

THE RACE TO REGULATE IS ON - WHAT'S IN STORE FOR TECH OVERSIGHT IN 2020

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Legal Briefings - By **Anna Jaffe**

As the era of 'move fast and break things' ends, global regulators will be striving to police tech giants in 2020

With headlines accumulating, and calls for regulatory action accelerating, 2019 ended the decade with the rise of the techlash and the end of '[permissionless innovation](#)'. As we move into the 2020's with these long-simmering trends continuing to erupt, how will the [race to regulate](#) 'big tech' play out?

Technology providers have been forced to rethink the Silicon Valley mantra 'move fast and break things', yet regulators have demonstrated the contrary, signalling they are unafraid to implement change. However, the reactive and piecemeal manner in which laws have been swiftly passed lack a holistic, global view of the digital ecosystem.

As public concerns that regulation is failing to keep pace continued to increase, we saw a greater openness to use regulatory alternatives to 'fill' the gaps. [Internationally](#), consideration is being paid to the capability of human rights and more prominently ethical frameworks in responding to new and emerging technologies, in particular artificial intelligence.

SO WHAT'S ON THE CARDS FOR 2020?

As January has already proven, many of the concerns motivating the 'techlash' in 2019 will remain at the forefront of technology regulation in the new decade. In particular, with the rise of artificial intelligence and the corresponding capability of new and emerging technologies to store, consume, learn from and generate ever-increasing amounts of (highly personalised) data, technology providers will continue to reckon with the broader issues and implications of their solutions. The question of whether all companies, not just technology providers, can maintain their social licence to operate in the digital economy will remain.

THE TECHLASH GETS BROADER... BUT PERHAPS NOT DEEPER

This is demonstrated in the way that the ‘techlash’, initially focused on the market power of, and the use (and potential misuse) of data by, ‘big tech’, has expanded outwards — a trend that is likely to continue.

2020 kicked off with Microsoft’s plan to be [carbon negative](#) by 2030, a goal that extends through its supply chain. This announcement reflects the reality that, although the technology sector is confronting its own unique challenges, it is also not immune from the environmental, social and governance (**ESG**) factors influencing other companies in a wide variety of industries. Indeed, technology providers could have a particularly central role to play, given their size, influence and capacity to contribute to innovative technological solutions in these areas.

Conversely, although the sector is likely to need to respond to a broader range of issues and public concerns, it is not clear that the current focus on big tech will materially intensify. For example, although a number of market regulators have commenced, or are considering, various actions in relation to large technology providers, we are unlikely in the short term to see successful proposals to ‘break up’ these companies.

GLOBAL CONSENSUS PROVES ELUSIVE

The piecemeal, reactive global approach to technology regulation that was emblematic of 2019 has continued into 2020. The clearest example of this is in the current debate over the use of facial recognition technology, largely by government and law enforcement agencies. That debate suffers from a [narrowness of focus](#) in relation to facial recognition technology as used by the public sector, rather than considering the broad universe of both private and public sector applications of biometric identification technologies. It is also evidence of clear and pronounced divergences in regulatory responses — in the absence of global consensus, not only have federal and state regulators differed in their approaches, but local regulators have often stepped in to set their own approach (for example, in San Francisco’s proposed ban on such technologies).

This failure to reach substantive consensus on specific technology regulatory issues is also compounded by broader geopolitical factors, including trade wars and political concerns of data sovereignty. In 2020, although there will be greater recognition of the value of greater harmonisation in technology regulation, this is unlikely to truly materialise.

MIND THE GAPS: GIVING TEETH TO ETHICAL APPROACHES

In the absence of this harmonisation, the buzz around ‘ethics in AI’ and other public policy-based approaches to emerging technology will not abate. However, we are likely to see increased scepticism of the practical ability of many of these ethical frameworks and principles, as they currently stand, to effect meaningful industry-wide change. This is especially the case where — as today — these frameworks are fast proliferating, but are often specific to individual companies or smaller groups of providers.

In order to avoid charges of 'ethics-washing', these frameworks will need to quickly mature. In 2020, all stakeholders are likely to need to move faster to not only define and adhere to widely accepted norms of 'ethical' conduct, but also to ensure that the consequences for failing to meet these norms are clear and robust.

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JULIAN LINCOLN
PARTNER, HEAD OF
TMT & DIGITAL
AUSTRALIA,
MELBOURNE
+61 3 9288 1694
Julian.Lincoln@hsf.com



HAYLEY BRADY
PARTNER, HEAD OF
MEDIA AND DIGITAL,
UK, LONDON
+44 20 7466 2079
Hayley.Brady@hsf.com



MARK ROBINSON
PARTNER, GLOBAL
CO-HEAD OF TMT
SECTOR, SINGAPORE
+65 68689808
Mark.Robinson@hsf.com



ALEXANDRA NERI
PARTNER, PARIS
+33 1 53 57 78 30
alexandra.neri@hsf.com