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RESEARCH ARTICLE



Tech money in civil society: whose interests do digital rights organisations represent?

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ABSTRACT

This article explores philanthropic interactions between ‘Big Tech’ and digital rights civil society organizations (DRCOSOs) to enhance understanding of the alignment and misalignment of interests between these groups. ‘Big Tech’ wields political influence by distributing cash to research and policy organizations. Academic research supporting ‘Big Tech’ business practices is marshalled to support their political lobbying efforts, while civil society policy work shapes the narrative what dimensions of these businesses should be regulated (or not). While academic work is typically presented as a cool analysis of the relevant issues, DRCOSOs purport to represent the interests of individuals and groups negatively affected by those business practices. Through empirical tracking of direct financial flows, as well as an analysis of cash distributions via class action litigation settlements, we show that certain DRCOSOs have long-term financial relationships with ‘Big Tech’ that trouble our understanding of the alignments or misalignments of their interests. Through that analysis, we question where and how civil society fits into automated and algorithmic cultural production and perpetuation, and the way that Big Tech uses and guards the economic capital generated through its dominance over ‘automated culture’.

KEYWORDS Philanthropy; civil society; digital rights; non-profits; Big Tech; philanthrocapitalism; cy pres

Introduction

There is a long history of ethically questionable philanthropic practices in socially harmful industries. ‘Big Tobacco’, gambling, alcohol, pharmaceuticals, and mining have all been supported by philanthropically backed research and policy work. Industry is able to influence scientific findings and policy agendas in various ways, for instance through research funding and directing research programmes (Yach and Bialous 2001, Adams 2007, Capps and van der Eijk 2014), creating of conflicts of interests (e.g. between academics and industry, in favour of industry agendas) (Brandt 2012, Hendlin *et al.* 2019), undermining policy-relevant research (Landman and Glantz 2009), or

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interfering with researcher independence (Van der Eijk *et al.* 2019). Philanthropic interventions have the potential to deflect research and policy towards corporate objectives, launder corporate and executive reputations, and satisfy perceptions of corporate social responsibility (on corporate reputation and philanthropy, see Brammer and Millington 2005).

As relationships between industry and academia intensify (Crespo and Dridi 2007), related concerns associated with industry funding of academic research continue to emerge in the field of technology policy (Phan *et al.* 2021). Moves towards university commercialization come with complex ethical challenges (Mintz *et al.* 2010), especially at times where research budgets are under threat, and promoting industry collaboration is seen as a solution to fiscal crises. These issues, by no means new, are however, taking on new inflections in the context of research and policy work being funded by 'Big Tech' firms.

The firms that constitute 'Big Tech' have become so profitable, in part, through business models that automate cultural production by 'enfolding human thought, conduct, organisation and expression into the logic of big data and large-scale computation' (Striphas 2015). We focus our analysis of the relationship between technology firms and policy work in the context of this dimension of Big Tech platforms' participation in automated culture – the use of automated and opaque systems that manage and monetize the concurrent flows of personal data, cultural output, and human attention. Through entirely opaque curatorial, ranking, and gatekeeping systems, dominant platforms are able to manage the flow of cultural content according to incentives and optimizations that target the maximization of advertising revenue (Viljoen *et al.* 2021). Maintaining the opacity and profitability of these complex systems of automated cultural distribution and monetization requires ongoing control – control over cultural production, control over markets, control over consumer behaviour, and control over regulatory outcomes. This represents an epic and expensive political exercise. In the context of ongoing regulatory efforts to address the privacy impacts of this business model, as well as tackle the obscene market power that platforms have aggregated in the digital economy, dominant platforms appear especially resolute in preventing exposure of the relationships between cultural content, data flow, and economic value that their automated systems control.

In this article, we trace the movement of money between Big Tech firms and DRSCOs in order to highlight one way that the distributional and political status quo of automated culture reproduces itself. Although it is not possible to directly demonstrate the link between financial support from Big Tech to DRSCOs and the political objectives they pursue, we suggest that these financial relationships likely influence certain civil liberties narratives common to DRSCO outputs – ideas like greater individual control over data

– which we argue operate to smooth over the often contradictory interests of platform providers and their ‘users’.

Our argument proceeds as follows: automation at scale (i.e. via forms of intermediation, advertising and attention economies, and the domination of multi-sided markets) enables Big Tech to accumulate vast economic capital. Big Tech faces threats in relation to these (frequently unethical, at times legally questionable) automated practices, including regulation challenging those business models, as well as competition law and antitrust enforcement that challenges their domination of those profitable markets. Following Maclean *et al.* (2021) we contend that the strategic distribution of economic capital through philanthropy enables the transference of economic capital into social, cultural and political capital that serves to inoculate platforms from regulatory intervention. This in turn allows Big Tech to continue to accumulate through their automated management and monetization of cultural content. Our examination of automated culture thus takes a wide focus that encompasses the social and political structures that facilitate, sustain and enable it. In doing so, we make original contributions to the field of cultural studies in questioning where and how civil society fits into algorithmic cultural production and perpetuation, and the way that Big Tech uses and guards the economic capital produced through automated culture. We begin with an overview of the money and influence that ‘Big Tech’ wields in various spheres, across political, academic, and civil society work.

Money and influence

It is not controversial to claim that ‘Big Tech’ firms are interested in wielding political influence. And they have ample funds to do so. Alongside donating \$100s of millions directly to charities (for example, every year Google.org (2020) grants USD\$200 million to charities and social enterprises), ‘Big Tech’ firms use a range of novel instruments to wield their influence under the moniker of doing social good. One mechanism that industry actors use to perform ostensibly socially beneficial work, while simultaneously promoting their own interests, is the philanthropic ‘non-profit’ run as a ‘for-profit’ vehicle, sometimes through Limited Liability Companies (LLCs) (Reiser 2017, Amarante 2018, Manning *et al.* 2020; on the application of capitalist profit seeking business strategies to philanthropy, or ‘philanthro-capitalism’, see Bishop and Green 2008).

For instance, since establishment in 2015, the Chan Zuckerberg Initiative (CZI) (a LLC established by Facebook founder and CEO Mark Zuckerberg and his wife) has donated more than USD\$2 billion in grants and USD\$150 million in ventures (CZI 2020). Concerns have been raised in relation to CZI philanthropic activities however, specifically in relation to the Biohub research centre (that aims to prevent or cure all diseases by the end of the

century) that ‘may be laying the foundation for future patentable drugs and technologies’ (Mehta and Assadpour 2017, p. 36). Similarly, between 1994 and 2018, Microsoft Founder Bill Gates and his wife Melinda Gates have donated more than USD\$36 billion to end extreme poverty and provide vaccinations in developing countries (Bill and Melinda Gates Foundation 2020a, 2020b). At the same time however, the Bill and Melinda Gates Foundation has invested millions in drug companies that prevent ‘African governments from buying AIDS, malaria, and tuberculosis medicine at cheap prices’ (Ahn 2007, p. 72). Strategic philanthropy and for-profit social enterprise is one way to influence a political environment. Another is to directly fund political campaigns and lobby for political outcomes.

'Big Tech' funds political work

Groups like the Centre for Responsive Politics (2020a, 2020b, 2020c, 2020d, 2020e, 2020f) continue to track the ways in which ‘Big Tech’ money is used to influence political outcomes through lobbying and campaign contributions. Their data show that for the 2020 cycle, Microsoft made USD \$17,000,468 in contributions to political parties and USD\$10,260,000 for lobbying; Alphabet Inc (the parent company of Google) made USD\$21,177,686 in contributions and USD\$12,780,000 in lobbying; Facebook made USD \$6,002,635 in contributions and USD\$16,710,000 in lobbying; Amazon made \$8,875,411 in contributions and USD\$16,790,000 in lobbying; and Apple made USD\$5,685,157 and \$USD7,410,000 in lobbying. The tech industry now eclipses ‘Big Oil’ and ‘Big Tobacco’ in lobbying spending, with Facebook and Amazon spending the most of any corporates in the US (Public Citizen 2021).

Lobbying frequently concerns the shape and enforcement of technology regulation. In addition to these direct contributions to political parties and lobbying efforts, executives of ‘Big Tech’ companies are deeply embedded in senior government and advisory roles. For example, U.S. President Joe Biden’s transition team included many executives of ‘Big Tech’ including Amazon’s Tom Sullivan (overseeing Department of State) and Mark Schwartz (overseeing Office of Management and Budget), and Former Vice President and deputy general counsel for Google’s Nicole Wong (overseeing the National Security Council) (Bose and Shepardson 2020). Lobbying work is frequently supported by (often commissioned) academic research promoting a particular position (see e.g. Lipton 2015).

'Big Tech' funds academic work

There are four key goals that motivate investment by ‘Big Tech’ into academic research: ‘to put forward a socially responsible public image, influence events

hosted by and decisions made by funded universities, influence the research questions and plans of individual scientists, and discover receptive academics who can be leveraged' (Abdalla and Abdalla 2020, p. 1). These concerns echo ongoing consternation about industry funding, and academics are certainly not naive to these strategies. In the research world of technology and society (broadly), there is continuing resistance to industry funding. For instance, in 2018, a group of privacy scholars and advocates issued an open letter¹ calling for the removal of Palantir as a platinum sponsor for the Amsterdam Privacy Conference. They simultaneously established a 'Funding Matters' campaign advocating for 'action-oriented discussion on corporate funding of academic events' and 'the development of rigorous criteria and guidelines for corporate sponsorship, for example, based on Human Rights Impact Assessments' (Funding Matters 2018). Later, in 2019, the U.S. Privacy Law Scholars Conference removed Palantir as a sponsor due to its involvement with the U.S. Immigration and Customs Enforcement (ICE) agency (Chapman 2019). Also in 2019, the Grace Hopper Celebration, the world's largest conference for women in technology, dropped Palantir as sponsor due to 'toxic association for advocacy non-profits and academic institutions in tech' (Ghaffary 2019). Palantir's involvement with military and police surveillance has raised concerns that their business practices are contradictory to the interests of communities in attendance at privacy conferences, and that Palantir's presence may legitimise its controversial practices (i.e. 'reputation laundering') (IAPP 2018).

However, 'Big Tech' is not simply (or even) Palantir, whose actions are relatively easy to evaluate from a 'social justice' position (despite the claims of Palantir itself, see e.g. Palantir 2020). Other 'Big Tech' companies, like Google, Microsoft, Facebook and Amazon, make substantial grants to researchers and research groups. Industry funding of research generates complex ethical issues (Manning *et al.* 2020). While some funding serves strategic ends for 'Big Tech', as per the examples described above, a great deal of funding has no connection to commercial gains or advantage. Further, funding recipients are certainly not automatically co-opted into industrial agendas. Researchers (and their managers) adopt sophisticated strategies to ensure industry money produces independent and critical research. Nonetheless, industry money may be used to commission sympathetic work. More likely, however, industry money is used to amplify work that is already congenial to the broader social and economic interests of corporate actors. Several academic funding scandals relating to tech policy work can be understood through this lens (Ochigame 2019), for instance, with respect to debates over the interpretation of European laws requiring algorithmic transparency (Williams 2019). Large-scale funding of academic work often translates into coordinating power, resulting in higher profiles for researchers,

and platforms to interface with policy makers, which can also influence political outcomes.

Google's interaction with research into antitrust and competition law represents another example. In 2017, a report by an organization called 'Campaign for Accountability' (2017) made claims about Google funding specific academics to produce work related to its public policy interests. Much of this work purportedly deflected antitrust accusations against the company (Mullins and Nicas 2017). Campaign for Accountability's transparency work was of limited empirical value, funded by Oracle, a competitor of Google, who, with little nuance, worked to smear academics to advance a competing position (see Marechal 2017, Miller 2017). That said, there are credible elements to claims that Google works to marshal academic outputs that can be used in its policy lobbying apparatus. For instance, Google's support (along with Amazon and Qualcomm) of an antitrust research centre at George Mason University, 'the Global Antitrust Institute', which, according to a June 2020 article by the New York Times, promoted a hands-off approach to antitrust enforcement (Wakabayashi 2020). Promoting that regulatory stance is unsurprising, however, considering George Mason University is the intellectual home of Pat Buchanan's 'public choice economics', with its particular brand of anti-regulatory free-market fundamentalism, as well as the Manne Economics Institute for Federal Judges, a law and economics programme which promoted the importance of the 'consumer welfare standard' and its dependence on price for measuring the effects of anti-competitive practices (see e.g. Ash *et al.* 2020).

Academics working in and orbiting that group, almost certainly hold those views in good faith, and the institute's \$2.1 million budget is relatively constrained compared to other research groups working in tech policy. Indeed, the ethics of industrial amplification of allied voices is difficult to parse. Google and Amazon are not paying academics to change their views – nor are academics necessarily trading their symbolic capital for cash by writing work that supports Google. Rather, they are paying for transmission and amplification of sympathetic views in politically effective ways. It is not the fault of those individual researchers that Google is able to continuously exploit its monopoly power, that pervasive surveillance and behavioural advertising has become a fundamental business model in the digital economy, or that 'Big Tech' actors repeatedly engage in concerning behaviours (Krumsieck 2003, Zuboff 2019).

Where ethical concerns become more stark is when industry takes positive action to marginalize critical academic voices. For instance, after a €2.42 billion (USD\$2.7 billion) fine levied against Google by European regulators for anti-competitive practices, Google apparently defunded the Open Markets Initiative from the USD\$21 million Google Funded New America Foundation think tank after its leader praised the European decision (Rushe

2017). More recently in December 2020, Google removed the co-lead of its 'ethical' AI team Timnit Gebru following a dispute regarding censorship of a co-authored paper Gebru submitted to a conference that Google wanted her to retract. The paper concerned the environmental impacts of large language models, among other concerns, such as transparency (see e.g. Hao 2020a, 2020b). These issues make clear that the dynamics of strategic alignment and mis-alignment between industrial and academic actors, and its ethical realities, are extremely complex. Big Tech's philanthropic efforts appear to strategically support their own business interests in the name of doing social good. While ethically questionable, there is, however, no reason for companies not to be strategic with their philanthropy. As we have shown, more issues emerge in the world of academic research funding, however, this is a complex reality requiring case-by-case treatment.

In the world of civil society actors and nonprofits however, where policy work representing the interests of the public is being done, the interest-alignment calculus *should* be different. DRCOS often explicitly position (and brand) themselves as antithetical to 'Big Tech' and its negative impacts. For instance, in class action settlements, some DRCOS purport to be as close as possible to the interests of the parties injured by the actions of 'Big Tech'. In the following sections, we show that the dynamics of interest alignment are especially fraught, compounded by limited transparency of the flow of industrial cash into the civil society ecosystem.

'Big Tech' funds civil society work

There are a range of civil society actors in tech policy – non-government organizations (NGOs), social and grassroot movements, nonprofits/not-for-profits, and civil society organizations – that work to develop, and advocate for, public policy positions. These groups purport to represent the public interest or some subset of it with respect to how governments should address the tech sector, and act as a buffer zone between state and private industry (Isar 2010), and seek to influence law and public policy through advocacy and engagement with government, policy makers, media, and community, as well as through strategic public interest litigation (see e.g. Hondora 2018). Civil society organizations 'provide fundamental contributions in terms of stimulating social participation, bottom-up approaches, activation of resources, sharing of information, understanding and knowledge' (Rondinella *et al.* 2017, p. 960). Their role in law and policy making thus processes that thus differs from the activities of academics and lobbyists. Their political legitimacy stems from their 'transmitting' or 'channelling' public interests and opinions into the political domain. Whether or not this description accurately reflects how civil society organizations operate in practice (see Erman 2018), civil society organizations tend to, or at least

position themselves to, represent certain groups or interests, and in this way they shape narratives of harm that influence regulation and policy.

According to their own self-descriptions, DRCOS often define themselves as representing the interests of those that 'Big Tech' (and governments) negatively impact through, for example, 'surveillance capitalism' and its associated human rights implications (Zuboff 2019). Take for example, the Electronic Frontier Foundation (EFF), that describes itself as 'the leading nonprofit organization defending civil liberties in the digital world' that has 'used our fiercely independent voice' to 'ensure that rights and freedoms are enhanced and protected' (EFF 2020) (see Youman 1996 for EFF's history). The EFF styles itself as 'the Internet's "first line of defense" against actions that attempt to limit or control the sovereign nature of cyberspace', including, though not limited to, those by 'Big Tech' (Nhan and Carroll 2012, p. 390). It is worth briefly noting that some of the earliest criticisms of the EFF concern its affiliation with, and funding by, the Digital Privacy and Security Privacy Working Group (DPSWG) in campaigns against the *Digital Telephony and Privacy Improvement Act (1994)* (US). DPSWG involved a coalition of over 50 companies and other civil liberties groups, including the American Civil Liberties Union (ACLU). It also included technology companies such as AT&T, IBM, Apple, Microsoft, among others (Youman 1996). In response to EFF's participation in this coalition, the 'electronic privacy community charged the EFF with selling out, and the ranks of the EFF's grassroots, on-line constituency were outraged' (Youman 1996, p. 22).

After that scandal, EFF Policy Director Jerry Berman left the organization and founded The Center for Democracy and Technology (CDT). Its aims include strengthening individual rights through defining, promoting and influencing technology policy (CDT 2020). Like EFF, CDT describes its purpose as working 'to promote democratic values by shaping technology policy and architecture, with a focus on the rights of the individual' (CDT 2020). Another DRCOS, Access Now, similarly, 'defends and extends the digital rights of users at risk around the world' and describes their mission to 'serve, guide and influence decision makers ... through human rights-focused thought leadership and innovation' (Access Now 2020). Finally (for our analysis), the Electronic Privacy Information Centre (EPIC) also describes its position as an independent non-profit research centre in Washington 'on the front lines of the major privacy and civil liberties debates'.

As we describe in the following sections, there are ongoing financial connections between these organizations and 'Big Tech' firms. The contexts of these financial flows are multiple and nuanced. Some is direct funding from corporations or foundations, some is directed to events and conferences, and some comes through class action law-suit settlements. There are risks for non-profits when accepting (public and/or private) funding in terms of (mis)alignment of funders' interests and the interests that non-

profits make themselves out to represent (see e.g. Barros and Taylor 2018). These risks are not limited to private or corporate donations, and extend to state funding too (see e.g. Suarez, 2011, Fyall 2016, Steinberg and Wertman 2018, Clément 2019). However, and similar to academic research contexts, there have been declines in state funding and a corresponding increased need for private funding (see e.g. Cortis 2017). To be clear, we certainly do not claim that financial support undermines the independence of these organizations. But we hope that tracking these financial flows affords some insight in the ostensible alignment or misalignments of interests at work in this environment. As with academic researchers, irrespective of how these organizations define themselves, funding is likely to demonstrate certain degrees of interest alignment. In other words, the flow of money to civil society from Big Tech risks situating DRCSOs as a mechanism to mollify the contradictions between the interests of platform users as a class, and a business model that defines users as a resource to be mined and monetized through the strategic management of cultural content, personal data, and human attention according to algorithmic optimizations.

Part 1: corporate and foundation donations

Unlike in other spheres of activity (i.e. political campaigning or academic research), there is not (or we were not able to identify) any systematic analysis of financial relationships between industrial and civil society actors in the technology policy space. We believe that those financial flows offer insight into how industrial actors influence policy, as well as shed light on the alignment and misalignment of interests between these groups. To perform that analysis we aggregated and analysed publicly available information (including annual reports and funding policies) about DRCSOs, cross-referencing, where possible, with registers for charities and not-for-profits and U.S. Internal Revenue Service (IRS) records. In Australia, we collected data on Electronic Frontiers Australia (EFA), Digital Rights Watch (DRW), and the Australian Privacy Foundation (APF). In Europe, we examined European Digital Rights (EDRi), Privacy International (PI) and Big Brother Watch. In the United States (US) we examined the Electronic Frontier Foundation (EFF), Access Now, the Centre for Democracy and Technology (CDT), and the Electronic Privacy Information Center (EPIC). We note at this stage that there was substantial diversity in positions relating to accepting corporate donations. Some organizations, like Privacy International, refuse to accept corporate funding (although this is not to say that funding from other sources e.g. trusts, foundations or international development agencies is unproblematic). Others limit corporate funding to a fractional percentage of total donations in order to limit potential influence. Others receive so little funding that transparency was of limited relevance. The [Tables 1–3](#) below speak to the

Table 1. Financial Records, Australia.

	Total revenue	Total donations	Corporate donations from Corp	% from Corp	Non-corporate Individual donations	Grants	Membership	Merchandise	Reimbursements	Other	Google	Microsoft	Apple	Facebook	Amazon	Twitter	Mozilla
AUSTRALIA																	
Electronic Frontiers Australia (EFA)																	
2019	71,945	24,935				43,514											
2018	69,997	28,778	28,778	28,778		25,842										15,377	
2017	75,332	50,295	50,936	50,936		12,380		234		10,572							
2016	62,162	42,802	42,802	42,802		12,741		387		6,037							
2015	44,998	16,121	8,947	8,947		29,548		639							1,278		
2014	42,967	10,719	734	734					20								
Digital Rights Watch (DRW)																	
2019																	
2018	16,917	1,073	1,073			1,073	15,725			15			2				
2017																	
2016																	
2015																	
2014																	
Australian Privacy Foundation (APF)																	
2019	3,354	3,354	* does not differentiate between revenue and donations			3,354	* does not differentiate between donations and membership										
2018																	
2017																	
2016																	
2015																	
2014																	

Note: All funds in AUD.

**Table 2.** Financial records, Europe.

	Total revenue	Total donations	Corporate donations	% from Corp	Non-corporate donations	Individual donations	Grants	Membership	Google	Microsoft	Apple	Facebook	Amazon	Twitter	Mozilla
EUROPE															
European Digital Rights (EDRI) (EUR)															
2019	926,099	146,831	85,037	9.2%	33,708	28,086	632,166	62870			YES	YES			
2018	704,568	187,177	136,683	20.0%	21,776	28,718	389,064	53281			YES	YES	Handshake, Mozilla, Twitter, AIRVPN, Mailfence, Schmidt Devops, Letfield, Netsend, Earthport FX		
2017	728,816	128,398	81,929	11.3%	25,651	20,818	533,195	39941	YES		YES	YES	Donations: EDIMA, Mozilla, Microsoft, TomTom, Twitter		
2016	514,745	82,214	53,413	10.1%	10,210	20,193	340,518	39304	YES	YES		YES	Google, Microsoft, Mozilla, Intel, Eco, Mailfenc, Cyberghost		
2015	85,670	41,552	9.0%	15,720	29,644	65,845	26857	YES			YES	YES	Google, Twitter, Mozilla, CyberGhost,		

2014 511,240 23,765 9,807 260,667

Privacy
International
(PI) (GBP)

Ghandi,
Eurozine
Intel, Yelp, CCIA,
Campact

Grants:
Adessium
Foundation,
Ford
Foundation,
International
Committee of
the Red Cross,
International
Development
Research
Centre,
Luminate,
Oak
Foundation,
Open Society
Foundations,
Swedish
International
Development
Cooperation
Agency,
Esmée
Fairbairn
Foundation,
Media

(Continued)

Table 2. Continued.

	Total revenue	Total donations	Corporate donations	% from Corp	Non-corporate donations	Individual donations	Grants	Membership	Google	Microsoft	Apple	Facebook	Amazon	Twitter	Mozilla
															Democracy Fund, Sigrid Rausing Trust, Street Foundation
2019	1,873,100	11,843			11,843										
2018	1,652,701	18,876			18,876										
2017	2,421,192	23,088			23,088										
2016	1,405,439	10,955			10,954										
2015	1,398,207	137,071			137,071										
2014	1,576,682	25,352			25,352										
Big Brother Watch (BBW) (GBP)															Grants: Andrew Wainwright Reform Trust, Atlas Network, Joseph Rowntree Reforms Trust, Lush, Digital Freedom Fund, Open Society Foundations, Lord Paul Strasburger
2019															
2018						51,317									
2017															
2016						7,545									
2015															
2014															

Note: EDRI in EUR, PI and BBW in GBP.

**Table 3.** Financial records, US.

	Total revenue	Total donations	Corporate donations	% from Corp	Non-corporate donations	Individual donations	Cy-pres	Grants (foundations)	Membership	Google	Microsoft	Apple	Facebook	Amazon	Twitter	Mozilla
ELECTRONIC FRONTIER FOUNDATION (EFF)																
2019 Annual Report	15,043,011	13,212,801	2,092,118		7,950,942	507,443	2,646,450									
2019 Financial Statement	15,043,010	4,147,183			507,443	4,224,610	4,317,717									
2019 IRS Form 990	14,232,158	12,707,275			507,443		4,247,465									
2019 Court Documents					505,838											
2018 Annual Report	17,268,830	15,189,058	2,740,485		7,820,395	2,276,235	2,334,049									
2018 Financial Statement	17,268,830	8,204,086	1,995,475		2,878,991	2,276,235	2,334,049	4,690,845								
2018 IRS Form 990	15,913,065	12,915,696			2,276,235		4,875,309									
2018 Court Documents					2,276,234											
2017 Annual Report	19,063,915	17,121,183	2,463,156		7,203,354	3,061,754	4,103,481		822,000							
2017 Financial Statement	19,063,915	17,121,183	1,707,801		3,771,816	3,061,754	5,811,283	4,186,894								
2017 IRS Form 990	17,392,426	16,833,747			5,646,598	3,061,754		4,186,894								
2017 Court Documents					3,061,754											
2016 Annual Report	8,981,402	9,645,696	1,137,151		4,930,643	997,470	2,390,394									
2016 Financial Statement	8,981,401	9,645,696			2,374,360	997,470	3,547,545	2,556,282								
2016 IRS Form 990	11,056,928	9,547,886			2,387,131	997,470		2,556,282								
2015 Annual Report	16,762,046	16,256,928	2,318,369		4,724,024	3,743,826	8,958,610									

(Continued)

Table 3. Continued.

2016 IRS Form 990	4,905,042	4,763,403	168,326			550,000	135,000	0	0	0
2016 Organizational Support			21.9%			398,300	135,000	50,000	40,000	165,000
2016 Intern Doc Data		22.0%	2,470,701	436,535	6,036,741					
2015 Financial Statement	3,359,891	1,780,021			1,408,348					
2015 IRS Form 990	3,338,316	3,260,369	79,875			220,000	85,000	0	0	210,000
2015 Organizational Support		18.1%				220,000	85,000	50,000		110,000
2015 Intern Doc Data		18.0%	1,520,800	85,374	1,079,764					
2014 Financial Statement	2,049,382	786,156			1,171,361					
2014 IRS Form 990	2,030,386	1,957,517	100,817			102,000	65,000	50,000	40,000	0
2014 Organizational Support		18.0%				200,000	65,000	50,000	40,000	25,000
2014 Intern Doc Data		18.0%	1,173,609	75,375	715,003					
CENTER FOR DEMOCRACY AND TECHNOLOGY (CDT)										
2021 Organisational Support						500,000+	100,000+	50,000	100,000+	Facebook, 500,000+ Chan Zuckerberg Initiative
2019 Annual Report	40.0%	20.0%	30.0%	4.0%	33.0%	200,000+	200,000+	100,000	200,000+	Facebook, 200,000+ Chan Zuckerberg Initiative
						+ +	+ +	+ +	+ +	+ +

Table 3. Continued.

2016 Annual Report													
2016 Financial Statement	4,780,774	3,769,867			882,225								
2016 IRS Form 990	4,878,909	4,886,927				897,289			584,911	250,000	215,000	180,931	135,000
2016 Financials Chart			35%	16%	14%	9%	20%						237,500
2016 Court Documents						439,957							
2015 Annual Report													
2015 Financial Statement	4,304,306	4,200,593											
2015 IRS Form 990	3,974,040	4,073,093						301,000	225,000		150,000	105,000	110,000
2014 Annual Report													
2014 Financial Statement	5,104,609	4,499,868			497,666								
2014 IRS Form 990	4,591,525	4,864,784			497,666			2,488,000	1,293,484		555,000		
ELECTRONIC PRIVACY INFORMATION CENTER (EPIC)													
2019 Annual Report													
2019 Financial Statement	2,259,413	2,148,036											
2019 IRS Form 990	2,347,778	2,130,046											
2019 Court Documents						28,828							
2018 Annual Report													

(Continued)

Table 3. Continued.

	Total revenue	Total donations	Corporate donations	% from Corp	Non-corporate donations	Individual donations	Cy-pres	Grants (foundations)	Membership	Google	Microsoft	Apple	Facebook	Amazon	Twitter	Mozilla
2018 Financial Statement	1,980,608	1,287,060					443,843	244,950								
2018 IRS Form 990	2,099,893	2,020,994							35,000							
2018 Court Documents						415,014										
2017 Annual Report																
2017 Financial Statement																
2017 IRS Form 990	1,715,419	1,640,888														
2016 Annual Report																
2016 Financial Statement																
2016 IRS Form 990	1,622,722	1,556,817														
2016 Court Documents						439,957										
2015 Annual Report																
2015 Financial Statement																
2015 IRS Form 990	1,119,662	954,224														
2014 Annual Report																
2014 Financial Statement																
2014 IRS Form 990	1,644,839	1,559,941														

Note: All funds in USD.

idiosyncrasies. Below is the funding information we could compile from those sources.

Nonprofit funding transparency is limited, despite the existence of compliance mechanisms requiring donation transparency in all jurisdictions, at least to a regulator. Public disclosure of financial information is generally intended to discipline the behaviour of charities and nonprofits (Brody 2012). The focus, however, is typically on executive compensation and expenditure rather than public disclosure of donor identities. In Australia, for instance, the Australian Charities and Not-For-Profits Commission regulates over 57,000 Australian charities (ACNC 2020). Some information about a registered charity's income is made publicly available as a means to monitor civil society donations – but not necessarily donor identities. Similarly, in the U.S., to ensure the legitimacy of nonprofits' tax-exempt status, nonprofits must disclose the identity of donors for donations above USD\$5,000 to the Federal Internal Revenue Service (IRS) in Schedule B of Form 990 ('Return of Organisation Exempt From Income Tax'). Schedule B Form disclosure allows the IRS to review nonprofits claims of being publicly supported (and thus not a private foundation which would be subject to different tax rules). However, rights to free speech and association protected under the U.S. Constitution (First Amendment) prevent those contributions being disclosed to the public (IRS 2020). Not having to *publicly* disclose Schedule B forms resolves the tension between the need for tax and charity law enforcement, and protecting individuals from publicity of their organizational associations. Those protections first emerged in the U.S. context of mid-century civil rights advocacy, where free speech rights protected members of civil rights organizations from hostile state governments.²

Recent cases have navigated the contours of these contradictory positions, where U.S. state governments have sought access to federally held Schedule B forms for the purpose of their own oversight of charitable organizations³ (see e.g. Akins 2017). In these cases, state regulators typically argue this type of disclosure is necessary for enforcing rules against self-dealing. Alternatively, political organizations and nonprofits argue that disclosing Schedule B forms to state regulators risks rendering those forms publicly inspectable through Freedom of Information applications or accidental publication. They claim this risks undermining donor support or exposing donors to harassment (Volkova 2017). Courts, however, have been unconvinced by this contention. These cases have little bearing on donor information becoming more available to the *public*. That is, they make tracking corporate influence of civil society no easier.

Given some of the limits to transparency described above, some funding information has been gleaned from staff exposés, litigation materials, or from DRCSOs annual reports or minutes of meetings. For instance, former EFF employee April Glasser (2018) claimed EFF received USD\$822,000 from

Google in 2017 (although we could not find evidence of this donation in any of its regulatory compliance documents). The ongoing relationship between Google and EFF was further documented in the 2012 *Oracle v Google* patent dispute, where Google acknowledged funding EFF 'for years' prior to the 2012 dispute.⁴ In Australia, annual reports and/or minutes of annual general meetings reveal Google has been funding Electronic Frontiers Australia for several years: 'The board accepted a donation from Google, as this had been done in previous years' (EFA 2018, p. 9). EFA presents a total donation amount in their annual reports, however, it is not stated who the donors are or exactly how much was donated by them. While EFA have publicly revealed receipt of funding from Google over a number of years, there is limited information about it including amounts and what the funding was used for. For example, EFA's 2016 annual report states the organization accepted 'significant financial support from Google' yet fails to mention the amount, and EFA insist they 'continue to be critical of Google where necessary' (EFA 2016, p. 2).

There is considerable variation between DRCOS in their approach and disclosure of funding. For example, each of the European Digital Rights' (EDRi) annual reports clearly detail their yearly income (including corporate donations, foundation grants, individual donations and non-corporate donations). Further, EDRi has a clear funding policy outlining limitations on the total amount of donations they can receive from corporate sponsors, and that limits corporate donations to a maximum of 30% of yearly budget with each corporate donation not exceeding 7.5% of its total income of the previous year (EDRi 2018). This can be compared with Privacy International, which does not accept corporate donations at all ('because we believe that it would jeopardize the independence of our activities'), however, receives grants from a range of foundations, trusts and international development agencies (Privacy International 2020).

Accessing information about 'Big Tech' funding of civil society was complex and challenging due to the limited availability of information, non-standard reporting styles, accounting methods and classifications, and discrepancies across (cross-referenced) information. While some organizations were highly transparent, others were not, and do not reveal whether funding is private, corporate, or from a foundation – in fact, the lines between corporate donations and foundation grants (from corporations that fund foundations) are very difficult to draw. Further, some organizations were simply demonstrably less transparent than others about sources of funding and/or their funding policies (if indeed they had one). Frequently, organizations might reveal a funding amount, but not a source. What this shows is that some DRCOS lack of donation transparency is deeply institutionalized and tracking interest alignment through financial flows alone is vexed. On the whole, while the financial information we could obtain was

patchy (at best), and limited to a small group of industrial actors and civil society organizations, it suggests that funding between DRCSOs and 'Big Tech' is endemic which raises questions about the interests DRCSOs represent, especially when funding is not transparent. Any conclusions drawn about the motivation of this funding would be speculative. It may be that 'Big Tech' supports a vibrant civil society, it may be that certain policy issues raise the possibility of strategic alliance, or it may be that the political disposition of 'Big Tech', with its libertarian origins (Turner 2006), are not always antithetical to the concerns of organizations oriented around protecting civil liberties, which often translates into advocating for greater user control over data in the technology space.

Part 2: *cy près: interests of the class or conflicts of interest?*

The motivations behind direct financial contributions from 'Big Tech' to DRCSOs are difficult to discern. These relationships, and the interests they advance, become more complex in the context of financial contributions required by class action lawsuits against 'Big Tech' firms. Through the doctrine of *cy près* (described below), 'Big Tech' firms distribute cash to DRCSOs that purport to represent the interests of the parties directly injured by the actions of those companies. However, what becomes apparent is an ironic leveraging of this interest misalignment to continue cultivating (and funding) longstanding and ongoing relationships between 'Big Tech' and DRCSOs. Below, we track these financial flows, and the jurisprudence around them to better discern this play of interests.

Originating from the French expression *cy près comme possible* (or 'as near as possible'), the *cy près* doctrine initially moved from Roman law to the Anglo laws of equity in the context of charitable trusts. Historian Edith Fisch identifies *cy près* as part of the early equity chancellors' ecclesiastical acceptance of the medieval practice of giving alms to expiate sins – i.e. as a way to buy salvation (Fisch 1953). In the context of charitable trusts, fulfilling the declared intention of donors is sometimes impracticable or impossible. *Cy près* thus enables the court to give effect, as near as possible, to a donor's intention through equity, whereas under common law, when impossible, the donation would fail entirely. In the 1970s, *cy près* controversially entered the domain of class action settlements after being promoted as a useful instrument in a law journal article (Shepherd 1972). In that context, *cy près* is typically invoked where the plaintiff class is so large that joining all members is impractical. That is often the case in class actions against 'Big Tech' firms which sometimes involve hundreds of millions (if not more) users, making joining the entire class administratively and financially impracticable (if not impossible). At the same time, these giant classes render payouts per class member a mere pittance. Instead, DRCSOs, whose missions are perceived as connected

to the interests of the plaintiff class, are frequently selected as *cy près* recipients (Rotenberg and Jacobs 2016, p. 309).

Doctrinal and ethical concerns continue to trouble the use of *cy près* in class actions. Class members' rights are potentially undermined, and the potential for bias and conflicted interests are introduced. Because class counsel negotiates with defendants absent direct client supervision, counsel is incentivised to accept potentially suboptimal settlements that still result in substantial legal fees. More importantly for our purposes, while requiring 'fairness' certification from the judge, private settlement negotiations between class counsel and the defendants has resulted in distributions to DRCSOs with which technology and law firms have ongoing relationships, as well as law and technology research centres at universities attended by class counsel. In other words, it has the potential to facilitate distributions to counsel and defendants' preferred recipients rather than recipients representing interests 'as close as possible' to the interests of the class. A selection of *cy près* settlements from large tech companies, and their recipients are listed in Table 4 below.⁵ Note that Table 4 does not include recipients other than listed DRSCOs. However, other recipients include a range of technology policy research groups at numerous US universities.

The progression of outcomes and distribution methods in these cases reveal certain strategic imperatives from the defendants. For instance, in the case of *Lane v Facebook*, *cy près* distributions were to be made via a new grant-making entity – the 'Digital Trust Foundation' – to make awards from the USD\$6.5 million settlement. This entity was structured specifically to inoculate Facebook from critique. The three-person board included Facebook's Director of Public Policy. During the litigation, it was argued that such structural conflicts could not satisfy the next best distributions of funds required for *cy près* awards. However, the court declined to intervene, on one hand, not wishing to intrude on the nature of private settlement negotiation, and on the other, suggesting that the potential for structural conflict does not preclude the outcome as long as there is a substantial nexus to the interests of class members.⁶ Though Justice Kleinfeld dissented, noting that this would lead to a USD\$6.5 million advertising campaign for Facebook, the majority of judges held, 'that Facebook retained and will use its say in how *cy près* funds will be distributed so as to ensure that the funds will not be used in a way that harms Facebook is the unremarkable result of the parties' give-and-take negotiations'. It was thus deemed perfectly reasonable that the class interests be promoted in a way that did not harm Facebook's interests.⁷

Critique of that distribution mechanism has since shifted the way subsequent *cy près* distributions are handled. Rather than establishing *ad hoc* grant making organizations, money has been distributed directly to DRCSOs and research organizations, as agreed between the defendants

Table 4. Cy pres settlements.

Case	Citation	Total Award	Total Cy Pres	EFF	CDT	EPIC	AN
2020							
<i>In Re Google Inc Street View Electronic Communications Litigation</i>	3:10-md-02184	13,000,000				YES	
TOTAL							
2019							
<i>In Re: Ashley Madison Customer Data Security Breach Litigation</i>	4:15-MD-02669	11,200,000	230,628	28,828		28,828	
<i>Ossola v American Express Co</i>	1:13-cv-04863	8,250,000	Remainder	84,467			
<i>Cottage Health Settlement</i>		3,000,000		239,170			
<i>Opperman v Kong Technologies Inc</i>	3:13-cv-00453	5,300,000	Remainder	153,372			
TOTAL				505,838	0	28,828	0
2018							
<i>Couser v Comenity Bank</i>	3:12-cv-02484	8,475,000	871,550	59,833			
<i>In Re: The Home Depot Inc Consumer Data Security Breach Litigation</i>	931 F3d 1065, 1:14-md-02583	25,000,000		971,169			
<i>Ossola v American Express Co</i>	1:13-cv-04863	8,250,000	Remainder	7,321			
<i>In Re: Ashley Madison Customer Data Security Breach Litigation</i>	4:15-MD-02669	11,200,000	3,320,111	415,014		415,014	
<i>Khoday v Symantec Corporation</i>	0:11-cv-00180	60,000,000	Remainder	92,086			
<i>Gehrich v Chase Bank</i>	1:12-cv-05510	34,000,000	Remainder	402,727			
<i>Zepeda v Paypal</i>	4:10-cv-02500	3,200,000	Remainder	328,084			
Unknown						443,843	
TOTAL				2,276,234	0	858,857	0
2017							
<i>In Re: Capital One TCPA Litigation</i>	1:12-cv-10064	75,455,099	Remainder	1,726,379			
<i>Fraley v Facebook Inc</i>	C 11-1726-RS	20,000,000	Remainder	846,771		846,771	
<i>Bank of America TCPA Litigation</i>	5:11-cv-02390	32,000,000	Remainder	187,212			
<i>McCabe v Six Continents</i>	3:12-cv-04818	11,700,000	252,375	125,870			
<i>Stanley Nader v Capital One</i>	2:12-cv-01265	3,000,000	Remainder	83,559			
<i>Chapa v TruGreen Inc</i>	1:13-cv-03957	4,450,000	82,550	82,550			
<i>Wheelock v Hyundai Motors of America</i>		1,350,000	Remainder	9,413			
<i>Perkins v LinkedIn</i>	5:13-cv-04303	13,000,000	Remainder		347,332		347,332
<i>In Re: Google Inc Cookie Placement Consumer Privacy Litigation</i>	1:12-md-02358	5,500,000					

(Continued)



**Table 4.** Continued.

Case	Citation	Total Award	Total Cy Pres	EFF	CDT	EPIC	AN
TOTAL 2016				3,061,754	1,194,103	0	347,332
<i>Aboudi v T-Mobile</i>	3:12-cv-02169	2,500,000	Remainder	997,470	439,957	439,957	
Unknown				997,470	439,957	439,957	0
TOTAL 2015							
<i>In Re: Google Referrer Header Privacy Litigation</i>	5:10-cv-04809	8,500,000		3,743,826			
Unknown				3,743,826	0	0	0
TOTAL 2014							
<i>In Re: Netflix Privacy Litigation</i>	5:11-cv-00379	9,000,000			497,661		
<i>Manjunath Gokare v Federal Express</i>					5		
Unknown				1,303,028			
TOTAL 2013				1,303,028	497,666	0	0
<i>Standiford v Palm Inc</i>	5:09-cv-5719	640,000			365,149		
TOTAL 2011				0	365,149	0	0
<i>In Re: Google Buzz Privacy Litigation</i>	5:10-cv-00672		6,065,000	1,000,000	500,000	500,000	
TOTAL 2010				1,000,000	500,000	500,000	0
<i>Lane v Facebook Inc</i>	5:08-cv-03845	9,500,000					
TOTAL							
OVERALL TOTAL				12,888,150	2,996,875	1,827,642	347,332

Note: Figures in USD.

and class counsel, with no defendant oversight. As Table 4 suggests, a small selection of civil society and research organizations are repeat recipients. This, of course, raises its own set of concerns. In the *Google Buzz* litigation, EPIC, along with seven other privacy-focused civil society organizations,⁸ objected to their exclusion from the *cy près* funds distribution, stating that Google had arranged to give the majority of the funds to organizations that 'that are currently paid by Google to lobby for or to consult for the company'.⁹ The result was a modification of the recipient list to include additional organizations, including EPIC.

Further critique of distributions to the same group of civil society and research organizations followed in the *Google Referrer Heading Litigation*. There, the appeal court expressed displeasure at the lacklustre fairness analyses from the lower court enabling continuing *cy près* distributions despite clearly conflicted interests. One amicus brief in that litigation, for instance, explicitly asserted *cy près* was being used to 'secretly funnel money to non-profits (which is not reported as a corporate donation), obtain a charitable giving tax deduction for that portion of the class action settlement, and seed the public messaging landscape with reliable allies ...'.¹⁰ The persistent challenges to problematic settlement agreements has ultimately led to more stringent standards for selecting *cy près* recipients.¹¹ First, the direct distribution of settlement funds must be not feasible – i.e. the administrative costs of identifying and notifying the class would exceed the value of the fund; second, where recipients must have a mission connected to the problems identified in the litigation; and third (and most importantly for our purposes), any prior affiliation between the parties or the recipients must not raise questions about whether the selection of recipient was made based on the merits of the recipients.

Ongoing financial relationships now raise red flags for 'fairness' determinations in *cy près* settlements. This initially appeared to limit the possibility of using the class action settlement to achieve structural influence. To that end, in the 2019 *Google Street View Settlement*, an entirely new group of *cy près* recipients was selected. However, the distribution procedure is now evolving again in ways that appear to maintain the legitimacy of this mechanism for dealing with class actions, but upon closer inspection, also afford another way for established funding relationships to continue. To that end, at the time of writing, the ongoing *Google Cookie Placement* and *Google Plus* settlements, for instance, will require independent third parties to select *cy près* recipients through a competitive process. This involves the appointment of a 'special master' (magistrate judge) to select recipients for distributions of settlement funds (after identified class members receive USD\$12 each) based on competitive applications.¹² This opens the door for DRCSOs with ongoing financial relationships to 'Big Tech' to re-enter the recipient list.

In sum, DRCOS such as the EFF, CDT, EPIC and Access Now, alongside 'law and technology' research centres at elite U.S. universities, are all frequent beneficiaries of *cy près* settlements. Multiple class actions against 'Big Tech' firms have resulted in very significant payments and the *cy près* mechanism opens the door to leveraging settlement agreements as sites of strategic intervention by dispersing cash through the academic and civil society ecosystems in the name of 'paying for one's sins.' This risks erasing, or at least re-shaping, the contradictions between DRCOS and 'Big Tech's' respective missions through a constant and institutionalized cash flow to the very critics working on these issues. Strategies for using *cy près* have also evolved from directly inoculating 'Big Tech' firms from critique, to creating groups of preferred recipients, to leaving recipients determined by third parties – the effects of which we are yet to see. On one hand, this may be a positive development that limits the influence corporate firms can wield through the payment of legal compensation. Alternatively, it may open another pathway for co-opting judicial process in order to distribute funds to preferred actors (that still purport to represent the interests of injured classes). Indeed, repeat players will likely have the institutional resources to win those competitive applications, and are able to continue to describe their missions as sympathetic to litigating classes. Requiring a third party arbiter rather than allowing private negotiation for recipients may introduce more independence to ensuring recipient interests match class interests, or it may be another way tech firms can continue to legitimately funnelling money to groups whose interest alignment it prefers.

Conclusion

Tech firms must continually fight to protect the rents that automated culture generates against regulatory strategies that would rebalance the power and legality of their industrial interests and business models. Different regulatory objectives attend to different dimensions of automated culture that we describe above as the opaque and automated systems that manage and distribute cultural content, personal data, and economic value. Different strategies interrupt the continuing profitability of Big Tech's automated culture ecosystem and business model to different degrees.

One strategy is to fight for greater levels of individual privacy defined by individual control over data in the digital economy. Another is to fight for structural economic reform in order to challenge Big Tech's monopolistic control over automated systems of cultural consumption and monetization. The former strategy represents a significantly lesser challenge to Big Tech's business model – which has in many ways been enabled by a consumer privacy model premised on individual control and relatively free market relations between platforms and users. By tracking the financial flows

between Big Tech and the political actors (DRSCOs) that might otherwise agitate for meaningful reform, we identify one way that Big Tech redirects a fraction of its massive profits into the ongoing political effort to avoid meaningful regulation. By sending money to DRSCOs, both directly and through the *Cy Prés* class action mechanism, dominant platforms are steering regulatory attention in preferred directions to reproduce and protect its business model premised on monetizing cultural consumption that has become so profitable.

Our findings highlight some of the deeply institutionalized ways that financial flows to DRSCOs are performed, along with funding transparency issues. Tracking financial flows from technology firms to civil society offers a lens into the potential for problematic political influence and reputation washing discussed above, but also opens the door for an interpretation that the ‘missions’ of DRCSOs are not *necessarily* as antithetical to ‘Big Techs’ agendas. We suggest this play of mis/alignment becomes especially visible in a series of *cy près* class action settlements against ‘Big Tech’, where, in lieu of compensation to injured plaintiffs, awards have been made to DRCSOs highlighting how the ‘interests’ of groups injured by ‘Big Tech’, and the ‘interests’ of DRSCOs may *not* always be the same. Without undergoing a close analysis of the work that comes out of DRSCOs and the degree to which it is aligned or misaligned with ‘Big Tech’ interests (a task that would be impossible considering the complexity of the issue/s), looking at the financial flows from those settlements at least exposes a group of repeat players, with ongoing connections to ‘Big Tech’ money.

There are already numerous proposals to break away from the non-profit industrial complex, including grassroots movements, sociocratic non-profits, worker self-directed non-profits, and swarm organizations that aim to increase participation in, and the accountability of, social movements (see e.g. INCITE 2007, Haber 2019). Other proposals concern funding policies and enhanced transparency. An initiative from the Digital Freedom Fund (DFF 2019), for instance, sets forth a funding policy that involves appointing a ‘reviewer’ for donations over €50,000, and referral to the Board of Directors for donations over €100,000 (DFF 2019; on the need for auditing and transparency see Privett and Erhun 2011, Rutzen 2015). In addition to these types of approaches there are charity ‘watchdog’ organizations, for example *Charity Navigator*, *Great Nonprofits*, and *Charity Watch*, which provide ratings in terms of governance, spending, and quite interestingly the protection of donor privacy (Hatfield 2018).

Technology regulation is a high stakes issue: European regulators are currently considering passage of a *Digital Services Act* package (Lomba and Evas 2020), and North American regulators are pursuing antitrust enforcement against ‘Big Tech’ firms.¹³ However, by following the money to DRSCOs, it already becomes apparent that there is a group of actors whose critiques of ‘Big Tech’ fit a preferred political and regulatory narrative. As the scandal

with the Open Markets Institute suggests, we see ‘Big Tech’ as far more hostile to work around broader economic intervention than privacy violation. Analysis of funding relationships between those technology firms and organizations advocating competition law enforcement – and *what type of* competition law enforcement, is future work. It may be that ‘Big Tech’ is relatively tolerant of ‘human rights’ and ‘civil liberties’ based criticisms – especially when the interpretation of such rights promote ‘individual control’ as a regulatory paradigm for privacy. These financial flows thus offer evidence of a new way to read the objectives of DRCSOs, especially in their relationship with companies selling automation as a service. Rather than amplifying work, as in the case of academic research, money to DRCSOs may work to influence which questions are asked and which are not. The question remains, how can DRCSOs meaningfully challenge the underlying logics and (harmful) business practices of the industry that funds them, when the interests of that industry run counter to the interests that they position themselves as representing? If that is not possible, DRCSOS may work to affirm, rather than challenge, the very interests at stake.

Notes

1. The Funding Matters Open letter and signatories is here: <https://fundingmatters.tech/>.
2. *NAACP v Alabama ex. Rel. Patterson*, 357 U.S. 449 (1958).
3. *Citizens United and Citizens United Foundation v Schneiderman*, No 1:14-cv-3703-SHS (S.D.N.Y. May 22, 2014); *Centre for Competitive Politics v Harris* No14-15978 (U.S.C.A 9th Cir May 01, 2015).
4. 1238 Order to Supplement. Signed by Judge Alsup on August 20, 2012., *Oracle America, Inc., v Google Inc.*, 872, F.Supp.2d 974 (2012) (No. C 10-03561 WHA). p.1 at 24; 1240 Response to re#1238 Order to Supplement by Google Inc. *Oracle America, Inc., v Google Inc.*, 872, F.Supp.2d 974 (2012) (No. C 10-03561 WHA). p.7 at 11.
5. Cy pres settlements from large tech companies include: *Lane v Facebook* (settled in 2013, concerning Facebook’s ‘beacon’ programme which disclosed information about user activities not on Facebook); *Fraley v Facebook* (settled in 2012, concerning the non-consensual use of user information in advertisements called ‘sponsored stories’); *In re Google Referrer Header Privacy Litigation* (originally settled in 2013, however presently being relitigated, concerning Google’s disclosure of search terms through referral headers); *In re Google Cookie Placement Settlement* (initially settled in 2017, presently being relitigated, concerning Google’s using DoubleClick cookies that bypassed user cookie controls on Safari and Internet Explorer); *In re Google LLC Street View* (settled in 2020, concerning Google’s collection of open wifi information by ‘Street View’ vehicles); *In Re Google Buzz User Privacy Litigation* (settled in 2010, concerning Google’s disclosure of followed and following lists and frequent email contacts); as well as the *Google+ Class Action Settlement* (ongoing concerning knowingly leaking personal information from 500,000 user accounts via the Google Plus API).

6. *Lane v Facebook, Inc.*, 696 F.3d 811 (9th Cir. 2012) p. 834.
7. The Digital Trust Foundation made payments to ACLU (\$100,000), CDT (\$200,000), CDD (\$50,000), EFF (\$100,000), EPIC (\$100,000), among others. There were also payments to Fordham University CLIP (\$120,000), California State University Northridge (\$193,491,000), and the UC Berkeley Institute of Human Development (\$50,000). This is in addition to the nearly \$840,000 granted to the initially Microsoft Funded non-profit Data & Society (who itself did not disclose the donors of its \$6,620,646 in donations in 2019), and \$188,362 to the non-profit public policy organization, the Brookings Institution.
8. PRIVACY.ORG, The Center for Digital Democracy (CDD), Consumer Action (CA), Patient Privacy Rights Foundation (PPR), Privacy Activism (PA), Privacy Rights Clearinghouse (PRC), U.S PIRG and The World Privacy Forum (WPF).
9. Brief for EPIC as Amicus Curiae, p. 9. *In re Google Buzz User Privacy Litigation* Case No. 5:10-CV-00672-JW (2011).
10. Brief of Amicus Curiae for David Lowery, Raymond J. Pepperell, Blake Morgan, and Guy Forsyth in Support of Petitioners in *Frank v Goas* no. 17-961 586 U.S. (2019).
11. *In Re: Google Inc. Cookie Placement Privacy Litigation*, No. 17-1480 (3rd Cir. 2019).
12. *Google Plus Profile Litigation* no. 5:18-cv-06164-EJD (VKD) (N.D. Cal) settlement terms and instructions available <https://www.googleplusdatalitigation.com/>.
13. See e.g. *FTC v Google LLC*. complaint no. 1:20-cv-03010 (filed Oct. 20. 2020).

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