

Facebook, Google and other big tech giants are about to face a 'reckoning,' state attorneys general warn

Tony Romm, The Washington Post

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Some of the country's most powerful state attorneys general are signaling they're willing to take action against Facebook, Google and other tech giants, warning that the companies have grown too big and powerful - and that Washington has been too slow to respond.

For many of these top law enforcement officials, the fear is that Silicon Valley has amassed too much personal information about web users and harnessed it in a way that's jeopardized people's privacy and undermined competition, often without much oversight.

"I think what we've found is that big tech has become too big, and that while we may have been asleep at the wheel, they were able to consolidate a tremendous amount of power," Jeff Landry, the Republican attorney general of Louisiana, said in an interview.

Federal regulators have the primary responsibility for keeping watch over Silicon Valley - they can break up monopolies, for example, and penalize companies for privacy abuses. But some state officials feel that Washington bears some of the blame for the tech industry's string of scandals in the first place.

Lawmakers in Congress long have struggled to adopt a national law targeting tech giants' data-collection practices, while federal agencies have allowed many of the headline-grabbing mishaps at Facebook and Google to go unpunished.

In response, states like Arizona and Mississippi now are taking aim at Google for the way it collects and monetizes web users' data. The District of Columbia, meanwhile, is challenging Facebook's business practices in court. And there are "numerous bipartisan discussions" among Democrats and Republicans about other areas where attorneys general can coordinate their attention on big tech, Landry said.

"We are in a moment where the federal government's level of effectiveness and engagement on a range of issues, on technology, consumer protection and privacy, is limited," added Phil Weiser, the Democratic attorney general of Colorado. Absent federal intervention, he said, "states in general or state AGs are able to act."

Asked about the criticisms, Will Castleberry, Facebook's vice president of state and local public policy, said the social giant has

had "productive conversations" with state AGs. "Many officials have approached us in a constructive manner, focused on solutions that ensure all companies are protecting people's information, and we look forward to working with them," he added in a statement.

Google declined comment for this story.

The appetite for action seemed apparent last week, when state officials gathered in Washington for a series of events including an annual forum with the National Association of Attorneys General, where Landry is president. Concerns about the tech industry's privacy practices were on full display, while a few miles away, the District of Columbia appeared in court to argue that Facebook had deceived its users about its approach to collecting and monetizing their data. The lawsuit stems from Facebook's entanglement with Cambridge Analytica, a political consultancy that improperly accessed data about roughly 87 million of the social-site's users without their knowledge or permission.

Federal watchdogs have been probing the matter for nearly a year, and they could soon bring a historic fine. But D.C. Attorney General Karl Racine opted not to wait for his federal counterparts, and he filed his case in December, which Facebook has sought to dismiss on grounds that D.C. lacks jurisdiction. Both sides are set to air their next round of arguments in front of a D.C. Superior Court judge on March 22. A slew of additional states, including New York and Pennsylvania, are proceeding with Facebook probes of their own.

Other state attorneys general have set their sights on Google, fearing the search, advertising and mobile giant knows too much about consumers -- and can easily squash its competitors. Some

states' calls for stronger antitrust enforcement stand in stark contrast with Washington, where federal regulators investigated Google but ultimately decided in 2013 against breaking apart the company.

The latest to take aim was Arizona's GOP attorney general, Mark Brnovich, who began investigating the tech giant's data-collection practices in 2018. Last week, Brnovich reaffirmed his concerns with Google's use of location data gleaned from Android smartphones during a private event for fellow Republican attorneys general, according to a person who attended the gathering but asked not to be identified because it was off record. Brnovich also raised new questions about Google's search practices, particularly the company's approach to surfacing results to queries about local businesses, the person said.

Asked Thursday if the states needed to open an antitrust probe of Google, Brnovich replied: "Maybe," adding: "I think there are a lot of us in the AG world that are collecting information, trying to get documents, and trying to get to the bottom of whether that's a reasonable step or a reasonable option." He said he could not comment on any open investigations.

Google's challenges could span far beyond Arizona. Before becoming Minnesota's attorney general, Democrat Keith Ellison argued in Congress for the federal government to embark on an antitrust probe of the tech giant. Ellison's office declined comment for this story. In Missouri, meanwhile, the state embarked on a wide-ranging antitrust and privacy investigation into Google under former Attorney General Josh Hawley, who left

the office for the U.S. Senate in January. A spokesman for his successor declined to say if it's still under way.

Louisiana's Landry slammed Google last week for being "more and more manipulative" with its search results. And in Mississippi, Democratic Attorney General Jim Hood has sued the company for its handling of students' data. For years, the two sides have warred repeatedly, with Google at one point suggesting that the Democratic attorney general had wrongly targeted the company with the aid of its foes in the movie industry. In an interview, Hood faulted Google for trying to "send a message to other states that we will sue you."

"You cannot allow this power to accumulate in the hands of this few people," Hood said. "At some point, there's going to have to be a reckoning for it."

In these and other probes, state attorneys general are powerful in their own right: They can leverage local laws to fine companies for their misdeeds, and in some cases, their rules are tougher than what the federal government has at its disposal -- especially in California under a landmark privacy statute adopted in 2018.

But they often band together to take aim at common targets, and at their most effective, state attorneys general can prod the federal government to do the same. The tech industry learned that lesson firsthand two decades ago, when state attorneys general helped drive a landmark U.S. antitrust lawsuit against Microsoft -- and sought later to block a settlement out of concern the federal government had been too soft on the company.

The most recent wave of activity began in September, when the Justice Department asked attorneys general to discuss the power of Facebook, Google and online platforms. The session in Washington had been designed to probe claims that some tech companies censor conservatives -- a concern Democrats don't share -- but the conversation proved far more wide ranging, with Mississippi's Hood and others weighing whether to partner in a formal way to study big tech companies.

Roughly six months after that DOJ summit, Xavier Beccera, the Democratic attorney general of California, said their early talks were "perceived as something worthwhile." He acknowledged in an interview there's been "increased discussions among the state AGs" about the privacy challenges and other troubles posed by some of the tech industry's biggest players.

Beccera added: "I think everyone's trying to get a handle on what we can do."