CHAMBER OF PROGRESS

To: Interested Parties
From: Adam Kovacevich, CEO, Chamber of Progress
Re: 2024 Policy Outlook
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Election year dynamics ensure that 2024 will be a busy one for tech and innovation policy.

Senate Democrats are likely to hold additional hearings and continue their ongoing policy dialogue on regulating Artificial Intelligence (AI), protecting children online, and the election.

House Republicans will keep their focus on scoring political points to embarrass tech companies, the Biden Administration, or both. That may take the form of "jawboning" tech company leadership to rein in supposed anti-conservative bias. We also expect House Republicans to haul Biden Administration officials in for hard questioning that leads to little legislating.

The **divided Congress** means that we expect a large number of hearings, and presumably many bills being introduced – but bipartisan ratification is unlikely. Instead, the most substantive policymaking will come from <u>federal regulatory action, state-level legislating, and pending legal decisions</u>.

In the states, we are tracking dozens of **bills on children's online safety**, **delivery fees**, **earned wage access,** and more.

And the courts will play a major role in the policy conversation and pending decisions including on **content moderation** and **digital assets** that could catalyze substantive legislative activity at the federal and state level alike.

Here's what we're watching in 2024.

Technology Policy

Artificial Intelligence
Last year, the Biden Administration published its sweeping Executive Order (EO) on AI with the goal of promoting continued US AI leadership while also laying out a framework for how the federal government would use AI. One key aspect of the EO directed the federal government agencies to take public comment on how they will be using AI in their operations.

As a consequence, agencies across government will be issuing Requests for Comment (RFCs). These RFCs will shape how the Biden Administration makes use of AI across the government, including in procurement. One key item will be how the Administration will approach open- vs. closed-source generative AI models.

For much of 2023, Senate Majority Leader Schumer convened a series of "Insight Forums'' with stakeholders across industry, academia, and government to shape a legislative framework for overarching AI regulation. We expect legislation this year. We are also following Rep. Anna Eshoo's push to enact the CREATE AI Act, a bill authorizing the development of the National AI Research Resource (NAIRR).

The election year will also bring a renewed focus on the potential for AI-generated images and video to produce electoral misinformation. We've seen policymaker interest in combating political deepfakes at the federal and state level alike.

The states are also interested in regulating AI, most notably in California where the California Privacy Protection Agency (CPPA) is undertaking a process to govern automated decision-making by tech companies. So far, the CPPA appears focused on requiring companies to offer Californians the ability to opt their personal data out of ADM processes.

Protecting Children Online
The Senate will renew its focus on protecting children online. Sens. Blumenthal and Blackburn will push their Kids Online Safety Act (KOSA) while Sen. Markey and Cassidy will focus on their updates to the Children's Online Privacy Protection Act (COPPA 2.0). KOSA would impose a "duty of care" on platforms that serve children; COPPA 2.0 would reform privacy protections for young people online. Senate Judiciary Chairman Durbin will emphasize his STOP CSAM Act concerning victims of child sexual exploitation online.

Despite a concerted legislative push in 2023 none of these bipartisan bills made it into law. One factor: intra-caucus disagreement over which bill to prioritize. So a key factor in 2024 will be whether the Senate majority will diverge from its past approach and unite around a coordinated legislative strategy.

Children's online safety is also a perennial source of state legislator interest, and election year dynamics ensure that will only further focus legislator attention. We have already seen several children's online safety bills put forward in the states, including Florida, New Jersey, and Washington. The hottest topics have been age verification, chronological feed requirements, and variations on the California Age Appropriate Design Code (AADC). Federal courts have enjoined both California's law and Arkansas' social media age verification law, showing that these bills typically run into a First Amendment buzzsaw.

Competition
The troubled launch of ticketing for Taylor Swift's Eras Tour shone a light on ticketing policy. Sens. Klobuchar and Cornyn will push hard for their Fans First Act, though it is favored by Ticketmaster/Live Nation and does little to address the underlying lack of competition in primary ticketing.

Epic's court victory over Google will draw an appeal from Google, and the Epic v. Apple case awaits a cert decision by the Supreme Court. So long as these cases, Europe's Digital Markets Act requirements, and state AG cases linger, Congress is unlikely to revisit app store legislation.

In California, Asm. Wicks is continuing to push her California Journalism Protection Act (CJPA), which would amount to a state-level news link tax. The bill's negative consequences in Canada should give California policymakers pause. Meanwhile, Minnesota, Maine, and California could all debate changes to state-level antitrust laws in 2024.

Finally, pending legal cases stand to immediately reshape the tech policy conversation at the federal and state level. In *Moody v. NetChoice*, the Supreme Court will decide whether state regulation of content moderation violates platforms' First Amendment rights. An adverse decision here could trigger a raft of partisan content moderation bills. We're also watching the *FTC v. Meta* case and the *DOJ v. Google* ad tech case.

Civic Innovation Policy

Autonomous Vehicles
A divided Congress means that action on autonomous vehicles is mostly at the state and federal regulatory level. We expect Teamsters-backed legislation in New York, Washington, and other states requiring human drivers in autonomous vehicles; all such bills were defeated in 2023. We also expect California legislators to revisit state AV regulation this year following the rollout of AVs in San Francisco in 2023.

Workforce Regulations

The long-awaited Department of Labor (DOL) rules on independent contractor classification will be released earlier this year, though the Administration has not signaled any plans to apply the rules to app-based gig work. In Congress, Sen. Mark Warner and Rep. Suzan DelBene are expected to renew their focus on portable benefits bills aimed at gig workers.

At the state level, we are seeing significant experimentation with benefits policy. "Third-way" models, giving rideshare and delivery drivers benefits like sick leave and unemployment insurance while maintaining their independent contractor status, have been implemented in California and Washington state. New York Attorney General Letitia James also reached a settlement with Uber and Lyft that will provide similar benefits for rideshare drivers beginning in February 2024. While California's Proposition 22 is set to be reviewed by the California Supreme Court this year, these models could serve as blueprints for other states.

Sharing Economy

Local policymakers spent much of 2023 grappling with the consequences of short-term rental regulations, and we expect that to continue into 2024. In addition, incumbent car rental companies have benefited from tax loopholes that give them competitive advantages over peer-to-peer carsharing models and other newcomers to the market. Over 30 states have taken action to close those loopholes, and we expect further progress in states this year, including in Maine.

Financial Policy

Digital assets

Stablecoin policy is a major opportunity for bipartisan policymaking in 2024. The Clarity for Payment Stablecoins Act would clarify that stablecoins are neither commodities nor securities while establishing a regulatory framework for stablecoins used as payment instruments. The involvement of the Biden Administration in negotiations increases the likelihood of action on this issue.

Legislation to address illicit finance concerns will also receive more attention this year. At the end of last year, Treasury sent Sen. Brown a list of proposals to combat illicit uses of digital assets. The proposals include extending anti-money laundering obligations under the Bank Secrecy Act to digital asset exchanges and wallet providers and expanding the Treasury Department's ability to regulate blockchain networks under its sanctions authority. Democratic lawmakers may likely introduce some of these proposals this year, but they may not advance out of the House Financial Services Committee.

Finally, the Financial Innovation and Technology for the 21st Century (FIT21) Act could bring regulatory clarity to the digital asset industry once passed. It is likely to see a House floor vote early in 2024, though its Senate prospects are not yet clear. Rep. Patrick McHenry's retirement at the end of this term adds pressure to move the FIT21 Act, as possible successors to the Chair of the House Financial Services Committee–save for Rep. French Hill– may not share his vision or determination for regulating this industry.

SEC Litigation and Regulatory Issues
We anticipate the SEC will approve Bitcoin Spot ETFs, following Grayscale's successful lawsuit against the agency and an emerging interest in crypto ETFs from traditional financial institutions like BlackRock. Approval here would further legitimize digital assets and provide welcome regulatory clarity.

Coinbase asked the SEC to conduct rulemaking processes to clarify the status of digital assets. The SEC, which prefers a case-by-case approach to enforcement, denied Coinbase's request. Meanwhile, the SEC is suing several crypto exchanges including Coinbase, alleging a variety of violations of securities law. These cases will shape the US crypto policy conversation and may prove the catalyzing agent for various legislative efforts.

In the states, digital asset licensure has driven significant legislator interest, as state policymakers look to provide a regulatory framework for the industry. Although California's Digital Financial Assets Law won't take effect until 2025, the state Department of Financial Protection and Innovation has solicited comments on the law's implementation. In New York, Attorney General James has pushed for legislation that would aggressively regulate the digital asset industry, but it is unlikely to get far due to opposition from the state Department of Financial Services.

Fintech
The Consumer Financial Protection Bureau (CFPB) is expected to refresh its guidance on earned wage access (EWA) services. The CFPB issued an Advisory Opinion in 2020 that determined that certain EWA models did not involve the extension of "credit" under the Truth in Lending Act. Rep. Bryan Steil may introduce his Earned Wage Access and Consumer Protection Act as well.

In the states, Maryland is likely to make EWA a focus. Meanwhile, the California DFPI will issue its final rule on EWA this year. We are tracking whether more states will pick up model legislation passed in Nevada last year that provided regulatory clarity for the industry.