

# The Fifth Annual William G. McGowan Forum on Communications, Technology, and Government: Web 2.0 Technologies and Participatory Democracy

*November 5, 2009*

President Obama has called for transparency and collaboration. But can "Government 2.0" technologies build a new kind of participatory democracy? On November 5, 2009, a panel moderated by **Darrell M. West**, vice president and director of governance studies at the Brookings Institution, discussed how collaborative democracy can be designed. Panelists included **Beth Simone Noveck**, White House Office of Science and Technology Policy; **Mark H. Webbink**, visiting professor of law, New York Law School, and executive director, Center for Patent Innovations; **Gigi B. Sohn**, president and co-founder, Public Knowledge; and **Jason R. Baron**, director of litigation, National Archives and Records Administration. This program was generously supported by the William G. McGowan Charitable Fund, Inc.

**MARVIN PINKERT:** I'm Marvin Pinkert, Director of the National Archives Experience, and it's my pleasure to welcome you to the Fifth Annual William G. McGowan Forum on Communication, Technology, and Government. Tonight's program really captures the spirit of this series, looking at the transformative effect of Web 2.0 on the relationship between citizens and their government. As the nation's records keeper, the National Archives has a special interest in these emerging technologies--not only in terms of transparency in civic participation but also in thinking about the long-term preservation of this new class of government records. The potential for what our government can accomplish by tapping into the talents of the American people is tremendous and so is the obligation to document these processes while respecting the privacy of individuals willing to contribute to the national good. At the end of tonight's panel discussion, we hope to reserve about 20 minutes for questions from the audience. I need to ask you to move to the microphones because we are recording tonight's program and putting it on the web and we want to make sure everyone can hear. I would also ask you to keep your questions short--about the length of a tweet would be good because we're going to try to get in as many questions as we can. The Annual McGowan Forum is made possible by a public, private partnership with the Foundation for the National Archives and a grant from the William G. McGowan Charitable Fund. Private support is key in allowing this agency to produce such a robust calendar of programs and exhibits. The Foundation is instrumental



in keeping our name in front of the American people and in turning our records into educational tools--including, I might point out, Underwriting for our collaborate web forum, as well as the future DocsTeach.org, a website that will not only provide new classroom tools but a place to share the work product of those tools among teachers across the world. It's my honor tonight to ask executive director of the Foundation for the National Archives, Thora Colot, to offer greetings on behalf of the Foundation.

**THORA COLOT:** Why, thank you, Marvin. Hello and welcome to our magnificent, beautiful William G. McGowan theatre. Like Marvin said, I'm Thora Colot. I'm the Executive Director of the Foundation for the National Archives and an extremely proud partner of the National Archives Experience. My very big thank you. This evening, we are extremely grateful to the William G. McGowan Charitable Fund, Many of whom are with us this evening and I'd actually like to recognize them, if they'd stand up, for the incredibly great work that they do. Oh, you're waving. You don't want to stand up. Ok, wave, everybody, but in any case, thank you all. Their extremely and very generous support not only made this physical space possible, but they continue to be fabulous partners--offering on-going support with additional grants, but, more importantly, their friendship, and we are truly grateful.

We are pleased that over the past few months we've had programs here featuring some really spectacular personalities--from Robert Osborne, introducing "Mr. Smith goes to Washington" to Michael Beschloss, describing finding a letter he wrote to President Kennedy. From Cookie Roberts and Drew Faust and David Grubin, to Helen Thomas offering really good advice to our presidents, as well as first ladies here, including Hillary Clinton and Barbara Bush. And these are just the tip of an iceberg of great programming here in the William G. McGowan Theatre. So, I am delighted to introduce our important Partner--Sue Ling Gin McGowan from Chicago, Illinois, is the founder of Flying Food Fare, Inc. Production Company serving international airlines and specialty retailers. I found out tonight she's supporting my heritage. I'm half-Icelandic and they also serve Icelandic Air, so I'm excited about that Sue has served as Chairman and Chief Executive Officer there since 1983. She's also the owner and founder of New Management, Ltd, a real estate sales, leasing, management and development firm and has served as its President since 1977. Sue Gin also serves as Vice President of the Field Museum in Chicago, President and Director of the Sue Ling Gin Charitable Fund and the President and Director of the William G. McGowan Charitable Fund. Sue, welcome to Washington DC.

**SUE GIN MCGOWAN:** Good evening. I'm Sue Gin McGowan, and I am pleased to welcome on behalf of the William G. McGowan Charitable Fund, which honors the memory of my late husband, Bill McGowan. Bill passed away in 1992. Bill loved history. He loved movies. He loved debating the great ideas of the day. It was natural for the McGowan Fund to work with the National Archives to ensure an ongoing national conversation about important topics. In 2003, the Fund partnered with the Archives to



develop the William G. McGowan theatre here in Washington, D.C., The center point of American democracy. Initially, we established the McGowan Forum on Communication Technology, and Government. Enthused audiences gathered in quality dialogue generated by this fall series and inspired our board to establish a second series of public forums--Women and Leadership. That spring series focuses on women in business, government, journalism, academia, the arts, science, and medicine.

Tonight's program, the fifth program in our fall series, deeply echoes Bill's great belief in the power of communication to keep democracy vibrant and responsive. Those convictions fueled his career and ultimately lead to enormous change in U.S. and global communications. Bill earned his way through high school and college by working on the railroad in a small Pennsylvania town where his father was a railroad engineer. He set his sights on Harvard business school because he wanted the best education possible. When his savings ran out, he funded his second year of his M.B.A. via student aid, available to the top 5% of his class. That was part of his can-do spirit. Bill next became a consultant in the 1960s and recognized the potential of mass communication. He partnered with a small mid-western company that provided telephone service between St. Louis and Chicago. That was the beginning of Mica. At the time, AT&T had a lock on all the local phone services in America. There was no competition. There was no progress. Bill knew this was wrong and destructive to the potential for America to advance in a field that he saw as the wave of the future. With MCI as his base, Bill waged legal and regulatory service battles against AT&T over a period of many years. Ultimately, MCI broke AT&T's virtual monopoly and opened telecommunications up to healthy competition. Following that, Bill lead MCI and the industry, championing new technologies and providing improved services at lower rates. One of our young McGowan scholars, whose college education we actually fund, had described Bill's achievement as a spark--as the spark igniting the flame in our country's spirit. And the Hagley Museum and Library, not so far from here in Wilmington, Delaware, has written about Bill. More than any one individual, William McGowan brought about the breakup of AT&T and fundamentally changed the telecommunication revolution. Bill's story explains why this evening's topic--"Web 2.0 Technologies and Participatory Democracy"--is such a vital and important subject for the McGowan Fund.

We thank the panel tonight for participating and we look forward to hearing your ideas. And also we thank the National Archives and its programming team for continuing to develop these provocative and informative programs. Thank you.

**PINKERT:** Thank you, Sue. Your support and the support of your Board mean everything to us. Tonight's distinguished panel will be moderated by Dr. Darrell West. Dr. West is currently the Vice President and Director of government studies at the Brookings Institution. His specializations include mass media, public opinion, technology policy, electronic government, health IT broadband, and mobile communications. I don't know how you put that all together. Dr. West is the author of 16 books dealing with media



technology and public policymaking. Including digital medicine, health care in the internet era and digital government, technology and public sector performance. His work at the Brookings builds on his accomplishments as a scholar and lecturer, serving as the John Hazen White Professor of Political Science and Public Policy and director of the Taubman Center for Public Policy at Brown University. Ladies and gentlemen, welcome Dr. Darrell West.

**DARELL WEST:** Thank you, Marvin. It is a pleasure to be here and I want to also extend my thanks to Sue McGowan and the McGowan Charitable Fund for all the great work that you are doing. This is a spectacular theatre. It's actually my first time seeing this theatre and it's really a wonderful sight. So, thank you for all the great work that you are doing. It is a great time to be thinking about government 2.0 because the rise of information technology has created enormous opportunities to alter how government functions. With online transactions, 2-way communications, and collaboration through social media, there are opportunities to engage citizens and make government much more effective.

It is possible to use technology to create a new kind of participatory democracy. And this involves a wide variety of different outlets--electronic comments on proposed federal rules, expert panels to evaluate new patents, websites for public information, and a wide variety of other things. And I think now in particular is an exciting time to be thinking about technology because of all the new things that are taking place at the level of both the state and federal government. The Obama administration has placed a high priority on technology innovation. In fact, I have argued that President Obama has the potential and hopefully will become our nation's first truly digital president. He certainly was very innovative in his use of technology in the campaign and now he is trying to bring that same sense of innovation to the public sector. With new policies on openness and transparency, the Federal Communications Commission is envisioning some new rules on net neutrality and extending some of those principles to the wireless world. So, I think it's really a terrific time to hold this panel, given all the developments taking place in the technology area, as well as some of the new possibilities that are being established at the level of the federal government. So, to address this topic, we have assembled a distinguished panel of experts. Beth Simone Noveck is the Deputy Chief Technology Officer for the Office of Open Government in the White House. She is also a professor of law at New York University. She's the author of *Wiki-Government - How technology can make government better, democracy stronger, and citizens more powerful*. And this is really an outstanding book on collaborative decision making in the public sector. And I say that not just because the book was published by Brookings Institution of press, but it really is a terrific book. Even if I had no connection with Brookings, I would make that statement.

We're also fortunate to have Mark Webbink, who is a visiting Professor of Law and Executive Director of the Center for Patent Innovations at the New York Law School. He served as general counsel and senior vice president of Red Hat Incorporated. He has



written and spoken extensively on the subjects of open source software, software patents, and patent reform. He has published articles in the *Duke Law and Technology Review*, *The Internet Law and Business Publication* and *The New South Wales Society for Computers and the Law*. His article on understanding open source software has been reprinted around the world as a primer on open source licensing.

Gigi Sohn is the president and co-founder of Public Knowledge. Public Knowledge is a D.C. public interest advocacy organization dedicated to defending citizen rights in our emerging digital culture. She has been frequently quoted in *The New York Times*, *The Washington Post*, *The Wall Street Journal*, and numerous other publications. She has published articles in *The Washington Post*, *Variety*, *CNET*, and *Legal Times*, among other outlets. She's appeared on numerous television and radio programs, including *The Today Show*, *McNeil/Lehrer*, National Public Radio's *All Things Considered* and *Morning Edition*. She is a senior adjunct fellow at the Silicon Flatiron Center at the University of Colorado and a senior fellow at the University of Melbourne faculty of law in Australia.

And our last panelist is Jason Baron, who is Director of Litigation for the National Archives and Records Administration. In that position, Jason is responsible for overseeing all litigation-related activities facing the National Archives, including litigation involving access to federal and presidential records. He serves as NARA's representative to the Sedona Conference, where he is a member of the steering committee for the working group on electronic document retention and production. He is a founding coordinator of the Legal Track, an international research project organized through the National Institute of Standards and Technology to evaluate search protocols used in e-discovery and he currently serves as an Adjunct Professor in the University of Maryland's graduate College of Information Studies.

So, the format that we are going to follow tonight is we--I will start with questions for the panelists. Each of them will make brief opening statements, and then we'll have a period of panel discussion and then as Marvin pointed out, there will be opportunities for each of you to ask questions and make comments near the end of the program. So, I would like to start with Beth. You literally are on the frontlines of web 2.0 and participatory democracy. So, can you tell us what the government is doing and how these activities are going to make the public sector function more effectively?

**BETH SIMONY NOVECK:** Thank you. Thank you very much, Darrell. I've had the pleasure to be moderated by you before. And it's really a pleasure to be with you and with our fellow panelists and I want to also thank the organizers at NARA, to Marvin for his lovely introduction, and to Mrs. McGowan. It's really quite a pleasure to be here of all places, really the home of transparency, if you will, and of openness in government. So, I think what's exciting today about as we leap forward from the traditional vehicles and documents of our democracy that sit in the rotunda out here to now thinking about how do



the new tools of Twitter and Facebook and web 2.0 really change our democratic culture in the way that our government can function and does function is that ultimately what these technologies allow us to do is to frankly bring down the costs of creating a participatory democracy. They help us if we have the vision and we have the will in which this administration does to eliminate the barriers for people to participate in their government, to allow people to reduce the influence of government, to reduce the influence of lobbyists and special interests and create a government culture in which everyone has an opportunity to participate. I think we need the vision and the commitment to do that, but in many ways, we can't realize that vision without the tools that give us the mechanisms for new forms of engagement in participating.

So, just as in the same way we're seeing a transformation in the social and economic sector of the rise of what some people call amateur production, people creating their own movies and putting them on YouTube, people creating songs and putting them up on iTunes. I just had a conversation this morning with the renowned MIT Professor, Eric von Hippel, who tells me about a study that he's worked on in the up that said that 8% of consumers have either created or modified the products that they use. How much more show, should it be the case, if what we are doing is making the t-shirts and making the songs that we should now have better mechanisms in which to participate in the life of our democracy in the public sphere? So, for me, Government 2.0 in this use of the Web 2.0 to create new forms of institutions of government is really to realize new institutions and new ways of working that allow us to engage in our democracy in new ways.

And the question is, why does that matter and why should we care about it? Well, obviously, it helps us to build a robust public sphere and create a vibrant democracy and all those good things that we care about. But I think even more pragmatically, when we can increase the level of direct engagement the people have in their government, we can hold government more accountable for the work that it does. We can create a more critical eye on government and I know that we're going to hear from some of the panel about some of the ability that we—that accountability that we have to realize and talk about the ways that new technology can help us to do that. It will also help us though to scrutinize and analyze the way government spends money. So, when we can use new technologies in order to help us visualize and see the way we spend money, we can reduce the costs, in a quite literal sense, we can reduce the waste and bring down the size of government and save money for the American tax payer by actually bringing that kind of accountability to government.

And, finally, engagement matters because it helps us to improve the quality of our everyday life. So, it's not just a matter of creating institutions of government that work better, but helping people to live their lives better in more useful ways. So, let me just give a couple of quick examples about what I think that that means and then turn it over to the rest of the panel. So, just in the area, for example, of accountability, when we use new



Web 2.0 technologies now and take the Federal Register which is published here by NARA and make it available in a machine readable format that allows other people to engage with it, like the Center for Information Technology and Policy at Princeton to build the first-ever annotatable Federal Register that allows people to participate in and comment on this newspaper of our democracy, we create an opportunity to both scrutinize and hold government accountable and to do so through participatory mechanisms. We can actually realize greater cost savings when, in fact, we set up a website Like [recovery.gov](http://recovery.gov) or [it.usaspending.gov](http://it.usaspending.gov). That allows us to track how the money is being spent in government and how that money might be saved, when we use new brainstorming platforms that allow us to do things like the Green Gov challenge or the Save Award, the Green Gov challenge, you may have read today that 5,300 new ideas were submitted and 165,000 votes were cast to generate innovative suggestions for how we green the government and make it work better and more effectively.

Again, it's a transparency mechanism, but it doesn't work without participation that Web 2.0 enables for us to think about new ideas and new approaches to solving problems. And, in turn, we can improve the quality of life for people when we do things, for example, like as Marvin talked about, the Collaborate Forum here at NARA, in which, what he's working on, is bringing teachers together who are teaching using primary source materials. It makes them better teachers, more informed teachers. It helps them improve the quality of education in their classrooms because we're using tools that connect people in new ways. When last week, HHS launches a Forum on Health IT and allows professionals across the medical profession to connect with one another to talk about what the standards are by which we're going to build electronic health care records systems so that we can realize the dream of reduced cost for electronic health care records and improved health care in America. We're using new technologies and we're using the spirit of participation to achieve national priorities around education, around health care, around entrepreneurship and other goals, which we'll hear more about today.

So, let me just wrap up to say what do I think the lessons are for engagement? Where does this sort of take us, this idea that, obviously, if we have a spirit of transparency and a commitment to transparency and participation, and we have the tools that allow us to do this and we can create greater accountability and better cost savings and improve the quality of life and achieve national priorities, what does this mean in terms of our administration position, philosophy, vision, and action? Well, it means we have to create as many opportunities as possible for people to engage and to participate. And whether it's thinking about the teachers who are engaging around primary source materials or the coders and civically minded geeks who are getting together to write electronic health care records systems or the software developers who are taking the Federal Register that's released out of NARA and creating new products out of it--we have to create many new opportunities for participation. We have to understand that these opportunities for participation don't only look like writing a comment in response to an agency rule. We



have to do that well, in addition, but it may involve things like writing--making a video to educate Americans about how to prevent the H1N1 flu virus, which was something that HHS did when they launched a video competition on YouTube to create the best video for H1N1 prevention. It might look like making a software application. It might look like getting out and volunteering in a school to actually help realize the priority of science education in America. So, it's proliferating opportunities for participation, creating innovations in the way that we think about participation. And, finally, it has to be based on ultimately a vision and a policy that focuses on and believes in trusting the American people to collaborate with the government in developing solutions to the problems that we face today. So, the tools are wonderful, and we have to have access to the tools and easy ways to get them. And the general services administration is helping to make sure that agencies who want tools can get access to them. But it has to start with a vision and a philosophy and a commitment to participatory democracy and to trust in and working with the American people to realize that vision.

**WEST:** Thank you. Mark, you have the Center for Patent Innovations at NYU. So, you've spent a lot of time thinking about the subject of innovation. How can we improve the patent process and why is this important for innovation?

**MARK WEBBINK:** Thank you, Darrell. New York Law School, by the way, where Beth and I--Beth will hopefully be returning to the faculty soon. And I'm on the faculty. I want to walk you through a little imagery, if I can think for a second; you're not in your current profession. You are, in fact, a software engineer. Now I know that's going to stretch your imagination a little bit. Certainly, if you're me, it will. You're a software engineer and you work for the Patent Office. You're a patent examiner and you're charged in your duties by our government to evaluate applications pertaining to new inventions to determine whether on behalf of all of us, the citizens of this country, you'll grant a monopoly for the next 20 years on the invention that the party's claiming. Now, that's a human activity. And we're asking them to do this based on the information, the best information that we can give them. Well, the best information we can give them is actually quite good up to a point. We got powerful search engines available to them. And they can search every patent database virtually in the world. So, they can look at patents that were issued in Europe, in Japan, in...With the world intellectual property organization and determine whether there is a patent out there that already embodies the invention that the applicant is claiming. But what if that pre-existing invention, that prior art, isn't embodied in an existing patent? Where do they look? Well, they do have access to a database of some non-patent literature—documentation for software, technical manuals, journal articles, presentations that were made to a software society, but it's very limited. So, if it's not embodied in a patent and it's not in that non-patent literature, they have a hard time finding out whether that invention already exists. And if they go ahead and issue that patent and the invention exists and somebody has demonstrated that already, now we've got a patent floating out there that might be asserted in litigation, it might be threatened in a licensing situation. A





party may try to extract value out of somebody else that they don't deserve. And we've seen this escalate the cost of litigation in the area of patents especially in the areas of software patents and business method patents in this country over the last 10 years. So, 4 years ago, my colleague, Beth Noveck, based on a blog that she had written previously, went before a group of 100-plus Individuals at the patent office, including a wide-range of corporations that were interested in open source software and proposed that rather than placing this burden solely on the examiner, what if we engaged individual citizens in this process of finding prior art? What if we asked citizen experts who know this technology and we say, what do you know about this and what do you have--what can you show that would prove that this invention already existed? She garnered support from corporations and from the PTO, from foundations and built a software platform called peer-to-patent and it became an interactive tool to engage citizen experts in the process of finding prior art--not of examining the applications themselves, that is still the sole purview of the patent and trademark office, but inviting all of us to help those examiners do a more effective job so that when they issue a patent, we should all be more confident that that patent is valid, that it's not claiming more than it should. I think this is probably the first proof point into what is now become much of Beth's efforts within the government that, in fact, people will collaborate. And Dave Kappos, the new director of the patent and trademark office has said You don't need to convince him that collaboration works. He knows collaboration works. So, as we go forward now, having gone through this pilot process with peer-to-patent, now we're working with the patent and trademark office to say how we can make this process better and how can we implement it on a permanent basis so that we continue to have citizen experts engaging with and making our patent system more effective. I think a classic example of what we're talking about tonight.

**WEST:** Thank you. Gigi, you work on issues such as government transparency and access to information. What needs to be done to encourage more open government and how is the government doing today?

**GIGI SOHN:** ok, I want to thank everybody for coming here today. It's great to see some friends in the audience. I want to thank NARA and I want to say Mrs. McGowan, I've been a telecommunications lawyer for 20 plus years and your husband was a great man and MCI was a great company. And, quite honestly, we need another MCI to break up that again, but, you know, hopefully sometime soon. And the best telecom lawyers in this town came from MCI, came from that building on 18th and h. So, his legacy is very, very strong and I'm really honored to be here. So, I'm going to be a little bit of a skunk at the transparency party here. And it's great and I do believe I agree with Beth and Mark that this administration does have a vision and a spirit and a commitment to transparency and participatory democracy, but it's not enough to talk the talk, you've got to walk the walk. And I would say that the record so far in one year since the president was elected has been decidedly mixed. So, I want to give you 3 examples, 3 issues that public knowledge works on, and I would divide them into the good, the bad, and the ugly. I'm going to spend



most of the time in the ugly because the ugly is really an outrage. So, the good is what's going on in the Federal Communications Commission right now under the leadership of Julius Genachowski, who I've known for about 15 years, who's the new chairman of the FCC--under the previous leadership, the agency was about the most opaque agency one could imagine. And experts like me—it was great for me, right? Because, you know, you could have insider conversations with people that were never subject to ex parte notices and, you know, you could, even after a decision was made, but the actual document, the decision hadn't come out--you could still make some changes, you know, in the 2 or 3--a few weeks or sometimes a month interim between the time the decision was made and the text came out. I mean, it was really quite ugly. And even though there were some things that the previous chairman did that my organization liked, you felt like you wanted to take a shower afterwards. And the FCC really was sort of targeted by a lot of people, not just communications lawyers like me, as being a petri dish for, you know, for reform--for transparency reform, for encouraging more participatory democracy and ensuring that experts like me didn't really have all the advantages. I mean, experts like me, I work for a public interest organization, you can only imagine that the corporate lobbyists had great edge on me and the folks that I work with. So, Genachowski has just done a fabulous job. He has an FCC reform list that is pages long and it includes--number one engaging the public much more in decision making--number 2, he's already had dozens of public workshops. The FCC, under the economic stimulus bill that was passed in February has to create a national broadband plan. Hard to believe, but this country does not have a plan for how to get universal access to high speed broadband internet access to people. It's hard to believe that we wasted the last 10 years and never really had a plan in figuring out how everybody could benefit from the internet. Well, congress finally said, FCC, you've got to do this. And, as I said, he's had like 3 dozen, at least, workshops and he's continuing to have workshops. Darrell talked about a proceeding that will set rules for the open internet.net neutrality is the code word. He's already planning workshops on that. So, he really honestly, this is not for show.

Ok, he honestly wants to hear from people besides me, besides the industry lobbyists who are there 24/7. He's revamping the website. The FCC's—and this is critical. The FCC's website was built during the Clinton era and really did not change. It is not 2.0. I mean, it is 0.0. It's negative. I mean, you can't access the—you can't--you know, there's no links to anything outside the FCC's website from the FCC. It's really quite an outrage. That's starting to change. It's going to take a massive amount of work. All the thousands and tens of thousands and hundreds of thousands of documents were not machine readable. They were not searchable. So, you'd have to basically go through 7 screens to find the document you want. So, he's got a huge amount of work ahead of him, but he's doing it. And it's a really great example of somebody who wants to have the public participate and wants to make data available to the public. So, that's the good. The bad is something I call--as is commonly known--as open access publishing. So, the notion there is that when the federal government pays--when your taxpayer dollars are going to research on



medicines, on diseases, on anything, you should get the benefit. You, the taxpayer, should get that benefit of that research by ensuring that the fruits of those taxpayer dollars the fruits of that research is made available online for free. Ok, so, this obviously has been opposed by large publishers, none of whom are American companies, like Reed Elsevier and Thompson because they are afraid that it upsets their business model of journals. I can quibble with that, but that's not the point.

The point is taxpayers make an investment. We should have access to that for free. And so far the only federal government agency, the National Institutes of Health, does that. But they do it this way. If you get NIH money, you have to put the fruits of your research online in PubMed central. It's an online archive. And you don't have to do it until 12 months afterwards. So, by that time allowed, that research, particularly if it's medical research, could be stale. Now, this administration could by executive order, mandate that all government-funded research be made available online for free. And I'm still waiting for that to happen. I think that this is something that's easy to do. It's controversial to 2 very large publishing companies. But it would be a huge benefit to the American people. So, that's the bad, the ugly.

You'll probably notice a lot of these things that I talk about involve intellectual property and intellectual property policy. And it's all well and good to talk about an open internet and government transparency if you have copyright laws and patent laws that are so strong as to prevent that from happening, but that's a separate conversation I want to talk about something that's called the anti-counterfeiting trade agreement. And I'm going to always say trade agreement because it really isn't. So, what the anti-counterfeiting trade agreement is, it really is a multi-lateral intellectual property agreement that was created by its proponents, which are largely large manufacturing companies, the large content companies, software, Hollywood recording industry, which among other things, is supposed to deal with counterfeit products, border enforcement, and also internet online liability issues.

Then why am I being so vague? I'm being so vague because unless you're the lucky few who have signed a non-disclosure agreement, you can't see this agreement, all right. And this agreement is being called a trade agreement because the normal processes for determining what should be a multilateral intellectual property agreement, like the world intellectual property organization, are too democratic for the proponents of ACTA. So, there's a very strong civil society. There's a very strong democratic processes. It wasn't always that way, but it is now. The proponents of ACTA said, you know, what, WIPO is too democratic. Let's go to the U.S. Trade representative and let's have a trade agreement that nobody can see. all right, so, unless you're a cleared advisor, you cannot see the provisions of ACTA, so people like us are just left guessing as to what's in it. What makes matters worse, is that USTR is saying, well, we're coloring within the lines of U.S. Intellectual property laws, so, therefore, Congress does not have to look at this. We're



going to do it as an executive agreement. So, but how could you tell, right? Because nobody can see it.

So, today my organization, along with 15 other library, cultural, and other organizations, sent a letter to President Obama saying, you have to make ACTA public. You have to make the text public. Now, there have been some people who have seen the text of ACTA. In fact, I was being a little disingenuous because I did sign a non-disclosure agreement. I've seen it. I can't tell you what the details are, otherwise, I may be hauled away in handcuffs. But what I can tell you is that there's absolutely nothing in there that needs to be secret. Number 1 and number 2, I can absolutely tell you that that particular internet provisions, I've only seen the internet provisions, do not color within the lines of U.S. Law. So, I think it's critically important that this be made public. I think this is where the Obama administration has to walk the walk. And I'm hoping that they will do so very soon because this agreement is being negotiated in Korea, as we speak. And it's critical to the future of online discourse, online commerce, online creativity, and a lot of stuff that we really talk about. And a lot of stuff that Beth says is so very important to this administration. And I believe so. We can't have an agreement--a critical agreement like this being negotiated in secret. So, I'll stop there. I think, uh, I think I've forgotten my time.

**WEST:** Jason, you are a lawyer for the National Archives. How is the digital era affecting NARA and how is it affecting government record keeping in general?

**JASON BARON:** Well, thank you and it's a privilege to be here. And there's one thing worse than being a lawyer at the National Archives, people whisper behind your back, you're a non-archivist. The National Archives is a unique agency in government. We have a perspective that's lateral across all government agencies and all the problems record keeping government agencies have, but we also in time, think back, we're about 100 yards from the Rotunda where the Charters of Freedom documents are. Where the Declaration of Independence and the Constitution and the Bill of Rights and the Magna Carta, and those documents represent citizens of earlier ages becoming more powerful, asserting themselves, and truly shaping what a democratic government represents.

Now, we also--we think about those documents, we think about records, and we also think forward in time for future generations. It's a long way from the Magna Carta to Facebook and Twitter. We can all agree to that. But the Obama administration, lead by the efforts of Beth Noveck and her colleagues at the White House, are really pointing the way towards an introduction of these new technologies--to empower citizens and really have them interact with us inside the beltway types who have been here for a long time. I think NARA truly gets it. we have committed ourselves in lots of ways to being part of this new sort of web 2.0 world, especially in 2009, just a month ago, and Beth sort of stole my thunder a little bit by talking about this, but we announced in the office of the Federal Register that we achieved a breakthrough of sorts to basically make the Federal Register accessible



and available to people, by converting 9 years of Federal Register text into xml format. And this change is going to really make it possible to manipulate the data in limitless ways so that you can basically personalize the data to your unique interests. And so it really is—it empowers individuals to interact with government information.

You can download a Federal Register and see what proposed actions might affect your community or region. And, basically, you can do so on a very granular, micro level. But we're also at National Archives; we're online in any number of other ways. We have a Facebook page and we have our Facebook friends. We have a blog called Narrations, where we have interacted with the public to ask questions. For example, there's a question out about social tagging, where we're asking whether or not the public at large should assist in the tagging of our archival collections, so as to help and aide archivists, so they are not doing the job alone with the billions of objects we have, but we actually use the wisdom of everyone, the citizenry to do that kind of tagging scheme. We're on YouTube. There have been 15,000 users on our YouTube channel to watch historic videos. Far more than the kind of people foot traffic that would come to a national archives building itself, where a course on Twitter--I think we have about 1,000 friends, but, you know, you have to start somewhere. And I don't know how many tweets we've had, but we're there.

And we are continuing as an institution to think about new innovative ways to involve everyone in getting more access to our holdings, which are vast, I can tell you. But I also am here to say that we have enormous challenges as an agency because of this historical prospective--both looking back and looking to the future for future generations for access and transparency. The last 20 years have seen really vast changes in how government--the staff and their agencies communicate. All of our personal secretaries are gone. We're replaced--they're replaced by all of us as end users being records managers and government across all agencies. And, whether or not, it's printing to paper, which is still the predominant paradigm in government, in terms of official record schedules or dragging and dropping email and word processing into electronic recordkeeping schemes, the issue for me is that we are still in this world of huge volumes of information coming at us but end users having to do the job. And we just can't do it by ourselves. No one has the time or energy to deal with 200 emails in an inbox a day. And so for my own personal view, I think NARA should be on the forefront.

What transparency means to me in government is to provide the tools to do truly electronic government. Everything is born digital, but still there's this transitional era where it's saved in paper. And the question is, can we move to a world of true electronic archiving and so that the business of government in this administration, the Obama administration, and future administrations, are preserved--not just for an interaction in time now, but for future generations. I'd like to think that the high-level officials in the Obama administration aren't spending their entire day on Twitter and Facebook that they are



instead--I know that they are engaging in all sorts of important matters by sending emails, by writing memos, and signing off on them, on dealing with spreadsheets and all the business that everyone is familiar with, sort of pre-web 2.0, they're going to have lots of opportunities to interact with the public with web 2.0, but we want to keep our eye on the business of government in terms of record keeping and address all of these issues so that we can move to a world where what is born digital really stays in digital form, at least that which is permanent because the permanent stuff will be coming to the national archives. The white house has an email archiving scheme. I think the rest of the government could have an email archiving scheme and could have other ways of really pushing out tools and technologies. And we would like to capture permanent records of those agencies not just for now, but for future generations.

**WEST:** Thank you. By the way, I love that line that "it's a long way from The Magna Carta to Twitter." I think there is a book title in thereof, now we're going to move to a short free-for-all section. I'm going to throw out a couple of questions. Any of the panel can jump in. One question, what do you view as the greatest obstacles to participatory democracy? And second question, what are The concrete steps you think government should be taking to move forward on openness and transparency? Anybody can jump in. And don't all of you talk at once. I just hate that.

**SOHN:** Well, I'll take a crack at it. I think there are a couple of obstacles. One of them is just plain access to the technology. I mean, there's 20%--10% of this country has no access to high speed broadband internet, mostly in rural areas. 20% of the country doesn't have--only has a choice of--it's not a choice really. Of one high speed broadband internet provider. So, there's not a lot of competition out there. And, as a result, you know, prices are high and a lot of folks can't afford to get access to the technology. There are definitely challenges with getting people to adopt it. It's not just price. Sometimes it's a matter of taste or people don't know why it's important to them. Right, there's not the content online that, you know, makes people want to desire having internet access like they desire having television or cable access. So, I think that's—I think that's probably one of the biggest obstacles right there.

**NOVECK:** I guess I'll add to that, although I want to second the importance of the broadband strategy and broadband penetration to realize a participatory democracy, but I'll give the other side of that, which is, if we don't create the opportunities, the transparent opportunities for participation in which people can engage, then they can have all the broadband that they want, we have to also create the opportunities for people to engage in government. So, when the FCC did one of those remarkable broadband workshops, the very first one they did was about civic engagement, civic participation. And they looked at both side of this story, which is both, how do we create the broadband penetration America that allow people to get engaged, but also how do we create a culture in government, across the government? And it is a very big place with very--as you've



pointed out--divergent practices, an entrenched culture in which it is often difficult to create opportunities, to create institutional opportunities, for people to participate. And part of the challenge there is a lack of technology in government itself.

So, we can, you know, talk about having Twitter and Facebook and I'm going to tweet your Narrations blog later, I'm looking forward to that, but there are a lot of agencies that don't have access to tools. And even if they do, they don't necessarily know how to use them. They don't have the experience with using them. There are policy impediments or policy ambiguities that make people wonder; is it ok for me to use some of these tools to actually engage with the American people? And there are often, you know, perceived legal impediments that cause people to say, I don't know if I'm allowed to be transparent or allowed to engage with people. So, even if they have the tools, there may be policy impediments to doing so. And that really is ultimately a question of, how do we change the culture and move towards a participatory opportunities for engagement on both the institutional side, as well as then on the side of individuals who are going to participate, as well as then among the interest groups and gnus who were there in part to foster participation and engagement and who have been used to working in a very different cultural environment for so long, where they have--they have been the participants in government. They have funneled contributions from their members in order to support their lobbying activities. And now we have to think about new ways for civil society to engage and respond to this shift in culture towards more participatory forms of engagement on the institutional side, on the civil society side, among individuals.

**WEST:** Mark, you were going to jump in?

**WEBBINK:** I was just going to, you know, I think fundamental to government and politics in this country is information is power. And people are not going to give up that power readily. I'm curious with Beth's experience so far in government. This administration has made this an objective, but what's the pushback been like from the agencies in terms of who really don't want to give up this stuff. We're not really anxious to give access to everything that we've got here. What's that been like?

**NOVECK:** Well, I think you know, in the first place, there are so many people who want--I mean, we have so many open doors to push on first, number one. So, when you have a patent office now under this administration, so talking about people like Dave Kappos and his new team, who say we are a 150% committed to transparency in the Patent Office and to making available all the Patent Office data, but we have some technical impediments to doing so because our servers are old and we need some help with figuring out how to do that, so, we're going to ask private industry to help us think about what technical strategies we--so, we can't do it in one day because it's hard for us to do it, but, you know, if you help us, we'll get there.



There's so many, you know, willing innovators. I mean my first week here, I came over to see folks at NARA and between the Records Management and Modern Records Management and Exhibitions and the Federal Register team and the offices of the Acting Archivist, I mean, there were so many people here who were just thrilled to say--who are committed, whose work centers around transparency and collaboration and who just want to do stuff, so, I don't mean to sound Pollyanna, but I am because I'm thrilled by all the amazing, innovative people that I've encountered.

Now, when you encounter the people who say, we can't, we won't, we shouldn't, that's where it's awfully helpful to say, well, the President said on his first day in office that this is the vision to which we are committed. And that goes a long way, or the ability to say, as I just did today, I called up Marvin and I said, I've got another agency that wants to think about how they can be more open in the way that you have been in the collaborate project, can you help them, share with them your know-how of what you've done because they're saying, I don't know if we can do it because we don't know how. So, it's--it tends to be—I haven't faced too many people who've said, we absolutely won't do this because we don't believe in it. Because we all now live in a world in which we're all living in this participatory culture of making movies and YouTube videos and whatever. We're in a right time where people, I think, all kind of get the idea that participation helps to create innovation in the economy and helps to do good things for us. So, I think it's, you know, it's more of a matter of I don't know how than I won't do it is what I'm finding. And maybe that's me and whom I'm talking to, but it's a big place and there are so many willing innovators. So, I have to be relentlessly happy and optimistic and Gigi has to be the skunk at the party and we make a good team then, it's really good. And she keeps me honest and keeps reminding me now--whom i have to go talk to and what I have to go do next, so...

**WEST:** Yes, I liked her metaphor that we're actually still in government 0.0. Jason, what's your view on this?

**BARON:** Well, I think there are a lot of obstacles and resources is clearly one for government agencies, but Beth didn't ask me to do this, but I think government SCS people should all read this book. It's "wiki government".

**NOVECK:** Darrell's on commission secretly for Brookings.

**BARON:** it really is a terrific road map.

**WEST:** and speaking on behalf of the Brookings press, I mean, they endorse this idea as long as you're buying the book, not just reading it?





**BARON:** What Beth has done is each chapter has a wonderful quote. And the quote that I really like in the chapter called "The social life of information" is, there's a quote from Margaret Mead, the anthropologist, and she said, Margaret Mead says, "never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has." and I think that in my lectures, I live in a world of litigation and new discovery and lawyers who want electronic evidence, including from the federal government. And what I encounter is part of this Rosetta Stone quality of different communities of people talking in different languages inside the government. So, you have legal people, you have records manage people, and then you have this IT crowd that doesn't communicate with carbon-based life forms. And what you need is a Rosetta Stone.

You need the right communities of practice within agencies who can be agents of change. And in my lectures, what I say is, for at least the legal crowd, to pick somebody as the knowledge person, the agent of change. The knowledge council who can really communicate across communities and get out the message of all the good tools and techniques that are out there. And in this conversation it would be about web 2.0. My point when I give these lectures is I say to the legal crowd I'm with--find the youngest lawyer who has been last hired in the office because they're the ones who get it at a visceral level in terms of web 2.0 stuff and beyond. And so I would say that the fact that President Obama put out a memorandum on the first day of office, January 21st, about transparency and openness shows where this administration is. And if you can push that out through an OMB and through OSTP and through all the levers of government's issue to reach the right people in--across all federal agencies, I think you can make a big difference in this first term.

**WEST:** Ok, why don't we move to the audience participation part of this? You've been very patient. There are microphones over there, as well as over here, so if you have a question or a short comment, we would like to hear your thoughts. And we would ask you to speak into the microphones because this event is being broadcast. We'll start over here.

**AUDIENCE MEMBER:** Hi. Very interesting panel. You asked a question of what are The barriers and I'd like to suggest another one, particularly since we had a lot of discussion about the federal register. And that is the language in which the government writes. I'm one of those people that advocates for plain language and until you can clean up the prose that the government is putting out there, it doesn't matter how much access people have to it physically, if they can't read it, you haven't really achieved anything. And the Obama administration does periodically use the words "plain language." I know Mr. Warsag has used the words, and the President has used those words, but I would really like to see, you know, if you have any suggestion about how you might move that to the next level.



**WEST:** Jason, do you want to...

**BARON:** Well, the problem is you got lawyers up here on the panel.

**AUDIENCE MEMBER:** You have a whole bunch of them, right? I'm an anthropologist, so...

**BARON:** So, but I'm in full agreement and I think that there really should be a push across government to be more clear in what we're saying. Because it really--it makes no sense to put out products in the 21st century that people can't engage with and read.

**SOHN:** I've been doing a little bit of research because we have this FCC Reform project, and I think the FCC's website is probably an example of—the Worst example of jargon and, you know, technical terms. Hopefully, again, That will change. But we were looking for sort of best practices, and I think The EPA's website is a really excellent example of plain language, simple to understand concepts, and actual, real visuals. I mean, the FCC's website, other than the pictures of the commissioners, it doesn't have one video on it or one picture. It's about as static as you can get. So, you know, the EPA, I think, is a real great example of an engaging website. Now, granted, it's probably easier to explain environmental issues than it is to explain telecommunications issues, but still there's just a huge gulf.

**NOVECK:** I'll tell you one thing, though, that's, I think, very encouraging, and we are focused on what we can do in this area in really trying--with the downloadable federal register, and this ability now to make it work in different ways. I mean, it really allows us to try some new things. But one of the main things, I think, is when we start to think about how we open up government, and we do things like come in and say," we're going to create an open government policy, and we're going to talk to Americans about how to do that, before we write the policy, not afterwards." or Arne Duncan comes into the department of education and says, "We need to reauthorize no child left behind next year. We're going to talk to Americans before we write up our draft, not afterwards." by changing the process, it changes the nature of the language that we need to use, because we have to talk in more plain and direct ways that allow us to do that engagement. When we have government processes that focus on," I'm going to write a draft of a rule," or, "I'm going to write a draft of a policy in its legalistic form," and then you ask people for comment, of course, they can't read it and can't understand it, and we, frankly--it's part of the kind of, you know, conspiracy of the legal priesthood that we don't want people to understand it or to give us comments because we've already spend all this time writing the draft so we surely don't want to rewrite it at that point.



So, what it allows us to do is when we change to more open processes of decision making, and we push forward the opportunity for participation earlier in the process, then that hopefully creates a change to the way that we draft the language, the way that we communicate with people around issues towards a simpler and easier way of talking. And a more visual, sometimes, way of talking, as well.

**WEST:** Okay, we'll take a question over here.

**AUDIENCE MEMBER:** Thank you. First of all, just a quick comment. I'm thinking that the Archives and the systems that you're creating and the new websites probably also help burgeoning democracies around the world figure out their systems and maybe learn from our mistakes and develop some systems, so that's just a side comment, because we do care about that. A couple of quick questions. One is formats change, so when you're talking about archiving and patents, et cetera, how do you address that obstacle? I mean, we don't use Betamax anymore is the obvious example. So, how do you address that? And the other is, people have an investment in technologies, et cetera. I mean, how do you get people to create these technologies if they're not going to be compensated for them? If they're all open source, then why should they bother if they're not going to get anything for it?

**BARON:** I could take the first question. I'll leave the second for my colleagues. First question is about migration and formatting, and we, at the National Archives, we don't want to be a Smithsonian of every proprietary format that has ever existed. And so, we have--this is a huge challenge for us--but we have a major project called the electronic records archives, and one of the premises of that is to take any kind of proprietary object that the government creates, and if it's a permanent record, bring it in and we basically do an XML metadata wrap, or something equivalent of that, to make sure that that proprietary structure is in tact, has integrity, and can be read somewhat, somewhere over time, in generations to come. And it's really important--I can speak from a lawyer who deals with litigation—very important that we make sure that the chain of custody is there for bringing in and ingesting electronic objects and making sure that they remain authentic for really, for decades, and beyond. So, it's a really important question. You should go to our website--again, lots of good material on electronic records archives that at least go a long way towards answering those kinds of concerns.

**WEST:** Mark, do you want to answer the question on incentives for open source?

**WEBBINK:** Well, having worked for a company that is now worth about \$5 billion is--gives its software away for free, you can make money off of open source. I call it the great myth of open source is that you have tens of thousands of software programmers out in the world, writing this code for free.



Not true. Most of them work for companies, and the companies have decided that it's in their self-interest to share that software code with other companies, that they all advance together and make progress, and it really brings us back to two things that tie back into this discussion. One is open formats, assuring that documents will continue to be available in formats that are accessible to all of us, and that will not change at the whim of a single company. The other is open specification that as we start to build these systems, that we do so on a basis that all of us understand what the rules of the road are going to be, and we can all access the data on an even basis with everyone else.

Those are two challenging aspects for us, because we've become very reliant on technology that has come to us from a fairly narrow band of companies that have been very focused on retaining their customers, and doing so, at least in one way, by using proprietary data formats. The other thing I would add is, let's not forget that digital is not permanent. Paper...we know how long paper lasts. In fact, we've been astounded by how, at times, by how long paper lasts. What we don't know today is how long digital lasts. How long will those digital records be maintained on those disk drives, before the disk drive fails, before it becomes corrupted, simply through age, and the next thing we know, we've lost the content. How many of us have put photos on DVDs, thinking we have created a permanent archive of our photographs? Not true. And so, those kinds of challenges still sit out there for us, especially as we continue to make all this data more accessible in a digital manner.

**WEST:** Okay. Next question please.

**AUDIENCE MEMBER:** I've noticed that one of the barriers that I have seen in government, implementing some of these web 2.0 technologies has been the need to maintain private information as private, and I was wondering what your opinions are on how exactly we navigate the challenge of trying to expand the information that we can provide to people in a way that they can customize for themselves, while we're still maintaining the privacy of the citizens and not collecting personally identifiable information.

**WEST:** Panelists?

**SOHN:** I think you have to give people control over their own data. You have to, at a minimum, let them know what you're collecting and give them the option to opt out at a minimum. I mean, you know, others believe you should--they should have to opt in, but, you know, i think this is more of a problem in the commercial realm than it is in the government realm, although, I think increasingly, as we go to government 2.0, it's going to be a problem. You know, I just think, absolutely, as a matter of right, a person has got to be able to see and change the data that you've collected on them. But it's interesting because, you know, my organization is very much a web 2.0 organization--we're like,



"public knowledge, sharing of information..."but we find ourselves increasingly coming up against some of the privacy advocates, because, you know, obviously, the sharing information and wanting things to be kept private are going to clash, and I think you're going to see it increasingly in policy realm clashing, as well. And figuring out what the best practices are, I think, is something that really needs to be done now.

**NOVECK:** I'll just add that I think, you know, part of privacy is part of Open Government, and so for that reason, when the CIO Council launched data.gov, and when they continue now to agencies to put up data feeds on data.gov, that data is very carefully scrutinized for personally identifiable information. When the White House releases the visitor records, as it began to do on Friday, one of the reasons there was a lag between the announcement and the release of the records was in order to make sure that social security numbers and other personally identifiable information wasn't included. So, it's being transparent has to be also respectful of the value of privacy, and it means it's another reason that instant transparency isn't always doable and possible. It's another reason why, I think, that the development of the creation of apps.gov--this new website that GSA offers...at some level, what GSA does is they create a searchable catalogue of products that agencies can acquire. But where that's really important in the software realm is that they're pre-vetting tools to ensure that their terms of service are privacy-friendly and respect personally identifiable information, so that when an agency says, "I want to select a web 2.0 tool," we're not doing a free-for-all of choosing any old product but making sure that we're complying with, and respectful of privacy as we move towards a more web 2.0 environment. So, some of those coordinating steps are, actually, I think, very helpful to ensuring we do both of these. But I agree with Gigi that it's--figuring out the best practices as we move into this wild and wooly new world is a difficult job.

**WEST:** Okay, next question over here.

**AUDIENCE MEMBER:** Great panel. Moving towards web 2.0 and utilizing the Internet puts a great dependency on these telecom companies. I've noticed that, you know, the recent discussions about net neutrality and all these things, they're kind of butting heads with the government. I just want to know, what is the strategy to ensure that these private companies, these telecom companies, are in the best interest of the government?

**SOHN:** Well, I can talk about net neutrality generally, and why I think it's in the best interest of the American people and the best interest of the government, as well. Basically, in this country, for the most part, you have a series of regional duopolies—telephone companies and cable companies—that control access to the Internet. They are not the Internet. People say, "oh, net neutrality. You're regulating the internet. "No, ok? Net neutrality is about regulating and ensuring fairness among the onramps to the Internet, in a way that telecom companies have been regulated for 100 years. I hear people say, "Oh, this is new." No, it's not new, all right? So, when you had your land line telephone, the



telephone company couldn't decide that Mark's phone calls got higher quality than my phone calls.

And this is what net neutrality is about. It makes sure that the cable company and the telephone company can't pick winners and losers--can't decide that, you know, Google's search engine and website comes up with no jitter, but yahoo..."sorry about that, and, you know, "If you want your website to come up "with no jitter, then you'd better pay us x amount of money." that doesn't mean that yahoo and Google don't pay the telecoms, you know, for all the lines and all the servers they need. They pay them millions—and maybe billions--of dollars. But the idea is you don't want the Internet to turn into a cable system, all right? Everybody loves his or her cable company, right? So, the cable company decides, with the exception of broadcast channels, what networks get on their system, what channel position they get, whether they get on the digital tier or not. You have absolutely no control. The internet is the most democratic medium we've ever had, and the way the internet--and Mike Nelson, who is going to ask the next question, is an even better person to talk about this than I am—but the internet was created so that the control would be at the ends, not that there would be some gatekeeper determining, you know, who gets what quality of service and who gets what speeds, and whose, you know, website comes up faster than others. So, that's what network neutrality is about. People want to say, "well, why shouldn't network neutrality apply to Google?" Google's not a network all right? If we want to have a conversation about whether Google's search is neutral, that's a different conversation. But right now, we're talking about who controls the onramps to the internet and should they be able to pick winners and losers, and I think they should not, and that's best, both for the government and for the American people.

**WEST:** Mike Nelson, we hope you didn't come here to be anonymous.

**AUDIENCE MEMBER:** Luckily no. Thanks for the introduction, Gigi, but I'm actually going to ask a question of Beth and Jason. I wanted to go a little deeper into this question of where transparency runs into privacy, and particularly look at examples from the web 2.0 worlds--and particularly look at the question of privacy for government officials. Just a couple of illustrations. When I worked at the White House 15 years ago, I knew that my email could end up in the National Archives. The people who sent me email didn't necessarily know that. And they included close, personal friends who were sometimes sharing close, personal information. We had a case where several of the top appointees from the Obama administration got appointed, and within 30 seconds, their Facebook page disappeared because they didn't want anybody reading their Facebook page and using that information against them on the hill.

We had a case where Sarah Palin was using her personal email account to do political and policy work. The archivist would probably say, "that material should be saved so we



understand the policy process. "She would say, "Well, I was talking to my friends." how do we work that problem? And, particularly, when we have this situation with Facebook, where the government official might have to share something under legal obligation, but that also would involve sharing information about people who have sent information to them, without expecting that information to be in the archives, or in *The Washington Post*, or in the historical record. So, how do we really work this problem about privacy in an interconnected, shared world?

**WEST:** That's a great question, because, you know, I tried to befriend Larry Summers, and he still has not replied to me.

**BARON:** Well, let me take a partial swing at that because there's a great social experiment that has been going on at the White House since 1994. There was a case that I had some association with, called *Armstrong vs. The Executive Office of the President*, and, as a result of the decisions in that case--that email was considered to be a government record and to be preserved-- the White House put into place--the Clinton White House put into place--an email archiving system, that more or less has been in place from the Clinton years to the Bush years, and now in the Obama years, in various platforms.

And just like sort of a reality tv show, even though when you sign on every morning at the White House, and there's a banner that says this is U.S. Government property and that there's some archiving scheme, I think people forget, and there's--there are 32 million emails from the Clinton years that have now been preserved. Presidential and federal—some of yours, perhaps--and 200 plus million from the bush years, and I'm not there predicting in the longer view that we'll have a billion emails from the end, and for their 2 terms of the Obama administration, or whatever the next president is. The fact is that there may be--and beyond email, because email may be something that there's a tipping point, and it's a messaging. The fact is that all of this collection is there. So the responsibility, as a government lawyer, and as an official for what has been sent into the white house and what has been generated by white house staff—when there's a FOIA, and the presidential records act incorporates the FOIA, and so that 5 years after office, there is the availability of FOIA request to white house email, the responsibility is really on myself and my colleagues and those that work on these matters, to do the right thing, which is to protect the privacy interests that are at stake. So when I vetted Chief Justice's Robert's email, when he was a young lawyer at the Reagan administration a few years back, when he was part of the nomination and suddenly he wanted us to do a huge production right away, we went through and we looked to see whether there are third parties that he may have worked on matters about individuals being vetted, and they might have had some history or something that we would redact out. And there are tools and technologies that allow for that. So, I think it's very important. We have, in the



audience here, the director of the new office at the national archives, the office of government information services, and Miriam Nisbet is very much on the forefront of thinking about these issues, from a FOIA perspective, to ensure that exemption 6 and privacy rights are protected. So, that's a partial answer to the question. But I'm going defer on the Facebook aspect of that to my colleague, Ms. Noveck.

**NOVECK:** I was going to say that this is Darrell's 17th book now. I think it's a wonderful question, or maybe it's your next law review article that you'll work on, because I think you've raised a whole host of questions in asking this. One has to do with the first amendment rights of government employees to speak and to speak also using social media. And so, we think we want to encourage netizenship, if that's a fair word, among government employees, to be out there, to be engaged, and to do so, and that raises a lot of tricky questions. I mean, it's tricky questions that are raised in any organization, about how one--with what voice one speaks, and what the--it's an issue of developing best practices around what's appropriate and not appropriate.

I happen to know of a government official who took down a Facebook page, not out of a lack of transparency but because this person's children were receiving death threats. And so the material on the Facebook page was creating fodder for--the person was in a new public, high-profile, public role, and so they took down the Facebook page to, again, have a segregation, in some ways, between their private life, which had suddenly become very public in ways that were uncomfortable and inappropriate. So I think there's a set of issues, first, about creating the environment in which government officials will speak and will be netizens and will participate and use social media.

I think there's a second issue about, you know, if on my own inbox, I have an email address that has an auto-responder on it, which says, when you send me an email, that what you send me may be posted or made publicly available. For precisely this reason, and so as to create that alert for people, and we are under strict instructions, that if you want to talk about trading recipes and what you had for breakfast, and—my government account is not the place to do those conversations, but to keep those personal and private conversations separate.

But this is increasingly difficult, as you point out, particularly, when it may be easier or faster for us to use other accounts in how we do this. So, I think, to some extent, technology will provide some help for us. Some of the natural language processing tools, but it's the policies that people like Miriam and others are working on that will help us to figure out how we navigate these waters. But again, I think that it's not something where we can just put up our hands in despair and go, "Oh, it's such a big problem. What are you going to do?" We have to just develop the best practices and move forward, informed by the values of a commitment to free speech, including for government employees and government officials, a desire to speak out and engage more with people, and a





recognition that the conversations that we're having focus around issues of public import and around policy, which means there's a decreased expectation of privacy about the communications we have in our role as government officials. But I look forward to the book.

**WEST:** Next question please.

**AUDIENCE MEMBER:** I'd like to thank the panel for a very well-informed and high-level discussion, but I can't help being struck by the, what I would call, American exceptionalism of the discussion, and the fact that the internet is inherently global, and the neurons and synapses of the worldwide web have shrunk the global village, and been driving the globalization trend for the last 20 years, and so we aren't operating in a vacuum, and we are really both informing and drawing from other countries and the rest of the world in everything we do. And so, uh...but there hasn't been any discussion or mention of what that relationship is and how we are managing it and what our expectations are with regard to the rest of the world in information policy and information, um, uh, activities. You know, the U.S. Government is probably the most transparent, despite the bad and the ugly, and that's kind of a sad state of affairs if you think about the rest of the world. But we have a lot to, show by way of leadership or demonstrating the benefits of openness on the online, from the public domain and government information and from the various benefits that accrue from an open information policy. The question is—what is the Obama administration, in particular, doing with regard to managing this on an international basis, and both trying to influence other governments so that there's less of an asymmetry in information policy, as well as learning from other contexts for our own policy development?

**WEBBINK:** I won't speak for the administration, but just giving as an example, the peer-to-patent program that we've had in operation with the U.S. Patent and Trademark Office--from that we have spinoff pilots in development with the U.K., Japan has run, in their own pilot, is now looking to integrate that into the same technology base that we've been using.

Australia and other patent offices around the world have inquired about this, and it makes a lot of sense because so many patent applications are filed on a pct basis, which means that I file, for example, as a U.S. Citizen--I may file my patent application in the U.S. but I also file so that I'm claiming patent rights in many other countries at the same time because patent rights are protected, country by country. Well, it doesn't make sense to have every country have to do the same search for prior art, over and over and over again. It's just not efficient. So, if we've got this group of citizen experts, why not ask them to look once for everybody? And in the U.S. Pilot, it was not open just to citizen experts in the U.S., but, in fact, citizen experts throughout the world. The second largest national group that we had participating was India. We had a fellow in the Czech Republic identify a piece of non-patent literature that knocked out the claims of a key patent of one of our



technology companies, and it was based on some eastern European publication. We would've never found that, but it existed. Somebody had already invented the invention. So, it's been fascinating to watch that process, and it's not one that we've had to drive necessarily by intent, although programmatically at New York Law School, we've wanted to extend the technology internationally, but what we've found is, people are watching us and watching what we are doing right now, and saying, "we want to replicate that." and so, some of it's just following the lead that we provided, and then making ourselves accessible to them.

**WEST:** I think we have time just for one last question. We're almost out of time here.

**AUDIENCE MEMBER:** I'd like to, first of all, echo the compliments to the panel on a very fascinating and informative evening. Also, to reassure Jason as an IT guy that some of us actually can interact with carbon-based life forms.

As I've been specializing in security for the past 10 years, that's become more and more of the challenge, and I hope from that perspective, I'm not going to bring another skunk to the party, but when Beth mentioned that the trust in the American people to collaborate with government, the thought that went through my mind was whether--or the question was whether that trust might be well-founded or not? Because the reality is that we have an internet where 80-90% of all email is spam. Most of it is carrying malicious content. We have the situation where there is a lot of fraud online. We live in a world where everyone isn't dedicated to making things work together. You're all lawyers. You're familiar with the fact that there's a lot of adversarial positioning that people engage in. With all of this as a backdrop, the question is, what areas are in critical need of improvement to--for us to realize the potential for this improvement in participatory democracy and to keep it from getting mired down into the same kind of problems that we've seen in other areas, and on the internet, up to this point?

**WEST:** Good closing question. Panelists?

**NOVECK:** I guess I'll start on this one. So, obviously, the security of our network infrastructure is a precondition to the same point about sort of broadband access we have to have, access to networks that are actually secure, as a baseline, in order to enable us to have a participatory culture. One of the exciting things though now, I think, is the development of new kinds of social media. The talk of this panel is very much about web 2.0, that allow us to ensure that even when we have things like, you know, whether the participation is malicious, or the participation is spam, or the participation is just intentionally kind of trouble le making for the fun of it, that we now have tools that allow us to do things, for example, like with natural language processing tools. University of Massachusetts just announced their new system last week for analyzing comments to agencies and identifying that out of 500,000 duplicative comments, you know, 400,000



may be the same, because they're all just done by a boot, and then we can say, "oh, these 400,000 are the same, and, therefore, we only have to read 100,000, or more likely, 10,000, in the pile of the 500,000. So we have some tools that allow us to do this. We have new social media rating and ranking collaborative filtering tools that allow us to rate and rank suggestions up and down, to tag suggestions and to tag comments, so that we can sort them more effectively. So, even when people are not maliciously participating, but there's just a huge volume of participation, we have a way to manage that content, and where people are just kind of having fun or being silly and being off-topic, whether for malicious reasons or otherwise, we have the ability for communities of people to self-moderate their participation, so that we can actually ensure that the conversation stays on topic.

When we first started our Open Government public consultation, it was well-known in the first day or two--in fact, this was a project that was run by the National Academy of Public Administration, in collaboration with us, we got a lot of initial postings that were either about UFO's or about the president's birth certificate or the president's birth certificate being on a UFO--and so I earned the title--in my office, there's a sign on my door, which says, "Director of Intergalactic policy" as my title. But what happened after the first day, which was widely reported on, was then those social media tools kicked in and allowed us to do some of that. The community itself, in the Open Government community, that said we are stakeholders of this conversation and we are going to take charge of ensuring and using the tools that are available to us to rate and rank and flagging things as off-topic, to actually make sure that the conversation is well moderated.

All those people went away, and it caused the conversation itself to stay on-topic of its own accord. So, I think that there are some, yes, basic issues about infrastructure that we have to deal with, and particularly with issues of critical infrastructure around, you know, whether it's national security or financial services. But when it comes to things like the social practices of participation, we have a lot of new tools available to us, as well, from the front-end, if you will, as well as from the back-end, that are helping us to do these things better and more effectively. But we are really just at, you know, 0.1 of having the tools available. And the last thing I'll just say with regard to this is, as we begin as government, which is a very big consumer of technology--buying \$76 billion of technology a year--as we begin to articulate the demand for better citizen engagement platforms, I think the IT industry will also step up to create those platforms for us. There just hasn't been a demand for them before, and I think we're going to see now the development of better IT tools that allow us to create a more participatory culture.

**WEST:** I think we will make that the benediction on this panel, but I want to thank Beth, Jason, Gigi, and Mark. And I also want to thank you, the audience. You asked terrific questions, and we appreciate your coming out tonight. Thank you very much.



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