

Recommendations to the Biden Administration and 117th Congress

to Advance Civil Rights & Civil Liberties in the Digital Age

Center for Democracy & Technology

The Biden Administration's commitment to "Build Back Better" presents an important opportunity for technology policy. As our nation emerges from the hardships of the COVID-19 pandemic, grapples with unprecedented attacks on election integrity and divisiveness in social discourse, and continues to confront the deep wounds of racial injustice, questions of connectivity, online speech, surveillance, privacy, and security will matter as never before. Building on our 25 year history, CDT is committed to advancing civil rights and protecting civil liberties by shaping technology policy and architecture. As 2021 begins, we share the following policy priorities for the new Congress and new Administration.

Preserving Free Expression and the Democratic Process While Addressing Online Content Issues

Content Moderation. Policy leaders should examine issues such as disinformation, hate speech and discrimination online while preserving the [essential legal protections](#) that support free expression. Legislating on the basis of slogans regarding online content will do more harm than good, [especially for historically marginalized groups](#), and it is crucial to start breaking down policy interventions into discrete, definable priorities. There are no easy legislative fixes to issues like disinformation and online hate, but leaders should focus on promoting [transparency and due process](#) in content moderation, enabling [independent research](#) to promote accountability of online services, and using their oversight authority to examine the measures platforms can take to respond to harmful content on their services. As part of this effort, Congress should consider how passage of federal privacy legislation could help address issues such as targeted disinformation.

Elections. Federal leadership should work to preserve the democratic process and [combat election disinformation](#), [fight voter suppression](#) online and offline, [secure voting infrastructure](#), and promote access to the ballot. The Administration and Congress can accomplish these goals through the passage of long-overdue electoral reform legislation and through [engagement with stakeholders](#) at the state, local, territorial, and tribal levels. Election officials should be provided with [sufficient resources](#) to combat disinformation, improve [physical](#) and cybersecurity, ensure that each vote has a paper trail, conduct [risk-limiting audits](#), and [permanently expand eligibility for mail-in voting](#).

Protecting Consumers and Civil Rights Through Privacy Legislation and Agency Enforcement

Privacy Legislation. Congress is closer than ever to [passing meaningful privacy legislation](#), and it should finish this effort as its first order of tech policy business in 2021. A few key issues need

resolution, including how to limit the collection, sharing, and use of data and how to strengthen antidiscrimination laws. Leadership is also needed to build consensus around a private right of action and the preemption of state laws, if any. The Federal Trade Commission should [aggressively pursue cases and remedies](#) under its [authority to combat unfair practices](#) and deter discriminatory, exploitative, or egregious behavior. Such efforts would not only protect consumers but protect civil rights, advance racial justice, and promote economic growth.

Data-Driven Discrimination. Congress and the Administration must also commit to fighting algorithmic-driven discrimination, especially in areas such as [employment](#), [education](#), housing, credit, the receipt of [government benefits](#), and goods and services markets. Civil rights and competition agencies should [conduct investigations](#), issue clear guidance or regulations, and enforce against offenders. Congress should investigate and fill any gaps in public accommodation and civil rights laws to account for modern data practices, and it must undo [recent efforts to undermine the “disparate impact” standard](#) as a means for challenging discrimination. It is crucial that these efforts include laws and policies that prohibit discrimination against people with disabilities.

Civic Technology and Data. Civic institutions increasingly rely on data and technology to carry out their responsibilities, such as [designing educational programs](#), [addressing food instability](#), and [identifying effective responses to COVID-19](#). It is critical that governments use data in ways that affirm responsible data use, protect individual privacy, and advance just social structures. Congress and the Administration should provide guidance to governmental institutions on the privacy risks posed by data collection and use, [address cybersecurity risks faced by schools and state and local governments](#), and identify ethical principles to guide governments’ responsible use of data.

Reforming Surveillance and Preserving Fundamental Rights

Surveillance. The Administration and Congress should address the impact of surveillance on people in and outside the United States, including the rights of BIPOC communities, activists, journalists, immigrants, and refugees. [Extreme vetting measures](#), [warrantless electronic device](#) searches at the border, and [social media monitoring](#) must be eliminated or restricted. Policy leaders should establish a right to redress disproportionate surveillance, limit the purposes of surveillance, and [update surveillance laws](#) to account for [technological advances](#). They should eliminate or regulate the use of unreliable surveillance technologies for law enforcement purposes, such as [facial recognition](#). Finally, Congress should hold hearings and consider legislation to ensure that surveillance focuses on evidence of crime and not on peaceful protesters, and to prevent the government’s circumvention of the Fourth Amendment through the purchase of constitutionally protected data from data brokers.

Encryption. Congress and the Administration must commit to protecting access to end-to-end encrypted services. Encryption plays a fundamental role in preserving the privacy and security of online communications and personal data, and is one of the few measures that companies exporting data to the United States can employ to meet GDPR requirements. Despite the importance of encryption to a secure internet, [governments are calling for backdoors](#) to encryption and advancing proposals that would expose encrypted communications services to legal liability. The Administration and Congress

should oppose those efforts [in the U.S.](#) and internationally, defend users' access to end-to-end encryption, and pursue more appropriate [ways to combat harms](#) such as child sexual abuse material and terrorist propaganda.

Advocating for a Competitive, Free, and Open Internet

Congress and the Administration must ensure that all Americans have affordable access to a free and open internet, and act to promote competition within technology services. The FCC and Congress should establish an action plan to close the digital divide by 2024, reaffirm the FCC's authority over all telecommunications services, including broadband, and implement [strong and enduring net neutrality protections](#). Congress, the FTC, and DOJ should commit to robust antitrust enforcement, through increased funding, hiring sufficient lawyers and technologists, and litigating important matters. Internationally, the United States must resume its role as a leader in promoting an open and secure internet driven by democratic values, including by [restoring funding and open, fair decision-making](#) for Internet freedom projects supported by the U.S. Agency for Global Media. In its foreign as well as domestic policy, the Administration can support technology's potential to empower and connect people, while addressing the risks of invasive and discriminatory uses that undermine human rights and civil liberties.

The Center for Democracy & Technology is a 25-year-old 501(c)3 nonpartisan nonprofit organization working to promote democratic values by shaping technology policy and architecture.

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