ROUGHLY EDITED TEXT FILE

Center for Democracy and Technology
Future of Speech Online:
AI, Elections and Speech

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>>Ash Kazaryan: Good. We are going to start. The live stream is being recorded and you can always go back and watch the parts you missed. My name is Ash Kazaryan. The Stanford Trust I focus on free speech and liberty and we have worked with the Center for Democracy and Technology and collaborated on both the eighth annual future of online speech conference and many other projects… Let me tell you a little bit about trust. Our organization has worked for many years protecting freedom of speech and civil liberties and that has been our focus. We have never wavered. When new technologies get introduced there's always a new attempt with stronger focus to regulate speech, to invade our privacy, mostly by governments but some other actors in that space. And we have to stay vigilant and constantly and tirelessly worked to protect the [indiscernible] we live in an era when there's increased momentum across the clinical spectrum to stifle speech that [indiscernible] affected and we can't is the value and importance of that because the society is being [indiscernible] defending the First Amendment and civil liberties I believe is more important than ever and we have now encountered this new not if medium but least mode of technological development that has affected our lives that is artificial intelligence now when social media first came to the scene it changed everything and changed how we communicate and our economy and discourse about free speech. We are already seeing artificial intelligence have a similar effect. And in the year of 2024 we are having a critical election in the United

States and there are also many critical elections that happen across the globe that have affected many democracies, and also affected the way political discourse is being conducted in the United States. So all of that brought us to this topic of focusing on AI and elections and free speech and I'm very excited for you to hear from the rock star panelists that we are going to do a little bit of housekeeping and then turn it over to Kate.

So first of all as I said, we are being live streamed and recorded. If there are meetings or something you need to step away for you can always come back and go back and rewatch some of the great insights. If there are any questions, get them in early. We are trying to stay on a tight schedule. If you are joining via Zoom there's a Q&A feature. If you are watching on YouTube, live streaming on YouTube, you can tweet questions using hashtag FOSO 2024 or email questions to questions@CDT.org and Elizabeth Seeger is going to monitor all those channels and pass them to me.

We are very delighted to welcome a broad audience today and we encourage them to stay away from tech policy or legal jargon, and make this conversation as accessible as possible for all of those who are joining us. We are going to run until 2: 30 p.m. EST, and after that if you haven't joined us yesterday I encourage you to watch day one of FOSO. We had an incredible keynote by René DiResta and two incredible panels. My takeaway was that the elections are coming, this information is happening, campaigns sometimes are coordinated. Sometimes they are not, some of these are rumors, some of these are misinformation and disinformation campaigns but at the same time all of it is depressing and bad. There are systems that we as a society have created that are fact checked that companies and industry are collaborating and working together to address these. And with this new mode of having generative AI be part of this conversation we are not seeing anything extremely out of the ordinary destruction or ecosystem. Everyone is very open to civil society and experts and academic feedback to reinforce the system.

That was a very very short recap. I'm going to turn it over to Kate, who can do a much better job than I did. Thank you everyone for joining.

>> Kate Ruane: Thank you so much, Ash. Hello everyone and welcome to the second day of the annual future of speech online hosted for the Center for democracy and technology and stand together trust. I'm the director of CDT's [indiscernible] project CDT is a 30-year-old nonprofit organization that works to protect user civil rights and civil liberties and democratic values in the digital age but I'm delighted to welcome you today today number two of the incredible event where every year we tackle expression online as was talked about and the day one kicked off with an incredible slate of experts that you can go watch online. First we heard an important call to action from Renée DIResta, our keynote speaker. She's been at the forefront of the advocacy field working tirelessly against the erosion of our shared reality. She explained the challenges we face as

realities turning two separate silos but also reminded us that we are not without agency. We have the power to affect change. She urged us to use that as an opportunity to learn about threats to free expression and our elections, to come to understand how the threats operate and to take action to thwart them.

We also heard from election experts and disinformation experts and fact checkers in both English and Spanish that told us the importance of building reliable trust within communities by speaking their language and meeting them where they are. We heard that generative AI has so far not manifested as a major threat we have been concerned about though there have been worrying incidents about even so we heard civil society and companies remain vigilant and concerned about the possibility of last-minute uses of the technology that could have a profound impact.

Finally we also heard from company stakeholders that ME and Microsoft to discuss methods to protect elections and limit the use cases of their services to reduce respite all around the discussion today we plan to build on it by first discussing what we are calling the infrastructure of truth that might be better described as the infrastructure of trust put in the first panel today we are going to talk with experts from the Wikimedia foundation witness and internets sans Frontieres how to build spaces online without asking intermediaries to become the arbiters of truth then we will turn to reports my colleague Rebekah will lead a cohort from the [indiscernible] nice women Institute on Columbia in a discussion about rescinding court cases and impacts on speech and of the legislative landscape going forward finally we will turn to the question about how we will be able to understand the upcoming election and the way that Internet spaces that we all inhabit will influence it. Online spaces are critical for discussion and organizing. One of the only ways to understand how these activities happen and how online talk might cross over into real world action even violence is to be able to research it but researcher access to the data necessary to understand these events is under threat. In the final panel Rose Jackson of the DFR lab will talk with experts about the necessity of independent research, what is needed to support it and how to protect researchers as they do their work.

Thank you so much for joining us today. We are excited for the discussion. The stakes are tremendously high. We have an opportunity to work together to ensure the protection of her most cherished) looking forward to working with all of you to do so now. As Ash set, I'm going to repeat some of the housekeeping points for folks who have joined since then. So just as a heads up we are recording and live streaming today's session on CDT YouTube page so if you have to pop up for another meeting that's okay you can always catch what you missed online. We are scheduled to go to 2:30 PM today and schedules are tight so we're going to do our best to stick to the schedule. If you have questions, get them in early. We are also taking questions through audience members if you are connecting in webinar Q&A function at the bottom of the window if following in the lifestream you can submit questions via email at questions@

CDT.org or via twitter using hashtag CDT questions to hashtag FOSO 2024 and Cen dem tech.

We are delighted to welcome a broad audience today and for that reason we remind all of our speakers and participants to try and keep our language as accessible and understandable as possible to allow nonexperts to follow along more easily. Okay here we go. On to the first panel infrastructure of truth with that I think we have a couple minutes but I will pass it to Beth Francesco.

>> Beth Francesco: Hi, thanks so much Kate and good afternoon, everybody. I want to say hello to our guests today who are joining from around the world. I am Beth Francesco and I'm honored to join you from the national press club journalism Institute in Washington DC. Our nonprofit organization's mission is to power journalism in the public interest and I feel so fortunate to speak with three experts today whose work also centers on the public interest. Civic engagement, free-speech and digital infrastructure. Especially in a high-stakes year like this one.

This year as you know more than 2 billion voters are expected to head to the polls in 60 elections worldwide including our own US presidential election and state and municipal races and we have already seen how quickly disinformation campaigns can be designed to interrupt true civic discourse and keep it from spreading.

So let's be clear. Disinformation interferes with the right to vote. If a voter's beliefs are founded in false or inaccurate information people are unable to make electoral choices that truly reflect their values. That's why combating disinformation and lifting and amplifying reliable information is crucial to protecting our elections. In the US, courts, regulators and lawmakers are all grappling with efforts to protect the integrity of elections while supporting voter access to authoritative election information. We must have the infrastructure and systems in place that foster accurate and reliable information the public can trust in those systems that do exist for us to learn from, Wikipedia is one such system calling itself the ground truth of the Internet. Journalists and news organizations have historically been a trustworthy system but burdensome regulations, smaller profit recognitions and turmoil are creating barriers to the freedom of the press and to online dissent.

Today we can explore the markers of resilient ecosystems designed to counter misinformation while championing free speech and discourse. For this we are going to turn toward panelists. I would like to introduce Julie Owono, executive director of journalism without borders. Julie's work focuses on facing channels of collaboration between different sets of actors on the Internet. She's especially interested in using multi-stake holder approaches to foster collaboration on issues related to online content moderation. Julie is also a member of the global partnership on AI treated by France and Canada of the world economic forum global future council for AI on humanity and its counsel in the connected world. She's also a member of UNESCO's ad hoc expert

group on the recommendation of ethics of artificial intelligence, a member of the world benchmarking alliance's expert community on digital inclusion and a civil society member of the Global network initiatives board. Welcome, Julie.

I would also like to introduce Sam Gregory, an internationally recognized human rights advocate and technologist, as executive director of witness, he leased their strategic plan to fortify the truth and champions their global team who support millions of people using video and technology for human rights. Such important work. Sam helps ensure we are better prepared globally for defects, synthetic media and deceptive generative AI. He's an expert on innovations and preserving trust authenticity and evidence in an era of more and more complex audiovisual communication and deception. Sam has testified US House and Senate subcommittee is addressing AI, defects and media transparency and has spoken at Ted on proactive human rights based deceptive practices in AI. In 2018 he initiated a witness's prepared don't panic initiative around defects and generative AI. He has influenced platform technologies emerging technologies for trust legislative efforts and a public discussion of who and what to prioritize. Welcome, Sam. And let's also welcome Costanza Sciubba Caniglia. With over 10 years of experience in policy and international relations Costanza is the anti-disinformation strategist with at the Wikimedia foundation a global nonprofit organization that operates Wikipedia and other free knowledge projects. She has also founded and directs a think tank working on geopolitical trends and regulation in the digital era, her mission is to improve the information ecosystem working to promote free trustworthy knowledge and to counter threats to democracy, human rights and public trust. Costanza has co hosted a project that has crafted regulatory proposals for Italy and is a special editor for the Harvard Kennedy school misinformation review where she contributes on the latest development and challenges in the field as a professional journalist with a Masters in Public administration from the Harvard Kennedy school, she combines her editorial, social media and new media schools with a deep understanding of global political communication, information management and public affairs. Thank you so much for being here and sharing your expertise with us today. We are so grateful.

We are all here because we are concerned about disinformation and about ensuring people have access to reliable content, especially about elections. But it can be really difficult to tease out what is true and what is false and comparatively easy for motivated actors to characterize information that does not fit their own worldview, [even] false in some way Julie I hope you could tell us a little bit about the bigger picture. What are some things we should be thinking about when we consider how to create safety, reliability and accountability online without getting caught up in adjudicating a particular factual dispute?

>> Julie Owono: Thank you so much Beth. It's a great pleasure to be here and of course thank you to CDT and stand together for organizing and convening these very important

discussions about free-speech online. To respond to your question, I probably will focus primarily on the context. We are talking about an online environment where billions of content are published in a matter of a second. And among those billions of content, there is information that is factually untrue. There are defects. There's a lot of very wrong and blatantly false things. And there are also questions and issues being discussed and that can be weaponized by those actors to further create this assumption that the Internet is against one side or the Internet is against those who really want to defend free speech. I am thinking, for instance, about a very famous CEO of a platform that used to be called twitter and is now positioning himself as being someone who is the subject of a witch hunt.

So having set this context I think it's important, urgent even I think it has become urgent for our online ecosystem to probably pause a little bit the huge amount of human and also financial investment that we have put in the past few years to go after a piece of misinformation each year. It's humanly exhausting and from a philosophical or more systemic point of view it's probably not the approach that has been always, that has always been the most efficient. I sit on the Meta oversight board which is one platform that we cannot criticize for not investing, probably not enough as we would wish, but probably cannot be criticized as one platform that does not invest resources in making sure that it's platforms are free of disinformation and unsafe content, but yet we are still facing problems. Meta is still facing a huge amount of problems on threads, instagram and Facebook.

So where do we go from here? My assumption and that is the reason I joined the oversight board, I think having a public exercise such as the one the oversight board offers a public exercise in which a platform has to respond to questions about its moderation and its choices of moderation, a platform has to respond whether or not it would accept her XYZ recommendation and how the said platform will implement XYZ platform or way the platform will not implement the recommendation I think that type of public exercise is one of the antidotes to the environment in which we are, in which on the one hand a lot of us are dissatisfied with what we think are not enough efforts because we probably don't have enough information about the efforts. And on the other hand we also have those saying there's a conspiracy against us. There's a conspiracy against our point of view. We should defend free speech. We are the ones defending free speech. To kind of to appease, not to appease but maybe set the record straight and say these are very complex questions. These are very complex situations. None of us will get it right on their own. Not a single platform can get it right on its own. A platform does sometimes need the expertise of people who, like me, come from civil society organizations. I have done a company and have done fact checking of its resource intensive and we have decided not to do that anymore but we are on the ground but also I work on the board with people who have been thinking about these issues from a legal perspective. Also working with [indiscernible] people from around

the world because the infrastructure, the architecture of these platforms requires this very important diversity of thought, diversity of perspective on a set of issues that are very complex.

So I think for me this is where the infrastructure part of the conversation is interesting, because how can we, maybe the fundamental question would be, how can we elevate ourselves from the very exhausting task of getting every single piece of content right, to a place where we are confident as a society, as a global online society that yes, we can trust that this platform has the necessary infrastructure to ensure that I will feel safe. They might not get it right 100% of the time but at least I will have information about how they do, what efforts they put in place to make sure I feel as safe as possible on the platform. Thank you.

>> Beth Francesco: Thank you Julie. I'm hearing transparency on the platforms to have their efforts as well as needing to be open... To the feedback they are getting from people who are outside of the organization and can help build the trust. I mean I think we can't account for human behavior right? It is how people will respond even with the information that is apparent to them. Sam or Costanza, would you like to weigh in on the question of how we should be thinking about creating these safe, reliable systems without getting caught up in debunking each factual dispute that comes up?

>> Sam Gregory: I can jump in... I think one of the things we need to do is have a mindset shift as well because we're placing a lot of emphasis here on how we debunk falsehood and how we challenge falsehood and the fragility of the system at a global scale is incredibly apparent. When we talk about that we have to put it in the context of the backsliding of content moderation, the challenges doing that that have existed in the challenges emerging from generative AI one of the things we are trying to do and witness's work is focused on how we can reinforce the capacity of individuals and communities to create trustworthy information and have the indices of trust carry over with it on the Internet online and off-line. And I think that's a really important shift as we think about infrastructure as being human infrastructure and technical infrastructure in support of credibility and trust and transparency versus debunking infrastructure that is flawed and sadly probably is going to get even more under resourced over time and I think that is one of the critical questions we have to grapple with his how to get the balance right between the two. We can't give up on infrastructure but I totally agree with what Julie is describing it feels like as someone who works with fact checkers that is a Sisyphean task in the public perception the fact checkers is even if the public perception of fact checks and research shows that they do work but it's a Sisyphean task to debunk falsehood and do it at a global scale.

>>Costanza Sciubba Caniglia: Yes, I would like to comment on this, too. It's such a good question. I love the framing of infrastructure because really framing the design we try to implement is a critical part of how the information ecosystem works. So it's not a

secondary topic, but really fundamental. Regarding fact checking in a certain way when we get to fact checking we already have lost a little bit. So we need to work earlier, much earlier in the context of how we create infrastructure. How do we promote a positive architecture of the information ecosystem? This could look like increasing capacity, like Sam was saying, and for example for Wikipedia, for the Wikimedia foundation we think about increasing capacity of our volunteers. It can look like creating structures that are more conducive to create reliable information that rely more on sources and things like that and certainly what Julie was saying about having a public exercise, kind of an external look at the structures and the way we structure and organize online is really critical.

>> Beth Francesco: Well, along those lines of not thinking about the infrastructure that supports resilience reliability, I think Wikipedia is that great example of the infrastructure. You know I think in previous conversations thinking about it as kind of an antidote to disinformation if you will. Costanza, can you tell a little bit... What is the secret of Wikipedia and what lessons can we learn to bring its benefits to other platforms that maybe haven't had the same type of success?

Costanza Sciubba Caniglia: Yeah so, an antidote to the information is a big claim. But we really do believe in this claim. And really first of all let me say how happy I am to participate in this conversation and really thank the organizers. This is such a good framing of the conversation and I think the idea of infrastructure is really really critical. The reason why we call Wikipedia and an antidote to disinformation and also call it an infrastructure is because both for the way that content is created on Wikipedia, maybe I will say a little bit more about this and how the volunteers work, but also one way that people get in touch with Wikipedia every day is not just by accessing Wikipedia but by coming in contact with Wikipedia data across each platform. So Wikipedia for example is used for fact checking in the main platform. It is used as one of the main sources of training data for LLMs. It is used by search engines, by digital assistance etc. There are two components. What happens on the platform and what is the content of the work the volunteers do on the platform. But there's also another question, which is how data is reused and shared.

So we like to think about Wikipedia as both influencing and being influenced by the information ecosystem. Because one way we rely on Wikipedia information is critical because again it has a ripple effect. On the other hand, as most people, one of the reasons why Wikipedia works so well is that for volunteers , each piece of content needs to be sourced and sourced by a source that has been deemed reliable by a community of volunteers. And this can only be as reliable as the sources of information. So we really like to think about how we positively influence the rest of the ecosystem that supports those sources and supports the creation of those.

Why Wikipedia is reliable, and I want to say, you know, that every piece of content on Wikipedia is, it will be, it will stand the test of time. Let's say. But the way the volunteers work has been, we have done many many research on how volunteers work and it usually and it usually gets to the point of understanding and reliability. And this is because of the way volunteers work not only in creating content but also in creating their own policies, in sometimes coding and creating the platform. If you go to any Wikipedia article you can look at the [page] next to it and it will show the conversations people have had with each other to come to a certain conclusion. Of why a certain piece of content is the right way to portray a certain aspect. And that has a lot to do with transparency as well and that is certainly something that other platforms can take and so to recap the community led model, I think is something that definitely should be highlighted. Should be promoted. Should be protected, volunteers work every day to develop the content to create the content. To work with each other in communities. We as the Wikimedia foundation do not work on the content at all. This is only the work of volunteers. So that is one component.

Then there is an important component that I think is transparency. Everything on Wikipedia is transparent. Every edit. Every conversation. Everything. We understand that that is not possible for each and every platform. We really have radical transparency but we think it can be done better and it needs of course to be transparency that does not go in the way of privacy but goes together with privacy.

Then there's also this component of really relying on the sources, and we think this is going to be more and more important in the age of AI. So I think those components are maybe some of the critical aspects and why we think of it as an infrastructure.

>> Beth Francesco: Thank you so much for that insight. I am wondering Sam or Julie, would you like to follow up on any of Costanza's thoughts

>> Julie Owono: If you will allow me I will go ahead thank you. Yes, first of all Wikimedia is absolutely a source of inspiration. If I could share, and empowerment, and for that I would like to share the story of my 10-year-old who has become a Wikipedia contributor because he saw a page where he thought the information was not accurate. So for me this was, I was preparing this panel, and I thought oh my gosh this is exactly what, the center of probably the new age in which the online ecosystem might be going. An age in which yes we do need to rely on platforms willingness as Sam was rightly saying, willingness and commitment to make sure they are tasked with the right resources to fight the humongous problems that we are facing already and will continue to face if nothing is done.

But in addition to that, I truly believe that contributors, users, if you will, have a very central role to play that probably we ignore a little bit too much right now. Because yes most of us are evolving on platforms where you have the impression that things come to

you in an automated manner, almost serendipitously but not that much anymore. So it might feel kind of overwhelming sometimes.

So having spaces where you can, you are empowered, you have the power to make a certain decision that no, I do not want to see it, and I think that others should have the ability to look further for information for themselves. I think this is very important and powerful, and speaks to the other challenge that we need to think about when we talk about infrastructure for truth. We need to reflect on how bad our education has become. I would say globally. In France there is a lot, where I worked there's a lot and where my organization is based, there's a lot of discussion in education, the lack of investment, the decrease of investment in education especially in an era where we are overflowing with information on the one hand. On the second hand there are very real issues that we still need to deal with in our societies. We still have a lot of problems with sexism. We still have a lot of problems with racism and these pre-existed before the platforms of course came with a magnifying mirror that makes a lie become so huge that it leads to real-world consequences. But it remains that the grain of this diseases exist in our society.

So I think reflecting on infrastructure would also include some aspect of the off-lineworld that we do not include so far and this aspect relates to education of course the younger generations I have them in mind but even as adults we should continue to educate ourselves. And of course the other very societal and political questions that remain that need to be addressed outside of technology and for that the contributory approach, the ability for citizens, because the users are real people who are citizens in their lives, the ability to discuss those and disagree and find reconciliation at some point hopefully is something that I hope we will see a little bit more on different platforms.

>> Sam Gregory: Also a huge fan of Wikipedia. I have not persuaded my children yet to become editors, but I will now set that as a challenge, thank you Julie. Sometime soon.

Two elements strike me in this and one is reflecting on the challenges that human rights defenders and journalists that witness work with we often feel are facing an escalating burden of proof. There is skepticism about front-line documentation and accounts. A lot of responses are collaborative. It's doing collaborative Osan work and verification and although Wikimedia is often perceived as very textual there is a lot to learn about the ability to multisource and how we move that forward. So it's very much what we see on the front lines of human rights defense in journalism, a kind of escalating burden of proof that is by collaborating and finding new ways to represent information and present it collaboratively. The other thing that is very important and you touched on it Costanza, that Wikimedia org Wikipedia rely on a diverse set of sources I feel very complicated about our title today infrastructure of truth because I remember a range of governments around the world think about what they have created in terms of fake news laws as of infrastructure for truth and getting at accountability for truth and the dystopian world of

online where they perceive they have dissidents and oppositional voices so I think we need to think very carefully about how we sustain legally and financially and directly with the skills and tools to this front-line of journalism and human rights and civil society that creates information and we can't separated from the fact that there is a perception of what the infrastructure of truth is around very much legislation and fake news laws and serene grounding and that I know we are thinking in those terms but we have to think 360 on this because we are seeing that being applied at the same time.

>> Beth Francesco: Sam, such a great point. I want to take a pause before we start the next question, to encourage the audience if you have questions to submit them early so we can make sure we get to them and we will answer just a few before we go through a couple more questions.

We have many of the tools and understanding necessary to structure our online environments and better ways but technology advances so quickly and in ways that sometimes outpace our understanding or ability to immediately adopt. Sam, how are democratic actors like journalists, academics and activists viewing the changes in the online environment created, caused by synthetic content?

>> Sam Gregory: Thank you. And thank you also to CDT for hosting this and for standing together. Really glad to be here. So this has been a significant focus of witness's work within our prepare don't panic initiative, is how do we proactively support those front-line defenders and journalists to not only counter at the front line like in a very direct way but have a voice on infrastructure and regulation because I think we need to have both. So what's happening, and in the introduction to today, and I understand it was a very rich conversation yesterday about how we understand the impact of generative AI on the elections and information environment and that witness we have been [indiscernible] mechanism for suspected defects we are very deeply embedded in the landscape of how it is playing out I would say there's probably three things we are seeing that feel really important in terms of adaptation and needs for the first is to recognize that the hype has not played out this year. And that's a good thing. Because there are more than enough challenges but we have seen enough signals of the way this disrupts the information environment with both new ways to falsify information, new ways to cast doubt on real information and how that relates to what we have been talking about already. Something goodness has not played out. What I feel is really important in a space like one led by CDT and others is that the next two years are supercritical on the technical infrastructure and policy perspective. So yes we may have dodged a bullet so to speak on the sort of direct manifestations in many ways of explicitly misinforming or does informing deep fakes or synthetic media but that does not mean we can take our hands our eyes off what is happening now and I say explicitly does informing and misinforming because I'm not referring to the nonconsensual sexual deep fakes where you have explosion of content that is incredibly harmful and has risen at a velocity that is increasing.

The two things we hear from front-line defenders, one is, well maybe three things, I am going to add one, one is a reflection they see this very much in the platform context, the sense that on the one hand moderation will be not done as appropriately as they hoped or not be contextualized, and also they will not have voice and agency in platform decisions and decision-making. So that is a constant from before being carried over into experiencing this. Then there is what we describe as a detection equity gap. What I mean by that is, when we talk to a frontline fact checker in Georgia or Ghana or Venezuela or some in the US, or front-line journalists, that the tools are not widely available to them to detect synthetic content or prove that it is not synthetic. So just a couple days ago in one of the deep fakes rapid response task forces we got a case from a major country having an election this year in which a vice presidential candidate claimed that real footage was fake and put the pressure on journalists in fact checkers to prove that it was real. That's almost probably like 30% of the cases we see.

So that's all about this kind of blurring lines and the technical inability to make good judgments on that and that even at the current volume is challenging I imagine that is 10 or 20 X suddenly you have the additional pressure being placed on front-line journalism defenders to both discern what is real and both discern what is fake or synthesized. I think that is a really looming layer because it lands on all the challenges we have on journalists and media. The fake news laws capacity challenges, distrust, add in a technical dimension the ripples through all those.

The second thing, and this is an area we've spent a great time working on human rights field over a decade is how we have better ways to have media transparency about the provenance of media how it is structured and created so you can understand in some sense the recipe of what is human and what is AI and what is mixed together in the media. What we are consuming will be increasingly complex and differentiating the two. The human rights defenders we work with come up with very often different perspectives around it. So one perspective would be, yes that would be helpful but who controls it? Will this perpetuate monopoly control over who gets to decide how this works? Yes but will this be used for surveillance or in any way to tie into those fake news laws? Yes, but who will have access? Yes but who will shift the burden of proof of truth on? so there's this emerging infrastructure very much part of the proposals that are regulatory and legislative, including in many of the proposals at the state level say the recent California proposals for legislation the US federal, that UAI act to have ways to determine the recipes of AI in the media and certainly from a witness point of view we think this is important we are going to need better media transparency to enable discernment that is not centralized so that I can make a decision whether I think it is complicated or discerning or deceptive that someone has used AI or that something was created in a certain way. But we have to do that in a way that reflects these core values that are human rights and civil rights values and other reflections of the people

who are the most compromised at the moment as I said around privacy access and weaponization.

 So we have a complex set of needs but it's very grounded in existing rights issues and concerns around platforms and monopoly control.

>> Beth Francesco: Costanza, I would love your reaction to Sam's statements here about the needs of front-line defenders.

>> Costanza Sciubba Caniglia: Yeah, I think, so there are multiple components. To this. One thing that I think it's really important about what Sam was saying was well many points, but one is about really tracing the information and making sure that we have a way and that we put pressure also on the design of platforms and actors and others that are creating this of course in good faith to have a traceability. And this goes with the thing that we were saying before about sources. So where does a piece of information come from? And this is something we think about a lot also for what I said before that Wikipedia is used as one of the main sources of training data for generative AI. Of course you don't have free access to Wikipedia data, it will always be free, never make a decision to not have it free. We want to make sure that it's not used to create false content or content that goes in the direction that is inaccurate.

 So how do we do that? And I think really one part is this. Traceability. And then there's also a component of how we really promote the information ecosystem that is able to have reliable information that can then kind of counter immediately or have reliable information available when deep fakes or this type of synthetic media might be put out for disinformation purposes. How do we check that? How do we check that in a way that it is not a burden of proof only on the first-line defenders and how do we support them also to have this response.

>> Beth Francesco: Julie would you like to weigh in?

>> Julie Owono: Yes thank you Beth, to wholeheartedly agree with what you said Costanza and also with what Sam was saying and maybe put the emphasis on the idea that yes tech is going to evolve and tech does evolve very fast very rapidly. And there is an emerging conversation about human rights and engineering for instance. Human rights and product. So that we can go past the worry that technology will evolve because we have technology technical teams where the platforms are privately owned or public rather focused on public interest like the Wikimedia foundation or any of the forms but we will be confident that whoever, whoever will work on the technical advancement of the innovation. We'll have the human rights understanding and lens, ethical human rights lens that is required to translate into the technique, the impressions we are talking around deep fake how can I, will by definition deep fake especially porn deep fake, are non consensual by definition so how can I embed this from a technical point of view. The principal will remain the same, probably technicality or how can I ensure the people can transparently access more information about a piece of content whether it is generated artificially or humanly. These are questions that will remain the

same always, no matter what the technology will become. So maybe the focus should be in ensuring that we can translate these questions as we are building the tools. That's probably one emphasis that I wanted to add.

>> Beth Francesco: I am so grateful for you offering that framework of the question thank you so much Julie. I would like to follow up we often talk about the dangers of synthetic content undermining truth and the need to fortify us against the risk that has been top of mind for a while now but also interesting to think about the ways in which synthetic content might be used to reveal truth, specifically in the form of satire. Sam, can you talk a little bit about those kinds of uses? And what they could mean?

>> Sam Gregory: Yeah, I think, and this is going back to the word truth here and trying to think about what truth telling means in a lot of contexts and how that plays out and I remember Julie you and I one of the first time as we met was around the case of misinterpreted synthetic media, one of the early ones where a platform really couldn't understand a piece of political content that to one person might appear as informing was in fact satirical content and this was a very crude video a number of years ago that was dis informing, was satire but was perceived as does informing or misinforming. And I think satire is a very powerful form of truth telling. In the context of AI how do we draw the lines there and do that in a way that is combined with media transparency and what I mean by that is when you see how easy it is to create satirical and parodic media with text to video we can see all the mimetic communication that is happening at the moment around the presidential candidates in the US, how do we understand and navigate preserving that as a space for power and truth telling while knowing that it's incredibly susceptible as we knew already to gas lighting and deception. And I think it's also really helpful and we have done a lot of work on satire to think of this also as really the sort of gray area that reveals the need for things like media transparency. Media transparency underlying ways to understand AI and humans and how something was created can help us discern that something was created with satirical or parodic intent or perhaps neutral intent that is sitting in the middle and is being used as disinformation or misconstrued. That's important when we look at both photorealistic deep fakes which of course there are more and more of it and to some extent the metaphorical representation. I read a quote from a couple days ago from Brendan Nyhan, a political scientist who said one of the most powerful things about text to image generators is that they allow you to create metaphorical representation really quickly. Just a sentence and you can metaphorically represent a dilemma or political contents so we are struggling with how to deal with the explosion of metaphorical representation satire and increasingly will struggle with the sort of photorealistic creation of how we navigate that and that's what I think it becomes important to have had both these infrastructure of trust and of provenance and media transparency but also the collective sense making which can say wait a second that is designed to attack and the way we discussed that

and can analyze that online or in spaces like similar to Wikimedia or Wikipedia seems incredibly important.

>> Beth Francesco: Thank you so much we do have a question from the audience.Adam says as we know authoritarians are building out infrastructure of information manipulation which allows them to amplify and accelerate discourse that is harmful to democracy as Sam suggested, and increasingly complex and crowded information environment Adam says, infrastructure is the idea of truth as we shift from reactive to proactive approaches. Adam wonders as we are thinking about infrastructure including some strategic alignment, among things like governments, thunders civil society and others around the strategic goals what should the goals look like? And do we want infrastructure to help us quickly understand what is happening in the information environment or to accelerate data sharing across regions. It seems like there's a lot of different directions that the purpose and goals could take. So I would love to hear from each of you on your reaction to Adam's commentary. Julie please. You can kick us off.

>> Julie Owono: Thank you. That is such a great question which allows us to broaden a little bit some of the aspects that we discussed. identify the main goal. We are afraid that technology might disrupt or put an end to a democratic and quite liberal world right? Whether it is in powerful democracies like the United States, or like in countries in the European Union, or whether it furthers like you know, Adam was saying in his question it furthers the authoritarian powers around the world.

I think for me, what would be very, very exciting would be how we can come together, governments, civil society actors and companies etc. to ensure that we want Tech to continue to support democracy. We have seen that technology is able to support democracy. And with the recent news it is very easy to forget the very incredible advancements that have happened in the past 10 to 15 years. Personally I probably would not have the same voice that I have today if we were in a world in which I grew up 25 or 30 years ago. So I think we should be clear on that. Either we want to make sure that the very important tool, communication tool continues to push humanity to its best. How do we do that? And then we can set different types of goals. One of the big problems is inequalities. Inequality in access to information inequality in deciphering even the information. Hence the question of education and whose role is it to do the education. Is that the role only of the governments? Is the role only of platforms? We could learn lessons from COVID from COVID platforms and government official authorities collaborated to ensure that everybody could get access to information about the disease, information about where to get medication or protection against COVID. Could we envision that for fighting against disinformation, AI generated disinformation? I would love to see more programs such as these ones. Resources developed by a different set of actors, governments and platforms to ensure that people wherever they are, on these devices know where to find resources to interpret whatever they are

receiving on their devices. That is one example. If the aim is to make sure that during the election season here in the United States globally as we have seen in 2024, there were dozens of elections around the world the aim is to prevent the electoral process from being distracted by false results or false claims of victory or of loss? How do we do that? Well we need to partner with elections authorities. We need to partner with organizations that can reach the last elector who is in the most remote village. I don't know, I am from Cameroon, in Cameroon for instance. That to me would be the type of initiative that I would hope to see more. I don't think we have done that as much as we have in the past. I feel like at the end [indiscernible] there is less appetite to do it than we have been doing in Covid maybe on the part of governments there is more appetite to make sure the companies can take down content that we think as governments are false. As civil society organizations there is less appetite to do a lot of work that is sometimes corrupted without any form of recognition that is also reality. It is important for the different set of actor, stakeholders, in a multi-stakeholder fashion to sit down and yes, to reaffirm what is the goal that we want to achieve together and how do we change? What is not working now or how to envision what could work much better in the future. So it is a broad response. But I guess the goal is way too important to just focus on one. Unfortunately, we cannot have the power only to focus on one issue. The problems are so huge and are going to become huge and we do need to have a more systemic approach hence the importance of this discussion.

>> Beth Francesco: Julie you just have so wonderfully wrapped up our conversation. Thank you so much because I think you hit on the key points of coming together and identifying among multiple stakeholders the key, core issues that we are trying to address as we look at the infrastructure of truth. We are right at times. I just want to make sure we say thank you to Costanza Julie and Sam and leading off the second day of FOSO conversations today, thank you.

>> Kate Ruane: Thank you so much Beth and Julie and Sam and Costanza for a fascinating discussion. I'm gonna kick it over to my colleague Becca, who is going to tackle free speech on the ballot.

>> Becca Branum: Thank you Kate and to everyone for joining us today on the free-speech panel, Today we will be discussing the online expressions of the Supreme Court Ninth Circuit and other courts have been tackling recently and how they will shape how companies and election experts to make sure the trustworthy information about the election is available to people who need it. To talk about that and more I'm delighted to be joined by a fantastic panel. Including Alexander where he's involved in the conception and litigation of most of the institute's legal challenges. Prior to joining the night Institute Alex worked for eight years at the ACLU focusing on litigation relating to NSA surveillance encryption, anonymous speech online and government transparency. Next we have David Brody, the director of the digital justice initiative, the lawyers committee for civil rights under Law, where he focuses on issues related to the

intersection of technology and racial justice. Such as consumer privacy, algorithmic bias, election disinformation free speech, online hate group activity content information and Internet surveillance per David launched the digital justice initiative at lawyers committee in 2019 and previously served in the wireline competition Bureau at the FCC. Last but certainly not least we have Lee Rowland who is a lifelong free speech advocate and the executive director of the national coalition against censorship he has extensive experience as a litigator lobbyist and public speaker as ACLU attorney she served as lead counsel in federal First Amendment cases involving public employee speech rights the First Amendment rights of community advocates and government regulation of digital speech. She recently served as policy director of the ACLU of New York where she ran a civil rights organization law and public advocacy work but I'm thrilled to be joined by the three of them and really look forward to what I hope will be a conversation among them about some of the pressing issues and elections and what the courts have been saying lately about how the First Amendment intersects with that. So maybe we can start with Murthy versus Missouri for those of you who are not familiar with the case where the Supreme Court was asked to consider the limits of the First Amendment placed on what is commonly referred to as jawboning. In the run-up to the 2020 and 2022 elections and throughout the pandemic White House and other administration officials communicated pretty extensively with social media platforms about the content moderation policies in an effort to address election and covert 19 misinformation. Two states and five social media users sued alleging the communications were efforts to censor their speech. In violation of the First Amendment. The case was dismissed on standing grounds but nevertheless I think it raises important questions about censorship, challenges to combating misinformation in the individual rights to access information. So a broad question to kick us off and I'm curious for your thoughts on the Murthy decision and how you expect the decision and congressional backlash to address efforts on misinformation to impact efforts to improve discourse and address misinformation leading up to the 2024 election.

>> I'm happy to take the first crack, Becca, but I'm glad to only take a small slice of the huge philosophical question which I think we will hopefully get into throughout the conversation. I think that of the panelists here and a lot of free-speech groups who weigh in, the next coalition against censorship filed a brief alongside fire made I think one of the more libertarian arguments kind of when we are talking about free speech and election there are some philosophical differences in how you view the speech environment whether you take a more libertarian and kind of clinically anti government involvement approach or whether it is a more human rights to beached framework where we are talking about the information environment and people's right to speak and sensor and all of the questions are crammed together in this roiling bubble in the Internet age. Because we are talking about communication via private companies at skill and even the justices do not know if that is censorship sometimes and Murthy really gets at the facts and what happened in the case really get at this division and how we

relook at the interplay between large corporate actors that are in fact massive gatekeepers. For conversations including election recorded conversations and the government's power and collaboration with them. And although you noted rightly this was a standing case but it has implications I am going to risk kicking us off with an oversimplification which is the standing decision here is what troubles me on the merits in large part. And I would not have called this a pristine record. I would not have called the Fifth Circuit's underlying decision a beautiful job of melding facts and law, but what was unquestionably clear in the facts of the case is that the government and the social media companies particularly the big ones, Meta, or hand in glove repeatedly meeting about the disinformation 12 or whomever, the hotlist of Covid and anti-VAX misinformation peddlers in the government's view and I think there was in a sense an informal full collaboration between the two including the government flagging information that was obviously constitutionally protected and using the close relationship with Meta in particular to get these posts taken down. And I think that the standing decision really does miss some of the forest for the trees or at least philosophically we have to ask ourselves do we care that the wrong plaintiffs were here which are the people who were censored. and if the right plaintiffs are only the company who feels job boned that we have to acknowledge that means that consensual cooperation between the government and massive corporations that gatekeeping in practice or current media for expression is fully constitutional under that rubric. And they have given us I think in the decision by punting no real help in determining the difference between persuasion and coercion in the classical test but for Bantam books for coercion but what we argued in our brief is that that itself leaves on the table an entire world of speech where the companies are the happy handmaidens of the government's attempts to get rid of constitutionally protected speech so I think whatever you think of Murthy, I would challenge everyone to think about it in a truly nonpartisan way which I think the plaintiff here in feta clay did not by the way but the idea that we are coming into an election cycle where the degree of the executive branch's control and ability to influence the speech moderation, the content moderation in speech environment depends on how close the relationship are and how welcome they are by the companies. Meta may welcome the Biden administration with open arms and the X Corporation might not and that might be exactly different if the administration and the executive branch were a different party. Or the legislative branch was a different party. So I think it really raises the question of, do we want our government to be able to consensually have tools and power to limit constitutionally protected speech when the governments, I mean, sorry, that was a real Freudian slip, when the companies that control our access to the information environments are happy to do it. And yes I think setting a clear line between coercion and persuasion by the government is really important but even beyond that we are leaving a lot of mischief on the table for corporations who are happy to kind of be handmaidens of the government censorship to do that here. And that really troubles us. And I know not everyone in the free speech environment shared the view because it

was not the only jawboning case and I'm sure we will get to it, but it's a lot of people weighed in on the case involving the companies doing business with the NRA who did not weigh in in this case in this case, the Murthy case I'm interested in that I'm interested in the philosophy of free speech folks who think it should be protected for the government as long as the companies are willing to manage our speech environment including constitutionally protected speech. That sets me off but it's not a university held belief among free-speech experts.

>> David Brody: I think Lee makes some points that get to a key distinction but I want to take issue with a little bit of it so let me unpack that a little bit. I think it is extremely important that we recognize that while there are important free-speech interests On these platforms there are zero First Amendment rights on the platforms. These are private companies that can make whatever rules they want for how people engage as long as they are not running afoul of other types of laws like civil rights laws or consumer protection laws or what have you. But in terms of speech, if Mark Zuckerberg wakes up tomorrow and wants to ban anyone from mentioning the New York Yankees, he can do that. That is his right as the proprietor of a private venue. Not a private venue but a privately owned venue.

But there are these hugely important free speech concerns that I think is what we are really getting at here. What I want to take issue with is I do not agree that the factual record in Murthy establishes that there was this level of hand in glove or concerted relationship between the federal government and the platforms.first off I'm not sure we got to a factual determination in the case to adjudicate that. So we have to be very careful about how we post it but I think there's plenty of examples and evidence where sometimes the Biden administration flagged things to the platforms and they said, no that does not violate our rules we are not going to touch that.

So there's a very big difference between the government twisting the arm of the platform to make them do something versus versus a platform having a set of rules about what types of content are allowed and what types of activities are allowed and allowing the government like anyone else to flag violations of it to them. There is nothing constitutionally problematic with the government saying hey we saw that such and such is a violation of your rules. Now again the Murthy court did not quite get to where is the line between reporting violations, having ongoing relationships and arm-twisting, but it still needs to be recognized that just because the government tells the platform, Haiti's guys are spreading disinformation, misinformation what have you and we think it is violating rules, that is not a Constitution problem. But you know, there are a lot of concerns about applying and overstretching First Amendment principles to these platforms when they are not state actors. And in particular, there is a huge threat of mis and disinformation related to elections in other subjects, as other panelists have talked about. The platforms play a vital role in keeping that in check and ensuring that we have a healthy information ecosystem. If some platforms want to choose to be free for all,

that is their right. But it's helpful when there are platforms that are not allowing disinformation to run rampant, particularly when the disinformation gets targeted at voters especially the examples that we have show that it is disproportionately targeted at Black voters and other voters of color at speakers of non-English languages. Recently there was an appeal in the US versus Mackey in the Second Circuit that's pending. This guy Mackey was convicted of sending voter intimidation messages through twitter in 2016. He spread misinformation that you could text your vote. And this was found to violate voting rights laws.

Similarly in 2020 there was a situation in which a group of bad actors sent voter intimidation robo calls targeted to Black voters in five different states that include misinformation about what would happen if they voted by mail and that too was held to violate the voting rights act.

So I think we have to think carefully about how we want platforms to be writing and engaging the rules and engaging with the federal government in terms of allowing things to be flagged. But the federal government also plays a really valuable role here. As we have seen with the cyber security and information security agency, which has primary responsibility for monitoring election interference and conveying that information to platforms.

Just yesterday Facebook decided to ban RT, which had been reported to be a Russian propaganda outfit, that is Facebook's right and the intelligence that they are acting on comes from the federal government.

>> Alexander Abdo: I think I should say it's a delight to be here, always great to talk with Lee and David. I used to work with Lee and Lee was my clinic leader back in law school so I feel like I've had several decades of learning from Lee. I think one of the really challenging aspects of the jaw boning doctrine is the First Amendment protects the right of Facebook to agree with the government. And that is why the coercion persuasion line is not just a line for determining in a unidirectional way whether the First Amendment is engagement actually divides the world's first moment rights on both sides. Coercion violates the right of people to speak. When it is a government acting but persuasion as a line protects the right of private individuals to be persuaded by the government. So it is not at least in my mind unconstitutional for there to be what Lee characterized as collaboration but what I might characterize as something that falls short of coercion. But despite and for that reason I think the court got it right in Murthy I wish the court had given us guidance as to what is the line between coercion and persuasion but even though I think the court got it right I still share a lot of Lee's concerns and I will take a couple of them.

One is that I agree that it should not be the case that somebody could be successfully jawboned and denied standing in a case because they couldn't actually get forward-looking relief which is one of the things the Supreme Court said. I actually think

this up import standing decision as is often the case in First Amendment cases was a tacit merit decision there wasn't standing because the court didn't think they had shown a direct connection between the alleged coercion in the active censorship of these potential plaintiffs but suppose they had demonstrated the connection another part of the court's logic would have kicked in and the plaintiffs could not have gone forward because there was no relief they could've gotten. The alleged coercion took place years ago, policies at Facebook have changed pretty in the meantime. Facebook has an absolute right to change the policies and it would actually be a first moment problem separate from the First Amendment problem to force Facebook to put them back on if Facebook did not want to put them back on. All of that to my mind speaks to the need for a kind of damages remedy related to government coercion. But this is the same Supreme Court that has systematically gutted the availability of damages causes of actions for demonstrated constitutional violations. I think that would go some way though if we had a damages remedy to prevent the real problem that I agree with Lee about that it should not be the case that somebody could successfully alleged coercion but not be able to seek a remedy. I do not think that was the case in this case but the logic of the Supreme Court's opinion certainly contemplates that it might be the case in the future.

Beyond that, I think a lot of the concerns that I share with Lee are ones that derived from the concentration of power that the private platforms wheeled over public discourse. And if it were not for the concentration of power, I think we would all be a lot less concerned about where exactly the line is between coercion and persuasion. Because the government talks to private speakers all the time. And the First Amendment community as a general matter is not up in arms screaming every time the government for example calls up the New York Times and says you misquoted me. Now the misquote was probably constitutionally protected and didn't rise to the level of actual malice and yet there they are trying to suppress constitutionally protected speech by getting a correction in the New York Times. The First Amendment community is as a general matter not up in arms complaining about that because the New York Times has a right to hear what the government has to say and to decide whether it is persuaded so long as... So long as it is insulated from coercion. What makes it different in a social media context is I think the core concern that Lee was really getting at is that there is a perception of the companies are willing to be handmaidens of government and that is in part because they are so large, such obvious targets or regulatory authority and benefit enormously from having a relatively smooth relationship with the government and they don't really care about any individual post on their sites. Very different from the New York Times the New York Times Kerala and most media outlets care a lot about any individual article they publish they agonize over every word. That is not Mark Zuckerberg. Facebook, they don't care. All that much. About any individual post so the incentives are aligned against or not sufficiently aligned with the free speech interests of their users so one thing we argued in our amicus brief was the Supreme Court should

not expect the jaw boning doctrine to solve the presence of distortion. And I don't think you could distorted enough to solve the problem of concentration for there would be all sorts of collateral consequences for other circumstances where nobody questions the legitimacy of the government engaging with private actors when the government scientists talk to private researchers and they say actually we disagree with your analysis of your data, that the private researcher is convinced, you know, would we say, I do not think we would say that is coercion but nominally it looks very similar to what was going on when say the CDC was asked by Facebook Is this potential disinformation about the vaccine actual disinformation, Facebook and decide whether they were going to take down what the CDC said ultimately it was their choice all of which is to say I think concentration is the core problem and if we address concentration had gone I think there would be a lot less pressure on the jaw boning doctrine to help sort out coercion from persuasion

>> Lee Rowland: I agree with that Alex, and I know that what we're talking about for setting norms for speech policies it's not a one-off, to your point David about the kind of election regulation environment it is not an objective verifiable fact I mean, these are not an existing buckets where we can kind of deal with them with our existing you know first amendment doctrine we are talking about setting rules for content moderation and speech at scale. So I absolutely plead guilty as charged that when I'm thinking about the government's role here my concern is massively heightened because it is de facto in some cases like becomes a speech environment where the government can heavily influence that and I, you know I think it is tough for me to actually posit an enforceable rule that would apply to kind of government communications that would apply to the misquote and, I get it, like it is a scale and how you slice that off I do not know. Obviously I think there are echoes of antitrust in how we think about monopolies and that speech environment. It might be helpful at this point to point to the practical outcome that I think shines a very bright light... I never in my life complimented the FBI as being a leading light in civil rights or free-speech or anything else, but here in the aftermath of the case the FBI put out new guidance about how they would reach out to social media companies. And that guy, I don't think I can access the chat but it's easy to find if folks want to. And the FBI's guidance emphasizes transparency and voluntariness. That is that every request to a social media company will be made transparent. And in it, and who knows how much of it is semantic, right given the massive scales in context we are talking about but it says, it falls all over itself to say this is persuasive not coercive. So we kind of see the language of the still unanswered question. I think in the wake of Phantom and in the wake of the Murthy cases that the FBI is at least setting forward a model where transparency at least would seem to be a pretty clear gap between coercion and persuasion. And I do think at heart, you know it's interesting the Institute for free speech I believe I hope I am getting this right filed a brief that basically wanted a bright line rule that any time the government wanted to request that constitutionally protected speech, wanted to flag, wanted to legally fly pursuant to

their existing policies the only way they could do it without a presumption of coercion would be to do it publicly transparently, it would be on the record and the request was that whenever that occurred behind closed doors and there was even a suggestion of a hand in glove relationship the presumption was that it was coercive absent under the proof. We didn't go quite that far in our test but I think no matter where the free-speech organizations are waiting and suggesting different tests, practical application by the FBI I think would satisfy most people. I think the real trouble for me is behind the closed doors meeting and David you are right there were times when they said hey, that speech was already on our list, we got it. There were other times it was hey you missed this but we are snatching pursuant to your policies but I think the most troubling for me is that record, and I agree totally I would love to have a better record there, indicated in entitlement on the part of federal government to have repeat meetings to get pissy when they did not get responses and I think when you work for a heavily regulated company it is very very difficult to actually assess how course of that is in the context of the regulatory environment. And by the way section 230 was raised a few times like oh, nice company, shame if anything happened to it. And all of those shenanigans are enabled. So give the FBI a complement, I suspect it will never happen again. They have created a guidance that at least straightforwardly makes it transparent, voluntary and at least eliminates the paranoia, right, that this repeat access is effectively our government jawboning the speech.

>> David Brody: I agree with a lot. I take issue with the idea that companies are heavily regulated in terms of the social media platform. But I think it is a very complicated environment when you are talking about the intersection of the government and some of these companies and other private actors, especially around elections, so just to give an example to tell a little bit about what we do at the lawyers committee. So at the lawyers committee for civil rights and the law we convene the election protection coalition, which is the largest nonpartisan voter protection network in the country. And for anyone listening at home, the hotline number is 866 our vote if you have any issues with voting please call us. But one of the things that election protection does is we do have ongoing relationships with both the social media companies and with federal agencies that are in charge of protecting election integrity like DOJ and CISA and other folks like that. And that trilateral relationship involves information sharing that needs to be kept confidential. Sometimes we are talking about threats to election officials and election workers. Sometimes we are talking about chatter about voter intimidation or things like that, where there needs to be able to be an information exchange that is not public, because if it gets highlighted in a public way, it can actually put people at risk or amplify disinformation or other harmful things in a manner that is counterproductive to addressing those threats to voting rights.

>> Alex Abdo: can I see two more things? I should have been more precise when I said heavily regulated what I mean is that platforms are heavily regulated in the sense that

they rely entirely on a federal statute for viability of the business model without section 230 they could not exist in the current form and they have an interest in making sure the statute stays more or less the way it is.

>> David Brody: Sure but the White House cannot affect that for the executive branch cannot threaten hey we are going to make the legislative branch pass a law

>> Alex Abdo: I don't think Biden is saying we think the 30 reform should be coercive with the meaning of the jawboning doctrine, nor do I think [indiscernible] the Biden administration the platforms could be killing people we did in our brief point to an exchange along the lines of what Lee was referring to a minute ago that we thought satisfied the coercion test. The Supreme Court of think was probably right that even that example was not connected to actual censorship of the browbeating to us seem to reach the level of coercion, you know, but the other quick point I would make is just I want to agree with Lee about the FBI guidance, which I think is very very good. In terms of the message it signals around FBI input to social media companies about quote unquote [form the line] influence I do take issues with this phrase. I don't know if folks have studied the FBI's definition of the phrase from the line of influence. On its face it seems directed at the idea that we don't want foreign states trying to subversively or coercively influence our elections, but the definition is written so broadly that it would seem to cover a nonstate foreigner. So say a citizen of the EU who is complaining in an op-ed, ghostwritten in the New York Times about the threat of NSA surveillance because it allows the NSA to spy on virtually anybody in the EU. I don't think the FBI should have as its mission the suppression of that kind of speech. So just one minor quibble in the other direction with the FBI

>> Becca Branum: That's really helpful, maybe we could pivot there for both regulation to transparency so the Ninth Circuit has been busy. In August and September they issued two decisions that speak to both the regulation of platforms but also the transparency of platforms that will have application for online speech and transparency specifically in the X versus Bonta case the court struck down parts of a California law that mandated transparency regarding platforms policies for addressing extremism disinformation and foreign political influence among other topics on the platforms.

 At CDT we care a lot about transparency and we often think of transparency and sunlight as the best disinfectant. And in other areas in the political speech lineage of cases for example the Supreme Court has upheld different kinds of transparency requirements. But the Ninth Circuit sets the ones that the California legislature enacted could not pass muster under the First Amendment. So I am curious for your thoughts on what X versus Bonta means and also moody versus net choice means for the future of transparency related to elections and elections related speech, and to what extent you think the political speech lineage of cases is relevant to how we should understand and evaluate transparency requirements for platforms?

>> David Brody: Sure. So let me kick it off there. I have a lot of concerns about the breadth of the Ninth Circuit decisions. And part of that is that I think the Supreme Court made a very astute point in the net choice versus Moody versus Paxton cases where it said that the lower courts need to slice and dice these laws with particularity. Some provisions may be facially unconstitutional. Some provisions are facially constitutional. Some provisions may be unconstitutional as applied but you need to wait until you have facts that give rise to that application. My concern with the Ninth Circuit decisions is that they are painting with a broad brush. You know, there are certainly some potential speech issues with some of the state laws that are seeking to try to regulate what content kids can see online or there's also some First Amendment questions around age verification. Things like that. But when those statutes have basic privacy and transparency provisions in them, those are things that we have upheld as constitutional for decades. And so when the Ninth Circuit says that it's going to, in these cases it took a very very very narrow view of what constitutes commercial speech versus other forms of speech and its folks probably know commercial speech gets less protection under the First Amendment and it is easier to regulate it. And the Ninth Circuit basically said we are going to take this very narrow view. And the types of transparency disclosures that some of the statutes are requiring the privacy protections that the statutes require do not rise to that level. The consequence of this is that it threatens privacy laws generally and consumer protection laws generally if we are going to start a weapon arising from the First Amendment to say anytime we require a disclosure from a corporate actor that that is going to be compelled speech. Or anytime we impose a burden on data collection or data use practices, that is going to be some sort of prior restraint. That's not how consumer protection law has functioned for decades and it jeopardizes lots of long-standing laws like HIPAA and the online children's privacy protection act and [GLBA] and other basic consumer protection statutes, not even just in the privacy context. But think about the SEC requiring various transparency disclosures of publicly traded companies. And the FDA requires certain disclosures on food labeling. And medicines. It gets really problematic when you start saying that these types of basic privacy and transparency provisions are unconstitutional

>> Lee Rowland: I think I agree with all the values you set out for David. I do not think that risk is present here. I think there are some cases where I think I have been troubled by that line. This is not one of them to me. And I think it is because, as I mentioned before, we briefly touched on commercial speech that under [indiscernible] line of cases commercial speech generally has to deal with or compelled commercial speech with a kind of objective presentable fact. And I think when you are talking about content moderation decisions, that there is a very real tension between editorial judgment and disclosure and I do think there are ways to apply consumer protection laws to speech entities. That is, I do not think there should be a speech of exceptionalism. You claim that you go online and post a blog and all of a sudden you get some exception from the consumer. I do not think that is the case. But when I think the law itself categorizes

based on the content of that speech, rather than the mechanisms by which you know, the company protects data, you are squarely in the idea of, we require all newspapers to disclose how they pick their op-eds, their editorial judgment and I think that is a tension that we should recognize and welcome as First Amendment advocates. That we are not just in normal consumer protection land that the government is getting into subjectivity. The subjectivity of editorial choice and frankly I see claiming this as a consumer protection somewhat as a smokescreen for the government to claim that's what cares about when if you just read the face of the law the entire law is anchored on six different types of content. Hate speech. Misinformation also known as constitutionally protected categories of speech. So I think that AB 587 frankly was doomed from the get-go because the way it was drafted belied the fact that it's drafters what they were truly concerned about was a mechanism for the government to investigate whether social media companies were allowing hate speech. They were not fundamentally concerned I don't think, and I don't think the statute text believes that would be basic data practices in protecting minors from data practices. You don't need to know those categories of information to do so so I think this case, this law, this bill deserved the opinion.because I see the California age-appropriate design code as fundamentally about content. And I do not think that a law like that should benefit from the general [indiscernible] the general [Zogerer] thing that we are gonna claim it's about data and moderation policies. No. There are different ways to draft a law that do not start here on the six categories of we really like to know what you guys are doing with. So I do not see the decision as a threat to that case line at all. I see it more akin to the recognition that we have not used generic antitrust monopoly consumer protection laws to regulate for example newspapers. And I think that is a healthy tension. Not a doctrine that is going to swallow consumer protection law.

>> Alexander Abdo: I think I agree with a lot of what David and Lee said. Let me start with the net choice case in the Supreme Court. I think it was good for the Supreme Court, right for the Supreme Court to recognize that [Zowder] has an applicability even in the context of entities engaged in significant expressive decision-making. This was a fight all the way up to the Supreme Court with the free-speech community a bit split. And maybe saying it was split is really over generous to the night Institute but I think the night Institute was the only free-speech Institute arguing they had any application to the individualized [indiscernible] decision that the Supreme Court took up in that case. I can think of a few other amicus briefs that suggested that Zowder was categorically inapplicable with the context of editorial decision-making and I think the court was right. I think it was, there was no recent explanation from the Supreme Court as to why exactly Powder is the right framework for analyzing those individualized explanation requirements in the Texas and Florida laws that were being considered and there's a good argument as the dissent said that or maybe it was really a concurrence that that was all dicta, and will have to be considered again once the case gets backed up to the Supreme Court.

But still I think eight out of nine justices suggested that it was the right framework and I think that was the important recognition. When it comes to X versus Bonta. I'm of two minds. I am not clear that the case will have significant impact when it comes to what I think of as the most fruitful avenues for transparency litigation. I think both laws AB 587 and age-appropriate design act both ran pretty headlong into the most challenging doctrinal questions around transparency laws. Along the lines of what Lee was saying. Neither one is like, neither for example was at all like the platform accountability and transparency act being considered by Congress, which was about mostly enabling research through transparency disclosures by the platforms rather than requiring the platforms themselves to explain something about for example in the context of the age-appropriate design act vague and undefined categories of constitutionally protected speech that is, could be of material detrimental minors.

So I am a little bit, it's not entirely clear to me that the cases will have a significant impact on this narrow category of transparency laws. On the other hand, even though I agree with the outcome in net choices versus Bonta I have some questions about the choices in X versus Bonta but setting aside my views on the outcome I think the analyses on the cases were probably overbroad. For one thing it is not at all, the court in both cases went out of its way to articulate a fairly narrow vision of what Powder is about and I don't think the narrow vision was necessary for the court to reach the outcome it reached in either case. And the vision it articulated actually was inconsistent with the premise of the net choice decision in the Supreme Court that Zowder might apply to individualized explanation requirements. So I do worry about how narrowly construed Zowder I also don't think it should all have been at play in the consideration of the data privacy impact assessments in the age... Appropriate design code act. Because those impact assessments were meant to be disclosed under a promise of legal confidentiality to the state to the Atty. Gen. I believe. Zowder is about making sure consumers have the information they need to understand commercial products and services. So I don't think that case should have been about Powder at all. I don't know why the court went out of its way to describe it very narrowly but anyway that is kind of how I think about this. I think there is still plenty of room for transparency regulation. I hope the kind of transparency regulation we see has less to do with content moderation policies and rationales than it does with data necessary to enable independent research which I think is going to be a lot more important to the public in understanding these platforms and to regulators and coming up with reasonable content neutral regulations to the extent there are any that seem obvious after we better understand these platforms.

>> David Brody: I largely agree with Alex and just a highlight, I agree that on the merits in terms of like the right outcome was basically reached in these cases For the most part in terms of the way these underlying statutes had speech content issues. My concern, though, is that the court, the ninth circuit in these cases seems to be focusing

on, too much in my mind on the speech rights of the platforms versus the way in which the laws were impairing the speech of users by restricting content in ways that infringes on the speech rights of the users.

And the way I see this being problematic going forward is in terms of AI regulation. So one of the things that many folks including us at the lawyers committee have been advocating for is requiring that algorithmic decision-making systems be required to do pre-and post deployment impact assessments in terms of we want to require companies to test their systems for biases, for other forms of harm, and to look at what sorts of good risk mitigations need to happen, and to publish reports about the findings. Maybe sanitized reports with trade secrets redacted or summaries or something like that. But the idea being, you know, it is sort of like crash test, crash testing for cars. Or testing drugs before they are released on the market. We want these things to be tested. We want some disclosures. And the way in which the opinions were written in the Ninth Circuit calls into question the ability to do that. Because they took this really narrow view of what forms of speech can be compelled from the platforms. And I'm not sure that some of the AI disclosure requirements would satisfy the narrow view of the Ninth Circuit. And that is what is very concerning to me about how we go forward here.

>> Becca Branum: Great. Thank you so much for that. I'm sorry to cut you off but we are at time I want to extend my heartfelt thanks to David, Alex and Lee. For a fantastic discussion I wish we could stick around and discuss Murthy more because there is so much to discuss so thank you so much for a great conversation about the Ninth Circuit case is and that as well and I'm delighted to introduce our next panel which will address postmortems generally, researcher access to data and oversight mechanisms to study the election. And to moderate the panel I'm delighted to be joined by Rose Jackson. Rose Jackson is the director of the Democracy + Tech Initiative within the Atlantic Council Technology Programs where she runs the Digital Forensic Research Lab. She is an entrepreneur and former diplomat with nearly two decades of experience strengthening democracy and defending human rights, leveraging technology for social impact, and building institutions to support democratic activists around the world. She previously founded and served as chief executive officer of Beacon, a platform leveraging data and marketing technology to make it easier for people to take meaningful civic and political action.Prior to founding her company, Jackson served as a senior policy adviser at the Open Society Foundations where she led a presidential transition initiative focused on reforming US support to foreign military and police. During the Obama administration, Jackson served as the chief of staff to the Bureau of Democracy, Human Rights, and Labor at the State Department, and before that as an advisor to US Senator Chris Coons on foreign policy and national security issues as a Galloway fellow. thanks so much for moderating, rose

>> Rose Jackson: Thank you so much. I'm joined by an extremely exciting panel for the next conversation before we dive in. Thank you to CDT for the invitation. And to the

panelists before me for a really interesting conversation. I think it is fitting that we wrap up with a discussion on researcher access to data and broader conversations on transparency given so much the conversation about freedom of expression and particularly freedom of expression on digital platforms which are highly skilled and simultaneously quite bubbled in communication. How we know what we know. To even prioritize the questions we want to ask, the policies that we want to drive forward, and the necessary steps to create a future world in which our digital expectations of rights and social cohesion can be met as much as we might expect in our physical spaces. I can think of no better panel than the one we are about to have a conversation with. So I would like to first introduce Rebekah Tromble director of George Washington University Institute for data and politics who serves on the advisory Council of the digital media Conservatory, through which she has led a good deal of the global conversations around it access in the context of the EU's digital services act and the GDP are before that. Rebekah, thank you so much for joining, we are also joined by Brandon Silverman who is the former CEO and founder of Crowd Tangle, a groundbreaking and I would say field shaping social media data access platform that was acquired and unfortunately later shattered by Meta. According to social media Brandon is a fan of transparency and dogs one of which he is able to do in part as a fellow at Rebekah's program at GW we will let you guess which one it is and finally we are rounded out by Agustina Del Campo Argentina base university professor and director at the University [indiscernible] directly university studies on, and discusses global technology and human rights protections also served as the vice chair of the Global network initiative. I am excited to dive in and to say it was hard to stop our discussion and pre-discussion conversation so I will do my best to keep it flowing. And I want to start with everyone, given the question that we may be a decade into a pretty robust and professionalized conversation about understanding social media coming to awareness of the ways in which social media can impact the world in very real ways. What do you think has changed about the conversation on data access? Are there things that we know how to do better? And are there some things you think we are kind of in the same place on? What is the state of play today? Perhaps we will start with Rebekah.

>> Rebekah: Thanks so much rose and thank you to CDT for having me here and to the fellow panelists for joining in the discussion. First and foremost an academic researcher or empirical social scientist and I was just starting to wait into the water of studying digital political medication roughly about 10 years ago. So if I kinda transport myself back into that time I think most of the focus then was what sort of questions should we be even asking in the first place? Everybody was just trying to grapple with the sense that there is a new set of communication platforms and systems that are clearly having big impacts on the way that we all communicate with one another and about big important issues.

But before that, everybody was sort of focused on these as being new flash in the pan things that may not fundamentally work into and transform communication systems used for whatever it was was really only a decade ago that we serve grappling with the fact that social media was here to stay and it was really going to be a core part of fundamental communication not just for the kids but for everyone. And would integrate with what we thought of as traditional mass media and so on. Roughly 10 years ago we were still wrapping our heads around what this thing is and how we need to think about it in the first place. But then once we start taking that seriously we have to move to the question of what data do we need in order to address these questions. And 10 years ago we were in a place where people are starting to think about confrontational social science. Maybe that is the thing. Maybe we need to think about new ways of actually getting data and maybe we need new tools for the data and some of the social platforms had relatively open APIs at the time. So it was in a sense for those who could acquire the skills to conduct the research and that way was sort of a free-for-all. Go in and grab everything that you can. Since then I think there have been hard conversations across a number of different fields and arenas about the responsible way to conduct the research, at the same time that we have the avenues for actually collecting the data and really shutting down the open APIs that are no longer open in some cases they don't even exist anymore.

So just at the moment where I think we finally figured out what are the really big important things that we want to be asking just at the moment when we have really realized that these are profound, that these platforms will have profound impacts on all of our lives from here going forward we are actually now in a position where we are much more in the dark than we were before we were still trying to wrap our heads around all of this.

>> Rose Jackson: Thanks. Brandon can I go to you next and given the flavor of the conference itself being on elections the same questions but particularly in the context of elections are we in a different place or do we need new skills or are we standing still? And mute buttons we have now gotten one out of the way. Thank you for doing that.

>> Brandon Silverman: Yeah I think Rebekah echoed a lot of my feelings which is there was a lot more access to data 10 years ago but it was also probably a terrible ecosystem of ethics and privacy violations. And we have made a lot of progress on that front while also sacrificing access to a lot of the data we want while also much harder to get through or in some cases just having them entirely shut down. At our work at Crowd Tangle there's no question that election work was one of the biggest components. And if we are looking at the very short term this year 2024 and 2025 there's much less access to data for civil society groups in particular, especially journalists. But also academics to be able to monitor elections. And just to give two quick examples, obviously there's the crowdTangle one but if you look at voluntary efforts you know Meta launched what was a really groundbreaking and huge effort to study the US 2020 election and there is not

only have no other platforms attempted something similar but obviously Meta is not doing that for this election either so we have lost both a short-term window into what's happening with the content but also the more long-term studies.

But to end on a slightly optimistic note I do think that the answer to all these questions is crafting laws that require the sort of data we want and we are making progress on that front especially in Europe there's a lot more work to be done and [indiscernible] work with civil society but I am optimistic by 2025 and certainly by 2026 here in the US some of the work will have kicked in and we will begin to see the type turn in a slightly different direction.

>> Rose Jackson: And Augustina, starting we just heard from two Americans dealing with laws who have [indiscernible] as someone who has done quite a bit of work what you see as the same or changing and how we have got access and understanding data

>>Agustina Del Campo: Okay, a slightly different take. I agree with what has been said but I think there were key changes over the past decade and a half. What technological changes, what platforms can do with the information they have. The debate in 2014 over the ability of platforms to monitor phone content for example was radically different than the one we have today. So I think technology is dramatically different, and may grant different kinds of access today than the ones they were able to grant maybe 10 or 15 years ago.

The second part is, I think there's been a shift from a right conversation to a risky conversation that is related to the Internet. So when we are thinking about transparency and access to data, the goal that is, that we are trying to achieve through transparency or through access to data I think has also changed. We are not looking necessarily at transparency from a rights perspective but we are looking at it from a risk perspective. And the clearest example that I can think of is the first exercises of transparency that companies did looking at state access to data and state requests to remove content and focus on that kind of transparency versus the kind of transparency that we are now talking about, which for good or evil have nothing to do with that. And in fact we have shifted our attention from what the state is doing and we're focusing a little bit more on risks rather than rights.

The third change that I see very profoundly, well, no. The fact that I see as a content maybe in the past decade is somewhat of an inability from civil society but also from researchers and also from states in clearly determining what we mean by the transparency that we need. The transparency we need for accountability is probably not the same that we need from a sociological perspective for policy input for example to understand how discrimination and society works. That's really interesting research but it's probably a different data set. Then the one we need for platform accountability for example or state accountability for that matter. It gets accentuated I think when we are talking about elections or the election framework.

>> Rose Jackson: That is really helpful to bring in the question of actors and what are we trying to achieve just the term data access was an attempt by many to get slightly more precise in the grand vision of quote unquote transparency.I'm curious all of you who have now been involved in the many year experiment that is the digital services act, and one significant component of the DSA the people are excited about is taking on some of the meatier questions of defining what we mean. What kind of data access to whom, by whom, how do you determine who is trustworthy enough to have access to more sensitive information. What information should be available to the broader public, and frankly to your point Augustina, what questions should we be attempting to answer through that access and information?

I am curious, if I can start with you Rebekah, are you seeing promising trends or are there things in the process that have come up for you as surprisingly harder to do than you thought? And I will give you the opportunity to also say things that you think are actually easier than people believe, not to say that any of this is easy. But we are in the middle of this world changing experiment, and a lot of countries are watching it and trying to figure out where they fit into it. So I would love to hear your insight, having gone through so much of it.

>> Rebekah Tromble: Yeah what I think is really interesting about the approach that the digital services act takes an specifically article 40 which is focused on research or data access is that it embeds, and relatable DSA, really looks at this as Augustina, was commenting, from a risk-based approach but it is assessing risks in service of better understanding where there might be violations of fundamental human rights for European users of the platforms, and how those sorts of risks that could represent risks to those rights could in fact be mitigated. You know, full article 40 on research or data access is not in effect. There are two different components of this. Article 40.12, which is really focused on access to real-time data, has been in effect for more than a year now. And we are seeing-kind of fair to say mixed results with that. On the optimistic side and the thing that I honestly and feeling really good about, the fact that almost every single one of the very large online platforms and search engines that are required to actually set of research or data access programs under 40.12, at least almost all of them at least have somewhere on their website that says, why yes researchers can request access to our data. Now in practice what does that mean? We don't know. Some of the platforms, those who have been doing a bit more data access in previous years have slightly more robust systems. None of them are perfect by any means. But a lot of them, it isn't anything more than just this little statement on the website that says, sure researchers can have access to data. They, the platforms are reasonably complaining that the European commission has not provided more guidance about what this means. I am hopeful that in the weeks ahead we will actually be seeing more of that. But in the meantime we are left with a status quo where the platforms themselves are laying out the rules of the road for what it means to review and approve who

qualifies as a researcher. What data will they actually get access to what research projects will they approve and this is a situation that really is in nobody's benefit to continue and even for the platforms the more they are reviewing and sort of have their hands and the processes to make decisions about who gets access to what data the more legal liability they have under a number of different provisions including GDPR in Europe.

So I'm relatively optimistic that we will make some progress in the next few months laying out a more robust system that will help platforms take a step back, give researchers more power over these processes themselves, but we are just not there yet and frankly for that, for 40.12 and for provisions that have not gone into effect which all deal with bespoke requests to the new digital services coordinators rather than the platforms for private data, not just public data, real-time data as in 40.12, we don't even have a delegated act from the European commission yet. So we have nothing but really a lot of question marks at this point. This work is going to be really really hard even after those questions are answered. I always tell researchers in this space that we have got to have patience because it is going to be a very bumpy road for at least the first year to 18 months before we start to see a system that is functioning very well. And that's very clearly evidenced by how things have been going with 40.12.

>> Rose Jackson: that's very helpful and I've been thinking every time there's a release of some aspect there's transparency reports that are part of voluntary codes. There's kind of the initial play with what you referenced a year of open access being required and so many different forms. People are testing; we are certainly learning some of the good, bad and ugly of different approaches. Augustina, I am curious you know pretty significant conversation in a global community about what does the DSA do for the world whether that is a conversation about just setting a standard and getting a standard right that others attempt to engage with or mimic, or it is actually a question of who is gaining access to this information to understand a systemic Internet and systemic information space. I am curious as you have been watching how the DSA has been developing. Are there things you would want to flag as particularly promising or problematic from that viewpoint?

>>Agustina Del Campo: Yeah thanks for that question. We have been following the DSA well, since it's drafting, and article 3 with a lot of interest last year we held, we organized a couple of meetings with global South, I hate that term but I'm going to use it because it is clear what I mean, but we did organize a couple of meetings to see how her researchers and civil society were thinking about this. And we came out with not a lot, but a few clear points. One is that we are all very cautiously optimistic that the DSA may provide access to data that has not been available so far. So there are a number of transparency obligations that are going to be interesting for the global ecosystem and that's deftly going to be beyond Europe. But most, may be the most significant part of article 40, which is the regulatory dialogue that the commission seems to be pushing for,

it's not yet clear how they are going to engage with the rest of the world. It seems to be for one a very European focused kind of legislation. So it's not clear how they are going to value the input from research elsewhere and what that means for the European ecosystem. They have not been very integrative of foreign views in their conversations so far. They have engaged with the US a lot more than they did with other communities, the Latin American community, the African community, the Asia, the Asian community. I think there are problems there in terms of how they are going to weather it. They are going to be contributing to researchers outside of Europe in the United States accessing information from platforms. The second thing is the scope is limited. The scope that the DSA has is based on their systemic risks definition. So one of the concerns that I have is that in looking at the DSA I understand that maybe in their opinion those are the biggest systemic risks. There's a big part which is the state that is out of the DSA equation. The DSA does not consider the state to be a systemic risk and unfortunately in most countries all over the world, the state is the main threat to human rights. Out there. So it is at least incomplete. And it probably could foster a very siloed view of the risk particularly to elections which is the topic of our conversation today right? If we do not play selections and platforms in a broader context of elections, how is social media? How is the Internet playing out with journalism, with political parties campaigning. In Argentina we have off-line disinformation. People submitting fake ballots that are left underneath your doors. So, those things are still there and I'm not sure the DSA has a lot to offer so long as they view the systemic risks from the narrow perspective of the platform. And then again it's not clear how they are going to be... Dealing with foreign researchers.

>> Rose Jackson: It is a really interesting set of points and builds on what you said before the pendulum sometimes between focusing on containing our understanding of the government actor as opposed to understanding or containing the power of commercial or industry actors where in reality these are the kind of spaces that we are all playing on. Not necessarily in competition with each other. Rebekah, I know you wanted to add something to that

>> Rebekah Tromble: just to underscore a couple planes about what Augustina was saying right now doing which in the DSA, there's the possibility that non-European-based researchers would have access to data under the DSA but that seems like it is going to hinge on a sort of political or wonky understanding and interpretation of a separate law the European copyright law, the European copyright act and crucially while Augustina you are so right to emphasize the sort of big gap in the DSA's perspective of focusing on state actors potential threats to rights that are coming from state actors, the one area where the DSA does take this seriously is threats from external state actors, and so while we have this, it is sort of interesting to see that we have got this odd juxtaposition where we don't know for sure whether other researchers could be brought in to support understanding, get access to the data to help us

understand these particular risks, but in fact those are the one area where the law is focused on potential state-based risks.

>> Rose Jackson: I feel like any conversation on the Internet you have to say 12 times over that the Internet does not respect your boundaries. [Laughter] it is this tricky bit, we were having a conversation before about the first transparency reports requiring all of the covered companies toDisclose billing which capacities they have for content moderation in European official languages and the report dropped the same the conflict between Israel and Gaza started and I think it was X that happened to include any language that anyone in the company could speak so it included Arabic and Hebrew, which of course brought to the fore how relevant that capacity is, even though it is not an official European language. So thinking about those sorts of questions expanded and expanded and expanded, even if you were only focusing on foreign actors in a European context, certainly would benefit from an Argentinian researcher understanding Argentinian actors in their own spaces. I am so glad that you call that out. I am curious, Brandon, if we could throw it to you at the very practical level you have had to actually figure out yourself some of these questions in the absence of regulation and rules, while you were building a platform that had to have policies around who could gain access to that data, what kind of data, what data did you prioritize and for what reasons? How did that create dynamics within the company about what could be known.

I am curious now that you are pretty intimately involved in the questions around data access and transparency and the DSA implementation, are there things that you think that they are really getting right? Things that seem like they might be missing? and I guess to say that if you were king for the day, pardon the reference point at an elections event, but we will go with it, what would you really want to be able to make sure they kneel in how they implement this in the DSA?

>> Brandon Silverman: All right. I will try to keep this brief. I could probably go on for a while. First of all I would say that I have been blown away by the staff at the commission level who have been working on this and the degree to which they have really, I feel like they [indiscernible] the technical details and everything this is a very complicated space so I have been very impressed with the people working on this at the ground level. I think one of the most important things that I think they feel very aligned on, which is something I have come to believe really strongly in, is for all this data access we need some sort of overall regime that is about different tiers. There are some data assets that should have incredibly strict and difficult to get through access provisions and other ones that represent less risky stuff that provide more value to broader audiences and we need to find ways to have different tiers of system. I think that is something they are aligned on and trying to bring to practice and something [indiscernible] when it comes to that but I would say going forward I would say there are three things I am mostly looking for.

The first is obviously the delegated act, and/or any additional guidance that comes from the commission on how they interpret and see article 40.12. And by the way I'm in a focus on 40.12 because that's much more the area I know relative to

>> Rose Jackson: Can you remind everyone what 40.12 is

>> Brandon Silverman: 40.12 is the one provision of a real-time access to public data, so it is much more than we work with crowdtangle, and it's an area that I feel more of the nuances on. So one is, that does not follow under the purview of the delegated act so a lot of us are kind of hoping that in some different formats the commission can come out with more guidance as to how they see article 40.12, and what compliance looks like even if it is not a formal mechanism similar to the delegated act. So can they spell out things like, this is a broader audience of researchers to be able to use this provision relative to other ones etc. I think more guidance is on how they interpret 40.12. The second one is I think this entire space, especially for those of us who care about making this access available internationally, is in desperate need of standards of the global level. And I think the commission could play a really important role if they decide to support efforts to build standards. And I think they already have to some degree with a lot of the work they have done around some of the stuff Rebekah has been leading around the last several years are in the intermediary body but I think there's a big question of like not only can we begin to set a precedent for what the laws look like but begin to establish global standards for this so that countries all over the world and begin following suit and also can we unlock some of the jurisdictional stuff that gets really complicated and in the last one is I do think there is definitely a risk of a little bit of field of dreams of just hoping if you build it they will come. Just providing data and even if the platforms get all the data access 100% right you are talking about a field that is technically challenging. There are not a lot of practitioners who have been doing this for 50 years with these petabytes of data and Cetera one of the things we need is money to help to support the research itself but somewhere where I spent a lot of time is to build the tools that make the data useful and simply having a massive Google cloud storage full of 150 PB of data is not going to help an election monitoring group in the global South or even in places in Europe if they cannot turn the data into usable insights for and that requires real work so I think the other one we are looking for is can the commission find ways to support some of this stuff financially as well.

>> Rose Jackson: That's great and I want to make sure that we connect questions on the research community

>> Brandon Silverman: I forgot to flag one of the other signs of progress here is the US and White House is showing progress on this. There was an announcement a couple weeks ago that the NTIA and I think the OSTP at the White House are in the process of beginning to build out their guidelines around researcher access and standards which is a huge step forward

>> Rose Jackson: That's a huge step forward and connected to the conversations happening elsewhere. Augustina do you want to add something?

>>Agustina Del Campo: Yeah just very quickly to put my +1000 to Brandon on the last comment. The existing equalities in the research of the information ecosystem between global South And global North is huge. The lack of research that is pervasive when it is outside of Europe and the United States. It is really frustrating and when thinking about who is going to be considered a researcher for these purposes, what tools are going to be available, I think that there needs to be a lot of broader conversation than there is today. And should take into account precisely that it is not a question of building it and they will come. It does not work like that. There needs to be active work. So that there is meaningful engagement.

>> Rose Jackson: Such an important point and I think often people in a conversation about technology forget about people in policy and think these are technical streams or if you just hand them the data it is fine. So before the end of this I really do want to make sure that we are able to talk about some of the dynamics shaping the broader research community globally and in the United States and Europe but before we do that you have raised something really important, also Augustina, which is the learnings from each other. Not just a question of having the global majority able to do research because that is a neutral good on its own. It is an interconnected Internet. We'll actually need that and no bigger proof point actually to talk about this year has been that it was the super year of elections. 80 something elections around the world, more people voting this year than ever before in the history of the world at the same moment. That democracies are in decline for the first time over the course of many years. Since the 1980s. And given that dynamic, there was a lot of conversation in particular about whether AI was going to be a fundamental change, whether the kind of spate of elections would mean platforms were less capable of engaging as they would in other places as responsibly. I am curious we are now more than halfway through. Gearing up toward a big one in the United States but a lot of the very large elections in India and elsewhere have already happened and I'm curious if you can speak to what we have learned and if there's anything from that that should filter into what we do and do not need to know in the context of these data access conversations in particular to keep elections safe and transparent and to learn from them. I don't know if anyone wants to raise their hand to go first or I will be a jerk and just calling you. We will go back to Brandon first.

>> Brandon Silverman: Yeah it's a good question. I do think it is worth highlighting some of what is happening here in the US around attacks on researchers and the degree to which that is having a huge impact on the ability for academic and civil society to help participate in them. And I will segue to something Rebekah is launching which I think is really important but it points to the fact that this is a sociotechnical, this is a cross society wide challenge and we need to be thinking about strategies for data access

funding research for institutions, support for researchers etc. But it's had an absolutely stifling effect on being able to monitor elections here in the US and the sheer number of people who are doing it and by the way I think one very small misinterpretation of the some of the work which is probably intentional on the part of some people who have been launching campaigns against researchers is that while it is true some of them were in contact with platforms etc., the vast majority of researchers do as monitoring elections is helping inform journalists in the news industry how to cover the elections and what stories they should be trying to cover more so citizens have a complete picture of the issues. So for me that feels like just such a core, and I hope noncontroversial value for how to run a liberal democracy, is to have a marketplace of ideas where people can engage and debate with them and a big part of what this work all does is help support that.

>> Rose Jackson: thank you I suppose I should throw it to Rebekah for the teased news from Brandon.

>> Rebehak Tromble: thank you Rose and thank you Brandon for teasing the news. I think we should take a step back and look at the landscape in terms of what we are monitoring and conducting research to understand what is happening during this really pivotal election year where now we are rightly focused first and foremost especially for those of us in the US on the upcoming presidential election. We are roughly 6 weeks away from this being a really important moment but this has been a crucial moment globally for elections. We are more than halfway done and there have been a number of really important elections that have happened internationally. And there has been this sort of build up of different factors that I think have created this point in time in 2024 where this absolutely vital public interest work has been, has become more difficult than it any other time than ever before, so we have had first the sort of undermining of a number of key trust and safety tasks, workers, remits a number who have been laid off across a number of different platforms and they are right, it's not that trust and safety workers have been essential for researcher interactions although some external independent researchers have in fact interfaced with the trust and safety workers but they were vital for performing the key tasks and communicating out with the public what it was they were seeing happening inside the platforms at any given moment. And that sort of work is just much much harder to achieve. We are not hearing from the platforms themselves nearly as much anymore about what they are seeing during these crucial election periods. Second is that the data access itself, so the ability for independent external eyes to check on these things, to monitor these things has really been hampered because APIs and tools like crowd to go have been shut down. But then third, and I really can't underscore this enough, the pressure that researchers themselves are facing from external actors who were doing things like filing lawsuits or issuing letters of inquiry and subpoenas who are working with online sort of Confederates to bring together these effectively dog piles of attacks that then get further

media attention, trying to undermine the work that is being done. There are a number of accusations being lodged at independent researchers. I fundamentally believe that they are all completely and utterly baseless but what we are seeing is that the researchers are committed to doing this work and so are really working hard to keep it going even under this absolutely incredible pressure. Folks aren't caving, but the day in and day out work is just much much harder. And fundamentally I see this as part of a larger campaign, a larger initiative to undermine in the public's eyes to undermine higher education and science. In scientific inquiry. Right, the knowledge that scientific experts are bringing to the table, are bringing to journalists, are bringing to the public, and fundamentally it is a right of those of us who do this work to share, it is a right to share our perspectives with the public, and we are seeing political actors trying to undermine our right and our ability to do this work.

 So on Friday by a bit of coincidence, I am launching a new initiative called the researcher support consortium. At a public event here at GW. If anyone is in the audience who would like to join us in the audience at 2 PM you are very welcome but what is important here is that we have put together a series of resources and tools for researchers institutions to stand up and support those who are doing this important public interest work. There just isn't a whole lot of understanding that first and foremost this is an occupational hazard for researchers there's a lot of focus on fundamental rights to do this work so the researcher support consortium is there to try to work directly with institutions particularly professional associations and universities to get them to take the steps that are absolutely essential to protecting this important public interest work.

> Rose Jackson: thank you so much for sharing that. I am reminded that the digital forensic research lab is composed of researchers all around the world and the running joke for us as we have come under some of the same pressures that you discussed here in the United States is that for most of our international researchers there's a little bit of a welcome now you know what we experience. But underscoring yet again that there is no such thing as separate intranets and separate experiences. And the more the people understand the scope of the very intentional and coordinated attacks to frustrate the ability of independent researchers to help us understand our own information ecosystems to be able to build rules and laws and societal guidelines whatever those are. The more important conversation and awareness is so thank you for doing that and I encourage people to take a look on Friday.

I am cognizant that we are just about working overtime here so what I want to do is let each of our panelists give each of our panelists their last thoughts before I turn it over to close. And let's start with Augustina.

>>Agustina Del Campo: well thanks, congratulations Rebekah, on this initiative, it's very timely so thanks for putting that together. I am just going to address the last question. I

think it sort of recaps what I have been trying to put forth here. I think a couple of things have gotten worse or accentuated during this big electoral year. For one, there's been a lot of reforms in different countries giving states or state officials powers to act during the election with no transparency, regarding what they are asking platforms to do, what kind of access to data they are requesting. And that is getting problematic. And that affects researchers as well, and journalists and it creates tension around their work.

 A second thing is an increasing trend in stigmatization of journalists particularly doing investigative journalism, and the stigmatization campaigns that we are seeing in different countries popping up are huge. [SLAPS] are growing in number and growing

>> Rose Jackson: Remind people what slabs are?

Agustina Del Campo: Slaps are lawsuits that are launched basically to silence journalists, defenders, organizations researchers. It is a way of persecuting people through legal means. Is an abuse of legal tools that are out there towards other ends, but are used to censor speech basically. And those are increasing after two or three decades of working on these. Instead of decreasing, they are increasing. Attacks on journalists are increasing instead of decreasing. And the mechanisms and protocols to address those are not there. There's huge levels of impunity across the globe. This index is not improving. It is getting worse.

So anything we can do to put some light on the overall situation is very welcome and thanks again for having me on this panel.

>> Rose Jackson: Thank you Augustina. Brandon, closing thoughts.

>> Brandon Silverman: Yeah I think I'm going to make the world's worst pitch for people to come work on transparency and access , which is there is a definition of transparency as a banal policy idea which is that it's pervasive and uncontroversial. But I think the truth, having been in this space on the policy side for the last year and a half or two years, we need more people working on it. And partly because it is banal. And I think there are theories of change out there where you can take advantage of huge moments to do big things in short periods of time. But at least personally I think that more sustained and impactful change happens with slow, boring methodical hard work over long periods of time. And I think that is the sort of change that we are trying to pursue on the data access site. So it's not going to get front-page articles, well maybe if you shut down the transparency program it might. But most of the time

>> Rose Jackson: I have no idea what you're talking about Brandon

>> Brandon Silverman: But yeah there are hard challenging cross industry things that have to be worked through when you get there it is the sort of thing that can impact a lot of things we care about so that is my pitch for folks who care about a lot of these

Internet related things that data access is I hope one of the ways we can achieve a long-term vision of the Internet we want, but we also need more help.

>> Rose Jackson: Excellent and Rebekah?

>> Rebekah Tromble: To very quick calls for action, one for the non research community is simply to recognize and find ways to support researchers who are doing this vital work. We continue to do it because this is a group of people committed to the greater good, to the public interest, and this community deserves the support and protection and others in this space weather that is lawyers, whether that is administrators, whether that is the general public reaching out and saying to people how great and important we think your work is. Every little piece helps to bolster the resolve of folks around the world who are doing this work.

 The second is to the research community. We are looking in the upcoming months of what could be a real transformation in the data access landscape as article 40 of the DSA comes fully into effect. But it will not operate well unless we cooperate with one another and the institutions that are working to try to make sense of this including another independent intermediary body that will be established and announced really soon. But the key is that we need to cooperate and work together and try to push back against those individual incentives that we have to go after our own things come our own pursuits including our own data sets.

Because if we do that, all run for the shiny object at the same time, we are going to overwhelm the system and ultimately no one will benefit.

 So even the researchers remember why we do this work, the fundamental good we are trying to serve, and remember that then incentivizes us to work together in order to try and turn this into a sensible and workable system.

>> Rose Jackson: Excellent. And with that thank you to the panelists for giving your time, CT for giving your virtual stage and I am now going to pass to Kate Ruane who is the director of the free expression project at CDT. I believe they close you out. Thank you so much.

>> Kate Ruane: Thank you, Rose, Rebekah, Brandon and Augustina for a fascinating and essential conversation and on behalf of the Center for democracy and technology and standing together. Trust thank you all so much for joining us for this year's future of speech online. We will see you soon. Thank you all so much. Bye.