

STARTUP POLICY PLAYBOOK

How startups can get pro-innovation policy to the finish line



2024

FEDERAL POLICYMAKING IN THE U.S.



Congress has two chambers: the **House** (435 members divided by state based on population) and the **Senate** (100 members, 2 per state)



BILL INTRODUCTION

The legislative process kicks off in earnest when a member of Congress writes and introduces a bill. Serious legislative proposals usually come after the relevant committee gathers information on the issue through hearings, letters, roundtables, etc. While any member can introduce a bill, those most likely to advance come from members of the relevant committees. At or after introduction, lawmakers recruit their colleagues to "co-sponsor" their bills. A long list of co-sponsors, bipartisan support, and a companion measure in the other chamber are all good indicators for how serious a bill is.



COMMITTEE CONSIDERATION

Legislation has to go through "markup" in the committee(s) of jurisdiction, which is made up of a small subset of lawmakers who work on the relevant issues and have an opportunity to amend and vote on the legislation during the markup. Sometimes full committee markups are preceded by subcommittee markups, where an even smaller subset of lawmakers consider the proposal.

Key Senate Committees: Banking, Commerce,

Finance, Judiciary, Small Business

Key House Committees: Energy & Commerce, Financial

Services, Judiciary, Small Business, Ways & Means



FLOOR VOTE

In most instances, the bill goes through the relevant committee(s) and then goes to the chamber's floor for a vote by all of the lawmakers in that body. Once a bill passes one chamber, it moves to the other.

In the House, the Speaker effectively decides what goes to the floor, then the Rules Committee considers the bill. Normally bills require a simple majority to pass. Sometimes non-controversial bills are passed "under suspension," which requires a 2/3 vote.

In the Senate, the Majority Leader effectively decides what goes to the floor. Non-controversial bills can pass "by unanimous consent" when no one single Senator will oppose. Otherwise, a bill needs not only a simple majority to pass, but it needs 60 Senators to agree to vote for "cloture" to end debate and vote on the bill. The consequence is that Senate bills effectively need the support of 60 Senators to overcome the "filibuster," receive a vote, and pass.



Many parts of the executive branch make startup policy and impact the ecosystem, for example:

Federal Communications Commission - telecommunications regulator

Federal Trade Commission - consumer protection and competition agency

Office of Science and Technology Policy - White House office to advise the president on technology issues

Patent & Trademark Office - grants patents and trademarks, adjudicates patent challenges

Small Business Administration - clearinghouse for government information and resources for small businesses

Securities & Exchange Commission - financial services and investment regulator

U.S. Trade Representative - lead trade negotiation agency



BILL SIGNING

Once passed by both chambers, the bill is signed into law or vetoed by the President. Some bills, when signed into law, kick off other steps, such as agency rulemaking processes.



A NOTE ON PROCESS

The path described here is how lawmaking is supposed to work. However, Congress often considers mustpass legislation (such as the annual defense authorization bill and recurring government funding measures) up against predictable but tight deadlines. Often, unrelated policy proposals get attached to these must-pass bills, as it's difficult for lawmakers to hold up the overall bill over individual provisions.

STARTUP POLICY AT A GLANCE

ACCESS TO CAPITAL: Getting funding to launch and grow is the first hurdle most startups encounter, and policies can ease that hurdle by lowering barriers for investors, incentivizing investment, and creating accessible grant and loan opportunities.

Policymakers should:

- Expand and diversify the pool of investors so that more diverse startups receive funding
- Streamline processes for obtaining government funding, including through the grant process
- Avoid policies that make it more difficult to be acquired or access the public markets



CONNECTIVITY: Ubiquitous, affordable, reliable Internet access across the country creates a level playing field where anyone with a good idea can launch an innovative startup.

Policymakers should:

- Ensure ubiquitous, affordable, reliable broadband access for all communities across the country
- Invest in education and resources to increase digital literacy
- Support policies that keep the Internet open to startups



COPYRIGHT AND TRADEMARK: Existing intellectual property frameworks around copyright and trademark support innovation, including the fair use doctrine and intermediary liability frameworks that protect startups that host user content.

Policymakers should:

- Defend the copyright and trademark frameworks that encourage innovation, competition, and expression, including the fair use doctrine
- Push back on proposals that would require startups to proactively look for—and make complicated determinations about—infringement in vast amounts of user content

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PRIVACY: Startups want to be responsible stewards of their users' data, but they need clear, uniform, and consistent rules of the road when it comes to collecting, processing, sharing, and securing user data.

Policymakers should:

- Pass a federal, uniform, consistently-enforced set of rules around user privacy to provide startups with predictability and stability as they launch and grow, especially as several varying state privacy laws take effect.
- Preempt varying state laws that would create a confusing patchwork of privacy laws

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TALENT: The startup ecosystem requires training and attracting the best and brightest, supported by flexible policies that enable startups to grow their team as they scale.

Policymakers should:

- Reform high-skilled immigration programs to make them more accessible to startups and small companies
- Support STEM education programs across all education levels for women and people of color
- Support policies that increase workforce flexibility and mobility

ARTIFICIAL INTELLIGENCE: Potential AI regulations in the U.S. and around the world can shape how the

regulations in the U.S. and around the world can shape how the technology is developed, what it can be used for, and at what cost—all impacting the competitiveness of startups.

Policymakers should:

- Endeavor to limit negative consequences for startup competitiveness while mitigating risks associated with AI
- Support startup success by creating and funding AI resources for startups, bolstering AI talent, and affirming longstanding IP and intermediary liability frameworks

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CONTENT MODERATION: The current legal framework for the Internet allows startups to host—and moderate—user content (from comments, to reviews, to photos and videos, to files,

content (from comments, to reviews, to photos and videos, to files, to messages, and more) without facing ruinous legal costs anytime one user takes issue with another user's content.

Policymakers should:

- Defend legal frameworks that allow startup platforms of all types to host user content without reviewing or scanning it
- Support startups' efforts to moderate content in ways that make the most sense for each platform's community of users

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PATENTS: High-quality patents can promote innovation and creativity in the startup ecosystem, but startups are often the first to suffer in the face of low-quality patents that can be easily weaponized.

Policymakers should:

- Improve the quality of issued patents and preserve or enhance tools to protect against invalid ones
- Create more transparency in the patent system around who owns patents and controls patent assertion lawsuits

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TRADE: Digital trade policy promotes domestic technology entrepreneurship as lowering barriers to trade unlocks markets for U.S. startups to expand, compete, and find success.

Policymakers should:

- Pursue policies that lower barriers to trade and unlock markets to expand, compete, and find success
- Work together with trading partners around the world to facilitate cross-border transfers of data and enable startups to participate in digital trade

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TAX: Tax incentives can promote investment and participation in the startup ecosystem, while discriminatory tax regimes can disproportionately (directly and indirectly) burden startups.

Policymakers should:

- Enact policies that encourage startup formation and growth, including tax incentives for investors and early employees
- Support tax policies that make launching a startup more affordable, including a return to immediate expensing for R&D costs and permanently expanding the child tax credit
- Resist taxes that would create more costs and compliance burdens for startups

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ACCESS TO CAPITAL



How does public policy impact startup funding?

Most startups rely on a combination of funding methods. Studies show that 65 percent of entrepreneurs rely on personal and family savings for startup capital, and less than one percent of entrepreneurs use venture capital. In order to promote the growth of new startup ecosystems, policymakers need to craft rules that can help entrepreneurs in all communities across the country access capital.

KEY TAKEAWAYS:

- Most startups rely on sources of funding outside of traditional venture capital.
- Policies should reduce friction to accessing capital for startups, particularly for underrepresented founders, and open up capital markets to allow more people to participate in funding startups.
- Policy should encourage investment in startups, including by recognizing the role M&A plays in a startup's lifecycle.

Why does it matter to startups?

Accessing capital is always top of mind for startups. If entrepreneurs are forced to take on credit card debt or turn to family members for seed funding, many innovative companies will simply never get off the ground. Startups have several options outside of bootstrapping when pursuing funding, including venture capital, angel investment, small business loans, grants, and equity crowdfunding. But many of these options pose challenges, including funding limits, inequity, and complex application processes. Others, like the SBIR program, which needs to be regularly reauthorized, are often easier for those with PhDs and may feel inaccessible to founders. For startups with limited time and resources, any increased barrier to funding could lead to closed doors.

Where are we now?

EQUITY AND CAPITAL ACCESS: Underrepresented founders still represent a tiny fraction of those receiving venture funds. And this inequity extends to other forms of financing as well. Underrepresented founders report being approved for lower loan amounts than their white counterparts and are often quoted significantly higher interest rates. Though gender- and racially diverse startups are more likely to be more profitable and successful, funding still primarily benefits white-led companies.

DIVERSIFYING INVESTORS: Just as founders of color and women founders are underrepresented in the startup ecosystem, the world of eligible investors similarly lacks needed diversity. The current definition of accredited investor—and SEC plans to potentially increase the financial threshold to qualify—limit the pool of who is eligible to invest in startups. Policymakers should open up more opportunities to become early investors in startups including creating pathways for individuals to become accredited investors and expanding the size of angel funds.

OTHER ISSUES: While much of Congress has been focused on reigning in big tech, this may be to the detriment of startups and their founders. Efforts to limit mergers and acquisitions instead restrict a common and desirable startup exit pathway, leading to less competition. Other efforts, like an update to the JOBS Act, would help to further enhance capital access pathways and could increase opportunities for diverse investors to participate in the ecosystem.

ARTIFICIAL INTELLIGENCE



What is artificial intelligence policy?

Recent advances in AI technology have captivated the public and sparked concern among policymakers about what impacts it may have on intellectual property, civil rights, the workforce, national security, competitiveness, and more. In response, policymakers at the state and federal levels, international fora, and governments around the world are looking to regulate the technology, and many of their proposals stretch across many technology policy issues and will impact how AI is developed and deployed.

KEY TAKEAWAYS:

- The Al ecosystem is vast and diverse, made up of different types of companies
 of all sizes and across all sectors using Al in innovative ways, but policy
 conversations tend to focus on large players and specific uses of Al, like
 generative Al.
- Policymakers looking to mitigate Al risks must endeavor to limit negative consequences for startup competitiveness.
- Policymakers can support startup success by creating and funding AI resources for startups, bolstering AI talent, and affirming longstanding IP and intermediary liability frameworks.

Why does it matter to startups?

Recent breakthroughs in artificial intelligence build on decades of startups using AI to solve everyday problems and build innovative products, leading to record levels of investment in AI startups. But that has also brought with it record levels of skepticism and scrutiny from policymakers looking to regulate AI. Potential AI regulations in the U.S. and around the world can shape how the technology is developed, what it can be used for, and at what cost—all impacting the competitiveness of startups—but most AI policy debates are currently dominated by large market participants and concerns about generative AI without taking into account the impacts policy changes will have on the entire AI ecosystem.

Where are we now?

In the U.S., there is not yet a consensus on a comprehensive approach to AI policymaking, leaving policymakers to pursue voluntary commitments and executive actions, while several states and localities are poised to pass their own rules. Policymakers are also working through international fora to pursue alignment on mitigating AI risks, and the European Union has agreed to its AI Act, likely to enter force in 2026.

Several agencies are parsing key questions in AI policy for startups. The U.S. Patent and Trademark Office and U.S. Copyright Office will address intellectual property issues around AI, like patentability or the ability to include copyrighted works in training data, which will impact barriers to entry, the likelihood of legal threats to startups, and startup competitiveness. The National Telecommunications and Information Administration will address the extent to which AI models should be open sourced, which could impact costs and barriers to entry. The National Science Foundation is contemplating a National AI Research Resource that would bolster AI talent and provide resources to startups, but it needs funding from Congress to make it a reality.

CONNECTIVITY



What is connectivity policy?

Connectivity is the ability to get online, facilitated by broadband access. Much of the work the federal government does to improve broadband access has to do with wireline broadband, or the cables in the ground connecting homes, office buildings, etc. The government has several programs to encourage wireline broadband buildout and adoption, typically for underserved communities, such as rural areas or low-income communities. The federal government also controls who can offer Internet access via spectrum. Unlicensed spectrum is the airwaves that are open for use by anyone, including ones that power WiFi networks and connective devices. Net neutrality ensures that Internet Service Providers (ISPs) treat all lawful Internet traffic the same, meaning they can't block or slow access to websites or online services, or charge websites for better, faster access to users.

KEY TAKEAWAYS:

- With a good idea and a reliable, affordable connection to the open Internet, a startup of any size, anywhere in the country can launch and grow a global business.
- Startups need policymakers at all levels to prioritize reliable and affordable broadband to ensure the startup ecosystem remains accessible to all.
- Net neutrality is crucial for startups and provides a level playing field on the Internet. Without net neutrality protections, ISPs can block, throttle, or charge more to prioritize certain Internet traffic.

Why does it matter to startups?

With a connection to the open Internet, an entrepreneur located anywhere in the country can create and grow a company that reaches users across the world. As broadband access increases and improves, so too does the opportunity for innovation. Additionally, the availability of unlicensed spectrum has created opportunities for companies that make and use technology that relies on high-frequency airwaves for wireless device-to-device communications, like Bluetooth speakers or autonomous vehicles.

Net neutrality is what keeps the Internet a level playing field, and these protections are especially critical to startups. Without net neutrality, startups that have an innovative product or service that competes with big companies have to worry about paying to have their websites or services load as fast as those of their competitors.

Where are we now?

The federal government is constantly working to improve access to broadband across the country, including increasing the amount of spectrum available for use by the public, providing incentives for companies to build out wired broadband networks, and providing broadband subsidies to bring down the cost of broadband for consumers. One subsidy program in particular—the Affordable Connectivity Program, which was created during the pandemic and has helped connect millions of U.S. households to the Internet—is set to run out of money in spring 2024. Congress should ensure the program has the necessary funding to continue.

The FCC has a host of issues to prioritize in order to advance telecom policies that will help the startup ecosystem. These issues include opening more unlicensed spectrum for general use, identifying which communities across the country need better broadband access and resources, and reinstating strong net neutrality protections that keep the Internet a level playing field for startups. After years of back and forth at the agency and in the courts, the FCC kicked off a process in late 2023 to reinstate strong net neutrality protections that would keep ISPs from blocking or throttling lawful Internet traffic as well as engaging in "paid prioritization."

CONTENT MODERATION



What is content moderation policy?

Any Internet-enabled company that hosts content created and uploaded by its users is a platform. While people tend to think only of large social media companies, Internet platforms include websites with comment sections, apps that let users share messages, and services that let users rate and review products they've bought. Internet platforms can host, moderate, curate, recommend, etc. their users' content at their discretion without fear of being held legally liable for what users say or share thanks to the legal framework established by Section 230, which keeps Internet companies from being sued over their users' content, and the First Amendment, which protects Internet companies from both government obligations to censor speech and government obligations to host speech.

KEY TAKEAWAYS:

- Laws that protect Internet platforms from being held responsible for their users' speech are crucial for startups that host user-generated content and protect them from ruinous lawsuits.
- Proposals that limit how platforms moderate their users' content will make it harder for startups to keep their corners of the Internet safe, healthy, and relevant for their users.
- Startups are especially vulnerable to legal changes in this area as compared to the big tech companies that can afford to hire thousands of content moderators or build expensive filtering tools.

Why does it matter to startups?

Startups stand to lose the most if laws about platform liability and content moderation are changed. A small, new company that hosts user content will be unable 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 any moderation decisions it makes. Additionally, startups tend to serve niche purposes and audiences, and they need to be able to host and moderate content in ways that will keep their corners of the Internet safe, healthy, and relevant for their communities of users. And unlike the largest tech companies, startups do not have the time and resources to hire thousands of people or build expensive tools to monitor what their users share.

Where are we now?

Since 1996 Section 230 has done a good job of ensuring that new Internet platforms can get off the ground and compete with the biggest players without incurring ruinous legal costs. In recent years, Section 230 has come under attack from a variety of angles, starting with the passage of the Stop Enabling Sex Traffickers Act in 2018. Since then, policymakers have repeatedly threatened to further change Section 230 as a means to address a variety of problems online, including political misinformation, hate speech, opioid abuse, and alleged political censorship. Several states have considered—and a handful have even passed—legislation aimed at changing the ways platforms host and moderate content. Texas and Florida have laws on the books (though both were enjoined and are being challenged at the Supreme Court) that would make it more difficult for large platforms to remove content in a way that treats "viewpoints" differently. And a recent push around kids' safety online has surfaced proposals that would prohibit platforms from showing young users "harmful" content, which raises practical questions about how Internet companies can know when they're dealing with young users and whether policymakers and enforcers can agree on what should be considered "harmful."

COPYRIGHT AND TRADEMARK



What is copyright and trademark policy?

Copyright and trademark policy are largely governed by the intermediary liability frameworks created by the Digital Millennium Copyright Act and jurisprudence around contributory trademark infringement liability. These frameworks protect Internet companies that host user content from ruinous legal costs if a user uploads and shares content that infringes on someone else's copyright or trademark. Another important part of the copyright system is the fair use doctrine, which allows for the unauthorized use of copyrighted material if the material is being transformed or used for things like reporting and parody. While fair use doctrine is critical for innovation and expression, whether something is protected by fair use is fact-specific and determined on a case-by-case basis in court.

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.

Why does it matter to startups?

Copyright and trademark intermediary liability frameworks are critical to startups that host user content, ranging from social media platforms, to photo and video sharing services, to websites that host user reviews, to e-commerce platforms, and much more. These frameworks strike a valuable balance that is especially important to startups, because the law provides certainty and guards against mere threats or unaffordable legal exposure putting startups out of business. Many Internet companies that host user content establish notice-and-takedown processes for resolving allegations of infringement, removing accused content upon receipt of a complaint. But these systems can be gamed by anyone who alleges infringement but simply doesn't like another user's content, putting Internet companies in the impossible position of risking removing a user's content or risking allowing infringing content to stay online. The threat of steep statutory damages and imbalanced procedures for resolving infringement claims compound these problems—stifling speech, economic opportunity, and creativity online.

Where are we now?

Some rightsholders and some lawmakers are pushing to change copyright and trademark law despite the successful and balanced frameworks discussed above. For example, some have argued it should be easier to sue companies for copyright infringement they have no knowledge of or involvement in. Others have argued that all Internet platforms, regardless of whether their users have ever been accused of infringement, should be required to review or filter every single user post to find infringing content before it can be shared. This would be especially problematic for startups who can't hire teams of intellectual property experts to review every element of every piece of user content—from the music playing in the background of a video on social media, to the art in a photograph on a review website, to the validity of a piece of vintage clothing being sold on a secondhand e-commerce site—to see if it's allowed under intellectual property law, including whether it's protected by fair use or allowable because it's part of the public domain, etc.

PATENTS



What is a patent?

A patent is a limited right, of approximately 20 years, that the government gives to inventors in exchange for sharing their inventions with the public. To obtain a patent, an inventor has to establish that her invention is different from prior technology and has to explain it in sufficient detail that the public can understand. You can use someone else's patented technology if you take a license. However, weak or overbroad patents (that do not adequately describe and claim truly new inventions) should not—but occasionally do—get granted. And some bad actors try to use those low-quality patents to harm startups.

KEY TAKEAWAYS:

- Startups need balanced intellectual property laws that protect new inventions without stifling innovation.
- To protect startups, Congress and the PTO should prioritize patent quality and preserve mechanisms for weeding out low-quality patents.

Why does it matter to startups?

Startups drive innovation and many may choose to patent their inventions, but startups are also the first to suffer when weak or overbroad patents are issued. Even though it can be a long and expensive process, many startups apply because high-quality patents can be valuable assets for growing businesses and attracting investment. However, 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," acquire patents—sometimes in secret—with no intention of making or selling anything. Instead, they 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. Startups benefit when the U.S. Patent and Trademark Office and the courts weed-out invalid patents and only issue or enforce patents that specifically claim truly new inventions.

Where are we now?

Patent law has overall been getting better for startups and innovation. Recent developments have improved the quality of issued patents and leveled the playing field in litigation by giving startups easier and cheaper defenses when weak or overbroad patents are asserted. For example, the 2011 America Invents Act created inter partes review (IPR) and gave the PTO the ability to review and cancel patents that never should have been issued. By reducing the cost of challenging low-quality patents, IPR helped startups fight back against abuse. At the same time, the Supreme Court has decided key cases—confirming that abstract ideas performed on a computer are not patentable, restoring balance to damages law so startups can innovate without a spurious patent suit pulling their product from the market, and confirming that startups cannot be sued for infringement in far-flung corners of the country.

Despite these successes, some policymakers have sought to overturn recent improvements, including at the PTO. Some recent changes have made it more difficult to challenge weak patents, leaving bad actors with more leverage to harm startups. Instead of unraveling recent progress, further legislative or policy changes should preserve and expand the existing balance and seek more transparency about who owns and controls the lawsuits filed against startups.

PRIVACY



What is privacy policy?

User privacy refers to a user's ability to have a say in how her data is collected, used, and shared. At the federal level, there is no single, comprehensive law governing user or data privacy. Instead, federal laws address privacy on a sectoral basis, where data held by health providers has a certain set of protections, data about consumers' credit has a different set of protections, and education-related data is governed by a third, for example. Meanwhile, more than a dozen states have enacted their own unique comprehensive and sectoral data privacy laws.

KEY TAKEAWAYS:

- As policymakers think through privacy protections, it's crucial to consider the impact on small and new companies, not just tech giants.
- Startups can benefit from reasonable, common-sense privacy rules that restore consumers' faith in the Internet ecosystem.
- Startups need a uniform set of rules around user privacy to provide predictability, not varying and potentially conflicting rules on a state-by-state or court-by-court basis.

Why does it matter to startups?

The Internet does not stop at state borders, and as more and more states pass unique privacy laws, the volume of rules for startups to keep up with is growing, threatening to bury resource-strapped startups under duplicative compliance costs, limit their scalability, and burden their chances of success. Startups have to navigate the same legal and regulatory framework without the resources of their larger counterparts—but much of the conversation around data privacy focuses on the practices of large Internet companies. The U.S. needs a consistently enforced, uniform federal privacy framework to create privacy protections for all Americans and certainty for the startups that serve them.

Where are we now?

At the start of 2023, just five states had enacted their own comprehensive privacy rules. Now, at the start of 2024, over a dozen states have enacted their own unique privacy rules. Several of those laws are modeled after one another, making the patchwork of laws more consistent, but still varying, creating complications and additional costs from performing similar compliance activities multiple times. Startups report spending hundreds of thousands on privacy compliance, and additional tens of thousands for each new state law added to the patchwork.

In early 2023, with a flurry of hearings on data privacy, lawmakers signaled interest in moving forward with a bipartisan federal privacy bill, called the American Data Privacy & Protection Act, that they had advanced in 2022. For startups, that bill had areas in need of improvement, including the potential impact on the ad-supported ecosystem, a complex private right of action, and limited preemption of state laws. Lawmakers have not reintroduced that bill, and momentum around comprehensive privacy died out toward the second half of the year in favor of narrower kids' focused privacy bills and after getting hung up on familiar sticking points.

Those sticking points include whether and to what extent a federal law should override individual states' laws, which, if not preemptive, would merely add to the complicated patchwork of privacy rules for startups to navigate. Another hurdle has been whether federal law should give individual users the ability to bring lawsuits against companies that violate the law, as opposed to a single federal agency, which would ensure that enforcement is consistent across the country and doesn't vary from court to court or open up startups to potentially abusive lawsuits.

TRADE



What is trade policy and why does it matter to startups?

Sound digital trade policy is a vital part of promoting domestic technology entrepreneurship—lowering trade barriers unlocks markets for U.S. startups to expand, compete, and find success. Startups have flourished with the growth of digital trade, enabling them to reach users, facilitate transactions, and empower communications across borders and around the globe. However, tariff and non-tariff barriers create burdens for startups looking to serve new markets. For instance, the flow of data across borders underpins global trade and enables startups to serve users in other countries with minimal additional investment, but restrictions on data flows, or data-localization measures, have continued to proliferate around the world and harm the ability of startups to grow and compete globally. In addition, trade-related conflicts and fractured regulatory regimes inject uncertainty and inhibit startups' ability to enter new markets abroad.

KEY TAKEAWAYS:

- Sound digital trade policy is a vital part of promoting domestic technology entrepreneurship—lowering barriers to trade unlocks markets for U.S. startups to expand, compete, and find success.
- Trade policy should seek to facilitate cross-border data flows, reduce regulatory burdens, lower tariffs, and promote stability to ensure that startups are well positioned to prosper.
- Exporting American laws will increase opportunities for growth, innovation, and the international competitiveness of American startups.

Where are we now?

CHANGES TO U.S. TRADE POLICY: In October 2023, the Biden administration signaled a sharp departure from longstanding U.S. trade policy by withdrawing support for key digital trade provisions enabling cross-border data flows, opposing data localization, protecting source code, and ensuring anti-discrimination. These policies have fostered the growth of digital trade and abandoning them is likely to lead to increased barriers for U.S. startups.

WTO MINISTERIAL: The World Trade Organization's 13th Ministerial Conference will be held in Spring 2024. The moratorium on imposing customs duties on electronic transmissions, a foundational policy that has enabled digital trade without tariffs, will expire unless it is renewed at MC13. Also at MC13, a smaller group of countries may reach a digital agreement as part of the Joint Initiative on e-commerce, though that will be less ambitious and less helpful for U.S. startups given the recent changes to U.S. policy.

INDO-PACIFIC: In 2022, the Biden administration launched the Indo-Pacific Economic Framework with a group of countries in the region. Negotiations over the trade portion of the framework are held up by labor and digital trade issues, and a robust, startup-beneficial outcome seems unlikely.

EUROPE: The European Union has advanced several tech policy initiatives that will impact U.S. startups operating there and the broader tech regulatory environment. The General Data Protection Regulation sets strict rules around personal data. The Digital Markets Act addresses competition but could have the consequence of increased costs for basic services relied upon by startups. The Digital Services Act addresses content moderation online, adding new requirements for startups that will increase the costs of entry and operation in the EU. The Artificial Intelligence Act will regulate AI, impacting AI development and deployment in the EU and beyond. The Data Act will govern 'non-personal data,' and will impact the cross-border flow of such data. Finally, the EU-U.S. Data Privacy Framework is thankfully now active, restoring certainty to transatlantic data transfers needed for U.S. startups to serve EU customers.

TALENT



How does policy impact access to talent?

Access to talent is a critical component of a startup's ability to grow. Issues like restrictive non-compete agreements hinder startup formation and a worker's ability to migrate from large companies to startups, and independent contractor policy determines how well startups can meet their changing talent needs as they scale. Immigration also has an important role in startup formation and talent supply, but cost and limits to current high-skilled visa programs mean startups are often unable to benefit from existing programs. Moreover, women and people of color continue to be underrepresented in STEM education, leading to decreased opportunities in STEM fields, and domestic training programs and upskilling efforts are not meeting the demand for talent.

KEY TAKEAWAYS:

- Startups need access to the best and the brightest employees, as well as policies that increase worker mobility and flexibility.
- America needs to continue educating domestic talent and attracting and retaining the best talent from around the world to compete globally.
- The employer-sponsored visa programs remain broken. Congress needs to make it easier for startups and other small businesses to navigate the immigration system.

Why does it matter to startups?

Entrepreneurs know that finding and retaining talent remains one of the biggest challenges facing startups. To compete in a global economy, startups need to hire the best and brightest employees from around the world, and workers and innovation benefit from mobility and flexibility. That's why access to talent remains a top policy concern for startups. Long wait times for visas and confusing red tape practices place additional financial burdens on already tight startup budgets. A lack of a dedicated startup visa puts the United States behind its innovative competitors in attracting cutting-edge founders. U.S. immigration policy should instead encourage entrepreneurs to build and grow their companies here. It is also critical that we adequately train talent at home. Women and people of color are underrepresented in the innovation ecosystem, but diverse teams lead to more innovation and better results.

Where are we now?

IMMIGRATION: H-1B visas allow employers to sponsor foreign-born "highly-skilled" workers and are the best way for foreign students and specialized workers to remain in the country. For a startup, navigating the complex H-1B process and competing for an extremely limited number of visas is often daunting and cost-prohibitive, but these visas are critically important for the tech industry at large. Recent proposed changes would, in some ways, make it easier for startups and startup founders to make use of the H-1B process, but the proposed changes should be further refined to ensure maximum benefit to the startup ecosystem. Additionally, the Deferred Action for Childhood Arrivals (DACA) program remains in jeopardy after once again having been found unlawful by the courts, and Congress has yet to pass a permanent solution for the thousands of individuals affected.

NON-COMPETES AND INDEPENDENT CONTRACTORS: The Biden Administration has issued a proposed rule to ban post-employment non-compete agreements, which is expected to face a vote at the FTC this year. Policies to limit the implementation of non-competes would enable founders and employees to use the skills they have developed in launching and growing new startups, spurring economic and job growth. At the same time, the Department of Labor has issued a new rule that would make it more complicated to hire independent contractors, a flexible workforce that startups rely on when they have varying workloads and limited means to hire full-time employees.



Congress is responsible for developing tax policy, while the Internal Revenue Service is responsible for the implementation of this policy. Federal tax policy includes several areas like personal taxes filed every year, various corporate taxes, and complex taxes on foreign profits of U.S. multinational corporations. States have their own tax systems which use credits and deductions to affect economic activity. And international bodies like the Organisation for Economic Co-operation and Development (OECD) negotiate global tax frameworks that affect the digital services startups rely on.

KEY TAKEAWAYS:

- Tax policy has a significant impact on startups and can represent a barrier to growth and formation.
- A simplified tax code is easiest for startups to navigate. Overly complicated and discriminatory tax frameworks could result in complex tax planning and passed-down costs for startups.
- A permanently expanded child tax credit would help founders afford to support their families while undertaking the risk associated with launching a startup.

Why does it matter to startups?

Tax policy can be difficult for startups to navigate. While some tax benefits exist to assist startups and investors in off-setting their liabilities, many of these provisions can be improved. Benefits like the research and development (R&D) tax credit help startups fund critical and often costly research, and Qualified Small Business Stock can incentivize investment in startups and help startups attract talent. Many states encourage angel investment through tax credits, but comparable provisions do not exist at the federal level. Other considerations, like allowing employees to defer taxes when exercising stock options, significantly impact the recruitment and retention of talent, and expanding the child tax credit can help founders support their families so they can pursue entrepreneurship. Internationally, digital services taxes that target large tech companies could result in increased costs for startup customers.

Where are we now?

While previously, companies were permitted to immediately expense their research and development costs, the Tax Cuts and Jobs Act required these expenses to be amortized. This less favorable tax treatment makes conducting R&D more expensive, particularly for cash-strapped startups. Policymakers should continue to support efforts to return to immediate expensing for R&D and consider expanding the cap on the R&D tax credit, expanding eligibility for the credit, and broadening the definition of what counts as R&D to include common software development activities. Policymakers could implement a permanently expanded child tax credit (CTC). In 2021, Congress temporarily enhanced the CTC, leading to a landmark reduction in child poverty, providing working parents, including founders, with greater opportunities to build their careers.

Policymakers should also use tax policy to incentivize investment in startups. Several states have enacted angel investor tax credits, but there is no federal equivalent. Congress should also consider reforming the Opportunity Zone program, which provides tax benefits to individuals or corporations that invest in financially distressed regions.

Globally, several countries are considering digital service taxes, which would make products and services offered by predominantly large U.S. tech companies more expensive for startups to use. While OECD members agreed to a global tax framework, its implementation continues to face headwinds. Per the agreement, DSTs are temporarily suspended pending adoption, the target implementation date continues to be pushed back. Without formal adoption, the threat of unilateral DSTs will likely continue to grow.

Equity in the Startup Ecosystem -

INNOVATION FOR ALL

What is Innovation for All?

The U.S. has one of the most diverse startup ecosystems—startup founders hail from all across the country, located in urban hubs, suburban sprawl, and rural America. Founders come from all different backgrounds, cultures, races, genders, sexual orientations, immigration statuses, and ethnicities. And while the ecosystem is stronger because of the breadth of diversity, the U.S. startup ecosystem is not equitable for all founders. For many—especially founders of color and women founders—access to capital and resources is significantly more challenging than for their white, male counterparts. Inequities persist across all levels of education, including in STEM fields on which many startups rely. Mentorship and networking opportunities are limited for some founders, including those in rural America, where companies are located outside of dedicated technology hubs. To tackle barriers faced by underrepresented founders in the U.S. startup ecosystem, Engine, with the support of the Marion Ewing Kauffman Foundation, launched our Innovation for All project to shed light on barriers faced by underrepresented founders in the startup ecosystem and propose policy solutions that lead to more equity.

Why does it matter to startups?

Equitable opportunity and access to resources for founders are critical for the success and vibrancy of the U.S. startup ecosystem and for underrepresented founders to build generational wealth. Founders of color, women founders, and LGBTQ founders struggle to access the capital they need to grow their companies—from venture capital, to bank loans, to friends and family rounds—making their journeys as founders infinitely more difficult. Women founders in particular struggle because child care is both inaccessible and unaffordable. Immigrant founders, despite strong representation amongst the most successful American startups, face an almost unnavigable visa system. Without equitable access to the resources in the U.S. startup ecosystem, the diversity and success of U.S. startups will begin to fall behind.

Where are we now?

Through a series of round tables, policymaker interactions, survey work, and a planned report and startup fly-in, Congress and the administration have received and will continue to receive extensive feedback from underrepresented founders. The survey remains open and with more voices we can create a more complete picture of what barriers are faced and what policy changes are most needed. Take the survey here.



WHAT WE'VE HEARD SO FAR:

- Access to capital is the most significant barrier most underrepresented founders face—but not just at the venture level.
- Policymakers must make affordable and accessible child care a national priority.
- The U.S. needs more viable and accessible visa pathways, for both founders and needed talent.
- Policy needs to support expanding opportunities for underrepresented founders to build networks and find mentors.



What is Engine?

Engine is a non-profit organization that works with thousands of startups across the country as well as investors and ecosystem system support organizations to advocate for pro-startup policy through research, analysis, and advocacy. The vast majority of startups can't afford lobbyists, but their voice should be front and center as policymakers think about innovation, entrepreneurship, and technology policy.

How can startups get involved?

- Sign up for our weekly **newsletter**, which is how we keep startups updated on policy conversations that would impact the startup ecosystem
- Participate in a **#StartupsEverywhere profile**, where we showcase the work founders are doing, the story of how they got there, and how policy can help—or hurt—that process
- Take part in Engine-organized **events**, including panels, seminars, and meetings with lawmakers, including through Engine's flagship **Congressional Startup Day** in August
- Sign onto **letters** and **comments** in support of policies that support the startup ecosystem

Engine is a non-profit, and there is never any cost to working with us. Our work is supported by contributions from companies of all sizes as well as philanthropic organizations.

If you're interested in joining Engine's work or learning more, please contact advocacy@engine.is



