increase caused by economic interdependence.[35] If the pacifying effect of trade can rise and fall so can the provocative effect of strategic interests. It is important to distinguish between the existence of a strategic interest and a situation of unbearable strategic vulnerability. China and the US have many opposing strategic interests, but neither is in a strategically vulnerable position. For example, China shares many borders, but none present the same threat of invasion that Tsarist Russia did to Imperial Germany as none of the current maritime tensions between China, Japan, and the US equate to a matter of national survival.[36] This is crucial as some believe that for a crisis to escalate to a major war an actor who is isolated and believes that history is conspiring against them is needed. Only this actor would take an existential risk to try and offset their strategic vulnerability.[37] Imperial Germany fit this description, but neither China nor the US does. This is largely due to the geography of the region. The tension between the US, China and Japan are over maritime regions. Maritime issues still relate to national interests but, as Krause points out, “Land armies are still the only forces that can conquer and hold territory.”[38] Taking this into account one can argue that the benefits of US-China trade are, for each state, currently greater than the benefits of pursing strategic benefits via force, but this situation will only remain as long as the situation does not become one of unbearable strategic vulnerability. Realist Arguments Pertaining to the Undermining of Deterrence Having established that scenarios exist where strategic interests and vulnerabilities have a greater effect on the likelihood of war than economic interdependence, this essay will now evaluate arguments that economic interdependence can increase the likelihood of conflict through the undermining of deterrence. The argument proceeds as follows: if economic interdependence constrains the ability or willingness of a state to use its military, security is lowered as the state now has a weakened ability to engage in deterrence and defensive alliances. Deterrence relies on the ability of a state to make credible threats and defensive alliances rely on credible promises to protect one’s allies.[39] Credibility is defined as the product of the operational capability to follow through with a threat and the communication of resolve to use force.[40] What is at risk here is that if economic interconnectivity interferes with the communication of resolve to use force then states may end up with a way that neither side expected or wanted. Some argue that it was such a failure to communicate resolve that resulted in the beginning of WW1. Indeed, Jolly claims that: “The Austrians had believed that vigorous actions against Serbia and a promise of German support would deter Russia: the Russians had believed that a show of strength against Austria would both check the Austrians and deter Germany. In both cases, the bluff had been called and the three countries were faced with the military consequences of their actions.”[41] The risk in the US-China case would be that the interest groups described earlier would prevent the US from effectively communicating its resolve to use force if China were to cross a redline. The flaw in this argument lies in the fact that whilst interest groups might push back against public statements outlining redlines; the US has many less overt options available to it to communicate resolve. Modern technology and the forms of interconnectivity have resulted in many more lines of communication between China and the US than adversaries had access to in 1914. Private meetings, electronic communication and numerous other methods of communication have the capability to be candid without being visible to interest groups. It is for this reason that this essay discounts the theory that Sino-American economic interdependence results in a reduction of deterrence and therefore increases the likelihood of conflict. Conclusion This essay has shown that the strength of the pacifying effect of economic interdependence is subject to change depending on a series of dynamic variables. It has also demonstrated that the strength of the conflict provoking effects of strategic interests can change depending on whether the strategic interest amounts to a situation of unbearable strategic vulnerability. It has discounted the theory that interdependence leads to a higher chance of conflict through an erosion of credibility. To sum up, trade does seem to reduce the likelihood of conflict but should not be seen as a deterministic factor as strategic interests, and vulnerabilities also have a large effect. There is no hard rule as to what will be the driving factor as the nature of economic interdependence and of strategic factors impact their relative values. Accordingly, Pinker’s statement that the trade between the US and China makes war exceptionally unlikely is simplistic and misleading because it fails to account for a wide array of variables that can radically change the likelihood of a Sino-American war. An intellectually honest thesis would insist upon a comprehensive approach in which the level of economic activity is simply one of many variables that is required.

### States CP---2AC

#### State policy fails and isn’t perceived internationally

Daniel Abebe 12, Assistant Professor of Law at The University of Chicago Law School, “One Voice or Many? The Political Question Doctrine and Acoustic Dissonance in Foreign Affairs”, 2012, 2013 Sup. Ct. Rev. 233, Lexis

B. ONE VOICE AND CENTRALIZATION

The Supreme Court's emphasis on centralized decision making in foreign affairs is perhaps best exemplified in its foreign affairs federalism jurisprudence. The Constitution specifically limits the participation of states in foreign affairs 22 and, in the event of conflict between a federal statute and state law, the Supremacy Clause ensures that the state law is preempted. But the Supreme Court has also developed several preemption doctrines to ensure the primacy of the national government over the states on a range of foreign affairs questions, including field preemption, 23 obstacle preemption, 24 note dormant foreign affairs preemption, 25 and executive preemption. 26 In each of these areas, the Supreme Court's emphasis on speaking with one voice has resulted in the centralization of foreign affairs decision-making authority in the national government over the states.

What is the logic of this centralization? Much of it rests on general understandings of the merits of centralization in institutional design. The common functionalist account justifying centralization [\*243] of decision making in the national government focuses on collective action problems and the provision of public goods. National governments are best placed to coordinate public policy, determine national interests, and engage in the necessary trade-offs to promote national public welfare. Perhaps most central to the responsibilities of the national government is the provision of national security, the maintenance of a domestic market for trade, and the generation of economic wealth. For example, in the security context, the national government can act as a single, integrated institutional actor to determine the national interest; develop US foreign policy; coordinate the military, diplomatic, and intelligence resources of the nation; swiftly pursue national objectives; and prosecute wars. If the several states were tasked with such responsibilities, it does not take much to imagine the difficulties in coordinating among a large number of heterogeneous subnational governments, each with its own interests and desire to pass on the cost of national defense, when possible, to its co-sovereigns.

The same logic applies to the development and maintenance of a common economic market and the promotion of policies to encourage economic prosperity. The national government can aggregate information and coordinate policy to ensure that the US can benefit from international trade, encourage the production of goods for which it has a competitive advantage, protect the national market from foreign anticompetitive behavior, and redistribute wealth, if necessary, to ameliorate the unequal distribution of wealth across particular regions, states, or demographic groups. The states, by contrast, will tend to be focused narrowly on their own economic prosperity, and will produce economic policies that allow them to reap the benefits and externalize the costs. We can imagine Alaska, Texas, and Louisiana, for example, adopting policies with respect to resource extraction that might impose environmental costs on the US as a whole, just as we can imagine Massachusetts, California, and New York adopting regulatory policies that might limit the ability of the US as a whole to benefit from its resource endowment. In these contexts--national security, trade, and economic prosperity--the benefits of centralization over vast decentralization among dozens of subnational entities are clear.

Beyond this traditional account, there are less obvious but similarly [\*244] important justifications for centralization in foreign affairs. One is the clarity of the ensuing foreign policy. Even if there is substantive disagreement over policy, clarity ensures at least in theory that there is a clear communication of the US national interest to friend and foe alike. Another is the designation of a clear decision-making authority in foreign affairs. Among other things, it reduces the likelihood of constitutional impasses over key issues, provides an accountable governmental entity for the domestic voting public, and encourages specialization over time. Finally, to the extent the national government is working with other countries on an issue of global concern, centralization designates the US representative for international policy coordination.

#### Patchwork implementation muddies the plan’s signal, causes capture, and leads to duplication

Jacob P. Grosso 21, J.D. Candidate at the University of Richmond School of Law and B.A. from George Mason University, “The Preemption of Collective State Antitrust Enforcement in Telecommunications”, University of Richmond Law Review, 55 U. Rich. L. Rev. 615, Winter 2021, Lexis

A. Benefits of Preempting Collective State Action

Preemption would result in cognizable benefits to the regulatory and business spheres. These benefits would include clear guidance, increased enforcement efficiencies, and the ability to pursue nonenforcement agendas and broader policy goals.236 Businesses would receive clear guidance on the legality of their business choices. State antitrust enforcers would redeploy costs to state-specific issues. Federal enforcers would be able to effectively pursue broader policy goals.

Consolidated enforcement and regulatory schemes would provide clarity to businesses through more uniform regulations and decreased litigation concerns. This consolidation, in turn, would reduce costs for the government and the competitors while encouraging competition and unnecessary compliance costs.237 Clear regulations serving a common goal, without the inherent biases of individual state interests, can provide clarity to businesses and preserve the balancing of consumer welfare with the aggregate social welfare. Individual states make decisions based on their individual needs, as seen in the T-Mobile-Sprint merger.238 When federal law conflicts with state law, federal law controls.239 Despite this standard, multistate task forces continue to come forward as the interpreters of federal law.240 This approach poses problems because of the inherent state biases that underlie the enforcement actions. Preemption could decrease the effects of individual state biases on the guidance given to competitors.

Antitrust analysis considers geographic differences in determining the concentration of a market, meaning a one-size-fits-all approach does not work for aggregating individual state markets.241 This restructuring would reduce the effects of an individual state’s interests on collective action.242 While any individual state may be best served by one plan, the economy as a whole might suffer for that decision.243 “Divergent approaches to the exercise of enforcement discretion are not just possible, they are likely.”244 States likely face pressure from several groups that can influence their enforcement decisions, as well as the selfish motivation to protect their consumers regardless of the cost to national welfare.245 Uniform, clear guidance at the federal level, without state interference, will reduce opportunities for the individual motivations of states to negatively impact a clear enforcement scheme. Adding states as parties to a telecommunications antitrust lawsuit complicates the suit by increasing the number of parties that must agree to a settlement.246 The effects of the preemption and resulting enforcement system will create efficiencies for federal and state enforcers, as well as for businesses. For telecommunications antitrust enforcement actions, this will limit costs to the federal agencies, prevent the duplication of effort (in reviewing transactions), and eliminate the costs of coordination that NAAG multistate enforcement teams face.247 Extending even beyond telecommunications, this results in a net positive for the antitrust sections of state attorneys general offices to redeploy resources to monitor and combat anticompetitive behavior in the state-specific areas that these sections were designed to handle.248

The reduced litigation could represent a net positive for both state governments and competitors. Even responding to discovery requests from one state can cost two to nine million dollars.249 Dealing with multiple suits, as in the T-Mobile-Sprint merger, causes a compounding of these costs resulting from duplication of effort. For T-Mobile, the firm has now faced multiple reviews concerning the same issues that it believed it had resolved. The FCC review alone took 317 days.250 In total, from the initial merger review submission on April 28, 2018, until April 1, 2020, it took two years to close the transaction.251 The T-Mobile-Sprint merger exemplifies how further delays can slow the competitor’s ability to continue with business, as it must divert attention to compliance and litigation efforts. 252

#### Gets struck down via the DCC

Daniel A. Lyons 19, Professor at Boston College Law School and a Member of the Free State Foundation's Board of Academic Advisors, “State Net Neutrality”, Summer 2019, 80 U. Pitt. L. Rev. 905, Lexis

D. Dormant Commerce Clause

Independent of the Communications Act, state regulation of the Internet may also run afoul of the Dormant Commerce Clause. The Dormant Commerce Clause doctrine prevents states from imposing undue burdens on interstate commerce. It is a judge-made doctrine, derived from the negative implication of the Constitution's grant to Congress of the power to regulate commerce between the states. 245 Its "central rationale . . . is to prohibit state or municipal laws whose object is local economic protectionism." 246 Thus, state laws that explicitly discriminate against [\*941] interstate commerce face "a virtually per se rule of invalidity." 247 But even a facially nondiscriminatory state law may nonetheless run afoul of the doctrine if it unduly burdens interstate commerce. Courts evaluate such claims under the test announced in Pike v. Bruce Church: "Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." 248

The Pike balancing test played an important role in shaping early Internet regulation, because of concern about spillover effects when states regulate online conduct. In the prominent case of American Library Association v. Pataki, a district court struck down a New York law that prohibited the intentional use of the Internet to send pornographic messages that would be "harmful to minors." 249 The court conceded that shielding New York minors from pornography constituted a legitimate state interest. 250 But it found this interest was outweighed by the significant chilling effect the law would have on wholly out-of-state conduct. 251 Because information posted to the Internet is available everywhere simultaneously, those who disseminate information online could face liability for posting content that arguably ran afoul of New York's law, even if they had no intention of communicating with New York residents. 252 this, in turn, would chill communication to recipients in states where the content was legal, thus imposing an undue burden on interstate commerce far in excess of what little local benefits were likely to result from enforcement. 253

Like many balancing tests, the doctrine is somewhat unpredictable, turning on the facts of individual cases. Many state regulations create spillover effects; the Dormant Commerce Clause only invalidates those that, in the court's judgment, impose a greater burden on interstate commerce than they reap in local benefit--which can differ from case to case. For example, in National Federation of the Blind [\*942] v. Target Corp., 254 Target argued that California's disability law burdened interstate commerce by requiring it to modify a nationwide website to meet California requirements--which effectively imposed California law on the company's transactions with all customers, even those outside California. 255 The court found this argument was premature at the motion to dismiss stage, explaining that Target could develop a California-specific website, and even if it chose not to do so, its decision to develop one product for a nationwide market does not necessarily implicate the Commerce Clause. 256 At a minimum, factual development was necessary to determine the "practical effect" of the law on interstate commerce before the court could decide the Dormant Commerce Clause issue. 257

National Federation of the Blind's focus on practical effects reflects the insights of Professors Jack Goldsmith and Alan Sykes, whose seminal Yale Law Journal article, The Internet and the Dormant Commerce Clause, brought some clarity to this somewhat confusing corner of the law. 258 Goldsmith and Sykes highlight that the primary justification for the Dormant Commerce Clause is to "ensure[] free trade among the states and thereby secure[] the associated economic benefits." 259 They thus support the consideration of economic efficiency as the lodestar for such claims: "[T]he appropriate statement of the extraterritoriality concern is that states may not impose burdens on out-of-state actors that outweigh the in-state benefits." 260

A full application to broadband regulation is beyond the scope of this article. But it is worth noting that like early state attempts to regulate online conduct, state-level network traffic management regulations are susceptible to a Dormant Commerce Clause challenge. The Internet is a national (indeed, global) network, meaning that attempts to regulate the flow of traffic on that network are likely to have extraterritorial effects. If state net neutrality rules survive a preemption analysis, states should be ready for the claim that such regulations unreasonably burden [\*943] interstate commerce and, therefore, contravene the Dormant Commerce Clause doctrine.

#### No capabilities, decks signaling, and the plan is better for experimentation

Peter S. Menell 5, Koret Professor of Law and Director of the Berkeley Center for Law & Technology at University of California at Berkeley School of Law, “Regulating "Spyware": The Limitations of State "Laboratories" and the Case for Federal Preemption of State Unfair Competition Laws,” 2005, Berkeley Technology Law Journal, Vol 20

Using spyware and adware as a case study, this Article demonstrates that states cannot serve as independent laboratories of policy experimentation due to the inherent ubiquitous nature of the Internet. The experimentation of any one state creates national exposure, thereby making the policies of that state a national standard. State unfair competition law encompassing both common law and state statutes-has this effect. Internet businesses can be hauled into court in any state and therefore must consider legal risks in every state. The problem is compounded by the amorphous character of unfair competition law.

This analysis can be generalized beyond the spyware area to almost all Internet-related activities. There are inherent technological limitations on the ability of states to experiment in spam, phishing, malware, privacy, or ecommerce policy without having significant effects on commerce outside of their borders. 232 The ubiquity of the Internet makes state borders largely irrelevant. Therefore, there should be a strong presumption in favor of at least national regulatory governance of most Internet-related activities.

The logic of the Article suggests that even the federal level may be too provincial for addressing Internet-related activities. Governance of many aspects of the Internet properly belongs on the global stage-whether private, public, or some combination thereof. As recognized in prior analyses advocating global regulatory solutions to Internet-related activities, 233 regulation of Internet activities in any one country can have effects beyond the borders of that particular nation.234 Therefore, global or at least coordinated or harmonized regulatory standards for Internet activities would serve to create a clear and consistent regulatory environment and avoid the de facto standards from becoming the most restrictive of any nation. The allocation of domain names, which were initially handled within the United States through a government contract with Network Solutions Inc. (NSI), now takes place under the auspices of the Internet Corporation for Assigned Names and Numbers (ICANN), an international entity.235 This has alleviated the problem of conflicting standards in the assignment of domain names. On larger issues of Internet governance, however, the world is far from consensus. 236

In some respects, however, nation-based regulation may provide some of the advantages of policy experimentation that Justice Brandeis endorsed. International jurisdiction, country codes, and language erect partial barriers that limit the extent to which legal regulation from one nation spills over into the governance of activities in other nations. In these circumstances, nations can obtain the benefits of seeing how particular regulatory constraints affect economic activities. We are seeing the effects of such experimentation in the areas of privacy,237 database protection, 238 spyware, 239 and keyword advertising. 240 Nonetheless, there is some risk that such experiments will have undesirable spillover effects and that nations may use different constraints to serve protectionist goals.

Overall, the Internet's broad reach generally favors national and possibly global regulatory policies in order to promote a consistent regulatory environment. In some contexts, the locus of activity (as in the case of trespass to chattels) or practical constraints on activities (such as language and country codes) may create conditions in which sub-national or sub-global regulation is possible without spilling over into other jurisdictions. Policymakers should carefully consider the effects of such spillovers in allocating regulatory authority over Internet activities.

#### It gets preempted---existing precedent leaves the door open

Olivia Young 19, J.D. Candidate at Loyola Law School in Los Angeles, “CALIFORNIA, ARE YOU THERE? IT'S THE ENTERTAINMENT INDUSTRY CALLING AND WE NEED NET NEUTRALITY,” 40 Loy. L.A. Ent. L. Rev. 247, 2019, lexis

2. Federal Preemption May Still Present a Barrier to State Success

While the D.C. Circuit Court rejected the FCC's broad authority to preempt state regulation of the Internet under RIFO, the Court's opinion appears to leave the door open to other forms of federal preemption as possible alternatives to estop state laws. 366 The Federal Government's power to preempt state law which interfere with its own is derived from the Supremacy Clause of the United States Constitution which, in Article IV, states:

 [\*297]

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. 367

Out of the Supremacy Clause came various forms of federal preemption, including conflict preemption. 368 Conflict preemption works to protect federal laws by estopping, "state laws that under the circumstances of the particular case stand[] as an obstacle to the accomplishment and execution of the full purposes and objective of Congress." 369Conflict preemption does not serve as an outright ban on all state legislation in a particular area, only that which is in direct interference with federal law. 370

The FCC, in arguing that the Preemption Directive should be upheld, reasoned that application of conflict preemption to state laws interfering with RIFO would render the same, broad preemptory effect as the Directive. 371 The D.C. Circuit Court did not outright disagree with the Commission that the principle of conflict preemption, if applied to a conflicting state law, could render that law moot. 372However, the Court refused to uphold the broad Preemption Directive on this reasoning alone, finding that conflict preemption requires the court to perform a unique, fact-intensive analysis of the specific conflicting state or local law called into question and thus, cannot be used as a basis to block any and all legislation in a specific area. 373 Conflict preemption requires the court to answer, ""an issue incapable of resolution in the abstract,' let alone in gross." 374 Thus, the D.C. Circuit Court's  [\*298] ruling infers that if a conflicting state law were to be presented, it would not be subject to automatic preemption under the Directive, however it could still be preempted if, after analysis, a court found the law to impermissibly interfere with RIFO. 375

### Infrastructure DA---2AC

#### Manchin blocks it

Kathryn Watson 9/29, Politics Reporter for CBS News Digital, “Manchin and Sinema meet with Biden over reconciliation bill concerns”, CBS News, 9/29/21, https://www.cbsnews.com/news/biden-manchin-sinema-democrats-budget-reconciliation-bill/

At this point, the reconciliation bill includes a $150 billion "clean electricity performance program" that would pay utility companies to source their energy from renewables, a program that's modeled on clean energy standards adopted by some states. The West Virginia senator objects to the program and said it would unnecessarily provide financial incentives for energy providers.

"The transition is happening," Manchin said on CNN earlier this month. "Now they're wanting to pay companies to do what they're already doing. It makes no sense to me at all for us to take billions of dollars and pay utilities for what they're going to do as the market transitions."

The reconciliation measure also incentivizes electric vehicle purchases and construction of EV charging stations. It would offer consumer rebates to homeowners who weatherfit their homes; give tax credits to companies building sources of clean energy; charge oil and gas producers for methane leaks; help farmers reduce their carbon footprint and invest in climate research.

Manchin authored an op-ed in the Wall Street Journal earlier this month protesting spending trillions of dollars, citing concerns over inflation and burdening future generations.

"I, for one, won't support a $3.5 trillion bill, or anywhere near that level of additional spending, without greater clarity about why Congress chooses to ignore the serious effects inflation and debt have on existing government programs," Manchin wrote.

#### Biden has no PC, his agenda is shot, and other issues overwhelm

Rick Klein 9/29. Staff Writer at ABC News. “Biden takes credibility hit at critical time for agenda: The Note.” <https://abcnews.go.com/Politics/biden-takes-credibility-hit-critical-time-agenda-note/story?id=80285075>.

So much of the standoff over the Biden agenda is about Democrats' trust and lack thereof -- among and between progressives and moderates, leaders and rank-and-file members, outside groups and inside caucuses and between virtually everyone and the White House.

That makes this an inconvenient time for President Joe Biden's credibility to come into question. Top military advisers' testimony in the Senate Tuesday, with more to come in the House Wednesday, appears to contradict the president's previous assertions about the kind of advice he got before ordering the troop withdrawal from Afghanistan.

The White House is pushing back on any notion that the president hasn't been truthful about what he last month called a "split" in the advice he was getting. And Biden aides would like to separate Afghanistan from the domestic agenda entirely. A new ABC News/Ipsos poll published Wednesday shows how hard that might be, though.

Biden's approval rating is down across a range of issues compared to a month ago. People are unhappy about his handling of the COVID-19 pandemic, immigration, the economy, gun violence, crime and, yes, even infrastructure. The sagging numbers come after months of stability and relative popularity for the president. The figures started to drop right around the disastrous Afghanistan exit, and so far, they haven't shown signs of recovering.

With huge deadlines looming, it's notable not just how many Democrats are implicitly defying the White House, but how many are doing so while suggesting they know what Biden's agenda is better than he is.

Sen. Bernie Sanders' urging of House progressives to sink the bipartisan infrastructure bill unless the far larger social-spending package also moves along is a case in point. Republican opposition to Biden has long been unquestioned, but Democrats' commitment to him now very much is.

#### The plan is bipartisan

John D. Dingell 06, Former Democratic Representative from Michigan and longest serving member of Congress in history, “ICANN INTERNET GOVERNANCE: IS IT WORKING?”, House of Representatives Committee on Energy and Commerce, 7/21/06, https://www.govinfo.gov/content/pkg/CHRG-109hhrg31468/pdf/CHRG-109hhrg31468.pdf

ICANN continues to fall short in representing the interests of the broad Internet community. The last time, under your leadership, Mr. Chairman, this committee held a hearing on ICANN more than 5 years ago. Many serious questions were raised at that time. While ICANN has since made some progress in instituting reforms, several fairness, transparency and accountability issues and problems remain. Following the creation of the Internet in the U.S., ICANN was formed in 1998 as a global nongovernmental organization with guiding principles of stability, competition, bottom-up coordination and representation.

The Department of Commerce’s relationship with ICANN was under review at last year’s United Nations World Summit on the Information Society. With the bipartisan support of this committee and the Congress, attempts to shift Internet control away from the current framework were quelled. The international community instead reached consensus on maintaining a stable and secure Internet and continuing further dialogue on Internet governance. That said, we cannot allow U.S. interests to be put at risk by blindly ignoring ICANN’s flaws or failing to seek improvement for fear of global dissatisfaction. Indeed, I would worry that there may perhaps be more risk to us in ignoring than in proceeding to address this matter. As the Department negotiates an extension of the Memorandum of Understanding, further reforms must be sought. And the Memorandum of Understanding must be held up to the light for all to see and understand. ICANN remains far from a model of effective and sustainable self governance. It seems, however, to be a device which has a rich opportunity for prosperity and profit to some. Moreover, the Department should be sensitive that the manner in which the dot com registry contract is renewed bears on the integrity of ICANN and the Department itself.

#### But ICANN regs are apolitical and under the radar

Theo Lebryk 21, Yenching Scholar at Peking University Pursuing a Master's in China Studies, Graduated from Harvard University with a Joint Concentration in Social Studies and East Asian Studies and a Minor in Computer Science, Intern at the Center on Cyber and Technology Innovation at the Foundation for Defense of Democracies, “The Fight over the Fate of the Internet: The Economic, Political, and Security Costs of China’s Digital Standards Strategy”, China Focus, 4/21/2021, https://chinafocus.ucsd.edu/2021/04/21/the-fight-over-the-fate-of-the-internet-the-economic-political-and-security-costs-of-chinas-digital-standards-strategy/

Three months into Biden’s presidency, the new administration has already started to reverse many of Trump’s high profile exits from international institutions. The Biden administration has rejoined the Paris global climate accord and World Health Organization and looks poised to rejoin the UN Human Rights Council when it becomes eligible. While regaining America’s international stature may take some time, the Trump administration’s “Withdrawal Doctrine” appears to be more of a temporary blip than an important historical phenomenon.

However, there are important, albeit less flashy international arenas where the U.S. has lost ground to China, which transcend the Trump anomaly. Reversing China’s rise in these institutions cannot be accomplished with a simple executive pen stroke. Nowhere is this truer than the complicated world of digital standards and internet governance.

It is easy to think of the internet as simply working, but a great deal of work gets put into the standards, protocols, and rules which keep the World Wide Web running. In part because these debates are highly technical and seemingly apolitical in nature, internet governance institutions and standards development organizations often fly under the radar. In reality, considering how virtually every sector is increasingly reliant on the internet, the rules and standards of the Web have wide-ranging economic, political, and security implications.

The major digital innovations on the horizon – blockchain, 5G/6G, internet of things (IoT), AI – threaten to upend existing military, political, economic, and social paradigms. The direction of that impact is not predetermined. Blockchain, for instance, started with a promise of security, privacy, and independence, but has recently been put towards more Orwellian applications such as China’s social credit system. Internet governance institutions and standards organizations are becoming the battleground in determining how these digital technologies will be deployed and regulated.

The coming four years in internet governance will focus heavily on Huawei’s pitch to redesign the Internet, which it calls “New IP.” Huawei justifies this top-down redesign of the internet by arguing it is necessary to support these looming innovations. However, the political overtones of New IP are undeniable: if U.S. influence has eroded to the point where the proposal passes, it could create security backdoors for the Chinese government to exploit and codify Chinese censorship norms worldwide.

THE FREE INTERNET VS. CYBERSOVEREIGNTY

Having “invented” what eventually became the internet, the U.S. had a head start in determining the direction of the Web up until now. The U.S. government has generally supported a free, open internet while opposing censorship and excessive government regulation of the Web. The U.S. prefers to keep internet governance in the hands of multistakeholder organizations, where representatives from industry, academia, civil society as well as national governments have a say in decision making. By contrast, China supports multilateralism (national government-led governance, which is personified by the UN’s telecommunication arm, the International Telecommunication Union) and a more tightly regulated, censored internet. China’s general stance is that a national government should be able to control its domestic internet, which it calls “cybersovereignty.”

China has been pushing these norms for years, but only in recent years has it been able to pose a serious threat to U.S. interests. In recent years, America’s share of leadership and general participation in the ITU and ISO/IEC have dropped. In 2016, ICANN – the organization in charge of the Domain Name System (DNS) that therefore controls users’ ability to access URLs – left U.S. stewardship.

#### Federal spending decreases overall investment by trading-off with states and localities

D.J. Gribbin 19, Non-Resident Fellow at the Brookings Institution, Founder of Madrus, LLC, Former General Counsel of the U.S. Department of Transportation, “Three Reasons To Think Twice About An Infrastructure Bill”, Politico, 3/27/2019, https://www.politico.com/agenda/story/2019/03/27/infrastructure-funding-bill-000886/

In physics, Newton’s Third Law states that for every action there is an equal and opposite reaction. In policy, too, every action creates a reaction, albeit rarely equal or opposite. In fact, the challenge of policy is that reactions, while inevitable, are difficult to predict. When weighing federal expenditures on infrastructure, policymakers need to keep in mind that allocating more federal funds to infrastructure might backfire. Here are three ways that could happen:

The “coupon effect”

The prospect of federal funding can dampen state and local funding. While voters overwhelmingly support increased infrastructure spending, their strong preference is that someone else pay for it. This dynamic makes it difficult for state and local leaders (who own 90 percent of governmental infrastructure) to turn to their electorate and ask for a tax or fee increase if the federal government is offering “free” funding.

This dynamic can be called the “coupon effect.” Imagine if shoppers in the market for a new suit were told that there is a small likelihood they will receive a coupon for 80 percent off their next suit purchase. Consumers will rationally engage in what economists call strategic delay and postpone their purchase in the hope of receiving a coupon, even if the chance of getting the coupon is very small. Every time a consumer considers heading to the store and buying a suit, he will ask, “But what if a coupon arrives tomorrow?” As a result, many will continue to delay until their suits (or our infrastructure) become unacceptably shoddy and worn.

In my experience, the prospect of federal funding has this same impact on state and local leaders considering a tax or user fee increase to expand or improve the quality of their infrastructure. This dynamic was clearly apparent in Kentucky in 2014, for instance. That year, a candidate for the U.S. Senate encouraged the communities around the Brent Spence Bridge (connecting Cincinnati and Covington, Ky.) to oppose a toll increase, because if elected, she would get the federal government to pick up the $2.6 billion tab to replace the bridge. Her campaign successfully increased opposition to tolling. Yet five years later, the debate on how to fund the bridge is still unresolved, and the probability of full federal funding is still just about zero (notwithstanding the fact that the state is represented by the Senate majority leader, who is married to the Secretary of Transportation).

While further study needs to be done, the coupon effect could actually result in a net *decrease* in infrastructure funds, especially when coupled with the challenges of substitution; states and local governments receiving an influx of federal dollars frequently substitute the new federal dollars for funds previously allocated to infrastructure and transfer their dollars to other policy priorities. As a result, a dollar in new federal infrastructure spending does not necessarily result in an additional dollar available for infrastructure.

The current non-federal to federal ratio of infrastructure spending is 3:1. Thus, if a 30 percent increase in federal spending (along with celebrations that the coupon is in the mail) dampened by 11 percent non-federal spending increases, our nation would be left with a net national decrease in infrastructure funding.

#### Fights are compartmentalized AND don’t spill over

Chad Pergram 18, Congressional Correspondent for FOX News Channel, 10/13/2018, “Amid Kavanaugh Cacophony, Congress Forges Bipartisan Agreements On Key Issues.” https://www.foxnews.com/politics/amid-kavanaugh-cacophony-congress-forges-bipartisan-agreements-on-key-issues

Step back from the Kavanaugh cacophony. Examine what lawmakers from both parties in both chambers accomplished in September and early October, with virtually zero fanfare.

Amid the turmoil, Congress approved the first revamp of national aviation policy in years. The Senate approved the final version of the legislation 93-6. This came after a staggering six extensions due to bickering and disagreement.

Then, Congress approved a sweeping, bipartisan measure to combat opioid abuse. The House okayed the package 393-8. The Senate adopted the measure 98-1.

And, there was no government shutdown. The House and Senate came to terms on two bipartisan bills which funded five of the 12 annual spending bills which operate the government. The sides agreed to latch an additional measure to one of the spending plans to fund the remaining seven areas of federal spending through December 7. President Trump briefly threatened to force a government shutdown if lawmakers didn’t include money for his border wall in the plan. But the President ultimately punted that battle until December. Democrats praised Republicans for keeping conservative “poison pill” riders out of the appropriations bills. That decision drew Democratic support for the measures.

The Senate approved a bipartisan water and infrastructure package.

McConnell hailed the bipartisanship which descended upon the Senate – even as the senators fought over Kavanaugh. Nearly in the same breath, McConnell derided boisterous, anti-Kavanaugh protesters outside the Capitol as a “mob.”

McConnell insisted this week he needed the Senate to clear a slate of 15 conservative judges to lower courts before he could cut senators loose for the midterm elections. McConnell and Schumer appeared at loggerheads. McConnell’s goal was clear: extract the confirmation of these nominees – or tether to Washington vulnerable Democratic senators from battleground states to keep them off the campaign trail.

Schumer knew McConnell would ultimately prevail on the nominees after the midterms. So the New York Democrat accepted McConnell’s ransom, permitting the Senate vote on a slate of nominees on Thursday night. Schumer also extracted a concession from McConnell: send senators home until November 13th.

One may wonder how lawmakers can find themselves in an imbroglio over a major issue like Kavanaugh – yet forge major bipartisan accords on other. Frankly, that’s just politics. Politics always elicits strange bedfellows. Successful lawmakers know they should compartmentalize their disputes. The enemy today may be your best ally tomorrow.

#### There are still tons of gaps

David Smith 21, Vice President of Business Planning & Performance at National Grid, “The Grid in the Infrastructure Package – What’s In, What’s Out, What’s Next”, GridForward, 8/19/21, https://gridforward.org/the-grid-in-the-infrastructure-package-whats-in-whats-out-whats-next/

What’s Not In The Package

Demand-Side Flexibility

Demand response and wider demand side management capabilities are essentially not funded in the bi-partisan package. One section encourages utility demand side management considerations, but no real funding goes to bringing demand side resources on the grid. With the potential of FERC 2222 to bring aggregated demand side and distributed resources into markets, much more widely available and adopted controllable devices, and other market developments necessitating the type of resource coming on the grid, this is a bit striking.

Building Automation

Support to ensure that buildings have higher level controls and capabilities to respond to grid signals was also not in the package. See comments in demand side and DER integration above and below.

Distributed Resource Integration

It’s not a future state, but a current need, in which aggregated edge resources can provide significant value to the grid. Turning distributed assets (solar, storage, EVs, thermostats, generators, hot water heaters, and much more) into a resource requires new technology, evolved models, new partnerships and more. Support to help this transition is essential. When well established values can be equitably dispersed to owners and all grid customers (and for the benefit of the system itself), we will have reached a new milestone in the evolution of our energy system – the grid has not reached this place yet and investing to get there is critical.

Analytics & Digital Infrastructure

Real-time grid telemetry to better understand and optimize the dynamics of the system was essentially not in the package and is also not present in most parts of the grid. What’s the saying ‘you can’t manage what you don’t measure?’ Are there exciting things you can do with the roughly 70% of advanced meters that are now deployed? Absolutely! But additional investments are required to apply a suite of capabilities, largely powered by the cloud, to the grid and it’s time that we take them off the shelf and use them.

Renewable Energy

Remember that part of the grid that actually creates the energy we need to run our economy? There are a handful of minor areas of investment in targeted deployments and demonstrations here and there offering a few hundred million dollars. But this package does not help fund the build-out of clean energy resources, nor the grid capabilities to help facilitate it. Economics of resources like wind and solar in many jurisdictions are just so cost-effective that their additions have largely won out over recent years, but if we want a lower carbon society we have to dramatically expand renewable resources. And, importantly, we must build a grid that ensures affordable, reliable power gets to people and businesses when they need it. It seems that the reconciliation package may have central aspects to helping support the further build-out of clean energy resources, but if the IPCC report that came out this week didn’t wake you up to the needs I’m not sure what else may.

#### No blackouts

Selena Larson 18, Cyber Threat Intelligence Analyst at Dragos, Inc., “Threats to Electric Grid are Real; Widespread Blackouts are Not”, 8/6/2018, https://dragos.com/blog/industry-news/threats-to-electric-grid-are-real-widespread-blackouts-are-not/

The US electric grid is not about to go down. Though it’s understandable if someone believed that. Over the last few weeks, numerous media reports suggest state-backed hackers have infiltrated the US electric grid and are capable of manipulating the flow of electricity on a grand scale and cause chaos. Threats against industrial sectors including electric utilities, oil and gas, and manufacturing are growing, and it’s reasonable for people to be concerned. But to say hackers have invaded the US electric grid and are prepared to cause blackouts is false. The initial reporting stemmed from a public Department of Homeland Security (DHS) presentation in July on Russian hacking activity targeting US electric utilities. This presentation contained previously-reported information on a group known as Dragonfly by Symantec and which Dragos associates to activity labeled DYMALLOY and ALLANITE. These groups focus on information gathering from industrial control system (ICS) networks and have not demonstrated disruptive or damaging capabilities. While some news reports cite 2015 and 2016 blackouts in Ukraine as evidence of hackers’ disruptive capabilities, DYMALLOY nor ALLANITE were involved in those incidents and it is inaccurate to suggest the DHS’s public presentation and those destructive behaviors are linked. Adversaries have not placed “cyber implants” into the electric grid to cause blackouts; but they are infiltrating business networks – and in some cases, ICS networks – in an effort to steal information and intelligence to potentially gain access to operational systems. Overall, the activity is concerning and represents the prerequisites towards a potential future disruptive event – but evidence to date does not support the claim that such an attack is imminent. The US electric grid is resilient and segmented, and although it makes an interesting plot to an action movie, one or two strains of malware targeting operational networks would not cause widespread blackouts. A destructive incident at one site would require highly-tailored tools and operations and would not effectively scale. Essentially, localized impacts are possible, and asset owners and operators should work to defend their networks from intrusions such as those described by DHS. But scaling up from isolated events to widespread impacts is highly unlikely.

### CWS DA---2AC

#### The plan is aligned with consumer welfare

Justin T. Lepp 12, J.D. from Washington University School of Law, A.B. from University of Chicago, “ICANN'S ESCAPE FROM ANTITRUST LIABILITY”, 2012, 89 Wash. U. L. Rev. 931, lexis

C. Antitrust Law

The U.S. Congress enacted the Sherman Act in 1890 to promote consumer welfare and efficiency, 48 counter the threat of antidemocratic political pressures from dominant corporations, 49 and protect small, independent businesses. 50 Section 1 of the Act makes illegal "every contract, combination … or conspiracy, in restraint of trade or commerce." 51 Section 1's prohibition extends to horizontal agreements (those among competitors at the same level of the supply chain) and [\*937] vertical agreements (those between manufacturers and distributors). 52 Most agreements are analyzed under the "Rule of Reason," a level of scrutiny by which a court weighs an agreement's procompetitive benefits against its anticompetitive harms. 53 Only "naked" restraints such as price fixing are considered illegal per se and receive no benefit of the doubt, regardless of their effect on competition. 54

While Section 1 targets agreements among multiple firms, Section 2 of the Sherman Act aims at the anticompetitive conduct of single firms in a given market. 55 "Every person who shall monopolize, or attempt to monopolize" a relevant market is guilty of violating the Act. 56 A violation of Section 2 has two elements: "(1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." 57 This two-part test is meant to distinguish between monopolies that have acquired their market power through anticompetitive conduct and monopolies that have achieved success through vigorous competition. 58

Because the Sherman Act is meant to encourage vigorous competition, courts are wary to punish monopolies unless their conduct has damaged competition. 59 The essential antitrust inquiry, therefore, is whether a firm has engaged in activity that has harmed competition in a relevant market. 60 Part II uses this antitrust analysis to determine whether ICANN's conduct has damaged competition in the domain name market.

[\*938]

II. ICANN's Anticompetitive Conduct

As the technical manager of the DNS, ICANN has a great deal of control over the domain name marketplace. 61 Some of ICANN's conduct, particularly as it relates to its contracts with registry operators, has harmed competition in the domain name market. Part II discusses three examples of ICANN's anticompetitive behavior. Section A describes ICANN's elimination of competitive bidding for registry contracts. Section B discusses ICANN's control over domain name prices in the .com, .net, and .org TLDs. Section C addresses ICANN's constrained rollout of new TLDs and the impact of the New gTLD Program.

A. Competitive Bidding

"Price is the "central nervous system of the economy.'" 62 Agreements that interfere with the natural ebb and flow of prices are presumptively illegal. 63 Competitive bidding is an important method for ensuring that price is controlled by the market. 64 The Sherman Act does not affirmatively require competitive bidding, 65 but an unfair restriction on competitive bidding may restrain trade within the meaning of the Act. 66 ICANN has imposed unfair restrictions on competitive bidding and has therefore violated the Sherman Act.

Restrictions on competitive bidding are evaluated under the Rule of [\*939] Reason because they do not restrain competition in the same way as a naked restraint like price fixing. 67 The Supreme Court applied the Rule of Reason to a ban on competitive bidding in National Society of Professional Engineers v. United States. 68 A non-profit association of engineers banned competitive bidding for its members' projects. 69 The Court held that the practice restrained trade within the meaning of Section 1 of the Sherman Act, but as part of the Rule of Reason analysis explored the association's justifications for its ban. 70 The association contended that ensuring high prices guaranteed the quality of its members' work. 71 The Court rejected the association's argument because it necessarily assumed that competition itself is unreasonable - a conclusion inconsistent with the purposes of the Sherman Act. 72

ICANN has eliminated competitive bidding for DNS registry contracts. VeriSign, Inc., the registry operator of the lucrative .com and .net TLDs, 73 was the beneficiary of a no-bid contract for operation of the .com TLD in 2006. 74 VeriSign is alleged to have publicly attacked ICANN in the media and through litigation to force ICANN to award it the .com contract without a competitive bidding process. 75 Beyond the no-bid contract awarded to VeriSign for .com, ICANN has contracts with each of its registry operators that all but guarantee a no-bid automatic renewal when their terms expire. 76 The contracts nominally provide for a competitive renewal process if the registry operator breaches certain terms, 77 but this provision has been called "illusory." 78 By eliminating competitive bidding [\*940] for the .com contract and competitive re-bidding for all other registry contracts, ICANN has arguably impeded "the ordinary give and take of the market place."

Under a Rule of Reason analysis, a court would investigate any justifications for ICANN's elimination of competitive bidding. 80 Like the association in Professional Engineers, ICANN would likely argue that a restrictive bidding process stabilizes prices and ensures that the backbone of the DNS is managed by competent, experienced, and technically skilled organizations. This argument is not without merit, because the potential consequences of poor DNS management could cripple the Internet itself. 81 However, a competitive bidding process would still provide ICANN the opportunity to adequately vet and accredit potential registry operators to ensure the continued vitality of the DNS. 82 As the Professional Engineers Court held, "the Rule of Reason does not support a defense based on the assumption that competition itself is unreasonable." 83 ICANN, therefore, has likely violated the Sherman Act by eliminating competitive bidding.

#### Energy antitrust is coming and thumps

Evan Miller 9/7, Associate in the Complex Commercial Litigation Practice Group at Vinson & Elkins LLP, JD from the Boston University School of Law, BA from The George Washington University, “FTC Letter Signals Increased Scrutiny of Oil & Gas M&A Activity”, JD Supra, 9/7/2021, https://www.jdsupra.com/legalnews/ftc-letter-signals-increased-scrutiny-2957307/

In a recent exchange of letters with the White House, the chair of the Federal Trade Commission (“FTC”) signaled her intent to ramp up antitrust enforcement in the oil and gas industry. The move comes as part of a broader shift in priorities at the FTC in evaluating mergers and is in line with the Biden administration’s recent efforts to increase antitrust enforcement across industries (about which V&E has previously written). While calls for FTC action to combat high gas prices are fairly common from new administrations and Congress, the agency’s recent response includes specific action items that suggest deviations from past policy. These changes could have significant effects on the regulatory environment for energy companies, especially for the retail fuels sector. Indeed, practitioners who regularly represent oil and gas companies before the FTC have noted that they are already receiving inquiries in line with the chair’s letter.

Background

On August 11, 2021, White House National Economic Council Director Brian Deese, who is also head of the new White House Competition Council, issued a letter to the FTC raising concerns about “divergences between oil prices and the cost of gasoline at the pump” during this past summer season. The letter did not provide any support for this assertion but urged the FTC to use “all of its available tools to monitor the U.S. gasoline market and address any illegal conduct that might be contributing to price increases for consumers at the pump.”

On August 25, 2021, the FTC’s new chair, Lina Khan, responded in a two-page letter that echoed the White House’s concerns and also expressed concern that the FTC’s “approach to merger review in recent years has enabled significant consolidation.” The letter claims that the FTC’s prior approach to retail fuel outlet mergers may have created “conditions ripe for price coordination and other collusive practices.”

New FTC Oil & Gas Initiatives

To address these concerns, the chair’s letter outlines several specific actions the agency plans to take.

First, the FTC will seek to “identify additional legal theories to challenge retail fuel station mergers where dominant players are buying up family-run businesses.” The letter does not provide any additional detail on this potentially significant shift in enforcement policy, the basis for this concern, or how this concern relates to protecting competition.

Second, the FTC will re-examine its approach to merger divestitures, to ensure that they do not encourage further consolidation or enable dominant firms or groups of firms to exercise market power. Khan states that she is “especially interested in ways that large national chains may ‘restore’ higher prices through collusive practices.” This reference to the industry-specific term of price “restorations” suggests that the agency’s leadership is more engaged than previously on the details of retail fuel station transactions.

Third, the FTC will “tak[e] steps to deter unlawful mergers in the oil and gas industry,” including by imposing “prior approval” requirements to deter companies from proposing “illegal mergers” in the first place. The FTC recently voted 3-2 to rescind its 1995 policy against the use of “prior approval” requirements in merger consent decrees.

Fourth, the FTC will ask staff to “investigate abuses in the franchise market,” with a specific focus on determining “whether the power imbalance favoring large national chains allows them to force their franchisees to sell gasoline at higher prices, benefitting the chain at the expense of the franchisee’s convenience store operations.” As with the first action item, how these concerns fit within the antitrust laws, and the basis for these concerns, are unclear at this point.

Expect Increased Scrutiny of M&A Activity

While the FTC regularly monitors oil and gasoline prices to identify unusual price activity that may signal potentially anticompetitive conduct in the industry and has brought numerous merger and non-merger enforcement actions over the years, oil and gas has not recently been a focus for the agency in public statements (unlike, for example, pharmaceuticals or technology companies). The letter suggests that the FTC leadership may be more focused on enforcement in the energy industry and that they may be particularly skeptical of transactions involving the acquisition of smaller local fuel retailers by larger national chains.

Based on our own recent experiences with oil and gas mergers before the FTC, and those of others in the antitrust bar, FTC staff has already begun requesting information from merging parties related to the issues in Chair Khan’s August 25 letter, as well as issues, such as unionization and ESG policies, of merging parties. Though Chair Khan’s letter focused on the retail gasoline level, we have seen similar expansive concerns at other levels of gasoline refining and production as well. These investigations are also taking longer than ever before. Unless the recent changes are a temporary blip on the radar — which the letter suggests is unlikely — large oil and gas companies and their counsel may need to adjust expectations on transaction timing and the range of issues investigated for matters that go before the FTC.

#### Facebook enforcement now---it’ll ramp next week

Margaret Harding McGill 21, Technology Reporter for Axios, “Fall Antitrust Forecast: Biden Raises Hammer on Big Tech”, Axios, 8/30/2021, https://www.axios.com/antitrust-big-tech-apple-google-amazon-facebook-2e619cf6-2fd9-48be-bc72-0e36cb7fdcfb.html

The antitrust scrutiny of tech giants that began during the Trump era will only intensify this fall as Big Tech critics Lina Khan, Tim Wu and Jonathan Kanter take the lead on competition policy and enforcement in the Biden administration.

Why it matters: Facebook, Google, Amazon and Apple face threats from federal regulators, Congress, state attorneys general and European Union authorities.

The big picture: That's four companies each being challenged from four directions: No wonder the antitrust arena can feel like three-dimensional chess.

As the fall season looms, here's what the game board looks like:

Facebook

The Federal Trade Commission, now led by Khan, renewed its legal effort challenging Facebook's acquisitions of Instagram and WhatsApp in August. The FTC accuses Facebook of buying rivals or using anticompetitive tactics to stymie them in order to squelch competition.

* What to watch: Facebook has until Oct. 4 to respond.

#### Health enforcement increased last week

Nicole Wetsman 9/22, Health Tech Reporter at The Verge, “FTC Resurrects a Decade-Old Rule as a Guardrail on the Health App Explosion”, The Verge, 9/22/2021, https://www.theverge.com/2021/9/22/22688497/ftc-health-app-privacy-transparency-data

Health apps have to tell their users about any data breaches or risk a hefty fine, the Federal Trade Commission clarified in a policy statement last week. The rule that requires that transparency is a decade old, but it hasn’t been enforced before. The new guidance serves as a warning to the many companies elbowing into the health app space: the FTC is taking issues around health data privacy seriously — even if it won’t be able to tackle all the privacy gaps on its own.

The FTC’s Health Breach Notification Rule covers all organizations that aren’t subject to the Health Insurance Portability and Accountability Act (HIPAA), which covers things like doctors and insurance companies. HIPAA requires those groups to disclose any time they have a data breach. The FTC rule covers any other group that deals in health information.

Health apps often haven’t had strong data privacy protections, FTC Chair Lina Khan said in a statement about the rule. Apps often have poor data protection systems, or violate their own privacy policies by sharing data with outside groups without telling users. These apps weren’t a piece of the digital health picture when the rule was first written. But since then, there’s been an explosion in health apps — tens of thousands are released each year, and downloads increased during the COVID-19 pandemic. More and more people are trusting their health information to these products. The new guidance clarifies that the Health Breach Notification Rule applies to these platforms as well, even if they didn’t think it covered them before.

The breaches that could trigger a report don’t just include hacks or attacks. These organizations would have to disclose any information shared without users’ permission. That might apply to situations like the recent privacy breach by period tracking app Flo, which was sharing data to Facebook, Google, and marketing companies without users’ knowledge. The FTC didn’t cite Flo for breaking the Health Breach Notification Rule — it focused on false statements made by the company about its privacy policies — but two FTC members argued that it should have.

The FTC’s new focus on making sure companies follow the rule could trigger internal changes at health apps, says David Simon, a research fellow at the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School. “It’s going to force them to at least put systems in place, if they’re not already in place, to figure out when these breaches occur and then notify people,” Simon says. The rule says that groups have to report any data breaches that they should have known about, not just that they do know about — so they have to have ways to monitor data.

The penalties for breaking the rule are fairly significant: $43,792 per violation per day. “That can add up very quickly,” says Jennifer Wagner, an assistant professor of law, policy, and engineering at Pennsylvania State University. “I think they’re trying to signal that, ‘look, it’s in your best interest if you’re an app developer or a vendor of a connected platform that you pay attention to this rule, and that you have some kind of response mechanism in place.’”

#### it’s resilient

R. David Ranson 20, Research Fellow at the Independent Institute and the President and Director of Research at HCWE Inc., “Resilient US Economy Has Overcome the COVID-19 Recession”, Independent Institute, 10/9/20, https://www.independent.org/news/article.asp?id=13290

Though the president and first lady weren’t able to dodge the COVID-19 bullet, the U.S. economy, we now know, has adapted remarkably well to the pandemic and social distancing. As a result, the worst of the COVID-19 recession is over.

Fear pushed public and even professional opinion to be bearish about the prospects of economic recovery. On both sides of the aisle, it became commonplace to assume that economic vitality depended largely on financial aid from Washington.

Therein lies a Catch-22 that’s keeping us from paying attention to the economy’s rebound. If markets and the economy recover or perform well, the conventional wisdom attributes this to government “stimulus.” If they stagnate or perform poorly, it’s attributed to Washington’s sloth and stinginess. In short, we’ve been too focused on vulnerability—and the perceived need for artificial stimulation—and not focused enough on resilience.

Real GDP dropped like a stone in the second quarter (April-June) of 2020, at a record annual rate of 31.7%. The great majority of forecasters did not anticipate that we could recover from such a blow anytime soon—even taking into account unprecedented government largesse. Their predictions of sustained weakness are being overtaken by events.

Weeks ago the largest component of gross domestic product, consumer spending, already had bounced back to pre-pandemic levels, recovering twice as fast as employment or industrial production. Within just two months, May and June, retail sales had completed a full round trip. In July and August they rose further.

How well does this good news reflect the economy as a whole? That requires an estimate of GDP itself. With forecasters in broad disagreement, it might seem that we’ll have to wait until third quarter results are in.

Happily, thanks to the Center for Quantitative Economic Research at the Federal Reserve Bank of Atlanta, there’s now a more timely source of information, unavailable in past downturns, and derived from real-time hard data: the bank’s GDPNow estimate. As of Sept. 24 the GDPNow team calculated third-quarter annualized growth of 32%.

This figure exceeds all but three of the 62 forecasts in The Wall Street Journal’s September survey of forecasters, and reflects a huge upward revision from GDPNow’s earliest estimate at the end of July.

Such quarter-to-quarter growth would be twice the record set by the Korean War buildup. And it implies that the economy already had recaptured three-fourths of its second-quarter collapse in a single quarter.

The speed and vigor of the U.S. rebound can be interpreted in two contrasting ways. One is that federal intervention has been much more effective than expected. There will be no shortage of politicians waiting to take credit for that. The other is that, collectively, virtually all of the so-called experts underestimated the economy’s intrinsic resilience.

Back in the days when federal “stimulus” was puny by today’s standards, GDP already showed an ability to bounce back from drastic financial shocks, natural disasters, widespread strikes and global crises. To paraphrase Independent Institute senior fellow Richard Vedder, professor emeritus of economics at Ohio University, perhaps the most impressive example is the economic transition following demobilization at the end of World War II. Millions of military personnel became jobless within months and military spending plummeted. But the economy’s resilience came to the rescue and the predicted sharp rise in overall unemployment never occurred.

It’s not clear whether government “stimulus” funds add to or subtract from the economy’s resilience. Relief to those among the newly unemployed who are too pressed to fend for themselves may actually help them become more resilient. On the flip side, moderate deprivation may be a greater spur to self-reliance, encouraging the unemployed to seek work rather than temporary income from government.

Either way, the resilience of the U.S. economy is overpowering the COVID-19 recession, which soon could be history.

## 1AR

### States CP---1AR

#### It doesn’t send a signal

Theodore Voorhees 14, Senior Litigator and Member of the Antitrust and Competition Law Practice Group at Covington & Burling LLP, and Leah Brannon, Partner at Cleary Gottlieb Steen & Hamilton LLP, ABA 2016 Presidential Transition Task Force, “Presidential Transition Report: The State of Antitrust Enforcement”, Antitrust Source - American Bar Association, 16-3 Antitrust Src. 1 (2014), Lexis

D. International Matters

The global expansion of competition law regimes has dramatically increased the complexity and cost of compliance for U.S. businesses. The Section commends the Agencies for working to address these challenges through formal and informal cooperation, communication, and consensus-building efforts. However, there is much work yet to be done. Now, more than ever, it is important for the United States to speak with one voice in international antitrust matters. The Section encourages the Agencies to work more closely with each other and with the Administration to develop and communicate a unified global antitrust policy. To accomplish this goal, the Administration may wish to consider how the Executive Branch could facilitate more extensive coordination between the Agencies and better respond to pressing international competition law matters. The Section commends the Agencies for their efforts to promote comity through deference to foreign authorities' enforcement actions. That said, where appropriate legal grounds exist, and where consistent with U.S. policy, the Agencies should not hesitate to intervene in foreign enforcement proceedings where it appears that U.S. firms are being subjected to rules or policies that are antithetical to U.S. antitrust law, particularly where serious due process concerns are at stake. Finally, in the wake of recent federal appellate decisions opining that the Federal Trade and Antitrust Improvements Act (FTAIA) is a substantive element of a Sherman Act claim, the Section recommends that the Agencies clarify that the FTAIA places a jurisdictional limit on Sherman Act enforcement.

III. ENFORCEMENT MATTERS

A. Agency Enforcement and Policy

1. Guidance

Where there are uncertainties in the Agencies' enforcement policies or priorities, it is often essential for the Agencies to provide guidance. The formal guidance can take the form of formal guidance documents (such as the Horizontal Merger Guidelines of 2010) or FTC opinions. Informal guidance can take the form of agency reports, speeches by key agency personnel, amicus briefs, decisions to litigate, or closing statements. Agency guidance is important and beneficial for multiple reasons, such as providing clarity for businesses, moving competition policy in the right direction, and ensuring a U.S. perspective on the international arena. Agency guidance is also particularly useful to communicate a shift in enforcement policy or practice.

Furthermore, uncertainty as to the boundaries of antitrust laws may chill potentially procompetitive conduct or enable potentially anticompetitive behavior to continue unchecked. Businesses may be less willing to engage in novel business activities that could benefit consumers. Moreover, agency guidance and enforcement not only define the boundaries of how the Agencies view and enforce the law, but may also impact how courts rule in litigation.

Guidance also ensures a place for the U.S. perspective on the international stage. Because so many foreign antitrust authorities look to the Agencies for leadership and study U.S. enforcement decisions and cases, clearly articulated guidance helps achieve uniformity across jurisdictions. Moreover, an international presence and influence as to antitrust policy is particularly critical in an era in which some foreign competition agencies use the pretense of antitrust enforcement as a cover to mask decisions that are actually based on industrial policy or protectionism.

#### Sends a weak, mixed message

Richard B. Bilder 89, Professor of Law – University of Wisconsin-Madison, “Distribution of Constitutional Authority: The Role of States and Cities in Foreign Relations”, American Journal of International Law, October, 83 A.J.I.L. 821, Lexis)

The arguments for state and local governments to stay completely out of matters relating to foreign affairs include the following.

First, the vital national interest in the effective and efficient achievement of U.S. foreign relations objectives requires that other nations perceive our foreign policy as unified and coherent -- that our nation "speak with one voice." Consequently, state and local involvement in international issues, particularly if not in accord with administration policy, may undermine the conduct of U.S. foreign relations and the credibility of our negotiating posture by conveying the appearance of disagreement, confusion, uncertainty and weakness in our Government's stated foreign policy positions.

Second, state and local activities may sometimes directly impede or frustrate national foreign policy or embarrass our foreign relations by causing offense or injury to foreign nations, their citizens or their economic interests. It is inappropriate and irresponsible for particular states and localities, acting on their own and without regard to broader national public opinion or policy, to adopt measures that may result in adverse consequences for the nation as a whole.

#### It causes uncertainty, stifles competition, and impedes federal regulation

Jacob P. Grosso 21, J.D. Candidate at the University of Richmond School of Law and B.A. from George Mason University, “The Preemption of Collective State Antitrust Enforcement in Telecommunications”, University of Richmond Law Review, 55 U. Rich. L. Rev. 615, Winter 2021, Lexis

Preemption would address the effects of the growth of federal regulators in the telecommunications market, particularly CFIUS, as well as the resulting changes to the regulatory landscape. If the states act as another national regulator in telecommunications, then innovation, competition, and the ability of federal enforcers to pursue policy goals will be stifled. To solve this problem, collective state antitrust action should be preempted by federal law in the telecommunications market. States likely remain better plaintiffs than consumers in many situations and therefore should litigate on behalf of their citizens. This litigation should be conducted individually, with federal regulatory enforcement generally left to federal regulators.

States should not be prevented from enforcing antitrust law; instead, states should focus exclusively on violations of their own state laws and on protecting their citizens as individual enforcers, not as a collective body. Federal agencies are the proper regulators of national industries such as telecommunications, while state enforcement prevents federal nonenforcement policies which may benefit social welfare overall.253 With respect to policy goals, CFIUS’s interventions in recent years showcase the federal government’s focus on national security concerns in the telecommunications market. Agendas balancing broader policy goals—such as national security—with competition are only possible under a more centralized enforcement system and by specialized agencies.254

Specialized agencies are therefore the best regulators of the telecommunications market.255 The requirement that “[a]ntitrust analysis must always be attuned to the particular structure and circumstances of the industry at issue” leads to efficiencies from the use of specialized enforcers.256 The inelasticity of the market and the significant barriers to entry require oversight by specialized expert regulators to maintain a competitive environment, and interference from other government regulators will only impede the ability of the federal regulators to direct this market. Nonenforcement policies, used when the agencies determine doing so is in the best interests of competition, cannot be enforced without a monopoly on enforcement.257

Placing control in the hands of more centralized regulators reduces uncertainty for competitors due to the inherent inconsistencies in court proceedings and allows for better market functioning.258 The inability to pursue nonenforcement agendas and reduce litigation will cause unnecessary false positives. False positives can discourage competition and innovation.259 Too many false positives will cause competitors to restrict their behavior drastically to comply with enforcers at the cost of innovative business practices.260 Overenforcement and the resulting false positives reduce competition, inviting harm to both the consumer and the aggregate social welfare.261 Reduction in states’ ability to conduct collective antitrust litigation will naturally decrease the overall amount of litigation, which provides several benefits to competition and to regulators. These benefits include reduced compliance costs, legal fees, and the redistribution of resources.262 Reduced costs will benefit administrative costs, particularly those resulting from the coordination of state agencies. The result is a leaner, specialized enforcement system; increased market freedom due to clear regulations; and the opportunity for regulators to balance broader policy goals with antitrust.

#### States fail---laundry list

- lack resources

- get captured

- favor local interests

- piggyback

- increase costs

D. Daniel Sokol 10, Assistant Professor at the University of Florida Levin College of Law, “ANTITRUST, INSTITUTIONS, AND MERGER CONTROL”, 2010, 17 Geo. Mason L. Rev. 1055, Lexis

One reason to support a reduced state role has to do with limited state resources, and thus competency, relative to the federal government. 224 An additional justification involves the greater propensity for special interest capture of state enforcers relative to federal enforcers. 225 Such limitations on the part of the states may hurt optimal antitrust enforcement. States lack the resources of federal enforcers in terms of budget and antitrust expertise. 226 Moreover, states may be more likely to put local parochial interests ahead of national consumer welfare. 227 These factors increase the possibility of bad decision making in terms of what kinds of cases to bring. States have incentives to piggyback onto national cases because the cases are high profile and generate political rewards to the state AGs. 228 How much state involvement adds in such cases is debatable. 229

In terms of institutional resource allocation, state involvement in federal enforcement of mergers or single-firm conduct cases may increase coordination costs for potential resolution of the legal issue. 230 Central enforcement therefore may reduce compliance costs.

#### But no follow-on AND it’d fail from duplication

Elysa M. Dishman 19, Associate Professor of Law at Brigham Young University Law School, “Enforcement Piggybacking and Multistate Actions”, BYU Law Review, 2019 B.Y.U.L. Rev. 421, Lexis

Certain conditions allow enforcement overlap to occur. First, the law provides overlapping enforcement authority to multiple enforcers. Several areas of the law provide authority for multiple enforcers to act, such as securities, environmental, antitrust, and consumer protection enforcement.

For example, the securities law enforcement regime provides authority to multiple enforcers to bring overlapping actions. Federal securities laws provide enforcement authority to federal agencies such as the Securities and Exchange Commission (SEC). These laws also allow for private rights of action that are enforced through private enforcers, such as securities class actions. States [\*441] also have the authority to enforce their own state securities laws. For example, the New York Attorney General has used the state's securities fraud statute, the Martin Act, to bring a series of enforcement actions against large financial institutions.

Another example of overlapping enforcement authority is in the area of consumer protection law. Federal agencies, such as the Consumer Protection Financial Bureau (CPFB), have the authority to enforce federal law. Federal law also delegates authority to AGs to enforce consumer protection law. States also have state consumer protection laws, known as unfair and deceptive acts and practices (UDAP) laws. And private enforcers also bring class actions based on consumer protection theories.

Second, overlap is created by enforcer discretion, or the considerable independence and choice that enforcers have in choosing their enforcement agenda and pursuing enforcement actions. Both federal and state enforcers have tremendous discretion to choose which actions to bring against which target and what type of settlement or sanctions to pursue. Private attorneys also have the ability to choose their cases. Furthermore, private attorneys acting as class counsel also have considerable leeway [\*442] directing class actions and negotiating the settlement on behalf of class members.

Third, enforcers have incentives to pursue overlapping actions. Most predictably, private enforcers are incentivized to pursue actions that produce large settlements and attorneys' fees. Incentives with respect to public enforcers, however, can be more difficult to identify. Federal enforcers may pursue cases that are within their agency's expertise and raise issues of national scope. They may have financial motivations when they pursue particular actions because large settlements provide reputational benefits for the agency, or the agency may be able to keep a portion of the penalties from its enforcement actions. AGs may be motivated to prioritize local issues that are important to their voters or step in when federal enforcers have failed to act. AGs may also seek high-profile targets and large settlements for the publicity that may help them in future campaigns.

Because public and private enforcers have different incentives, it stands to reason that they will use their discretion to pursue different types of actions. However, it may be that all enforcers are often incentivized to pursue the same type of action. Overlap occurs when all enforcers are attracted to the same type of cases. These cases are often high-profile actions against major national and multinational corporations. Actions against large corporate defendants have the prospects of high financial settlements and attract all types of enforcers. For example, private enforcers interested in attorneys' fees, federal enforcers focused on enforcement reputation, and AGs planning to campaign on a "tough on fraud" campaign platform.

But the financial incentives may not be enough to explain why public enforcers may be attracted to actions against major corporations. Actions against corporate targets may also be of particular national importance because of their role in interstate commerce and their potentially complex nature that may call for [\*443] the expertise of a federal enforcer. AGs may also be attracted to the same type of enforcement target because their state residents were particularly affected by the misconduct or because federal enforcers have failed to bring action.

While it may be necessary in some instances to have overlapping actions, more often in the context of major corporate fraud, there is a danger of over-enforcing these types of actions at the expense of pursuing other actions. The overenforcement in this category of actions means that, with scarce enforcement resources, other types of actions will go under-enforced, such as small-scale fraudsters, Ponzi schemes, and other less splashy but important enforcement areas. This leaves victims of these types of frauds uncompensated and fails to deter certain types of misconduct that are also deserving of enforcement resources. This means that it is possible to over-enforce certain types of actions or certain types of targets but under-enforce other types of cases against different targets.

When there is overenforcement in the multienforcer system, it is difficult to calibrate the multienforcer system to reduce levels of enforcement. If an enforcer has the legal authority, discretion, and all the incentives to proceed, arguments about unfairness to corporations (whose misconduct may not make them particularly sympathetic) may not be enough to encourage enforcers to exercise restraint. Furthermore, enforcement tends to have a "ratchet up" effect where enforcers that advocate for less enforcement are easily trumped by other enforcers pursuing actions. These dynamics make it difficult to change the current system to approach more optimal levels of enforcement. "The hard question for system designers is how to achieve an optimal mix of public and private litigation so as to leverage the strengths, and compensate for the weaknesses, of each model."

[\*444]

C. Piggybacking in a Multienforcer System

The potential for overlap in a multienforcer system makes it prone to piggybacking among enforcers. Piggybacking has generally been considered to be negative, with enforcers free riding on the efforts of other enforcers without adding any additional value by duplicating their efforts. Piggybacking can be problematic when it creates overenforcement problems, facilitating excessive duplicative enforcement actions.

There is a fair amount of finger-pointing when it comes to enforcement piggybacking. The most common target of such finger-pointing tends to be private enforcers. Private enforcers have been accused of riding on the coattails of public enforcers that have invested considerable resources in investigation and litigation. Private enforcers are particularly incentivized to piggyback because they are financially motivated and seek to leverage the smallest investment of resources for the greatest recoveries or attorneys' fees.

But private enforcers are not the only ones accused of piggybacking. State enforcement actions brought by AGs have also been criticized for duplicating private class action litigation. In particular AGs have the authority to bring parens patriae actions that closely resemble private class actions. In fact, AGs can bring parens patriae actions against the same corporation as a class action and even hire the same class counsel to pursue the action on behalf of the state and its residents.

AGs have also been criticized for piggybacking on federal enforcement actions, particularly in the areas of antitrust and [\*445] securities enforcement. In the context of securities enforcement, rational states may do little to enforce securities fraud against public corporations, and instead piggyback on federal securities enforcement. AGs may be incentivized to piggyback on federal and private enforcers because their offices have limited budgets and, like private enforcers, they want to leverage the least amount of enforcement resources for the greatest possible settlement to benefit their states, or their own political benefit.

Although less common, federal enforcers can also piggyback on AG actions and on private enforcement actions. Federal enforcers may piggyback because they may have come late to certain enforcement actions due to agency capture, bureaucratic sluggishness, or other political impediments.

### Infrastructure DA---1AR

#### Reconciliation gets shrunk, delayed, and passes inevitably OR won’t pass

Jordain Carney 9/29, Senate reporter at The Hill, “Manchin says he could back reconciliation bill this year”, The Hill, 9/29/21, https://thehill.com/homenews/senate/574593-manchin-says-he-could-back-reconciliation-bill-this-year

Sen. Joe Manchin (D-W.Va.) said Wednesday that he could support passing a Democratic-only spending bill by the end of the year, even as he blasted a multitrillion-dollar top-line spending bill envisioned by progressives as "fiscal insanity."

"I think we can get a good bill done. I really do, and work in good faith," Manchin said, when asked if he could support a Democratic-only bill this year.

"I'm fine. If we can get it done, sure. Let's roll our sleeves up and do it," Manchin added, when asked again about the potential timeline.

Manchin's embrace of getting a bill passed this year comes after Axios reported that he wanted to hit pause on the sweeping Democratic-only package until 2022.

Manchin didn't specify when this year he thinks Democrats need to act but noted that they weren't under pressure to meet a "one-week, two-week deadline."

"The child tax credit ends at the end of the year. Everything else goes way into next year and 2023," Manchin said. "Do a pause and let's really take our time to look ... and hopefully we'll get there."

Manchin suggested that overhauling the 2017 GOP tax bill should be the starting point for the reconciliation bill, because it unifies the party. Democrats are planning to change the corporate tax rate, which was set to 21 percent under the GOP bill, as well as make other tax changes.

“I think there’s a lot of good things — I want to do a tax overhaul. The one thing you understand that all Democrats agreed on, and that’s not a lot of things that we all agreed on right, the 2017 tax cuts were unfair and weighted to the high end," he said.

"Let’s fix that ... and then if there’s some good things we can do, and the president has some things we really want to do. We can work out a child tax credit," Manchin added.

Manchin pointed to the assistance for children and help for seniors as two broad areas that could be included in the spending bill but reiterated that he wanted means testing to put income-related caps on the assistance.

"He has a belief that he wants to help people. And I believe that I want to help people and I believe together we can. There's different ways to help them, OK?" Manchin said, referring to Biden.

"People have to help themselves when they can. But some people are down low and how you pick them up out of poverty, I understand that," Manchin added. "Let's see where the need really is."

He added that "anything that can be added should be means tested," adding that he doesn't want the U.S. to move to an "entitlement society."

Manchin's comments, made to reporters as he was leaving the Capitol after a vote, come as the House appears poised to pull a bipartisan roughly $1 trillion infrastructure bill that Manchin helped negotiate in the Senate.

Progressives are threatening to sink the bill unless they can get an agreement on what will be in the spending bill that Democrats want to pass under reconciliation, which allows them to bypass the 60-vote legislative filibuster in the Senate.

House Speaker Nancy Pelosi (D-Calif.) told reporters that Democrats need an agreement on the legislative text of the reconciliation bill in order for the bipartisan Senate bill to come up, something Manchin warned earlier Wednesday that Democrats would not hit by Thursday.

Manchin's comments also came minutes after he released a lengthy statement that took aim at his progressive critics, while also offering few new details on the specifics of what he could support in the sweeping spending bill. Biden urged a group of moderates, including Manchin, to come up with a top-line number, but Manchin has yet to say what could get him on board.

“What I have made clear to the President and Democratic leaders is that spending trillions more on new and expanded government programs, when we can’t even pay for the essential social programs, like Social Security and Medicare, is the definition of fiscal insanity,” Manchin said in the statement.

Manchin added that the social spending bill at the heart of Biden’s agenda should be driven by “what we need and can afford” and not to “reengineer the social and economic fabric of this nation or vengefully tax for the sake of wishful spending.”

“I cannot — and will not — support trillions in spending or an all or nothing approach that ignores the brutal fiscal reality our nation faces,” Manchin said, while adding that he hopes a path forward can be found.

#### Biden has no remaining PC

Naomi Lim 9/30, White House Reporter at the Washington Examiner, “Biden's Decision to Go Big on Coronavirus Spending Undermines Reconciliation Negotiations”, Washington Examiner, 9/30/2021, <https://www.washingtonexaminer.com/politics/biden-big-coronavirus-reconciliation> [language modified]

President Joe Biden's decision to outspend former President Barack Obama with his $1.9 trillion coronavirus package may backfire as Democrats squabble over his $3.5 trillion social welfare and environment proposal amid a looming federal government shutdown and debt ceiling crisis.

As inflation lingers and new data suggest mass pandemic-induced evictions never materialized, Biden may have exhausted his political capital with centrist Democrats by muscling an excessive COVID-19 relief measure through Congress — ~~crippling~~ [tanking] his broader legislative agenda and the health of the U.S. economy in the process. On Wednesday evening, Sen. Joe Manchin, a West Virginia Democrat and key vote on the package, trashed the spending bill as "fiscal insanity."

#### Tons of thumpers derail the DA

Daniel Henninger 9/29, deputy editor of The Wall Street Journal's editorial page, “Nancy Pelosi’s Hell Week,” WSJ, 9-29-2021, <https://www.wsj.com/articles/nancy-pelosi-spending-plan-zero-cost-infrastructure-build-back-better-reconciliation-11632944432?mod=flipboard>

This week’s legislative agenda in the House of Representatives sounds like the to-do list of a madhouse.

Members of Congress know now what it’s like to swim through mud. Welcome to Nancy Pelosi’s hell week. It can still get worse.

Some seven years ago in this column, amid bureaucratic problems implementing Barack Obama’s sprawling Affordable Care Act, we wondered whether the U.S. government was becoming a black hole, siphoning everything near it into a deadly, inert mass.

It is in the interests of Speaker Pelosi and her fellow fork-carrier Sen. Chuck Schumer to narcotize the public and press with arcane process detail. But what we’re witnessing is the capital of a great nation on the verge of collapsing the country into a state of long-term misgovernance.

As it began, this week’s House agenda read like the to-do list of a madhouse: Vote on a $1 trillion infrastructure bill. Vote on a $3.5 trillion spending reconciliation bill. Vote on a continuing resolution to avoid a government shutdown until they decide the “details” inside the 2,465 pages of the spending bill. Vote to increase the U.S. government’s debt ceiling, now at $28 trillion.

Keep in mind what the Byrd Rule governing reconciliation is, or was. Conceived in 1985 by Democratic Sen. Robert Byrd of West Virginia, its purpose was to discipline the substance of spending and taxes inside a budget process that had been wrecked by the 1974 Congressional Budget and Impoundment Control Act. Chuck Schumer has made a mockery of Robert Byrd’s reform. Discipline is dead because it is in the way. The result is legislative chaos.

Last week, when Speaker Pelosi and Mr. Schumer said they and the White House had a “framework” for the revenue to pay for this spending, their Democratic colleagues Sens. Bernie Sanders and Mark Warner said they had “no idea” or “the foggiest” what the two were talking about.

#### Like the border crisis

Alex Seitz-Wald 9/27, Political Reporter at NBC News, BA from Brown University, “Biden In A Bind On The Border: 'The Politics Finally Got The Better Of Their Policy'”, NBC News, 9/27/2021, https://www.nbcnews.com/politics/joe-biden/biden-bind-border-politics-finally-got-better-their-policy-n1280044

Biden is stuck between immigration advocates in his own party on one side and Republicans, who insist he’s still not doing enough to control the border, on the other, leaving the White House politically isolated and with no clear refuge.

“President Biden needs to show moral clarity in this moment,” said Julián Castro, the former Obama Cabinet member and 2020 Democratic presidential candidate. “If he doesn’t, the coalition that elected him will collapse.”

There were no snakes and alligators, as Trump reportedly wanted on the U.S.-Mexico border. But the images of Border Patrol agents on horseback chasing Haitian asylum-seekers attempting to cross the Rio Grande has many of Biden’s allies comparing him to his predecessor and questioning his commitment to the larger reform project.

The administration has attempted to distance itself from actions taking place under its oversight.

Homeland Security Secretary Alejandro Mayorkas called the images “horrible and horrific,” and the White House said horses will no longer be used in the area.

Vice President Kamala Harris, who has been tasked with dealing with some border issues, released an eyebrow-raising readout of a call she held with Mayorkas speaking to her nominal subordinate the way she might to a hostile a foreign leader.

But none of it seems to have helped much.

The administration’s top envoy to Haiti resigned in protest of the "inhumane, counterproductive decision" to deport Haitian refugees back to a country seemingly everyone agrees is unsafe as it grapples with political unrest and the aftermath of a hurricane and earthquake.

And Republicans are still insisting Biden is promoting “uncontrolled illegal immigration into the country,” as Missouri Sen. Josh Hawley said during a hearing with Mayorkas.

For some, like Frank Sharry, the longtime head of the immigration advocacy group America's Voice, it’s all too familiar to see a Democrat have their dreams — and backbone — crushed by a media firestorm over an immigration flashpoint.

“I’ve been in this debate for 40 years, and it feels like groundhog,” Sharry said, noting every president for decades has dealt with surges of Haitian and Central American migrants.

Back in March, when a different surge of migrants was in the news, many of the questions at Biden’s first news conference were about the border. The new president stood by his plan for a regional approach to stem the flow of migrants, fix the asylum system and “undo the moral and national shame of the previous administration.”

But since then, Biden has faced one challenge after another, from the pandemic to the pullout of Afghanistan, with his poll numbers declining along with the prospects for his domestic legislative agenda on Capitol Hill, leaving little political capital left for a fight on one of the most divisive issues in the country.

#### It won’t be publicized OR noticed

Ed Vaizey 16, Contributor at Tech Crunch, Former Minister in the UK Government, Responsible for Digital and Technology Policy, “ICANN’s Globalization Creates Peril and Promise”, Tech Crunch, 9/2/2016, https://techcrunch.com/2016/09/02/icanns-globalization-creates-peril-and-promise/

In a quiet blogpost, Larry Strickling, the US government’s assistant secretary for communications and information announced that he had “informed ICANN…that…[the US government] intends to allow the IANA functions contract to expire as of October 1”.

That sentence may not mean a whole lot to many people, but this move is of huge global significance in how the internet is managed and governed.

ICANN is the Internet Corporation for Assigned Names and Numbers, a private non-profit organisation based on the west coast of the United States.

It’s not responsible for running the internet entirely, of course (no one is) but it’s an important – vital – part of the jigsaw. It’s responsible, in effect, for maintaining the internet. Without an organization like ICANN, and the IANA (Internet Assigned Numbers Authority) function it undertakes, we wouldn’t have domain names and IP addresses.

For almost twenty years, ICANN has carried out its functions on the basis of a contract with the US Department of Commerce, who set it up to formalize the process for managing domain names.

But ICANN’s future is part of a much wider debate about how the internet is governed. For something that is now so fundamental to how our world works, it is surprising how little this debate has actually played out in the mainstream.

In effect, the internet is “governed” by the Internet Governance Forum – the IGF – which was set up just over ten years ago, and had its mandate renewed last year. Its council is a multi-stakeholder advisory group, with a mix of representatives from government, civil society, business and academia.

It remains pretty fluid and informal, and very much under the radar. It meets once a year, in a different country, for about a week. Several thousand people attend, but there are regional IGF meetings throughout the year. Being part of the IGF tour can almost be a full time job for many people.

#### U.S. action alone fails

I&I 21, Issues & Insights Editorial Board, “There’s Nothing The U.S. Can Do To Affect Global Temperature”, Issues & Insights, 9/7/21, https://issuesinsights.com/2021/09/07/theres-nothing-the-u-s-can-do-to-affect-global-temperature/

“We simulated the environmental impact of eliminating greenhouse gas emissions from the United States completely,” Dayaratna said in testimony.

“Simulation results indicate that if all carbon dioxide, methane, and nitrous oxide emissions were to be eliminated from the United States completely, the result in terms of temperature reductions would be less than 0.2 degrees Celsius, 0.03 degrees Celsius, and 0.02 degrees Celsius, respectively. These temperature reductions would also be accompanied by minuscule changes in sea level rise (less than 2-centimeter reduction).”

This isn’t hard to understand when it’s put next to the fact that more than half of the world’s human greenhouse gas emissions are produced by 25 cities,

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all but two of them in China, none of them in the U.S.

It’s truly asinine to believe that Washington and our state lawmakers can do anything about greenhouse gas emissions when China and India have been busy building hundreds of coal plants and that, as of last year, 350 coal-fired power plants were under construction worldwide. China – which, we must point out, produces most of the solar panels installed in the West in factories powered by that country’s “mountain” of coal – is not going to yield to John Kerry’s embarrassing begging that it cut emissions. Beijing will do only what it wishes.

## 2AR

### Infrastructure DA---2AR

#### Finishing

I&I 21, Issues & Insights Editorial Board, “There’s Nothing The U.S. Can Do To Affect Global Temperature”, Issues & Insights, 9/7/21, https://issuesinsights.com/2021/09/07/theres-nothing-the-u-s-can-do-to-affect-global-temperature/

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#### China is by far the largest emitter AND unilateral action isn’t enough

BBC 21, British Broadcast Corporation, “Report: China emissions exceed all developed nations combined”, BBC News, 5/7/21, https://www.bbc.com/news/world-asia-57018837

China emits more greenhouse gas than the entire developed world combined, a new report has claimed.

The research by Rhodium Group says China emitted 27% of the world's greenhouse gases in 2019.

The US was the second-largest emitter at 11% while India was third with 6.6% of emissions, the think tank said.

Scientists warn that without an agreement between the US and China it will be hard to avert dangerous climate change.

China's emissions more than tripled over the previous three decades, the report from the US-based Rhodium Group added.

The Asian giant has the world's largest population, so its per person emissions are still far behind the US, but the research said those emissions have increased too, tripling over the course of two decades.