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HOW DO GOVERNMENT RESTRICTIONS HARM
INTERNATIONAL ONLINE TRADE AND COMMERCE?

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P R O C E E D I N G S

MR. YGLESIAS: Welcome. My name is Matthew Yglesias. I'm the business and economics correspondent for *Slate*, and I'm very excited to be here at the Brookings Institution moderating this panel. The title is "How do government restrictions harm international online trade and commerce?" which is obviously a huge, huge SEO term for me all the time. And I've been asked to say that the hashtag for this event is #TechCTI if you have anything to say on Twitter. And also anyone who is watching on the webcast can weigh in there and good questions may even come to the floor here.

On the panel with me is Joshua Meltzer, a fellow here at Brookings; Stanford McCoy, from the Office of the U.S. Trade Representative; Jay Colvin, from the National Fire and Trade Council; Allan Friedman, also from Brookings; and Jonathan McHale, also from the USTR Office. It should be a great panel to help sort of explore these questions.

And I thought maybe just sort of get started in with things and turn to Joshua here, whose paper is the sort of occasion for this event, I believe. The Internet is sort of experienced by most people as this sort of form list, very free flow of information thing. It's a miracle of communication. You can reach out to anyone anywhere on the planet at anytime, but obviously it is on some level a series of physical infrastructure that exists in particular places and that governments want to regulate because activities happen in places, facilities are located in different places, and so there can be a lot of tension there between the sort of open global possibilities of the Internet and the reality of governments sort of trying to do their legitimate regulation. And also, though, trying to create sort of protectionist trade barriers. Can you maybe just set the table for us a little bit? Talk about what's the sort of key issues here that people need to understand.

MR. MELTZER: Thanks, Matt. And thank you everyone for making it

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out in this rainy weather.

From our perspective, when we think about the Internet and its role in commerce, I mean, one of the focuses I think has the role of e-commerce domestically in the United States, in North America, and how that has grown over time. I think one of the new phenomena we're seeing is the Internet increasing being a platform for both global international trade and, importantly, and as a very key complement to that has been the significance of cross-border data flows or the free flow of information is also a facilitator of international trade. In fact, I might refer to a couple of numbers quickly just to highlight this point. One of them is the number of 30 percent, which is actually the number of Internet revenues captured in the United States. The next number is 60 percent, which is the difference, the digital divide which currently exists between Internet access in the developed world and in the developing world. And 600 percent which is, in fact, the potential growth in cloud-based computing export services which we could see out to 2015.

Now, I mention these figures simply to highlight a couple of salient facts. One of them is the potential and the economic significance of the United States. The other is the potential growth of this in the developing world. And the other is why all this comes together as a very important platform for international trade, including the role in this context of cross-border data flows.

Now, as Matt pointed out -- and I'll just say this very briefly -- I think we're at a point in time where the capacity of the Internet to drive international trade is really still in its early stages. We're also at a time where we are seeing an increasing propensity around the world for forms of intervention and restrictions in the Internet where there is actually government action, various rules and regulations, which is challenging the capacity and ability for the Internet and for cross-border data flows to deliver the type

of economic potential that it can.

And so the challenge of the paper you may have picked up out at the front tries to get at is how do we develop now new rules, new regulations which can both maintain the open nature of the Internet, which has produced the type of gains that we've seen so far and will continue to grow into the future, yet at the same time giving governments the space and the scope to do what they may need to do to address legitimate concerns in probably what we would say is the least trade restrictive means while at the same time avoiding other concerns which are considered less legitimate.

MR. YGLESIAS: Thank you.

Now, to Stanford, what's the role of intellectual property regulation in this? When you talk about the flow of data across borders, that can mean many different things. One thing that it often does mean is the flow of sort of copyrighted content, other forms of intellectual property. Different countries have different regimes, different interests here. We need some kind of framework for them to trade together. How does it play out?

MR. McCOY: Yeah, sure. I think, Matthew, you could probably find people with different perspectives on this issue who would be willing to say that intellectual property itself was either the problem or the solution to online barriers to international trade, neither one of which is probably entirely the case. I think from the perspective of someone engaged in international transactions, whether you're talking about physical goods or intangibles traded over the Internet, be they goods, services, or something in-between, you're probably looking at IP as an important background condition for transactions, a way of defining and confirming that the person who's offering something for sale or license actually owns what they're purporting to sell or license and a way of defining what you're buying if you engage in that transaction with them. So the

stability of rules in that space is important from just a pure transactional standpoint. And I think it's also fair to say that intellectual property is a potential source of great complexity in international transactions and international trades, particularly as you try to map those questions about ownership and protection across multiple different jurisdictions where a particular item of intellectual property might exist simultaneously and might be more or less enforceable, more or less protected in different circumstances across those multiple different jurisdictions.

So to bring it back to sort of, my part in this and international trade rules affecting intellectual property, I think that where the rubber meets the road is on the question of certainty. If international trade disciplines have a role to play here, it's a role of seeking to enhance certainty for people involved in international transactions. And I'll give you one example which is around the existence of regimes like the Digital Millennium Copyright Act we have here in the United States to both define aspects of online liability for copyright infringing content and to define safe harbors so that intermediaries engaged in trade in that area will have some certainty about what kind of behavior on their part will protect them against uncertain liability. So it's fostering that kind of certainty around IP that I would see a role for trade.

MR. YGLESIAS: And Jake, when you sort of hear about Internet trade, your mind naturally goes to a certain set of sort of high-tech companies. But your organization represents a very sort of diverse group of American businesses, a lot of them that are outside of that sort of narrow domain. Can you tell me, I mean, what's the business interest in this subject? Why does it matter to your constituents?

MR. COLVIN: Thanks, Matt.

I think having the opportunity to see a perspective from many different businesses, it's clear that there are two sort of equally important challenges. One is kind

of what Josh already laid out. It's the ability to participate effectively in the global digital marketplace. But the second is dealing with the consequences of that and the consequences of the explosion of digital information online. And so I don't want to minimize the challenges for businesses. I hear this a lot from our companies: that it's certainly easier to distribute software illegally in the digital age.

Trade secrets are a huge concern for our businesses. We spent quite a bit of time on this in our recent submission to USTR on IP barriers, and I know the administration just came out with a report on dealing with trade secret theft. But then there's also a whole set of concerns that aren't related to intellectual property rights. Companies might get the wrong foot in on privacy concerns, on morality around the world, which is sort of regulated in different ways. And so there's a role for trade policy here, I think, to effectively protect IP which we do, for example, through free trade agreements; to provide space, international dialogues, and policy frameworks; to bridge gaps or differences in privacy frameworks nationally.

But I think the key is doing this all in a way that is as least trade restrictive as necessary and that permits the digital economy to function because there is a real opportunity here. And so for our companies and businesses generally I think being able to plug into an open, global digital marketplace is really important. For our companies, it's essential to the way that you do business in the modern world, and so I'll give you a couple of examples from our board membership. Procter & Gamble is a company that I think about a lot because I've got a 7-month-old at home and so we buy a lot of Pampers. And so if you Google Pampers, they've got their own website for Pampers, Facebook page, Twitter account, YouTube channel, and Procter & Gamble now has an online web e-store where they sell directly to consumers. And so this is a major interface for Procter & Gamble into their customers, both in the United States and

advertising for around the world.

Now, General Electric is also on our board and they make what they like to call "intelligent power plants." And so these power plants can be monitored remotely, and they are monitored remotely from the United States from their HQ headquarters in Atlanta.

And so if you interrupt the ability of companies like Procter & Gamble or General Electric to provide these services or sort of the channels and the networks by which they interact with customers and other businesses, that's really detrimental to their ability to do business in the modern world.

I think, for us, the other reason why this is really important is because it's not only good for our companies--NFTC represents large companies--but because it has the potential to change the narrative and the way that we think about trade in the United States and around the world.

eBay did a report last year that indicated that 97 percent of their commercial sellers export, and of that 97 percent, 80 percent do so to five or more markets. Now, the reason that is, is because eBay makes the border virtually disappear. Buyers in other countries can see a fully landed price, and when a seller goes to sell a product he can essentially hand it off to FedEx with whom they have a partnership and drop it in the mail and not worry about anything from there. I suspect I'm oversimplifying but it's gotten a lot easier to access global markets, even as an entrepreneur or a very, very small business.

We think that this is good for the dialogue on trade generally and has the opportunity not only to sort of change how we think about public policy in the United States but also in conversations around the world in forms like the World Trade Organization. And I think on this certainly there's a role for government policy as Josh's

paper points out. We've been thinking through how to apply concepts that have governed trading goods for decades with respect to nondiscrimination and fair treatment. It's information in the services that provide that information.

I guess I'll close by saying Stan and Jonathan have really been spectacular in thinking through these concepts from a public policy standpoint, and so it's been a pleasure to work with them on these issues and I think they're really at the tip of the spear in terms of policymaking going forward and how to apply these sort of fair concepts to information. So thank you.

MR. YGLESIAS: Great.

Allan, I think we were talking a little bit before the event about the fact that there's often a sort of clash of perspectives in the digital realm between people with a technology background and people who are maybe lawyers and policymakers in Washington. You're more of a tech person. And I wonder if you can speak to some of that and how it looks from a technologist's viewpoint and what it is that people need to know about how this works.

MR. FRIEDMAN: I think technology can be both part of the problem and also part of the solution. Cryptography is a great example. Cryptography is just a technology that allows you to hide information through various means. And for a while in this country it was illegal to publish cryptographic algorithms. To produce products you needed a weapons license. In fact, the woman who was in charge of introducing cryptography to Windows 95 had to get licensed as an arms dealer by the United States Government. And it was framed as a battle. You had the geeks, who saw themselves wearing the mantle of human rights and free expression said, "Listen, if we're going to communicate around the world we need to be able to do it in a secure fashion that doesn't have eavesdropping from any government because we don't know who to trust."

And on the other side was the National Security Establishment that said, "Why do you want kidnapers and terrorists to have this stuff?" And that was sort of the frame. They saw cryptography as something making it harder to do their job, which was to protect us. And it turns out there was an impasse and National Security won until the late '90s when along comes Commerce and just blows them all out of the water and says, "Listen, we have all of this great economic growth stuff that's going to happen." This is, of course, a simplification of a long and complex discussion, but essentially, Commerce won the day by making both of their arguments irrelevant. We needed this stuff to make the global economy work.

Now, what's interesting about crypto is that we still see it. There are still export restrictions in this country about what you're allowed to send abroad, to the point where you have professors being told that non-American grad students aren't allowed to work on certain types of technology. And at the same time, what's really funny is other countries have import restrictions. Russia or Vietnam, policies that say, listen, if you want to bring in this technology in our country you need to clear it with the government so that we know what's going on and who has this technology, and to close on this idea that technology can help us a little bit for things like cross-border data flows. Organizations, if they're faced with the idea that different governments are going to have different policies can develop some tools using metadata or even technology that tracks specific information flows on the network individually to say, okay, well, we're going to allow certain types of data that aren't sensitive to flow around, but the stuff that we need to protect we can actually manage that and keep it inside certain countries or out of certain countries that we care about. Now, the benefit of this is that while this technology isn't cheap and it requires organizational change, this is also exactly the sort of thing that we need to do to safeguard strategic proprietary information and trade secrets.

MR. YGLESIAS: Great. And now, way down there, I'm thinking back to sort of my college days and the basic introduction to the global trade, multilateral trade process and the sort of graphs they show you, comparative advantage, trade is good, tariffs are bad, you have concentrated interests, so you have this process to sort of bring the barriers down or open the world up. And it's very removed from these sorts of considerations that we're talking about today. How do international data flows get on that sort of agenda for the trade disciplines? What's the rationale for making this part of that multilateral trading process?

MR. McHALE: Well, I think the good news is, if you look at any of the statistics, the data is flowing exponentially. You'll get different numbers for how fast it's growing and a big part of that is international. The trade issues come in when you start seeing barriers to that. Right now it's been very difficult for governments to erect barriers but we're at a position I think, we're at a time where we can make sure that the regime going forward is the more rationale regime. I mean, traditionally, the trade rules deal with borders. Goods come over the border. That's where you get to look at it. That's where you get to put the tariff on. That's where you get to check to see if it's safe, et cetera. In the service world, you know, governments have been able to license companies in their markets and they've been able to check to see whether they're a responsible player in the marketplace.

The issue here is the Internet, you know, it's notoriously resistant, if not impervious, to borders. Data flows around the most efficient manners. I think governments have a real dilemma in how do they assert their jurisdiction over their legitimate regulatory needs when they can't get -- they can't hold onto what they're trying to get at.

So it is a new area where we are trying to deal with something that's

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beyond the border where government wants to have a role in protecting its consumers and protecting its other equities, and yet the mechanisms for doing so are not clear and they're typically blunt. You have things like the Great Firewall of China or you have governments just saying no data at all. And that's just a very inefficient way of being able to participate in what's obviously an enormously innovative and economically important sector.

So we have to rethink this. We have to rethink what are responsible rules that will allow governments to have an impact on what happens to data despite the fact they don't have jurisdiction over necessarily where the data is located or where the servers are. And we're trying to work through that. What we don't want -- I don't know if folks can see it -- but here's a picture of what I think is the origin of the globally interconnected electronic network, which was the telegraph network. So here in 1902, 100 years ago, we actually had the first globally interconnected electronic network. The bad result of what happened in that was it started out in the private sector generally as a lot of the U.S. and British companies are doing it. Governments decided this was strategic. I'm going to control it. I'm going to nationalize it. And you ended up with a balkanized telecommunications network. Eight years later we've essentially opened up the physical layer of these and we have generally free trade and the ability to operate telecomm networks in various markets.

The data is another issue because governments would like to be able to grab onto this and that-- sort of defeats the purpose of having data that moves efficiently and at the optimal location. And so we don't want what happened in the telecomm world, which was a balkanization of who controls the various inputs. You want to have regimes that allow legitimate interests to be addressed without having both sort of the rent-seeking where you have someone that wants just the national champion to be the player

and then that being seen as by a government as the only way that they can address their legitimate regulatory interests.

MR. YGLESIAS: All right. Now moving into a little bit more discussion, I'd like to encourage anyone on the panel to jump in at any time if they've got something to say. But I was hoping actually Jake would revisit something. You sort of alluded to companies getting "wrong footed on privacy concerns" was the phrase you used. I wonder if you can talk a little bit more about that. I was in Germany recently and heard a lot about privacy concerns. I imagine coming from sort of the opposite direction of how American trade associations see it I think this is an interesting subject.

MR. COLVIN: Sure. And I'm not a privacy expert by any means, so this is going to be fairly general. I think that different countries treat privacy differently. They regulate it differently. My sense is that there are more stringent laws in the European Union which sort of considers privacy a fundamental human right but there is perhaps more enforcement in the United States and more of a patchwork of laws, regulations, and best practices that have kind of bubbled up without sort of an overarching major main law.

And so I think you do have the challenge where companies can get wrong-footed because they certainly -- or they do their best to understand laws in the country in which they operate but then they go over and they capture information contained -- say they're in the United States and they want to do business in Europe; you have to understand those rules as well. And that's a difficult thing, particularly if you're operating in more than one international market. And so countries have figured out a way to try to bridge those differences and so there's this thing called the EU-US Safe Harbor Framework that provides one option by which, if you follow a set of rules that are listed on the Department of Commerce website, you are granted safe harbor from sort of

prosecution under privacy guidelines in Europe. There are other frameworks out there that have been under discussion or that have been developed in APEC. There's a privacy framework pathfinder by which a number of countries have signed up to essentially build bridges between their different privacy regimes.

And so I don't know if you guys know more about that and want to jump in on that but that's the extent of my knowledge.

MR. McHALE: I can chat a little bit. The whole trope of the EU takes privacy much more seriously in the United States is not completely unfounded but at the same time I think there are a lot of cases where we have a real advantage in terms of modern regulatory thinking. And the best example of that is data breach laws which now I think 47-48 states now have a law that says if a company has consumer data, they have personal information which includes employee data as well, and they lose it, they have to notify the subject of the data. This first bill was passed in 2004. It's an excellent example of the political science model of the laboratory of 50 states. California had this great idea it soon spread around the country. And if you draw a plot of how many companies lost our data just based on public reports, it went very low, very flat, maybe five, six a year, and then in 2004 it shoots up because companies now had to be held accountable for it.

And this focus on outcomes of saying you screwed up has had a number of effects. One, companies take this a lot more seriously. They're encrypting data. They're managing their resources. And we've also created a whole secondary set of market solutions. The only place where we really see functioning cyber insurance or insurance for cyber security issues is around this question of personal data breaches. The challenge of focusing on outcomes is even a law that says just look out for bad things -- that should be your regulatory approach -- it's hard to actually implement that from a regulatory perspective. If you think about a law that says "just confirm for us that

everything inside your company is working properly and if you're lying to us or if you're wrong we're going to throw your CEO in jail." That sounds like a great policy until you realize that that's SOX(Sarbanes-Oxland). I don't think anyone really holds that up as a great model of global regulation. So we need to find ways of having accountability-based regulation inside the information space. It is easier to do auditing on a computer system, but at the same time computer systems evolve a lot faster, so it's harder for a large organization to have an accurate understanding of what its state is at any given time.

MR. MELTZER: I might just jump in here quickly because I think it's a good platform to highlight, I think, one of the challenges that we have here in terms of doing two things, which is basically making sure that we have the freest flow of data possible but also providing opportunities for governments to do what they need to do. And you're going to get privacy, which I think is a good example. You're going to get divergent approaches which we currently have. The U.S. is definitely going to a divergent approach to the E.U. which has got a divergent approach to Australia, which has got a divergent approach to other countries.

There are a couple of ways of getting at that. I mean, in a way, to some extent, there are already trade rules on these. The GATS, the General Agreement on Trade and Services, has an exception in there for privacy-related issues but that really only applies to basically your market access commitments already made under that agreement, which is not really going to cover off where we're in the free flow of data issue which is sort of one of the new areas which we're trying to get at.

Now, you could do it in a similar way in a sense that you could basically say it's up to each country to decide how they want to protect data and as long as you're doing it in a particularly transparent and least trade restrictive way you just go ahead and do your own thing which would be one approach. Another approach, which would be sort

of parallel to some of the other sort of global regulatory approaches which have been done in this area, would be to do things like Mutual Recognition Agreements, which is a little bit like what the Safe Harbor Agreements tend to be a bit like where they sort of recognize each other's approaches as being equivalent and basically they allow for the free flow of data between those type approaches. Another approach being a global harmonization approach, such as the APEC approach, which is not binding but Jake referred to as an attempt to get consensus around norms in this area. So there's sort of a variety of mechanisms I think in play here.

MR. YGLESIAS: You know, I think to that point, to what extent are we talking about sort of good faith, divergent ideas about how should we do these things? And there's kind of a logistical problem that, well, we need to hammer something out so that it works for people versus are we really looking at divergences that are becoming entrenched for really protectionist reasons? I mean, obviously, there's some of both always in the universe. What are we more talking about in this space?

MR. MELTZER: I'll just say briefly, I mean, I think that there are some hard issues here. I think data privacy is one. There's national security. There's a range of issues. I think another thing that we are seeing increasingly more of is -- which I think is very directly applicable to this issue -- is simply the type of intervention that governments are doing which really are nothing much more than commercial restrictions which, to some extent, are little bit like digital, sort of infant industry policy where they're trying to develop their own Google or their own eBay or their own Amazon and basically trying to avoid levels of competition over the Internet. And so though various mechanisms are degrading, blocking access to these websites as they provide space domestically for these types of companies and entities.

Now, we know that in a very simple trade law perspective the norm of

discrimination is that you are meant to treat basically the same goods and services the same. You treat your domestic companies the same as you treat goods that are imported. And so even supplying that simple norm reveals the challenges that we have here, which is why the norms that have been developed me think in a trade law context here are very applicable and would work quite well.

MR. COLVIN: I think you're right. It is a little bit of both and our pitch has been that we ought to try to develop rules among like-minded countries that see an open global digital marketplace as a good thing and hammer out these important issues on a good faith basis. And I think one example of that is the Trans-Pacific Partnerships negotiations. I think Jonathan is right in that information is flowing back and forth and around the world right now. It's not that our digital borders are closed; it's that we see trends from some actors in the world that are moving in the wrong direction in developing policies for economic or political reasons and it really doesn't matter to our businesses. The end result is the same: that your information is restricted. So I think TPP is a good example, as are the other trade agreements that are in the process of being negotiated or about to be negotiated, like the International Services Agreement, the US-EU partnership, as ways of sort of hammering out among like-minded countries good rules and codes of conduct in this area that will guarantee that information flows in the future. And I think what we're really worried about are policies in places like Vietnam and Indonesia which have proposed local server requirements essentially, that you have to keep your data in local servers in the country in order to operate cloud services or other IT services. But there are others around the world. A number of countries are trying to develop national payment capabilities and so are restricting the flows of financial data. Other countries are restricting for political or other reasons in a way that is more trade restrictive than necessary. You can block YouTube or Facebook indefinitely, and that,

like I said before, affects all of our companies, including consumer product companies and business-to-business companies.

MR. FRIEDMAN: So also part of the challenge is understanding when we're talking about good faith mapping it to particular political values. So, for example, in December there was a meeting of representatives of the International Telecommunications Union, the ITU, which is a U.N. affiliated body that actually predates the U.N., to try to think about should the ITU take responsibility for certain aspects of Internet governance, particularly from a security perspective, because they felt that the organization that currently does it, ICAN, it's not a governmental organization. It's not truly representative.

Now, people talked about a number of different values there. Some countries were very clear. They said, listen, we don't like a global Internet. We want to have a more national control-based approach. Other countries said, well, we're worried about cyber security. We need a global body that thinks about this. And then you have sort of more patriotic models. So a number of fairly senior European officials have made statements, and in fact, one country even proposed this as policy saying we're not going to work with any American cloud providers because of the Patriot Act. Now, those of you who know the Patriot Act know that that's not the operative aspect of U.S. law that allows the American government to have access to certain types of data, but the Patriot Act is sort of code for we generally don't trust those Americans and sort of those models.

And then you have countries that say, listen, all these standards that are out there were developed by Americans, and so why should we trust them? Shouldn't we develop our own standards? And by the way, that means that no one will compete with our market of a billion people because we're going to be the only ones who use our own standards. And trying to establish, well, good faith for what and why gets tricky.

MR. YGLESIAS: We've got some people from the government here. Why should they trust us?

MR. McHALE: Well, let me first say that all governments do have the sovereign rights to regulate activities in their borders, and no one is saying that the trade rules should trump that. I think what the trade rules can do is make the governments accountable for those measures that they put in place. I'll give you a small example. I was contacted by a software company who was getting blocked in--surprise, surprise--China. And it was essentially a collaboration tool that allowed the software to be developed among various locations, so a classic cloud application, and it shows the brilliance of the Internet allowing remotely located people working together for things of economic value. I couldn't for the life of me figure out why this is an application that should be blocked, and we did approach the Chinese government. The Chinese government, I think, saw reason and it was probably on the same server with something that they found objectionable but ended up removing the block.

So that was a case, I think, where they did not have -- I think they would agree -- a legitimate reason to block it. We can agree to disagree on some of the other areas where they are also blocking, but at least they were held accountable in that case to not, in my view, impeding legitimate commerce. The trick here, though, was that was at their discretion. They had no necessary obligation to listen to me and to take action when I was trying to help a particular company. So what we're trying to do is actually create a baseline rule that the data should be moving across borders. It doesn't prevent governments from having exceptions to privacy, security, et cetera, but it has to be justified in light of the underlying obligation that the default data should flow.

And then the difficult question is, okay, how do you implement the various exceptions and what standard of privacy, what standard of security, what public

morals issues are legitimately inside or outside the scope of what you can do? Another example –is of a trade agreement I negotiated that ended up not progressing with Thailand. One of their demands was in the context of that negotiation that we give particular credence to, their desire to make sure that the monarchy was respected on the Internet. We wrestled that and we have all our First Amendment issues -- very difficult from a trade policy perspective to say that we will take down information that's not illegal under U.S. law. But the bottom line was one of the responses -- and this gets to the main point -- is often a very blunt response, to just block completely an entire service. And I think the conversation that one wants to have based on a trade rule is we can respect your local standards, your local values, your local laws. Is the action that you are proposing to solve it, is it really proportional? Is it really the necessary action to address your concern?

In this case there are techniques, and technology again here is very helpful to make sure that you can narrow down the scope to which the government actually impedes what otherwise is legitimate commerce. And the challenge is to have a framework that allows the conversation between governments to make sure that these trade impediments are minimized.

MR. MELTZER: I just want to pick up just quickly on something Jonathan said before, which I think is one of the key issues here, the idea of maintaining a rational sort of framework when it comes to cross-border data flows. And maybe to link it back to the developing country perspective because essentially what we're talking about here is a vehicle for economic growth. And certainly, Jake was talking about this a little bit in terms of what eBay is doing overseas, and I think this is what we're going to increasingly see, is that the opportunities to actually engage in the global trading system are going to be enormous, particularly for traders in developing countries are going to be

able to use this as a platform to often overcome barriers like poor infrastructure, inefficient custom procedures and the like, to actually link in a way that's just been impossible in the past. So in a sense it's a very strong economic rationale to actually making sure that this happens and develops in a way which is essentially free of unnecessary barriers.

So in a sense, I think the strong argument there is this one: that in a sense the long-term kind of growth benefits are there and what you're trying to do is develop the type of disciplines which prevent sort of being captured in a sense by a particular interest in the process of it being developed.

MR. YGLESIAS: This shifts gears a little bit, but Jake mentioned the Trans-Pacific Partnership and I had a question for Stanford about this, which was when the president mentioned the Trans-Pacific Partnership in his State of the Union and so I had to do some coverage and I thought I would quickly check what one of my colleagues at *Slate* said about that. We had only one piece that had ever mentioned it and it was, I think, someone rather alarmed said that the rules for intellectual property worldwide were being rewritten in secret somewhere over the Pacific Ocean. Is that how you see it? I'm guessing not.

MR. McCOY: Well, I'd be giving away the secret if I answered that.

MR. YGLESIAS: We can smoke it out here.

MR. McCOY: There you go.

I think we certainly approach IP rules in the Trans-Pacific Partnership as an extension of the kind of logic we've been talking about in other areas where if you flash back 50 or 60 years we're talking about trade as moving goods across borders and the evolution of international trade over the ensuing time has been an evolution of dealing more and more in-depth with the kinds of issues that our goods and services confront

when they get across the borders and we're trying to do business in foreign markets. And particularly, as countries like the United States are dealing more and more in value-added goods and services we want to make sure that the vehicles for monetizing value-added in foreign markets are available in all the major systems where our companies are doing business. If you think about how you monetize value-added in a good or a service, it's often through intellectual property. It's often through a copyright-protecting creativity, a patent-protecting inventive value or a trademark-protecting reputational value associated with a good or service. So it is a very important function of a trade agreement to lend certainty to those things.

That's not to say that there isn't a certain amount of alarm associated with the notion that there will be trade rules in space and there's a certain strain in republic discourse around the Internet that abhors any kind of restriction, even if it's a restriction for a property right that wouldn't bother us at all if we were talking about the same thing in the environment of physical property. One of the things we've tried to do to respond to that in the context of the Trans-Pacific Partnership in particular is be very clear that even as we seek to define exclusive rights, that exclusive doesn't mean absolute and that the rights and the copyright space that we're standing up for and think definitely need to be protected in the context of the TPP should also be subject to limitations and exceptions that are consistent with our own law and jurisprudence for things like criticism, comment, news reporting, teaching, scholarship, research. And I think the more we can do to make sure that the public understands that those are functions that we respect and that we ultimately seek for our Trans-Pacific Partnerships to seek to achieve an appropriate balance in their systems, including on those kinds of issues, the more space we have potentially for others to also respect the fact that people who enter into digital commerce with intellectual property that they want to see protected

do have rights that ought to be respected there.

MR. YGLESIAS: All right. I wonder if we can get some space going here. Maybe if Allan or Joshua would have an example of perhaps an area where you think that the United States is sort of the one trying to keep fine elements out or not willing to let information kind of flow and let foreign companies gain access here.

MR. FRIEDMAN: I don't know quite as much about TPP but certainly one of the bigger questions that was quite controversial was the idea that this was a trade negotiation that was happening without transparency at all. Also, we saw the same thing with the Anti-Counterfeiting Trade Agreement (ACTA) which through a series of progressive leaks became less and less popular until the European Parliament was basically forced to reject it. And I think that's been one of the challenges from a political aspect. Something that we've learned from *The Guardian* newspaper's sorting of Wikileaks documents is that copyright bills in New Zealand and Spain were basically bludgeoned through from strong industrial influence primarily rooted in America. When that broke in Spain, it caused a small scandal. It was eventually, I believe, overturned. And so the challenge is, again, I completely agree that there are very legitimate industrial concerns and you can't have an information economy without intellectual property. The challenge is how do we do this in a transparent, democratic fashion?

MR. McCOY: So just a quick comment on that. I think it's important, the issue of how we both do deals in the international trade space and engage effectively with public and stakeholders who are interested in how those deals are taking shape is one that we're very seized of inside the administration. We've done a tremendous amount in the context of TPP to kind of facilitate that kind of engagement. That's not to say that there aren't still challenges, but if you go to a round of the Trans-Pacific Partnership you see a degree of stakeholder engagement and communication and

accessibility of the negotiators that has never been present in any previous trade negotiation that I've been affiliated with.

In terms of the importance of our advocacy with foreign governments, I think the democratically-elected governments of New Zealand and Spain would probably take exception to the notion that anything they did was at the behest of the United States and the laws that resulted from the processes in both of those countries actually happened to include significant elements, each of them that is quite different from U.S. law in rather innovative ways trying to tackle a generation of the online piracy problem that in some ways goes beyond the online piracy problem that we were attacking in the United States with the Digital Millennium Copyright Act. So I think it's a good thing from the U.S. perspective that those and other governments are trying to be at the forefront of tackling problems like this. It's something we do want to encourage in a way that's consistent with our own law and our own values and having rule of law in the Internet space is certainly something that is entirely consistent with those values.

MR. MELTZER: I heard the question actually a little bit differently so I'll answer what I heard, which was to the extent the U.S. is itself imposing restrictions on the Internet. And I guess I'll make the short point because I certainly don't want this to be a conversation simply about other countries' restrictions. And it really probably just gets to the broader point that this is going to have to be about finding ways of balancing appropriate intervention with actually allowing data to flow freely. Because there is an interesting way of thinking about it. Again, if we get back to the privacy issue I think there's different countries have got actually very different like first principle conceptions of privacy. And in the U.S. it's sort of an amalgam of constitutional rights and statutory-based laws and in some respects these differences are going to create their own barriers, but at the same time the way that governments regulate also has the potential to increase

confidence in the ability of both consumers and businesses to actually use the Internet as a commercial platform. I mean, the willingness of someone to put their personal data online, I think, is going to some extent depend on whether you think actually it's ever going to get out, how companies and businesses are going to use it. So the idea that an appropriate level of regulation here is going to be certainly I think important to actually maintaining the confidence. So these issues are actually going to cut both ways in some respects.

MR. YGLESIAS: I think it might be time to see if there are any questions out there in the audience. People who bother to show up in a chilly, rainy day possibly have some things to say, to ask our panel. I believe we have some people with microphones, maybe.

Yes, this gentleman here.

MR. HERSHEY: I'm Bob Hershey. I'm a consultant.

To what extent are you able to hold meetings over the Internet and negotiate some of the kinds of things that we've heard about today?

MR. McCOY: I'll say from a government perspective it's a lot. I'm sure a lot of you have experienced this in the private sector that we're doing a lot more digital videoconferencing than was the case a few years ago and the current budgetary climate puts a premium on making the most of all your taxpayer dollars in terms of how the government engages internationally. So we do a lot of that kind of work through DVCs. There are downsides to that. There's the lack of the face-to-face interaction. There's the lack of the ability to sort of pause, go in the next room, have a one-on-one conversation, come back. And all that is important to getting deals done. So it can't substitute for the face-to-face old-fashioned interactions that we need to get done, and it has drawbacks. Security is a big drawback in some of the technologies available for online conferencing.

Maybe Allan can tell us how to improve on that. But it is an important supplement to face-to-face negotiations.

MR. YGLESIAS: I was glad that security came up sort of incidentally there because I imagine this is a big issue here. Governments are obviously going to want, as they use digital technology and information technology more and more themselves, they're going to want to have some assurance of its security. But that's obviously going to raise a lot of questions in terms of who do you procure from? Who do you contract with? What do companies do with information? You know, how does it flow within there? It seems like just sort of a playpen for both very legitimate concerns but also for all kinds of possible monkey business.

MR. FRIEDMAN: The last major cyber security legislation was actually the Federal Information Security Management Act of 2002, and that's really just sort of how data government security regulations are. And again, this is one of those policies that started out -- the text is quite parsimonious. It says, listen, identify your risks; tell us how you're addressing them. The problem is it was implemented through regulation in a very long roundabout model of compliance. Check boxes. Until 2006, you couldn't comply with this law electronically. This is a law where agencies measure their compliance in binder feet. So we're slowly getting better at that. Certainly, entrepreneurial agencies have found ways to sort of say, listen, we are under attack. We need to secure our own systems.

If anything, the challenge from the U.S. government, as you mentioned, the procurement side, that's probably a whole another panel about how we overhaul IT procurement for flexible situations, but I think the security side is less of a challenge because we can't use the latest cutting edge technologies. In the international front this is something that countries have identified saying, listen, there's all this stuff that is being

sold to us by westerners; we don't trust it.

A famous scandal in Greece in 2005 where the main switches that the primary Greek cell phone service was using, giant heavy steel switches were sold to them. They were sold as complaint with American law enforcement policy to allow a government to install backdoor wire taps. The Greek phone company didn't pay for them so they weren't turned on, but someone figured out how to turn them on and we still don't know who. What we do know is that someone was eavesdropping on senior Greek government officials for about 18 months in 2005. So this is a challenge around the world that we have to solve.

MR. MELTZER: I might just add to Allan's comment because it seems to me also that the national security I think is going to be particularly challenging, because if you think about it in the more conventional goods and services context -- and again, I'll refer back to the trading world -- I mean, there's national security exceptions in the WTO and in a sense it's more or less where the rule of law tends to end and governments tend to do what they need to do. But you could sort of cabin it off in a sense because the WTO, the GAT was sort of dealing in a world where you really might have to take trade restrictions essentially in times of war to deal with U.N. Security Council issues, which is a lot more sort of clear cut whereas here in a slightly more amorphous world where the national security implications have been connected globally are a lot more significant. I mean, we've had the issue which has come up recently about China's attack on cyber security issues in the United States. But the point really is that, say for instance the infrastructure and then it becomes strategic industries that you start to get designated as being part of national security, so the capacity for this exception in a sense to really bleed wide I think is real here. And I don't have an answer to how you respond to that but I think, I mean, some colleagues here have done some work around this in a very specific

context dealing with China. But I think one of the ideas there is that we won't really need to be focusing on here as much as the rule of law is actually developing norms of conduct where you actually develop understandings about appropriate ways of actually using the Internet, which might be one way of getting at the issue.

MR. YGLESIAS: Questions?

SPEAKER: Thank you. Could you tell us a little bit about tax regulation and how that interferes or enhances Internet trade?

MR. YGLESIAS: Taxes. Taxes. Anyone? Yeah, go for it.

MR. COLVIN: The only thing on my mind is the e-commerce moratorium at the World Trade Organization. That was a provision that was adopted at the beginning of the foundation of the World Trade Organization back in the 1990s and it's been extended by unanimous consent ever since. And so it still remains in effect today but it's subject to the sort of unanimous consent every two years when everyone gets together in Geneva or somewhere else and has a meeting. What we've proposed -- it's been on my mind because we just submitted comments for the International Services Agreement -- is to extend and make permanent the sort of Internet customs duties moratorium through the International Services Agreement. So just institutionalize it instead of having it be subject to kind of the whims of the membership.

MR. FRIEDMAN: So, inside the United States the big question is how do we handle state and local sales taxes. And it's interesting to see sort of coalitions sort of continue to evolve. There are lots of people who say, listen, particularly the online vendors don't want to pay sales tax and the large brick and mortar vendors want sales tax to be imposed. What's fascinating is there was a statement today from Grover Norquist, who is a famous anti-tax advocate who said the SOPA and PIPA thing means that the Internet won't stand for sales tax online. This is one of the classic, old guard,

D.C. establishment activists sort of trying to draft this new Internet activist community in one of his fights. So it'll be very interesting to see how that plays out.

MR. McHALE: Jake was mentioning the WTO moratorium. So in the trade agreements we actually turn that into a binding commitment. So at the border, from a tariff perspective, we commit not to put a tariff on digital products transiting into the country. That's a border issue. Maybe you were asking about internal what happens. And I think that's what Allan was more mentioning, was more focused on.

It is an issue -- well, it's not an issue in that the trade rules generally don't speak to taxation. That's considered a domestic issue, as long as the taxes aren't discriminatory. You don't tax a foreign good more than you tax a domestic good. Where we are seeing this come into a little bit of an issue that's related to the standard flow issue is governments are saying I want to tax the activity, and I can only tax the activity if the company establishes in my jurisdiction. So essentially, it's a challenge to the whole idea of allowing for cross-border trade when governments conclude the only way they can get their piece of what they think is legitimately taxable income is to force the company to establish in-country. So we don't take a view on whether governments have a right to tax or not tax; they do as long as it's not discriminatory. We do take a view on whether you should force companies to establish, and that being the reason. It's not from our perspective a legitimate reason. Yes, they should have the right to exercise their taxation authority; no, they shouldn't force companies to establish in order to accomplish that.

MR. YGLESIAS: Good stuff.

Yes, you, sir.

MR. BEHSUDI: Hello. Adam Behsudi from *Inside U.S. Trade*.

I just had two questions related to IPR and data flows related to TPP and

in the context of a round coming up next week in Singapore, kind of status on these issues.

On IPR, I guess this is more for Stan, you know, in terms of IPR, and this is a bit unrelated, I guess, to the issue of Internet copyrights and things but is there a sense that USTR will be verbalizing new ideas on its patent proposal? And to what extent are these changes being considered? To what extent is the initial proposal going to be changed? And then on data flows --

MR. McCOY: On its what proposal?

MR. BEHSUDI: On the patent pharmaceutical proposal, the access to medicines proposal.

And then on data flows, Jonathan, what is the progress on this issue? How are you going about the work of determining exceptions and for privacy and security, what is sort of the dynamic of the debate now? What kind of progress do you expect here in the next round?

MR. YGLESIAS: Okay.

MR. McCOY: So I think pharmaceutical patents is off topic so I'm going to pass it to Jonathan on the data flow.

MR. McHALE: We have a proposal on the table. A lot of engagement. All the issues we're talking about here on governments wanting to make sure that they don't lose regulatory jurisdiction are a subject of conversation. We'll see. I mean, it's a negotiation, so it's not over till it's over. But there is broad-based engagement and recognition that this is clearly a relevant topic if you're having a modern trade agreement.

MR. YGLESIAS: Yes, ma'am.

MS. MEDRANO: Thank you. Maria Medrano with ITI.

Congratulations to Jonathan for all his work on getting cross-border flows

into the TPP and maybe even the ISA soon.

What about the countries that aren't covered by the TPP and the ISA? Are there any thoughts either from the Brookings perspective or the U.S. Government perspective on how to socialize this free flow of information with countries like Brazil, Indonesia, China, India maybe? Is there a Brookings road show planned or U.S. Government bilateral dialogues? Any ideas? Just thoughts on that.

MR. YGLESIAS: I'm definitely up for moderating in Brazil, you know, if anyone --

MR. MELTZER: Yeah, likewise.

MR. YGLESIAS: Let's do it.

MR. MELTZER: I think it's a good point. I do get at this briefly in the paper because I think there's two parts there. I think one is there are these forms of TPP. There's going to be the Trans-Atlantic opportunity. Obviously, the Japan module and the TPP. Japan is negotiating with the E.U. but this is a context where formal trade rules are being negotiated. I think it's also important to use other forum to develop more sort of informal, less binding norms around this. And I think there are a lot of opportunities to do that. For instance, APEC is one opportunity. I think the G-20 is possibly another one. And just bilaterally, I mean, we see this is already happening. Different countries have actually reached sort of essentially some principles around these issues and so the scope to sort of do that. So I think it's a combination of both, but I do think the thrust of your question is the right one, which is the idea that this really is a conversation that needs to be broadened out.

MR. YGLESIAS: Further thoughts?

MR. McHALE: If I can just follow up. We obviously have resource constraints. You can only manage so many negotiations at the same time, but we do

have, as Joshua was mentioning, a nonbinding vehicle, which is the ICT trade principles, which do speak to some of these issues. And we are actively trying to have other countries sign up with us. We're working on Jordan, on Morocco, on Taiwan, on ASEAN. So the extent that we have engagement with various countries that we think share our view and are willing to put this, eventually we hope, into a binding context -- that's the one vehicle we do have.

MR. COLVIN: I also think, I mean, it's important to use the countries that are already part of these conversations or who get it to talk to others. And so, I mean, if you see what's going on, I think Chile generally gets this, and so they are part of the TPP negotiations. They're part of a number of other trade agreements and they have programs like Start Up Chile where they bring entrepreneurs into Chile to try to encourage them to start up businesses in the country. And so I think at a high level they understand the importance of the issues that we're talking about here. And so to find forums like APEC, like in Geneva using the e-commerce work program, to get them to tell their stories. Turkey has been helpful in bringing technology into the classroom. Pakistan benefits, or has an entrepreneurial community that benefits, from e-commerce and information flows. And so to bring these countries in to talk to others that may be a little more reticent is helpful.

I also think, I mean, there are good stories in the United States, and we represent big companies. It may not warm your heart to know that they benefit from e-commerce and information flows, but we go around the country as well and talk with small businesses and educators about how they interact with the global marketplace. We met with a company, I think in Detroit, called Flextrol which makes induction heating equipment. They put sort of coverings on metals that direct heat to specific places and so it saves on heating costs for manufacturing. And they have a YouTube channel. And

so the way that they've explained their business and the way that they've developed relationships with potential customers overseas is through YouTube. So they're a big exporter into China. That's a portion of their business, mostly because of technology.

I've got a suit at home from a company called Black Lapel. It's two guys who used to work on Wall Street up in New York, and they decided that that was too soul-crushing for them, and so they decided to start an online custom suiting business. A suit retails for about 500 bucks and they export to 66 countries. They have 10 employees in New York City. I mean, there are great stories to tell that don't involve big companies both here and abroad, and I think that's an important part of the conversation.

MR. YGLESIAS: Absolutely. Anyone out there? No? Yeah.

MS. GILSTON: Meredith Gilston with the *Washington Tariff and Trade Letter*.

I find it interesting what Matt said about the civil society organizations not satisfied with the level of transparency, especially in the TPP but also in other negotiations. And Mr. McCoy, you said that it was as transparent as any previous trade negotiations, and your boss, Ambassador Kirk has said similar. Is there any way for both sides to be satisfied here or both sides, you know, I know that you said also that civil society organizations are not one of the sides of the negotiations but just in terms of public opinion and public press around this. Thanks.

MR. McCOY: Working on trade agreements makes one acutely aware that you can't satisfy all the people all the time. And there's a continuing role and obligation of the government to listen to all the diverse viewpoints that are out there on these issues, to bear in mind the economic interests to the United States and implement the policies of the president in this area. And that's what we try very hard to do and those policies are informed by a desire to balance a really wide range of views and benefits.

So I don't despair of the possibility of developing balanced policy and that's what we constantly see to develop and implement. But one of the interesting realities of doing international trade in the Internet context is instant communication also means instant criticisms. And we hear that. We internalize it. We try to move forward in as balanced a way as possible.

MR. YGLESIAS: Anyone else?

MR. COLVIN: First of all, I think USTR has done a really good job in terms of outreach and transparency. I think having been to some of these realms that's clear. I mean, they actually listen to people. They hold forums. And I think they do a good balance. They do a good job balancing. I mean, the reality is that you can't negotiate in public and they shouldn't be asked to. And so, for some people there will never be enough transparency, and that's okay. But I do think that they do an effective job.

On the intellectual property rights question, I think it's important to acknowledge that there are concerns in the digital age and that some intellectual property rights challenges have become more acute or require action like we take in trade agreements precisely because of the challenges of the digital age. And so I mentioned trade secrets before. I think it's important to have the right rules and frameworks, including the balance of rights and limitations and exceptions in U.S. law that protect intellectual property rights but also allow the digital economy to function because if you don't have the former, no one is going to be confident enough to engage in the latter.

MR. YGLESIAS: I think I saw a hand back there. Yes.

SPEAKER: Thanks.

Two questions. First is I'm curious if there's any reaction to the WTO decision about the online gambling services. And the second is we were talking about

taxes but I'd like to broaden this out to there's a bit of an uproar in Europe and the poster children here are Starbucks and Amazon and Google for pretty aggressive use of transfer pricing guidelines to reduce their profits in those countries. Have the incentives gone too far?

MR. YGLESIAS: Of gambling? Can anyone speak to that?

MR. McCOY: Yeah, I can probably speak to that a little bit just to say that for those who don't know what we're talking about here there's been a long-running World Trade Organization dispute between the United States and a Caribbean nation, Antigua and Barbuda about the ability to offer online gambling services into the United States. It has to do with the U.S. GATS schedule and commitments in the service area, and that case has been litigated. The government of Antigua has announced its intention now to move forward with suspension of WTO concession over the results of that dispute and their plans involve something called cross-retaliation where they would not retaliate in-sector in the services sector but they would suspend concessions in another area. In this case they've talked about intellectual property. And as with many disputes, the governments keep talking to each other even as the process moves forward and that's certainly true in this case. We're engaged in ongoing discussions with the government of Antigua and Barbuda on that matter and we're hopeful that we can work in good faith to find a way forward.

MR. YGLESIAS: It's funny. We were chatting this earlier and I'm very much not an expert on the international trade side, but I've done a lot of work on the online gaming aspect and I think the one hope is just that if the U.S. can run out the clock as it has succeeded in doing, in a fashion that makes me despair if the U.S. is ever on the wrong end of a trade agreement, just how long an actor can delay retaliation. But there are a number of policies going on in the United States to allow certain state control

which introduces a host of challenges domestically but would allow if someone conforms to, for example, Nevada's new policies or New Jersey's policies they could enter that market in a way that might meet with WTO policy.

And I just want to get back to this challenge on intellectual property. I will say it is heartening to see the administration focus intellectual property on trade secret theft because for a while many of us were very concerned that they were perhaps not giving that -- it was getting short shrift for other aspects of intellectual property. So I would like to commend the administration for really beginning to make that a priority when perhaps they spent a little too long focusing on some of the other aspects.

MR. McCOY: Maybe I could say a quick word on trade secret theft. It is true the administration has announced an enhanced focus on that issue. We had an event last Wednesday where we rolled out a new administration strategy on trade secret theft and I think Allan's comment is a good reflection on how it's been received in the technology community. And the only observation I wanted to make was that this is tied into the subject we're talking about today because it's not like trade secrets haven't existed and been important for generations. They've certainly been there, but trade secrets existed as a very quiet, frequently unnoticed intellectual property right that mainly came up in a sort of personnel context when big companies were writing contracts with their personnel and worried about them leaving and taking secret technology to a competitor. And now the networked environment has created all these possibilities for cyber intrusions where someone might be able to just, as we've read in the press recently, invade corporate networks and take secret information that exists there and then apply it to their own commercial purposes. This is a danger that we've become highly sensitized to in the U.S. government and it calls on us to go back and dust off these disciplines around trade secret protection that were written in a different era and

make sure that they are relevant and meaningfully applied and meaningfully monitored in the context of the present day challenges that we have. And that's something the administration is working very hard to do both at home and with our partners overseas.

MR. COLVIN: I was reading through the administration's trade secret policy and they used all these examples of different companies that have had their trade secrets stolen, and I think the first five were members of NFTC. And so this is important to us.

I think to your point about new rules, my understanding is that a number of countries don't protect trade secrets except through contracts. So unless you have a contract with a bad actor that is stealing your trade secrets you're kind of SOL. I mean, to your point, it's not just the employee that is taking a document in its pocket and leaving and going to give it to another country as reported in the press. It seems like this is a lot more state sponsored and really that gets at sort of the commercial heart of our economy.

MR. YGLESIAS: Indeed. Yes.

MS. NIGHTINGALE: Liz Nightingale with Baker & McKenzie.

I have one comment and one question. I wanted to echo what Jake said about it being a very transparent process. I've been at two of the stakeholder negotiation sessions and numerous preparatory meetings and debrief sessions, so I wanted to commend USTR for that.

The question is for Jonathan, and it's with respect to the ICT trade principles you had mentioned Taiwan as one of the countries with whom you were setting up some principles. And I'm wondering if that is going to be folded into or done separately from the upcoming U.S. Taiwan discussions as part of the TIFA next month.

MR. McHALE: It is in that context. We always look for some action-

forcing events to give it some focus if we can actually conclude it. I have no idea whether we'll get there but hopefully that bilateral engagement will be a good venue to highlight an area where it looks like Taiwan and us do have general agreement on these important principles.

MR. YGLESIAS: I wonder if I could ask a little bit more about the gaming case because it's sort of an interesting concrete illustration, not so much in terms of the countermeasures that Antigua was asking for but here you have a situation where gambling is generally illegal in the United States. It's easy to see these Internet gaming bands as really about sort of domestic morals regulation, a certain kind of paternalistic rule. At the same time you know anyone that lives in the area probably saw all the ads about the gambling proposition in Maryland during the last election cycle, and the overwhelming majority of the money going to sort of block the construction of the new casino was coming from the owners of the existing casino in West Virginia is a very classic Baptist and bootleggers kind of dynamic here.

And so from another viewpoint, sort of efforts against Internet gaming in the United States are just the very essence of the kind of rent seeking that trade agreements are supposed to get rid of, that here we have these sort of inefficient producers of gaming services located in the United States. You have a whole wide world that kind of wants to knock the doors down, and so not to get anyone to speak out of school but maybe Joshua can say something about this. How do you say to a country -- how do you draw the lines here? Because each country does have its own sort of quirks and different industrial structures and political economies to them.

MR. MELTZER: I don't want to get too much into the ways of the gambling case.

MR. YGLESIAS: Of course.

MR. MELTZER: I mean, there's two sort of issues which really came out of it and which your question goes to because the challenge for the U.S., I guess the first principle is really the question is to what extent do countries when they enter into these type of trade commitments open up their markets to imports? And it's a decision each country makes. It's a variety of sort of influences that lead to that decision. And then there's the other question of how do you actually in a sense implement that decision? And it's at that point I think that the United States got tripped up in this case where I think it actually got a fair rating of the GATS schedule that there was an intention not to open it up but the judicial system at the WTO read it in a different way which is sort of where the problem lies. So I think one of the key messages for that is that, in a sense how, you schedule your comments actually really matters.

MR. YGLESIAS: Fair enough.

MR. FRIEDMAN: So again, I apologize for only being able to speak to -- I feel so provincial. I can only speak to the American case. It's interesting as a microcosm for all these issues that we've talked about where you took an issue that not just had traditional economic boundaries but moral boundaries, and most important, governance boundaries. And now we've opened it up to the Internet and said, okay, well, who is going to be in charge when we're worried about issues such as collecting taxes, such as consumer protection against problem gambling, and perhaps most important regulation. So something that has allowed legalized gaming to survive where it has in the United States is very strong government oversight. And whether it's state lotteries or riverboat gambling, and certainly Nevada has incredibly strong controls. And so the question is as we open this up on the Internet, how do we sort of do consumer protection? How do we do brand protection? One bad brand can spoil it for everyone. As we found out, one of the Costa Rica-based poker communities, it turns out they were

dipping into some of their players' winnings and there was all sorts of internal accounting issues which the industry itself recognized was a problem. So as we begin to open up in any of these issues we need some sort of protection. And we see this in health care, in markets, in financial markets. Some governance structures needed to preserve trust for everything to work. And ultimately, any decision in any of these issues we've come down to talking about will boil down to a governance process for establishing trust.

MR. YGLESIAS: Seems fair enough. Yeah.

MR. McCOY: If I could just pick up on that. I think that is sort of the heart of the good outcome that's come out of the APEC privacy framework where in order to establish trust the governments get together, set some baseline requirements, and they agree to mutually enforce against an agreed upon set of standards.

The challenge is in areas where you can't come up with that mutually agreed set of standards. So whether it's on the security side, whether it's on morals, if you can't come up with that it's very hard to have sort of a transnational sort of multi-stakeholder process. But it's clearly going to be the requirement for this sector to thrive to have this type of transnational enforcement cooperation and policy. I don't know if it's harmonization, but I guess the code word is interoperability between different regimes so that you can have a mechanism for the trade to flow and yet to have the trust there that has some enforcement behind it.

MR. YGLESIAS: I think as we've said in the tiling context, try to find ways to at least narrow the scope of the areas where you can't reach that sort of mutualism.

Is there any final question? Concluding thoughts?

MR. COLVIN: I just want to tie this back to the question of strategic data theft, and I think it gets down to this idea of shared negotiations. China has been

bantered about. We were talking about China, a new Cold War and taming the “cyber dragon.” I think focusing on China doesn’t help the trade negotiation process at all. But more importantly, I want to acknowledge that this is happening from around the world. You can rattle off Japan, Korea, Taiwan, Israel, Russia, Brazil. It’s very easy to find examples where you’ve seen cyber theft of trade secrets. The challenge is, again, if you have a model where you can’t prevent all of it, moving to an environment where you have these norms that said, listen, this isn’t how we do business in a global society and it comes down to that approach.

MR. YGLESIAS: All right. I think we’ve about reached our appointed time here. So let me thank everyone for coming out and thank our panel for their wonderful discussion.

(Applause)

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CERTIFICATE OF NOTARY PUBLIC

I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

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