



NewStreet
Research

Big Tech and Government Face Off:

Policy, Politics and Litigation All
Around the World


A quarterly update from the New
Street Policy Research Group


Q4 2022


Agenda

- 1 Policy risk “heat map”: takeaways
- 2 Company impacts
- 3 Policy trends
- 4 Overrated or underrated?

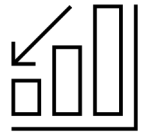
Policy risk “heat map”

 Federal legislation	Likelihood (1 = unlikely, 5 = almost certain)	Big Tech				
		Alphabet	Amazon	Apple	Meta	Microsoft
Antitrust: non-discrimination	2	5	5	5	4	4
Antitrust: portability and interoperability	1	2	2	4	2	2

 Regulatory	Likelihood (1 = unlikely, 5 = almost certain)	Big Tech				
		Alphabet	Amazon	Apple	Meta	Microsoft
FTC issues rules on privacy/security that survive legal review	2	4	4	4	4	4

 Litigation (likelihood of Big Tech company loss)	Likelihood (1 = unlikely, 5 = almost certain)	Big Tech				
		Alphabet	Amazon	Apple	Meta	Microsoft
Antitrust: FTC, DOJ, and state AG suits against Alphabet	2	5	3	3	3	3
Antitrust: FTC, DOJ, and state AG suits against Apple	2	4	3	5	3	3

Policy risk “heat map”: Takeaways



**Decline in
overall risk**

1



**Apple risk remains
undervalued;
Meta overvalued**

2



**Increase in risk
for Big Tech's
competitors**

3

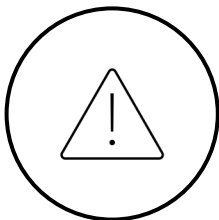
Takeaway 1: Decline in overall risk

16% drop
in overall risk

Driven by...



Decreasing risk of federal legislation

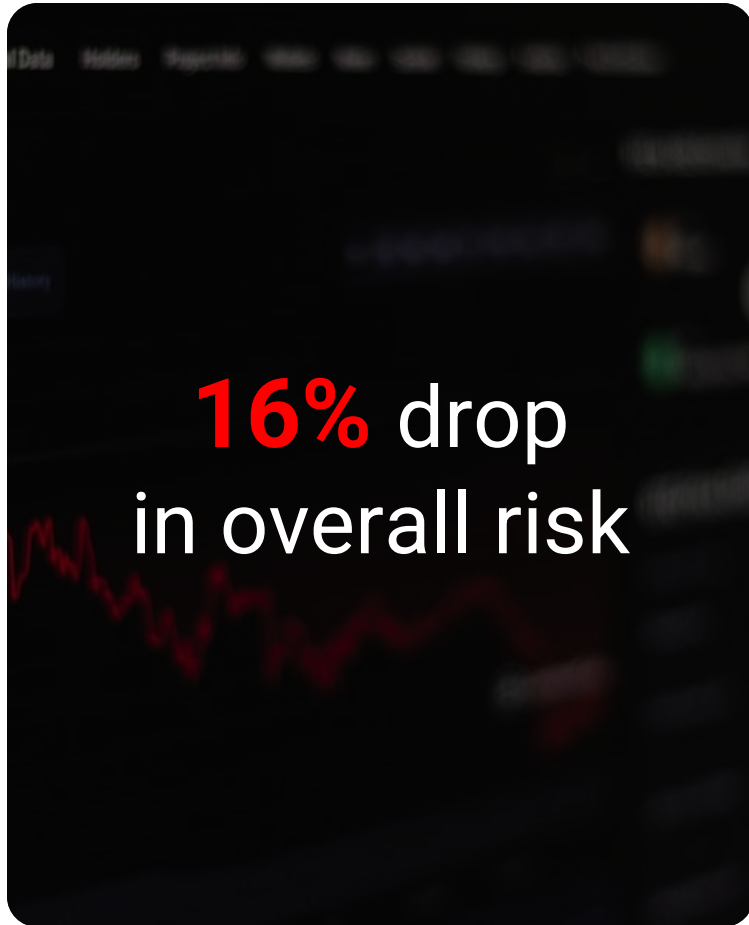


New risk areas are skewed toward content (which hurts smaller companies more than Big Tech) or specific company risk (Twitter, MSFT)

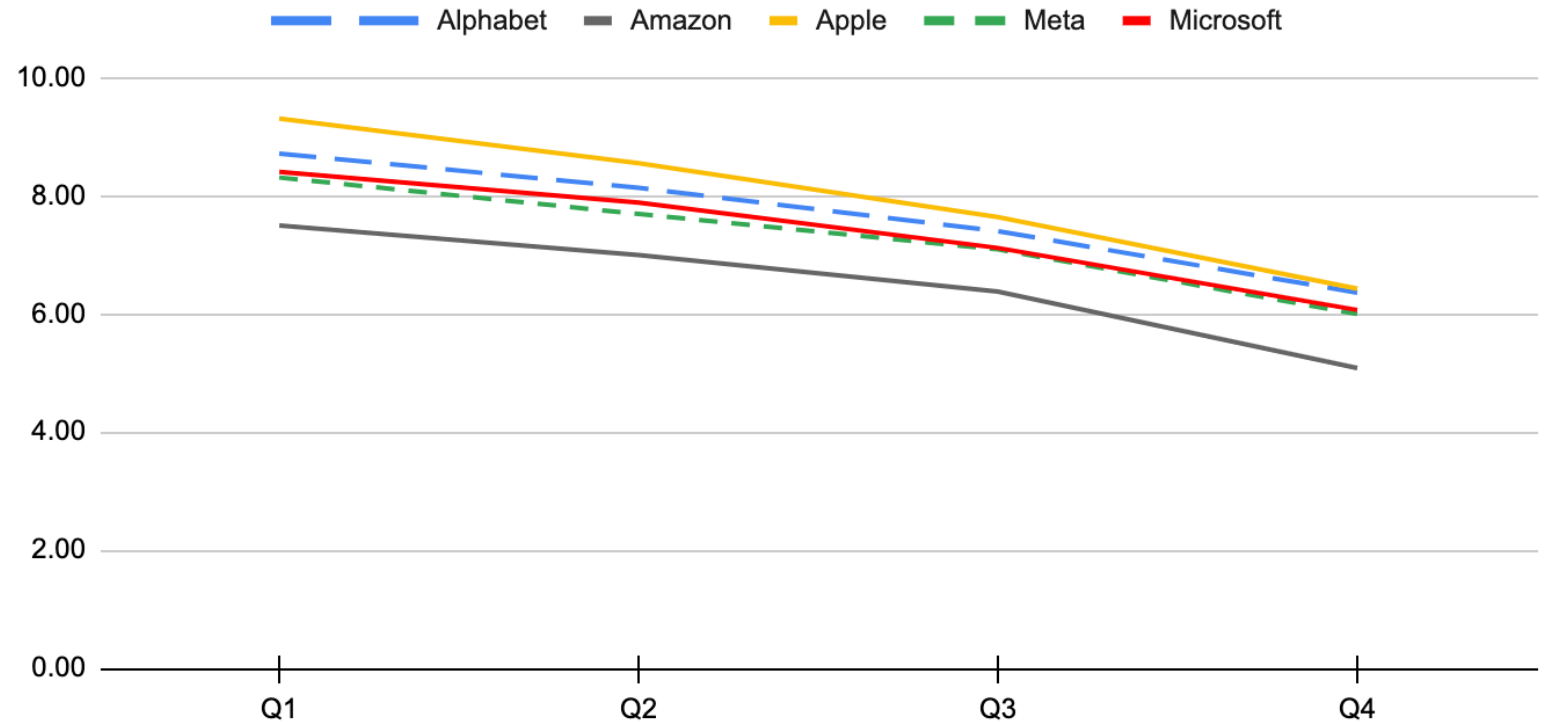


Decreasing risk of state antitrust legislation modeled on New York proposal

Takeaway 1: Decline in overall risk



Expected risk scores



Takeaway 2: Apple risk remains undervalued; Meta overvalued



Risk rating:

- Apple faces the most risk (6.4 expected risk rating)
- Meta ranks 4th of 5 Big Tech companies (6.0)



Trend:

- Apple down 16% (decrease in federal antitrust risk; limited Apple-specific litigation so far)
- Meta down 15% (fragility > decrease in regulatory risk)

NOTE Amazon down the most (20%); Alphabet and MSFT down the least (14%)

- Decrease in federal antitrust risk
- Litigation risk for MSFT-ATVI and Meta-Within

Takeaway 3: Increase in risk for Big Tech's competitors



Twitter

- Increase of 27% (to 3.7)
- Driven by increases in risk related to the FTC consent order and content regulation (state legislation, litigation)

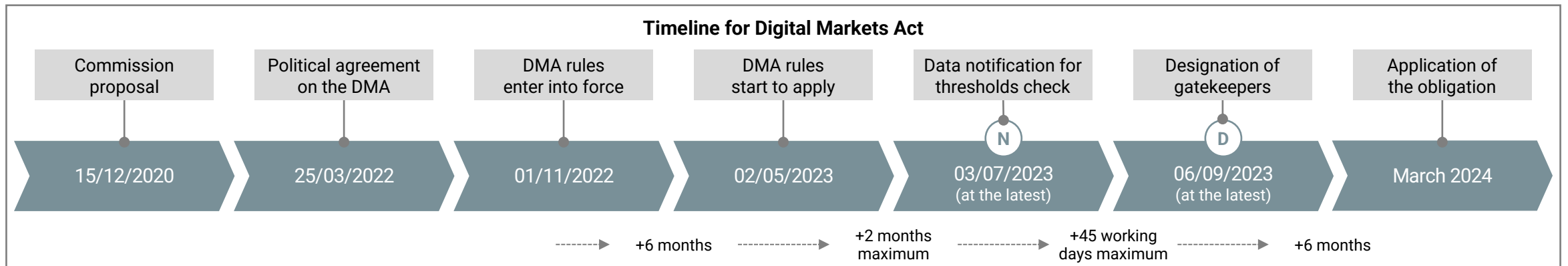


Snap

- Increase of 19% (to 3.5)
- Driven by increases in risk related to content and safety (state legislation, litigation)

Company impacts: Key themes across Big Tech

- **Europe shakes up the tech sector**
 - Digital Markets Act: hurts Big Tech
 - Digital Services Act: helps Big Tech, hurts smaller competitors
 - What happens next?
- **Market declines → changes to regulatory risk profile**
- **Company solutions matter**



Company impacts: DMA's impact on Big Tech

	Alphabet	amazon	Apple	Meta	Microsoft
Targeted ads	-			-	
Non-discrimination	-	-	-	+	-
Interoperability	- +		-	-	
App store rules	-		-	+	-
Most-favored nations clauses		-			
Equal treatment of sellers		-			
No data sharing from platform to product		-			

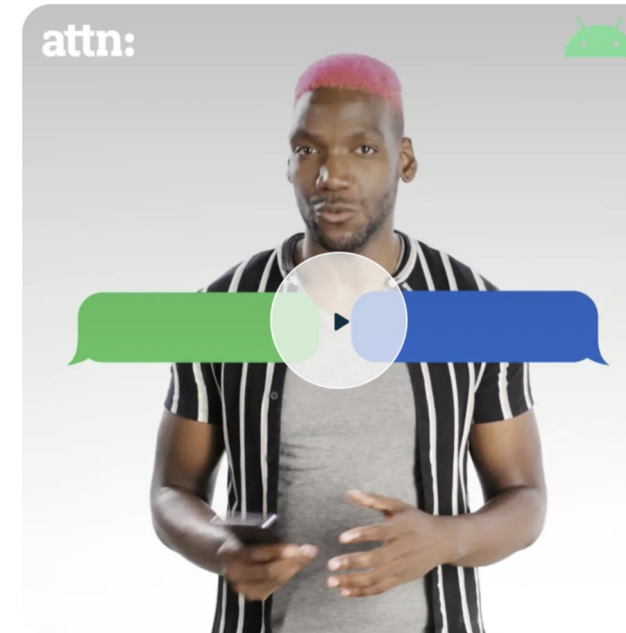
Company impacts: Alphabet

Broad impact of DMA

- Targeted ads
- Non-discrimination
- App Stores
- Interoperability (but might help with green bubble concern)

Ongoing antitrust litigation

- US Justice Department
- US State cases



**It's time for
Apple to fix
texting.**

Company impacts: Amazon

Unique impact of DMA

- Most-favored nations clauses
- Equal treatment for sellers for the Buy Box
- Data sharing: platform data can't be used to build products

The FTC suit that isn't (yet)

- One Medical
- iRobot
- MGM
- Section 2 case

THE YALE LAW JOURNAL

LINA M. KHAN

Amazon's Antitrust Paradox

Opinion

OP-ED CONTRIBUTOR

Amazon Bites Off Even More Monopoly Power

By Lina M. Khan
June 21, 2017

amazon

PRESS CENTER

July 21, 2022

Amazon and One Medical Sign an Agreement for Amazon to Acquire One Medical

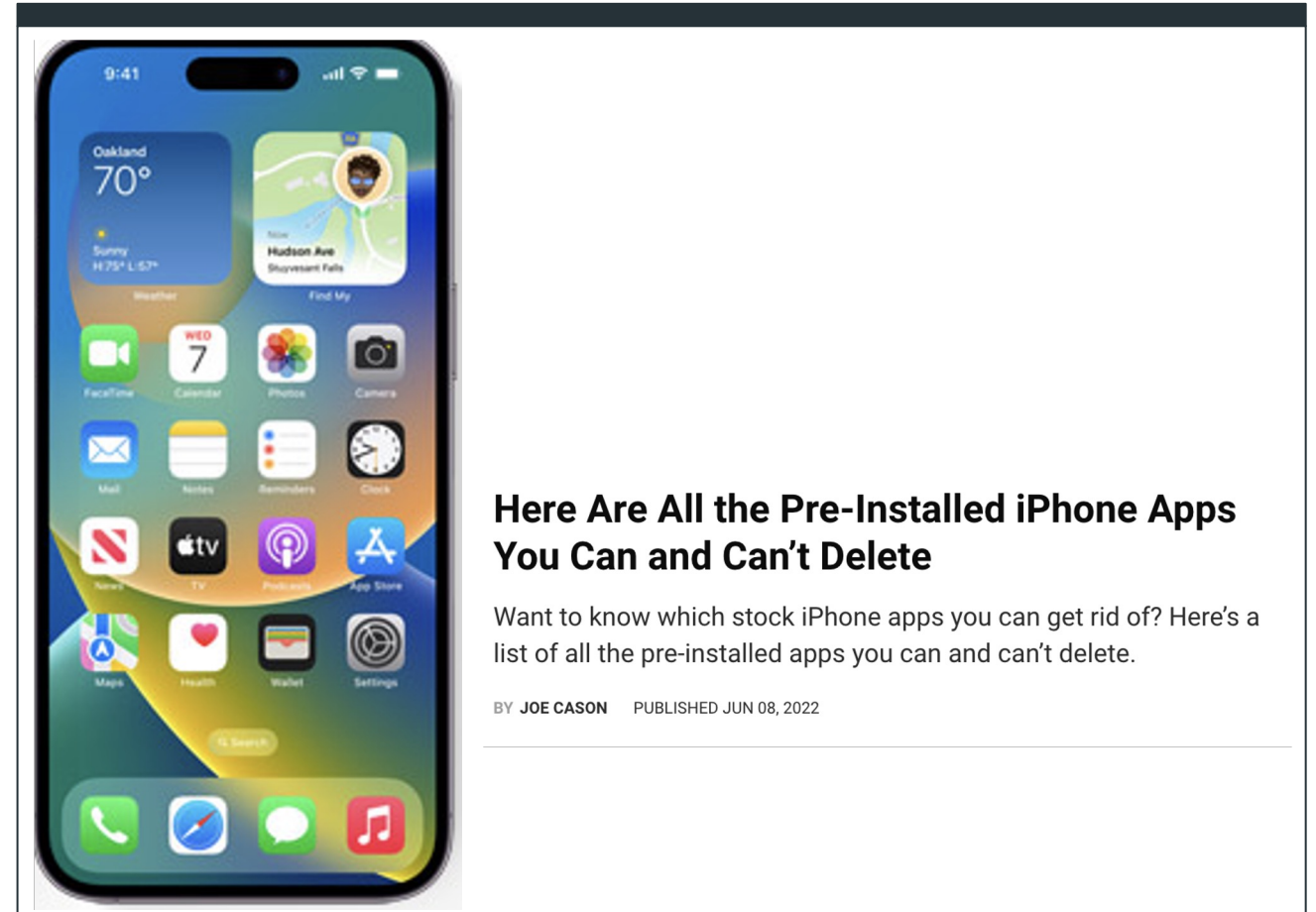
Company impacts: Apple

Deep impact of DMA

- Interoperability
- Non-discrimination
- App Stores

App Store regulation

- State legislation
- International



Company impacts: Meta

Mixed impact of DMA:

- How it hurts: targeted ads
- How it helps:
 - Nondiscrimination
 - App stores
- What's uncertain: interoperability

Business headwinds:

- What happened:
 - Sharp decline in market cap
 - Layoffs of 11%: estimated impact on policy advocacy is low
- Impact on regulatory risk:
 - Statutory thresholds: "covered platform"
 - Product market definitions in litigation: Meta v. TikTok
 - The China argument

Mergers:

- Hearing in the Within case
- Abandons GIPHY merger: One jurisdiction sets global rules



Company impacts: Microsoft

Minimal impact of DMA:

- Non-discrimination
- App store rules

Activision:

- FTC sues...but will it litigate?
- Foreign regulator review: EU's Phase II investigation
- Competitors raise concerns: Continued advocacy by Sony
- New Street notes: [here](#), [here](#), and [here](#)



For Release

FTC Seeks to Block Microsoft Corp.'s Acquisition of Activision Blizzard, Inc.



Press release | 8 November 2022 | Brussels

Mergers: Commission opens in-depth investigation into the proposed acquisition of Activision Blizzard by Microsoft

Company impacts: Twitter

Impact on Twitter regulatory risk:

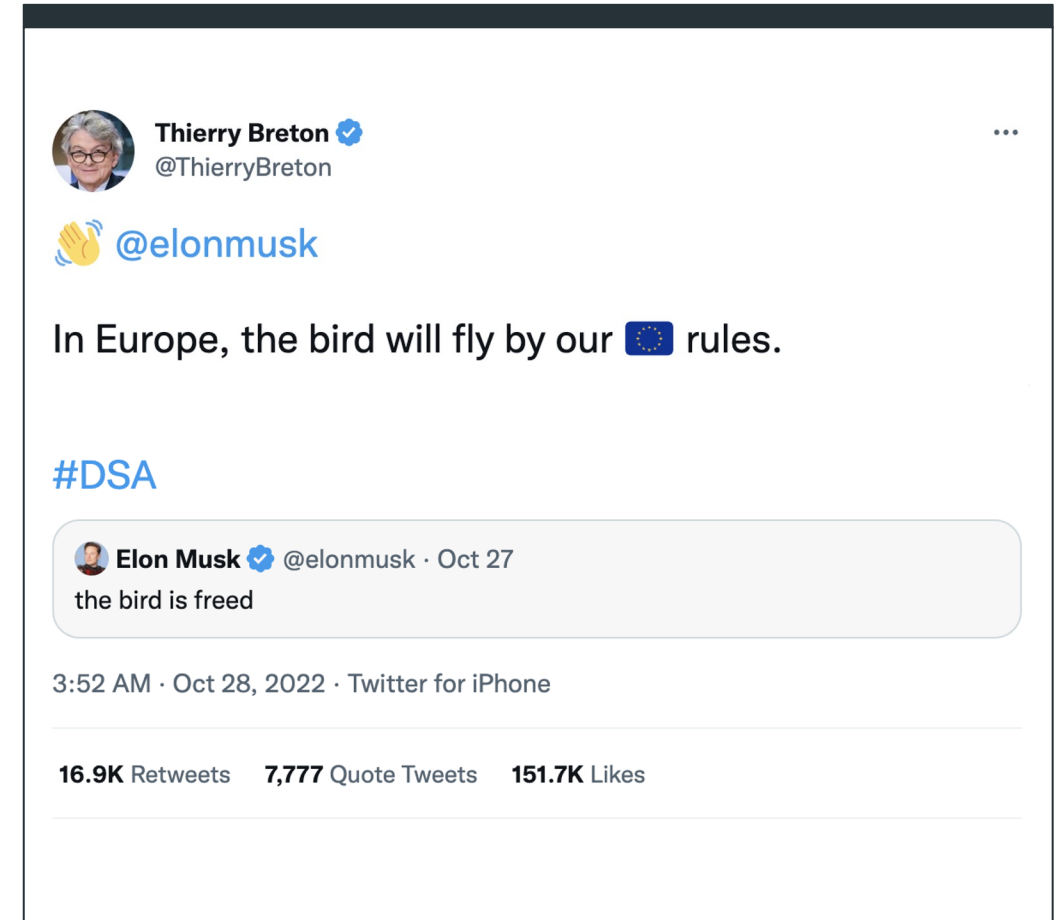
- Advocates push for action
- FTC Consent Order
- European skepticism: “The bird will fly by our rules.”

Impact on sector regulatory risk:

- Will Republicans be less likely to regulate?
- Will Democrats be more likely to regulate?
- How will other platforms respond?

An antitrust aside:

- How Twitter users and advertisers move to other platforms may reveal something about market definition. What are substitutes?



Company impacts: TikTok and Snap

TikTok

- CFIUS
 - Likely result: TikTok can operate, bug with conditions
 - Timing: Likely soon
- But still a punching bag (e.g., Carr)
 - Note a bump in Meta and Snap stock after Carr's criticism of TikTok
- State AG investigation in child safety

Snap

- ATT
 - Continued impact
 - Small companies affected by ATT will be more effective advocates than Big Tech companies like Google and Meta
- State AG investigation in child safety

Attorney General Josh Stein Leads 44 Bipartisan Attorneys General Pressing TikTok and Snapchat Over Parental Controls


“Keeping our kids safe wherever they are, including online, is job one for parents and the state. Parents need to be able to take measures to make sure children are safe on social media and help them when there are signs of trouble. I’m proud to lead this group of bipartisan attorneys general to urge social media companies to better protect our kids.”

Attorney General Josh Stein




For Immediate Release:
Tuesday, March 29, 2022


Policy trends



US midterms divide the federal government.



State legislatures meet for the first time since SCOTUS overturned *Roe*.



Supreme Court takes Section 230 cases.

US midterms divide the federal government

Federal results

- Republicans take the House
- Democrats retain the Senate

Will Congress pass tech legislation?

- Divided government makes it harder
- All eyes on 2024
- Political value of messaging bills > political values of passing laws
- Problematic product changes: Will politicians risk a user backlash?

Implications:

- State > federal
- Litigation > legislation
- International > domestic

U.S. House Election Results: Republicans Win

Republicans won control of the House by a far narrower margin than party leaders had expected.

212
Democrats

219
✓ Republicans

218
FOR CONTROL

+7 net gain

State legislative sessions kick off

State midterm election results

- Last term: 37 trifectas (one party controls both houses of the legislator and the governorship)
- This term: at least 39 (races still to be called)

Trifectas → increase in likelihood that tech legislation is passed

- 28 tech bills passed last term
- 23 passed by unified governments (82%)

Impact of Dobbs: The Digital Civil War

- Political incentive to pass laws on content and privacy
- Conflicts of laws between states, with tech platforms caught in the middle

Key areas of focus:

- Content
- Privacy
- Kids
- Tax
- Antitrust



Supreme Court takes Section 230 cases

What happened:

- Supreme Court agreed to hear 2 cases on platform liability:
 - *Gonzalez v. Google*
 - *Twitter v. Taamneh*
- Question: Should tech platforms receive liability protection when they offer algorithmic recommendations?

What it means:

- SCOTUS may narrow the scope of 230 protections
- If so, Congress and states may have more space to legislate.
- Increase in liability → disproportionate burden on small platforms
 - Good for: Google, Meta
 - Bad for: Snap, Twitter, and other smaller platforms
- Thomas and Alito have indicated they disagree with current jurisprudence. Will a majority agree?



Overrated or underrated

- Musk takes over Twitter
- FTC challenges MSFT-ATVI
- No tech reform legislation passes Congress in the Lame Duck (so far).

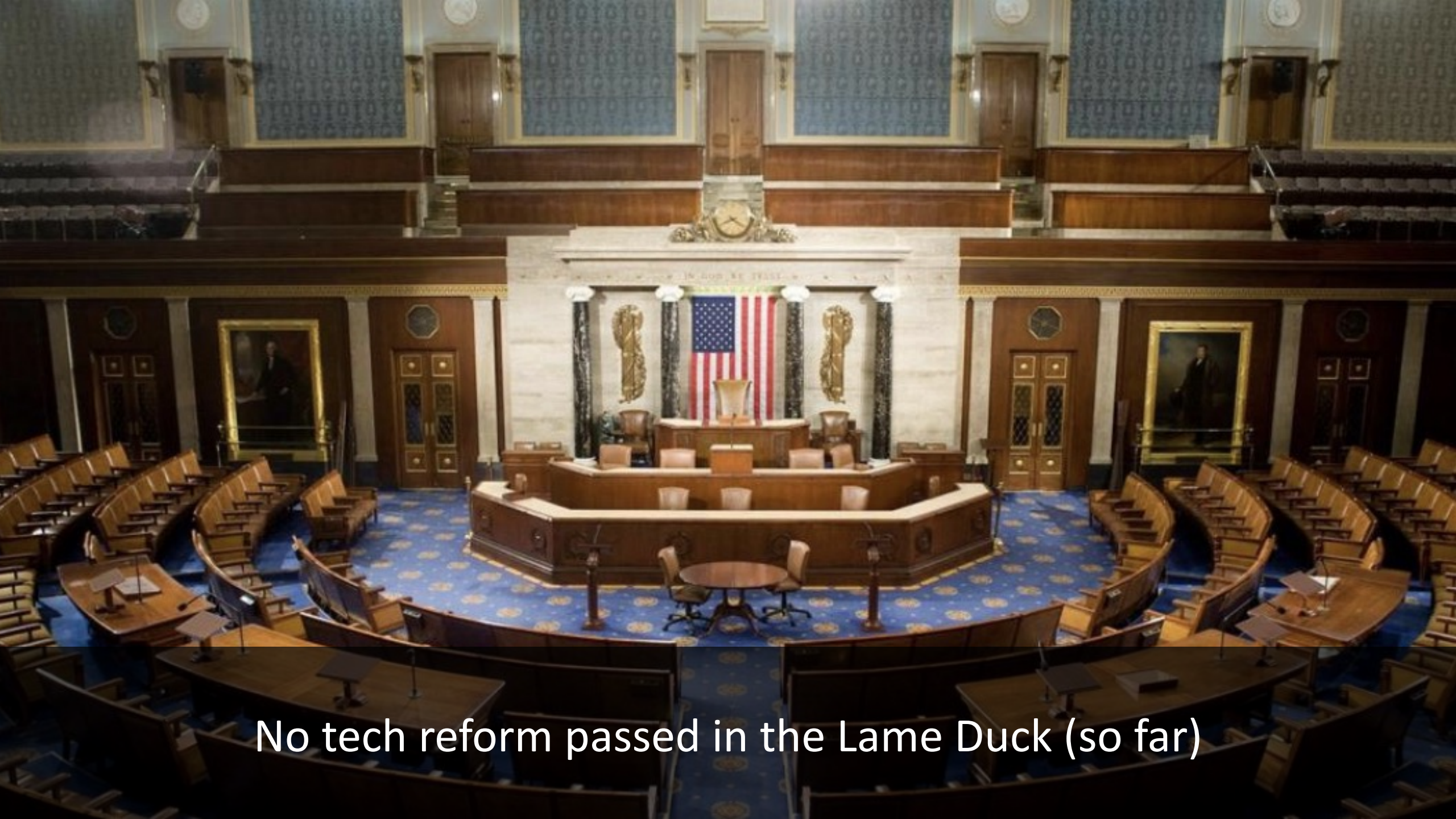




Musk takes over Twitter



FTC challenges MSFT-ATVI



No tech reform passed in the Lame Duck (so far)

Q&A



Appendix: Policy risk “heat map”

Harm if it happens (by company)


1 = Minimal Harm 5 = Significant Harm

Federal legislation	Likelihood (1 = unlikely, 5 = almost certain)	Big Tech					Big Tech's tech competitors				Competing Industries	
		Alphabet	Amazon	Apple	Meta	Microsoft	Snap	Twitter	TikTok	Spotify	ISPs/ telco	Traditional media
Antitrust: non-discrimination	2	5	5	5	4	4	0	0	0	0	0	0
Antitrust: portability and interoperability	1	2	2	4	2	2	0	0	0	0	0	0
Antitrust: merger restrictions	1	5	5	5	5	5	0	0	0	0	0	0
Antitrust: App Store reform	2	4	1	5	1	2	0	0	0	0	0	0
Antitrust: more resources for DOJ and FTC	2	2	2	2	2	1	0	0	0	0	0	0
Antitrust: antitrust exemption for publishers	2	2	1	1	2	1	2	2	2	0	0	0
Content: Section 230 repeal	1	2	2	2	2	2	4	5	3	2	1	1
Content: Section 230 reform: Quid Pro Quo (EARN IT or PACT Act)	1	1	1	1	1	1	4	4	3	2	1	1
Content: Section 230 reform: algorithms and personalization	1	2	2	2	2	2	5	5	4	3	1	1
Content: Section 230 reform: common carrier reform (conservative bias)	1	3	2	2	3	1	3	3	3	1	1	1
Children: restrictions on targeting kids	2	2	1	2	2	2	3	2	3	2	1	2
Privacy: comprehensive federal privacy law	2	1	1	1	1	1	2	2	2	1	1	2
Researcher data access	1	2	2	2	3	2	2	2	2	2	1	1
Tech "omnibus" (including privacy, content, antitrust, kids, researcher data)	1	4	4	4	4	4	3	3	3	2	2	2
Federal metaverse legislation	1	2	1	2	3	3	1	1	1	0	0	1

Policy risk “heat map”

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Post-Dobbs content regulation	4	3	2	2	3	2	3	3	3	1	1	1
Post-Dobbs privacy regulation	4	3	2	3	3	2	4	4	3	0	2	0
Antitrust reform, following NY model	1	4	4	4	4	4	0	0	0	0	0	0
Antitrust reform: app store regulation	2	4	1	4	1	2	0	0	0	0	0	0
State digital services tax, following MD model	2	3	3	3	3	3	2	2	2	2	2	0
State privacy law, following CA model	3	3	2	2	3	2	3	3	3	3	1	2
State privacy law, following WA model	4	1	1	1	1	1	2	2	2	1	1	2
State child safety law, modeled on CA	4	3	1	3	3	2	3	2	3	2	1	2
State content bills, common carrier modeled on FL/TX	3	3	2	2	3	2	3	3	3	1	1	1
State content bills, transparency modeled on CA, NY, and FL	4	1	1	1	1	1	3	3	2	1	0	0
State content bills, modeled on NY	2	3	2	2	3	2	3	3	3	1	1	1
State metaverse regulation	2	2	1	2	3	3	1	1	1	0	0	1

Policy risk “heat map”

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Antitrust: FTC, DOJ, and state AG suits against Apple	2	4	3	5	3	3	0	0	0	0	0	0
Antitrust: FTC, DOJ, and state AG suits against Amazon	2	3	5	3	3	3	0	0	0	0	0	0
Antitrust: FTC, DOJ, and state AG suits against Meta	2	3	3	3	5	3	0	0	0	0	0	0
Antitrust: MSFT-ATVI: gov requires conditions	5	1	1	1	1	2	0	0	0	0	0	0
Antitrust: MSFT-ATVI: gov successfully blocks	1	2	2	2	2	4	0	0	0	0	0	0
App stores: Epic case against Apple	2	4	2	5	2	2	0	0	0	0	0	0
Antitrust: gov successfully challenges Meta-Within	2	2	2	2	4	2	0	0	0	0	0	0
Antitrust: gov successfully challenges Amazon-One Medical	2	2	4	2	2	2	0	0	0	0	0	0
Child safety: state AG suit against TikTok and Snap	3	2	1	2	2	2	4	2	4	1	0	1
Content: SCOTUS overhauls Section 230	3	2	2	2	2	2	4	5	3	2	1	1

Policy risk “heat map”

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FTC issues rules on competition that survive legal review	2	4	4	4	3	3	0	0	1	0	0	0
Antitrust: DOJ/FTC stringent merger review	5	5	5	3	5	3	0	0	0	0	0	0
Export/import restrictions (e.g., Commerce ICTS rule)	3	1	1	1	1	1	1	1	4	0	2	0
CFIUS resolution of TikTok investigation	3	0	0	0	0	0	0	0	4	0	0	0
DOJ initiates process to review outbound investment	3	1	1	2	1	2	1	1	4	0	1	0
FTC review of Twitter consent order compliance	4	0	0	0	0	0	0	5	0	0	0	0

Policy risk “heat map”

Harm if it happens (by company)


1 = Minimal Harm 5 = Significant Harm

 International	Likelihood (1 = unlikely, 5 = almost certain)	Big Tech					Big Tech's tech competitors				Competing Industries	
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EU Digital Markets Act	5	5	5	5	4	4	0	0	0	0	0	0
EU Digital Services Act	5	3	3	3	3	3	4	4	4	3	0	0
EU antitrust investigations: MSFT and tying, app stores, FB Marketplace (likelihood of enforcement)	4	3	3	5	4	5	0	0	0	0	0	0
EU Google cases (likelihood of gov win)	3	5	3	3	3	3	0	0	0	0	0	0
China content and surveillance	5	2	1	4	2	4	1	1	2	1	1	1
China localization	4	2	1	4	2	4	1	1	2	1	1	1
China import/export restrictions on US products/services	4	3	1	4	3	4	1	1	3	1	2	1
Antitrust: MSFT-ATVI: foreign gov requires conditions	5	1	1	1	1	2	0	0	0	0	0	0
Antitrust: MSFT-ATVI: foreign gov successfully blocks	2	2	2	2	2	5	0	0	0	0	0	0

Policy risk “heat map” (expected value)

Harm if it happens (by company)


1 = Minimal Harm 25 = Significant Harm

 Federal legislation	Likelihood (1 = unlikely, 5 = almost certain)	Big Tech					Big Tech's tech competitors				Competing Industries	
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Antitrust: non-discrimination		10	10	10	8	8	0	0	0	0	0	0
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Children: restrictions on targeting kids (Blumenthal/Blackburn bill)		4	2	4	4	4	6	4	6	4	2	4
Privacy: comprehensive federal privacy law		2	2	2	2	2	4	4	4	2	2	4
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Federal metaverse legislation		2	1	2	3	3	1	1	1	0	0	1

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Harm if it happens (by company)


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Antitrust: FTC, DOJ, and state AG suits against Apple		8	6	10	6	6	0	0	0	0	0	0
Antitrust: FTC, DOJ, and state AG suits against Amazon		6	10	6	6	6	0	0	0	0	0	0
Antitrust: FTC, DOJ, and state AG suits against Meta		6	6	6	10	6	0	0	0	0	0	0
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Antitrust: gov successfully challenges Meta-Within		4	4	4	8	4	0	0	0	0	0	0
Antitrust: gov successfully challenges Amazon-One Medical		4	8	4	4	4	0	0	0	0	0	0
Child safety: state AG suit against TikTok and Snap		6	3	6	6	6	12	6	12	3	0	3
Content: SCOTUS overhauls Section 230		6	6	6	6	6	12	15	9	6	3	3

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Antitrust: DOJ/FTC stringent merger review		25	25	15	25	15	0	0	0	0	0	0
Export/import restrictions (e.g., Commerce ICTS rule)		3	3	3	3	3	3	3	12	0	6	0
CFIUS resolution of TikTok investigation		0	0	0	0	0	0	0	12	0	0	0
DOJ initiates process to review outbound investment		3	3	6	3	6	3	3	12	0	3	0
FTC review of Twitter consent order compliance		0	0	0	0	0	0	20	0	0	0	0

Policy risk “heat map” (expected value)

Harm if it happens (by company)

1 = Minimal Harm 25 = Significant Harm

 International	Likelihood (1 = unlikely, 5 = almost certain)	Big Tech					Big Tech's tech competitors				Competing Industries	
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EU Digital Markets Act		25	25	25	20	20	0	0	0	0	0	0
EU Digital Services Act		15	15	15	15	15	20	20	20	15	0	0
EU antitrust investigations: MSFT and tying, app stores, FB Marketplace (likelihood of enforcement)		12	12	20	16	20	0	0	0	0	0	0
EU Google cases (likelihood of gov win)		15	9	9	9	9	0	0	0	0	0	0
China content and surveillance		10	5	20	10	20	5	5	10	5	5	5
China localization		8	4	16	8	16	4	4	8	4	4	4
China import/export restrictions on US products/services		12	4	16	12	16	4	4	12	4	8	4
Antitrust: MSFT-ATVI: foreign gov requires conditions		5	5	5	5	10	0	0	0	0	0	0
Antitrust: MSFT-ATVI: foreign gov successfully blocks		4	4	4	4	10	0	0	0	0	0	0