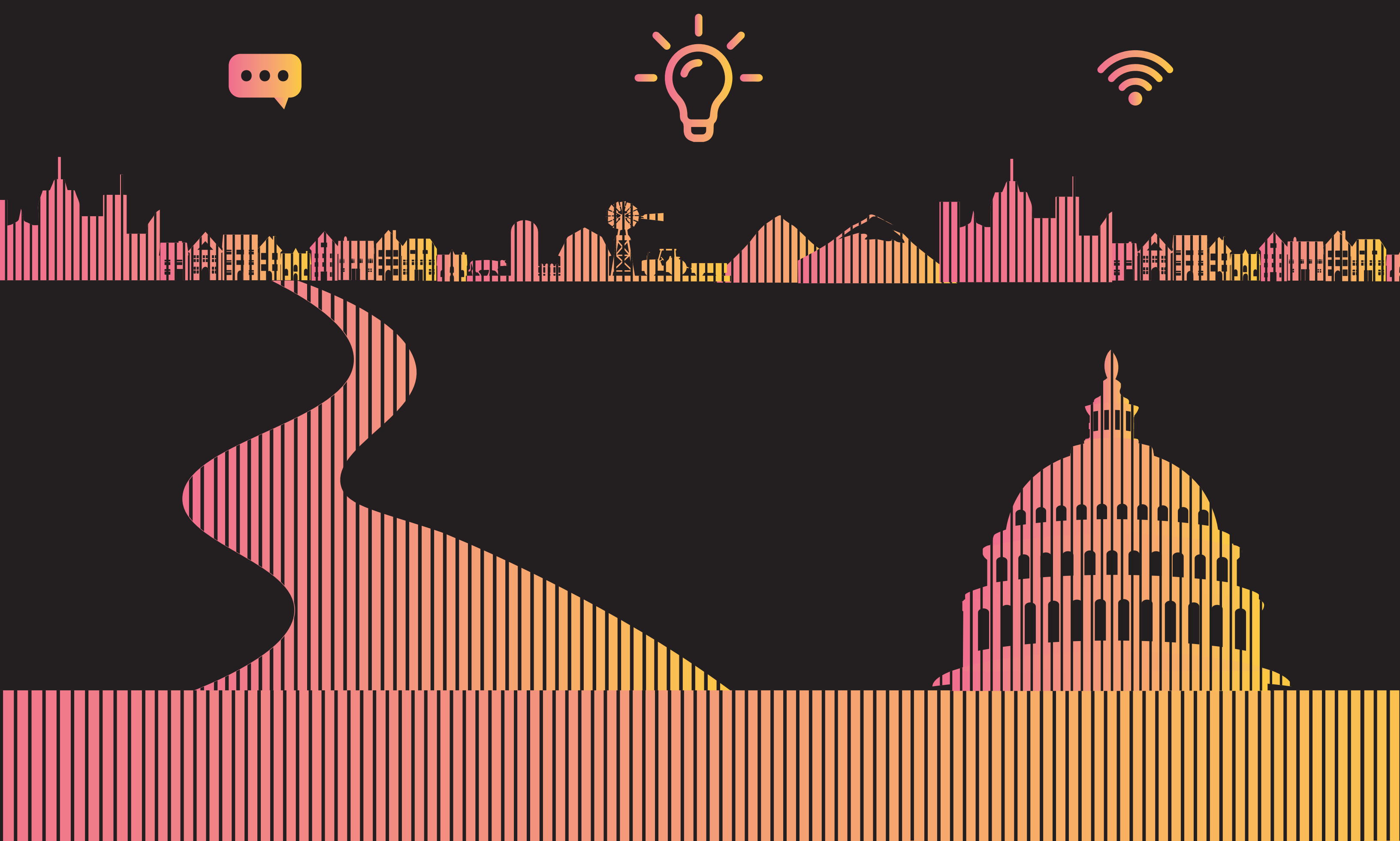
Engine

STARTUP AGENDA

2022



INTRODUCTION

At Engine, we've spent the last 10 years talking to thousands of startups across the country about their successes and struggles and how policy can do a better job supporting their companies and their ecosystem.

The startup ecosystem—and the tech industry—isn't a monolith; no two companies trek the same path, face the same obstacles, or are impacted the same way by ongoing policy debates. There are startups in every state and every congressional district. There are startups that have all kinds of business models and rely on all types of funding. There are startups that operate in every sector of U.S. industry. And all of them will be impacted by policymakers' decisions across a range of issues.

The startup perspective can be often overshadowed when policymakers turn to the work of legislating and regulating in the technology space. Instead, the focus tends to fall on the industry's largest companies. Writing rules in response to concerns about the behaviors of the largest players—without fully considering the consequences for their smaller, newer counterparts that lack longstanding relationships and immense resources—risks creating burdens that fall disproportionately on startups. If policymakers are interested in creating opportunities for innovation and boosting competition, they must ensure an open, level, and consistent playing field across the wide range of policy issues that impact the startup ecosystem.

Heading into 2022, several technology policy debates are already underway in Washington, D.C. As always, Engine aims to be a resource in those conversations, surfacing the startup perspective and highlighting the voices of startup founders who are running small businesses, creating jobs, and building new and innovative products and services. This agenda is a high-level overview of the issues we hear about from startups every day and a jumping off point for policymakers looking to support the technology industry's small businesses.

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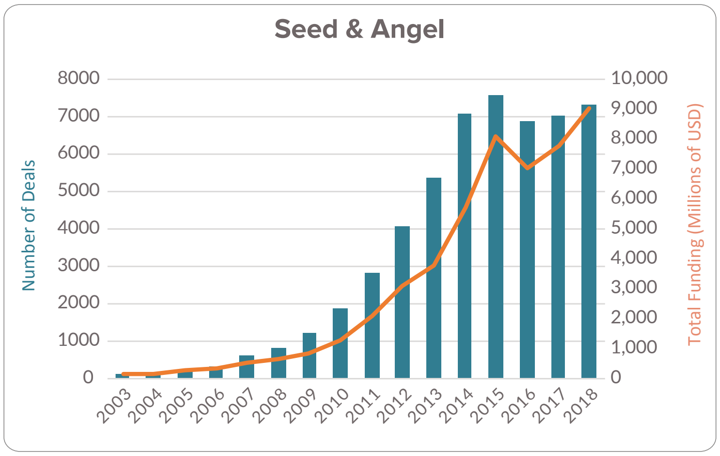
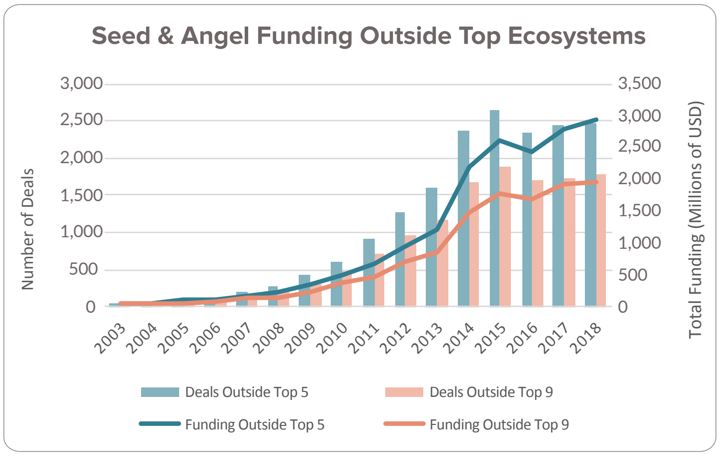
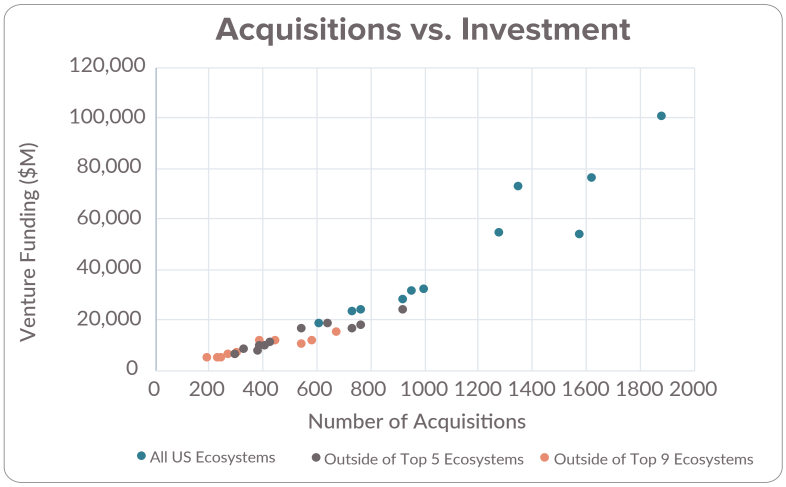
The State of the Startup Ecosystem

As the navigational truism goes, to chart where you're going, you need to first understand where you are. And it's as true for finding your way through the wilderness as it is in policymaking, which is why in April of 2021 Engine released a report analyzing "the State of the Startup Ecosystem." Overall, we found a healthy and growing ecosystem, where formal funding rounds of early-stage companies have grown consistently year after year for the past decade. More of that funding has gone to locations outside of the top entrepreneurial hubs like Silicon Valley, New York, Seattle, and Boston, but there is still plenty of room for improvement in the distribution of venture capital.





A critical part of the ecosystem are successful startup exits—where founders and investors have the opportunity to take profit, which is often used to fund or begin new ventures. In analyzing startup exits, we saw the strong, positive relationship between acquisitions and investment—and their importance in ecosystems outside of the nation's largest entrepreneurial hubs when compared to other methods of exit like an initial public offering.



To aid in policy analysis, the report highlights the resources that an average, investor-backed seed-stage startup has at their disposal—a startup meeting this description was an average of 22 months old and had raised an average of $1.2 million—money that must be stretched over nearly two years. Putting this figure into monthly flows—about $55,000 per month—illustrates just how devastating costs from poorly conceived policy or frivolous litigation can be for a young company.

The report does have its blind spots. The data don't include effects of the pandemic, reveal trends in earlier, non-venture capital funding, or examine the disparate experiences underrepresented founders have accessing that funding. This is partly due to poor data availability, which the government can play an important role in overcoming. Regardless, venture capital has continued to break records, and new businesses are starting at highs that haven't been seen in decades. Policymakers should look to continue, bolster, and replicate the success across the entire ecosystem and for all founders.

Making the Ecosystem More Equitable

We're all better off with a more representative, more equitable startup ecosystem, where anyone with a good idea—no matter where they live or what they look like—has a chance to succeed.

Representative teams produce better innovation. Studies show that racially and gender diverse teams are more likely to be more profitable than less-diverse teams. And more representative teams are better able to suit a diverse customer base and reach wider audiences. Diversity within a leadership team is also directly correlated to increased innovation as measured by revenue from new products and services. Studies routinely show that a significant amount of employer businesses and new jobs could be created if only underrepresented founders had equitable access to start and scale their businesses.

But underrepresented founders, including women founders and founders of color, face significant barriers in achieving startup success. From diminished access to capital, including venture capital, reduced access to bank loans, and diminished friends and family rounds, to fewer opportunities with respect to networking and mentorship, to inequities in STEM education and access to broadband, diverse founders face struggles at every step in the startup journey. In order to bring more diversity into the ecosystem, it is important to ensure diversity is prioritized throughout; institutions, individuals, and policy must do better to support diverse innovators.

Policymakers must prioritize diversity in all areas affecting a startup's chances of success, which will take a multifaceted approach. Policymakers should prioritize attracting and retaining diverse leaders and employees across every government agency that funds or regulates research and development sectors to help to ensure equity in decision making. They should also ensure that government accurately collects data on startups and underrepresented founders to better inform their work. Policymakers should also work to incentivize private investment in more diverse startups, including through public-private partnerships that direct venture capital to startups that typically don't have access to venture capital funding. Efforts should also be taken to boost mentoring and networking opportunities for women founders and founders of color, including by directing funds to incubators and accelerators who are often the best attuned to the needs of their communities and may be well suited to ensuring underrepresented founders are able to access the resources they need. Finally, policymakers should also work to address inequities in STEM education, including issues pertaining to retention and the "leaky pipeline," and prioritize the recruitment and training of diverse STEM educators.

Startup Spotlight

Fund Black Founders

(New York, NY)

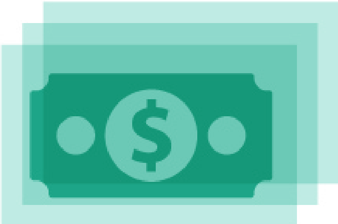
Renee King, Founder & CEO

Fund Black Founders is a crowdfunding platform dedicated to narrowing the racial capital access gap by connecting Black founders with financial and community resources.

"Black entrepreneurs are starting on average with $35,000 and white entrepreneurs are starting with $106,000 in capital. And that's just financial capital. We're not talking about connections that a founder has in their network. We're not talking about access to knowledge and resources that help one navigate the challenges of starting a business. That's how I knew that this organization had to be helping founders at the start. Fund Black Founders has to open doors for these founders through financial and social capital, so crowdfunding was the right solution."

Capital Access

Why it matters to startups:



Access to capital is perhaps the most critical barrier startups face when launching. Most startups launch with a combination of limited amounts of funding, often cobbled together from a mix of personal loans and family savings. Even the average seed stage startup only has roughly $55,000 a month in resources, which, after payroll and expenses, leaves little room to cover extras. Only an estimated 1 percent of startups even receive venture capital, and founders of different backgrounds—including race, gender, and geographical location—often face greater barriers across the board in accessing the capital they need, from friends and family rounds, to business loans, to venture capital.

Key takeaways:

- Most startups rely on a patchwork of funding sources outside of traditional venture capital.
- Policies should make it easier for startups to access capital and open up capital markets to allow more people to participate in funding early-stage companies.
- Difficulties with accessing capital are especially relevant to underrepresented founders, including women and founders of color.

What policymakers can do:

Policymakers must continue to improve the regulatory environment in which startups operate to raise capital. Though past efforts by the Securities and Exchange Commission including an expansion of the definition of accredited investor, lifting the limit a company can raise through crowdfunding, and increasing the offering limits for Regulation A and Rule 504 were helpful, policymakers should continue to seek out ways to best enable startups to raise capital effectively. Policymakers can also address capital access issues with federal funds, including by streamlining federal grant processes—an at times slow process that is poorly suited to the startup lifecycle—directing federal funds to incubators and accelerators, and supporting organizations that provide valuable support, resources, and programming for startups. Policymakers should specifically prioritize equalizing access to capital for underrepresented founders, including through incentivizing venture capital funds to be allocated to diverse founders, ensuring access to Small Business Administration (SBA) resources, and identifying and rectifying discrimination in bank lending. Policymakers should undertake efforts to bring diversity to the investment community, including through the Small Business Investment Company (SBIC) program, to encourage the SBA to license smaller funds (which are more likely to be diverse) as SBICs and would be more likely to invest in underrepresented founders.

Startup Spotlight

Productions.com

(Atlanta, GA)

Carolyn Pitt, CEO & Founder

Productions.com is a platform that simplifies and diversifies hiring within the production community.

"Accessing capital is one of the hardest things that founders have to do. And research has shown that it's much harder for women founders to access capital, and even harder yet for founders of color. As a Black woman founder, my experience has borne that out. While the vast majority of venture capital is granted each year to white men, .0006 percent is granted to Black women. But it's not just venture capital that is more challenging for underrepresented founders to access. Black and Brown founders often don't have a friends and family round—or they have one that's substantially smaller than their counterparts—due to the lack of generational wealth. In addition, when we consider securing loans, we often encounter additional barriers and difficulties."

Connectivity

Why it matters to startups:

Thanks to the Internet, an entrepreneur located anywhere in the country can launch and grow a company that reaches users across the world. Increasing reliable, affordable broadband access—through wireless and wireline connectivity, devices, and digital literacy resources— creates more opportunities for innovation and entrepreneurs. Startups also need net neutrality protections—to prevent ISPs from blocking or throttling Internet traffic, or charging companies for better access to users—to ensure the Internet is that level playing field. Startups also benefit when there is increased availability of unlicensed spectrum, the shared airwaves that fuel Wi-Fi networks. Unlike licensed spectrum, which is typically only held by deep-pocketed wireless incumbents, unlicensed spectrum is available for use by anyone that abides by set standards. Increases in the availability of unlicensed spectrum have created vast opportunities for the companies that make and use technology that relies on the high-frequency airwaves—such as connected devices—as well as generally improving Wi-Fi networks across the country.

Key takeaways:

- Startups need policymakers at all levels of government to prioritize more reliable, affordable, and accessible broadband across the country.
- Net neutrality is crucial for startups and provides a level playing field online. Without net neutrality protections, Internet Service Providers (ISPs) can block, throttle, or charge more to prioritize certain Internet traffic.
- Startups especially stand to gain from increasing unlicensed spectrum, which fuels Wi-Fi networks and short-range wireless connectivity and creates new opportunities for innovation.

What policymakers can do:

Policymakers should continue working to improve broadband access across the country by increasing the amount of spectrum available for use by the public and by pushing ISPs to build out broadband access in underserved areas. Early in the pandemic, when Internet access became even more critical, Congress passed a handful of bills aimed at closing the digital divide, including by creating the Affordable Connectivity Program and the Emergency Connectivity Fund. The National Telecommunications and Information Administration is now tasked with working with state governments to administer the billions of dollars set aside as part of the recently-passed Infrastructure Investment and Jobs Act.

Policymakers should also reinstate strong net neutrality protections to ensure that the Internet is a level playing field and guarantee that startups don't have to worry about their large competitors paying ISPs for better, faster access to users. After years of attempts and legal challenges, the Federal Communications Commission (FCC) in 2015 adopted strong net neutrality rules. But the FCC reversed course in 2017, repealing the 2015 rules and replacing them with weaker obligations for ISPs to disclose how they treat Internet traffic. Policymakers can create certainty for startups and promote competition by putting in place commonsense net neutrality rules.

Startup Spotlight

Lakeshore Advantage
(Holland, MI)
Amanda Chocko, Director of Entrepreneurship

Lakeshore Advantage is a nonprofit economic development organization that supports startups, entrepreneurs, and businesses in West Michigan.

"Increasing broadband access locally and across the state would have a positive impact on startups. It's a big issue in our region, and there's a collective of organizations—including our local municipal utility—working to increase access to Internet services. Attracting more companies to the region, bringing in the talent of the future, and educating our students and tomorrow's startup founders is all reliant on access to high-speed Internet."

Section 230

Why it matters to startups:

Section 230 is crucial for any company that hosts content created by users—including websites with comment sections, apps that let users share messages, photo storage services, and websites that let users rate and review products they've bought. Under the law, Internet companies of all sizes are able to host and moderate their users' content at their discretion without the fear of being held legally liable for what users say or share. A small, new company that hosts user content won't be able to get investment, get off the ground, and grow its business if it has to constantly be prepared to face costly, time-consuming lawsuits over the content its users post. And unlike the largest tech companies, startups do not have the time and resources to hire thousands of people or build expensive and ultimately imperfect tools to monitor what their users share.

Key takeaways:

- Startups need to be able to create online spaces that are useful, relevant, and welcoming to their users.
- Content moderation is difficult for all companies that host-user generated content, especially for startups, which can't afford to hire thousands of content moderators or build expensive filtering tools.
- Section 230 allows Internet companies to relatively quickly and inexpensively resolve lawsuits over content created by their users.
- Many of the proposed reforms—especially dealing with lawful speech—would use the threat of private lawsuits to pressure companies into moderating content differently.

What policymakers can do:

Policymakers understandably want to address concerns about problematic content that spreads online, especially when online content leads to real world harms. But amending Section 230 could make it harder for smaller and new Internet companies to launch and compete, leading to fewer places for users to gather online. Content moderation is incredibly difficult, even for the world's largest companies. There are no silver bullet solutions to quickly finding and removing the user content a company doesn't want to host, including technological solutions, which are inherently imperfect and expensive to build and maintain.

Additionally, companies face competing pressures over what content should be removed. Some lawmakers accuse companies of removing too much and have proposed requiring that Internet companies host certain content, despite the fact that Internet companies have rights to moderate content—not obligations to host content—under the First Amendment. At the same time, many lawmakers say companies aren't doing enough to remove or suppress problematic content—including illegal content as well as First Amendment-protected speech like misinformation. Given the practical and legal realities, most reforms to Section 230 wouldn't change the ability of a company to host, moderate, sort, amplify, or demote content, but they would create opportunities for lawsuits or even threats of lawsuits that would be ruinous for startups.

Startup Spotlight

Event Vesta

(Omaha, NE)

Andrew Prystai, CEO & Co-Founder

Event Vesta is an event discovery and promotion platform.

"We would definitely prefer to see Section 230 not change.... [I]f the law were to change, it would cause a lot of angst and unnecessary cost, which we don't have the resources to handle.... [Policy changes regarding algorithms] would be a setback if our ability to tailor content to our users was hindered.... [N]ot having the ability to build a more sophisticated algorithm would be a massive hindrance to our long term ability to grow."

Copyright & Trademark

Why it matters to startups:

Many startups encounter user-generated content—for example, digital services where artists connect with fans, e-commerce platforms, podcasting sites, and website infrastructure companies. These companies and the users and creators who rely on them routinely interact with the copyright and trademark systems. And these startups rely on balanced legal frameworks—like Section 512 of the Digital Millennium Copyright Act (DMCA) and the judicial decision in *Tiffany v. eBay*—which ensure companies should not automatically be held liable for alleged infringement by users that the company has no knowledge of or direct involvement in. In practice, companies establish notice-and-takedown processes for resolving allegations of online infringement, removing accused content upon receipt of a complaint. These frameworks strike a valuable balance that is especially important to startups, because the law provides certainty and guards against mere threats of unaffordable legal exposure putting startups out of business. Startups, Internet users, and Internet-enabled creators also face abusive copyright litigation threats and improper trademark takedowns. For example, companies routinely receive takedown requests from purported rightsholders seeking to remove non-infringing content they do not like. And the threat of steep statutory damages and imbalanced procedures for resolving infringement claims compound these problems—stifling speech, economic opportunity, and creativity online.

Key takeaways:

- Changing the framework for online copyright and trademark claims would have an outsized, negative impact on startups that encounter user-generated content.
- Mandating filtering technology—which is very expensive and inherently error-prone—would create high costs and risks for startups without catching much (if any) more infringement.
- Policymakers should protect Internet users and Internet-enabled creators against abusive threats and improper takedown notices.

What policymakers can do:

Congress should avoid decreasing certainty or imposing unwarranted cost and risk on emerging Internet companies, especially considering that these startups infrequently encounter infringing content. Today's startups need the same legal frameworks afforded to their predecessors in order to compete. Larger Internet companies have the resources to absorb increased cost and risk. Startups do not. Policymakers should also avoid requiring Internet companies to proactively monitor or filter all user posts to try to detect infringement. This would not catch much (if any) additional infringement, but would impose a lot of new costs and risks and create substantial barriers to entry. Policymakers should adopt changes to combat abuse of the current systems. For example, the law should discourage the sending of improper takedown notices. And policymakers should consider ways to restore balance to the overall copyright and trademark systems to avoid giving bad actors even more leverage over startups, Internet-enabled creators, and everyday Internet users.

Startup Spotlight

hobbyDB
(Superior, CO)
Christian Braun, CEO

hobbyDB is an online collectibles database.

"We follow the rules laid out by the DMCA, and the structure of that system has worked well for us. We've only had one party make a couple of complaints. These complaints were valid and were properly dealt with on our platform. We wish that there was a similar straight forward process for trademark issues. Ideally the DMCA would just be extended to cover alleged trademark infringements as well. It would make it much easier to run a user-generated content business."

Patents

Why it matters to startups:

Patent quality is essential to innovative, high-tech startups. High-quality patents can be a valuable asset for many emerging companies. Low-quality patents—those that claim things that were already known or that are written in vague, overbroad terms that are difficult to understand—on the other hand lack value and can fuel abusive litigation that harms startups. Unfortunately, many startups will only interact with the patent system in the context of abusive litigation. For example, patent assertion entities—also known as “patent trolls”—use patents to try to coerce startups to take quick settlements, knowing startups cannot afford costly patent litigation. Competitors can also use patent litigation to distract startups and slow down or stall new market entrants. Weak and overbroad patents are especially easy to misuse because they can be asserted against many startups’ basic activities. Startups benefit when the U.S. Patent and Trademark Office (PTO) and the courts weed-out weak and overbroad patents and when they can afford to defend themselves against frivolous or abusive lawsuits.

Key takeaways:

- Startups need patent laws that protect truly new inventions and prevent the issuance of low-quality patents that stifle innovation.
- Policymakers must focus on patent quality; preserve tools to clear out weak, overbroad, low-quality patents; and foster affordable mechanisms for startups to defend themselves in frivolous or abusive lawsuits.

What policymakers can do:

Patent law had been improving for startups and innovation. Developments in the past decade had leveled the playing field in litigation and given startups easier and cheaper defenses when weak or overbroad patents were asserted. Policymakers should prioritize patent quality—not falling into the trap of placing quantity over quality—and avoid legislative or policy changes which could upset the existing balance or give bad actors more leverage over startups. Congress and the PTO should seek ways to improve the quality of U.S. patents and ensure affordable ways to weed-out low-quality patents. For example, the 2011 America Invents Act created inter partes review, a procedure through which the PTO can take a second look at patents and cancel those that never should have been granted. Around the same time, the Supreme Court decided key cases confirming that abstract ideas performed on a computer are not patent eligible and that startups cannot be sued for infringement in far-flung corners of the country. Despite these successes, in recent years some have sought to overturn improvements. Policymakers should instead preserve progress made over the past decade and further endorse tools that promote quality and reduce costs of defending against costly, frivolous patent lawsuits.

Startup Spotlight

UnaliWear
(Austin, TX)
Jean Anne Booth, Founder

UnaliWear builds technologies to keep vulnerable individuals connected, independent, active, and safe.

“I had to stop publicizing positive news about UnaliWear because every time I did, we would get hit with a demand or lawsuit from a patent troll. It does not matter that we do not violate their patents—they still threaten to sue. The whole business model feels like legalized extortion. . . . There are good things that I and my company could be doing in the world besides dealing with patent trolls.”

Why it matters to startups:

Startup founders, employees, and investors all stand to benefit from tax policies that incentivize contributing to new, innovative companies that can't pay the high salaries or promise the returns that larger companies can. Tax credits, like for research and development (R&D), help startups fund critical and often costly research. Others, including Section 1202 of the Internal Revenue Code—often called qualified small business stock, or QSBS—encourage investment in and employment at early stage startups. State angel investment tax credits attract investors, though comparable provisions do not exist at the federal level.

On the other hand, complex, discriminatory tax frameworks discourage startup growth. Several countries have considered or adopted digital services taxes that, while directed at large U.S. technology companies, could impose trickle down costs for the startups that rely on the services these companies provide. And while the G20 and OECD have agreed to a global tax framework that would call for the elimination of DSTs, set a global minimum tax rate, and would require companies to pay tax based on where they conduct business, the deal must be passed by acquiescing legislatures, including the U.S. Congress, where it faces an uphill battle.

Key takeaways:

- Providing tax benefits to investors and startup founders and early employees can increase capital, talent, and opportunities for nascent companies.
- Policymakers can improve on existing tax benefits, such as the research and development tax credit, to make them more accessible to startups.
- Discriminatory international or interstate tax frameworks, like digital services taxes, that are targeted at large companies still stand to increase costs for nascent startups with limited budgets.

What policymakers can do:

Policymakers should explore ways to expand or alter existing tax benefits to help startups offset their liabilities while encouraging investment. One way to do that would be to make it easier and more useful for more startups to take advantage of the existing R&D tax credit, such as by expanding the definition of what qualifies as R&D to include common software development activities like user experience research and design. Policymakers should also preserve existing benefits for startup investors and employees, including QSBS, and expand the Opportunity Zones program to include more areas. Finally, Congress should create a federal tax credit for angel investors to incentivize startup investment, as is offered in a number of U.S. states.

Concerning tax regimes at the state and global levels, U.S. policymakers should continue to use the tools at their disposal to push back against discriminatory digital services taxes that will ultimately stifle startup growth and innovation by making it harder for emerging companies to access the critical products and services they need to thrive.

Startup Spotlight

Sofia Labs

(Owing Mills, MD)

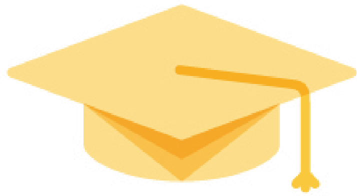
Dr. Edouard Siregar, Founder

Sofia Labs builds tools to use artificial intelligence to help users lighten their workloads on complex projects.

"State tax incentives would also help startups. Right now, small businesses are the ones who are suffering the most. If policymakers want the economy to recover quickly... then tax incentives are a way to do it. Such incentives help the majority of employers, like small startups."

Talent

Why it matters to startups:



Startups need to hire the best and brightest talent to compete, but the U.S. talent pool isn't currently equipped to fill all of the talent gaps. The U.S. technology sector needs a more diverse and better trained workforce. Studies routinely show that a diverse workforce leads to more profitability for a business. And the startup ecosystem on the whole would benefit from increased resources for STEM education, an emphasis on innovation and entrepreneurship education, and better support for equity in STEM education programs and amongst educators.

Additionally, the process for hiring a high-skilled, foreign-born worker is uncertain and complex, with long wait times for visas and additional financial burdens on already tight startup budgets. The entire tech ecosystem benefits when companies can access high-skilled immigration opportunities—many of these employees may go on to found or contribute to new, innovative companies, and the presence of immigrant workers raises wages and creates jobs for native-born Americans. Adopting a startup visa would further boost economic and innovation gains, especially as new immigrant-owned startups generated an estimated three to four million jobs.

Key takeaways:

- The startup ecosystem needs access to the best and brightest talent to succeed.
- The U.S. needs to continue attracting and retaining skilled talent from around the world to compete globally, including by implementing a startup visa.
- Policymakers must prioritize STEM education to cultivate future startup founders and innovative thinkers and build on initiatives to bolster diversity in tech.

What policymakers can do:

To address the current talent gap that startups face, policymakers should take steps towards building a larger and representative high-skilled workforce through improved STEM education. Policymakers should consider proposals to increase funding for STEM education generally, including boosting funding for university-based STEM programs through government grant-supported research. And Congress should prioritize efforts to bolster diversity and inclusion of underrepresented groups—including at the National Science Foundation and at educational institutions—and craft strategies to increase diversity in tech at the federal level. And policymakers at all levels of government should work with stakeholders in order to remove barriers to participation in STEM careers, including through grants to boost participation of underrepresented individuals in STEM programs.

Policymakers should also defend and expand existing immigration programs and implement new programs to enable foreign-born entrepreneurs to come to the U.S. Recipients of the Deferred Action for Childhood Arrivals program still lack a permanent solution to legally remain in the U.S. without having to continually renew their statuses, and policymakers must prioritize a legislative solution for this critical talent pool. Efforts should be made to bolster the H-1B visa program and make it more easily accessible to startup founders. Policymakers should work to implement a startup visa with a pathway to citizenship, to enable the U.S. to remain at the forefront of innovation.

Startup Spotlight

Unshackled Ventures
(San Francisco, CA)
Manan Mehta, Founding Partner

Unshackled Ventures is a venture capital fund that supports immigrant entrepreneurs.

"Full stop, we need a startup visa. This is an issue with bipartisan support. Yet, it gets caught up in the grinding gears of comprehensive immigration reform. I think it's time to recognize that we are educating, employing, and using U.S. taxpayer dollars for immigrant students and others that immigrate here but are constrained by the current system...If we want to keep the competitive advantage we need, then we need a startup visa."

Trade

Why it matters to startups:

The continued digitalization of world economies has contributed to the significant growth of digital trade, letting startups and the smallest Internet companies reach users across the globe. A global patchwork of laws and regulations that stifle digital trade have a disproportionate impact on small startups that lack the compliance resources of their foreign and larger industry competitors. These non-tariff trade barriers hinder the growth of digital trade and stand in the way of U.S. startups' ability to compete abroad. For example, the Privacy Shield Agreement had fostered transatlantic data flows and was overwhelmingly relied upon by startups. When it was invalidated in July 2020 over EU concerns with U.S. government surveillance, U.S. startups faced increased costs and difficulties as a result.

Key takeaways:

- Trade policy should seek to lower tariffs, reduce regulatory burdens, increase market access, and promote stability to ensure that startups are able to compete abroad.
- Exporting U.S. legal and regulatory frameworks and promoting digital trade will increase innovation, competitiveness, and opportunities for U.S. startups.

What policymakers can do:

Policymakers must support the legal environment necessary to foster innovation online, including through trade policy. Balanced intermediary liability frameworks, like those found in the U.S., provide the legal certainty needed for startups with business models that rely on user content—whether it's comments, photos, reviews, etc.—to grow and thrive. Around the world, however, common methods for governing intermediaries are taking root that undermine a startup-friendly environment and create new uncertainties and costs for U.S. companies. Laws that require the appointment of local representatives, impose tight content takedown timelines, require automated filtering, require the removal of content that is not otherwise illegal, and threaten heavy fines create barriers to entry for startups and reduce the number of foreign markets available to them.

The Internet allows startups to access foreign markets with little additional investment, but many countries have policies that restrict how and when data can be transferred across borders. Policymakers must act to foster data flows and reduce barriers to trade that startups with limited resources have difficulty overcoming, especially compared to their larger rivals. To accomplish this, U.S. policymakers must be responsive to global concerns, including issues around U.S. government surveillance at the core of creating a permanent transatlantic data-transfer agreement.

Startup Spotlight

Onfleet

(San Francisco, CA)

Mikel Carmenes Cavia, Co-Founder

Onfleet uses logistics management software and route optimization to power last mile delivery services.

"The European Court of Justice's Schrems II decision invalidating the EU-U.S. Privacy Shield was catastrophic for our company. As an American company with a large number of EU-based customers, we were forced to make major investments in building out a cloud environment within the EU....The unexpected difficulty of having to prioritize such a major change to our systems has been very costly to Onfleet and we have regrettably lost prospects and customers as a result."

User Privacy

Why it matters to startups:

Much of the conversation around privacy and data security focuses on large Internet companies, but startups have to navigate the same legal and regulatory framework around data without the resources of their larger counterparts. As several states consider and pass their own privacy laws —many of which are written with the same overarching goal but contain small differences—startups are left to grapple with varying requirements and obligations that increase compliance and legal costs. The evolving and varying laws at the state level adds to a longstanding patchwork of state data security and data breach notification laws, which create disparate requirements about how startups have to protect against data breaches and what a startup has to do to notify users if it is the victim of a data breach. A federal privacy and data security framework can create consistency for startups while ensuring strong protections for consumers.

Key takeaways:

- Startups need one uniform, consistently-enforced set of rules around user privacy to provide predictability and stability as they launch and grow.
- As policymakers think through privacy and data security rules, it's crucial that they consider the impact on small and new companies.
- Startups can benefit from reasonable, commonsense privacy and data security rules that help restore consumers' faith in the Internet ecosystem and ensure access to markets around the world.
- A federal framework should incentivize pro-privacy and strong security measures that make sense for a wide range of startups and their unique risk profiles without creating unncessary compliance costs or legal risks.

What policymakers can do:

Policymakers should prioritize crafting a uniform federal privacy and data security framework that creates certainty for startups while providing strong protections for consumers. Virginia, Colorado, and California have passed their own laws in recent years, and more states are set to act in 2022. While Congress has spent much of the last few years discussing a federal privacy framework, several sticking points remain, including whether a federal framework would preempt state laws and how to enforce the law. Congress should create one federal standard so startups know their obligations and responsibilities under the law, regardless of where they're located, and that framework should be consistently enforced to ensure certainty and to minimize opportunities for bad actors to weaponize costly legal action against startups.

Additionally, policymakers should defend the ability of technology companies to protect their users through encryption. The push for "backdoors"—or intentional vulnerabilities in hardware or software that can be exploited by law enforcement—will do more harm than good by opening up products and services and their users to malicious actors.

Startup Spotlight

Storj
(Atlanta, GA)
Ben Golub, CEO

Storj is an encrypted, decentralized cloud storage provider that utilizes its own digital token to facilitate transactions.

"Privacy is just one particular area where many startups struggle to understand what is required of them. . . .As policymakers grapple with these issues, it is important that they give startups a role in policy debates. There are things that Amazon, Microsoft, or Google can do that startups cannot, so it helps level the playing field when the voices of startups are included in policy debates."

Engine is a non-profit technology policy, research, and advocacy organization that bridges the gap between policymakers and startups. Engine works with government and a community of thousands of high-technology, growth-oriented startups across the nation to support the development of technology entrepreneurship.

Engine brings together policymakers and startups to promote an economic environment conducive to startup success. One of the cornerstones of this work is Congressional Startup Day—an annual, bipartisan celebration of entrepreneurial communities that connects startups with their members of Congress. In order to foster open discussions about the successes and policy concerns of the startup community, Engine coordinates meetings between House and Senate lawmakers and their entrepreneurial constituents as part of this nationwide celebration. Congressional Startup Day takes place every year during the August recess as part a week-long initiative to connect all levels of government with the startup ecosystem, and allows startups and entrepreneurs to directly engage with their elected officials about the issues affecting their businesses. If you are interested in participating in Congressional Startup Day, reach out to startupday@engine.is to learn more about scheduling a meeting.

If you would like to learn more about Engine's work or engage with us further about any policy issues, please reach out to the appropriate contact below:

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