# Northwestern---Round 1 vs. Kansas OR

## 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

### T Ban---2AC

#### ‘Prohibitions’ means hinder and can contain exceptions---it doesn’t have to be all

Sandra L. Lynch 2, Judge on the United States Court of Appeals, First Circuit, “Second Generation Props., L.P. v. Town of Pelham”, 313 F.3d 620, 634, 2002 U.S. App. LEXIS 25904, 12/17/2002, Lexis

§ 332(c)(7)(B). We start with the fact that Congress used "services" and not "service." A straightforward reading is that "services" refers to more than one carrier. Congress contemplated that there be multiple carriers competing to provide services to consumers. That one carrier provides some service in a geographic gap should not lead to abandonment of examination of the effect on wireless services for other carriers and their customers. Next, the phrase "have the effect of prohibiting" may well refer to actions that mostly prohibit. For example, B.A. Garner, A Dictionary of Modern Legal Usage 256 (2d ed., 1995), gives as the first definition of effective "having a high degree of effect." (emphasis added). Accord B.A. Garner, A Dictionary of Modern American Usage 237-38 (1998). Moreover, a common reading of the word "prohibition" standing alone would apply to a situation of denial of services to the vast majority of users. See, e.g., Oxford English Dictionary (2d ed. 1989) (defining [\*\*33] "prohibit" as "to prevent, preclude, hinder") (emphasis added). Thus Congress may well have meant the effective prohibition clause to reach certain situations in which there is some coverage in a gap.

### 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.

#### Can’t solve either advantage---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 05, 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,” Berkeley Technology Law Journal, Vol 20, 2005

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

### Regulation CP---2AC

#### Regs fail---there’s no authority to control ICANN

Nelson Drake 18, J.D. from American University 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,” 2018, lexis

B. **ICANN as an Agency in Form but Not in Name**

Traditionally, through its role in Internet governance and administration, ICANN acts like an administrative agency. ICANN derived its power from an agreement from the MOU with the NTIA, which in effect allowed ICANN to act with the power of the NTIA with regard to the administration of the DNS root servers. 42 However, this power was limited by the NTIA's oversight as the MOU required ICANN to check with the NTIA before making any changes to the root servers. One key feature of this role is that ICANN uses its authority to create the policies and procedures that governed its regulation of the IANA functions.

For example, ICANN created the Uniform Domain-Name Dispute Resolution Policy (UDRP) to outline the rules regarding the transfer of domain names from cybersquatters 43 in disputes involving the rights of trademark owners. 44 Specifically, the UDRP procedures permit ICANN to unilaterally transfer ownership of domain names when a preapproved arbitration panel 45 determines that the original domain name owner is violating the trademark owner's rights. 46 Thus, through these arbitration panels, ICANN determines whether a party has trademark rights in a domain name and can subsequently transfer that domain name from an infringing party.

However, one might argue that is **not a meaningful regulatory role** because parties who are displeased with a panel decision may appeal the ruling  [\*91]  in federal court. 47 The **courts** largely **defer to the UDRP panel's decisions**, and the United States Patent and Trademark Office's (USPTO's) own policy regarding trademarkability of domain names effectively mirrors the UDRP. 48 In addition, ICANN's regulatory authority is codified by its registration agreements that domain name registrants are required to sign. 49 Thus, through the UDRP, and approved arbitration panels, ICANN regulates the ownership rights of domain name registrants and determines the existence of trademark rights with respect to domain names, a function that is typically served by the USPTO in assigning trademark rights. 50

More recently, ICANN began exercising more direct, regulatory control over the Internet through the IANA functions when the Obama administration began drafting a plan by which the remaining control over the IANA functions could be transferred from the NTIA to ICANN. 51 The **transition** was finalized on January 6, 2017, pursuant to the Memorandum signed by Lawrence Strickling, which consequently **made ICANN the sole arbiter of the DNS root zone.** 52 This transfer amounted to the **complete privatization of the administration of the Internet**'s authoritative root zone functions. As a result, ICANN changed from a government contractor acting as an arm of the NTIA into an Internet regulator possessing the power to manage the authoritative root zone as it saw fit.

One primary effect of this transition is that ICANN now resembles an independent administrative agency and no longer a contractor for an executive agency. Independent agencies are unique because they are delegated power **and free to act** largely **without direct interference from the legislative or executive branches.** 53 That independence allows the agency to make decisions  [\*92]  about topics falling within the scope of their expertise that are, in theory, apolitical. 54 Therefore, the basic effect of the IANA transfer in 2017 is that ICANN is now free to regulate the root zone as it sees fit and create the rules that govern its administration.

#### Internet regs destroy clarity and get circumvented

Steven Semeraro 2, Associate Dean & Associate Professor of Law at the Thomas Jefferson School of Law, “Regulating Information Platforms: The Convergence to Antitrust”, Telecommunications & High Technology Law, Volume 1, p. 178-180

IV. INDUSTRY-SPECIFIC REGULATION

Industry-specific regulation is believed to be needed where cooperation among competitors is necessary in order to maximize consumer welfare and where the public interest demands consideration of goals other than short-run consumer welfare. Antitrust is generally thought to be incapable of achieving these results because it rarely imposes duties to cooperate.121 As explained in Section I, however, antitrust has proven quite adept at requiring cooperation when it is really essential.122 And Sections II and III explained how antitrust may incorporate long-run consumer welfare and free speech values. There is thus no inherent need for specifically tailored legislative pronouncements when the general body of antitrust law is seen as flexible enough to reach all threats to consumer welfare.

Nevertheless, industry-specific consumer-welfare regulation arguably could provide substantial benefits by clearly identifying ex ante the rights and obligations of the competitors in a way that the general antitrust laws cannot. But that theoretical benefit is unlikely to be realized. Congress has demonstrated a singular inability, or at least an unwillingness, to draft regulatory legislation that is clear enough to obtain this benefit. As Justice Scalia wrote in his opinion for the Court in Iowa Utilities:

It would be a gross understatement to say that the 1996 [Telecommunications] Act is not a model of clarity. It is in many important respects a model of ambiguity or indeed even self contradiction. That is most unfortunate for a piece of legislation that profoundly affects a crucial segment of the economy worth tens of billions of dollars.123

In the absence of industry-specific regulation, litigation would often be necessary to resolve particular disputes. Given the inherent uncertainties in the antitrust laws, the notion that private parties could often settle differences in the shadow of those laws is unlikely.124 But industry specific regulation may be no better. The 1996 Telecommunications Act produced an explosion of litigation that remains unresolved five years later.125

Even when industry-specific regulation is interpreted in a way that provides clear rules to govern competitive behavior in information platform markets, the antitrust laws may remain a substantively better regulatory device. By their nature, industry- specific rules intended to enhance consumer welfare would necessarily require both (a) costly conduct to conform to the rules that in some situations would have no measurable consumer welfare benefit, and (b) permit some conduct that reduced consumer welfare but did not violate an ex ante rule.126 The problem would likely worsen over time as firms learned to walk the line along the rule, figuring out ways to comply with the letter of the law without providing the intended consumer welfare benefits. 127 For example, firms may learn the maximum permissible delays in the implementation of a rule-required behavior. All this is not to say that clear rules are never useful. But the resistance to using clear rules in antitrust doctrine generally should lead us to think twice before assuming that industry-specific legislation is a superior alternative to antitrust as a regulator of competition among information platforms.

#### AND won’t be enforced

Stacey L. Dogan 8, Assistant Professor of Law at Northeastern University; and Mark A. Lemley, William H. Neukom Professor of Law at Stanford Law School, “Antitrust Law and Regulatory Gaming”, Stanford Law School, 2008, No. 367 John M. Olin Program in Law and Economics, Working Paper No. 367, https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=1873&context=faculty\_scholarship

II. The Relative Efficiency of Antitrust and Regulation

The growing antitrust deference to regulation is cause for concern. Both antitrust and regulation are economic responses to market failures.46 Implemented correctly, both are designed to serve the ends of economic efficiency. 47 It is therefore reasonable to judge the relative efficacy of antitrust and regulation by economic criteria. And judged by those criteria, virtually all economists would agree that antitrust-overseen market competition is superior to industry regulation. In particular, none of the arguments the Court has offered as a reason to prefer regulation to antitrust withstand scrutiny.

Relative expertise. It is true, as the Court emphasized in Trinko and CreditSuisse, that antitrust courts are generalist courts, while regulatory agencies tend to specialize in a particular industry and its problems. That specialization should, all other things being equal, mean that expert regulators will do a better job than judges or juries of reaching the right result. But other things are far from being equal. Antitrust courts have two significant advantages over regulatory agencies when it comes to promoting competition.

First, antitrust courts are trying to promote economic efficiency, while regulators often aren’t. For decades, efficiency has served as the sole criterion on which to judge antitrust rules. And courts have had over a century in which to hone those rules to achieve that end. Without question, courts have made mistakes in the past. But there is a strong consensus among antitrust scholars that the wave of cases in the last 30 years has largely moved antitrust in the right direction, eliminating any significant risk that antitrust enforcement will do more harm than good.48 Scholars may fight over whether a Chicago School or a post-Chicago School approach will achieve the right result in specific cases, 49 but for the most part they are tinkering at the margins: the law and the scholarship have converged with respect to both the proper goals of antitrust and the general rules that will achieve those goals.

Regulation, by contrast, is frequently not even intended to achieve economic efficiency through competition. Occasionally that is because of a legislative judgment that competition is impossible, though the number of industries thought to be natural monopolies for which markets won’t work has shrunk dramatically in the past four decades.50 Industry regulation that excludes entry in order to promote a natural monopoly, as telephone regulation did before 1984, is not likely to achieve a competitive outcome.

More often, the goals of the legislators who establish regulatory agencies, or the goals of the regulators who run those agencies, are to achieve something other than competition. Indeed, many regulations are aimed precisely at eliminating competition, as was the government sponsored raisin cartel in Parker v. Brown 51 or any of its modern descendent crop-support programs administered by the Department of Agriculture. It should be obvious that regulations intended to reduce competition will not promote it. But even if the regulation is not directly inimical to competition, competition is frequently irrelevant to, or at best a minor consideration in, a regulator’s agenda. Regulators may care about the safety and efficacy of a drug, for example, and only incidentally about whether there is competition in the sale of that drug. They may seek to reduce traffic deaths or air pollution by mandating technology, regardless of the effect that mandate has on the price manufacturers can charge or the number of products they sell. These are laudable goals, to be sure, but they are not competition-related goals. An agency tasked with achieving these goals is likely to ignore threats to competition from the industry it regulates so long as those threats do not compromise its core mission. Thus, the state and local governments that enacted the privately-drafted National Fire Protection Code at issue in Allied Tube into law were interested in stopping fires; doubtless they thought little if at all about the competitive effects of the code, even though it turned out that the code was drafted by interested private parties with the purpose of impeding competition rather than promoting fire safety.52

Even those agencies whose mission expressly involves consideration of competition issues will not necessarily make it their first among potentially conflicting priorities. The SEC, for example, which as Justice Breyer pointed out is dedicated to improving market information and expressly considers competition among other issues in setting regulation,53 is first and foremost an investor-protection and information-disclosure agency, not an agency that investigates and weeds out cartels or other anticompetitive practices. It is unlikely to devote much in the way of time or resources to such issues, because even if it is tasked to consider such issues they do not reflect the agency’s primary purpose. Similarly, even an agency like the Federal Communications Commission that is directly focused on competitive conditions in a particular market may naturally pay attention primarily to that market, and give less if any attention to the effect its rules might have on competition in adjacent markets or competition from unanticipated new businesses. This arguably explains the FCC’s willingness to largely ignore the effects of its decisions on the Internet, for example: it is telecommunications, not the Internet, that the FCC is tasked to regulate.

Agencies that view competition as secondary, or view it through the lens of a particular industry’s characteristics and interests, are less likely to create and enforce rules that optimally encourage competition. 54 At a bare minimum, therefore, the industry-specific expertise of an agency must be balanced against the competition-specific expertise of the specialist antitrust agencies: the Federal Trade Commission (FTC) and the Department of Justice Antitrust Division.

#### It causes agency capture AND links to the net benefit

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

Public choice helps to explain how sector regulators are likely to be captured by special interests. 241 The interests that affect sector regulators are more concentrated than those in antitrust 242 and therefore more successful in their efforts to capture regulators. In this sense, the sector regulators are more likely to be captured and will behave more politically than antitrust agencies.

Interest groups have an advantage in crafting policy for two reasons. First, there are informational costs to political participation. 243 Individuals need to determine their interests. To do so, they must expend resources. Such expenditure for information can be significant, especially when the benefit is small for an individual consumer. 244 Because information itself is a public good, markets are suboptimal at generating information. 245 Information costs limit the ability of parties to participate effectively in the legislative process.

The second participation cost is the cost of political mobilization. 246 Once interests are properly identified, political forces must be mobilized to fight for legislation. This creates free-rider problems for public goods such [\*1092] as laws of general societal benefit, like antitrust. 247 Each individual has an incentive to shirk on his organizational responsibility because someone else can do his work for him. 248 This makes majority groups unlikely to be as effective as smaller groups with lower organizational costs. 249

These informational and organizational costs make it possible for a well-organized interest group to push for legislation that will benefit the group instead of society at large. 250 Because of lower informational and organizational participation costs, these groups tend to be effective in their rent seeking. Rent seeking in the antitrust setting creates immunities from antitrust or shifts regulatory intervention to sector regulators more prone to capture than antitrust enforcers. Firms may have strong political clout to restrict competition. 251 These firms have an incentive to shape government policy to be receptive to their needs through policies that facilitate anticompetitive restraints rather than the needs of consumers as a whole. 252 In both regulated and unregulated sectors, firms may try to curry favor with government to raise barriers to prevent new entry or to raise rivals' costs. 253 In a recent article, Professors Dogan and Lemley conclude that antitrust and the use of generalized courts are more efficient than regulatory agencies because generalized courts are less likely to pursue regulatory gaming strategies. 254 Sector regulation and antitrust enforcement overlap in many respects. Such overlap creates the potential for inconsistency between these two institutions, as well as increased fear of regulatory capture. [\*1093]

### CIL CP---2AC

#### The CP’s irregular and incoherent process destroys the signal AND model

William E. Kovacic 15, Global Competition Professor of Law and Policy, George Washington University Law School and Non-executive Director, United Kingdom Competition and Markets Authority, JD from Columbia University Law School, BA from Princeton University, “The United States and its Future Influence on Global Competition Policy, George Mason Law Review, 22 Geo. Mason L. Rev. 1157, Lexis

A. Reputation

Regulatory agencies develop reputations, 31 and the reputation of a competition system affects whether other authorities choose to emulate that jurisdiction's applications, seek its know-how, or even amend their own operating systems. A competition agency's reputation is a function of many factors. The most important is the perceived quality of its programs: has the agency delivered visibly good economic results for consumers in its decisions about what to do and what not to do?

In some cases, it is possible to link improvements in economic performance directly to the agency's work. 32 Because it can be difficult to show how the operation of a competition system affects economic performance, other proxies of effectiveness serve to separate stronger competition systems from weaker ones. In many instances, the volume of the agency's activity--notably, the filing of cases and the successful defense of litigation matters in court--and the sum of monetary penalties recovered are taken as [\*1165] measures of agency quality. 33 Agencies that bring big cases and obtain substantial penalties figure prominently in discussions about agency quality. 34

Reputation also is shaped by perceptions of the quality of an agency's process. 35 One important element of process is the set of procedural techniques (both formal rules and norms) that the agency uses to ensure that it operates within the boundaries of the law and tests theory and evidence rigorously. Another ingredient of good process is meaningful public disclosure--notably, informative statements about priorities, guidelines and other commentary that spell out how the agency analyzes business behavior, and clear explanations of why the agency chose to issue complaints, close files, or settle cases. Good practice also leads agency officials to appear regularly in public to explain their views and accept criticism. A further measure is the establishment of a routine practice to evaluate the substance of the agency's work and its procedures.

B. Branding

Reputation is the central ingredient of an agency's efforts to build a well-respected brand internationally. 36 The concept of branding extends beyond the development of a good reputation to encompass efforts that make the agency well-known and well-respected in the eyes of external observers, including other competition authorities. In this way, branding has an important dimension of marketing. An agency's good work is unlikely to exert substantial influence abroad unless it is known and understood by a wider audience.

Effective branding is a function of how the agency formulates and communicates its policies. A major determinant of effectiveness is to ensure that the agency's expressions of policy--through hard tools such as law enforcement and rulemaking or though softer policy instruments, such as guidelines, reports, and speeches--are coherent. Policy coherence in turn depends heavily on the agency's ability to form an overall strategy and to set out priorities that guide its staff about the selection of programs and inform outsiders about its intentions.

Coherence also requires discipline in external communications, including the agency's public relations program. Means of informing external observers include public statements by the agency and its senior managers, [\*1166] presentations at conferences, formal decisions on the initiation or resolution of cases, and the publication of studies. Each public utterance of an agency or its officials is an occasion to emboss or tarnish the agency's brand. As a group, these messages should consistently and clearly reinforce the agency's main themes, as contained in its statement of strategy and priorities.

#### U.S. leadership is locked in---the material base of primacy is overwhelming

Carlo Catapano 21, PhD Candidate in International Studies at the University of Roma Tre, MSc in International Relations of the Americas at UCL, “Book Reviews: Unrivaled: Why America will Remain the World’s Sole Super-power, by Michael Beckley. Ithaca: Cornell University Press, 2021, pp. 231.”, Interdisciplinary Political Studies, Volume 7, Number 1, p. 249-252

Moving on to the emerging rivalry between China and the United States, Beckley acknowledges that the Asian giant is its most likely challenger. However, his detailed evaluation of Beijing’s economic and military resources leaves no room for doubts: China lags behind the US on almost every net indicator, and the gap between the two is unlikely to vanish any time soon. This conclusion is surprising if one considers the constant references – in academia and the media – to China’s rise and the Asian century. Beckley points out the weaknesses of the Chinese economy (Chapter 3), the hidden costs for a large, populous and developing country that are not included in gross estimates, and the various advantages that the US economic system still owns despite the limited growth of the post-2008 period.

Similarly, he compares (Chapter 4) the net military capabilities of the two powers by subtracting, for example, the costs to maintain security at home from their overall military assets. Also, he addresses the geopolitical factors that separate the US and Chinese ability to project their military power abroad. From this analysis, it emerges that China’s position is severely constrained by the high costs paid to assure its internal security and the defense of its national borders as well as by the welfare costs associated to the large number of troops composing the People’s Liberation Army. Beckley argues that China’s rising military capabilities are also constrained by the continued presence of US outposts in the region and the improvements made by China’s neighbors to their own military forces. Overall, this assessment leaves few chances for Beijing to obtain the regional hegemony that it would need to challenge the US on a global scale.

Beckley’s analysis also indicates the path forward (Chapter 5), starting from the rejection of the theories usually employed to predict the fate of US power (balance-of-power theory and “convergence” theory). All indicators suggest that the US will retain its role of leading global power in the coming years, notwithstanding China’s uninterrupted rise. Beckley is eager to point out, however, that this conclusion should not be confused with the praise of American superiority or invincibility. At no point, does his analysis suggest that Washington’s primacy is uncontestable or destined to last forever. Instability with weaker countries, unnecessary wars, internal polarization and disunity, can all produce unpredicted losses and undermine the position of the most powerful country in the world (Chapter 6). Beckley’s argument, therefore, consists in a re-evaluation of the sources of power that have guaranteed the US primacy since the end of the Cold War. Those same sources still place the United States in a category of its own, apart from the other great powers of the system. This book’s claim, in the end, is about the duration of the unipolar era, which it predicts will last more than usually expected, not about the infallibility or moral virtues of US power.

A few years later on the publication of this book, its central tenets are even more relevant. Events such as Trump’s nationalist policies, the trade war with China, the COVID-19 outbreak seem to have accelerated history and the shift away from the post-Cold War unipolar configuration. Beckley’s work, however, invites to reject simplistic predictions about the dismissal of US primacy. The decline in Washington’s global influence as well as the retrenchment from its international responsibilities do not necessarily mean that its net position in terms of material capabilities has collapsed or that a condition of power parity with China has finally emerged. Even if outcomes are not favorable to US interests, it does not mean that US power has vanished. This is a relevant reminder for policymakers in both Washington and Beijing.

### Infrastructure DA---2AC

#### Won’t pass---Manchin won’t be persuaded

Hans Nichols 9/16, Political Reporter at Axios, “Scoop: Biden bombs with Manchin”, Axios, 9/16/21, https://www.axios.com/scoop-biden-bombs-manchin-b2b4acbd-24d0-40a3-ba6f-c0509e0e0224.html

President Biden failed to persuade Sen. Joe Manchin (D-W.Va.) to agree to spending $3.5 trillion on the Democrats' budget reconciliation package during their Oval Office meeting on Wednesday, people familiar with the matter tell Axios.

Why it matters: Defying a president from his own party — face-to-face — is the strongest indication yet Manchin is serious about cutting specific programs and limiting the price tag of any potential bill to $1.5 trillion. His insistence could blow up the deal for progressives and others.

Axios was told Biden explained to Manchin his opposition could imperil the $1.2 trillion bipartisan infrastructure bill that's already passed the Senate. Biden's analysis did little to persuade Manchin to raise his top line.

Manchin held his position and appears willing to let the bipartisan bill hang in the balance, given his entrenched opposition to many of the specific proposals in the $3.5 trillion spending package, Axios was told.

#### COVID and Afghanistan are nuking PC

AFP 9/7 – i24 News, “Biden To Unveil New 'Six-Pronged' Plan On How To Stop Delta Variant”, 9/7/2021, https://www.i24news.tv/en/news/coronavirus/1631027956-biden-to-unveil-new-six-pronged-plan-on-how-to-stop-delta-variant

US President Joe Biden will make a speech outlining plans to combat the highly transmissible Delta variant of the virus that causes Covid-19 on Thursday, as he attempts to recover rapidly slipping political momentum.

A White House official said Tuesday that Biden will "speak to the American people about his robust plan to stop the spread of the Delta variant and boost vaccinations."

The "six-pronged strategy" will involve both the public and private sectors, the official, who spoke on condition of anonymity, said.

"As the president has said since day one, his administration will pull every lever to get the pandemic under control," the official said.

Biden, who took office in January, won praise for his administration's concerted effort to get the coronavirus pandemic under control. Mass vaccination campaigns quickly got off the ground, boosting the Democrat's image as a competent crisis manager.

However, the combination of the aggressive Delta variant and large, mostly Republican-dominated swaths of the country where vaccinations continue to lag, has fueled a stunning resurgence of the disease.

Despite the role played by Republican leaders in refusing to impose mask mandates in hard-hit areas, Biden is taking much of the blame.

Also damaged politically by the traumatic exit from Afghanistan, the 78-year-old Democrat has seen his political capital plummet in the last few weeks.

#### 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.

### AT: Warming---2AC

#### The bill dooms climate initiatives

Michael E. Mann 21, Distinguished Professor of Atmospheric Science and Director of the Earth System Science Center at Penn State University, “The Bipartisan Infrastructure Deal Is a Return to the Old Way of Politics. That’s A Problem for the Climate”, 8/6/21, https://time.com/6087933/biden-infrastructure-bill-climate-change/

The looming bipartisan infrastructure deal, if it passes, will be celebrated as a return to pre-Trump politics where politicians reach across the partisan divide, compromise where necessary, and work toward the wrong shared goals.

But it’s business as usual when it comes to the defining challenge of our time: the climate crisis. The bill provides nothing tangible to expedite the country’s urgent need to transition towards renewable energy.

This deal is a far cry from meeting the moment we find ourselves in. It does not address our dependence on fossil fuels, and instead further enables it. Instead, it is focusing money and resources on technologies that don’t work while ignoring the clear winners—solar, wind, etc.—we have in front of us.

In the bill’s current incarnation, I am left wondering what happened to President Joe Biden’s pledge to transform our heavily fossil-fuel-dependent economy into a clean-energy economy. In his campaign he promised to end climate-damaging carbon emissions from U.S. power plants by 2035. But this bill wastes billions of dollars on dubious carbon capture and the fossil fuel industry’s attempt to use hydrogen as a cover to build new gas plants—both of which will do nothing more than strengthen the industry’s hold.

This bipartisan deal disguises handouts to polluters as ostensible “climate solutions,” when they in fact fuel additional carbon emissions and, with them, ever-more searing heat waves, drenching floods, parching droughts, infernal wildfires, and devastating superstorms.

Further, while Biden pledged to address issues of environmental justice by directing 40% of the administration’s climate and clean-energy investments toward low-income and frontline communities that have most suffered the environmental and health risks from fossil-fuel dependence, this bill weakens critical environmental review processes, placing many of these communities at even greater risk. For example, one section of the bill exempts oil and gas pipelines on federal land from being subject to environmental assessments.

Donald Trump was rightly ridiculed for suggesting the solution to California’s climate-change-fueled wildfires was to cut down the trees (and adopt better raking technique). But the bipartisan infrastructure bill includes the same sort of policy Trump supported, calling the logging of 30 million acres of federal forests and $1.6 billion in new taxpayer-funded subsidies to the logging industry “wildfire risk reduction,” waiving environmental protections for logging projects in the name of “fuel breaks,” and giving hundreds of millions of dollars to the timber industry to log new areas and build new processing and power plants under the guise of “ecosystem restoration.”

What passed for wacky theatrics when Trump suggested it, now gets labeled shrewd political calculus in 2021. But it’s not wise; it’s dangerous. We need healthy forests to capture carbon in the only safe way: the natural way. Giving the timber industry the keys to our national forests is like giving fossil-fuel giant ExxonMobil the keys to our climate. And speaking of ExxonMobil, senators who belong to the infamous Exxon 11 made up a third of the bill’s co-authors.

#### 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, 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.

#### Warming won’t be catastrophic

Dr. Benjamin Zycher 21, Senior Fellow at the American Enterprise Institute, Doctorate in Economics from UCLA, Master in Public Policy from the University of California, Berkeley, and Bachelor of Arts in Political Science from UCLA, Former Senior Economist at the RAND Corporation, Former Adjunct Professor of Economics at the University of California, Los Angeles (UCLA) and at the California State University Channel Islands, and Former Senior Economist at the Jet Propulsion Laboratory, California Institute of Technology, “The Case for Climate Change Realism”, 6/21/2021, https://www.aei.org/articles/the-case-for-climate-change-realism/

Unable to demonstrate that observed climate trends are due to anthropogenic climate change — or even that these events are particularly unusual or concerning — climate catastrophists will often turn to dire predictions about prospective climate phenomena. The problem with such predictions is that they are almost always generated by climate models driven by highly complex sets of assumptions about which there is significant dispute. Worse, these models are notorious for failing to accurately predict already documented changes in climate. As climatologist Patrick Michaels of the Competitive Enterprise Institute notes:

During all periods from 10 years (2006-2015) to 65 (1951-2015) years in length, the observed temperature trend lies in the lower half of the collection of climate model simulations, and for several periods it lies very close (or even below) the 2.5th percentile of all the model runs. Over shorter periods, such as the last two decades, a plethora of mechanisms have been put forth to explain the observed/modeled divergence, but none do so completely and many of the explanations are inconsistent with each other.

Similarly, climatologist John Christy of the University of Alabama in Huntsville observes that almost all of the 102 climate models incorporated into the Coupled Model Intercomparison Project (CMIP) — a tracking effort conducted by the Lawrence Livermore National Laboratory — overstate past and current temperature trends by a factor of two to three, and at times even more. It seems axiomatic to say we should not rely on climate models that are unable to predict the past or the present to make predictions about the distant future.

The overall temperature trend is not the only parameter the models predict poorly. As an example, every CMIP climate model predicts that increases in atmospheric concentrations of greenhouse gas should create an enhanced heating effect in the mid-troposphere over the tropics — that is, at an altitude over the tropics of about 30,000-40,000 feet. The underlying climatology is simple: Most of the tropics is ocean, and as increases in greenhouse-gas concentrations warm the Earth slightly, there should be an increase in the evaporation of ocean water in this region. When the water vapor rises into the mid-troposphere, it condenses, releasing heat. And yet the satellites cannot find this heating effect — a reality suggesting that our understanding of climate and atmospheric phenomena is not as robust as many seem to assume.

The poor predictive record of mainstream climate models is exacerbated by the tendency of the IPCC and U.S. government agencies to assume highly unrealistic future increases in greenhouse-gas concentrations. The IPCC’s 2014 Fifth Assessment Report, for example, uses four alternative “representative concentration pathways” to outline scenarios of increased greenhouse-gas concentrations yielding anthropogenic warming. These scenarios are known as RCP2.6, RCP4.5, RCP6, and RCP8.5. Since 1950, the average annual increase in greenhouse-gas concentrations has been about 1.6 parts per million. The average annual increase from 1985 to 2019 was about 1.9 parts per million, and from 2000 to 2019, it was about 2.2 parts per million. The largest increase that occurred was about 3.4 parts per million in 2016. But the assumed average annual increases in greenhouse-gas concentrations through 2100 under the four RCPs are 1.1, 3.0, 5.5, and an astounding 11.9 parts per million, respectively.

The studies generating the most alarmist predictions are the IPCC’s Special Report on Global Warming of 1.5°C and the U.S. government’s Fourth National Climate Assessment, both of which were published in 2018. Both assume RCP8.5 as the scenario most relevant for policy planning. The average annual greenhouse-gas increase under RCP8.5 is over five times the annual average for 2000-2019 and almost four times the single biggest increase on record. Climatologist Judith Curry, formerly of the Georgia Institute of Technology, describes such a scenario as “borderline impossible.”

RCP6 is certainly more realistic. It predicts a temperature increase of 3 degrees Celsius by 2100 in the average of the CMIP models. But on average, those CMIP models overstate the documented temperature record by a factor of at least two. Ultimately, models with a poor record of successfully accounting for past data and highly unrealistic future greenhouse-gas concentrations should not be considered a reasonable basis for future policy formulation.

### Tradeoff DA---2AC

#### Biden’s XO and future FTC rule changes thump

Ausra Delard & Brian O’Bleness 21, JD Co-Chair of the U.S. Competition and Antitrust Group and Member of Dentons' National Health Care Practice Group; Co-Chair of the U.S. Competition and Antitrust Group and Member of Dentons' White Collar and Government Investigations Practice, “A New Day, A New Deal: The Biden Administration’s Antitrust Revolution”, JD Supra, 7/19/21, https://www.jdsupra.com/legalnews/a-new-day-a-new-deal-the-biden-8824526/

The Biden administration is “supercharging” antitrust enforcement with an expansive view of what constitutes anti-competitive behavior. While much attention has been paid to antitrust scrutiny of large technology companies, also in the crosshairs of the Biden administration are labor markets, agricultural markets and healthcare markets (prescription drugs, hospital consolidation and insurance) according to President Biden’s July 9 Executive Order on Competition2. The order is one of several recent developments that signal an antitrust revolution is underway. A central theme of this revolution is that competition laws can serve as a broad panacea to solve many societal problems, including privacy concerns.3

The Federal Trade Commission (“FTC”) is now led by Lina Khan, a 32-year old academic, who believes that “the current framework in antitrust – specifically its pegging competition to ‘consumer welfare,’ defined as short-term price effects – is unequipped to capture the architecture of market power in the modern economy.”4 Within her first month as chair of the FTC, Khan has moved quickly to revise guidance and protocols that may have otherwise limited expanded enforcement against broadly defined unfair competition, including predatory, exploitative and coercive practices. Transformation of current antitrust policy is also supported by pending legislation that calls for sweeping reform to “reinvigorate America’s antitrust laws and restore competition to American markets.”5

At the heart of the revolution is a sense that antitrust enforcement has failed to address anti-competitive acts by (i) limiting competitive effects to pricing and (ii) the general acceptance that driving a hard bargain is a lawful business practice as long as it doesn’t leverage market power in another relevant market. With a focus on pricing effects, modern antitrust analysis recognizes economic efficiency and the ability to lower costs – which can be passed on to consumers through lower prices – as redeeming pro-competitive benefits. However, the Biden administration appears keen to return to historical antitrust paradigms seen in the 1960s where maintenance of fragmented industries and markets was of paramount importance, even at the cost of higher prices.6

Biden’s Executive Order on Competition

On July 9, President Biden issued an Executive Order on Competition (“EOC”) and established a White House Competition Council to monitor progress on finalizing the initiatives in the order. The EOC encouraged enforcement efforts particularly in labor markets, agricultural markets, healthcare markets (prescription drugs, hospital consolidation and insurance), and the tech sector.7 In particular, the President announced a policy of greater scrutiny of mergers, “with particular attention to the acquisition of nascent competitors, serial mergers, the accumulation of data, competition by ‘free’ products, and the effect on user privacy” and “prior bad mergers that past administrations did not previously challenge.”8

In technology markets, President Biden encouraged the FTC to establish rules on (i) surveillance and the accumulation of data and (ii) barring unfair methods of competition in internet marketplaces, particularly where “large platforms’ power give them unfair opportunities to get a leg up on the small businesses that rely on them to reach customers.”9 The EOC calls for the FTC to use its rule-making authority to ban “pay for delay” and similar agreements among drugmakers and for the FDA to combat high prescription drug prices and price gouging. In agriculture, the EOC points to concentration in markets for seeds, equipment, feed and fertilizer. In labor markets, the EOC moves to prohibit non-compete clauses and unnecessary occupational licensing restrictions that impede economic mobility.10

Merger Guidelines

Also on July 9, FTC Chair Khan, within one month of being sworn in, issued a joint statement with Acting Assistant Attorney General Richard A. Powers of the Antitrust Division of the Department of Justice to consider revisions to the Merger Guidelines.11 We anticipate that federal antitrust authorities plan to significantly revamp the public guidance relating to both horizontal and vertical mergers. Chair Khan has raised concerns that current vertical merger enforcement has been over-permissive and not adequately addressed concerns regarding foreclosure and leverage.12 Khan has criticized the Reagan administration’s 1982 Merger Guidelines for its “radical departure” from an emphasis on “preserving and promoting market structures conducive to competition” to a disproportionate embrace of economic factors relating to price increases and output restrictions that has guided modern antitrust analyses to date.13 Instead, she calls on evaluating the neutrality of the competitive process and the openness of the market by examining: (i) entry barriers, (ii) conflicts of interest, (iii) the emergence of gatekeepers and bottlenecks, (iv) the use of and control over data, and (v) the dynamics of bargaining power. More emphasis would be placed on the competitive process and market structure, including what lines of business a firm is involved in and how those lines of business interact and whether the structure of the market creates or reflects dependencies. Chair Khan’s scholarly work has focused on pre-1980s antitrust analyses when courts, concerned with protecting small businesses and avoiding the adverse political consequences that may arise from the aggregation of economic power, blocked mergers with 5 percent share increases to prevent increased market concentration in its incipiency.14 President Biden’s remarks in the EOC echo this historical sentiment as he discusses “threats from growing corporate power” and the need to give “the little guy a fighting chance.”15

#### So does COVID

Andrew M. Levine 20, litigation partner who focuses his practice on white collar and regulatory defense, internal investigations, “White Collar Crime and COVID-19: Enforcement in a Rapidly Changing Landscape”, https://www.debevoise.com/insights/publications/2020/05/white-collar-crime-and-covid-19-enforcement-in-a

In the short term, while enforcement agencies prioritize safety and work remotely, at least certain aspects of white collar and regulatory investigations globally will slow. There is much anecdotal evidence that enforcement agencies have reduced the scale and pace of some investigations given current obstacles. For example, there will be inevitable delays as response times to subpoenas and investigative requests are extended due to difficulties in sourcing documents and information remotely. Further practical limitations – such as lack of remote access to investigation files and physical evidence due to information security protocols, court closures, difficulties with videoconference technology, and restrictions on in-person meetings and interviews – also have delayed investigations.

#### Agencies are wrecked

MFEM 8/19, Masuda, Funai, Eifert & Mitchell, Ltd., "The Implications of President Biden's ‘Executive Order on Promoting Competition in the American Economy’," Mondaq, 08/19/2021, https://www.mondaq.com/unitedstates/antitrust-eu-competition-/1103288/the-implications-of-president-biden39s-executive-order-on-promoting-competition-in-the-american-economy.

On July 9, 2021, President Joe Biden signed a sweeping executive order titled the “Executive Order on Promoting Competition in the American Economy” (the “Order”), affirming the policy of the Biden administration to “enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony.” To achieve this, the Order, among other things, directs regulatory agencies to assert oversight over certain business practices and encourages regulatory agencies to develop and/or strengthen rules. The Order includes 72 initiatives by more than a dozen federal agencies.

The Order specifically cites the areas of “labor markets, agricultural markets, Internet platform industries, healthcare markets (including insurance, hospital, and prescription drug markets), repair markets, and United States markets directly affected by foreign cartel activity.” The scope of this order is broad. On the other hand, the Order itself does not create new regulations or laws, leaving the specific implications of it vague.

Although the implications of the Order are not limited to the area of antitrust, the Order reflects the Biden Administration's emphasis on it. For example, the Order encourages the DOJ and other agencies responsible for banking to update guidelines on banking mergers to provide heightened scrutiny of mergers. The Order also encourages the DOJ and the FTC to challenge prior “bad mergers,” meaning that mergers that went unchallenged under previous administrations may be challenged in the future. Another specific area that the Order focuses on is the right to repair; it encourages the FTC to limit equipment manufacturers from limiting consumer's rights to repair.

Other affected areas of law include, but are not limited to, labor and employment (e.g. non-compete agreements) and consumer protection (e.g. financial data portability). Corporations with any significant activity in the United States should assess the impact that the Order would have on their businesses and prepare for the materialization of the specific initiatives included in the Order.

### AT: Healthcare---2AC

#### COVID thumps healthcare

Blumenthal et al. 20, President of the Commonwealth Fund, a national philanthropy engaged in independent research on health and social policy; Elizabeth Fowler, Former Executive Vice President for Programs at the Commonwealth Fund; Melinda Abrams, Executive vice president for programs at the Commonwealth Fund; Sara R. Collins, Vice President for health care coverage and access at The Commonwealth Fund, “Covid-19 — Implications for the Health Care System”, The New England Journal of Medicine, 10/8/20, https://www.nejm.org/doi/full/10.1056/nejmsb2021088

INSURANCE COVERAGE

The pandemic has significantly undermined health insurance coverage in the United States. A sudden surge in unemployment — exceeding 20 million workers1 — has caused many Americans to lose employer-sponsored insurance. A recent Commonwealth Fund survey showed that 40% of respondents or their spouse or partner who lost a job or were furloughed had insurance through the job that was lost.2 Although many will continue to get employer coverage or become eligible for Medicaid or marketplace plans, a substantial number will probably become uninsured.3,4 Even workers who keep their jobs may find their coverage dropped or curtailed as financially strained employers cut costs. These developments will add to the 31 million persons who were uninsured and the more than 40 million estimated to be underinsured before the pandemic struck.5,6

This new crisis of coverage has at least two causes. The first is our continued reliance on employer-sponsored insurance to cover approximately half of Americans against the cost of illness. The second is failure to vigorously implement current law. By design, the Affordable Care Act (ACA) helps persons who lose employer-sponsored insurance by making subsidies available for the purchase of individual insurance in the ACA marketplaces, by expanding Medicaid eligibility, and by requiring that private insurance cover preexisting conditions and a basic package of benefits. However, although states with their own marketplaces have alerted the recently unemployed to their potential eligibility for subsidized plans,7 the federal government has not engaged in a parallel effort. It has neither educated the newly unemployed about their immediate eligibility outside of open enrollment periods for subsidized insurance in the federally run ACA marketplaces nor opened special enrollment periods for those wishing to enroll even if they did not previously have coverage. Furthermore, 14 states have chosen not to expand Medicaid.

DEEP FINANCIAL LOSSES FOR PROVIDERS

For the first time since the Great Depression, ~~crippling~~ [devastating] financial losses threaten the viability of substantial numbers of hospitals and office practices, especially those that were already financially vulnerable, including rural and safety-net providers and primary care practices.8 The immediate cause of this unprecedented financial crisis is substantial, unexpected changes in demand for health services. On the one hand, a novel infectious illness has increased demand for specialized acute care that has overtaxed some hospitals and imposed unexpected costs on many more. On the other hand, precipitous declines in demand for routine services have reduced providers’ revenue. Office-based practices had reductions of 60% in visit volumes in the first months of the crisis, and, by their own estimates, hospitals will lose an estimated $323.1 billion in 2020.9,10 Employment in the health care system is down by more than 1 million jobs through May.1

Providers’ vulnerability to these demand fluctuations raises a fundamental question about the way we currently pay for health care in the United States. Providers operate as businesses that charge for services in a predominantly fee-for-service marketplace. When the market for well-paid services collapses, so do health care providers.

This system has a number of adverse effects in normal times. It creates incentives to raise prices and push up volumes, shortages of poorly compensated services such as primary care and behavioral health, and an undersupply of services in less financially attractive poor and rural communities. But in the extreme circumstances of a pandemic, a new question arises: is health care an essential national resource that warrants secure financing beyond what the current fee-for-service system offers?

SUBSTANTIAL RACIAL AND ETHNIC DISPARITIES IN THE HEALTH CARE SYSTEM

Black persons constitute 13% of the U.S. population but account for 20% of Covid-19 cases and more than 22% of Covid-19 deaths, as of July 22, 2020. Hispanic persons, at 18% of the population, account for almost 33% of new cases nationwide.11 Nearly 20% of U.S. counties are disproportionately Black, and these counties have accounted for more than half of Covid-19 cases and almost 60% of Covid-19 deaths nationally.12

These racial and ethnic disparities constitute a new crisis compounding the long-standing failure of our health system to care adequately for persons of color. The causes start with a system that disproportionately fails to insure persons of color for the cost of illness, a problem reduced but not eliminated by the ACA.13 Lack of coverage causes less access to care, which results in a higher prevalence of and less-well-controlled chronic illness among persons of color. These illnesses leave them more vulnerable to the ravages of Covid-19.14

Another cause is that persons of color are more affected by nonmedical threats to health, including food and housing insecurity. They also tend to have jobs that are riskier during pandemics, such as providing care at home and long-term care facilities.15 Once ill, persons of color are more likely to get care in safety-net facilities overwhelmed by surges in demand for acute care.

Disparities in access and health outcomes are entrenched features of the U.S. health care system.16 They reflect a history of racism and discrimination that permeates society generally.

A CRISIS IN PUBLIC HEALTH

The United States has 4% of the world’s population but, as of July 16, approximately 26% of its Covid-19 cases and 24% of its Covid-19 deaths.17 These startling figures reflect a deep crisis in our public health system.

Put simply, that system failed to quickly identify and control the spread of the novel coronavirus. The United States did not make testing widely available early in the pandemic, was late to impose physical-distancing guidelines, and has still not implemented either as widely as needed.18 National guidance on managing the pandemic has been inconsistent and delayed. Many states have now abandoned stringent physical-distancing guidelines without careful attention to public health measures needed to prevent resurgence.

Although inadequate leadership and excessive partisanship have played a role in these shortcomings, other factors are also in play. Public health is a quintessentially governmental function, undertaken collectively for the public good at the national, state, and local levels. In part because of many Americans’ distrust of government, public health functions have historically been underresourced.19 The trained personnel who are needed for contact tracing — a traditional public health function long applied to such age-old afflictions as tuberculosis and sexually transmitted disease — are now scarce. Tellingly, there is no national public health information system — electronic or otherwise — that enables authorities to identify regional variation in the demand for, and supply of, resources critical to managing Covid-19. Without such information, authorities have no way to direct vital resources from areas of surplus to areas of undersupply. It is no exaggeration to say that the United States currently lacks a functioning national system for responding to pandemics.

## 1AR

### Regulation CP---1AR

#### Regs fail---can’t deter, police, or enforce violations

Stacey L. Dogan 8, Assistant Professor of Law at Northeastern University; and Mark A. Lemley, William H. Neukom Professor of Law at Stanford Law School, “Antitrust Law and Regulatory Gaming”, Stanford Law School, 2008, No. 367 John M. Olin Program in Law and Economics, Working Paper No. 367, https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=1873&context=faculty\_scholarship

To begin, we note that all of the problems we detailed above make it unlikely that very many administrative agencies will in fact serve as effective guardians of the competition function.74 Agencies that do not see promoting competition as a core part of their mission, or agencies that have been captured, are unlikely to get competition policy right. 75 Further, even agencies that are willing to take competition into account rarely provide effective mechanisms to enforce competition policy or deter antitrust violations. An agency that stops certain conduct after it begins does not sufficiently deter antitrust violations; an agency that imposes modest fines but lacks the power to stop the conduct at all will be even less effective. And even if there is an effective remedy on the books, agencies are unlikely to have the interest and expertise in antitrust necessary to detect and enforce violations.

#### Decks clarity and causes inconsistent application---especially for the internet

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

Overlapping regulation effectively means that there are multiple regulators and each impacts the development of a particular sector. 238 When [\*1091] concurrent jurisdiction exists, collaboration between sector and antitrust authorities may not always be easy. Concurrent powers with sector regulators may make it more difficult for antitrust agencies to create and maintain a competitive environment in regulated sectors. Remedies available and approaches to the creation of a competitive market may vary between sector regulators and antitrust agencies. The task may be even more difficult in dynamic markets where the market forces and regulations may evolve in ways that are not predictable, such as in telecommunications. 239 The problem of inconsistent decisions for the same conduct when there is not an appropriate division of labor between sector regulator and antitrust authority may complicate efforts to create a more efficient competition system. 240

#### PDCP-They didn’t read a card-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.

### Tradeoff DA---1AR

#### No food wars

Jonas Vestby 18, Doctoral Researcher at the Peace Research Institute Oslo, Ida Rudolfsen, doctoral researcher at the Department of Peace and Conflict Research at Uppsala University and PRIO, and Halvard Buhaug, Research Professor at the Peace Research Institute Oslo (PRIO); Professor of Political Science at the Norwegian University of Science and Technology (NTNU); and Associate Editor of the Journal of Peace Research and Political Geography, “Does hunger cause conflict?”, 5/18/18, https://blogs.prio.org/ClimateAndConflict/2018/05/does-hunger-cause-conflict/]

It is perhaps surprising, then, that there is little scholarly merit in the notion that a short-term reduction in access to food increases the probability that conflict will break out. This is because to start or participate in violent conflict requires people to have both the means and the will. Most people on the brink of starvation are not in the position to resort to violence, whether against the government or other social groups. In fact, the urban middle classes tend to be the most likely to protest against rises in food prices, since they often have the best opportunities, the most energy, and the best skills to coordinate and participate in protests.

Accordingly, there is a widespread misapprehension that social unrest in periods of high food prices relates primarily to food shortages. In reality, the sources of discontent are considerably more complex – linked to political structures, land ownership, corruption, the desire for democratic reforms and general economic problems – where the price of food is seen in the context of general increases in the cost of living. Research has shown that while the international media have a tendency to seek simple resource-related explanations – such as drought or famine – for conflicts in the Global South, debates in the local media are permeated by more complex political relationships.

#### Global food supply is high and resilient

Indur Goklany 15, PhD from Michigan State, Assistant Director of Programs, Science and Technology Policy at the DOI, represented the United States at the Intergovernmental Panel on Climate Change (IPCC) and during the negotiations that led to the United Nations Framework Convention on Climate Change, “CARBON DIOXIDE: The good news”, The Global Warming Policy Foundation, GWPF Report 18

Crop yields have increased (see Figure 3) and global food production, far from declining, has actually increased in recent decades. Between 1990–92 and 2011–13, although global population increased by 31% to 7.1 billion, available food supplies increased by 44%. Consequently, the population suffering from chronic hunger declined by 173 million despite a population increase of 1.7 billion.112 This occurred despite the diversion of land and crops from production of food to the production of biofuels. According to one estimate, in 2008 such activities helped push 130–155 million people into absolute poverty, exacerbating hunger in this most marginal of populations. This may in turn have led to 190,000 premature deaths worldwide in 2010 alone.113 Thus, ironically, a policy purporting to reduce AGW in order to reduce future poverty and hunger only magnified these problems in the present day.

#### The FTC is expanding its authority AND is even broader than Sherman and Clayton

David McLaughlin 21, Reporter for Bloomberg News, “U.S. FTC’s Lina Khan Vows Return to Agency’s Trustbusting Roots”, 7/28/21, https://www.bloomberg.com/news/articles/2021-07-29/u-s-ftc-s-lina-khan-vows-return-to-agency-s-trustbusting-roots

The new chair of the U.S. Federal Trade Commission said she intends to use the full arsenal of the agency’s authority to take on dominant companies that are thwarting competition and signaled she’s not afraid to pursue risky cases that officials have shied away from in the past.

In a meeting with reporters Wednesday at the FTC’s headquarters in Washington, 32-year-old Lina Khan said the agency has failed to use the full scope of its powers laid out by Congress, which created the agency as an antitrust watchdog in 1914.

“There has been a bit of a missed opportunity, especially over the last few decades, to take full advantage of the institutional tools that Congress granted the agency,” Khan said in a wide-ranging interview.

Khan’s remarks to reporters followed her testimony earlier Wednesday at a hearing on Capitol Hill, her first since President Joe Biden named her chair of the agency in June. His nomination of Khan put one of the most prominent advocates for more forceful antitrust actions against companies in charge of the commission and indicated the administration’s intent to toughen competition policy.

Less than two months into her tenure, Khan is already taking steps to restore the agency’s power. In July, she and her two fellow Democrats on the commission voted to rescind an Obama administration competition policy that put limits on how the agency uses its authority to bring antitrust cases. Advocates for more aggressive enforcement have said the FTC can use that authority -- known as Section 5 of the FTC Act -- more broadly than the 2015 policy allowed.

In Wednesday’s interview, Khan said that Section 5 is a key aspect of the FTC’s authority that’s broader than the two main antitrust laws in the U.S. -- the Sherman Act and the Clayton Act.

#### Renewed antitrust enforcement is coming AND massive.

Eric J. Savitz & Max A. Cherney 8-20, Associate Editor, Technology, Barron's; Technology Reporter, Barron's, "The White House Wants to Rein in Big Tech. Here’s How." Barrons, 08/20/2021, https://www.barrons.com/articles/white-house-big-tech-51629428885.

The era of the U.S. government giving free rein to technology companies as they grow and flourish is over. The momentum around regulation has been building for at least five years, roughly corresponding to a speech that Sen. Elizabeth Warren (D., Mass.) delivered in 2016, when she singled out tech companies in arguing that “in America, competition is dying.”

That technology companies are living in a new era of oversight is no longer up for debate. The view among both Democrats and Republicans is that the status quo must change.

President Joe Biden has made his view clear with the appointment of progressive reformists to his administration. In a sprawling executive order that tackles corporate power, the Biden administration is seeking to rein in Big Tech in numerous areas, including data collection and surveillance, while also asking the Federal Trade Commission to take a closer look at mergers.

#### AND applies to nearly all sectors.

Florian Ederer 21, Associate Professor of Economics, "Does Big Tech Gobble Up Competitors?" Yale Insights, 08/04/2021, https://insights.som.yale.edu/insights/does-big-tech-gobble-up-competitors.

Will Biden’s executive order make a difference? What else does government need to do to prevent these acquisitions?

I think the executive order is a step in the right direction. It is quite far reaching because it orders every part of the Federal government—not just the antitrust enforcers—to focus on creating fair competition and to reduce product and labor market power, especially in concentrated markets. Furthermore, the executive order is not confined to a few specific industries, but includes industries from railroads and shipping to pharmaceuticals and agriculture. It is also encouraging that the executive order acknowledges that killer acquisitions impede competition.

#### Antitrust enforcement is increasing and inevitable

Alden F. Abbott 21, Senior Research Fellow at the Mercatus Center of George Mason University, J.D. from Harvard Law School and M.A. in economics from Georgetown University, “Competition Policy Challenges for a New U.S. Administration: Is The Past Prologue?”, Concurrences: Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

I. BACKGROUND: THE RECENT PAST

1. The new Joseph Biden administration (JBA) will have the opportunity, if it so chooses, to apply American antitrust and competition policy in a manner that promotes economic efficiency, consumer welfare, and economic growth. Antitrust policy formulation, of course, is not made in a vacuum—the past is prologue. The JBA will find in the pipeline a large number of investigations, ongoing enforcement actions, and policy initiatives that will have to be considered as new antitrust priorities are devised.

2. Consistent with the “past is prologue” theme, let us examine U.S. Federal Trade Commission (FTC) enforcement statistics in recent administrations. [2]

3. First, consider merger challenges. FTC merger consent decrees accepted for comment included 84 under G. W. Bush (hereinafter “Bush”) (2001–2009), 113 under Obama (2009–2017), and 41 under Trump (2017–2021). FTC merger-specific Part III Administrative complaints (not including dual-track cases where a preliminary injunction was pursued first) numbered 5 under Bush, 2 under Obama, and 4 under Trump. Permanent injunctions were 2 under Bush and 1 under Obama. Preliminary injunctions numbered 17 under Bush, 21 under Obama, and 12 under Trump. Finally, transactions abandoned or restructured—an extremely important measure of cost-efficient merger enforcement effectiveness—numbered 46 under Bush, 29 under Obama, and 28 under Trump. Aggregating across measures, one finds 154 merger enforcement actions under Bush (about 19 a year), 166 under Obama (just over 20 a year), and 85 under Trump (just over 21 a year). In short, FTC merger enforcement rates were quite consistent across the last three administrations, with the FTC having its best aggregate numbers under President Trump.

4. Second, non-merger antitrust enforcement. During the second term of the Obama administration (2013–2016), the FTC took 24 non-merger enforcement actions (including 18 consents accepted for comment, 3 injunctions authorized, 2 administrative complaints, and 1 action for an order violation), whereas the Trump administration (2017–2020) took 17 (including 6 consents accepted for comment, 8 injunctions authorized, and 3 administrative complaints). Those numbers are not widely dissimilar, particularly when one considers that the Trump administration litigated administratively and in federal court multiple resource-intensive cases.

5. Apart from its vigorous merger and non-merger enforcement, the FTC undertook major policy development initiatives during the Trump administration. Under Chairman Simons, during 2018 and 2019 the Commission convened a pathbreaking set of comprehensive “Hearings on Competition and Consumer Protection in the 21st Century.” [3] These hearings addressed a large number of “new economy” issues that are transforming antitrust and consumer protection enforcement, such as, for example, common ownership; innovation and intellectual property; data security; privacy, big data, and competition; algorithms, artificial intelligence, and predictive analytics; consumer privacy; monopsony and buyer power; and the antitrust analysis of digital platforms, nascent competition, and labor markets. The record of these hearings will provide valuable information to help inform future antitrust enforcement decisions and policy development. In particular, the interplay between consumer protection and competition law doctrines discussed during the hearings may bear fruit in future “new economy” studies and investigations.

6. As the hearings ended, the FTC took aggressive steps to focus enforcement on high technology digital economy issues. In particular, in 2019 the FTC rolled out a dedicated Technology Enforcement Division within the Bureau of Competition, focused on cutting-edge digital platform and related high investigations. [4] Also, the FTC issued Special Orders to Alphabet Inc. (including Google), Amazon.com, Inc., Apple Inc., Facebook, Inc., and Microsoft Corp. to provide information and documents on the terms, scope, structure, and purpose of their acquisitions during the ten-year 2010–2019 time period that fell outside the pre-merger notification law. [5] Information gleaned from these inquiries may prove valuable in assessing how such mergers have affected competitive conditions in giant digital platform markets. Furthermore, the FTC bared its enforcement teeth, charging Facebook with anticompetitive monopolization in violation of Section 2 of the Sherman Act in a December 2020 federal district court complaint. [6] This suit followed less than two months after “the [U.S.] Department of Justice — along with eleven state Attorneys General — filed a civil antitrust lawsuit in the U.S. District Court for the District of Columbia to stop Google from unlawfully maintaining monopolies through anticompetitive and exclusionary practices in the search and search advertising markets and to remedy the competitive harms.” [7] In sum, the Trump administration left its successor a legacy of significant new initiatives in high-tech digital antitrust enforcement.

7. Furthermore, the FTC and U.S. Department of Justice greatly enhanced the coverage of antitrust policy guidance with the issuance of new Vertical Merger Guidelines in June

2020. [8] The 2020 Guidelines, which displaced the badly outdated treatment of vertical mergers in the agencies’ 1984 Merger Guidelines, drew on developments in law and economics as reflected in actual enforcement agency practice in order to provide greater clarity for antitrust practitioners in an increasingly important area of antitrust enforcement. In December 2020, the FTC supplemented the 2020 Guidelines with a set of Commentaries on Vertical Merger Enforcement. [9] These commentaries, which examine the application of vertical enforcement principles in a variety of agency merger matters, provide further practical insights on the likely future application of the new guidelines. Taken together, these two initiatives are major achievements designed to reduce uncertainty and thereby improve the predictability, efficacy, and efficiency of public U.S. merger enforcement.

8. In addition, the FTC and the U.S. Justice Department recognized the importance of swift action to reduce uncertainty arising out of private sector joint activities to address the COVID-19 pandemic. As explained in a joint March 2020 Statement, [10] the two enforcers established a system to respond expeditiously to all COVID-19-related requests for antitrust guidance, and to resolve those requests addressing public health and safety within seven calendar days of receiving all necessary information.

9. In short, the Trump administration FTC enjoyed a solid record of antitrust enforcement statistically in line with that of its recent predecessors. What’s more, through public hearings, organizational change, and new guidance (in tandem with the U.S. Justice Department), it acted decisively to move forward aggressively as a top-flight antitrust enforcer and policymaker, despite being subject to tight resource constraints and the major dislocations caused by the COVID-19 pandemic. One hopes that the JBA will take full account of this record of accomplishment as it sets its antitrust enforcement and policy priorities.

## 2AR

### Regulation CP---2AR

#### Judges prevent capture

Stacey L. Dogan 8, Assistant Professor of Law at Northeastern University; and Mark A. Lemley, William H. Neukom Professor of Law at Stanford Law School, “Antitrust Law and Regulatory Gaming”, Stanford Law School, 2008, No. 367 John M. Olin Program in Law and Economics, Working Paper No. 367, https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=1873&context=faculty\_scholarship

Judges, by contrast, are much less subject either to having their purpose diverted or to capture. While some have tried to argue that judges face some of the same interest group constraints as legislators and administrative agencies, 57 the fact is that antitrust courts are trying to achieve the goal of economic efficiency, they are doing it in industries in which they have no direct financial interest, they cannot act to benefit their “agency” in rendering a decision, and the structure of the litigation process helps ensure to the extent possible that both sides are presented in a relatively balanced way. Courts aren’t perfect, of course. But all advantages are comparative, and the fact that antitrust courts are trying to promote competition rather than to achieve some other end (whether legislated or self-motivated) provides a powerful counterweight to the industry expertise of administrative agencies. It is important to keep in mind, as Areeda and Hovenkamp summarize, that “it often turn[s] out that the principal beneficiaries of industry regulation were the regulated firms themselves, which were shielded from competition and guaranteed profit margins.”58 Courts should not assume that regulation will lead to competition merely because regulators know more than courts about the industries they regulate.