

Shareholder Engagement in Tech: Status Report

November 2022

Key Takeaways

- A dramatic growth in ESG investing in recent years has created momentum for successful shareholder engagement across multiple industry sectors, including technology, where investor advocates are successfully pressuring companies for accountability on a range of critical digital issues — from privacy and artificial intelligence to surveillance and racial equity. Our research identifies at least 10 initiatives funders could support in the field of shareholder engagement.
- Challenges to successful shareholder engagement include a backlash against ESG investment practices, with prominent conservative and right-wing figures driving an emerging “anti-ESG” political movement. This movement requires a targeted response.
- There is also concern that shareholder advocacy is hampered by a paucity of objective data and rankings to measure corporate support and performance in the digital arena, especially as advocates work to anticipate the societal impact of new and emerging technologies — including artificial and virtual reality, biometrics, nanotechnology, synthetic biology and others.
- As shareholder engagement on digital issues matures, there’s need for greater coordination and action by advocacy organizations across a broad range of potential “finance-focused” initiatives, which will entail focused and long-term support from the philanthropic community.

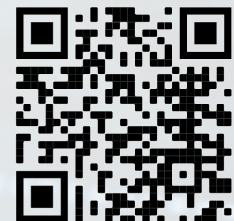
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In September 2021, the NetGain Partnership initiated a research process designed to explore finance-focused strategies that would hold leading internet platforms accountable and “create a healthier digital public sphere.” The partnership said it was interested in supporting shareholder engagement while also developing stronger ESG(+D) screens on tech issues. The research would aim to be “broadly useful to philanthropy and the broader public interest community.”

In April 2022, the partnership commissioned Open MIC and Whistle Stop Capital to produce a series of reports that addressed those issues. Since then, the research team has conducted interviews with more than 40 practitioners, analysts and observers of shareholder engagement and finance-focused strategies in the global technology sector. The team has also done substantial research exploring current tactics and strategies employed in the finance-sector globally to check the power and harmful behaviors of Big Tech companies.

[Click here or use the QR code at the right to view the four reports prepared by Open MIC](#)

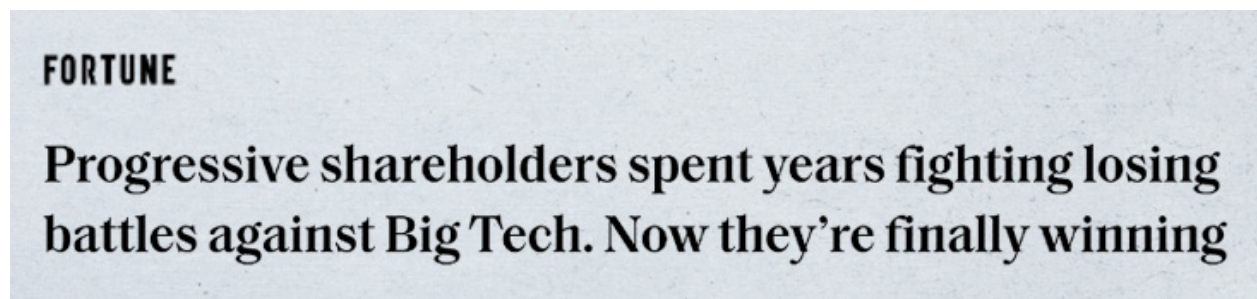


Overview

Titans of the investment world – big asset managers, major pension funds and foundations among them – are choosing to invest in companies that make environmental, social and governance (ESG) concerns a priority. They do so not only to encourage good corporate behavior but also because there is solid evidence that such companies outperform those that ignore or eschew ESG.

For advocates, few sectors of the global economy are of more concern than the huge technology companies that move markets and affect public life like no other industry.

Shareholder engagement in the tech sector has never been more prevalent or more successful than right now. Consider this May 2022 headline in [Fortune magazine](#):



“Very slowly but ever so surely, the social-justice-minded shareholder is becoming a thorn in the side of Big Tech management,” the article added. “The modern activist shareholder has never been more powerful.”¹

May 27, 2022

This success with technology issues mirrors the track record of shareholder advocacy more generally on other important societal concerns such as climate change. Bolstered by enormous growth in ESG investments, shareholder advocates have become a powerful force in corporate boardrooms. But their success has also sponsored a backlash from

¹ Jacob Carpenter, *Fortune*, “Progressive shareholders spent years fighting losing battles against Big Tech. Now they’re finally winning” (Sept. 22, 2022), <https://fortune.com/2022/05/27/activist-shareholder-proposal-apple-amazon-microsoft/>.

political conservatives who are making baseless claims and conflating ESG with the term “woke” to incite an emotional reaction.

Nonetheless, in the tech sector, the number and variety of shareholder advocates has grown dramatically within the last five years. Investors and civil society organizations are successfully pressing companies on a wider variety of critical issues — from privacy and artificial intelligence to surveillance and racial equity — while notching strategically important gains on shareholder votes and, with some frequency, successfully negotiating with companies for desired outcomes.

“The record-breaking 2021 proxy season suggests that a major power shift is well under way,” says Andrew Behar, CEO of As You Sow, a non-profit leader in shareholder engagement. “Investors feel the momentum, and so do company executives.”²

The challenge for shareholder advocates is how to translate that momentum into progress. While growing in numbers, the movement is largely uncoordinated. The power dynamic between shareholders and many large tech companies — notably, Alphabet and Meta — is also acutely affected by the existence of dual-class share structures which grant the companies’ founders many times the voting power of an average shareholder, allowing them to control the outcome of a shareholder vote. Concerns about dual-class shares – favoring “corporate royalty,” as a former commissioner of the Securities and Exchange Commission termed the practice³ – go beyond the ESG movement to basic fairness in public markets.

The backlash against ESG is picking up steam, with prominent conservative and right-wing figures driving an emerging “anti-ESG” political movement that could present significant challenges to shareholder engagement and other finance-focused strategies for corporate accountability. Two potential candidates for the 2024 Republican presidential nomination — former vice president Mike Pence and Florida Governor Ron DeSantis — have already launched verbal broadsides targeting corporations and financial institutions that employ ESG investment strategies.⁴ Texas and other states have forbade their agencies and

² “Letter from the Publisher,” Proxy Preview, (2022), <https://www.proxypreview.org/2022/report-blog>

³ Robert J. Jackson, Jr., “Perpetual Dual-Class Stock: The Case Against Corporate Royalty,” Securities and Exchange Commission, (Feb. 15, 2018),

<https://www.sec.gov/news/speech/perpetual-dual-class-stock-case-against-corporate-royalty>

⁴ David Gelles, *New York Times*, “Another Culture War Front: Are Companies Too ‘Woke’ When It Comes to Climate?” (Sept. 19, 2022),

<https://www.nytimes.com/2022/09/19/climate/companies-conservatives-attack.html>

pension funds from contracting with major banks and investment firms that have embraced ESG investments.⁵ Nineteen Republican state attorneys general led by Arizona Attorney General Mark Brnovich sent a letter to BlackRock CEO Laurence D. Fink accusing it of forsaking its fiduciary obligations by supporting with its voting power the goal of net zero emissions by 2050.⁶

ESG advocates counter that political posturing with simple facts: ESG strategies have taken off in recent years because many investors recognize that prudent, long-term thinking is in their best interest. ESG is a framework for assessing risk. When risk is reduced, investments are safer.

This report is based on interviews with more than 40 practitioners, analysts and observers of shareholder engagement in the global technology sector, together with substantial research regarding current tactics and strategies employed by investors to check the power and harmful behaviors of Big Tech companies. There is general agreement that these are still early days in the battle for digital rights and digital justice. There is also consensus among practitioners that shareholder strategies are most effective and successful when clearly aligned with the interests of people whose rights are impacted by digital technologies.

But there is also concern that ESG efforts are hampered by the paucity of objective data and rankings to measure corporate support and performance in this arena. For responsible tech investment to be feasible, investors need reliable information on how companies manage their impacts on digital and other human rights.

Unfortunately, mainstream ESG ratings fail to adequately account for and measure the “S” and “G” risks prevalent in tech. While there are initiatives attempting to standardize and measure digital rights risks, none offer investors comprehensive, decision-useful data to guide their responsible tech investment practices. (These challenges are discussed more fully in our [ESG\(+D\)?](#) report.)

The ongoing challenge, of course, is to persuade major investors, public and private, to throw their weight behind this push to hold big tech to account as they once did with apartheid and more recently in advancing efforts to stem climate change.

⁵ Andrew Freedman, *Axios*, “BlackRock, UBS and 348 ESG funds ‘banned’ in Texas,” (Aug. 25, 2022), <https://www.axios.com/2022/08/25/texas-bans-blackrock-ubs-esg-backlash>

⁶ Republican State Attorneys General letter to BlackRock CEO Laurence D. Fink, Aug. 4, 2022, <https://www.azag.gov/sites/default/files/2022-08/BlackRock%20Letter.pdf>

Continued progress will require sustained philanthropic support, practitioners say, with a need to break down silos within the shareholder advocacy field, encourage coalition building, and launch more aggressive and possibly coordinated finance-focused strategies.

In addition to the well-documented threats and harms to vulnerable communities posed by existing digital technologies, advocates are also working to anticipate the societal impact of new and emerging technologies — including artificial intelligence, artificial and virtual reality, biometrics, nanotechnology, synthetic biology and others. The products and services arising from these technologies are often “dual use,” in that they can be used as much to serve malicious or lethal purposes (such as predictive policing) as they can be harnessed to enhance social and economic development. This renders efforts to manage them much more complex. The question for advocates is whether values such as fairness, inclusiveness, and accountability can be built into governance systems and the technologies themselves to ensure that their direct risks to users and negative consequences for others are managed and remediated.

Continued progress will require sustained philanthropic support, practitioners say, with a need to break down silos within the shareholder advocacy field, encourage coalition building, and launch more aggressive and possibly coordinated finance-focused strategies. There is also a need to build consensus around thematic messaging that will be understandable and appeal to larger segments of the general public. “My biggest fear is that people will dramatically underestimate the level of resourcing and effort that is necessary to make real headway,” says Eli Kasargod-Staub of Majority Action, which organizes proxy campaigns in support of ESG. “Current efforts do not rival the power of the corporations that are currently organizing all aspects of our economic life.”⁷

⁷ Interview with Open MIC for this report (2022).

A Changing Landscape

Shareholder engagement in the tech sector began substantively around 2008 with investor proposals aimed at what were then the leading U.S. telecommunications providers — AT&T, Verizon and Sprint — challenging the companies' policies and practices regarding network neutrality, i.e., the principle that Internet Service Providers (ISPs) should treat all data that travels over their networks fairly, without improper discrimination in favor of particular apps, sites or services.⁸ (The Federal Communications Commission voted to enshrine net neutrality by regulation in 2015, but that was undone by the Trump administration.⁹)

When the net neutrality debate first began, the five current behemoths that dominate Big Tech — Amazon, Apple, Google (Alphabet), Facebook (Meta) and Microsoft — enjoyed largely favorable public perceptions, especially when compared with ISPs that, in the public eye, sought to violate network neutrality principles while managing and controlling what was transmitted over the Internet. Big Tech was growing fast, but was nowhere near its current size and impact. The iPhone had just been launched to the public in June 2007. The future looked benign, not dystopian (and not withstanding Apple's famous, anti-IBM 1984 ad for its breakthrough Macintosh computer)¹⁰. Computerworld magazine optimistically predicted in 2008:¹¹

Social networking will become so ubiquitous and mainstream that people will be participating in it without even thinking of it as social networking. Business colleagues will stay in touch. Public relations will be transformed. Hobbyists, bloggers, journalists, vacationers, families, politicians, and others will all boost the quality of their interaction through social networking tools.

Much has changed in the 15 years since that rosy prediction was made. Big Tech now exerts extraordinary power and dominance over global communications and exchange of information. Its catalog of societal harms is substantial and well documented. And despite

⁸ Jim Puzzanghera, *Los Angeles Times*, "A brief, strange history of net neutrality," (May 3, 2017), <https://www.latimes.com/business/la-fi-net-neutrality-timeline-20170502-htmstory.html>

⁹ Cecilia Kang, *New York Times*, "F.C.C. Repeals Net Neutrality Rules," (Dec 14, 2017), <https://www.nytimes.com/2017/12/14/technology/net-neutrality-repeal-vote.html>.

¹⁰ 1984 Apple's Macintosh Commercial, You Tube, <https://www.youtube.com/watch?v=VtvjbmoDx-I>

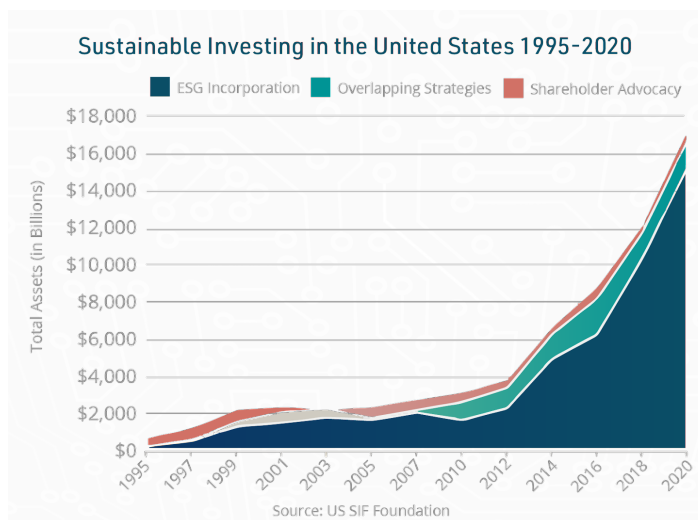
¹¹ Mike Elgan, *Computer World*, "Personal Tech 2008: Top 10 Trends, (Dec 31, 2007), <https://www.computerworld.com/article/2538244/personal-tech-2008--top-10-trends.html?page=3>.

recent stock market declines, those five Big Tech companies continue to exert outsized financial control of their markets while enjoying a combined stock market capitalization of \$7 trillion — larger by far than the Gross Domestic Product (GDP) of Japan alone and Germany and the United Kingdom combined.¹²

Even with the threat of a bear stock market, most financial analysts remain bullish on Big Tech because these companies have tight control of some of the world's most lucrative businesses: social media, premium smartphones, e-commerce, cloud computing and search.

One potent counter to the power of Big Tech is shareholder advocacy, fueled in large measure by the growth of ESG investing. While definitions of environmental, social and governance investing vary, there's no doubt that it has grown dramatically: ESG investments globally are estimated to have almost tripled over eight years to roughly \$41 trillion by the end of 2022, with further growth expected to \$50 trillion by 2025. ESG-related assets now account for one in three dollars managed globally, according to the Global Sustainable Investment Alliance.¹³¹⁴

The increase in ESG investing has created pressure on large U.S.-based asset managers (firms such as BlackRock, Vanguard, Fidelity and State Street) and European investors to actually vote their shares on social and environmental issues rather than abstain from voting. The large U.S. asset managers are often among the top five shareholders in any U.S. publicly-held company, with each frequently owning 3-5% or more of a



¹² "How Big Tech Got Even Bigger," *The Wall Street Journal*, (Feb. 6, 2021), <https://www.wsj.com/articles/how-big-tech-got-even-bigger-11612587632>.

¹³ Saijel Kishan, *Bloomberg*, "ESG by the Numbers: Sustainable Investing Set Records in 2021," (Feb. 3, 2022), <https://www.bloomberg.com/news/articles/2022-02-03/esg-by-the-numbers-sustainable-investing-set-records-in-2021>

¹⁴ 1. US SIF Foundation, "Report on US Sustainable and Impact Investing Trends 2020: Executive Summary", <https://www.ussif.org/files/Trends%20Report%202020%20Executive%20Summary.pdf>

company's stock; by one estimate, BlackRock, Vanguard and State Street collectively hold, on average, 21.4% of the shares of S&P 500 corporations.¹⁵ These firms have unique access to the managements and boards of tech companies; in recent years they've indicated increased openness to ESG shareholder proposals.

Advocacy organizations, an ESG executive for one of the world's largest asset managers told us, "help us understand where the gaps are in a company and what 'best practice' is."

These mega-asset managers sit atop a complex network of organizations that includes institutional investors (including state and municipal pension funds, foundations), investment firms (including those focused on "sustainable" investing), faith-based investors, and individual shareholders.

In recent years, more and more of these players have transitioned from being merely "investors" to active shareholder "advocates" — engaging directly with companies, building relationships with other shareholders, and filing shareholder proposals when dialogue with a company fails.

For a detailed analysis of how shareholder engagement has been used to address issues such as climate change and racial equity, see [link to Whistle Stop Capital report.]

Supporting investors in the tech sector, and playing a critically important catalytic role in the shareholder engagement process, are a number of Civil Society Organizations (CSOs), some funded by members of the NetGain Partnership, that identify emerging issues, conduct research, draft position papers and shareholder proposals, manage media outreach and communications, and lead campaigns to pressure target companies for change. Advocacy organizations, an ESG executive for one of the world's largest asset managers told us, "help us understand where the gaps are in a company and what 'best practice' is. They help make the materiality case really strong and help frame human rights risk in investor language."

As one example of keen investor interest in tech, consider the growth of the Investor Alliance for Human Rights (IAHR), which prioritizes digital human rights issues in its work.

¹⁵ Lucian Bebchuk & Scott Hirst, "The Power of the Big Three and Why It Matters," Working Draft, Harvard Law School, (Feb. 21, 2021), http://www.law.harvard.edu/faculty/bebchuk/The_Power_of_the_Big_Three_and_Why_It_Matters.pdf

Founded in 2018, the alliance now includes more than [200 institutional investors](#), including asset management firms, trade union funds, public pension funds, foundations, endowments, faith-based organizations, and family funds — representing more than \$12 trillion in assets under management and 19 countries. IAHR hosts monthly coordination calls, organizes working groups on tech and other issues, and coordinates shareholder initiatives that challenge tech companies on human rights issues.

A list of leading civil society organizations and investors involved in tech shareholder engagement is available [here](#).

Moving Forward

An important tool in the toolbox of shareholder advocates is the shareholder proposal.

A shareholder proposal presents an issue and suggests a course of action to a company, with the intention that the proposal will be voted on at the company's annual meeting. A shareholder proposal is often a last resort, filed only after a company has refused to discuss a particular issue or adopt policies and practices that address that issue.

To file a shareholder proposal, the U.S. Securities and Exchange Commission requires that an investor own at least \$25,000 of a company's shares for at least one year, with lesser amounts required for longer-term shareholders.¹⁶ Companies frequently file "no-action" legal challenges with the SEC to prevent proposals from being presented for a vote, with shareholder advocates afforded a right to respond.¹⁷ The entire process can be complicated and expensive, which is why getting a shareholder proposal onto a company's proxy statement and presented for a vote at the annual meeting is often a significant achievement in itself.

That's why 2022 has been so notable for shareholder advocates.

¹⁶ Securities and Exchange Commission, Division of Corporate Finance, "\$240.14a-8 Shareholder proposals," <https://www.sec.gov/divisions/corpfin/rule-14a-8.pdf>.

¹⁷ Securities and Exchange Commission, *Investor.gov*, "No Action Letters," <https://www.investor.gov/introduction-investing/investing-basics/glossary/no-action-letters>.

- **From 2018 to 2021, eight leading tech companies were confronted with a total of 47 shareholder proposals. In contrast, in 2022 alone those same companies have already confronted more than 60 proposals.**¹⁸
- **In 2022, shareholders successfully filed 17 proposals at Google, 15 at Amazon, 12 at Meta, and five at Twitter—records for each of the companies.**¹⁹

Nearly all shareholder proposals are “precatory,” or nonbinding. But these proposals derive their power from the fact that directors have fiduciary duties to act in the best interests of a corporation and its shareholders. Even without majority support they often have impact, as proposals require a company’s senior management and board to evaluate and respond. “If a proposal hits 20% or 30%, it’s vital that boards address that issue,” says corporate governance expert Charles Elson, founding director at the University of Delaware’s Weinberg Center for Corporate Governance.²⁰

- **Support for all shareholder proposals that were voted on topped 36% in 2021, up from 31% in 2020 and nearly 33% in 2019. That number dipped under 27% in the 2022 proxy season as asset managers shied away from backing tougher investor requests.**²¹ “Last year (2021) was such a big year the proponents were emboldened,” said Heidi Welsh, Executive Director of Proxy Preview, which tracks shareholder votes.²²
- **Support for shareholder proposals at many tech companies exceeded the 30% threshold during 2022. Strong voting support for shareholder proposals also**

¹⁸ *Fortune*, op. cit.,

<https://fortune.com/2022/05/27/activist-shareholder-proposal-apple-amazon-microsoft/>

¹⁹ Jan Rydzak, Ranking Digital Rights, “Dissecting Big Tech’s shareholder showdown,”

<https://rankingdigitalrights.org/2022/06/16/dissecting-big-techs-shareholder-showdown/>.

²⁰ Alexandra Garfinkle, *Yahoo*, “Why Amazon’s board might pay attention to shareholder proposals — even ones that fail,” (May 27, 2022),

<https://finance.yahoo.com/news/why-amazons-board-should-pay-attention-to-shareholder-proposal-s-183144816.html>.

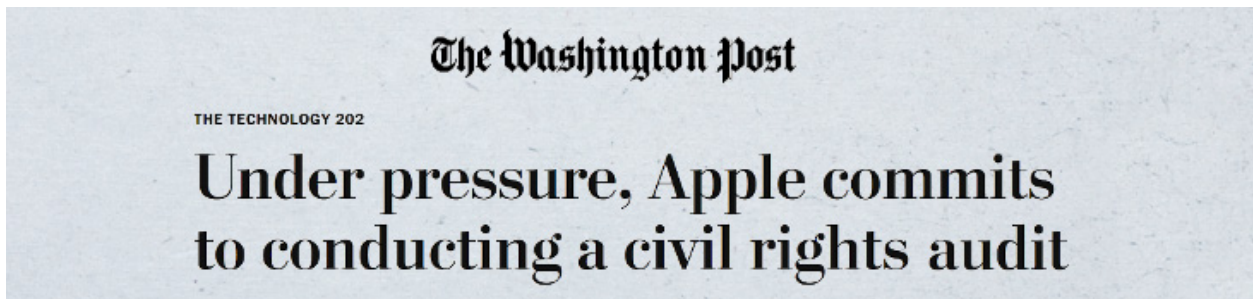
²¹ Gibson Dunn, “Shareholder Developments During the 2021 Proxy Season,” ((Aug. 19, 2021),

<https://www.gibsondunn.com/wp-content/uploads/2021/08/shareholder-proposal-developments-during-the-2021-proxy-season.pdf>.

²² Ross Kerber, *Reuters*, “Shareholder ESG support down but not out, researchers say,” (July 13, 2022), <https://www.reuters.com/business/sustainable-business/shareholder-esg-support-down-not-out-researchers-say-2022-07-13/>.

increases the number of proposals filed and then withdrawn following successful negotiations with management.

Highlights of effective shareholder engagement in the tech sector:



April 21, 2022

- **Civil rights and racial equity audits:** Calls for companies to perform what are known as civil rights or racial equity audits grew in the wake of the protests that erupted across the U.S. in 2020 after the murder of George Floyd. Some audits are very broad, while others focus only on specific parts of a business. In 2022, **Apple** shareholders voted in the majority to approve a broad civil rights audit at the company. **Amazon**, when confronted with a shareholder proposal calling for a racial equity proposal of its entire business operations, agreed to conduct a more limited audit regarding racial equity issues affecting its one million hourly U.S. employees. Independent shareholders at **Alphabet** voted 64% in favor of a racial equity audit.

FINANCIAL TIMES

Investors challenge concealment clauses at large tech groups

December 15, 2021

- **Concealment clauses** in employment agreements prevent employees from speaking about harassment or other unlawful acts in the workplace. A campaign by a coalition of organizations to ban the use of such clauses scored multiple victories. Of six shareholder proposals that went to proxy, **three won majority support: Apple** (50%), **IBM** (65%), and **Twitter** (69%). At **Meta**, the proposal earned 62% of independent shareholder votes, but technically was not approved due to outsized insider voting power. A proposal at Salesforce was [successfully withdrawn](#) after the company agreed to extend the protections in California's Silenced No More Act to all U.S. employees. **Expensify**, **Twilio**, and **Microsoft** also announced they would suspend use of concealment clauses after engagement with the coalition.

FORTUNE

Is the metaverse good for society? Meta shareholders will get to weigh in after the Facebook owner loses a bid to stop the vote

April 8, 2022

- **Algorithms and Artificial Intelligence:** At **Meta**, excluding shares held by co-founder and CEO Mark Zuckerberg, 78% of shares voted for a human rights impact assessment (HRIA) of the company's ad targeting system. At **Alphabet**, a proposal by Trillium Asset Management that asked the company to "go above and beyond its existing disclosures and provide more quantitative and qualitative information on its algorithmic systems," including how Alphabet uses algorithmic

systems to target and deliver ads, won 66% of the independent shareholder vote. The proposal suggested that Alphabet “consider using the recommendations and technical standards for algorithm and ad transparency put forward by the **Mozilla Foundation** and researchers at New York University.”

Bloomberg

Microsoft Agrees to Human Rights Review in Deals With Law Enforcement, Government

After shareholder proposal, Microsoft to commission independent report on company's contracts.

October 13, 2021

- **Surveillance Capitalism:** In response to a shareholder proposal filed by a group of faith-based investors, **Microsoft** agreed in October 2021 to commission an independent, third-party assessment to “identify, understand, assess, and address actual or potential adverse human rights impacts” of the company’s products, services and business relationships with regard to law enforcement, immigration enforcement, and other government contracts. This Human Rights Impact Assessment (HRIA) - something rarely agreed to by a Big Tech company - is being conducted over an extended period in 2022 by the law firm Foley Hoag.

“This year’s wave of investor action on human rights has proven stronger than any in the past,” writes Jan Rydzak, Company and Investor Engagement Manager of Ranking Digital Rights. “The volume and range of proposals has reached record levels, breaking into issues that the investor community formerly hadn’t explored.”²³

²³ Jan Rydzak, *Tech Policy Press*, “Dissecting Big Tech’s Shareholder Showdown,” (June 16, 2022), <https://techpolicy.press/dissecting-big-techs-shareholder-showdown/>.

Challenges and Opportunities

Even as shareholder advocates in tech enjoy some success, there's an awareness that the battle to hold Big Tech more accountable will not be quickly won. "At its heart, this work is about persistence and long-term change," says Jonas Kron, chief advocacy officer of Trillium Asset Management, a leader in shareholder advocacy.²⁴ Interviews with asset managers, shareholder advocates and civil society organizations help paint a picture of a field that is currently abrim with optimism and energy but sorely in need of more direction and greater leadership.

Consider these comments from front-line participants in the fight:²⁵

- **"People don't understand what ESG means; they see it as box-ticking compliance element; they need to start thinking about it as part and parcel of building a company," says Hannah Leach, the co-founder of VentureESG, a global non-profit initiative, that helps VCs integrate ESG practices into start-ups.**
- "Tech companies tend to respond poorly to engagement on human rights. Going in collectively is absolutely necessary. We need a strong coalition on human rights similar to what Climate Action 100+ does on GHG emissions. Their engagements are efficient, recognized, and have definitely changed the balance of power in the relationships between investors and corporates," says Benjamin Chekroun, Engagement Specialist at CANDRIAM, a European based asset manager emphasizing sustainability.
- **"Big tech companies have become fluent in the expected human rights narrative. They are savvy in understanding that they need to tick these boxes. But when you look at what they're actually doing, it's in complete conflict," says digital rights advocate Isedua Oribhabor of Access Now.**
- "The problem is that ESG has become a bit of a buzz-phrase with lots of people in the investment community claiming to be ESG 'experts'. Human rights is not a subset of the "S" risks under ESG but an overarching international framework that is

²⁴ "Shareholder Meetings Are The New Battleground For Workers' Concerns," *Protocol*, (June 23, 2021), <https://www.protocol.com/newsletters/sourcecode/shareholder-meetings-battleground>.

²⁵ Quotes from interviews with Open MIC for this report.

relevant and applicable across all ESG factors and risks,” says Anita Dorett of the Investor Alliance for Human Rights.

- **“How do you engage with companies at an earlier stage of their development? Given the opaque world of start-ups, the only players that are able to exercise leverage are VCs (venture capitalists),” says Michael Kleinman, director of Amnesty International’s Silicon Valley Initiative. “The work that’s being done on human rights due diligence is fractured and inchoate.”**
- “Most standards are designed for companies that are large and have greater data capacity. They are not really applicable to the world of VCs and start-ups,” says another ESG analyst “And the existing standards are so quantitative that they make people miss the forest for the trees; they focus on the metrics without focusing on the issues.”
- **“For far too long the philanthropic community has been focused on siloed approaches; what we’re talking about is the most powerful alignment of technology and economic power structures in the modern economy. It’s going to take all the levers at every stage to actually transform behavior internally in companies and create guardrails around this behavior externally,” observes Eli Kasargod-Staub of Majority Action, which organizes proxy campaigns in support of ESG.**

The public record and anecdotal evidence make it clear that shareholder advocacy is having an impact in the corporate boardrooms of leading tech companies. Shareholder campaigns help shine an unflattering spotlight on questionable business policies and practices. Oftentimes a shareholder proposal empowers middle management — or front line workers — to challenge existing corporate policy. With some of the world’s largest asset managers more frequently voting against Big Tech management on key issues, tech companies are reluctantly listening and, in some instances, ceding ground. The consulting firm PwC’s 2021 annual survey of corporate directors reported: “Board members now report that ESG is the number one topic investors most want to discuss with directors during shareholder engagements.”²⁶

²⁶ “PwC’s 2022 Annual Corporate Directors Survey,” <https://www.pwc.com/us/en/services/governance-insights-center/library/annual-corporate-directors-survey.html>

At the same time, there's a danger that advocates may succumb to a "numbers game," as numerous advocacy organizations — many new to the field — crowd each other out while critical issues compete for attention from investors, media and companies. An executive of one of the world's largest asset managers, interviewed for this report, privately expressed concern that the volume and breadth of shareholder proposals could cause some companies — and large institutional shareholders — to become desensitized to them.

Indeed, BlackRock, the world's biggest asset manager, with just under \$10 trillion in assets, and a long-time advocate of shareholder engagement, has publicly said it expected to support fewer shareholder resolutions in the 2022 proxy season because many of the current proposals were "too prescriptive" and "implicitly are intended to micromanage companies."

How does one counter the power of Big Tech? Here are some of the current efforts, ideas and suggestions that emerge from research and interviews with leading players in the shareholder engagement field:

→ Countering the messaging of the "anti-ESG" movement

Shareholder engagement and other finance-focused strategies for building corporate accountability often have been dismissed by mainstream investors as marginal initiatives driven by do-gooders concerned about the environment and other social issues. But as ESG investing has attracted trillions of dollars in investments over the past decade — with one in three U.S. dollars invested now being managed according to ESG principles — and as shareholder advocates have notched notable wins in multiple industry sectors, including tech, a new and significant "anti-ESG" political movement has emerged.

The anti-ESG movement, driven by conservative entrepreneurs such as Elon Musk and Peter Thiel as well as such right-wing politicians as Pence and DeSantis, could present an ominous threat to ESG investing and shareholder advocacy. Entrepreneur and provocateur Vivek Ramaswamy's book, *Woke Inc.: Inside Corporate America's Social Justice Scam*,²⁷ is a broadside against the ESG movement. A growing number of bills have been introduced and in some cases enacted by Republican-dominated legislatures and governors to prevent state pension funds and state treasurers from investing in accord with ESG principles. A 2021 Texas law bans state investments in the oil and gas industry. West Virginia recently

²⁷ "Woke, Inc.: Inside Corporate America's Social Justice Scam," Amazon, <https://www.amazon.com/Woke-Inc-Corporate-Americas-Justice/dp/1546090789>.

excluded five leading banks and financial firms that avoid investing in coal and fossil fuels from doing business with the state. Another Texas law targets banks that reject gun companies as clients. An analysis for the Brookings Institution by a University of Pennsylvania's Wharton School professor and a Federal Reserve Board economist concluded Texas taxpayers are already paying a heavy price for the stance -- \$300 million to \$530 million in higher interest rates on municipal bonds in the first eight months alone.²⁸



-The Wall Street Journal, Aug. 30, 2022

One concern for ESG advocates is that companies, including those in the tech sector, could use this political pushback as “cover” to minimize the importance of shareholder initiatives.

ESG proponents are currently organizing broad strategic and tactical counter-offensives to the anti-ESG movement. Advocates working on digital issues need to be aware of the emerging battle and be prepared to persuasively argue the case for shareholder engagement in the tech sector.

→ Increasing pressure on large mainstream asset managers

Shareholder power in U.S.-based technology companies is concentrated in a number of extremely large financial institutions that manage the assets of individuals, companies, pension funds, foundations and other organizations. While there are many large asset managers globally, the dominant firms in the market — the “Big Three” — are BlackRock, Vanguard, and State Street, which control the vast majority of capital in “indexed” stock market funds.

²⁸ “Gas, Guns, and Governments: Financial Costs of Anti-ESG Policies,” Daniel G. Garrett and Ivan T. Ivanov, Brookings Institution, July 11, 2022, https://www.brookings.edu/wp-content/uploads/2022/06/Texas_Muni_Law-9.pdf.

Together, the Big Three are the largest single shareholders in almost 90% of S&P 500 firms, including Apple, Microsoft, ExxonMobil, General Electric and Coca-Cola. Their ownership in S&P 500 companies has almost quadrupled in the past two decades and together they cast about 20% to 25% of all shareholder votes.

Thus, the Big Three are in a position to determine the outcome of the majority of shareholder proposals. The challenge for shareholder advocates is how to engage with the Big Three and other asset managers on tech issues as ESG grows from a niche application to a mainstream investment approach.

→ Adapting ESG ratings systems to include digital-specific issues

One of the biggest problems cited in our interviews with tech shareholder advocates concerns the destabilizing influence of current, inadequate ESG ratings systems.

Companies in the tech sector often receive relatively high ratings on existing standardized ESG metrics, yet their products and services are often complicit in serious human rights violations. That's because ESG risk is generally not defined in terms of a company's social and environmental impact but in terms of how ESG factors affect a company's profits.⁵ While it may no longer be profitable for companies to ignore climate risk as the costs associated with climate change are likely to touch every sector, there are many other ESG impacts that are not considered "material risks" to companies or investors.

This is particularly true of digital human rights risks. Technologies like facial recognition and surveillance tools, for example, are profitable despite their inherent violations of internationally-recognized human rights.⁶ Absent significant damage to a company's reputation following a human rights controversy that creates a media splash, human rights are arguably not "material" issues for tech companies.

Hans Taparia, an entrepreneur and professor at the NYU Stern School of Business, notes that while Alphabet, Amazon and Facebook often get high ESG ratings, "few would consider them to be good corporate citizens." He argues that an "entirely new" ESG ratings system is needed — one that would measure "market failures" by corporations, including "where a

seller or a buyer, respectively, has limited competition or outsized power” or where a corporation has created “negative externalities” that directly harm third-parties.²⁹

Shareholder advocates told us that it’s critically important to support long-term efforts to establish and promote robust benchmarks to assess the performance of companies employing digital technologies that create negative consequences.

→ Building coalitions around common human rights objectives

As a corollary to long-term concerns about ESG ratings, some tech shareholder advocates cited a need to develop coordinated strategies and tactics across numerous investors and social justice organizations — focusing public attention on current digital rights harms and highlighting those harms as “material risks” for companies. Such an initiative could involve a large-scale education and information campaign directed at both the financial community and the general public.

Currently, each individual investor group or Civil Society Organization undertakes its own campaign, sometimes in alliance with others, targeting a particular company. The argument to a company is that “it might cost more in the short term to put the correct (human rights) protections in place but it’s ultimately worth it to maximize long term brand value,” says one CSO organizer. The goal is “to make it clear to companies that even if they make money doing this, their brand value will decline.” She notes that the strategy is most effective with companies that sell directly to consumers, while with companies that depend on business-to-business relationships, “the pressure needs to be more sustained.”

Yet very few CSOs have sufficient budget for a sustained campaign addressing one issue and involving even one of the Big Tech companies — never mind multiple “material risks” at multiple companies. As a result, organizing efforts are fractured. A broader joint initiative could seek to coordinate current individual CSO efforts while providing supplemental philanthropic support for media outreach, advertising and social media efforts. The goal would be to generate broad public awareness. “None of these companies have ever faced a real public firestorm,” notes another CSO organizer.

²⁹ “The World May Be Better Off Without ESG Investing,” Hans Taparia, Stanford Social Innovation Review, July 14, 2021, https://ssir.org/articles/entry/the_world_may_be_better_off_without_esg_investing#bio-footer.

Jennifer Brody, U.S. Policy and Advocacy Manager at Access Now, argues that U.S. antitrust reform is necessary to defend global human rights; she proposes support for two pieces of bipartisan antitrust legislation: the American Innovation and Choice Online Act and the Open App Markets Act. “(A) very small number of U.S. tech companies exercise outsized influence over our human rights in the digital age, and this needs to change,” she writes. “If a company controls a market and has no real competitors — thanks to years of anti-competitive practices — it has little to no incentive to care about the human rights implications of its content moderation policies, data collection practices, and more.”³⁰

Should there be a coordinated investor effort that links human rights to “material risk” for tech companies? (We’ve checked, and the domain name www.materialrisk.org is currently available for purchase.)

But “coordination on particular issues will not lead anywhere without adequate funding,” says a shareholder advocate. Another recounts an international dialogue among multiple international organizations that lost its funding after one year just as important relationships were being formed.

→ Organizing to eliminate or restrict multi-class shares

Two of the largest and most powerful companies in the world - Alphabet and Meta - have two or more classes of stock, created when each company first went public. One class of shares, held by regular investors, is entitled to one vote per share; another class of shares carries 10 times as many votes per share for the companies’ founders — Mark Zuckerberg at Meta and Sergey Brin and Larry Page at Alphabet — plus a select few corporate insiders.

Proponents maintain that multi-class share structures such as these — most often involving two classes of stock— encourage the entrepreneurial spirit of visionary founders and protect a company from the vagaries of the stock market. Critics argue that multi-class shares obstruct good corporate governance, taking from investors a key tool used to address risks and hold companies accountable on ESG and other issues. Former Security and Exchange Commissioner Robert J. Jackson in a 2018 speech denounced dual share

³⁰ Jennifer Brody, *Tech Policy Press*, “U.S. Antitrust Reform Is Necessary to Defend Global Human Rights,” (July 11, 2022), <https://techpolicy.press/u-s-antitrust-reform-is-necessary-to-defend-global-human-rights>

ownership, arguing that, “Asking investors to put eternal trust in corporate royalty is antithetical to our values as Americans.”³¹

- **An SEC advisory committee reports that between 2005 and 2015, the number of companies with multi-class stock structures increased by 44%. Nearly one in four (24%) U.S. companies that went public in the first half of 2021 did so with a multi-class structure, according to the Council of Institutional Investors.**³²

Analyses of the 2022 votes at Meta and Alphabet highlight the dramatic disconnect between the managements and boards of these companies and their “independent” shareholders across a broad range of issues:

- **At Meta, if special class shares owned by Zuckerberg and other insiders were not included in 2022 vote totals, 7 out of 12 proposals would have been approved by a majority of shareholders.**
- **At Alphabet, if shares owned by Brin and Page were excluded from 2022 vote totals, 8 of the 17 shareholder proposals this year would have been approved.**

Multi-class share structures are increasingly popular among firms going public, especially in the tech sector. Some companies — such as Snap Inc., an e-commerce company — grant shareholders no voting rights at all. Substantial efforts are being made to eliminate or restrict multi-class shares. The brewing battle pits corporate governance and shareholder advocates against entrepreneurs who may be inventing products and services that could be the next generation Google or Facebook. Can society afford more technological breakthroughs that fail to protect users’ rights? The stakes are high.

→ Increasing digital strategic litigation

Strategic litigation is the process of using court proceedings to force a change beyond the scope of the case being litigated. It’s already being used to advance digital rights around the world, challenging both well-known global brands as well as lesser-known digital companies in emerging markets.

³¹ Jackson, Robert J., speech on “Perpetual Dual-Class Stock: The Case Against Corporate Royalty,” San Francisco, Feb. 18, 2018, <https://www.sec.gov/news/speech/perpetual-dual-class-stock-case-against-corporate-royalty>.

³²Council of Institutional Investors, “Dual Class Stock,” https://www.cii.org/dualclass_stock

For example, Austrian lawyer and privacy crusader Max Schrems successfully brought two strategic actions against the international agreements that enable cross-border data flows – bringing both Facebook and the U.S. national security apparatus under the scrutiny of the Court of Justice of the European Union – ultimately invalidating a long-standing “Safe Harbor” trade arrangement used by tech companies to self-authorize transatlantic data sharing.³³

Open Society Foundation currently funds a Justice Initiative that has engaged in over 100 human rights cases around the world.³⁴ Strategic litigation on behalf of digital human rights has been employed in the U.S.,³⁵ Africa,³⁶ and Europe.³⁷

Sean Martin McDonald, senior fellow at the Centre for International Governance Innovation, in Waterloo, Canada, makes a strong case for strategic litigation on behalf of human rights.³⁸ He notes that global technology companies may be especially vulnerable to litigation because they’ve made large, illiquid capital investments all over the world – “investments in things like logistics and storage infrastructure, fixed line undersea cables, and, even, difficult-to-win licenses to operate, like spectrum and payment provision” — which are important considerations for evaluating a company’s stock market capitalization.

“Rights advocates,” says McDonald, “therefore have significant points of entry to focus digital strategic litigation in markets with both large illiquid capital outlays and a large impact on market cap projections.”

³³ Sean McDonald, “Impact-Orienting Digital Strategic Litigation,” Centre for International Governance Innovation, (March 24, 2021),

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3805834.

³⁴ Open Society Justice Initiative, “Strategic Litigation,”

<https://www.justiceinitiative.org/tools/strategic-litigation#:~:text=Since%202003%2C%20our%20lawyers%20have,and%20international%20human%20rights%20tribunals.&text=In%20addition%20to%20vindicating%20individual,the%20law's%20protection%20for%20everyone>.

³⁵ UC Berkeley Law School, Human Rights Center,

<https://humanrights.berkeley.edu/programs-projects/tech-human-rights-program/tech-law-and-policy>

³⁶ Dunia Mekonnen Tegegn, “Advancing Strategic Litigation on Internet Shutdowns cases in Africa,” Collaboration on International ICT Policy for East and Southern Africa (CIPESA),

https://cipesa.org/?wpfb_dl=462

³⁷ Digital Freedom Fund, “Advancing digital rights in Europe,” <https://digitalfreedomfund.org/>

³⁸ Sean McDonald, op.cit., https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3805834

→ Vote No! Holding corporate directors more directly accountable

One of the least sexy letters in the “ESG” equation is the letter “G” and its focus on corporate governance. But it is frequently the top priority of the largest asset managers who view corporate boards as the most direct way of managing the risk associated with many of Big Tech’s policies and practices.

One way of doing that is to wage “Vote No” campaigns that target specific directors for not exercising their oversight responsibilities rather than pressing for a vote on more sweeping shareholder proposals.

Ben Colton, Global Head of the Asset Stewardship Team at State Street Global Advisors, one of the three largest U.S. asset managers, whose team is responsible for developing and implementing State Street’s global proxy voting policies, said recently that voting against company directors was “the most effective tool we have” to hold companies to account. He said holding down support for a company’s favored candidate or incumbent to 60% [a relatively low vote] would be “much more powerful” than securing 40% for a shareholder proposal.³⁹

A small hedge fund, Engine No. 1, concerned about climate change, managed to oust two Exxon-Mobil directors and replace them with its own candidates in 2021.⁴⁰

→ Prioritizing European regulations and the role of investors in EU policy

As tech regulation and legislation languishes in the U.S., Europe could play a key role in challenging the power of global tech companies.

³⁹ Dominic Webb, *Responsible Investor*, “Director vote is the most effective stewardship tool says State Street stewardship head,” (July 14, 2022), https://www.responsible-investor.com/director-vote-is-the-most-effective-stewardship-tool-says-state-street-stewardship-head/?utm_source=newsletter-daily&utm_medium=email&utm_campaign=ri-daily-bronze&utm_content=14-07-2022

⁴⁰ Jessica Camille Aguirre, *New York Times*, “The Little Hedge Fund Taking Down Big Oil,” (June 23, 2021), <https://www.nytimes.com/2021/06/23/magazine/exxon-mobil-engine-no-1-board.html>.

In July 2022 the European Parliament approved the Digital Services Act and Digital Markets Act, two landmark proposals to rein in how the tech giants moderate content and treat competitors — setting a new global standard for digital regulation. Together, “the measures would force the world’s largest tech companies to more aggressively tackle harmful content, disclose more data to external researchers and make their services interoperable with competitors’ products. They would also prohibit large companies from giving their own products preferential treatment and block app stores from requiring that developers use their payment systems,” according to a Washington Post analysis.⁴¹

Investors have already weighed in support of the Digital Services Act and could be a catalyst for aggressive enforcement. In January 2022, a coalition of 65 investors, representing over \$8.7 trillion in assets under management and advisement, endorsed the proposed Digital Services Act. “Rights-respecting regulation that protects the digital rights of users is good for business and investors, the economy and the people it serves,” they said in a statement organized by the Investor Alliance for Human Rights.⁴²

→ Increase attention on the needs of rights holders in the Global South and China

While much shareholder attention is focused on big global brands such as Apple and Google, in many emerging and developing economies there are large companies serving huge domestic and regional markets. In 2021, Ranking Digital Rights noted that companies headquartered in emerging markets saw the most improvement in the RDR Index between 2019 and 2020, with investor engagement playing a role in the shift.⁴³

China is a particular challenge. While a number of the Chinese internet platforms are listed on U.S. stock exchanges, they have been largely unresponsive to shareholder calls for

⁴¹ Cristiano Lima, *The Washington Post*, “The verdict is still out on Europe’s new digital rulebook,” July 6, 2022, <https://www.washingtonpost.com/politics/2022/07/06/verdict-is-still-out-europes-new-digital-rulebook/>.

⁴² Investor Alliance for Human Rights, “Investor Statement in Support of Digital Rights Regulations,” https://investorsforhumanrights.org/sites/default/files/attachments/2022-01/Investor%20statement%20on%20European%20digital%20rights%20regulation_FINAL.pdf.

⁴³ Ranking Digital Rights, “Investors need an updated digital rights playbook for 2021,” <https://rankingdigitalrights.org/wp-content/uploads/2021/04/Spring-2021-Investor-Update.pdf>.

greater accountability. Jie Zhang, an analyst for Ranking Digital Rights, an independent research program at the New America think tank in Washington, explains: “Since they cater to an almost exclusively Chinese user base, China’s internet platforms lack incentives to engage with Western civil society. Indeed, why should they bother to respond to concerns from outside their home market? In a heavily regulated market where the government constantly intervenes, the destinies of China’s tech companies are most often left to the mercy of the party. They simply do not have the ability to set their agendas independently.”⁴⁴

In July 2022, Zevin Asset Management, a sustainable investing firm, announced that it had decided to divest from its direct Chinese and Hong Kong holdings for now. “The horrific impacts of Russia’s invasion of Ukraine have been a wake-up call for Zevin Asset Management’s investments in China,” the firm said. “Similar to our approach to Russia, we also aim to not invest in companies that are key enablers of human rights abuses by the Chinese government. We acknowledge that our approach to China is imperfect, but we find continued direct investment in China to be untenable, both from a financial and social perspective.”⁴⁵

→ Human Capital Development: Recognizing the Value of Tech Workers

The ties between tech workers and shareholder advocates have grown closer in the past several years as workers have become more vocal about their experiences toiling for tech giants. The nascent Amazon Labor Union and Alphabet Workers Union both have worked recently with shareholder advocacy groups and organized their own direct shareholder proposals to company management.

For two years running, Alphabet investors have had a chance to hear directly from Google engineers at the company’s annual shareholder meeting. In 2020, an Alphabet whistleblower presented a shareholder proposal that addressed the company’s efforts to build a search engine for China. In 2021, a Google Ads engineer and member of the

⁴⁴ Jie Zhang, Ranking Digital Rights, “Why Won’t Chinese Companies Talk to Us? It’s Complicated,” <https://rankingdigitalrights.org/2022/04/27/why-wont-chinese-companies-talk-to-us/>

⁴⁵ Zevin Asset Management, “China Policy,” (July 2022), <https://static1.squarespace.com/static/5d0cee8d37a63200017a0906/t/62c5880b868f2a20a6b7b595/1657658623673/China+Divestment+Policy.pdf>

Alphabet Workers Union talked about how Alphabet has retaliated against whistleblowers inside the company.

In May 2022, a coalition of large public pension funds led by the New York City and New York State employee funds urged shareholders to confront Amazon's corporate leadership by voting out a pair of board directors who oversee Amazon's workplace and compensation policies. They were joined by several other elected state treasurers from around the country.

Human capital is a particularly important financial issue for technology companies.

Recently, a blue-chip group of corporate governance experts calling themselves the Working Group on Human Capital Accounting Disclosure urged the SEC to adopt new rules requiring companies to disclose much more information about their investments in what accountants call “intangible assets” such as human capital. These experts said current SEC rules “do not reflect the current reality that the largest firms add value through internally developed intangible assets such as human capital.” They noted that over several decades, as the SEC required companies to disclose increasing amounts of information regarding human capital, “intangible assets” grew from 17% of the market value of the S&P 500 in 1975 to 90% of the S&P 500 value in 2020.⁴⁶

Over the past few decades, we have seen an explosion of so-called “human capital firms”— that is, firms that generate value due to the knowledge, skills, competencies, and attributes of their workforce. Yet, despite the value generated by employees, U.S. accounting principles provide virtually no information on firm labor. The Commission should address this lack of transparency by requiring firm managers to (a) discuss what portion of their labor costs should be considered an investment in future firm profitability, (b) disclose information that allows investors to assess a firm’s investment in its workforce, and (c) disaggregate the income statement to show what portion of major expenses are attributable to labor costs.

It is important to note that risks to tech companies are not confined to the employee population; the treatment of contractors and other contingent or temporary workers must also be seriously considered. In October 2021, a jury awarded \$137 million to a contractor

⁴⁶ Working Group on Human Capital Accounting Disclosure, letter to the Securities and Exchange Commission, <https://www.sec.gov/rules/petitions/2022/petn4-787.pdf>

elevator operator at a Tesla factory who alleged racial harassment by the company. A judge later reduced the award to \$15 million.⁴⁷

- Alphabet's business model depends on legions of contractors. In fact, Google employs more contract workers than employees, the New York Times reported in 2020. The more than 130,000 contractors and temp workers comprise "a shadow work force that outnumbers its 123,000 full-time employees." These temps and contractors often do not have the same workplace protections, even though they work alongside full time employees, according to the Times.⁴⁸
- Amazon's business model depends on large numbers of contractors, including delivery drivers employed by independently-owned Delivery Service Providers ("DSPs"). Amazon's DSP network reportedly spans eight countries and employs 158,000 drivers. Each one of those drivers is a subcontractor, employed by one of 2,500 DSPs that contract with Amazon to deliver its packages.

In February 2022, U.S. Senators Mark Warner of Virginia and Sherrod Brown of Ohio wrote to SEC Chairman Gary Gensler urging the Commission to require U.S. public companies to report if they use subcontracting workers as part of their "material workforce." Increasingly, investors may demand information about the status and treatment of contract workers.

Activism on labor issues is not confined to Big Tech companies. A group of institutional investors recently wrote to the New York Times Co. in support of unionized tech workers at the Times who were seeking greater workplace rights and protections. That group was led by Trillium Asset Management and included other major ESG investing firms Domini Impact Investments and Boston Common Asset Management, as well as New York City Comptroller Brad Lander.⁴⁹

Margot Brandenburg of the **Ford Foundation** is currently overseeing a research project exploring the implications of greater organizing of tech workers. ■

⁴⁷ Fred Lambert, Electrek, "Tesla manages to get \$137 million award for racial abuse slashed to \$15 million," (Apr. 14, 2022), <https://electrek.co/2022/04/14/tesla-manages-137-million-racial-abuse-slashed-to-15-million/>.

⁴⁸ Daisuke Wakabayashi, *New York Times*, "Google Rescinds Offers to Thousands of Contract Workers," (May 29, 2020), <https://www.nytimes.com/2020/05/29/technology/google-rescinds-job-offers-to-contract-workers.html>.

⁴⁹ Eric Rosenbaum, *CNBC*, "The market starts speaking out on a tech worker union effort at The New York Times," (Feb. 1, 2022), <https://www.cnbc.com/2022/02/01/investors-speak-out-on-tech-worker-union-battle-at-the-new-york-times.html>

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