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Possible Anticompetitive Efforts to Restrict Competition on the Internet
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Good morning. Thank you for the opportunity to testify on this important topic.

Let me preface my remarks by saying I'm not speaking on behalf of CNET News.com. Rather, I'm going to make some brief points based on my own personal experience as someone who writes about technology policy and the people who work in this industry. Before starting at News.com in June, I spent four years as the Washington bureau chief of Wired News and before that working as a reporter at Time Inc.

I'll limit my remarks to a summary and refer anyone who's interested to the full text of my prepared statement, which should be available at the ftc.gov site.

I want to start by recognizing that in some cases state governments have legitimate authority in regulating shipments of products into their states. As we'll no doubt hear this week, the 21st Amendment includes a rare specific constitutional grant of power to state governments to regulate specific products. Representatives of some industries that financially benefit from existing regulatory structures, such as car dealers, claim to provide valuable services to consumers that Internet sales cannot replicate. Optometrists and opticians raise safety concerns.

There may be some truth to those arguments. But I would urge the commission to weigh the costs that state regulations impose on consumers against the benefits that would accrue if the regulations were to be removed. I believe the costs of the regulations outweigh any benefits.

On a personal note, two days ago I was visiting wineries in Sonoma Valley, California, which is one mountain ridge to the west of Napa Valley. I wanted to sign up for wine clubs at some wineries, such as Artesa Winery, which keep your credit card number on file and send you three or four bottles of wine every few months. But because I live in Washington, DC, the form said I couldn't join. At the wineries I visited, only a handful of states are authorized for shipments, with West Virginia being the closest to us.

Now, this is not a new debate. Advances in technology often disrupt existing methods of doing business. Until the mid-15th century, first scribal monks sanctioned by the Church and then their secular counterparts at scriptoria, or writing shops, were how Europe mass-produced documents. Then a goldsmith named Johannes Gutenberg created a printing press, changing the way bulk documents were printed by providing a better, cheaper alternative to scriptoria.

In the mid-19th century, the French economist Frédéric Bastiat wrote an essay called "A Petition." It purports to come from the French association of candle makers and lighting manufacturers. It complains about unfair competition from the sun, saying:

"We ask you to be so good as to pass a law requiring the closing of all windows, dormers, skylights, inside and outside shutters, curtains, casements, bull's-eyes, deadlights, and blinds—in short, all openings, holes, chinks, and fissures through which

the light of the sun is wont to enter houses, to the detriment of the fair industries with which, we are proud to say, we have endowed the country, a country that cannot, without betraying ingratitude, abandon us today to so unequal a combat."

About 100 years later, another economist, Joseph Schumpeter, popularized the term "creative destruction." Borrowing a term from biology, he also called it "industrial mutation." He said that the opening of new markets incessantly revolutionizes the economic structure from within, incessantly destroying the old one, incessantly creating a new one.

That is even more true today. The policy arguments we're here today to talk about are not new. Mail order businesses create some of the same concerns. But the ability of the Internet to link buyers and sellers with little regard for political boundaries makes the resolution of these topics more pressing, with far more at stake. The opening of new markets is creating a new economic structure, offering consumers lower prices and more choices – or at least it would if state regulations did not stand in the way.

Offshore businesses are another market disruptor and creator. In the long run they may render state regulations far less desirable. Perhaps items that are heavy and bulky like cars and funeral caskets won't be ordered from websites that are outside the reach of U.S. law. But other products, like contact lenses, are more likely candidates. If legitimate U.S. companies can't sell their products nationally because of state barriers to electronic commerce, the resulting higher prices means an overseas market that is unregulated and not taxed by any U.S. jurisdiction may become more attractive to consumers.

Nobody likes competition, and today's middlemen who argue that the scale of the cost-benefit analysis must be weighted differently are no exception. Perhaps Internet firms also will echo the French candlemakers eventually, and we'll be back here in 20 or 30 years arguing that the big entrenched Internet companies of tomorrow are trying to stifle competition in the next upstart, disruptive technology.

But today, of course, that's not the case. The costs of maintaining these existing state regulatory structures outweighs the benefits and hinders the process of creative destruction that lowers prices and helps consumers.