

TECHNOLOGY AND PUBLIC PURPOSE PROJECT

The Blueprint for a New Government Agency



HARVARD Kennedy School
BELFER CENTER
for Science and International Affairs



HARVARD Kennedy School
SHORENSTEIN CENTER
on Media, Politics and Public Policy

BLUEPRINT
2023



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About the Technology and Public Purpose Project (TAPP)

The arc of innovative progress has reached an inflection point. It is our responsibility to ensure it bends towards public good.

Technological change has brought immeasurable benefits to billions through improved health, productivity, and convenience. Yet as recent events have shown, unless we actively manage their risks to society, new technologies may also bring unforeseen destructive consequences.

Making technological change positive for all is the critical challenge of our time. We ourselves - not only the logic of discovery and market forces - must manage it. To create a future where technology serves humanity as a whole and where public purpose drives innovation, we need a new approach.

Founded by former U.S. Secretary of Defense Ash Carter, the TAPP Project works to ensure that emerging technologies are developed and managed in ways that serve the overall public good.

TAPP Project Principles:

- Technology's advance is inevitable, and it often brings with it much progress for some. Yet, progress for all is not guaranteed. We have an obligation to foresee the dilemmas presented by emerging technology and to generate solutions to them.
- There is no silver bullet; effective solutions to technology-induced public dilemmas require a mix of government regulation and tech-sector self-governance. The right mix can only result from strong and trusted linkages between the tech sector and government.
- Ensuring a future where public purpose drives innovation requires the next generation of tech leaders to act; we must train and inspire them to implement sustainable solutions and carry the torch.

For more information, visit: www.belfercenter.org/TAPP

About the Initiative

The Democracy and Internet Governance Initiative (DIGI) is a special joint initiative between Belfer Center for Science and International Affairs and Shorenstein Center on Media, Politics and Public Policy.

DIGI aims to research and build solutions to mitigate the harms of digital platforms, with a particular focus on social media. As part of the Initiative, our team worked with a range of stakeholders across government, business, and civil society to address growing public concerns.

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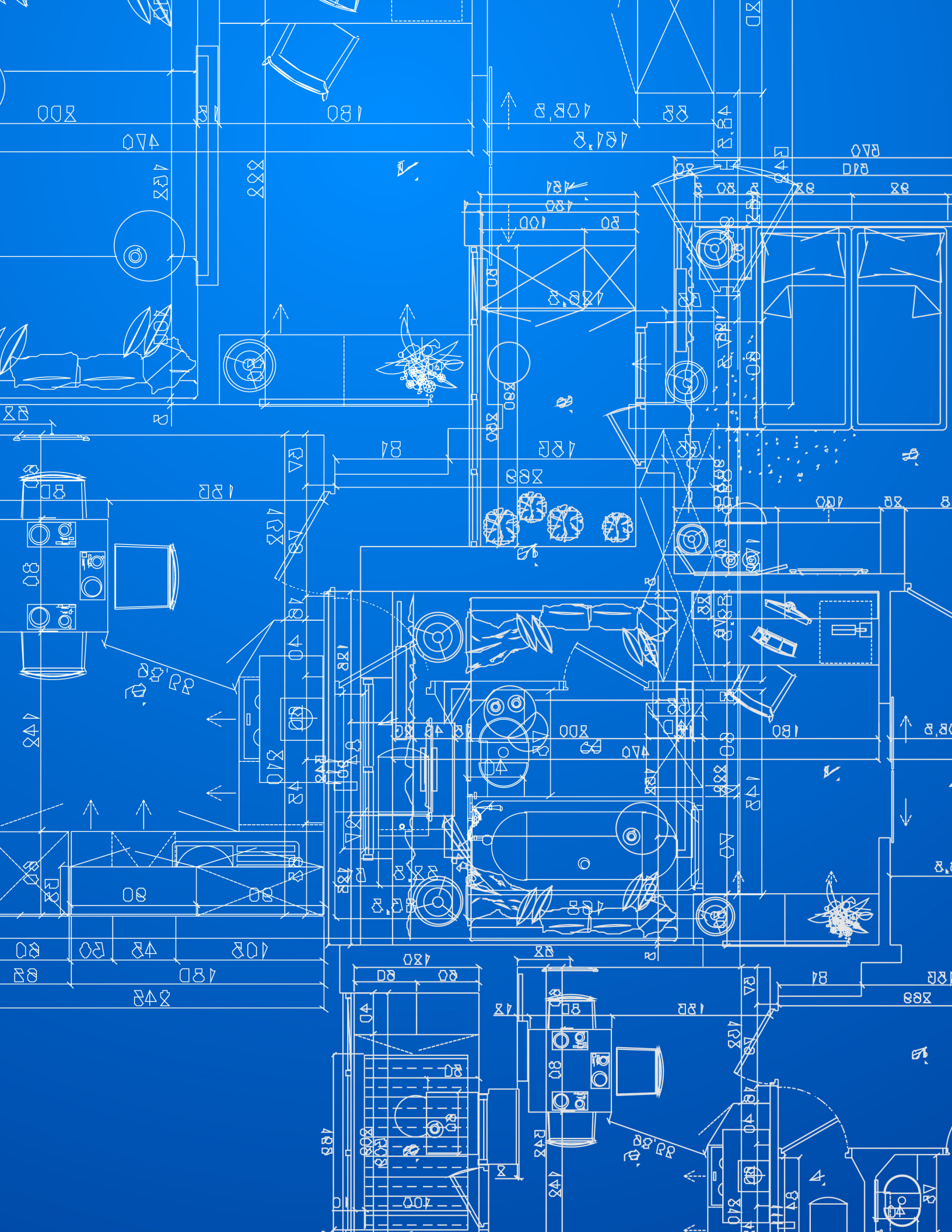
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Introduction

Digital platforms have far-reaching consequences on society, amplifying harms like mental health crises, radicalization, and polarization. The Democracy and Internet Governance Initiative has conducted extensive research behind how these platforms contribute to such harms.¹ With the rapid emergence of new technologies like generative artificial intelligence, which could introduce further challenges to consumers, the need for decisive action has never been more urgent. This raises the question: how should society respond to these challenges?

Historical precedent demonstrates the effectiveness of self-regulation and proves that industries can successfully establish standards to guide the development of their products, under the right conditions. This is exemplified by the pharmaceutical industry's formation of the United States Pharmacopeia in 1820.² However, for these standards to be effectively enforced and broadly adopted, government oversight is essential.³

This is because industry leaders face a dilemma. While leaders may be inclined to adopt standards that align with their values, and even collaborate with competitors to reduce their impact on society, they may be concerned that adhering to such standards could diminish their platform's competitiveness. To overcome this challenge, leaders require assurance that their competitors will also comply with agreed-upon standards before committing to them. This is where the role of a government watchdog becomes indispensable. By enforcing industry standards and imposing penalties on those who deviate from agreed-upon norms, the government can instill trust and confidence in the system. This ensures that all participants have faith in the fairness and integrity of the regulatory framework, promoting a level playing field and encouraging widespread adoption of responsible practices throughout the digital services industry.

This document presents a comprehensive blueprint for the establishment of a federal watchdog within the U.S. government, tasked with overseeing the digital services industry and enforcing standards as they are developed. The concept of a digital services-specific watchdog is not completely new; other experts have championed the idea of establishing a regulatory body to oversee digital platforms.⁴ In fact, in May 2023, U.S. Senator Michael Bennet and U.S. Senator Peter Welch (D-Vt.) introduced the Digital Platform Commission Act, the first-ever legislation in Congress to create an expert federal agency to provide comprehensive regulation of digital platforms to protect consumers, promote competition, and defend the public interest.⁵ However, this blueprint is presented within the context of the larger insights and findings from Democracy and Internet Governance, as summarized in its final report *Digital Platforms and Public Purpose*,⁶ and aims to address questions of execution.

Overview of the Watchdog's Mission

The primary mission of the watchdog will be the safety of consumers of digital services. This mission involves enforcing industry standards – providing the confidence necessary for business leaders to improve their impact on society in an industry with a level playing field with uniform regulation. Additionally, the watchdog will assume the role of an expert body, consolidating valuable information and conducting research on the broader impact of digital services. By serving as a knowledge hub, the watchdog will provide vital support to other government regulatory agencies, equipping them with the insights necessary to fulfill their respective missions.

Where the Watchdog Should Be Housed

Maximalist vs. Minimalist Approaches.

Regulating digital services could take multiple approaches. Some approaches, like creating a new government watchdog, are more aggressive. Others, like creating a new team within – or expanding the authorities of – an existing watchdog represent a more cautious approach. This paper lays out the pros and cons between the “maximalist approach” and “minimalist approach,” respectively. It then provides two case studies, laying out examples of each approach in action.

- **Maximalist approach.** In a maximalist approach, a push is made for the creation of a new digital services watchdog. Such an organization can develop complex regulatory policies, advise senior officials, and interface with industry leaders. It can also collaborate with other government agencies – empowering them with expertise and knowledge of the technology sector.
- **Minimalist approach.** In a minimalist approach, officials begin by creating a small team within an existing government watchdog, or else expanding the authority of a watchdog to regulate the new industry. This team would act as an arm of an existing watchdog or smaller executive office branch, and would focus on advising specific government officials and suggesting future policy approaches.

Advantages of the Maximalist Approach.

- **Receive more resources and support.** A maximalist approach would provide more resources and support to the issue, such as funding, dedicated employees, research, and mentorship. For example, the budgets of large, standalone government agencies like the Federal Trade Commission (FTC) can reach \$430M⁷, as compared to smaller science and technology teams such as the White House Office of Science and Technology Policy (\$4.5M in 2012)⁸. Similarly, many larger agencies have more employees (~1,000 at FTC)⁹ compared with 71 at the White House Office of Science and Technology Policy.¹⁰ An approach that results in the creation of a new watchdog to regulate digital services would bring more

resources to the issue – increasing the impact and helping move a policy agenda forward.

- **Can tackle a wide range of initiatives.** With greater resources, a government watchdog can tackle a wide range of initiatives. Even small government agencies have the resources to explore a range of initiatives. A maximalist approach to regulating digital services would enable the government to develop multiple wide-ranging initiatives into the various societal harms stemming from platforms, such as privacy, mental health, and radicalization.
- **Pressing time to act.** Digital platforms are reshaping society. Their rise has been accompanied by many societal harms, from radicalization and a burgeoning mental health crisis to loss of user privacy.¹¹ In 2021, 22% of high schoolers seriously considered attempting suicide.¹² These harms are trending in the wrong direction. In this environment, government officials are pushing to act quickly, which (as laid out above) calls for a maximalist approach.
- **Signals the importance of this work.** A maximalist approach that aims to tackle a wide range of harms will show that the government is committed to the issues stemming from this sector. Such signals could lead to greater public awareness of societal harms, and could stimulate movement by industry to proactively regulate themselves.

Disadvantages of the Maximalist Approach.

- **Political feasibility.** Creating a new government watchdog to regulate the digital services industry would require an act of Congress.¹³ Congress' ability to come together on this issue could be low. After all, the U.S. Congress is divided and a bill authorizing the creation of a new watchdog would require Democrats and Republicans to compromise. Furthermore, many members of Congress, particularly among the Republican party, are resistant to regulation and to funding regulatory bodies. In January 2023, 140 GOP members cosponsored the REINS Act, requiring Congressional majority rule for any federal regulation with major impacts to the economy or consumers.¹⁴ Likewise, there has been a sharp decline in recent years in support for regulation of tech companies, especially among Republicans. In 2022, Pew reported that just 44% of Americans think major tech

companies should be regulated more than they currently are, with Republicans sitting at roughly 35%.¹⁵

- **Greater administrative burden and red tape.** Establishing governing, decision-making, and operational processes takes time.¹⁶ As such, a maximalist approach will take greater effort and time to organize, which could stall important initiatives. Furthermore, once the watchdog is operationalized, the bureaucracy of a larger watchdog could slow action when compared with a smaller team.¹⁷
- **Cost.** Government agencies are not cheap. The budget of the FTC lies on the lower end of government regulatory agencies, and its 2023 budget is \$430 million.¹⁸ Creating a new government watchdog will likely require similar levels of high funding.

Advantages of the Minimalist Approach.

The polar opposite of the maximalist approach, the minimalist approach holds many advantages and disadvantages that are the inverse of its alternative.

- **Less administrative burden and red tape.** A specialized team within an existing watchdog can move quickly and with less bureaucratic oversight.
- **More politically feasible.** Rather than requiring a vote by Congress, creating a new task force within an existing government watchdog is less politically complicated. For example, new initiatives can be established within the FTC by a simple majority vote from the five commissioners. This occurred with the creation of the Technology Office within the FTC, which was established following a unanimous vote by the commissioners.¹⁹
- **Act as a proof of concept with room to grow.** A minimalist approach would enable a new team to start small and focused, perhaps addressing only a few key issues. The team could begin by addressing harms that are politically uncontroversial and that are most supported by fact. By establishing a successful track record, the team could then expand into larger more intractable problems, potentially in the form of a new government watchdog. The FTC itself followed such a model – first beginning as the Bureau of Corporations within the Department of Commerce in 1903 before being expanded into its own agency in 1914.²⁰

Disadvantages of the Minimalist Approach.

- **Less resources and distracted officials could minimize impact.** Existing agencies are often focused on a specific industry or specialize in a certain regulatory mechanism. Some of these agencies have become overburdened, and officials could therefore be distracted and unable to devote the time or resources necessary to regulate the digital services industry. For example, the FTC reportedly had to explore cost-saving strategies, including hiring freezes and even shrinking its staff, as a result of bringing an expensive lawsuit against Facebook in 2020.²¹
- **Strategy by industry to delay actual regulation and oversight.** Industry has a history of delaying regulation by lobbying for enforcement to come from less powerful and specialized agencies. In 2013, telecom giants attempted lobbying Congress to shift their regulator away from the FCC to the FTC – which the Washington Post called a move to shift regulation to “other agencies that don’t have nearly as much power as the FCC.”²² Industry would benefit from less specialized regulators in the form of reduced oversight.

Maximalist Case Study: A New Standalone Digital Services Watchdog

Advantages.

- **Work with the FTC, not against it.** A new watchdog would work with and augment the efforts of existing agencies, like the FTC. For example, since FTC has limited power to establish broad rules for the digital industry and often focuses on addressing a specific type of abuse by individual companies, mainly through anti-trust action. A new watchdog would complement these efforts by focusing on preventing harm and establishing comprehensive behavioral rules across the consumer-facing digital economy.²³
- **Digital DNA.** Currently, in most government agencies, including FTC, FCC, and DOJ, digital regulation is impeded by siloed strategy and decision-making, a risk-averse culture, and a shortage of staff with advanced expertise in digital technologies. A new watchdog would have a digital DNA – a deep-rooted understanding of and expertise in the digital landscape, emerging technologies, and dynamics of digital advancement. It will embody the watchdog's very culture, reflecting its agility, data mastery, and capabilities to anticipate and mitigate potential harms before they become widespread. The watchdog's expert workforce, with a deep understanding of the industry's practices and challenges, would foster meaningful dialogue with technology companies, industry associations, and other relevant parties, to develop and enforce proactive and informed policies and regulation, while also enacting stronger oversight.²⁴
- **Focused expertise and consolidation of federal oversight.** A standalone digital services watchdog would concentrate its resources, personnel, and expertise on technology and the digital economy. By assembling a team of experts with specialized knowledge in data, artificial intelligence, digital platforms, digital marketplace behavior, and other relevant fields, the watchdog would develop deep and focused expertise. It would also consolidate regulatory oversight of digital companies and fill the void created by the limitations that face the FTC, FCC, and the Department

of Justice. Currently, federal oversight of the digital sector remains “fragmented, incomplete, under-resourced, and unable to respond to emerging or even established harms in a timely manner.”²⁵

- **Enhanced independence.** In the new watchdog, there would be a departure from the “old top-down micromanagement that characterized industrial regulation.”²⁶ Instead, a key focus would be on bolstering independence to enable agile and prompt decision-making, aligned with the rapid pace of technological advancements. This enhanced level of independence would warrant novel approaches to decision-making and collaboration with relevant public and private stakeholders. Furthermore, it would serve as a strengthened safeguard against industry pressure and undue political influence.

Disadvantages.

- **Adding complexity to a crowded digital services landscape.** Establishing a new watchdog would further complicate the existing digital services landscape. This is a growing criticism as technology begins to ingratiate itself into all industries. As one researcher writing for Tech Policy said, “there is no more ‘tech sector’: every industry is now a tech-centric industry.”²⁷ Instead, it is suggested that specialized federal agencies can provide tech-related rules and guidance in their respective sectors and grow their relevant expertise and capabilities. For example, in 2018, the National Transportation Safety Board (NTSB) investigated an Uber automated test vehicle crash, which resulted in the death of a pedestrian. The NTSB successfully demonstrated its expertise in the algorithmically-powered automated driving system of the vehicle, which was a significant aspect of the investigation, and fulfilled its mission by making recommendations to the National Highway Traffic Safety Administration.²⁸ Likewise, the FDA has released guidance around the use of artificial intelligence and machine learning in the development of medical devices and techniques.²⁹
- **Unclear and potentially broad focus.** Defining the scope of the ‘technology industry’ that a new watchdog would regulate is a significant challenge. In the modern landscape, technology permeates almost every sector and industry, including communications, education, healthcare, finance, transportation, agriculture, retail, and others, blurring traditional boundaries.³⁰ For example, a new watchdog’s specialized focus on digital

platforms could overlook important interconnections and implications, while an overly broad mandate may result in missing out on nuanced regulatory approaches specific to each sector.

Minimalist Case Study: Expanding the Authorities of the FTC

Advantages.

- **Existing authority to regulate.** The FTC is already empowered to investigate and enforce many of the harmful practices within the technology industry. The FTC's primary missions are to protect competition and protect consumers – two objectives at the center of addressing many digital harms.³¹ Several laws also provide the FTC with authority to regulate.^{32 33} These existing authorities could allow a specialized team within the FTC to regulate the industry quickly, with little need for new legislation.
- **Less legislative and administrative legwork.** Creating a unit or office within an existing watchdog is simpler than standing up a new organization altogether. Actions internal to the FTC only require a majority vote of the FTC Commissioners. In 2019, the FTC's Bureau of Competition created the Technology Task Force dedicated to monitoring competition in U.S. technology markets.³⁴ This task force drew upon existing staff. In 2023, the FTC stood up an Office of Technology³⁵ to further modernize its capacity to respond to issues related to emerging technology.³⁶ These initiatives were rapidly executed, given the small administrative burden of implementing changes within an existing watchdog.
- **There is legislative precedence for proposals to expand FTC authority.** While the FTC could regulate without expanded authority, through antitrust measures and mechanisms protecting consumers against fraud, more tools could be required to fully regulate the digital services industry. Lawmakers have sponsored several bills that further empower the FTC, showing an existing appetite in Congress to expand the FTC's authority.³⁷

- **Expressed desire within the FTC to understand the technology sector.** In June 2022, the Commission published a report to Congress titled *Combating Online Harms through Innovation*. In the report, the FTC notes that they have “sought to add more technologists to its professional staff” and that the “FTC’s work has addressed AI repeatedly, and this work will likely deepen as AI’s presence continues to rise in commerce.”³⁸ In May 2023, FTC Chair Lisa Khan wrote an essay in the *New York Times*, making the case for the FTC’s potential role in regulating AI.³⁹ These moves show an appetite by the FTC to regulate the digital services industry.

Disadvantages

- **The FTC is already overburdened.** The FTC is often overwhelmed with its current requirements. In 2021 the FTC reported that a “tidal wave” of merger filings grew to “astounding” levels“ that was “straining the agency’s capacity to rigorously investigate deals ahead of the statutory deadlines.”⁴⁰ Adding more to its plate may only make matters worse.
- **The FTC moves too slowly to be the sole regulator of the digital services industry.** FTC litigation is a lengthy process, and by the time the FTC can act in response to emerging concerns, large technology companies can rapidly evolve. For example, in the time it took the FTC to receive a judge’s approval for an antitrust suit against Facebook for its purchase of WhatsApp and Instagram in 2021, Facebook changed its name to Meta, made changes to its algorithms, adapted its policy around the use of facial recognition, and changed its rules for political advertising.⁴¹ While the original antitrust case against Meta continues to wage in 2023, Meta continues to make more acquisitions. The FTC has since tried and failed another antitrust case to prevent Meta from purchasing Within Unlimited, a virtual reality company.⁴² A slow-moving regulator is not the solution to an industry that undergoes such rapid change.
- **Administrative muscle memory.** Organizations develop institutional memory over time. The FTC is not an exception. In the century since the Commission was established, it has developed bureaucratic standards and procedures that allowed it to effectively regulate industrial-era corporations. The digital services industry is fast moving and requires a regulator that can develop in a similar pattern.⁴³

Recommendation

Our recommendation is to move forward with a **maximalist approach**, developing a new standalone Digital Services watchdog to regulate the industry. The country is facing multiple crises, many of which have been exacerbated by digital services platforms.⁴⁴ Solving these problems requires fast action. While expanding the authority of FTC would represent a good start, the commission is already overburdened and specializes in antitrust enforcement – a powerful tool, but not a cure all. A better path lies in creating a focused watchdog with digital expertise. Such a watchdog can empower and supplement existing authorities through sophisticated and fast-moving regulatory actions. It will be able to coordinate with agencies and industry – serving as a convening body and working alongside various domain specific regulators. A new government watchdog would not replace current regulatory bodies, like the FTC, but would empower them, providing expertise and support to their missionsets.

Structure and Organization

Single Director Agency vs. Multi-Member Commission. Structure and organization are crucial aspects to consider when establishing a new digital services agency. The choice between a single-director agency and a multi-member commission has important implications for the decision-making processes, overall functioning, and oversight of the agency. We lay out the pros and cons of each approach and provide recommendations on what we consider to be the most optimal structure and organization for the new agency.

- **Single director agency.** Single director agencies are government institutions that are controlled by a single authority. This authority often reports directly to the President and their department secretary.
- **Multi-member commission.** Multi-member commissions are government institutions that are controlled by a board of multiple authorities. These authorities often have the final say on all matters within the institution, and decisions are often decided by a simple majority vote of the members.

Advantages of a Single Director Agency

- **Strong accountability.** With a single director in charge, there is a clear line of responsibility and decision-making, making it easier to hold actors accountable for the agency's performance and actions. Such a design provides "a focal point for praising, critiquing, or attempting to alter agency action."⁴⁵ Direct accountability can foster public trust and confidence in the agency, incentivize data-driven and well-informed decision-making, and, by extension, greater collaboration with external stakeholders.
- **Streamlined and agile decision making.** A single-director agency offers distinct advantages in promoting efficiency and agility in decision-making. Unlike commission-based structures that require members to coordinate and reach an agreement to adopt significant decisions, an agency led by a single director can respond promptly and exercise greater agility and adaptability.⁴⁶ This allows it to stay at the forefront of a rapidly evolving digital landscape.

- **Swift review and resolution of complex legal issues.** A single-director structure, exemplified by the Consumer Financial Protection Bureau (CFPB), enables a swift review of complex legal issues. In the 2014 case involving the PHH Corporation, the CFPB's enforcement division pursued charges against the corporation, alleging it "harmed consumers through a mortgage insurance kickback scheme."⁴⁷ Following the imposition of a fine by the administrative law judge, PHH's appeal was promptly reviewed by the CFPB director, actually resulting in an even higher penalty and a new interpretation of the law. It has been argued that a single-director structure was critical in the swift review of the case, which reportedly "would not be likely if the Bureau was led by commission."⁴⁸

Disadvantages of a Single Director Agency

- **Disruptions caused by changes in political leadership.** A single-director agency is susceptible to disruptions caused by changes in leadership. The introduction of a new director with contrasting views and priorities can significantly alter the agency's direction and overall functioning, potentially weakening its continuity and institutional memory. For example, the appointment of a new director of the Environmental Protection Agency (EPA) in 2019 led to major shifts in EPA's direction, including deregulation, rollback on certain environmental regulations, and changing the agency's overall approach to climate and energy issues.⁴⁹
- **Concentration of power.** Placing significant authority in the hands of a single director raises concerns about the concentration of power. There is a risk of decision-making becoming subjective or influenced by personal biases, potentially compromising the agency's integrity. Critics described independent agencies as "a haphazard deposit of irresponsible agencies and uncoordinated powers."⁵⁰
- **Weak independence vulnerable to partisan political agendas.** In a single-director structure, the agency's direction and policies can be influenced by changes in political leadership and agenda. In 2020, a Supreme Court granted the President of the United States the power to dismiss the head of an independent agency, CFPB, allowing for increased presidential control and potentially weakening the agency's independence.

[This] “decision could end up making the agency more accountable first to Trump, and then to Biden.”⁵¹ This could open the agency up to dramatic shifts in direction and policy.

Advantages of a Multi-Member Commission

- **Broad and bipartisan leadership.** A multi-member commission incorporates diverse perspectives and expertise into the governing system and “tends toward accommodation of diverse or extreme views through the compromise inherent in the process of collegial decision-making.”⁵² In structuring the Federal Election Commission (FEC), Congress arrived at a bipartisan, even-numbered design that reportedly allows FEC’s regulations to carry weight and stay insulated from political pressure.⁵³
- **Continuity of policy.** A multi-member commission “tends to secure stability, continuity of policy, and greater independence of action.”⁵⁴ Advocates of transitioning an existing single-director agency, the CFPB, to a commission-based structure argue that doing so would ensure the longevity and stability of the agency’s efforts. It is argued that policies and approaches adopted by a bipartisan commission would be less vulnerable to being dismantled due to shifts in political leadership.⁵⁵
- **Enhanced internal oversight.** With multiple members, a commission can provide enhanced oversight within the agency itself. The collective nature of decision-making reduces the risk of unchecked authority and could help prevent arbitrary actions by a single decision maker.

Disadvantages of a Multi-Member Commission

- **Slower decision making and greater potential for deadlock.** Collective decision-making in a multi-member commission could undermine the efficiency of the organization by slowing down its responses and processes. Disagreements and differing opinions among members could lead to delays in policy formulation and implementation. In cases where the commission is evenly divided on certain issues, decision-making could become eternally deadlocked. Critics of the even-number commissioner structure of the FEC are concerned about how it intentionally makes the

agency “weak” and “designed to promote deadlock along party lines on issues that really mattered.”⁵⁶

- **Reduced accountability.** Holding the commission or its members accountable for the organization’s actions or performance is more challenging, raising concerns not only from the standpoint of public accountability and the government’s functioning, but also the ability of Congress to perform oversight.⁵⁷ Commissions, therefore, can be viewed as “not sufficiently accountable to either Congress or the executive branch.”⁵⁸

Recommendation

Considering the advantages and disadvantages of both a single-director agency and a multi-member commission, we recommend adopting a **multi-member commission**. While a single director agency offers strong accountability, streamlined decision-making, and swift resolution of legal issues, it is also susceptible to disruptions caused by changes in political leadership and risks concentrating power in the hands of a single individual. Conversely, a multi-member commission provides broad and bipartisan leadership, continuity of policy, and enhanced internal oversight. By incorporating diverse perspectives and expertise into the decision-making process, a commission can help prevent unchecked authority and arbitrary actions. While it may result in slower decision-making and potential deadlock, proper mechanisms can be put in place to address these concerns. Overall, a multi-member commission approach strikes a balance between accountability, stability, and independence, making it the optimal structure and organization for the new government watchdog of the digital services industry.

Enforcement Capabilities

For a new watchdog to be effective at mitigating harms, it will need a range of potent, yet politically feasible enforcement mechanisms. Below, we lay out an analysis of mechanisms that existing agencies use.

Advisory and Investigative Actions			
Action Name	Action Description	Agencies	Appeal Status
Guidance Documents and Advisories	These documents are used to provide clarity about requirements and agency policies, but are not legally binding.	CFPB, CFTC, EPA, FAA, FCC, FDA, FTC	Cannot be appealed
Warning Letters and Notices of Violation	These letters are issued to offending parties as a means to correct behavior. They often direct the offender to take specific action to stop further harm, and threaten agency action if the offender does not comply. The goal of these letters is to give the offending party an opportunity to correct the identified violation before facing further action.	CFPB, CFTC, EPA, FAA, FCC, FDA, FTC	Cannot be appealed
Investigations	In order to identify actors that are not complying with agency guidelines, agencies can launch investigations into entities within their jurisdiction. These investigations are often launched after agencies receive information that an actor may be out of compliance. Some investigations are internal, and are carried out by investigative units within an agency, like the FCC's Enforcement Bureau, EPA compliance monitoring and record reviews, and the CFTC's Division Investigations. Other investigations may be referred to the Department of Justice, which specializes in criminal proceedings.	CFPB, CFTC, EPA, FAA, FCC, FDA, FTC	Cannot be appealed

The existing tools used by other federal agencies offer various models of potential enforcement mechanisms that a new watchdog could utilize. By analyzing the enforcement tools of the **CFPB**, **CFTC**, **EPA**, **FAA**, **FCC**, **FDA**, and **FTC**, we have identified five buckets of potential watchdog enforcement mechanisms, with various methods used within each. These five buckets are: (1) Advisory and Investigative action, (2) Operational Restrictions, (3) Legal action, (4) Financial action, and (5) Criminal prosecution.

	Strength of Action	Description of Strength
	Weak	<p>Guidance documents serve as authoritative interpretations and policies on regulatory matters, providing direction to agency staff, industries, and the public. While they lack the binding force of law, they offer valuable insights into the design, production, labeling, promotion, manufacturing, testing, submissions, inspection, and enforcement of regulated products, as well as other relevant areas. These documents aim to inform stakeholders of their rights, obligations, and best practices within the respective regulatory jurisdictions.</p> <p>These represent weak actions, as they are not legally binding and primarily offer interpretations on policy and regulatory matters.</p>
	Weak	<p>Investigations conducted by regulatory agencies, such as the FDA, involve assessing potential violations and ensuring public protection. Agencies often provide parties an opportunity to address and rectify identified issues voluntarily before enforcement actions are initiated. Warning letters play a significant role in this process, serving as official notifications that highlight violations found during inspections or investigations. They aim to prompt compliance, encourage corrective measures, and offer recommendations and guidance to manufacturers for addressing observed violations in order to ensure product safety and quality. It is designed as a weaker enforcement to enable parties to rectify issues before stronger actions are initiated.</p>
	Weak	<p>Enforcement actions target individuals and entities for fraud and misconduct to ensure the protection of investors and markets. In conducting investigations, enforcement actions strive to balance the need for complete, effective, and fair investigations with the need to file enforcement actions in as timely a manner as possible. Investigations are resource-intensive, which limits the extent to which regulators can fully investigate all parties due to competing priorities – reducing the strength of this mechanism.</p>

Operational Restrictions			
Action Name	Action Description	Agencies	Appeal Status
Certificate Actions	Allow agencies to suspend or revoke licenses that are required for companies to operate within the United States. Examples include the FAA's suspension or revocation of certificates required for piloting an aircraft, the FCC revoking licenses required to..., the EPA revoking permits to..., the CFTC's suspension and revocation of registrations required to..., and the FDA not approving certain drugs – preventing them from being marketed.	CFTC, EPA, FAA, FCC, FDA	Cannot be appealed
Supervision and Monitoring	Agencies have the ability to monitor and supervise companies within their jurisdiction. These actions allow agencies to watch companies or individuals that have been suspected of previous violations, as well as check in on other actors to ensure continued compliance. These actions can sometimes be carried out by agents who have been tasked to visit companies in person.	CFPB, CFTC, EPA	Can be appealed
Cease and Desist Letters		CFPB, CFTC, EPA, FAA, FCC, FTC	Cannot be appealed

	Strength of Action	Description of Strength
	Moderate	Certificate actions refer to the measures taken by authorities to suspend or revoke specific certificates or licenses. These certificate actions serve as consequences for non-compliance or violations of relevant regulations. This is a moderate enforcement action, as it provides agencies with strong authority, but one that is limited in scope to targeting specific products or services.
	Moderate	These activities, conducted by regulatory bodies such as the Federal Reserve and the FDIC, ensure the safe operation of financial institutions while also promoting compliance with laws and regulations. They range from continuous supervisory presence and dedicated examination teams for large firms to regular point-in-time and targeted periodic examinations for small, noncomplex firms. Larger and more complex institutions may undergo more frequent onsite reviews and robust off-site monitoring. While investigations can lead parties to endure reputational damage, this mechanism provides parties with an opportunity to take remedial action, thus making this a moderate action.
	Moderate	A cease and desist letter is a cautionary communication typically sent by an attorney to an alleged wrongdoer. It outlines the alleged misconduct and demands an immediate halt to the conduct in question. Cease and desist letters serve as a formal notice that legal action may be pursued if the alleged misconduct continues. These are often used to address infringement of intellectual property rights, but can also be used to address issues like harassment, slander, libel, and contractual violations. While non-binding, they can serve as potential evidence in litigation if the alleged misconduct persists. The opportunity cease-and-desist letters provide to parties to rectify their actions makes this a moderately strong mechanism.

Legal Actions			
Action Name	Action Description	Agencies	Appeal Status
Internal Adjudication	For less complex matters, rather than adjudicating in public court, agencies can handle legal issues through an internal process. These proceedings are often used to perform initial decisions and to grant fact-finding authorities to agency investigators. Many agencies employ Administrative Law Judges (ALJ) to handle these cases.	CFPB, CFTC, EPA, FAA, FCC, FDA, FTC	Can be appealed
Federal lawsuits, injunctions and court orders	When cases move beyond the jurisdiction of an agency, or if defendants appeal the decisions of an ALJ, they are referred to the federal court system.	CFPB, CFTC, EPA, FAA, FCC, FDA, FTC	Can be appealed

	Strength of Action	Description of Strength
	Moderate	Internal adjudication refers to the process by which an agency, through its authorized decision-making body, resolves specific claims or disputes between individuals in a particular case. While internal adjudication is a serious action, it provides the alleged wrongdoer with the opportunity to reach a solution via internal discussions, as opposed to public court.
	Moderate / Strong	Injunctions offer significant leverage during the enforcement phase. However, the principle of proportionality serves as a crucial check against aggressive litigation. While proportionality provides flexibility, it also introduces a level of uncertainty and unpredictability in resolving disputes. Hence, it is important to apply the principle of proportionality in a structured and orderly manner to ensure fairness in the legal process. This action is considered moderate to strong, depending on the gravity of the lawsuit that an agency files before a court while maintaining the principle of proportionality.

Financial Actions			
Action Name	Action Description	Agencies	Appeal Status
Settlements	These are financial payments that violators agree to pay in order to avoid full litigation, and often to lower penalty amounts that would result from litigation.	CFTC, EPA, FAA, FCC, FDA, FTC	Cannot be appealed
Civil Penalties	These are fines imposed on violators. Dollar amounts can range from up to \$50,120 per violation in the FTC to \$500,000 for FDA fines.	CFPB, CFTC, EPA, FAA, FCC, FDA, FTC	Can be appealed

Criminal Prosecution - Criminal prosecution occurs when individuals or corporations commit a knowing refusal to adhere to rules and regulations. Some agencies employ teams to work with law enforcement, like the FTC Criminal Liaison Unit, or refer investigations to other law enforcement agencies, including the DOJ and FBI.			
Action Name	Action Description	Agencies	Appeal Status
Misdemeanors	These are charges for less serious crimes and can result in imprisonment for less than 1 year.	CFTC, EPA, FAA, FCC, FDA, FTC	Can be appealed
Felonies	These are charges for more serious crimes and can result in jail time of up to three years for FDA violations and five years for EPA violations.	CFTC, EPA, FAA, FCC, FDA, FTC	Can be appealed

	Strength of Action	Description of Strength
	Moderate / Strong	Settlements typically outline the details of alleged misconduct and specify the actions that a party involved will undertake to address it. These actions may involve implementing plans to enhance future compliance, providing regular reports to demonstrate compliance, and making financial payments to the United States Treasury or impacted parties. This action is considered moderate to strong depending on the scale of the financial payment. Firms that are well resourced are likely to settle even for large amounts to avoid the public glare if taken to court. By contrast, relatively smaller firms are more likely to change their actions due to the burden of the financial penalty.
	Moderate / Strong	Civil money penalties are used to punish violators based on their level of culpability and the seriousness of the violation. Additionally, they serve as a deterrent against future violations. This is a moderate to strong action, depending on the resources of the alleged wrongdoer and their ability to withstand a financial penalty.

	Strength of Action	Description of Strength
	Strong	Misdemeanor convictions can lead to fines and/or imprisonment. Felony convictions, applicable for a second violation or cases involving intent to defraud or mislead, can result in larger fines and/or longer imprisonment. These penalties serve as some of the strongest consequences for violations and are determined based on the severity of the offense.
	Strong	Felonies apply in cases of a second violation or intent to defraud or mislead and can result in stronger fines and / or imprisonment sentences than misdemeanors.

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