

TRAINING & DEVELOPMENT PROGRAMME

Knowledge Network

Webinar Series

Shift and Ctrl: Who should be in charge of Big Tech Companies?

Theme – Examining regulation and governance in Big Tech companies

Wednesday, 13 January 2021 | 8.30 am to 9.30 am



Professor Blanaid Clarke

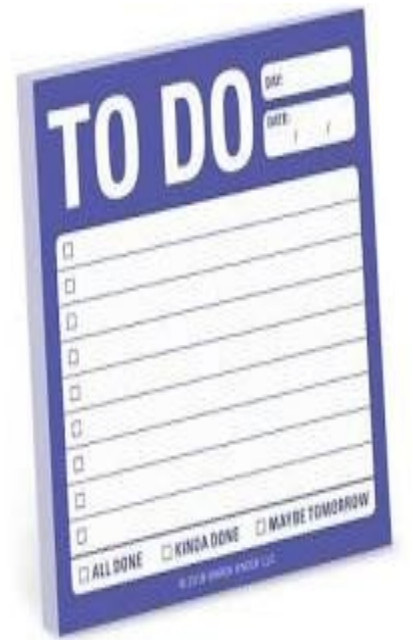
McCann FitzGerald Chair of Corporate Law
Trinity College Dublin



Presentation

Governance

1. Introduction to Big Tech Companies
2. Existing Controls
3. European Digital Strategy and AI
4. Governance Solutions



S&P 500 gains halved without Big Tech stocks

Index performance rebased to the start of the year

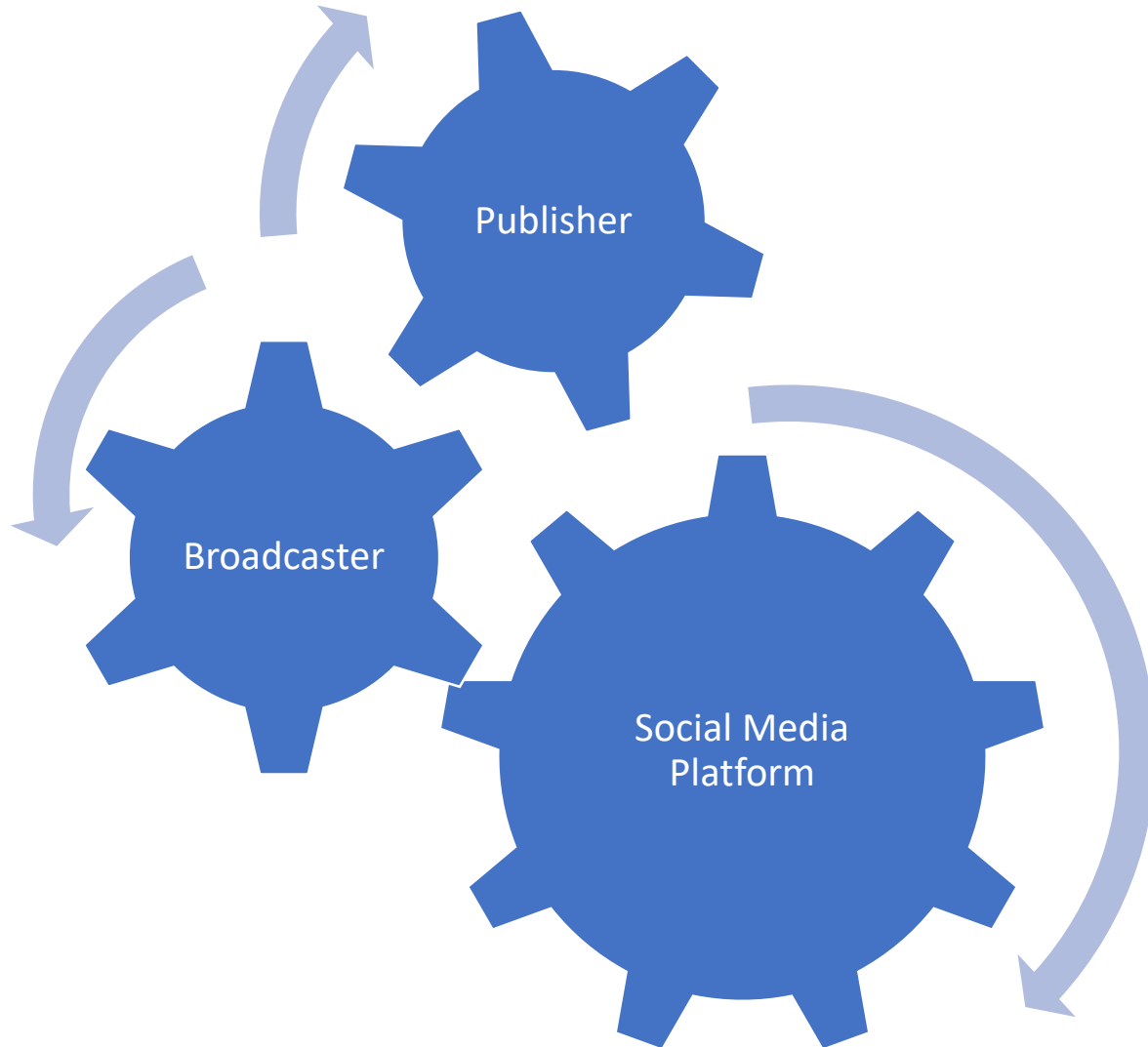


Source: [Schroders](#); [Refinitiv](#)

TECHMONITOR

How to Regulate? ---A Private Company

Social Licence?



**Private
Gatekeeper**

**Public
Utility**

Regulator

2. Existing Controls












Regulation

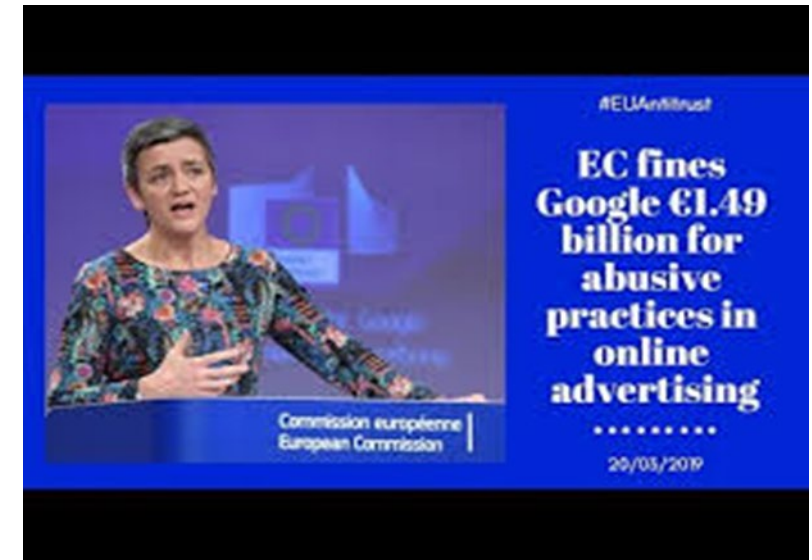
We are **subject to a variety of laws and regulations in the United States and abroad** that involve matters central to our business. **Many of these laws and regulations** are still evolving and being tested in courts, and **could be interpreted in ways that could harm our business.**

These may involve privacy, data protection and personal information, rights of publicity, content, intellectual property, advertising, marketing, distribution, data security, data retention and deletion, electronic contracts and other communications, competition, protection of minors, consumer protection, telecommunications, product liability, taxation, economic or other trade prohibitions or sanctions, anti-corruption law compliance, securities law compliance, and online payment services. In particular, we are subject to federal, state, and foreign laws regarding privacy and protection of people's data.



Active and completed probes into tech companies

Company	Investigator	Investigating
 Facebook	FTC, state attorneys general	Competition, Privacy
 Facebook	FTC	Privacy
 Facebook	House Judiciary Committee	Acquisitions
 Google	DOJ, State attorneys general	Competition, advertising
 Google	House Judiciary Committee	Competition
 Amazon	FTC	Competition
 Amazon	House Judiciary Committee	Competition
 Apple	House Judiciary Committee	Competition
 Amazon, Messenger, Reddit	FTC	Privacy, data collection
 WhatsApp, Facebook, LinkedIn	FTC	Privacy, data collection
 YouTube, Twitter, Snapchat	FTC	Privacy, data collection



“The European Commission has opened a formal antitrust investigation to assess whether Amazon's use of sensitive data from independent retailers who sell on its marketplace is in breach of EU competition rules. November 2020”

China's central bank orders Jack Ma's Ant Group to overhaul business

Fintech giant accused of 'turning a blind eye' on regulatory compliance issues

“By controlling access to markets, these giants can pick winners and losers throughout our economy. They **not only wield tremendous power, but they also abuse it** by charging exorbitant fees, imposing oppressive contract terms, and extracting valuable data from the people and businesses that rely on them.”

INVESTIGATION OF COMPETITION
IN DIGITAL MARKETS

MAJORITY STAFF REPORT AND
RECOMMENDATIONS

SUBCOMMITTEE ON ANTITRUST,
COMMERCIAL AND ADMINISTRATIVE LAW
OF THE COMMITTEE ON THE JUDICIARY

Jerrold Nadler, Chairman, Committee on the Judiciary

David N. Cicilline, Chairman, Subcommittee on
Antitrust, Commercial and Administrative Law



UNITED STATES
2020



The Twitter Trust and Safety Council

Advisory groups:

Overview

Online Safety and Harassment

Human and Digital Rights

Child Sexual Exploitation

Suicide Prevention and Mental Health

Dehumanization

The Human and Digital Rights group engages Twitter on priority challenges and policy issues in the realm of human rights, free expression, civil liberties, and defending the digital rights of people on Twitter.

[Article 19](#) [@article19org](#)

[Center for Democracy & Technology \(CDT\)](#) [@CenDemTech](#)

[Civil Rights Defenders](#) [@crdefenders](#)

[Committee to Protect Journalists](#) [@pressfreedom](#)

[Digital Rights Foundation](#) [@DigitalRightsPK](#)

[Front Line Defenders](#) [@FrontLineHRD](#)

[Fundación para la Libertad de Prensa \(FLIP\)](#) [@FLIP_org](#)

[Human Rights Foundation](#) [@HRF](#)

[ICT Watch](#) [@internetsehat](#)

[Internet Sans Frontieres](#) [@Internet_SF](#)

The Washington Post

Breaking News

News Alert

Jan. 7, 11:00 a.m. EST

Trump banned from Facebook indefinitely, CEO Mark Zuckerberg says

The move was a sign of escalated actions by tech giants in the face of growing social unrest at the end of President Trump's term in office.



Twitter Safety  @TwitterSafety · Jan 8

⋮

After close review of recent Tweets from the [@realDonaldTrump](#) account and the context around them we have permanently suspended the account due to the risk of further incitement of violence.



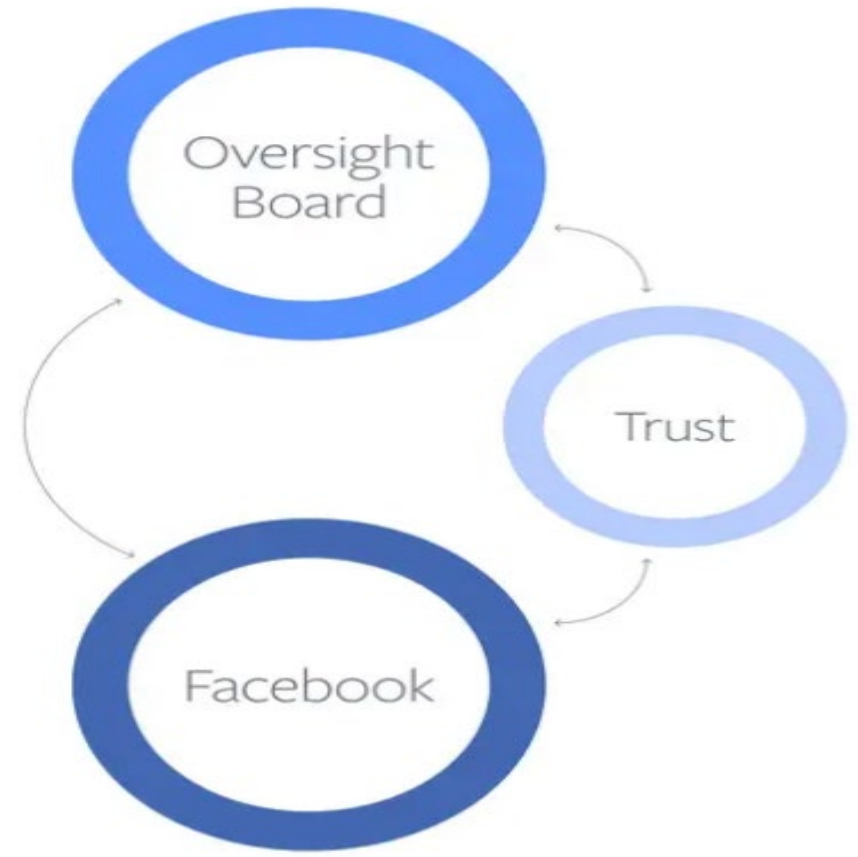
Permanent suspension of [@realDonaldTrump](#)
Suspension of [@realDonaldTrump](#)
blog.twitter.com

Google scraps AI ethics council after backlash: 'Back to the drawing board'

Decision comes after employees called for the removal of a rightwing thinktank leader from the council



▲ Google announced last week it had started a council dedicated to advising on ethical questions related to facial recognition and machine learning and consulting 'diverse perspectives' on its work. Photograph: Stephen Lam/Reuters



Boards

Auditors

Employees

Service Users / Public

Shareholders

Mark Zuckerberg
CEO/Chairman



Board: **CEO/Chairman**, COO and 7
NEDS (4 female directors)

Shareholders: Mutual fund holders
(45.91%), Other institutions
(33.57%) and Individual
stakeholders (2.29%)

Dual-class stock: CEO controls
57.9% of the total voting shares



Jeff Bezos
CEO/Chairman

Board: **CEO/chairman**, and 10
NEDS (5 female directors)
Shareholders: Mutual fund holders
(32.64%), Other institutions
(25.81%) and Individual
stakeholders (11.47%)

Bezos owns >10%

Jack Dorsey CEO



Board: CEO, and 10 NEDS
(including independent
Chairman)(3 female directors)

Shareholders: Mutual fund holders
(40.02%), Other institutions
(36.04%) and Individual
stakeholders (11.86%)

Dorsey owns circa 2%

Twitter's Jack Dorsey plays defence as Elliott Management circles FT 5/3/20

Chief defends his role at Square and mulls putting off Africa trip after activist called for his ouster

3. EU Digital Strategy - Communication Shaping Europe's digital future COM(2020) 67 final

**Technology
that works for
people**

**A Fair and
Competitive
Digital
Economy**

**An Open,
Democratic
and
Sustainable
Digital
Economy**

**Europe as a
Global Digital
Player**

Digital Skills & Jobs
Artificial Intelligence
Cloud computing and
Blockchain
High-Performance
Computing and Quantum
Technologies
Connectivity
5G and Internet of Things
Cybersecurity
Digital Inclusion
Photonics and Electronics

Data
**Online platforms and
eCommerce**
Copyright
Digitising European
Industry
Start-Up Europe
The Digital Economy
& Society Index

Disinformation
**Media and Digital
Culture**
Trust and ePrivacy
eHealth,
eGovernment
Smart Cities
Safer Internet
Women in ICT

Foreign Policy
Standardisation
Next Generation
Internet

Big Tech and Artificial Intelligence

- Who should be responsible for AI Governance?
- “AI capabilities are highly **concentrated** in the hand of a few commercial actors with **access to the largest data sets, resulting in an asymmetry of power** with respect to other commercial players and even public sector bodies” – D.Lewis et al (2019)
- “AI is reshaping Finance”
- Enormous **cost and research intensive nature** of high level research (“deep learning) leads to only a small number of big technology companies engaging eg Microsoft exclusive licence of GPT-3 an innovative new natural language processing algorithm.

In response to claim on tech forum Hacker News that GPT-3 has consciousness, **the model itself wrote a rebuttal:**

‘To be clear, I am not a person. I am not self-aware. I am not conscious. I can’t feel pain. I don’t enjoy anything. I am a cold, calculating machine designed to simulate human response and to predict the probability of certain outcomes. The only reason I am responding is to defend my honour’

Digital Services Act COM(2020) 825

- Increased safety for user from illegal and harmful content
- Increased transparency of platforms incl. operation of algorithms
- Better enforcement across single market
- Risk Assessment & Mitigation for very large online platforms eg independent Audit, Compliance Officer reporting to the highest management level of the platform, increased reporting and Codes of Conduct

Digital Markets Act COM(2020) 842

- Obligations for certain providers of core platform services (size, users and durability)
- Ex-anti rules on the use of data, interoperability, self-preferencing etc
- Market Investigations and remedies

Digital Services Act - Systemic Risks

Recital 56 - Very large online platforms are used in a way that strongly influences safety online, the shaping of public opinion and discourse, as well as on online trade. The way they design their services is generally optimised to benefit their often advertising-driven business models and can cause societal concerns. **In the absence of effective regulation and enforcement, they can set the rules of the game, without effectively identifying and mitigating the risks and the societal and economic harm they can cause.** Under this Regulation, very large online platforms should therefore assess the systemic risks stemming from the functioning and use of their service, as well as by potential misuses by the recipients of the service, and take appropriate mitigating measures.



Dissemination of illegal content and
conduct of illegal activities



Impact of the service on the exercise of
fundamental rights



Intentional manipulation of the
platform's service

Interview with Thierry Breton, Internal Markets Commissioner 10/1/2021
POLITICO

With the DSA, Europe has made its opening move...But the challenges faced by our societies and democracies are global in nature. That is why the EU and the new U.S. administration should join forces, as allies of the free world, to **start a constructive dialogue leading to globally coherent principles.**

The DSA...**can help pave the way for a new global approach to online platforms** — one that serves the general interest of our societies. By setting a standard and clarifying the rules, it has the potential to become a paramount democratic reform serving generations to come.

4. Solutions: Banks as an Exemplar ?



Size and Significance



Need to protect tech users



Too big to fail/to jail/ to care



Poor risk management



Cultural and Ethical Problems



Complex/Information Asymmetries
Opaque Decision Making

Governance Solutions

- **Board Composition Rules and Fitness & Probity assessments** – see *EU Commission, Study on Directors' Duties and Sustainable Corporate Governance* (July 2020)
- **Regulating Takeovers / Qualifying Shareholders** – see UK National Security and Investment Bill 2020
- **Increased Fiduciary Duties for all directors** – see: Stigler Committee on Digital Platforms Final Report (2019); EU Commission Study on Directors Duties and Sustainable Corporate Governance (2020); Credit Institutions (Stabilisation) Act 2010
- **Designated Directors representing public interest or appointment of public interest directors** – “public interest director” appointments in 2008
- **Cultural Risk Regulation and Supervision** – CRD IV
- **An Oversight Body** – see: proposed Digital Markets Unit in UK: Media Commission under AMSD; DSA



Human-centric approaches to technological innovation.

Five year International and Interdisciplinary fellowship programme supported by the prestigious European Commission, Horizon 2020 Marie Skłodowska-Curie Co-Fund Action.

[Learn more](#)

Led by the Trinity Long Room Hub Arts and Humanities Research Institute (TLRH) and **ADAPT**, the Science Foundation Ireland Centre for Digital Content Innovation at Trinity College Dublin