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Technology & Artificial Intelligence

Outlook for the 119th Congress & the Trump Administration

Key Takeaways

- While the impact of a Trump administration on artificial intelligence (AI) and other issues is not yet clear, there remains the possibility of efforts to repeal/replace the Biden AI executive order (EO) and an overall continued focus on AI through a China and national security lens.

- Expect a push for industry-friendly federal privacy legislation following Congress's failure to pass the American Privacy Rights Act (APRA), with a focus on innovation and economic growth.

- A Trump administration is not likely to focus on competition enforcement or policy reform efforts and may pull back Federal Trade Commission (FTC) and Department of Justice (DOJ) engagement with ongoing enforcement cases.

- Expect a potential review/reform of Section 230 to hold platforms more accountable for content moderation decisions and efforts to address concerns about perceived bias against conservative viewpoints.

Additional Insights

- **White House Mulls Repeal of President Biden's AI EO.** The Republican National Convention Platform pledges to repeal President Biden's AI EO. While it is not clear what, if anything, a second Trump administration would do to replace the EO, it is expected that the focus would shift at least in part from the Biden-Harris administration's focus on civil rights protections and reporting requirements for companies training the most powerful AI models in favor of more industry-friendly policies around development and adoption of AI within and outside of government. Expect China/national security concerns to be front and center.

    o David Sacks, a prominent Silicon Valley investor and venture capitalist, will serve as President Trump's AI and Crypto Czar and will lead the President's Council of Advisors on Science and Technology (PCAST).

    o Howard Lutnick, head of Cantor Fitzgerald and co-chair of President Trump's transition team, has been picked as Commerce Secretary.

    o Former Rep. Mike Waltz (R-FL) will serve as the President's national security advisor.

    o Michael Kratsios, who served as chief technology officer during President Trump's first term, and Gail Slater, who serves as economic policy advisor to Vice President-elect JD Vance, are handling tech policy during the President Trump transition.

    o Peter Thiel, another member of President Trump's transition team, is expected to help the president-elect build bridges with Silicon Valley.

    o Further, Jacob Helberg, commissioner for the U.S.-China Economic and Security Review Commission and senior advisor to the CEO of Palantir, has reportedly advised President Trump and his campaign on AI and convened an informal group of investors and tech leaders to mull provisions of a potential AI EO.

    o President Trump is also expected to look to other outside influencers like Elon Musk.

Congress to Focus on Protection of American Intellectual Property (IP) Rights and AI/Energy Issues. In the 118th Congress, House Republicans on the Judiciary Committee's IP Subcommittee examined issues at the intersection of AI and IP, including concerns about the misuse of AI technology with respect to the likeness, voice and other identifying characteristics of individuals, as well as whether IP protection should be given to patents or copyrights generated with the assistance of AI. Expect members to examine current capabilities and risks in the arms race between the U.S. and China in the development of AI, cybersecurity implications of AI and the potential impacts on the protection of U.S. IP and technical resources. Also expect a focus on energy/data centers, including proposals to address surging energy demand, the strain on the power grid, clean energy investments, transmission bottlenecks and the potential of smart grids. Finally, some congressional Republicans may work to address "woke AI" concerns that President Trump and other conservatives have increasingly challenged in recent years.

  o For a full list of AI provisions primed to be signed into law at the end of this year, please see our client alert.

- **Calls For a National Privacy Law Continue.** On privacy, expect a push for more industry-friendly federal privacy legislation following Congress's failure to pass the APRA, with a focus on innovation and economic growth and continued Republican opposition to a broad private right of action. Expect a continued focus on children's privacy, especially if children's privacy measures are not included in a 2024 year-end package.

- **Big Tech Antitrust Efforts Stall.** While Democrats have championed Big Tech antitrust legislation in prior sessions of Congress, congressional Republicans are less likely to prioritize Big Tech antitrust legislation or other competition reform efforts, especially in the absence of support from the administration.

- **Content Moderation Push Continues, Incremental Reforms Possible.** Expect Republican members to push against online content moderation. Expect incremental activity on bipartisan priorities like AI deepfakes, including potentially carving out Section 230 protection for tech companies that fail to remove intimate AI deepfakes from their platforms.

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