

René König and Miriam Rasch (eds), *Society of the Query Reader: Reflections on Web Search*, Amsterdam: Institute of Network Cultures, 2014. ISBN: 978-90-818575-8-1.

# Dominating Search: Google Before the Law

—

Angela Daly

# Dominating Search: Google Before the Law

▽  
Angela Daly

For many, particularly in the Anglophone world and Western Europe, it may be obvious that Google has a monopoly over online search and advertising and that this is an undesirable state of affairs, due to Google's ability to mediate information flows online. The baffling question may be why governments and regulators are doing little to nothing about this situation, given the increasingly pivotal importance of the internet and free flowing communications in our lives. However, the law concerning monopolies, namely antitrust or competition law, works in what may be seen as a less intuitive way by the general public.<sup>1</sup> Monopolies themselves are not illegal. Conduct that is unlawful, i.e. abuses of that market power, is defined by a complex set of rules and revolves principally around economic harm suffered due to anticompetitive behavior. However the effect of information monopolies over search, such as Google's, is more than just economic, yet competition law does not address this. Furthermore, Google's collection and analysis of user data and its portfolio of related services make it difficult for others to compete. Such a situation may also explain why Google's established search rivals, Bing and Yahoo, have not managed to provide services that are as effective or popular as Google's own. Users, however, are not entirely powerless. Google's business model rests, at least partially, on them – especially the data collected about them. If they stop using Google, then Google is nothing.

## The Case Against Google

Google has been challenged on both sides of the northern Atlantic through competition investigations into the operation of its online search and advertising business. Complaints of anticompetitive behavior came from Google's 'vertical' search engine competitors. Vertical search engines focus on a specific part of online content, e.g. price-comparison sites, and sites offering legal and medical information. In addition to its 'generic' search engine, Google also runs its own vertical services such as Google Maps, Google Flight Search, and the mobile application Google Shopper. Google's vertical competitors alleged that Google was using its dominant position in online generic search and advertising to give it an unfair advantage in these other markets, specifically by giving its vertical services higher and more prominent places in its

---

1. 'Antitrust' is the U.S. term, whereas 'competition' is used in most other jurisdictions, including the United Kingdom and European Union, to refer to the same area of law. In this essay, I will use 'competition' except when referring specifically to the American system in which case 'antitrust' will be used.

generic search results, while lowering the 'Quality Score' of competitors' sponsored links. This practice would make users more likely to click on Google's services rather than its competitors' vertical search services.

### *Google's Dominance*

Google is certainly the most prominent of the search engines in Europe and the U.S.; it is the market leader in the overall European market for online search, based on either proportion of searches that are conducted through Google (for no cost to users) or its proportional share of advertising revenue (which is where Google gets its funds).<sup>2</sup> The company's market share in Europe is around 90 percent,<sup>3</sup> which would be classified as 'near monopoly' according to the Commission's past practice. Google's online search and advertising is also the market leader in the U.S., but with a lesser market share of around 80 percent, though this is still enough to be considered a dominant position.<sup>4</sup>

However, Google does have competition from other general search engines offered by Bing and Yahoo, as well as subject-specific vertical search engines. Google itself likes to claim when on the defensive from allegations that it operates an abusive monopoly, that its competitors are only a click away. While the search engine market in the U.S. and Europe was competitive in the 1990s and into the early 2000s, it is now massively more consolidated and concentrated around Google.

Google emerged as the market leader because of its early innovations in providing better search service than its rivals. The company did this first by developing a more sophisticated search algorithm that relied on reputation (measured by links from other pages to that page) and text matching to provide the most relevant results, and second by building on its growing experience with search to deliver even more relevant advertising through paid results.<sup>5</sup> Google's operation also involved the accumulation of data about user searches in order to improve the accuracy of its search function: the more data collected, the more accurate its searches became. As a result, the collection, analysis, and sale of user data form a barrier to entry for any potential competitors and entrench Google's position as the leading search engine. In other words, Google's possession and contextualization of user data put it far ahead of any potential rivals starting a new search engine. This advantage makes it more difficult to compete with Google, since a company would need similar knowledge in order to do so. A further barrier to entry for potential competitors is the large investment in hardware, software, and connection capacity required by the creation and maintenance of a search.<sup>6</sup> In ad-

- 
2. There are different methods of calculating shares of the search engine market in Europe, which are subject to various criticisms, but Google seems to come out in all of them as possessing a dominant position in this market.
  3. StatCounter, 'Global Stats Top 5 Search Engines in Europe from Feb 2013 to Jan 2014', [http://gs.statcounter.com/#search\\_engine-eu-monthly-201302-201401](http://gs.statcounter.com/#search_engine-eu-monthly-201302-201401).
  4. StatCounter 'Global Stats Top 5 Search Engines in the United States from Feb 2013 to Jan 2014', [http://gs.statcounter.com/#search\\_engine-US-monthly-201302-201401](http://gs.statcounter.com/#search_engine-US-monthly-201302-201401).
  5. Kristine L. Devine, 'Preserving Competition in Multi-Sided Innovative Markets: How Do You Solve A Problem Like Google?', *North Carolina Journal of Law and Technology* 10 (2009): 7.
  6. Elizabeth Van Couvering, 'New Media? The Political Economy of Internet Search Engines', paper presented to the Communication Technology Policy section of the International Association of Media & Communications Researchers (IAMCR), Porto Alegre, 25-30 July 2004, [http://www.academia.edu/1047079/New\\_media\\_The\\_political\\_economy\\_of\\_Internet\\_search\\_engines](http://www.academia.edu/1047079/New_media_The_political_economy_of_Internet_search_engines).

dition, Google has built up a portfolio of related products and services from which it also harvests user data for its search business.<sup>7</sup>

### *The Competition Investigations*

The European Commission opened its investigation into Google in November 2010 for an alleged abuse of its dominant position contrary to Art 102 TFEU.<sup>8</sup> This case is the largest and most significant competition investigation into Google to date. At the time of writing the Commission and Google appear to have reached a settlement in the wake of various proposals from Google that were rejected by the Commission. In the U.S., the Federal Trade Commission (FTC) launched an antitrust investigation into Google's activities, including search and advertising, which resulted in a settlement with Google in early 2013.

The European Commission investigation was launched in 2010 after complaints were received from Google's competitors – price comparison site Foundem, ejustice.fr (a French legal search engine) and German shopping site Ciao (owned by Microsoft) – that Google was treating them unfavorably in its search results (both 'organic' or unpaid results, and the 'sponsored' or paid results), and was discriminating in favor of its own services. More specifically, there were allegations that Google had both lowered the rank of the unpaid search results of services, particularly vertical search engines that compete with Google, and had accorded preferential placement to the results of its own versions of these services.<sup>9</sup> Furthermore, Google is alleged to have lowered the 'Quality Score' for the sponsored links of these competing vertical search engines (the Quality Score influences the likelihood that an ad will be displayed by Google and the ranking of that ad in the search results, and is a factor determining the price paid by advertisers to Google). In 2012, the Commission issued a communication inviting Google to offer its commitment to remedy the Commission's concerns about anticompetitive behavior, including what the Commission perceived as the potential preferential treatment that Google Search gave its own vertical search services compared to the vertical search competitors.

The saga between Google and the Commission has been lengthy and drawn out. The Commission has twice rejected offers from Google to change its behavior before accepting the current proposal in early 2014. It has always been in Google's interests to reach a settlement with the Commission since otherwise the Commission would proceed with a full-blown investigation, quite probably resulting in the imposition of remedies as well as a large fine (up to 10 percent of global turnover).

Google's first proposal to the Commission in early 2013 to remedy its behavior seemed to include an offer to label its own services in search results in order to distinguish

- 
7. Although this is not without controversy. Changes to Google's privacy policy in 2012 which allowed it to share users' data across all of its products and services, was considered by national data protection authorities to breach data protection laws in the Netherlands, Spain and France. For more information, see Ezra Steinhardt, 'Google Fined by the CNIL for Privacy Breaches as European Regulators Continue Investigation', Inside Privacy, 13 January 2014, <http://www.insideprivacy.com/google-fined-by-the-cnil-for-privacy-breaches-as-european-regulators-continue-investigation/>.
  8. European Commission press release, 'Antitrust: Commission Probes Allegations of Antitrust Violations by Google', 30 November 2010.
  9. This was also one of the complaints against Google forming the FTC investigation.

them from competitors' results and to provide links to rival services. The Commission rejected these proposals in July 2013. Indeed, Foundem called Google's initial offer to the Commission 'half-hearted' because it did not address the deeper problem of how Google determined the 'relevance' of links to search queries, especially when its competitors' services were involved.<sup>10</sup>

The second, supposedly confidential, proposal from Google came later in 2013 (whose content was leaked on an American consumer rights group).<sup>11</sup> This version seemed to involve Google offering to label its own services when one or other of them was displayed in the results page in case a user did a generic search for particular terms. The label should be 'accessible to users via a clearly visible icon', should show that this result has been added by Google in order to ensure that users would not confuse it with generic search results and should indicate to users where they can find alternatives provided by Google's competitors. The result from Google's own service should be displayed in a separate area to Google's generic search results and Google also offered to display links to three rival services in 'a manner to make users clearly aware of these alternatives'. These rivals' services would be selected from a pool of eligible vertical search competitors according to a complicated process set out in the document. Google included screenshots of how these results would be displayed, which included links to competitors being displayed under its own specialized search results in a separately boxed part of the screen and taking up roughly half of the space on the page that Google's specialized service results occupied.

In response to Google's offer, FairSearch (a lobby group comprising many of Google's search rivals) commissioned a survey with the aim of finding the likely impact of these proposals on actual internet users, in particular testing the extent to which users were likely to click on any of the three rival links and whether they understood and recognized the different parts of Google's proposed search results page i.e. the labeling and descriptions.<sup>12</sup> The survey found that 'only a modest number' of users would click on one of the rival links and that users were confused about the difference between Google's vertical search results and the other results.<sup>13</sup> The conclusion was that if Google presented links to its rivals in a relatively neutral fashion i.e. in a comparable way in terms of appearance and placement on the page, then this would result in higher click through rates for the competitors' links. However, the Second Commitments offered by Google did not achieve this and so were not 'likely to command materially increased consumer attention or restore competition for [Google's] rivals'.<sup>14</sup>

The head of a consumer advocacy group, BEUC, also condemned the second commitments proposal as 'not just inadequate to solve consumer detriment, but [...] in fact self-serving' since they continued to 'marginalize concerns' and 'bizarrely' suggested

10. Kelly Fiveash, 'Google's Euro Antitrust Offer: Fine! We'll Link to Our Search Rivals', *The Register*, 25 April 2013, [http://www.theregister.co.uk/2013/04/25/ec\\_gives\\_google\\_rivals\\_one\\_month\\_to\\_market\\_test\\_search\\_tweaks/](http://www.theregister.co.uk/2013/04/25/ec_gives_google_rivals_one_month_to_market_test_search_tweaks/).

11. See, <http://www.consumerwatchdog.org/resources/googlesettlement102113.pdf>.

12. David J. Franklyn and David A. Hyman 'Review of the Likely Effects of Google's Proposed Commitments Dated October 21, 2013', 9 December 2013, [http://www.fairsearch.org/wp-content/uploads/2013/12/FairSearch-Hyman\\_Franklyn-Study.pdf](http://www.fairsearch.org/wp-content/uploads/2013/12/FairSearch-Hyman_Franklyn-Study.pdf).

13. Franklyn and Hyman 'Review of the Likely Effects', p. 2.

14. Franklyn and Hyman 'Review of the Likely Effects', p. 13.

a new revenue stream for Google, since certain competitors would have to bid in a separate auction to be included as one of the rival links displayed.<sup>15</sup>

In the end, the European Commission again rejected Google's offer. The third and final offer made by Google at the time of writing, which the Commission appears to have accepted at least tentatively, comprises Google informing users via a label that Google's own specialized services are promoted, separating them from the other search results in order to make clear the difference between them and 'normal' results and displaying 'prominent' links to three rival specialized search services from a pool of 'eligible competitors', and showing clearly to users in a 'comparable' way to how Google displays its own services.<sup>16</sup> On the occasions where Google does not charge for inclusion in its specialized search results, it will also not charge its rivals for inclusion as rival links and here will select them using its 'normal' web search algorithm. But for those services for which Google does charge for inclusion, the three rivals will be chosen via an auction from a pool of eligible competitors.

The Commission includes screenshots of how Google's services will change as a result of the commitments. When results from Google's specialized Shopping service are displayed in the results page, they are done so at the top of the page in a box headed 'Google Shopping results' and directly adjacent to the right of this box is one of the same size labeled 'Alternatives', with a shaded background, displaying results from some of Google's vertical search rivals. Google Shopping is a service for which Google charges for inclusion, and so the rivals whose results will be displayed will be selected via the auction mechanism.

The screenshot shows a Google search for "gas grill". The search bar at the top shows "gas grill" with a magnifying glass icon. Below the search bar, navigation links for "Web", "Images", "Maps", "Shopping", "More", and "Search tools" are visible. The search results indicate "About 44,000,000 results (0.18 seconds)".

**Sponsored**

**Google Shopping results**

Three gas grills are displayed with their prices:

- GP-Grill Gas Grill - black/...** £141.96
- Blacktop 360 Party Hub Gas 57cm...** £299.00
- OUTBACK Grill ... 4 or 6 stainless steel burners • Backlit LED tank scale • Grill Out® handle lights.** £127.99

**Alternatives**

Three gas grills are displayed with their prices:

- Supaprice Best stock of gas grills from £150.00**
- Kelkoo Great deals on gas grills from £129.00**
- Shopzilla Best prices on gas grills from £180.00**

**Ads**

**Gas Grill at Amazon**  
www.amazon.com/patio  
★★★★★ 336 reviews for amazon.com  
Low Prices on **Gas grill**  
Free Shipping on Qualified Orders.

**Cheap Gas Grill**  
www.groupon.com/  
★★★★★ 61 reviews for groupon.com  
Save 50-90% Every Day  
Thousands of Deals to Enjoy

**gas grill**  
www.appliancesconnection.com/Grills  
★★★★★ 3,550 seller reviews  
1 (800) 299 9470  
Huge Variety, Free In-Home Delivery  
Price Match Promise on All Grills

**BBQ Grills**  
www.wholesalepatiostore.com/  
1 (888) 611 7227

Fig. 1. Google's specialized Shopping service. Source: European Commission.

15. John M. Simpson, 'Consumer Groups on Both Sides of the Atlantic Oppose Google Antitrust Settlement', Consumer Watchdog, 26 November 2013, <http://www.consumerwatchdog.org/newsrelease/consumer-groups-both-sides-atlantic-oppose-google-antitrust-settlement>.
16. European Commission, 'Antitrust: Commission Obtains from Google Comparable Display of Specialised Search Rivals – Frequently Asked Questions', MEMO/14/87, 5 February 2014.

This would go further towards the ‘parity of appearance and placement’ that the Fairsearch-commission consumer research found increased consumers’ likelihood of clicking on Google’s rivals’ results, although the research also found that the result to the furthest left on the screen was the more likely to be clicked on than those to the right.<sup>17</sup> If this research goes some way to reflecting accurately how European internet users in general behave, then this formulation of the results page should see an increase in clicks on rivals’ results but Google’s specialized service results will still have the more attractive position.

The other screenshot from the Commission includes results from Google’s Local Search service, for which Google does not charge a payment for inclusion and so the rivals whose results will be displayed will be selected using Google’s general search algorithm.

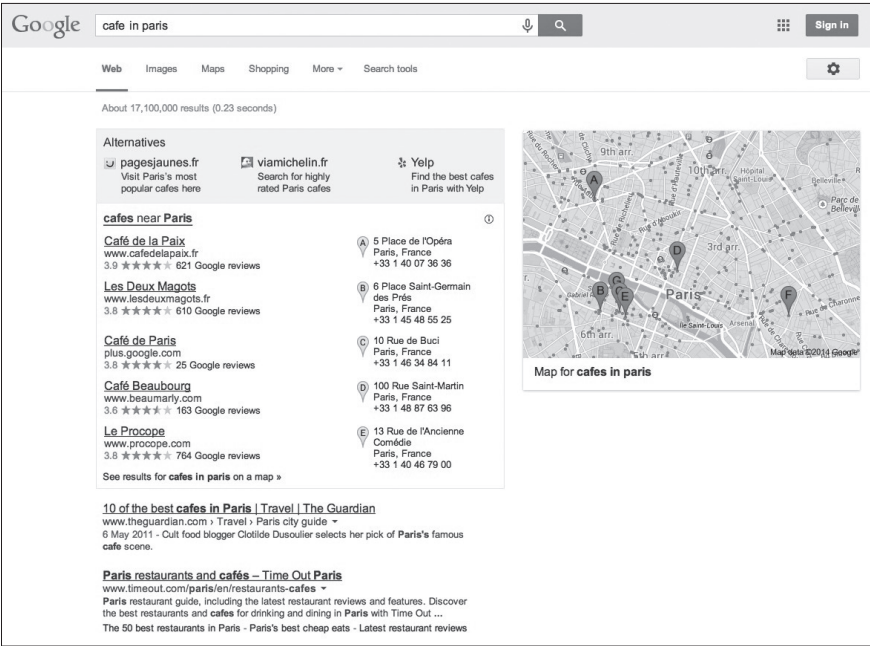


Fig. 2. Google’s Local Search service. Source: European Commission.

Here, the layout is somewhat different, with the rivals’ results placed at the top of the page but in a much smaller shaded area than Google’s own specialized search results, which are also less clearly labeled. While the rivals’ results might be thought to be in a better position, at the top of the page, their reduced size may well make them less attractive for users’ clicks. This scenario does not seem to be addressed directly in the FairSearch commission and so it is unclear as to how users would react to this in practice.

17. Franklyn and Hyman, ‘Review of the Likely Effects’, pp. 10-11.

The procedure now is that the Commission will contact those who made the complaints about Google's conduct, state the Commission's views and ask for their feedback. While the Commission will consider these comments before it takes a final decision on Google's proposal, it seems unlikely that they will change the Commission's mind. Unlike Google's first two proposals, it seems that this third one will not be subject to a rigorous 'market test', during which interested third parties can offer their opinions and research, such as the FairSearch survey evidence mentioned above. This is significant since it seems that the results of the market test of Google's previous proposals contributed to the Commission's decisions not to accept them.

If this agreement does become legally binding, then Google will not have to pay a fine running into billions of euros and will escape an official finding of wrongdoing. Its previous conduct will also not officially be termed anticompetitive, which can have value as a precedent in future investigations. Perhaps an even greater victory for Google will be that it does not have to reveal to the public any more information about how its secretive algorithm works, although it may have to pass on some information about it to the independent monitoring trustee who will assist the Commission in making sure Google implements its commitments properly.

Google's competitors thus far have expressed their unhappiness with the proposed settlement. The Initiative for a Competitive Online Marketplace (ICOMP), an umbrella group of competitors, said that without another market test of the proposals, the Commission's head of competition Joaquin Almunia 'risks having the wool pulled over his eyes by Google'.<sup>18</sup> However Almunia himself has emphasized that his mission is to protect competition for the benefit of European consumers, not competitors, and that this proposal strikes the right balance between allowing Google to improve its services and giving users a 'real choice between different options'.<sup>19</sup>

#### *Federal Trade Commission (FTC)*

In the U.S., the Federal Trade Commission (FTC) also conducted an antitrust investigation into Google and came to a very different conclusion to that of the European Commission; it found that Google had adopted design changes for its search results page (it displayed its own vertical search results more prominently and had the effect of pushing the organic search links further down the page) primarily to improve the quality of its search product and the overall user experience.<sup>20</sup> Although Google's vertical search competitors may have lost sales as a result of this improvement, in the FTC's eyes this was just a normal part of a fierce, competitive process, and the outcome for users was that there was more directly relevant information for their search queries. So the FTC found that Google had not acted anti-competitively, and the company was not forced to label its results or otherwise change the operation or format of its search results page.

---

18. ICOMP Response to Commission's Announcement on the Google Antitrust Case, 5 February 2014, <http://www.i-comp.org/blog/2014/icompe-response-commissions-announcement-google-antitrust-case/>.

19. Joaquin Almunia, 'Statement on the Google investigation' European Commission SPEECH/14/93, 5 February 2014.

20. 'Statement of the Federal Trade Commission Regarding Google's Search Practices, In the Matter of Google Inc.', FTC File Number 111-0163, 3 January 2013.



Indeed, the FTC may also have found it legally difficult to insist on such changes. Certain constitutional rights in the U.S. are also enjoyed by 'legal persons' such as corporations as well as 'natural persons' (i.e. real individual people), including the right to freedom of expression under the First Amendment, as can be seen in the highly controversial Supreme Court decision in *Citizens United*.<sup>21</sup> Search engines including Google may be considered to be 'speakers' for the purposes of First Amendment protection, given they make 'editorial judgements' about information akin to a newspaper, with the implication that the government is not able to regulate what is presented by Google in its search results nor the way in which it is presented.<sup>22</sup> If the FTC had tried to impose regulations in this way, then Google may claim that it would be unconstitutional and thus illegal for them to do so.

### *The Users' Perspective*

In any event, aside from how users might see and act on information in Google's search results pages, the perspective of users vis-à-vis a private, unaccountable, dominant online gatekeeper has not really been addressed at all so far in the competition investigations' narrow focus.

The problem that users may have with search engines is one of access to information: a search engine is a portal through which users experience the web. If a user does a search, and information thought of as 'relevant' does not appear in the results page, *and* if the search engine has had an active role in ensuring that information does not appear, then this can be characterized as censorship of sorts. Furthermore, even if certain information said to be 'relevant' or 'very relevant' is not entirely blocked from the results pages, but does not appear on the first page or even on the first five pages, then it may effectively be unavailable to users who generally will not go beyond these first few pages of results.<sup>23</sup> In a competitive market, according to neoclassical economic theory, when a search engine does not provide a user with the results she is seeking, that user will switch to a competitor that does provide these results. However, if the market for search engines is dominated by one entity or a small group of entities, then the user may not be able to obtain the results she wants even by switching to a competitor.<sup>24</sup> Her searches will be restricted either according to the economic interests or the ideological bearing of the dominant player(s). Indeed, Google has been accused of bias in how it presents its search results,<sup>25</sup> and there has been some evidence that it has taken steps to censor search

21. *Citizens United v Federal Election Commission* 558 US 310 (2010).

22. Eugene Volokh and Donald M. Falk, 'First Amendment Protection for Search Engine Search Results', Google White Paper, 20 April 2012, <http://www.volokh.com/wp-content/uploads/2012/05/SearchEngineFirstAmendment.pdf>.

23. Amanda Spink, Bernard J. Jansen, Dietmar Wolfram, and Tefko Saracevic, 'From E-Sex To E-Commerce: Web Search Changes', *IEEE Computer*, 35.3 (2002): 107.

24. Indeed, there are allegations that Microsoft's Bing, one of Google's competitors has been actively engaged in censoring results for certain terms that are controversial in China such as the Dalai Lama for Chinese language users doing searches from the US: <http://www.theguardian.com/technology/2014/feb/11/bing-censors-chinese-language-search-results>.

25. Benjamin Edelman, 'Hard-Coding Bias in Google Algorithmic Search Results', 15 November 2010, <http://www.benedelman.org/hardcoding/>.

terms.<sup>26</sup> However, one result of the competition investigations into Google is that very little has been revealed about its secretive website-ranking algorithm, so users are still in the dark about exactly how Google conducts its searches.

A further problem that users face regards the company's collection and use of data about them. Indeed, invasions of privacy and lack of compliance with data protection standards have been recognized in the American context as exacerbated by concentrated search markets, since consumers are left without meaningful choices given few or no competitors.<sup>27</sup>

### **Competition Law: Could Do Better?**

The result of the two investigations has been that in Europe, Google seems to have abused its dominant position regarding how it displays search results (although there is no official finding of wrongdoing), while in the U.S. Google's same conduct was found to be within the bounds of the law and, as mentioned above, possibly protected by First Amendment rights.

Indeed, it is actually unclear whether Google was acting anticompetitively and abusing its dominant position in the E.U. Aside from Google's incentives to come to an agreement with the Commission, the Commission may have been motivated to settle with Google for the reason that if it conducted a full investigation, it may not have come to the conclusion that there was anticompetitive conduct, and even if it did, Google could have appealed that decision to the European courts, which might well not have agreed with the Commission. This is because Google's conduct in favoring its own subsidiary services over those of its rivals does not fit squarely into recognized categories of anticompetitive abuses of dominance. It is not a straightforward case of 'refusal to deal' or 'refusal to supply' since Google is not refusing to deal or supply: it is 'dealing' with its competitors, but not on the terms they want. It is not blocking them entirely from its search results, whether paid or unpaid, it is just not placing them as highly and prominently as they wish to be placed. Furthermore, while certain types of discriminatory conduct by dominant entities have been found to constitute abuses of dominance, there seems to be no general duty not to discriminate against competitors on neighboring markets, and again it is unclear that Google's conduct is analogous to the cases where such abusive discrimination has been found to exist.<sup>28</sup> Furthermore, it is unclear whether Google's conduct fulfills the conditions for an abuse of dominance in the form of bundling and tying: Google certainly does 'bundle' its services i.e. its generic search engine and its vertical search engines, such that the former displays the latter in its results for a particular search term, but some conditions for finding this conduct abusive seem not to be met. Finally, the *effects* of Google's conduct are not definitively excluding competition:

---

26. Ernesto Van Der Sar, 'Google Starts Censoring BitTorrent, RapidShare and More', *TorrentFreak*, 26 January 2011, <http://torrentfreak.com/google-starts-censoring-bittorrent-rapidshare-and-more-110126/>.

27. Al Franken, 'How Privacy Has Become an Antitrust Issue', American Bar Association Antitrust Section Spring Meeting, Washington DC, 30 March 2012, [http://www.americanbar.org/calendar/2012/03/antitrust\\_law\\_2012springmeeting.html](http://www.americanbar.org/calendar/2012/03/antitrust_law_2012springmeeting.html).

28. Pablo Ibanez Colomo, 'Exclusionary Discrimination Under Article 102 TFEU', *Common Market Law Review*, 51 (2014) Issue 1: 141-163.

indeed, many of these competitors are still very much alive and kicking more than three years after they started to complain about Google's behavior.<sup>29</sup>

The Commission is empowered to take actions that can radically change the way businesses operate if it makes an official finding of abusive conduct, such as obliging certain kinds of business practices vis-à-vis competitors and customers, or even breaking up an entity into smaller constituent parts in extreme circumstances. In contrast, the terms of the agreement with Google are somewhat weak by comparison. Google will have to make some changes to the layout and content of its results page, but it will not seemingly have to be a lot more transparent about its inner machinations, nor will a general obligation of non-discrimination be imposed on Google, which were possible remedies during the investigation.<sup>30</sup> More transparency in particular around how Google's search algorithm works and an obligation of non-discrimination could have had positive consequences for more user-centric concerns: if the Commission had taken measures to force Google to reveal more details about its algorithm, then this would have been important for users as well as Google's competitors since they would have a lot more understanding of the hitherto secret way in which Google operates.

In comparison, the U.S. FTC did not force Google to make any changes to its search results page, since it did not find that Google had acted anticompetitively or abused its dominant position. Instead, the FTC found Google's design changes had improved its search function for consumers. This follows a line of U.S. case law including *Kodak*<sup>31</sup> and *IBM*,<sup>32</sup> which suggest that new and innovative products from the dominant entity that disadvantage competitors do not necessarily constitute abuses of the dominant position. Since this conduct was not viewed as anticompetitive, there could be no possibility of remedies for anticompetitive behavior having a positive 'spillover' effect for user-centric concerns.

These outcomes from both sides of the Atlantic may seem rather disappointing given the problems, identified above, that a dominant search engine such as Google poses for users. However, competition law is not designed to deal with all of these problems, even when they seem to flow from a concentrated market, and even when it would seem that more competition may solve or at least lessen the problem.

First, contemporary competition law's basis in neoclassical economics – due to the influence of the Chicago School of Economics in the U.S. since the 1970s and the subsequent move in the E.U. towards the 'more economic approach' in competition law and policy – has produced a legal regime that is concerned with the idea of competition as efficiency, with the maximization of 'consumer welfare' as its objective. The maximization of consumer welfare seems to trump the promotion of competition in

---

29. Pablo Ibanez Colomo, 'Exclusionary Effects in Google: Are They Relevant at All for the Outcome of the Case?', *Chillin' Competition*, 30 December 2013, <http://chillingcompetition.com/2013/12/30/exclusionary-effects-in-google-are-they-relevant-at-all-for-the-outcome-of-the-case/>.

30. Martin Cave and Howard Peter Williams, 'Google and European Competition Law', TPRC The 39th Research Conference on Communication, Information and Internet Policy, Arlington VA, 23-25 September 2011, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1992974](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1992974).

31. *Berkley Photo v Eastman Kodak*, 444 US 1093 (1980).

32. *California Computer Products v International Business Machines*, 613 F.2d 727 (1979).

a market, resulting in a consequentialist approach to certain situations of (near) monopoly along with finding aggressive conduct towards competitors acceptable so long as the prices consumers pay are low or zero, as this is believed to be in their best interests. Indeed, as mentioned above, the European Commission's head of competition emphasized that he was operating within this precise approach when he described his mission as protecting competition for the benefit of consumers, not competitors. For some time in both E.U. and U.S. law, it has been established that the 'mere' accumulation of market power even up to the situation of monopoly is not in itself illegal. This can be contrasted with the past, when competition law was open to other public policy considerations that come about from the accumulation of private power, such as the effect it might have on the democratic process, a concern both of the German ordoliberals and U.S. antitrust law before the Second World War.

Second, and related to its current neoclassical incarnation, is the difficulty that competition law's economic approach has with quantifying other valuable societal goals, including vis-à-vis consumer welfare, which has resulted in them being left out of the analysis altogether.<sup>33</sup> Stucke, for instance, believes that competition policy can go beyond promoting economic efficiency, dispersing economic and political power, and promoting individual freedom.<sup>34</sup> He argues for a 'blended approach' to competition goals, yet does not explain very adequately what this would mean across the board of competition investigations and issues. His point seems simply to be a different interpretation of economic policy objectives in the scope of competition law, such as protecting small and medium businesses. In any event, it is true that competition law, as a regime that operates using mainly quantitative data, is not so well-equipped to take into account more qualitative factors. Measuring the extent to which, for instance, Google's users experience non-economic harm would seem to be a more qualitative than quantitative exercise, and generally one that would not be measured in financial terms. For non-economic objectives, it may be more expedient to use law and policy aside from competition law to achieve them, since using competition law to do so can be costly and ineffective.<sup>35</sup> Competition law has a particular ideology and aim that may not be conceptually flexible enough to bend to these situations.

In any event, this conception of competition law, based on principles of neoclassical economics seeing competition as efficiency with the objective of maximizing consumer welfare, may no longer reflect practice. Indeed, Buch-Hansen and Wigger have argued that at least in the E.U., competition regulation has undergone a 'neoliberal transformation' that has been primarily in the interests of transnational globalized capital rather than other social groups, challenging the view that it is consumers who are the main beneficiaries of competition.<sup>36</sup> Furthermore, in the U.S., one empirical study suggests that antitrust policy did not actually improve consumer welfare in practice.<sup>37</sup>

---

33. Christopher Townley, 'Which Goals Count in Article 101 TFEU?: Public Policy and its Discontents', *European Competition Law Review* 9 (2011).

34. Maurice Stucke, 'Reconsidering Antitrust's Goals', *Boston College Law Review* 53 (2012): 590.

35. Christopher Townley, *Article 81 EC and Public Policy*, Oxford: Hart Publishing, 2009.

36. Hubert Buch-Hansen and Angela Wigger, *The Politics of European Competition Regulation: A Critical Political Economy Perspective*, Abingdon and New York: Routledge, 2011.

37. Robert W. Crandall and Clifford Winston, 'Does Antitrust Policy Improve Consumer Welfare? Assessing the Evidence', *Journal of Economic Perspectives* 17.4 (2003): 3.

However, this is somewhat hard to square with the Commission's action against Google, since surely its investigation seems definitely not to be in the interests of the transnational globalized capital that Google constitutes. In addition, the Commission's willingness to intervene and even push for changes to Google's business practices when it is debatable that Google is behaving in an anticompetitive way would also not seem to accord with an approach minimizing intervention in markets that neoliberalism promotes. Indeed, it seems that the Commission may have gone beyond what is 'necessary' or the bare minimum to address competition concerns. While neoliberal thought has been a dominant political current in the U.S. and U.K. at least since the 1980s, and has made inroads into the rest of the European Union, it would seem that the Commission's conduct here cannot wholly be attributed to it, and may possibly be due to factors such as European protectionism when faced with an American corporation (yet some of Google's competitors which have been making the complaints are also American) or being seen as a relevant institution to the general public and act in the face of what they perceive as a monopoly. Nevertheless, it is clear that the Commission has not been overly 'invasive' of Google's business practices, and particularly those which hold the most concern for users.

### **Can Other Areas of Law Help?**

Although competition law seems inadequate for properly addressing the issues created by Google's dominant position for users, there are other areas of law that may go some way to alleviate these problems. First merger control, another 'head' of competition law that blocks transactions resulting in anticompetitive outcomes, could have been used more effectively to prevent Google from accumulating power through certain takeovers of other companies. Some of these mergers resulted in Google buying companies whose additional services were integrated with its existing business, becoming the object of the Commission's investigation of Google for abusing its dominant position. However the practice of the American and European merger authorities, especially when it comes to vertical or conglomerate mergers, has not been particularly circumspect. The U.S. merger authorities have been specifically criticized for being too lenient with this kind of merger as well as the resulting concentrations in technology and communications markets.<sup>38</sup> The European Commission's non-horizontal merger guidelines from 2008 have also been termed 'hospitable' to non-horizontal concentrations.<sup>39</sup> Buch-Hansen and Wigger singled out European merger control in particular as having taken the neoliberal turn in the interests of transnational capital rather than European consumers. So it is difficult to have much faith that it will address Google's dominance as a leading ambassador of globalized technological capitalism.

Some of the privacy and data protection concerns around Google's activities in Europe could at least be addressed using the European data protection regime, which is in the process of being updated from its 1995 version to reflect current technological reality. Regarding user data in the data protection regulation, there has been an attempt to include an obligation by companies to obtain the affirmative consent of individual users before profiling them. However there has been a great amount of resistance from online industry groups towards including such a term, with Google named as one of

---

38. Franken, 'How Privacy Has Become an Antitrust Issue'.

39. Cave and Williams, 'Google and European Competition Law'.

the companies lobbying against it.<sup>40</sup> Although in the U.S. there is growing regulatory activism around privacy and data protection, the approach taken is largely self-regulatory, with privacy activists actually appealing to the antitrust regime to intervene when dominant entities infringe on privacy. If the antitrust regime does not uphold their privacy in practice, then the limited privacy regime already in place is unlikely to help. Aside from the FTC's cognizance of the limits of its legal authority in this area, Pasquale has also identified the conceptual limits of competition law (at least in the U.S.) to govern 'dominant' search engines, such as the fact that economics-based, consumer welfare-oriented competition analysis cannot deal properly with *inter alia* privacy concerns.<sup>41</sup>

With regards to information access and privacy more generally and the role search engines play, the human/constitutional rights legal regimes could be called on to aid users. However, the protection of free expression (sometimes encompassing access to information as well) in Europe and the U.S. contained in the European Convention on Human Rights (ECHR) and the First Amendment to the Constitution, respectively, are usually enforceable as rights against the government and public bodies, though not against private entities such as corporations. Indeed, as mentioned earlier, in the U.S. corporations such as Google actually enjoy the protection of the First Amendment themselves. Human/constitutional rights mainly operate to prohibit government interference with citizens' rights but are largely impotent against infringements by companies or other non-public organizations. Moreover, American protection for the right to privacy (under the Fourth Amendment to the Constitution) is weaker and would seem to apply to less circumstances than the European position in the ECHR.

The Council of Europe has turned its attention to search engines, and in April 2012 its Committee of Ministers adopted a Recommendation to Member States concerning the protection and promotion of respect for human rights regarding search engines.<sup>42</sup> The non-binding recommendation recognizes the potential challenges of search engines to the right of freedom of expression (Art 10 of the ECHR) and the right to a private life (Art 8), which may come from the design of algorithms, de-indexing, and/or partial treatment or biased results, concentration in the market, a lack of transparency about how results are selected and ranked, the ability of search engines to gather and index content that may not have been intended for mass communication, general data processing and retention, and the generation of new kinds of personal data such as individual search histories and behavioral profiles. The recommendation, of course, is not legally binding, and it merely constitutes suggestions for the Member States to follow, if they see fit. Thus far it does not seem that the recommendation has actually been followed by Member States, and adequate protection of privacy and facilitation of free expression remain a problem for privately-owned and operated platforms like Google.

Prior or *ex ante* regulation of search engines is another possibility, especially if the legal regimes above do not adequately address user concerns. Various commentators have

40. EDRI, 'US Privacy Groups Believe US Officials Lobby to Weaken EU Privacy', 13 February 2013, <http://www.edri.org/edriagram/number11.3/us-privacy-groups-eu-law-lobby>.

41. Frank A. Pasquale, 'Privacy, Antitrust and Power', *George Mason Law Review* 20.4 (2013).

42. Council of Europe, 'Recommendation CM/Rec (2012) 3 of the Committee of Ministers to member States on the protection of human rights with regard to search engines', 4 April 2012, <https://wcd.coe.int/ViewDoc.jsp?id=1929429&Site=CM>.

recommended *ex ante* regulation as well as, or else appeal to these other legal regimes. In Europe, the Council of Europe's Committee of Ministers advocated a co-regulatory approach to search engines. Member States should cooperate with the private sector and civil society to develop strategies to protect fundamental rights and freedoms pertaining to search engine operation, particularly regarding transparency over how the search engines provide information, the criteria according to which search results are organized, how content not intended for mass communication (although in the public space) should be ranked and indexed, transparency as to the collection of personal data, empowerment of users to access and modify their personal data held by search engine providers, the minimization of the collection and processing of personal data, and the assurance that search engine services are accessible to people with disabilities. Member States should also consider offering users a choice of search engines, particularly to search outputs based on criteria of public value. However, as mentioned above, Member States so far have not acted on this recommendation, and as it stands the recommendation is also non-binding.

In the U.S. context, specifically given the limits of competition law to deal with privacy concerns, Pasquale argues that search engines should instead be thought of as an 'essential cultural and political facility' and regulated accordingly, using tools beyond competition law,<sup>43</sup> alongside other measures he has previously advocated for that relate to the increased regulation of search engines (such as protection for users' privacy and greater transparency over how search results are ordered).<sup>44</sup>

In order to deal with issues related to the use and exploitation of user data, Fuchs has taken a radical position and argued that as a solution, Google should not be dissolved, alternatives are not needed, and its services are not 'a danger to humanity'.<sup>45</sup> Instead he advocates that Google be 'expropriated and transformed into a public, non-profit, non-commercial organization that serves the common good'. He outlines what this public search engine could look like, including a non-profit organization such as a university running its services, and support by public funding. Interestingly, Vaidhyathan has previously identified Google as remedying what he terms 'public failures' i.e. the opposite of a 'market failure', when the state cannot satisfy public needs and deliver services effectively. Google has 'stepped into voids better filled by the public sector'.<sup>46</sup> Aside from the fact that this is highly unlikely to happen in practice given the enormous 'intervention' in the market that such 'expropriation' of Google would entail, Fuchs also notes that this may only be possible by 'establishing a commons-based internet in a commons-based society'; this has particular resonance in the wake of the revelations of vast public/state surveillance of the internet. It would seem that internet users will only be safe in cyberspace when there is no concentration of power in one entity, whether public or private, and relations are governed on a peer-to-peer basis.

---

43. Frank A. Pasquale, 'Dominant Search Engines: An Essential Cultural & Political Facility', in Berin Szoka and Adam Marcus (eds) *The Next Digital Decade, Essays on the Future of the Internet*, Washington DC: TechFreedom, 2010, pp. 401-417.

44. Frank A. Pasquale, 'Beyond Innovation and Competition: The Need for Qualified Transparency in Internet Intermediaries', *Northwestern University Law Review* 104.1 (2010).

45. Christian Fuchs, 'Google Capitalism', *tripleC* 10.1 (2012): 47-48.

46. Siva Vaidhyathan, *The Googolization of Everything (And Why We Should Worry)*, Berkeley: University of California Press, 2011.



Furthermore, regulation similar to that advocated for Internet Service Providers (ISPs) in the net neutrality debate has been suggested for search engines, including Google. Interestingly, Google itself was an early advocate of net neutrality regulation for ISPs, before 'modifying' its position on the issue in 2010. An equivalent obligation of Google's might encompass non-discrimination rules for its search results, as well as requiring Google not to 'block' content that would otherwise be considered a 'relevant' result for a search. However, without knowing more about how Google's search algorithm works and how 'neutral' or not it already is in determining results, it would be difficult to design such an obligation of neutrality then see that it is effectively put into place. With ISPs it is easier to determine whether they are acting in a non-neutral fashion due to their technical makeup.

Nevertheless, despite these varied suggestions for law and regulation to deal with Google's dominance, given the imperfect solutions offered (at most) by competition law, there has been no attempt to implement any of them.

This inaction may be explained by the regulatory climate in the U.S. and Europe. The regulation of communications in both jurisdictions operates according to a mostly 'market-based' approach, which, as mentioned above, has reflected the ascendancy of neoliberalism and its corresponding doctrine of 'light touch' regulation of private entities. Alongside this development, there has been the attempted capture by corporate interests of public regulatory bodies. A glaring example is the aforementioned corporate lobbying of European institutions during the legislative process for a new data protection regulation. This has resulted in governments of liberal democracies being loathe in practice to extend any further regulation of private entities, especially for seemingly 'non-economic' purposes, in accordance with the mantra that the market will provide. The legislative and regulatory solutions outlined above would entail significant intervention and 'interference' with the market for online search and advertising. Given the general environment, it is not surprising that these solutions for Google's dominance may be thought of as idealistic or going too far.

Even if the will did exist to regulate in users' interests, another issue remains: the time it takes for law and regulation to be discussed, enacted, then implemented, which is at odds with the high speed of new technological markets that govern online search and advertising.

### **Extra-Legal Solutions**

Since the law and regulation, for various reasons listed above, seem inadequate, extra-legal solutions may be the most appropriate for search. One suggestion has been for a publicly funded search engine that would compete with Google and its ilk. This solution is advocated for by Pasquale as a real alternative to those already in operation, as a means to avoid problems with monitoring and accountability that private search engines pose. As described above, Fuchs advocated for government intervention to turn Google into a public search engine, while also admitting that a non-exploitative search engine for the benefit of humanity may only be possible through the general establishment of a commons-based internet in a commons-based society.

Nevertheless, users themselves are not entirely powerless towards search engines and do not need to wait for top-down direction. Even in scenarios where users create



information for corporate expropriation, there is a weakness inasmuch as the corporations cannot force users to utilize the services and thus contribute their data. Consent is dependent on users' own views and motivations. Since the users and the data they produce become the 'product' of the company, then 'the corporation is in many ways at the mercy of users [... and] the community of users is more empowered in the face of the corporation'.<sup>47</sup> This suggests that if users, on whom Google's whole business model rests (at least partially anyway), realized their potential by going on 'strike' and shutting down their accounts, or refused to use Google's service and thus create data for Google, then they could avoid and successfully resist these exploitative practices.

A final option for users would be to support and use decentralized peer-to-peer search engines such as YaCy, avoiding centralized servers along with the problems they entail.<sup>48</sup> However, the success of such peer-to-peer search engines is dependent upon the amount of people using it 'actively' by contributing to the website index. Next to that, these search engines cannot constantly update the quality of search by accessing data to improve their results as Google does, so their results are likely to be less 'accurate' or 'relevant'.

## References

- Almunia, Joaquin. 'Statement on the Google investigation' European Commission SPEECH/14/93, 5 February 2014.
- Berkley Photo v Eastman Kodak, 444 US 1093 (1980).
- Buch-Hansen, Hubert and Angela Wigger. *The Politics of European Competition Regulation: A Critical Political Economy Perspective*, Abingdon and New York: Routledge, 2011.
- California Computer Products v International Business Machines, 613 F.2d 727 (1979).
- Cave, Martin and Howard Peter Williams. 'Google and European Competition Law', TPRC The 39th Research Conference on Communication, Information and Internet Policy, Arlington VA, 23-25 September 2011, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1992974](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1992974).
- Citizens United v Federal Election Commission, 558 US 310 (2010).
- Council of Europe, 'Recommendation CM/Rec(2012)3 of the Committee of Ministers to Member States on the Protection of Human Rights with Regard to Search Engines', 4 April 2012, <https://wcd.coe.int/ViewDoc.jsp?id=1929429&Site=CM>.
- Crandall, Robert W. and Clifford Winston. 'Does Antitrust Policy Improve Consumer Welfare? Assessing the Evidence', *Journal of Economic Perspectives* 17 (.4) (2003): 3-26.
- Devine, Kristine, L. 'Preserving Competition in Multi-Sided Innovative Markets: How Do You Solve A Problem Like Google?', *North Carolina Journal of Law and Technology* 10 (2009).
- Edelman, Ben. 'Hard-Coding Bias in Google Algorithmic Search Results', 15 November 2010, <http://www.benedelman.org/hardcoding/>.
- EDRi, 'US Privacy Groups Believe US Officials Lobby to Weaken EU Privacy', 13 February 2013, <http://www.edri.org/edrigram/number11.3/us-privacy-groups-eu-law-lobby>.
- European Commission, 'Antitrust: Commission Obtains from Google Comparable Display of Specialised Search Rivals – Frequently Asked Questions', MEMO/14/87, 5 February 2014.
- European Commission press release. 'Antitrust: Commission Probes Allegations of Antitrust Violations

47. Mayo Fuster Morrell, 'The Unethics of Sharing: Wikiwashing', *International Review of Information Ethics* 15: 10.

48. Tyler Handley, 'P2P Search As An Alternative to Google: Recapturing Network Value Through Decentralized Search', *Journal of Peer Production: The Critical Power of Free Software* 3, <http://peerproduction.net/issues/issue-3-free-software-epistemics/peer-reviewed-papers/p2p-search-as-an-alternative-to-google-recapturing-network-value-through-decentralized-search/>.

- by Google', 30 November 2010.
- Federal Trade Commission, 'Statement Regarding Google's Search Practices, In the matter of Google Inc.', FTC File Number 111-0163, 3 January 2013.
- Fiveash, Kelly. 'Google's Euro Antitrust Offer: Fine! We'll Link to Our Search Rivals', *The Register*, 25 April 2013, [http://www.theregister.co.uk/2013/04/25/ec\\_gives\\_google\\_rivals\\_one\\_month\\_to\\_market\\_test\\_search\\_tweaks/](http://www.theregister.co.uk/2013/04/25/ec_gives_google_rivals_one_month_to_market_test_search_tweaks/).
- Franken, Al (Senator). 'How Privacy Has Become an Antitrust Issue', American Bar Association Antitrust Section Spring Meeting, Washington DC, 30 March 2012, [http://www.americanbar.org/calendar/2012/03/antitrust\\_law\\_2012springmeeting.html](http://www.americanbar.org/calendar/2012/03/antitrust_law_2012springmeeting.html).
- Franklyn, David J. and David A. Hyman. 'Review of the Likely Effects of Google's Proposed Commitments Dated October 21, 2013', 9 December 2013, [http://www.fairsearch.org/wp-content/uploads/2013/12/FairSearch-Hyman\\_Franklyn-Study.pdf](http://www.fairsearch.org/wp-content/uploads/2013/12/FairSearch-Hyman_Franklyn-Study.pdf).
- Fuchs, Christian. 'Google Capitalism', *tripleC* 10 (.1) (2012): 42-48.
- Fuster Morrell, Mayo. 'The Unethics of Sharing: Wikiwashing', *International Review of Information Ethics* 15: 9-16.
- Handley, Tyler. 'P2P Search As An Alternative to Google: Recapturing Network Value Through Decentralized Search', *Journal of Peer Production* 3 'The Critical Power of Free Software' (2013), <http://peerproduction.net/issues/issue-3-free-software-epistemics/peer-reviewed-papers/p2p-search-as-an-alternative-to-google-recapturing-network-value-through-decentralized-search/>.
- Ibanez Colomo, Pablo. 'Exclusionary Discrimination Under Article 102 TFEU', *Common Market Law Review*, 51(1) (2014): 141-163.
- \_\_\_\_\_. 'Exclusionary Effects in Google: Are They Relevant at All for the Outcome of the Case?', *Chilling Competition*, 30 December 2013, <http://chillingcompetition.com/2013/12/30/exclusionary-effects-in-google-are-they-relevant-at-all-for-the-outcome-of-the-case/>.
- ICOMP Response to Commission's Announcement on the Google Antitrust Case. 5 February 2014, <http://www.i-comp.org/blog/2014/icompe-response-commissions-announcement-google-antitrust-case/>.
- Pasquale, Frank A. 'Beyond Innovation and Competition: The Need for Qualified Transparency in Internet Intermediaries', *Northwestern University Law Review* 104.1 (2010): 105-173.
- \_\_\_\_\_. 'Dominant Search Engines: An Essential Cultural & Political Facility', in Berin Szoka and Adam Marcus (eds) *The Next Digital Decade, Essays on the Future of the Internet*, Washington DC: TechFreedom, 2010, pp 401-417.
- \_\_\_\_\_. 'Privacy, Antitrust and Power', *George Mason Law Review* 20.4 (2013): 1009-1024.
- Rushe, Dominic. 'Bing Censoring Chinese Language Search Results for Users in the US', *The Guardian*, 12 February 2014, <http://www.theguardian.com/technology/2014/feb/11/bing-censors-chinese-language-search-results>.
- Simpson, John M. 'Consumer Groups on Both Sides of the Atlantic Oppose Google Antitrust Settlement', *Consumer Watchdog*, 26 November 2013, <http://www.consumerwatchdog.org/newsrelease/consumer-groups-both-sides-atlantic-oppose-google-antitrust-settlement>.
- Spink, Amanda, Bernard J. Jansen, Dietmar Wolfram, and Tefko Saracevic, 'From E-Sex to E-Commerce: Web Search Changes', *IEEE Computer*, 35.3 (2002): 107-109.
- StatCounter, 'Global Stats Top 5 Search Engines in Europe from Feb 2013 to Jan 2014', [http://gs.statcounter.com/#search\\_engine-eu-monthly-201302-201401](http://gs.statcounter.com/#search_engine-eu-monthly-201302-201401).
- StatCounter 'Global Stats Top 5 Search Engines in the United States from Feb 2013 to Jan 2014', [http://gs.statcounter.com/#search\\_engine-US-monthly-201302-201401](http://gs.statcounter.com/#search_engine-US-monthly-201302-201401).
- Steinhardt, Ezra. 'Google Fined by the CNIL for Privacy Breaches as European Regulators Continue Investigation', *Inside Privacy*, 13 January 2014, <http://www.insideprivacy.com/google-fined-by-the-cnil-for-privacy-breaches-as-european-regulators-continue-investigation/>.
- Stucke, Maurice. 'Reconsidering Antitrust's Goals' *Boston College Law Review* 53 (2012): 551-629.
- Townley, Christopher. *Article 81 EC and Public Policy*, Oxford: Hart Publishing, 2009.
- \_\_\_\_\_. 'Which Goals Count in Article 101 TFEU?: public policy and its discontents', *European Competition Law Review* 9 (2011): 441-448.
- Vaidhyanathan, Siva. *The Googolization of Everything (And Why We Should Worry)*, Berkeley: University of California Press, 2011.
- Van Couvering, Elizabeth. 'New Media? The Political Economy of Internet Search Engines', pre-

sented to the Communication Technology Policy section of the International Association of Media & Communications Researchers (IAMCR), Porto Alegre, 25-30 July 2004, [http://www.academia.edu/1047079/New\\_media\\_The\\_political\\_economy\\_of\\_Internet\\_search\\_engines](http://www.academia.edu/1047079/New_media_The_political_economy_of_Internet_search_engines).

Van Der Sar, Ernesto. 'Google Starts Censoring BitTorrent, RapidShare and More', TorrentFreak, 26 January 2011, <http://torrentfreak.com/google-starts-censoring-bittorrent-rapidshare-and-more-110126/>.

Volokh, Eugene and Falk, Donald, M. 'First Amendment Protection for Search Engine Search Results', Google White Paper, 20 April 2012, <http://www.volokh.com/wp-content/uploads/2012/05/SearchEngineFirstAmendment.pdf>.