

Ways & Means S7E1 Too Big to Sue

Bob Sullivan: From the Sanford School of Public Policy at Duke University This is a part one of a co-production with Ways & Means and the Debugger Podcast. I'm Bob Sullivan.

The dot-com bubble. It's hard to put into words how crazy, outlandish, extravagant, and optimistic the dot com bubble was. When I landed in the middle of it as a Microsoft intern in the mid-90s, the first company party I went to -- Microsoft rented out a mountain. It felt like everyone I met was a millionaire, planning retirement at age 30. Really. But however crazy things were in Silicon Valley and Seattle at the time.... things were way more crazy in Ireland.

[Celtic music starts]

Thanks to dot-com mania, this tiny island nation – long impoverished by centuries of conflict – was now one of the fastest growing economy in the world. They called it the Celtic Tiger. As a cub tech reporter in 1999, I landed a plumb assignment to spend a few weeks in Ireland writing about this Celtic Tiger. For a man born of the Sullivan and McFadden clans, this was truly the opportunity of a lifetime. And it was obvious right away – whether I talked to a call center manager or a cab driver – Ireland was dot-com-crazy. By the time I boarded a train into Dublin, I was drunk on Irish charm and optimism, let alone pints of Guinness. And as I looked at the window, I was overwhelmed by brand name tech plants and offices I saw everywhere -- Apple, Microsoft, Intel, Dell, Cisco.

Things were so good that former immigrants -- and people whose ancestors had braved the dangerous trip across the Atlantic to escape the Great Famine -- were moving BACK to Ireland to get rich. Ireland and her people owe technology companies a great deal. And some worry, Big Tech is now calling in that debt.

[music change - ominous]

Storm clouds are gathering around the technology industry, and few would argue an epic battle is coming. Some call it the techlash. Big Tech is accused of running our lives, through surveillance and manipulation ... accused of censorship, accused of harming children, accused of threatening democracy. Mainly, it is accused of doing whatever the hell it wants, with companies so rich and so powerful that they seemingly don't have to answer to anyone.

[warrior/battle sounds]

Who has been drafted to fight the first battle in this war for control of the 21 Century? To make the first stand? Ireland. By a twist of fate worthy of a great Irish novel, Ireland's good fortune as a tech company darling now has cast it as a David supposed to slay the tech Goliath or at least, get it back in line. The world's first coordinated effort to put some real boundaries around tech firms is Europe's General Data Protection Regulation – GDPR —And there's some quirky things about the way it works.

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Johnny Ryan: The GDPR provides that the country where you have your headquarters in Europe, that country is also where you will be supervised, so the Irish data protection commission has the responsibility for all of Europe to supervise Google, Facebook, Microsoft, Apple, and so on. So quite a remarkable situation. Now that means that no other enforcer in Europe can intervene unless Ireland has first done its job.

But is Ireland really in a position to enforce regulations, or even pull away the welcome mat, for its golden goose, the very industry which gave it the Celtic Tiger? For that matter...can any country, any organization, let alone any individual, really stand up to Big Tech?

Welcome to the Ways and Means podcast brought to you by Duke University...I'm your host Bob Sullivan. I normally host Duke's Debugger podcast, but this is a special collaboration with Ways & Means. Defending Democracy – and Us! – From Big Tech. For the next three episodes, we're going to take a deep look into the coming battle over control of our digital future, and how we might make large technology platforms accountable for the things they do. We begin with today's episode: Too Big to Sue.

David Hoffman: This Series is supported by the Duke Sanford Cyber Policy Program and the Kenan Institute of Ethics. I'm Prof. David Hoffman and I lead the Cyber Policy Program. At the Sanford School of Public Policy, we are training the next generation of technology policy leaders and researching how technology platforms can demonstrate that they are behaving responsibly and ethically.

This isn't a podcast about Ireland – sorry for the head fake – but I wanted to start there because it's critical to understand just how hard it is to tell Big Tech companies what to do. The notion of checks and balances is built into the very fabric of the United States. Our adversarial legal system – plaintiffs fighting defendants – depends on the idea of a fair fight. But right now, tech firms often act as their own judge and jury. They control everything from which posts they censor, to what software we can download, to what research they permit into self-harm.

Sure, once in a while a government will fine a Silicon Valley giant. Ireland's Data Commissioner's office recently suggested fining Facebook about 30 million Euros for misleading consumers after its acquisition of chat tool WhatsApp, but Facebook brings in about \$10 million EVERY HOUR. That's right, every hour. The firm could pay that fine over a long lunch. Big Tech makes so much money that even big fines don't really scare these companies. You might say they are simply too big to sue. Feels like David is fighting Goliath with an empty slingshot. Governments and advocacy groups all over the world are scrambling to deal with the implications of that. Kyle Taylor helps run an advocacy group called the Real Facebook Oversight Board. It's *not* affiliated with Facebook

Kyle Taylor: This gets into the bigger issue, the sort of the paradox of big tech companies. You know, on one hand, we have to remember that they're just private businesses trying to maximize profit and ultimately their advertising businesses and their customers or advertisers and their users are their products.

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They're selling our attention to advertisers to make money. But on the other hand, you know, they're not just businesses. They have a really outsized impact now in society because they effectively serve as the digital public sphere. You know, the digital place that we all go to engage and interact. And that amount of power and that amount of ability to influence how we think, what we feel, requires additional layers of responsibility and oversight.

So, this isn't a podcast about Ireland, and it isn't a podcast about Facebook ... after all, the techlash is hitting plenty of brand name tech companies

Female voice (Val Demings): This decision meant that your company would now combine, for example, all of my data on Google, my search history, my location from Google Maps, information from my emails from Gmail, as well as my personal identity with a record of almost all of the websites I visited. That is absolutely staggering.

Male Voice: My point is, and I'm sorry to interrupt, but I want to get to the point. Point is that Apple is the sole decision maker as to whether an app is made available to app users through the Apple store. Isn't that correct?

Female voice: Your own documents make clear that the price war against diapers.com worked. And within a few months it was struggling, and so then Amazon bought it. After buying your leading competitor here, Amazon cut promotions like Amazon.mom, and the steep discounts it used to lure customers away from diapers.com. And then increase the prices of diapers for new moms and dads. Mr. Bezos, did you personally sign off on the plan to raise prices after Amazon eliminated its competition?

Female voice: (Frances Haugen): Facebook wants you to believe that the problems we're talking about are unsolvable. They want you to believe in false choices. They want you to believe that you must choose between a Facebook full of divisive and extreme content or losing one of the most important values our country was founded upon: free speech. That you must choose between public oversight of Facebook's choices and your personal privacy. That to be able to share fun photos of your kids with old friends, you must also be inundated with anger-driven virality. They want you to believe that this is just part of the deal.

We could go on. Privacy. Censorship. Child safety. Monopoly power. The problems of Big Tech, the challenges, seem overwhelming. That might be part of the strategy. That last voice you heard was Francis Haugen – you might remember her as the whistleblower who testified before Congress about Facebook's missteps. – she says tech companies want to create the impression that all these issues are inevitable.

That fatalistic sentiment echoes the famous line uttered by tech titan Scott McNealy back in 1999, who – at about the same time I was on that train to Dublin – famously said, “You have zero privacy anyway, get over it.” Francella Ochillo, a fellow at Harvard and executive of Next Century Cities, is one of the loudest voices for fairness and diversity in tech. She's heard this kind of fatalism before, particularly when studying inherent bias in technology

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Francella Ochillo: I think that it's often dismissed as "Well, it's a one-off and I don't really think it's an issue." And then when someone actually decides to invest in the data, they find, "Actually that's a regular practice. We don't really know how to fix it," which is actually code for, "We don't really want to invest in fixing it."

So, let's not let them get away with that. Let's try to fix it. That's what we're going to try to do together in these three episodes of Ways and Means. So...as good a place as any to start is to head back to the front lines in Ireland. – and get a sense of how the early skirmishes in this battle are going.-This is Johnny Ryan – you met him in the beginning of this piece – he is head of the Irish Council for Civil Liberties, kind of like the ACLU in the U.S. He's got a great background for this discussion because he's lived on both side of the Big Tech issue. Before he was a digital rights advocate, he was a digital ad man.

Johnny Ryan: For years, I had a front row seat into how the tracking industry snoops on all of us and, and it's, it's quite astounding. Once you develop a taste for reading technical documentation and understand what it means, you'll never look at your online experience the same way again.

He doesn't mince words when he talks about Big Tech here he is talking specifically about Google's advertising business.

Johnny Ryan: So, they're trying to match the person who might be interested in seeing an ad with the right ad, that's the objective. But what it boils down to is that hundreds of billions, of times a day, what everyone is watching, reading, and listening to and where they are in the real world is being broadcast out to thousands of companies. Not only is it the biggest data breach of all time, every day, it's the biggest data breach we've ever had. And it's repeated daily. The scale is astounding and from industry documents, we know that thousands, that's a quote, thousands of companies may receive the data about what you're doing right now on the internet, in the serving of a single ad.

Why should we care? We click on a web page or look up a coffee shop on our smartphone map, or you listen to a podcast like this one ... it all seems to work pretty well. In the background, on some server we never see, there's some kind of auction going on that reveals you like cute pictures of puppies and might respond to an ad for dog food. So what? What could the harm be? For starters, Ryan warns, data that is collected for one purpose often ends up being used for another, far more worrisome, purpose. History is full of such examples: it happened recently in Afghanistan.

Johnny Ryan: If you recall, after the withdrawal of the U S and NATO allies, it turned out that the biometric machines, used to scan people by NATO forces, had of course fallen into the hands of the Taliban, and that gave the Taliban a database.

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Just for a moment, take Ryan at his word: that your data is being shared without your consent by large tech companies. Say you trusted an app like WhatsApp to keep your data private, but then Facebook acquired it, promised it wouldn't share the data with the rest of its business units, but did that anyway. What's to stop them? A fine from a government agency like the Irish Data Protection Commission?

Quick – if there were a fire hydrant in front of your front door, but the parking ticket was, say, five cents per day-- you'd probably park there, right? That's kind of how things work in big tech right now. Europe passes a law. Ireland is in charge of enforcement. But when it comes time to enforce that law, Ireland threatens Facebook with loss of 3 hours' worth of revenue. And while other EU nations stepped in to increase the fine – it's still short of one day's revenue – hardly an amount that would stop Facebook from parking in front of that fire hydrant.

Remember how this podcast started – the wondrous Celtic Tiger – is Ireland really in a position to stick up against big tech? Ryan actually disputes my insinuation here that his country is *that* beholden to big tech. At the same time, Ryan's organization published a study last year, revealing that Ireland's Data Protection Commission has only produced decisions in 4 of the 164 cases where it is the lead authority.

Bob Sullivan addressing Johnny Ryan: I've read your piece. 98% of the cases. Are in a holding pattern above flying in circles above

Johnny Ryan: Dublin. Right. That was the case at three years after the GDPR. So that figure is from May, 2021, um, I assume it's correct still, but I don't know. It could be worse. It could be better.

What's more, documents obtained by privacy advocates suggest the Irish office sided with Facebook recently on a proposed so-called GDPR bypass that would have allowed fine print on websites to serve as consent for tech firms to do whatever they want with our data.

Bob Sullivan addressing Johnny Ryan: How am I to interpret that other than the Irish enforcers seem too friendly with the tech companies,

Johnny Ryan: I have not spoken about motive throughout this whole thing. We at ICCL have been calling on the Irish government to launch an independent review. And the purpose of that review would be to identify what the problems are and to understand maybe how to strengthen and reform the Irish data protection commission. We do not know why there was a problem, or even what the problems are. All we know is that there is a problem. And, you know, having studied history for many a year, it is very often the case that a cock-up can look like a conspiracy, and a conspiracy can look like a cock-up. We will not know which is which for quite some time. And Actually it's largely irrelevant, whatever the motives are are secondary to fixing the problem. And to fix the problem, we need a review.

Bob Sullivan: As I've mentioned, this isn't a podcast about Ireland. And it's not a podcast about Facebook. But Facebook has provided a lot of material through the years. However much you might think to blame Ireland for not coming down hard enough on Facebook when it had the

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chance, for not being able to force Facebook to behave, well, the U.S. can't really say much about that, because back in 2011, the U.S. Federal Trade Commission had its chance. It sued Facebook for misleading consumers about sharing data with third party companies. Facebook signed a consent decree, said it was sorry, said it wouldn't do that again. And ... you probably know how this story ends. With a much bigger data-sharing scandal. And more apologies from Mark Zuckerberg.

Montage of Mark Zuckerberg apologizing: So this was a major breach of trust, and- and I'm really sorry that this happened. You know we have a basic responsibility to protect people's data and if we can't do that then we don't deserve to have the opportunity to serve people. // Congressman in retrospect it was a mistake. // Congresswoman it sounds like we made a mistake there, I apologize for that. // We didn't take a broad enough view of our responsibility and that was a big mistake and it was my mistake, and I'm sorry.

One of the people who forced Mark Zuckerberg to say he was sorry back in 2011 was David Vladek – director of the FTC's Bureau of Consumer Protection at the time. You can think of him as an early David, who genuinely lifted a slingshot and took a shot at Goliath. And when he got Mark Zuckerberg's signature on a consent decree – well, it probably wasn't worth the paper it was printed on. Facebook violated the agreement a few years later, in what we now know as the Cambridge Analytica scandal. Facebook allowed a political data-analytics firm to access personal information on nearly 100 million users. The data was ultimately used to manipulate voters in the 2016 U.S. presidential election.

Bob addressing David Vladek: When I hear you say that Cambridge Analytica was essentially predicted, I mean, predictable, but it still happened that that must be really frustrating for, no?

David Vladek: oh, yes. It was incredibly frustrating because the consent decree was designed exactly to avert the Cambridge Analytica. and there's almost no provision in the 2011 consent decree that Facebook did not violate.

But wait a minute. That 2011 consent decree included ongoing monitoring of Facebook – and the firm – still got itself wrapped up in an international scandal? How? Vladeck explains that the government was overmatched.

David Vladek: At the height of my tenure, at the FTC, I had about 430 people in the bureau of consumer protection. At one point, Google had about a thousand people just in their general counsel's office. And when I would talk to the general counsels of Facebook and Google, I was just overwhelmed by the sense of, "Not only are we the David versus Goliath, but we're pretty tiny David."

There's that metaphor again. Talk to almost anyone at the FTC, and we will, in another episode, and you'll hear this point- There are just 40-45 lawyers in the FTC's privacy group. A Big Tech company can throw that many lawyers at a single case. Almost like enforcement is destined to-- well, designed to -- fail. But Vladeck goes even a step farther when talking about what it's like to go up against a company like Facebook, against a serial offender. That's...something else

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David Vladek: Remember back in 2008, 2009, Facebook was a, you know, a relatively small company compared to what it was now. It was still in its infancy. It was still trying to figure out what its business models were. And, you know, for regulators, the core question is, is this company clueless or is it venal? And at that point I did not suspect venality. I just thought that it was an aggressive company that made some serious mistakes, but there was willing to at least work with us work with the FTC in order to get back on a better path. And you know, over the years, I think I probably misjudged Facebook.

So, this is the question at the heart of this podcast. How does society force a large company to do something it won't volunteer to do? You can ask, you can shame, you can fine. But what if a company really seems "too big to sue?" Then what? How does society make sure these massive firms are accountable for what they do? After violating that consent decree, Facebook faced a staggering, record \$5 billion fine. And you know what? It didn't make a difference. In fact, it appears Facebook became more brazen. After whistleblower Frances Haugen's devastating testimony before Congress, the firm switched to a "no apology" strategy, according to the New York Times. It even manipulated users' Facebook walls to show more pro-Facebook posts to people, the Times wrote. That is power. So how do we hold that kind of power accountable? This is where the idea of 'platform accountability' comes in. What's a platform? Here's Duke professor David Hoffman.

David Hoffman: I think the best way to understand it is by through the traditional definition of platform. And by that, I mean, a raised area that people or things could stand on, uh, because in the technology environment, that's really what these platforms are these days, they are things People or other things like technology can stand on or exist in that gives them advantages of being able to be heard by more people or have being able to have a more impactful reach of the technology.

Bob addressing David: Okay. So now I'm picturing a massive county fair and there's 10,000 people on a big lawn, but there's seven or eight places where there's platforms that might have a band or might have people selling things, and those platforms are really valuable spaces in this big county fair, right?

David: It's a great metaphor to use for this.

So, a platform is special. We're not just talking about tech here - we're talking about BIG tech. Tech that sits above other tech. And if there's any confusion still in your mind, recall that the Facebook corporation has recently changed its name to Meta... but the full name is "Meta Platforms Inc." Ok, so that's a platform. What about "accountability"? Marty Abrams is the Executive Director of something called the Information Accountability Foundation. It's an industry group which focuses on that very thing. Abrams is also a visiting scholar at Duke's Sanford School of Public Policy.

Marty Abrams: If I'm going to trust an organization with my information, I want to understand they have the skills and the integrity to use my data in a responsible fashion that is responsive to the stakeholders that are impacted by that information and that they can

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demonstrate to others that they are indeed acting in a responsible way, and a responsible way means that they have to have the competence to figure out what is going to be the impact of the information they use and that they can then that they can do that in with integrity. So I need to be able to demonstrate both competence and integrity in order to be able to be trusted to use that information.

Bob Sullivan: One way to think about it – platform accountability. – Say your post or your photo or your app was removed by a social media company -- maybe that's even happened to you -- can you get a good explanation of why? Can you even appeal that decision? You'd think that's just a basic right in the digital age. But it's not. When tech companies remove your posts, they are, in some ways, acting like governments, like a judge and jury, or a regulator. Yet they don't have to answer to anyone right now, they aren't accountable to anyone. Want to appeal? Go ahead and sue. Well...you probably can't even sue. We'll get to that, too. And this is one reason many people are calling for platform accountability, even though that phrase might not roll trippingly off the tongue, but it should, says Ochillo, the digital rights advocate.

Marty Abrams: And it's not that I think that everyone needs to be able to talk about platform accountability, but if I were to go and bring up, for example, the word broadband, five years ago, I don't know if I could've had a lot of people -- like go back to Louisiana where I'm from—if I said broadband, people wouldn't know what I was talking about. If I said internet, they're like, yeah, but even now, when we're talking about platform regulation, not everybody even has that language. And so we're in a place where we're still socializing the language, but I don't think that we always go out of our way to make sure that it's something that's accessible to a lot of people.

So that's why we're doing this podcast. To make the language of platform accountability more mainstream. And the work of platform accountability more visible. But before we go on, I want to talk just a little bit more about how we got here. It's an incredible situation if you think about it. Tech titans own trillion-dollar companies that throw off so much cash they can dabble in space travel, the way previous titans might have bought expensive cars. Tech has now infiltrated, inserted itself into almost everything we do – how we order dinner, how we get a cab, how to talk to our doctors, how we drive, even how we walk. And at each one of these insertion points, it takes a cut of the action. Chris Hoofnagle is a Berkeley law and tech professor. He warns, don't get distracted by individual issues at play here.

Chris Hoofnagle: It really strikes me to see how many policy reports out there are talking about these atomized issues of let's say teens, body image, or teens reading about suicide or teens doing high-risk behavior after seeing that on YouTube or adults reading about vaccine denial and so on all of these things come back to the same problem. And that's the incentive system of making money for clicks. So I think that we need a completely different intervention that will deal with the underlying economics of these platforms. I have very controversial ideas about this, but I think we have to change fundamentally the business model because this week it's going to be a girl's body image, and next week it's going to be teenagers who decided to commit suicide because they've watched a hundred videos on Tik Tok about that.

It's NOT just about disinformation. Or about body image. Buz Waitzkin is Deputy Director of Science & Society at Duke University. He talked with me about just how deeply Big Tech is embedded in our lives now. Just one example: When many people get sick, they go to Google – even before they go to a doctor -- that puts Google in an incredibly privileged position.

Buz Waitzkin: If somebody were to, um, have prostate cancer, I think their first look for information or they thought they had symptoms would be number one to go to Google to see if they had symptoms and what those symptoms really meant and when they were significant. And so they're going into their doctor already informed, and you can put that in air quotes if you want, or any informed by Google about what their medical condition is and what the right treatments are before they ever see their doctor

Bob: based on who you are, exactly, it would be tailored somehow for you and based on what they thought they knew about you. Should we all be disturbed by this?

Buz: I think so. I think so, because the question is what sources of information do we have?

Medical professionals are trained in the concept of informed consent. Google isn't. When you have a condition like prostate cancer, a good doctor will lay out for you 4-5-6 treatment plan options, try to give you as much information as possible. They are financially liable for any mistakes they make, and they pay a lot for malpractice insurance. But also, ethically and professionally, physicians are bound to give the patient unbiased information so the patient ultimately makes the decision about their own life. At least, they try. Google operates on no such ethic. How many of us unconsciously let Google make treatment choice for us? And how does Google pick what it shows first to a scared cancer patient? We don't know. There's no transparency. No malpractice insurance. NO platform accountability. And that word platform matters a lot here. Because Google hands out this kind of advice....at scale.

Buz Waitzkin: Well, it's, it's interesting because I think you're dealing with a wholesale retail disparity in in the grossest sense. I think, you know, a conversation with the doctor reaches a very limited number of people and they're very much one-on-one whereas information provided through the Google Algorithm is reaching thousands, if not sometimes millions of people with that particular information. So I think we're dealing with a level of information distribution, which is of a very different kind. And I think that the need to make sure that there is accuracy. If not, objectivity is really far more important. Because we've seen over and over again in recent events, and the work of the January Sixth committee in Congress, is clearly demonstrating that the power of these tools, both to organize and inspire, if not instigate behavior, is enormous.

Just think about all the decisions, large and small, that are influenced by platforms like Google, and Facebook, and Twitter, all of them. Based on what? Here's Jolynn Dellinger, a professor at Duke and the University of North Carolina.

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Jolyn Dellinger: Google plays a central role for so many of us. And I think that it, um, is amazing. The technology is amazing and contributes to all of our lives, but I often ask people in my classes, “How many people look past the first page of Google?” And so many people do not ever look past the first page of Google results. So when you consider that, you know, half of what’s on the first page these days is ads. And then you would consider, okay, well, the rest of the stuff on the first page, how did it get there? So these same questions about algorithms and ranking, like how are decisions being made about what we see and are those decisions, ones that favor or prioritize Google’s own products and Google’s own services. Or is it more objective in a way, and they’re just trying to bring you whatever fits your suggestions. So, so I’m not sure that we can necessarily trust that the information we’re being provided in response to a search is really, truly the best information out there.

Bob addresses Jolyn: When I ask, “Tell me something about how the vaccine works.” When you asked Google that, we don’t really know why Google picks these 10 things to show me first. Right?

Jolyn: Right. I don’t think that we have any visibility into that.

Bob: When I go to Amazon and I search for vacuum cleaner, how do I know why they’re picking these 10 vacuum cleaners for me?

Jolyn: Right. Like, what does Amazon’s choice mean? I don’t know. I don’t know why something’s at the top and I usually don’t have time to figure that out. Yeah, it’s a really, really complicated situation.

So, tech is having this enormous influence on our decisions, and it does so largely in a black box. Do large tech firms with their ever-evolving algorithms think there’s a problem here? I’m not so sure. If you hang around Big Tech towns like San Francisco or Seattle long enough, as I have, you’ll begin to get a sense of something that Buz calls libertarian paternalism -- a term borrowed from the book *Nudge*. Tech companies, and many tech workers just seem to think they have a right to nudge us towards what cancer treatment to get or what vacuum cleaner to buy. They think they know better. Sometimes this feels benevolent – they’re rescuing us from the ignorance or our small-town doctor or our bad vacuum. More often, to me, it feels cynical. Like, if us silly people would just stop worrying about our privacy, or what goes into those algorithms, everything would be just great. This all reminds me a bit of things I’ve read about the 1964 World’s Fair... Disney unleashed the song “It’s a Small World After all” on the planet that year. But it also released a song called “There’s a Great Big Beautiful Tomorrow,” the soundtrack to a ride called The Carousel of Progress. It showed Americans living a life of free leisure, while robots did all our work for us. I don’t know about you, but I certainly don’t believe Big Tech has delivered on the promise of this life of leisure. And in some cases, Big Tech has just made things easier for propagandists or charlatans or just old-fashioned criminals to stand on a very large, very loud platform.

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When Amazon recommends something for you, or when Facebook does, what happens when that product is broken or it's a fraud? Well, at least according to documents filed by Facebook in one lawsuit against the company, tech companies have no responsibility for, or liability for fraud at all. Because they are immune. They have Section 230. Facebook's lawyers argued this recently:

(Reading): The Court should dismiss all of Plaintiffs' claims with prejudice because the Communications Decency Act, 47 U.S.C. § 230 ("Section 230"), shields interactive computer service providers such as Facebook from liability arising from content created by third parties.

Now 230 deserves a whole podcast -- many podcasts really, and we just have to breeze past it here. It does make sense not to make tech companies responsible for everything and anything that goes on in their platforms. The phone company isn't responsible for what happens in every phone call. But when Section 230 is thrown around like a get out of jail free for everything, like algorithms that help criminals, well...that sounds a lot like saying platforms can never be accountable for anything. Waitzkin says it's important to have the right incentives in place.

Buz Waitzkin: So, I think one of the things we need to be careful of is if we create the wrong kinds of incentives through our efforts of transparency, we may be doing more harm than good. But if there's no regulatory accountability, because there's no transparency and there's no requirement, for example, that the media are going to be held accountable if they continually disseminate inaccurate information that's of an inflammatory or offensive nature, then there's no reason not to do it. It's a very difficult thing to do. It's a very expensive thing to do. And if we don't create incentives to behave properly and disincentives to behave improperly, there's no control.

Whenever this techlash discussion comes up, and the desire to regulate big tech comes up, there's always a chorus which makes the case say that market forces can fix this problem. And...maybe they should. But "Too Big To Sue" can also mean "Too Big to Lose." Here's Barak Richman, also a Duke professor

Barak Richman: What's deeply frustrating to the user of Facebook is that it's really hard to leave Facebook and go someplace else. If Coca-Cola were doing something really awful -- forget about the quality of its product -- if we're doing something that was really awful, it would be very satisfying to not Drink Coke anymore and drink Pepsi instead. So in, in that sense, it's not that Facebook is big, it's that Facebook really is the social network, and it's very hard to find an alternative to satisfy whatever social network needs individuals have. But this is actually something that is an underlying challenge or problem for platform monopolies. Platform monopolies are really hard to unseat.

And so it seems like we are stuck with Facebook, and Google, and Apple, and Microsoft, and Amazon and all the other tech platforms for quite a while. But are we really stuck with the system we currently have? An occasional fine, a 'shocking' Congressional hearing every once in a while, a muckraking newspaper story every now and then, and then, Big Tech still does whatever it wants at the end of the day?

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Despite what you may have heard, or felt, things don't have to be this way. Plenty of people, on all sides of the political spectrum, are working very hard on this problem. In and out of government. That's what we'll explore in the next two episodes of Ways and Means. Next week, we'll look at a few things that have already been tried, like the Facebook Oversight Board. But today we'll leave you back in Ireland with Johnny Ryan, because he's among the people who believe the key to solving the problems of Big Tech isn't as elusive as you've been led to believe. Take the abuse of data collection, for example:

Johnny Ryan: So, what we're, what we're talking about here is an obligation to keep data secure, right, to keep it confidential and obligation to not reuse it for whatever the hell you want to use it for, unless someone's given you the okay.

Which is really just common sense and ordinary politeness, but also an obligation to be able to tell people what you're doing with the data and what happened to it to be accountable and to be transparent. And if you don't need the data, an obligation to not use it. Really simple ideas.

Next week, on Ways & Means: What we saw on January 6th in the first 202 interviews of people involved that were done by the department of justice, nearly half cited, Facebook or Instagram as a way that they either heard about the insurrection or helps to organize the insurrection.

Bob addresses Kyle: So, half of the people who stormed the Capitol building on January 6th, got there in some way, because of Facebook.

Kyle: Half of the first, roughly 200 people that the DOJ interviewed. That's all that's been publicly released to date. I'm unsure of the total number of people, but it's a pretty large sample size 200 people. And to think that half of them cited a Facebook product as their tool either to find out about or to facilitate, I think is extremely important to remember.