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The Law Can't Keep Up With Technology...and That's a Very Good Thing

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In the 1910s, the number of cars in the U.S. exploded from 200,000 to 2.5 million. The newfangled machines scared horses and ran over pedestrians, who had never before encountered anything moving down a street at 20 miles per hour. The state of Georgia classified cars as ferocious animals. By the time any government could pass the very first traffic law, it had to accommodate cars. It could not stop them.

Today, thanks to political gridlock in the U.S., lawmakers respond to innovations with all the speed of continental drift. As government gets slower, tech is going the opposite way. New technologies spread instantly by cloud-based apps and social networks, and take hold with almost no legal oversight. Then, by the time government can act, it's usually too late to wind things back to the way they were.

And this, as it turns out, is terrific for tech startups, especially those aimed at demolishing creaky old norms—like taxis, or flight paths over crowded airspace, or money. Lately, the law vs. tech gap is making headlines as it upends the rules around sports gambling. The daily fantasy sports sites FanDuel and DraftKings are showing how fast technology can exploit the gap and put government on its heels.

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FanDuel and DraftKings got their start when FanDuel's CEO, Nigel Eccles, noticed a clause in anti-gambling laws that allow for games of skill, which could arguably include fantasy sports. This year, the two companies perfected their apps, signed up major sports leagues and teams along with ESPN as partners, raised a combined \$575 million in venture funding, exploited the legal gap and took hold in the mass market.

So now government is upset about what happened when it wasn't looking. Nevada says the companies need a gambling license. The Department of Justice is investigating the legality of the apps. Congress is harrumphing and rustling papers and saying it might hold hearings.

But the officials and politicians are probably too late. The real question for lawmakers is not whether FanDuel and DraftKings fit into old laws that apparently have more holes than Blackburn, Lancashire. It's whether they're willing to take action that would destroy the companies' \$2.5 billion combined value owned by important investors (and campaign donors) like KKR, Comcast, NBC, Major League Baseball and several Silicon Valley VCs. Oh, and maybe lawmakers will think twice before ending an activity enjoyed by around 50 million people, many of them the lawmakers' constituents.

If government had examined the fantasy sites a year ago, shutting them down or putting them in a legal corner would've been relatively easy. Because government was so inept, now it's the one in a corner. Speed to critical mass turns out to be a great strategy in the face of rickety laws and oblivious lawmakers. The faster companies move, the less government can get in their way.

This kind of thing is happening all around us. Drone aircraft are suddenly filling the sky, and a whole multibillion-dollar industry of drone making and drone services has taken hold. Now the Federal Aviation Administration is scrambling to catch up and make rules. If the FAA had been either farsighted or fast moving, at the first sign of drones it might've outlawed them or confined them to someplace like Oklahoma where they can't get in the way of anything too important. But now the FAA is forced to accommodate drones, not the other way around.

Bitcoin is another example. The technology has spawned hundreds of startups funded by billions of dollars of investment. It could remake the global financial system. Bitcoin is becoming so mainstream, in Las Vegas you can now walk up to a Mike Tyson-branded bitcoin ATM machine. (The *New York Post*, as only it can do, reported the development this way: "Iron Mike Tyson has moved from bit ears to bitcoin.") But have you heard the word *bitcoin* uttered once in any of the presidential debates? Government doesn't even understand bitcoin, and that's been really good for it.

Uber and Airbnb showed how to execute this outrun-the-government strategy. By the time cities understood what those companies were doing, it was too late to block or seriously limit them. New York tried to stop both, ran into outcries from its citizens and backed off. Other

cities, like San Francisco, ended up passing laws that allow the companies to keep doing what they were already doing, as long as they pay some additional taxes.

Now there are certainly dangers in this gap. “A genuine public policy crisis for the new economy has emerged,” writes Larry Downes, an author and expert on law and technology. Like FanDuel and DraftKings, startups that outrun laws eventually wind up in some kind of distracting or destabilizing fight, often spurred by legacy businesses, such as taxi owners, protected by regulations and laws. Downes calls this “an epidemic of misguided efforts by incumbent businesses to apply old laws to new products and services.”

The other danger is the risk to society of ungoverned technology. An unchecked plague of drones buzzing around cities would be a problem not unlike cars on anarchic streets in 1916. We want to protect our privacy, the nature of our neighborhoods, our safety and our money from potential harm by new technologies. Coming our way soon will be some really smart artificial intelligence that some super-successful people such as Elon Musk and Stephen Hawking think might pose a danger to humans. They're calling for laws or codes of conduct that would protect us the way we're protected from nuclear bombs.

So to both protect citizens and at the same time allow disruptive technology to flourish, let's get government to stay on top of new developments in a smart, bipartisan, forward-leaning way.

That was a joke.

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