

Senator Thom Tillis

Questions for the Record

Senate Judiciary Competition Policy Subcommittee Hearing

“The Impact of Consolidation and Monopoly Power on American Innovation.”

Dec. 15, 2021

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1. Could you explain how intellectual property is important for start-ups who are seeking investment opportunities?

For some startups, especially those in the life sciences industry, having a strong IP strategy in the early days is critical. But for the vast majority of consumer and enterprise software technology startups, IP strategy is not very important. The most important thing in the early days is to get to Product Market Fit

<https://www.ycombinator.com/library/5z-the-real-product-market-fit>

2. Is having a strong, well-functioning, intellectual property system necessary for you as an innovator?

Yes, but there are many more important factors for early stage startups. I would rank it very low on the priority list for early stage startups (pre-Series A).

3. Your testimony states that big tech is attempting to thwart efforts at interoperability, and cites the case of *Facebook v. Power Ventures*. In that case, when holding Power Ventures liable, the judge distinguishes the *user* consent from consent of the *platform* as the difference between a *user* consent to access a safety deposit box at a bank from the bank’s separate access requirements.
 - a. Do you agree with the judge’s reasoning, that consent from both the user and the platform is required?

As a policy matter, I think that users should have the freedom to download a copy of all their messages sent and received on a communication network. They should have the freedom to choose which applications they use to connect to a communication network. They should have the freedom to continue to communicate with family and friends who are on different communication networks.

I am not a lawyer, so I can't weigh in on the judge's reasoning.

- b. Are there situations in which barriers to interoperability may be necessary to ensure security or functionality of the platform?

There is a lot of abuse, spam and other ways that a communication network can be overwhelmed. However, there are many examples of how interoperable networks can thrive even with constraints. Good examples where interoperability makes the system even more secure and reliable are the internet, email, today's wireline and wireless telecommunication networks.

- c. Does Beeper's terms of service prohibit automatic devices from accessing the service, or prohibit uses that could damage or impair the service?

We block and/or delete the account of anyone who uses Beeper for purposes like those. Our full terms of service is available at <https://www.beeper.com/terms>

- d. Should companies be *required* to make their systems interoperable, even where it poses cybersecurity or other risks? If so, how should that be achieved?

No computer system is perfect. The many publicized failures of iMessage, WhatsApp et al are living proof of that. Interoperable open source end-to-end encrypted networks (like Beeper) have the potential to be even more secure because they are not closed black-box systems. Security professionals can inspect our code and analyse the encryption algorithms. Users can make informed decisions about whether they should trust how the system works.