Good morning, good afternoon, good evening wherever you are. Thank you very much for joining us to take part in this very timely conversation on the intersection between digital development and digital imperialism in Sub-Saharan Africa. My name is Jacquelene Mwangi. I'm a fellow at the Berkman Klein Center and an S.J.D candidate at Harvard Law School. I am joined by three stellar scholars who have been at the forefront of considering various issues in the politics of technology and development in developing countries and specifically in African countries too. Professor Ofunmilayo Arewa is a Shusterman professor of business and transactional law at Temple University Beasley School of Law. She received an MA and PhD in anthropology from the University of California, Berkeley. A master's in applied economics from the University of Michigan. Wait for it I'm not done, a J.D from Harvard Law School and an AB from Harvard College. Her research focuses on technology, music, film, business, and African studies. She has worked with technology companies in both Silicon valley and Nigeria. Served as vice chair of the Nigeria Copyright Expert Working Group. Worked on projects relating to education, scientific, and technological capacity in Africa. And most exciting bit is that she has a forthcoming book titled "Disrupting Africa: Technology, Law, and Development" which will be out this September and all advice I've gotten so far is that I should read it cover to cover and, you know, I advise everyone else to do so as well. So, in this book Professor Ofunmilayo Arewa examines the intersection between digital era technologies within existing laws and institutions constructed under conditions of colonial and post-colonial authoritarian rule. Thomas Streinz is the executive director of Guarini Global Law and Tech, adjunct professor of law at NYU Law and a fellow at the Institute for International Law and Justice. He works on internet governance, regulation of the global data economy and global law and technology. He's one of the pioneers in the study of global law and tech and I encourage you all to check out his works. His most recent publications are "Confronting Data Inequality" with Angelina Fisher. "The Beijing Effect" with Matthew Erie and "The Evolution of European Data Law". Padmashree Gehl Sampath is a leading expert on trade policy, innovation policy, and economic development with over two decades of experience in policy and forecasting and analysis, policy design and implementation. She has worked with a range of international organizations national governments, regional agencies and companies influencing policy and strategic decision making by assessing and predicting the emergence of new market segments and trends and identifying strategic areas of intervention to promote change. In addition to this, she's also an adjunct professor at the Department of Social Sciences at the University of Aalborg in Denmark. A senior advisor of the Global Access in Action Project at the Berkman Klein Center in addition to being a fellow at the center. I'll post links to their full bios in the chat in case anyone wants to look further and see their works and read, yeah. So today's conversation is really significant because African countries kind of find themselves in a dilemma between digital imperialism and this has been covered by many authors. Key being, "The cost of connection" by Nick Couldry and Ulises A. Mejias So, it's African countries in between this digital imperialism and also very optimistic hopes for digital development based on the history of impoverishment that these countries have had. So today we ask ourselves pertinent questions regarding these two issues. One what
shapes and limits digital development? Is it possible to attain digital development in the midst of Western and Chinese hegemony? If yes, how? And lastly what exactly do we mean by digital development? Is it for the stakes? Is it for the people and how do the people then to reclaim this vision for what they want for themselves as well? So to kick off this conversation, I'll ask Thomas to talk about inequality in the global digital economy and he'll also give us a picture of what this means for digital development initiatives. Thank you, Thomas it's your time.

- Thank you Jackie for inviting me and for organizing this panel. It's such a pleasure and an honor to be with you all on this panel and around the world thanks a lot for tuning in. I thought I would start us off by just giving you snippets from the recent papers that Jackie so kindly mentioned. And the first point I want to make is that if you want to confront data inequality we need a more holistic understanding of what data governance is all about 'cause there tends to be this perception that it's mainly about addressing certain negative externalities that come from innovation in particular, with regard to privacy and data protection. But if one takes a broader perspective, it becomes apparent that data conveys considerable economic, social and political power and that that kind of power is unequally distributed. So in this paper with Angelina Fisher which we wrote as a background paper for the World Bank's recent wealth development report, we wanted to make the point that it's not just about having or not having data. So kind of distributive data inequality even though this is of course also a very salient dimension of digital development if one considers data resource or input factor in particular for artificial intelligence and machine learning. But crucially, it's not just about having or not having data, it's also about deciding what becomes data. Who gets to decide what becomes data, in what form, for whose benefit with what purpose in mind? And this is what we call the power to datafy, it's another dimension of data inequality that needs to be part of the conversation around data governance. In the paper we argue that data inequality is fundamentally a function of infrastructure or control. So those who control the means of data production cannot only decide what becomes data, they're also able to then accumulate that data and to further their economic or social political projects in this way. In this way we also complicate a standard narrative or maybe it's a trope that to develop in a digitally mediated economy and society what needs to rely on large scale corporations that are going to supply this kind of infrastructure. But as Nick Couldry, Ulises Mejias argued in their "Cost of connection" that's a too simplistic understanding of how the digital economy operates. And I found it striking reading their book after reading Shoshana Zuboff how her accounts of surveillance capitalism emphasizes disruption and discontinuity between earlier for this types of capitalism, whereas Couldry and Mejias emphasized the continuities, that they are continuities and even past dependencies extractivism that are now shifting from natural resources towards data. So, to confront data inequality one needs to take account of these various ways in which data is being shaped, reshaped and used by different actors. And if one wants to confront data inequality, one needs to have a broader perspective that is not just focused on data protection privacy, but take seriously the possibility that new approaches towards digital development and digital industrial policy might be needed. If that's the case and that's my second point we need to retain the freedom to experiment with different approaches towards digital development. And in that regard, one needs to have a critical look at the ways in which international economic law trade investment agreements have shaped and are continuously shaping the frameworks within
which national governments are able to craft new data policies. United States has been at the forefront of this development by creating a new template for the digital economy in the Trans-Pacific Partnership Agreement and even though the Trump administration withdrew from that agreement it continued to push essentially the same model in the new NAFTA Agreement with Mexico and Canada and the Digital Trade Agreement with Japan and now through the WTO which is engaged in a purely lateral initiative to create new rules for the digital economy in which more than 70 countries are engaged. Crucially however, while all developed countries are part of that initiative, only three least developed countries and only five WTO members from Africa participate in the Joint Statement Initiative. Which suggests that there is not a consensus that this kind of approach that is, through which different digital trade powers are now uploading their approach towards regulating the digital economy into rules under WTO law is the right approach for developing countries in general and for countries in Sub-Saharan Africa in particular. In a recent piece on regulating data as a resource for the artificial intelligence economy a look at interventions that countries might try to increase access to data which is not going to solve the problem of unequal power to datafy but might help with redistribution of access to data and how those policies might conflict with emerging and existing disciplines under international trade law and under international investment law. Which brings me to my final third point. If countries retain the freedom to develop their own digital development strategies and to develop their own data governance frameworks. If the idea is to take seriously the idea that the countries, individuals, collectives should be able to determine their own destinies we need to center the collectives and individuals in Sub-Saharan Africa, and to think about data governance from their perspective, about their needs and to listen to them and not to me. Which also suggest that this constant centering of Brussels or Beijing or Geneva, or Washington DC really ignores the agency that both the governments, but also civil society groups and collectives have in these countries. Because if one looks closely it's never just a binary choice between the United States or China supplying 5G infrastructure in Ethiopia, it's always a more complex assemblage of different public and private actors and which may be susceptible to different types of input. And in the same way it's not just a choice between the liberalism of the Silicon Valley and the heavy handed regulatory hand of Brussels or digital authoritarianism that China is allegedly exporting. In a way it's much more of a push and pull at different dynamics at play and to get those dynamics right one needs to take a contextual approach that takes seriously to particular political, economic and social context in which different countries may want to decide their own digital destinies going forward. And in this regard even though it might seem counterintuitive it might be worth exploring not just different approaches to digital development but to also look much more granularly and much more locally at ways in which collective data governance could develop from the ground up and that can include transnational initiatives among developing countries, but in ways that are not entrenched in instruments of international economic law from the get-go and with that I'll stop here and I look forward very much to our discussion.

- Thanks Thomas. I like your emphasis on agency and people driven initiatives and just what the people want. This is really it's a good point to transition to Ofunmilayo's work because she has done a lot of work on this. She's done some work on Nollywood and just how creative the creative industry has flourished without law and in spite of, you know, hegemony in IP
institutions and also governmental inefficiency, the success of End SARS. So I think it's a good point to transition to Ofunmilayo's work, and Ofunmilayo I invite you to come and talk about digital disruption and, you know specifically what's happening in Africa. Does technology matter or not? Is technology and development possible? Yeah.

- Well I will try to, thank you Jackie. First of all, I'd like to thank the Berkman Klein Center for sponsoring this event and thank Jackie for organizing it. It's wonderful to see this discussion, and I also thank my fellow panelists. Thomas Streinz really gave a nice introduction to my remarks, so it's very, a nice ordering too. So my background I'm an anthropologist and a lawyer. So a lot of my remarks today are going to be based on my forthcoming book, which is forthcoming in September which is called "Disrupting Africa, Technology, Law and Development". Now this book is based on 10 years of archival research, where I looked at lawmaking in former British colonies, primarily Nigeria. So I wanna talk about two distinct problems of law and policy. The first of which I think Thomas addressed and which I think is of critical importance. I'm going to address the second part in my remarks and I hope in our discussion we can talk about those aspects. So the two distinct interrelated problems of law and policy, the first relates to digital era regulatory legal policy mismatch where we have these new technologies and we don't always know how to regulate them or even how they're used. So there's proliferation of new technologies, devices, uses and associated infrastructures. And it's a global problem, everywhere in the world we're dealing with, how do we deal with this stuff? You know, and there are various kinds of legal issues, it might be privacy law, it might be IP law, it might be business and commercial law. It may be things like court administration, right? We have all kinds of new technologies that are proliferating all over the world. I think the discussion that we just heard from Thomas Streinz highlights the key aspects of global discussions related to digital era governance. Now in African context, and again, my research focuses on Nigeria and other British colonies, but I think a lot of my comments are relevant outside of those contexts. In African context, this widespread problem of how do we govern in the digital era is exacerbated by what I call colonial era overhang which is pervasive in African context and I would suggest that colonial era overhang limits potential digital developments. And when I think of colonial era overhang, it's really about exclusion. It reflects top-down approaches that often exclude African countries from global power relationships. In fact, the secretary general of the UN just around July, 2020 actually had a quote where he basically said, you know, African countries are excluded from the global power structures that were set up to a significant degree after World War II and that hasn't really changed. We also see, so we have global marginalization to a significant degree of African countries. We also see exclusion and marginalization within African countries where a majority of the population may not really be considered when people are undertaking law and policy. And the key question is which individuals are taken into consideration when we're talking about governance. So, I would suggest as we just heard that we need to think about ways we can put in place a bottom up focus that focuses on the local that starts with the local, and how we do that will vary by different local contexts. That's why I think the experimental approach that was just discussed is really important. It's important to have experiments that are grounded in local context, often small scale experiments and that can be the basis for future success. However, a big impediment to that is some of the models of governance, policies and laws that were
developed during colonialism that have what I refer to as an external orientation with external sources of authority. This continues to be active in many African countries and it's not just former colonial powers, it may be companies, private companies, other powers the US participated in the conference of Berlin in 1884, 1885. It didn't take colonies in Africa, formal colonies in Africa, but it was part of the dividing up of Africa. We have NGOs and again, a lot of commercial and business interest. And a lot of the orientation of some of those interests is primarily external. And that leads to a second problem, what I refer to as a problem of indiscriminate borrowing. Often in African context when laws, policies are adopted they're often adopted based on some kind of external guidance and that external guidance doesn't necessarily take the local to a sufficient degree into account. Because borrowing from other contexts comes with past histories contexts, assumptions, disputes, and accommodations. And the reality is people if I suggest that someone undertake a policy in another country that I may not have a real understanding of how what I'm suggesting really works in my own context and often it's not interrogated. Does this thing that's being suggested in other contexts does it really work in the context that it's coming from? So I think one of the key issues I think we need to focus on in the digital era and African context when we think about incorporating the local into these digital governance questions is what models are being used and what assumptions are being made about those models and expected outcomes in African context, given local conditions on the ground. So again, this experimental approach is really I think a useful one, and it should be grounded in the local. So a couple of key points I wanna make in terms of thinking about key issues we need to think about in an African context. One is that we're seeing across Africa is the case everywhere else in the world. We're seeing widespread, visible widespread dissemination of digital era technologies. Now much of the narrative in African context is what I would refer to as technology uplift narratives. There are varying kinds of uplift narratives that are occurring right now in African context. There's China uplift narratives, there technology uplift narratives. And I think context of technology usage today reflect a collision of past and current paths and visions of the future. And the question is, it's clear that something is changing and that we're seeing that social media and other digital spaces have become town halls for expressing dissent and debating goals, merits and methods of social, political and social transformation, this is Jacquelin Katanekszwa speaking about Zimbabwe. If we look at the End SARS protests in Nigeria they highlight a collision of governance basically. So when we think about digital economy governance and digital technology governance we also have to think about other kinds of governance and I think End SARS reflects a collision of various kinds of governance because it reflects youth in Nigeria, demographics in Nigeria and elsewhere in Africa suggest that populations will double or triple by the end of this century. We have a scarcity of opportunity that's widespread, particularly for young people in Nigeria and other countries in Africa. We have rulers in many instances that have have assumptions of governance that look back to colonial arrangements. It's authoritarian kind of governance and this is a legacy of colonialism. And part of End SARS is a conflict about visions of governance between the youth who are looking to a future where they don't have much opportunity and rulers who are often in African countries, Africa generally has the youngest population in the world and median age of 19.5 with the oldest rulers in the world. One reason the rules are so old is it's very hard to get them to leave. So, we have some rulers Museveni in Uganda has been in power for more than three decades. Now that that collision becomes very highlighted in the
digital era, as we saw with the End SARS protest and we see the government has used tools with End SARS that reflect sort of a harkening and a use of tools of authoritarianism that are embedded in law that goes back to colonial times. However, this collision I don’t think this collision is gonna be solved by those tools. You really need new tools of governance, a new approaches to governance to think about how do we regulate these instances? So three more things and three or four more things and then I'll open it up for questions, I look forward to this discussion. So I think we have a legacy of external determination in many African contexts and we need really need to interrogate that to a significant extent. Patterns of borrowing and legal policy decision-making that reflect a predominance of external powers, external agents, external funding and external needs. And this is not a historical legacy of the past it's something, for instance, in April 15th of this year in Nature Medicine, there was an open letter published about malaria funding in Africa and it noted that in the United States $30 million was granted to a nonprofit health organization and it was granted to a consortium of seven institutions in the US, UK and Australia to support African countries and the improved use of data for decision-making and malaria control and elimination not one African institution was named or granted money as part of that. And that reflects the part that a lot of aid funding the authors of the open letter suggest that just 1% of malaria funding is actually available to local in-country research institutions. So when we think about models, we have to think about the involvement of local institutions, they can't entirely come from the outside. Now this, that pattern of the external determination with little local involvement I talk about in my book needs to be disrupted. We however see continuities between the digital economy and past practices all of which I think need to be disrupted. We saw colonialism was about extraction. There was an extractive focus in extraction of people during the slave trade and natural resources. Infrastructures including legal ones were built to support short-term extraction not the needs of the many. In digital economy context Africa remains a source of raw materials. It may be rare earth metals that are used in technology products but we're still seeing external extraction as a key motivating part of many economies in Africa. We also see data which we can see as digital economy gold. We also see people mining and using for instance, Cambridge Analytica, one way to read that is Africa is unregulated testing ground to test things that they later deployed in other countries. A couple of other things, colonialism involves suppression of local competition and has led to significant global competitiveness in many African countries is not as good as we might like. Colonialism led to economies that are not competitive with often insufficient internal restriction and monopolous. The Economist noted in October 2020 in much of Africa, formal economies are dominated by large firms that rip off consumers. The IMF reckons that firm markups are about 11% larger in Sub-Saharan Africa than in other developing regions and that prices are 20% higher. Colonial economies were built around European trading firms with licensing rules that hindered the emergence of black African capitalists. The other thing we need to think about is portfolio approaches. Many African economies today reflect portfolio approaches of British, I'm talking about British colonies specifically where Ghana was oriented around cocoa, Sudan cotton, Nigeria palm oil, ground nuts, and other products. Those mono-crop tendencies still exist in many countries. It may be a mineral. It may be oil. It may be copper in Zambia. One thing that in agricultural sphere, this is placement of food crops by export crops has contributed to ongoing food insecurity throughout Africa. We think about the digital, we have to think
about other infrastructures that support sort of the development of robust digital economies that people really have to not have food security and be able to eat to a significant degree. Food security is significant and likely to grow in many African contexts. The external determination that is a legacy of colonialism leads to valorization of the external which leads to insufficient value attributed to the local and internal. It also creates, I'll end with this. It creates incentives for elite intermediaries that are of concern when we wanna think about digital economy inequality. One of the things we know about the digital economy in developed world context, is it has contributed to inequality in places in contexts like Nigeria where we already have significant inequality we have to think about governance and the adoption of policies that are really proactive in addressing some of the tendencies in the digital economy, in other digital economy context have exacerbated inequality that's might be one context, one consequences of the digital economy proliferation. So I'm gonna stop there and I look forward to our discussion, thank you.

- Thanks Ofunmilayo, that was a lot and I can't wait for us to dig into all that after Padmarshree gives her response to the both of you. She works in policy and has done a lot of work on a digital development policy side and tried to develop narratives of data sovereignty in African context. So I believe she has a lot to say and to ask, so Padmarshree the floor is yours.

- Thank you so much, Jackie, thank you. First of all, I want to congratulate you on putting together this event and I think the title of this event intersection between digital development and digital imperialism it's just, it couldn't be more precise. It's just, you know, encapsulates the real conundrum that countries face in the developing world and particularly in Africa today. And so I have the tough job of reacting to both what Thomas and Ofunmilayo have said which are both really sort of excellent short presentations. So I'm going to just sort of like draw on my work in African countries to say where the sort of the common points are and raise a few questions for us to discuss. So when I take, let me start from what Thomas said about international economic law and how that really looks in terms of transnational data governance and see what I, and then try to break down what I see in the field, working in African countries on policy making on the question, the digital economy. So if you work with governments and you start, or international and national agencies then you see that policy making in the digital economy is cut into three different discreet pieces I would say. The first one looks at the privatization of the internet and how digital competition is getting more and more unfair and how that is actually increasing market rents and increasing market concentration in a way that it takes away the opportunities from new forums that can emerge in the digital economy, so barriers of entry and away from consumers which is the basic sort of narrative on data disposition but it's happening in a much faster and much more unregulated way from the global South to the global North. The second set of policy initiatives I would say are focused around what Thomas talked about the World Trade Organization, e-commerce debates platformization, and what's happening in terms of free trade agreements and how they're trying to ratchet up the standards for protection of the platform economy. And this basically looks at what kind of data mining is being facilitated in the big tech business model and countries are trying to look at basically data localization strategies as a strategy to protect their data from leaving their national borders. Now both of these initiatives really on the privatization of the internet and on
trying to protect policy space within the World Trade Organization set of agreements really is based or rooted in a broader idea of trying to preserve sovereignty, national sovereignty over the digital economy and what the digital economy might entail and what data solidarity might mean in a broad sense. Then you have a third set of policy initiatives in a large number of countries and these have to do with digital industrialization. And this basic sort of policy emphasis is looking at digital industrialization as a sort of an offshoot of industrialization per se and it looks at issues like how do we create skills in the digital economy? Do we need more STEM labor force? Do we need to change the academic curriculum? How do we facilitate the local industry? How do we allow local platforms to emerge? And what are we going, what kind of incentives do we have to give our local sectors? Right, so when I work with countries advising them on a regular basis, what I see is that a thread between these three kinds of initiatives it's really how to link industrialization or this idea that you can use the digital economy for development with really, you know individual empowerment and national empowerment. And why is that missing? So I've got a couple of thoughts on why that is missing. First is that, I mean, countries in Africa and Asia have historically had weaker institutions and these weaker institutions means that there is a sort of a mismatch between the kind of policy response that they have towards the outside which is to protect the data and to keep it within the border, but then how to use it how to harness it for local development is a sort of a conversation that hasn't yet happened at all. So we talk about a lot of digital industrialization strategies and one of the things that I really observed is that there is absolutely no allocation of roles and responsibilities and privacy protection, who owns data? How can data be used? What are we going to do with data that we localize internally? And how are we going to use that for developmental purposes industrialization, empowerment, equality, poverty reduction? That's a conversation that has not happened. One of the reasons why this conversation has not happened is because countries have been bombarded, but you know they've suddenly realized that the digital economy has become very important, there's a lot of data like development, they need to do something. And this kind of policy emphasis coming from the outside to protect the data has taken a sort of a precedence over a discussion on what to do inside. A second reason why this has not happened is because there is a historical mismatch and I think Ofunmilayo talked about this. You know when we look at the role of colonization in these countries, in our countries, what we are talking about really is that technology was used as a tool. It was used as a tool of hegemony to maintain colonial relations, to show the hierarchy and the better nature of the of the imperialist power over those that were dominated. And this is something which shapes and it permeates our policy-making psyche. So in the global South the entire debate on industrialization and development is structured in a way that we think that we need to move towards a convergence, a technological convergence an industrial convergence in order to achieve development and prosperity. What this means is that very deeply ingrained in our policy psyche is the notion that technology is good for development and this is a very difficult proposition to break down in the context of the digital economy and especially the kind of stuff we have discussions around AI. All technology is not good and all kinds of technological applications are not good. And to sit down and interact with policy making agencies in Africa on this topic is quite fascinating because this is the mindset, technology is good, more technology is always good. Let's just get technological applications in, let's apply and one needs to break that down. A third thing that is really important is, this is also
again, since the beginning of the 1950s when a large number of countries began to industrialize, the industrialization processes placed a major emphasis on the role of the state. So a lot of the policy-making underpinnings in African countries and other Asian countries are resting on the notion that the state will champion development. The state is going to be the champion of industrialization. Now what this does in the digital economy is that it enhances the role of the state. So when we're talking about digital economy, digital development strategies digital industrialization, digital sovereignty basically we are placing a massive emphasis on the state being the arbiter of digital rights. And this is a very difficult proposition once again, to break down in practice in a large number of countries not just in Africa, also take the case of India right now the kind of struggles that are going on in terms of making sure that the digital economy does not encroach on constitutional rights, on personal fundamental rights of people and this primacy of the state the role of the state in the development process we need to unbundle that and unpack it for ourselves in the developing world, in the African context to understand how do we construct new citizens state relationships in the digital economy that are conducive for development and personal growth and freedom. And the last thing I want to stress on is loss of autonomy. There is a loss of autonomy for developing country governments in Africa particularly to enact the digital industrial or digital development strategies. And this loss of autonomy comes from a lot of things. It comes from a colonial mindset. It also comes from the loss of policy space that Thomas has talked about. And then it also comes from another thing which is that they don't have the finances to finance the development process and financing development is a very big chunk of being sovereign and in taking decisions about your development destinies, right? And financing plays a really important role in the digital economy and considering that a large number of infrastructure is being given by the Chinese or international agencies which are active in promoting biometric ID systems. There's a large number of other kinds of activities going on which sort of like perpetuate North South relationships. This idea, there is a loss of autonomy in the digital economy which is actually very much associated with control. And how do we reinstate that? Or how do we regain that lost autonomy and do not lose degrees of control while providing digital infrastructure and while recognizing digital rights, and while trying to to have a narrative, a homegrown narrative on digital sovereignty is something that is a focus of my advisory work with African governments. That's it, I wanna leave us now to raise, I wanna raise just two questions for my fellow panelists to respond because I really wanna hear from them. Now the first question is for Thomas, Thomas you talked about how the US through the TBB and just generally through their national regulatory architecture are trying to harmonize laws through international free trade agreements which I find actually very fascinating and I've also personally worked on and this definitely takes away the policy space available with African countries to enact their own digital development strategies and to have experimentation. What do you think can be done for countries to regain that kind of policy space especially given the kind of wheeling and dealing that goes on in international policy, right, International trade policy? Ofunmilayo one more thing that for you, the main question I wanna ask is, you know you talked about how there's this dependence across agriculture, across, you know external relations for African countries, you're absolutely right, and I think that we are currently in a global trading regime which basically actually reinforces this dependence, right? Because the African agricultural exports and commodity exports are, the African countries are entrenched in this. What can we do?
can we have, you talked about these fantastic local initiatives that can be actually sort of like, you know, engendered, how do we engender more of these? And when we have them on the ground, how can we really say you know, we are going to make, you know we are going to have synergies between these initiatives, we're gonna learn from them and we're going to replicate them? How do we do this? Thank you very much.

- Thomas if you wanna go first.

- Thanks a lot to both my, to all my co-panelists for the remarks from which I learned a lot and took copious notes. So, to respond to Padmashree's question, let me start by saying that it makes a difference how one thinks about these agreements. And in way if one conceptualizes them as digital trade agreements or e-commerce agreements one is already set on a certain trajectory which might not be the right one because it invokes that this is just a continuation of the past that this is an application of the trade disciplines that were initially developed for conventional trading goods, then extended to trade and services and controversially to trade related aspects of intellectual property rights and now we're going to address the trade-related aspects of the digital economy. That's the standard narrative. But if one looks at these agreements in substance they are nothing like the trade agreements of the past. There are global economic governance agreements that address all kinds of issues that have to do with the digital economy from spam, overtaxation, to data flows, and once one shifts the conceptualization from this digital trade framing through a global economic governance framing to what I've called digital mega-regulation because our book was called "Megaregulation Contested" so why not run with that term? One sees both the danger and the potential of these kinds of agreements. The danger of course is to get locked into commitments that are not the right ones to develop your own digital economy. And in that regard there's of course a difference to be made between the commitments that already exist including the commitments that countries might've entered into under the general agreement on trade and services where it depends on like what countries committed towards in their schedules in the 1990s, and are now stuck with because, and need to push back against under recourse to the principle of neutrality. So, where the kind of standard trade role thinking is while the commitments it's not going to change just because the technology changes, which means that if technology makes more and more trade and services possible there's going to be more and more liberalization if such commitments towards services liberalization were made. Which is why I think there needs to be a limit to the, to how much this kind of liberalization by technological progress can proceed. On the other side when it comes to entering into new commitments, I think it makes a lot of sense for African countries to be skeptical about the current trans statement initiative in the WTO, and I recall it a terrific conversation with James Scotty about the continental free trade era in Africa and why they did not include the e-commerce and digital trade chapter. And I think that was for the moment maybe not the worst decision. At the same time there's potential in creating rules in these agreements that could be addressing the kinds of issues that you and Ofunmilayo we're talking about. So, in that way, one could imagine a different kind of international economic law that takes seriously for example, the concentration of power by those who control the means of data generation who control the infrastructures that generate data and to mobilize international economic law against
them. That sounds, you know, high flying utopian but it's not completely impossible and I have a forthcoming paper that's talking a little bit about both the taxation and the data protection issue and how those issues could be addressed differently in instruments of international economic law.

- Now that's fascinating Thomas I think, you really hit the nail on the head when you say, you know you really can't take this as a continuation of what happened before, it's completely different and we need countries to realize that.

- You're muted Ofunmilayo, we can't hear.

- Okay, I'm not muted now. So I would follow Thomas by saying I think we need approaches and to answer Padmashree's question, I think we need approaches that are more consciously strategic. Because I think we have a global power structure that's unlikely to shift significantly in the short term. Now, maybe in the long-term it can shift but I think many countries in Africa I don't think are strategic enough in thinking about how do we navigate with these external restrictions 'cause I don't think the constraints are gonna go away. I do think it requires strategic approaches that really look at how are we using our funds, because, you know if you look at Nigeria as an example a lot of, I think as Padmashree indicated a lot of countries are constrained in terms of funds. But part of that is the funds aren't being used very well in a number of countries, and Nigeria would be high on the list of countries if we were to look at how much, how are funds being used. I think Tatham House estimates that hundreds of billions of dollars of oil money have gone missing in Nigeria and Nigeria has been, one of the things Nigeria has been working on is getting back money from... The last military dictator in Nigeria, took one to five billion dollars and Nigeria has been getting some of that money back but when Switzerland gave back 500 million, it disappeared. So the question is how are funds being deployed? And I think that reflects problems of governance within African countries and it also also reflects a problematic role of the state. Now, one of the problems I think with global economic order is it looks at the state as a basis for action and the state is having it is an effective agent for people within countries. And I think in many African countries that given the construction of the state during colonialism that's a reality that doesn't really exist. So states, many people from a policy perspective are invisible to policymakers within many African countries. And that invisibility is a profound problem for the future because you have to render the invisible visible and make it have meaning to the people who are in charge and I think part of the, this reflects to a problem of elite formation during and after colonialism where elites may not actually be appropriate agents. So the question, I say in my book I think that the people that have been appointed to sort of as agents for good governance are questionable people to be promoting good governance and I think this is not just a problem in Nigeria, we could go down a list of what's happening in Chad right now, what's happening in Benin right now, there, you know, there's a long list of countries where there are serious issues with governance and about rule of law from a more formal perspective. I think what we need between sort of external constraints misuse of funds, I think we need new approaches to law and policy that are innovative. Where that sort of look at the local conditions on the ground to determine how do we actually navigate around those. And it means you can't just borrow in the
way that people have borrowed in the past because the things we're borrowing weren't really suited to address these particular concerns. So I think we need to measure things. We need to figure out how to measure things. How do we measure the effectiveness of states? How do we measure? In Nigeria we can't even get a good measure of population because it's so contested. How do we deal with questions of contestation? The state in many African contexts is a political terrain of contestation and part of that contestation is about access to wealth. It's very rare, many African leaders, I mean the Mo Ibrahim Foundation every year tries to award an award to an African leader for governance and most years they can't find anyone. And part of that has to do with some of the incentives that exist at the state that go back to colonialism because I think during colonialism intermediaries were appointed who misused resources but the colonial powers didn't really do much about it at that point in time and that came to be fairly embedded and I think how you disrupt that, that is a key question. How do you innovate and disrupt that? And I think you also have to measure outcomes. One of the things that if we think of law in the United States and other locations I don't think we're so good at measuring outcomes. So if we're borrowing from the United States we're gonna borrow the practice of not measuring outcomes and I think in context in developing countries with their limited resources and already governance problems on the ground that are pretty profound I think we have to think about how do we measure outcomes and develop flexible laws that can shift. And that, because one of the problems of colonial overhang is laws don't get modified very often. Kenya just modified its company law six years ago, it took 20 years. Nigeria just modified its company law last year it took 30 years. Swazi land modified its company law about 10 years ago, it took almost 100 years. So you have to have much more flexible laws and policies that are really based, I think policy based and based on measuring things on the ground and measuring outcomes.

- Thank you Ofunmilayo. That's just absolutely fantastic. I think that we definitely need to be more consciously strategic. I've just recently concluded a sort of a survey of all the privacy legislations in Africa and I found that they simply blindly borrow the GDPR language without really going into what it really means, informed consent, where is the set of institutions to take action and what can the private citizens do? So, you're bang on point. I mean, I look forward to reading your book and to interacting more and back to Jackie.

- Thank you Padma actually thank you very much for touching on the privacy legislation, because I wanted to ask Thomas to speak, just to say something about his critique of data privacy generally because in digital economy and in the support of digital businesses in African countries, the conversation right now is, as long as we have a data privacy legislation, let's go ahead. But we're not thinking about the context to which privacy law is deployed in this country. It's not just about e-commerce but it's also about FinTech Lending and the manner in which these apps are changing other relations outside that very simple notice and consent agreement in downloading the app. So, yeah I'll ask Thomas to speak about his critique and also there's someone in the chat who asks something about how do you feel about Chinese extractive processes? That is a really good question also for Thomas to answer and Ofunmilayo also, because I know Ofunmilayo has done some work on China and Africa belt and road, I think.
- [Ofunmilayo] Yes.

- Yes. And Thomas has done the same in the Digital Silk Road perspective. So I'd like us to have a conversation about that and if we have time, I'll ask something else but let's go with that for now.

- Okay, thanks a lot Jackie. I'm in full agreement with my colleagues. I mean, I'm German, I'm European I like the GDPR. I think it was a good reform of the earlier data protection directive but I don't think it's the right model for the world and here we work with international organizations I always try to make this point the GDPR is a function of European lawmaking. European governments try to compromise between their national data protection laws and the outcome was the data protection directive and then they thought to update it and out came the GDPR but GDPR has fundamental flaws even under European terms in terms of its enforcement record and in terms of its relationship to national governments, which are flaws that maybe shouldn't be replicated elsewhere. So starting the lawmaking process and thinking about data governance, not from the perspective of copying and pasting GDPR, even though there are incentives to do so including European generated incentives under the adequacy structure. Now the better approach is to think about data governance holistically and in that regard in our paper, we make the point that by any stretch of imagination the GDPR is not a digital industrial policy. So just because you enact GDPR even though there's this narrative that better data protection laws need to trust in digital economy which is going to lead to economic growth that's incorrectly not very well founded. It's a nice narrative though that data protection supporters of course like, and again there's nothing wrong with data protection law but the mistake is to think that data protection is everything around data law and data governance. And I think that there are several thought experiments that one can use to make clear how there limitations in the ways in which laws like GDPR address issues. The consent problem has already been mentioned where data protection supporters would often point out that it's not just about consent because there are other ways to which GDPR allows for data processing but in reality companies very often rely on consent because it's so easy to obtain because it's so easy to click yes. At the same time if our concerns are around infrastructural control if our concerns are around concentration of corporate power if our concerns are around accumulation of and shaping of data in certain ways there's very little that GDPR is going to do about this because of the individualistic rights-based approach that is useful in other ways, by centering the individual vis-a-vis the data controller, but it's not the systematic countering of concentration of data power, which is why other initiatives need to tackle that kind of problem. And then finally on the Digital Silk Road in our Beijing effect paper we try to counter the narrative that the China is somehow not just exporting the digital technologies but also exporting digital authoritarianism to engage in this conversation between the back and forth and our case study on Pakistan taught me a lot about that interplay bringing to the fore, how Pakistan civil society pushed back against the cyber crime legislation has been pushing for data protection of law with not much avail and one key issue in that regard is participant asked about data extractivism is that it's very hard to scrutinize these infrastructures from the outset because they are properly controlled. And even in invested democracies there are no frameworks in place that would
allow us to scrutinize the data accumulation and the data flows within and between corporate actors and that connects, I think very nicely to the measurement point that Ofunmilayo raised which I completely agree with and which I think has been a key driver in my turn away from a TPP or forage young researcher towards the TPP skeptic because the data we use to assess these kinds of agreements simply doesn’t support the policy prescriptions that are then getting entrenched with potentially very long lasting effects.

- I mean, if I may add just one thing to what Thomas has said, you know, I mean we don’t collect the right data in our countries. I mean, in African countries, a lot of the stuff we don’t collect the data. One of the things I work with countries on is really to get them to collect the right kind of data. We’re not even collecting the right kind of data to measure innovation from a grassroots perspective. We’re not collecting the right population data. We’re not collecting the right data on what inputs and what creates actually different kinds of creative activities in our countries. And I think that, you know this idea that policymakers think they should just copy something that exists somewhere else and bring it in a template and implement it, this has got to stop. There needs to really... I mean, I think for me digital development is about accountability. It’s about changing the way states are accountable to citizens for choosing development trajectories. That’s what digital means for me.

- So I would just add that I think that accountability is a powerful starting point because I think states are often not accountable and this is not just in Africa, but I think is a particular problem in many African countries because of the construction of the countries that African countries are typically diverse by many measures, not good infrastructure and there are all kinds of reasons why you particularly need state accountability in those contexts. So, you know, the thing that came to mind when I heard Thomas and Padmashree most recent points were biometrics. For instance, copying the GDPR biometrics every time, I haven’t been to Africa since 2019, I think I was last in Ghana but every time I went prior to that point I typically will see what happens in the future. But typically I went to different countries, mostly Nigeria at least once a year and one thing that I’ve noticed over the last 10 to 15 years is there’s just a large number of biometrics being collected in many African countries to get a SIM card in Nigeria you need to give a fingerprint. When I did my trip to Ghana at that fabulous new airport I had to have facial scans, two different scans of my face and all of my fingerprints taken and consistently when I ask people what happens to this data, no one can tell me. So if you don’t actually know practically what happens to the data, it may not matter what the law says because you don’t actually know who has access to that data. And I even, I talked to some people that are really in the know in terms of technology, no one could tell me. And we had recently a hack of a Nigerian bank, I don’t think it involved biometric data but in a world that’s full of hackers the collection of biometrics in African countries has run way ahead of the the legal and regulatory frameworks to govern that. And I don’t think GDPR, the reality in Europe is you don’t have the same kind of collection of biometrics so you don’t necessarily have the legal framework to address that. So in terms of thinking about accountability, accountability is partly about accountability of data collection. So who actually has access to this data? What’s being done with the data? I think as Padmashree noted in her comment to the question we also need to think in a more cross-disciplinary way. When you borrow you’re borrowing from countries
where there's not also often a lot of thought across different categories. So let's think about poverty and technology. Let's think about the environment and technology. We're just now coming to a recognition in many developed countries about how these things interrelate. It's absolutely critical in many African countries that conversation be the starting point. Because the digital era right now countries like Ghana are potentially a dumping ground for digital waste. There's very little talking about their relationships with the external. Technology transfer in many countries today involves transferring old computers and things like that. It's not really the kind of technology transfer that's contemplated in some of the global agreements that many African countries and developed countries have signed. So I think we need to think about accountability. We need to think about local conditions on the ground and we need to think in a more cross disciplinary way when we think about separate policy categories. And the last thing I would address is extraction in China. You know, I always say I don't really know what's gonna happen in China. People often ask me this question because I write about China and Africa and I also write about technology in Africa. I think Ching Kwan Lee has written a really fantastic book called "The Specter of Global China", she's a sociologist at UCLA that I think is a really good starting point for thinking about that, I'll paste it into the chat window. I talk about China a little bit in my book. You know, I think part of it depends on how African countries engage with China. And one of the things that disturbs me is a lot of African countries say, well we don't negotiate with China because it's bad to negotiate with China. That's a really bad starting point when we think about future relations with China. There's also a lot lack of transparency in terms of many of the deals that China has done in African countries. And this contributed to Zambia's default on its eurobonds last fall because the Euro bond lenders wanted to know the terms of Zambia's, they basically wanted to know whether they were paying the Chinese debt. They wanted to know the terms of their loans with China and Zambia said they had to sign a confidentiality agreement to get the terms of those loans. So I think two things that concerned me about China two or three things. One is the lack of transparency, which leads I think to a lack of accountability for the government signing these agreements. And then there's also a continuing question about how Chinese relate to Africans. I was very disturbed last year when in Guangzhou African people were being thrown out of their houses because of coronavirus in China and that's I think something that African countries need to address that they haven't addressed. That's part of the external, I think dealing with China also requires dealing with those kinds of things and I don't think I've seen any African government address that kind of behavior and I think that's a problem because if you're gonna manage the external strategically you have to manage those kinds of relationships because we don't want the Chinese relationship to end up like the colonial relationship ended up.

Indeed. Thank you Ofunmilayo, this is actually a really good point for us to conclude. I will need everyone to give a one minute concluding statement, but specifically for you Ofunmilayo I want you to adjust these questions that we have in the chat about lawmaking and law reform and also something about regulatory authorities that exist because I think there's no difference between the data commissions we're having now and any other regulatory institutions that we have, they all suffer or share the same kinds of characteristics. So I'd like to hear everyone, each one of you give a concluding statement for one minute, tops. I'll start with Thomas.
Okay So I think the final point I would like to make is picking up on something that Padmashree said earlier and it is about how to think about technology in relation to law and in relation to policy, where the thinking often is that technology is there and creates costs and benefits and we need to, you know, use it to spur economic growth and economic development, and we also need to mitigate the harms. And in that way is what Julie Cohen in her "Between Truth and Power" has described between the technology hitting the wall of law and policy. Whereas the better way of thinking about technology is in a framework that scrutinizes the interplay between law, politics and economics. It's a law and political economic framework and even though that might sound crazy I think a lot of the theory that has been developed in this space and in science and technology studies is actually really useful because science and technology studies teaches us that technology is not just there it has been designed in networks with machines and humans that have different interests that operate in different configurations and law and other norms intervening in all of these. So if you want to de-center technology just as an object and if you want to de-center the state as the key actor for economic development thinking about these networks and the various configurations in which human interaction with technologies is playing out might be a way to spur the kind of creative thinking that we've all been asking for. And thanks a lot, this was a great panel. I really enjoyed it.

- Thank you. Padmashree.

Thank you, Jackie. So I just want to end with two thoughts, right, about 30 seconds. So one thing that I think we really need to do when we start to address this really is to start thinking about how would we solve this problem ourselves? If we had to deal with this problem ourselves on the ground things sitting inside Africa, inside those countries the kind of patterns of development we've seen, the kind of strengths we have, the kind of difficulties we have the different kinds of communities we are dealing with, how would we solve it? And for this purpose, I would shut out the GDPR. I would shut out everything else from outside. I would focus on homegrown solutions, which is something we're not doing. And one of the key things that I do in my work is to look at it from that perspective, right? The second one is really to sort of see how the digital economy can become a new or can offer a new sort of fresh breath of air new emphasis to re-conceptualize citizen state relationships in our countries because that's the weakest link for development as far as I'm concerned as a person who've sort of studied development strategies we've actually perpetrated inequality, increased distributional injustice and this is because economic growth is not really neutral and economic growth and technological growth comes with its own set of problems. And I think it's time to use the digital economy to reconstruct the citizens state relationships when we talk about the role of law and the role of policy how can it be more empowering than disempowering? How can we reduce inequality than increase equality? How do we address structural inequality and how do we create opportunities for all? And I think these are the two focuses of my work. So thank you so much for bringing us all together. I really look forward to interacting with all three of you. This has been great. Thank you.

- Ofunmilayo you have the opportunity to close.
- Yes, I just have three things and I think it relates to what Thomas and Padmashree also said. I think we need to think about innovation as not just being about technology. I think as lawyers we're often trained when we wanna do law or policy we're trained to look at what's been done in the past and that's not to say you reinvent the wheel every time but I think we need to think more consciously especially in African contexts about innovating law itself. How do we innovate law governance, legal practice policy? Which hasn't really been done to a sufficient degree, I would even argue in the developed world. I think there's room to do this in the developed world as well but I think it's really a pressing need in African countries because there's so much poverty and there's so many people that are suffering that suffering could be alleviated with better policies, more innovation. The second thing I would say is we need a problem solving approach, I think as Padmashree indicated. which actually means, requires being able to discuss what the problem is, which is problematic in some African contexts where governments are very sensitive about you talking, you criticizing the government. Nigeria social media bill, essentially the 2019 one would essentially criminalize criticism of government and I think that's something that needs to be disrupted. That's a hangover from colonialism and that needs to be disrupted. The third and final thing I would say is we need to emphasize the local and measure it with a key goal of eliminating what I refer to as the scarcity of opportunity in my book. For too many people, in the everyday people who are working hard they're too few opportunities in many African countries. The statistic I think I've seen is that 12 million new young people are entering the job market every year in African countries. That's not across Africa, maybe that's just Nigeria but there are only 3 million jobs being provided every year. So there's an increasing gap. The situation we see on the ground is likely to get much worse as populations grow and I think in answering one of the questions in the chat we have to convince policy makers that this is, current situation is not sustainable and that things are going to be potentially catastrophic if we don't see some real profound changes and I don't think we have much time to make those changes, so, I would end there and thank you. It's been a wonderful discussion with the fellow panelists and thank you, Jackie again for organizing this fantastic discussion.

- Thank you for joining us, I guess. Thank you so much for having this discussion with us and may you, at least for starting it, you know. This is not a conversation that's happening so, thank you for sharing this with me and the Berkman Klein Center. Okay, with that I guess that is all and see you when I see you, bye.