



Office of Commissioner
Rohit Chopra

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**Prepared Remarks of
Federal Trade Commissioner
Rohit Chopra¹**

**Silicon Flatirons Conference
February 10, 2019**

**University of Colorado Law School
Boulder, CO**

Thank you to Attorney General Weiser and to all of you for having me.

It wasn't long ago that the stories we would read and hear about technology were mostly about how it was changing our lives for the better. New products and services were making us more connected and helped us to save time and money. And the leaders of these companies were self-described disruptors looking to put their users first.

But now we read and hear different stories, especially when it comes to dominant technology platforms. The start-ups of years ago are now large and powerful corporations. Seven of the top ten largest corporations by market capitalization are either an American or Chinese technology firm. They are no longer small and scrappy, but use their considerable clout to seek government benefits and impose self-serving contractual terms over users and suppliers.

Many of these firms are now able to map our minds by harvesting massive amounts of data. Journalist Julia Angwin wrote how one of these firms could "build a complete portrait of a user by name, based on everything they write in e-mail, every website they visit and the searches they conduct."

More and more Americans are waking up to the notion that we are losing control. We want answers and accountability.

Enforcers, like state attorneys general and federal agencies, are rightfully focusing more attention on whether these firms are living up to existing laws on the book. Legislatures, including the United States Congress, are looking to investigate and act.

Today, I want to outline three threats and challenges posed by today's tech sector. First, to fair economic competition. Second, to our civil rights. And third, to our democracy.

¹ The views expressed below are my own and do not necessarily reflect those of the Commission or of any other Commissioner.

First, we need to investigate how technology platforms may be threatening economic competition.

Turbocharging competition and innovation was a key promise of an increasingly digital world and an open internet. If you wanted to make or sell something, you wouldn't have to go through gatekeepers. And twenty years ago, we started to see online offerings truly take off.

But, many of the earliest popular online offerings saw their fortunes dry up when a better competitor emerged. That's how it works in a market without gatekeepers and barriers. Investors and entrepreneurs saw this, and many of them knew that to hit a truly big payday, they'd need to create an essential utility that couldn't be easily unplugged.

They would need to expand their reach horizontally, vertically, and diagonally, first by dominating functions, then leveraging those functions into market platforms, and then embedding those platforms across the internet and in software and devices.

This strategy couldn't be executed solely through their own innovation. In many cases, it would also rest on an acquisition strategy. Firms seeking dominance saw the value of a company, not in its standalone revenue, but in the ways that it would increase the company's scale, scope, and bargaining leverage with new data sources to harvest and entry into new markets.

Every time an acquisition with an eye-popping price was announced, analysts would often ridicule the buyer for overpaying. But, many on Sand Hill Road and in Silicon Valley clearly understood the play.

For example, more than a decade ago, Google bought a small two-year-old company with little revenue called YouTube for \$1.65 billion, more than a billion dollars higher than the buyer's own valuation, according to some reporting. In 2012, Facebook bought Instagram for \$1 billion when it had \$0 in sales. In 2014, Facebook bought WhatsApp for \$19 billion, which had around \$20 million of sales the previous year.

But, what would the world look like if these acquisitions never happened? What if Google never bought YouTube? And what if Amazon never bought Zappos? Or perhaps put another way, what if MySpace or Friendster was able to buy up Facebook? No one knows.

If we still believe in the promise of the digital economy, we need to ask ourselves whether certain business practices and merger activity are really promoting innovation or simply allowing corporate royalty to hold on to their reign.

Second, we need to investigate how technology platforms may be a threat to our civil rights and the goals of fairness we seek in our society.

Large technology companies are carefully connecting dots about each of our lives, creating detailed dossiers about all of us. How these dossiers are used or misused is opaque and can be damaging.

Massive data collection is feeding algorithms that are making more decisions about our society, like which college a student is admitted to or whether an inmate gets parole. Mathematical models now help determine not only whether we can get a job, a loan, or an apartment, but even whether we'll see a listing for one in the first place. Our civil rights and anti-discrimination laws seek to keep certain elements out of the equation. We've put these laws into place with the goal of making our society more just and fair.

While machines crunching numbers might seem capable of taking human bias out of the equation, they can't. More and more of us are asking whether we are doing enough to understand the bias that is coded into the machines. And if not, are we making discrimination even harder to detect? Findings from academic studies and news reporting raise serious questions about algorithmic bias. One report found that men were shown more high-wage job listings much more often than women, and that if you search for black fraternities, you're more likely to be shown ads for arrest records. According to a Reuters report, one company's recruiting algorithms seem to reinforce preferences toward hiring men, downgrading graduates of women's colleges, and even resumes that listed the word "women's" (as in "women's chess club captain"). Scholars like Danielle Citron, Frank Pasquale, and many others are shining a light on these prediction engines and raising important questions. How can we know the reason for a decision? Who is responsible for those decisions?

The reality is that we should never assume that algorithms will be free of bias. Instead, we need to own that reality and act. We understand that people have biases and we structure our laws and rights accordingly. We need to do the same here.

If we still want to move toward a society where each of us has equal opportunities, we need to investigate whether these black box models, protected as trade secrets, are undermining that goal.

Finally, we need to understand how the tech sector is changing our democracy.

There has been considerable attention to how social media and behavioral advertising can be weaponized to sway elections and impact politics. Bots, fake accounts, and disinformation are now in our lexicon. This is important, but it is not the only intersection between technology and democracy.

Speech and debate are the lifeblood of a democratic society. We need a competitive marketplace of diverse ideas and perspectives. Competition for ideas allows the best ones to emerge in ways that make our democracy flourish. A competitive marketplace of ideas requires news and journalism and books and authors. This competition helps keep those in power accountable.

Another promise of the digital marketplace was giving those with ideas a new vehicle to reach others. Bloggers and podcasters don't require a permission slip from someone in New York or Washington. That's a good thing.

With tech platforms serving as the gateway for Americans to consume news and ideas, their dominance has raised fears about journalism and publishing. These firms don't really employ

journalists or create news content, but they've had a dramatic impact. According to one calculation, there are half as many journalists working in newsrooms today, compared to 2008.

For better or worse, news and journalism have long rested on a robust advertising market. In recent years, advertising technology and behavioral targeting have reshaped advertising markets. The battle for advertising dollars is not waged on the basis of the quality or popularity of news content. It's increasingly driven by a contest on who has more data. Since the data hoarder – not the content creator – is capturing a big slice of the pie, there's less to go around to those with ideas. For local news outlets that lack the bargaining leverage, their struggles mean less transparency and accountability for town halls, police departments, and school districts all over America.

It's not just news and journalism, it's books, too. A few weeks ago, the Author's Guild reported that median writing-related earnings by American authors plummeted by 42 percent over the last decade. Even with the rise of e-books and self-publishing, which would theoretically allow authors to cut out intermediaries and earn more, authors are reporting that the new marketplace leaves them no choice but to accept low royalties and restrictive terms. Many authors report that they're not getting their fair share.

We will never know what damage has already been done. What books will never be written? What ideas will never see the light of day? Moving forward, we need to ask ourselves what these developments mean for our democratic values. We need to make sure that technology is propelling our democracy, not holding it back.

No single individual or entity has a monopoly when it comes to investigating and safeguarding us from these challenges and threats. All across the globe, policymakers and enforcers are investigating and acting. In India, new regulations create a structural separation between ownership of e-commerce marketplaces and ownership of goods sold on those marketplaces. In Germany, competition enforcers halted "exploitative" terms and conditions allowing the dominant social media platform to collect and combine personal data.

Here at home, it's clear that Congress, state attorneys general, federal law enforcement, media, academia, and sick-and-tired citizens all want answers.

The Federal Trade Commission held a set of hearings that included discussions on platforms, artificial intelligence, nascent competitors, and vertical mergers. In addition to discussion, we could also play a key role by gathering the facts across the industry.

The FTC has a long history when it comes to conducting industry-wide studies. In addition to our enforcement authority, the law allows the Commission to issue orders that require companies to hand over data and reports about their business practices. In recent history, we've used this to publish detailed studies on patent assertion entities and data brokers.

An industry-wide inquiry could uncover economic incentives related to online marketplaces and search, how massive amounts of data are used to create predictions, whether algorithms are

leading to coordinated pricing effects, how adtech is reshaping the market for content, and how incumbent firms evaluate the acquisition of nascent startups.

It's becoming increasingly clear that we need to reduce conflicts of interest and exclusionary conduct, increase transparency and auditability of algorithms, and advance structural reforms. FTC fact gathering can help us lay the groundwork for more effective enforcement, legislation, and regulations to protect our economy, society, and democracy.

Let me conclude by reminding all of us that over the last century, competition enforcement actions, like the Bell Labs consent decree, created the conditions for scores of startups to innovate and flourish. While we often focus on the costs of action and regulation, we should also be asking ourselves about the cost of inaction and whether we are missing out on the innovation and progress that come with a competitive marketplace.

Thank you.