Shaping the future of tech industry regulation
5 steps to take now
The tech sector has enjoyed explosive growth over the past few decades, thanks in no small part to the ingenuity of new entrants who always seemed to be a beat ahead of regulation. Ride-hailing companies, for instance, tapped geolocation and smartphone technology to fill a consumer need in transportation. They would not be nearly as prolific if they hadn’t anticipated and influenced regulation.

Today, the once-scrappy tech sector includes in its ranks companies with the highest market caps. And they’re being scrutinized more closely for a variety of issues, including antitrust, privacy, security, consumer data protection, platform activity, and emerging tech use, particularly AI.

Europe has implemented laws around data protection and privacy, as has California. Meanwhile, policymakers in other states are aiming to follow California’s example. Legislators are also proposing industry standards around the spread of misinformation and the handling of synthetic content such as deep fakes. And there are moves to update legislation that protects online platforms.

Most new entrants today face a binary choice: Get acquired or get choked off by more powerful imitators. A majority of state attorneys general have signed on to participate in an antitrust investigation that examines the practices and market power of major players. While fines have become more commonplace, regulation is now seen as inevitable.

Scrutiny of the tech sector continues to intensify. Policymakers are likely to address concerns over antitrust, data usage, consumer privacy and content moderation, among other issues. With their concentration of superior talent, vast troves of data and transformative products, tech companies are well-positioned to shape regulation that advances innovation and growth.

To be part of the solution, however, they must proactively collaborate with peers, policymakers, consumers and other stakeholders to ensure participatory regulation that benefits all stakeholders. They must also embed government relations into their overall business strategy.
Timely opportunity to rally stakeholders

Tech companies face a timely opportunity here: to rally their stakeholders—including consumers and government agencies—with a view towards creating participatory regulation that benefits all stakeholders. The sector is well positioned to educate stakeholders by illustrating that:

- Their technologies are built with and within appropriate parameters.
- They are implementing guardrails for consumer privacy.
- They seek to protect users from bad actors.

They are also uniquely equipped with the tools to monitor consumer sentiment in real time and demonstrate with evidence that user demand and utility characterize their offerings.

Oversight doesn’t have to hinder growth. In fact, it can provide guidelines that incubate innovation while yielding creative new business models and consumer benefits. In response to current antitrust challenges, the tech sector has a rich history to draw on. Both Microsoft and IBM overcame similar regulatory hurdles in past decades. And both responded in ways that benefited the industry and consumers, allowing legacy companies to thrive while making room for new players.

The IBM probe, which led to the unbundling of software from hardware, allowed companies like Microsoft to gain steam during the 80s and 90s. In turn, Microsoft, which owned a majority of the operating-system market in the late 90s, cleared a path for competitors such as Mozilla and Google once it opened the doors to other offerings in service of consumer needs and choice. As a result, consumers gained more options for quality internet browsers.
As Microsoft focused on its core strengths while also seeking ways to participate in regulatory outcomes, the sector germinated new entrants. Consumer choice flourished. Today, many of those entrants—including Google, Facebook and Uber, among others—have evolved into the current crop of tech leaders. By taking a proactive approach to regulation, starting with educating stakeholders, today’s tech companies can affect positive change.

Conversely, when companies are not proactive about anticipating and planning for participatory regulation, they are unable to get ahead of situations such as the bill in California that requires reclassification of independent contractors. After the fact, some companies are engaged in costly efforts to counter the bill and preserve their business models.

Top challenges to navigating an uncertain policy and regulatory environment

- Fragmented policy and regulatory landscape at the global, federal, state and local levels
- Translating policy, regulatory, and compliance insights into product, engineering and sales decisions
- Difficulty collecting, analyzing, and disseminating vast amounts of policy and business data
- Lack of clarity on what’s coming next
- Design and scale capable of supporting high-growth, global businesses
Lessons from entertainment, healthcare, financial services

Lessons from other industries can also serve as templates for tech companies. Examples of assisted regulation can be found in industries ranging from advertising to energy, entertainment, food and more. Participants can band together to create enforceable standards to protect consumers while concurrently advancing growth.

Entertainment

The gaming industry established the Entertainment Software Rating Board (ESRB) in 1994 to provide ratings, descriptions and categorizations for consumers—especially parents—to make informed buying decisions. That framework is now the industry standard; games not appropriately labeled are subject to fines.

Healthcare

Apple, Fitbit, Samsung and others are teaming up to help streamline the US Food and Drug Administration's (FDA's) approval process for software-powered medical devices. The FDA invited medical-device companies to participate in a precertification program that ensures their products meet quality and safety standards, thus accelerating time to market.

Financial services

Major card issuers and banks formed a self-regulating body, the Payment Card Industry (PCI), whose Data Security Standard (PCI DSS) enabled worldwide uniformity via global standards. Members of the industry group created global protocols to allow consumers to make secure, seamless electronic payments anywhere in the world. With EMVCo, a joint effort of Europay, MasterCard and Visa, the payments industry enforces worldwide interoperability and acceptance. Speaking as one voice, PCI has been effective at staving off unwanted regulation.
Ready to be proactive? 5 steps to take

Tech companies are well-positioned to contour the regulatory landscape in which they operate. The abundance of tools in their arsenal include:

- Technical and consumer-experience experts to explain the benefits of their products.
- Access to a trove of data to demonstrate the positive impact of tech on society.
- The ability to monitor how products are used.
- Concrete metrics to implement real-time improvements.

It’s time to use these tools to take control of the narrative rather than wait for others to tell the story. Here’s how to get started:

1. **Invest in government relations**

Keeping track of public policy developments is smart business. Regulatory changes are not temporary; neither can they be easily altered. Strategic investment in government relations has proven its worth. Companies with the right mindset don’t see government relations as overhead. Rather, they see the function as an effective means to achieve the twin objectives of avoiding unnecessary regulation while concurrently incubating innovation. Staving off unnecessary regulation is a top risk priority that chief risk officers should position front and center on their agendas. Instead of acting as a risk mitigation center, get ahead of issues to drive ROI.

2. **Weave public policy into the fabric of the organization**

Over-regulation and policy uncertainty are the top two threats on the minds of CEOs, yet siloed public policy functions are not uncommon. They are likely to be ineffective in today’s labyrinthine regulatory landscape. It is essential to integrate the public policy function organizationwide. Ensure that every relevant business function is aligned with, informed by, and contributes to a broader strategy on public policy and government relations. Companies that stay ahead of regulation, prioritize it for all parts of the business and shape it proactively are in a far better position to innovate.
3. Create a web of advocacy for your industry

A single voice has limited scope. However, partnering with others in your own as well as adjacent industries can amplify and extend your reach. As can collaborating with stakeholders, constituent groups and professional organizations. If you aren’t proactive in helping shape regulation, you may be left to deal with undesirable consequences. Make the time and effort to inform and educate policymakers and consumers alike about your business and its benefits. Recruit champions and spokespeople to disseminate relevant, persuasive points of view.

4. Embrace tech tools to catalyze efficiency

Efficient digital tools can offer insights about how policy and compliance shifts can affect potential market entry, operation, tech adoption and more. Digital tools scan and organize structured and unstructured data from filings, reports and a variety of social, digital, print and other media. You can be proactive about imminent legislation the minute you find out it’s in the works. And digital tools are cost-effective because they can ingest information and analyze it in real time. You can minimize the expenses associated with large internal and external staff, whose ROI is hard to measure.

5. Shore up internal resources with external expertise

To be effective, you’ll need to proactively identify and manage emerging policy, regulatory and legislative issues that could affect your business. You can’t always go it alone, however. External experts can provide proactive, real-time insights, as well as sentiment and contextual analysis. They can navigate, analyze and summarize the overwhelming amount of public information on policy and regulatory issues that might affect your business. That allows you to focus on how best to adjust your strategy, investment, R&D and operations.
The way ahead

As legislators, regulators and other officials write the legal code of compliance, they look to stakeholders for input. We anticipate the day when policymakers and industry leaders “sprint and scrum” together to develop new policies that participants can monitor and enforce.

Getting there may not be as difficult as it seems. Both government and business can benefit by leveraging regulatory frameworks as viable operating systems that foster innovation and competition while promoting the greater good.
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