

Wild Wild Tech...Regulation

By: William Crozer

Big tech is under fire on Capitol Hill and in states across the country. Policymakers are concerned about a variety of issues from market concentration and real or perceived anticompetitive practices to the role of algorithms in delivering content, content moderation, child safety, and other consumer protection concerns. An undercurrent to this dynamic is an increasing concern about foreign control and competition over platforms and supply chains with a strong eye towards China.

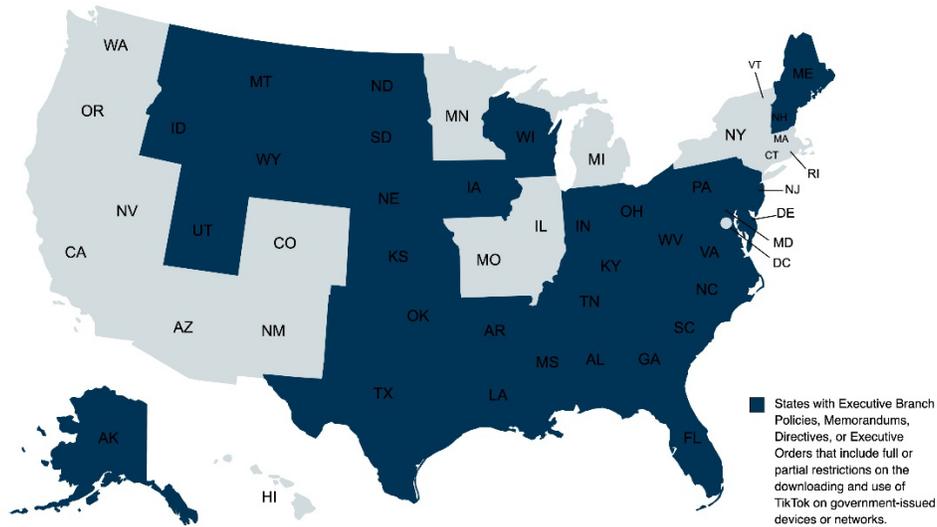
In Washington, like in the states, tech companies have drawn bipartisan fire from lawmakers. The Administration and Congress have focused their efforts principally in three main areas: privacy, algorithmic responsibility, and competition. In a January 2023 [op-ed](#) to Congress, President Biden wrote, "I'm concerned about how some in the industry collect, share and exploit our most personal data, deepen extremism and polarization in our country, tilt our economy's playing field, violate the civil rights of women and minorities, and even put our children at risk". Missouri Senator Josh Hawley (R, MO), an outspoken critic of social media companies, fired in from the right stating in an [op-ed](#) that now was the time for Congress to pass "transformative change" to protect children online.



While there appears to be growing bipartisan movement in Washington, including around crafting a federal data privacy law and online safety legislation, states are forging ahead, driven by consumer protection and parental groups and sharp political calculations. As is true across many major policy issues, California is the so-called pace car. Just last year, Governor Gavin Newsom (D, CA) signed two sweeping measures into law. One ([AB 587](#)) requires social media companies to publicly post their policies on hate speech and disinformation as well as provide details on their content moderation activities to the state. The other ([AB 2273](#)) requires online platforms to consider the best interest of child users and to default to privacy and safety settings that protect children's mental and physical health and wellbeing.

California is not alone as of late. While state TikTok bans have grabbed headlines - more than 30 states have enacted bans or restrictions on government issued devices – a legislative trend is emerging around age verification and parental consent, which is drawing bipartisan support. In Utah, lawmakers recently passed legislation ([SB 152](#)) requires social media companies to verify the age of users and obtain

parental consent to create accounts for minors. Another bill ([HB 311](#)) would prohibit social media companies from utilizing features that promote addiction to their platform among minors. In Ohio, Governor Mike DeWine and Lt. Governor John Husted are promoting a measure - the [Social Media Parental Notification Act](#) - that requires social media companies to obtain a parent's permission for children under 16 to sign up for social media and gaming apps. Similar bills have been introduced in Connecticut ([HB 5025](#)) and Iowa ([HB 223](#)), just to name a few.



States with Executive Branch Policies that include full or partial restrictions on the use of TikTok on government-issues networks or devices

“Big tech” also remains squarely in the bullseye of State Attorneys General on both sides of the aisle. Through lawsuits to investigations, AGs are illustrating the momentum at the state level while efforts on Capitol Hill start and stall. Nearly every state is suing Google and Meta over anti-competitive concerns. Amazon is under fire from California and the District of Columbia on similar grounds. Investigations have been launched into Instagram and TikTok relating to potential harm to children. All of these efforts illustrate where AGs are directing their consumer protection priorities and evidence what is to come in 2023 and beyond. It is worth continuing to watch the spotlight on social media companies. AGs from both sides of the aisle are investigating the role of these platforms (and their algorithms) in facilitating human and drug trafficking to exacerbating youth mental health challenges.

Taken together, this cumulative state level activity is creating an uncertain operating environment for tech companies governed by a disparate set (i.e. state to state) of rules and regulations. It also highlights an interesting dynamic, that being the competing pressure to promote domestic technology and innovation while also protecting consumers. Billions of dollars in federal stimulus are being poured into bolstering a 21st century supply chain and workforce (see the CHIPS and Science Act), while at the same time policymakers and regulators are pursuing antitrust actions against tech companies and passing potentially market altering laws and regulations.

Data privacy laws are a prime example. Five states have comprehensive data privacy laws on the book (CA, CO, CT, UT, and VA). The Illinois Biometric Information Privacy Act (BIPA) stands out among the rest

as it is the only state biometric privacy law that authorizes a private right of action, which according to a [report](#) from the U.S. Chamber's Institute for Legal Reform, has led to more litigation abuse than consumer protection. As more states consider data privacy and related measures, the question remains whether these laws will cripple any competitive advantage borne by historic federal stimulus dollars.

Looking ahead, we cannot escape the maxim that technology moves faster than policymakers and the law. The ongoing debate in Washington and the grab bag of laws and regulations being considered across states evidence this. The question is when, if ever, will advances in technology and efforts by tech companies themselves adequately address consumer protection concerns and whether this will satisfy policymakers and regulators. Until then, it promises to be a bumpy ride.