



Executive Summary

# A Technology Policy Framework for Online Services Regulation

By Erin Simpson and Adam Conner November 16, 2021

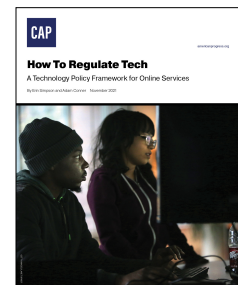
A new report from the Center for American Progress proposes a framework for the regulation of online services. At a time when Americans are more reliant on online services than ever before, the case for enhanced oversight is clear. Robust regulatory and oversight powers are a necessary complement to revived antitrust enforcement in the pursuit of protecting Americans' rights and livelihoods.

First, this report surveys the interlocking economic, privacy, consumer protection, and civil rights challenges that online services pose to Americans. The evidence of serious problems is clear yet frustratingly incomplete, with the lack of transparency from online services creating a stark information asymmetry between internet companies and everyone else. In aggregate, the report finds that these issues present systemic risks to the national interest. It contends that these harms are neither inevitable nor the “cost” of enjoying the internet’s many benefits.

The 117th Congress can make immediate progress toward better online services by advancing the bipartisan tech antitrust bills, fully resourcing the Federal Trade Commission, and taking up a comprehensive federal privacy law or supporting robust privacy rule-making. But a survey of outstanding regulatory gaps presents a strong argument in favor of new and enhanced authorities to protect the public interest online.

In advancing the debate around these issues, this report builds on existing work to present a holistic, future-facing proposal for online services regulation. It makes five primary contributions:

1. Modeling what regulation could look like for *all* online services, beyond today’s gatekeepers.
2. Advocating for a hybrid approach, encompassing baseline statutes around highly problematic practices and a system of proactive, principles-based rule-making.
3. Proposing a unique, opt-in regulatory tier specifically for online infrastructure companies, which require distinct treatment to protect the essential operation of information online.



The full report is available at <https://www.americanprogress.org/article/how-to-regulate-tech-a-technology-policy-framework-for-online-services>

4. Proposing a new test to further the robust conversation around identifying digital gatekeepers.
5. Developing a cross-cutting approach to strengthen existing sector-specific regulatory bodies through investigatory powers, referral powers, expert support, and regulatory coordination.

## Focus on online services

In defining the universe for regulatory action, this proposal focuses simply on providers of “online services”—products and services delivered through the internet, exempting core protocols and their static use. This cross-cutting approach focuses on the online services components delivered by many different types of providers, rather than trying to circumscribe the tech industry or a particular definition of a digital platform. In technical terms, this encompasses services offered in the application layer of a traditional internet stack but generally does not encompass telecommunications or networking infrastructure further down the stack, such as physical networking infrastructure or internet service providers (see the report for more on “stack” models of internet architecture).

## Three-tier regulatory strategy

The report proposes three categories of online services regulation: online infrastructure, general online services, and gatekeepers. Each section outlines the target entities, regulatory logic, and tools proposed. All online service providers would fall into either an online infrastructure tier, on an opt-in basis with approval, or the general online services tier by default; extremely economically significant providers might additionally qualify for oversight as gatekeepers.

- **The online infrastructure tier** is designed for infrastructural providers such as web hosts, cloud services, and content delivery networks. An opt-in regulatory category, it aims to preserve online infrastructure by imposing public interest obligations—such as common carriage, which is the requirement to deal fairly and equitably with all legal customers; nondiscrimination; and cybersecurity and other baseline standards—alongside greater regulatory stability and dedicated intermediary liability protections in addition to those provided in Section 230. It provides baseline freedom of expression protections for legal content online and would enable a more focused discussion on appropriate public interest obligations for infrastructural services.
- **The general online services tier** is designed for all other online services entities, regardless of size. It proposes prioritizing **competition, civil rights, consumer protection, and privacy** as the key principles for online services regulation—operationalized by dedicated statutes and accompanying rule-making capabilities guided by those principles, as well as further process requirements enumerated by Congress. Clear, per se violations of rules can set

a foundation for online services conduct. Additional principles-based rule-making would enable regulators to sustainably update and tailor protections to keep pace with emerging markets, balance competing interests within rule-making, and curb predatory practices on an ongoing basis. Equipped with significant technical expertise and research capacity, these regulators would be tasked with general oversight responsibilities and also serve as specialist partners to other federal agencies.

- **The gatekeeper tier** proposes additional oversight for the largest, most powerful online services companies. In order to determine gatekeeper status, this report builds on existing work to propose a new test of qualifying common characteristics of dominant digital platforms. It envisions additional powers for regulators to act as complements to existing antitrust enforcement, including proactive rule-making powers and a wide range of tools to bring to bear on specific problems arising from gatekeeper power. Designating powerful online services providers as gatekeepers that merit dedicated scrutiny enables regulators to look at business practices not only in isolation, but also in terms of what systemic risks they may pose to the economy and the national interest.

## Administration

The report envisions many potential pathways to actualizing this framework—a combination of new and existing statutes, new rule-making powers, and revived use of existing powers is needed. It likewise envisions several potential strategies for regulatory administration. Instead of preemptively determining which federal bodies should administer this regulatory approach, the authors hold that form should follow function. While the report briefly discusses a set of administrative options, it remains agnostic among those choices. None of the report’s proposals present a substitute to structural remedies that could more effectively prevent and address inherent conflicts of interest. However, given the scope of online issues that are beyond the reach of structural approaches, additional regulatory capacity is needed.

## Conclusion

Americans strongly support government action to regulate online services. A government that cannot understand, much less anticipate, the dangers and potential of new technologies will increasingly fail the public over the coming decades. The road ahead is a significant undertaking, but the cost of inaction would be greater.

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