

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

Plenary 3: Finding the Balance of Responsibility between Companies, Investors and Regulators

- James Andrus, Investment Manager, CalPERS, USA
- Charlotte Decker, Chief Information Technology Officer, UAW Retiree Medical Benefits Trust
- Marco Enriquez, Senior Applied Mathematician, Office of Data Science, U.S. Securities and Exchange Commission
- Rohinton P. Medhora, President, Centre for International Governance Innovation

Chaired by Catherine McIntyre, Reporter, The Logic

Catherine McIntyre: Data is often referred to as the new oil and while that's an imperfect comparison, in some ways it's apt in the sense that data is one of the most valuable resources we have. It's also everywhere and waiting to be commodified. The biggest companies in the world today largely have data to thank for their wealth. Companies that don't leverage it risk being left behind in our data driven global economy. With the ubiquity of data and the A.I. that it feeds comes risk that this information will be mishandled or exploited. I'd like to start by talking about the broad regional differences around data regulation. The general data protection regulation, or GDPR, in Europe was the trailblazer in this domain but I think we should talk about what the regulations we're seeing implemented or considered around the world and what major differences exist between these approaches. Rohinton, what are we seeing here?

Rohinton P. Medhora: We're seeing four types of regimes around data. Since data is not just a factor of production but has other intrinsic qualities that make it social, cultural, personal, political. At the risk of generalizing, we have four data zones globally. If there's

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

a China zone in which data is broadly controlled by or belongs to the state, not the individual that has necessarily generated it. It's almost a mirror image of what we see mainly in the US, although here I'd qualify that the state level jurisdictions like California that go beyond it but in the US it's mainly the data firms and again, the citizen is not empowered it is the digital firm that appears to control or benefit in ways from the data and citizen's benefit secondarily. The third zone would be what we see in the European Union with the GDPR, which is, as you pointed out, a gold standard for those who think that data is something that actually comes from the people and therefore in some way should belong to it, we can certainly discuss what that might mean. You've got the fourth default zone which is countries on the outside, be they Canada or India, looking in who you might say either free ride off one of the other rules or try to create their own fourth way. The challenge for both for national and global policy is to make these regions more harmonious, make them talk to each other so that we have globalization in data that respects its other intrinsic qualities.

Catherine McIntyre: Harmonizing some of these regulatory approaches is interesting to me. Given the differences between them, if there are pieces of each of these approaches that could be borrowed to come up with something more universal.

Rohinton P. Medhora: First of all, in intent, even, for example, if you look at China's draft data privacy law, that's now out for comment in intent, I find remarkable how everyone believes that data is something that should be used for a public good, that privacy matters. In fact, we've all signed on, most countries have to the Universal Declaration on Human Rights, which enshrines privacy as a basic human right. And so on intent I'd say we're all harmonious on operationalization, of course, we have differences. The one we should look at the most is, is data localization. For example, if a Canadian purchases a cannabis product legally because in this country it is legal using his or her credit card and that information is stored on a server in New Jersey, is it possible hypothetically, for that person to be hassled when they try and cross the border or in the US because that substance is not legal there? These are not totally

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

hypothetical issues, these things do happen. There's a lot of human rights and privacy concern with data localization, which is where I would look out for the intent to run into reality. The second point I'd make is that increasingly we're seeing data being categorized by different groups. You may say, financial data might be more globalized than other forms of data. I'd come back to my first example, if I paid for a blood test in Canada with my credit card, is that information personal health or is it financial? So there's lots of devil's in the detail and I think between groups of data that run into each other and data localization, we've got some ways to go on being harmonious.

Catherine McIntyre We'll touch again on harmonization here, but beyond regulation, I wanted to talk about one other thing that has traditionally moved the dial in addressing ethical concerns around things like fossil fuels and tobacco in the past that's been shareholder pressure to change things. So, James, how you are seeing or if you're seeing investors looking at responsible A.I. and technology and data use through an ESG lens? And what do they want to see from companies on that?

James Andrus: Two years ago at CalPERS, I led a group of 16 investment professionals that focused on disruptive technology in the industry, it was led through our Sustainability Investments Group, which is in fact focused on ESG. We were using an ESG lens and looking at AI in all parts of the market. We're not yet at AI and in fact it's more than a decade away if we ever get there and it's important to point out that what we where we are now is that machine learning, in some cases deep machine learning, which means that it's still subject to the input of people. When that happens, it's like it can be manipulated with whoever has their finger on their finger on the button. So the issue we have is that in some cases a failure of accurate reporting with the information that companies now have available, they would, in fact, control the AI from a company perspective and from their own disclosure perspective. It's unclear the quality of the information we are going to get, given that it's not very good. On the opposite end, we do see machine learning taking place and providing valuable pieces of information, but not from a company perspective. The information doesn't come from a

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

company perspective, but its third parties executing their own machine, learning and deep learning techniques in examining companies, and maybe something as simple as examining the number of cars in a parking lot to determine whether or not a company is actually doing adequate business. Or it could be something irrational capital focused on human capital measures and using their own information but using deep learning and information to determine how well companies are performing in human capital management. So there are two things, there's from the A.I. perspective, it's unclear what we're going to get from companies, even though they have the capacity to give us far more information based on the technology because they're reluctant to do so. And then you have AI from third parties are outside that will in fact provide us valuable ESG information. Our preference for variety of reasons is to get the information from the companies, but to upgrade that information. In order to do so, we need better rules around what companies have to provide us.

Catherine McIntyre: We often talk about how regulation isn't keeping pace with technology that is available or technological capabilities. And is that something that you are seeing from your perspective? Is it that regulation has to come in here and put the onus on companies to disclose more of this information?

James Andrus: That is definitely my personal opinion. We need to reimagine the disclosure regime and make use of the available technology. We do not do that, and it's a policy issue. We have two factions, investors who push for greater transparency and I think it's important to mention as well that I chair the Disclosure and Transparency Committee of the ICGN, we do advocate for enhanced transparency in numerous contexts. We do believe that it's available in part because of the technology that's available but companies and auditors and others have greater access to the policymakers and they control the regime and resist us in enhanced disclosures. We need to actually reimagine it and acknowledge that the current regimes that are essentially paper based, time bound, are just archaic. We can have advanced disclosures and the securities laws in most jurisdictions actually require it, require full

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

and fair disclosure, and even in the United States to serve in the public interest, which goes beyond just the console, the concerns of equity investors, and using this to using technology and technology available. In some cases, not even that. Sometimes it's getting companies to disclose the information that's already available to them, given their use of their own technology. We have a situation in which managers have access to the information but they're not sharing it with investors and you create this information gap and it's actually being enhanced instead of closed. The bottom line is we do need to close the information gap and that's best done with the use of technology.

Catherine McIntyre: Marco, do you have input on that, given your work on the technology policy side of the Securities and Exchange Commission. Can you share insight into what's happening at the regulator?

Marco Enriquez: The opinions I'm going to state are my own and I don't reflect that of the commission. I will say that one of the things that I'm privileged enough to do with my current role is to actually meet with other regulators around the world. I very much agree with James that unfortunately, when it comes to other regulators, sometimes we see unfortunate things like there are still paper-based forms that are being filed in the United States right now. Also speaking about corporate disclosures, we require the use of the XBRL structured reporting standard, whereas in other countries they are purely optional. The lack of harmonization in policies unfortunately hurt the downstream investors because they don't have necessarily uniform access to information, certainly without a lot of added effort, or sometimes they would have to pay extra to turn to a vendor who will actually turn those data insights for them. That said, the regulators around the world are aware of these discrepancies and these challenges and we meet fairly frequently to discuss how we could kind of surmount these obstacles together. There are a lot of working groups and we're writing a lot and sharing insights with each other to really address some of these pain points that James has identified. We're making progress in our collaborations, though I will say that the collaborations and the conversations, they're kind of in a fairly nascent stage currently. Speaking about the United States and

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

the finance industry, I will say that perhaps I'm a little biased, but I will say I'm surprised by how great the progress we've made, at least at the Securities and Exchange Commission with regards to how we're using technology, especially to analyze disclosures and also around the responsible use of AI related technologies or machine learning for the purpose of disclosure review. These are really important issues given the fact that we have limited resources that the federal government and the fact that we're thinking carefully about how to responsibly use these emerging technologies really to benefit the downstream investor and investor protection. It's been fascinating to see and I'm very excited for what the future will hold.

Catherine McIntyre: Charlotte, I know that the trust is responsible for managing highly sensitive personal information of hundreds of thousands of retirees. What are some of the security considerations involved with that?

Charlotte Decker: We take a multi layered approach to our security program, and the approach that a security program is never done. We're always constantly refining, enhancing, replacing components of that program. You have boundaries that you try to put in place. Then every step of the way, you have another tool to get to the centre of the candy, which is where your data is and that data is highly encrypted.

Catherine McIntyre: The steps you're taking here is this all driven by regulator? It's like is are these all things that are required?

Charlotte Decker: Well, I think it's driven by the regulators, but we also we have a strong passion to protect our retiree data. It is very valuable in the in the dark market. So the last thing we want for our retirees is that they're their MBI or their Social Security or their personal information is somehow exposed because they are a member of the trust. So I think it just comes from a passion within the leadership of the trust to protect that data at all costs.

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

Catherine McIntyre: We touched briefly on this idea of disclosure requirements and I am curious about this question, about increased disclosure requirements on firms and whether that disadvantages certain firms that may not have access to as broad a pool of data as some of the larger firms. Rohinton, can you share your thoughts?

Rohinton P. Medhora: I'd say just as a broad set of governance point, one of the lessons from the application of GDPR has been that these kinds of requirements almost inevitably fall disproportionately on smaller and medium sized firms than large firms. And that's just that's just plain mathematics that some of these regulations come with fixed costs of compliance. So fixed costs naturally are more onerous, the smaller the denominator. So that's one thing to keep in mind with disclosure that although it's meant to open up transparency and create a level playing field, in practice, it might not. The second question at point, which is of implicit in what you ask, is, does the size of the pool create market imbalances? The short answer is yes. So if you're a small country that doesn't belong to any data zone, then by definition and take think of Canada, we simply wouldn't have the population or the base that generates all the data that we need. Now, there's one or two areas where that's not the case. So the proposals have been made for Canada to find a niche in, for example, natural resource management data or farm or agricultural data in which we would have that critical mass. There are other areas in which, if you're firm in the EU or in the US or for that matter, China, you have access to multiples and multiples of data. At that point and now I'm thinking of what we do, what Big Pharma does with clinical trials. For example, if you want to diversify your database, you have to go elsewhere and obtain that data. This is again, where international harmony or conventions around what kind of data can be gathered by who, for what purpose, how is it stored? How is it used comes into effect. We're going to see these kinds of plurilateral pacts in which de facto data zones are created precisely so that we have economies of scale in the gathering of data.

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

Catherine McIntyre: I want to touch on this idea of the value of data as well. If we're thinking of data like a resource, should we also then consider factors around how that resource was extracted, where policy privacy considerations applied? How transparent is the company that's using the data, were people paid even for their data? Will data be valued differently based on these factors? Marco, are these considerations that are happening among your colleagues?

Marco Enriquez: I could tell you with an emphatic yes, so by the way, the Securities and Exchange Commission has a lot of lawyers, to put it mildly, so we cannot use data willy nilly. Even if it's freely available online, we have to consult with counsel to make sure that that the terms of use are congruent with what we want to use the data for. So we're a very cautious organization in general because we are aware of some of these considerations. Furthermore, recently we have did the president last year had decided that the Open Data Act, which required the appointment of a (CDO) chief data officer at every major government agency. Part of what the chief data officer are supposed to do is to make sure that the data is categorized correctly, so if it's really sensitive or not, and also defined for proper zones for use. So that sensitive data should be in a secure place so that they can be readily accessed in case of the breach speaking to what Charlotte had mentioned earlier.

Catherine McIntyre: Charlotte, from this perspective of the trust if are these things that are being discussed too?

Charlotte Decker: Absolutely, we also have investment data to manage that portfolio of assets that provides the funding for the benefit plan that we support for our UAW retirees. We have sensitive data on both sides of the house, the supply and the demand. So whether it's health care data or investment data, we treat it all as super secret and sensitive and highly encrypted, highly protected. We expect the same out of our vendors. I know that's a big buzzword right now is third party risk management, but

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

we take it to heart to make sure that not only are we're managing and controlling and protecting that data, but our Vendor partners are doing the same thing.

Catherine McIntyre: James, can you speak more to what you're seeing in terms of regulators engaging with investors and boards on striking this balance between privacy on the one hand and the open exchange of information and freedom of expression on the other.

James Andrus I'm going to highlight it first with this: last December, the Federal Trade Commission wrote to nine social media and Internet companies demanding more information on how they collect, store and use customer data. That should blow your mind because the Federal Trade Commission, the institution that's supposed to see this, has to actually write the letter way after the fact. We have rules put in place in 1996 that has let the technology industry go bonkers. For example, given that it's the NCAA playoffs you may win a million dollars, all you have to do is fill out a bracket. If you have a perfect bracket, you win a million dollars but when you sign up, you provide all of your information. That company doesn't need to collect a dollar from you because the company will, in fact, sell your information at probably about ten dollars a pop. Individuals do not receive compensation from companies that sell their information or use their information in all sorts of ways. We're fortunate in California recently with the California Privacy Rights Act which gives more rights to California citizens, but it doesn't extend to anybody else. Even in that context, we were able to benefit from people in the technology industry that actually know enough about the technology to actually begin to draft the rules. So from the example of the Federal Trade Commission, it's clear that, one: you're incredibly far behind and two: you're more likely than not because you're asking general questions, don't know the details required to actually actively protect individuals and we totally have to rely upon, not law, not contracts, but the ethics of the company. I shouldn't think that contracts because you actually comply with the contract, because if you want some sort of particular information, you're asked to click the button on multi-page documents that you don't read because you want the information. You

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

click a button and it binds you, so all the terrible things can happen to you. Interestingly enough, the CPR protects investors, at least in some cases you can get out of the contract, by telling a company, no, delete all my information and they're required to do that unless you owe them money. So we, or people who sit on the opposite side of the table of well-developed industry or at a disadvantage, we're at an information disadvantage and we are at a time disadvantage. We're looking at an industry that is incredibly well entrenched, making so much money that not only do they have an incentive to protect the money they're making, but they actually have the money to fight against any sort of intrusion that would bring back what should be accurate data privacy rights. For most people, if you knew how much money is being made upon information, you just give at a minimum, you'd want some of that compensation and that's clearly not happening.

Catherine McIntyre: Do any of the other panellists want to weigh in on that, particularly the point of whether consumers who are handing over data, knowingly or unknowingly, should be compensated for that.

Rohinton P. Medhora: I think James is absolutely on to something. There's a number of things to unpack, meaningless consent. Yes, this is exactly what Katherine previously asked about regulation and then consumer pressure that that improves standards. The two go hand in hand, we can't simply rely on one. Since you mentioned tobacco and energy, if there's one lesson we've learned from those episodes, it is that you certainly need an educated and demanding public. But that has to be backed up by some teeth and you need carrots and sticks as well. Regulation also creates a level playing field so you don't have races to the bottom. This is why in international trade, we have rules around carbon content or environmental or labor standards and I do see AI or the way data is used as being the next wave in that in which a European Union, will demand to know what the standards were for the data that was used to create that product imported into the EU. Think of that as the next big battle in border carbon adjustment, and that's the next border adjustment that we should be looking out for. Now, on the

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

question of who gets the benefits of data, the textbook answer would be, and I'm not subscribing to it, it doesn't matter if Company X, the company James mentioned, made ten dollars a pop, because if you had a sensible corporate taxation regime, well, that's how the money flows back to the public coffers to create public goods. In practice, we know that these regimes are not perfect. One proposal that I'm intrigued by is the creation of data trusts in which, as you do with your retirement savings, you designate that your data is held for whatever purpose by a firm which then monetizes the data and pays dividends to the people who are shareholders, i.e. the ones who have given it data or have chosen to be members. The other point that is intriguing is the changing role of national statistical agencies. National statistical agencies have gone from producing data once a year or quarterly to gathering data in real time from space, from sensors and indeed from human surveys. This all data is valuable and as central banks garner profits from Cinereach, which are then remitted to the Exchequer, think of national statistical agencies as gathering data for the public good, making money off of that in ways that are regulated, the system that democracy through a public process and then remitting that those profits to the to the state. So we're in the early stages of a conversation that we should be having on the governance of data that goes much beyond its security for X, but really goes to saying what is the sum total of data doing and how does society benefit from it and how do the individuals who've created it individually benefit from it as well?

Catherine McIntyre: One question which arises frequently is the question of the trade-offs between data use and privacy is that it's not the algorithms themselves or the data that's the problem, but it's the people making the algorithms. Either way, it makes for a suboptimal outcome or product, If you're picking bias, negative bias into these algorithms. Charlotte, maybe you can speak to how companies or organizations can address this problem or avoid it in the first place.

Charlotte Decker: The way to address it is through a very strong and rich diversity, equity and inclusion training program for all staff. It starts at the top, including the board

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

for that organization, all the way down to the contributor and with that DEI training program should naturally come more diversity within the staff, within the board, within the leadership. Some of that systemic, inherent human nature bias may go away, but we've been saying that for years and it's difficult, especially when it's so part of the culture within your country. We've certainly seen that here in the States over the past couple of years that racism doesn't go away, it just goes quiet, dormant, and then it winds up again in a very ugly way.

James Andrus: So I would like to speak to that issue as well, when we see an algorithm, it's on a basic level, sometimes it's just a calculation of people making assumptions. The NFL went into a CTE settlement in 2015. In 2017 they adopted a policy where they made an assumption that every African-American athlete is dumber than every white athlete. In order to get paid from the CTE settlement, you have to show diminishing mental capability. Since you start off with the assumption that every black is dumber than every white it becomes harder for an African-American professional athlete to get paid out of the settlement. It's the case where 75% of the athletes are, in fact, black but they're a third as likely to get paid out of a settlement based upon a mathematical assumption that was done and why I'm raising it, it's not a matter of just having diversity in the decision makers, it's about actually making diversity. There was diversity in the decision makers, but among those decision makers, they're getting paid. So greed is even more fundamental in the US than racism. Greed can overcome common sense and other things, even participating in a process where there is an expectation that you would, in fact, would in fact be fair. So there are too many things where ethical people are too far removed from making these decisions, and the fundamental reason in the fundamental controlling factor is greed. There's too much money to be made by putting your finger on the scale and you can't rely or trust people. You basically have to have some process of assurance that it is in fact fair.

Marco Enriquez: To echo Charlotte and James, diversity is a big issue, we really need to start making sure that the biggest tech companies exhibit this diversity because the

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

tools that they create actually have the downstream effect that they are adopted by other folks in other companies. The example I like using is this language model that people use that was created by reading like two decades or decades worth of news articles. People had shown that this happened to be a very sexist language model as it assumed that women should be homemakers and men should be engineers. The mathematical formulation and the people who created the model didn't train it to be sexist, it had picked up on this implicit bias in the news articles that had read a decade's worth. So to the extent that the bigger companies like Google, who typically are the thought leaders in this space, and they released these language models for people to be using in their companies, we should kind of demand more from them with regards to diversity. There are two issues with potential bias and data. So people making bad decisions are kind of creating a model in bad faith, actually, in the recent paper that my colleague published about how regulators in the financial services industry are using A.I., we actually argued that failure to supervise properly is one way that legal theory could accommodate violations of securities laws and how we could go after potential violators. So the news article example is kind of implicit bias that no one really intended. But there's another one that's more purposeful and more harmful and I think that speaks to James' example.

James Andrus: I think since we're focused on big tech, it's also important to understand that there are substantial diversity issues which are, in fact, governance issues. A number of big tech companies based in California are being sued for their lack of diversity but you can't be sued just for lack of diversity. The problem is that you promote diversity in your regulatory materials and in your sustainability information and quite frankly, it's just a lie. For example, Oracle State's diversity and inclusion in our workforce starts at the top and they stated that at a time when there was no diversity on the board of the Department of Labor found that in a four year period, they had only hired six African-American college graduates for their primary hiring opportunity. In 2016 they hired zero. In order to defend Oracle, I would say, we didn't define diversity in any of those materials. Therefore, we can be diverse and not have any African-Americans.

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

So I think it's important when you look at governance and you look at big tech, the data privacy issues are broader and the diversity issues are in fact incredibly important, because what we expect to have happen with the machine learning, the potential A.I. in the absence of diverse populations actually being involved in making decisions that will impact the lives of everyone going forward.

Catherine McIntyre: In terms ethics in A.I. and Big Tech and data, when it comes to data, governance, accountability, is there a need to create a universally accepted statement of ethics around these things? And is that possible? And I Rohinton mentioned we have a universal declaration of human rights and privacy is part of that. Is that effective at this point? Do we need more?

Rohinton P. Medhora: I have argued for exactly that, We as societies need to have some proper conversations on the relationship between new technologies and us, as a group, that inevitably leads to some tricky questions around ethics and collective rights versus individual rights, which are long standing debate in the human rights field. The G20 group of countries and the OECD are working and there's this almost like a growth industry on statements. There's a Montreal statement on ethics and so there's something around ethics and new technologies and we limit to EHI but think about biotech, think about the convergence of Sencion technologies. We're going to really want to have a sense that goes much beyond the one or two sentences in the US are on privacy because it goes much beyond privacy to the use that data are put to, to the question that James and Marco were also mentioning, which is if you have an algorithm that is badly designed or makes decisions that are fundamentally wrong, who is accountable, how many persons, how many different firms? And if you don't have firms if it's all contracted out, where does accountability lie? And once you have groups that are thinking for themselves automatically at that point, it's not clear anymore. So there's a series of next generation issues and ethics that we have to think about. And the first step is to have a broad base of discussion and statement on what we expect of new technologies and why.

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

Catherine McIntyre: I think it's fairly well established that it's the larger Web based companies that have the most access to data and that that data in turn enriches these companies further in this sort of self-propelling system, this presents concerns around fair competition. And as part of addressing that, governments around the world are talking about digital services taxes on these large companies, even if they may not have the physical presence within these borders. What do you think about that approach that that we're seeing from governments around the world on this now?

James Andrus: I think it's necessary for governments to protect their own people in their own commerce. Given the nature of technology, it's not like a physical factory or a plant. You're not selling in many cases of good that you put in the mail. You're selling ideas which do not have a particular location and I think whatever tax regime you create, there's enough money being moved around that those companies figure out exactly what's best for them. As you saw in the Apple case in which there's an ability to locate all sales in a particular location that substantially reduces your taxes so you do that even though commerce is being conducted in across borders and in different locations. So it's reasonable to me that those very countries would develop a taxing regime to make sure you capture the sales that go to your particular jurisdiction so that the government gets the benefit of those particular transactions. How you do that is complex and how you protect it is complex, but it's very reasonable that governments move to actually do that.

Catherine McIntyre: Are there technology, resources or platforms out there for board and executive recruitment and succession planning? Does that technology exist?

Charlotte: I don't know if there's technology, but there's organization in like "In forum" here in Michigan, and I think it's national as well as for "Women on boards" is another organization. I'm not sure if there's a technology platform, but those very specific skills

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

that each board needs, whether it's technology audit, legal, those types of credentials are the ones that and experiences are the ones that help get you on board as well.

James Andrus: So the answer for me would be Equilar. It was established to keep track of executive compensation data. So they have information on every person who's in the top five of a publicly traded company as well as every person who actually sits on a board. If they have a database that provides information on probably the largest set of potential directors. That's going to use their own proprietary technology in providing that information.

Catherine McIntyre: Do you see other institutional investors in the US requiring any information or disclosures on ethical tech issues from their asset managers?

James Andrus: The answer is yes, but the source of it is through ILPA, I think many investors, many limited partners, actually use the ILPA diligence questionnaires. And there are guidelines in terms of asking the questions. Whether or not those guidelines go deep enough is another question, but I think it is the most substantial body of due diligence asking those particular questions. Now, there's an issue in a focus on ethics because ethics comes along with no legal requirement whatsoever. So what people actually focus on is actually the contractual information. If there's an ethical violation, you can certainly choose not to invest with that particular provider later on but nothing's going to happen. If there's a contractual violation, so there are other issues involved and then we're dealing with complex issues enough that what's ethical is very much in the eye of the beholder or in the eye of what someone's already established, is that if there is a body that basically establishes this is what meets ethical requirements, it was just a statement of a company that you behave ethically or in a particular circumstance that comes with no contractual or legal obligation that anyone has to abide by. We need to be careful. So in some cases, what we need is actually stronger contracts as opposed to commitments to ethics, because you can't hold someone to that because you can quickly transfer it. Then quickly, in an example, in the US, mortgages are

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

nonrecourse. So if your house goes down in value and even though you have the capability of paying your mortgage, you don't have to. And someone argue, well, if you're not paying your mortgage, it's unethical, you're not paying a debt. It's like, no. The contract I signed up to is that as long as I want to pay my mortgage but finished paying it, it's it. If I choose not to pay my mortgage, the deal I struck the house is goes to the bank. Now, some might consider that as being unethical view of things, but from a contractual basis, it's totally correct, and if it's totally correct, how can it be unethical?

Catherine McIntyre: Why can't this be simplified into four or five bullet points? Do you have what are your thoughts on the way in which we go about getting consent for things like using data or software?

Rohinton P. Medhora: Look, it cannot be summarized into a few bullet points for the same reason that no contract you signed, be it for a mortgage to get a credit card, is actually that short. I just signed off on the mortgage, so I know, it might have been 17 pages, but I had a lawyer explain in simple English groups of clauses saying this basically says this. You could certainly have a summary document. There are explanations on the Web on what you're actually signing off to. Most of this can be compressed into saying basically that you've given away use of your data to the firm and you do not have legal recourse. Now, there's some argument to be made that some of these contracts are not binding. I have a colleague working on a paper on exactly that point. If they're if there's a test case, then they're found to be null and void. What happens to all that data? Who does it belong to? Generally speaking, the common sense explanation of what we signed on to is available or could be made available but I don't think we're anywhere near getting rid of those legal contracts for the same reason that we're not near doing that in any industry. So I wouldn't just I wouldn't just blame the digital firms on this one.

Catherine McIntyre: Do you see the role for exploring justice considerations in a firm's technology and data governance policies and by justice considerations I'm referring to

**ICGN**

International Corporate Governance Network

Kindly sponsored by

**Diligent****SANDS CAPITAL****The Governance of Big Tech****23rd March 2021****Hosted by NASDAQ OMX**

ensuring that the rights of parties involved are protected and that the parties are involved in decision making regarding the technology.

James Andrus: So and I think we need something like that, but I think it's important to realise that when you go to the table to negotiate something that you find appropriate, you're at a disadvantage in part because the people on the other side have a larger financial incentive and have been doing it longer and have more knowledge of the effect of technology. Now, granted, our side has gained some advantage. Notably, I think if some people have seen the social network on Netflix, where basically you have people who actually participate in developing the technology that keeps our eyes on our handhelds, made their money, felt guilty and come back and out the institutions that they formerly worked for. Now, this provides us great information, but it doesn't go to the level we need to actually develop a regime that will, in fact, be fair. And so when you say rights protected, you're not talking about one single thing, about one right to be focused on. You're talking about hundreds of rights and many of which have financial components attached. And the question is, is it possible to actually negotiate through those? And so the issue becomes when this takes place, we need to be able to go to the table with the best information available, the best talent available to negotiate something that's proper for our side. Otherwise, we end up with what we found in Section 230 from 1996 in which it only favours certain technology companies in the consumers. In effect, the advantage of.

ENDS