# 1AC

**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

**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 **U**nited **S**tates 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 **U**nited **S**tates 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 **U**nited **S**tates 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 **U**nited **S**tates 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 infra**structure.

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.

**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.**

**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---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.

**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. **Tech**nology 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 **info**rmation 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 m**illions. 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 **tech**nology 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 **f**oreign **d**irect **i**nvestment in sensitive sectors, and pursuing other actions to ensure Western dominance in strategic industries such as **a**rtificial **i**ntelligence 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, **attract**ing meddlers including the **U**nited **S**tates, 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 **head**ing 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 **a**n 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 **nuc**lear weapon**s**. 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.

# 2AC

## OFF

### T Expand Scope---2AC

#### Default to plan text in a vacuum---it’s the only objective option.

#### We meet---the plan expands the scope of the core statutes to include anticompetitive gTLD allocation.

#### ‘Expand’ means to increase the extent

Merriam-Webster’s 21 Online Dictionary, ‘expand’, https://www.merriam-webster.com/dictionary/expand

transitive verb

1: to open up : UNFOLD

2: to increase the extent, number, volume, or scope of : ENLARGE

#### ‘Scope’ refers to activity at the present time, not the abstract potential application of law

Frank G. Clement 16 Jr, Judge on the Tennessee Court of Appeals, “Hamer v. Southeast Res. Group, Inc.”, Court of Appeals of Tennessee, At Nashville, 2016 Tenn. App. LEXIS 176, 3/3/2016, Lexis

When interpreting a contract, ordinary words typically have their ordinary meanings unless there is evidence [\*13] that the parties intended for the words to have a special meaning. Madson v. Madson, 636 So. 2d 759, 761 (Fla. Dist. Ct. App. 1994). The ordinary meaning of a word is often described as its meaning in the dictionary. See Siegle v. Progressive Consumers Ins. Co., 788 So. 2d 355, 360 (Fla. Dist. Ct. App. 2001); Beans v. Chohonis, 740 So. 2d 65, 67 (Fla. Dist. Ct. App. 1999). The ordinary meaning of a word or phrase is also described as "a natural meaning or the meaning most commonly understood when considered in relation to the subject matter and circumstances." See J.N. Laliotis Eng'g Constr. v. Mastor, 558 So. 2d 67, 68 (Fla. Dist. Ct. App. 1990) (quoting Granados Quinones v. Swiss Bank Corp., 509 So. 2d 273, 275 (Fla. 1987)).

If parties wish to depart from the ordinary meaning of common words and assign uncommon meanings to them, they must do so explicitly. See Madson, 636 So. 2d at 761. "One who would ascribe an exotic meaning to a term in a contract which otherwise has perfectly ordinary connotations must take pains to define the term either expressly or by express reference." E. Ins. Co. v. Austin, 396 So. 2d 823, 825 (Fla. Dist. Ct. App. 1981); see Russ v. State, 832 So. 2d 901, 907 (Fla. Dist. Ct. App. 2002) ("[W]here a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense." (alteration in original)); Koplowitz v. Imperial Towers Condo., Inc., 478 So. 2d 504, 505 (Fla. Dist. Ct. App. 1985) ("Whether they appear in a statute or in a declaration of condominium, words of common usage should be construed in their plain and ordinary sense.").

Here, this dispute exists because the parties' agreement does not define "scope" or "scope and purpose." Furthermore, the agreement does not identify the point in time when the "scope" of [\*14] Action's business is to be determined. Southeast contends that "scope and purpose" is ambiguous because it is susceptible to multiple reasonable interpretations. According to Southeast, "scope and purpose" means "at a minimum any business opportunity to be marketed to credit union members, including the telemedicine opportunity." However, the entirety of the parties' agreement and the "inconvenience, hardship, or absurdity" that would result from Southeast's proposed interpretation demonstrate that the agreement is not ambiguous and that the parties intended for the words "scope and purpose" to have their ordinary meanings. See Branscombe, 76 So. 3d at 948.

"Scope" and "purpose" are commonly-used words with commonly-understood meanings. Therefore, if the parties intended to ascribe an uncommon meaning to "scope" or "scope and purpose," they should have explicitly defined those terms. See E. Ins. Co., 396 So. 2d at 825. Instead of explicitly stating that these words have an uncommon definition, the agreement provides that its terms, covenants, and provisions "shall be construed simply and according to [their] fair meaning[s] . . . ." Consequently, the failure to specify a unique meaning for "scope and purpose" and the inclusion of the above-quoted section [\*15] indicate that the parties intended for these words to have their ordinary meanings. See id.; see also Russ, 832 So. 2d at 907; Koplowitz, 478 So. 2d at 505.

Under Southeast's interpretation, Plaintiff agreed to disclose and make available every business opportunity "to be marketed to credit union members." Such a broad definition appears to encompass every product or service imaginable, whether they have anything to do with Action or not. Under this interpretation, Plaintiff would be required to disclose an opportunity to sell cars to credit union members even though Action's business is not related to cars at all. The inconvenience, hardship, or absurdity that would result are weighty evidence that the parties did not intend for "scope and purpose" to have this meaning, especially when interpreting the agreement based on the ordinary meaning of "scope" avoids these difficulties. See Branscombe, 76 So. 3d at 948 HN9 ("The inconvenience, hardship, or absurdity of one interpretation of a contract or its contradiction of the general purpose is weighty evidence that such meaning was not intended when the language is open to an interpretation which is neither absurd nor frivolous and is in agreement with the general purpose of the parties.").

HN10 The ordinary meaning of words is found in the dictionary and is the most commonly understood meaning in relation to the subject matter of the parties' agreement. See Siegle, 788 So.2d at 360; Beans, 740 So. 2d at 67; J.N. Laliotis, 558 So. 2d at 68. According to one dictionary, "scope" means "1. The range of one's perceptions, thoughts, or actions. 2. Breath or opportunity to function. 3. The area covered by a given activity or subject." The American Heritage College Dictionary 1222 (3d ed. 1997). The operating agreement is concerned with the relationship of Action's members to each other and to Action, and the subject matter of section 6.6 is the duty to make certain business opportunities available to Action in order to avoid competition between Action and its members. [\*18] Based on the dictionary and the subject matter of the parties' agreement, "scope" most naturally refers to the range or breadth of the business that Action is engaged in at the relevant time.

Southeast contends this interpretation renders "purpose" redundant because "by definition, scope would always be within the purpose." We respectfully disagree. Contrary to Southeast's contentions, "scope" and "purpose" refer to different concepts. "Purpose" is aspirational and refers to what Action is capable of doing in the future (i.e. all lawful business for limited liability companies). In contrast, "scope" refers to what Action actually is doing or has done at the relevant point in time. Thus, an opportunity might be within Action's scope but not its purpose if, for example, Action had been organized for a limited purpose (e.g. to acquire real estate in Florida) but was in fact also engaged in the business of selling disposable mobile phones to college students. In this example, a business opportunity to sell mobile phones to college students would be within Action's scope but not its purpose.

Therefore, under the ordinary meaning of "scope," a member is required to disclose a business opportunity [\*19] if that opportunity (1) is within Action's aspirational goal — its purpose; and (2) is within the area that Action's business has or is actually covering at the relevant point in time. As a result, interpreting "scope" according to its ordinary meaning does not render any part of the agreement redundant.

Having concluded that "scope" refers to the breadth of the business Action is or has engaged in, we must turn our attention to determining when Action's "scope" should be assessed. The agreement does not specify whether Action's scope is to be determined as of the date of the agreement, the date of the discovery of an opportunity, or some other date. After reviewing the agreement, we conclude that the parties intended for Action's scope to be determined at the time when a member seeks to pursue the business opportunity in question.

#### Prefer it---

#### 1---Topic Cohesion---core antitrust statutes list general goals, not industries and defer application to agencies---expanding enforcement is the only way to expand scope.

#### 2---Predictability---“expand” and “scope” aren’t terms of art BUT even if they were, our ev is from federal courts and has intent to define and include.

#### 3---Functional limits---Regs CP, Incentives CPs, States CP, solvency advocates, etc. check limits explosion.

#### 4---Reasonability---competing interpretations causes a race to the bottom and substance crowd-out.

### T Private Sector---2AC

#### Default to plan text in a vacuum---it’s the only objective option.

#### ‘Private sector’ includes non-governmental non-profits like ICANN

Anne-Marie Buzatu 20, Vice President and Chief Operations Officer of ICT4Peace Foundation, Former Executive-in-Residence at the Geneva Centre for Security Policy (GCSP), LLM from the Geneva Academy of International Humanitarian Law and Human Rights, JD from Tulane Law School, “Global Cybersecurity and the Private Sector”, in Routledge Handbook Of International Cybersecurity, Ed. Tikk and Kerttunen, p. 313-314

This chapter aims to look at the specific challenges and opportunities cyberspace raises for the security sector through the lens of the private sector. It begins with a brief explanation of how cyberspace works, highlighting the important role of the private sector in bringing to life and shaping this medium. This is followed by a discussion of some specific challenges to traditional security situations that are particular to the cybersecurity sector. Some of the most recent responses to the challenges are then presented, highlighting the important role the private sector has taken to shape and drive these responses. The chapter finishes with a brief discussion about the current state of cybersecurity norms development, identifying emerging norms, and offering some suggestions for their effective implementation. For the purposes of this chapter, the term ‘private sector’ not only refers to commercial actors, but also includes all non-governmental participants in cyberspace including individuals, civil society, non-state armed groups, and other organizations and communities that are organized around identity or political affiliations.

Cyberspace: the nuts and bolts

For all of the wonders and dangers of this online, borderless virtual space, as many have pointed out, cyberspace does have an underlying physical component that is present in, and in most cases under the jurisdictions of, national authorities. For example, a physical server is under the jurisdiction and control of the country within which it is located, and therefore presumably subject to its laws and oversight. However, its connection to and role in sending and receiving information across the wider cyberspace clouds the notions of locality and territoriality. Without going into too much technical detail, it is worthwhile to consider the stuff which makes the Internet possible.

From a technical perspective, cyberspace is housed within physical and wireless pathways, routers, servers and endhosts (PCs, smartphones, IOTs), also commonly referred to as the link layer, through which data, or information, travels. The principal data pathways of this layer are known as the Internet backbone made up of long, undersea mostly privately-owned transnational fibre optic cables that connect core data routers and large, strategically-placed networks. Of note, the whistleblower Edward Snowden revealed in 2013 that the US and UK carried out ‘the largest programme of suspicionless surveillance in human history’ by ‘tapping directly into the Internet backbone’ (Davenport 2015, p. 58).

Data is shepherded through this interconnected labyrinth with assistance from the Internet Protocol (IP), also known as the network layer, and the Transmission Control Protocol (TCP) or transport layer, to help ensure the correct data get to the right destinations. Atop this resides the application layer, or the one users in cyberspace are most familiar with. It is the level from which users surf the web, participate in social media platforms, stream multimedia and save files to the cloud. As such, it is the layer in which a constant stream of new software and programs are being developed and released by mostly private actors, including private commercial companies, independent software and application developers as well as amateur programmers and hackers.

Addresses in cyberspace are managed by the Internet Corporation for Assigned Names and Numbers (ICANN), a non-profit corporation founded in 1998 in California, USA. One of the key functions of ICANN is to facilitate the translation of addresses from words [e.g., Facebook.com] to numbers that the network layer can understand, or the Internet Protocol address (IP address), such as 204.15.23.255. For many years, ICANN provided these services under a contract with the US government. However, in 2016 ICANN cut ties with the US government to provide these services under a multi-stakeholder governance framework.

#### Prefer it---

#### 1---Predictability---our ev has intent to define and include from experts in the field and even namedrops ICANN.

#### 2---No limits explosion---it’s a tiny subset

Tim Zimmer 19, Writer at the Houston Chronicle, “The Difference Between Public & Private Non-Profit Organizations”, Houston Chronicle, 3/6/2019, https://smallbusiness.chron.com/difference-between-public-private-nonprofit-organizations-26366.html

Nonprofit organizations play a key role in the social and economic well-being of a country. They benefit society in ways that the private sector might not, which is part of the reason why a majority of nonprofit organizations are tax-exempt under Section 501(c)(3) of the Internal Revenue Code. The Internal Revenue Service (IRS) distinguishes nonprofit organizations primarily by the level of public involvement in their operations. As a result, nonprofit organizations generally fall into two distinct categories: public charities (public nonprofit organizations) and private foundations (private nonprofit organizations).

Public Charities or Public Nonprofit Organizations

Public charities, or public nonprofit organizations, are the most common type of nonprofit organization classified by the IRS and what people generally think of when they hear that an institution is a "nonprofit." Although public charities include entities such as churches, homeless shelters and hospitals, the definition is broad enough to include educational sites such as universities and medical research institutions, which are considered "statutory public charities."

In stark contrast with private nonprofit institutions, public charities must contain a diversified board of directors that represent the public interest. More than half of the board must be unrelated and unable to receive compensation as employees of the institution.

Public nonprofit institutions rely more heavily on public support and are less regulated than private nonprofit institutions. For an organization to become a bona fide public nonprofit institution, at least 33 percent of its income must come either from small donors, the government or from other charities. The collected funds must then be used to directly support the organization's initiatives. Since public charities rely heavily on public contributions, typically, they are more susceptible to public scrutiny than private foundations.

Private Foundations or Private Nonprofit Organizations

Under tax law, a section 501(c)(3) organization is initially considered a private foundation, or a private nonprofit organization, unless it requests, and is authorized to be, a public charity. As opposed to a public nonprofit institution, in which more than half of the board must be unrelated, a private nonprofit organization can be controlled by a family or a small group of individuals. Private foundations generally derive much of their income from a smaller pool of donors and from investment income, and are typically subject to more restrictions than public nonprofit organizations. Failure to comply with regulation can garner serious penalties for private foundations.

A fundamental reason as to why an individual might prefer to establish a private foundation, as opposed to a public charity, is the level of control. Since private nonprofit organizations mainly rely upon a small number of private donations, they can operate fairly independently. Typically, private foundations aren't held accountable by the public, but their actions are limited by stricter and more extensive federal regulation.

#### 3---Functional limits---Regs CP, Incentives CPs, States CP, solvency advocates, etc. check limits explosion.

#### 4---Reasonability---competing interpretations causes a race to the bottom and substance crowd-out.

### 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

#### Condo is a voter---run and gun strategies crowd out in-depth research---dispo solves.

#### 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.

### AT: Follow On---2AC

#### If they win follow on then it links to the net benefit.

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

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

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

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

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

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

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

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

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

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

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

[\*444]

C. Piggybacking in a Multienforcer System

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

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

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

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

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

### CWS DA---2AC

#### The plan is aligned with consumer welfare

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

C. Antitrust Law

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

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

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

[\*938]

II. ICANN's Anticompetitive Conduct

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

A. Competitive Bidding

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

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

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

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

#### Anticompetitive gTLD allocation violates consumer welfare

Jamie N. Nafziger 09, Chair of the Dorsey & Whitney LLP Cybersecurity, Privacy and Social Media Practice Group, “Brand Owners and U.S. Government Tell ICANN: Domain Name Plan Will Confuse Consumers and Hurt Us – Especially in These Tough Economic Times”, Dorsey & Whitney LLP, 3/16/09, https://www.dorsey.com/newsresources/publications/2009/03/brand-owners-and-us-government-tell-icann--domai\_\_

Even the Vatican has weighed in. In a February 20, 2009 letter to Dr. Twomey, the Holy See expressed its concerns about the bitter disputes that might arise and “the perils connected with the assignment of new gTLDs with reference to religious traditions (.catholic, .anglican, .orthodox, .hindu, .islam, .muslim, .buddhist, etc.),” especially if ICANN plans ultimately to decide which particular group is THE representative of a particular religious tradition.

The brand owner comments focused mainly on concerns that the costs of obtaining defensive domain name registrations and enforcing trademarks in hundreds of new gTLDs would outweigh the benefits to consumers. The high application fees, the dispute resolution process, the process for deciding between competing applicants, and proposals for including trademarks on the Reserved Names List were also commonly raised. Some of the most thorough comments were from: Microsoft, AT&T, International Trademark Association, and MarkMonitor (on behalf of 70 large companies).

The comments from the U.S. Departments of Justice and Commerce focused on consumer welfare and competition, going so far as to say “ICANN’s approach to TLD management demonstrates that it has adopted an ineffective approach with respect to its obligation to promote competition at the registry level.” See <http://www.icann.org/correspondence/baker-to-dengate-thrush-18dec08-en.pdf>.

#### The solvency advocate is explicitly about consumer welfare

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

III. POLICING ICANN USING ANTITRUST LAW

Given the growing distrust that ICANN will follow the policies established by its Bylaws and Articles of Incorporation, it is inadvisable to allow it to [\*98] remain largely unregulated in the wake of the IANA transfer. Therefore, something must be done to create a failsafe to protect consumers and stakeholders from an event that causes competitive harm in the Internet marketplace. In the following Part, this paper examines the applicability of Section 1 of the Sherman Act in policing collusion between ICANN and other stakeholders and the application of the Essential Facilities Doctrine enumerated in MCI Communications Corp. v. AT&T. 96 Both approaches would enable U.S. courts to limit ICANN's regulatory powers and limit the commercial harm if they are used improperly while not undermining the organization's ability to exercise its powers generally.

### FTC Tradeoff DA---2AC

#### Normal means solves---includes funding and other resources.

#### 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.

#### Link is illogical---if \_\_\_ is a priority, no reason resources are diverted from that area.

#### No spillover between parts of the FTC

Spencer Weber Waller 5, Professor of Law and Director of the Institute for Consumer Antitrust Studies at the Loyola University Chicago School of Law, “In Search of Economic Justice: Considering Competition and Consumer Protection Law”, Loyola University Chicago Law Journal, 36 Loy. U. Chi. L.J. 631, Winter 2005, Lexis

Despite this more comprehensive mission, the FTC is organized in a way that tends to emphasize the separation of these fields, rather than the common elements of the agency's mission. The FTC has a Bureau of Competition and a separate Bureau of Consumer Protection, with a Bureau of Economics to support the work of both endeavors. The Bureau of Competition ("BC") primarily engages in the investigation and enforcement of mergers and complex civil antitrust cases with a recent emphasis on intellectual property and health care issues. The Bureau of Consumer Protection ("BCP") primarily investigates and challenges outright fraudulent conduct. 9 The FTC website details recent BCP activity involving Internet sales, telemarketing, false health and fitness claims, identity theft and similar issues. 10 These are all very different issues from the day-to-day focus of the competition staff. This basic split is further mirrored in the Bureau of Economics ("BE"), where the staff tends to specialize in either competition or consumer protection. Any crossover of staff and cooperation occurs primarily in competition advocacy before legislatures or regulatory agencies, and not in case selection and investigation.

#### No link---the plan is the DOJ.

### AT: Readiness---2AC

#### Case solves---ICT interoperability is key to secure alliance relationships which maintain readiness.

#### Alt causes---emerging tech, declining soft power, etc.

#### 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.

### PTX---2AC

#### Won’t pass---the bills are tied, far off, unfinished, and Biden can’t assuage progressives

Jonathan Weisman 10/28, Congressional correspondent and Domestic Policy Editor for The New York Times, B.S. in Journalism and History from Northwestern University; Jim Tankersley, Tax and economics reporter for The New York Times, B.A. in Political Science from Stanford University; Emily Cochrane, Congressional reporter at The New York Times, B.S. in Journalism from the University of Florida, “Crucial Elements of Spending Plan Remain in Flux After Biden’s Appeal to Democrats,” The New York Times, 10/28/21, https://www.nytimes.com/live/2021/10/28/us/biden-bill-plan

President Biden pleaded with House Democrats on Thursday to embrace his “framework” for a $1.85 trillion economic and environmental bill, saying its fate would help determine that of his presidency and his party’s hold on Congress, and its success would restore the nation’s standing on the world stage.

But the president’s appeal appeared to have failed to break the logjam among Democrats. Crucial details of the legislation remained in flux, and progressives declared they would not bow to pressure to quickly throw their support behind a separate $1 trillion bipartisan infrastructure package that has already passed the Senate.

By Thursday night, House leaders had scrapped plans for a vote on the public works measure, and the chamber approved a short-term extension of transportation programs through early December, a sign that passage of both the infrastructure bill and the domestic policy plan may be far off.

It was a setback after an audacious gamble by Mr. Biden, who had delayed his departure for a trip to Europe to try to nail down an accord on his domestic agenda. He used a morning meeting at the Capitol to attempt to rally House Democrats around the emerging deal.

“We have a framework that will get 50 votes in the United States Senate,” Mr. Biden told the group, according to a person familiar with his private remarks. “I don’t think it’s hyperbole to say that the House and Senate majorities and my presidency will be determined by what happens in the next week.”

Later, in public remarks at the White House, Mr. Biden hailed the plan as “historic.”

“No one got everything they wanted, including me,” he said in the East Room before departing on a trip to Rome. “But that’s what compromise is. That’s consensus. And that’s what I ran on.”

House leaders hoped the framework would be enough to persuade the chamber’s most liberal members that Congress was on the verge of passing a truly progressive package — and that those liberals, in turn, would join more moderate and conservative Democrats to send the infrastructure bill to the president for his signature.

“We badly need a vote on both of these measures,” Mr. Biden privately told lawmakers on Thursday morning, according to the person familiar with his remarks.

But liberals were still unsatisfied with a plan that was clearly unfinished — and that omitted many of their cherished priorities.

“What I would say is you have the outline of a very significant piece of legislation — I want us to make it better,” said Senator Bernie Sanders, the Vermont independent and Budget Committee chairman.

The change of course on holding an infrastructure vote on Thursday was a sign that the last-minute visit by Mr. Biden had not been enough to assuage progressives worried about the fate of the economic and environmental bill.

“Members of our caucus will not vote for the infrastructure bill without the Build Back Better Act,” Representative Pramila Jayapal, Democrat of Washington and the chairwoman of the Congressional Progressive Caucus, said in a statement that endorsed the president’s outline. “We will work immediately to finalize and pass both pieces of legislation through the House

together.”

Two crucial holdouts, Senators Joe Manchin III of West Virginia and Kyrsten Sinema of Arizona, had yet to publicly commit to voting for the social policy legislation.

#### Winners win

Paul Waldman 20, Columnist covering politics, “You’re darn right Biden has a mandate. Now he has to act like it.,” 11/9/20, https://www.washingtonpost.com/opinions/2020/11/09/youre-darn-right-biden-has-mandate-now-he-has-act-like-it/

Now that Joe Biden is the president-elect, the skeptical questions have already begun. How is he going to reach out to Republicans? Doesn’t the fact that Democrats lost some seats in the House show how closely divided the country is? Does he really have a mandate?

The answer is this: You bet he does. And he needs to act like it.

In recent years, whenever Senate Majority Leader Mitch McConnell (R-Ky.) was questioned about some extraordinary move he and Republicans were taking, such as rushing Amy Coney Barrett’s confirmation through the process fast enough to create a sonic boom, his usual reply was to smirk and say, “Elections have consequences.” We won, in other words, so we can exercise our power in any way we see fit.

This is what we have come to expect not just from McConnell but also from all Republicans, regardless of the circumstances of their victory. But when it’s Democrats’ turn, we expect them to be tentative and apologetic about using their power, always worried about whether a sternly worded editorial will chastise them for not incorporating enough Republican ideas into their plans.

So let’s take stock of just where Biden and the Democrats stand.

As of this writing, Biden has tallied 4.4 million more votes than President Trump, a number that will keep growing as more results come in. By the time the counting is over, he will likely have bested Trump by 6 million votes or more.

Given the current state of party polarization, that is a positively overwhelming victory; the days when Ronald Reagan could win reelection by 18 points or Lyndon Johnson could win by 23 points are long behind us.

Let’s also not forget that Biden won this emphatic victory despite the extraordinary voter suppression effort that Republicans have assembled in recent years and that accelerated in the past few months as they tried madly to keep as many Democrats from voting as possible. Voter purges, closing of polling places, restrictions on early voting, ID laws, the attack on the Postal Service — they even went after drop boxes, as though allowing people to safely and conveniently drop off ballots was some kind of anti-Trump conspiracy.

Yet despite all the hurdles Republicans put in front of people who were more likely to vote Democratic, Biden still beat Trump soundly.

Furthermore, Democrats control the House and, if they win both seats in the Georgia runoffs, will control the Senate as well. Even though the upper chamber would be divided 50-50, the Democrats there would represent 41 million more Americans than the Republicans do, as Ian Millhiser noted.

It’s not just that Democrats have won more elections (including the popular vote in seven of the last eight presidential contests) and represent more people. Their policy agenda — the substance of any mandate — is overwhelmingly popular as well.

In fact, it’s hard to find a controversial issue on which the Democratic position doesn’t enjoy the support of a majority of the public, sometimes an overwhelming majority. A $15-an-hour minimum wage, universal background checks for gun purchases, strong action on climate change, protecting reproductive rights, a path to citizenship for undocumented immigrants and legal status for “dreamers,” higher taxes for the wealthy and corporations, a public health insurance option — all are hugely popular.

You know who understands that perfectly well? Republicans.

Which is why the campaigns they run are so often about things like who loves America more or which candidate is “weak” and which one is “strong.” But more importantly, they know that if you act like you have a mandate, then you do.

You might recall that when Trump took office in 2017 despite losing the popular vote by 3 million votes, neither he nor any other Republican took it as a reason to trim his sails in any way. They did not say, “We shouldn’t go too far in cutting taxes for the wealthy or gutting environmental regulations or restricting reproductive rights — this is a closely divided country, and we should try to govern in a cooperative way.”

Quite the contrary, in fact; it’s hard to recall a modern president more contemptuous not just of the opposition party but also of the majority of Americans who didn’t support him.

Nor was this anything new. Like Trump, George W. Bush took office after losing the popular vote, and he didn’t moderate his agenda either (even if he was better-mannered). What they understood is that mandates are, in the end, a kind of collective fiction. They exist only to the extent we decide they do.

On Friday, before news organizations declared him the victor, Biden said that the voters had “given us a mandate for action on covid, the economy, climate change, systemic racism. They made it clear they want the country to come together, not continue to pull apart.” Those two ideas are in tension, because acting on the mandate he received will not bring the country together.

It will make Republicans angry. They will say that they are the victims of oppression and tyranny, that when a duly elected Democrat enacts his agenda it is unfair and illegitimate. They will do everything in their power not only to make Biden fail but also to exacerbate the resentment, anger and division that they see as their path back to power.

There is not a single thing Biden can do to change that. What he can do, however, is act as though his mandate is well-earned and of the highest urgency. He can do what he promised, undeterred by Republican whining. If he does that, the public will get what it voted for. And isn’t that the point of having an election?

#### No capital---blame doesn’t stick

Liz Goodwin 20, staff writer at the Boston Globe, “‘Sleepy Joe?' Trump struggles to stick a label to ‘Teflon Biden’,” BostonGlobe, 7-11-2020, https://www.bostonglobe.com/2020/07/11/nation/sleepy-joe-trump-struggles-stick-label-teflon-biden/

But the 77-year-old Biden has been surprisingly hard to caricature, in part because he has largely stayed in his Delaware home due to the coronavirus outbreak while Trump has struggled to respond to the twin crises of the pandemic and racial justice protests.

Biden similarly survived blistering attacks on his record from his rivals during the Democratic primaries. Senator Kamala Harris memorably lambasted Biden for his decades-old stance against busing to integrate public schools, while liberals derided his stated willingness to compromise with Republican senators — even ones who defended segregation — and his assurances to donors that nothing would fundamentally change if he were elected.

Now, Trump has half-heartedly begun painting Biden as a secret radical, one who wants to “defund the police” and dramatically raise taxes, or at least who will be manipulated into doing so. The move fits into Trump’s larger strategy of warning his mostly white base that civil rights protesters seek to “erase” their history and transform the country, and that Biden will facilitate that.

“Joe is just — look, let’s face it, he’s been taken over by the radical left,” Trump said on Fox News on Thursday night. “I think they brainwashed him.”

In one of Trump’s campaign’s recent digital ads, Representatives Alexandria Ocasio Cortez, Ilhan Omar, and Senator Bernie Sanders silently leap out of the wooden cavity of a Trojan horse topped with the head of Biden, as ominous music plays in the background.

But Biden faced months of criticism from liberals for being too moderate in the Democratic race. Trump’s attacks face a credibility problem.

“They try to say he’s extreme. But of course Joe Biden has been ‘canceled’ every week for the last two years by people who think he’s too centrist,” said Sean McElwee, the founder of the liberal polling firm Data for Progress. “All the stuff that people really hated about Joe Biden in the primary, it’s ended up making it hard for Trump to attack him in the general.”

“It’s hard to say this man is this woke statue destroyer,” McElwee added, referring to Trump’s messaging around statues of Confederates and other historical figures that have been defaced or toppled in recent weeks.

Biden’s own relative blandness as a political figure hurts Trump’s attempts to define him negatively, as he does not inspire strong feelings in a significant portion of the electorate. Just 22 percent of Americans say they dislike Biden “a lot” compared to 40 percent who dislike Trump “a lot,” according to a July Economist/YouGov poll.

That lack of venom can be seen at recent Trump events, where relatively few fans sport anti-Biden gear, unlike in 2016, when Hillary Clinton was skewered on pins and T-shirts and other paraphernalia, often in sexist terms.

“While I don’t want to say anyone is Teflon, Biden in some ways is unique because of his generic nature,” said Ian Russell, a Democratic strategist who used to run the House Democrats’ campaign arm. “The truth is they don’t have a ‘lock him up’ chant, they don’t have a ‘Crooked Hillary’ equivalent.”

#### Biden has no PC

Adam Creighton 10/29, Washington Correspondent for The Australian, award-winning journalist with a special interest in tax and financial policy, B.S. in Economics from the University of New South Wales, M.A. in Economics from Oxford University, “Joe Biden’s stocks grow weaker as errors build,” The Australian, 10/29/21, https://www.theaustralian.com.au/world/joe-bidens-stocks-grow-weaker-as-errors-build/news-story/770507d77e5918541ebc5e2ab0c71af0

Little is going right for the Democrats in the US. President Joe Biden flew out of Washington on Thursday night for Italy and then Glasgow in the weakest political position of his presidency.

Biden’s rapidly diminishing political capital at home augurs badly for any new global agreement on climate change.

His personal approval rating has been falling, accelerating since the controversial withdrawal from Afghanistan in August, to the lowest point of any president at this stage except Donald Trump.

Economic growth has collapsed in the third quarter to 2 per cent, inflation remains stuck above 5 per cent, and the President’s reform agenda has stalled.

Almost 20 months on from the start of the pandemic the labour force remains three million smaller than it was in February last year.

Illegal arrivals at the southern border with Mexico have exploded. A Republican could even win a close-run governor election in ­Virginia next week, which a few weeks ago looked to be a shoo-in for the Democratic incumbents.

Far-left Democrats refused to support the President’s slimmed-down “infrastructure” compromise on Thursday (Friday AEDT), furious the originally massive ­social spending had shrunk from a mooted $US3.5 trillion, as promised earlier this year, to less than $US1.9 trillion to appease moderate Democrats worried about how the plans might play in the suburbs.

In other words, the President landed in Rome early on Friday for his first in-person G20 meeting without any of the legislative ­machinery he needs to make his April promise to slash US carbon emission by 50 per cent by 2030 credible.

Biden’s lacklustre first year is the product of forced and unforced errors. Inflation was always going to tick up as the economy snapped back, whoever was in office. The job market was bound to recover slowly.

But setting reform ambitions so high when the Democrats won only a tiny legislative mandate last November – barely a handful of seats in House of Representatives and none in the Senate – was bound to end in humiliation.

Biden’s proposed reforms to ­social security match Lyndon Johnson’s Great Society reforms of the late 1960s in social impact, without any of the political mandate. Similarly, the White House unexpectedly mandated that every employee in businesses with more than 100 staff – more than 100 million workers – needed to be vaccinated against Covid-19, guaranteeing to fuel angry protests, and clog US courts for years.

#### Alt causes---fracking, emissions, other countries, etc.

#### 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.

# 1AR

## T-Private Sector

**T Private Sector---1AR---We Meet**

**ICANN is a ‘private sector’ corporation with no government control**

Milton L. **Mueller 17**, Professor at Georgia Institute of Technology School of Public Policy, and Frazaneh Badiei, Research Associate at Georgia Institute of Technology School of Public Policy, and the Executive Director of Internet Governance Project, “Governing Internet Territory: ICANN, Sovereignty Claims, Property Rights and Country Code Top-Level Domain”, Columbia Science and Technology Law Review, 18 Colum. Sci. & Tech. L. Rev. 435, Spring 2017, Lexis

But some top-level domain names refer to countries--in other words, there is a semantic linkage between political territory and domain name resources. Nearly 200 top-level domains are based on an international standard (ISO-3166) that assigns two-letter alphabetic codes to internationally recognized geographical territories (e.g., .BR for Brazil or .IN for India). These domains have come to be known as country code top-level domains [\*438] ("ccTLDs"). Country code TLDs function in exactly the same way as more familiar top-level domains such as .COM or .ORG. But their association with geographic territories sets up an interesting interaction between the Internet's global virtual space, traditional concepts of political territory, and various standards for asserting rights to control territory. By "standards for asserting rights" we refer specifically to property rights claims and sovereignty claims. Can the right to control a ccTLD be considered a property right, owned by a private party and tradable in a market? Or is control of a ccTLD an extension of the state's sovereign rights? Or does a third model apply--that of a public trustee administered by the Internet Corporation for Assigned Names and Numbers ("ICANN"), the global organization that coordinates the root of the domain name system ("DNS")? ICANN is a **private nonprofit corporation** organized under California law. Because of its technical coordination role in the domain name system, ICANN must be involved in the award of a top-level domain name to a specific party. Unless ICANN enters the appropriate technical [\*439] data into the DNS root zone, the delegee does not have control over the management of or registration within the domain.

This paper explores the legal and economic rationales for conceptualizing ccTLDs as property rights, sovereign rights, or public trusts administered by ICANN. It explores the consequences of each approach and asks which model provides for the most efficient and equitable form of governance. The problem posed involves an unusual and interesting interaction of international relations, public international law, private law and technical protocols. By engaging with these questions, the paper attempts to provide useful insights into the nature of sovereignty in cyberspace, and practical insights into the best way to handle conflicting claims over ccTLD delegations.

This is not a purely theoretical issue. In recent litigation involving the top-level domain for Iran (.IR), plaintiffs sought to seize control of a country code domain in order to compensate victims of terrorist acts allegedly backed by the Iranian state. The plaintiffs characterized the ccTLD as a form of property that could be confiscated under civil law. Similar cases seeking to attach ccTLDs have affected Syria (.SY), North Korea (.KP) and the Congo (.CG). The Congo case was based on a commercial dispute and not on terrorism claims.

A view of ccTLDs as property subject to attachment or 'garnishment' has been reinforced by the fact that the global authority for domain names is not an intergovernmental treaty organization organized around principles of sovereignty, but ICANN. Because **it is a U.S. private sector corporation**, ICANN's role seemingly subjects ccTLD delegees to civil law claims of the sort seen in the Iran and Congo cases.

On the other hand, using American courts to settle claims over country domains strikes many as incongruous. In fact, governments have been keen to assert sovereignty rights over the ccTLDs referring to their country. States began to intervene in the ICANN environment after 1999 to claim exclusive authority over [\*440] delegation and public policy for ccTLDs. Sovereignty claims are especially important to countries that have geopolitical conflicts with the U.S. (such as Iran, Russia and China); the claims are thought to immunize them from external claims of authority or control Complicating the picture both politically and legally, ICANN has held its status as the authoritative manager of the DNS by virtue of a **contract** with a single **sovereign**: the **U**nited **S**tates of America. This contractual tether to a single state sets up **a**n internal contradiction within the putatively **private sector-based, sovereignty-free governance regime** of ICANN.

**ICANN is private, not part of the U.S. government**

Dr. Jonathan **Koppell 2k**, Fellow at the New America Foundation and Professor of Policy, Politics and Organisation at the Yale School of Management, PhD and MA in Political Science from the University of California, Berkeley, “Governed From Cyberspace”, Australian Financial Review, 11/20/2000, Lexis

ICANN is **not** part of the **US Government** or **any other government** for that matter. It's a **private**, non-profit corporation created by the late Jon Postel, one of the architects of the internet.

**T Private Sector---1AR---CI**

**‘Private sector’ includes both non-profit AND for-profit entities**

Denilde **Holzhacker 9**, Doctoral Student in the Department of Political Science, at the University of São Paulo and Assistant Professor at Universidade Rio Branco, et al., “Privatization in Higher Education: Cross-Country Analysis of Trends, Policies, Problems, and Solutions”, Institute for Higher Education Policy Issue Brief, March 2009, https://files.eric.ed.gov/fulltext/ED508091.pdf

Private institutions: Some countries (e.g., the United States) have a long history of private sector development. In others (e.g., in Latin America), the private sector appeared a half century ago but saw its greatest increase in the last decade of the 20th century. In many parts of the world (e.g., Africa and postcommunist Europe), private education is a recent phenomenon. The private sector **includes non-profit institutions** as well as for-profit or proprietary ones. Proprietary institutions—with their market-driven and profit-seeking behavior, centralized and businesslike management systems, and weakened academic culture—are considered to be the pure form of privatization.

**Non-profits are ‘private sector’**

Smita **Joshi 99**, PhD in Education from the University of Toronto, “Assessing Stakeholders’ Perspectives on the Status and Impact of Educational Partnerships in the High School Co-Op and Enterprise Education Programs of Newfoundland and Labrador”, Doctoral Dissertation, 1999, http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.427.8088&rep=rep1&type=pdf

*Private Sector Members*: The term private sector includes **non profit** special interest groups, local entrepreneurs, community service groups and members of large corporations.

**T Private Sector---1AR---AT: Limits**

**Private non-profits are a subset that avoids limits explosion**

Tim **Zimmer 19**, Writer at the Houston Chronicle, “The Difference Between Public & Private Non-Profit Organizations”, Houston Chronicle, 3/6/2019, https://smallbusiness.chron.com/difference-between-public-private-nonprofit-organizations-26366.html

Nonprofit organizations play a key role in the social and economic well-being of a country. They benefit society in ways that the private sector might not, which is part of the reason why a majority of nonprofit organizations are tax-exempt under Section 501(c)(3) of the Internal Revenue Code. The Internal Revenue Service (IRS) **distinguishes** nonprofit organizations primarily by the **level of public involvement** in their operations. As a result, nonprofit organizations generally fall into **two distinct categories**: public charities (**public** nonprofit organizations) and private foundations (**private** nonprofit organizations).

Public Charities or Public Nonprofit Organizations

Public charities, or public nonprofit organizations, are the most common type of nonprofit organization classified by the IRS and what people generally think of when they hear that an institution is a "nonprofit." Although public charities include entities such as churches, homeless shelters and hospitals, the definition is broad enough to include educational sites such as **universities** and **medical research** institutions, which are considered "statutory public charities."

In stark contrast with private nonprofit institutions, public charities must contain a diversified board of directors that represent the public interest. More than half of the board must be unrelated and unable to receive compensation as employees of the institution.

Public nonprofit institutions rely more heavily on public support and are less regulated than private nonprofit institutions. For an organization to become a bona fide public nonprofit institution, at least 33 percent of its income must come either from small donors, the government or from other charities. The collected funds must then be used to directly support the organization's initiatives. Since public charities rely heavily on public contributions, typically, they are more susceptible to public scrutiny than private foundations.

Private Foundations or Private Nonprofit Organizations

Under tax law, a section 501(c)(3) organization is initially considered a private foundation, or a private nonprofit organization, unless it requests, and is authorized to be, a public charity. As **opposed to** a **public** nonprofit institution, in which more than half of the board must be unrelated, a private nonprofit organization can be controlled by a family or a small group of individuals. Private foundations generally derive much of their income from a smaller pool of donors and from investment income, and are typically subject to more restrictions than public nonprofit organizations. Failure to comply with regulation can garner serious penalties for private foundations.

A fundamental reason as to why an individual might prefer to establish a private foundation, as opposed to a public charity, is the level of control. Since private nonprofit organizations mainly rely upon a small number of private donations, they can operate fairly independently. Typically, private foundations aren't held accountable by the public, but their actions are limited by stricter and more extensive federal regulation.

**T Private Sector---1AR---Predictability**

**‘Private sector’ includes non-profits---government definitions**

**U.S. Code 21 –** “2 U.S. Code § 658 – Definitions”, Legal Information Institute, https://www.law.cornell.edu/uscode/text/2/658#9

(9) Private sector

The term “private sector” means all persons or entities in the **U**nited **S**tates, including individuals, partnerships, associations, corporations, and educational and **nonprofit institutions**, but shall not include State, local, or tribal governments.

**There’s no hard line between public and private sector**

Colin **Poulton 21**, Emeritus Reader at SOAS University of London, “Unit 1 Management, Organisations and Performance”, Management in Rural Development, https://www.soas.ac.uk/cedep-demos/000\_P531\_MRD\_K3736-Demo/unit1/page\_15.htm

It should be noted that the distinctions between commercial, public sector and non-governmental organisations are **not** always **hard and fast**. Thus, some public sector enterprises aim to make profit (but, in practice, have often made losses!), whilst some 'social enterprises' are established as commercial entities, but have developmental goals that take precedence over profit maximisation. Nevertheless, it is helpful to think in general terms about the characteristics of these different categories of organisation, some of which are outlined in the table in 2.2.2. This can help us think about the particular challenges of managing these different types of organisation.

## PTX

#### There won’t be a bill for weeks

Carl Hulse 10/28, Chief Washington correspondent for The New York Times, B.A. in Mass Communications from Illinois State University, “Crucial Elements of Spending Plan Remain in

Flux After Biden’s Appeal to Democrats,” The New York Times, 10/28/21, https://www.nytimes.com/live/2021/10/28/us/biden-bill-plan

Today’s civics lesson: A framework is not a bill

It could take weeks for the framework President Biden laid out to become final legislation. Sarahbeth Maney/The New York Times

President Biden proudly trumpeted his Build Back Better legislative “framework” Thursday, but that document is a long way from being an actual piece of legislation. Frameworks cannot be enacted and signed into law, though it would certainly simplify the process if they could.

The White House outline laying out broad areas of agreement on complex issues such as universal prekindergarten and clean energy investment incentives is really just a shell that will need to be filled out with pages and pages of dense and technical language explaining exactly how the new programs will be implemented and who will qualify.

Adding an entire new benefit to Medicare is going to take more legislative language than just “allow Medicare to cover the cost of hearing,” as the framework declared.

Trying to satisfy progressive Democrats who insisted on seeing text of the social safety net bill before agreeing to end their blockade of a separate infrastructure measure, House Democratic leaders on Thursday afternoon released a 1,684-page preliminary version of their measure drafted by various committees.

But even that bill was more of a starting point for negotiation than a final product, cobbled together before Mr. Biden’s framework was unveiled. It most likely will take substantial revising to align it with the president’s vision and ultimately produce a final version that has the support to clear Congress.

Speaker Nancy Pelosi conceded the proposal would be undergoing changes once lawmakers got their hands on it.

“For those who said they want to see text, the text is there for you to review, for you to complain about, for you to add to or subtract from — whatever it is,” she told reporters. “We’ll see what consensus emerges from that.”

Whatever consensus does emerge, it will then have to be put in bill form and then pass both the House and Senate, a process that will take time as lawmakers haggle over the fine points.

While it may be trite to say the devil is in the details, that has long proved true about legislative language. Lawmakers who avidly support abstract concepts might balk at the details laid out in bill form. That is a main reason House progressives have been insisting that they see a bill before agreeing to move forward on the infrastructure measure they have been blocking for leverage over the social policy and climate measure.

A few words or a phrase can make a huge difference. Legislative wars have been waged over the difference between “may” and “shall.”

That also helps explain why the centrist Democratic Senators Joe Manchin III of West Virginia and Kyrsten Sinema of Arizona are refraining from declaring definitively that they will support the framework, since the legislation that emanates from it could go beyond what they would accept.

Mr. Manchin, for example, delayed a vote on a major Democratic pandemic relief bill this year over his unhappiness with the final language on unemployment benefits after the bill had already hit the floor and was on the runway to passage.