

The letters H, I, and D are rendered in a large, bold, sans-serif font. Each letter is filled with a complex, glowing network pattern of interconnected lines and nodes in shades of blue, green, and red, set against a dark background.The letters D, E, and N are rendered in a large, bold, sans-serif font. Each letter is filled with a complex, glowing network pattern of interconnected lines and nodes in shades of blue, green, and red, set against a dark background.The letters L, A, and Y are rendered in a large, bold, sans-serif font. Each letter is filled with a complex, glowing network pattern of interconnected lines and nodes in shades of blue, green, and red, set against a dark background.The letters E, R, and S are rendered in a large, bold, sans-serif font. Each letter is filled with a complex, glowing network pattern of interconnected lines and nodes in shades of blue, green, and red, set against a dark background.

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Welcome back to another edition of Hidden Layers. In this issue, we discuss the future of Big Tech-related bills that Congress is deliberating after the U.S. midterm elections, the December 5 Trade and Technology Council meeting, the status of Privacy Shield 2.0 and the White House's AI Bill of Rights.

REGULATING BIG TECH

The U.S. Congress has been quiet on Big Tech legislation in recent months. [The American Innovation and Choice Online Act \(AICO\)](#), introduced by Sens. Amy Klobuchar and Chuck Grassley, did not, as expected, move to a vote before November's U.S. midterm elections. Congress is now in a lame-duck session and, with only three weeks until the new 118th Congress convenes on January 3, time is quickly running out for this bill. Despite the time crunch, the Biden administration has not given up on passing antitrust legislation. [White House officials](#) continue to hold private meetings with staffers from the offices of Senate Majority Leader Chuck Schumer and Speaker of the House Nancy Pelosi to pass AICO and the related [Open App Markets Act](#) before Republicans take control of the House next year.

Klobuchar and Grassley claim that [AICO has the votes needed to pass the Senate](#), including more than 20 from Republicans. Schumer is not so sure and, therefore, has not agreed to hold a floor vote. Big Tech and their trade groups have spent almost [\\$95 million](#) lobbying to derail the bill. They and their allies in this effort, including the [U.S. Chamber of Commerce](#), argue that AICO is deeply flawed by being too broad, too vague, and a threat to national security, privacy, and consumer choice and benefits. Anti-monopoly advocates, on the other hand, fear the delay is a hypocritical strategy by senators who publicly support the legislation but really want to let the clock run out to protect the interests of Big Tech. The antitrust legislation may not survive in a Republican-controlled House, especially since Rep. Kevin McCarthy, who may be the chamber's next speaker, has criticized AICO. The act is a bipartisan bill, but there is wider support for it among Democrats.

The [Kids Online Safety Act \(KOSA\)](#) is in a similar situation.

Little time remains for this legislation to become law, but its supporters believe that the lame-duck session is a good opportunity for progress. Congress may see little urgency in passing federal data privacy legislation, but rare bipartisan support exists for protecting children's privacy and promoting online safety. KOSA also has the [support of Senate Commerce Committee Chair Maria Cantwell](#), who is pushing to make the bill a priority. It still has a good chance to pass, possibly as part of a big, year-end legislative package, such as a defense or spending bill. But the current Congress is trying to push through several competing bills in the next few weeks, and KOSA may not make the cut.

Meanwhile, in Europe, the [Digital Markets Act \(DMA\)](#), the European Union's landmark tech antitrust regulation, came into force on November 1. It is now in its implementation phase. Its rules will apply as of May 2, 2023, when digital gatekeepers must notify the European Commission if their core platform services are available in at least three EU countries, serve more than 45 million monthly active end users and achieve an annual turnover within the EU of more than [€7.5 billion](#).

On the other side of the Atlantic, the EU opened a San Francisco office on September 1 led by Commission veteran Gerard de Graaf, who played a key role in developing the DMA and Digital Services Act. European Commission Vice President Josep Borrell says that the office signals the [EU's commitment to strengthening transatlantic technological cooperation](#), to driving the global digital transformation, and to reinforcing the EU's work on cybersecurity and foreign manipulation of information. More importantly, however, the new presence near Silicon Valley will facilitate



compliance and dialogue between European regulators and Big Tech as major EU technology regulation is rolled out.

The bloc is sending a message that it wants to ensure that overdue change in the technology sector finally happens.



U.S.-EU TRADE AND TECHNOLOGY COUNCIL (TTC)

The [U.S.-EU Trade and Technology Council](#) held on December 5 its third meeting, this one at the University of Maryland, to discuss geostrategic challenges and address the contentious issue of U.S. clean-energy tax incentives. Since the Inflation Reduction Act (IRA) became law earlier this year, EU leaders have raised concerns over the applicability of the bill's electric vehicle (EV) tax credit only to vehicles made in North America. The EU argues that excluding European cars is a protectionist measure, and the bloc's policymakers have spoken of potential retaliation with [their own green subsidies bill](#) to benefit European companies.

EU officials hoped the TTC would serve as a forum to negotiate a deal with the U.S. and avoid a trade war. Optimism was in the air following the launch of the [U.S.-EU task force on the IRA](#) in late October and French President Emmanuel [Macron's successful visit to Washington](#), during which he raised the issue directly with U.S. President Joe Biden. Although the TTC meeting produced no deal, the U.S. acknowledged the EU's concerns and committed itself to addressing them. The two sides agreed to intensify talks to find a solution that benefits companies, workers and consumers on both sides of the Atlantic. They also announced plans to launch a new Transatlantic Initiative for Sustainable Trade to advance shared objectives and ensure a "mutually supportive green transition".

Concerning digital issues, the U.S. and EU unveiled a joint effort to support secure and resilient digital connectivity and communication technology in Jamaica and Kenya. The move reflects the transatlantic partners' commitment to the Partnership for Global Infrastructure and Investment that came out of the G7 summit in Elmau. TTC participants also discussed cooperation on security in the information

and communications technology ecosystem, especially that for undersea cables. These cables, which transmit large amounts of data worldwide, are a critical component of internet infrastructure. But despite their significance, they are vulnerable to natural disasters and tampering by malicious actors. Since the start of the war in Ukraine, the West has been increasingly concerned about Russian attacks on undersea cables as part of a hybrid warfare strategy. The TTC aims to increase transatlantic cooperation on securing these cables and creating alternate routes connecting Europe, North America and Asia.

To address cooperation on new and emerging technologies, the U.S. and EU have issued a [joint roadmap on evaluation and measurement tools](#) for trustworthy AI systems that enhance innovation, lower barriers to trade, bolster market competition, operationalize common values and protect universal human rights. The U.S. and EU will work on a pilot project to assess the use of privacy-enhancing technologies and synthetic data in health and medicine to ensure that AI development aligns with privacy regulation. The U.S. and EU will also collaborate on quantum computing by reducing barriers to research and development, building common frameworks for assessing technological readiness, and advancing international standards.

On the issue of semiconductors, the TTC joint statement highlighted the passage of the [U.S.'s CHIPS and Science Act](#) since the last TTC meeting in Paris and the [European Chips Act's](#) steady progress in the legislative process. The U.S. Department of Commerce and the European Commission are now entering into an administrative arrangement to implement a cooperative, early-warning mechanism to mitigate semiconductor supply chain disruptions. The

TTC will work with industry to increase understanding of global semiconductor demand to prevent overcapacity and bottlenecks, a policy objective on both sides of the Atlantic. The U.S. and the EU also committed themselves to avoiding subsidy races and market distortions to ensure a more resilient, sustainable and innovative semiconductor value chain.

The TTC as a whole made progress on strengthening collaboration in areas of common interest, such as AI standards, semiconductors, and China's non-market economic policies. For instance, the TTC agreed to develop a joint response to Chinese subsidies for medical devices and will cooperate on understanding the impact of Beijing's "Made in China 2025" plan on American and European companies. But while the TTC is successful in addressing areas where there is common ground, they have not yet resolved some of the issues the U.S. and EU disagree on. There is a bit of a disconnect in the way Americans and Europeans perceive the usefulness of the TTC. Europeans see these meetings as an opportunity to address transatlantic irritants. The Americans see it as a structure to increase overall cooperation with the EU and develop a joint response to China and Russia, they do not necessarily want to use the TTC to discuss issues Europeans have with U.S. law.

The TTC meeting may turn out to be a good starting point for trade discussions that continue into 2023, particularly as some Europeans are hoping to revive talks on a new Transatlantic Trade and Investment Partnership (TTIP). Following the U.S. midterm elections, a German government spokesperson said that [Chancellor Olaf Scholz wants the EU to try \(again\) to negotiate a free trade agreement with the U.S.](#) to help resolve growing tensions over the IRA. But not

everyone in [Brussels](#), or even in Germany, is keen on the idea. Bringing back TTIP lacks sufficient political support in Europe and filing a complaint with the World Trade Organization over U.S. EV incentives would likely lead to a dead end. The TTC may not be the most efficient option for resolving trade disputes with the U.S., but it might be the only tool the EU has right now.

To learn more about the EU's response to the Biden administration's Inflation Reduction Act and electric-vehicle incentives, read [The Policy Prism](#) by the Bertelsmann Foundation's Chloe Laird.

ON PRIVACY

Comprehensive federal data privacy legislation has not been a top priority for Congress in recent years, but the [American Data Privacy and Protection Act \(ADPPA\)](#), introduced in the House on June 21, has gained traction. ADPPA establishes requirements for corporate handling of personal data. It compels companies, for example, to limit the collection, processing and transfer of personal data to what is “reasonably necessary” for providing a product or service. The act also prohibits the transfer of an individual’s personal data without their consent.

The bill has gone through several rounds of amendments in the House Energy and Commerce Committee. Two main points of lingering debate are the private right of action period, lowered from four years to two, and preemption provisions, which stipulate if federal privacy law should supersede that of the states. California lawmakers in particular, including Speaker Pelosi, are concerned that the new bill would override the comprehensive California Consumer Privacy Act, which is comparable to the EU’s General Data Protection Regulation (GDPR). [Pelosi has commended the House Energy and Commerce Committee](#) for its work on the bill but has also cautioned that ADPPA does not provide the same essential consumer protections that California’s privacy laws do. She will, therefore, not hold a vote on ADPPA in its current form.

Following the midterm elections, the International Association of Privacy Professionals brought together [privacy experts](#) to discuss their hopes for privacy legislation in the new Congress. Both experts were optimistic that, if ADPPA does not advance in the lame-duck session, the new Congress will revive it. Republicans have shown interest in privacy legislation and made it a priority. They may change

some provisions on right of action and preemption, but their control of the House will not doom the legislation. There is little interest in scrapping ADPPA since much bipartisan work has already gone into it. Rep. McCarthy also backs national privacy legislation over a state-by-state approach, which suggests his willingness to reintroduce the bill in the new Congress. This would likely not necessitate a repetition of the full House committee and subcommittee markup process, though ADPPA would not escape that in the Senate.

President Joe Biden’s long-awaited [Executive Order on Enhancing Safeguards For United States Signals Intelligence Activities](#), released on October 7, is another development in privacy regulation. This order is the next crucial step in advancing the U.S.-EU Data Privacy Framework, a political agreement between the president and European Commission President Ursula von der Leyen on a new transatlantic data privacy framework that reestablishes a legal mechanism for the transfer of personal data. The order, a response to the Court of Justice of the European Union’s (CJEU) striking down the previous Privacy Shield agreement, specifies the circumstances under which the U.S. government may conduct signals intelligence activities.

The agreement commits the U.S. to limiting data collection only to priority intelligence matters and to minimizing the collection of irrelevant information. It also creates a two-level redress mechanism for individuals outside the U.S. to submit complaints, through an appropriate public authority, about illegal data collection by American government agencies. A newly established [Data Protection Review Court](#) that operates within the U.S. Department of Justice’s Office of Privacy and Civil Liberties will review the complaints. The European Commission may now determine if these U.S.

measures are adequate for safeguarding EU citizens’ data privacy. If so, the Commission will adopt the framework and reauthorize companies to share data across the Atlantic.

Biden’s executive order has [been criticized](#) by the American Civil Liberties Union (ACLU) and Max Schrems, the Austrian privacy advocate whose complaints led the CJEU to strike down two earlier transatlantic data transfer agreements. The ACLU and Schrems argue that the privacy measures in the order remain insufficient and are not fully aligned with EU requirements. This could lead the CJEU to invalidate the new framework. Still, the direction of travel is promising,

and support from the private sector is sufficient to move the Biden-von der Leyen agreement along.

There may be no other options at this point. Washington may not have the political will to restart negotiations yet again if the European Commission finds the framework inadequate or the CJEU intervenes a third time.

To learn more about the new U.S.-EU Data Privacy Framework, watch [Privacy Shield 2.0 – The New Transatlantic Data Privacy Framework Explained](#)



TURNING TO AI

The White House Office of Science and Technology Policy (OSTP) released on October 4 its [Blueprint for an AI Bill of Rights](#), a year after the OSTP director announced in a Wired op-ed that the U.S. needed such a document “to guard against the powerful technologies we have created”. The AI Bill of Rights is centered on protecting civil rights and democratic values as AI innovation and progress increasingly produce automated systems. The blueprint has five key principles:

- Safe and effective systems, and protection from unsafe and ineffective systems
- Algorithmic discrimination protections, and equitable use and design of automated systems
- Data privacy, including built-in protections from and user control over abusive data practices
- Notice and explanation of when and how automated systems are used and how they may contribute to unsafe outcomes, including those beyond intended use
- Human alternatives, consideration and fallback so that users may opt out of automated systems and reach someone who can quickly remedy problems

The AI Bill of Rights includes criteria for determining the impact of automated systems on Americans’ rights, opportunities, and access to critical resources and services. An appendix provides a [list of examples](#) of automated systems to which these criteria should apply. A technical companion offers guidance for individuals or entities to incorporate the criteria in policy, practice and technological design.

The White House also released a [fact sheet](#) outlining the Biden administration’s work in advancing tech accountability

and protecting Americans’ rights in a wide range of areas from healthcare and financial services to housing. For example, to protect renters, the Department of Housing and Urban Development will release guidance addressing the use of tenant screening algorithms in ways that could limit fair access to housing.

The AI Blueprint, like most frameworks proposed by the administration, received mixed reviews. Civil rights advocates applauded the government’s efforts to afford citizens greater protections. But [Georgetown’s Center for Security and Emerging Technology](#) noted that, despite initial plans for the document to offer enforcement options, in part through laws and regulations to fill gaps, it is essentially a non-binding white paper. Other organizations, such as the [Center for Data Innovation](#) and the [U.S. Chamber of Commerce](#), expressed concern about the impact on industry. They argue that the blueprint’s regulations overstate the risks of AI and could limit the U.S.’s ability to compete globally, especially with China in the race for AI.