



# Engine

## Policy Primers

Below are one-page policy primers on eight issues relevant to startups, including:

- Access to Capital
- Access to Talent
- Connectivity
- Patents
- Platform Issues
- Trade
- User Privacy
- Tax

These primers can be used as a starting point for a discussion with your local policymaker or representative. If you would like to chat more in-depth about one of these or any other issues important to your startup, please reach out to us at [info@engine.is](mailto:info@engine.is) and we'll happily connect you with the relevant member of our policy team.

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## 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 throughout the country access capital.

## Key Takeaways:

- Startups are the economy's main net job creators, but legislators should consider the unique circumstances facing startups when formulating policy, including the role M&A plays in a startup's lifecycle.
- 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. Legislation should open up capital markets to allow more people to participate in funding startups.

## 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 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?

**The Pandemic & Capital Access:** The government's response to the Coronavirus Disease Pandemic revealed a general lack of understanding about startups and their needs. Two years out, policymakers should keep lessons learned from the pandemic response, including the Paycheck Protection Program, in mind, including the unique capital and talent needs of the innovation ecosystem. Doing so will ensure that startups and other small businesses—our economy's main job creators—are well positioned to thrive.

**Equity & Capital Access:** While the allocation of venture capital is more diverse than it has ever been, 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. And without diversity in the innovation ecosystem, diverse viewpoints fail to be acknowledged, and innovation will lag.

**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. the pandemic response, including the Paycheck Protection Program, in mind, including the unique capital and talent needs of the innovation ecosystem. Doing so will ensure that startups and other small businesses—our economy's main job creators—are well positioned to thrive.

## 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. Immigration also has an important role in startup formation and talent supply. Immigrants are twice as likely as native-born Americans to start a new business, and new immigrant-owned startups generate an estimated three to four million jobs. And unemployment in STEM fields is incredibly low, meaning demand outpaces supply. But hiring foreign-born employees to fill talent gaps can be daunting since there is no guarantee that you will succeed in getting a visa for the prospective employee. Cost and limits to current high-skilled visa programs means startups are often unable to benefit from existing programs.

## Key Takeaways:

- Startups know that having the best and the brightest employees is critical for success.
- America needs to continue attracting and retaining the best talent from around the world to compete globally, and for that a startup visa is essential.
- The employee-sponsored visa program remains 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. 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. And 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.

## Where are we now?

- The Biden administration began implementation of the International Entrepreneur Rule, created in 2016. The IER allows entrepreneurs with over \$250,000 of capital investment and a business plan dependent on hiring American workers to apply for a visa.
- 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.
- This year marks the 10 year anniversary of the Deferred Action for Childhood Arrivals (DACA) program. DACA is still embroiled in litigation and Congress has yet to pass a permanent solution for the thousands of individuals affected.
- The Workforce Mobility Act which would prohibit the use of post-employment non-compete agreements except in a limited number of exceptions, would enable founders and employees to use the skills they have developed in launching and growing new startups, spurring economic and job growth.

## What is connectivity?

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, typically for underserved communities, such as rural areas or educational institutions. The federal government also controls who can offer Internet access via spectrum. The FCC auctions off billions of dollars of licenses for licensed spectrum to companies like AT&T, Verizon, and T-Mobile, who use those to provide Internet and voice services over cell phone networks. Unlicensed spectrum is the airwaves that are open for use by anyone, including ones that power WiFi networks. Net neutrality ensures that Internet Service Providers (ISPs) treat all lawful Internet traffic the same. Under net neutrality, ISPs can't block or slow access to websites or online services, and they can't engage in "paid prioritization," or charging 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 faster, more accessible broadband.
- 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 the 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 which 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 by 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 consumers during the pandemic. As the debate over broadband in D.C. can often become dominated by the large companies vying for either the spectrum or the incentives, it's critical that the startup community regularly weigh in to provide the perspectives of the small companies that rely on Internet access.

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, preventing digital discrimination, and improving broadband maps. Under the \$1.2 trillion infrastructure bill, the FCC has received billions of dollars to invest in improving broadband adoption and addressing discrimination. Simultaneously, the FCC has been updating its broadband maps, which are used to determine where to direct efforts to boost broadband access. In order to ensure the closing of the digital divide, the FCC must discover which communities across the country are missing out on opportunities for education and innovation because they lack broadband access.

## 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 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 weak and overbroad 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 only consider changes to patent law after careful deliberation and with an eye toward ensuring patent quality.

## 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 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 (PAEs), also known as “patent trolls,” acquire patents with no intention of making or selling anything. Instead, PAEs 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 only issue or enforce patents that specifically claim truly new inventions.

## Where are we now?

Patent law had been getting better for startups and innovation. Recent developments were improving the quality of issued patents and leveled the playing field in litigation by giving startups easier and cheaper defenses when weak or overbroad patents were 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. Indeed, since IPR went into effect in 2012, abusive PAE litigation had started to decline while startup activity was simultaneously increasing. At the same time, the Supreme Court has 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, some policymakers have sought to overturn recent improvements. Such changes are giving bad actors with weak and overbroad patents more leverage to harm startups. Further legislative or policy changes could upset existing balance at a time when policymakers should instead focus on restoring it.

## How are platforms regulated?

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. Under current laws, Internet platforms are able to host and moderate their users' content at their discretion without fear of being held legally liable for what users say or share. In the copyright space, this liability is governed by the Digital Millennium Copyright Act (DMCA), which sets up a system for platforms to respond to complaints about user-uploaded, allegedly-infringing content. Outside of that context, platform liability is protected by Section 230 of the Communications Decency Act.

## Key Takeaways:

- Laws that protect Internet platforms from being held responsible for their users' speech are crucial for startups that host user-generated content. Without these protections, platforms could easily be sued out of existence.
- 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 these laws about platform liability 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 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 and 1998, respectively, Section 230 and the DMCA have 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 Trackers 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. New York recently passed a law that dictates how platforms should handle “hateful conduct,” while Texas and Florida have laws on the books (though both are currently being blocked by federal courts) that would make it more difficult for large platforms to remove content in a way that treats “viewpoints” differently.

At the same time, there has been a push among copyright holders and some lawmakers to change copyright law despite the successful and balanced framework established by the DMCA. 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.

## Why do startups care?

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. 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. In addition, trade-related conflicts and fractured regulatory regimes inject uncertainty and inhibit startups' ability to enter new markets abroad. Trade policy should seek to lower these barriers, increase market access, and promote stability to ensure startups are well positioned to prosper.

## 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, increase market access, lower tariffs, and promote stability to ensure that startups are well positioned to prosper.
- Exporting American laws—including intermediary liability frameworks like Section 230 and DMCA Section 512—and promoting digital trade will increase opportunities for growth, innovation, and the international competitiveness of American startups.

## Where are we now?

**Global Tax Policy:** The Organization for Economic Co-operation and Development (OECD) members agreed to a global tax framework, but its implementation continues to face headwinds. While per the agreement, Digital Services Taxes (DSTs) are temporarily suspended pending adoption, the target implementation date has been pushed back until 2024. Without formal adoption, the threat of unilateral DSTs will likely reemerge. While DSTs are largely geared at high-revenue tech companies, these taxes could lead to a downturn in startup activity, due to additional and passthrough costs imposed on small businesses.

**Cross-border data flows:** The flow of data across borders underpins global trade and enables startups to serve users in other countries with minimal additional investment. Unfortunately, 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 July 2020, the data transfer agreement between the U.S. and EU that was overwhelmingly relied upon by startups, was invalidated by a European court over security concerns—restricting how data can be transferred across the Atlantic. A new agreement responsive to European concerns was announced earlier this year, but it may still be months before it can be relied upon as a legal transfer mechanism.

**Indo-Pacific:** Earlier this year, the Biden administration launched the Indo-Pacific Economic Framework with a group of countries in the region, and negotiations over the details are expected over the next year or more. While the framework is not a traditional trade agreement, it still could produce benefits for U.S. startups. Negotiators should ensure cross-border data flows to lower barriers to digital trade, seek balance in regulatory frameworks to make sure startups are not locked out of lucrative markets, and take a light-touch approach to regulation of emerging technologies to avoid precluding innovative ideas from reaching the market.

**Europe:** The European Union has adopted or begun several legislative initiatives that will impact U.S. startups operating there. 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 could increase costs of entry and operation—and could effectively ban personalized advertising relied upon by startups. The Artificial Intelligence Act is a proposal that will regulate AI based upon “risk,” and will impact AI development and deployment in the EU. The Data Act is a proposal to govern ‘non-personal data,’ and will impact the cross-border flow of such data. U.S. policymakers should carefully evaluate the consequences of these developments for startups and engage their counterparts in Europe through fora like the U.S.-EU Trade and Technology Council. tion reached a “phase one” deal with China this year, it has since fizzled. Tariffs are poor negotiating tools as they dampen startup activity and job creation, chill innovation, increase costs, and will make American startups less competitive abroad. While the cessation of such malign behavior by the Chinese will benefit American innovation, using tariffs serves to harm the constituency that the administration desires to protect.

## What is user privacy?

User privacy refers to a user's ability to have a say in how her data is collected, used, and shared. Currently, U.S. law approaches privacy on a sector-by-sector basis, where data held by health providers has a certain set of protections, data about consumers' credit has a different set of protections, etc. In the U.S., the first comprehensive privacy law to grant users more control over their personal data was the California Consumer Privacy Act, though more states have passed their own privacy laws, and several more are creating their drafts of potential bills.

## 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?

After a series of high-profile privacy missteps by Internet giants in recent years, policymakers have understandably taken a stance on creating strong user privacy rights. Unfortunately, much of the discussion about privacy policy has ignored startups, which stand to lose the most. On the one hand, it's startups without name recognition and longstanding reputations and relationships with users that consumers will abandon first if they lose trust in the Internet ecosystem. At the same time, the large Internet companies that have already amassed large amounts of user data and have large budgets and legal teams will be best equipped to navigate the regulatory, legal, and business landscapes that could result from reactionary policymaking in this area. A well balanced policy approach to protecting user privacy can help restore faith in the Internet ecosystem while allowing startups to continue to collect and use the data they need to provide services and compete with big tech companies.

## Where are we now?

In 2021, the U.S. user privacy debate began to evolve when more states such as Utah, Connecticut and Colorado began passing their own privacy legislation. This varied patchwork of laws kicked off when California passed the first comprehensive privacy law, the California Consumer Privacy Act, which was changed by a California ballot initiative in 2020. Most companies with California users need to comply with the law's new burdens and responsibilities in order to avoid penalties from the state Attorney General as well as potential lawsuits by Californians. Some of the state laws created this year have been built from other state privacy models, such as Colorado's law being created from the Virginia Consumer Data Protection Act — making the patchwork of laws more consistent, but still complicated for startups to follow.

In 2022, Congress created the first bipartisan supported bicameral federal privacy bill, also known as the American Data Privacy & Protection Act. While the bill shows promise there are some provisions that policymakers have to iron out if the startup ecosystem will be protected. Some of these provisions include the potential impact on the ad-supported ecosystem, a complex private right of action, and a limited preemption. One major open question is whether a federal law should override individual states' laws, which currently stand to create a complicated patchwork of state-by-state privacy rules that will be costly for startups to navigate. Another hurdle has been whether a 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.



## What is tax policy?

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. The purpose of tax policy is not solely to raise revenue, but also to influence policy through the provision of tax credits and deductions.

## 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.
- Several states have enacted angel investor tax credits through which the state offers tax breaks for qualifying investments.

## Why does it matter to startups?

Tax policy can be difficult for startups to navigate. Simple adjustments, like electronic filing of 83(b) elections, can ease this burden. While some tax benefits exist to assist startups and investors in offsetting 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, while Section 1202 of the Internal Revenue Code incentivizes angel investment in small businesses. Other considerations, like allowing employees to defer taxes when exercising stock options, significantly impacts the recruitment and retention of talent. Policymakers should consider new benefits to encourage startup formation and growth, and resist efforts, like digital advertising taxes, which could increase costs for services on which startups rely. Many states encourage angel investment through tax credits, but comparable provisions do not exist at the federal level.

## Where are we now?

Qualifying small businesses can currently take advantage of the R&D tax credit of up to \$250,000 per year, offsetting the payroll tax. Companies also have the option of deducting their R&D expenses when they file their taxes. Policymakers should support efforts to continue allowing R&D expenses to be deducted each year, rather than spreading the deduction over five years. Congress should consider expanding the cap on the refundable tax credit, expanding the credit itself, expanding eligibility for the credit, and broadening the definition of what counts as R&D to include common software development activities.

Policymakers could also pursue a first employee tax credit that is equal to a percentage of W-2 wages filed. Because many startups are not yet profitable in their early stages, providing a tax credit against payroll tax liability would be particularly beneficial. And as the credit would be designed to help truly small businesses, the credit would be especially helpful to underrepresented founders.

While several states have enacted angel investor tax credits, there is no federal equivalent. Policymakers could consider enacting a federal counterpart that provides a credit of 25 percent to 50 percent of the amount invested in startups. Congress should also consider reforming the Opportunity Zone program, which provides tax benefits to individuals or corporations that invest in financially distressed regions.