



# Big Tech Accountability Depends on Better Protection for Whistleblowers

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# Executive Summary

In January 2024, the CEOs of five of the largest social media platforms testified before the US Senate about the impact their companies were having on children<sup>1</sup>. The hearing may never have happened but for one thing – the bravery of individuals who came forward from inside these companies and blew the whistle on their activities.

Over the past decade, the biggest revelations about Big Tech’s activities have come not from the companies, or even civil society or governments. Instead, they have come from Big Tech’s own employees. In an unregulated industry where transparency is almost non-existent, whistleblowers have become a fundamental source of light for those seeking to understand the impact the companies are having on our daily lives. While a few public ones have become household names, dozens of others have remained anonymous, yet played a critical role in feeding information to the press and policymakers. They have done so at great personal risk and often without the support needed to ensure their safety. They have faced financial ruin, suffered emotional trauma and the loss of family and friends, and even been doxed by their employers, having to flee for their physical safety.

In order to ensure Big Tech – including and urgently those in AI – are held accountable, whistleblower support must form a core component of broader tech accountability efforts. Specifically, we need to:

1. **Empower tech workers** to know and understand their rights. They need to be given access to information and confidential legal advice free of charge.
2. **Strengthen support systems for tech workers** to speak out. They need to know that there is legal, financial, psychosocial, digital and physical security and other support in place should they decide to speak out.
3. **Amplify whistleblowers’ voices** to ensure their disclosures have impact and to send a signal to others that they too can disclose information and be protected.
4. **Strengthen legal protections** to better protect those who speak out. This includes better anti-SLAPP legislation, better limits on the enforceability of NDAs and strong protections for those who blow the whistle to the media.

## **Tech Accountability is Limited by a Lack of Transparency**

By design, we know precious little about what goes on inside tech companies. Tech companies use a variety of legal tools to limit access to information, thereby keeping regulators, lawmakers and the public in the dark. Those tools include trade secrecy, commercial confidentiality, privacy and computer crime law, as well as strategic lawsuits against public participation (SLAPPs) and non-disclosure agreements (NDAs), which have become particularly problematic<sup>2</sup>. NDAs restrict worker speech in excessively broad ways<sup>3</sup>, making it incredibly risky for tech workers to speak out about problematic behavior. For example, Theranos, the blood-testing start-up that imploded after revelations of widespread fraud, aggressively used broad NDAs to prevent employees from speaking publicly about a wide range of topics<sup>4</sup>. When two brave whistleblowers, Erika Cheung and Tyler Shultz, stepped forward to speak out, the company used their NDAs to threaten financial ruin and legal action<sup>5</sup>.

Big Tech's quest for secrecy has contributed to an overall "blackboxing" of the tech sector to the point that tech companies now carry a fundamental opacity to outsiders<sup>6</sup>. The tech industry's secrecy often overrides even official demands to produce information about data extraction practices and related agreements<sup>7</sup>. This makes both technical details and their effects on society at large "hard to see."<sup>8</sup> In other words, the secrecy surrounding tech companies goes beyond direct corporate and trade consequences, with their capacity to affect politics and culture in profound ways<sup>9</sup>. In the case of Google, for instance, the company's data extraction capabilities have always been protected by secrecy and obfuscation to hide its "exclusive capabilities in unilateral surveillance of online behavior."<sup>10</sup>

In no small part due to this obscurity, concerns are growing that governments are ill-equipped to understand technology and intervene when necessary to protect the public<sup>11</sup>. Consider, for example, artificial intelligence (AI): its rise has led observers to sound the alarm about the significant "information disparities between developers on the one hand, and policymakers and the public on the other."<sup>12</sup> If "information is the 'lifeblood' of effective governance," the current prospects for effectively governing AI and other technologies look dim.<sup>13</sup>

## **Whistleblowers are Key to Overcoming the Transparency Deficit**

Against this background of corporate secrecy, whistleblowing is a crucial source of information for regulators, lawmakers, and the public seeking to understand tech companies and hold them accountable<sup>14</sup>. Tech whistleblowers have played an important role in providing access to documents, data and other materials, often in collaboration with investigative journalists.<sup>15</sup>

Perhaps the foremost example of a tech worker revealing crucial information of public interest is the Facebook whistleblower, Frances Haugen. In late 2021, Haugen shed light on how Facebook put profits before safety and knowingly spread disinformation.<sup>16</sup> She disclosed a cache of internal documents to both The Wall Street Journal and the U.S. Securities and Exchange Commission, and then testified before legislative and parliamentary bodies on both sides of the Atlantic. Haugen's disclosures about algorithmic and platform design decisions at Facebook marked a "notable shift" in the attention and focus of policy-makers in the U.S. and Europe.<sup>17</sup> Her actions also inspired other whistleblowers to come forward and advocate for policy change. For example, Sophie Zhang, another Facebook whistleblower, told CNN that she was encouraged to testify to Congress for action relating to the protection of children online following Haugen's testimony to a Senate subcommittee.<sup>18</sup>

Other examples include Daniel Motaung, who with support from The Signals Network, disclosed to Time in a front-cover February 2022 story, "Inside Facebook's African Sweatshop," the horrendous working conditions Meta's content moderators faced in Kenya.<sup>19</sup> Motaung has since become an advocate for ethical tech and is suing Meta and its partner, Sama, to end forced labor, human trafficking, and union busting of content moderators in Kenya.<sup>20</sup> If successful, this case will be the first time courts of a country have forced Meta to address content moderators' health and well-being.

The revelations of tech whistleblowers have extended beyond just content moderation to the impact of social media companies on democracy itself. Anika Collier Navaroli, who is also supported by The Signals Network, in 2023 blew the whistle on the role that Twitter played in the attacks on the US Capitol in January 2021.<sup>21</sup> She gave evidence to the Congressional Committee investigating the January 6th attacks and appeared before the House Oversight Committee, warning that January 6th will happen again if social media platforms are not better regulated.<sup>22</sup>

For every tech whistleblower who has gone public, like Frances, Daniel and Anika, dozens have remained anonymous, sharing information with the press and policymakers under the radar. From July 2022 to September 2023, TSN received requests from 37 tech whistleblowers looking to disclose public interest information about what was happening inside their companies. Many of them worked anonymously with reporters to get information out.

Thanks to whistleblowers, we now know a lot more about what happens inside the black box of Big Tech. But more transparency is still needed, especially in AI, where the rapid development of the technology makes it even more imperative that individuals inside these companies feel they will be protected and supported if they speak out. These insiders hold the key to us understanding the impacts of this new technology and ensuring AI companies and applications are held accountable when they cause harm.

## Tech Whistleblowers Face Unique and Serious Risks

Tech whistleblowers face significant and serious risks when they speak out. In addition to retaliation from their employers and being blacklisted from future jobs, employees face the very real risk of lawsuits. For example, Tesla and Elon Musk have a long history of suing those who try to blow the whistle.<sup>23</sup> TSN is supporting two such individuals. Litigation costs individuals hundreds of thousands of dollars to defend and takes a significant mental health toll.<sup>24</sup> In extreme cases, whistleblowers may be physically threatened, assaulted or even killed, like other human rights defenders.<sup>25</sup>

In November 2020, Google fired Timnit Gebru, a co-leader of the company's Ethical AI team, for not retracting her latest research paper or removing her name from its list of authors.<sup>26</sup> Google maintained Gebru resigned, but thousands of Google employees and AI experts signed a public letter castigating the company for ousting her.<sup>27</sup> A few months later, Google fired another co-leader of the Ethical AI team, Margaret Mitchell.<sup>28</sup> Gebru's and Mitchell's firing prompted a broader discussion about whistleblower protections in tech.<sup>29</sup>

NDA's also pose significant risks for tech whistleblowers. Ifeoma Ozoma, the Pinterest whistleblower, violated her NDA when she came forward with claims of racism, sexism, and pay discrimination.<sup>30</sup> Ozoma has taken a leading role in advocating for California's Silence No More Act, which bars firms from using NDAs to limit discussion of sexual harassment in settlement agreements.<sup>31</sup> For now, though, the legislation has no equivalent at the federal level or beyond the bounds of California. Ozoma has also become a leading voice on tech accountability and led the development of the first-ever Tech Worker Handbook, with support from TSN, which contains guidance for those thinking about blowing the whistle.

While legal risks are always a concern, some tech whistleblowers have also faced real and terrifying threats to their own physical safety. In December 2023, Elon Musk released the so-called "Twitter Files", a select set of internal conversations and documents aimed at showing the bias of Twitter prior to Musk's ownership.<sup>32</sup> The names of several employees were deliberately left unredacted, including Anika Collier Navaroli and Yoel Roth, both of whom had spoken out about Twitter's practices. As a result of their naming, both were doxed and received death threats. Yoel's doxing was so bad that he had to flee his home and go into hiding.<sup>33</sup> What was never reported was that dozens of other employees experienced significant mental trauma as they waited daily to see if their name would be released with the newest batch of files. These tech workers were people who everyday simply showed up to do the best job they could in an impossible situation.

The risks of retaliation, legal liability and in some cases even physical safety can be overwhelming. Without proper support networks, or a place to get free advice, speaking out for many can seem impossible.<sup>34</sup> The result is exactly what companies are aiming for – speech is chilled and Big Tech's activities remain a shrouded in secrecy.

## **Better Protections Can Mitigate Whistleblowing Risks Enabling More People to Speak Out**

If Big Tech is to be held accountable for its actions, we urgently need more insiders in these companies to come forward. Nowhere is this more needed than in AI, where we know precious little about how AI companies are operating and therefore what risks really exist.

While whistleblowing comes with significant personal, financial and legal risks, these risks can be mitigated. With better support and advice for whistleblowers, individuals can make informed decisions about how to safely disclose what they know. And for every whistleblower who is able to safely speak up publicly in a supported way, there will be dozens of others considering speaking out who will be influenced to believe they too can safely do it.

Without better support for whistleblowers – and without whistleblowers themselves – the transparency deficit in Big Tech makes accountability impossible. Whistleblower support must be a core component of broader tech accountability strategies. Specifically, we need to:

1. Empower tech workers to know and understand their rights. They need to be given access to information and confidential legal advice free of charge so they can understand their options and access support if they decide to blow the whistle.
2. Strengthen support systems for tech workers who do speak out. They need to know that there is legal, financial, psychosocial, digital and physical security, and other support in place should they decide to speak out. A strong community of support needs to exist.
3. Amplify whistleblowers' voices to ensure their disclosures have impact, thereby sending a signal to others that they too can safely disclose. Whistleblowers need access to expert assistance to deal with media and political representatives. Fostering links between whistleblowers and civil society with subject expertise relevant to their disclosures is equally critical to promoting evidence-based tech policy development and advocacy.
4. Strengthen legal protections to better protect those who speak out. This includes better anti-SLAPP legislation, better limits on the enforceability of NDAs and strong protections for those who disclose to the media. Tech companies also need to be held accountable for their own internal whistleblower protection policies and ensuring safe reporting channels that are free of conflicts of interest.

# Endnotes

- 1 Barbara Ortutay and Haleluya Hadero, Meta, TikTok and other social media CEOs testify in heated Senate hearing on child exploitation, *The Associated Press* (February 1, 2024) <https://apnews.com/article/meta-tiktok-snap-discord-zuckerberg-testify-senate-00754a6bea92aaad62585ed55f219932>.
- 2 Hannah Bloch-Wehba, *The Promise and Perils of Tech Whistleblowing*, 118 *Northwestern University Law Review* (2023); Philip Di Salvo, *Leaking black boxes: Whistleblowing and big tech invisibility*, *First Monday* (2022).
- 3 Shira Ovide, *An Obsession with Secrets*, *The New York Times* (July 27, 2021) <https://www.nytimes.com/2021/07/27/technology/nondisclosure-agreements-tech-companies.html>
- 4 Lauren Rogal, *Secrets, Lies, and Lessons from the Theranos Scandal*, 72 *Hastings Law Journal* 1663 (2021).
- 5 John Carreyrou, *Theranos Whistleblower Shook the Company – and His Family*, *The Wall Street Journal* (November 18, 2016) <https://www.wsj.com/articles/theranos-whistleblower-shook-the-companyand-his-family-1479335963>; Erin Woo and Erin Griffith, *Theranos whistle-blower concludes her testimony in trial of Elizabeth Holmes*, *The New York Times* (September 17, 2021) <https://www.nytimes.com/2021/09/17/technology/theranos-whistle-blower-erika-cheung-elizabeth-holmes.html>.
- 6 Bruno Latour, *Pandora's hope: Essays on the reality of science studies*, Harvard University Press (1999).
- 7 Julie E. Cohen, *Between Truth And Power: The Legal Constructions Of Informational Capitalism* (2019).
- 8 Kate Crawford and Meredith Whittaker, *Artificial intelligence is hard to see*, *Medium* (September 11, 2016) <https://medium.com/@katecrawford/artificial-intelligence-is-hard-to-see-a71e74f386db>
- 9 Di Salvo (n 2).
- 10 Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*, New York: Public Affairs (2019) at 89-90.
- 11 See eg, Ryan Calo and Alex Rosenblat, *The Taking Economy: Uber, Information, and Power*, 117 *Columbia Law Review* 1623 (2017); Rory Van Loo, *The Missing Regulatory State: Monitoring Businesses in an Age of Surveillance*, 72 *Vanderbilt Law Review* 1563 (2019); Alicia Solow- Niederman, *Administering Artificial Intelligence*, 93 *Southern California Law Review* 633 (2020).
- 12 Andrew D Selbst, *An Institutional View of Algorithmic Impact Assessments*, 35 *Harvard Journal of Law & Technology* 117 (2021) at 125.
- 13 Rory Van Loo, *The Missing Regulatory State: Monitoring Businesses in an Age of Surveillance*, 72 *Vanderbilt Law Review* 1563 (2019) at 1565.
- 14 Bloch-Wehba (n 2); Di Salvo (n 2); Thomas Olesen, *Whistleblowing in a time of digital (in)visibility: towards a sociology of 'grey areas'*, 25(2) *Information, Communication & Society* 295 (2022).
- 15 *Ibid.*
- 16 Jeff Horwitz, *The Facebook Files*, *The Wall Street Journal* (September 13, 2021) <https://www.wsj.com/articles/the-facebook-files-11631713039>.
- 17 Karen Hao, *The Facebook whistleblower says its algorithms are dangerous. Here's why*, *MIT Technology Review* (October 5, 2021) <https://www.technologyreview.com/2021/10/05/1036519/facebook-whistleblower-frances-haugen-algorithms>.
- 18 Donie O'Sullivan, *Another Facebook whistleblower says she is willing to testify before Congress*, *CNN* (October 12, 2021) <https://edition.cnn.com/2021/10/11/tech/facebook-whistleblower-sophie-zhang-congress/index.html>.
- 19 Billy Perrigo, *Inside Facebook's African Sweatshop*, *TIME* (February 17, 2022) <https://time.com/6147458/facebook-africa-content-moderation-employee-treatment/>.

- 20 Foxglove, Daniel Motaung launches world-first case to force Facebook to finally put content moderators' health and wellbeing ahead of cash (May 10, 2022) <https://www.foxglove.org.uk/2022/05/10/motaung-facebook-world-first/>.
- 21 Drew Harwell, Jan. 6 Twitter witness: Failure to curb Trump spurred 'terrifying' choice, The Washington Post (September 22, 2022) <https://www.washingtonpost.com/technology/2022/09/22/jan6-committee-twitter-witness-navaroli/>.
- 22 The Signals Network, Whistleblower to Congress: Twitter 'bent and broke' own rules before Jan. 6 (February 13, 2023) <https://thesignalsnetwork.org/whistleblower-to-congress-twitter-bent-and-broke-own-rules-before-jan-6/>.
- 23 Sarah Cords, Tesla's Long History of Silencing Whistleblowers, The Progressive Magazine (January 15, 2022), <https://progressive.org/latest/tesla-history-silencing-whistleblowers-cords-220115/>
- 24 Wim Vandekerckhove, Research on retaliation against whistleblowers (2020) <https://nationalguardian.org.uk/2020/10/21/research-retaliation/>; Brita Bjorkelo and Stig Berge Matthiesen, "Preventing and Dealing with Retaliation Against Whistleblowers" in David Lewis and Wim Vanderkerckhove (eds), Whistleblowing and democratic values, International Whistleblowing Research Network (2011).
- 25 Mary Lawlor, At the heart of the struggle: human rights defenders working against corruption, United Nations Human Rights Council (2021).
- 26 Tom Simonite, What Really Happened When Google Ousted Timnit Gebru, WIRED (June 8, 2021), <https://www.wired.com/story/google-timnit-gebru-ai-what-really-happened>.
- 27 Julia Carrie Wong, More than 1,200 Google workers condemn firing of AI scientist Timnit Gebru, The Guardian (December 4, 2020) <https://www.theguardian.com/technology/2020/dec/04/timnit-gebru-google-ai-fired-diversity-ethics>.
- 28 Guardian Staff, Google fires Margaret Mitchell, another top researcher on its AI ethics team, The Guardian (February 20, 2021), <https://www.theguardian.com/technology/2021/feb/19/google-fires-margaret-mitchell-ai-ethics-team>.
- 29 Sara Brown, Ex-Google researcher: AI workers need whistleblower protection, MIT Sloan (October 6, 2021), <https://mitsloan.mit.edu/ideas-made-to-matter/ex-google-researcher-ai-workers-need-whistleblower-protection>.
- 30 Erin Woo, A Tech Whistle-Blower Helps Others Speak Out, The New York Times (November 24, 2021), <https://www.nytimes.com/2021/11/24/technology/pinterest-whistle-blower-ifeoma-ozoma.html>.
- 31 Kari Paul, California companies can no longer silence workers in victory for tech activists, The Guardian (October 8, 2021) <https://www.theguardian.com/technology/2021/oct/08/california-companies-can-no-longer-silence-workers-in-victory-for-tech-activists>.
- 32 Sannon Bond, Elon Musk is using the Twitter Files to discredit foes and push conspiracy theories, NPR (December 14, 2022), <https://www.npr.org/2022/12/14/1142666067/elon-musk-is-using-the-twitter-files-to-discredit-foes-and-push-conspiracy-theor>
- 33 Donie O'Sullivan, Former top Twitter official forced to flee his home due to threats amid 'Twitter Files' release, CNN (December 12, 2022), <https://www.cnn.com/2022/12/12/tech/twitter-files-yoel-roth/index.html>
- 34 Bloch-Wehba (n 2).

*TSN is a 501(c)3 organization dedicated to supporting whistleblowers who risk their livelihoods to share public interest information with the press. Founded in 2017 by journalists, whistleblowers and lawyers, TSN operates internationally to hold powerful interests accountable. TSN provides customized support to a selected group of whistleblowers who have contributed to published reports of significant wrongdoing. This support may include legal, psychological, physical safety, temporary safe-housing, online safety, career support and communication support.*

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