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WEBINAR

REGULATING DIGITAL INDUSTRIES

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FIRESIDE CHAT

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PANEL DISCUSSION

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TURNER-LEE: Well, hello, everybody. Good afternoon or wherever you are in the country. Good day to you. I am Dr. Nicole Turner Lee. I'm a senior fellow at the Brookings Institution and the director of the Center for Technology Innovation. Today, I am so excited because I am being joined by my colleague, who is a nonresident fellow in the Center for Technology Innovation and an adjunct professor at Georgetown University for the release of his new book. If I could tell you, because I've known Mark MacCarthy for a really long time, this has been one labor of love. And what is so exciting about this afternoon is that we actually get to hear from him about what was invested in the contents of this book. And so Mark and I are going to have at the beginning a fireside chat to allow him some author time to really get into the details. For those of you who have purchased the book or have your finger on that send button because we want you to buy the book available through Brookings Press. And at the end of our conversation, we're actually going to pivot to a panel. I've got a panel of experts who could, following Mark's work, who know a lot about the areas that he's going to discuss. And we'll pick it up with some reader feedback on what we're actually gleaning from the book as well. So for all of you that are following us, stay tuned. There will be an opportunity for you to provide some questions. I will give you those details shortly. But follow us on X using the hashtag #digitalregulation and send your questions to events.brookings.edu or via X, and we'll be sure to try to get to that. So, Mark, I've spoken a lot. Let me get over to you and just say first of all, congratulations on the book.

MACCARTHY: Thanks very much.

TURNER-LEE: Yeah, we're really appreciative of that. Again, labor of love and effort that you place in this book. The book is entitled "Regulating Digital Industries." And I think one thing I want to actually start this conversation on is sort of giving people a definition of who are you talking about? You use this term big tech. So I think let's start out because I think the book really nuances the particular actors you're referencing. Let's start out with defining who those actors are just to do some level setting before we get into the details of the book.

MACCARTHY: Sure, that's great. So but first, I want to thank Brookings and you, Nicole, for doing this panel and and also, of course, to you and and to Darrell, Darrell West at the at the Center and Tom Wheeler for their encouragement in putting this book together. And of course, thanks to my wife and my son for their support in putting it together. And I should also thank the students and faculty over at the Communications Culture and Technology Program at Georgetown. They've been supportive as well. The structure of the book actually derives from the courses I teach there on privacy, tech, competition and content moderation. So I wanted to acknowledge all that before we got into your question. So I don't actually try to define digital industries. I try to avoid the term big tech because it's it's not it's not specific enough to to really get at what I'm interested in. Instead, I just I just enumerate the industries that I'm interested in. This is really the same strategy that's used in the legislation in the United States that promotes technology competition. I think search electronic commerce and social media as the main digital industries. And I add that the mobile app infrastructure and the ad technology ecosystem should also be included in the digital industry. So so why these guys? They're the ones where competition problems, privacy problems, and content moderation problems are the most salient, and they're also the industries that are essential to full participation in the social and economic and political life of the 21st century. So that's that's what they are. They're the central industries where most of the major problems are. So I focus on them.

TURNER-LEE: By focusing on them just to sort of stay in this area so people sort of understand your rationale for focusing on, you know, the verticals that you suggested. Do you think it provides in an area that tends to be really expansive, a more narrowed understanding of what those particular industries do? Because I really like that about your book. It sort of took us out of this nuanced, big definition, you know, comprehensive view of digital industries and really went more narrow based on function and purpose.

MACCARTHY: Yeah, I don't see that I'm any narrower than many of the other actual pieces of legislation that are being put together in this area. If you look at it, as I say it, the the legislation that's promoting technology competition in the technology industries on the hill, they pick out the three industries that I focus on. And there's another piece of legislation that focuses entirely on the mobile app industry. And I think the ad technology industry is also one that deserves focus. But I do think it's it's a danger to try to focus too broadly on everything that's technology or everything that's digital, because then it becomes really diffuse. And to jump ahead to a point that I'm going to make later on, you really want to define the industries reasonably tightly, because the one of the fixes that I think is important is to create a specialized regulatory agency. And if it's focused on everything digital, that's not narrow enough. But search social media and electronic commerce, that gives them a little bit more of a focus and makes them a little bit more like the Federal Communications Commission, which focuses on cable broadcasting, satellite, telecom and the Internet.

TURNER-LEE: Yeah, I appreciate that definition, and particularly for people who are listening, who are wrapping their hands around, you know, some of the popular notions and conceptions of that. Thank you for the clarification. One of the things you do in the book also that I thought was really useful is this sort of historical overview and contextualization of where the modern Internet evolved from and where regulation has come from. Talk to us a little bit more like how the modern day Internet is different from, you know, previous versions and iterations, and you spent a lot of time. Mark, which I actually valued. I did a little bit of this in my book, but not as much as you right, in terms of really defining the scope of regulatory action dating back to, you know, the AT&T breakup. I found that to be interesting.

MACCARTHY: Well, the the the big difference between the Internet as initially presented to the public and what we see now is that the problems that were only beginning at the infancy of the of the Internet are now really visible. Concentration, privacy, invasion, information disorder. And I think and regulation has evolved as well. I was around in the 1990s when everyone thought that regulation was the the enemy of progress in this area. And policymakers have to move beyond that initial deregulatory impulse, and they're now beginning to look at regulating in all three of the areas that that I'm interested in. I think it's a great sign, for example, that policymakers are looking to regulate artificial intelligence. It's as if they are consciously trying to avoid the mistake they made with the Internet. And I look at regulation almost succeeded in the last Congress. And and I think ultimately it's a matter of of when the regulatory structure is going to be put into place, not if it always takes longer than one Congress to make these kind of fundamental reforms. One review of my book said this is an optimist's guide to tech regulation. So I'm happy to embrace that, that that assessment of my attitude toward tech regulation.

TURNER-LEE: Yeah, no, I agree with I actually when I was looking at where your book is, is falling, I've gotten some really good feedback, Mark, actually, in terms of your ability to comprehensively give us some history and background on this, which doesn't often happen. But we talk about some of the tech issues in the companies that you're referencing because they're always in the news or there's always some type of a reputational challenge that's happening. But you do talk about the all too familiar antitrust case of AT&T, which I would love for you to sort of give some background on why that case as sort of a primer for your book and what we've learned since the 1970s and '80s. Now, Mark, when I say the words 1970s and '80s, I just want you to be clear. I might have been born sometime around there, but I plead the fifth on all. AT&T details. Yeah, right. I lived in Chicago. I remember.

MACCARTHY: That. It's interesting. The I was just having a conversation with Tom Wheeler and some others who were around during the 1980s. As I was I was on the hill working for John Dingell during the time of the AT&T breakup. And so I'm intimately familiar with the thinking that was going on at that time. And and many of the people who are now focusing on a digital agency were involved in that attempt to introduce competition into technology. Tom Wheeler was there, Phil Verveer Was there, Gene Kimmelman was there. And they're all pushing in the same direction for a digital regulator as a way to introduce and maintain competition in the digital world. And that comes from their experience with AT&T. The thinking behind AT&T was the you need to break the company up really to introduce and maintain telecom competition. But but you also needed a regulatory structure. And in the 1996 Telecom Act, which came a decade after the attempt to break up the company, the FTC, the FCC was given the job of of managing and introducing competition into all parts of the telecom industry. And the other message that came from the AT&T experience was that you can't do this alone. You can't do this solely by the action of antitrust. There was a judge who was given the authority to supervise the breakup, and he did nothing for 12 years but supervised that breakup. And he was backed up by the Justice Department, the Federal Communications Commission, and 50 state public utility commissioners. In that effort, it's hard to introduce competition into the network industry. The forces leading towards concentration and falling back towards a single supplier are very, very strong. And it may not work. It didn't work all that successfully in the telecom area, but without a regulator riding herd on the industry, it it really is impossible to install and maintain competition in a network industry.

TURNER-LEE: Yeah, that's so interesting. I mean, just so people do know. Yeah I am that old. I do remember, you know, when when AT&T, you know, the whole telephone monopoly piece and what that looked like in the and I was in Illinois at the time when SBC was there and other things. But you know, this conversation that happens in digital industry though about breaking them up has been one that has been pretty prominent. And you sort of argue based on this stance of the AT&T scenario, that it's harder than most people think. I mean, talk us a little bit more about that, because I think there is at least remember a couple of years ago this idea that perhaps we should just break these companies up to sort of help us manage some of the perception of antitrust, anti-competitive and antitrust behaviors.

MACCARTHY: Yeah. I mean, the key thing I think Senator Warren has moved away from from this, but earlier on, she was a big fan of breaking up some of the tech companies. And she she sort of floated that

idea as an alternative to regulation. The idea is you break up the companies and then you can walk away. And the you know, the free market takes care of the rest of the problem without having to worry about regulating. And really, the experience of the AT&T breakup shows that that doesn't work. As I said, you had you had a breakup of the AT&T monopoly into six smaller companies with regional monopolies and a long distance company that was separated from them. And you needed to monitor the breakup yet to make sure that they didn't reassemble the monopoly. And that took, as I said, a federal judge full time to make sure that the monopoly didn't get recreated. And it it took the efforts of state and federal regulators to make sure that competition flourished as well as it could in the in that area. So it really does beg the question to say what we're going to have here is just old fashioned antitrust action where you put in place a breakup order and then you walk away and go on to something else. You're really going to need an ongoing supervisory role for a regulator to make sure that competition, to the extent it can be generated in such a market, is generated through ongoing supervision.

TURNER-LEE: Yeah, and that's interesting because I think when Senator Warren was calling that out, along with some of her colleagues, there was this assumption because I, we're talking to some people that we both know that, okay, it's easy. You just kind of disentangle them from the different products and services they had. And it wasn't that easy, which is why I think you're putting this premise out in your book. You also add in your three tenants for people. Again, you know, Mark sort of takes us through this journey, this historical journey, this context. We're actually thinking about communications policies. But he also sort of thinks about three tenants of competition policy privacy and then quote unquote, information disorder. Unpack for us. You know, you've sort of talked about the antitrust and the competition policy if you want to say a little bit more, please do, but unpack for us privacy as well as you know what you meant by information disorder.

MACCARTHY: Yeah. So, I mean, it's important to recognize why competition failed in search, social media and e-commerce. It was basically because of network effects. People actually like the single supplier in these industries. They want to go where their friends and family and the merchants are. And that generates a competition problem because the industry tends to coalesce towards a single supplier. We have a massive privacy problem where social media and search are based on collecting and analyzing truly massive amounts of personal data in ways that aren't really dictated by the underlying technology. So we have a very real privacy issue, and then we have an information disorder problem. This too much harmful and illegal material. There's hate speech, disinformation material that's harmful for children. And at the same time you have an opaque and unaccountable content moderation system. So we have a content moderation issue. And so you need to do something about all of those three areas. And one of the main points of the book is that they have to be treated in a holistic fashion. You can't do one without thinking about the other issues at the same time. And so when you pass laws to regulate competition, to regulate privacy, and to regulate this information disorder, you have to set up a regulator who can handle all three of those issues at the at the same time.

TURNER-LEE: And that, to me, appears to be also a little different from what you saw in the '70s and '80s with regards to the regulatory framework. But but you do. And you brought up a couple of times in our conversation, you know, Mark, I'm kind of liking this it's just me and you on the screen, right? You're drinking your water. Maybe I should have my coffee, right? I feel like this is like really great conversation, like this is a real book talk we're really kind of delving into this. You talk about like enforcement throughout the book as well. And so I'm curious, part of the challenge that we have when we're talking about the regulation of digital industries is where do we put most of the emphasis of policing and enforcement? Kind of unpack that for us, because I just finished testifying on some of these issues. And I'm just curious in terms of the informing of your book on what each tenant sort of suggests in terms of police enforcement.

MACCARTHY: So I think one of the major innovations is, is to think about competition as requiring a regulatory approach. This is really what the EU is doing with its Digital Markets Act. And the idea is that an agency will set down rules for things like data portability and interoperability, rules against self preferencing and then enforces them. That's so different from the traditional antitrust approach of trying to prove a violation of law before a court and then seeking a remedy. It's much more like what the Federal Communications Commission did to try to maintain a competitive market structure in broadcasting where they had a whole raft of ownership rules, local ownership rules, national ownership rules, cross-ownership rules, all designed to maintain a competitive market structure. So I think that's the major innovation in the area of competition privacy. I think the European Union has really put together a comprehensive and effective set of privacy requirements, the card of which is a requirement showing requiring companies to have a legal basis for data collection. They have to show that it's either based on service, necessity or genuine consent or or some sort of legitimate interest. And again, that's enforced by a regulator who has the responsibility to make sure that the companies live up to those requirements. My sense is that in content moderation, the key idea is, is transparency. I think there has to be transparency for users. There has to be a

system of explanations, the dispute resolution mechanism. So that system isn't as opaque and arbitrary as it is now. I think the companies have to come forward with assessments of harmful material and the mitigation steps that they're going to be taking to avoid the risks. And I think there has to be data access for researchers. This is very similar to the European Union's Digital Services Act. And again, you need a regulatory agency to supervise all that. The one difference between the way the United States is dealing with this and the way Europe is dealing with this in the UK is that if you look at the way the U.S. is beginning to approach this, they bypass or look at passing a piece of legislation and promoting competition. And they say to the Federal Trade Commission, you're going to be the enforcing agency. And then they say, let's have a privacy law. And they look at the Federal Trade Commission once again to be the enforcing agency, and then they look at transparency requirements for social media and they turn once again to the Federal Trade Commission as the implementer and the enforcer. So as a practical matter, in a kind of siloed way, the U.S. Congress is moving towards thinking of the Federal Trade Commission as a single unified digital regulator. In contrast, the UK and the European Union keep those regulatory responsibilities separated out in separate agencies. I think the almost accidental approach that the U.S. is taking is the right way to go. You put those responsibilities in the same agency.

TURNER-LEE: You know, and I think that's interesting. And we'll come back to this and obviously for the panel, we should explore this a little bit more as well. But, you know, this idea of a single digital regulator is interesting. And the idea that they can combine certain those three tenets in a reasonable fashion is even more interesting. Right? The thing that becomes really tricky, which I'm surprised that you actually brought up in the book, is this First Amendment piece and content moderation. Yeah, we didn't throw that in. It kind of changes the very discrete and manageable lines of, you know, settled antitrust policy privacy. And what we're coming to see is true information disorder. Talk to me a little bit about the information disorder, the First Amendment in guided moderation and how you see that playing into this very neat packaging of digital access.

MACCARTHY: Yeah, that's the \$64,000 question, if I can say that, and not date myself. But look, I think the transparency measures will survive First Amendment scrutiny. The the lower I mean there's a question there and but the lower courts have already looked at transparency requirements and largely agreed that they passed First Amendment muster. This was in the Florida and Texas social media cases. Now, that's gone up to the Supreme Court. So we'll see what they say about about that. And that's where I put most of my focus. I think I think transparency will produce many, many benefits. And I do think that can survive First Amendment scrutiny. There are other stronger measures the state laws have a requirement for for must carry for political candidates and and for news organizations. That's in Florida. And Texas has a ban on content moderation based on political point of view. And I actually think that those measures have a lot going for them. Many of my progressive friends are horrified by them. But but I do think they're addressing a real problem which is trying to put a constraint on platform power. You know what? If Rupert Murdoch got control of Facebook and turned that tuned in, according to the editorial policy of Fox News, we're getting sort of a taste of that with Musk and and Twitter. So I think this problem of platform power is a real issue. And to some degree, broadcast regulation might be a model for how to deal with it. There was a thing called the Fairness Doctrine for broadcasters in the still equal time rules for political candidates, for broadcasters. And that's roughly what Texas and Florida did. I think the Texas bill is unconstitutional for vagueness. I mean, what's a political point of view? And, you know, how can a social media company deal with hate speech under a rule like that? But I think must carry fares a little bit better in the Turner case. The court upheld broadcast must carry, and they might very well do it again for the social media case. Now, all that being said, I think much of the work for bringing information disorder under control will really be done by the transparency measures I mentioned, transparency for user users assessments and mitigation measures and access to social media information for researchers. That's where the real work is going to get done, and I think those will survive First Amendment scrutiny.

TURNER-LEE: Well, that's interesting because I think what you're doing in this book and you sort of talked about I love this like accidental discovery of where we're seeing most enforcement sort of contained. It does bring up a question when you talk about this digital regulator. And we're going to go folks into the panel next. I just want to make sure I ask you this question as well. Where do you see some of the challenges of sort of centralizing those functions into one agency? And if you're suggesting that the FTC is, in fact, the agency, the Federal Trade Commission, where will they fall short as well? And being that, you know, that one, I don't want to say one size fits all because you're breaking that that logjam and giving us some tenants to work from. But where do you think they'll be insufficient as a regulator?

MACCARTHY: Yeah, I think as a as a first step, centralizing these enforcement roles for privacy, tech competition and content moderation in the FTC is is a pretty good first step, but it's not the answer overall because the Federal Trade Commission, for all its its important skills and values, is essentially a law enforcement agency. It's not a regulator and it's not focused on regulating a particular industry. It's economy

wide. And that's not the kind of structure you need to deal with social media, electronic commerce and search. You need an agency that's more like the Federal Communications Commission, specialized, focused on a particular industry with expertise and background and experience in that particular industry, and also an agency that has full experience and understanding of the rulemaking process, because this will not be the kind of thing that can be done through adjudications. You're going to have to put in place real rules and have an experience in enforcing and implementing real rules. And an agency that is focused on a particular sector as a regulatory supervisor would have a huge advantage in that area. So what I think is going to happen likely is that you'll have a first step where the the Federal Trade Commission is given this responsibility and then eventually it'll be spun off and its digital responsibilities will be lodged in a separate regulator. And the FTC will go back to being what it is today, which is a law enforcement agency with economy wide powers.

TURNER-LEE: Yeah, it's an interesting proposition. And I love that part of the book because, you know, even the comparison with the Federal Communications Commission, that took a long time and they had to be authorized as an agency and look at where they are today. They sort of to your point, they've evolved in transition to accommodate the communications infrastructure in ways that they're responsive. It's still, you know, bring up to the panel, Mark. Right. That's still to be determined in terms of your thought process if they ultimately are the landing space. Or a digital regulator or as others have suggested along with you, it's a totally different entity. Mark, is there anything else you want to say about this book before we bring on the panelists? And I was looking around the other day, and I see that your book is trending number one in a certain property terms of communications policy. I don't know if you saw that. It was like this is the best book to read on that. You've got news views. Yeah, I saw that. Yes, I was going to say it here to surprise you, but who do you want to read this book, like who's your audience and what else you want them to know about this book.

MACCARTHY: So the one thing I would add that we haven't mentioned before is this connection between regulation and and innovation. And I was just in another meeting where one of the participants who has been around this space for almost as long as I have said something very wise, he said never. He was talking about the Internet. He said, never has such a transformative technology been outside of public supervision for so long. And it really is a historical anomaly. It's only in the last 40 years that we've thought of regulation as the enemy of innovation. Before that, regulation was the handmaiden of innovation. That's how new industries got started broadcasting, airlines, pharmaceuticals. They all flourished under regulation. The federal and the Food and Drug Administration was founded in 1906. It's been around since almost the very beginning of that industry. Even credit bureaus were introduced to the public with public interest obligations and consumer protection regulations. I think the move to regulate AI is a sign that that's changing and that the aberration of the last 40 years is finally come to an end. That zeitgeist, I think, is over in terms of who the ideal reader and the audience might be. It's the whole range of of Washington policy community people. It's the it's the the the policymakers in Congress and their staff, the agencies, it's the think tanks. It's the it's the lobbying groups. It's the public interest advocates and industry officials. I think the the book would be excellent in an academic context. I use it in my own classes on content, moderation, privacy and tech competition. And so the academic audience would be would be ideal as well. And I'm delighted that it seems to be finding its its audience and trending in the right direction, as you pointed out.

TURNER-LEE: Yeah, no we need I think what I realized about the books that have been coming out, particularly from CTI, have really been explainers bolstered to the next level to allow people to sort of make sense of some very complicated tech policy issues. And the time is right. Like I said, I just testified this morning on a similar issue and your question about a regulator came up, Mark, so people have this on their mind. Listen, folks, if you want to partake in the conversation, please send questions to events@brookings.edu and we'll try to get as many questions as possible or post them on X using the hashtag #digitalregulation. Hey, Mark, we're going to be joined by some friends now. Like I said, I feel like we're like pop up the coffee cup. The next time we do this, we're going to have coffee cups and stuff. This has actually been really great. If we can, I want to pivot to some people who actually have been playing in the space for quite some time. That would be very helpful as we contextualize the context of the book and its findings, I'm going to bring on Chris Lewis, who is president and CEO of Public Knowledge. Hey, Chris, where's your coffee cup? At least your water. Harleen Gambier, who is counsel to Senator Elizabeth Warren. Where is it that I swear? Well, she's coming to join us. She probably went to go get her coffee cup. And we're going to be joined in a bit by Jon Leibowitz, who's the former chair of the Federal Trade Communication, who wanted to join us and had to be traveling. But he's going to pop into this conversation soon. Chris, you've heard Mark talk a little bit about his intentions of this book and you've heard him give this historical purview, an overview of how regulation looks different today. And you also heard him say Gene Kimmelman who was someone you also know quite well. From your perspective, you know, are we barking up the wrong tree with this? Is this something in terms of competition policy we should be entertaining? What's your reaction to the

findings of the book and where it's trying to steer the course towards something that could be much more substantive and project and productive?

LEWIS: Yeah, well, thanks for having me. Nicole and Mark, congratulations on the book. My reaction is it's a phenomenal piece and I hope folks read it. I was listening to your conversation, the two of you and Mark's phrase about regulation is the handmaiden of innovation. I think it is really important to highlight here, because I think it does a great job. The book does a great job of really highlighting the interconnectedness of many of the concerns that people have about large digital platforms and showing that not only do you need an agency, I completely agree with the expertise to wrestle with it, but one that understands the interconnectedness of those different harms. You know, you lift up competition and privacy and content moderation with great expertise. And I think that's definitely where you start. You also describe how it's important to go beyond the antitrust enforcers in and to look at empowering real public interest protections. And so once you start with competition, privacy and content moderation, I think it's easy to lift up and include in a mandate or charge of creating an agency or other value. Certainly, free expression is woven in to what you describe, Mark, certainly in the content moderation part of the conversation. But I think also it's built into other parts as well. And you could think of down the road other public interests, values being whipped up as you look to other other platforms, other services that have digital technology as a core component, which I think was your definition for what should be what should fall under the jurisdiction of a new regulator, so that when you're looking at narrow parts of the platform sector, things like the new video streaming services, then you can incorporate important values like diversity into it. You can lift up the importance of localism. You know, these are values that are present in conversations about old media. And I could see them cycling in to an agency that has public interest obligations. As you talk about what this new these new types of media in the 21st century are have to have to have protected. So I think it's fantastic. I agree with a lot of it. There's probably some small pieces I would quibble with. The Section 230 conversation was fascinating. It made me think and challenge some of my thinking as a chief '30 advocate and just fantastic work.

TURNER-LEE: Yeah, and it's Chris, it's so interesting that you bring that up because Chris and I've known each other for a long time as well. I think I've noted the scope of that, not the '70s. Mark I've known you for quite some time but not in the '70s, but it's so interesting that you bring up some of these other areas that had trickled into the antitrust conversation in terms of diversity, equity, inclusion, you know how we look at localism, which Mark, interestingly enough, from your model, where this could eventually land up at the Federal Communications Commission, it actually may start to shape up that way, too, you know, because the FCC, because it had that rulemaking authority, I think, gleans a lot of that right during the rulemaking process. So very interesting observation. Hey, Jon, how are you?

LEIBOWITZ: I will unmute so.

TURNER-LEE: Yes, no, I told everybody you were joining it. A Harleen friends. She's having a little trouble with the camera, but we're going to try to get her on this conversation as well even if I have to bring on audio. You've read the book. You've got it there. I know you do, because you flashed it a little earlier.

LEIBOWITZ: It's a it's a terrific book, by the way. And I hope many of you can in the audience can read it. It's really provocative and it's it's really smart. And even if you don't agree with 100% and I'm like at about 85 to 90%, it's it's worth a read from a historical perspective and from a in in in in from a what's the right policy perspective. We're all struggling. So let me pause right there, because I know you actually want to ask me a question.

TURNER-LEE: Well, you know, look, I'm look, any endorsement of the book is great, so I don't want to stop you from talking. Trust me. But, Jon, I do you know, the conversation that Mark and I just had and you heard bits and pieces of it really goes back to the Federal Trade Commission, where you spent your career. Right. In terms of thinking about regulation there. And those three tenets intersect antitrust, privacy and misinformation. I'm curious, you know, from your perspective, does that rule in terms of the book offer a comfort or place for you as a former regulator yourself, or is it something in terms of the FTC's ability to even take this on? Because Mark made a suggestion that the FTC is kind of doing this by accident. So just watching on that a little bit for us.

LEIBOWITZ: Well, I mean, it's it's it's a fair point. I'm not sure it's entirely by accident, although it is it is partially. I'm sure it is partially so. I mean, what the what the FTC has been designed was designed to do going back to 1914, when it was first created, was to stop distortions in the marketplace. Right. One kind of distortion is a distortion caused by monopolization or by or by an anti-competitive merger. Right. Another kind of distortion is caused by, say, false advertising. So consumers can't, you know, can't make intelligent choices. And so from my perspective, I would say and I see Harleen is back, so I don't have to filibuster for her. So so from my perspective, I think that all three of these functions, even if they are partially by accident,

could actually be done by the FTC because Section 230 really it's not Section 230 the sort of disinformation on the Internet now is really another form of deception. And so, you know, with respect to Senator Warren, who wants to create a new agency and did a pretty good job with the last time she wanted to create a new agency. You know, I would I would I would like to disagree with Mark's, you know, two step and just stop here at the at the FTC, where they do have expertise on antitrust and they do have expertise on privacy. And they have dealt with, you know, misinformation issues for, you know, for decades. I will I will pause there and I can talk a little bit later about sort of, you know, whether we should do these things in tandem or whether we should take them on piecemeal or where we think we have the opportunity to get them done.

TURNER-LEE: That's right. Now, listen, Mark, since this is your book, I'm going to give you a little opportunity to respond back before we bring in Harleen. And thank you so much, Harleen, you're in, right? So, yeah, right. Because look, we understand, but Mark, you want to respond to Chris and Jon where we go deeper, because I know as we from the '70s and '80s, it takes we want to make sure we get everything down pat, you know keep the conversation going.

MACCARTHY: Don't make me remember this for more than a couple of minutes.

TURNER-LEE: Right, Right.

MACCARTHY: So I thought Chris' comments were were excellent on you know, we can call it mission creep, right? I mean you start off with with with competition, privacy and content moderation and then why not other values as well as here as you're moving out? And I think diversity and localism are good candidates. That's not how I set it out. I set it out to just have those those three, because that's where it seemed to me the biggest issues issues were. And but by enforcing privacy and enforcing good competition and pushing on transparency for good content, moderation, I think you do contribute towards satisfying the other value of diversity and protecting vulnerable populations, even though you're not doing it directly. But I do think once you've got the regulatory structure in place that says, here's an agency with overall responsibility for. This industry, you can begin to add other responsibilities on top of the three that are the original ones. That's certainly the way the FCC works. The FCC, for example, enforces equal employment for the communications industry as well as a diversity in sources of information and so on. So it's got a broader responsibility than than many agencies. So I think that's in the future. On on the. Why not stop with the FTC? I mean, we we got them there to begin with. You know, why go beyond that? Look, the world is a is a funny place. We may stop there. I do think the the choice of having the FTC do each of those individual tasks was deliberate and that wasn't an accident. The FTC is great on competition. Let's have them do the new regulatory role for a competition. The FTC is great. And consumer protection, that's a natural place for it, for privacy. Deception about the way you're running your content moderation operation is a perfect thing for the Federal Trade Commission to be dealing with. So it wasn't an accident that the agency got chosen to do each of those tasks. What was an accident is that it was the same agency, right? And no one sat down and said, let's make the FTC, the agency that does all this stuff right. So it was a siloed decision that that accidentally resulted in this agency that had holistic responsibilities for all these different policy areas. Is that the right answer ultimately? Well, we talked about the FCC. You know, the FCC wasn't the first entity to regulate telephone rates. The department initially, it was the Interstate Commerce Commission that was given the authority to regulate telephone rates. They got that in 1910 and they sat on it for 20 years and didn't do anything with it. And then ultimately the Congress said, you know, we had this thing called the communications industry, which is really telecommunications and broadcasting. We need to have an agency that can do all of that. And they took the Federal Radio Commission that had existed since 1927 and the telecommunications function that had been in the Interstate Commerce Commission. And they created a brand new agency, you know, years and years after they had assigned the responsibility to existing agencies. So I do think that there's an opportunity for evolution here. I'm happy to start with the Federal Trade Commission, but I do think over time it will become clear that the FTC can't be both a general purpose regulator for antitrust and consumer protection that goes across the entire economy and also a sector specific agency focused on electronic commerce. Search and social media can't do both. So ultimately, I think they'll make the change. But I think Jon and I agree that the first step is probably likely to be the FTC. And if it turns out to be the last step because it's working, I'm okay with that.

TURNER-LEE: Right. Right. Well, I'm going to let Jon come back in around to in a little bit. Right. If you could hold on, let Harleen come in because your boss actually put out something with Lindsey Graham. Right. Which is actually arguing for a single digital regulator. And she's been in this conversation for quite some time. This is not new to her. So I find it to be interesting to sort of revisit that role. Probably talk to us a little bit about like what this perception of her separate entity is. Is it kind of aligned with what markets talk about? Is it different, this new proposition with Senator Graham? Tell me a little bit more.

GAMBHIR: Absolutely. And so glad to finally be here with you all. Sorry about that. Thanks for your patience with me. I'll just say off the bat, since I didn't get to join in the chorus of the book, I really I think Mark's book is really wonderful and definitely the book that we need for this moment in terms of really laying out, you know, not just sort of what the problem is. And there's a lot of great work that's been done in that space. But focusing mainly on the question of what do we actually do and what are the trade offs. And I think the book really does a fabulous job of laying it out in this clear way and also giving these historic examples where we have more than a century of sectoral regulation in the more recent history of tech regulation. And I think I absolutely and I know Senator Warren does as well come out to where Mark did in terms of a final, final point of saying that a creation of a digital regulator is really critical here. You know, we've been talking about how and the book also talks about how platform regulation, you know, isn't just a question of antitrust or consumer protection or privacy or national security or trade. Right. It's all of those things. And and I think part of the problem of sort of why we haven't been able to get movement on this in Congress is that, you know, we have these efforts to rein in one type of abuse or to protect one affected group. But we all know that Congress moves very slowly and the tech lobby is fast. And so individual efforts, you know, have have sort of been in process for a while now. And I think while we're while we're looking down the road and saying, where is it that we actually want to end? How do we actually, you know, get to a point where it's not just one law that does one good thing, but a, you know, meaningful set of regulation over time. You need an agency for that. And so you need that structural, structural solution to a structural problem. And I'll just add one piece on there. I think that's also really important to think about from a design perspective. And Mark's book talks about this at length is sort of these design choices, right? So to say, sure, you can have an agency, but let's think about why it needs to be an independent agency, right? How much of a difference these questions of structure are, how much of it how much of an effect they have, what, you know, regulatory and enforcement authorities do you need that agency to have? What meaningful consequences do you have for wrongdoing? I think, you know, it's you can have all of the great substance in the world in terms of, you know, if we finally come to agreement on these really tricky questions about privacy and content regulation, antitrust. But if at the end of the day, whoever is enforcing those laws doesn't actually have the ability to impose injunctions or financial penalties or bring a judicial action or do whatever they need, have that full sweep, you know, all of that will sort of have been for not so. I really appreciate it, sort of both of those both of those really important aspects that come into the proposal that Mark is putting forward here.

TURNER-LEE: Well, and I like that. And Jon, I'll let you come in and Chris for round two, but I do want to put out to the whole group hardly this whole idea, because when your senator kind of your member put this out, there was like this conversation happening. Right? She was early in this conversation. And I think what we're hearing now is that this agency could potentially be an FCC arm, could potentially be FCC. I mean, put it out there. But you got to talk about this in the book. Is it just something separately and totally different? Right. Is it a different entity that needs to be created and maybe, you know, that will actually move with where the tech is going? Because as many of us, Chris, and I've had this conversation for many years, we have happened to see, you know, older establishments and institutions and regulatory frameworks that we've had to sort of pull into the 21st century over the years. I'm just I'm just curious, sort of reacting to Harleen first and this sort of giving me that that moderator privilege of asking that question. And then I'll open it up for folks to come in.

MACCARTHY: So I think I mean, our only makes makes the the case among other things that that it really it really matters how you structure this agency and what kind of powers you give it. And I try to spend a little bit of time on those nitty gritty details people who are better than I am at administrative law. I encourage you to check my work and look at it. I mean, it was more care. But I do think the devil and God are both in the details. And you want you want to get those details right. I do think an important element is to keep the agency independent because it it it you don't want this to become an instrument of political power. And so the independence of the agency, I think, is a key thing. Any time it's given responsibilities, they come near content as it would. If it's enforcing transparency requirements, you've got to make sure that there's as much insulation as you can possibly get there. So I do think that the the agency has to be structured properly. Look, if we could get Congress to agree right now to not stop with as and not start with the intermediate step of the Federal Trade Commission and to set up a brand new agency from scratch, if you could get the votes for that, I'd be for it. My instinct, though, is that it's just really hard to get the Congress to do two things at the same time. Number one, invent a whole new set of regulatory requirements and create a structure to enforce them. I think they can do one or the other, but it's hard to get them to do to do both. And so as a as a practical matter, I would opt for the FTC route. But if if Senator Warren and Senator Graham can find a pass through and create the agency from scratch, I would be hardly in favor of that. I think it would be a it would stand a better chance of getting the job done than having it lodged at the Federal Trade Commission. It would have to have a big startup period of time and have to you know, the Consumer Financial Protection Bureau took years before it got up to speed. And so there might be a delay in doing it. But I do think it's the right answer. And if we can get there without the intermediate step, I'd be for it. So for me, it's a question of political realism and feasibility, not a not a fundamental question.

TURNER-LEE: Yeah. Listen, Jon, you're up.

LEIBOWITZ: Well, let me just make a couple of points. I mean, if if we could wave a magic wand and tomorrow have the Senator Warren Agency, I would be all for it. I mean, I would. Because I think the most I think regulatory design is an enforcement agency. Design is is incredibly important. And I have to go back and look at the legislation. But it's not just design, but it's also substantive authority, as I recall. I'd make a couple of just a couple of other points, although I'd also say that that and I know, Mark, you disagree with this. I do think there is more agency capture among industry oversight agencies than there is in a generalist agency, though of course, if you made the FTC generalists plus specific, maybe you would have that kind of agency capture as well, just as something Harleen said about and use. And Nicole, you said as well talked about as well, which is the independence of an independent agency. One thing I found even when I was a minority commissioner during the Bush administration was we really were divorced from political pressure. And I worry I just think the Supreme Court is gunning for it. Six members of the Supreme Court are gunning to overturn the independent agency doctrine and overturn "Humphrey's Executor", which is a 1937 case. I think that that that that that really created the certainty of of independence in those independent agencies. I guess I'd make one other point, too, and I don't know that anyone disagrees with it. A lot of folks might. I mean, we need we need antitrust reform because major tech companies dominate their environments. You made this point actually quite well in your book, in ways rarely seen before in other industries, at least for the past hundred years. And there's too much concentration and there is too much anti-competitive behavior. We need privacy reform and a privacy legislation. I think it should be ex-ante, in part because, you know, there is no privacy law in the United States and too many Americans are having their data hoovered up without real consent, without true consumer consent. That that is appalling. People's information is that is their own. And and equally problematic in many ways is the it is the inadequate content moderation, you know, which is a real problem generally, but also for the health of democracy, I would say as well as for, you know, the the the health of teens and all of this, the absence of these three, these three restraints, and they would be thoughtfully implemented. But the three restraints on big tech, I would say more than just big tech with particularly big tech companies, it leads to, you know, too much irresponsibility because there are no regulatory constraints for them or inadequate regulatory constraints. And and, for example, in in in in antitrust, I mean, antitrust, you can bring antitrust cases, but they're after the fact. And then, you know, there are there are 236 Trump judges. They have made the judiciary much more conservative than they already were on antitrust cases. I think we won one case in the last 20 years on the government side in antitrust. That was the pay-for-delay case involving pharmaceuticals. And so I think we need all of those things. But but I would also say that that you have to also and I think people agree with this, but again, you can disagree that that if you can get one of those things, you know, that would be a vast improvement in in in zero. And so, you know and Nicole, I know you were testifying today before the Energy and Commerce Committee on, you know, privacy and AI. And there are a lot of members there who believe, I hope they're right, that they could pass a privacy law this Congress. You know, I would take that in a heartbeat if we could if we could do this piecemeal. And so I guess that's the other. And there's about a 90% agreement on both sides of the aisle on what should go in a privacy law. So there is even though the 10% is often the most difficult, there's a real possibility we could do that. So I wouldn't want to focus on the entire competition. Privacy, content, moderation, enchilada. If we could get to mixed metaphors, if we could take it, if we could take, you know, a third of a sandwich or something.

TURNER-LEE: Mm hmm. I mean, that makes sense. Chris or Harleen, you want to respond to that and then.

LEWIS: Yeah.

TURNER-LEE: Yeah I know.

LEWIS: I, I'm going to stay away from the enchilada sandwich metaphors. That was that was magical at the end.

LEIBOWITZ: don't know about that.

LEWIS: There's a lot there, guys. I have to say, while I would never I would never say no to Congress acting and moving a comprehensive privacy bill tomorrow, of course. I think what's important about this book and what Mark proposes is that we can't last much longer with the situation that we have, where privacy, content, moderation and competition and other values are left hanging. And so we may get one, but we will not have the healthy information systems that help the Internet and platforms that we want unless we get all of them. And so we have to push we have to push for a regulator that can do those things. I wholly agree that it would be better if it was an independent agency. I'm not afraid of agency capture because I'm

more afraid of the idea that we don't have a cop on the beat, a cop on the beat that can be proactive rather than the wonderful work done by antitrust enforcers after the fact that it takes years. And Mark does a great job of breaking down how that happened in the Microsoft case and how we got enforcement. And by the time we got enforcement, Microsoft was not the big dog anymore than it was Google. So we have to be proactive. We need an agency that has rulemaking authority and that has the authority and the expertise to deal with the digital economy, economy on these different layers and on these variety of issues and see the interaction between them. And where I would have added to Mark's book is I would have talked about the importance of competition policy in promoting content moderation that, you know, with the infinite channels on the Internet, that if we had if it was easier to move, if the network effects were weaker and it was easier to move from Facebook to something else and to have interoperability between social media companies, we could find a way to make that technologically work. Then then you would have choices on places to go where you might like their content moderation better, or where, you know, I don't want to go where there is no content moderation, but you would have that force and hopefully still be able to interact with your friends and loved ones that that that's the white whale of interoperability that we'd love to see. But that's technologically hard to get to. And an expert agency could bring the stakeholders together to study what that could look like, and so that over time we could figure out technologically if it's possible. And it would have tremendous impact on content moderation in a world where we are working under the the I don't want to say extreme, but the the the strongest values of the First Amendment stronger than you see in any other country when it comes to keeping the government out of our free expression. I would love to test that theory out before we get to challenging like some folks want to do the underpinnings of the First Amendment. And, you know, we should try these things first before we report the First Amendment and our strong protections of keeping government out of out of our lives in those ways. And I think Mark points to how we can get there with the combination of competition policy and transparency and even other best practices around moderating content. It doesn't get into choices of specific content, moderation choices, but gets at ways that companies can be better about the content moderation.

TURNER-LEE: Now, and you've given us a lot there, and I want to come back and see hopefully we'll unpack that let me just do a quick commercial here in about 10 minutes, folks. We're going to be going to Q&A and a few questions have been coming in. The book is right there. Regulating digital industries is available for purchase. But please events@brookings.edu or go to X and digital regulation is the hashtag because this is really some interesting stuff. Harleen I'm bringing you back into this conversation as we sort of started this thought process and the thinking that prompted it. When you think about this, digital regulators is something else that Mark could have peeped into the book a little bit more to other things that you might want to see that flush out those ideas?

GAMBHIR: Well, look, I think this this gets back to some of the enchilada sandwich questions about.

TURNER-LEE: I am so hungry. And you were talking about. I was testifying all day and I am starving, so enough already with the.

GAMBHIR: Oh, sorry.

TURNER-LEE: No, just kidding it's okay. Okay.

GAMBHIR: Well, I'll, I'll just say, I mean, like on, on the on the exchange between Jon and Chris, it just, you know, I think I come out where Chris does and saying the individual pieces privacy and I trust each of those having some movement on them would be better than the status quo certainly. But I think a digital regulator here is the right answer. And, you know, it's important to articulate a solution that's sort of as big as the problem. Obviously, you know, one aspect of this that I think is worth highlighting is just the rate of change that we've seen. Right. Is that even, you know, over the past few years where we've seen increased activity on the whole focused on platform regulation, these questions around AI and what sort of whether that needs to change the approach or whether there are particular sorts of questions that come up there really highlights the ways in which the text that, you know, maybe folks were ready to enact in a hard coded statute for courts to interpret, you know, would have maybe missed a lot of the the problems and opportunities that would come up in that space. And so I think, again, this is where I come back to the importance of having not just a regulator, but a regulator who has the expertise and the focus to be able to respond to the changes here. Because, you know, if if you if you are if you're really looking to actually be able to say we want the solution over time and to say, okay, there are going to be questions that come up around national security or questions that come up around IP. And, you know, we need a we need someone to actually be looking at it from the point of view of how platforms intersect with this. I think it really does make the case for having a sectoral specific regulator.

TURNER-LEE: So, Mark, you've heard a little bit of this conversation just to sort of unpack a few things that we're hearing. You know, it seems to me that this conversation is sort of going into this where we always get stuck in tech. You know, the time that it takes to sort of think through these issues, the time that gets expended around these issues. You know, what started as a dot now turns into something else, you know, in terms of not a lot of jobs, but like towards the north. But most importantly, I think what we're hearing, too, is we haven't resolved so many of these issues. Right. So we're sort of giving you know, when I was reading book, I was thinking like, are we giving the regulator something that we still can't settle ourselves, which is what I think I heard a little bit come out of the conversation here as well. And does that sort of set this regulator up for failure or to be stuck in the past of how we've actually looked at these industries and new industries? Chris, I think is your point to come, you know, and challenges constitutional challenges, but respond to what you're hearing? Because I think for people who are listening, this is such a useful conversation because we just don't do this in Washington D.C. And again, I think, you know, your book is sort of tipping these conversations in a space where we might actually have some productive substance behind what we actually pontificate.

MACCARTHY: Well that's part of the that's part of the hope. But look, I want to go back to the the agency capture idea, because I do think it's a serious one. And practically every time I mentioned the idea of a digital regulator, someone says that a regulatory capture and I think to some degree it's it's it's been overstated. It's been a mantra for years and years and years that says regulatory capture is a problem. But we don't really we don't really mean it. I mean, if regulatory capture were a real thing, we'd dismantle the Food and Drug Administration and say, you know, what do we need them for? They're just captured by the pharmaceutical industry. Let's get rid of them. They're they're acting against the public interest and acting for the industry. We don't do that. And and, you know, just a few years ago, we set up a new agency, the Consumer Financial Protection Bureau, which was focused on protecting the public in their financial area. And we didn't say, oh, they're going to be captured by the the the and the industry. In fact, part of the reason for separating that off from the industry regulator was to make sure it wasn't captured. So I think I think it's a it's a it's an issue. We have to deal with it. I don't take it as a as a an argument that says we shouldn't do it. But it does seem to me we've got to take some precautions. And and so I suggest in the book, for example, that if you're going to be working for this digital agency, then there has to be post service employment restrictions. You can't go back to the agency and work on the same issues that you were working on when you were there, or maybe even make it more draconian and any issue whatsoever that relates to the agency maybe make it a pretty severe restriction, maybe give the the the commissioners who are in charge of the agency a longer term there, maybe maybe ten years so that they don't go in and out and then, you know, think of themselves as gaining experience and they can then turn to their own personal advantage afterwards, make it into a career. So I do think there are things that we can think about that would mitigate the problems associated with it with agency capture. But I think Jon actually made the fundamental case for why it it's not a crucial difference, because if you encapsulate a sectoral regulator inside of the Federal Trade Commission that can be captured just as easily as a separate agency. So I do think I do think we have to be careful about that one. I agree with him, by the way, that independent agencies may be on the way out, and there's not much that we can do that as policymakers thinking about what kind of legislation there should be. That really is a decision that will be made for us by the courts. And if it happens, I think it's a huge disaster. But as Jon mentioned, I think there are enough members of the Supreme Court. So if they find the right case, they probably will do independent agencies in and then we would have to rethink some of the structure that I've put in place to try to find other ways to to protect the public from politicization of an agency.

TURNER-LEE: Others want to chime in or respond back to the offer? Jon, do you want to respond back to the author?

LEIBOWITZ: Oh, no. I mean, look, I think that's right. You can well, on independent agencies, we'll just wait and see. I just have my this is a I used to have a picture of William Humphrey in my office as executor. And and and, you know, I just think he's going and his case is going the way of the dodo. I hope I'm wrong on on agency, on on avoiding agency capture. I still think those things like a longer term of seven years. That's the FTC or ten years that's the that's the Fed, I think is helpful. And and of course, the if they take the the if the Supreme Court takes the approach with the FTC and the SEC that it has done with the CFP, it will be firing without cause. And I think that's a bad thing. But I don't think it is a it is necessarily the worse things the worst thing there would still be an agency with people of different parties. Right. So that you have a built in that you have so that you have a built in a minority to dissent. And I think that's really important. It's really also important. It's a clunky way to if you're with an independent agency, it's a clunky way to make decisions. But in many ways, if the if the agency is working properly, it's a better way to make decisions because you'll end up with a supermajority or unanimity. And that goes further towards ensuring that your decisions are lasting. And then I just want to make one other point, and I don't know where this is Harleen in your boss's bill, but I think it's really important to vest residual authority in agencies that you are taking some authority away from. We had a big fight with the Treasury Department and with Chris Dodd

because they wanted to have exclusive jurisdiction over non-bank financial institutions. And we were like, No, you can't do that. You can create this new agency, which, by the way, I was advocating privately and of course, like nobody listened to me at high levels of the White House to make it part of the FTC. But but just a small you can't hear whether people are laughing at your jokes. But that was actually true. And and I always thought it was pretty funny. But but but, you know, our argument was that we thought, well, maybe the CFPB will be committed to consumer protection, but maybe they'll be an administration. Let's just say hypothetically, that wouldn't be. And so you want to make sure that you have an agency where there is that built in minority to to put and where people have a long practice of doing certain things and going after, you know, unfair, deceptive practices for non-bank financial institutions. So we won that small battle. And and I think it was better for that reason. I get the notion of of exclusivity. And sometimes you have to sometimes you have to make you have to allow that for purposes of getting more important legislation done. But I do think it's if you have a fallback, that's a really good thing, because sometimes agencies, particularly agencies where people start with great commitment, often the the response is like a kind of thermidorian reaction, you know, when the other side gets in and they want to do as little as possible or they're not committed to that mission. So with that, I'll quit bloviating and turn it back to you guys.

TURNER-LEE: Harleen, you want to jump in?

GAMBHIR: Yeah. I mean, Jon, read my mind on the jurisdiction piece. I mean, I think, you know, in all of these conversations that we've been having about agency structure in the FTC, I think it's worth saying that the FTC has been, of course, doing excellent work in the space and responding to a whole host of challenges in the digital space alongside of, you know, long list of other priorities. But yes, so Senator Warren's bill does give concurrent enforcement jurisdiction to the FTC and to DOJ's antitrust division and to state attorneys general. And I think, you know, that that structure is helpful because each agency is going to have different perspectives and different tools and different sort of organizational culture. And I absolutely agree. You know, one of the solutions to the capture problem, in addition to the really important pieces of revolving door restrictions and and term limits on term lengths, is also having this piece of saying, okay. If we're going to have personnel policy, if it turns out that leadership in one of these agencies is not really aligned with what is required to respond to the challenges in the space, let's have these overlapping areas of jurisdiction. Obviously, that requires more coordination, that requires raises all of these questions about, you know, folks needing to talk to each other. But I think, you know, from my perspective, one, it's important to have a dedicated agency with the expertise. But two, that doesn't mean that folks who also have equities in the space and have been doing good work in the space shouldn't have the authority to continue to do it.

TURNER-LEE: If yeah, Chris and then Mark or Mark you want to respond that Chris?

MACCARTHY: Just just on that and I wound up going in the other direction, I mean, it it seems to me that it's really important to have a single final decision maker in this area. And if you have concomitant jurisdiction, you can have conflicts and there's a way of resolving that. You just talk and talk and talk and talk until you reach to reach consensus. But it's related to a larger concern that I've got, which is I do think you need to think of this as a as a coherent policy whole. And the UK, for example, has three different agencies focused on these three different problems that they've got Ofcom to do the social media stuff, they've got the ICO to do the privacy stuff, and they've got their CMA to do their, their competition stuff. And then they have to invent the regulatory digital forum where they all get together and talk about what's going on. And so you don't have a kind of whole of government approach. You've got, you know, I'm going to do my thing, I'll tell you what I'm doing, but that's my thing. And so privacy decisions get made by the privacy regulator. Competition decisions get made by the competition regulator and the content moderation decisions get made by by Ofcom, and they don't always have to be working in tandem. And so that strikes me as being a potentially very serious problem because in many circumstances these different policy areas are in tension. They don't all work together. You know, you'd like to think that data portability supports both privacy and competition, and it does. But, you know, if if I transport my data to some other place because I want to go there, I'm transporting your data as well, because you're implicated in the kind of data that I've got. And so suddenly my decision to take information is affecting your privacy. That kind of thing indicates that there are tensions in this area, that interoperability is a great thing for a competition, but it also makes it more complicated to engage in content moderation, you know, online safety. It would be great if you could break through encryption to get to the bad stuff, but it's terrible for for privacy. So there are all these tensions that have to be sorted out. And if you have agencies working at cross-purposes, you might not be able to sort them out quite as easily. So I do think there's a real role for a final decision maker in this area, a single administrative agency that can take a kind of whole of government approach on these questions.

TURNER-LEE: Chris did you want to jump in real quick.

LEWIS: Mark got to it before I could largely I agree with his analysis there. I mean, we. We're seeing it right now in the Federal Communications Commission spectrum policy, where they have authority over parts of a policy. But the administration and other agencies have and they literally had to come up with an MOU on how they would work together because of how challenging the overlapping jurisdictions have been. Even though people understand why it was so set up, I think we've had greater success with parallel jurisdictions with our antitrust enforcers and it's like, the FCC working side by side where FCC proactively promotes competition and other consumer protections in the public interest, but then you have the ability for the deep study in the law cases brought in antitrust, in the media and telecom market marketplace. And I think that's been productive. And so I imagine something similar to that with this organization not taking away from the great work that is done where antitrust enforcers are. And right now they're challenging and testing the limits of all natural law in a way that that we welcome those questions. But it doesn't get at privacy, it doesn't get at content moderation, and it can't. You need an agency that has the expertise to look at the interconnection and the interplay between those different issues and boundaries. I completely agree with that. But lastly, I didn't get in on independent agencies. I worry about the Supreme Court as well. I hate to hate to sound like the activist here, but I also.

TURNER-LEE: What, you?

LEWIS: I know, me, never. At a certain point, the public has to say, and I think they're getting to that point that they want their government that represents them to protect them with adequate resources and adequate expertise. And if the courts undermine that, then we'll have a serious challenge, because I think legislators are coming up with these one off bills, like like Harleen was saying, that get at one issue or one higher than another issue, another one because they're fearing the public about them. And in the end, it would be great whether it's Senator Warren's bill or I have to give a shoutout to Senator Welch and Senator Bennett's excellent proposal on creating a digital regulator, something that that has the power and the expertise and the resources to get it multiple harms and to keep up with the pace of innovation because nothing is more frustrating to the public. I mean, you see comedians talking about it, about watching a congressional hearing with legislators. We're trying to keep up with the pace of innovation. And God bless them, they can't because they work on everything else in society. And so they don't have the up to date knowledge of how algorithms work or how social media is innovating or where the metaverse has gone. And, you know, they're working hard right now on AI, know, they're having these insight forums. They're you know, the White House is asking for agencies to research and study. But wouldn't it be great if an agency with expertise over digital platforms and digital economy could be conducting that research and thinking about the interplay of competition, content, moderation, privacy when it comes to AI. I think that would be fantastic.

TURNER-LEE: So, Chris, I just want to let you know, because I'm sitting in a committee room in their lounge area, because I just finished testifying that the committee that I spoke to, the Subcommittee on Communication Technology did fine today, you guys did fine if you're watching your level of awareness was very, very astute today. And I appreciate that.

LEWIS: They're never going to call you back.

TURNER-LEE: Right.

LEWIS: So far.

TURNER-LEE: I just wanted to make sure I put that out there because they were very kind to allow me to use this room because our hearing ran over. You know, Mark, I want to go to Q&A, you guys, and I want to stay with this question. It sort of relates to what Chris actually talked about, which is the weaving in of engagement and listening sessions of local communities and stakeholders. Right. Part of what we always assume, I guess, was Chris's point is that in this tech space, digital industry space, it used to be like with AT&T, something that was maybe more grass top and now is a lot more grassroots, right when it comes to people registering their concerns, which is why we see this rush of Congress to try to want to do something even if it's disparate and not necessary around the court. Three tenets that you spoke about, you know, your book, you know, you clearly define what this format and structure should look like, how a local community input, like where does that fall into and local community on the modern day you know what I mean not local community from how we define it in the past.

MACCARTHY: Yeah I think the the input from from from sort of ordinary people is kind of hard in a regulatory context because the level of expertise that's required to actually make a productive contribution is pretty high. I do think there are organizations that are groups that can be representative of the consumer, of minority groups of different public sectors. And I think those groups have to have a special role within the

regulatory process. And it used to be that that that people said, you know, what we want is multi-stakeholder stuff. You know, we'll all sit around a table and we'll think of ideas and then we'll all hold hands and it'll sort of get done automatically. I think that those days are over. But I do think that we need to have the same sort of input into the regulatory process where public interest groups, civil society groups, academics, experts in the technical field have a special role before the agency giving them a special place for for making a contribution to the final decision. How that works. I don't have any strong suggestions for for the best way to do it. Technical committees is clearly one way to do it. The Federal Trade Commission was required to do that under a couple of the the pro-competition bills that were passed in the House. But I think I think something needs to be done to drag them more fully into the into the process. And that's how I would handle input from the community.

TURNER-LEE: What I would say on that person's question, too, one thing to consider as sort of the next book that you write perhaps, is this conversation around many of us on this call sit on a variety of advisories in some way, form or capacity to be the channel for input. But I think what we're seeing in this new technological ecosystem is that there's not the infrastructure that's set in place. So perhaps this idea of the digital regulator taking on a new data infrastructure that allows for the flow of information to be much more structured, you know, giving it some space like you're doing with the regulator. What does that look like? And from my work, you know, we see that globally, particularly among countries who are trying to share and collaborate and sort of capture best practices. One of the things they say is what does our data infrastructure look like to be able to to flow those concerns. So it's something to think about. Jonathan had a question I'll go to Mark first the author and then open it up. From Jonathan: Does Congress need to regulate AI as an area that needs to be included in a new independent regulator with oversight over digital industries? President Biden's Executive Order on AI, while impressive, could be rescinded by later administration. More generally, how will AI affect the competition, privacy, and free speech areas you address in the book?

MACCARTHY: Yeah, I think I spend a little bit of time in the book on AI and I'm not a big fan of an agency focused on regulating artificial intelligence as such. I think it's I think it's a red herring. It's sort of going down the wrong direction. I think the way the administration has been handling it is all to the good. And I like their their proposal for the came out within the last couple of weeks. I wish it had been more regulatory and in context, but it was good in what it proposed. But I do think that the costs and the benefits of AI appear almost entirely at the application level. And so what that means is that agencies like the Consumer Financial Protection Bureau have to step up to do regulation of AI within their area of jurisdiction. If an AI system is used for credit granting and is biased. Well, I think the CFPB should be in your future. If AI is used for consumer fraud, the Federal Trade Commission should knock on your door and say, What are you doing? If you're using AI in a way that is a violation of the anti-discrimination laws in employment, then the EEOC should be, you know, paying you a visit and saying you got to stop it. I think that's really where protection against the abuses of artificial intelligence can be most effectively provided. And so for the digital regulator, what that means is that if AI is being used in a way that creates a competition problem within the digital industries, they should go after it. If there's collusion going on using AI to set prices. You know, let's have a take. Let's take a look at that. If AI is being used to provide abusive material to children, then that should be something that our content regulators should be should be looking at. And if AI is being used to invade people's privacy in the digital area. Then the agency should should look at that. So there should be a lot of regulation of artificial intelligence as it's used in particular lines of business. And I think the digital regulator should be in charge of that. But I don't want the digital regulator to be in charge of saying I think this foundation model is safe for all users. I hereby give it a stamp of approval. I'm not even sure that kind of role makes sense. But if it does, I don't want it to be the digital regulator. It can be some other agency maybe, you know, derived from NIST or some place that could play that role. But I think the digital regulator should stay with the lines of business that it should focus on, which is search, social media and electronic commerce.

TURNER-LEE: Mm hmm. Anybody else want to just come in their last 2 minutes for the other people who gave questions? I think we actually answered your question. Cindy, who's over there at the University of Maryland when it comes to regulatory capture, revolving door, she sort of compared the potential of this to become a cartel, much like the transportation industry. But I think you guys sort of sifted through that and unpacked that. And then I think we talk about this collaboration of regulators, and we got a clearer stance of where Mark is based on some of the conversation that we had. Mark, this is one great question. And anybody who's written a book, it is the toughest thing to keep it evergreen in this particular space where you're writing six months before and it publishes six months after. Any regrets in writing this book, or do you see that as actually something that's just going to futureproof into the next technology?

MACCARTHY: Well, nothing, nothing is future proof these days. It's a famous phrase, but it doesn't really work. I'm glad I had a chance to write it. I had I'd been involved in the AT&T breakup and in the '80s I'd been involved in the 1996 Telecom Act of lobbying on behalf of Comcast for for competition. I've been

involved in the Microsoft case on the the anti Microsoft side of the case. And then I've been involved in a lot of the tech regulatory stuff over the last ten years. And then when I got the Brookings, I was writing these these commentaries for you guys in a range of issues. And it occurred to me that I had put together in my own head a pretty coherent set of thoughts about how all this stuff really related to each other. So I was delighted to have the chance to write the book, to put it all together in one place. And so, no, I don't have regrets about the book. Obviously, some of the details and, you know, the the Google versus Gonzalez is not going to be up to date because, you know, here it is. The Supreme Court made this decision after I wrote the book. But but most of the stuff and the perspective in there will endure. So it's it'll be a useful text for years to come.

TURNER-LEE: Perfect. Well, listen, on that note, Mark, put your book up. It is an actual book, Brookings Press. You can get it at the Brookings bookstore. You can order it online or you can find it wherever books are sold. We are very, very proud of you and wish you a super congratulations for the publication of this book. Even though that Google Gonzalez case needed an update. No kidding. Just the nature of how it was, but it actually created a great dinner table conversation for all of us in terms of this conversation we're having here today. Thank you, Chris. Thank you, Jon. Thank you, Harleen. Thank you, Mark. And thank you, all of you, for actually participating. I'm Dr. Nicole Turner-Lee at the Center for Technology Innovation and go on out to get the book. Brookings Press is the publisher. Thank you, everybody.

LEIBOWITZ: Thank you. And thank you, Mark.

MACCARTHY: Thank you very much, all of you.