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A FAIR PLAYING FIELD? INVESTIGATING BIG TECH'S IMPACT ON SMALL BUSINESS

HEARING

BEFORE THE

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UNITED STATES
HOUSE OF REPRESENTATIVES

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A FAIR PLAYING FIELD? INVESTIGATING BIG TECH'S IMPACT ON SMALL BUSINESS

THURSDAY, NOVEMBER 14, 2019

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The committee met, pursuant to call, at 2:08 p.m., in Room 2360, Rayburn House Office Building. Hon. Nydia Velázquez [chairwoman of the Committee] presiding.

Present: Representatives Velázquez, Golden, Kim, Davids, Evans, Schneider, Espaillat, Delgado, Craig, Chabot, Balderson, Hern, Hagedorn, Stauber, Joyce, and Bishop.

Chairwoman VELAZQUEZ. The Committee will come to order.

I want to take this opportunity to thank everyone for joining us today.

I would like to start by thanking all of our witnesses for coming to the table today to participate in this hearing, including those that traveled. In particular, I want to thank Amazon and Google for deciding to appear today. I know that this was not an easy decision for your company, but I believe it was the right one.

As everyone can see, we also have two empty chairs to demonstrate the failure of Facebook and Apple—companies that somehow find the means to spend millions on lobbying and hire dozens of executives—to find the time to be here today. Their failure not only impedes Congress's mission, but also speaks volumes about the companies' commitment to transparency and their very own customers.

Thank you, Amazon and Google for being here today—and to Facebook and Apple—you reap what you sow.

It is important that everyone in the room understands that this Committee has a tradition of being fair, and that will continue during this hearing.

Earlier this year we held a hearing on how the digital ecosystem promotes entrepreneurship, and last year, we held an Amazon roundtable on Prime Day. Both events showcased the benefits that tech platforms provide small businesses. Today, we will now look at this through another lens.

It is true that innovation and ingenuity built this country. In fact, one could argue that these qualities are uniquely American and have propelled our nation to produce the most successful companies and the foremost technologies. I know that the companies we have on this panel—and the ones we do not—started as an idea, in a basement or a college dorm room, and that entrepreneurship—the spirit that built your companies, is to be commended. That

being said, the grip that big tech now holds over our daily lives and our competitive landscape at the same time is astounding but also concerning.

Big tech platforms dominate search functions, the devices used by nearly every American, online advertising, and online messaging platforms. They are market leaders in cloud computing services to businesses and consumers, while also providing entertainment and other digital streaming services. Microsoft, Apple, Amazon, Alphabet, and Facebook are collectively worth over $4.3 trillion dollars. Those 5 companies comprise over 15 percent of the total value of the S&P 500, which tracks the market value of the 500 largest companies listed on U.S. Stock Exchanges.

To provide a little more context on the scope and reach of these companies, Amazon currently has approximately 50 percent of the U.S. ecommerce retail market. Nearly 90 percent of Internet searches go through Google and its subsidiary, YouTube, while Facebook pulled in 55 billion dollars in ad revenue last year. Additionally, Apple sold over 217 million iPhones in 2018 alone.

The sheer size of these companies, along with pervasive integration of these platforms and concentration of power influencing online traffic, raises questions that should concern anyone who cares about market access, data privacy, small business development, entrepreneurship, and innovation.

One only has to look to the decline in American startups to connect the dots. In 2006, 558,000 businesses were formed but the Census reported that only 414,000 businesses were started in 2015. There is growing anxiety—not only in the U.S. but around the world—that the large tech companies pose a threat to innovation and competition.

When consolidation takes place in any industry and market power is increased, as it has in the tech industry, it is simply too hard for new businesses to get off the ground. Many of the popular products and features of these companies have not been developed internally. They have occurred through merger and acquisition, with the largest being Microsoft paying over $26 billion for LinkedIn. Do we want a country of entrepreneurs and inventors that dream of building something or dream of being bought by larger competitors? In my view, we need to reboot the startup economy.

When small businesses do get off the ground and are able to succeed, we need to ensure that they are treated fairly on online marketplaces and that consumers can find them on search engines. Small businesses need certainty and transparency when they are operating their businesses on digital platforms so that they can set competitive prices and still make enough money to continue to grow their businesses, create jobs, and invest in their communities. When small firms do get into disputes with the powerful gatekeepers, they need a fair shot at resolving the problem so that they can continue to run their businesses.

Finally, I think we need to be clear that in a digital marketplace, that every firm, and especially the Big Tech firms here today are desperate for our data. Our data is an economic asset which garners more value as one collects more of it. The concentration of that data in fewer and fewer firms has implications for small businesses.

The Internet and digital platforms are so deeply woven into American lives that small firms cannot afford to be excluded and/or treated unfairly. Small businesses need to be protected by policies that offer them the certainty and transparency they need to make meaningful business decisions. As consumers continue to increase their engagement with businesses through digital platforms, small firms need to be sure that they can be found when new and existing customers are looking for their business. We cannot allow our economy to become one that stifles innovation or makes it impossible for small firms to compete.

I look forward to working with my colleagues on both sides of the aisle to create meaningful policies that foster collaboration between small firms and digital platforms and ensure that small businesses have a fair opportunity to succeed.

I now would like to yield to the Ranking Member, Mr. Chabot, for his opening statement.

Mr. CHABOT. Thank you, Madam Chairwoman. And thank you for the witnesses that are here today. We understand that it is not always easy to answer when Congress calls but are glad that you have taken the time out of your busy schedules to speak with us today.

The digital age has caused a revolution for small businesses. No more are small firms caught behind their larger counterparts when it comes to the availability of game-changing technologies to help grow and expand their businesses. Small firms can now utilize cutting-edge products and services to respond to market changes very swiftly. And with increasing adoption of mobile computing devices, cloud systems and on-line conference call technology, like Facebook, employees can collaborate effectively even across great distances and work almost anywhere.

But perhaps the greatest benefit is the financial savings it affords small businesses. Increases in productivity allow companies to do more faster and less overhead. Not surprisingly, many of these digital platforms have been developed and marketed by large businesses such as our witnesses today from Amazon and Google.

Have there been some concerns regarding privacy and intellectual property concerns? Of course there have. But by and large the development of these digital platform products and services from these tech giants has been a boon for the millions of individual small businesses that would probably never have existed without them.

We are the Small Business Committee here after all, but we like all businesses as competition drives progress, growth, and economic expansion. Today's hearing is an opportunity for us to examine the symbiotic relationship between small firms and big businesses. Both need each other to continue our unprecedented economic expansion of the past 3 years. I think we are all looking forward to our discussion here this afternoon.

Thank you, Madam Chair, for holding this hearing, and I yield back.

Chairwoman VELÁZQUEZ. Thank you, Mr. Chabot. The gentleman yields back.

If Committee Members have an opening statement, we would ask that they be submitted for the record.

I would like to take a minute to explain the timing rules. Each witness gets 5 minutes to testify and Members get 5 minutes for questioning. There is a lighting system to assist you. The green light comes on when you begin, and the yellow light means there is 1 minute remaining. The red light comes on when you are out of time, and we ask that you stay within that timeframe to the best of your ability.

I would now like to introduce our witnesses on today's first panel. I will take a minute to introduce each of you before turning it over for testimony.

Our first witness today is Mr. Dharmesh Mehta. Mr. Mehta is the Vice President for Amazon's Customer Trust and Partner Support team. The team is focused on creating a trustworthy shopping experience across Amazon stores worldwide by protecting customers, brands, selling partners, and Amazon from fraud and abuse, and they are also focused on providing world-class support for Amazon's-selling partners. He joined Amazon in 2013, and prior to joining Amazon, Mr. Mehta spent most of his career in the technology industry in a variety of product, engineering, and marketing leadership roles. Welcome, sir.

Our second witness is Ms. Erica Swanson. Ms. Swanson currently serves as the Head of Community Engagement for Growth with Google, which is a new U.S. initiative to help people grow their skills, careers, and businesses through free training, tools, and events. Previously, she served as Head of Community Impact Investments and Programs at Google Fiber. She led the team responsible for developing and delivering a range of social impact investments and community engagement strategies in Google Fiber cities. A key area of focus was partnering with local leaders to advance digital equity.

Our third witness is Dr. Joe Kennedy, a senior fellow at the Information Technology and Innovation Foundation, where he focuses on economic policy. For almost 3 decades, he has provided legal and economic advice to senior officials in the public and private sector. Much of this advice has been directed at public policies involving technology, competitiveness, and the social contract. Dr. Kennedy previously served as the Chief Economist for the U.S. Department of Commerce where he oversaw a staff of 15 economists and regularly briefed the Secretary of Commerce on economic issues including the financial crisis and immigration reform.

Welcome, all.

Mr. Mehta, you are now recognized for 5 minutes.

STATEMENTS OF DHARMESH M. MEHTA, VICE PRESIDENT, CUSTOMER TRUST AND PARTNER SUPPORT, AMAZON; ERICA SWANSON, HEAD OF COMMUNITY ENGAGEMENT, GROW WITH GOOGLE, GOOGLE; JOE KENNEDY, SENIOR FELLOW, INFORMATION TECHNOLOGY & INNOVATION FOUNDATION

STATEMENT OF DHARMESH M. MEHTA

Mr. MEHTA. Thank you, Chairwoman Velázquez, Ranking Member Chabot, and members of the Committee. My name is Dharmesh Mehta, and I am the vice president of Worldwide Customer Trust and Partner Support at Amazon.

Amazon's mission is to be earth's most customer-centric customer. Our philosophy is simple: work backwards from what customers want—convenience, selection, and low prices—and to constantly innovate to make our store better, for both our buying customers and our selling partners.

Amazon lowers barriers to entry for entrepreneurs. We help make retail more vibrantly competitive, and we delight customers with new innovations.

In 1999, we decided to open our stores to small and medium businesses, or SMBs, to sell alongside us because we wanted to give customers greater selection that only third-party sellers could provide. In 2006, we did the same with our logistics network, and we invited SMBs to use a new program called Fulfillment by Amazon to give customers even faster delivery.

With the partnership of small and medium businesses, we now provide our customers with even more selection with faster delivery speeds.

Our store model has worked well because empowering third-party selling has created a better customer experience than Amazon could otherwise provide on its own. Today, in the United States alone, there are more than 1.9 million businesses, content creators, and developers that are using Amazon's products and services to realize their dreams. And they are thriving. On average, they sell more than 4,000 items every minute. In 2018, there were over 25,000 entrepreneurs that surpassed more than $1 million in sales on Amazon.

In addition, these entrepreneurs have used these sales and their businesses to create more than 830,000 jobs for Americans.

When third parties first started selling on Amazon, they generated about $100 million in sales and were about 3 percent of our total sales. Since then, we have made substantial investments to help our selling partners succeed, and now, SMBs generate about $160 billion in sales, and they represent 58 percent of the total value of physical products sold in our stores. That is because third party sellers are thriving and growing almost twice as fast as Amazon's own retail business. We celebrate that growth and we expect that trend to continue.

But numbers paint only part of the picture. Every American small business has a story that tells much, much more. And so I would like to share one with the Committee.

Let me tell you about Tara Darnley from Greensboro, North Carolina. She owns Darlyng and Company. Tara and her husband, Carl, had an idea for a new product to help their baby get through teething. At the time, Tara did not have a business background, she did not have a college degree, and her husband was working as a pastry chef. So they started to prototype devices, and a few prototypes later, Darlyng and Company was in business with the Yummy Mitt. Their innovative teether became a big hit at trade shows, and a few months later the Yummy Mitt was on retail shelves. However, Tara says that listing the product on Amazon was the real game changer. Tara not only sold on Amazon but she relied on Amazon customer reviews and sales data to grow her business. She said that she had initially focused on marketing to moms, but as she looked at the Amazon data, she realized that

grandparents were an untapped target. Tara said that when their sales really jumped was when they started marketing to grandparents.

Darlyng and Company is now a global company. They sell 20 different baby products. Carl has quit his day job and he now works with Tara every day and they have 10 employees running the business.

There are thousands of stories just like this that I would love to tell you if we had the time.

We know that our selling partners have many ways to reach our customers, and so our value proposition has to be strong. That is the reason that this year we will invest over $15 billion in infrastructure and tools and programs and employees that create programs to help our selling partners' success. We have 7,000 employees building tools and features that help our selling partners run their business, to set up their accounts, to list products, to manage their inventory and to grow their business. We have another 10,000 full-time employees that are dedicated to understanding, responding to, and providing support to our selling partners, and our goal is to respond to and resolve every one of those contacts expeditiously.

Last year, more than 80 percent of those selling partner issues were fully resolved in less than 24 hours. We also have 5,000 employees working to prevent fraud and abuse in our stores. Our efforts to proactively stop fraud and abuse are critical to creating a trusted shopping experience, not only for our customers but also for our honest selling partners.

We are also proud of the work we have done to help our selling partners build thriving businesses beyond selling on Amazon. That includes hundreds of thousands of authors who have published millions of books through Kindle Direct Publishing, hundreds of thousands of SMBs and startups using Amazon Web Services, and hundreds of thousands of third-party developers who built more than 100,000 skills for Alexa. These opportunities enable a wide variety of entrepreneurs to sell their products, fuel their creative passion, grow their business, and create jobs.

I look forward to answering any questions the Committee may have.

Chairwoman VELÁZQUEZ. Thank you.

Ms. Swanson, you are now recognized.

STATEMENT OF ERICA SWANSON

Ms. SWANSON. Chairwoman Velázquez, Ranking Member Chabot, and distinguished members of the Committee, thank you for the opportunity to appear before you today. I appreciate your leadership in making sure small businesses have every opportunity to grow and thrive, and I look forward to sharing with you the many ways that Google is committed to supporting that goal.

My name is Erica Swanson, and I am the head of community engagement for Grow with Google, which is Google's initiative to create economic opportunity for all Americans. At google, we are deeply proud of the ways in which we support the success of the small business community in the United States and globally, and we be-

lieve large companies like google should play a role in helping them succeed.

Today, I will discuss Google's positive economic impact on American businesses, the products and tools we provide small businesses to help them succeed, and Grow with Google's free trainings and programs for American small business owners and employees.

Google tools help American businesses find and connect with customers. In 2018, Google's search and advertising tools helped provide $335 billion of economic activity nationwide. Over 1.3 million U.S. businesses, website publishers, and nonprofits use our tools annually to grow their customer base and drive revenue.

Two examples of small businesses that use our products and services to grow their business and reach new customers are Propel Electric Bikes in Brooklyn, New York, and Nehemiah Manufacturing Company in Cincinnati, Ohio. I go into more detail in my written testimony about how these inspiring businesses are using our products to succeed.

There are a number of ways our products and tools help small businesses meet their online goals. Businesses are discoverable not only in organic search—that is the standard nonadvertising search results—but also through free business profiles on Google where businesses can list their websites, add photos, update their hours, and more.

In addition to free services, we have a robust suite of advertising products that help small businesses reach the right customer at the right time. For every $1 invested in Google ads, our estimate suggests that businesses make an average of $2 back in revenue.

With Google analytics on a business website, the owner can better understand their customers to make online marketing efforts even more effective. And, Google Suite of workplace productivity tools called G Suite helps small businesses work more efficiently.

Google also plays a part in helping small businesses reach new customers who are outside the U.S. Small business exports contribute significantly to the U.S. economy.

Market Finder is Google's free tool that enables any small business to identify the best expansion markets for their business, find shipping and logistics partners, adapt to local markets, and start exporting to customers around the world.

We understand that the magnitude of tools and resources available can be daunting. That is why we launched Google for Small Business, a dedicated online tool that curates our resources into a personalized digital marketing plan.

We also help small businesses learn how to use our products and tools. Through our Grow with Google program, we are seeking to ensure that more Americans size the opportunity that is created by technology. Since 2017, Grow with Google has trained more than 3 million Americans in all 50 states. We do this through our free online tools, partnerships with local organizations, delivering in-person trainings, and providing philanthropy to organizations that are helping small businesses learn skills.

We also know how important it is to support small businesses that are just getting started. So last month, as part of our $1 billion global commitment to create more economic opportunity for everyone, Google.org announced a $10 million U.S. commitment to

help low income, underrepresented entrepreneurs start their businesses by providing access to training, mentoring, and much-needed capital.

Our Grow with Google programs continue to meet the needs of our users. For example, just last week we partnered with the Small Business Administration to support National Veterans Small Business Week. We also launched a series of new resources that support the 2.5 million veteran-led businesses in the United States.

In conclusion, the future of small businesses online is bright, and we are proud of the role we play. We appreciate the opportunity to highlight Google's contributions to helping the small business community, and we thank you. We look forward to your questions.

Chairwoman VELÁZQUEZ. Thank you.

Dr. Kennedy?

STATEMENT OF DR. JOE KENNEDY

Mr. KENNEDY. Thank you very much Chairwoman Velázquez, Ranking Member Chabot, and members of the Committee. I am pleased to be here to talk about the impact that large Internet companies are having on small business. I would like to make five basic points in my opening statement.

The first is that large Internet platforms deliver tremendous benefits to small business. Any business now can set up a free website, but it can also set up social networking accounts for free using Facebook, Instagram, YouTube, and Amazon.

Not only that, it can also use market platforms like eBay and Amazon to sell worldwide to potential customers. These platforms often offer a variety of other services such as handling the payments, shipping, and handling returns, thus saving the small business from having to do that itself.

Gig platforms match small business men and women with potential customers that are interested in their services allowing them to build a clientele without spending more money on print advertising, radio, or mail inserts.

And finally, a separate set of platforms, including Microsoft and Google offer cloud services on demand for small businesses.

My second point is that these platforms share a common interest with the small businesses that use them, and that is to offer a larger variety of good products and services which will attract more consumers, which will result in more sales. Platforms that do not do this successfully will lose market share.

My third point is that this fundamental model is not new. We also have large retail chains, including Costco, Safeway, CVS, and Walmart, which offer shelf space to thousands of suppliers. These retail shops collect a lot of data on what is selling, and occasionally they make the decision to offer a competing product. That product then sits on the same shelf often with those of its other suppliers, and it is sometimes offered at a discount. Wherever this happens, consumers benefit. They get a broader choice and they get lower prices, and this is exactly the type of competition that we should be encouraging.

My fourth point is that globalization and technology have changed the optimum size of firms in many industries. Small firms feel pressure to grow in order to take advantage of a global market.

But platforms relieve some of this pressure because they stand ready to take some of their fixed costs and turn them into variable costs that can scale up or down with business conditions. And so these include some of the ones I have mentioned—shipping, returns, and setting up cloud services.

My final point is that anti-trust policy should encourage competition. But it should not protect companies, whether they are large or small, from the effects of that competition. The fundamental guidepost for anti-trust should remain the consumer welfare standard, which looks at whether a particular merger or a business activity will harm consumers by raising price, lowering quality, or delaying innovation. Where these occur, existing policy and law allows regulators and potential plaintiffs to take action to rectify the situation.

But we should not use anti-trust policy to try and accomplish other goals, such as instilling privacy requirements or trying to rebalance the political power between large or small companies.

With that, I will conclude my statement. And I want to thank you again for this opportunity to talk to you. And I look forward to your questions. Thank you.

Chairwoman VELÁZQUEZ. Thank you, Dr. Kennedy.

Thank you all for your testimonies.

I will begin by recognizing myself for 5 minutes.

I would like to address my first question to you, Mr. Mehta. Some argue that Amazon does not just dominate the online market; it controls its access by creating a platform for sellers while also competing against those same businesses. Doesn't a company that sells things and owns the platform where things are sold have an inherent advantage over other small businesses that it is competing against?

Mr. MEHTA. Thank you, Chairwoman, first, for holding this hearing and allowing Amazon to participate in this conversation. You know, I am honored to be here.

Let me address your question by comparing ourselves to what happens traditionally in the retail market. And when we talk about retail, we talk about the overall retail market.

Amazon represents about 1 percent of the worldwide retail market and about 4 percent of the U.S. retail market. Whether you look at Walmart or Target or Trader Joe's or Costco, all of these major retailers have a private label business that competes with others in their store.

For Amazon, our private label business represents about 1 percent of our total sales. If you look at most of these retailers, their private label businesses represent anywhere from 18 to 85 percent of their total sales.

Chairwoman VELÁZQUEZ. I hear you, however, there is some research that show that Amazon's own product consistently wins the buy box. We know what went in the buy box, the area on the right hand side of the page that says "add to cart." To me this suggests that the buy box is designed to favor Amazon and potentially gives you an unfair advantage.

I have a lot of questions, so let me proceed.

Ms. Swanson, like Amazon, Google has market dominance in that 95 percent of all Internet searches go through Google. Small

businesses cannot survive on the Internet if they cannot be found. However, when Amazon, Walmart, Verizon, Expedia, and many more large companies spend millions advertising on Google and their ads appear on the first page, does this not crowd out the ability for small firms to advertise online?

Ms. SWANSON. Thank you, Madam Chairwoman, for having us here and for the opportunity to have this conversation.

There are a number of ways that small businesses can be discovered online. And at Google, we are proud to provide a range of options, both paid and unpaid. We have a suite of tools that are free at no cost to small businesses.

Chairwoman VELÁZQUEZ. So if you Google a restaurant that does not pay but is using your free space, that restaurant will probably show up on page five or seven. That clearly gives an advantage for those who pay and will show up on the first page.

Ms. SWANSON. There are a number of ways that small businesses like this small restaurant could appear depending on the particular search query, whether that search query included the restaurant's name. But typically, if it includes the restaurant's name or a qualifier, like near me, it will appear in the first set of organic search listings.

Chairwoman VELÁZQUEZ. How can entrepreneurs optimize their search results? Does Google Maps only identify restaurants and hotels on its mapping platform that are willing to pay to be found?

Ms. SWANSON. No, Madam Chairwoman. We have a number of ways that small businesses can appear on Google Search and Maps. Many of those are free.

So, for example, Grow with Google helps small businesses claim their free Google My Business Listing which allows a small business to share their website, or if they do not have one, create a website so that they show up in that local search on that map. They can share their hours. They can share customer reviews, encourage that conversation with customers that is so important to building customer loyalty over time.

Chairwoman VELÁZQUEZ. Mr. Mehta, small businesses just want to be treated fairly and understand Amazon's terms of use regarding pricing, fees, and other arrangements.

Is it true that for some businesses, 30 to 40 percent of their sales price goes back to Amazon?

Mr. MEHTA. Chairwoman, the way our fees work, for professional sellers on Amazon, they pay $40 a month here in the U.S., and then on top of that they will pay a fee that depends on the product they sell, typically 8 to 15 percent. Any additional fees are up to the seller based on additional services they choose to use, such as our fulfillment services or advertising.

Chairwoman VELÁZQUEZ. Do you have a number as to the percentage that they pay back to Amazon compared to the profits that they are making on average?

Mr. MEHTA. Madam Chairwoman, I do not have that data point in front of me. I would be happy to have the team follow up.

Chairwoman VELÁZQUEZ. Does Amazon give sellers adequate notice and transparency of changes to fees or other terms of their seller agreement?

Mr. MEHTA. Our fees are publicly posted. They are both available to all sellers before they start selling, as well as anyone in the public can see those fees. We try to provide transparent advanced notice before changing those fees.

Chairwoman VELAZQUEZ. You try to provide changes, but do you notify sellers in advance?

Mr. MEHTA. Madam Chairwoman, I do not own our fees. I am happy to have someone follow up with the specifics of what has been done in every instance.

Chairwoman VELAZQUEZ. Okay.

Mr. MEHTA. But we want our sellers to be able to plan for our fees. We try to make those fees very attractive. You know, for instance, if I look at our Fulfillment by Amazon fees that provide fulfillment services for sellers, we benchmark those versus the alternatives that the sellers have. Our fees on average are 50 to 80 percent lower than sellers' alternatives.

Chairwoman VELAZQUEZ. What I am asking is if you provide notices in advance giving them enough time. What about sellers that use Amazon warehouses? Do they have opportunities to reconcile if there is a dispute with Amazon and prevent their inventory from being seized?

Mr. MEHTA. Absolutely. So when sellers send their inventory into our fulfillment centers if they choose to use Fulfilled by Amazon, they have visibility into their inventory, that inventory that is available for sale when it is purchased, and if for any reason there is a dispute, we have 10,000 associates that support sellers every day and respond to them quickly.

Chairwoman VELAZQUEZ. Does Amazon consider how long a seller has been using the platform before closing or suspending an account?

Mr. MEHTA. When we close or suspend accounts, they can be done for a variety of reasons. If an account is suspended for potential fraud or abuse, or other policy violations, we make decisions around closing accounts based on the activities that have happened and the potential policy violations.

Chairwoman VELAZQUEZ. Thank you.

Now I recognize the Ranking Member.

Mr. CHABOT. Thank you, Madam Chair.

Mr. Mehta, in March, the U.S. Chamber of Commerce in partnership with Amazon published a report detailing the impact of technology on rural communities. The report acknowledges that rural business owners who have already embraced digital technology are seeing tremendous results. What has been your experience in seeing the potential of ecommerce for growth by small businesses in rural America?

Mr. MEHTA. Thank you, Ranking Member Chabot, for the question.

It is a great question. One of the powerful things that enabling sellers to sell in Amazon's stores has achieved is for these businesses that are often in rural America that have historically set up physical shops have only been able to reach customers within a small distance of their physical store. By selling on Amazon, we enable them to not only sell in their local district but to sell across

their state, to sell across the country, and increasingly, to sell across the world.

As one example, a feature we launched recently called FBA Export is a program for sellers that use our fulfillment services to export products to other parts of the world. It helps sellers find customers in other parts of the world. It helps navigate export requirements. That one program generated $1.8 billion in sales for American businesses.

Mr. CHABOT. Thank you very much.

Ms. Swanson, I will go to you next.

It is my understanding that about 96 percent of the people that occupy this globe are outside the borders of the United States, so there is a huge market out there for large and small businesses. And I have got a book here, Growing Small Business Exports by Google. And could you tell us, obviously, we do not have time to go through all this, but what is Google able to do to allow America's small businesses to more successfully market their products across the globe?

Ms. SWANSON. Thank you, Ranking Member Chabot.

Being able to increase broader markets is increasingly important to small businesses. My family had a small business, a bakery in a small town, and their market was their town. And today, a small business like that can reach and sell across the Nation and across the globe. This is important to our economy. And to job creation in the United States.

One recent study shows that 6 million jobs in the United States are supported by small businesses who are exporting. Google is proud to make it easier for small businesses to export their goods and to find new markets. Examples are Strider Sports in South Dakota. They had this great little idea to build bikes that little kids could push without needing pedals so they could move without falling over. They had this great idea, and now thanks to digital tools and the expanded market that the web enables, they have sold 2.5 million bikes in 78 countries, and the majority of their sales are coming from international exports. This has really enabled because the web has enabled small businesses to reach into these global markets to find new places to reach new customers.

Mr. CHABOT. Thank you.

Mr. Kennedy, or Dr. Kennedy, I am sorry, some have suggested recently that we need a new regulatory regime to clamp down on tech companies and that the government ought to be determining what you do and how you do it, et cetera, to a much greater degree than exists today. Obviously, these are private companies, but we also want them to be fair with the public and that sort of thing.

What is your view relative to additional regulations coming out of Washington?

Mr. KENNEDY. I tend to be very skeptical of that. I think that the government's primary purpose should be to try and ensure a competitive market and to try and make sure that there is active competition that results in good products at low prices going to consumers. It should be reluctant to take a side in the various battles that occur between businesses over different practices, you know, getting market share.

The one exception is where there is either a merger that could result in monopoly power or where there are clear, uncompetitive practices, and there I think the existing anti-trust laws already give regulators and potential plaintiffs the powers that they need to restore competition.

I do think it is worth having a dialogue about fair business practices in general regarding transparency and consistency, but I am very reluctant to have the government mandate those. I think it is likely to be more productive if decisions are arrived at in an open conversation.

Mr. CHABOT. Thank you very much.

Mr. KENNEDY. Thank you.

Mr. CHABOT. My time is expired, Madam Chair.

Chairwoman VELÁZQUEZ. Do you have any other questions?

The Chair recognizes Ms. Davids from Kansas.

Ms. DAVIDS. Thank you, Chairwoman. And Ranking Member Chabot for holding this hearing today. And I think this is a really important conversation as it relates to our country's small businesses.

Finding a fair marketplace and competing with big businesses has always been a challenge for small businesses. And using and competing with large tech companies, however, is a new iteration on that issue. So it is vital that we ensure that online marketplaces provide a fair online space for businesses to compete.

And I actually am going to follow up on the Ranking Member's line of questioning because that is where I was headed anyway.

So Dr. Kennedy, I noticed in your testimony, and you actually started getting into it based on Ranking Member Chabot's questioning, can you talk to us a little bit about enhancing the rules governing fairness and transparency as it relates to how small businesses can interact with these large platforms, that in some instances they are both a customer and a competitor of the large platforms?

Mr. KENNEDY. Yeah. I do not feel I can get into a lot of detail but I used to be general counsel of the Senate Subcommittee on Investigations, and there we found that when we saw a problem in a particular market, often if we called people in and we had a quiet discussion with them about why they did a certain thing, we could get a sensible resolution. And they would go off and amend their practice. And I think that kind of informal dialogue can accomplish a lot.

I think as far as specific things, in general I think it is reasonable for a businessman to know what the rules are for a platform and to have them applied with some consistency. And as a general manner, I would look at Costco or Walmart and I would look and see how are they treating their suppliers? And we do not seem to have a lot of problems with them. So, you know, if they have a particular practice, if Amazon and Google has a similar practice, I do not think necessarily we should have a problem with them either.

I do note, I forget the gentleman's name, but one of the people on the next panel has in his file testimony a pretty good discussion of some of the issues and possible resolutions. So I think they are out there.

Ms. DAVIDS. In your testimony you talk about an example of the United Kingdom's open banking initiative and the E.U.'s payment services directive. Can you talk a little bit about that?

Mr. KENNEDY. Well, I do not know——

Ms. DAVIDS. And why you used them as an example?

Mr. KENNEDY. I do not know the great details in them, but in general, they allow, my understanding is that they allow a banking customer to mandate that his or her information be available to various outside apps so that if you want to download an app that will download information from your say banking account and compare your fees to the fees of other banks and tell you how you could save on fees by moving to a different bank——

Ms. DAVIDS. So you think those kinds of policies might be helpful when we are talking about large Internet platforms——

Mr. KENNEDY. Yeah.

Ms. DAVIDS.—that are selling goods and services and having a very transparent process of understanding what your fees are? If you were paying for Google to put you in a search versus another searching platform. I am actually not sure what other platforms folks use besides Google, which kind of brings us to the point of how dependent small businesses might be on one or two specific platforms. Do you think that that is something that we need to see more of in these instances?

Mr. KENNEDY. I think in general it is good to have a conversation between Congress and the industries. It often is better to have it in private where people do not feel under the gun that they have to get every word exactly right. And I think that often that results in reasonable changes to business practices. You know, platforms already have a strong interest.

Ms. DAVIDS. My time is running out.

I think the folks in my district might be a little surprised to hear you say that we should have meetings behind closed doors with large businesses, but I thank you for your time, and thank you for your testimony today.

I yield back.

Chairwoman VELÁZQUEZ. The gentlelady yields back.

The gentleman from Oklahoma, Mr. Hern, Ranking Member of the Subcommittee on Growth, Tax, and Capital Access is recognized.

Mr. HERN. Thank you, Madam Chairwoman.

As you all know, every big business begins as a small business, and as an entrepreneur, a business owner, a job creator of thousands of jobs over 34 years, I appreciate the support that you have given the small business job creators of the world.

I was just looking, I have five businesses that I created that my family members now run today thanks to being in Congress that use both of your services, either Google Suites or the AWSS3 server system and cloud-based other tools that you have. So I really appreciate it.

And for Amazon, this support is represented by 5 million of AWS credits that you gave out in 2018. This has led to hundreds of thousands of small businesses, startups using your web services to launch and scale their businesses, including over a million current

small businesses utilizing their web services, 6,500 of which are in my home state of Oklahoma.

As for Google, the support for small business is represented by the fact that in 2018, your search and advertising tools helped to provide $335 billion of economic activity nationwide, $712 million of economic activity in Oklahoma, and $1.69 million of free advertising in the Oklahoma nonprofits. Benefits for over 7,800 Oklahoma businesses, website publishers, and nonprofits, and we thank you for that.

Both of you all are very well represented in our northeast Oklahoma area. The Google data center complex is just outside of my district, which I have had the opportunity to tour, which I will go on the record to say it is very large. The Amazon fulfillment center coming to Tulsa in 2020 is the largest ever job employer ever in the history of northeast Oklahoma where we are at. So I really appreciate that.

So with all of this, I would say that what you do also for helping small businesses start up and help with the protecting of small business from cyber threats, I would like for you just to take in my remaining amount of time here, so hopefully a minute and a half each, that each of you could talk about how beneficial these startup services are and the ability to continue on with your marketplace.

We will start with Amazon, your marketplace, and cyber threats as we are seeing them today, how you can help secure those fronts for small business and entrepreneurs.

Mr. MEHTA. Thank you, Congressman.

You know, absolutely, one of the things that we find to be very powerful for these small businesses is the way that we can level the playing field, that we can provide access to not only the reach of hundreds of millions of customers, not only the large fulfillment centers and the fulfillment capability we have built, but also the advanced fraud and abuse detection capabilities that protect these small and medium businesses that end up lowering costs for them and are going to continue to allow them to thrive. We think some of the key ingredients that have continued to allow small businesses to grow so fast and become now 58 percent of our total sales.

Mr. HERN. Thank you.

Ms. Swanson? Dr. Swanson? Ms. Swanson? I am sorry.

Ms. SWANSON. Still Ms. Thank you, Congressman Hern.

Google is really proud to call Oklahoma home, and I am pleased to hear that we have customers in your family.

Cloud computing is one of the ways that we help small businesses take their security very seriously. Cloud computing can give small businesses an advantage that was not available many years ago. It can help them access their data from anywhere, anytime, at a reasonable price. And security and that safety is really built in.

What we hear as we travel the country working with small businesses is that they are really good at what they do. They know their business. What they might not know as much about is the digital tools, things like how to keep their data safe. And so they turn to affordable products, like cloud computing, to keep their data safe.

Mr. HERN. I appreciate both of your comments. The only thing I would like to say in my remaining moments is I think sometimes people forget that every large business did start as a small business, and I think we oftentimes forget, in the case of both your companies for sure, and obviously, Mr. Zuckerberg, who is not here, your companies were started by the people who are currently involved in your companies. And we just ask I think collectively as a bipartisan Committee that they not forget where they came from. Whether it be Mr. Brin and Mr. Page in their dorm room at Stanford or whether it be Mr. Bezos, who I would like to go on the record to say his first job was at McDonald's at 16 years old, someone near and dear to my heart, and learned a lot from that lesson. That they would not forget and continue to help entrepreneurs create this competitive environment and the free market ideas that got them the ability to start and allow them to get them to where they are at today, that they would not forget that. And if that is a message that we could get collectively bipartisan out of this Committee and back to them, and many of the other companies that have come from absolutely nothing, we would like to make that message heard loud and clear. Thank you.

I yield back.

Chairwoman VELÁZQUEZ. The gentleman yields back.

Now we recognize Mr. Evans from Pennsylvania, Vice Chair of the Committee.

Mr. EVANS. Thank you, Madam Chair. And I thank you for the leadership on this discussion.

I would like to start out with just the title. Basically the title is, "A Fair Playing Field? Investigating Big Tech's Impact on Small Business.

So I would like to start out with, I think is his name Mr. Kennedy? Is that you?

Mr. KENNEDY. Yes.

Mr. EVANS. You were kind of giving a general sense of what certain things you did not think should happen in terms of what government should do. So you see that question, and it is a very simple question. So kind of give me your reaction to the question that we are just attempting to do our oversight responsibility. You know, we know the importance of small business in this Nation and the role that it plays. I come from the City of Philadelphia. We have 25 percent poverty. I would like to see more growth and more opportunity. So can you talk a little bit about relating to what you see as the fair playing field? Because what I heard you mention as a solution was kind of using a soft stick of conversation. So talk a little bit to me about how you view the fair playing field.

Mr. KENNEDY. So I think the government should work hard to make sure that it is as easy to start a business as is possible. That it is as easy to get credit, consulting help as is possible. That when a business does get created that the markets it is in are competitive and give it a fair shot. That the rules of the market, the laws are, you know, fairly applied. But it should not try and favor one set of businesses over the other, whether they are small businesses versus big businesses, or platforms versus sellers. It should allow that competition to go on and that competition inevitably results in losers who complain. But unless there is a demonstrated unfairness

in the rules of the market, in which case anti-trust already has the powers to deal with it, the government should leave well enough alone.

Mr. EVANS. Well, if you were whipping out your report card at this point and you look at where we are, and obviously, this is new to all of us. I mean, we are just fully trying to understand it, but we hear a lot of complaints about individuals not being able to get into the marketplace. As you say, government should just leave it like it is, then how are you rating it at this point?

Mr. KENNEDY. Well, I think the companies testifying today and the other ones we have mentioned, they already have a significant interest in expanding the number of small businesses and big businesses that use their platform and working with those businesses to grow their volume. So that incentive already exists.

Now, about the margin about this rule or that rule or how it is applied, and I think, you know, government usually is better off not getting too involved in setting those rules, but should concentrate on is the competition on the whole fair?

Mr. EVANS. But would you agree, you may or may not, would you agree that it is critical that small businesses are given an equal opportunity to enter the marketplace and flourish?

Mr. KENNEDY. Yes.

Mr. EVANS. Okay. Well, I guess that is why I was kind of trying to drill down on the question and what your view of it because obviously, you know, maybe some cases it may not be working.

Mr. KENNEDY. Yeah. And I think the central question we ask is what is going on hurting the customer? So if competition is putting some companies out of business but prices are going down, efficiency is going up, consumers are benefitting, then that is okay. If consumers are getting hurt because companies are getting monopoly power and they are raising prices, then that is not okay and we have anti-trust policies. But we ought to look at how is the consumer being helped or hurt.

Mr. EVANS. Thank you.

And I yield back the balance of my time, Madam Chairperson.

Chairwoman VELÁZQUEZ. The gentleman yields back.

The gentleman from Minnesota, Mr. Hagedorn, is recognized for 5 minutes.

Mr. HAGEDORN. Thank you, Madam Chair, and Ranking Member Chabot. I appreciate the witnesses.

I represent a rural part of southern Minnesota there, and so obviously, for small businesses and entrepreneurs wanting to get their start, the platforms that you provide can make a huge difference. They have in many instances. So especially from a rural standpoint, I get it, and I think as my colleague, Congressman Hern said, in many ways this is a really good thing.

But I did talk with someone in my office recently, Mr. Mehta, about a product that a woman named Sophia had on your platform. She is selling espresso machines. Had about $100,000 put into the business. Very happy because doing it through you she can work from home and all sorts of kind of you would say luxuries for a business owner to be able to do those types of things. But she said there were certain costs. You know, 15 percent on average goes to your company to sell their machines. There could be storage costs

if you have machines at the warehouses and things like that. And also, some advertising. So in general, do you think the way that you are charging these small businesses is fair? Are there ways to look at that to make sure that they are not being gauged? How would you respond to that?

Mr. MEHTA. Congressman, thank you for the question.

You know, fundamentally, the way we view this is that we succeed when sellers succeed. Our growth over the years, a large part of it is because of the success of these small and medium businesses. We want to make sure we offer a set of services at a set of fees and prices that are super attractive and reasonable. Now, advertising is one of those services that can be very powerful for that rural business that has an unknown brand that no one may know about that maybe has invented an amazing espresso maker. We want them to be able to advertise their products, but advertising is a choice. For the brand that is known and is generating the sales or the awareness that they want, they do not have to buy advertising. We try and make as many of these a choice, a simple choice with easy to use tools so that different small and medium businesses can pick the set of services that work best for them.

Mr. HAGEDORN. I think that is a very good answer. It makes sense. You want your clients to be successful, and then from a customer standpoint it is awesome for us to be able to go there, wherever it is, and find all these different choices and shop and things of that nature.

So then I would move on to the other aspect of this which is kind of the infrastructure of how we search for companies that can provide services and products, so I would go to Ms. Swanson. How do we know for sure that your company is not picking winners and losers in the marketplace? That you are not really fronting for companies that may advertise more, or just in general, how can we be assured that that is not happening? Because you are the infrastructure. You are like the road, and if you just decide that only certain cars and trucks get to go out first or get to drive faster and everybody else is left behind, that would not be fair. So in this case with the Internet, how would you respond to that?

Ms. SWANSON. Thank you, Congressman, for the question.

At Google Search, we build, we design for everyone. The business model of search is dependent upon being useful and being trustworthy for our users. So we have natural long-term incentive to prevent that type of activity on our platforms.

We build those platforms and those products in a really neutral way, and we work hard to make sure that we are continuing to improve search to surface the most reliable, most relevant answers for our search users in real time.

Mr. HERN. Well, who audits you to determine whether or not that is happening? Because you do not know what you do not see; right? So if I put in a search for widgets but some company does not come up, how would I ever know that? So who would kind of look over your shoulder to make sure that that is being done properly?

Ms. SWANSON. Yeah. We have a series of processes and safeguards in place that allow us to continue to test. And then evolve and improve the way that search functions. Some of the ways we

do that, for example, are running hundreds of thousands of experiences every year and asking independent search users to review the quality of those search improvements, always looking to understand are we providing the most relevant, reliable answers to our search users. We take that feedback into account. We take it very seriously.

Mr. HERN. Yeah. I am not always for too much regulation in the marketplace and things like that but I think we should make sure that in the future there is at least somebody who is overseeing this or looking at the results to make sure that if it is not happening, then we need to make some changes because I think you would want to be the first ones to make changes so the government would not move in and regulate in these areas. But it is pretty important, I think, for businesses and the consumers that that be done on a fair basis. So thank you.

Chairwoman VELAZQUEZ. The gentleman yields back.

The gentleman from Maine, Mr. Golden, Chairman of the Subcommittee on Contracting and Infrastructure is recognized.

Mr. GOLDEN. Thank you, Madam Chair.

Mr. Mehta, I wanted to ask, does Amazon use algorithms that favor sellers who use Fulfillment by Amazon over those who chose to do Fulfillment by Merchant?

Mr. MEHTA. Thank you, Congressman, for the question.

The short answer is no. We design our algorithms for search and the products we feature based on what we think customers want regardless of whether those products are sold by Amazon.

Mr. GOLDEN. Just to be clear, not products but sellers.

Mr. MEHTA. We do not design them to favor sellers or products based on who is selling them or the fulfillment channel. We design them to prioritize what we think customers want most.

Mr. GOLDEN. All right. I guess we have heard from some people back home in Maine who are concerned that that may not be the case, and perhaps you have a better explanation. But has Amazon ever been willing to maybe do some third-party testing on its algorithms which, of course, would be done to avoid revealing how the precise mechanisms work but could confirm for sellers that there is, in fact, no bias towards people who use one or the other?

Mr. MEHTA. I would have to have someone from our search team follow up, but I do know we run constant experiments looking at our search results to make sure we are prioritizing what customers want most and that we are avoiding any kind of unintentional bias in that system. I would be happy to have the team follow up with you.

Mr. GOLDEN. All right. I would appreciate that very much. And obviously, that would be important to avoid that kind of unfair bias.

We have a company in Maine that sells products to help keep houses from losing heat in the wintertime. They choose to ship their own orders and believe that they have noticed that their product has started missing out on search placement and sales to competitors who use FBA. They believe their experience is backed up by testimony from the Institute for Local Self-Reliance at a July House Anti-Trust Subcommittee hearing and a letter to Congress from another seller described in a November 8th Bloomberg article.

Another concern that we have that impacts sellers' ability to choose whether or not they want to use FBA instead of going with their own option is that sometimes Amazon may suspend sellers' accounts if they deliver items late. I understand you are trying to look out for consumers, but I also understand that you may exempt sellers who use FBA from similar penalties. I am just curious, is there a penalty to Amazon itself under FBA for late delivery that would either recompensate the seller or the consumer similar to way of people who do fulfillment by merchant?

Mr. MEHTA. Thank you, Congressman.

If an order is delivered late by our fulfillment services, Amazon takes responsibility for that order, makes sure the customer is made whole, and we do not hold sellers liable for that. So we do take accountability for this.

Mr. GOLDEN. All right. Good. Good. That just seems like a common, that you can hold yourself to the standard you would hold other, some of your clients to would be important. I appreciate that.

If I could shift over to Ms. Swanson. I think we are going to hear some testimony from the second panel. I do have some concerns. I am just curious in learning more about it having to do with some of Google's blue book a room button changes and also some potential changes recently this year having to do with how people are able to find businesses' phone numbers. And I think you probably heard many questions about the blue button, you know, in a system where essentially people are booking, whether they know it or not, through OTAs. You know, you may have a consumer seeking to purchase a room directly from a hotel or a bed and breakfast or something and largely unaware that they are booking through an OTA when they use the blue book button. I am curious if you have any feedback about that change. Have you considered whether or not you can build in the ability for consumers to choose to go directly to a business? And secondly, I have heard that there have been changes this year where a lot of searches no longer have phone numbers for businesses directly listed unless they opt to pay for that listing, essentially paying to have their own phone number advertised. And of course, as a consumer, very frustrating to think you have booked directly with someone, then try and pick up the phone and call them and realize you cannot.

Ms. SWANSON. Thank you, Congressman, for your question.

There are a number of ways that a user might go about finding a service provider, for example, a hotel, could be to direct navigate to that website, could be to search for it, could discover it in an organic search, or could choose to book through an OTA.

You asked about some of those panels that we have on the right side of search. We do work to make it very transparent to the user when they have the option of booking through the official site. There is a little button there that says the official site, for example, of that hotel. Although some users may choose to book through an OTA for their own personal kind of shopping preferences, and that is a choice that we want to provide.

You also ask a little bit about how small businesses can make their phone number available. We know that is really important to be able to provide that direct connection from search to a small

business can be a critical way of initiating contact with that potential customer. And through our local services, features, and products, we can help small businesses list their phone numbers for free in their Google My Business listing, direct that call directly to that small business.

Mr. GOLDEN. Thank you. I appreciate that.

I am overdue on time, but I would just ask that you commit yourself to that transparency for consumers, particularly as you need to change your interface for things like the smaller screens. Suddenly, that transparency becomes much more difficult for consumers.

Chairwoman VELÁZQUEZ. The gentleman yields back.

The gentleman from Ohio, Mr. Balderson, Ranking Member of the Subcommittee on Innovation and Workforce Development is recognized for 5 minutes.

Mr. BALDERSON. Thank you, Madam Chair. Thank you all for being here.

I want to do a couple questions and kind of follow some of Mr. Hern's lead, and I will probably try to work with you all some more.

It is good for us to find out the technology side of the companies in American small businesses, and I am going to share more the success side of it. But Mr. Mehta and Ms. Swanson—sorry, bad angle here—I first want to thank you both and your companies to date in the district and in the State of Ohio. Amazon has invested $5 billion, and Google, you have invested closer to $7 billion. So thank you both very much. And I want to share a story.

I did the groundbreaking ceremony for Google a couple weeks ago, and I was pulling in the facility and I was driving and I look off to the side and I see one of my buddies. He has got waste dumpsters there. There were nine of them I counted, so I got out excited for him. I thought, wow, Google is actually working with small businesses here in the district and the community. And I thought how important that was. So I call Seth up and I say, "Hey, Seth, congratulations, man. I am looking at your dumpsters here. I see nine of them out here." And he said, "Nine?" He said, "There better be 14." I said, "Well, we will cross that bridge when we come to it." But anyway, just thank you, because that is meaningful to small business owners in those districts when you build these huge data centers. So thank you very much.

Would each of you, please, explain to this Committee what the growth of the Internet and the information age has meant for small businesses?

Ms. Swanson, ladies first.

Ms. SWANSON. Thank you, Congressman, for the question. And thank you for the kind words about our data centers. What you saw was part of a $13 billion investment that Google is making across American to create new data centers and expand our offices. And we are committed to working with small businesses in these communities as part of that work.

We really see the Internet and Google products and tools as being great equalizers, as being tools that help small businesses do things, reach customers, and become discoverable in ways that used to be only available to the very biggest of businesses. It used

to be that if you were a small business and you wanted to market to customers you had few options. They were TV. They were radio. Maybe outdoor, out of home in some way. And now if you are a small business, you can set your budget, and with a very limited budget even, make really effective focus online media advertising campaigns.

And we hear that is a game changer. As we travel the country, we hear from small businesses again and again that this is helping them find the right customer at the right time in ways that they could not have imagined before.

Mr. BALDERSON. Okay. Thank you.

I want to jump to another question because of the time limit that we are on here, because I do want to talk about the positive things that are created from big techs and from small businesses.

I would like to highlight a recent meeting that I had with a constituent in my district who actually, I would not say went out of business but pretty much just shut down his business that he had prior to that. In doing so, then he changed and started up another business, a vintage bookseller business, and he used Amazon's tools, including the Fulfillment by Amazon, and his business just in the last year has grown 500 percent. He has had to expand his work force, and he now ships to customers across the U.S. and Canada.

Would you, both of you, Mr. Mehta, you can go first on this one, would each of you please tell this Committee how many businesses, publishers, or nonprofits benefit from your services that you are aware of?

Mr. MEHTA. Thank you, Congressman, for the question. That story of Vintage Book Art Company is another awesome story of many entrepreneurs and small businesses across America.

You know, currently, there are more than 1.9 million small businesses, content creators, authors, et cetera, that are small and medium businesses across the U.S. that are partnering with Amazon and growing as a result. Interestingly, these small businesses have generated more than 830,000 new jobs for Americans. So we are very excited both about that specific business, but in general, about what we have been able to do together with partnerships with small businesses.

Mr. BALDERSON. Thank you both very much for your investment in Ohio. And Madam Chair, I yield back my remaining time.

Chairwoman VELAZQUEZ. The gentleman yields back.

Now the gentleman from New York, Mr. Espaillat, is recognized for 5 minutes.

Mr. ESPAILLAT. Thank you, Madam Chair.

My question goes to Mr. Mehta. I want to touch base on the Amazon Storefronts small businesses, approximately 30,000 small and medium-size businesses you mentioned in your prepared statement, participate in Amazon Storefronts.

My question is, what is Amazon's practice for outreach, and do know the demographic or geographic breakdown of participating small and medium-size businesses?

Mr. MEHTA. Thank you, Congressman, for the question.

Amazon Storefronts is very exciting. We have 30,000 small businesses that are already participating. They have reached 70 million

customers and sold over 250 million items. We have a number of different ways we try to reach out to these small and medium businesses. It starts with a great deal of online content and help. Programs like our Seller University that provide courses and training and videos and webinars to help these small and medium businesses. Just recently, we announced a new Amazon Small Business Academy where we send Amazon employees into local communities to sit side by side with small businesses as they get started on Amazon and help them as they start selling. So we are very excited about Storefronts and very excited about Small Business Academy.

Mr. ESPAILLAT. And when an Amazon searched for product yields a result, are these products shown contemporaneously with relevant products? Or how does that work?

Mr. MEHTA. So when a customer places a search result on Amazon?

Mr. ESPAILLAT. Yes.

Mr. MEHTA. We use the query that they typed in to try to find what we think will be the best products regardless of who is selling it or how they are selling it, but what we think the customer is most likely to want, and we put those in front of the customer.

Mr. ESPAILLAT. And do the results delineate Amazon Storefront and those that are not? Is this the same for English language searches versus Spanish searches or other non-English languages? How is that handled? If I were to search in Spanish, for example?

Mr. MEHTA. Yes. Customers speak many different languages, and we try to support them in their native language. And so when we design our search results we do think about who the customer is and where they are searching and customize the search results accordingly.

Mr. ESPAILLAT. Okay. My next question is what is your reimbursement schedule or model for products sold through on Amazon for small businesses? Is it uniform or can the vendor work to adjust or meet the needs of the industry? Let's say, for example, seasonal or employee design? Small businesses obviously have very strong constraints very often. How do you handle your reimbursement schedule?

Mr. MEHTA. Thank you, Congressman, for that question.

On average, our selling partners are paid 7 days after a customer receives the product. So, we like to make that very quick, as soon as possible after the customer receives the product.

Mr. ESPAILLAT. Thank you so much.

I yield back my time.

Chairwoman VELÁZQUEZ. The gentleman yields back.

Let me take this opportunity to thank all of the witnesses for taking time to be here and answer our questions. You are now excused and we will take a moment while we get our next panel set up. Thank you.

[Recess]

Chairwoman VELÁZQUEZ. I will ask everyone to please take your seat. Thank you.

Welcome to our witnesses on today's second panel. I will take a moment to introduce each of you before turning it over for your testimony.

Our first witness today is Ms. Allyson Cavaretta. Ms. Cavaretta is an executive leader and part owner of the family run Meadowmere Resort on Maine's southern coast. She is a third-generation small business owner and graduate of the University of Notre Dame, Mendoza College of Business, cum laude. Ms. Cavaretta has received the Governor's Award for Environmental Excellence, the Innovation Award from the Institute for Family Owned Business, and formal bipartisan recognition from the Maine State Legislature. Welcome.

Our second witness is Mr. Molson Hart, the CEO and founder of Viahart Toy Company, a retail toy company based in Houston, Texas. Viahart has four full-time employees and sold about $4 million of product on Amazon last year. Mr. Hart speaks Chinese and specializes in manufacturing, logistics, and ecommerce. He graduated from Dartmouth College with a Bachelor of Arts in mathematics and economics. Welcome.

Our third witness is Mr. Harold Feld, the Senior Vice President of Public Knowledge. Before this, he worked as senior Vice President of Media Access Project, advocating for the public interest in media, telecommunications, and technology policy for almost 10 years. Prior to joining MAP, Mr. Feld was an associate Covington and Burling where he worked on the Freedom Information Act, accountability issues at the Department of Energy. He received his B.A. from Princeton University and his J.D. from Boston University Law School. Welcome.

Our next witness is Theo Prodromitis. Ms. Prodromitis is the Cofounder and CEO of Spa Destinations in Tampa, Florida. Spa Destination sells an environmentally conscious luxury brand of natural beauty products and was nominated by Amazon to receive the 2018 National Retail Federation's "Champion of Retail" Award. As a business leader, she also consults with companies ranging from startup ventures all the way to Fortune 500 companies. She specializes in the areas of sustainability, white space analysis, public purpose partnerships, and fast-growth businesses.

I would now like to yield to our Ranking Member, Mr. Chabot, to introduce our final two witnesses.

Mr. CHABOT. Thank you, Madam Chair.

Our next witness is Mr. Jake Ward, president of the Connected Commerce Council, or CCC, a membership organization for small businesses powered by digital. CCC works to provide small businesses with access to the market's most effective digital tools available, provides coaching to optimize growth and efficiency and works to cultivate a policy environment that considers and respects the interests of small businesses. Mr. Ward is the cofounder and former CEO of the Application Developers Alliance and Forward Strategies. We thank you for being here this afternoon.

And our final witness will be Graham—could you pronounce that last name for me?

Mr. DUFAULT. Dufault.

Mr. CHABOT. Dufault?

Mr. DUFAULT. Yes.

Mr. CHABOT. Okay. It looks like that, so that makes sense. Dufault. Senior director for public policy at ACT, the App Association, representing more than 5,000 app makers and connected de-

vice companies in the mobile economy. Mr. Dufault leads public policy initiatives and education in front of the Congress on behalf of 5,000 small and medium-size member companies. Prior to joining the App Association, Mr. Dufault was counsel to the Subcommittee on Consumer Protection and Commerce at the U.S. House of Representatives Committee on Energy and Commerce. Prior to joining the Committee, he was counsel to Congressman Lee Terry, focusing primarily on telecommunications and technology issues. He earned his J.D. from George Mason University School of Law in 2012, with a concentration in communications law. And we thank you also for being here.

I yield back.

Chairwoman VELÁZQUEZ. The gentleman yields back.

Ms. Cavaretta, now you are recognized for 5 minutes.

STATEMENTS OF ALLYSON CAVARETTA, PRINCIPAL AND OWNER, MEADOWMERE RESORT; MOLSON HART, CEO, VIAHART TOY CO.; HAROLD FELD, SENIOR VICE PRESIDENT, PUBLIC KNOWLEDGE; THEO PRODROMITIS, CO-FOUNDER AND CEO, SPA DESTINATIONS; JAKE WARD, PRESIDENT, CONNECTED COMMERCE COUNCIL; GRAHAM DUFAULT, SENIOR DIRECTOR FOR PUBLIC POLICY, ACT/THE APP ASSOCIATION

STATEMENT OF ALLYSON CAVARETTA

Ms. CAVARETTA. Thank you, Chairwoman Velázquez, Ranking Member Chabot, and the members of the Committee. I am Allyson Cavaretta, a multi-generation small business owner at the Meadowmere Resort in Ogunquit Maine. Thank you for the opportunity to speak with you today.

I am here to explain why Google's most recent actions in travel present a concern to small business, how those behaviors harm the consumer, and to urge relief from Google's near monopoly access to market.

While Google's testimony from July 2019 states that they are proud to work with small businesses, that claim is not uniform. While Google's examples of an unequal playing field for hoteliers range from a 2015 "pay to play" book here button to currently prohibiting access to the posts and view room products. Most recently, March 2019's algorithm change prioritizes paid products, reportedly wiped $13 billion in market value off the largest players in travel and is harming direct bookings with small hotels like mine. The results often mislead the consumer to the highest bidder and not to our website.

Google is an unavoidable gatekeeper. Over 93 percent of searches begin on Google. Since June, a majority of these searches result in zero clicks because Google sends these clicks to their own products—YouTube, maps, subdomains of Google.com and over a dozen others.

Our July correspondence to Congress on the March update is dated just one day after Google claimed to not engage in such practices at a House Judiciary Committee hearing.

I will focus on the Google My Business Listing product commonly referred to as the GMB, and as I will refer to it such hereafter, an

increasing middle man. Since the March update took effect, when comparing May through September this year against last year, the following concerns are observed for our hotel. A 36 percent increase in visits to that GMB product from Google's own search or maps products, but only a 5 percent increase in visits to our website from the GMB. A 22 percent increase in phone calls to our GMB, but a concerning 33 percent decrease in direct phone reservations.

The click-through rate of 3.8 percent for our listing is an outstanding search result, since across all industries an average click-through rate for search ads is only 1.91 percent. And I cannot help but wonder if Google is able to push the GMB performance to outstanding levels by funneling searches to its own product complete with "pay to play" bookings.

The transparency into such behavior is a challenge. Our hotel deploys urchin-tracking module parameters, commonly called UTM codes and that evaluates online marketing. A snapshot of UTM tracking for our listing demonstrates a shift of over 37 percent in website traffic in just 7 days.

When Google arbitrarily removes this tracking, a small business has limited data. This is in stark contrast to the extensive metrics that Google analytics offers, and I cannot help but wonder why Google does not subject the GMB product to the same metrics that other ads and travel sources are scrutinized by.

This is concerning. We estimate a year-over-year shift of over $140,000 in revenue now dependent on this listing in just 6 months. The speed at which Google is impacting the market access for small business and for the consumer is quite alarming. From 2016 to 2019, the cost to protect direct bookings to our hotel has meant an increase spend of over 500 percent with Google, and a 20 percent increase in our overall marketing budget to keep up.

And we are not an isolated incident. As my testimony notes, over 900 innkeepers representing 47 states and the District of Columbia support the points I am making today. There are strong incentives to "pay to play." Travel is a lucrative ecosystem where consumers rely on digital information. Digital travel sales worldwide increased over 10 percent to $694 billion in 2018. However, the consumer cannot discern that paid products like Google's book a room button do not lead to the hotel directly. Over 70 percent of consumers believe that they are booking directly when, in fact, they are redirected by the bid system that is frequently won by online travel agents.

There are similar concerns with consumers accessing our phone number. Nowhere does Google educate the public that Google is diverting the consumer away from a small business. And while I do not fault them for making decisions on their bottom line, the net impact to small business and consumers is concerning.

They loom over innkeepers. The community of small hoteliers now has very high cost to market, and a century ago we saw such similar things for perishable goods because of the railroads. We are now at the end of the line for today's modern equivalent, the Internet. I would ask that the Committee look to hardwire a fair playing field for hotels and for all small businesses.

And I thank you for listening and for the opportunity to present today. I look forward to answering any questions that you may have.

Chairwoman VELÁZQUEZ. Thank you.

Mr. Hart?

STATEMENT OF MOLSON HART

Mr. HART. My name is Molson Hart. Almost 10 years ago I founded a guy company named Viahart. We have four full-time employees, and we sold about $4 million of product on Amazon last year and should sell about $5 million on Amazon this year. I speak Chinese. I know manufacturing logistics, and ecommerce. And with regard to big tech, Amazon is my area of expertise. With my testimony, I am going to give you a bird's eye view of what it is like to operate a small business in Amazon's orbit, as well as answer the questions posed by the hearing summary. I will also submit detailed documents for the record that describe issues small businesses and consumers face on Amazon, what government can do about it, and whether they should.

To the question, "Has Amazon created business solutions that have enabled small businesses to reach and serve new customers?" The answer to that question is "Yes, absolutely." Their Fulfillment by Amazon program solved logistical issues for small businesses that previously would have required big investments or big headaches. This has enabled small businesses to offer less expensive and innovative products more easily to American consumers. Everyone, perhaps with the exception of brick1and-mortar retailers, has won—Amazon, small businesses, and consumers. As a result, Amazon owns ecommerce. We can talk statistics, but just trust me; for most categories, such as books, toys, electronics, home goods, and gifts. Basically, everything but cars, food, gasoline, luxury, and convenience, Amazon is dominant. In 2018, despite selling on eBay, Walmart.com, our own website, and brick and mortar stores, Amazon accounted for 98 percent of our revenue.

So, do small businesses like ours rely on Amazon? Yes, completely. When they say jump, we say how high? If Amazon suspends us from the platform, we go bust and we go bust fast. In 2018, we paid $2 million to Amazon and Amazon's expenses as a share of our revenue on Amazon have gone from 33 percent in 2013 to 50 percent in 2018. That said, we have been profitable and our sales have grown 37 percent every year over that period.

So, do small businesses have an opportunity to compete in the information age? It is not easy, and we work hard, but we, as a small business, have done all right. So yes, we do have an opportunity to compete amongst big tech. But is the playing field fair? The answer to that is like a Facebook relationship status, it is complicated.

If we compete against Amazon, we operate at a massive disadvantage, but provided they do not engage in underhanded tactics, that is okay. It is capitalist competition. If Amazon Basics knocks off one of our products, provided they did not commit IP infringement, it is unfortunate, but it is okay. On balance, while they certainly make their fair of mistakes, which I describe in my additional submission for the record, and while they sometimes focus

on what is legal rather than what is ethical, they are a good company.

They are also an engine for innovation. As such, we as a Nation should take great care in legislating or regulating this giant, but also fast-moving and innovative company.

Like in the Hippocratic Oath, we should first do no harm. IN keeping the metaphor, it is said that sunshine is the best disinfectant. By shining light on the issues, we can compel Amazon to do a better job in addressing them. Since selling on the platform, I have seen them make great strides towards improving their marketplace for honest sellers and consumers. While I do think there are some areas where legislation and regulation is appropriate, in general, here, the threat of it is stronger than its execution.

We can do better for American consumers, American small businesses, and the entire United States by preceding with caution and introducing narrow legislation that addresses the nagging problems on the platform.

My additional submission for the record not only describes these problems in detail, but also suggests legislative solutions that can win bipartisan support and better American for all stakeholders.

So let's do it. And let's do it now.

We have a unique opportunity in time to improve our country by doing so, and I look forward to working with you to make it happen.

Thank you for this opportunity, and I welcome your questions.

Chairwoman VELÁZQUEZ. Thank you, Mr. Hart.

Mr. Feld, you are recognized for 5 minutes.

STATEMENT OF HAROLD FELD

Mr. FELD. Thank you, Chairwoman Velázquez, Ranking Member Chabot, thank you for having me here today.

In a world where people find restaurants by asking their phones to show them the best reviewed places on their map apps, where people research their purchases and comparison shop online, and where viral video or tweet can make you famous in a good way or a bad way, we must acknowledge the impact of big tech goes well beyond startup garages in Silicon Valley.

Big tech impacts every Main Street in America. Digital platforms are only the latest technology to transform how we do business. Just as it is impossible to imagine our economy without the ability to ship goods anywhere or to operate without electric power or to manage without credit cards, money transfers and global communication systems, it is impossible now to imagine a small business without somehow interacting with big tech.

As with these previous technologies, Congress must set rules of the road that protect small businesses from anti-competitive abuse and provide the stability necessary for investment and for commerce to thrive. We have seen in the last few years a growing stream of credible allegations that the largest online platforms have used their dominant position to favor their own products, unfairly undermine competitors or extract concessions from small businesses with no real alternatives.

For example, Amazon has been accused of altering its recommendation algorithm to suggest purchases based on what maxi-

mizes profit to Amazon rather than what consumers would most like to purchase. Google was found guilty in the E.U. of favoring its affiliated products in its shopping act. Facebook has been accused of denying access to potential competitors, such as Vine, and extracting concessions from applications developers once they were locked into the platforms. The companies deny some of these accusations but the list continues to grow.

But even more troubling are the growing number of cases where giant digital platforms hurt small businesses entirely by accident or when trying to do the right thing. If this were simply about finding and punishing a few bad apples, we could leave this to existing law. But what could a small business do when a fake complaint by a rival can get them kicked off Amazon with no notice, effectively shutting down their business? Or when a decision by YouTube to change its monetization policy can bankrupts thousands of small creators at once?

Congress must step up as it has done in the past, as it did when access to railroads or to reliable banking services or to electric power became essential inputs for small businesses. Congress must set some basic rules of the road that ensure that everyone gets treated fairly. Ideally, Congress would create a comprehensive statute addressing digital platforms and a new expert agency to enforce it.

Digital platforms are a unique sector of the economy subject to powerful network effects that make them prone to concentration. At the same time, many of the things that create the capacity for competitive harms also create the capacity for significant consumers and business benefits. A sector-specific regulator is best equipped to investigate concerns and strike the proper balance.

Public knowledge recognizes that this is an ongoing process. We therefore urge Congress to focus in the short-term on the following four things as most important to protecting small businesses and promoting competition.

One, nondiscrimination. Search and recommendation algorithms should great everyone fairly, not based on how much profit goes to the platform or app store.

Two, interoperability. Small businesses and potential competitors with the platform should have the ability to plug and play without interference from the platform.

Three, protection of proprietary information. Small businesses expose sensitive information as part of their dealings with digital platforms. Platforms should not be able to exploit that access.

Four, due process. Businesses need sufficient notice to plan and the right to correct mistakes that can cost them their business.

Thank you, and I am happy to answer any questions.

Chairwoman VELÁZQUEZ. Thank you, Mr. Feld.

Ms. Prodromitis, you are recognized.

STATEMENT OF THEO PRODROMITIS

Ms. PRODROMITIS. Thank you. Thank you, Chairwoman Velázquez, Ranking Member Chabot, and all the esteemed Committee members.

My name is Theo Prodromitis. And I am a family member of Greek immigrants, U.S. veterans—very proud veterans—and entre-

preneurs. You could say entrepreneurship is in my DNA. And I grew up working in our family businesses. So all of this talk in the Committee about small businesses, I am one of them. I have also had the great pleasure on being the National Retail Federation's Small Business Advisory counsel, and in that capacity have gotten to work with thousands of different small businesses, understanding their pain points.

But for the topic today, I will talk about the product line that I launched called Spa Destinations. In 2003, we launched our line of personal care products, but in 2008, something happened and we had to downsize and pivot. One of our big issues at that point, in addition to the economy, was the impact of the market flooded with subpar Chinese imports. And our $20 premium natural sponge that was hand selected and harvested from the Gulf of Mexico as a natural renewable resource, now suddenly could not compete with a $2 synthetic sponge imported from China. And that was the impact it had on us because we needed somewhere to tell our story.

So in 2014, we heard about selling on Amazon. And all of our colleagues thought we were crazy. They thought Amazon was the competition or the enemy and they told us not to do it. Luckily, we did not listen. So we started small, and it was $39.99 to get a seller account, and we started listing some of our products on Amazon. And eureka. Our business started to grow over and over again because we featured in on the Amazon democratizing opportunity, which is the best brand wins. It is not just price; it was the fact that we could actually tell our brand story on a platform and they gave us access to their millions and millions of customers.

So Amazon provides conferences and Seller University. Everything we need, it is a really robust platform that gives us access, and there are people there 24/7 to answer our questions. Yes, we have the same business challenges everybody does, but now we have a logistics expert that allows us to actually focus on product innovation and investing in our own businesses, growing our own staff, and doing the things that we need to do in our small business on this platform. They make a lot of the services very affordable and give small businesses and premium brands, like myself, a voice.

Noteworthy is that Amazon, of course, does disrupt industries and categories, and we all know that. So, for example, when they disrupted the delivery with Prime, it got everybody to innovate. And everybody sort of stepped it up. And they started delivering faster because Amazon focuses and holds us accountable to a customer-centric model where we have to put the customers first. And Dr. Kennedy's testimony said that in the most competitive environment and my 30 years' experience in retail, the most important thing is that the customer is treated fairly. And they also created a professional beauty category to actually decrease the number of counterfeits and to address some of the issues with the market being flooded with used products or substandard products.

So in conclusion, there are a few important statistics I just wanted to reiterate. One is that as part of the National Retail Federation, one of their published statistics is that 10 percent of retail sales, only 10 percent, are done online. So there is still a huge additional market. It seems like it eclipses everything else but it only

accounts online sales for 10 percent of all retail. And, of course, the one that matters to me the most is that the Amazon platform and building our business after the downsizing in 2008 has given me the opportunity to grow a multi-million dollar business, take care of my kids, and to grow and innovate and focus on what my expertise is in partnership with Amazon. Thank you.

Chairwoman VELÁZQUEZ. Thank you.

Mr. Ward?

STATEMENT OF JAKE WARD

Mr. WARD. Madam Chair, Ranking Member Chabot, members of the Committee, on behalf of the Connected Commerce Council and our members, it is good to be with you again today.

The Connected Commerce Council is a nonprofit membership organization for digitally empowered small businesses. We believe that access to digital tools gives small businesses the best opportunity to succeed. This belief is informed and affirmed by each of our more than 2,500 member companies and supported by the numbers. In fact, a recent Deloitte study illustrates what our members would tell you, that small businesses that leverage digital tools have higher revenue, twice the profitability, and create three times as many jobs.

It is a privilege to be with you today and to share their perspective and the stories of some of these businesses. Stories like that of a Utah-based startup that invented an all-in-one bedding set that makes it easy for kids, and adults, to make their bed every morning. And for those of us who have attempted to make a bunkbed, this is an innovation on the level of the wheel and sliced bread.

Even then, breaking into the traditional retail market and competing against global giants is nearly impossible. With a quality product, a simple website, well-placed ads and access to online marketplaces, Beddy's is now a thriving company employing dozens of people and serving a global customer base.

While Beddy's is an exceptional company, their success is not an exception. Digital services, platforms, marketplaces, help tens of millions of small businesses start, grow, and succeed in previously unimaginable ways. These tools provide lower cost options specifically designed to provide small businesses with more accurate, measurable, and efficient ways to enter into a market. And most importantly, those tools give small businesses a fighting chance, not only because of the scale of the platforms but also against some of those large companies.

For our part, it is hard to imagine a more competitive marketplace. The largest, most innovative companies in the world compete fiercely to reach tens of millions of American small businesses. As a result, their prices are low, their products are innovative, and the business is good. In turn, small businesses use these tools and marketplaces and platforms to compete with one another, with larger companies, and with businesses in countries around the world. The result is more, better, cheaper products for consumers everywhere and a more vibrant economy here at home. This is what a healthy market looks like. It is working.

I am not here to defend big tech today or to speak to the interest of those companies. They are more than capable of defending themselves. I am here today to defend small businesses from the unintended consequences of overreacting, to defend an ecosystem in an economy that is working, and to speak up for tens of millions of American businesses whose livelihood, whose peace of mind, and whose bottom lines have been well served by digital tools and the companies that produce them.

CCC's concern is that we too often only focus on the largest companies, missing the forest through the trees. The idea that regulators and policymakers are investigating free and low cal services that power small businesses confuses and frustrates many of our members. Access to digital tools is essential for American small businesses, not in concept or in a legal sense, but in reality. As you know, the answer to many of these challenges is for policymakers to speak with small businesses rather than simply talking about them.

I would like to thank you, Madam Chairwoman, Representative Chabot, and this Committee for your leadership in welcoming small businesses to the table today, because if asked, small business owners will tell you the challenge of every small business is unique, but their stories are universal, and that those challenges force small businesses to be early adopters and to adapt quickly where others are too large or too complacent to take advantage. They would tell you that access to affordable, secure, and scalable tools unleashes the potential of American small business and that the value of that access is measured in new employees and increased financial security. Every small business owner knows that starting a business is an act of faith, that running one is a matter of perseverance, but success requires luck and a lot of help. Today that help comes in the form of global platforms and services providers.

Digitally empowered small businesses stand on the shoulders of large companies to reach otherwise unattainable heights. Platforms invest in scalable, secure, affordable tools. Marketplaces connect buyers with sellers and the guiding principles of the digital economy, speed and scale, consistently drive shared value and mutual benefit for small businesses. Innovative technologies and approaches are widely available, easily adopted, and quickly improved upon.

Now is not the time for political opportunism or gamesmanship. The stakes are too high and the issue too important. The partnership between big tech and small businesses are built on mutual benefit. Discussions about balancing that benefit are warranted and welcomed, but we should also consider the harm changes to the current ecosystem could have on an American small business economy that is thriving.

On behalf of tens of millions of digitally empowered small businesses, thank you for welcoming us today. I look forward to answering your questions.

Chairwoman VELAZQUEZ. Thank you.

Mr. Dufault, you are recognized.

STATEMENT OF GRAHAM DUFAULT

Mr. DUFAULT. Good afternoon. My name is Graham Dufault, and I represent over 5,000 small businesses that build the software programs that bring your smart devices to life. Thank you for hosting this important hearing and for listening to the voices of small businesses in this debate.

The App Association's primary focus here is on the mobile software market, and that includes the relationships between my member companies and big software platforms.

You heard on the first panel about some really big numbers, billions of people, trillions of dollars that are impacted in all of this but I want to focus on the smaller numbers, the father-son team of two at Micro Integration Services in Medford, New Jersey; the team of 17 at Hashrocket in Ohio, Florida, and Illinois; and the team of five in Duluth, Minnesota, at Creative Arcade. These are small numbers but they add up in your districts to a really powerful engine of growth. And we want to preserve that.

Chairwoman Velázquez, in your district there is a teacher who created an app called Chaperone. It helps organize school field trips in real time. She is a problem solver and the App Store platform helped her create a solution there.

Ranking Member Chabot, the team at Canned Spinach in your district created the augmented reality solution for Toyota so that shoppers can virtually experience cars from their smart devices.

And so how did big tech help small companies, these small companies that I just mentioned? Let's go back in time.

Back in 1998, it could cost up to about $10 million to get a software company off the ground. Now, 21 years later, it costs about $100,000. From an investor's perspective, a $100 million investment fund can go toward a lot more companies now and it can go toward market disrupters as opposed to sort of the sure bet, the pre-IPO incumbent.

So how has a platform made these radical changes possible? I point to three things. One, reduced overhead. Two, a trusted space. And three, immediate access to billions of consumers around the world. And so in this case, the fact that platforms, software platforms especially, are household names, has actually helped lead to the democratization of entrepreneurship here.

Of course, for software companies, coming by trust is a pretty expensive proposition. Even now when you download a software program it can be glitchy, it can give your computer a virus, and so a trusted source is extremely valuable.

Back in the '90s, it used to be necessary for some developers to sign over their rights to publishers just to deal with that trust issue. And so platforms have changed all of this by creating a trusted space where users know that their devices will remain secure. Not only that, they have done it in a way so that consumers and developers can transact directly.

Each of you probably has a smartphone in your pockets, and if you are like the average American you have somewhere between 60 and 90 apps. The vast majority of those are made by small businesses that you have never heard of, so why is it that you trust the software that they have created enough to download it? The an-

swer is because the platform has created a dependable environment for you to do that.

Of course, it is not all sunshine and roses. Platforms need to improve in important ways and we are very glad that the Committee is conducting this inquiry so that we can understand the competitive forces at work.

Our developers need a few things from platforms. Number one, they need developer guidelines and any changes made to them explained clearly so that developers know what the changes are going to mean for them. And number two, we need safety and security. Some have control over device security and other platforms do not. But measures should be in place to ensure that consumers and developers alike are protected. And number three, platforms should diligently respond to even the smallest developer when they see that their content has been stolen by another developer on the platform.

Right now, platforms are fighting for our business. This is an ideal state of affairs and it is a sign that competition is alive and well, at least in the app economy here.

So from Congress our asks are simple. Number one, even by the most conservative estimates, 20 million Americans still lack access to broadband. I have a colleague from Orrington, Maine, who is just 6 miles out of Bangor, actually, and her parents still use dialup. Dialup is still being used everywhere. All over the place here in the United States it is still an issue. We thank the Committee for the efforts that you guys have embarked on to ensure that broadband is deployed to the hardest to reach parts of America.

Number two, we appreciate the Committee's efforts to ensure that Small Business Administration programs do what they are supposed to do, and we want to urge you to continue that work to ensure that tech-driven businesses like my members have access to those support mechanisms as well.

And then finally, we urge you to provide adequate resources for workforce training programs so that we can fill the 500,000 computing jobs that are open right now in this country.

And so thank you again for the opportunity to appear here before the Committee, and I look forward to your questions.

Chairwoman VELÁZQUEZ. Thank you. Thank you all for your testimonies.

Let me just share with you that in this Committee we work in a bipartisan way. There is no republican or democratic approach when it comes to issues that are impacting small businesses. We are committed to accountability. When we have Amazon and Google come before us and we pose questions regarding the treatment or the unlevel playing field for small businesses to be able to compete and not be put at a disadvantage and they tell me that they know because they do internal testing, well, it is not only about internal testing; it is about accountability.

I believe it was Congressman Hern who raised the issue, who is watching over you? Who is holding you accountable? That is what goes to the heart of the issue here.

Ms. Cavaretta, it is my understanding that over 96 percent of all hotel room bookings that take place through online travel agencies

go through two companies, Expedia and bookings.com. They then pay millions of dollars to Google which controls 90 percent of all Internet searches. It seems to me that if you are a travel company looking to reach consumers, all roads lead to Google.

Can you expand on how this happened and discuss how it impacts small businesses and ultimately consumers?

Ms. CAVARETTA. Certainly, Chairwoman. I would be happy to address that today. First off, thank you very much for the hearing and the opportunity.

Two things come to mind with your question. First, when over 70 percent of consumers believe that they are booking directly with a hotel, when, in fact, they are redirected by Google's book a room button to the highest bidder, the traveling public is being misled. It's misdirection to that highest bidder, and often it is to the highest bidders of those two companies that you mentioned. Or it is one of their mass subsidiaries. I think Google can get to over 18,000 of Expedia's sites, and they have that many. Or even worse; it could be a fraudulent fly-by-night site and you have an online booking scam.

Second, our small business has to pay now to try to have our phone number found in searches. And those searches spiked over the last 6 months since its recent update. And it is still not being found as the data shows. So that secretive algorithm, the transparency that you are so concerned about, it determines whether or not we have our call extension shown, even if we are paying for it or not.

So if the consumer is directly searching for our phone number, the net effect is that Google has moved the ability for it to be found by the consumer into a play to play space.

Chairwoman VELÁZQUEZ. Thank you.

Ms. CAVARETTA. You are welcome.

Chairwoman VELÁZQUEZ. Thank you.

Mr. Hart, you rightly recognize that Amazon has created business solutions that have enabled small businesses to reach new customers, solving logistical and transportation issues for millions of small firms. You also acknowledge Amazon could do better. What are your targeted ideas to ensure that companies like Amazon, and other large tech companies like them, are not using their market power to put small businesses at a disadvantage?

Mr. HART. So at this point, I think the best course of action would be narrow legislation coming from Congress to address some of the nagging problems on Amazon. And I laid some of them out in my additional submitted testimony.

For example, there is a law called the DMCA, where if someone files an allegation of copyright infringement, the defendant as it were has the right to submit a DMCA counter notice for that copyright infringement and kind of say to the person who is saying that you are infringing on the copyright say, look, if I am infringing on your copyright, you have got to sue me. I think that that legislation should be extended toward trademarks and patents, and I think that that would clean up the marketplace enormously.

The reason why is that there are a lot of brands in the United States that make allegations of trademark incentives toward companies that are selling on Amazon that are selling authentic goods.

They want to keep their prices high. They do not want the competition on Amazon so they say that that guy, you know, who is maybe in Ohio, maybe who is in rural Ohio who is selling products, that person is selling inauthentic goods when, in reality, they are not. Amazon in some cases, they may make the wrong decision, they may make the right decision. We will suspended that seller from the platform. I think that is a pretty good example of how we could fix that problem. That problem has existed for 3 to 5 years, maybe even longer on the Amazon platform, and they have not really done anything about it. So I think at this point we could use some legislation, and in my initial submission, there are a whole host of other ideas like this that improve the platform.

Chairwoman VELÁZQUEZ. Thank you.

Mr. Feld, how should Congress approach ensuring small businesses are treated fairly on this large platform?

Mr. FELD. I have a number of specific suggestions. I think it is exactly that there needs to be somebody who can check. There needs to be somebody who has the authority to go in and ask questions. At the same time, the companies' proprietary information needs to be respected. You do not want to expose the search algorithm itself because you do not want people to be able to hack it for illegitimate purposes. There are other suggestions in my written testimony, and I am happy to supplement because I see I am running out of time.

Chairwoman VELÁZQUEZ. Thank you.

You listened to the companies that were here today. Do any of you have any reaction to any point that was raised or any of the answers that were provided by either Amazon or Google?

Mr. Feld?

Mr. FELD. I do want to address this point that Amazon makes about comparison of their own label with traditional supermarket labels because it is not really a fair analogy. The problem here is that Amazon works much more as a distributor than as a retail market. If I go to a supermarket, yes, there is generic brand label on the shelf but I also see all of the other products. If I am in the pet food section, for example, I see all of the other cat foods. And if I am on Amazon, however, I only see the products that are displayed in the very small space which there is for a display. Furthermore, the supermarket only knows the sales that it makes. It orders an inventory. It brings that in. It knows the specific sales it makes. It may have information about the customers that it sells to. Whereas, Amazon takes in a great deal more of proprietary information in the same way that a distribution, a national or global distributor does. Again, it is not quite like a distributor either but I recommend in the testimony and I have recommended in my book, The Case for the Digital Platform Act, which is available on Amazon, which as I point out is not hypocrisy. It just proves my point. But that there are many situations that we have like this, such as shippers and telephone companies that we have rules that govern this.

Chairwoman VELÁZQUEZ. My time has expired. I am sorry. If not, Mr. Chabot is going to be—then he is going to say that I am too partisan here, and I am not. Mr. Chabot?

Mr. CHABOT. I would never say such a thing.

Just to be clear though, we did agree, that was about 7 minutes.

Chairwoman VELAZQUEZ. Correct.

Mr. CHABOT. So we get it.

Chairwoman VELAZQUEZ. Yes. That is what I got.

Mr. CHABOT. Okay, thank you. Thank you.

I am going to ask Mr. Ward and Mr. Feld, obviously, one of the things that Congress is considering is should we get involved relative to regulations of the tech platforms and that sort of thing. And if we were on a scale say of zero to 10, zero being leave it as it is, do not do anything, to 10, being a heck of a lot of regulations, as much as necessary, Mr. Ward, Mr. Feld, I do not care who goes first, but make your best argument as to where that number ought to be and where. So 10 is a lot of regulations, zero is no more than we have now.

Mr. FELD. Well, I think you have to have as much as necessary. I mean, that is kind of like how high is up? I think that the current situation is an atmosphere that creates distrust by small businesses that create situations where they cannot resolve their problems, where very real problems are being created, where businesses are being hurt by accident, where the platforms are trying to do the right thing and cannot because they involve complicated tradeoffs. So I think Congress needs to make a number of important decisions. I do not think that necessary equals lots and lots of regulation but I do think that it means that Congress needs to create an authority that is empowered to, you know, an umpire to call balls and strikes. That is not a lot of work. That is calling balls and strikes but it is pretty important to do.

Mr. CHABOT. Okay. Can you put a number on it?

Mr. FELD. No.

Mr. CHABOT. Okay.

All right. Mr. Ward?

Mr. WARD. Two.

Mr. CHABOT. Okay.

Mr. WARD. I think in the lifecycle of platforms and big tech companies we are in the Model T stage. You know, this is just the beginning. We are seeing the market do what the market is supposed to do. We frankly are so far afield from what real capitalism is supposed to look like it scares us a little bit. I, on behalf of my members, reject out of hand the idea that small businesses distrust the platforms. I think that the vast majority of growth in the small business community is because they do trust the platforms. There is certainly a backlash against large tech companies over the last 3 or 4 years for reasons outside the perspective of competition, and there is sort of a triangulation around the idea of data and privacy and competition that is all coming together at once. And that is understandable and reasonable, and we should all dig into that.

But I think historically we know that one of the primary drivers of innovation in this country is not government intervention. Right? What Google and Amazon need to figure out better ways to service small businesses is not government bureaucracy. I also think the FTC would be a little insulted that we need somebody else to call balls and strikes.

And lastly, regulatory capture is very real threat if we go down this road. There is a continuing evolution in big tech, faster cycles

than we have ever seen. That is just the nature of the universe that we live in now. Let's give the market a chance to catch up and surpass and reorder some of these companies before we have Congress do it.

Mr. CHABOT. Thank you.

Mr. Dufault, let me go to you next. I think you said you have about 5,000 apps in your organization. How many apps are there? I know that is a hard number to know, but do you have any idea how many there are out there?

Mr. DUFAULT. The major platforms, you have more than 2 million that are broadly available to the public. So there is going to be more than that. I think that is the latest count for the Apple App store and the Google Play store. So there are more than that. There are more than just those two platforms is the thing that we have to recognize. And even our member companies are on Microsoft's platform. They are on App 47, which is an enterprise platform that most people do not think about because it is really just enterprise-facing work. And so I will point to that and say, you know, definitely over 2 million but it is hard to count at this point.

Mr. CHABOT. Thank you.

If an ad or something pops up on your iPad or your iPhone or whatever, is there an accepted size that the X is supposed to be on there? Is there best practices or is there anything like that?

Mr. DUFAULT. You are talking about the ads?

Mr. CHABOT. It is really hard to find sometimes.

Mr. DUFAULT. The ads or the——

Mr. CHABOT. Yeah. Say an ad pops up and you want to get rid of the ad.

Mr. DUFAULT. Right.

Mr. CHABOT. And, you know, there is an X where you can X out and get rid of that ad and look at what you went on there to begin with. Is there an accepted size or is there a standard?

Mr. DUFAULT. There are some standards. I know that the Digital Advertising Alliance which is sort of a partnership of advertisers tries to standardize the size and make sure that there is an opt in for advertisers so that you can provide the X. I think I know what you are talking about. It is a little blue X in the top right corner; right?

Mr. CHABOT. Yeah, usually up there. And just to get rid of it if you want to.

Mr. DUFAULT. Right.

Mr. CHABOT. Along those lines, oftentimes you are given two choices on this particular thing that you did not go to, that popped up. You know, it is either like do it, whatever it wants, or do it later. Well, I do not want to do it at all, so they do not give you an option. Or there is no X. You know, I do not know that there is any regulations on that but that is one I might just support to do something about that.

Let me go to you, Ms. Cavaretta. You, excuse me, I know you had your battles with Google. What, if anything, did they do? Did they offer to do anything? Did you confront them? And if so, did you get any answer at all?

Ms. CAVARETTA. In short? No. They have not approached me, and they are not approachable.

Mr. CHABOT. And you could not get them, I mean, basically? Okay.

Mr. Hart, let me go to you next. You mentioned that—I think you said 50 percent of sales basically goes to Amazon; is that correct?

Mr. HART. Yeah, that is correct. If we sell a dollar on Amazon, as of 2018, we pay 50 cents of that dollar to Amazon.

Mr. CHABOT. Okay.

Mr. HART. In 2013, it was 33 cents.

Mr. CHABOT. Okay. And what services do you get in return for that? Do they break it down for you or what?

Mr. HART. Yeah, they absolutely do break it down for us. So the first thing is we pay a 15 percent commission on every product that is sold on Amazon. For some of the products we sell, we pay Fulfillment by Amazon fulfillment fees. They range from $5 to $10 depending on how heavy the item is. We pay a ton of money. As I recall, in 2018, we spent about $180,000 on sponsored advertising on Amazon. That kind of works the way Google Ad Words advertising does. When you search, you will see a sponsored product. We pay money in the form of storage fees. A whole host of things. When you add them all up, in 2018, it added to about 50 percent.

Mr. CHABOT. Thank you.

Chairwoman VELÁZQUEZ. Would the gentleman yield for a second?

Mr. CHABOT. I would be happy to yield to the Chair.

Chairwoman VELÁZQUEZ. Mr. Hart, was I correct or incorrect when I made the comment to Amazon that in order for a search to show a small business product that if you pay ads then you will show up on the first page or second but not——

Mr. HART. Yeah. In 2019, at this point, it is enormously difficult to have your products appear on Amazon without paying Amazon for advertising. It depends. It varies by category, but if you do a random search on Amazon, your top eight results in many cases will be advertisements. They will be advertised products. If you go back to 2013, Amazon did not even have advertising. So that is one of the ways that Amazon's expense share of our sales has gone from 33 percent to 50 percent.

And I know you guys have limited time, but if I could, I would love to respond to some of the questions and things that were said earlier.

Mr. CHABOT. My time is expired. I will yield back at this point.

Chairwoman VELÁZQUEZ. Okay. The gentleman yields back.

Mr. Evans from Pennsylvania is recognized for 5 minutes. You will have 2 extra minutes if you want to listen or allow the gentleman to be able to react.

Mr. EVANS. Thank you, Madam Chair.

I want to piggyback a little bit on the Ranking Member and what he said between zero to 10 and go by the previous person, I think it was Mr. Kennedy. And he raised the issue that it should be about the consumer. And I have not heard that. That is what I am most concerned about is the concern. So I heard one gentleman say two and I heard the other one did not want to give a number. But how does all this relate to the consumer? I mean, it is about credibility and integrity. So I am hearing about the search engine, but

the consumer, I mean, the consumer does not have the ability to have access to this information.

So Mr. Feld, I am interested, and the other gentleman, Mr. Ward, I think it is.

Mr. FELD. This is one of the big issues that makes the digital platform sector unique. It has what I call perfect asymmetry of information. Meaning if I am the user, I have no clue what is going on there.

Mr. EVANS. Right.

Mr. FELD. I have to trust. Now, one of the ways is if I start getting good search results, you know, that they are relevant, then that is all fine. But the problem is when you are talking about a business perspective, there are a lot of hotels that are relevant to me if I am looking for a vacation in Maine. I do not happen to know what is the ideal one, and if somebody is paying, it is kind of like if you are listening on the radio, I do not know if it is a payola thing where somebody is paying for play or if it is really that the DJ thought that that was a cool song.

Mr. EVANS. Right.

Mr. FELD. And that is why Congress passed the law that says, you know, no payola. You have to pay if it is being sponsored. So there is a similar problem here; there is just no way for the consumer to know, and I agree with Ms. Cavaretta that it is a real problem, that it is deceiving the consumer to some degree if it is not factors that the consumer thinks the search ought to be based on.

Mr. EVANS. Mr. Ward, your response?

Mr. WARD. Yeah, sorry. The idea of consumer harm, and again, I am not a lawyer but I will play one on TV for a minute, is an FTC term. I think it is Article 5. It is the idea of price discrimination or deception, neither of which are particularly applicable when the product is free. Now, it is true that free is a price, that you have to build into the idea that your search result has a value to somebody the same way that it would if you were shopping for something else. But again, the market is going to do what the market is going to do. And we are taking for granted that this did not even exist 23 years ago. When we wanted to go on vacation in Ogunquit, we would ask somebody that we knew that had been there. And that was the quality of the search that we could do. In this case, it does not take too many clicks to look at ratings, Yelp reviews, particular feedback from people that have actually been there. You can make a call or two. All of that is accessible because of the investment that was made from these companies to give that power to us. If we are not willing to use it, that is on us, not them.

Mr. EVANS. Are you still holding to your position based on the Ranking Member of being a two when I add the aspect of the consumer? Because remember, the consumer is trusting this information, and the consumer does not really know. Because through marketing of this——

Mr. WARD. Sure.

Mr. EVANS.—advertising, the consumer makes the assumption that I am getting the best—you wanted to say something, too. So I have got about a minute, and so you have got to make it quick. I want to get over to the——

Mr. WARD. I believe Ranking Member Chabot's question was on a scale of 1 to 10, how urgent is it that government get involved and my answer was 2.

Mr. EVANS. You said 2; correct.

Mr. WARD. That is still the case.

Mr. EVANS. Okay, even about the consumer.

Do you want to comment on that?

Ms. CAVARETTA. Thank you, Congressman Evans.

I would say that if you looked at your search results as a consumer, you had about 900 pixels that was going to be relevant to your organic search result and you are down to about 360, 390 that is organic and the rest of it in Google is now all pay to play product. That is a lot of real estate that is gone that they are making money off of.

But you know, just this past weekend I can tell you that I had customers who thought they booked on booking.com, and they did, but really it came through another third party because they did site scraping. And the customer had no idea that they had two middle men in between their reservation or not. And what happens is they do not know who they have actually booked with. And that is a problem when they want to change their reservation. If it is a fly-by-night site. And that is happening often. I send about two cease and desist letters every summer to fly-by-night companies that are scraping off of sites and causing fake bookings. And that is a real problem, and it is enabled by this environment where there is lack of clarity around those reservation buttons.

Mr. EVANS. I will yield back the balance of my time.

I want to say to you, Madam Chair, it does seem like the Wild West for the consumer. Now, we are talking about the consumer who does not have the knowledge that we are seeing here and do not have a chance. And here the consumer looks like they are in trouble.

Chairwoman VELÁZQUEZ. Since I allotted 7 minutes for the gentleman, I will allow Mr. Hart and Ms. Cavaretta to react to any of the answers that were provided previously by the companies that were here.

Mr. HART. Just briefly. I think there are some narrow areas where Amazon does have policies that do lead to consumer harm. This is not an example of it but just to kind of frame the conversation.

So we were talking about how I was paying 33 cents for every dollar in 2013; now it is 50 cents for every dollar in 2018. We raised prices. So that is a little bit of consumer harm right there. But that is not an Amazon policy necessarily.

Returning to the comments earlier, Ranking Member Chabot, you said that exports are important to you, and I obviously agree. Everyone does. One really great way to solve that problem would be to bring equity to the Chinese e-packet situation. And I can explain what that is if you like.

Basically, it is just considerably more expensive for us to ship our products to the United Kingdom versus a seller in China. Considerably. Like 10 times the cost. And that inhibits our exports.

Congressman Golden, you asked a question to Mr. Mehta about whether or not you need to store your goods in Fulfillment by Ama-

zon. This is not necessarily something that is unfair or bad, but in order to get sales, you absolutely do need to store your products in Amazon's warehouses in order to get that Prime check.

The punishment for late delivery, Amazon makes late deliveries all the time. A lot of us are Prime members. This probably happened to you. You can fight for like maybe a $5 promotional credit or something like that. We ship out of our own warehouse. If we are late, we can get suspended, which is a rather more onerous punishment. Now, if Amazon is late, in some cases you can like kind of edge your way into a refund of some sort. This is another example of consumer harm. And Amazon is very generous with how it refunds the consumer in that case. But it turns out in a lot of cases, my company will be footing that bill. So they will deliver our product late but we pay for the refund even though it was not our fault.

Respectfully, Ms. Prodromitis, I know hundreds of Amazon sellers, and I would say that her view of the platform is more the exception than the rule. And I would love to hear about how she sells her sponges on Amazon today in view of how much Chinese competition there is on the marketplace now.

Chairwoman VELÁZQUEZ. Okay. I will recognize the gentleman from Maine, Mr. Golden. We are running late here. Thank you.

Mr. GOLDEN. Thank you, Madam Chair. And thank you, Mr. Hart, for weighing in on that. That is basically what I suspected, and I might be able to do it. Sometimes just because you can do something does not mean you should. And I think when consumers learn more and more about these things some of them may make different choices and it is okay. But even having the ability to have that information and make those choices I think is part of what we are talking about.

I would just make a comment that as we have had conversations about government getting involved and whether or not people trust government to get involved and get it right, and absolutely I think sometimes it is totally fair to say government does not get it right. Sometimes they do get it right.

One thing that I always hear from my constituents is a concern in particular about individual information. You know, we can talk about health care and other things. People's concerns about the government having control over individualized information. And when I think about some of the tech companies and some of these services, I think that the growing distrust out there in the general public is about this concern about information and who has control over it. Whether it is directly attached to them in their name or not, people are becoming aware that there is a lot of information flying around about them, and there is I think a growing distrust and a lot of concern. And people will I think over time look to government for reassurances that they have protections. And I think companies are going to have to come to grips with this and acknowledge that as they have growing power.

As I listen to Ms. Cavaretta talk about some of the issues with her business, I hear her talking about the fact that there is, in addition to the relationship between her and the consumer, a growing kind of side market that consumers are not even aware of in terms of another level of revenue being introduced into the relationship.

But even beyond that there is another almost side market which is the trafficking of people's data and information which also a lot of these companies are harvesting and using to go out and make money. And I think that consumers are aware of that and concerned about it as well. So I think there is a responsibility to do oversight. And at the end of the day, thinking about consumers, what we need to be able to talk about is transparency which is what Ms. Cavaretta and a lot of other people are talking about. These are really amazing things that you said they help a lot of small businesses. None of these small business owners would be using these platforms if that was not the case, but they also have the right to express their concerns and seek for options and to have a voice which is what the point of Congress is at the end of the day.

I love this phone right here. A good partner of mine back home, Chamber of Commerce, Maine State Chamber of Commerce, I love to work with them. I love to work with their members. Lewiston Auburn Chamber of Commerce where I come from, I can go onto their website, do a quick scroll search, see who all of their members are, have a really helpful platform there where I can reach out and say, all right, I want to find a local brewery or something along those lines, get connected with that business. It is a great service and a great nonprofit. So just a little bit of helpful feedback.

Mr. Ward, I would love to have more information. I would love to know who I am talking to. Who is sitting before me. I have checked out your website, clicked on your membership page. It just gave me the opportunity to sign up as a member. Perhaps I will consider that or have my family small business think about that. But I would just say we would love to know more about the tens of millions of small business owners that you do represent, and I think that is helpful information for members of Congress to know.

And just with the remaining time I have, Ms. Cavaretta, I know that you were indicating you had more to say.

Ms. CAVARETTA. Thank you very much, Representative Golden.

You know, earlier we talked about misdirection and a little bit of the confusion that the consumer may have. And there are two sides to that. If you use that Google My Business Listing as a hotel and you can now go down to the view room's feature which a hotel like mine does not have access to, it drops you right to an OTA. So they are going to have access to that for 6 months, and the consumer will be booking with them for 6 months before I will get that as the producer of the product at my family's business. And that is unusual to me to think that I cannot sell my own product on my own listing that is given to me by free by Google. And the consumer cannot tell the difference except for a little tiny word. And so both they are misled and I am misled withheld from being able to access a way to sell on that product and platform that way.

Chairwoman VELÁZQUEZ. The gentleman yields back.

We want to thank all of the witnesses for taking time to be here. I know that you all have a busy schedule. I really appreciate it.

We have now heard from both large tech companies and small main street businesses about opportunities and challenges for entrepreneurs in the digital economy. As we continue to race toward innovation, we cannot forget the important role small firms play in

our communities and our economy. Toy companies, beauty brands, and family-owned, small businesses across all sectors rely on the Internet and digital platforms to reach consumers and grow their businesses. However, when entrepreneurship continues to lag in the U.S., that means fewer jobs and less innovation. While we must ensure that there is protection for small businesses and consumers who enjoy the benefits of digital platforms, we must work diligently to develop policies that will also continue to foster innovative technology that has the power to continue to change our lives. I look forward to working with my colleagues on both sides of the aisle to come up with bipartisan solutions to these issues.

I will ask unanimous consent that Members have 5 legislative days to submit statements and supporting materials for the record.

Without objection, so ordered.

If there is no further business to come before the Committee, we are adjourned. Thank you.

[Whereupon, at 4:34 p.m., the committee was adjourned.]

APPENDIX

Statement of Dharmesh Mehta
Vice President, Worldwide Customer Trust and Partner Support
Amazon.com, Inc.
before the
United States House of Representatives
Committee on Small Business
November 14, 2019

Thank you, Chairwoman Velázquez, Ranking Member Chabot, and members of the Committee. My name is Dharmesh Mehta, and I am the Vice President of Worldwide Customer Trust and Partner Support at Amazon. I have the privilege of leading the teams dedicated to helping support our selling partners to succeed in our store, and the teams dedicated to ensuring that we prevent bad actors, fraud, and abuse from harming our customers, brands, and selling partners.

I'd like to address three items in my testimony. First, Amazon's long record of partnering successfully with small businesses and the remarkable corresponding growth of small businesses selling on Amazon. Second, Amazon's investments in tools and infrastructure for our selling partners. Third, our support for our selling partners and their brands.

I. Amazon's Partnership With Small Businesses.

Amazon's mission is to be Earth's most customer-centric company. Our philosophy is simple: work backwards from what customers want – convenience, selection, and low prices – and constantly innovate to make our store better, for both our buying customers and our selling partners.

By offering small and medium-sized businesses a low cost way to reach customers worldwide, and through our investments to support these businesses, Amazon lowers barriers to entry for entrepreneurs, helps make retail even more vibrantly competitive, and continues to delight customers with new innovations. The reason our store model has worked so well, and why both Amazon and our selling partners have thrived since we introduced it, is that empowering third-party sellers helps create a better customer experience than Amazon otherwise could provide on its own. This is why many other retailers around the world have also adopted the model we pioneered, further intensifying competition within retail across online, offline, in-store, and other channels.

In 1999, we made the decision to open our stores—where we had invested significantly in the customer experience and built considerable customer trust, brand equity, and traffic—to small and medium-sized businesses to sell alongside us. We wanted to give customers greater selection, and with the partnership of small and medium-sized businesses that selection and corresponding benefits to customers continue to grow. Today, in the United States alone, there

are more than 1.9 million businesses, content creators, and developers in the U.S. using Amazon products and services to realize their dreams. In 2006, we followed this same approach and invited small and medium-sized businesses to use our logistics network, Fulfillment by Amazon – where we have invested billions of dollars in fulfillment centers and shipping capabilities – to store, pick, pack, ship, and provide customer service for their products (even if those products were not sold in the Amazon store). We wanted to give customers even faster delivery and with the partnership of small and medium-sized businesses, we now provide even more products at faster delivery speeds. There are countless other examples where we make innovative tools available to help small and medium-sized businesses grow and thrive in our store.

And, U.S. small businesses are thriving on Amazon: on average, they sell more than 4,000 items per minute in our stores. In 2018, small and medium-sized businesses made an average of $90,000 selling in Amazon's stores. More than 50,000 entrepreneurs surpassed $500,000 in sales and 25,000 of them exceeded $1 million. We are also incredibly proud of the fact that small and medium-sized businesses selling in Amazon's stores have created more than 830,000 jobs in the U.S.

When Amazon first invited third parties to start selling on Amazon in 1999, they represented just 3 percent of our sales, totaling $100 million. Amazon invested substantially and invented products and services to empower selling partners to help them succeed. Now, over 58 percent of the value of physical products sold in Amazon's stores come from small and medium-sized businesses – totaling $160 billion. Third-party sellers' compound annual growth rate has been 52 percent over the past 19 years, while our first-party business has grown 25 percent. To be clear, that means that third-party sales are growing more than twice as fast as Amazon's own sales. We celebrate that growth, and we expect that trend to continue.

Numbers paint only part of the picture of our small and medium-sized business selling partners' success. Every Amazon small business has a story that tells much more. I would like to share a few with the Committee.

Tara Darnley, Darlyng & Co. (Greensboro, NC)

Tara Darnley and her husband, Carl, had an idea for soothing their child's teething troubles. Tara didn't have a business background or a college degree when they developed the product, and her husband was still working full time as a pastry chef. A few prototypes later, Darlyng & Co. was in business with the Yummy Mitt – an innovative new teether – and was becoming a real hit at trade shows. A few months later, the Yummy Mitt was on retail shelves. But Tara said listing the product on Amazon was a real game changer - seventy-five percent of their sales come from Amazon. Tara relies on Amazon customer reviews and sales data to grow the business, saying, "We thought we only needed to market to moms, but our Amazon data showed us we really needed to target grandparents. Once we did, our sales jumped." Darlyng & Co. is now a global company selling 20 other products for babies and toddlers. Carl quit his day job and now works alongside Tara and a team of ten employees.

Chris Guiher, Vintage Book Art Co. (Columbus, OH)

Chris Guiher founded his company after unfortunate circumstances forced him to shut down a prior business and left him, in his own words, "basically broke." Chris decided to return to his creative roots and founded Vintage Book Art, which specializes in unique art printed on dictionary pages. He sells his products in Amazon's stores using our logistics network, Fulfilment by Amazon (FBA), and has become one of the top artisans on Amazon Handmade. His business has grown by 500 percent since starting with Amazon. When asked about his sales through FBA, Chris said that it has allowed him to grow his business "much faster and more efficiently than I would have been able to without that fulfilment service."

Sejal Parag, KarmaLit (Denver, CO)

The glow of a candle was an everyday presence in Sejal Parag's childhood home. Her mother lit one each evening to signal the end of a day, a time to reflect and relax. When Sejal started her own family, candle-making became a hobby. In 2015, she saw an opportunity to leave her job at an education non-profit and go into business for herself selling affordable hand-poured, soy-based scented candles on Amazon Handmade. She wanted to be home with her kids and have flexibility to pick them up from school and spend time with them. As a former education advocate, Sejal donates a portion of her sales to schools in her local community and decided to start an initiative to teach young women how to launch and run their own small businesses. She hires local high school girls to give them real world business experiences working with her at KarmaLit.

II. Amazon's Investments In Tools And Infrastructure For Our Selling Partners.

We know that our selling partners have many ways to reach customers, so we invest in delighting them, providing world-class support, and creating innovative tools to help them run their businesses – including how they manage inventory, process payments, track shipments, improve sales, and sell across borders. In 2019 alone, we will invest $15 billion in infrastructure, services and tools, programs, and people to further our selling partners' success.

Amazon employs more than 7,000 employees worldwide who build and maintain the systems and tools that make it easier for our selling partners to identify, attract, and reach our customers, provide our selling partners with vital business analytics, and distill that data into concrete steps to grow their businesses. These employees are constantly developing new services for our selling partners; in 2019 alone, we have launched over 150 new services and tools to help our selling partners run their businesses on Amazon.

A few examples of the innovative tools and services we offer to support small businesses and entrepreneurs include:

- *Fulfillment by Amazon (FBA):* our logistics network where businesses selling on Amazon can choose to have us store, pick, pack, ship, and provide customer service for their products (even if those products were not sold in the Amazon store). We have grown our logistics network to be closer to our customers, and we now have 110 fulfillment

centers in the U.S. Improvements in our logistics network benefit all of our small and medium-sized business selling partners. In just one example, we are excited about offering Prime Free One Day shipping to our selling partners because we know that faster delivery times boost sales. As of June 2019, Prime Free One Day shipping is available to Prime members with no minimum purchase amount on more than 10 million products, coast to coast. We saw that 70 percent of selling partners who were able to deliver in two days reported unit sales increases of greater than 20 percent, which is a good indication that Prime Free One Day will help them delight more customers and sell even more.

- *FBA Export:* Small and medium-sized businesses can also choose to use FBA's Export Tool to list products on Amazon or their own websites and have Amazon export orders to customers in countries around the world. With FBA Export, a small company can prioritize investing time and money into building their business and brand, rather than in finding customers in other countries, conducting market research, and learning how to navigate logistics. Last year, U.S.-based Amazon selling partners sold more than $2 billion in our international stores, reaching customers in more than 180 countries, fourteen marketplaces, and across more than thirty product categories.

- *Amazon Storefronts:* a store featuring exclusively U.S. small and medium-sized businesses selling on Amazon. With Storefronts, customers can shop a curated collection of more than 2.5 million products from nearly 30,000 U.S. small and medium-sized businesses from all 50 states, with more than 250 million items sold to more than 70 million customers.

- *Amazon Handmade:* a store that provides customers a trusted destination to find handcrafted customizable items or one-of-a-kind goods made by artisans who are selling to millions of Amazon customers all over the world.

- *Seller Coach:* provides recommendations to selling partners to help increase their success. It notifies them of new products they might want to list, flags best-selling items that they may want to manufacture or be inspired by, highlights top keywords so selling partners can optimize their advertising, helps them identify when to re-stock inventory, offers pricing recommendations, and much more. The tool generates customized reports based on business analytics and data, providing curated guidance for selling partners based on the selling partner's past activities and customer demand.

- *Amazon Intellectual Property Accelerator:* helps brands connect with high-quality trademark attorneys working at pre-negotiated, discounted rates to help selling partners obtain trademark registrations and other intellectual property for emerging brands. Amazon also provides businesses using IP Accelerator with earlier access to brand protections and brand building features in Amazon's stores, and to better protect and grow their brand months, or even years, before their trademark registration is officially issued.

- *Selling Partner Appstore:* helps selling partners identify trusted third-party applications that complement Amazon's free tools to further help them streamline their business operations. With more than 200 apps available, selling partners can find tools and services across a range of categories including pricing, advertising, and inventory management. These tools can also help selling partners sell across multiple marketplaces, integrate with their own physical point-of-sale software, optimize their marketing, and analyze reviews.

III. Amazon's Support For Our Selling Partners And Their Brands.

Amazon employs more than 10,000 full-time employees and partners with more than 5,000 contracted workers around the world dedicated to understanding, responding to, and providing support for our selling partners. These people are committed to helping our selling partners succeed, including assisting them in setting up and managing their accounts, listing products for sale, and answering their questions. We strive to respond to and resolve every contact expeditiously. In 2018, for example, more than 90 percent of emails from selling partners were responded to in under 12 hours; more than 90 percent of phone calls from selling partners were answered in under 90 seconds; more than 90 percent of chats from selling partners were answered in under 90 seconds; and more than 80 percent of all selling partner issues were fully resolved in under 24 hours.

Amazon also employs more than 5,000 employees worldwide to prevent fraud and abuse in order to protect our customers and the success of our honest selling partners. In 2018 alone, we invested over $400 million to fight fraud and abuse in our stores; those investments directly benefit our selling partners by building a shopping experience trusted by hundreds of millions of customers, and by preventing bad actors from impeding our selling partners' success.

Our primary focus is on preventative, technology-driven tools designed to proactively stop fraud and abuse at scale before it ever affects a customer or selling partner. Our technology constantly analyzes data for potential risk beginning the moment a new account attempts to register. We also continuously scan our existing product listings and all new product updates to find products that might present a concern. Our tools scan the more than 5 billion daily product changes submitted by our selling partners, and we analyze the tens of millions of customer reviews that are submitted weekly. When we find something concerning, we may stop that listing or review, ask for more information, or conduct further investigation.

In 2018, our proactive efforts blocked over 1 million suspected bad actor accounts before they were able to publish a single product for sale, and we blocked over 3 billion suspected bad listings from being published in our stores. In addition to these technology tools and our other proactive efforts, we invest heavily in innovative mechanisms for brands so they can partner with us to better protect brands and customers by preventing counterfeits and other infringing products from being sold in our stores. A few examples of the innovations we offer our selling partners and brands to help protect their intellectual property and protect customers include:

- *Brand Registry:* This free service powers proactive brand protection on Amazon and is available to any rights owner, including small and medium-sized businesses, with a registered trademark, independent of any economic relationship with Amazon. Through Brand Registry, brands gain access to powerful tools including automated brand protections that use machine learning to detect potentially infringing listings and proactively protect brands' intellectual property. More than 200,000 brands have enrolled in Brand Registry, and those brands are finding and reporting 99 percent fewer suspected infringements than before the launch of Brand Registry.

- *Transparency:* This product serialization service effectively eliminates counterfeits on enrolled products. Amazon provides unique codes that participating brands place on every unit they manufacture of an enrolled product. Amazon then scans these codes before a product is shipped, ensuring only authentic products are received by customers. Since Transparency's launch in 2018, over 6,000 brands have enrolled, enabling Amazon to protect brands and our customers by detecting and preventing over 300,000 counterfeit products from being sold. To date, brands have not reported a single counterfeit notice of infringement for products fully enrolled in Transparency.

- *Project Zero*: This new program launched in 2019 empowers brands to partner with Amazon to drive counterfeits to zero. It combines the breadth and power of Amazon's technology-driven automated protections, the complete coverage of product unit serialization, and a new self-service tool that gives rights owners the control to directly remove suspected counterfeits from Amazon's stores. As of October 2019, over 6,000 brands are already enrolled in Project Zero.

IV. Conclusion.

As the Committee knows, small businesses make up half of the country's gross domestic product, more than half of our jobs, and 75 percent of new jobs created each year. These businesses are the backbone of our economy. We've heard from many of our small business partners that they want help and guidance leveraging technology to grow their businesses right from their hometowns. We are proud that our tools, training, and resources help them do just that. In the United States alone, there are more than 1.9 million businesses, content creators, and developers in the U.S. using Amazon products and services to realize their dreams, and we are excited that we are helping small and medium-sized businesses selling in Amazon's stores to create more than more than 830,000 jobs in the U.S.

In addition to helping small and medium-sized businesses sell in our stores, we've created a series of services and opportunities that enable businesses and entrepreneurs of all kinds to pursue their dreams by opening access and bypassing traditional gatekeepers:

- Hundreds of thousands of authors have self-published millions of books through Kindle Direct Publishing. This means more diversity of authors, a broader range of content, and ultimately better products for our customers.

- We are empowering independent contractors to partner with Amazon in fulfillment operations and become business owners. As business owners, they hire and develop a team of drivers employing up to 100 people and operate a fleet of vans. Amazon helps them get set up and ready to operate out of a delivery station in their local city.
- Hundreds of thousands of small and medium-sized businesses, tech consultants, and startups use Amazon Web Services (AWS). In 2018, we provided more than $500 million in AWS credits to help startups build their business.
- Alexa gives entrepreneurs the opportunity to reach millions of engaged customers with a voice-first business. More than 90 percent of new Alexa-enabled products are built by someone other than Amazon. Hundreds of thousands of third-party developers have built more than 100,000 Alexa skills.

These services, tools, and opportunities enable a wide variety of selling partners, content creators, and independent merchants to sell their products, fuel their creative passion, and grow their businesses – all of which helps drive the U.S. economy.

We look forward to engaging with the Committee on this important topic. Creating policy that is helpful for all stakeholders in our dynamic economy requires careful attention, and our experience has proven that focusing on customers first, and working backward from the best customer experience, makes it easier to make great decisions. Amazon shares the Committee's core goal of supporting small businesses and making sure they have the tools they need to grow. As technology continues to advance the world of retail, so too will the opportunities for all of us to work together to ensure small and medium-sized businesses are able to benefit their employees, communities, and the larger American economy.

Written Testimony of Erica Swanson
Head of Community Engagement for Grow with Google Initiative

United States House of Representatives
Small Business Committee Hearing
"A Fair Playing Field? Investigating Big Tech's Impact on Small Business"

November 14, 2019

Chairwoman Velazquez, Ranking Member Chabot, and distinguished members of the Committee: Thank you for the opportunity to appear before you today. I appreciate your leadership in making sure small businesses in the United States have every advantage to grow and thrive, and I look forward to sharing with you all the ways that Google is committed to supporting that goal.

My name is Erica Swanson, and I am the Head of Community Engagement for Grow with Google, which is Google's initiative to help create economic opportunities for all Americans. Grow with Google's free products and programming are aimed at helping teachers, students, jobseekers, veterans, developers, startups, and small businesses across the United States be better prepared to succeed in the changing economy. In this role, I have the privilege of traveling the country to work with and to hear from small businesses that benefit from the use of technology. As the granddaughter of the owners of a bakery in a small town in Iowa, this work is personally very important to me. Google's positive impact on the lives of small business owners like my family is what keeps me motivated.

Today, Google is a successful company with many different lines of products and services. But back in 1998, Google was a startup founded in a garage in Palo Alto,

California, by two Stanford graduate students who aspired to organize the world's information and make it accessible and useful to everyone. From those small beginnings came a company that builds products that billions of people use every day to find their way around a new city, learn something new, and — most relevant for today's hearing — connect with businesses when they are looking for a product or service.

At Google, we are deeply proud of the ways in which we support the success of the small business community in the United States and globally. American small businesses are creating and building amazing things even as they face new challenges. And we believe larger companies like Google should play a role in helping them succeed. Some people assume that big companies can succeed only at the expense of small ones, but our experience is the opposite. For us, the years since Google's founding in 1998 have demonstrated that big businesses and small businesses can grow together in the digital economy.

Businesses use Google products because they help them grow. Today I will discuss Google's positive economic impact on American businesses, the products and tools we provide small businesses to help them succeed, and Grow with Google's free trainings and programs for American small business owners and employees, which help them reach new customers across the web to drive revenue, grow their businesses, and become American success stories.

Economic Impact

Google tools help American businesses find and connect with customers. In 2018, Google's search and advertising tools helped provide $335 billion of economic activity nationwide. More than 1.3 million businesses, website publishers, and nonprofits benefited from using Google's advertising solutions.

One example of a small business using Google products to succeed is Propel Electric Bikes, a company in Brooklyn, New York, with eight employees. Its founder, Chris Nolte, who is a U.S. Army combat veteran with a disability, was determined to return to his active lifestyle despite his injury. In 2011, he took out a small business loan, bought some inventory, and launched his business. When Chris was looking for efficient ways to connect with new customers, he turned to Google My Business and Google Ads to boost visibility on Google Search and Maps, and used Google Analytics to better understand how his marketing dollars generate sales. Chris's website typically attracts about 11,000 users from organic search and 2,500 users from paid search (Google Search Ads) per month. With a limited marketing budget, it's essential that Chris ensures his advertising is as efficient and accountable as possible, which is why he uses Google Ads. Chris holds his advertising spend accountable using Google Analytics, our free web analytics platform. "Through Google Analytics, we're able to track our ads, and I can feel more confident in spending more money because I know that we're going to get it back," Chris said.[1]

Another example is the Nehemiah Manufacturing Company in Cincinnati, Ohio. Nehemiah specializes in manufacturing consumer packaged goods, including their own products as well as brands licensed from other companies. When hiring they particularly focus on hard-to-hire candidates that most companies wouldn't consider. They may have no work history, or a blemished record due to a criminal record, but part of the Nehemiah mission is to give a second chance to people who just need the opportunity to prove themselves. Google Ads allows them to share their message with consumers nationwide. YouTube's TrueView video ads have been instrumental in reaching and educating their target audience. Running TrueView ads to support their "Boogie Wipes" product resulted in 10% sales growth, while many competitors saw a 10-20% decrease in sales during that same period due to a mild cold and flu season.

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[1] Google Economic Impact Report, New York, 2018

Google Analytics helps them fine-tune their strategy. From five employees at the start, Nehemiah has grown to a staff of 110.

These are just two of many success stories. Over 1.3 million U.S. businesses, website publishers, and non profits use our search and advertising tools annually to grow their customer base, drive revenue, and positively impact their local economy.

Products and Tools That Help Small Businesses Grow

The growth of the digital economy is providing enormous opportunities for small businesses to reach new customers. Google helps with this through our free products and services as well as our paid advertising services. I'd like to highlight three main ways our products support the success of small businesses: by providing discoverability on Google Search and Maps, by helping them to reach new customers through our advertising products, and by enabling them to run their businesses more effectively with productivity tools.

Connecting with new customers is the number one need for small businesses. Every online interaction is an opportunity to find new customers and win their loyalty. Being discoverable online is critical -- 83% of U.S. shoppers who visited a store in the last week said they searched online first. Each one of these searches is an opportunity for a small business to reach a new customer or re-engage an existing one.

People frequently search on Google or other providers when they're ready to act — to buy something, choose a service, or book an appointment. More than half of smartphone users say they have discovered a new company or product when conducting a search on their smartphones. In fact, 3 in 4 people who conduct a local search on their smartphones visit a related business in person within 24 hours.[2]

[2] https://smallbusiness.withgoogle.com/get-more-customers/

Businesses are discoverable on Google not only in "organic" Search — the standard, non-advertising search results — but also through free Business Profiles on Google, where businesses can list their websites, add photos, update hours, and more. These free tools help small businesses gain exposure online. When people see a complete Business Profile on Google Search and Maps, they are 50% more likely to buy something.[3] Business Profiles also allow business owners to respond to user reviews, to build customer loyalty, post updates such as a discount or a promotion, and to generate excitement and drive sales.

We understand that the magnitude of tools and resources available can be daunting for a small business owner who must choose what's best for their business. That's why we've launched an easy way to find the right solutions: Google for Small Business, a new website that in just a few steps curates our resources into a personalized plan, creating recommendations for identifying what could be most useful for each individual business.[4] Small business owners get a step-by-step guide to address their goals, whether they're seeking to stand out on Google, reach more customers, or work more efficiently. We also understand that finding new employees for a small business can be a challenge. Google Job Search helps local talent to discover jobs in local businesses.[5]

In addition to free services, we have a robust suite of advertising products to help small businesses reach the right customer at the right time. Through Google Ads, Google connects many potential customers to small businesses via the clearly-labeled sponsored ad placements above and below the search results on Google.com, as well as across our other properties, partner sites, and apps. To use Google Search ads, small businesses create short text ads and bid in an online auction for the keywords they want their ads associated with. A coffee shop, for instance, might bid on the

[3] https://smallbusiness.withgoogle.com/get-your-business-on-google/
[4] https://smallbusiness.withgoogle.com/
[5] https://jobs.google.com/

phrase "cafe in Nashville." When someone searches for this or a related phrase on Google, they may see the coffee shop's ad above or below the search results. The business only pays when someone clicks the ad to visit their website. For every $1 invested in Google Ads, our estimates suggest that businesses make an average of $2 in revenue.[6] For service businesses — such as plumbing and housekeeping companies — we offer Local Services ads, which are designed specifically to help them connect with local customers looking for such services. And with Google Analytics on a business's website, the owner can better understand her customers to make her online marketing efforts even more effective.

Additionally, Google's suite of workplace productivity tools, G Suite, helps small businesses work more efficiently so that they can scale and succeed. From organizing to planning, many small businesses spend a significant portion of their time managing back-office tasks. 77% of small businesses say they are looking for ways to save time at work.[7] G Suite does exactly that by giving small business owners a custom, professional-looking email address (like joe@yourcompany.com), an easily shareable calendar, and secure cloud storage so users can create and access documents and spreadsheets from anywhere. And if a business has an online store, it can add Google Pay to simplify checkout. Google Pay gives customers a faster, safer way to pay that's free to both the business owner and customers.

Google also plays a part in helping small businesses reach new customers outside the U.S. Small business exports contribute significantly to the U.S. economy; according to the "Growing Small Business Exports" report, exports generated $541 billion in output in 2017 and supported more than 6 million jobs.[8] Small businesses say that if they had better access to overseas markets, their export sales would increase by over 14% during the next three years, which would increase economic output by $81 billion and

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[6] Varian, Hal R. 2009. "Online Ad Auctions." American Economic Review, 99 (2): 430-34.
[7] https://smallbusiness.withgoogle.com/work-productively/
[8] https://americaninnovators.com/wp-content/uploads/2019/10/CTEC_GoogleReport_v7-DIGITAL-opt.pdf

add 900,000 U.S. jobs. Over 60% of small business owners report that technology can help them overcome the top three barriers to exporting, including tools to help with finance and payment collection, communications challenges, and tariffs and customs issues. To help get these tools into the hands of more small businesses and enable them to overcome barriers to exporting, Google offers Market Finder.[9]

Market Finder is a free tool that enables any small business to identify the best expansion markets for their business, find shipping and logistics partners, adapt to local markets, and start exporting to customers around the world. Market Finder helps American businesses by providing tailored export recommendations based on global data and consumer insights. Through this free tool, small businesses get access to logistics planning tools and supply chain strategies, market adaptation tools like translation and currency conversion, and marketing recommendations. With tools like Market Finder, we're helping small businesses leverage the growing demand from other countries for American-made goods and services. In 2018 more than 35% of clicks for U.S. businesses advertising on Google came from outside the country — and we want to do all we can to help businesses tap that exporting potential.

Trainings and Programs

At Google we are deeply committed to building great products that support small business growth. We are equally committed to helping small business owners and their employees use those products to succeed in today's increasingly digital workplace and economy. Small businesses that use digital tools are nearly three times as likely to have created new jobs in the last year, and they see four times higher revenue growth.[10] But to get the most of digital tools and to grow, small businesses need digital skills.

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[9] https://marketfinder.thinkwithgoogle.com/intl/en_us/
[10] Google/Deloitte, Connected Small Businesses (2017)

Through our Grow with Google program, we are seeking to ensure that more Americans seize the opportunities created by technology. Since 2017, Grow with Google has trained more than 3 million Americans.[11] We do this through free online tools and resources, partnerships with local organizations, in-person trainings we conduct in every state throughout the country, and philanthropy to organizations that help small businesses learn new digital skills. These resources help small business owners build their online presence, reach new customers, and run their business smoothly.

We also know how important it is to support small businesses that are just starting out. Last month, as part of our $1 billion global commitment to create more opportunity for everyone, we announced a $10 million U.S. commitment by Google.org -- Google's philanthropic arm -- to help low-income, under-represented people start their businesses through access to training, mentoring, and capital. Over the next three years, Google.org will allocate grants based on this need. Our first grant went to the American Library Association (ALA) to further develop libraries' Entrepreneurship Centers that provide support for people trying to start new businesses. The ALA network of libraries serves 96%[12] of the U.S. population, and almost 1 in 2 libraries provide access and assistance to entrepreneurs[13] looking to start a business of their own.

Our Grow with Google programs continue to evolve to meet the needs of our users. For example, just last week, to support National Veterans Small Business Week, Grow with Google launched new resources to support the 2.5 million veteran-led businesses in the U.S. This includes a centralized online hub where veterans and military spouses can access free tools and resources to grow or start their businesses, a livestream

[11] https://grow.google/
[12] https://www.imls.gov/research-evaluation/data-collection/public-libraries-survey
[13] https://digitalinclusion.umd.edu/sites/default/files/EmploymentBrief2015.pdf

workshop focused on growing a veteran-led business with the Small Business Administration's Northern California Veteran Business Outreach Center, custom business and marketing mini-courses tailored to veterans and military spouses on the free Primer app, and free one-on-one support for veteran and military spouses through Google's Small Business Pros program.[14] We're proud to put on programs like this and others to help communities gain the skills they need to successfully run small businesses.

Conclusion

In conclusion, the future of small businesses online is bright with the help of platforms that connect small businesses to existing and new customers, aid them in exporting globally, and provide them with productivity tools to better leverage their small but mighty workforces. We appreciate the opportunity to highlight Google's contributions to helping the small business community succeed. Thank you, and I look forward to your questions.

[14] https://thesmallbusinesspros.com/

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Testimony of
Joe Kennedy
Senior Fellow,
Information Technology and Innovation Foundation

Before the
House Small Business Committee

Hearing on
"A Fair Playing Field?
Investigating Big Tech's Impact on Small Business"

November 14, 2019
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Washington, DC

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Chairwoman Velázquez, Ranking Member Chabot, and members of the Committee. Thank you for inviting me today to talk about large technology companies' impact on small business. I am Joe Kennedy, Senior Fellow with the Information Technology and Innovation Foundation (ITIF). ITIF is the world's leading think tank for science and technology policy and focuses on developing better policy to promote innovation, increase competitiveness, and improve productivity. In my capacity at ITIF I have written on Internet platforms, antitrust, the gig economy, and other issues.[1]

The small businessperson has long played an iconic role in American society, symbolizing independence, fortitude, and diligence. However, both the challenges and opportunities facing small businesses have grown in an increasingly global economy with a ubiquitous Internet that lets consumers quickly compare prices, find reviews, and shop online. On the whole, Internet platforms play a positive role in helping businesses of all sizes deal with these changes. More importantly, by delivering efficiencies and increasing competition, they benefit consumers by lowering prices, leaving them with more money to spend on other goods and services.

In cases where large technology platforms compete fairly with small businesses and gain market share, this is something that policymakers should welcome, not oppose, for by definition such results boost consumer welfare and economic growth. However, when the conduct of large technology companies, particularly technology platforms, raises legitimate antitrust issues, these problems can be adequately addressed by applying existing laws. We should not enact new, restrictive laws or engage in new antitrust practices simply to rein in some of America's most productive companies. Nor should we try the Herculean task of trying to break them up. Both would come with the consequence of less innovation, productivity, and consumer welfare.

Most large technology companies, including Internet platforms, give business owners tools they need to succeed. The most challenging aspect of any new business involves finding customers, establishing a reputation, and setting up the fixed costs involved in running a business. These latter include accounting, computer systems, human resources, and complying with the many federal, state, and local regulations. Platforms help small companies with all of this in the following ways:

- Internet platforms allow any business to set up a website, Facebook page, Instagram account, YouTube channel and other online presences to reach customers, exchange information, and build a loyal customer base. Prior to these platforms, most small businesses were limited to local media, which was geographically limited, comparatively expensive, and did not provide any feedback about effectiveness.[2]

- Firms such as PayPal and Square make it easier to handle payments, greatly reducing the risk of nonpayment and fraud, and integrate directly with various accounting software systems, reducing administrative overhead.
- Platforms such as TaskRabbit and Thumbtack match businesses with customers, saving them some of the time and effort involved in advertising. They also help small companies find workers to deal with sudden increases in volume.
- Rating systems on sites such as eBay and Yelp help companies build reputations for excellence and provide transparency in markets.
- Cloud services from Amazon, Dropbox, Microsoft and other companies provide easily scalable computer capacity at low cost. These services also offer best-in-class security features, allowing small businesses to protect consumers' information from hackers and reduce downtime and lost business from technical problems.
- Internet platforms allow even the smallest company to targeted advertising to those most likely to be interested in its products, which makes effective marketing more affordable for small companies.
- Finally, marketplaces, such as Amazon, eBay, and Etsy, give even the smallest companies the ability to sell online to consumers across the world. They also handle logistics and delivery, saving the company from having to perform these services itself and allowing it to concentrate on customer service and the quality of its products.

Online platforms therefore significantly reduce the costs of market entry for businesses and enable entirely new business models.[3] This success depends on their flexibility to design rules and terms of service that maximize their value to consumers and producers.

Many of the most important battles in the technology industry do not involve small business. Whatever the merits of Spotify's antitrust suit against Apple, the dispute involves two large and highly successful firms that can look out for themselves. But it is also important to acknowledge that some Internet companies compete with small business. This is neither new nor disturbing. With the growth in national and now global markets, the optimal size of businesses in many industries has grown. As ITIF President Robert Atkinson and Michael Lind point out, with growing markets, large companies are often more efficient than their competitors.[4] In competitive markets, the lion's share of the benefit from efficiency is passed on to consumers. The effect of enhanced competition can reduce the market share of smaller, less efficient rivals. Where this displacement is the effect of legitimate competition, public policy should encourage it, or at minimum not hinder it. The purpose of antitrust policy should be to enhance consumer welfare and ensure that businesses do not engage in anticompetitive conduct. It should not be to protect companies from the legitimate effects of competition.

One aspect of competition occurs when companies that operate a platform also offer their own products over that platform. The fear is that the platform owner will compete with the most profitable products offered by others. Some commentators have expressed concern that this would allow for unfair competition. For example, Senator Elizabeth Warren (D-MA) has proposed prohibiting platform owners from competing with companies that use their platform.[5]

But once again, these practices are neither strange nor new. Walmart, Safeway, and CVS, for example, all offer shelf space to thousands of brands. In many cases they use in-store analytics to identify what products they should sell under their own brand, competing with the brands they already sell. For example, Costco's Kirkland brand directly competes with those of their suppliers. These products appear side-by-side with their competitors and are often priced lower. Yet few people argue Safeway should be broken up or that Costco should divest itself of its Kirkland products, for the simple reason that these practices are valued by consumers.

In a widely cited article, antitrust attorney Lina Khan criticized Amazon for competing with Quidsi, an online company that sold baby products, by lowing its prices on diapers and other baby products.[6] She alleges Amazon lowered its prices by 30 percent in order to force Quidsi out of business. While lower prices might have hurt Quidsi, they clearly benefited consumers, at least in the short run. In a deal reviewed by the Federal Trade Commission, Amazon eventually purchased Quidsi in 2011. Yet Amazon continued to face strong competition from other suppliers including Pampers and Huggies as well as marketplaces such as getdyper.com and boxed.com, and of course other major retailers that sold online and offline.

The Quidsi case is worth examining in some detail. Khan basically alleges that Amazon sold diapers at a loss in order to encroach on Quidsi's business. She may be right about the pricing but wrong about the intended target. As Kristian Stout and Alec Stapp of the International Center for Law & Economics relate, Quidsi's founders also sold diapers below costs.[7] Why? Because they saw Walmart and Target using diapers as a loss leader in order to build a relationship with new mothers who hopefully would then purchase a lot more from the store.

It might look like Amazon eventually won the battle when it was able to purchase Quidsi for $545 million. But even after this purchase it faced strong competition that limited its ability to raise prices. According to Khan, in 2016 Amazon had 43 percent of online diaper sales, while Walmart and Target had 23 percent and 18 percent respectively. Signficantly more sales were made off-line. But the story does not end there. As Jeff Eisenach of the American Enterprise Institute points out, in April, 2017 Amazon shut down Quidsi, including Diapers.com. Meanwhile the founders of Quidsi used the proceeds from the sale to create another online retail company, Jet.com, which Walmart purchased for $3.3 billion. In one of the most often cited

examples of unfair competition, it is difficult to see any harm to either consumers or the founders of the target company. Meanwhile Amazon suffered large losses on both its sale of diapers and its acquisition of Quidsi.

In the vast majority of cases, however, the interests of a platform coincide with those of the businesses that sell over it: to increase sales. The more a given business sells to customers, the more the platform realizes in commissions. Thus platforms have an incentive to help small businesses reach new customers and increase their sales. This is the same practice as in grocery stores, which take a markup on the products they sell and, by offering a wide variety, attract more customers. Customers are better off with a few large marketplaces competing vigorously than with many smaller less efficient shops offering limited selections.

Another issue arises when platforms have access to extensive information about customers and suppliers. The fear here is that they will either use it to compete against suppliers or, by denying it to sellers, they will limit their ability to grow. Again, supermarkets offer a good guide. Walmart, Costco and other big supermarkets collect lots of data about the performance of both their own brands and those of others. But we do not regulate whether they should share this information with suppliers like Proctor and Gamble. Some stores may want to share consumer information in order to attract more suppliers, which in turn will attract consumers. Other stores may want to build a reputation for protecting consumers' privacy by not sharing data. This might attract more consumers and therefore more suppliers. In each case the store has a strong incentive to attract and keep participants on both sides of the market.[8]

The same dynamic operates when it comes to bundling services. Any seller of a hardware or software product faces a decision of how much to include in the offering. But this is not new. Automobile companies have long bundled features like radios in new cars. While this might have hurt particular sellers of car radios, it clearly benefited consumers who wanted to be able to buy a car with the radio already installed. We see the same dynamic in the digital era. For example, initially Microsoft Word did not come with an integrated spell checker. Consumers had to buy one separately and install it. But it became clear that spell check was an integral component of any word processing program and so Microsoft, Apple and other providers of word processing systems bundled them into the initial offering.

More recently we see companies bundling offerings in smart phones. For example, once Apple realized that consumers valued a flashlight app in the iPhone, it decided to include it when they are sold, in part because makers of many phones using the Android operating system were doing the same thing. This may have hurt a small app developer that might otherwise offer a similar app. Despite this, the market is resilient enough that iPhone users can still use the Apple store to download a number of other flashlight apps for free. In addition, Apple's store offers an instant market to millions of other app developers. Antitrust policy is meant to promote competition and encourage productivity, not to protect the interests of existing suppliers, be they large or small.

Internet marketplaces benefit consumers in other ways. By reducing the cost of communication and record keeping large technology firms also likely increase the optimal size of many businesses. This puts pressure on small companies to grow enough to achieve the efficiencies that new technology offers. However, platforms give these companies the option of putting some of these burdens onto platforms, effectively outsourcing and turning them into variable costs.

This move toward efficiency largely benefits consumers, who after all are the primary intended beneficiaries of antitrust policy. Large companies often have lower marginal costs from economies of scale, and therefore lower prices. Buyers often prefer large marketplaces that offer a broad selection. But in order to offer a wide selection, platforms need to be large and deal with many suppliers. Although businesses must pay Walmart and Amazon a share of their revenue in order to access these platforms, they obtain access to a large number of buyers without having to duplicate the platform's infrastructure.

As a filing by ITIF's affiliate the Center for Data Innovation recently concluded:

> While the kind of competition platforms enable is unique, many of their other economic characteristics—such as catering to two sided markets, the fact other businesses rely on platforms as routes to market, the fact platforms often compete with those same businesses, and the fact platforms control large quantities of valuable data, occur in various sectors, as the above comments illustrate.
>
> It is for these reasons, as well as the great diversity of platforms' business models, that broad regulations on platform-to-business relations would be ill-advised, because they risk imposing restrictions on business models they are not suited to, which would stifle competition and innovation at the expense of consumers. Policymakers should apply the tools they already have at their disposal for promoting fairness and enforcing the law, and limit regulatory interventions to specific, clearly-defined sectors where they will work as intended, without creating harmful distortions.[9]

Still, some regulators are concerned that platforms may have too much power over smaller companies. A report by the European Commission worried that:

> Where business models of entire ecosystems of [small and medium enterprises] are dependent on access to a small number of online platforms, or where platforms have access to datasets of unprecedented size, new asymmetries may be created. In such situations, some

> suppliers to platforms can be disproportionately exposed to potentially unfair trading practices, even in the absence of established dominance of a platform.[10]

Fears about market dominance have led to several unwise policy recommendations. I would like to briefly explain why this is so. First, a number of commentators recommend breaking up the largest Internet companies. Rather than refer to any concrete harm to consumers, these advocates concentrate on the alleged dangers that large companies pose not only to small business, but to our political and social systems.[11] Yet breaking up companies is extremely difficult; it takes years and seldom leads to better market performance.[12] It is also doubtful that courts would approve such drastic moves. Moreover, doing so would almost surely reduce innovation, productivity and consumer welfare. For example, it is hard to not believe that breaking up Amazon into its regular website and Amazon Marketplace would harm consumers, who would then have to go to two separate websites to shop for the same item, thus reducing competition and choice.

Others advocate for legislation that would dictate specific rules for how platforms operate, such as search fairness, data collection or sharing, and removal from the platform. While platforms should publish clear rules and enforce them evenly, dictating the specifics of those rules would harm the market. Each platform already has a strong incentive to satisfy both buyers and sellers. Platforms often differ on how to do this, but the competition between platforms benefits users. For example, some platforms resist sharing data about their search algorithms because they do not want suppliers to game the system. Government officials, lobbied by companies on one side or another, are unlikely to find the best solutions. Moreover, existing antitrust laws already limit truly unfair trade practices.

Extensive limits on data collection and use are also unwise and would hurt small businesses. Consumer data is often helpful in increasing both sales and customer satisfaction. Although much of this data is available from other sources or has a limited shelf life, small businesses are often the least able to get access to it. Where platforms decide to use this data to help suppliers find potential customers, the government should allow it, subject to reasonable privacy rules.

Advocates also complain that, because many platforms get to see what people are looking for, they have an unfair advantage. This is most often expressed about Amazon, which sometimes competes against other companies by offering its own products. But again, large bricks and mortar retailers also get to see what people are buying, and they can and do use this to identify products to sell. Overall, this kind of competition benefits consumers. Again, the law should not protect companies, even ones with a nice story to tell, from the effects of legitimate competition.

Finally, some foreign countries allege that platforms are not paying their fair share of taxes. France recently responded by enacting a Digital Services Tax narrowly focused on the largest U.S. Internet companies. But recent studies show digital companies often face a higher marginal tax burden than large companies in other industries.[13] Moreover, the French Digital Service Tax clearly violates its trade agreements with other countries. It also violates the spirit of existing bilateral tax treaties.[14]

So what can policymakers do to strengthen the relationship between Internet companies and small business? One solution is to enhance rules governing fairness and transparency. Platforms should publish their rules for dealing with both buyers and sellers and should apply those rules in a transparent, even-handed manner. A recent example is the United Kingdom's open banking initiative and the European Union's second Payment Services Directive, which will boost competition in financial services by allowing banking consumers to share their data with third party service providers using open application programming interfaces developed by industry. But the scope for doing this is likely to be limited because multi-sided platforms already have a strong incentive to cater to the needs of each side of the market. Perceived unfairness to suppliers not only drives them away, it also makes the platform less attractive to buyers, who now have access to fewer sellers.

Second, regulators can look for barriers to entry, whether natural or artificial, and try to remove them, thus encouraging more platforms to enter the market to serve the diverse needs of small businesses and their customers, both current and potential. Determining the best ways to add value is difficult and often subject to failure, but the general goal of offering services that allow business owners to devote more effort to improving their products and customer service remains an important market opportunity.

Finally, in some cases a limited number of firms outside the technology industry have created an exclusive access to particular datasets that they use to exploit market power. Examples are the Multiple Listing Services in real estate, bank restrictions on financial data aggregators that show customers how to reduce fees, and flight availability and pricing in the airline industry. Some health care providers, and their technology providers, have also been found to be blocking legitimate access to patient data to protect their own economic interests.[15] In each case companies are blocking consumer data without a legitimate business purpose. Regulators should require them to make the data widely available so that consumers can benefit from enhanced competition.[16]

A particular platform may remain successful for a prolonged period if it successfully adapts to new technology and business models. But this is unlikely to systemically harm small businesses who have a number of potential routes to their customers. Platforms already compete for their business and shutting off access would threaten the main source of revenue for many platforms: selling ads targeted at the consumers that visit their sites or encouraging consumers to buy their own products. And again, if such a market position is abused, existing antitrust remedies are adequate to restore competition. For example, if a platform applied stricter

criteria or higher fees to products that compete with its own or arbitrarily sold one company sales data about its rivals, we believe existing authority would allow regulators to challenge it.

I am happy to answer any questions you have.

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**TESTIMONY ON THE "A FAIR PLAYING FIELD?
INVESTIGATING BIG TECH'S IMPACT ON SMALL BUSINESS."
BEFORE THE COMMITTEE ON SMALL BUSINESS, US HOUSE OF REPRESENTATIVES**

Allyson Cavaretta
Principal/Owner
Meadowmere Resort
Ogunquit, Maine

NOVEMBER 14, 2019

I. Introduction

Chairwoman Velazquez, Ranking Member Chabot, and Members of the Committee:

I am Allyson Cavaretta, a resident of Maine, a University of Notre Dame graduate from the Mendoza College of Business, Marketing Management, cum laude, three generations in small business and a principal at my family business of over 35 years, the Meadowmere Resort in Ogunquit Maine.

I thank you for the opportunity to speak with you today about why Congress should look closely at the impact of Big Tech on Small Business. I will be speaking to the effects of recent actions by Google in the travel landscape. However, please know that I do not stand alone. Many of my concerns translate across the Small Business ecosystem as can be seen in supporting documentation.[1] As recently as November 6th, the multi-billion dollar company Expedia expressed concerns about a level playing field with Google[2]. On just November 8th Bloomberg described Google Search Ads behavior as

[1] See Exhibit Supplement provided as separate pdf document
[2] https://www.geekwire.com/2019/google-moves-travel-expedia-group-ceo-calls-level-playing-field-search-results/

"crushing" and "wiping out wiping out a combined market value of more than $13 billion from the three online travel agents"[3]. When these large companies are impacted by billions in just six months, there is all the more urgency to consider the impact on small businesses.

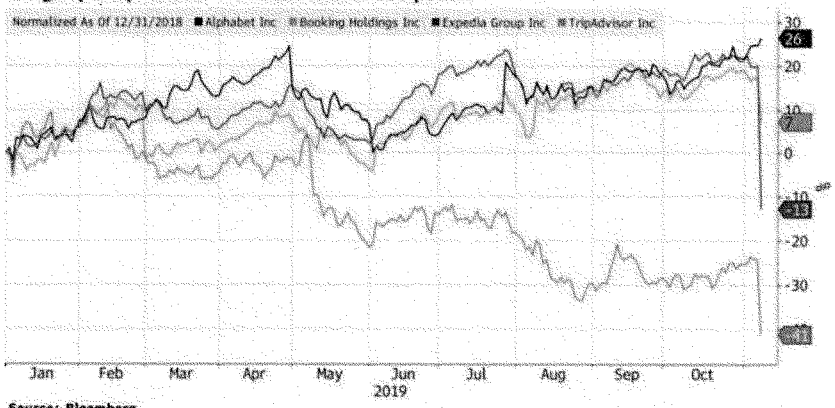
II. Testimony Summary

I am here today for three reasons: to explain why Google's most recent actions in the online travel ecosystem present a serious threat to small business; to explain how those behaviors in turn harm the end consumer; and to urge that Congress address immediately Google's near monopoly access to market for small business.

[3] https://www.bloomberg.com/news/articles/2019-11-08/google-s-search-ad-embrace-crushes-online-travel-agents

What A Terrible Trip

Google puts pressure on online travel companies



Source: Bloomberg

To echo the testimony of Dr. Robert Epstein before the United States Senate Judiciary Subcommittee on the Constitution from Tuesday, June 16, 2019: The problem with Google is that it has the power to determine what content a person will or will not see. No single entity – especially a private company that is not accountable to the public – should have such power. [4]

III. Google's Actions in the Travel Space – Impact on Access

There is a history to the detrimental actions of Google for independent lodging properties in the online travel ecosystem. In 2015, suddenly and without warning, changes made by Google to their search algorithm for hotels altered the lodging results pages. Under that change, Google would allow for the consumer to go to the hotel's website by clicking on a link, but when one searched for a specific hotel, the results would return one of two options:

- A singular 'Book Here' box that went directly to an Online Travel Agent if the hotel had a relationship with such an agency. This option was financially beneficial to Google who would be paid a per click fee by the Online Travel Agent.
- A 'No known availability for this property' message, which for the common person meant 'This hotel has no rooms'. This option had the net effect of closing off hotels that could not 'pay to play' with Online Travel Agents.

[4] https://www.judiciary.senate.gov/imo/media/doc/Epstein%20Testimony.pdf

This concern was pervasive across the Google platforms: desktop, mobile and the app. The late Spring timing was particularly concerning as the change occurred as peak season in Maine was getting underway and would quickly impact the profitability of independent hotels, with little to no recourse. The hotel industry is not based on making it up tomorrow, but rather one that has a perishable amount of time to book and deliver rooms, to seat and serve meals – Then it is lost forever. Not just to the hotel, but to the employee's paycheck and the state's tax revenue.

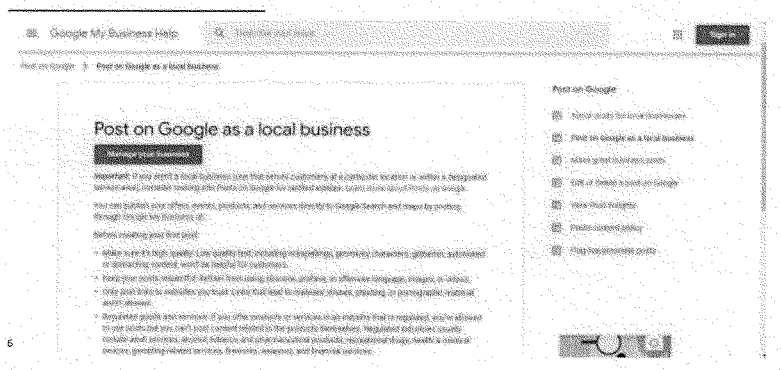
After approximately one month of strong urging by Congressional representation from our state, Google made an adjustment that clarified to the user to visit the property's website. Visually, that looked as follows:

However, this icon did not link to the website. The consumer would have to go find the website; one could not click or call directly from the icon shown here. Occasionally, the 'No known availability for this property' continued to appear but would retreat with subsequent outreach from Congress. Monitoring Google is an ongoing challenge and as recently as October 29, 2019, the company's algorithm and changes to it were cited by the Wall Street Journal as "secretive"[5].

[5] https://www.wsj.com/articles/google-lifts-veil-a-little-into-secretive-search-algorithm-changes-11571986861

There are concerns beyond secretive algorithm changes that speak to an unequal playing field for small businesses in the travel space that exist at the time of this testimony. Examples that support an unfair playing field include:

- Hoteliers are prohibited from the 'Posts' feature, which is given to vacation rentals, doctors and lawyers in their search results. This prevents hotels from being able to offer the option to book direct or learn about specials in their listings.[6]

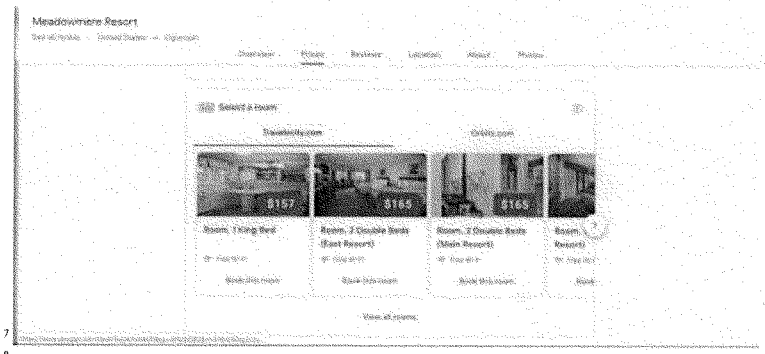


6

- Hoteliers are prohibited from the 'View Rooms' feature under their Google My Business listing, which is given to the Online Travel Agents known as Travelocity and Orbitz (both owned and operated by Expedia).[7]

Though I appreciate Google's testimony that they are proud to work with hundreds of thousands of small and medium size businesses, enabling these businesses to tap into the commercial opportunity of the Internet[8], that claim is not uniform for all types of small businesses in the search landscape.

I would point this Committee to the most recent unexpected Google algorithm change called the 'March 2019 core update'. With this update, Google has decided to become heavily involved the travel space and once again alter control over access to hotels such as ours by changing how the platform's search interface works, especially the



[7]

[8] https://www.judiciary.senate.gov/imo/media/doc/Bhatia%20Testimony.pdf

components known as the '4 pack'[9] and the metasearch ad console. The changes from this most recent iteration once again began to take effect just as Maine entered its busy summer season in late spring 2019 and became apparent by July to ourselves and industry experts.

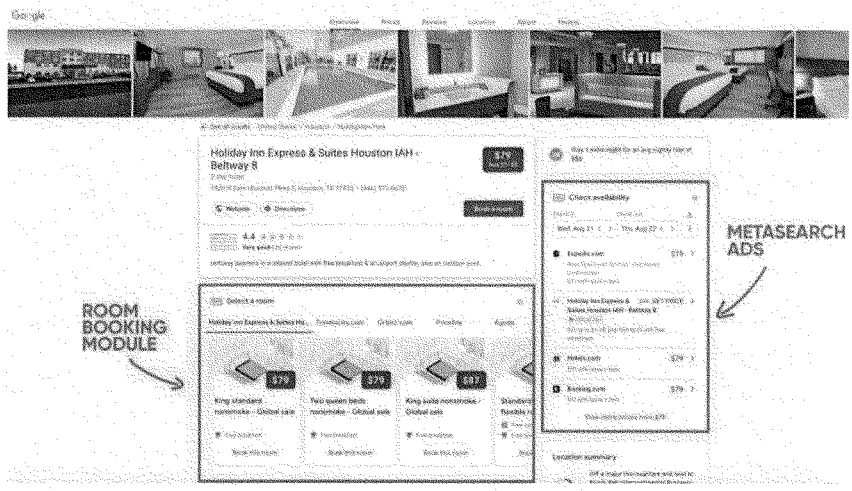
With the 'March 2019 core update', the direct booking engine efforts of a hotel are pushed to 'below the fold' and instead replaced by paid metasearch results that Google benefits from financially. The impact of this change means that Google is prioritizing the area where it makes money from the impressions and clicks within the metasearch box over the direct booking engine of the hotel. The result often misleads the consumer to the highest bidder, such as an online travel agent or fraudulent website, instead of to the hotel. The financial resources to compete against the billions of dollars that online travel companies such as Expedia and Booking.com have in order to appear in the metasearch box are simply not afforded to the many small businesses that make up

[9] '4 pack sample' screen shot :

Maine's tourism industry and beyond. In my opinion, this is far removed from an open marketplace for a small business in Maine or in any state.

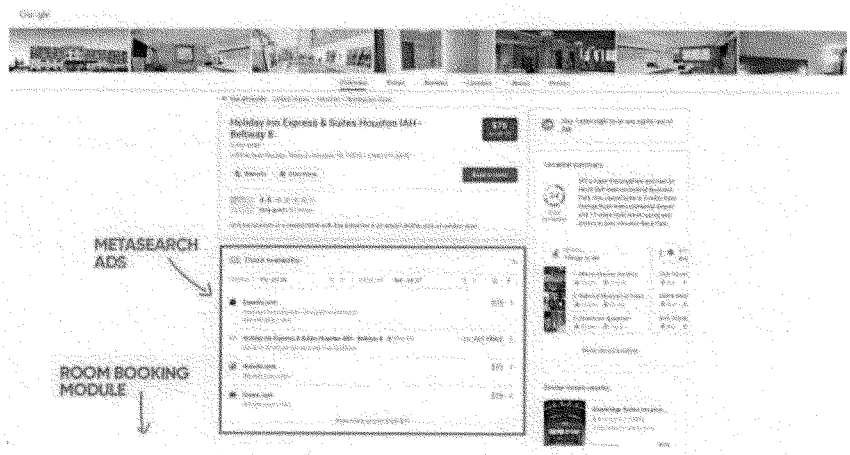
The following are screen shots of the changes that are of concern to my business and to small businesses in the travel ecosystem[10]:

PRE-JULY 2019 RESULTS LAYOUT



[10] https://koddi.com/google-experiments-room-booking-module-placement/

JULY 2019 RESULTS LAYOUT IN BETA, AS IMPACTED BY THE 'MARCH 2019 CORE UPDATE'



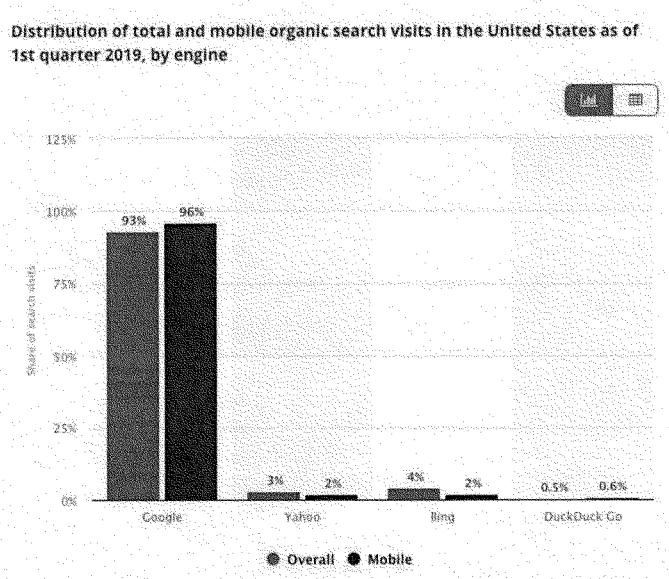
It has come to the attention of the hotel industry – and therefore our attention - that Google is using its platform to place its paid product between the traveler and the hotelier. In essence, Google's layout acts as a gatekeeper that the hotel must pay in order for its direct booking option to appear. I will note to this Committee that our hotel's correspondence to the Maine delegation on the matter of the 'March 2019 core update'[11] is dated just one day after Google claimed to not engage in such practices at the United States House Judiciary Committee hearing.[12]

[11] See Appendix A

[12] https://www.congress.gov/committees/video/house-judiciary/hsju00/9doWy1i5hpo

In my personal opinion, should a large company with such tremendous market share as Google look to undercut access by having its paid products 'bump out' a direct booking option, there are a number of anti-trust and anti-competitive concerns raised.

In fact, industry experts noted a milestone in Google's dominance in controlling search behaviors in June 2019 when, for the first time, a majority of all browser-based searches on Google.com resulted in zero-clicks.[13] Google sends a huge portion of search clicks to their own properties such as YouTube, Maps, Android, Google's blog, subdomains of Google.com, and a dozen or so others. Over 93% of searches began on Google before this aggressive change[14]:



[13] https://sparktoro.com/blog/less-than-half-of-google-searches-now-result-in-a-click/
[14] https://www.highervisibility.com/blog/organic-vs-paid-search-statistics/

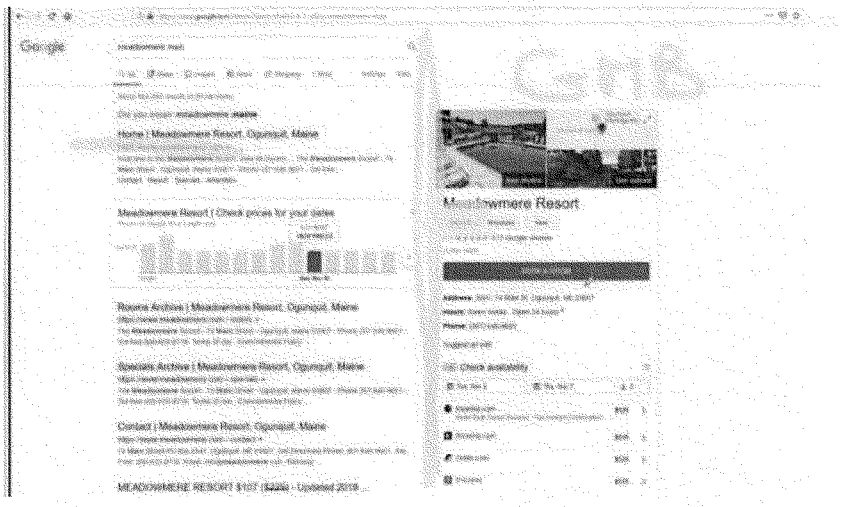
When one considers that 82% of travel bookings in 2018 were completed via a website or mobile app without any human interaction in combination with Google's dominant market share of search, [15] the small businesses and innkeepers of Maine and innkeepers in the United States are right to be concerned. The dominant market share of Google, as seen in the graph above at 93%, lends itself to rent-seeking behaviors that prevent market access and to an unfair playing field. In my personal opinion, there is good reason for the Small Business Committee and Congress to be very concerned.[16]

IV. Google's Actions in the Travel Space – Impact on Meadowmere Resort

The mechanism by which Google looks to control access is entitled 'Google My Business listing', commonly referred to as the 'GMB'. This feature appeared in 2014 and has steadily become a middleman between a small business and the consumer. The GMB and the accompanying search results change depending on the search terms and consumer device.

To display the visual nature of this, I am including a screen shot of a search for 'meadowmere main' showing the organic search results on the left hand side and the GMB on the right hand side:

[15] https://www.trekksoft.com/en/academy/ebooks/travel-trends-report-2019
[16] https://skift.com/2019/06/04/here-are-travels-big-winners-in-an-antitrust-crackdown-on-big-tech/



To highlight the impact that Google's behavior with the GMB has had, I have prepared data from our Google analytics for the Meadowmere Resort. However, one must understand that a small business is limited as to what historic data Google provides to us when it comes to GMB listing insights. In other words, a small business must trust that Google is providing accurate reporting on its own advertising products. Despite this caveat, the data is compelling.

When comparing May 1, 2019 through September 30, 2019 against May 1, 2018 through September 30, 2018, the following changes are observed in the GMB listing for our hotel[17] :

- Phone Call Actions: Number of times customers have called the business from the GMB listing

  5/1/18 to 9/30/18: 1,894
  5/1/19 to 9/30/19: 2,324
  Increase of 22.7%

  Why this matters: Consumers being shifted from our hotel's website to Google's GMB product to access the phone number, if that consumer is even able to find our phone number.

Business name	Overall rating Overall rating of this listing as of the date the report was generated	Total searches Number of times customers found this listing by searching on Google Search or Maps	Direct searches Number of times customers found this listing by searching for the business name or address on Google Search or Maps	Discovery searches Number of times customers found this listing by searching for the category, product or service on Google Search or Maps	Total views Number of times this listing has been viewed on Google Search or Maps	Search views Number of times this listing has been viewed on Google Search	Maps views Number of times this listing has been viewed on Google Maps	Total actions Number of times customers have taken action on this listing on Google Search or Maps	Website actions Number of times customers have visited the website from this listing	Directions actions Number of times customers have requested directions from this listing	Phone call actions Number of times customers have called the business from this listing
Meadowmere Resort	4.4	326787	96899	229888	838134	370608	467526	26533	16253	8386	1894

GMB Insights - Discover Report
5/1/2018 - 9/30/2018
Data file: 795192897e75d713dcbae8d42aa80537

17

Business name	Overall rating Overall rating of this listing as of the date the report was generated	Total searches Number of times customers found this listing by searching on Google Search or Maps	Direct searches Number of times customers found this listing by searching for the business name or address on Google Search or Maps	Discovery searches Number of times customers found this listing by searching for the category, product or service on Google Search or Maps	Total views Number of times this listing has been viewed on Google Search or Maps	Search views Number of times this listing has been viewed on Google Search	Maps views Number of times this listing has been viewed on Google Maps	Total actions Number of times customers have taken action on this listing on Google Search or Maps	Website actions Number of times customers have visited the website from this listing	Directions actions Number of times customers have requested directions from this listing	Phone call actions Number of times customers have called the business from this listing
Meadowmere Resort	4.4	447335	196351	230984	710647	222077	488570	29390	17066	10000	2324

GMB Insights - Discover Report
5/1/2019 - 9/30/2019
Data file: 5575fbf87424ebc40c76950a54e95649

- Website Actions: Number of times customers have visited the website from the GMB listing

  5/1/18 to 9/30/18: 16,253
  5/1/19 to 9/30/19: 17,066
  Increase of 5%

  Why this matters: Consumers being shifted from the organic and free search results to Google's GMB product to access our website.

- Total Searches: Number of times customers found the GMB listing by searching on Google Search or Maps

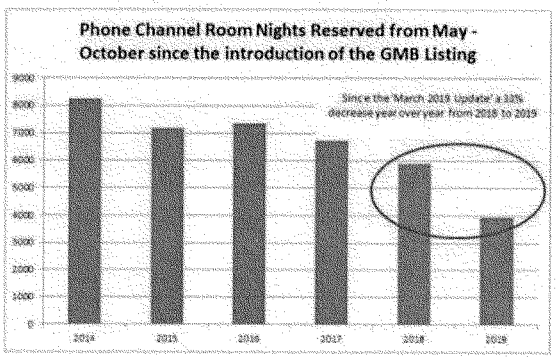
  5/1/18 to 9/30/18: 326,787
  5/1/19 to 9/30/19: 447,335
  Increase of 36%

  Why this matters: Consumers being shifted from clicking organic (free) search results to access the information on our website to viewing Google's GMB product for the same information, regardless of desktop, mobile or in app searches.

When one looks at Total Searches and Website Actions, one is able to calculate a rough click-through rate of 3.8% for our GMB listing. If such a click-through rate occurred for an online display ad unit, our hotel would be experiencing an outstanding result since across all industries, the average click-through rate for a search ad is 1.91%.[18]

When comparing room nights reserved through the direct phone channel for May through September across the 6 year history of the GMB, the following is observed for our hotel:

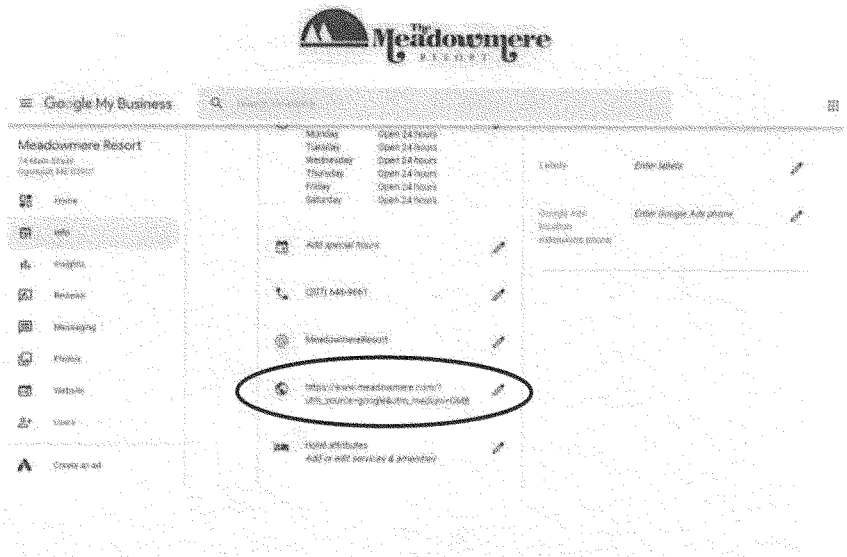
[18] https://blog.hubspot.com/agency/google-adwords-benchmark-data "Across all industries, the average CTR for a search ad is 1.91%"



Since the 'March 2019 core update' a 33% decrease year over year from 2018 to 2019 has occurred in room nights reserved by direct phone call at our hotel.

With the GMB listing experiencing a staggering year over year growth since the 'March 2019 core update', the GMB click-through rate and corresponding change in our direct phone channel raises concerns that organic search and even some ads have been deprioritized by Google. One cannot help but wonder if Google is able to push the performance of a GMB to these outstanding levels by funneling searches to its own paid product.

The transparency into such behavior remains opaque at best. Our hotel deploys landing pages and Urchin Tracking Module parameters, commonly called UTM codes, to measure sources to our website and evaluate marketing efforts. An example of UTM tracking can be seen within our GMB listing under the hotel 'info' area:

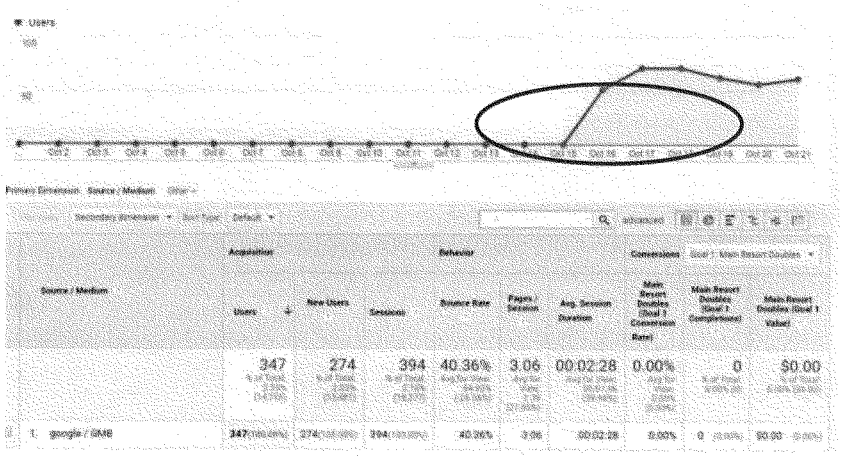


While Google offers the opportunity for our small business to enter such a link and therefore receive some clarity within Google Analytics on just how much traffic is sourcing from our GMB listing, there have been multiple instances whereby Google arbitrarily removes the UTM code without warning. Without this UTM code, a small business lacks this ability to accurately track the performance of their GMB as the data hides within organic search results.

However, knowing that the UTM code is subject to random removal, our hotel proceeded to screen shot capture the impact of the GMB when separated from the organic traffic and present what just seven days of actively tracking represents. Prior to separation, the organic traffic to our website showed approximately 200 user sessions per day. After implementing the UTM tracking code on our GMB listing, the GMB listing experiences approximately 75 user sessions per day - or 37.5% of the user session traffic. No other changes were made to ad campaigns or tracking during this period in

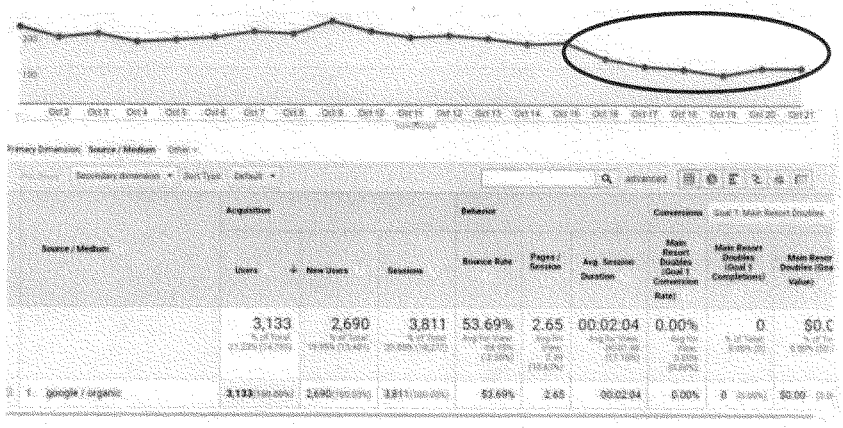
order to provide a clean capture of the GMB impact. I would add that in preparation for today, over 100 other innkeepers indicated that they too have these similar concerns with their organic traffic versus the GMB traffic.

GMB listing as tracked via UTM coding, October 15, 2019 through October 21, 2019:



Source / Medium	Acquisition: Users	New Users	Sessions	Behavior: Bounce Rate	Pages / Session	Avg. Session Duration	Conversions: Main Resort Doubles (Goal 1 Conversion Rate)	Main Resort Doubles (Goal 1 Completions)	Main Resort Doubles (Goal 1 Value)
	347	274	394	40.36%	3.06	00:02:28	0.00%	0	$0.00
1. google / GMB	347	274	394	40.36%	3.06	00:02:28	0.00%	0	$0.00

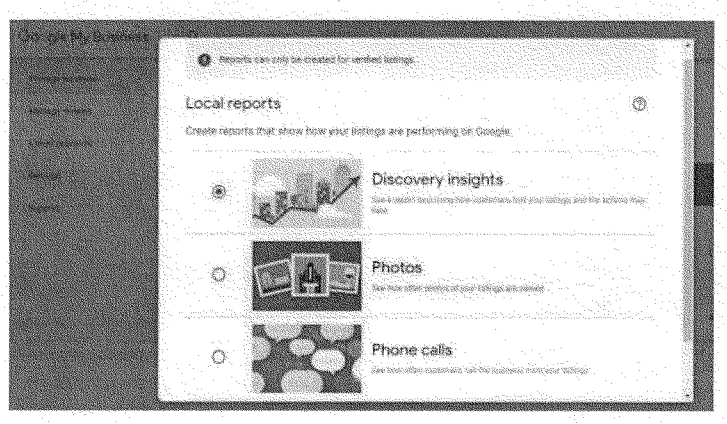
Google Organic Search performance, October 15, 2019 through October 21, 2019:



Source / Medium	Acquisition: Users	New Users	Sessions	Behavior: Bounce Rate	Pages / Session	Avg. Session Duration	Conversions: Main Resort Doubles (Goal 1 Conversion Rate)	Main Resort Doubles (Goal 1 Completions)	Main Resort Doubles (Goal 1 Value)
	3,133	2,690	3,811	53.69%	2.65	00:02:04	0.00%	0	$0.0
1. google / organic	3,133	2,690	3,811	53.69%	2.65	00:02:04	0.00%	0	$0.00

I would note to this Committee that not only does a small business contend with the difficulties in retaining the UTM tracking in a GMB listing, but our small business also receives controlled and limited data access thru the GMB listing management area. I would highlight that the listing management reporting that Google provides is not the same as Google Analytics. In fact, without the UTM code, GMB data is in an entirely separate console and allows for only three data sets that provide only 18 months of historical access despite GMB listing being in place since 2014.

These data sets are Discover Insights, Photos and Phone Calls:

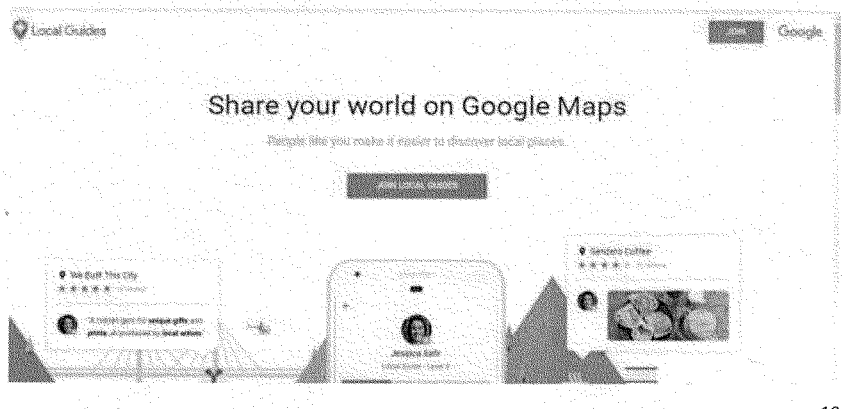


When the UTM tracking is removed, these data sets are the only means by which a small business can analyze the performance of the GMB listing.

- In regards to the Discover Insights, this area is in stark contrast to the Google Analytics dashboard that provides extensive website metrics. One cannot help but wonder why Google would not subject its GMB product to the same metrics capabilities that other ad products and traffic sources are scrutinized by. One can only see such metric if the UTM code is in place and remains as such.

- In regards to the Photos Insights, the number of views of photos on the GMB listing for our hotel reached 26,658 in the seven days period of the UTM code activation. To put this volume of views into perspective, from the period of October 15th through October 21st, the page views across the entire website for our hotel were 15,490. With the introduction of Google Local Guides, an unpaid, points based incentive program for people to submit photos and reviews, Google is building a database of image files globally at the local level.[19] One should note that this is in combination with GMB listing feature entitled 'Website' that Google offers to create a dedicated website within the GMB for a business. This

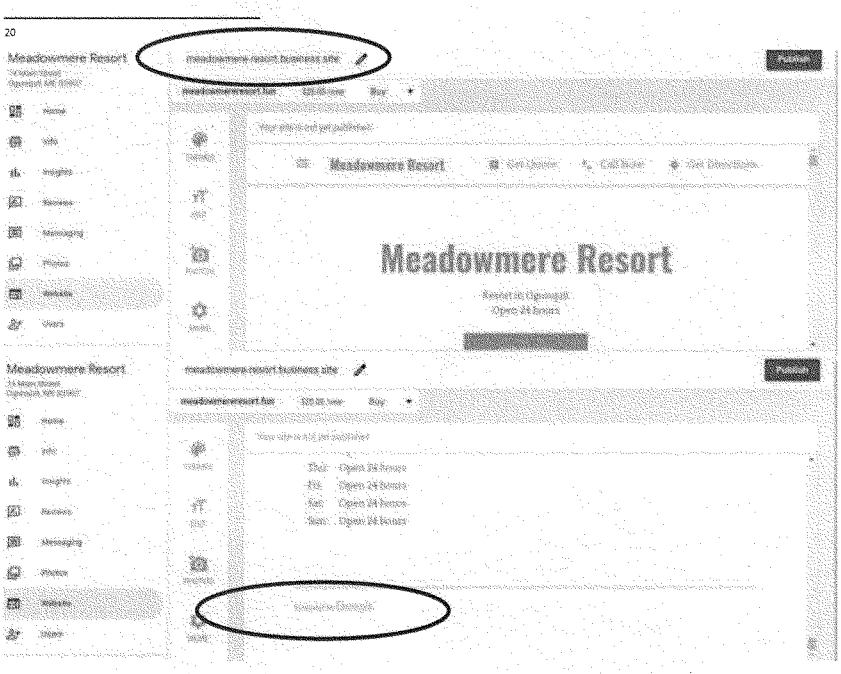
19



'Website' feature focuses on offering quotes and photos and is Google branded.[20] It is not entirely clear what, if any, requirement Google may make upon a small business to use this Google website product.

- In regards to the Phone Calls Insights, while our hotel has seen a decrease in overall phone calls, calls originating from our GMB listing have grown 22.7% year over year in a five month period of May 1st through September 30th. This is an increase of 430 (+22.7%) calls on top of the 1,894 calls that were initiated from the GMB listing in this same five month period in 2018. This is significant because while call volume is down, Google is still reporting growth. The 'March

20



2019 core update' and its corresponding changes on the GMB have a multiplier effect in that it is both decreasing our call load by serving information directly through Google's products and it is consuming the remaining call traffic at an increasing rate through the GMB listing. With the 2018 average phone reservation revenue of $341, this represents a year over year shift in a revenue of over $140,000 now dependent on Google's GMB listing performance.

Given that the changes noted here are occurring within the short five month period that the 'March 2019 core update' has affected the travel landscape, this Committee should also make note of the speed at which Google is impacting the ability for a small business to access the consumer and vice versa - for a consumer to access a small business. This impact is reflected in the rapid increase in spend required across Google's pay to play products of Hotel Ads, Video Display Ads, Text Display Ads, Adwords Pay-Per-Click and Retargeting/Remarketing to protect direct bookings to our own hotel. For our hotel that means an increased spend of over 500% from 2016 to 2019 with Google, who has gone from 3% to 13% of our annual marketing budget. A small business such as ours has experienced a 20% increase in our overall marketing budget in an effort to keep up with Google's changes to direct bookings. I would note that increase does not include the fees to connect an internet booking engine to Google or the fees paid to online travel agents who often outspend our hotel in this pay-to-play model.

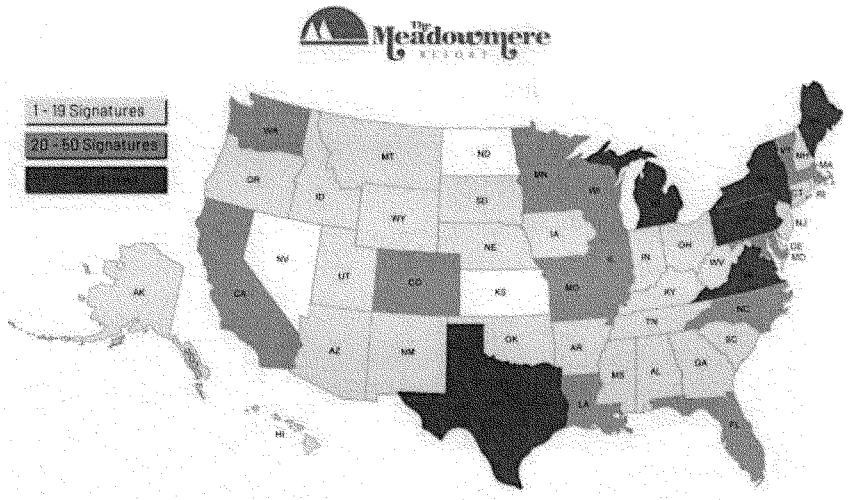
I would caution that the market access concerns will only grow as screens get smaller with mobile bookings and perhaps, the need for a screen disappears altogether with voice search. In my personal opinion, the small business and the consumer will then be at the mercy of what Google decides to show - or tell.

V. Google's Actions in the Travel Space – Impact on Independent Innkeepers

To assuage concerns that our hotel may be an isolated incident, the Association of Independent Hospitality Professionals (AIHP) and the Professional Association of Innkeepers International (PAII) provided the data presented in this section. AIHP represents independent lodging across the United States. PAII represents innkeepers, bed & breakfast, boutique hotels, and other lodging professionals both nationally and internationally. The Meadowmere Resort is not a member of either association and therefore the data presented on our hotel stands separate from the information provided by members of these groups.

Over 900 innkeepers representing over 47 states and the District of Columbia supported the points made by our business here today[21]:

[21] See Exhibit Supplement provided as separate pdf document



STATE	Innkeepers reported as impacted by Google
AK	19
AL	5
AR	15
AZ	10
CA	39
CO	20
CT	6
DE	3
FL	21
GA	11
HI	1
IA	9
ID	2
IL	23
IN	7
KS	0
KY	10
STATE	Innkeepers reported as impacted by Google
LA	21
MA	30
MD	20
ME	59

MI	72
MN	22
MO	28
MS	2
MT	1
NC	36
ND	0
NE	3
NH	16
NJ	12
NM	7
NV	0
NY	65
OH	9
OK	6
OR	11
PA	57
RI	4
SC	5
SD	1
TN	19
TX	56
UT	1
VA	35
VT	24
WA	29
WI	28
WV	6
WY	1

OTHER LOCATIONS	Innkeepers reported as impacted by Google
Canada	3
District of Columbia	4
Mexico	1

VI. Google's Actions in the Travel Space – Impact on End Consumer

Digital travel sales worldwide increased 10.4% to $694.41 billion in 2018.[22] For states like Maine, tourism is one of Maine's largest and most vibrant industries. Total recent tourism expenditures were over 6 billion dollars a year – which equals $191 per second and tourism employs almost 107,000 people, about 16% of the state's workforce.[23] Ogunquit, a signature destination in Maine and where our hotel is located, contributes over $34 million annually in tax revenue to the state.

The size of the travel market creates strong incentives for middlemen like Google to insert themselves between a hotel (supplier) and a guest (consumer) with a 'pay to play' model. It is a lucrative ecosystem especially where consumers rely heavily on digital information to plan travel to places that they have not been before.

For these reasons, in my personal opinion Section 5(a) of the FTC Act which provides that "unfair or deceptive acts or practices in or affecting commerce . . . are . . . declared unlawful" and where "Deceptive" practices are defined in the Commission's Policy Statement on Deception as involving a material representation, omission or practice that is likely to mislead a consumer acting reasonably in the circumstances may be of interest to this Committee.[24] There are two areas which I would call to this Committee's attention to regarding Google's practices: the blue 'Book a Room' button and the ability to find a hotel's direct phone number.

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[22] https://www.emarketer.com/content/global-digital-travel-sales-2018
[23] https://motpartners.com/
[24] https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority

Google's Blue 'Book a Room' Button

When over 70% of consumers believe that they are booking directly with a hotel when in fact they are being redirected by Google's blue 'Book a Room' button, the traveling public is being misled. [25] In fact, the petition comments refer to this concern repeatedly.[26] This blue button is a 'pay to play' feature operating on a bid system that is frequently won by the large Online Travel Agencies Expedia and Booking.com and places not one but two middlemen between the consumer and the hotel. A small business is placed at a distinct disadvantage in this arrangement because the 'pay to play' model is pitting the independent hotelier against billion dollar public companies. However, the consumer is also impacted by the model whereby they can no longer alter their reservation without going through the Online Travel Agent and cannot discern that the blue 'Book a Room' button does not lead to the independent hotel directly.

The insertion of Google as a 'pay to play' middleman introduces additional costs that must impact the economic system. Either small businesses absorb this cost – and thereby decrease margin and reinvestment into their product and community – or they pass along the additional expense of being found on Google to the consumer. This additional expense can range from 18% and more, an unsustainable inflation of pricing to the traveler.[27]

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[25] https://acorn-is.com/blog/2018/11/70-of-your-customers-think-they-are-booking-direct-when-they-are-not-and-we-have-the-proof.html

[26] See Exhibit Supplement provided as separate pdf document

[27] https://acorn-is.com/blog/2018/11/70-of-your-customers-think-they-are-booking-direct-when-they-are-not-and-we-have-the-proof.html

Nowhere does Google educate the general public that Google and their Online Travel Agency (OTA) partners are diverting the consumer's purchase away from the small business that the consumer intended to buy from with the blue 'Book a Room' button. The disturbing side effect of online booking scams is also raised by this lack of end consumer transparency.

Google's Impact on Finding Phone Numbers

Before coming to the purchase of a room, the end consumer may have questions that they wish to ask directly of the hotel. Since the 'March 2019 core update', the ability to locate a direct phone number within search queries has become an increasing challenge. While developing our Google Ads strategy for Q4 2019, a performance review of the Dynamic Search Ads (DSAs) on Google that ran over this summer was conducted. This included a list of search terms that Google's algorithm decided to serve our dynamic ads on.

There was a trend on this specific report that in my personal opinion is worth bringing to this Committee's attention. It appears that our campaign served ads against a number of unique searches for our hotel's phone number.[28] While seeing a few of these phone

[28] List of unique search terms from the report mentioned:

- number for meadowmere hotel in ogunquit maine
- phone number of meadowmere resort ogunquit maine
- phone number for the meadowmere hotel in ogunquit maine
- meadowmere phone
- meadowmere resort phone number
- phone number for meadowmere ogunquit

number searches would be normal, both I and our digital marketing partner consider the number of unique searches over the summer of 2019 and since the 'March 2019 core update' to be abnormal.

What this told us is that users are having a harder time finding our direct phone number organically in Google search results since the 'March 2019 core update'. Even more disturbing, the report only includes searches that received at least one click in the past 30 days and were used by a significant number of users on Google. This means that there are most-likely other search terms that have been used and are unaccounted for. In response, our hotel enabled Call Extensions in Google Ads for our Q4 campaign. This functionality allows us to add a phone number to our ads. It is important to remember that by doing this we are now effectively paying to improve the discovery of our own phone number with this method. The net effect is that Google has moved the ability to see a direct phone of an independent hotel into the 'pay to play" space.

However, call extensions do not show with every ad impression served – The secretive Google algorithm determines whether to show the call extension or not, even if the consumer is directly searching for the phone number. With this action, Google's 'pay to play' product stands directly between the information sought by the consumer and the accurate search result that they are looking for.

- phone number meadowmere resort ogunquit maine
- google meadowmere hotel in ogunquit contact number
- give me the number to the meadowmere resort in ogunquit
- call meadowmere hotel ogunquit maine
- meadowmere resort telephone number

VII. Monopoly Power for Access to Search Results is the Modern Railroad

A century ago, railroads reduced the time and distance to market for goods and people, radically changing the costs and convenience to travel. Now, a century later, Google and other Big Tech players stand in a similar position. It is now cheaper and more convenient to simply go online and explore all the places one can go.

However, much as the public and businesses feared the railroads for their monopoly power, small businesses are today acutely aware that it is impossible to do business without Big Tech, especially Google.

While no one would fault Google for making decisions on innovation based on their bottom line, the net impact to small business and consumers is the consideration that this body holds as its charge. There is great economic and societal danger in Google's ability to decide who succeeds in small business and who fails in our communities and in our country. When something as fundamental as the free circulation of information is in question, the issues are no longer just economic, but also strike at the core of our values.

Much like the corn farmer that had been limited to no other way to access the market with his perishable goods than the railroad, small businesses are at the end of the line for today's modern equivalent, the Internet. When one entity such as Google holds similar dominance – and perhaps similar lack of transparency into that dominance – our

society is faced with the same inefficiencies and costs. In the end the consumer is hurt by a decrease in supply driving an increase in costs and pricing, but more importantly the small business economy that this country thrives on is adversely impacted. I urge this Committee to work diligently on an immediate answer to this modern monopoly and market access problem.

VIII. Conclusion

The U.S. Small Business economy has thrived because entrepreneurs know that they can devote years of productive labor and resources into developing their inventions for the marketplace, secure in the knowledge that their work provides a solid foundation for a livelihood and a better community.

Big Tech looms over small businesses in the travel space and indeed, many commercial activities, threatening supply chain between supply and demand without rhyme or reason. Small businesses and consumer choice depends on access to market in order to thrive. The current structure is incentivizing a form of "efficient infringement" by large, capitalized companies, such as Google, who make an economic impact on the fair market value price for travel while not producing the consumed product or paying the producer for access to the product. This is in addition to the lost investment in the small businesses operations. The current structure creates an unvirtuous cycle whereby ever increasing costs to access markets decrease access to supply, drive up costs to consumers and drive down choice, and therefore undermine the foundations of the U.S. Small Business economy.

In sum, the U.S. Small Business community is now characterized by inordinately high costs to market access, high legal hurdles, and free riding by both the legal and illegal players in the online market.

I would ask that Congress through the diligent work of this Small Business Committee "hardwire" into the online 'railroad' the fundamental checks and balances necessary to ensure that the rights of Small Business owners are recognized and respected. Congress should look to address by regulatory means the necessary and real reform that will bring back balance to the U.S. Small Business economy and return the marketplace to the "gold standard" of innovation, market access and a fair playing field by the rule of law.

I thank you Chairwoman Velazquez, Ranking Member Chabot, and Members of the Committee for the opportunity to present this information to you and thank you for listening to the small businesses impacted by the decisions of Big Tech. It is an ever-changing landscape and I appreciate the work of this Committee to vigorously protect small businesses like ours.

I am happy to answer any questions you may have.

Acknowledgements

I wish to acknowledge assistance provided to me in preparing this testimony from Lisa Kolb, Greg Dugal and Devin Temple. Despite listing their names here, none of those individuals necessarily agrees with, nor endorses any of my comments or opinions.

Appendix A

Correspondence sent to the office of Senator Angus King, Maine, dated July 17, 2019

July 17, 2019

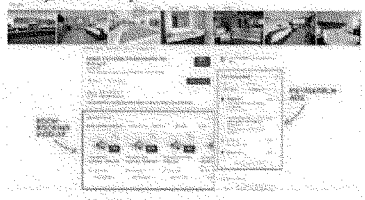
Dear Honorable Senator King:

I am resident and voter of Maine and part of the tourism industry that is critical to Maine's economy. The Meadowmere Resort is a family owned and operated small business and part of the Ogunquit and Southern Maine community. Since opening in 1983, we have welcomed visitors to Maine and to our family hotel. Back then, one could reach out to customers with a simple postcard.

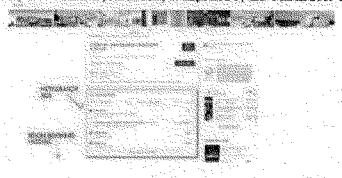
Today, I am reaching out regarding the metasearch practices of Google in the travel space. Recently, in March 2019, Google altered control over access to hotels such as ours by changing how the platform's search interface works in the travel space. It was labeled 'March 2019 Core update' by Google and contained several changes to the search results when looking for travel products, also known as the '5 pack' and to the metasearch ad console.

The following is an example of why the changes are of concern to Maine's tourism and small businesses:

Pre-July 2019 results layout



July 2019 results layout in beta, as impacted by the 'March 2019 core update':



With this change, the hotels direct booking engine efforts are pushed to "below the fold" and instead replaced by the metasearch results. The impact of this change means that Google is prioritizing an area where it makes money from the impressions and clicks within the metasearch box over the hotel's direct booking engine. The result often misleads the consumer to the highest bidder instead of to the hotel. The financial resources to compete against the billions and billions of dollars that online travel companies such as Expedia and Booking.com have in order to appear in the metasearch box are simply not afforded to the many small businesses that make up Maine's tourism industry. This is far removed from the days of postcards and from an open marketplace.

It has come to the hotel industry's attention – and therefore our attention - that Google is using its platform to place its paid product between the traveler and the hotelier. In essence, Google's layout acts as a gatekeeper that the hotel must pay for its direct booking option to appear. It does not escape me that this letter is dated just one day after Google claimed to not engage in such practices at the US House Judiciary Committee hearing. I would strongly urge that claim to be aggressively reviewed, especially in the travel space since in 2018 digital travel sales worldwide increased 10.4% to $694.41 billion (Source emarketer.com).

Eighty-two percent of travel bookings in 2018 were completed via a website or mobile app, without human interaction (Source Trekksoft). Should a large company with such tremendous market share as Google look to undercut access by having one hand of its paid products "bump out" a direct booking option, there are a number of anti-trust concerns raised. The concerns will only grow as screens get smaller with mobile bookings and perhaps disappear altogether with voice search. Then truly the small business will be at the mercy of what Google decides to show the end consumer.

Maine's small businesses and innkeepers have a right to access to their customer on a level playing field.

I urge actions such as those discussed above to be addressed when Congress continues to question the market share and impact of "Big Tech" and I urge Congress to help support Maine's important tourism industry.

Thank you in advance for your time and assistance.

Sincerely,
Allyson Cavaretta
Meadowmere Resort
Owner

Sources & Hearings:

https://koddi.com/google-experiments-room-booking-module-placement/
https://www.emarketer.com/content/global-digital-travel-sales-2018
https://www.trekksoft.com/en/academy/ebooks/travel-trends-report-2019
https://www.congress.gov/committees/video/house-judiciary/hjju00/9deWy1i5hpo

2019/11/12

Molson Hart's Congressional Testimony for the Committee on Small Business' "A Fair Playing Field? Investigating Big Tech's Impact on Small Business."

My name is Molson Hart. Almost 10 years ago I founded a toy company named Viahart. We have 4 full time employees and we sold about $4 million dollars of product on Amazon last year and should sell about $5 million dollars on Amazon this year. I speak Chinese, I know manufacturing, logistics, and e-commerce. And with regards to Big Tech, Amazon is my area of expertise. With my testimony, I am going to give you a bird's eye view of what it's like to operate as a small business in Amazon's orbit as well as answer the questions posed by the hearing summary. I will also submit detailed documents for the record that describe issues small businesses and consumers face on Amazon, what government can do about it, and whether they should.

To the question "Has Amazon created business solutions that have enabled small businesses to reach and serve new customers?" - The answer to that question is "Yes, absolutely." Their Fulfillment by Amazon program solved logistical issues for small businesses that previously would've required big investments or big headaches. This has enabled small businesses to offer less expensive and innovative products more easily to American consumers. Everyone, perhaps with the exception of brick-and-mortar retailers, has won: Amazon, small businesses, and consumers. As a result, Amazon owns e-commerce. We can talk statistics, but just trust me; for most categories, such as books, toys, electronics, home goods, and gifts etc., basically everything but cars, food, gasoline, luxury, and convenience, Amazon is dominant. In 2018, despite selling on eBay, Walmart.com, our own website, and brick and mortar stores, Amazon accounted for 98% of our revenue. So, "Do small businesses like ours rely on Amazon?" Yes, completely. When they say "jump", we say "how high" - if Amazon suspends us from the platform, we go bust, and we go bust fast. In 2018, we paid $2 million dollars to Amazon and Amazon's expenses as a share of our revenue on Amazon have gone from 33% in 2013 to 50% in 2018. That said, we've been profitable and our sales have grown 37% every year over that period. So "Do small businesses have an opportunity to compete in the information age?" It is not easy and we work very hard, but we, as a small business, have done all right. So, yes, we do have an opportunity to compete amongst "Big Tech"...but, is the playing field fair? The answer to that is like a Facebook relationship status - "it's complicated". If we compete against Amazon, we operate at a massive disadvantage, but provided they don't engage in underhanded tactics, that's okay. It's capitalist competition. If Amazon Basics knocks off one of our products, provided they didn't commit IP

infringement, it's unfortunate, but it's okay. On balance, while they certainly make their fair share of mistakes, which I describe in my additional submission for the record, and while they sometimes focus on what's legal rather than what's ethical, they are a good company. They're also an engine for innovation. As such, we, as a nation, should take great care in legislating or regulating this giant, but also fast moving and innovative company. Like in the hippocratic oath, we should "first, do no harm". In keeping the metaphor, it is said that sunshine is the best disinfectant. By shining light on the issues, we can compel Amazon to do a better job in addressing them. Since selling on the platform, I have seen them make great strides towards improving their marketplace for honest sellers and consumers. While I do think there are some areas where legislation and regulation is appropriate, in general, here, the threat of it is stronger than its execution. We can do better for American consumers, American small businesses, and the entire United States by proceeding with caution and introducing narrow legislation that addresses the nagging problems on the platform. My additional submission for the record not only describes these problems in detail, but also suggests legislative solutions that can win bipartisan support and better America for all stakeholders.

So let's do it. And let's do it now.

We have a unique opportunity in time to improve our country by doing so and I look forward to working with you to make it happen.

Thank you for this opportunity and I welcome your questions.

Testimony of Harold Feld
Senior Vice President
Public Knowledge

Before the
U.S. House of Representatives
Committee on Small Business

"A Fair Playing Field? Investigating Big Tech's Impact on Small Business"

Washington, DC
November 14, 2019

HEARING ON
"INVESTIGATING BIG TECH'S IMPACT ON SMALL BUSINESS"

Harold Feld, Senior Vice President
Public Knowledge

Chairman Velazquez, Ranking Member Chabot, thank you for inviting me here to testify today on this important issue.

No one can doubt that digital platforms, including "big tech" platforms such as Google, Amazon, and social media platforms such as Facebook, have created enormous opportunities for small businesses. Not only have these services allowed small businesses to extend their existing reach, but they have also created exciting new opportunities for entirely new small businesses. YouTube (owned by Google) and Twitch (owned by Amazon) have allowed tens of thousands of people to make their living through content creation, forming small businesses employing others.[1] Online shopping sites such as Amazon, Etsy and eBay have not only expanded the reach of traditional merchants, but also created new business opportunities for resellers and local distributors that suit local community needs. The Ultra-Orthodox Jewish Communities of Lakewood and Brooklyn, for example, has found that signing up as Amazon partners offers them flexibility that is well suited to the religious restrictions of Sabbath and religious holidays.[2]

At the same time, the dominance of a handful of massive companies in online retail, online search, online video and social media creates enormous problems for small businesses. These problems can be divided into two categories. First, small businesses face potential obstacles when they potentially compete with digital platforms. For example, there have been repeated reports that Amazon harvests information from third party vendors to develop competing products.[3] (Amazon claims it does not do this and has no incentive to do so.) There is evidence from leaked emails that Facebook used its control over application programming interfaces (APIs) to block competitors and extort concessions from app developers once it reached dominance in the social media market.[4] In 2017, the European Commission antitrust authority found that Google violated EU antitrust laws by favoring its affiliated content in its "Google shopping" service.[5]

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[1] *See* David J. Bland, *What is the Business Model for a Twitch Streamer?*, Medium (April 19, 2017). Available at: https://medium.com/precoil/what-is-the-business-model-for-a-twitch-streamer-f3b9e5351666

[2] *See* Leticia Miranda, *America's Orthodox Jews Are Selling a ton of Products You Buy on Amazon*, Buzzfeed (September 4, 2019). Available at: https://www.buzzfeednews.com/article/leticiamiranda/amazon-orthodox-jews.

[3] Julie Cresswell, *How Amazon Steers Shoppers to Its Own Product*, New York Times (June 2018); Greg Ip, *The Antitrust Case Against Facebook, Google and Amazon*, The Wall Street Journal (Jan. 2018),

[4] *See* Bill Goodwin, Sebastian Klovig Skelton & Duncan Campbell, *How Facebook's 'Switcheroo' Plan Concealed Scheme To Kill Popular Apps*, ComputerWeekly.com (November 6, 2019). Available at: https://www.computerweekly.com/feature/How-Facebooks-Switcheroo-plan-concealed-scheme-to-kill-popular-apps.

[5] *See* EC Competition Antitrust Page 39740. Available at: https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_39740

Importantly, however, small businesses that use digital platforms as necessary inputs for their businesses can face enormous costs and barriers to entry even when they do not compete against the platform. Giant platforms, lacking competition and focused on maximizing their own revenue and preserving their own quality of service, can cause havoc with small businesses through poorly implemented decisions or imposing cumbersome and expensive processes. For example, rivals have been known to sabotage each other on platforms such as Amazon and YouTube with fake complaints, forcing small businesses to undertake expensive and complicated appeals processes.[6] Changes in monetization policies or search algorithms can cause small businesses – through no fault of their own – to experience a sudden unanticipated drop in revenue.[7] Changes in policy by giants such as Amazon can force smaller platforms such as Etsy to change their own policies to compete, shifting costs to the small merchants that use these rival platforms.[8]

In other words, giant platforms present a danger to small businesses not simply when they deliberately try to put them at a disadvantage. Like the proverbial bull in the china shop, giant digital platforms are simply incapable of controlling how even their rational business decisions can have unanticipated and disastrous impacts on the small businesses dependent on them. It therefore lies with Congress to set necessary safeguards that balance providing a stable and competitive environment for small businesses while preserving the valuable features of digital platforms.

Lessons From The Physical World and the Last 150 Years of Communications Policy.

In the physical world, there is a well-developed body of law to prevent both deliberate anticompetitive conduct and to prevent providers of necessary business inputs from distorting the market. For example, there is an entire body of commercial real estate law that prevents landlords from unilaterally changing the terms on small businesses with no notice. A shopping mall owner could not, for example, simply lock a merchant out of their store for some presumed violation of the shopping mall's policy. But most digital platforms can – and do – shut down online merchants or impose various other penalties for purported infractions without any sort of notice or appeal process.[9] There are rules that govern necessary inputs such as telecommunications or electricity so that providers of these vital services cannot squeeze merchants dependent on them into agreeing to onerous terms and conditions. But there are no such rules in the digital space. To the

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[6] Josh Dzieza, *Prime and Punishment, Dirty Dealing in the $175 Billion Amazon Marketplace*, The Verge (Dec. 2018). Available at: https://www.theverge.com/2018/12/19/18140799/amazon-marketplace- scams-seller-court-appeal-reinstatement.

[7] *YouTube shooting spotlights creators' frustrations with monetization policy changes*, CBS News (April 7, 2018). Available at: https://www.cbsnews.com/news/youtube-shooting-spotlights-recent-changes-to-companys-ad-revenue-sharing/.

[8] Kaitlyn Tiffany, *Was Etsy too good to be true?*, Vox (September 4, 2019). Available at: https://www.vox.com/the-goods/2019/9/4/20841475/etsy-free-shipping-amazon-handmade-josh-silverman+&cd=1&hl=en&ct=clnk&gl=us.

[9] Ari Levy, *Amazon sellers say they were unfairly suspended before Prime Day, and now have two bad choices*, CNBC (July 17, 2018). Available at: https://www.cnbc.com/2018/07/12/amazon-sellers-removed-before-prime-day-two-bad-choices.html.

contrary, small businesses are left vulnerable in the online world in ways they have not been in the real world for over a century.

Below, I discuss important reforms Congress should consider to protect small businesses in cyberspace comparable to those they enjoy today in the physical world. While we must increase antitrust enforcement and improve antitrust law, we must also recognize the limits of antitrust law.

In my book *The Case for the Digital Platform Act*,[10] I argue that the rise of digital platforms reflects the latest iteration of disruptive communications technology. In the 150 years since the telegraph revolutionized every aspect of society from commerce to foreign relations to news reporting, society observed how dramatic changes in communications technology produce equally dramatic and disruptive changes in society. This should come as no surprise. At heart, all human interaction that creates society and commerce is communication. When society changes the nature of how people communicate, then society also changes the nature of how people do business. At the same time, however, society's fundamental values guide how people address these challenges. Our commitment to democracy, competition, consumer protection and public safety provide the necessary foundation for how our laws respond to the challenges these new communication technologies create.

Below, I summarize the relevant sections and recommendations for the committee. First, I discuss the importance of defining digital platforms and distinguishing between "dominant" and "non-dominant" platforms. Behavior that is neutral, or even pro-consumer or pro-competitive, when done by a small business in a competitive environment can be harmful when done by a dominant firm. This is particularly true in the digital platform space because of the enormous network effects that dominant digital platforms enjoy and the susceptibility of digital markets to "tipping."[11] Next, I make specific recommendations for legislative remedies that Congress could adopt, either individually or as part of a package, to create a new "digital authority" as recommended both in *The Case for the Digital Platform Act* and by several recent expert reports. I will focus specifically on measures to protect small businesses from anti-competitive conduct by platforms, certain pro-competitive regulations such as interoperability, how "filter bubbles" and other problems with search and recommendation algorithms harm small businesses, and protections against arbitrary treatment. Finally, I will discuss how antitrust law can and cannot promote a digital environment in which small businesses can thrive.

Defining Digital Platforms and What Constitutes "Dominance" In The Digital Platform Space.

Nearly every business today incorporates digital technology. Additionally, numerous businesses with radically different business models claim for various reasons to be "platforms" or digital platforms. Should the law treat businesses such as Google

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[10] Harold Feld, *The Case for the Digital Platform Act: Market Structure and Regulation of Digital Platforms* 17 (2019).

[11] Tipping refers to the tendency of certain markets to become uncontestable once they reach a sufficient level of concentration. Several expert reports have observed that digital platform markets seem particularly susceptible to tipping. *See* Jean-Pierre H. Dubé et al., *Tipping and Concentration in Markets with Indirect Network Effects*, 29 Marketing Science 2 at 199 (2010).

Search and other online businesses such as Netflix, or internet access providers such as Verizon or Comcast, the same? What distinguishes a would-be digital platform such as WeWork from a genuine digital platform such as Twitter? Defining what makes this particular sector of the economy unique makes clear the impact of "big tech" (as distinguishable from "big business" generally) on small businesses. In the last year, in addition to my own analysis, three separate expert reports have reached similar conclusions on what distinguishes digital platforms from other businesses.[12]

First, digital platforms do not provide internet access themselves. Instead, they are available through the internet. This radically changes the cost structure and enables rapid growth not possible for physical networks such as ISPs. Second, digital platforms enjoy powerful network effects. There is some argument as to what factors are most significant in creating these network effects, but they include: the ability of the platform to enable multisided markets and self-organizing subnetworks networks (e.g., users can be simultaneously buyers and sellers, can create multiple distinct groups, and can engage in multiple activities on the same platforms simultaneously); platforms can use personal information to manipulate users without their knowledge; and platforms can achieve a sufficient head start over rivals that it becomes almost impossible for new entrants to directly challenge the dominant platform ("tipping point economies").

These factors also create tremendous benefits for users. Collecting personal information enables platforms to customize features for enhanced service efficiency. Delivering service via the internet enables platforms to provide "always on" service (even if, as in the case of online shopping, goods and services may be delivered offline, they may be ordered at any time). The ability of users to self-organize and to simultaneously occupy multiple roles on the platform enables users (and small businesses) to enjoy unique business and social opportunities. At the same time, however, these attributes create the potential for tremendous competitive harms.

The Difference Between Net Neutrality and Search Neutrality. For political reasons, industry lobbyists over the years have sought to conflate internet access providers and "edge" providers such as digital platforms. These two businesses have radically different cost structures and business models. While the history of telecommunications (including broadband) provides useful information about networked industries centered on human speech, rote mechanical application of rules governing one business to the other is a recipe for disaster. It would be like applying the same regulations to airplanes and buses because "both are passenger vehicles for transportation."

The difference between digital platforms that ***use*** the internet and broadband providers that offer ***access to*** the internet is best illustrated by the difference between

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[12] *See* Jacques Crémer et al., *Competition Policy for the Digital Era*, European Commission (2019). Available at: https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf; Digital Competition Expert Panel, *Unlocking Digital Competition*, Her Majesty's Treasury (2019). Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785547/unlocking_digital_competition_furman_review_web.pdf; Fiona Scott Morton et al., *Stigler Committee on Digital Platforms*, Chicago Booth Stigler Center for the Study of Economy and the State (2019). Available at: https://research.chicagobooth.edu/-/media/research/stigler/pdfs/digital-platforms---committee-report---stigler-center.pdf?la=en&hash=2D23583FF8BCC560B7FEF7A81E1F95C1DDC5225E.

what "neutrality" means in the internet access context and the search context. As a principle of ensuring reliability and avoiding anticompetitive conduct, the basic concept of non-discrimination works reasonably well. But consider the difference in application between an internet service provider and a search engine.

An ISP simply delivers information from one location to another – classic telecommunications, generally referred to as "common carrier." For "neutrality" to apply in this context, the ISP needs to reliably deliver the information without any artificial distinction in service. The user buys transmission, the ISP provides it. Nothing more is required for the system to function, and the users on either end of the connection desire nothing more than that the system work in the same reliable way every time.

Now consider a search engine. What would it mean for a search engine to be a "common carrier"? The entire point of a search engine is to help a user sort through the billions of potential pieces of information available so that the user can find the most relevant information. This is entirely different from the function the user wants from the ISP, where the user already knows the information they want transmitted. It is like the difference between the telephone and an information directory. A person used to dial "411" to speak to a human being to help them sort through information to find the phone number, and the human at the information desk would then use the phone system to connect him.

This does not mean that concepts of "nondiscrimination" or "neutrality" have no application to search (either in a search engine such as Google or a recommendation algorithm such as a Facebook newsfeed). It is simply that they must express themselves in very different ways, and that mechanically applying the definition of "neutrality" from telecommunications to digital platforms would be a disaster. In the context of digital platforms such as search, as I discuss in greater detail below, nondiscrimination requires a certain level of transparency as to the nature of the search criteria and prohibiting self-dealing or deception. For example, Amazon was accused recently of altering its recommendation algorithm to make recommendations based on what products would be most profitable to Amazon, rather than on correlations with consumer preferences.[13] This violates "neutrality" to the detriment of small businesses trying to compete directly with the platform.

As this illustration shows, trying to compare the behavior of infrastructure providers such as ISPs or cloud storage providers to those of digital platforms is a recipe for bad policy outcomes. Legislative solutions should be designed to level the playing field between small businesses and big tech, not between big tech and big telecom.

Measuring the Cost of Exclusion. One of the difficulties in addressing market power is how to measure dominance. The term "digital platforms" covers a wide range of businesses, with giant platforms potentially able to impact or influence small businesses in ways traditional antitrust law has difficulty defining. Additionally, for a remedy to protect small businesses effectively, it must either blunt the impact of a dominant

[13] *See* Dana Mattioli, *Amazon Changed Search Algorithm in Ways That Boosts Its Own Products*, The Wall St. Journal (Sept. 16, 2019). Available at: https://www.wsj.com/articles/amazon-changed-search-algorithm-in-ways-that-boost-its-own-products-11568645345

platform's actions or reduce the market power of a digital platform so that new entrants can compete.

Additionally, behaviors that are anticompetitive in dominant firms may be procompetitive in smaller firms. Again, rote mechanical application of the same rules and standards does not produce fairness or a "level playing field." The law imposes additional obligations on dominant firms as a remedy to their exceptional market power and as a mechanism for promoting competition. Once the market becomes competitive and the previously dominant firm becomes non-dominant, the additional safeguards imposed to limit abuses of market power can be removed. But it requires a reasonable test of dominance to avoid removing these safeguards prematurely – especially in a market subject to tipping, such as this one.

I have proposed the cost of exclusion from the platform (COE) as the appropriate measure of dominance. As I explain in greater detail in *The Case for the Digital Platform Act*, once a platform achieves a sufficient size, businesses suffer a significant, non-transient harm from losing access to the platform (either losing literal access through deplatforming, or by effectively disappearing as a result of being degraded in search results and disappearing from recommendations as a consequence of anticompetitive discrimination). The measurable cost of exclusion from the platform can be considered a measure of a platforms market power. If a small business can walk away from a platform with little loss of potential business, then the platform should not be considered dominant. On the other hand, if losing access to the platform can mean a significant drop in revenue or significant increase in expense, then the platform has significant market power and should be considered dominant.

Use of COE illustrates why small businesses require protection even from unintended consequences of dominant firms. When YouTube changes its monetization policy, for example, the impact is felt by tens of thousands of small content creators.[14] Facebook's decision to prioritize "quality engagement" rather than extreme content in its newsfeed and recommendations had enormous impact on news outlets that had – for better or worse – optimized their headlines and coverage around Facebook's previous algorithm.[15] Even though moving away from an emphasis on "engagement" that placed greater value to more extreme content over more informative content was a positive change made in response to widespread criticism, the way in which it was done created significant disruption for thousands of news outlets and content creators unprepared for the change.

Finally, recent actions by Amazon illustrate how dominant firms can directly target vulnerable small businesses to offload costs and to deny small businesses access to competing platforms at more favorable terms. For example, Amazon has been accused of

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[14] Ben Bours, *YouTube's Latest Shake-Up Is Bigger Than Just Ads*, Wired (January 18, 2018). Available at: https://www.wired.com/story/youtube-monetization-creators-ads/

[15] Marlene Awaad, *Facebook is Changing its Algorithm (Again) To Stop Fake News*, Wired (April 10, 2019). Available at: https://www.google.com/search?q=facebook+algorithm+to+look+at+quality+engagement&tbm=nws&ei=OSLKXcjuMJCE5wLEsbDwBw&start=20&sa=N&ved=0ahUKEwiI7_mF2ePlAhUQwlkKHcQYDH44ChDw0wMIeQ&biw=1251&bih=609&dpr=1

penalizing sellers when their products are available for lower prices on Walmart.com.[16] This summer, Amazon imposed a new refund policy that requires merchants who do not ship through Amazon to accept returned merchandise in the same way sellers who use Amazon do. This leaves businesses that feel they cannot leave Amazon with two choices: eat the cost or switch to Amazon's delivery service.[17]

To be clear, this does not mean that dominant firms should be locked into the same technology or same set of algorithms forever. Rather, this highlights the need to impose due process obligations on dominant platforms to ensure that small businesses have the stability they need to thrive.

Measures to Promote Competition: The Case for the Digital Platform Act.

Several recent reports have urged creation of a new "digital authority" to promote competition in the digital platform space.[18] Public Knowledge similarly believes that the digital platform sector is sufficiently important to the economy and to society generally to require a specialized agency empowered to affirmatively promote competition, protect consumers, ensure a robust marketplace of ideas, and protect public safety. Congress has historically moved cautiously in expanding sector specific regulation. Our recommendations are therefore designed to work individually as well as in combination.

Data portability. One important feature in digital platform dominance is the collection and use of personal data from customers. This is particularly important for small businesses trying to maintain relationships with customers. Requiring platforms to honor requests from customers to move data to other platforms in usable formats has been recommended by many experts as a way to enhance competition.[19] In the small business context, it would enable customers to move information from the platform to the small business if the customer chooses, decreasing dependence on the platform intermediary, in addition to moving information to businesses that directly compete with the platform.

Open APIs, licensing essential patents, and interoperability. Interoperability is critically important for application developers. Disturbing reports of Facebook's "Switcheroo" plan detail how Facebook initially encouraged application developers to

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[16] Eugene Kim, *Amazon is testing a new program that lets it control third-party product prices as its pricing policy draws criticism*, CNBC (August 8, 2019). Available at: https://www.cnbc.com/2019/08/08/amazon-new-program-sold-by-amazon-amid-pricing-policy-scrutiny.html

[17] Spencer Soper, *Amazon is accused of forcing up prices for independent merchants in antitrust complaint*, Los Angeles Times (November 8, 2019). Available at: https://www.latimes.com/business/technology/story/2019-11-08/amazon-antitrust-complaint

[18] *See* Fiona Scott Morton et al., *Stigler Committee on Digital Platforms*, at 18; Digital Competition Expert Panel, *Unlocking Digital Competition*, at 8; Harold Feld, *The Case for the Digital Platform Act: Market Structure and Regulation of Digital Platforms*, at 188 (2019).

[19] *See* Fiona Scott Morton et al., *Stigler Committee on Digital Platforms*, at 16; Jacques Crémer et al., *Competition Policy for the Digital Era*, at 58-60; Harold Feld, *The Case for the Digital Platform Act: Market Structure and Regulation of Digital Platforms*, at 78- 81; Chris Riley, *Competition Through Interoperability*, Medium (Oct. 2017). Available at: https://medium.com/@mchrisriley/competition-through-interoperability-3ed34a5c55f1.

invest in Facebook applications with the understanding that they would have continued access to the necessary application interfaces.[20] Once Facebook achieved dominance, it used its power over these developers to extract concessions, such as requiring the app developers to spend over $300,000 in advertising on Facebook's mobile platform or lose access.[21]

Public Knowledge proposes eliminating significant barriers to interoperability for competitors and for businesses using a platform as an essential input. For example, content creators should be able to use the same applications to create content for diverse platforms such as YouTube, Twitch and Facebook without worrying that one of the important platforms will take steps to force them into proprietary applications. The history of the telecommunications industry shows that interconnection creates competition and creates stability for small businesses, since they can use interconnected competitors to access reliably their customers on competing platforms.

For the same reason, Public Knowledge recommends that companies that hold patents or copyrights that are essential to industry standards be required to license their intellectual property on fair, reasonable and non-discriminatory terms (FRAND). This does not mean that intellectual property holders must make their IP available for free. But FRAND licensing has been an important tool to prevent firms from using their IP to freeze out potential competitors or impose terms that prevent others from developing new, disruptive business models.[22]

Restricting use of information collected from commercial rivals and prohibiting "most favored nation" clauses. When small businesses use digital platforms, they expose some of their most sensitive proprietary information to the platform. Indeed, for the relationship to work, the platform must "know" details such as the popularity of a specific product, whether or not there are returns, and customer billing information. A platform may also legitimately require proof of quality control and proof of capacity to meet specific demand thresholds. Nothing prevents platforms from using this information to develop rival products and services and compete directly with the small businesses that use the platform. Indeed, there are persistent accusations that platforms such as Amazon engage in precisely this kind of behavior.[23]

Even without using information gleaned from the commercial relationship between the small business and the platform, dominant platforms can use their market power to require that small businesses provide them with terms as favorable as (or better than) those given to any rival platform. These "most favored nation" (MFN) policies prevent small businesses from taking advantage of efforts by potential competitors to compete against the dominant platform. The policies force small businesses to maintain

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[20] Bill Goodwin et al., *How Facebook's 'Switcheroo' plan concealed scheme to kill popular apps*, Computer Weekly (November 6, 2019). Available at: https://www.computerweekly.com/feature/How-Facebooks-Switcheroo-plan-concealed-scheme-to-kill-popular-apps

[21] *Id* ("In one of the most extreme examples, Facebook proposed that developers would lose access to Facebook's valuable data feeds unless they spent at least £250,000 a year advertising their apps on Facebook's mobile advertising platform.").

[22] European Commission Decision No. IP/14/489 (Apr. 29, 2014).

[23] Eugene Kim, *Amazon has been promoting its own products at the bottom of competitors' listings*, CNBC (October 2, 2018). Available at: https://www.cnbc.com/2018/10/02/amazon-is-testing-a-new-feature-that-promotes-its-private-label-brands-inside-a-competitors-product-listing.html.

higher prices even if the would-be competing platform offers superior terms in other respects. The ability of large platforms to conduct massive internet searches across multiple potential sales platforms gives the dominant platform an overwhelming advantage against any small business attempting to take advantage of competition between digital platforms.

Public Knowledge therefore proposes measures that have demonstrated effectiveness in the communications market. First, Public Knowledge proposes limitations on the use of proprietary information collected by the platform as part of its business dealings with small businesses. This type of information is known in communications law as "customer proprietary network information" (CPNI).[24] CPNI recognizes that although the network must "know" certain types of highly proprietary information to function, the law can limit the ability of the rival network to use this information for purposes other than the contracted service.[25]

Second, Public Knowledge proposes prohibiting punitive MFN clauses, or other mechanisms that prevent small businesses from finding alternatives to the dominant platform. Allowing small businesses to move freely between platforms without fear of reprisals is critical to maintaining a competitive environment and limiting the ability of dominant platforms to abuse small businesses dependent on them. It also promotes the development of competition, since dominant platforms cannot use their market power to prevent small businesses from patronizing rivals and enhancing their likelihood of success.

Non-discrimination, transparency and 'black box testing.' A repeated concern by small businesses and consumers alike is that platforms may favor content for reasons having nothing to do with consumer preferences. Whether it is Google Search, or Amazon's search engine and recommendations, or any other ordering and presentation of information, the platform has tremendous opportunity to discriminate in a number of ways without the consumer knowing. The most obvious concern is favoring affiliated products or down-ranking rivals. But platforms may also take money to prioritize search without disclosing this fact.

At the same time, businesses have incentive to "game the system" and try to manipulate search results. In the United States, "search engine optimization" (SEO), essentially the business of trying to get to the top of Google's search page, is a multibillion dollar business.[26] Bad actors have routinely used understanding of how YouTube and Facebook optimize their recommendation and news feed algorithms for "engagement" to promote content designed to radicalize or undermine democratic discourse. Creating a truly transparent system to verify non-discrimination is therefore highly inadvisable.

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[24] *See* 47 U.S.C. §222.

[25] *See* 47 U.S.C. §222; Harold Feld, *CPNI Is More Than Just Consumer Privacy -- How To Apply It to Digital Platforms*, Wetmachine (July 30, 2018). Available at: https://wetmachine.com/tales-of-the-sausage-factory/cpni-is-more-than-just-consumer-privacy-how-to-apply-it-to-digital-platforms/

[26] TJ McCue, *SEO Industry Approaching $80 Billion, But All You Want Is More Web Traffic*, Forbes (July 30, 2018). Available at: https://www.forbes.com/sites/tjmccue/2018/07/30/seo-industry-approaching-80-billion-but-all-you-want-is-more-web-traffic/#7128f8247337

In that case, the best solution is "black box testing."[27] Where a party has reason to believe that search and recommendation results are manipulated to discriminate in an inappropriate fashion, the party would file a complaint with the enforcing agency. The enforcing agency would then be given access to the code for testing purposes. The enforcing agency would then determine whether or not reasonable grounds exists to open an investigation. The complaining party would not get access to the code, thus avoiding the ability of parties to use the complaint process as a pretext to gain access to proprietary algorithms to reverse engineer them.

Product unbundling and structural separation. When the combination of products creates both a powerful incentive to engage in anticompetitive conduct and the structure of the company makes it difficult to otherwise police anticompetitive conduct, it makes sense to consider product unbundling and structural separation. Historically, these two remedies represent a range from requiring separate accounting within an intact firm to wholly separating the company into affiliated firms with entirely separate governance (even if they remain commonly owned). Typically, structural separation is created under the supervision of a court or an agency to ensure that it successfully creates lines of division that reduce or eliminate the incentive to favor one's own product and make it possible to police non-discrimination easily.

For example, beginning in the 1970s and continuing until Congress passed the Telecommunications Act of 1996, the Federal Communications Commission (FCC) required that incumbent telephone networks (first the AT&T monopoly, then the "Baby Bells") only offer certain types of service through a separate affiliate. For example, AT&T offered an alarm service. To ensure that it competed on equal terms with rival alarm companies, AT&T was required to offer this alarm service through an entirely separate affiliate, with separate corporate headquarters and separate facilities and workforce. Because AT&T was required to tariff the cost of interconnection with its phone network,[28] the FCC could make sure that AT&T the phone company offered the same rate to every alarm company – including AT&T's own affiliate.

Product unbundling works somewhat differently from structural separation. With product unbundling, a seller has a suite of products it may wish to sell as a unit, but regulators require it "unbundle" and sell the components separately. For example, in the 1990s, the United States required that local telephone companies sell unbundled access to various elements of the local network at regulated wholesale prices to potential competitors. The theory was that this would allow competition to emerge as competitors initially gained access to customers by leasing unbundled elements from the local

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[27] Harold Feld, *The Case for the Digital Platform Act: Market Structure and Regulation of Digital Platforms*, 111 (2019).

[28] A tariff is a regulated rate determined by a regulator (through a public rate-setting proceeding), based on the cost of providing the regulated service and a reasonable rate of return. It is a public document, and any similarly situated party is entitled to the same regulated rate. The rate regulator, such as the FCC, also has the power to hear and investigate complaints that the provider is engaging in price or service discrimination. Here, AT&T was required to offer all companies that wanted to interconnect with its network to provide alarm service the same government approved price, subject to investigation and enforcement by the government if it tried to favor its own affiliate.

monopoly provider, which would provide them with revenue to build out independent networks where economically feasible.

To illustrate with examples in the digital platform space, requiring Amazon to separate its retail business "Amazon Essentials" from its online merchant platform and operate them as entirely separate companies (even while allowing them to remain commonly owned) would be an example of structural separation. Alternatively, requiring Amazon to separate various services it currently requires third party sellers to take as a bundle and allowing them to pick which ones they wish to use would be an example of unbundling.

Structural separation and unbundling can be a very effective means of introducing competition and providing a level playing field for small businesses. The difficulty of implementing these regimes, however, should not be underestimated. Both structural separation and unbundling require ongoing regulatory supervision to ensure that the platform follows the rules. While the need for pervasive monitoring and supervision can be reduced in a well-designed system, it cannot be wholly eliminated as the economic factors that drove the consolidation in the first place will, absent some countervailing force, drive the separated pieces to reconsolidate.

Break ups and the Starfish problem. Sometimes, the only way to restore competitive balance to the marketplace is by breaking up a company into separate components. A successful break up will identify and separate the "natural monopoly" component for specific regulation, while simultaneously separating out those lines of business that reinforce the existing monopoly or monopolies.

The AT&T break-up is generally acknowledged as the most successful break-up in the last 50 years. It illustrates both the potential rewards of dismantling a set of interconnected and reinforcing monopolies and the enormous investment required to do so. The final litigation that concluded in the settlement breaking up AT&T into a long-distance company, an equipment manufacturing company, an information/yellow pages publisher and regional bell operating companies ("RBOCS," aka the "Baby Bells") took ten years and the combined efforts of the Department of Justice and the FCC. The FCC conducted multiple proceedings to ensure that the break-up did not disrupt the phone system, and preserved service in rural areas subsidized by AT&T's regulated monopoly rates. Even after the break-up in 1984, the FCC continued to regulate AT&T long-distance as a dominant carrier until 1995.[29]

Once the Telecommunications Act of 1996 removed legal barriers to the telecommunications monopoly reconstituting itself, the market proceeded on a steady march to concentration. While not a monopoly, the current communications market has been described as an "oligopoly on steroids."[30] The same fundamental economic factors that created the AT&T monopoly once again drove the communications market to concentration – a process which continues unabated with the recent acquisition of Sprint

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[29] Harold Feld, *The Case for the Digital Platform Act: Market Structure and Regulation of Digital Platforms* 100 (2019) (*citing* Federal Communications Commission (FCC), 1995, *In re: Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, FCC 95-427 11 FCC Rcd 3271 (1995)).

[30] Gene Kimmelman and Mark Cooper, *A communications oligopoly on steroids*, Washington Center for Equitable Growth (2017). Available at: https://equitablegrowth.org/wp-content/uploads/2017/07/071817-kimmelman-cooper2.pdf

by T-Mobile. Broadband, which was supposed to provide the competitive antidote, is divided in most markets between a higher-speed cable offering and a lower speed DSL offering from the legacy telephone company.

This reconstituted communications oligopoly 35 years after the break-up of the original "Ma Bell," is an example of the "starfish problem." Tear up a starfish and it simply regrows the missing limbs. While not all monopolies suffer from the starfish problem, this natural regeneration of concentration will occur in any market where the underlying economic structure of the market itself drives toward concentration. For this reason, although vigorous antitrust investigation and enforcement against dominant platforms is necessary, even the largest platforms can not simply be broken into pieces as a means of solving existing competition problems. Before any break-up, Congress must carefully consider what regulatory framework will prevent the market from simply returning to its highly concentrated state.

The Importance of Due Process.

Due process does not extend simply to government action.[31] Small businesses depend on a wide body of law protecting their rights to notice in the physical world. If a small business rents a storefront or space in a shopping mall, a body of commercial real estate law protects the business from arbitrary changes by the landlord and protects the shopkeeper from certain abusive behaviors. A small business can contract for critical inputs such as electricity or telecommunications or water service, confident that these utilities are subject to special regulation because society recognizes their vital importance as an input to small businesses.

Again, the point is not to replicate commercial real estate law or public utility law in the digital space. To the contrary, as I have repeated throughout this testimony, mechanical rote application of traditional law to digital platforms is a recipe for disaster. But the basic principle that both economic efficiency and fundamental fairness entitle small businesses to due process before losing access to essential services or experiencing dramatic changes in contract terms applies equally in cyberspace as in physical space. Distinguishing between dominant firms and non-dominant firms gives a starting point for discussion. When the decision of a single company can impact the bottom line of tens of thousands of small businesses, basic notice and protection become more urgent than when the stakes are lower. In the same vein, the nature of the notice and protections due should depend on the level of potential impact.

For example, Amazon has such a complicated and arcane set of rules around its appeals process that an entire cottage industry has developed to help small businesses navigate through it.[32] The problem extends outside of Amazon. Users routinely complain that they do not understand platform policies, nor do they feel well treated by their appeal

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[31] *See* John Bergmayer, *Even Under Kind Masters: A Proposal to Require that Dominant Platforms Accord Their Users Due Process*, Public Knowledge, 22 (May 2018). Available at: https://www.publicknowledge.org/assets/uploads/blog/Even_Under_Kind_Masters.pdf.

[32] Amazon Account Suspension Appeals, Riverbend Consulting. Available at: https://www.riverbendconsulting.com/what-we-do/account-appeals/?gclid=EAIaIQobChMI9o_vkOvk5QIV2IVaBR1D7gZPEAAYASAAEgIjLvD_BwE

process.[33] And, as mentioned above, content creators and third party sellers often find themselves given short "take it or leave it" notice for major changes imposing significant cost. Finally, in the cut-throat world of online retail, small business competitors may "hack" the processes of platforms to sabotage their rivals.[34]

A recent high-profile case on YouTube involving creator Lindsay Ellis illustrates how the lack of an appeals process can have significant impact for small businesses. Lindsay Ellis creates content for YouTube, and employs four people in her production studio.[35] As part of a video essay critical of Disney's effort to obscure its problematic history on racism, Ellis included a 5 second clip from the original animated Dumbo containing offensive lyrics from "the Song of the Roustabouts." UMG holds the copyright to the Song of the Roustabouts. When YouTube's Copyright ID system identified the 5-second clip as part of a song belonging to UMG, it did not conduct a fair use analysis. YouTube offered UMG the option to monetize Ellis' work by inserting advertising in Ellis' video. This not only unjustly allowed UMG to profit from Ellis' intellectual property (the use of the clip clearly falling into the category of fair use), but interfered with Ellis' sponsorship contract with Audible, which prohibits internal advertising in Ellis' video essays that it sponsors. When Ellis complained to YouTube, she was informed that YouTube provided no appeal process and that she would need to go to court to vindicate her fair use claim.

The point here is not that YouTube should not have a Content ID system. The point is that by failing to provide an appeal system, YouTube has privileged the complainant over the defendant and privileged large businesses that can afford expensive litigation over small businesses that cannot. Indeed, under applicable law, had UMG ordered YouTube to take down Ellis' video as infringing, Ellis would have been entitled to issue a counter-notice to YouTube to restore the video pending court review.[36] But because YouTube has decided to give the complaining rights holder an option to monetize the alleged infringement rather than demand a takedown, Ellis' statutory due process right has been abrogated.

As this example illustrates, a decision that a platform believes will benefit small businesses (providing a copyright complainant with an option other than takedown) can actually prove harmful to small businesses without appropriate due process. As this example also illustrates, there is no clear solution. Ideally, competition would prevent any single platform from becoming dominant, so that unintended consequences on one platform would not have broad impact and best practices could emerge as a function of competition between platforms. Absent this, however, Congress must consider how to encourage or require platforms to develop processes that treat small businesses fairly.

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[33] Eugene Kim, *Amazon's updated suspension policy still has sellers worried about getting inexplicably booted*, CNBC (July 20, 2019). Available at: https://www.cnbc.com/2019/07/20/amazons-updated-suspension-policy-still-has-sellers-worried.html

[34] Ari Levy, *This Amazon seller lost $400,000 in sales after being attacked by self-proclaimed 'virus of Amazon'*, CNBC (November 17, 2017). Available at: https://www.cnbc.com/2017/11/17/amazon-seller-targeted-virus-of-amazon.html

[35] The facts of this case and relevant citations are provided in my blog post: *Lindsay Ellis and the Future of Content in Europe*, Wetmachine.com (November 6, 2019). Available at: https://wetmachine.com/tales-of-the-sausage-factory/lindsay-ellis-and-the-future-of-content-in-europe/

[36] *See* 17 U.S.C. §512.

Small Businesses, Social Media, and the Problem of Filter Bubbles.

Small businesses rely on social media both directly and indirectly. Small businesses may themselves be content producers or offer businesses that rely directly on social media platforms. More commonly, small businesses use social media platforms to communicate with potential customers and to attract interest. A viral video or Tweet can drive business and increase search optimization. One of the contributing factors to the success of the Instant Pot was the organic growth of its Facebook community as a place to exchange recipes and generally encourage people to feel that owning an Instant Pot made them part of a community.[37]

But small businesses may find themselves stymied by the tendency of recommendation algorithms to recommend to people increasingly homogenous content. Dubbed "filter bubbles," this phenomena challenges the ability of new content providers to find an audience. As legal scholar Cass Sunstein has argued, traditional media have an "architecture of serendipity."[38] Go to a movie theater and you will see marquis for all the movies playing at the theater, even if you might not normally look for movies of that particular genre. Flip through television channels and you may stumble across an unexpectedly interesting TV show. Peruse the shelves of a bookstore and you may discover books from authors you never knew existed.

Increasingly, this experience cannot happen on digital platforms – to the detriment of small businesses. Recommendations are typically based on a combination of personal information (what the individual has previously watched before) and aggregate information ("people who liked this also liked that"). As the algorithm becomes more familiar with the individual user, its recommendations focus on content more and more similar to what the user watched previously, or what similarly situated people watched previously. Unlike the physical world, where the possibility of discovering something new ***increases*** with the length of time spent searching, the possibility of discovering something genuinely different actually ***decreases*** the longer someone uses the service. Addressing this "filter bubble" problem is complicated. Forcing users to look at content they do not want to see "for their own good" will create resentment. But the entire point of an "architecture of serendipity" is that the user actually ***would*** enjoy the content if they had the opportunity to discover it under circumstances that replicated browsing a bookstore or other situation where a person is searching for new content.

One approach I recommend is called the "wobbly algorithm." Algorithms generate a probability curve of content the user is likely to find engaging. Generally, given the limited space available, the algorithm recommends only a few choices at the very peak of the curve. What if, on some random number of recommendations, the algorithm recommended items slightly lower down the curve on either side? These would still fall within a general range of interest for the user, but they would not move in the same inexorable straight line as always selecting from the peak of the curve. Over time, this "wobbly algorithm" would introduce a significantly wider variety of content, but still falling within the range of content likely to appeal to the specific user.

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[37] Tom Huddleston, Jr., *How Instant Pot Became A Kitchen Appliance with a Cult Following and a Best Seller on Amazon*, CNBC (Nov. 26, 2018). Available at: https://www.cnbc.com/2018/11/26/how-instant-pot-became-a-kitchen-appliance-with-a-cult-following.html

[38] Cass Sunstein, *#Republic: Divided Democracy in the Age of Social Media* (2017).

Special Concerns Relating to App Stores.

Many application developers have a beneficial relationship with the platform they develop for. By making platforms more useful and versatile, they provide value to the platform owner itself, and to users. Platforms, in turn, provide them with a customer base, distribution, technical and payment services, and other things. In recent years, app stores have made it easier than ever for users to install software while being assured that it is secure, and security techniques like sandboxing and code-signing can protect user data and device integrity.

However, the relationship doesn't always go smoothly, especially when the interests of the platform owner and the app developer may not align--for example, when the app developer creates apps that compete with those produced by the platform itself. At these times, the very techniques that are used to benefit users and developers in most cases can become tools used for anticompetitive purposes.

The conflict between platforms and application developers has several flashpoints. Platform owners may privilege their own apps by preinstalling them on devices, and making it impossible to change certain defaults. Platform developers control the app stores that developers need to access to reach users, and could simply deny access to the store for alleged violations of the rules. App store rules themselves may be anticompetitive--and first-party apps might not even have to follow them. Platforms create the APIs that developers need to interact with, and these APIs in part determine the capabilities of apps. The APIs that developers are permitted to interact with may not give third-party apps the same functionality as first-party apps, and using the "private APIs" that platform owners can make free use of may be enough to block an app from an app store. Even the content guidelines that platforms establish may be problematic, if they prevent users from accessing lawful or politically sensitive content that is otherwise lawful.

The solution to these problems, however, cannot be to sacrifice user convenience and security by giving up the benefits that app stores and secure platforms provide. Instead, major platforms should prioritize the interests of users, and do a better job of creating an equal playing field for third-party developers. For example, a platform's own app store should not be the only way to install software on a device. With the safeguards provided by security techniques like sandboxing, code-signing, and app notarization in place,[39] users should be able to "sideload" software from the web. Public APIs should allow third-party apps to be fully competitive with platform-provided apps. Third-party apps that provide access to media like music, movies, and ebooks should not have to use platform-provided billing systems that make it impossible for developers to turn a profit. Additionally, while it is appropriate for the creators of major platforms to

[39] Sandboxing limits the amount of access that apps have to user data, data created by other apps, and system resources, sometimes allowing such access only in response to specific user actions. Code-signing is a cryptographic feature that ensures that an app comes from a specific developer, and prevents code from running if it has been modified after having been signed. Notarization is similar to code-signing, but involves the platform owner signing an app after checking it for malware and other issues. Both code-signing and app notarization allow an app to be remotely prevented from running if it is discovered to be malicious. Apps distributed through app stores are typically signed. Platforms can decide whether to require that apps be signed in some way, or can encourage if not require that apps be signed through certain user interface design choices.

provide users with a functional "out of the box" experience by preloading certain basic apps like email and a web browser, users should be able to change their defaults, and other apps (e.g., a video streaming service) should have to compete on a level playing field in the app store.

While policies like this can go a long way toward promoting competition and user choice while protecting security, a recent concrete example may illustrate why a sector-specific regulator is needed--to deal with specific factual scenarios it is unreasonable to expect Congress to have legislated about in advance, and where antitrust remedies may not be adequate.

In iOS 13, Apple limited the ability of third-party apps to gather location information in the background. While this may have some unintentional side effects on some categories of app, as a general matter this can be seen as an improvement to user privacy, and even a method to prolong an iPhone's battery life. However, Apple's own Maps app is not affected by this rule change—not because Apple has allowed the Maps app to collect location information in the background, but because location information for "Routing & Traffic" and "Improve Maps" is collected not by the Maps app but by the system itself. To opt out of this data collection, users have to go into the Settings app, chose "Privacy," then "Location Services," then "System Services" to locate the appropriate setting. By contrast, users have to use the Settings app to opt in to allow a third-party app to continually collect location data in the background--the app itself cannot offer that option at all. But the solution to this isn't to simply ask that Apple allow for indiscriminate data collection by apps--it is to require that Apple follow the same rules for data collection that it imposes on third parties, or to require that it makes the (non-personally identifiable) data that it collects available to third-party apps so that they can make the same use of it that Apple itself does.

This example shows that, with digital platforms, issues of privacy, security, competition, and even user experience can all arise together from a single decision. Deciding in advance as a matter of policy to optimize for one at the expense of the others would lead to a bad outcome. Thus, a unified approach is needed, and a single digital platform regulator would be best-suited to provide it.

The Role of Antitrust.

Traditionally, small businesses have benefited from pro-competition laws and rules, as well as strong antitrust enforcement, that kept consolidated power in check. This allowed small businesses greater room to thrive and provided them with a variety of options to choose from for their necessary inputs and paths to market. Over the last forty years, a de-regulatory spirit swept away many of these pro-competition policies, and the antitrust laws have been increasingly narrowed by judicial precedents based on economics that is now called into question.[40] Antitrust law needs targeted improvements in order to fulfill this important role again.

At the same time, America's antitrust agencies need to increase enforcement of our antitrust laws. The FTC, DOJ, and state attorneys general are investigating the dominant platforms for potential antitrust violations. This is a positive step. It's imperative that our antitrust enforcers scrutinize these companies to discover whether

[40] Jonathan B. Baker et. al, *Unlocking Antitrust Enforcement*, 127 Yale L.J, 7, 1742 (2018). Available at: https://www.yalelawjournal.org/collection/unlocking-antitrust-enforcement

they have committed violations of the antitrust laws and stop and remedy any violations that have occurred. It's important that the FTC, DOJ, and State Attorneys General devote the appropriate resources to make these investigations successful.

But digital platforms are a special case. Economists have identified digital platform markets as being particularly prone to tipping, with or without antitrust violations.[41] As a result, antitrust will only go so far towards building competition in an industry where there is currently very little competition. Antitrust enforcement must wait until anticompetitive conduct occurs, and remedies are limited to correcting the impacts of that anticompetitive conduct. Antitrust enforcers rarely get the opportunity to restructure industries in the big and continuing ways that are needed. A comprehensive regulatory plan is required to fully address the problems of competition in digital platforms.

Thank you and I am prepared to answer any questions at this time.

[41] Fiona Scott Morton et al., *Stigler Committee on Digital Platforms*, Chicago Booth Stigler Center for the Study of Economy and the State at 34 (2019). Available at: https://research.chicagobooth.edu/-/media/research/stigler/pdfs/digital-platforms---committee-report---stigler-center.pdf?la=en&hash=2D23583FF8BCC560B7FEF7A81E1F95C1DDC5225E

Theo Prodromitis

Congressional Hearing: US Small Business Committee

Thursday, November 14, 2019

My grandparents came over from Greece in the early 1900's and my parents were both born in NY. Our family values include hard work, integrity and helping others. We live by a Greek concept called "philotimo" which means love of honor and serving the greater good. They have all passed but would be extremely proud of my opportunity to share my small business story with this esteemed committee. Thank you, Chairwoman Velázquez, Ranking Member Chabot and Committee Members, for your time. Q4 is extremely crazy in retail, but it is an honor for me to be here!

My grandfather joined the US Navy in WWI and my father fought in the US Army in WWII. In addition, entrepreneurship is in our DNA. My father had one of the first automated car washes in New York City where he partnered with local, ethnically diverse families. We moved to Florida when we bought a Golf Course in Tarpon Springs. My father died when I was 8 and my mom became a Real Estate Broker. I started entrepreneurship early by running the school store in elementary school! I worked with my cousin George and brother Dean in our family business. They ran a large warehouse and distribution center with corporate offices and outside sales representatives for 30 years. As a sales and marketing trainer, I worked directly for several manufacturers of beauty products, traveling nationally visiting 12-20 salons and retail stores daily, including chains and big box retailers. The biggest market force I personally observed was the flooding of US stores with subpar, imported Chinese goods. The premium product market was in trouble and *consumer choices were being limited*. I could feel every pain point.

In 2003, we launched Spa Destinations line of personal care products only to have to pivot and downsize during the economic crisis of 2008. We heard about selling on Amazon in 2014. Our colleagues tried to dissuade us, because they saw Amazon as the enemy and competition, not an opportunity. My

experience told me otherwise. Consider that Moore's law of transistor power doubling every year will soon be replaced with Quantum Supremacy. Technology continues to evolve, we just had to figure out how to stay in business.

We didn't listen to naysayers and started small by listing a few of our natural sponges for sale on Amazon. It was an amazing opportunity to get our **premium** natural sponges directly to customers since stores were flooded with subpar, Chinese synthetic sponges. The Amazon selling platform offered us complete business training through "Seller University". They reinvented a way to get small brand, premium products to millions of customers quickly! The professional seller's account only cost $39.99 a month.

Everyone still asks me, "Can you really make it work on Amazon? Isn't it too hard, too competitive, too … everything?" One Pulitzer Prize winning journalist interviewed me and asked, "Are you sure your business on Amazon is fair and your business is profitable?" "Absolutely, I replied." He did not include me in his article, but I am proud to be heard today. Yes, you can make it and no it is not too hard.

When Amazon disrupts an industry, product category or concept, there is fall out because they can afford to give away products and profits. But the playing field levels, and it forces innovation and improved product quality. For example, Amazon set a new standard of delivery time with Prime, other retailers like Walmart and Home Depot innovated with in-store pick up and a more robust online presence. Also, Amazon created a category of "luxury beauty" to differentiate the premium brands from discount beauty. It requires more documentation, eliminating most counterfeit, used, spoiled or outdated resale products. Both examples result in an enhanced customer experience.

Customers come first at Amazon, so we *must* offer great products at great prices. Customers can give feedback to Amazon on absolutely everything including the photo, the description, the product. Sellers can provide feedback as well. Amazon is available 24/7 with support and an escalation strategy even

reaching up to Mr. Bezos and his team. They go to great lengths to protect our brand integrity. We do have to constantly read the terms updates, new marketing programs and follow the "Fulfilled By Amazon" shipping policies. In return, we get to co-brand with one of the most trusted brands in the world. Their logistics expertise blows away all the other e commerce platforms we sell on including eBay and Walmart. They allow us to leverage their billion-dollar technology and they train us on how to maximize sales, in some cases selling directly against them. Where else can I gain potential access to over 80 million customers?

I was invited to the Amazon Women's Entrepreneurship Conference in Seattle and have shared my experience with other sellers at an Amazon BOOST Conference. There are online and in person resources available to us all the time.

We love face to face business and brick and mortar stores. I am on the National Retail Federation (NRF) Small Business Advisory Council. The statistics reveal that brick and mortar is thriving and evolving with a synergy of serving customers both in-store and online. NRF projects continued retail growth in 2019. "It's not in-store vs. online. It's all retail. Of the top 50 online retailers, nearly all operate stores. Industry wide, online sales make up 10 percent of all retail sales." -NRF

Since launching on Amazon, we have grown to a multimillion-dollar, profitable business by being able to offer premium products directly to consumers. We reinvest in our people, product research and development and gain invaluable market insight from customer reviews and feedback. Amazon allows me to spend valuable time with my children, attend family events and even take them on vacations (our first one in 2015 was to Washington, DC). Rebuilding our business on Amazon has provided the funds to expand our own website and respond to evolving market demands.

For us, it is a business network that enables us to be a part of something enormous while maintaining control of our brands and individuality. Thank you.

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U.S. House of Representatives Committee on Small Business

A Fair Playing Field? Investigating Big Tech's Impact on Small Business

Testimony of Jake Ward
President, Connected Commerce Council
November 14, 2019

Chairwoman Velasquez, Ranking Member Chabot and Members of the Committee:

I am Jake Ward, president of the Connected Commerce Council (3C), a small business membership organization that promotes small businesses' access to essential digital technologies and tools.

On behalf of digitally-empowered small businesses nationwide, thank you for holding this important hearing, and thank you for inviting 3C to participate. Your exploration of Big Tech's impact on small business is extraordinarily valuable because you understand small business; you are the champions of small business. I encourage you to consider these issues carefully and to voice your opinions loudly.

Today I will use our time together to share what I have learned from thousands of 3C small businesspeople.

3C supports small businesses as a resource and an advocate. We promote access to and adoption of digital technologies and tools; provide resources and education to help optimize small businesses' digital opportunity; and cultivate a policy environment that considers and respects small businesses. 3C wants small businesses to succeed and we believe that digital technologies and tools give small businesses the best opportunity to succeed. A recent Deloitte study found that effective use of digital technology by small businesses resulted in markedly higher revenue, substantially greater profitability, and many more jobs created.

At 3C, we spend most of our time talking to and supporting small businesses. We have hosted SkillsConnect workshops nationwide, including in New York, Cincinnati, Boulder, Brooklyn, Sacramento, and Austin. We have been pleased to welcome Chairwoman Velasquez and Representative Chabot to our events so you can meet our members and hear their stories.

In many ways, 3C member businesses differ from one another. They include restaurants, authors and publishers, executive coaches, plumbing companies, inventors, hand-made leather goods producers, owners of small inns, wineries, print shops, and manufacturers. Yet in some important ways, their stories sound the same. If our member companies were here today, they would tell you that data-intensive digital platforms and marketplaces – including Google, Facebook, and

Amazon as well as Etsy, eBay, Yelp, Pinterest, TripAdvisor, Walmart.com, Houzz, QuickBooks and many more – benefit their businesses, help them compete, and accelerate their success.

Digital technology, digital platforms, and digital tools help small businesses start, grow and succeed in previously unimaginable ways – not only locally but way beyond traditional geographic limitations. Digital advertising and online marketing help small companies find new customers – globally and cost-efficiently. Data helps small businesses serve more customers at a lower cost. The digital cloud helps small businesses reduce paperwork, reduce their environmental footprint, and go on vacation while remaining available to colleagues and customers. Digital marketplaces help small businesses sell more products locally and globally.

- A 3C member in Iowa invented a retractable fabric gate to keep toddlers safe, and another member in Utah invented an all-in-one bedding set that makes it easy for kids (and adults) to make their bed every morning. As a startup, breaking into traditional retail and competing against global giants is almost impossible, so these entrepreneurs built simple websites and used Facebook posts and Google advertisements to find their first customers. Years later, digital marketing and data science still drive their growth and success. These companies employ dozens of people and has customers worldwide.

- A Columbus, Ohio print shop and an Arizona sports accessories retailer offer thousands of products in their online stores and compete against industry giants. Two decades ago, they would have been local shops with local customers; today they are small and global simultaneously.

- Several 3C members manage family-owned restaurants. They work with Yelp, Google, TripAdvisor, and Facebook to attract customers, manage their reputations and share specials and coupons, and they receive almost immediate feedback on whether their efforts are effective. Without digital platforms and tools, these restaurants would struggle to compete against big chain restaurants.

These are not simply feel-good stories or digital innovation stories. They relate directly to this hearing and the policy issues this Committee and others are considering because, in so many respects, the digital platforms and tools powering small businesses are provided by some of the world's largest companies, and several of those companies are being criticized and investigated.

Through the course of history, disruptive innovation has challenged incumbent industries. The combustion engine challenged horse-drawn carriages, the airplane challenged passenger and freight trains, and digital music challenged traditional record companies. Fortunately, policymakers in those times carefully scrutinized the complaints of then-powerful economic incumbents, and the inventions that once caused angst and turbulence were not over-regulated out of existence, and are now accepted as status quo.

With respect to this hearing and many of the digital economy investigations, 3C's concern is that policymakers, competition regulators, thought leaders and headline writers are focusing only on the largest companies, the loudest voices, and assertions of negative impacts or challenges when considering how to regulate the digital economy. It is so easy to say "big is bad," to hear the

wailing laments of incumbent businesses and industries, and to take for granted the opportunity and access to opportunity that deserves celebration and protection.

3C is also concerned that policymakers too often talk about small businesses rather than listen to them. For example, the U.S. Federal Trade Commission held several hearings about the digital economy and whether antitrust law should be reconsidered, and not a single small business or small business organization was invited to testify. 3C and our members thank Chairwoman Velasquez and Representative Chabot for sending a letter to the FTC calling attention to that glaring oversight.

The challenge of every small business is unique but their stories are universal. Unleashing the potential of American small business now requires access to affordable, secure, and scalable broadband and digital tools. It also requires policymakers to understand that the digital economy is a different type of interconnected and interdependent economy where the investment of global platforms have direct, tangible local benefits, and the value of access to digital tools is measured in new employees and increased financial security.

As I noted earlier, there are many more digital platforms than the Big Three or Big Four that so many people think about – Google, Facebook, Amazon, and Apple. QuickBooks supports home-based entrepreneurs and small businesses. John Deere's Precision Agriculture solutions work wonders for small farmers. Pinterest and Houzz support and promote home decoration and renovation products, designers and contractors. These companies collect, aggregate and analyze vast quantities of data - safely, securely and affordably - and deliver the power of data science to small businesses that could not do this or afford this in virtually any other way.

The idea that regulators and policymakers are gleefully investigating free and low-cost services that power small business success mystifies 3C members. Just last week a longtime Google critic pointed out that the government investigation targets are not "Big Tech," but rather are those companies whose business model is to provide "purportedly free services in exchange for massive and unconstrained collection of consumer data untethered to the underlying service." Perhaps this critic does not recall the days of "free" broadcast television and broadcast radio, when large companies paid writers, directors, news reporters and actors billions of dollars to create "free programming" that was really just an advertising platform in disguise. Or free and low-cost newspapers that gave away information about City Hall and town meetings as subterfuge to sell advertisements. And should we investigate grocery stores? Are they massive corporate conglomerates providing us with discount fruits and vegetables as a ruse to sell shelf space and endcaps? Are they offering loyalty cards and gasoline discounts as a scheme to collect our data to sell coupons and in-store advertising?

For decades inventors and entrepreneurs have struggled to get new products into traditional retail stores. Sophisticated corporate buyers now demand up-front payments for in-store sampling stations and upend the traditional wholesale model by refusing to pay for products until they are purchased by consumers. These "free experiences" that are offered to consumers – like malls and department stores – have become data-driven multi-sided markets that mercilessly exploit retail tenants, food and health care companies and especially the entrepreneurs who rent kiosks to launch a new business.

Let's take a moment to dig more into the retail industry. It was only a few years ago when Federated was buying Marshall Field, Macy's, Hecht and many more local anchor retail chains, and then squeezing more discounts and imposing more burdens on local manufacturers – if they were even allowed to sell product in those stores. Amazon did not invent or even perfect private label products that compete against their suppliers. Private label products were invented in the 19th century by merchants who recognized that customers would welcome lower-cost high-quality alternatives. The Wishbone brand that we know for salad dressing started as a private label brand in a Springfield, IL grocery store owned by Jacob Bunn – the same Jacob Bunn who sold the Mary Todd brand of coffee and went on to manage the political campaign of his good friend, Abraham Lincoln.

Retail brands that we all know (though some have disappeared) started as private label sellers. In 1858 R.H. Macy opened its first department store, and in its first century it produced and sold more than 4000 private-label branded products – hoop skirts, wrapping paper, sewing machines – the list is endless. Today Macy's still sells hundreds of high-quality competitively-priced private label products.

Other stores took a different route. A&P established a retail presence and then created "Eight O'Clock Breakfast Coffee." Sears built a retail presence and then, in 1927, created Craftsman tools. I am sure that independent tool manufacturers were unhappy that a large customer was now competing with them, but did they run to Congress and Attorneys General for relief, or did they instead build their brands and adjust their pricing strategies?

Certainly, Amazon is not the first retailer, or even the first large retailer, to build a private label business on the foundation of in-store data. CVS, Walgreen's and every grocery chain in America got there first.

Fortunately for inventors and small manufacturers, Amazon has unlimited shelf space and small companies can advertise and market independently to drive customers to their Amazon product page, or to their product page on Etsy, eBay, Walmart.com, or their own website. With Amazon and other e-commerce partners, entrepreneurs can test market new products, prices, colors, and features without ever building or shipping a product and without begging or paying off a corporate retail buyer for shelf space.

It is indisputable that large digital platforms, services, and marketplaces provide small businesses with affordable, scalable and secure business solutions. What is not equally understood is that these solutions are affordable, scalable, and secure because of the platforms' relative size. It is because of their size and scale that platforms have the capital to invest and the flexibility to price so that small businesses have a pathway to viability, growth, and success. Without the large platforms, these services would not exist or would not be affordable to 3C member small businesses.

We are living in an extraordinary era for entrepreneurs and small businesses. When new products, marketing campaigns, and advertising creative can be tested online for less than $100, there is virtually no barrier to starting a business or introducing a new product. But if the large digital platforms are broken up and each business unit would need to be individually profitable or pay the other business units for data or data solutions, there would be significantly fewer free

or low-cost tools and services available to small businesses, prices would increase and effectiveness would diminish. That would reduce small business formation; undermine small business innovation; and hurt families in nationwide.

It is also notable that large digital companies compete aggressively against each other. Some 3C members spend more money on Facebook and Instagram; others think Google is a better partner; and still, others focus on Amazon and Pinterest. Moreover, new competitors are entering the market every day and driving innovation. Each of the platforms is investing in new and better small business offerings, and small businesses and their hometowns benefit.

A common theme of 3C companies - the power of technology and data - connects directly to today's hearing. Unleashing the potential of rural America requires unleashing the potential of digital tools, access to data, and the power of data science for rural America. For many years, policymakers and thought leaders have discussed the digital divide as a broadband access issue and focused attention on how underserved communities would benefit from inexpensive access to broadband. These are legitimate concerns, but 3C's focus is the next question: once broadband and digital tools are available, how can small businesses maximize the opportunity?

The reality of the digital economy is that our members – and nearly 30 million small businesses like them - stand on the shoulders of large companies to reach otherwise unattainable heights. Platforms invest in scalable, secure, and affordable tools. Marketplaces connect buyers with sellers. Small businesses leverage these tools and marketplaces to start, build, and grow. The guiding principles of the digital economy – speed and scale – consistently drive shared value and mutual benefit for small businesses. Innovative technologies and approaches are widely available, easily adopted, and improved quickly. Our public officials must take great care to ensure that policies focused on the largest digital companies do not inadvertently undermine small business opportunity.

It is impossible to overstate the billions of dollars in small business value and the millions of small business jobs supported by some of America's largest digital companies, including eBay, Etsy, Amazon, Square, Intuit, FreshBooks, Google, Constant Contact and Facebook. Some of these companies are much larger than others, but all provide extraordinary and low-cost platforms and tools to small businesses. This committee, other federal policymakers, and competition regulators must not overlook this.

We cannot afford to lose the forest through the trees, focusing our attention on only the largest and more prominent companies and issues. Rather, we should try to take the perspective of a small business, seeing the full landscape as we consider who will ultimately pay the price if business models are dramatically changed, costly regulations are enacted, or access to essential tools is limited.

On behalf of the tens of millions of digitally-empowered American small businesses, thank you for welcoming 3C today. We look forward to working with you and your colleagues to lower technological barriers to small business success, to strengthen competition and to continue promoting small business opportunity.

ACT | The App Association

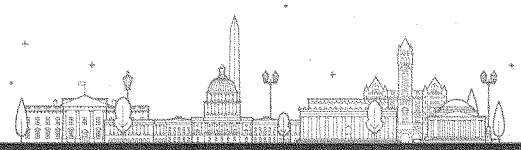
A Fair Playing Field? Investigating Big Tech's Impact on Small Business

Testimony of

Graham Dufault
Senior Director for Public Policy
ACT | The App Association

Before the

U.S. House of Representatives Small Business Committee



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I. Introduction

We applaud the House Small Business Committee for holding this hearing on the effect large technology-driven companies have on the growth and success of their small business counterparts. The time is right to examine how public policy concepts, including the role of competition law, apply in a variety of markets characterized by the presence of large companies with global reach. In previous tech sector-focused hearings across Congress, Members heard from a broad swath of large company representatives and consumer interest groups. Even in those hearings, the discussion often turned to how the practices of large companies affect innovative small businesses. ACT | The App Association is the voice of small business tech entrepreneurs, and we appreciate the Committee welcoming the views of our members and for giving small companies a voice on how best to safeguard innovative market activity and job creation in tech-driven industries.

The App Association is a trade group representing about 5,000 small to mid-sized software and connected device companies across the globe. In the United States, our member companies are part of a $1.7 trillion industry, supporting about 5.9 million jobs. We regularly participate in legal and regulatory proceedings affecting the relationship between consumers, small innovators, and platforms.[1] Further, we actively facilitate engagement between app developers, investors, and platforms in forums across the country.[2] For example, we are hosting events across the nation this year and next in our Developed | The App Economy Tour to highlight local success stories from the app ecosystem. Our destinations include New York, Minneapolis, Denver, and Oakland, and our panelists range from our members to venture capitalists to legal experts discussing subjects like the California Consumer Privacy Act.[3] The constituents of members of this Committee drive competition in the app ecosystem, and with these events, we aim to show that innovation is happening everywhere in the United States.

We urge this Committee to carefully consider how any potential changes to relevant federal law would affect industries across the economy. There is no longer a "tech industry" as it was commonly perceived when personal computers (PCs) first connected to the internet. Ubiquitous connectivity and access to cloud computing superimposed a tech-driven element to virtually all industries across the economy from agriculture to venture capital. As a result, competition has new and dynamic characteristics not just in tech, but everywhere. App Association member companies are at the center of these market changes, and their continued ability to create jobs in your congressional districts depends on robust enforcement of antitrust laws where appropriate and allowing competition to take place where intervention is inappropriate.

The proliferation and increased diversity of entrepreneurship creates less definable markets where value chains are not as easy to trace since they rely on data rather than tangible goods and are undergirded by two-sided platforms. We call on the Committee to appreciate the

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[1] *See, e.g.*, Brief for ACT | The App Association as Amicus Curiae Supporting Petitioner, Apple v. Pepper, 587 U.S. ___ (2019) (No. 17-204), *available at* https://actonline.org/wp-content/uploads/ACT-Amicus-Apple-v.-Pepper.pdf; Comments of ACT | The App Association to the Fed. Trade Comm'n on Competition and Consumer Protection in the 21st Century (Question 3: "The Identification and Measurement of market power and entry barriers, and the evaluation of collusive, exclusionary, or predatory conduct or conduct that violates the consumer protection statutes enforced by the FTC, in markets featuring "platform" businesses," Aug. 20, 2018, *available at* http://actonline.org/wp-content/uploads/Q3-ACT-Comments-re-FTC-2018-Consumer-Protection-Hearings-082018-FINAL.pdf.

[2] *See, e.g.*, ACT | The App Association, "Queen City Mobile Summit highlights Cincinnati as mobile tech hub," (Feb. 23, 2016), *available at* https://actonline.org/2016/02/23/queen-city-mobile-summit-highlights-cincinnati-as-mobile-tech-hub/.

[3] *See* https://actonline.org/developed/.

complexity of the market while also keeping in mind a few straightforward concepts that define the evolution of platform-driven markets.

First, app developers have direct relationships with their customers and clients—they are not "suppliers or manufacturers" of apps on behalf of software platforms. Second, software platforms provide significant value for developers and consumers, demonstrated by the increase in choices, access to new markets, and the reduction in prices for software since platforms entered the market. Third, platforms are not perfect. Developers want more transparency and continued improvements to security and safety. Our member companies want platforms to compete for their business, and they want to ensure competition is robust.

II. Software Platforms Provide Autonomy to Developers

Although platforms help software developers and device makers reach their clients and customers, there is a direct relationship between the client or customer and the developer. The majority decision of the Supreme Court of the United States (SCOTUS) in *Apple v. Pepper*—a split 5-4 decision—mistakenly conceives of platforms as "retailers" of apps, while app developers are mere "manufacturers or suppliers."[4] But our member companies do not "manufacture" or "supply" software on behalf of a platform. Platform companies do not order a shipment of apps from a developer as part of their supply chain—app companies are not contract manufacturers. Rather, developers sell directly to consumers and clients.

In *Apple v. Pepper*, SCOTUS was grappling with whether an app buyer has standing to sue a platform company under antitrust law, even though the app developer sets the app's price. Important to that determination is whether the buyer is also a direct buyer from the platform, which in turn is in part a function of whether the developer's product is distinct from the platform's product. This line-drawing may seem semantic, but it is an important exercise from a competition perspective. Developers can choose the best platform through which to reach these customers and clients, and platforms compete with each other for the ability to provide that service to our member companies. The result of *Apple v. Pepper* is legal precedent to now treat app developers as part of a distribution chain controlled by platforms, at least for purposes of whether a platform can be sued for app prices charged by app developers. But the relationships between developers and their customers and clients are direct and separate from the exchange of value for app developer services that comprise the platform-to-business market.

III. Platforms Have Reduced Costs for Developers and Enhanced Competition and Choices for Consumers

Consumers and developers experienced significant changes since the introduction of various mobile software platforms. In addition to having more choices, consumers also benefit from lower prices for software and even access to new markets that did not previously exist. Similarly, developers benefit from lower overhead costs, built-in customer trust, and wider distribution and market access.

[4] *Apple v. Pepper*, 587 U.S. ___ (2019) (No. 17-204), at 2 (May 13, 2019).

Choices proliferated because entry into the software market is much easier now than it was before platforms.[5] Before platforms, the nature of the marketplace forced software developers to take on tasks that were well beyond their core competencies—from marketing to protecting their intellectual property and negotiating with a variety of different types of companies to distribute their products. The transaction costs of taking on all these extra tasks were significant, and platforms have eliminated many of them. The resulting environment is one in which small companies like App Association members can retain their size and thrive. Our member companies experience a wide variety of growth trajectories. Growing to the enormous size and reach of companies like Facebook or Uber is not the only measure of success. To fully appreciate the depth of the app economy and its potential, one must look well beyond the "Top 10" apps in the major app stores or the eye-catching headlines covering the initial public offerings of unicorn companies.

Before the ubiquity of mobile platforms, the software ecosystem ran on personal computers. This forced early app companies, often with teams of just one or two developers, to wear many hats to develop, market, and manage their products. App companies were not only required to write code for their products, but they were also responsible for: 1) managing their public websites, 2) hiring third-parties to handle financial transactions, 3) employing legal teams to protect their intellectual property, and 4) contracting with distributors to promote and secure consumer trust in their product. App developers, trained in software coding and project management, were not well-equipped to carry out these tasks, and the additional steps cost them valuable time and money, with little tangible benefit.

Without platforms, developers had to take all of these additional steps, creating friction at each point, which meant that the only software titles that were available to the public were those that made the complicated journey from development to publishers to retailers like CompUSA or Best Buy. At one point, in 2003, CompUSA rolled out an early concept of a software platform consisting of a kiosk that burned made-to-order CDs containing software applications. With this system, the retailer could offer more software programs than it could fit on its shelves (which is how software was sold at that time), providing 1,200 titles from 200 different publishers.[6] Now, there are more than 317,673 companies active in the mobile app market in the United States[7] and more than 2 million apps available on the major app platforms. The kiosks are now in our smartphones—there are more than 5.28 billion mobile broadband subscriptions worldwide as of 2018[8]—which are attached to smartphones in the pockets of over 80 percent of Americans[9] and saving them the trip to Best Buy to purchase the box software.[10]

In the internet economy, immediate consumer trust is almost impossible without a substantial online reputation, and not attaining it spells death for any app company. However, what does

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[5] Daniel Ershov, THE EFFECTS OF CONSUMER SEARCH COSTS ON ENTRY AND QUALITY IN THE MOBILE APP MARKET, TOULOUSE SCHOOL OF ECON. (Apr. 18, 2018), *available at* https://www.cemfi.es/ftp/pdf/papers/wshop/DErshov_MobileAppCompetition_Jan2018.pdf.
[6] Brian Osborne, "CompUSA offers software vending machines," GEEK.COM (Dec. 12, 2003), *available at* https://www.geek.com/news/compusa-offers-software-vending-machines-551706/.
[7] DELOITTE, THE APP ECONOMY IN THE UNITED STATES (Aug. 17, 2018), available at http://actonline.org/wp-content/uploads/Deloitte-The-App-Economy-in-US.pdf.
[8] Mike Murphy, "Cellphones now outnumber the world's population," QUARTZ (Apr. 29, 2019), available at https://qz.com/1608103/there-are-now-more-cellphones-than-people-in-the-world/.
[9] Adam Lella, U.S. Smartphone Penetration Surpassed 80 Percent in 2016, comScore (Feb. 3, 2017) Available at: http://bit.ly/2pT04qo.
[10] *See*, Ashley Durkin-Rixey, "Out of the Box: How Platforms Changed Software Distribution," ACT | THE APP ASSOCIATION BLOG (Sept. 28, 2018), *available at* https://actonline.org/2018/09/28/out-of-the-box-how-platforms-changed-software-distribution/.

"trust" mean? In this context, trust refers to an established relationship between the app company and consumer where the consumer has the confidence to install the app and disclose otherwise personal information to an app company. Prior to platforms, software developers often handed over their products to companies with a significant reputation to break through the trust barrier.

Bungie—developer of popular games Halo, Myth, Oni, and Marathon—chronicled in 1996 the difficult and sometimes oppressive distributor requirements placed on software developers that predated the platform ecosystem. When dealing with retail distributors, Bungie was required to guarantee a competitive price, pay 3 to 6 percent of sales as a marketing fee in addition to $10,000 for product launch marketing, pay the shipping costs to deliver their products to distributors, and agree to buy back unsold products. Once contracts were negotiated, software developers were often required to spend additional money so that in-store catalogs would feature their product or retail stores would place their product on an end cap display, all before consumers even saw the products.[11]

However, with the advent of the smartphone, the experience Bungie described is a relic of the past. The smartphone, in its brief history, revolutionized the economy at large and established a symbiotic relationship between platforms and developers. And in the decade since the introduction of the App Store and other platforms, those developers and app companies contributed both to the overall success of smartphones and improved their functionality for consumers.

At first, developers were reluctant to join platforms, worried that the model might not accommodate their ability to "launch fast and iterate"[12] their apps. But successful platforms changed the app ecosystem by providing app developers with ubiquitous access to a broader swath of consumers. Platforms provide a centralized framework for app developers to engage and secure visibility with the 3.4 billion app users[13] worldwide. With lower costs and barriers to entry, both fledgling and established app developers can find success. For example, educational app company L'Escapadou secured 1.3 million downloads and earned more than $1.5 million from app sales between 2010 and 2014, a success attributed to the centralized nature of platforms. Founder Pierre Abel specialized the language, content, and pricing of each of his apps based on consumer and market needs and marketed them on different platforms to reach a variety of consumers around the world.[14]

IV. There's a Platform for That

As successful as the past 12 years have been for the app economy, the next decade could be even better. In just the first half of 2019, the two major app stores generated $39.7 billion in revenue—a robust 15.4 percent increase over the first half of 2018's $34.4 billion.[15] This growth

[11] Alexander Seropian, Distribution Myths and Lies, TidBITS (Nov. 4, 1996) *available at* http://bit.ly/2hitGau.
[12] To launch fast and iterate is often used to describe a software developer's business plan, where software developers like to launch products as soon as they are finished and like to update newer iterations of their product actively. Paul Graham, Apple's Mistake, paulgraham.com (Nov. 2009), *available at* http://www.paulgraham.com/apple.html.
[13] Simon Kemp, "The global state of the internet in April 2017," TNW (last visited Jan. 17, 2018) Available at: https://thenextweb.com/contributors/2017/04/11/current-global-state-internet/.
[14] Steve Young, Making $1.5 Million with Educational Apps with Pierre Abel, App Masters (Apr. 30, 2015) Available at: http://bit.ly/2hgDzZH.
[15] SensorTower Store Intelligence, "Global App Revenue Reached $39 Billion in the First Half of 2019, Up 15% Year-over-Year," (Jul. 9, 2019), available at https://sensortower.com/blog/app-revenue-and-downloads-1h-2019.

suggests the developer-platform model is still succeeding. Moreover, app economy growth is likely to endure because developers are continuing to create new products, services, and markets that did not exist prior to platforms. Perhaps the most notable of these is the market for ridesharing. Connecting a driver—using his or her own car—to a potential passenger in real-time for an on-demand ride to a destination selected by the passenger was impossible before developers could use the GPS capabilities and data connections of smartphones. Ridesharing is an important example of how app developer ingenuity meets the capabilities, built-in trust, and developer services of platforms to create new options for consumers.

The same combination of technologies and network effects has produced new possibilities for delivery services. For example, App Association member GetSwift created a white label—that is, a program created by GetSwift but with the client's branding—delivery tool enabling shippers in any type of industry to move their products to their customers quickly, efficiently, and easily.[16] The platform works the same whether the shipper is a rural farm that delivers fresh vegetables to individuals or an office water supplier,[17] as the real-time connectivity it provides reduced late or missed deliveries by 25 percent in some cases.[18]

Just as ridesharing fundamentally changed how we get around, developers and platforms also revolutionized how we access healthcare. A current shortage of about 30,000 physicians in the United States—which is projected to increase to up to 90,000 in the next six years—contributed to the need for caregivers and patients to find new ways of communicating. Compounding the caregiver shortage, 133 million Americans currently live with chronic conditions—most of them residing in rural areas with long drives to their nearest provider.[19] Devices, sensors, and software are now capable of gathering and analyzing physiological data like movement, heart rate, or blood oximetry so that physicians can better monitor their patients at home and address potential problems before they occur or worsen.[20] Studies show that preventive care regimes that use connected health tools are especially useful for patients with chronic conditions like diabetes and heart failure, which tend to affect underserved and rural communities especially.[21] But how do these capabilities reach patients and consumers, specifically those who need them most? Most Americans already interact with platforms, through a variety of different types of devices. We know that smartphone adoption rates are increasing among underserved populations in the United States and that for many, their handheld device is their only means of accessing the internet.[22] Here again, developers are leveraging the ubiquity and trusted

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[16] *See* Madeline Zick, "Rural Innovators Play a Key Role in the App Economy—Television White Spaces Can Help Them Do More" ACT | THE APP ASSOCIATION BLOG (Aug. 6, 2019), *available at* https://actonline.org/2019/08/06/rural-innovators-play-a-key-role-in-the-app-economy-television-white-spaces-can-help-them-do-more/.
[17] GETSWIFT, *available at* https://www.getswift.co/.
[18] Case Studies, GetSwift, *available at* https://www.getswift.co/getswift-case-studies.
[19] *See* Connected Health Initiative, "Testimony of Morgan Reed, Executive Director, The Connected Health Initiative, Before the U.S. Senate Committee on Health, Education, Labor, and Pensions (HELP) Subcommittee on Primary Health and Retirement Security," (Sept. 25, 2018), *available at* https://actonline.org/wp-content/uploads/CHI-Testimony-Health-Care-in-Rural-America.pdf.
[20] *See, e.g.*, HOW MABU WORKS, CATALIA HEALTH, *available at* http://www.cataliahealth.com/how-it-works/.
[21] *See, e.g.*, CLINICAL OUTCOMES, CARE INNOVATIONS, at 2, available at http://www.connectwithcare.org/wp-content/uploads/2017/06/2016_Outcomes_Clinical-1.pdf (showing the results of a study by Care innovations and University of Mississippi Medical Center, indicating that the first 100 patients with diabetes enrolled in a program with a remote monitoring component saved the state $336,184 in Medicaid dollars over six months); Testimony of Michael P. Adcock, Exec. Dir., University of Mississippi Med. Ctr., Hearing on "Telemedicine in the VA: Leveraging Technology to Increase Access, Improve Health Outcomes & Lower Costs," (May 4, 2017), available at https://www.appropriations.senate.gov/imo/media/doc/050417-Adcock-Testimony.pdf ("The Mississippi Division of Medicaid extrapolated this data to show potential savings of over $180 million per year if 20 percent of the diabetics on Mississippi Medicaid participated in this program").
[22] Charkarra Anderson-Lewis, MPH, PhD, et al, "mHealth Technology Use and Implications in Historically Underserved and Minority Populations in the United States: Systematic Literature Review," (Jun. 18, 2018), *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6028762/.

framework of platforms to produce healthcare innovations that address a variety of health conditions. Moreover, in this case, the platform-developer dynamic helps caregivers reach patients in rural and underserved areas.

Finally, the platform-driven app ecosystem gave rise to a new set of business-to-business markets. For example, Aurora, Colorado-based Peafowl is a cross-platform app development firm that creates dynamic websites and mobile applications across several devices and disciplines for clients of all sizes. From rapper Nicki Minaj all the way to small businesses like Groundwurk, Peafowl leverages the major software platforms and smart devices to provide their clients with apps that meet a variety of specific needs.[23] Similarly, Canned Spinach of Cincinnati, Ohio, is a full-service design and development firm that specializes in user experience and user interface design. They were founded in 2016 and boast a client roster including well-known entities like DJ Khaled and Toyota as well as smaller businesses like BodyBoss and This & They.[24] Taking on a software development task for a company like Toyota used to be a job for large companies. Now, the platform-driven internet of things (IoT) revolution has created opportunities for even the smallest companies to create software that makes connected devices come to life. The built-in trust, cloud computing, and distribution of platforms have enabled small companies to compete for major tasks—and these jobs are a significant part of the app ecosystem.

The competitive conditions over the past 10 years, and presently, suggest that the nature of competition in this space will continue to evolve and benefit consumers on the whole. One of the central markets at issue in the debate around the state of competition in the platform ecosystem—informally, we could call it the market for developer services, where a developer pays a platform for various services including distribution, marketing, etc.—also experiences vigorous competition. There is a tendency to include only two platform companies, Apple and Google, in this category of competitors. But for developers, the market is much wider. A game developer can choose platforms like Epic or Steam and enterprise developers can look to hundreds of proprietary, custom platforms or could create their own. For example, companies like App47 create app platforms for everything from "bulldozers to ultrasound devices."[25] Moreover, for developers looking to reach a general audience, using the web is an alternative, especially for companies that are looking for different kinds of distribution or search services than those available on platforms. Additionally, software developers could choose to advertise on Facebook or distribute their products through Amazon, or one of the giant Chinese platforms. It is worth noting, however, that there are some important distinctions between software platforms—which provide a marketplace for software apps like the App Store or Google Play—and aggregators that connect people with information and run on data.[26] Aggregators like Facebook and Twitter, for example, connect people with information and other people (and generate valuable data in the process), while the Google Play store and the App Store provide a marketplace for consumers and app developers to transact directly. These differences illustrate the diversity in the market for distribution methods, as developers may prefer one model over another.

Perhaps most importantly, the universe of platforms is continuing to evolve and expand as different kinds of hardware begin to connect to the network. New platforms are cropping up for

[23] PEAFOWL INC, *available at* http://www.peafowlinc.com/.
[24] CANNED SPINACH, *available at* https://cannedspinach.com/.
[25] APP47, *available at* https://app47.com/.
[26] *See, e.g.*, Ben Thompson, "Tech's Two Philosophies," Stratechery (May 9, 2018).

wearables made by companies like Garmin. Connected home devices and cars drive cross-platform interoperability so that Alexa or Cortana can communicate with your Samsung appliances or your Ford Fusion—further weighing against conceptions of platform markets where a single player wields market power. These characteristics tend to show that developer services will continue to improve and evolve along with demand. Federal intervention may be necessary where market power exists and is used to raise prices undisciplined by competition or maintain a monopoly position in order to reduce quality or decrease output. But when those factors are not present and competition drives the market, as it does in developer services, intervention is unlikely to help and may harm competition or consumer welfare.

V. Platforms Aren't Perfect

Although developers can choose from multiple platforms, there is no such thing as a perfect platform. Our member companies pay a fee to platforms for developer services, and they expect those services to meet their needs. Just as online companies must clearly communicate their data practices to consumers, so must platforms clearly define the requirements and details of their terms of service to developers. For example, when platforms change their developer guidelines, they must communicate clearly and ensure developers understand what the changes mean for them and their customer relationships. Occasionally, we hear from a member company that an ill-defined change significantly impacted their business. For example, a platform recently put a member company that provides a call blocking app on notice for temporary removal unless it made changes to how it obtained permission for gathering incoming call data.[27] The platform did not clearly explain how its policies changed or why they would necessitate action on the app's part, and it was the first removal notice of its kind in the app's nine years on the platform. Ultimately, the platform did not remove the app, but the process for remaining on the store was opaque and difficult enough to navigate that the company looked to us, their trade association, for help. Relevantly, this occurred amid a major update to California's privacy laws, so it may be an example of the unintended consequences of government intervention.

Especially for enterprise app developers, a platform's safety and security are important elements of developer services. Platforms' security features improved markedly over the course of their existence. Whereas unlocking a device used to require a four-digit passcode, devices are now capable of biometric-based authentication, and platforms make these authentication measures available to developers as well so that they can also benefit from these heightened security measures. But the game of cat-and-mouse between cybersecurity professionals and hackers will never end, and security must continue to evolve to meet and beat the threats. Although some platforms do not control device security, developers want the platform's security features to work seamlessly with any relevant hardware and that they account for all attack vectors. Platforms should continue to improve their threat sharing and gathering capabilities to ensure they protect developers across the platform, regardless of where threats originate. Moreover, they should approve and deploy software updates with important security updates rapidly to protect consumers as well as developers and their clients and users. The same is true when it comes to privacy controls. App developers strongly desire platform-level privacy controls they can adapt for their products and services. The types and nature of these controls

[27] Graham Dufault and Madeline Zick, "What's More Control with Fewer Options?" ACT | THE APP ASSOCIATION BLOG (May 21, 2019), *available at* https://actonline.org/2019/05/21/whats-more-control-with-fewer-options/.

vary among platforms and this variation should result in continuously improving options that iterate with end user expectations and privacy risks.

Similarly, platforms play an important role in helping small developers enforce their intellectual property (IP) rights. Our member companies' IP helps eliminate the inherent disadvantages of being a small, innovative company by enabling them to protect the fruits of their ingenuity from larger firms that might want to take it. Unfortunately, some of our member companies fall victim to IP thieves that succeed in selling the pirated content or using it to steal ad revenue on platforms. Ad networks can and do help mitigate the pirated ad revenue problem,[28] but platforms must also vigorously police their app stores for stolen content. With vast online stores, it is difficult for a platform to verify legitimate requests to remove allegedly pirated content. But a single app developer should not need the help of a legal team or trade association to resolve the issue. In one instance, an App Association member company, Busy Bee Studios, approached us when it was unable to convince the platform to investigate an app that appeared to have been stolen from Busy Bee. With our assistance, the platform investigated the issue and found that the infringing app was in fact stolen content.[29] But the time and resources it took our member company—which only has a few employees—to resolve the issue were significant and could have gone toward the development of their next app. Since this issue arose, IP resolution processes improved across the board, but the story is a reminder that they are important and in-demand developer services that platforms should improve in order to compete for developers.

VI. Congress Can Help Maintain a Level Playing Field

Our members' ability to create jobs and develop innovative software depends on strong IP protections and access to talent. In order to ensure the growth of the app economy, small, innovative companies must be able to pursue IP claims affordably and challenge claims that should not have been granted in the first place. For instance, we applaud the House of Representatives' recent passage of the Copyright Alternative in Small-Claims Enforcement (CASE) Act of 2019 (H.R. 2426), which would establish a voluntary small claims board at the Copyright Office, a less-expensive alternative for companies with important infringement claims but fewer resources.[30] Similarly, when it comes to patents our members support the current process for *inter partes* review (IPR) because IPR proceedings cost on average in the low six-figure range versus up to $5 million for a typical patent in federal court. While the low six-figures is still out of reach financially for many small businesses, an IPR provides much-needed leverage to companies faced with the possibility of litigation in federal court.[31] Finally, we urge members of the Committee to ensure that K-12 and college students alike have the opportunity to enroll in computer science classes and learn to code. There are almost 500,000 open computing jobs,[32] which earn an average of over $90,000,[33] while far fewer Americans are

[28] *See, e.g.*, TRUSTWORTHY ACCOUNTABILITY GROUP, *available at* https://www.tagtoday.net/.
[29] *See* Alex Cooke, "Member Monday: How One Small Developer Fought a Rogue App," ACT | THE APP ASSOCIATION BLOG (Nov. 26, 2018), *available at* https://actonline.org/2018/11/26/member-monday-how-one-small-developer-fought-a-rogue-app/.
[30] *See* Debbie Rose and Madeline Zick, "Creating an App? There's Copyright for That," (Jul. 8, 2019), *available at* https://actonline.org/2019/07/08/creating-an-app-theres-copyright-for-that/.
[31] *See* Craig Beuerlein and Graham Dufault, "Why STRONGER is Weaker: The Imbalance of Automatic Injunctions and No Post-Grant Review," (Jul. 1, 2019), *available at* https://actonline.org/2019/07/01/why-stronger-is-weaker-the-imbalance-of-automatic-injunctions-and-no-post-grant-review/.
[32] Why Computer Science?, Code.org, *available at* https://code.org/promote.
[33] *See* Mobile App Developer Salaries, Glassdoor.com, *available at* https://www.glassdoor.com/Salaries/mobile-app-

graduating with computer science training each year. Congress should be looking for every opportunity to equip students at all levels with the skills necessary to take these jobs.

VII. Conclusion

We appreciate this opportunity to provide testimony in this important hearing. Our member companies have a strong interest in maintaining a competitive app economy that enables them to compete with larger firms worldwide through innovative products and services for their customers and clients. The entry of platforms created novel opportunities for consumers and developers. But while platforms provide some of the infrastructure, developers bring smart devices to life. Without apps, a smartphone is just a phone. The symbiotic relationship between apps and platforms is not perfect, but it has created a powerful ecosystem that continues to benefit consumers. We look forward to discussing the pro-competitive effects and public policy concerns platforms have generated and welcome the discussion around how large, tech-driven firms affect smaller counterparts.

developer-salary-SRCH_KO0,20.htm (last visited Nov. 10, 2019).

Appendix: App Economy Innovators in Your Districts

Majority

Chairwoman Nydia Velázquez (NY-07)
Company: ChAPPerone
Founded by a high school physics teacher after taking 100 sixteen-year-olds on a two-week trip to Spain, ChAPPerone is a platform that allows teachers and chaperones to get important information to students without needing their personal cell phone numbers. The app includes up-to-date alerts and planning functions for before and during the trip.

Representative Abby Finkenauer (IA-01)
Company: TaxAct
Founded in 1998, TaxAct is a leading provider of affordable digital and downloadable tax preparation solutions for individuals, business owners, and tax professionals. Their flagship product promises users the highest degree of accuracy and was designed by their own in-house programmers and tax accountants. All available forms are IRS and state approved, and they introduced a mobile application in 2018.

Representative Jared Golden (ME-02)
Company: Sephone Interactive Media
Sephone Interactive Media is a web and mobile software development company with a focus on marketing and online brand management solutions. Sephone helps their clients design and launch apps, websites, and digital marketing campaigns, to name a few. Their team of 10 employees has been serving clients in their Maine community and beyond since 2001 and, depending on the size of the project, will contract with developers across the country.

Representative Andy Kim (NJ-03)
Company: Micro Integration Services
Founded in 1985, Micro Integration Services is a father and son team who transitioned from selling and maintaining hardware to an entirely software-based consulting business. MIS is focused on solving problems and helping their clients develop software for mobile and web turnkey business solutions. Although they have maintained their two-man team, Micro Integration Services works with major corporations like Kraft and the Philadelphia Eagles.

Representative Jason Crow (CO-06)
Company: Peafowl Inc.
Based in Aurora and founded in 2007, Peafowl is a cross platform app development firm that takes projects from inception to completion through development, design, and testing. Peafowl has a specific focus on digital marketing and creates dynamic websites and mobile applications across several devices and disciplines for their clients. From rapper Nicki Minaj all the way to small businesses like Groundwurk, Peafowl's clients span sizes and industries.

Representative Sharice Davids (KS-03)
Company: ActiveLogic Labs
ActiveLogic Labs is an innovative digital development agency headquartered in Kansas City

with a growing presence across the United States, including an office in the Chicago area. They provide a number of services from web and desktop software development to mobile app development, all with a specific focus on user interface design and a seamless user experience.

Representative Judy Chu (CA-27)
Company: Virtualitics, Inc.
Founded in 2016, Virtualitics is a platform that merges artificial intelligence, big data, and virtual and augmented reality to create data visualization experiences. They make data real and actionable, allowing businesses to immerse themselves in the data through VR/AR rather than a traditional two-dimensional format.

Representative Marc Veasey (TX-33)
Company: Awesome Technologies, Inc.
Located just north of Dallas, Awesome Technologies, Inc., builds mortgage technology that helps clients navigate the ever-changing digital landscape surrounding the finance industry. ATI provides consulting services, tech integration, and administrative solutions, while also providing custom development services that seamlessly operate on top of a company's existing technology stack.

Representative Dwight Evans (PA-03)
Company: The Tactile Group
The Tactile Group is a Philadelphia-based full-service development agency with digital solutions ranging from web and mobile software development to strategic marketing and a strong emphasis on user experience. Their clients are in both public and private sectors, and their projects range from the Philadelphia airport's website redesign to websites for businesses in their community.

Representative Brad Schneider (IL-10)
Company: Tighten
Tighten is a small development shop located just north of Chicago with 18 employees and an emphasis on large-scale projects. They're focused on developing websites, software, and mobile apps for a variety of companies and use cases and were a lead on the technological development for TeleHealth Company, one of America's leading bioethicists.

Representative Adriano Espaillat (NY-13)
Company: The Melody Book
Located in Harlem, the Melody Book is an award-winning mobile app development company with several apps on the App Store. A two-person team, The Melody Book specializes in education via musical tools and animated storytelling for young kids.

Representative Antonio Delgado (NY-19)
Company: The Mac Works
The Mac Works, located in Bloomington, is a one-man shop providing consulting and technical assistance, primarily on Apple devices and iOS, to businesses looking for expertise on product development and launch. The Mac Works provide services including mobile app development, iOS training, cloud services, and security education and system development for Mac and iOS

products.

Representative Chrissy Houlahan (PA-06)
Company: LMG Web Design
LMG Web Design is a cutting-edge development firm located in Reading with a specialty in customizable web design and branded graphic design. Their team also assists clients with mobile application development with an emphasis on equivalent and seamless user experiences across devices and operating systems.

Representative Angie Craig (MN-02)
Company: Avionte Staffing and Recruiting Software
Avionte Staffing and Recruiting Software, located in Eagan, provides solutions for payroll, attendance, billing, as well as customer relationship management, new job applications, and onboarding capabilities. Since opening their doors in 2005, they have served more than 900 customers and nearly 25,000 users across the United States and Canada.

Minority

Ranking Member Steve Chabot (OH-01)
Company: Canned Spinach
Canned Spinach is located in Cincinnati and is a full-service design and development firm that specializes in user experience and user interface design. They were founded in 2016, and their client roster includes well-known entities like DJ Khaled and Toyota as well as small businesses like Speakeasy and This & They.

Representative Aumua Amata Coleman Radewagen (AS-AL)
Company: Pago Tech, Inc.
Pago Tech, Inc., has been providing IT services to the American Samoa people and government since 2017 and is one of the few computer shops on the island with the ability to service Apple products. In addition to IT support and computer repairs, they also offer custom web design and launch.

Representative Troy Balderson (OH-12)
Company: Hashrocket
Located in Columbus, Hashrocket is an expert team of designers, developers, and consultants who are able to take a project from idea to reality through strategy, design, and development. Founded in 2008, Hashrocket has grown to a team of 17 full-time employees with offices across the United States, including Jacksonville Beach, Florida, and Chicago, Illinois. Hashrocket builds custom software that spans web, mobile, and desktop applications for their clients.

Representative Kevin Hern (OK-01)
Company: Spherexx.com
Spherexx is a full-service ad agency and software development firm with a variety of solutions for their clients including mobile apps and websites. Recently, Spherexx expanded their offerings to include digital ad automation, commission tracking, and public relations digital support. Spherexx is located in Tulsa and has grown to more than 50 employees since its

founding in 2000.

Representative Jim Hagedorn (MN-01)
Company: AgVantage Software
AgVantage Software has been providing diverse digital accounting solutions for agribusinesses since 1976 through offerings like live accounting—which allows for inventory management—financial statements, and a variety of other features all available at the touch of a button. Located in Rochester, their software allows businesses to digitally track, analyze, and manage accounting workflows.

Representative Pete Stauber (MN-08)
Company: Creative Arcade
Located in Duluth, Creative Arcade is a digital marketing agency that specializes in digital marketing and advertising, design and identity, web development, and inbound marketing. With five employees, Creative Arcade has a wide range of clients from West Virginia University to Fairview Range Hospital.

Representative Tim Burchett (TN-02)
Company: BigOven
Founded in 2004 and headquartered in Knoxville, BigOven is a mobile app for home cooks to organize their recipes and grocery lists with the capability to search for dishes from the app's content editors or trending recipes from other users. BigOven was the first recipe app for iOS and Android and has been downloaded more than 13 million times with over 3.3 million registered members.

Representative Ross Spano (FL-15)
Company: Torch Designs
Founded in 2014, Torch Designs is run by a husband and wife team who lead all the programming and graphic design for their clients. What started as a supplemental income source has turned into a full business venture that provides clients with a range of services, including website design, app development, business branding, and digital marketing.

Representative John Joyce (PA-13)
Company: AppCove, Inc.
AppCove, Inc., a small team of developers and designers serving clients across the United States and Canada, creates custom software, web, and mobile applications. With an integrated approach to application development across mobile and web, AppCove also helps their clients with content delivery and hosting management through a streamlined data management and analysis system built to meet the specific needs of each of their clients.

Representative Dan Bishop (NC-09)
Company: Event Capture Systems, Inc.
Headquartered in Mint Hill, Event Capture Systems (ECS) is a software and hardware company focused on increasing the efficiency of quality control systems of video cameras for manufacturing processes. Founded in 2007 and with fewer than than 50 employees, ECS provides long term assistance to manufacturers in controlling their quality and maintaining a high level of effectiveness through custom data management systems and reports.

Amazon's Responses to Questions for the Record, following the November 14, 2019, Hearing of the House Small Business Committee, Entitled "A Fair Playing Field? Investigating Big Tech's Impact on Small Business"

Question 1. Please explain how Amazon is addressing algorithm bias to ensure that local businesses have visibility to ensure that big companies aren't gaming their own systems?

As explained by Mr. Mehta during his testimony, Amazon's algorithms are optimized to feature products customers will want to purchase, regardless of the size of the selling partner offering these products. Small businesses that offer great selection, low price, and convenience to customers in the Amazon store have been highly successful, and often more successful than Amazon's retail business.

More than 1.9 million businesses, content creators, and developers in the United States use Amazon products and services. Selling partners, the vast majority of which are small businesses, sell more than 58% of the value of all merchandise sold through the Amazon store, and have grown twice as fast as Amazon's own sales. Our small business selling partners are thriving: on average, they sell more than 4,000 items per minute in our stores. In 2018, more than 50,000 entrepreneurs surpassed $500,000 in sales and 25,000 of them exceeded $1 million in sales. We are incredibly proud of the fact that these entrepreneurs have created more than 830,000 jobs in the United States.

We know that our selling partners have many ways to reach customers, so we invest in providing world-class support, and creating innovative tools to help them run their businesses, such as through Amazon Brand Analytics, Selling Coach, Business Reports, and many others. In 2019 alone, we will invest $15 billion in infrastructure, services and tools, programs, and people to further our selling partners' success.

Question 2. Please explain what your company is specifically doing to help small businesses that sell through Amazon prepare for cyber security attacks?

Protecting customer trust on behalf of the store and all sellers, including small businesses, is a fundamental priority for Amazon. We have more than 6,000 employees dedicated to protecting the security of our store on behalf of sellers and customers, and last year alone we spent over $500 million protecting our store against various security threats from hacking to fraud. These extensive investments and our world-class information security and anti-fraud teams protect the small businesses that sell through Amazon's store, securing the data associated with third-party sales and guarding against cybersecurity risks, social engineering, and fraudulent attacks against their businesses.

In addition, through Amazon Web Services (AWS) we offer businesses of all sizes access to hundreds of security, compliance, and governance services and features designed to run on a data center and network architecture built to meet the requirements of the most security-sensitive organizations. For example, Amazon GuardDuty continuously monitors for malicious activity and unauthorized behavior to protect customers' accounts and workloads, and AWS Key

Management Service makes it easy for customers to create and manage cryptographic keys and control their use across a wide range of AWS services and applications. AWS is also continually innovating to provide novel security capabilities, such as AWS IAM Access Analyzer – launched this month – which is a new first-of-its-kind capability available at no additional cost that uses mathematical logic and inferences to show customers whether any of their resources are accessible from outside their accounts.

Question 3. During the hearing, you advised that you would need to consult with Amazon's search team in order to speak about your company's procedures for auditing its search algorithm. Once you have had the opportunity to do so, please answer the following question: Is Amazon willing to subject its algorithms for search and for the Buy Box to third-party testing -in a way that avoids revealing the algorithms' precise mechanics - to confirm that there is no bias for or against sellers paying for Fulfillment by Amazon?

The featured offer (what your question refers to as the "Buy Box") is designed to predict and feature the offer customers would choose if they compared all offers in detail. All offers compete to be featured based on the same criteria, including price, delivery speed and cost, trust in the party making the sale, and customer service. Amazon has invested tens of billions of dollars in developing a world-class fulfillment network and offers that network to its third party sellers through its Fulfillment by Amazon (FBA) program. As a result of these investments, products offered through that network perform better on those factors than products fulfilled through other methods; FBA generally provides a better and more reliable experience for our customers than fulfillment through other means, which is reflected in the featured offer algorithm. The vast majority of customers who compare all of the available offers for a product ultimately select the offer we featured on the product's detail page, which tells us we are accurately predicting the best offer to feature.

We feature products in shopping results that customers will want to purchase, regardless of whether they are offered by Amazon's retail business or one of our third party sellers. We constantly refine our predictions, and consider a variety of factors when choosing shopping results, including customer actions (such as how frequently an item was purchased), information about the item (such as title, price, and description), availability, and delivery speed. Because delivery speed is important to customers and FBA generally provides faster delivery than fulfillment through other means, items that are fulfilled by Amazon may feature higher in the shopping results than products with slow delivery speed.

We have opened up our fulfillment services to third-party sellers through FBA to provide third party sellers access to convenient storage and fast delivery services with Prime eligibility at fees that have consistently been lower than the seller's comparable alternatives. We know customers love Prime and fast delivery, and millions of third party sellers have benefited from this service. FBA is an optional service and third party sellers are free to choose not to use it if it's not right for them.
We regularly review our shopping and discovery features to identify improvements that help customers find what they want, and we provide third party sellers with a wide range of services, tools, and features to help them gain visibility for their offers and achieve success.

Question 4. Amazon Business, your company's platform for enterprise customers, allows customers to refine search results according to sellers' certifications (see:

https://services.amazon.com/amazon-business/certifications.html). Is Amazon willing to build on this effort by:

a. **Allowing customers on the standard consumer-facing site to access these search refinement options?**
b. **Adding a "US-Based Business" refinement option?**

Amazon Business provides business customers of all sizes with features and benefits tailored to the needs of organizations. One of these features is the Selling Partner Certifications Program, which we launched in response to feedback from Amazon Business customers who wanted to easily identify and purchase from small and minority-owned selling partners. Third-party selling partners who use this feature can indicate one or more diversity certifications that they have been awarded or recognized for by a third party, such as the U.S. federal government, state agencies, or other standard-defining organizations. The Certifications Program currently covers over 150 certifications, including Small Business, Woman-Owned Small Business, Economically Disadvantaged Woman-Owned Small Business, SBA-Certified Small Disadvantaged Business, Veteran-Owned Small Business, and Service Disabled Veteran-Owned Small Business. These certifications are displayed on the selling partner's profile page and the product detail pages, and Amazon Business customers can refine their product searches by certification type to find products offered by these selling partners. Amazon Business is constantly working to improve the Certifications Program. We are currently evaluating what additional certifications and other features would best serve the needs of our business and consumer customers.

Question 5. Does Amazon give sellers adequate notice and transparency of changes to fees or other terms of their seller agreement?

We always endeavor to give sellers adequate notice and transparency of changes to fees or other terms of their seller agreement. That includes providing at least 15 days' advanced notice to sellers any time we modify the terms of the agreement. Amazon also generally provides sellers with 60 days' advance notice before changing fees so sellers can plan accordingly.

Question 6. Do sellers that use Amazon warehouses have opportunities to reconcile with Amazon and prevent their inventory from being seized?

Protecting customers is our top priority. While it is in our economic interest to minimize any disruption to our selling partners' sales, we take swift action to protect customers from illegal, counterfeit, or unsafe products. Where we take action against suspected violations, our goal is to provide clear and actionable communications to sellers, describe the policy violation that led to the suspension, and offer an appeals process where sellers can explain how they will prevent the violation from happening in the future or let us know if they believe we made a mistake. Those appeals are handled by specialized teams, and sellers are able to submit information to support their case. We often call sellers before suspensions occur to try to address the underlying issue and prevent account suspension in the first place. We also closely monitor our decision accuracy, analyze our mistakes to understand how they occurred, and use those lessons to prevent similar mistakes from happening in the future. We regularly evaluate our communications with our selling partners to make sure they are clear, actionable, and empathetic. Even when sellers are suspended for certain policy violations, we realize that sellers can make mistakes and should have a chance to try again if they can implement controls to prevent their past issues from reoccurring.

Question 7. Does Amazon consider how long a seller has been using the platform before closing or suspending an account?

Amazon proudly supports the honest entrepreneurs who sell their products through our stores, and it is in our economic interest to support all such sellers to meet customer expectations for great prices, selection, and convenience. We act swiftly to remove illegal, counterfeit, and unsafe products from our store and suspend suspected bad actors to protect our customers, but we also know from experience that rights owners, sellers, and Amazon can make mistakes. Therefore, we strive to tailor our enforcement actions to align with the potential risk to customers from sellers who violate our policies, mitigate the impact of erroneous enforcement, and provide our selling partners notice of and the opportunity to appeal claims made against them. Our risk models have shown that the potential risk associated with a seller generally decreases with tenure.

Question 8. Many small businesses that say Amazon has a huge counterfeiting problem. GAO, in 2018, made test buys major e-commerce retailers, including Amazon and nearly half of the items were fake. What does Amazon do to ensure that counterfeit products are not sold on the platform?

We know that customer trust is hard to win and easy to lose, and we view counterfeiting as an existential threat: if customers do not trust what they purchase through Amazon's stores, they can and will shop elsewhere. We are committed to zero counterfeits, and we are investing very heavily in proactive efforts to achieve that goal and prevent counterfeits from ever reaching our stores. In 2018 alone, we invested over $400 million in personnel and employed over 5,000 employees to fight fraud and abuse including counterfeiting in our stores.

We are investing heavily and will continue to do so until we reach our goal because doing so is good for our customers, good for the honest entrepreneurs who account for nearly 60% of the physical gross merchandise sales made through our stores, and good for the rights owners and brands that invent the hundreds of millions of products for sale in Amazon's stores. These investments are producing positive results: in 2018, our proactive efforts prevented over 1 million suspected bad actors from publishing a single product for sale in our stores and blocked over 3 billion suspected bad listings from being published on our stores.

Our investments include unique, industry-leading innovations to prevent counterfeits from being sold in our stores. We offer innovative tools, such as Brand Registry, Transparency, and Project Zero to help protect their brands and protect our customers. These tools are summarized in detail in Mr. Mehta's submitted written testimony.

The GAO report referenced is not indicative of the customer experience on Amazon. The GAO conducted a very small sample of test buys and relied on brands to identify targets for test purchases, thus likely targeting goods that were suspected to be counterfeit rather than a representative sample. Moreover, the GAO did not specify from which marketplace it purchased specific counterfeit items, leaving Amazon unable to investigate the claims. However, over 99.9% of products that customers actually viewed in Amazon's stores never have received a complaint about a suspected counterfeit from a customer or rights owner.

Question 9. Some sellers with a wide range of products are vulnerable to bogus complaints. How does Amazon decide whether to remove the item or the seller?

The trustworthiness of both customer and rights owner complaints and our selling partners is considered as part of our enforcement efforts, and, as explained in our response to Question 6, above, it is in our economic interest to minimize any disruption to our selling partners' sales. As a result, we screen complaints for accuracy using a variety of methods (including machine learning models), and reject complaints that we believe to be inaccurate or abusive (including attempts to control distribution through intellectual property claims). Where we take action against suspected violations, our goal is to provide clear and actionable communications to sellers, describe the policy violation that led to the suspension, and offer an appeals process where sellers can explain how they will prevent the violation from happening in the future or let us know if they believe we made a mistake.

Google

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11 December 2019

The Honorable Nydia M. Velazquez
Chairwoman
House Committee on Small Business
2361 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Velazquez,

Thank you for the opportunity to testify before your Committee last month. It was my privilege to discuss Google's commitment to the small business community. We look forward to continued growth and partnerships with businesses around the country and around the world as they seek new customers and new markets.

Please find attached my responses to the Questions for the Record. If you have any further questions, please reach out to Ed An, in our Washington office. I look forward to continuing to work with you and the Committee.

Sincerely,

Erica Swanson
Head of Community Engagement
Grow with Google

1. **Please explain how Google is addressing algorithm bias to ensure that local businesses have visibility to ensure that big companies aren't gaming their own systems?**

   We constantly improve Search to help people find relevant and reliable information on the web. We take a responsible and principled approach to making changes, including a rigorous evaluation process before launching any change - something we started implementing more than a decade ago. Listening to feedback from the public is a critical part of making Search better, and we welcome feedback from everyone on instances where Search might not be working as well as it could.

   We provide detailed information about our algorithms and ranking processes on our How Search Works site. We also work hard to inform website owners in advance of significant, actionable changes to our Search algorithms and provide extensive tools and tips to empower all webmasters, big and small, to manage their Search presence - including interactive websites, videos, starter guides, frequent blog posts, users forums and live expert support.

2. **Please explain what Google is doing to ensure that New Americans that own small businesses, with limited English proficiency and technology or cyber illiteracy, are being supported through your Grow with Google initiative?**

   We believe in giving everyone access to the economic opportunity that the online world has generated. The Latino community makes up 16 percent of the U.S. labor market and will make up half of the people entering the workforce by 2025. That's why we provide a number of programs and online trainings in Spanish. For example, our Applied Digital Skills curriculum helps learners develop crucial digital skills to thrive in the workplace through free, video-based lessons. We also offer minicourses in Spanish for local businesses and job seekers on our free Google Primer app, which teaches business and digital marketing skills through short and easy interactive lessons. Our IT Support Professional Certificate, which is designed to prepare beginners for entry-level IT support jobs in as little as six months, has been available in Spanish since September of this year. These resources and more can be accessed at grow.google/espanol.

   In addition, Grow with Google Digital Coaches work closely with minority-led businesses, delivering workshops and one-on-one coaching sessions that help

these businesses harness the power of digital tools. And through our Partner Program we support more than 6,000 nonprofit organizations around the country, many of whom are working with New American communities.

3. **What percentage of Google search volume is users searching for a local business? Is it fair to describe this as the most common category of search?**

   Google is invested in helping website owners be discovered in Search, and we provide a suite of tools and informational resources to help drive billions of visitors to websites small and large. We offer extensive resources to all webmasters to help them succeed in having their content discovered online — including interactive websites, videos, starter guides, frequent blog posts, forums, and live expert support. Website owners and others have access to resources on the Google Webmasters site, available at https://www.google.com/webmasters/#?modal_active=none.

4. **Google powers these searches with its own local reviews. An investigation by Yahoo finance recently determined that Google does not assign quality scores or Pagerank to its own content. Stated another way, Google content is not indexed, or Google has chosen to disallow robots.txt to index and score its review content alongside other providers on the web.**

   Why was Google review content once part of the organic index, but now is no longer? What precipitated the 2017 decision to instruct google.com/robots.txt to avoid indexing Google local businesses review content?

   When a user searches for information about a place, user reviews may appear in a formatted search unit about that place. We work hard to provide our users with a useful and trustworthy source of information and continuously work on ensuring that the most relevant results are surfaced. Consistent with those goals, Google has assembled different indexes for different types of online content, e.g., websites, images, videos, book excerpts, scholarly articles, and news.

   When a user enters a query, Google may display relevant search results from some or all of those indexes depending on the inferred intent of the query. For instance, Google's review content is part of its local index, as is other information about local places such as the address, hours of operation, and phone number of a particular establishment. The local index is used to display relevant search results when a user enters a query related to a place, such as "pizza washington dc." If users do not find our search results to be helpful, they can and will use another general search engine or go to a specialized vertical

search site. Providing the best possible search results is one way we meet our commitment to our users, and we'll continue to work hard to improve them.

5. **Please explain what your company is specifically doing to help small businesses that utilize Google Drive features prepare for cyber security attacks?**

   Cloud computing can give small businesses a competitive advantage by allowing them to access their data and applications from anywhere at any time for a reasonable price. The cloud gives small businesses access to technologies that previously were out of their reach and lets them compete with both other small businesses and larger ones by scaling up quickly, providing agility and reliability to run seamless business operations.

6. **Google collects a lot of information on individuals and small businesses. Recent reports shed light on Project Nightingale and that Google employees have access to data on tens of millions of patients. What type of risk are you taking on to hold your own companies accountable and ensure that you are protected against cyber breaches that impact small businesses?**

   As a general matter, Google approaches its Cloud Platform products with numerous administrative, technical, and physical safeguards:

- Google restricts access to data. For example, Google logically isolates each customer's data from that of other customers and users. Only a limited group of Google employees has access to customer data. Further, Google employees' access rights and levels are based on their job function and role, using the concepts of least-privilege and need-to-know to match access privileges to defined responsibilities.
- From an operational standpoint, Google administers a vulnerability management process that actively scans for security threats; has a security monitoring program focused on information gathered from internal network traffic, employee actions on systems, and outside knowledge of vulnerabilities; uses a variety of methods to prevent, detect, and eradicate malware in order to prevent malware attacks; and maintains a rigorous incident management process for security events that may affect the confidentiality, integrity, or availability of systems or data.
- Google has also custom-designed its servers, proprietary operating system, and geographically distributed data centers. Using the principles of "defense in depth," Google has created an IT infrastructure that is more secure and easier to manage than more traditional technologies.

With respect to Ascension data, Google utilizes those same administrative,

technical, and physical safeguards to protect the information maintained on behalf of Ascension:

- To keep data private and secure, Google logically isolates Ascension's data from that of other customers and users.
- Approvals for roles granting access to Ascension data are managed by workflow tools that maintain audit records of changes. These tools control both the modification of authorization settings and the approval process to ensure consistent application of the approval policies.
- Further, the Google systems and infrastructure that support the cloud-based services being provided to Ascension are subject to periodic security testing and audits against industry-standard security frameworks such as ISO 27001.

In addition, patient data in the electronic health records search pilot is accessible only in a strictly controlled environment with audit trails:

- Data is isolated in a virtual private space and encrypted.
- Access to patient data is stored, monitored and auditable.
- Access is restricted to specific individuals approved by Ascension.
- Binaries are cryptographically verified to contain only code that was checked into Google's code repository and explicitly reviewed by other engineers – no engineer may unilaterally modify code. There is thus a trail of the exact code of any software than ran against this data.

7. **Does Google intend to give independent hospitality businesses the ability to link the "Book Now" button in the Google Business Profile directly to their own booking engine without going through a third-party vendor? If so, when will this happen?**

Today, travelers expect to instantly find the information they need across devices. Our goal is to help simplify the experience and help users make faster, effortless decisions when they are travel planning. So, earlier this year, we brought together our travel experiences to make it easy for travelers to research and book frictionlessly and provides a single destination for users to connect with travel providers across devices.

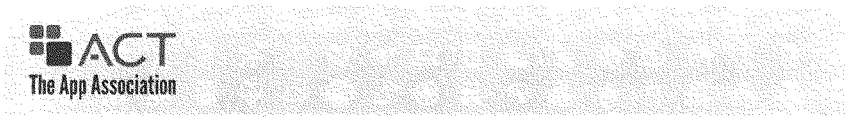
We offer a reliable way for business partners to connect with interested travelers. Partners are able to capture traveler demand and to re-engage customers with increased reach (e.g. travelers browsing destinations, flights, and hotels). These enhancements are meant to help travelers more easily find and book travel online. They do not represent a change in our fundamental business model

To the extent that we move or otherwise change elements of the user design, it is always done with the goal of providing useful information for our users, which in turn means they'll continue coming to Google to connect them with booking options - hotel suppliers and travel agencies alike.

8. **Because nearly 90 percent of all Internet Search goes through Google or YouTube, Google has become the gatekeeper to what Americans see and do not see on the web. Does Google have a strong financial incentive to funnel search traffic to ad buyers and away from sites that appear organically?**

We are always striving and competing to serve users globally: our platforms are about sharing information everywhere, making products for everyone, and giving many different people in the world a voice. Google Search responds to trillions of user queries from around the world every year, with more than 50% of those searches coming from users outside the United States. Our competitors are similarly diverse.

We face formidable competition around the world, with an ever-increasing competitive environment emerging around the globe. Our industry is highly dynamic and drives innovation that gives consumers better choices for lower costs. In addition to competitors such as Microsoft, Yelp, and Amazon, we face competitors like Bookings.com and Flipkart, and therefore invest heavily in research and development, so we can compete in a global environment with other global players. Whether a business, individual or organization buys ads is not a factor in our search algorithms. We never provide special treatment to advertisers in how our search algorithms rank their websites, and nobody can pay us to do so. We have long been transparent about this. Ads are only displayed if we believe they're relevant to the search terms you entered. For most searches, we show no ads at all. When we do show ads, they're always labeled so you can tell them apart from search results.



December 11, 2019

Responses to Questions for the Record
House Committee on Small Business
"A Fair Playing Field? Investigating Big Tech's Impact on Small Business"

1. **How important is it for developers to have access to broadband and what can we on this committee do to help ensure broadband is deployed to rural and other underserved areas?**

As our member companies seek to compete in the same space as household names like Apple and Google, small businesses like ACT | The App Association member companies need access to the internet to grow their businesses.[1] Unfortunately, traditional broadband deployment tends to be expensive. In fact, one of our members reported that despite her neighbors already having broadband, she had to pay $30,000 to lay the cable to her Colorado home. Moreover, sometimes developers' products require high internet speeds in order to operate. For instance, member company Canned Spinach made an augmented reality app for client Toyota where a customer can interact with a car they're considering buying as if it were in front of them. Because augmented reality requires processing large volumes of data to work properly, customers need high bandwidth internet where they are located so they get the full experience.

Limited- to no-access to broadband isn't just an issue for software developers, it is also an issue for the average American. As stated in my verbal testimony, even by the most conservative estimates, 20 million Americans lack access to broadband. Fortunately, private partnerships are exploring cost-effective alternatives to traditional wireline and dial-up connections. One such alternative is the use of television white spaces (TVWS), or the unused swaths of spectrum in between television broadcast channels.[2] TVWS help broadband providers solve the broadband deployment cost problem because amplifying a wireline broadband connection over the airwaves is less expensive than using infrastructure to extend the connection to the entire 'last mile.'

This particular method is gaining traction: in the United States pilots are ongoing in 16 states as of December 2018.[3] TVWS is also seen by Americans as a prudent way to address the digital divide. In fact, according to a poll of 1,000 confirmed 2018 midterm voters, 88 percent believe that the Federal Communications Commission (FCC) should finalize rules to ensure vacant television channels are used for broadband, especially in rural areas.[4]

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[1] *See, e.g.*, Chris Sims, "We can't compete if we can't connect: The case for new solutions to rural broadband," BIRMINGHAM BUSINESS JOURNAL (Aug. 10, 2018), *available at* https://www.bizjournals.com/birmingham/news/2018/08/10/we-can-t-compete-if-we-can-t-connect-the-case-for.html

[2] I often think of television white spaces as 'Wi-Fi on steroids,' where data can be transmitted at high speeds over long distances and through rough terrain including buildings, hills, and trees.

[3] *See*, e.g., https://blogs.microsoft.com/on-the-issues/2018/12/03/the-rural-broadband-divide-an-urgent-national-problem-that-we-can-solve/

[4] *See* https://actonline.org/wp-content/uploads/American-Demand-for-Broadband-Colored-Charts.pdf

The App Association appreciates the House Small Business Committee's activity on this issue. In April of this year, the Committee wrote to the chairman of the FCC, Ajit Pai, encouraging the FCC to finalize rules on the deployment of TVWS.[5] As we anticipate the FCC's next steps on TVWS, we encourage all policymakers to put their weight behind this momentum, and we thank the Small Business Committee for the work it has done to continue forward progress. These efforts are critical to ensuring that not only developers, but all Americans, can access the products, services, and opportunities afforded to those with internet access.

2. **Your testimony also talks about platforms reducing overhead costs for developers. I'm very interested in this concept as I look to support innovative ideas in research and to bring those to market. Could you unpack this idea more?**

As stated in our testimony, prior to platforms software developers "[took] on tasks that were well beyond their core competencies—from marketing to protecting their intellectual property and negotiating with a variety of different types of companies to distribute their products." Today, platforms provide a variety of support services that have dramatically reduced the overhead costs associated with developing a mobile app because each developer avoids the creation and management of these services when using a centralized platform. These services include storage systems for hosting apps and managing downloads, billing services and payment management systems, ready-to-use interfaces for advertising, and built-in cybersecurity features. Additionally, legal costs are lower via a standardized contract between the developer and platform, reducing the costs typically incurred during contract negotiation.[6] All these services have the additional benefit of reducing time to market for developers by streamlining the steps they would have had to take before the emergence of platforms.

The costs of bringing an app to market have also dramatically decreased due to the proliferation of apps on platforms. Bresnahan, Davis, and Yin in their 2015 paper on "Economic Value Creation in Mobile Applications" found that the boom of apps on platforms led to three things:

> "First, an application developer could create a new mobile app spending only a tiny fraction of the overall research and development (R&D) cost of providing it. Much of the R&D cost, including invention of mobile devices, mobile telephony transmission, the commercialized Internet, the cloud, and so forth, and the investment cost in infrastructure, including diffusion of mobile devices to users, had already been sunk and spread over thousands of applications. None of these common R&D or infrastructure investment costs were marginal to a particular app. For mobile applications developers, the fixed costs of offering a working system to users were dramatically lowered. Second, the potential economic return to new invention and investment in the platforms and in the

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[5] *See* https://smallbusiness.house.gov/uploadedfiles/0730_001.pdf

[6] DELOITTE, THE APP ECONOMY IN THE UNITED STATES (Aug. 17, 2018), available at http://actonline.org/wp-content/uploads/Deloitte-The-App-Economy-in-US.pdf

> preexisting complementary technologies that were recombined became higher. Third, applications developers were given free reign *[sic]* (and little guidance) to discover these opportunities."[7]

Perhaps most importantly, platforms, their processes, and the reduction in costs across the board lowered the barriers to enter the mobile app market for small businesses. As a result, our member companies have near-automatic access to the two billion smartphone users around the world by offering their software on an app store, so people like the creator of ChAPPerone, a high school physics teacher, can successfully take their brilliant ideas to market.

[7] Timothy F. Bresnahan, Jason P. Davis, and Pai-Ling Yin, "Economic Value Creation in Mobile Applications," THE CHANGING FRONTIER: RETHINKING SCIENCE AND INNOVATION POLICY (July 2015), *available at* https://www.nber.org/chapters/c13044

TESTIMONY ON THE "A FAIR PLAYING FIELD?
INVESTIGATING BIG TECH'S IMPACT ON SMALL BUSINESS."
BEFORE THE COMMITTEE ON SMALL BUSINESS, US HOUSE OF REPRESENTATIVES

Allyson Cavaretta
Principal/Owner
Meadowmere Resort
Ogunquit, Maine

NOVEMBER 14, 2019

Exhibit Supplement

House Small Business Committee Innkeepers and Hoteliers Petition and

Corresponding Results and Comments

House Small Business Committee Innkeepers and Hoteliers Petition

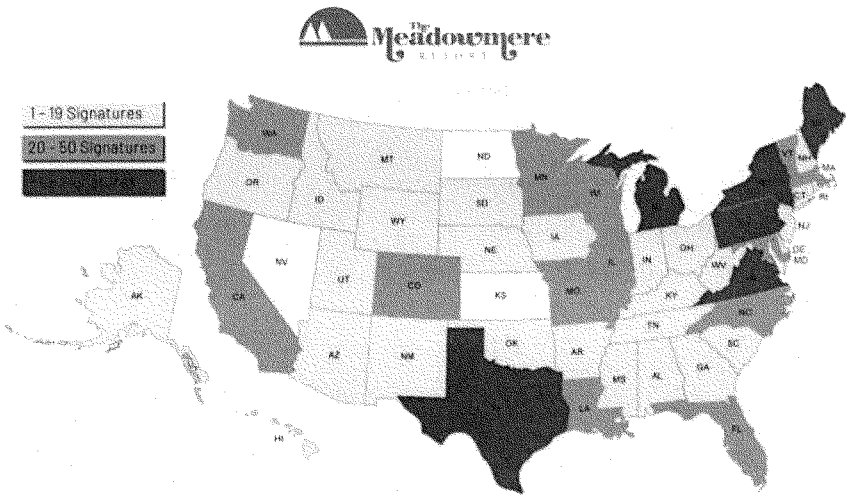
We, the undersigned, support the House Small Business Committee in its efforts to insure a level playing field for the Small Business Innkeepers and Hoteliers in the travel industry.

Our reasons for supporting such efforts include:

1) Innkeepers and hoteliers lack access to the 'Posts' feature given to vacation rentals, doctors and lawyers and other small businesses and are prohibited from this Google product in their Google My Business Knowledge Panel search results. This prevents bed & breakfasts, inns and hotels from being able to offer the option to book direct or share specials in Knowledge Panel.

2) Innkeepers and hoteliers lack access to the entire list of features available in Google My Business that would allow the hotel to sell directly, whereas the Online Travel Agents known as Travelocity (owned and operated by Expedia) and Orbitz (owned and operated by Booking.com) have full access to these features that Google offers.

3) The direct booking engine efforts of innkeepers and hoteliers were pushed to 'below the fold' and instead are replaced by paid metasearch results since the March 2019 Google Travel update. The impact of this change allows Google to prioritize an area from which it makes money based on impressions and clicks within the metasearch box instead of the hotel's direct booking engine. The result often misleads the consumer to the highest bidder instead of booking directly with the hotel. The financial resources to compete against the billions and billions of dollars that online travel companies such as Expedia and Booking.com have in order to appear in the metasearch box are simply not afforded to the many small businesses that make up the tourism industry



STATE	Innkeepers reported as impacted by Google
AK	19
AL	5
AR	15
AZ	10
CA	39
CO	20
CT	6
DE	3
FL	21
GA	11
HI	1
IA	9
ID	2
IL	23
IN	7
KS	0
KY	10
STATE	**Innkeepers reported as impacted by Google**
LA	21
MA	30
MD	20
ME	59

MI	72
MN	22
MO	28
MS	2
MT	1
NC	36
ND	0
NE	3
NH	16
NJ	12
NM	7
NV	0
NY	65
OH	9
OK	6
OR	11
PA	57
RI	4
SC	5
SD	1
TN	19
TX	56
UT	1
VA	55
VT	24
WA	29
WI	28
WV	6
WY	1

OTHER LOCATIONS	Innkeepers reported as impacted by Google
Canada	3
District of Columbia	4
Mexico	1
Virgin Islands	1

Petition Comments from Innkeepers and Owners organized by State. Also includes comments from neighboring Canadian Inns.

Alaska

- Because of this limitation, we are prevented to be visible as a self-governed entity and are unreachable for direct booking. We are paying 15% booking fee to booking.com and are locked away by them and Google doing direct booking on our sites.
- Thank you for correcting this troublesome practice.
- I want my fair chance to run my business just the same as anyone else.
- This is unfair competition for OTAs to literally buy AdWords of our business names. They are experts when it comes to confuse even our return customers who are booking direct. We constantly hear our customers told us we thought we were booking direct.
- Rigged game is working against small business.
- Small business is the backbone of this Nation. I can't compete on a level playing field.
- Please stop google from doing this!
- The actions of Google, Trip Advisor and all the online travel agencies have effectively blocked travelers from seeing my B&B to the point that my reservations have dropped by more than half. Google give priority placement to big advertising spenders - making it impossible for a small business to compete. They and Trip Advisor not showing our properties at all or erroneously showing us as being sold out when we are not. Trip Advisor actually says our property is not located in the city

of Juneau - where we most definitely are. Google and Trip Advisor are killing our businesses by creating a virtual monopoly which allows 2 online travel agencies to control all travel bookings (Priceline, Agoda & Booking.com are one company and all the others belong to Expedia).

- Thank you for looking into this. Even when "googling" our name specifically, OTAs come up in the ads (though we do not currently offer inventory on any), then when a potential guest clicks on the page they are told by the OTA there is no availability at my establishment and are offered another property through their service.
- How or why we would allow one business to place an ad for another business is beyond me. How did we get here? Greed. Ads should only be able to be paid for by the business themselves and all ads should be under the "original business" in the internet feed.
- Thank you for focusing on issues faced by small businesses.
- They have continued to increase their control of their technology to prevent small business from being able to connect with potential guests. The guests often think they are talking to the B&Bs when they are actually being trapped in Google's cookies.

Arizona

- Our small lodging business has been declining steadily as we've seen our business appearance in search results steadily pushed to the bottom of the page as it replaced more and more by the paid results of Outside Travel Agency.
- Anything you can do to "level" the playing field with Google and the big boys is great and very helpful.

- The status quo allows one major business to leverage ties to other major businesses to divert income to their own pockets. Losers in this scenario are the small business owners who are the backbone of this economy ... and who actually DO pay their fair share of taxes (i.e., do not benefit from egregious tax breaks).
- Please help us to compete on a level playing field against the big guys!!!

Arkansas

- I'm a small innkeeper with just 5 rooms.
- We are a small, five room Inn, in a small tourist town and we simply can't afford to give so much commission to OTA's but we also can't afford not to be listed on their sites. AND if you aren't willing to be listed on their site and give them a huge commission than they tell guests that we have no rooms available. Our occupancy is rather high, but our revenue is down due to such high commissions.
- This is affecting all of the lodging industry

California

- What's being done to hotels by Google and their partners, the Online Travel Agents, Expedia and Booking.com is the classic definition of anti-trust. It must be challenged and stopped. There should be no "pay to play" schemes when the bar is set for only the gorilla.
- We struggle daily to run a successful business - with 15% of my revenue being stolen by Expedia, Booking.com and the rest it is harder and harder to run a small independent company. The large companies steal my website - they are

not our partners they are not selling rooms that I can't sell - that would remain empty - that is all a lie.

- Google's practices hurt my business as I cannot compete with the ad budgets of the OTA's.
- About as close to antitrust as I have ever seen!

Colorado

- In addition to the above a property such as mine that has lost much of it's direct bookings to OTA's and their paid placement online, I now have the added cost of paying commission to organizations like Expedia and Booking.com or the property is otherwise ""lost"" to the consumer. In order to rank on some OTA's an accelerator is necessary so a guest can find you in the list as Expedia ranks the sort results within their sites based on the compensation the hotel, inn or property is willing to pay. In addition to paying a minimum of 15% commission just to list, a small property may need to pay an accelerator of equal percentage just to show up on page one of the sort results on Expedia. Lastly the influx of Non-Owner-Occupied Vacation Rentals whose growth is virtually unregulated in residential zoned neighborhoods gains an unfair advantage on sites like Expedia with their questionable nightly rate pricing tactics. On Expedia and many OTA's you can search just about any market and find vacation rentals by owner listing their property for a low nightly rate such as $99 per night yet the total stay for 2 nights might be $600 when the "fees" the property charges are added in. This is deceptive, predatory pricing that is confusing to consumers and undercuts competitors as low nightly rates are part of the algorithm for placement in these

types of sort. Many hotels and resorts will charge a small property or resort fee in addition to the nightly rate, but it is generally a small fraction of the nightly fee. Vacation Rentals on the other hand are charging in some cases 2 times the amount of the nightly rate in per day fees. A property that advertises $99 per night yet adds $200 in daily fee's should be required to list their property at $299 per night. That type of small print pricing is deceptive and confusing to the consumer, is predatory to competitors and should play no part in the hospitality industry.

District of Columbia

- We have seen direct booking seriously decline over the last couple of years!
- We are alarmed by the decline in direct bookings and very unhappy with the cost of commissions we are paying to OTA's. With the help of Google, they are trading on our name.

Florida

- When we got into the business 22 years ago, we were on a level playing field with others in our industry. That field is not only not level anymore, it's practically unplayable. Small businesses are entitled to the same access as large ones. Large corporations can still make money without doing so at the expense of those of us who are no less determined to be successful, and by having a different set of rules by which to do so. Monopolies came and went at the end of the last century. They were broken up for a reason. Going back there would be a detriment to all but a very, very few. Let's not keep that bad idea going.
- This is critical to our historic inn industry.

- As a small hospitality business, we cannot compete, OTA ads drown out our direct booking efforts. Level the playing field.
- On a daily basis we have multiple customers who thought they were booking directly with our inn but have mistakenly booked with an OTA due to the misleading/confusing presentation of information in Google search results. The result for a small business can be devastating as we find that more and more of our relatively small revenue stream is being siphoned as more and more of our reservations arrive through OTAs rather than directly. Even customers who have booked directly with us for years have booked recently with OTAs due to this new interface. Please consider this measure for a level playing field to ensure that our small businesses can survive.

Hawaii

- For years leading up to the past year or two we have had almost 100% direct organic referral traffic from Google. Now we have to pay Google ads to get the that strong referral support from Google and also pay Expedia.com and Booking.com to see the strength of bookings we used to receive from all organic traffic.

Iowa

- We are a new Inn Opening in 2020 and Fair Representation on Google will have a HUGE impact on building our business and competing with the larger hotels near us.

Illinois

- Small businesses need a more equitable approach.

Kentucky

- I own and operate a bed and breakfast with 3 guest rooms and have a very small marketing budget to work with. As a result of having limited funds to compete, information about my property is so buried that it's difficult for guests to find me.
- It is difficult to compete with OTAś that have been given preferential treatment by Google. The smaller the property, the more important these tools are to continued fiscal health.

Louisiana

- We are struggling with spring flooding in south Louisiana and I struggle. Please allow us to stay afloat.
- Small businesses such as ours are dying out because of this type of treatment by large corporations. We are important to the culture of America and need protection to survive.
- Additionally if a small property isn't listed with one of the major online travel agencies (OTAs) or doesn't list their ENTIRE inventory with the OTAs, those OTAs often present false information to the consuming public that the inn they have just searched for has NO AVAILABILITY, when in fact, there may be availability on that B&B's own website.
- The wording that Google puts into the business listing is often incorrect and uncomplimentary.

Maine

- When a potential guest enters the name of my inn searching for my website, and instead ads from online travel agencies show up and dominate the list with links to THEIR site using name of MY business, that is misleading and deceptive.
- Small business is the backbone of Maine economy. Being unable to compete due to the colossal amount of money involved means more and more small businesses will close or be absorbed by conglomerates, effectively reducing traveler choice and destroying a vibrant community and economy model.
- It is simply outrageous that Google is not treating lodging businesses equally, compared to other types of businesses — as described in the petition. Our guests tell us that they have to make more special efforts than in prior years to find our website directly, and many thought they had booked on our site when really they hadn't. We are a small independent motel with seventeen rooms, and don't have the resources to compete with the Google Ad budgets of the online travel agencies.
- Not only is it expensive, prohibitively so, but also a complicated mire that requires us to hire other professionals for assistance in order to get equal and fair internet search visibility.
- We are a small family run B&B and having travel websites take 20% of our rate at booking has a huge impact on if we can continue running the business. Booking direct is vital for our operation and our family.
- The deeper we dig, the more we will find Google and Facebook are taking advantage of small businesses who have no choice but to pay, even if there is no value to what is being spent.

- We are very frustrated by not being "seen" on these sites since we do not let the travel sites book our guests and take a cut of the action. If you look for hotels in New Harbor on Trip Advisor, we are 29th down on the list where hotels from neighboring towns (Bath, Rockland, Boothbay, Wiscasset, Camden, etc. are shown before our hotel which is IN NEW HARBOR...all because we do not let them make money off our bookings. At some point, small hotels like ours will be pushed out of business. I hope ME has an alternative plan for raising money to support the infrastructure needs and assistance programs needs of the state when the hospitality tax well runs dry!
- We need full access.
- Section 3 is especially applicable to our property.
- The OTA's (online travel agents) pay to have their myriad of clone web sites appear in a search which has the effect of driving our stand-alone sites lower on the search page. When I searched for Wilson Lake Inn tonight, Booking.com appeared over our listing. A search for lodging Wilton Maine shows us in seventh position and there is only one other hotel in town. A picture of our building appears in a google box at the top of the page. If you click on it you are directed to the OTA's. The OTA's exist to hijack our customers and skim the cream off our sales. Most customers are shocked to find out how much they charge us (15% per room per day). The customers often tell us that they thought they were booking directly with us.
- If we were not listed on the OTA's a significant number of potential customers would not find us. They have driven us down the search engine page and have

continuous television and digital advertising telling our customers they will get the best deal through them which is patently untrue.

- I agree wholeheartedly with this petition. I recently spoke with my representative at TripAdvisor and inquired as to why the OTA ads were more pronounced than my website link. I was told they were paying for the advertising space. The sad part is that I pay TripAdvisor to direct bookings to my website and had to search for the link as the OTA ads were so prominent. Independent hotels like myself can't compete with that.
- This is critical for our industry.
- Thank you for looking more closely at how Google, Expedia, and Booking.com operate and impact small business in our industry.
- Help

Maryland

- Please let's level the playing field!
- Please help us to make the playing ground level.
- Once Google began these practices, our revenues dropped by 20%
- With the changes in online booking engines it is harder and harder to find B&B's or independent hotels. Again, highest priority on all of these web products goes to the highest bidder and the small businesses are left in the cold.
- I appreciate that someone is taking this time to challenge a globe controlling company. I must receive 5 to 6 calls daily by Google telling me that my property is not recognized by Google, yet they have me listed and I receive reviews thru their viewers. I'm threatened by the Google representative that my business will

not be validated if I don't have key words embedded on the internet by Google. The charge for these key words starts off at $800 and by asking a few more questions the cost can become $300. Asking if this is the only Google representative the answer is no. I am told, that there are two other authorized companies by Google that demand a fee for these key words to be added to my business name for access by internet searches. How do I know that these key words are added to my business? I am verbally promised the 100% return on my investment, but I then ask how do I follow that promise up??? There is never an answer given to me. Black Mail!

- I no longer have the ability to build my own business standard and integrity. It is now manipulated by Google. It is a monopoly that overrides my ability to control my approach to my customer. Google's algorithm control is NOT a FAIR PRACTICE and needs regulation.
- Google just by their ubiquitous nature leads people to believe they are getting accurate results to a geographic search, when in fact they are getting what Google wants to show them based upon who has paid for the privilege. This is a fraud on the consumer.
- We feel analogous to local retailers who are trying to compete against a tech giant like Amazon.com
- As a small business, we need help fighting the big guys.

Massachusetts

- We also object to new travel search companies "scraping" some portion of our data and publishing our properties on their sites, where they tell travelers that we

have no availability until we go onto their sites, correct missing or incorrect the data and sign up to be listed on their sites (see "Trivago"). This has been going on for years. Our properties are, in effect, held hostage until we "ransom" them with a commitment to be represented by the new company. We demand the right to CHOOSE where and how our properties are listed. And, when we choose, we demand that those companies collect all required data and allow us access to guests' actual addresses and emails so we know exactly who our guests are, how to reach them, when and if they are arriving, and that they are fully aware of and agree to our policies in advance.

- Big tech engines are killing our small business.
- Small businesses struggle will all aspects of doing business as it is, and this makes it more difficult. Large hoteliers with heavy overheads need to make money indeed, but there are many regions that are not fiscally practical for large hotels to enter and the small businesses take up that slack. Allow us to have a fair share.

Michigan

- Our rental cottage -- only a small part of our enterprise -- has more features available in Google My Business than the B&B, which is our primary business. For the cottage, we could write the description and can add promotional or informational posts and even special offers.
- Definitely level the playing field for all types of lodging.
- It is truly unfair and actually unprincipled to slant potential guests only towards where you want them to go instead of giving them freedom to choose. Also,

America stands for free enterprise and should uphold the small business owner and do that in high regard. The majority of the bed and breakfast owners have limited rooms, not much competition against huge hotels. We are trying to make a living, why not allow us that opportunity. We have goods and services to offer as much as the larger corporations. Please let us keep our jobs.

- As a 4 bedroom B&B it is cost prohibitive for me to continue to place space on OTAs. Google has been an entity that has promoted me, but also makes it difficult for guests to book directly by making it appear that booking agents like Expedia are cheaper, when in reality they costs the guest and myself much more. All we are asking is for an equal playing field. Our direct booking should be allowed and at a price that we can afford. Thank you.
- This is a case of big money trying to control small bed & breakfasts / hotel bookings and profits. Google is advocating for the OTAs to provide an average renovation product at an excessive cost to the industry.
- This is very important to small business such as us. I hear the confusion from guests all the time and many thought they were booking with us direct but actually weren't costing everyone more money. Please consider this petition!
- For a small, 4 room property in a seasonal market, the online OTA's are putting us out of business. We have been a destination property for more than 18 years and have brought much commerce to our local and surrounding communities. We have prided ourselves on being a top-of-the-line property and being a shining star in Michigan's small business community. We don't want to close, but when your business (even return guests) are misled to book anywhere but our own

website, well, we just can't compete. This is extremely unfair and should be illegal. We are too small to fight them at a battle we just can't win. We need your support.

- Please support our local businesses by granting fair representation to our properties.
- Please help us solve this inequity. The Bed and Breakfast business is very fragile.
- We prefer direct bookings because we are a small Bed and Breakfast and feel more secure for ourselves and our guests, when we have the opportunity to connect with our potential guests personally when making reservations with us.
- Please help small business survive in the big box business world. We are where the people are at!
- Booking Direct is essential to us since we are a small business and feel more secure having personal contact not only ourselves but for those who book with us.
- With 5-star reviews and an excellent location in a university town my occupancy rate has diminished steadily. When I asked booking.com their insights on this they said, "people can't find me, think of booking.com as an acquisition tool". Clearly small businesses are at a disadvantage here - either the inn must accept a 15% reduction in income for their work or the public must pay 15% more for services across the board.

- Google is hijacking the essence of free enterprise and the small business owner. They have no right to monopolize the system. It is not only unfair but immoral and a social injustice.
- This has been unfair to us for way too long please hold them accountable for the business we've lost due to these unfair practices.
- It is impossible for a small business to correct misinformation about their business on sites like Google, Facebook, Booking.com, Expedia, Yelp. Information like number of rooms, hours of operation, description of business. These are basic pieces of information and 1) it is difficult to impossible to reach a person to address your issues, and 2) most of the time they will only correct it if you sign up for their premium service OR they say they don't control the information that they are displaying and that it is coming from a general source or database, the contact information for which they don't know or won't provide.
- This has to stop, and they need penalties for our loss of business

Minnesota

- All lodging facilities, large or small, should have a level playing field.
- As a small business, having large companies harming us at our expense is a horrible way to do business.

Mississippi

- These are very important and maddening situations. Change is definitely needed.

Missouri

- Thank for taking this on--strongly agree with all three reasons. And for me April 2019 was like a switch had been thrown--slowest April since my first in 2006. Other months have been below last year's as well as below last 5 years average.
- Fair practices and access for all small businesses across the board.
- Let's level the playing field and make things equal. How can Google be allowed to do this?
- I could never get Google to tell me why the book now button went to an OTA instead of my website.
- As a small business owner, I would simply ask for a level playing field.
- I do not have the budget of the big OTA's such as Expedia all I want is a level playing field.
- This really does have an effect on our business. Thanks for helping get this issue fixed.
- Please find out how we can stop Google from using fake telephone numbers on order to call and harass Innkeepers into paid advertising under the guise of updating your free listing.

Nebraska

- Just looking for a fair and level playing field for all.

New Hampshire

- The placement of each inn's official web site at the head on its search page would be a start to correct all these problems.
- I fully support this endeavor. Google's practices here are monopolistic, and their stated mission is to usurp competitive advantage through unfair practices.

- Thank you for your efforts!
- What's happening is not fair trade.

New Jersey

- Being a small Mom and Pop Inn, we just cannot compete with the Online Travel Services and their high commission rates in the environment created by Google and others like TripAdvisor.
- Fairness always means a level playing field.
- After 28 years in business, it's been really hard to continue with my business due to the impact of online travel agents and their billion marketing dollars. They just are gobbling up my revenue dollars and charging at least at 15-20% commissions. Please level the playing fields for our small business Inns.

New York

- Not asking for anything other than a level playing field and fairness.
- OTA fees are becoming extravagant! Please do what you can to keep them at a reasonable rate $10 or 10% 15 and 20% is too high!
- Google's algorithm changes have had a severe negative impact on my 30-year-old business, off 40%.
- Please fight for us little guys!
- Please level this playing field. We are all going out of business.
- We require and demand fairness on this platform!!
- It is like being forced to pay protection money to rent rooms.

- Can a class action lawsuit be filed against Google who fails to prevent malicious harm being heaped on small hotels and B&Bs, which ultimately leads to putting the B&Bs out of business?
- Please HELP! This is out of CONTROL!
- Our Village has to put moratorium on Home Rentals as over 50% of our small Village became Home Rentals by developers forcing local people out of affordable housing for local jobs - including critical emergency First Responder positions that threaten everyone!
- The loss of visibility on google searches has created a decline in my direct booking business of more than 20%.
- These practices need to stop.
- It is not a level playing field for small operators. Hotels and larger operators have an advantage.
- We need support!
- No matter how unfound, anyone is allowed by these companies to write and post negative reviews about a business multiple times.
- Our business has changed drastically in the past year- while we do not begrudge paying a commission for new guests to find us through the OTA's we are frustrated by the fact that is has become virtually the only way people are finding us due to the manipulation of Google to funnel all searches through one of their profit centers. Also, while our business has increased with the OTA bookings, we are not sure of our net returns because of the high commission and the pressure to post low rates. We are competing against properties that do not offer

amenities and services that we do but it's hard to show how we differ from one another due to limitations imposed by the different platforms.

- Please help save the small business owners from the big corporate hijackers of our websites and availability
- I've enjoyed a very successful business for the past eight years. I have lost as much as 30% of revenue over the last 3 years due to my website not being found anymore. OTA's have the buying power to rank as king with google. I also have purchased Google Ads in addition to my other advertising and am hardly receiving any conversions.
- Level the playing field, and SUPPORT SMALL BUSINESS!!
- I'm in business since 1984. We do everything within the rules and laws, but we are being very affected by everything around us. Everyone seems to have their hand in the pocket of the small, independent, legitimate business.

North Carolina

- It seems Google only wants to play with the BIG BOYS, it wasn't always that way - SAD
- Our segment of the lodging needs your support.
- Please help support our small businesses. Google is killing us.
- We have been affected. The robo calls to get us to pay for a better listing are so frequent that I have to screen all my calls.
- Please hear us.
- The deck is continuously being stacked against small businesses; however, we make up the largest segment of the business population. Most of us have to sign

up with the OTA's to survive and then we have to compete against them for our own business share. It's not fare we cannot compete! We're just asking for a level playing field.

- Please level the playing field.
- The collusion between Google and the two Online Travel Agencies, Expedia and Booking.com has had the effect of extorting small lodging businesses like ours into paying 15-18% of our income in order to reach customers that we previously reached directly through our websites. In order to stay in business, we had to allow our rooms to booked by the OTAs. The one room that I did not open to them because I couldn't adequately describe the room on their sites went from a 60% occupancy rate to 47% as a result. Many of our guests don't even realize that they were not on our website when they booked and feel deceived. Help small businesses compete by forcing these mega-companies to at the very least be transparent about their practices.

Ohio

- Even though I am retired after 20 rewarding years in such a unique business, I am still involved in the local & state associations. I have always advocated for a "level playing field". Thus, I wish to add my name to this.

Oklahoma

- We have decided to rent our entire house due to all the hoops we are having to jump through just to rent a room. We will be using a management company now and let them deal with all of it. By the way, the cabin management companies are struggling also.

Oregon

- All of us small B&Bs are struggling due to preferential treatment of online booking groups (Travelocity, booking.com etc.) AND lack of regulation of VRBOs (vacation rentals by owner) and AirBNB - most properties in these groups are not regulated or licensed. Please take some action to help the small business owners of bed and breakfasts!
- Thank you for your support for small business owners. We certainly struggle as a single entity. As it becomes more and more competitive in this world of online growing social media and OTA's small business enterprises are disappearing at an alarming rate. I see it in our small town of Ashland, Oregon. In the late 80's there were approximately 37 Bed and Breakfasts here, now there are less than 12. The hotels and vacation rentals are offering accommodation that is cheaper than we can offer. They can afford to spread their overheads because they are much larger than us i.e. hotels and the vacation rentals because many of them are not registered and are not paying the same fees as us.
- 18% commission to OTA, at least 3% to credit card companies, plus 3% for the channel manager, minus operating cost. It doesn't make it easy for small independent roadside motels.
- Thank you for this. The entire notion of what modern travelers want is unique, authentic, genuine experiences, and that is what independent hotels provide. The notion we have to pay upwards of 20%+ vs the large box brands who have commissions as low as 10% is unfair, and we're always isolated and taken

advantage of by tech and their incremental fees, charges, etc. It's wonderful that someone is taking this on. Bravo.

Pennsylvania

- All businesses need an equal playing field. Current practices described above are like extortion.
- Please help really small businesses be able to work alongside and with the big players in the Internet world. Thank you!
- Thank you for considering what is best for our small businesses in Pennsylvania.
- Please help us small businesses get our properties and reservations back! Thanks so much for any help in this matter.
- This is a real problem. We often have guests who believed they were on our website when they booked, only to find out later, they were misled by OTAs posing as our inn. We lose money and the customer is dissatisfied. The OTAs are using our business name to skim money off of our income without our permission. I list with them but do not give them permission to pose as our inn. In addition, they claim that there is no cancellation fee when our inn has a cancellation fee. They really are saying the OTA has no fee, but they don't tell the guests that the inn does. The guests don't understand their commitment.
- Small businesses, including owner-occupied unique hospitality properties, are the lifeblood of the U.S. economy: they create two-thirds of net new jobs and drive U.S. innovation and competitiveness. A new report shows that they account for 44 percent of U.S. economic activity. Google is crippling these small businesses.

- My bookings have decreased drastically...I ask for a level playing field. I have to play by all the rules, pay commercial rates for utilities, have to live on premises, pay for signage, provide parking, adhere to zoning laws and more. The fees for the OTA's are so high for a small business, but I have to be with them as direct bookings are way down. Help is needed. 26 years in business and it has come to this.
- Google should not be permitted to dominate business to the exclusion of equal opportunities for all!
- Google is engaging in unfair practices.
- This is a deceptive and reprehensible practice by corporate and big business to pick the pockets of the sole proprietorships that sustain our democracy.
- When some of my repeat guests have searched for my Inn via google, Google brings up a list of all the sites advertising my Inn, then highlights one which deceptively states "actual website," such that the guest thinks they'll be taken to my direct site, when it actually takes them to the "Google Ads" listing of my B&B. This is grossly unfair AND deceptive.
- Google has diverted many guests to OTA's or themselves via Google Hotel instead of my direct website. The huge corporations are continually taking more and more revenue from small business owners. We cannot compete with their huge marketing budgets.
- My business has been impacted negativity as these unfair practices hinder my ability to reach customers. Thank you for your efforts.

South Carolina

- Yes, this is an issue. Just as the operation of unlicensed, uninsured AirB&B properties are.
- These unfair practices affect our small business greatly. Our guests are often surprised to find that they have inadvertently reserved through the Online Travel Agency that they were led to, instead of through our website as they thought.

Tennessee

- TripAdvisor must be paying the most to google and presents us as no availability (misleading the public as we have no rooms rented at all most of the time)—does say to call the property (with no phone number) and has a complicated system to show up at all that includes lots of money paid to them every month. At least the OTA's you can sign up with free and we have done that to survive, so they benefit, and I imagine google benefits as they show up first. Good luck straightening all this out!
- We have already written numerous emails to the Google Team to change that.
- Action now please!
- Help!
- The high commission rates imposed by these 3rd party sites are harmful to we small businesses. I've had many guests that didn't realize they were being fooled into booking thru a different site and not my website. Small businesses are the backbone of our country. Level the field honestly!
- As a small Appalachian mountain getaway, I did very well with my website, various press stories and referrals and other word of mouth. But since the small listing websites have been bought up creating a monster, my website cannot

even get on page 2 of Google much less page 1. And I do not have the financial resources to pay to appear on page 1 or 2. I have been in business since May 1998 and not sure how much longer I can continue unless there are some changes made in the way small properties like mine (4 rooms and 2 rental homes) are found on Google, Yahoo and Bing.

- Future Innkeepers care too!

Texas

- As a bed and breakfast owner we have found the inability to use all of Google's tools frustrating. The lodging industry is, in my opinion is being blackmailed by Google and the online travel agencies.
- We need your help to be on an even "playing field" PLEASE.
- This is the 32nd year for our bed and breakfast. This is the full-time occupation for 2 people... myself and my adult son. It is not just a hobby. We have invested hard earned money over the years to make our property more and more comfortable and fun for our guests. We, of course, have worked hard 1000's of hours. In or 32 years we have been honored with many repeat guests ....and the guests 'children who are now adults with young children. One family has stayed several days every Thanksgiving, except for one. Since 1993. That is just one of many examples. We definitely are experiencing financial issues due to the information detailed above. A serious remedy needs to be implemented as soon as possible.
- I need to add that our property has 10 rooms.... which means that we provide jobs for many people other than ourselves, the owners. They do many

duties...cook, clean, yard work, greet guests, take reservations by phone and synchronize the paper calendar with our online reservation calendar, to mention a few. My partner, my adult son and I have our hands full with the bookkeeping and financial matters, grocery shopping for 20+ guests and being gracious hosts for our wonderful guests. We call that last part "THE FUN PART" ... which it IS. That atmosphere is one reason guests come to bed and breakfasts!! Please remember that we provide jobs daily employee described above AND often for upkeep ... anywhere from plumbing, carpentry, full yard work, painting, etc. If reservations are diminished by the means you have described in the petition above (and they were last year), many small businesses may go bankrupt and many wonderful employees will lose their jobs. Thank you for this petition to address this issue.

- Our booking revenue is on schedule to decrease by nearly 30% this year. We are being severely affected by the giants of the internet and would like a level playing field!

Vermont

- Just as an example we recently had a group decide to have their members stay at our B&B. They all booked online by searching on Google for our property. Even though the information about the B&B would have shown up directly in the search, all but one ending up booking, probably unknowingly, via one of the Expedia sites. This result was almost certainly because that's where the "Book a Room" button linked to, and that button is much more prominent than the link to "Website" to reach our property. Once a prospective guest clicks "Book a Room"

there is no path to book directly at the B&B, all the options are OTAs. The guest likely has no idea at that point that they could have had the option to book direct. This is a blatant example of where Google's search results page drives commissions from our B&B bottom line to their OTA partners, while providing no value to the guest or ourselves.

- We really don't understand why if someone puts in our name (The Vermont Inn) the search has paid ads for OTAs first and we're below the "fold" on the searches. This often negates the ability of the searcher to book direct with us.
- Google should remain a search engine, as was intended in its original vision, moving users off its site and out into the diverse marketplace to view and choose their lodging. Google should also give small independent businesses a chance to compete against the travel channels for direct bookings.
- I have contacted Peter Welch, who responded and acknowledged the burden small business carries due to Google's practices.
- Please help support small business by legislating to prevent Google and other high-tech giants from using their Trust-like powers to overwhelm and decimate our market!
- I have been battling with Expedia since May because they "lost" my BedandBreakfast.com listing and have not replaced it. This is yet another example of the abuses of these OTAs. I have lost $35,000 this tourist season as a result of this and Google.
- Expedia purchased the old BedandBreakfast.com booking site and many establishments lost their webpage as well as their city disappearing. At first, they

denied they bought out this website and strongly suggested we go to the pay and play format with them. Finally, they acknowledged after months of hounding that they did indeed own the site. To this day our listing has not been restored and it appears will not be restored any time soon. It appears it is a pathway for them to drive all business to their cookie cutter format.

- Please vote to help the businesses who invest in the legal infrastructure of the hospitality business through licenses, permits, insurance, and taxes to keep their state and community thriving.
- Level the playing field

Virginia

- If the playing field is not leveled soon, we will be closing our doors and filing bankruptcy.
- They've purposely made it difficult and confusing for people to click on my website because they want to force me into paying them a percentage for their booking service (similar to Expedia).
- Size & mega marketing dollars together with ability to INSERT ITSELF between the potential guests and the small B&TB, Hotel, Vacation Rental Owner, makes it impossible for the consumer to find and book directly with such small businesses - a true monopoly of the lodging business.
- On # 3 "The result often misleads", I would use stronger language. The word I would choose "extremely deceptive". I frequently have guests tell me they thought they booked directly on my site.

- When we purchased the Inn in 2014, we had an occupancy rate of over 50%. We continue to spend more on advertising trying to compete against the OTA's who spend more on ads than I earn. We watch our occupancy drop 2-3% annually. As a destination off the beaten path, we relied on folks finding us using simple searches. Now when I search our area or Inn by name, I see hotels offered by Expedia, etc. 50 miles from us and we are listed somewhere off the page. We continue to get 5-star reviews consistently on Google and TripAdvisor, etc. Nothing in the way the Inn has operated has changed except folks finding us.
- Google has put small business owners of bed and breakfasts and hotels at a dis-advantage in search engines! Please support the House Small Business Committee in its efforts to provide a level playing field for the small business Innkeepers and Hoteliers in the Travel and Tourism industries!
- We have watched our Inn placement on Google searches drop yearly since all the OTA's pay more money to promote their vast hotels for more money than we earn in a year. We have had a significant drop in listing us on Google searches to way below paid ads, OTAs, VRBO, Airbnb. Even when I directly put in my website address!!! As a property who consistently receives 5-star reviews, we watch our numbers decrease annually and when we search online, have dropped from the first page to somewhere far below. Trip advisor also expects us to pay for what was once a free place for guests to check our reputation. Now we are replaced by other "Suggested" properties.
- Please allow us an even playing field
- THANKS for educating me and others on this issue. Let's level the playing field!

- We will be out of business within the next year if something does not change with this. Until 2 to 3 years ago we thrived for 12 years!

Washington

- For properties that are not currently listing with Expedia or Booking.com or their partners, the problem is even worse. Search results may not even display our property on the first page at all.
- We have had a large drop in our business where guests are unable to find us unless we open up our properties to OTA's and Google Ads. We are told countless times that it was hard to find us and also that guests thought we had no rooms available as OTA's state this or that we are sold out when we do not have our property opened up to OTA's who are charging a large commission that B & B's with only 3 units such as ours are having a tough time.
- There is no fair competition between gigantic OTA's and small businesses for reservations. Besides being almost impossible to understand the analytics and restrictive nature of the system, it requires enormous amounts of money to put into ads to ""buy your way"" to the top of the list. Unfair to say the least.
- The impact of large tech on small lodging is negative and is costing us collectively millions of dollars in lost revenue. They must be controlled so we can survive.
- With only 2 rooms there is no way we ever show up against the OTA's
- I only have a few rooms and am a small business. The cost of using a booking site vs booking direct is too much for my bottom line. Please make booking direct an option for me.

- Their star ranking is not fair, giving priority to businesses that advertise with OTA's.
- The deck is really stacked against the small proprietors who run these bed and breakfast establishments. We are active parts of our community, contributing to the economy in meaningful ways. We work long, hard hours to build incredible experiences for our guests that translate to outstanding reviews, only to find that our hard work is being co-opted by large corporations who don't even care if we have availability or about the time and costs we incur to build our businesses. Most of us are paying those same companies large commissions to bring guests to us. To find that these same companies are now pulling potential guests away from our Google business listing, under the guise of booking directly with us, is frustrating at best, and an unfair advantage that cuts directly into our meager profits. None of us gets into this business to make a lot of money, but we should at least be given a fair shot at profiting off our own efforts.
- Google needs to be fair to all.
- The massive OTA's and Google with their corner on the hotel ad market completely blocks out access by small independent properties. It's a nightmare even trying to compete - and definitely not a level playing field. Control needs to be relinquished when it comes to social media ad buys and access to "bookdirect" information.
- We need a fair playing field.
- This is a huge issue!

West Virginia

- These issues cause small businesses to be placed at a clear disadvantage only because they are small, not because they offer an inferior product. Changes like these will greatly enhance the survival rate for small, family owned entrepreneur-type businesses!

Wisconsin

- Third Party marketing vendors are now creating platforms for small businesses to create less expensive Google Hotel Ads, however this also is very costly for trying to obtain direct bookings online.
- I have had many guests tell me they assume the information showing in this area on google links directly to my direct booking site. They are shocked and frustrated to find that they have not actually booked directly with a small business. I feel this is not only unfair to the small business innkeepers, but also dishonest business practice on the part of Google, Booking.com and Expedia.
- Our sales have dropped considerably since this practice of below the fold has gone into effect. Our click to our website is at about 23% of what it's been in past years.
- Big Google putting down the small business is very frustrating!
- In addition to the bias reservation technology, people who post reviews on Google Business, are not required to authenticate their experience. Thus anyone, i.e., a competitor, unhappy neighbor, soothsayer, can post a review and Google will not remove false claims.
- Level the playing field to include B&B's.
- Stand up for the small business which can't buy support.

Canada

- While not a US based Inn, the issue is global in reach and the US as a world leader needs to take a stand.
- The big guys always have the advantage of being big but in fairness we little guys should also be able to access any advantage the big guys have. We are too small to negatively impact those big guys, but small businesses are the backbone of the economy. Help us be competitive.
- The wonderful things TripAdvisor and Google do are overshadowed by the restrictions and preferential treatment given to some of the OTAs. That should STOP!

CreativeFuture
Creativity. Innovation. Tomorrow.

12 November 2019

The Honorable Nydia Velázquez
The Honorable Steve Chabot
Committee on Small Business
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairwoman Velázquez and Ranking Member Chabot,

We welcome the Small Business Committee's hearing on the anticompetitive practices of the major online platforms, specifically Google and Facebook, as they affect small businesses in America. In light of your upcoming hearing, we wish to submit comments for the record.

CreativeFuture is a coalition of Americans who create – over 560 organizations and companies and over 230,000 individuals. We make our living creating in film, television, music, book publishing, and photography. These are industries dominated by small businesses. In the film and television industry, 87% of all businesses have ten or fewer employees.[1]

For this reason, we truly appreciate your desire to hold a hearing on the anticompetitive practices of the largest internet platforms – notably Facebook and Google. We wish to draw attention in advance of the hearing to the impact of these practices on our country's creative industries.

Our nation's creative economy, the world's best, is under siege by digital piracy. Ever-evolving technologies and corporations facilitate the unauthorized duplication and distribution of our valuable creative works – among them, the largest internet platforms that wittingly or unwittingly serve the interests of illegal enterprises located outside of our borders and outside the reach of our law enforcement.

In July of this year, the U.S. Chamber of Commerce Global Innovation Policy Center (GIPC), in partnership with NERA Economic Consulting, published a new study[2] showing that all of the benefits that streaming has brought to our creative economy have been artificially capped by digital piracy. Using macroeconomic modeling of this piracy ecosystem, the study estimates that global online piracy costs the U.S. economy **at least $29.2 billion** in lost revenue each year – money that is being stolen from small business owners and their employees. And, this ecosystem is aided and abetted by some of the largest American tech companies.

We are submitting two attached filings that were previously submitted to the Federal Trade Commission in response to their request for comments, one in anticipation of the *Competition and Consumer Protection in the 21st Century Hearings* (Project Number P181201) and then one in response to their "FTC Hearing #4: Competition and Consumer Protection in the 21st Century" on October 23rd and 24th of 2018. In these comments, we shared our thoughts on the role of intellectual property and competition policy in promoting innovation.

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[1] The Economic Contribution of the Motion Picture & Television Industry to the United States, November 2018.
[2] Impacts of Digital Video Piracy on the U.S. Economy, June 2019.

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In summary, our creative communities are victimized by the unfair, deceptive, and anticompetitive practices that continue to be rampant on the internet and are facilitated by Google and Facebook. While the internet undoubtedly has had significant benefits for many in the creative communities, ultimately the current situation has not only hurt us, but has also harmed consumers and the public good.

We respectfully submit the attached documents for your consideration. As you evaluate the business practices of these enormous digital platforms and the impact those practices have on the health of small businesses in our country, we hope these documents are useful to your Committee.

Sincerely,

Ruth Vitale
CEO, CreativeFuture

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20 August 2018

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex C)
Washington, D.C. 20580

Dear Chairman Simons and Commissioners Ohlhausen, Phillips, Chopra, and Slaughter:

We submit this filing in response to the Federal Trade Commission's request for comments in anticipation of the "Competition and Consumer Protection in the 21st Century Hearings" (Project Number P181201) later this year. In these comments, we are pleased to share our thoughts in response to the suggested topics related to competition and consumer protection issues in communication, information, and media technology networks, as well as the role of intellectual property and competition policy in promoting innovation.

CreativeFuture is a coalition of Americans who create – over 540 organizations and companies and over 190,000 individuals. We make our living creating in film, television, music, book publishing, and photography. Our nation's creative economy, the world's best, is under siege by digital piracy because ever-evolving technologies facilitate the unauthorized duplication and distribution of our valuable creative works – among them, internet platforms, that wittingly or unwittingly serve the interests of illegal enterprises around the world.

In short, our creative communities are victimized by the unfair, deceptive, and anticompetitive practices that continue to be rampant on the internet and are facilitated by a variety of large internet platforms. While the internet has undoubtedly had significant benefits for many creatives, ultimately the current situation has not only hurt the creative communities, but has also harmed consumers and the public good.

*A large number of Americans agree that the government must act to keep Silicon Valley in check. CreativeFuture ran an online petition titled, "*Tell Washington: Hold Silicon Valley Accountable for Their Actions*," which was signed by over 56,000 Americans.[1] These signatures can be found on Page 39 of this document.*

Decades-old laws have largely immunized large internet platforms from accountability for the misuse of their platforms to facilitate theft. To a significant extent, they are able to hide behind flawed safe harbor provisions that pre-date the consumer internet as we know it. These overbroad safe harbors have been exploited not only by global criminal piracy operations but also by the internet platform providers themselves, which profit enormously from clicks and advertising by or for those seeking (and often steered by the platforms to) infringing content.

[1] *Tell Washington: Hold Silicon Valley Accountable for Their Actions*, CreativeFuture Petition

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The legal framework that protects these platforms stems largely from two '90s-era statutes – the 1996 Communications Decency Act (CDA)[2] and the 1998 Digital Millennium Copyright Act (DMCA).[3] These statutes were intended by Congress to promote the growth of the then-nascent internet by alleviating the burden of liability on the part of intermediaries for the unlawful acts occurring on their platforms, *while also encouraging those intermediaries to act responsibly in addressing abusive conduct.*

When the internet safe harbor laws were adopted by Congress some two decades ago, the internet was little known to most Americans. In contrast, today's internet is central to every aspect of our lives. It's the new Main Street – it's where we do our banking, where our medical records are accessed, and where unfathomable amounts of information about each of us resides. And significantly, unlike the '90s, when the internet was highly decentralized among a network of academics and government researchers, today the true power of the internet is concentrated in a handful of massive platform providers.

America's outdated, overbroad safe harbor protections hamper effective enforcement by or on behalf of rights holders in addressing the facilitation of piracy by the internet platform providers. This has had a negative impact on American creativity – the movies, music, television shows, books, photographs, video games, and other desirable products that make our creative economy the envy of the world. To cite just one example, in just a few seconds of searching on Google, its YouTube subsidiary, or Facebook, one can readily find thousands upon thousands of copyrighted works and the ability to access them *for free* without the permission of, or any compensation to, those who created, invested in, and marketed them.

Strong copyright protections are what give us the freedom to pursue our art as a career, not just as a hobby. Those protections ensure that the months and years of uncompensated work often invested in the creation of songs, crafting a film, or coding a program will be rewarded with a meaningful return.

The U.S. core copyright industries are a significant economic driver, contributing more than $1.2 trillion to America's Gross Domestic Product and employing 5.5 million Americans. These industries are leading exporters, outselling other major U.S. industries – including aerospace, agriculture, and pharmaceuticals. When consumers in other countries enjoy American-made creative products legally, job creation and economic growth occur here.

We strongly believe, and respectfully submit, that because of the enormous harm to our society and our economy that it causes, the practices of large internet platform providers as well as other enterprises that use the internet to promote illegal streaming services should be included within the scope of issues that the FTC examines in connection with the "Competition and Consumer Protection in the 21st Century Hearings."

Harm to Creators and to Competition

Filmmaking is a difficult and demanding process – requiring years of hard work and often millions of dollars in investment. Even on a small independent film, dozens of people work for years to capture an idea and bring it to the screen for audiences. Many in the next generation of creative voices may never have that opportunity because of digital piracy.

Why do we say that?

[2] Telecommunications Act of 1996, tit. V, Pub. L, No, 104-104, 110 Stat. 56, 133.
[3] Digital Millennium Copyright Act of 1998, Pub. L. No. 105-304, 112 Stat. 2860.

Moonlight, a small independent film, went on to win the Oscar® for Best Picture in 2017. It took Barry Jenkins, the director, eight years to get the movie financed. The film's team worked for little compensation. They signed on because they believed in it, with hope of financial gain if the film were successful. They worked for what is known as back-end participation, which is paid out from proceeds after production, marketing, and distribution costs are recouped.

Worldwide ticket sales totaled $65 million, which translates to approximately 9 million tickets sold. But during the time that the film was in theaters, there were roughly 60 million piracy transactions – *over 650% higher than paid ticket sales.*

It can be argued that those 60 million transactions would not have necessarily translated 1:1 into 60 million legitimate ticket purchases. We agree. But even if *only 5%* of the pirated transactions had been paid theatrical ticket sales, at an average worldwide ticket price of $7.00, the film would have earned an additional $21 million. Or, alternatively, if just 5% of those pirated transactions had been paid downloads or rentals, and at a conservative price of $3.99 per download or rental, the film would have earned an additional $12 million.

This kind of sales displacement by piracy can be life or death for an independent film, and can justify the decision by any financier to no longer invest in up-and-coming filmmakers and their projects.

Not every example of losses to piracy is a matter of life-and-death. However, search and upload functions (such as those popularized by Google, YouTube, and Facebook) allow users to access illegitimate copies of creative content. This presents our creative communities with the constant challenge of trying to make a fair return on investments of time and talent. Services that offer that functionality point consumers to free copies of our creative works, being distributed without our permission, which creates traffic on internet platforms that generates advertising revenues.

In music, with the onset of its digital availability on both legitimate and piracy platforms, the industry essentially collapsed in the span of a decade. In the United States, revenues decreased by more than half – from $14.6 billion in 1999 to $6.3 billion in 2009. Meanwhile, the economy grew 20% and more music was being consumed than ever before. A huge percentage of that drop was clearly attributable to unfair competition from rampant music piracy services. While some musicians made the transition successfully – particularly the subset of artists who excel at live performances, merchandising, and endorsements – many could no longer make a living in music.

Today, the music industry has largely transitioned to digital distribution. Streaming services like Spotify and Apple Music have started to reverse the financial decline, with streaming revenues accounting for two-thirds of much smaller U.S. music industry revenue in 2016. But artists traded and continue to trade dollars for pennies as this digital takeover occurs, with proceeds continuing to be dragged down by piracy.

As recently as two years ago, YouTube, one of the largest music streaming destinations in the world, generated less revenue for the industry in royalties than the relatively niche market for vinyl records. Moreover, musical artists have little or no control over the upload of their music to YouTube. As a result, they can spend huge amounts of time trying to make YouTube take their recordings down (so they can make a fair return through other forms of digital distribution and negotiate market rates for the legal distribution of their music on YouTube), or they can take the fractions of a cent that YouTube may be willing to pay them.

The result is a distortive effect on the market for music, driven by the widespread availability of illegal content and the ineffective response of YouTube and other platforms to it. Thus, an artist whose song is streamed 1,000 times will make $12 on Apple Music, $7 on Spotify, and just $1 on Google's YouTube.[4]

Similar stories can be told in the other creative content industries. The bottom line for all of these industries is that the unfair methods of competition often facilitated and sometimes practiced by the massive internet platform providers results in less creative content than otherwise would exist, fewer new voices, and harm to legitimate sources of distribution.

*A piece written by CreativeFuture Member and Documentary Producer and Executive Producer Mitchell Block (*Carrier, Vessel, The Testimony*) that discusses how Google and YouTube's rampant piracy problem has affected his livelihood can be found on Page 10 of this document.*

Additionally, 13 CreativeFuture Members, including filmmakers, musicians, photographers, and others, participated in writing "StandCreative Series One Stories." These short narratives explain how digital piracy has affected their livelihoods and careers. These stories can be found on Page 23 of this document.

Harm to American Consumers

Our copyright laws, as incorporated into the Constitution and as reflected in the Copyright Act, exist to benefit the public. As noted by the U.S. Supreme Court, "The immediate effect of our copyright law is to secure a fair return for an 'author's' creative labor. But the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good."[5]

Copyright promotes creativity and, thereby, the general public good. But the lack of accountability and attendant inaction demonstrated throughout much of the internet ecosystem, including by massive internet platforms like Google and Facebook, leads to consumer harm by reducing investment that leads to further creative production.

In film and television, copyright provides investors an incentive to invest in creative works. Film and television production, in particular, are among the most expensive artistic endeavors. The process requires financial backers to believe in a project and see it through to its end – often requiring tens of millions of dollars to be spent before a final product is completed and ready for the marketplace.

Piracy can create enough harm and uncertainty to deter investors, especially for independently-financed films, documentaries, and other works with less than "blockbuster" financial potential – all films that meaningfully increase the variety of content available to consumers.

With less investment, there will be fewer new voices than otherwise would exist, fewer artistic endeavors, and ultimately less creative output, which adversely affects consumer choice.

[4] See A. Abbott, et. al., "Creativity and Innovation Unchained: Why Copyright Law Must be Updated for the Digital Age by Simplifying It", released by the Regulatory Transparency Project of the Federalist Society, October 27, 2017 (https://regproject.org/wp-content/uploads/RTP-Intellectual-Property-Working-Group-Paper-Copyright.pdf).
[5] Twentieth Century Music v. Aiken, 422 U.S. 151 (1975)

There is also a more direct effect on American consumers who are led to illegitimate content by large internet platforms. The threat of malware can be found in a large number of pirate websites and can result in identity theft, ransomware, and financial loss.

A report by the Digital Citizens Alliance[6] found that at least one in three pirate websites expose consumers to malware. Additionally, malware can facilitate a nefarious practice known as "slaving," which results in hackers having access to a computer's camera. Due to these concerns, over 75% of respondents to the DCA's survey believe that the major digital platforms need to do more to keep the internet safe. The FTC itself considered the malware threat serious enough to issue a consumer warning in 2017 and to investigate LimeWire for similar data security concerns in 2010.[7]

The FTC should keep firmly in mind that when the CDA and DMCA "safe harbors" were enacted, the now market-dominant platforms were either in their infancies or did not exist at all. However well-intentioned those "safe harbors" may have been for an industry in its infancy, they have led to a fundamental and unprecedented lack of accountability for the social and economic harm that has become pervasive as the internet has matured. That is how platforms can, without meaningful accountability, drive millions of eyeballs to their sites and monetize that traffic all on the strength of pirated content.

It's not a coincidence that as recently as two years ago the content industry sent Google *over 900 million DMCA takedown notices*. Because of how the law is written, Google and YouTube can shrug their shoulders and reap advertising revenue while millions of views are racked up – in many cases from outright piracy, in others from videos that provide links to piracy, in many others from unlicensed uses of copyrighted works, etc.

Neither the entertainment industry, nor any legitimate business in the world, can "compete with free" when the "free" product is a perfect, stolen, endlessly replicable version of their own product. Nor can other streaming services like Apple Music or Spotify, which, unlike YouTube, do not attempt to leverage the availability of free, pirated content on their platforms to negotiate against musicians and their labels.

But these are certainly not the only ways in which large internet platforms lack, or try to avoid, accountability. In the past, Google agreed to a non-prosecution agreement with the Department of Justice over its role in accepting advertising dollars from unlicensed pharmacies. It was also forced to respond to statements by pirate site operators that came to light in litigation claiming that Google was actively assisting those sites to drive traffic to them by suggesting piracy-related keywords, with the majority of advertising revenue on those sites flowing back to Google.[8]

[6] Enabling Malware, July 2016

[7] Google and Facebook both have a history of data privacy and data security violations: In 2011, each company entered into an FTC consent decree to settle serious allegations of consumer privacy violations, and both promised that they would protect consumer data going forward. Subsequently, in 2012, Google agreed to pay $22.5 million to settle new FTC charges that it violated the FTC Order by misrepresenting privacy assurances to users. And in 2018, the FTC announced that Facebook was under investigation for violating its 2011 Order through allegedly inadequate consumer data security in connection with the Cambridge Analytica scandal.

[8] See Media Firms Say Google Benefited From Film Piracy, Wall Street Journal, February 12, 2007 (available at https://www.wsj.com/articles/SB117125197567105533)

More recently, Google fought Congress in the passing of the Fight Online Sex Trafficking Act (FOSTA)[9] because it would amend part of the Communications Decency Act and allow victims of sex trafficking to hold accountable websites that knowingly facilitate child sex trafficking, like Backpage.com.

Facebook claims to not be able to shut down groups that exist solely to share pirated content[10] – even though they do manage to remove groups participating in other illicit activities. Of course, Facebook relies on a revenue model that prioritizes time spent on the service, so if the groups go away, so does the associated user time spent on Facebook.

This fundamental lack of accountability deserves to be addressed.

Between March and June of 2018, we ran a nine-question survey that polled the public on their feelings about platform responsibility. Over 2,000 Americans answered.

Here are some key findings:

- Over 80% of respondents believe that online platforms should take responsibility for the illegal actions taken on their networks.
- Just under 80% of respondents (79.85%) believe that given the tremendous growth of the internet over the last 20 years, it is time to reconsider the Digital Millennium Copyright Act (DMCA) and the Communications Decency Act (CDA).
- Over 77% of respondents believe Google, Facebook, and Twitter should take greater responsibility for the use of their platforms to facilitate the illegal distribution of copyrighted movies, television shows, music, photography, and books.

You can read more about this survey, along with a question-by-question breakdown, on Page 13 of this document.

Lastly, like unlicensed pharmacies, sellers of streaming piracy devices, colloquially known as "Kodi Boxes," use Google and Facebook, among a variety of other services, to find customers and sell them their illicit goods.

These devices are media players that use "Kodi" software, an open-source video platform that can be used to access and organize a user's content – regardless of its legitimacy. In addition to organizing one's media library, Kodi-enabled devices can also be loaded with applications known as "add-ons."

These add-ons are similar to the Netflix app and other apps that operate on Roku, Firestick, Chromecast, or Apple TV devices. But there is *one big difference*: many add-ons for Kodi facilitate access to pirated content – everything from live television channels, limitless movies and television shows, and every premium broadcast available, from all around the globe. These apps may be pre-loaded onto Kodi boxes or may be downloaded after purchase.

[9] Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164.
[10] See Facebook is Overflowing With Groups Offering Pirated Films — and Says it Won't Do Anything About It, July 13, 2018 (available at https://www.businessinsider.com/facebook-groups-sharing-pirated-hollywood-movies-2018-7)

Advertisements for Kodi boxes, which typically sell for just a few hundred dollars, promise consumers "free television and hundreds of live channels" and advertise their services as "100% legal" – a blatant misrepresentation that lures unsuspecting consumers into commercial transactions with a business that appears to have the trappings of a legitimate commercial enterprise but is anything but.

*An op-ed written by CreativeFuture Member and Producer Wendy Finerman (*Forrest Gump, The Devil Wears Prada*) that discusses the dangers of streaming piracy devices and apps can be found on Page 8 of this document.*

Conclusion

We join other representatives of the creative industries in urging the Federal Trade Commission to consider these issues and their impact on competition and consumer protection, as it considers competition and consumer protection issues in communication, information, and media technology networks.

Sincerely,

Ruth Vitale
CEO, CreativeFuture

Will the Spirit of American Cinema Become Extinct?
By Wendy Finerman, *The Hill*
March 7, 2018

When I produced *Forrest Gump* and *The Devil Wears Prada*, it was astonishing to see each of them come together, from books to scripts to financing to shooting to the day they were in theaters. Amazingly, they both hold up beautifully years after they were released. The movies still inspire audiences, make them laugh, cry and think – all very true emotions that are at the heart of American filmmaking.

It took over 10 years to get *Forrest Gump* to the big screen. The film is a result of years of toil from hundreds of people to craft this singular experience.

Forrest Gump was released in theaters in 1994, a very different world of watching movies than we now inhabit. People didn't "stream" movies at home – they were still driving to and from Blockbuster with bulky tapes. We didn't give much thought to piracy back then.

Fast forward to 2018, and if that movie were released today, it would be available illegally online, from unauthorized sources, within hours. You don't need to be a tech genius to figure out how to see it. All you would need to do is get a "fully loaded" piracy device (sometimes referred to as a Kodi box) and you could be watching any movie *ever made* within seconds – all in the privacy of your own home and on your 60-inch flat screen TV – for free, with no compensation to anyone who helped make the film.

Kodi by itself is legal software that can be loaded onto any Android streaming device, creating a viewing interface on the television screen that functions similarly to the Apple TV. However, devices that use the Kodi platform can be easily misused. When they are loaded with third-party add-ons, the user can access a virtual treasure trove of pirated entertainment media from all over the world.

Unscrupulous companies are profiteering by buying massive numbers of empty set-top boxes, loading them with Kodi and illegal apps, then selling them at a high markup. One of the most notorious is "TickBox," which has been making headlines for its role in enabling piracy on the grandest of scales. That includes "Forrest Gump" and "The Devil Wears Prada", and as well as live streams of cable and pay TV channels from around the world. Don't believe me? Here's what TickBox's marketing pitch looked like (as it appeared on their website until they were ordered by a court to take it down):

"Simply plug the Tickbox TV into your current television, and enjoy unlimited access to all the hottest TV shows, Hollywood blockbusters and live sporting events in one convenient little device, absolutely free."

But entertainment *isn't* free – it costs money to develop an idea and then execute it. Whether it's a live event, or a film, or a television show, companies big and small spend millions of dollars to bring us the characters and stories we love.

Some piracy operators even have the gall to charge additional subscription fees for "services" that pipe in stolen content, usually for about $10 a month. A recent study from the Internet research firm Sandvine found that an estimated 7 million North American households now have a piracy device, earning criminals about $840 million per year. And this is nothing compared to the billions lost when the device users stop paying for legitimate access.

Because they look and work just like brand-name set top boxes, these streaming piracy devices normalize piracy, ushering content theft into the cheerful light of the living room. Now it may feel just like home, but you and your family are breaking the law from your couch.

Fortunately, the news about Kodi is not all bleak. TickBox has been called out for their blatant thievery, and the courts are listening. In January, a judge in California saw through TickBox's protestations of innocence and slapped the Georgia-based company with an injunction, ordering it to keep pirate add-ons off of its devices and halt all advertisements that encourage piracy.

But while the end may be near for TickBox, our fight is far from over. A recent study found more than 750 websites that sell infringing devices, which means that wherever a TickBox falls, another like-minded device will step in to take its place.

The battle against piracy will remain an endless game of Whack-A-Mole until we change the conversation at the federal level. In Europe, the highest court has ruled that fully-loaded piracy devices are illegal, and UK law enforcement have brought numerous criminal cases against box purveyors, obtaining jail sentences as long as four years. In our country, prosecutors, with the encouragement of Congress, should be working to deliver a similar knockout blow.

My fear is that the growth of streaming piracy will prevent films like mine from being made. Although "out of the box" films often reap a higher return on investment than franchise films, they have no built-in audiences and therefore are financially riskier than franchise films that do.

My hope is that services like Tickbox will be stopped so that the next generation of American writers, directors and producers have a chance to tell their stories. If the growth of streaming piracy devices continues, it will deprive audiences of the life long memories that come from watching classic American cinema.

Piracy must be stopped – for all of us.

Wendy Finerman is an Academy Award®, BAFTA®, and Golden Globe®-winning producer. She has produced films and television shows including Forrest Gump, The Devil Wears Prada, Drumline, *and* Stepmom, *among others.*

I am a Filmmaker and My Films Are Being Stolen on YouTube – this is My Story.
By Mitchell Block, *CreativeFuture Blog*, April 11, 2018

In 1973, fresh out of film school, I wrote and directed the dramatic short *No Lies*, an important film because of its open, and unfettered, discussion of sexual violence against women.

Today, *No Lies* is included in the National Registry and in the curriculum for film theory, women's studies, and anthropology college courses across the country. However, due to its subject matter, it struggled to find distribution after its initial release. So, I elected to distribute it myself.

More than 40 years later, my company, Direct Cinema, has produced, marketed, or distributed works by some of the leading figures in filmmaking, including John Lasseter, George Lucas, Martin Scorsese, and Ken Burns, among others – their films have collectively won nearly 30 Oscars® and have garnered close to 100 nominations.

My business grew and flourished by providing copies of little seen, often underappreciated, frequently challenging works to institutions that could benefit most from seeing them, including colleges, universities, public libraries, senior centers, and prisons.

As I write this, however, our business model is over.

It started in the 1980s with the invention of VHS formats. Then came the rise of the MPEG format in the '90s and, with it, illegal file sharing of motion pictures. Then, in 2005, came the death knell – with the emergence of YouTube and similar video streaming companies.

There are currently hundreds of films from Direct Cinema's past and current catalog that have been uploaded to YouTube and other sites like it. Every single one of them, from the popular PBS series *Carrier* to Disney's Oscar®-winning animation short *Tin Toy*, is being streamed illegally.

One YouTube user called "2009dinia" has had *Tin Toy* up and running since 2012. On that page alone, the film has received more than 1 million pirated views.

YouTube is fully aware that its site is rife with such content, which infringes on copyright and robs creatives of the earnings they deserve – even as the uploaders of the content make money from it via advertising. However, instead of actively seeking to curb piracy, YouTube puts the burden on copyright holders, like me, to flag videos for removal.

Needless to say, I spend a lot of time flagging our pirated videos on YouTube.

This task used to be much easier thanks to the Content Verification Program (CVP), a tool that allowed me to enter a Direct Cinema title into the YouTube search bar, and simply click a box next to each result that violated my copyright. I could then mass-submit a page of pirated uploads for one title, all at once, and then move on to the next page or the next title.

Even then, it was an endless game of Whack-A-Mole to keep on top of all the piracy, but the tool helped, allowing me to take down hundreds of infringing videos in a matter of minutes.

Until one day, when I logged onto my YouTube account and discovered that the Content Verification tool was gone. Vanished.

The tool was (and is) still a feature of the site, but my access to it had been removed.

Undeterred, I went through the rigmarole of applying to get the tool back, but my application was swiftly rejected, with the following note from the anonymous YouTube powers that be:
"We have decided that you are not an appropriate candidate for this tool. The CVP tool is designed for large copyright holders who expect to have an ongoing need to have content removed from YouTube."

My company may not be publicly traded, but with a few hundred titles and decades of experience, we certainly have an "ongoing need to have content removed from YouTube."

Having denied us the process that made it at least somewhat possible to protect ourselves from streaming piracy *en masse*, the YouTube rejection email proceeded to invite us to flag future infringing content on a case by case basis, by filling out a separate web form for each offending video.

Concerned, I wrote a message to YouTube's help center:

"Our works are stolen in large numbers on your site and providing individual notices for each take down is time-consuming and ineffective. Historically, we had a way of ticking a box and signing off. We would like that method returned to us."

Months later, I have yet to receive a response to this query from anyone at YouTube, or Google, its parent company. Instead, my requests to be reconsidered are just blocked automatically, with no email address to write to or phone number to call.

Being ignored when I'm trying to find a simple solution to the problem is infuriating, but more importantly, I simply don't have time for this. I'm trying to run a business that supports independent filmmakers and provides high-quality cinematic offerings to community institutions worldwide.

I am far from a "studio fat cat," not that the fat cats don't have the same rights and also work their tails off. Creatives, big and small, are all in this together – piracy hurts us all, from the director of the next comic book blockbuster to a little-known animator trying to get a short into a festival.
Based on the above exchanges, it's obvious that YouTube just doesn't care. It's not in their interest to change things because their business model depends on the monetization of content that they don't create or own. Long-outdated exceptions in our country's laws allow them to get away with it, evading accountability for illegal content that appears on their site.

Of course, when YouTube is selling video streams of its own licensed films, other pirated copies on the site have a way of quickly vanishing. (Try to find a free copy of the Warner classic, *Willy Wonka and the Chocolate Factory*, for instance.)

Apparently, someone at YouTube still has access to the CVP tool. I wish the same could be said for Direct Cinema and other indie film providers who have been deprived of this convenient method to limit the online infringement of their offerings.

Our legislators have the power to help. As I write this, NAFTA renegotiations continue to unfold. The new trade agreement could feature strong copyright protections and its "safe harbor" provisions could be eradicated, taking away the blanket immunity big tech companies like YouTube now enjoy from the innumerable acts of piracy occurring on their platforms.

It's high time Congress forced these sites to own up to the stolen content that they inadvertently host, but openly use to turn a substantial profit. YouTube must be held responsible for the materials its users share, taking stronger measures to ensure that the person who uploads a video also owns its copyright.

In the meantime, I will keep removing pirated Direct Cinema movies from YouTube. It's a lot harder to do than it used to be, but I have no choice. My livelihood, and the livelihoods of all the creative people whose work I support, depends on it.

Platform Responsibility Survey

Between March and June of this year, CreativeFuture ran a nine-question survey that polled the public on their feelings about platform responsibility. Over 2,000 Americans answered.

With a variety of scandals involving Big Tech coming to light over the last few months, our results demonstrate that the American public is ready for our government to take action by reining in Silicon Valley.

Here are some key findings:

- Over 80% of respondents believe that online platforms should take responsibility for the illegal actions taken on their networks.
- Just under 80% of respondents (79.85%) believe that given the tremendous growth of the internet over the last 20 years, it is time to reconsider the Digital Millennium Copyright Act (DMCA) and the Communications Decency Act (CDA).
- Over 77% of respondents believe Google, Facebook, and Twitter should take greater responsibility for the use of their platforms to facilitate the illegal distribution of copyrighted movies, television shows, music, photography, and books.

CreativeFuture believes that the tide is turning – Americans are beginning to view Google and Facebook as entities that have existed outside the reach of our laws for too long. Through safe harbors that were created at a time when the internet was still in its infancy, these now large corporations act irresponsibly and in their own best interest, regardless of who or what gets hurt in the process.

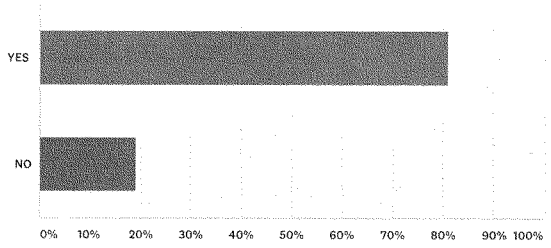
Due to the amount of money that is being made by Silicon Valley, only action by the government will compel these companies to begin acting responsibly and within the confines of the law.

The complete results of our survey can be found following this cover letter.

Should Google and Facebook Be More Responsible?

Q1 There is growing evidence that the major internet platforms are being used for purposes that may violate U.S. laws. Should the major internet platforms take responsibility for these uses of their services?

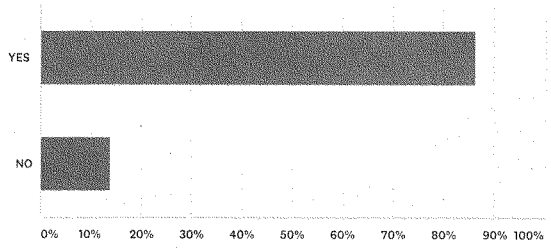
Answered: 2,071 Skipped: 6



ANSWER CHOICES	RESPONSES	
YES	80.98%	1,677
NO	19.02%	394
TOTAL		2,071

Q2 Recently, the major internet platforms opposed the Stop Enabling Sex Traffickers Act (SESTA) because they want to avoid responsibility or legal liability for such uses of their services. Do you believe that the major internet platforms need to do more to stop sex trafficking on their services?

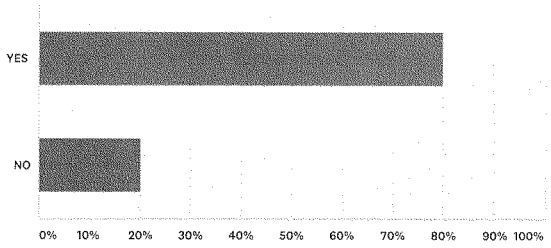
Answered: 2,064 Skipped: 13



ANSWER CHOICES	RESPONSES	
YES	86.19%	1,779
NO	13.81%	285
TOTAL		2,064

Q3 The major internet platforms benefit greatly from the Digital Millennium Copyright Act (DMCA) of 1998 and the Communications Decency Act (CDA) of 1996, two 20-year-old laws that were intended to give the then-fledgling internet the opportunity to grow. Today, the major global internet platforms – companies like Facebook, Google, and Twitter – use these laws to avoid taking responsibility for the content they deliver to consumers or help them find, and from which they make immense profits. Given the tremendous growth of the internet in the last 20 years, do you believe it is time to reconsider the DMCA and the CDA?

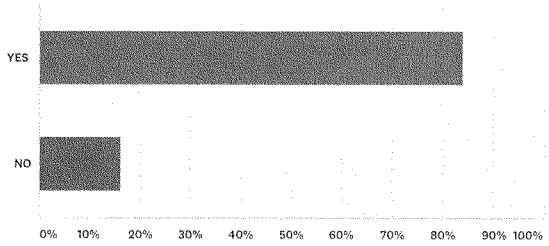
Answered: 2,060 Skipped: 17



ANSWER CHOICES	RESPONSES	
YES	79.85%	1,645
NO	20.15%	415
TOTAL		2,060

Q4 Do you believe that services like Facebook, Google, and Twitter should take greater responsibility for the use of their platforms to promote false and misleading news articles?

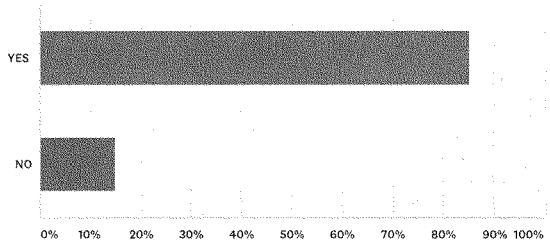
Answered: 2,069 Skipped: 8



ANSWER CHOICES	RESPONSES	
YES	83.95%	1,737
NO	16.05%	332
TOTAL		2,069

Q5 Do you believe that services like Facebook, Google, and Twitter should take greater responsibility to ensure that foreign agents cannot use their platforms for political advertising or influence?

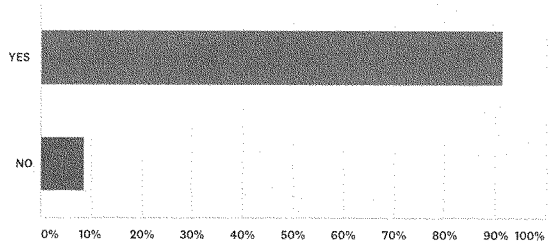
Answered: 2,072 Skipped: 5



ANSWER CHOICES	RESPONSES	
YES	85.14%	1,764
NO	14.86%	308
TOTAL		2,072

Q6 Do you believe that services like Facebook, Google, Twitter, and others should take greater responsibility for protecting the privacy of their users?

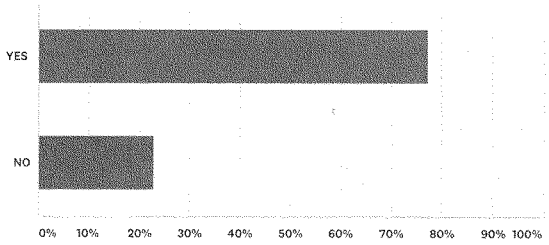
Answered: 2,070 Skipped: 7



ANSWER CHOICES	RESPONSES	
YES	91.50%	1,894
NO	8.50%	176
TOTAL		2,070

Q7 Do you believe that services like Google, Facebook and Twitter should take greater responsibility for the use of their platforms to facilitate the illegal distribution of creative copyrighted movies, television shows, music, photography, and books?

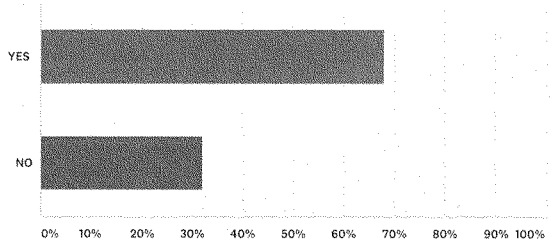
Answered: 2,064 Skipped: 13



ANSWER CHOICES	RESPONSES	
YES	77.18%	1,593
NO	22.82%	471
TOTAL		2,064

Q8 Has the growing public attention to the failure of giant internet platforms like Facebook, Google, and Twitter to take responsibility for their role in facilitating illegal activities changed your opinion of the companies?

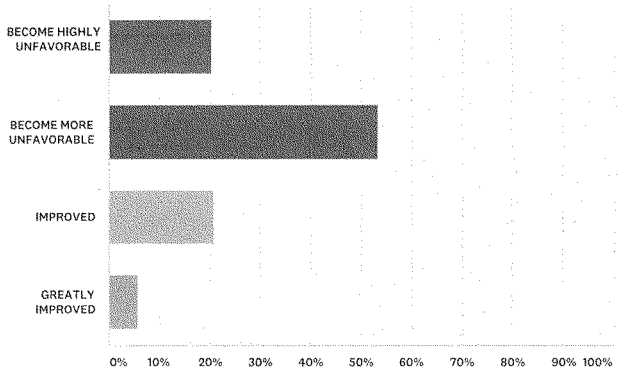
Answered: 2,069 Skipped: 8



ANSWER CHOICES	RESPONSES	
YES	68.05%	1,408
NO	31.95%	661
TOTAL		2,069

Q9 If your opinion has changed, has it ...

Answered: 1,962 Skipped: 115



ANSWER CHOICES	RESPONSES	
BECOME HIGHLY UNFAVORABLE	20.29%	398
BECOME MORE UNFAVORABLE	53.31%	1,046
IMPROVED	20.80%	408
GREATLY IMPROVED	5.61%	110
TOTAL		1,962

StandCreative Series One: Lisa Hammer
February 22, 2016

I have been an artist my whole life.

I spent thousands of hours and dollars studying film-making, music, and acting. I have been creating my own work since the 80s and for many, many years I was able to make a good living as a filmmaker/musician. I was able to live well, perform and record with the band, create and screen my films, and reinvest my earnings back into my work.

This, unfortunately, has dried up in recent years due to piracy. A few years ago, I made the mistake of Googling my bands. To my horror, I was easily able to find dozens of sites giving my songs away or charging for them, selling ads, etc. I had never heard of these companies and they were not sending royalties to me or to my record label. My label went to battle daily to bring these sites down, but every time they cut one head off, two more would grow in its place.

It is now impossible for me to continue with my band.

The same has happened with my films. I used to make money through distribution on tapes and DVDs, and even a few VOD. But now, as soon as I release a film through an online distributor, or submit it to a film festival, I see links to the film on a YouTube channel.

I ask Google to take it down. They do. Two days later, my partner emails in a panic. Three more links for our film have been put up on YouTube. This goes on every week now and we only just finished post production on our most recent feature. The film hasn't even been screened at a festival yet or considered by a distribution company. My last feature has only made about $100 on a legitimate VOD site because it's being given away for free all over the internet.

I am not a huge, greedy studio as the pirates and fans might imagine. I am a small, indie filmmaker creating content with my own pocket money and fan-funding. For the first time in my career, my bills are piling up and I can't keep up. I have no idea how to monetize my work or continue to afford making my films and music.

StandCreative Series One: Valerie McCaffrey
February 23, 2016

I thought that being part of a film that could reach out across borders both in America and Armenia and could make people laugh would be a perfect venue for the film audience both here in the US and the world.

Lost and Found in Armenia was made for a price, starred American and Armenian actors, and it seemed like it was the beginning of great relationship with the Armenian investors who were interested in continuing to make films for their community.

We had screenings in the US and the film was well-received. But, unfortunately, right when the film was going to be released theatrically in the US, the film was also available, for free, on YouTube.

How did this happen? Evidently, the film was stolen from where the Russian version of the film was going to be processed. But by the time I could stop it, it was seen thousands of times and several others like it came popping up. I was mortified. YouTube was being difficult. Every time I would take one down, two others would appear. And then YouTube refused to take down the links because the email address from which we were sending the requests was not associated with a website – even though it was the same address we had been using all along! At one point, there were eight separate links!

The task of reporting this infringement to YouTube was a full-time job. And since our distributor had made a flat deal with the Russian distributor, I was not given any recourse. The distributor collected their money and that was that. "It happens," a representative of our distributor told me. As a matter of fact, they sent me a standard reply that they had cut and pasted – I knew it was standard because they sent it to me twice and it was exactly the same wording! So I guess this was the norm — to make a film and for it to get stolen.

Our investors, whose money was hard earned, are still wondering what happened to their investment. Just recently, I took down a site that had over 55,000 downloads even though the movie was released in 2012!

We all worked hard on this film and wanted it to succeed financially so we could make more films. In my opinion, YouTube needs to be held accountable for money lost. They also need to be more responsible in protecting not just my film but also all creative works, especially in foreign territories. It's terrible that this happens and it has got to stop.

StandCreative Series One: Allison Burnett
March 2, 2016

These days, when only a tiny fraction of indie films are released theatrically, a small film's primary hope of financial recoupment is through Pay Per View.

My film's producers and I were filled with optimism when the date of our film's release arrived. Imagine, then, our horror when within 24 hours of the film appearing on iTunes, Amazon, Direct TV, and a host of other platforms, we discovered that it was also available on YouTube. One click and the film almost instantly streamed in perfect high definition *for free*. We reported the crime to our distributor who immediately reported it to Google. But no sooner would a link come down and then two more would appear.

By the end of two weeks, there were half a dozen sites streaming it for free. I got so disgusted with it that I even contacted one of the sites myself. A young Palestinian out of his West Bank apartment ran the site – he was so mortified to be contacted by the filmmaker himself that he apologized and took down the film.

However, we eventually just surrendered. We were fighting a losing battle. The only way to combat the anxiety and pain of our little film losing thousands and thousands of badly needed dollars was to stop checking YouTube altogether. Call it the ostrich approach to emotional and psychological self-preservation. The only interruptions to this self-imposed blackout were the daily tweets in my Twitter feed from young fans offering their friends free links to stream the movie.

I would tweet back a simple message – "THIEF!"

StandCreative Series One: Jane Clark and Bob Tourtellotte
March 7, 2016

We are independent filmmakers who thought we knew about piracy and its full impact until, of course, we didn't. We had raised money, made movies on a budget, screened at festivals, marketed online, and purposefully released our films in the new world of electronic sales. With *Crazy Bitches* we were a Top 10 download our opening weekend with a "box office" trumpeted by my cousin, who called to say we were No. 9 against *Fifty Shades of Grey* and the chat room buzz was strong – all on torrent sites.

Piracy was out there in cyberspace – not in our garage office. Our opening weekend was Valentine's Day 2015. More than 650 links to illegal copies landed on a range of sites including "legit" ones like YouTube.

They all made money – we didn't. Why? Why is piracy acceptable? Is it legal to walk into Walmart, take a DVD, and leave without paying? Absent a digital box office return, we cannot make another movie. Our indie voice will go silent. A crew of about 50 will not be paid. A good story won't reach you.

It doesn't have to be that way.

All us creative folks earn a living by trading our goods or services for cash. Pirates make money too, but they do it by exchanging a "free" product – "free" to them because someone stole it – for advertising revenue or from selling your private info or email or pushing malware onto your laptop or mobile device.

They profit by doing harm, but I bet you don't. I bet you work for your money – like we do. Please think about that before downloading your next "free" movie.

Paying benefits all of us – we make more movies, and you get to watch them – and puts the pirates out of business.

StandCreative Series One: Wayne Kramer
March 9, 2016

The day my most recent film, *Pawn Shop Chronicles* debuted on Video-On-Demand (which was on the same date as its theatrical release), the film was recorded in a perfect HD quality copy from one of its VOD rentals and illegally uploaded to the web. By the end of the first day of its availability on VOD, I could download the film for free from one of several thousand illegal links. I'm not exaggerating when I say **several thousand** links. Page after page of illegal download sites (torrents, streaming sites, and file lockers) were popping up one after the other. The film was also uploaded to YouTube multiple times and fake versions can still be found that redirect you to a site where you can illegally download or stream the actual film. A Twitter search of the title revealed that fans of the late Paul Walker (the star of the film) were brazenly posting torrent links for all interested parties. One fan posted on my Facebook page to tell me how much he enjoyed the film, while at the same time admitting to having illegally downloaded it. Even as I write this, if you enter "Pawn Shop Chronicles download" into Google, you'll get 114,000 results, the second choice listed being for an illegal torrent site (as are most of the links).

Now here's the thing: to this day I have never received any money for directing "Pawn Shop." Both Paul Walker and myself deferred our fees to put the money back into a financially strapped production. The film has not made back its five-million-dollar budget and the financiers of the film have not come close to recouping their original investment. About two months ago when I made my most recent inquiry, I was told "Pawn Shop" is still several million dollars in the red, translated as: I will never see a dime for all the work I put into the film. The Directors Guild of America even commissioned my salary on the film – money which I was never actually paid since my fee was deferred – and thankfully the producer covered my DGA costs or I'd personally be way into the red on the film.

I'm just bringing up the case of **one** low budget film here. ALL of the films I've directed have been pirated with a loss in residuals to myself that is likely in the hundreds of thousands of dollars. For each one of them you can find hundreds if not thousands of illegal links with a simple Google search of the title. Shortly after Paul Walker's death, a guy named Brandon Donovan uploaded "Running Scared" (a film that I wrote and directed, which also starred Paul Walker) in its entirety on YouTube in HD quality. His supposed reason for posting the film was to 'honor Paul Walker.' By the time I became aware of it, the film had been viewed over 200,000 times (with another copy having been viewed 260,000 times and being up on YouTube for more than a year). I identified myself as the writer and director of "Running Scared," to Brandon and politely asked him to take down the film. His response was that "[I] should go f*** [my]self." I tried reporting Brandon's upload of "Running Scared" to YouTube as copyright infringement, but because I'm simply the writer and director of the film and not the copyright holder they would not take any action to remove it. Now it would be obvious to most Google/YouTube employees that "Running Scared" is the property of New Line/Warner Bros./Media 8, etc., simply from the logos featured on the front of the film or a quick IMDB search. But Google has chosen to wrap themselves up in red tape and a labyrinth bureaucracy when it comes to acting on reports of piracy. I had to waste a whole lot of time tracking down someone in Warner's legal department to get YouTube to take action. And when they finally did remove the film, another copy took its place within days. Let's also keep in mind that the entire time the film was illegally available on YouTube, Google was monetizing it through advertising. I don't believe Warner Bros. or anyone involved in the making and financing of the film saw any of that money.

I'm not a rich guy. I work hard like everyone else to provide for my family. For the most part, I work in the low budget arena. If I'm lucky, I get to direct a film once every four or five years! And when I do direct a film, half of my fee typically goes to my agent, manager, and guild commissions, as well as legal fees and

taxes. With the down-sizing taking place in our industry over the last few years, budgets have become significantly smaller along with talent fees. This is happening in no small part due to piracy. A film that I directed ten years ago, which had a budget of fifteen million dollars, is expected to be made today for five million and under. And, yet, the producers and audiences demand the same level of production value as the fifteen-million-dollar film. I can tell you that is simply not possible. I'm required to do in 20 or 25 days now what I had previously been given 45 to 50 days to achieve – and even that was tight given the ambition of the material. You also have less money to spend on production design, set dressings, costumes, props, visual effects, music, etc. The whole thing becomes a downward spiral because budgets have been squeezed so much due to the losses incurred by most lower budget films – and, again, a huge part of this comes back to piracy.

Our children are growing up in a culture today where music and movies are free for the taking. They see nothing wrong in illegally downloading entertainment and swapping torrent links on social media. If anything, their popularity is reinforced by making as much free content available for downloading among their peers. The films that are getting hurt the most are the latest independent films that ten years ago were given the chance to thrive in theaters with limited releases and a healthy DVD afterlife. The future doesn't look good for the next "Pulp Fiction" or "Memento" or "Boogie Nights." I remember spending a hundred dollars to buy a laser disc of a film I loved back in the nineties—and that's when I could barely afford to feed myself. Today, that would be unheard of. High Definition content on Blu Ray typically sells for under $20 and often times for as low as $5 or $6 after a year or two. And still these films are ripped-off online. How is this a sustainable model for any business?

The sky is indeed falling and we need many hands to help prop it up. Please join us in getting the message out: if you enjoy our work and wish to see more of it in the future, please don't steal it.

StandCreative Series One: Cassian Elwes
March 11, 2016

I cut my teeth in the film business in the mid-80s, before the internet or even piracy was even a thing. Piracy back then was the guy on the street corner selling bootleg copies or the guy sitting in the back of the theater recording the movie directly onto a VHS tape. Not to minimize the criminality of these acts, but piracy has grown up right alongside the internet like a little brother who won't stop stealing candy bars no matter how many times he gets his hand slapped.

Well it's high time we move from hand slaps to something a bit harsher.

As a producer, and particularly as an executive producer, my job is to understand the finances of a film – what is it going to cost us, versus what we are going to make on it. In 2013, I was the executive producer on *Dallas Buyers Club*, a critically-acclaimed film that had strong Oscar® buzz. Even with this popularity surrounding our film, I was amazed to see the millions of illegal transactions from all over the world pour in. People all over the world downloaded or streamed my movie illegally without paying a dime. This wasn't the aforementioned guy on a New York street corner with DVD boxes lying on a picnic blanket. This wasn't the guy filming from the back row of a seedy multiplex. These are millionaires hosting our film on their site as they reap the benefits of ad-revenue from legitimate brands that have no idea where their logo is appearing. This is not a petty thief or your garden-variety shoplifter – this is a well-oiled criminal enterprise putting dollars in their bank accounts that rightfully belonged to our crew, our actors, our distributors, and myself.

I felt helpless – but I simply had to chase them. And I did, but in the end, after years of running after them, I threw in the towel.

With the tools we have in place and the lack of help we're getting from companies like Google, who facilitate the flow of traffic to these pirate hosting sites, we're fighting a losing battle. As soon as we celebrate a hard-fought but minor victory, new sources would surface almost instantly, providing new links, new hosting sites, and new avenues for people to watch *Dallas Buyers Club* without paying the talented people who made it a reality a single cent. It's not right.

The truth is that if this continues, independent cinema has its days numbered. We need to fix this and we need to fix it soon.

StandCreative Series One: Kari Tieger
March 18, 2016

My name is Kari Tieger and I'm a bilingual singer/songwriter and composer registered with the American Society of Composers, Authors, and Publishers (ASCAP).

I have written and performed in English since the age of 15 and, in French, since my mid-20s. I duly obtain copyrights for all my work. To date, I've released five full-length albums, two of which are entirely in French, with another that is half in each language.

With each passing year, I seem to earn increasingly LESS in performance royalties despite continuing to add to my musical catalog. In 2013, I earned more than $500 in royalties, followed by $163.84 in 2014, and then only $134.86 in 2015. I have seen streaming payouts decrease in recent years from 99¢ per song to only one or two cents per stream.

Last year, it came to my attention that some of my French songs were being used and released, but that because I am an independent publisher not registered with a major label there was no advocate to obtain me the royalties I was due. I became so disheartened by this downward trend that I took steps to assure that I will earn any and all royalties due to me. It is mildly encouraging to note that as of the end of February I have earned $13.87 in royalties (up from $5.83 by February 2015), which reflects that effort. I can only hope that the pendulum has begun to swing back in my favor.

It is simply not possible at this point to make a living creating music as an indie artist.

StandCreative Series One: Mark Leibowitz
March 22, 2016

I love taking photographs. It's one way I relate to the world – capturing the beauty of life in an image.

After 13 years as a professional photographer and filmmaker, I still take pictures non-stop for personal enjoyment. My personal images, however, are very different from the images I create as a professional photographer and director of photography. My professional work requires considerably more planning, creative thought, and effort – which is how my employees, crew, and I all make our livelihood from this work.

So, what's the difference between walking outside to shoot a nice personal photo and putting together a professional shoot?

There's a big difference. For fun, it's just a vacation photo to share with friends and family where I point and shoot. For work, I'm creating a meticulously crafted message that provides substantial good to many people. A professional shoot involves steps that start months before photographs are actually taken:

- The process actually starts with my team and I editing through my 15-year+ archive of photos to create a portfolio and/or reel to show to a client.
- My employees retouch, print, and design every image to a high level of technical and creative excellence. We spend months sending out these materials to potential clients and repeatedly following up with them to stay top of mind.
- If we do a good job at staying top of mind, they contact us when they have a project and ask us to prepare an estimate. This takes numerous hours or, more often, multiple days depending upon the complexity and scope of the job.
- Once awarded the job, we start pre-production, which involves the following: days of creative research, client meetings and conference calls, prepping expensive gear, booking crew (including camera assistants, hair and makeup artists, grips, gaffers, prop and wardrobe stylists, and producers), looking at locations, getting permits for the locations we select, and having more calls with clients to go over all of the details above.
- Then it's shoot day and a team of 5 to 50+ all wake up, often before sunrise, drive to the location, and do the job they are trained to do. People set up lights, lift sandbags, lay down cables, arrange sets and scenery, bring in the talent, put makeup on them, dress them, and place them in the scene. My crew and I check that the lighting is perfect and then everyone takes a deep breath as I finally...
- ... take the first photo.

What started many months earlier with weeks of editing has finally culminated in a professional photo shoot that yields a remarkably polished and focused product. We then choose the best images, process them, and make any edits or touch ups that we agree on with the client.

And everyone along every step of this process is a professional who pays for their healthcare, their children's school, their food, rent, gas, and everything else in their life with the money they make from this shoot and others like it.

My employees are real people – people you know. They are parents of teenagers applying to college, volunteers and donors to charity organizations, and supporters of their own parents and siblings. They are real people, with real needs, and very real obligations.

When our work is downloaded illegally, reposted without proper credit, or stolen in any form, my ability to keep these employees on my payroll and to support their lives and their loved ones is stolen as well. Please consider this before using anyone's creative work without permission.

StandCreative Series One: Doug Maddox
March 28, 2016

I produced *The Bill Collector* with actor Danny Trejo from *Machete* and *Undaunted* starring Allen Williamson from *Abduction* with Taylor Lautner.

The Bill Collector had great success with its theatrical worldwide release. After some time, I got a call from the FBI stating that the film had been pirated by a professional who was selling not just our film, but many other studio films out of Washington, DC. After the man was arrested, I was invited into the court process and was asked how much I wanted in compensation. I stated that a part of the $250,000 fine shown at the front of every film would be fair. I have received no compensation to date and do not expect to be paid. After all, the man has been fined and is in jail.

On *Undaunted,* I was recently told by our Spanish distributor that there have been approximately five different pirated versions of the film in Spanish. I went on YouTube to do a search for the Spanish version and English version and found *Undaunted* twice. On the Spanish YouTube page alone, the film has been viewed by more than two million people. Two million people equal a lot of money and lost revenue even at fifty cents coming back to the filmmaker.

Piracy is real and it's a real problem. I find it troubling that I find our movies and other movies up on YouTube. Pirating takes away from the incredible amount of work and artistry performed by not just myself as producer/director of films but crews that we hire. We have employees – many above and below-the-line filmmakers on the set. Since the money doesn't come back to the producers, it is harder to make more films to hire more crews to keep this industry rolling. I want to see piracy stopped and see money come back to the filmmakers so we can create more of the films that audiences love.

Let's stop piracy today.

StandCreative Series One: Dan Selakovich
April 18, 2016

Some years ago, I wrote and self-published a book for filmmakers called "Killer Camera Rigs That You Can Build." As I was the publisher, I was neck deep in the sales and distribution of the book.

The first edition sold extremely well (this was the only book of its kind and apparently much desired). The second edition was even beating first edition sales. Then sales dropped substantially. Within 3 weeks, I saw a 90% drop in sales. I couldn't figure it out until I did a Google search of my book. At the time, the first four pages of Google listed where you could get the book for free – one pirate site after another. I should point out that this book was not available in digital form at the time. Somehow, a PDF version had made its way onto the internet.

I started sending out DMCA notices. Most sites would take down the book, but it would mostly be back up by the next day. Some of the larger sites refused outright. ThePirateBay, for example, bragged: "We have never removed anything, and never would." I would spend a couple of hours every morning sending out these notices, but it was futile. For every site that took it down, five more would pop up. It was a never-ending, pointless task.

I begged Google to at least list legitimate sources where you could buy the book first on any search, but the reply was "that's not how search algorithms work." To me, Google was no better than a fence selling stolen goods. After all, they make money selling advertising to pirate sites, so I don't see any distinction.

It was much more profitable for them to send web searchers to pirate sites that they had sold ads to.

The DMCA couldn't help me. Websites should have to ask permission of the copyright holder before offering up any intellectual property — at the very least.

To fight piracy of my book, I wrote a much-expanded third edition and let Focal Press take over as publisher. Now I make a small royalty.

StandCreative Series One: Christian Keller
May 31, 2016

When I was 19 years old and just out of high school, I read about Gloria Trevi, the controversial "Mexican Madonna." This would be the beginning of an epic 10-year journey for me to get the film on the big screen.

Being Swiss, I had never heard of Gloria, but I was immediately captivated by her story and thought it needed to be told, so I got to working on a biopic of the controversial figure. Never having even made a short, I naïvely thought I could put the project together in a year – but it would take ten years to collect the rights, script, financing, and Academy Award®-winning team to make the film. In the meantime, Universal Pictures came on board and put forward a big release and marketing plan for *Gloria*. This was a dream come true for a small independent filmmaker like myself. Having a powerhouse behind me gave me confidence that I was on the right track.

A month before *Gloria* was set to be released on over 1,300 screens across Mexico, I saw copies of the film that took me ten years to complete, and involved the lives of hundreds of people to execute correctly, being sold for a few pesos on the streets of Mexico City – the primary market for my film.

Some people told me not to worry – that it wasn't a big deal, that piracy was just going to create more "buzz" for my film – and I believed them, but they couldn't have been more wrong. Millions of people saw the film in Mexico before its release, and millions more across the globe saw the film on YouTube and Facebook. It would show up on YouTube and receive 100,000 views night after night. The DVDs spread throughout Latin America, the US, and Europe overnight. Universal's anti-piracy team and I tried to take down illegitimate links across all websites and the few times we were successful in bringing down a stream, another five would pop up. The task was impossible.

The pirates were smart – they waited until all of the marketing dollars, which go into the millions, had been spent before the pirated versions of the movie hit the streets. You could see a billboard for *Gloria* and then either buy it on the same corner or go home and watch it for free on YouTube.

The piracy numbers continued to grow, and the biggest blow to our aspirations for *Gloria* hit – we lost US distribution for the film. Before the piracy numbers skyrocketed, we had a US distributor commit to spending $2M on advertising and get the film into 350 screens. After we felt the full effect of piracy, our distributor dropped out and *Gloria* was only seen on THREE screens in the US.

Making this film was a labor of love for a lot of us and we worked for next-to-nothing. We put our blood, sweat, and tears into this, and, at the end of the experience, I was saddled with a lot of debt. As a filmmaker, it grieves me tremendously that the film received less attention than it could have had because of piracy. The same goes for the actors and entire crew who devoted their time to the success of this film and that success was stolen from under them. None of us got paid, and none of us got what we deserved for making a film that was critically acclaimed across Mexico and received similar praise across other markets.

Piracy is a problem the same way that theft is a problem. Millions of people put food on the table by making what you watch on TV or in the theatre – and stealing that content robs them of their ability to continue to do their jobs. I am one of those people, but so are my actors, producers, editors, sound designers, composers, make-up artists, lighting technicians, camera operators, carpenters, designers,

costumers, set designers, VFX artists, production coordinators, and others. We all deserve to have our labor recognized and validated and protected from theft.

Creatives need to stand together and tell our detractors that stealing our content is not only illegal, but it is also just wrong. People, like me and my crew, work hard to make ideas a reality and to bring emotion to the viewing public. It's time that creatives take a stand and tell pirates that we will not be quiet any longer. We must, for our own livelihoods and the sustainability of our chosen careers, put an end to piracy.

I ask that you stand with us in the face of this threat and make the future of creativity a certainty.

StandCreative Series One: Shane Ryan
September 1, 2016

Growing up with a film editor as a father, I fell in love with all kinds of cinema at a young age. He taught me how to edit film when I was five, and I've been making movies ever since. Despite achieving some success and recognition in my 31 years of filmmaking, online piracy has left me struggling and reeling for ways to protect my work online.

My first major break as an independent filmmaker came in 2007, when I made the exploitation horror film *Amateur Pornstar Killer* in one night on a $45 budget. It quickly became a smash hit, spawning two sequels and receiving critical acclaim from MTV and the Theater for Living Arts (TLA).

Due to the controversial nature of *Amateur Pornstar Killer*, it was hard to distribute overseas and many countries banned the film. Consequently, the second film became one of the 25 most-pirated films across all torrent sites for around six years. My film was on the same list as some of Hollywood's biggest hits, yet I failed to profit from its success. I also learned from a friend who visited China that street vendors were illegally selling my movies as part of a bundle with Academy Award®-winning films. It was even for sale on Blu-ray, even though we never released it on Blu-ray!

With fewer distributors willing to take on edgy and controversial films like mine, pirates are inevitably becoming our main audience. One of the most frustrating things for me as a filmmaker was reading reviews on torrent websites from people who clearly didn't watch the film in its entirety. Many of the reviews for the second film complained about its lack of nudity, despite it being well known for its graphic ending. Unfortunately, I let this influence how I made the third film. I opened with more graphic scenes, which led my DVD manufacturer to refuse to make the DVDs for my distributor. I let pirates change the way I made my film, and it ended up hurting me as a filmmaker.

Despite *Amateur Pornstar Killer*'s success and notoriety, I haven't made a dime from any of my films. The trilogy was the only work I've done that earned me a paycheck, but I actually lost money on the films due to advertising and festival costs. On any given day, there is a new, illegal upload of one of my movies on YouTube. It's disturbingly easy for users to upload stolen copyrighted material. It's up to copyright owners to alert YouTube of any instances of infringement, but it's impossible to police the internet when I'm working 15-hour days making movies.

When I completed *My Name is 'A' by Anonymous* in 2014, which took a year to make and four years to find a distributor, I was happy to send a copy to a young film critic for review. When his readers begged him to illegally upload the film, they claimed an "unknown" filmmaker like myself would be happy to receive the buzz. This is simply not true. Studies have shown that the promotional impact of piracy doesn't outweigh the harms caused by violating copyrights. My new film *Faces of Snuff*, which is being released in November 2016, is already being advertised on pirate sites in Thailand. What can I do to stop it?

Why is it that people will spend $6 on a latte and wait five minutes for it to be made, but they won't spend $6 on a movie that takes a cast and crew years to make? It's simply not right.

StandCreative Series One: Bret Hampton
September 13, 2016

When Hollywood legend Paul Newman spoke at my film school, he remarked that only three of the 200 students in the audience would likely go on to work in the entertainment industry. Maybe it was a slight exaggeration back then, but in today's digital world where piracy has devalued creativity, it couldn't be more spot on.

When I first started, establishing myself as an editor often meant working for free and accepting any job that came my way. I first edited actors' demo reels before moving on to commercials, trailers, features and tv. I finally stopped working for free once I learned my craft well enough to charge for it and made a decent living. Eventually I worked my way up to Senior Video Editor at Image Entertainment, an independent video distributor. There, I worked on special features for the original *Star Wars* trilogy, *Toy Story*, *Mary Poppins*, *The Sound of Music* and others.

While fortunate to have beaten Paul Newman's odds, young editors face greater challenges establishing themselves in an age of rampant piracy.

Traditionally film school graduates launch their careers working in independent cinema. With this part of the industry suffering due to piracy, up-and-coming editors are paid less. Many of the major studios' independent art house divisions have shut down as it becomes more difficult to raise money for small and mid-budget movies. Budgets become smaller and filmmakers must find ways to make the same movies for less money, leading to less pay for editors like me.

It also means less money to pay writers, directors, set designers, costume designers, and the hundreds of other professionals who work on a movie set – they're all careers that take a keen imagination to do well. Creative jobs, including editing don't pay like they used to. You don't have to think too hard about the reason why – their capacity to make money will continue to be severely handicapped by piracy.

Piracy not only hurts up-and-coming artists; it hurts established ones like me. Many independent filmmakers offer less money for jobs that used to pay very well. For most of Hollywood's existence, the editing rooms I worked in cost hundreds of thousands of dollars to build and using them to their full potential required a vast education. And because of the sophistication inherent in the process, it was better to pay more for an experienced editor. Now, the money simply isn't there to pay people with experience – so if producers can get a film off the ground at all, they have to try to cut corners.

Unfortunately the future isn't looking very bright. Piracy continues growing and creativity continues to be devalued. If Paul Newman were to say the same thing at a film school today it'd be no exaggeration – and if anything, an understatement.

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21 December 2018

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600 Pennsylvania Avenue NW
Suite CC-5610 (Annex C)
Washington, D.C. 20580

RE: ***FTC Hearing #4: Competition and Consumer Protection in the 21st Century***

Dear Chairman Simons and Commissioners Phillips, Chopra, Slaughter, and Wilson:

We submit these comments in response to the Federal Trade Commission's request for feedback following *FTC Hearing #4: Competition and Consumer Protection in the 21st Century* on October 23rd and 24th. Specifically, we directly address arguments made during the panel discussion on October 23 – entitled *Competition Policy and Copyright Law* moderated by Suzanne Munck and Elizabeth Gillen from the FTC's Office of Policy Planning.

We want to thank Ms. Munck and Ms. Gillen for arranging a thoughtful panel and guiding the conversation on such a complicated subject matter. As you know, the panel was composed of experts with diverse opinions and perspectives on the current state of copyright law and competition policy:

1. Eric Cady, *Independent Film & Television Alliance*
2. Peter Jaszi, *American University, Washington College of Law*
3. Keith Kupferschmid, *Copyright Alliance*
4. Peter Menell, *University of California, Berkeley School of Law*
5. Tyler Ochoa, *Santa Clara University School of Law*
6. Sean O'Connor, *University of Washington School of Law*
7. Meredith Rose, *Public Knowledge*

Following the October 23rd hearing, the FTC requested additional comments on six issues. We offer our thoughts on three of these questions (in bold below), all of which are very important to CreativeFuture and the creative communities:

1. **Is there a role for the government in advancing or supporting innovation?**
2. **What is the importance of intellectual property – all forms – in advancing, protecting, and supporting innovation?** Does it differ because of industry-specific or other market-based factors, or because of the form of intellectual property?
3. How does modern economic analysis and empirical literature view the relationship between intellectual property and innovation, and the role of government in advancing and supporting innovation? Are there differences that depend on the type of intellectual property, and the protections offered for that intellectual property?
4. How can the FTC use its enforcement and policy authority to advance innovation? What factors should the FTC consider in attempting to achieve this objective?

5. What are emerging trends in patent quality and litigation issues? Should these trends influence the FTC's enforcement and policy agenda?
6. **How should the current status of copyright law and current business practices influence the FTC's enforcement and policy agenda?**

CreativeFuture, Copyright, and Creativity

CreativeFuture is a coalition of American creatives that includes over 540 organizations and companies and over 220,000 individuals. We make our living creating in film, television, music, book publishing, and photography.

We have been active in filing comments on these FTC proceedings because our nation's creative economy is under siege by a global digital piracy ecosystem that directly competes with our legitimate marketplaces. Ever-evolving technologies facilitate the unauthorized duplication and distribution of our valuable creative works worldwide – among them, internet platforms, that wittingly or unwittingly serve the interests of illegal enterprises.

In August, we submitted comments to the FTC in anticipation of these hearings on your suggested topics related to competition and consumer protection issues in communication, information, and media technology networks, as well as the role of intellectual property and competition policy in promoting innovation.

Today, we share our thoughts about the current state of copyright law, the state of competition for creatives, and our hope for FTC action to improve the economic outlook for America's creative communities.

Question #1: Is there a role for the government in advancing or supporting innovation?

We believe that the government has a crucial role to play in establishing and enforcing copyright protections that advance innovation by allowing creative individuals to be fairly compensated for their work. Were it not for copyright, creatives could simply not make a living.

The Constitution vests in Congress the explicit authority to promote the progress of science and the useful arts by securing the exclusive rights afforded to creators by copyright. Various government agencies play the critical role of ensuring the effectiveness of those protections, including through enforcement activities like those entrusted to the FTC. Strong copyright protections in U.S. law enable our creative communities to pursue their art as a career. These protections ensure that the years of uncompensated work that are invested in the creation of songs, publications, or films are rewarded with a meaningful return – a return that may then be used to pursue the next work, driving innovation and further enriching our culture and society.

Protecting intellectual property and copyright are crucial to an innovation economy. In fact, they are synonymous with each other. Our opponents would argue that copyright stifles innovation. But without copyright, there would be no financial incentive for creative individuals to dedicate their lives to new and exciting innovations.

Question #2: What is the importance of intellectual property – all forms – in advancing, protecting, and supporting innovation?

Copyright is the core of our creative industries, which are a significant economic driver, contributing more than $1.2 trillion to America's Gross Domestic Product and employing 5.5 million Americans. The U.S.

core copyright industries are leading exporters, with total foreign sales eclipsing other major U.S. industries – including aerospace, agriculture, and pharmaceuticals.[1] When consumers in other countries enjoy American-made creative products through legitimate platforms properly protected by local laws, job creation and economic growth occur here at home.

Copyright was enshrined in the U.S. Constitution precisely to promote innovation and creativity. The Supreme Court has said that copyright acts as an "engine of free expression."[2] The Court has further noted, "The immediate effect of our copyright law is to secure a fair return for an author's creative labor. But the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good."[3] We believe that intellectual property and copyright are essential elements of future innovation and creative expression.

Copyright is no less an engine of innovation and economic growth than are patents and other property rights. Nor are they less important to economic growth and prosperity than is innovation in communications technologies, including the internet. Creative content and innovative distribution technologies are interdependent.

Question #6: How should the current status of copyright law and current business practices influence the FTC's enforcement and policy agenda?

For some time, U.S. policy has prioritized the growth of the internet over meaningful accountability, paying little attention to the resulting harms, including to our content industries, through the abuse of the tools provided by large internet platforms. Having been largely immunized from responsibility for this abuse, large internet platforms have had little incentive to combat it, with some even seeking to grow their business through infringing content.

During the past two decades, our copyright-based industries have adapted rapidly to changing markets and consumer demand worldwide, working against the continuing challenge of the global theft of our creative works. But, for many creatives, it feels as if the policy deck is stacked against them, particularly as powerful interests spend unmatched sums of money lobbying the Federal Government to weaken copyright and protect their special immunities at all costs.

The legal framework that protects these platforms stems largely from two '90s-era statutes – the 1996 Communications Decency Act (CDA)[4] and the 1998 Digital Millennium Copyright Act (DMCA).[5] These statutes were intended by Congress to promote the growth of the then-nascent internet by alleviating the burden of liability on the part of intermediaries for the unlawful acts occurring on their platforms, while also encouraging those intermediaries to act responsibly in addressing abusive conduct.

When the internet safe harbor laws were adopted by Congress some two decades ago, the internet was little known to most Americans. These laws contributed to the unprecedented growth of this new industry, producing some of the largest and most powerful companies the world has ever seen.

But, at some point, growth without responsibility becomes a cancer. It is time that the government paid equal attention to harms resulting from the lack of accountability as it does to the benefits of the hands-

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[1] International Intellectual Property Alliance, *Copyright Industries in the U.S. Economies*, 2016

[2] Supreme Court Majority Opinion in *Harper & Row v. The Nation*, delivered by Sandra Day O'Connor

[3] Twentieth Century Music v. Aiken, 422 U.S. 151 (1975)

[4] Telecommunications Act of 1996, tit. V, Pub. L, No, 104-104, 110 Stat. 56, 133.

[5] Digital Millennium Copyright Act of 1998, Pub. L. No. 105-304, 112 Stat. 2860.

off approach of these 1990s-era policies. Today, the overbroad immunities that the large internet platforms enjoy not only harm innovation in creative fields, but they are likely chilling innovation in Silicon Valley itself. How can start-ups compete with the tiny number of behemoths that have come to dominate the internet?

From the creators' perspective, these outdated, overbroad safe harbor protections hamper effective enforcement by or on behalf of rights holders as they seek to address the facilitation of piracy by the internet platform providers. To cite just one example: in just a few seconds of searching on Google, its YouTube subsidiary, or Facebook, one can readily find thousands upon thousands of copyrighted works and the ability to access them *for free* without the permission of, or any compensation to, those who created, invested in, and marketed them.

In short, our creative communities are victimized by the unfair, deceptive, and anticompetitive practices that continue to be rampant on the internet and that are facilitated by a variety of large internet platforms. There is no doubt that the internet has ushered in a new era of innovation with significant benefits for consumers and many creatives. But ultimately, the current environment of near-zero accountability has not only hurt the creative communities, but also harmed consumers and the public good.

We urge the FTC to continue examining the practices of large internet platform providers, as well as other enterprises, that use the internet to promote all forms of piracy, including illegal streaming services. We believe these practices are rightly within the scope of your "Competition and Consumer Protection in the 21st Century Hearings." It is long past time for the government to address the harms to consumers and to competition by copyright theft in this modern internet environment. It is an environment dominated by the world's most powerful companies that enjoy a legal framework that holds them largely unaccountable for the harms perpetuated through the use of their platforms.

We appeal to the FTC to conduct more urgent scrutiny of consumer protection and competition policy in the modern internet environment, including as it relates to Silicon Valley's largest companies and the ways in which their business practices can adversely impact the interests both of consumers and of the creative industries. Global piracy continues to grow unchecked, facilitated by illegal distribution channels that can immediately deliver our community's content to audiences for free – using legitimate American platforms – without any compensation to artists and creatives. No other industry in the world is forced to compete with an illegal marketplace of goods that is identical to the original and that obtains (and often provides) their product for *free*.

We need look no further than the music industry for an example of the toll piracy can take. With the onset of digital music piracy in the late '90s, the business essentially collapsed in the span of a decade. In the United States, revenues decreased by more than half – from $14.6 billion in 1999 to $6.3 billion in 2009. Meanwhile, the economy grew 20% and more music was being consumed than ever before. A huge percentage of that drop was clearly attributable to unfair competition from rampant music piracy services. While some musicians made the transition to the digital age successfully – particularly the subset of artists who excel at live performances, merchandising, and endorsements – many could no longer make a living in music.

Despite this debilitating attack facilitated by the internet, the music business has survived and largely transitioned to digital distribution. Streaming services have started to reverse the financial decline, with streaming revenues accounting for two-thirds of a much smaller U.S. music industry revenue in 2016.

But artists continue to trade dollars for pennies as this digital takeover occurs, with proceeds continuing to be dragged down by piracy. As recently as two years ago, YouTube, one of the largest music streaming destinations in the world, generated less revenue for the industry than the niche market for vinyl records.

In film and television, piracy can create enough harm and uncertainty to deter investors, especially for independently financed films, documentaries, and other works with less than "blockbuster" financial potential – all films that meaningfully increase the variety of content available to consumers. The film and TV industries send almost one billion takedown notices each year to just one company – Alphabet – to flag copyright-infringing links or files on Google and YouTube.

There is another way that piracy directly impacts consumers. The threat of malware can be found in a large number of pirate websites and can result in identity theft, ransomware, and financial loss. A report by the Digital Citizens Alliance[6] found that at least one in three pirate websites expose consumers to malware. Additionally, malware can facilitate a nefarious practice known as "slaving," which results in hackers having access to a computer's camera. The FTC itself considered the malware threat serious enough to issue a consumer warning in 2017.[7]

Finally, there is a new kind of consumer fraud within the piracy ecosystem. Like unlicensed pharmacies, sellers of "streaming piracy devices," colloquially known as "Kodi Boxes," use Google and Facebook, among a variety of other services, to find customers and sell them their illicit goods.

These devices are media players that use "Kodi" software, an open-source video platform that can be used to access and organize a user's content – regardless of its legitimacy. In addition to organizing one's media library, Kodi-enabled devices can also be loaded with applications known as "add-ons." These programs facilitate access to pirated content – including live television channels, limitless movies and television shows, and every existing premium broadcast channel from all around the globe.

Advertisements for Kodi boxes, which typically sell for just a few hundred dollars, promise consumers "free television and hundreds of live channels" and advertise their services as "100% legal" – a blatant misrepresentation that lures unsuspecting consumers into commercial transactions with a business that appears to have the trappings of a legitimate commercial enterprise but is anything but.

It is for all of these reasons that we urge the FTC to consider the status of copyright law and the current business practices impacting the creative industries when setting your enforcement and policy agenda. We can think of few undertakings that are more urgent to American commerce, creativity, and innovation.

Responding to the October 23 Panel Discussion: Competition Policy and Copyright Law

Without relitigating the arguments made on October 23 by the various panelists, we would like to make a broad and important point about the proceedings. With the exception of Eric Cady, who spoke on behalf of the independent film and television industry, and Keith Kupferschmid, who represents thousands of

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[6] Enabling Malware, July 2016

[7] Google and Facebook both have a history of data privacy and data security violations: In 2011, each company entered into an FTC consent decree to settle serious allegations of consumer privacy violations, and both promised that they would protect consumer data going forward. Subsequently, in 2012, Google agreed to pay $22.5 million to settle new FTC charges that it violated the FTC Order by misrepresenting privacy assurances to users. And in 2018, the FTC announced that Facebook was under investigation for violating its 2011 Order through allegedly inadequate consumer data security in connection with the Cambridge Analytica scandal.

individual creatives who rely upon copyright, the majority of the panelists were academics or policy experts who argued against what they perceived as the *problems* with copyright law.

It was quite extraordinary to watch, given our expertise in the *importance* of copyright. After all, our organizations are comprised of people who have worked in the creative fields for decades and know exactly why copyright protections are so vital. In this context, hearing panelists who have very little on-the-ground experience talk about the problems with copyright would be like CreativeFuture telling Google or Facebook how to more effectively use the private data of millions to turn a profit. They're already the experts!

Despite the view of this handful of academics, it is not the existence of copyright that creates a *problem* for the 5.5. million Americans who rely upon it to make a living – it is the *lack of adequate enforcement and respect* for copyright that is the problem. Copyright is often rendered meaningless in a Wild West internet ecosystem where platforms are not held accountable for infringement on their sites and instead have built immense businesses made possible in large part by that rampant infringement.

Mr. Cady captured the reality in his opening remarks: "While the internet creates important opportunities for expanded distribution, new audiences, and new revenue streams for independents, it also presents the biggest threat to our industry as online infringement is allowed to flourish without any effective way under current law to prevent or stop the introduction and rapid proliferation of infringing copies across the internet. The result is a distorted marketplace where rightsholders are forced to compete with pirated content made available for free."

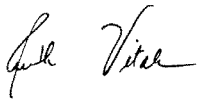
This was a polite way of saying: "*We have an existential threat that we are battling every day.*"

The panelists that followed Mr. Cady responded by talking not about piracy, not about massive destructive infringement of creative content, but rather about *tractors* – and their view that technological protection measures (TPMs) can be an unnecessary burden to consumers. This is a popular anti-copyright argument that academics enjoy using to show that copyright is a problem. But the argument has no relevance to commercial content piracy and is an obvious effort to brush past the real harms. The problems raised by Mr. Cady are those of a global epidemic that is crippling the ability of creatives to be fairly compensated.

We believe these arguments are used primarily to distract from the urgency of the piracy problem to the core copyright industries and the larger problem of zero platform accountability.

We join many others in the creative industries in urging you to address these alarming issues as you consider future enforcement actions. We hope the FTC will take a leadership role in addressing the competitive imbalance threatening the core copyright industries.

Sincerely,



Ruth Vitale
CEO, CreativeFuture

TESTIMONY Nov. 14, 2019
HOUSE SMALL BUSINESS COMMITTEE
JOHN WILLIAM TEMPLETON
executive editor, blackmoney.com
San Francisco, CA

CHAIR VELASQUEZ, RANKING MEMBER CHABOT AND MEMBERS.
MY NAME IS JOHN WILLIAM TEMPLETON but I come before you today not able to control the use of my name. As co-founder of National Black Business Month each August, I can tell you that many other business owners face the same issues at the hands of hypersegregated online monopolies, which you are examainng today.
Having been closely involved with technology for 30 years, I suggest the following legislative steps:

- Revocation of the Section 230 of the Communications Decency Act
- Allowing the Federal Trade Commission to investigate and adjudicate individual complaints, solely and in conjunction with local and state partners
- Raising damage limits for violations of the Lanham Act
- Requiring federal contractors to refrain from anti-competitive behavior against small businesses
- Binding customer service standards to have live persons with decision making authority address privacy, infringement and competititon issues
- An amendment to the Civil Rights Act of 1868 to cover bias in artificial intelligence

Because small businesses do not have the financial means to prevent online monopolies from infringing on their rights, we must have criminal enforcement on their behalf.
It would not be unreasonable to have a presence on the order of the Alcohol Tobacco and Firearms Bureau or the Drug Enforcement Administration. In both cases, these agencies work closely with manufacturers and distributors to ensure the public safety. As we have recently seen over the issue of falsehoods in political advertising, we can not leave up to private companies the enforcement of individual civil liberties and privacy.
Administratively, the performance of federal contractors on privacy, competition and equal opportunity should be cause for revocation of contracts. There is a sufficient recrod to bar Amazon and Google from being federal contractors.

For the past seven years, I have had to investigate two trillion-dollar valuation companies, file criminal charges, a state court civil complaint and a federal district court complaint just to enforce a cease and desist letter.

A responsible firm responded to a similar letter within two weeks in 2015. Most recently, an offending site was removed within four days.

For monopolies like Amazon and Google, there is a bullying attitude towards small businesses that puts their intellectual property rights in jeopardy

Appeals[1] and district court[2] judges have begun to consider whether Congress intended to endanger civil liberties, competition and privacy through Section 230, the only remaining part of the Communications Decency Act.

Your hearing today hopefully begins the reexamination of the impact of that provision. I would suggest that the impact on African-American media and businesses in general is a cautionary example of how all Americans are threatened by hypersegregated, closely held monopolies without safeguards. When legislation is unclear, it is best for the legislature to remedy faults without tying the judiciary in knots.

In summary, Section 230 is a threat to the First and Fourteenth Amendments which empowers real world danger to African-American individuals and communities not seen since the "Red Summer" of 1919.

In this particular instance, there is an inherent conflict of interest by the executive branch to intervene in ways which could influence the outcome of the 2020 election in ways to favor the interests of the incumbent hypersegregated monopolies.

The Senate Intelligence Committee report of this month alludes that the primary objective of the foreign intelligence manipulation in online media during 2016 was to illegally influence African-American voters.[3]

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[1]https://thehill.com/policy/technology/451580-court-rules-amazon-can-be-held-liable-for-third-party-sales?amp&__twitter_impression=true----------

[2] Feeling the Burn: Federal Court Rules That Diversion of Customers fro...ssories May Subject Amazon to False Advertising Liability | Arent Fox

[3] https://www.nytimes.com/2018/12/17/us/politics/russia-2016-influence-campaign.html

As the Senate committee[4] and the report of the Special Counsel[5] describe, there were numerous examples of inauthentic black media created by foreign actors with the objective of sowing viral emotional responses calculated to impact choices to vote or not, or who to vote for. In addition to that superb analysis, we also encourage the House Energy and Commerce Committee to consider the voices that were not heard. One of the largest gatherings in the nation is the Bud Billiken Parade, sponsored for a century by the *Chicago Defender*, with more than one million attendance. But this year, the paper ceased print publication after 114 years, including spurring the Great Migration.[6]

Similarly, the Essence Music Festival rivals Mardi Gras in New Orleans, but the publication for women had to scale back from monthly to bimontly publication in its 50th year.[7]

Most disturbingly, Johnson Publishing Co. would mark its 70th year by going bankrupt and having its photo collection sold at auction.[8]

> "Like many other publishers who have recently written on Facebook's growing power over the media and what Americans read, we too are alarmed with one company having such dominance in news aggregation,' **Benjamin F. Chavis**, president and CEO of the NNPA, wrote last year. "Online hubs like Facebook are able to engineer which stories catch on.

[4] https://www.king.senate.gov/newsroom/press-releases/in-second-volume-of-bipartisan-report-senate-intelligence-committee-releases-findings-on-russias-interference-in-the-2016-election

[5] https://www.npr.org/2019/04/18/708850903/read-the-full-mueller-report-with-redactions, p. 40

[6] https://www.mediapost.com/publications/article/337943/the-chicago-defender-to-end-print-edition-after.html

[7] https://theglowup.theroot.com/essence-announces-move-to-expanded-bimonthly-print-iss-1837308902

[8] https://www.theroot.com/iconic-johnson-publishing-the-company-that-was-once-be-1833929586

> And they're able to decide by algorithmic fiat, which bylines, viewpoints and subject matter is promoted to the masses." [9]

Paid false media got preferred position over trusted Constitutionally-protected freedom of the press. Why is it problematic to have hypersegregated monopolies as the gatekeepers for African-American freedom of speech? America has seen this movie before.

On April 27, 1897, one million gathered in New York after 90,000 donated $600,000 led by Richard T. Greener for the dedication of Grant's Tomb, the largest mausoleum in North America.[10] Many of the donors were from among the ranks of 209,145 troops of African descent who President and four-star General Ulysses S. Grant considered the deciding factor in the preservation of the United States through the victory over the Confederacy.

Yet 20 years later, many of these veterans and their descendants were outraged by the portrayal in the new medium of motion pictures of The Clansman, which depicted the freedom they fought for as a caricature. The rallies led to the development of the National Association for the Advancement of Colored People.

Once the management of the new medium became segregated, it continued to spew forth the most racist images, contrary to the real world appreciation for the patriotism of President Grant and the armies he led and the Constitutional change he presided over.

I've had the opportunity to watch a similar segregation in innovation after arriving in San Jose as editor of the *San Jose Business Journal* in 1987. Freedom

[9] https://newsone.com/3754559/google-search-engine-and-black-owned-digital-media-nnpa-ben-chavis/

[10] https://www.nps.gov/gegr/learn/historyculture/index.htm

Riders of the Cutting Edge[11] like Roy L. Clay Sr., Dr. Frank Greene Sr. and Gerald Anderson Lawson were developers of software, supercomputers and video gaming. But decades later, not one of 178 unicorns with billion-dollar valuation were led by African-Americans.[12] East Baton Rouge Parish, LA had more black computer workers than Santa Clara County and Jefferson County, AL had more than San Francisco County.[13]

Impact of Bias in Artificial Intelligence and Automation

The news that Google was paying homeless persons in Atlanta to add more faces of black people[14] for its facial recognition software is a continuing instance of the product consequences of hypersegregated workforces.

Although African-Americans are close to six percent of technology occupations nationally, every major network platform has a quota of two percent or less of black technical workers, ratios which have endured for the 20 years since my testimony to the House Judiciary Committee on the American Competitiveness Workforce Improvement Act.[15]

HUD brought a $5 billion settlement against Facebook for algorithms which violated the Fair Housing Act.[16] The evidence in that case alone justifies an end to Section 230.

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[11] Feb. 2, 2009 Dremann, Sue Palo Alto Weekly Unsung pioneers of high tech https://www.paloaltoonline.com/news/2009/01/30/unsung-pioneers-of-high-tech

[12]Cassidy, Mike San Jose Mercury News "Gaming Industry Finally Recognizes the Work of a Pioneer https://www.mercurynews.com/2011/03/03/cassidy-gaming-industry-finally-recognizes-the-work-of-a-pioneer/

[13] Templeton,John William "Silicon Ceiling 15: Equal Opportunity and High Technology" p. 10

[14] https://www.cnbc.com/2019/10/03/google-contractor-reportedly-tricked-homeless-people-into-face-scans.html

[15] Templeton, John William "Silicon Ceiling 19: Equal Opportunity and High Technology, p. 16

[16] HUD Sues Facebook Over Housing Discrimination and Says the Company's Algorithms Have Made the Problem Worse — ProPublica

This hypersegregation persists despite the fact that over the same period, the percentage of African-Americans working in technology jobs in the federal government – military and civilian – has topped 20 percent.[17] Black technology employment in FCC-regulated industries has exceeded ten percent during that span. But there hasn't been an EEOC case brought against a major industry firm in two decades.

The AI Now Institute[18] conclusively drew the link between personnel and products. The authors wrote:

"The histories of 'race science' are a grim reminder that race and gender classication based on appearance is scientifically flawed and easily abused. Systems that use physical appearance as a proxy for character or interior states are deeply suspect, including AI tools that claim to detect sexuality from headshots,[iv] predict 'criminality' based on facial features,[v] or assess worker competence via 'micro-expressions.'[vi] Such systems are replicating patterns of racial and gender bias in ways that can deepen and justify historical inequality. The commercial deployment of these tools is cause for deep concern. "

Section 230 not only lets technology monopolies off the hook for artificial intelligence bias, but made the authors and company employees sitting ducks for workplace retaliation.[19]

It means that members of Congress are subject to online harrassment which leads to real-life security threats against members of the Congressioanl Black Caucus such as Reps. Maxine Waters, D-CA; Fredericka Wilson, D-FL; Elijah Cummings, D-MD Ilhan Oman, D-MN. Not exempt is the Speaker herself from the lack of any standards.

[17] Templeton,Op.cit, Silicon Ceiling 15, page 21

[18] West, Sarah Myers; Whitaker, Meredith, Crawford, Kate Discriminating Systems:Gender, Race and Power in AI, AI Now Institute, New York University 2019: p. 3

[19] https://reclaimthenet.org/google-walkout-leaders-quit/

As a publisher for 34 years and an editor for 45 years, it has come to my attention that activities which would be unimaginable for print or film industries have metastasized online because of Section 230.

As co-founder of National Black Business Month, I have seen these trends cause the closure of many of the most enduring African-American businsses and institutions, such as Marcus Book Store, the oldest black-owned bookstore in the country.

We created blackrestaurant.net to connect consumers with more than 1,200 food businesses for our spinoff Black Food Month in March. Hypersegregated monopoly search engine Google refuses to link to the site or our main blackbusinessmonth.com site which features 31 different industries for every day of August.

Most of the restaurants that we survey yearly don't have direct access on the web to their customers because their location and menus are co-opted by various intermediaries.

As a book publisher, I find the aforementioned Google in collusion with Amazon scraping the bibliographic data posted for libraries and posting it on their site to divert customers to buy Amazon memberships, the subject of litigation and criminal charges over the past seven years, a burden no business should have to carry.

My testimony to the House and Senate Judiciary Committees at the beginning of the millenium predicting these outcomes doesn't even come up in search results, an example of the self-serving censorship, nor do my columns in The Hill in support of preserving federal funding for library services or the re-enactment of the first speech by an African-American in the Capitol.

But the more ominous issue for African-Americans is that we know that the Internet was weaponized against our voting in 2016 and 2018. With the European Union bringing stricter regulation, we are witnessing private discussions between leaders of hypersegregated monopolies and the White House to extend Section 230 provisions in trade deals and push back against antitrust enforcement.

Appendix One Subpoena to Jeffrey Preston Bezos served by Los Angeles County Sheriff

TEMPLETON, JOHN WILLIAM

1691 TURK ST
SAN FRANCISCO, CA 94115
(415)242-3837

18461

SUPERIOR COURT
400 MCALLISTER STREET, RM.103 Branch: 12
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Case Number/CSM18859150

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Appendix Two Amazon ad on Google violating Lanham Act

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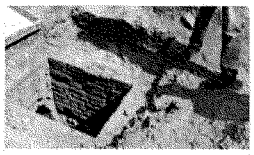

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All Things Open 2015, October 19th and 20th, Raleigh NC. Hosted by DeLisa Alexander with special guests Carolina Simard, **John William Templeton**, and Nithya R...

2019/11/12

Molson Hart's Additional Submission for the Congressional Record;
Problems on the Amazon Marketplace

I wrote this additional submission for the record because there is more to say than what can fit into five minutes of testimony. I wanted to bring attention to problems on the Amazon platform and their possible solutions for the public and Congress. I wrote the below in collaboration with a group of about 40 fellow sellers on the Amazon platform. Many of these descriptions, analyses, and solutions were not my own. Some were submitted anonymously because, given how significant Amazon is to their business, most Amazon sellers are fearful to speak publicly about the company. For background on how selling on Amazon works, please read this article which I also wrote[1].

For further clarification on the issues listed below, I can be reached at mike at viahart dot com.

Sincerely,

Molson Hart

[1] "Why Amazon Needs a Competitor and Why Walmart Ain't It" on *Medium*

2019/11/12

Issues on the Amazon Platform That May Require Government Investigation or New Legislation

1. Amazon's Pricing Policies Increase Prices for Consumers
    a. Description of Issue
        i. Amazon suppresses the search results of products selling for less on other websites.
    b. Why It's a Problem
        i. In response, because of Amazon's dominant market share, sellers are forced to raise their prices on other websites so that their products can be seen on Amazon. This increases prices for consumers.
    c. Solution
        i. FTC or state investigation.
    d. Who Submitted This Information
        i. Molson Hart
2. Amazon Is Non-Chalant Towards the Sale of Non-Compliant Products
    a. Description of Issue
        i. Sellers, predominantly based and operating in China, sell non-compliant product on the Amazon US marketplace to American consumers at much higher rates than domestic US sellers[2], who unlike Chinese sellers, face recourse for their actions.
    b. Why It's a Problem
        i. American consumers, unknowingly, buy these products from overseas sellers. When they are injured, they have no legal recourse as these predominantly China-based sellers are practically impossible to service-of-process and because the People's Republic of China does not enforce US judgments, it is nearly impossible to recover legal damages. Meanwhile, Amazon takes a commission on every sale.
    c. Solution
        i. A new federal law which requires foreign entities selling to American consumers to purchase product liability insurance if they wish to sell on the Amazon marketplace. In fact, this is required by the contract between Amazon sellers and Amazon, but they do not enforce it. Force Amazon, like they do in Europe, to list an address at which, upon receipt of a certified letter, the seller can be served for a lawsuit. Alternatively, allow

[2] "Amazon Has Ceded Control of Its Site. The Result: Thousands of Banned, Unsafe or Mislabeled Products" in the *Wall Street Journal*

e-mail service for marketplace sellers via the main e-mail address on the Amazon account.

d. Who Submitted This Information
    i. Molson Hart

3. Intellectual Property (IP) Abuse to Restrict Competition
    a. Description of Issue
        i. IP holders abuse Amazon's IP reporting system to restrict legitimate first-sale doctrine third parties from selling IP holder's products on Amazon.
    b. Why It's a Problem
        i. Amazon agents, mostly based overseas, lack the training to determine whether or not a product is truly infringing on said IP, in some cases resulting in the destruction of the third party seller's livelihood (via Amazon suspension) and higher prices for consumers who otherwise could purchase more product from more sellers at lower prices.
    c. Solution
        i. A federal law that extends the DMCA framework for safe harbor copyright infringement to trademarks and patents. Rather than have an untrained person determine whether or not a product is infringing with serious consequences, require the alleging party to file a lawsuit. If no lawsuit is filed, the third party seller is allowed to continue to sell.
    d. Who Submitted This Information
        i. Avraham Eisenberg and Mike Perillo
4. Foreign Sellers Engage in Unfair Trade Practices, Fraud, and IP Infringement and There Is No Corrective Recourse for Their Harmed Competition
    a. Description of Issue
        i. Amazon sellers, predominantly based in China, a country with weak rule of law and poor IP enforcement, bring their habits to the United States, engaging in unfair competition against American businesses while selling to American consumers.
    b. Why It's a Problem
        i. They cannot be served and thus sued because there is no address information for these entities based in China. Whether it's customs fraud to avoid import tariffs, fake reviews, counterfeiting, or more, there are no repercussions for these foreign sellers. This gives them de facto carte blanche to abuse their American competition for profit. If you do manage to serve Chinese defendants, it's irrelevant as China will not enforce US judgments.
    c. Solution

        i. A federal law that forces Amazon to, like they do in Europe, list an address at which, upon receipt of a certified letter, the seller can be served for a lawsuit. Alternatively, allow e-mail service for marketplace sellers. Require foreign sellers to purchase liability insurance, as mandated in the contract between all Amazon sellers and Amazon, that would pay out in case of a judgment of unfair competition or similar.
    d. Who Submitted This Information
        i. Molson Hart
5. Foreign Sellers Do Not Pay Income or Sales Taxes
    a. Description of the Issue
        i. Sellers based overseas, predominantly in China, face no recourse for not paying income or sales taxes, despite creating huge tax liability in the United States.
    b. Why It's a Problem
        i. It's cost states and the federal government billions of dollars of tax revenue.
    c. Solution
        i. All states should require Amazon to collect sales tax on behalf of all sellers on its platform with physical presence their respective state as soon as possible. A federal law requiring income withholding for foreign sellers should be considered.
    d. Who Submitted This Information
        i. Molson Hart
6. With ePackets and Postal Treaties, American Sellers Often Pay More to Ship to US Addresses than Chinese Sellers Shipping from China Do
    a. Description of the Issue
        It oftentimes costs more for American sellers to ship within the United States than it costs Chinese sellers to ship from China to the United States. It is considerably cheaper for Chinese sellers to ship to the United Kingdom from China than it is

for American sellers.[3]

Origin Country	Destination Country	Business Days Needed for Delivery	Weight (pounds)	Total Shipping Cost
China	USA	6 to 23 days	2.2	$11.27
USA	USA	4 days	2.2	$16.17
China	UK	7 to 23 days	2.2	$9.86
USA	UK	"Varies by Destination"	2.2	$37.50
USA	China	"Varies by Destination"	2.2	$35.00
China	USA	6 to 23 days	0.55	$4.40
USA	USA	4 days	0.55	$5.66
China	UK	7 to 23 days	0.55	$4.47
USA	UK	"Varies by Destination"	0.55	$24.00
USA	China	"Varies by Destination"	0.55	$23.50

Exchange Rate RMB/USD
7.1

b. Why It's a Problem
   i. It puts American sellers at a disadvantage to their Chinese competition. It encourages substandard non-compliant product to flood in from China. It avoids the payment of tariffs which American shippers must pay if they buy goods from China. It disincentivizes exporting from the United States.
c. Solution
   i. I don't know enough about postal treaties to know how to solve this issue.
d. Who Submitted This Information
   i. Molson Hart

7. Amazon Suppresses the Visibility of Products Sold by Third Parties When They Have Stock of Those Items on Back-Order
   a. Description of the Issue
      i. When Amazon has a product back-ordered, with expected delivery sometimes being as long as 1-3 months, they will suppress the visibility of third party sellers products which will deliver in 2 days and divert customers towards their slow 1-3 month offering.
   b. Why It's a Problem
      i. Sellers suffer lost sales. Consumers wait 1-3 months for products they could've received in 2 days.
   c. Solution
      i. FTC or state investigation
   d. Who Submitted This Information
      i. Anonymous

[3] ePacket rates are from http://www.epacket.com.cn/yunfei/. USPS rates from http://postcalc.usps.com US rates are for residential addresses between 10016 (Manhattan, NY) and 90210 (Beverly Hills, CA)

8. Amazon Causes Harm to Small Businesses by Restricting Product Sales Without Advance Notice
    a. Description of the issue
        i. Amazon from time to time restricts product with little or zero advance notice to the seller[4] [5]. For example, a seller purchases $100,000 worth of a hot toy and ships it to Amazon in November. Dec 1st, Amazon decides to block all sellers aside from themselves from selling this toy with no advance notice. The seller must now liquidate this product elsewhere. Amazon may take a month or more to ship them back their product, and by the time they get it back it is no longer the holiday season, making it exponentially more difficult to sell their stock on other platforms.
    b. Why it's a problem
        i. Businesses buy inventory depending on being allowed to sell it through Amazon. When Amazon blocks their ability to sell, they can go bankrupt or suffer significant losses. This also drives up prices for consumers since there is less supply on the market.
    c. Solution
        i. FTC or state investigation
    d. Who Submitted this Information
        i. Anonymous

Issues on the Amazon Platform That Probably Do Not Require Government Investigation or New Legislation

9. Suspended Sellers on the Amazon Platform Are Required to Admit Fault in Order to Be Reinstated and Allowed to Sell Again
    a. Description of the Issue
        i. As part of many suspensions from the Amazon platform, Amazon may require sellers to submit a Plan of Action (POA) that includes an admission of wrongdoing in order to be reinstated as an active seller and allowed to sell again on the Amazon platform.
    b. Why It's a Problem
        i. This is unfair because it severely hurts their ability to recover from Amazon legally at a later point since Amazon will point to their confession of wrongdoing that was required to be reinstated.
    c. Solution

[4] "Amazon bars marketplace merchants from selling some Nike items" in *Internet Retailer's Digital Commerce 360*
[5] "Amazon reverses sudden restriction of third-party "Nintendo product" sales" in *Ars Technica*

        i. Shine light on the issue.
    d. Who Submitted This Information
        i. Anonymous
10. Amazon Does Not Follow Its Own Policies Which It Also Uses To Suspend Small Businesses from Selling on Its Platform
    a. Description of the Issue
        i. For example, Amazon will not allow sellers on its platform to request a review from a product insert on packaging, but then will do so itself on Amazon Basics or other Amaozn private label products.
    b. Why It's a Problem
        i. Amazon will suspend sellers for things it itself does. It's hypocrisy and damages the livelihoods of small business owners in the process.
    c. Solution
        i. Shine light on the issue.
    d. Who Submitted This Information
        i. Anonymous
11. Amazon Threatens Sellers on Their Platform with Suspension If They Issue Press Releases About Amazon or Talk Publicly About Its Services
    a. Description of the Issue
        i. In the contract between Amazon and Amazon sellers there is a long paragraph that says "You may not issue any press release or make any public statement related to [Amazon's] services."
    b. Why It's a Problem
        i. It deters participants on the Amazon platform, those who know it best, from speaking publicly about what goes on there. As Amazon becomes a larger and larger part of our economy people have a right to know what's going on behind the scenes.
    c. Solution
        i. Shine light on the issue.
    d. Who Submitted This Information
        i. Molson Hart
12. Amazon Encourages and Supports Chinese Sellers to Sell on the US Platform Despite Evidence That They are By Far the Worst Offenders on the Marketplace
    a. Description of the Issue
        i. Despite evidence that Chinese sellers are by far the worst offenders on the US marketplace, Amazon hosts more conferences in China than the US and provides them more and exclusive support i.e. through Chinese language only tools and the Amazon Global Shipping Program. In Europe,

40% of Amazon sellers are based in China[6]. We have this data because Europe forces Amazon to list an address for every seller. We have no such law in the United States but it would appear that the American Marketplace has similar numbers.

b. Why It's a Problem
    i. American sellers are already at a disadvantage when competing with Chinese who flout the law and face no repercussions. Amazon seeking out these sellers and then offering them greater support through puts honest CPSC-compliant American sellers at a disadvantage and worsens the quality of goods for American consumers.
c. Solution
    i. Shine light on the issue.
d. Who Submitted This Information
    i. Molson Hart

13. The way Amazon treats customer data is hypocritical
    a. Description of the Issue
        i. With every passing year, Amazon sellers are given less and less capacity to contact their customers on the platform, be it for reviews, requests for feedback, or marketing. Amazon says they are Amazon's customers, but when something goes wrong, i.e. a customer is hurt or there is a customer service issue, Amazon throws up its hands and says that Amazon is merely a marketplace operator and that the customer's issue belongs to the seller.
    b. Why It's a Problem
        i. If Amazon can avoid taking responsibility for negative outcomes for US consumers, attributing it to a few bad actors, it has less of an incentive to enforce product quality and consumer safety on its platform
    c. Solution
        i. Shine light on the problem
    d. Who Submitted this Information
        i. Molson Hart
14. The Search Space Dedicated to Amazon Advertised Products Grows Every Year
    a. Description of Issue
        i. With every passing year, Amazon dedicates more and more search result space towards products which pay to be in search results, as opposed to products which earned the right to be there. In some cases, Amazon will charge advertising for a product to be seen, and when the customer arrives at the product's webpage, Amazon will show further ads, sometimes for

[6] "Over 40 Percent of Amazon's Sellers Are Based in China" in *PC MAG*

their own products, diverting customers away from the product whose seller just paid the advertising fee.

b. Why It's a Problem
    i. Consumers have to work harder to see well-rated, low-return, high-satisfaction products. Amazon sellers undergo margin compression and respond by raising prices.
c. Solution
    i. Shine light on the issue.
d. Who Submitted This Information
    i. Anonymous

15. Amazon Makes Millions from Its Sellers Without Offering Decent Customer Support
    a. Description of Issue
        i. In order to receive semi-competent support from Amazon as a seller one needs to join their Strategic Account Management program at a cost of $1600 + 0.3% of sales per month.
    b. Why It's a Problem
        i. Amazon makes enough money. Why do they need to charge additional money to speak to someone semi-competent on the phone?
    c. Solution
        i. Shine light on the issue.
    d. Who Submitted This Information
        i. Anonymous
16. Amazon Profits from IP Theft
    a. Description of Issue
        i. Amazon takes a commission on every sale of IP-infringing product sold on their platform.
    b. Why It's a Problem
        i. That money is kept by Amazon, even after a judgment against the infringing party.
    c. Solution
        i. Shine light on the issue.
    d. Who Submitted This Information
        i. Molson Hart
17. Amazon Awards the Prime Badge for Products That Arrive in 4-5 Days When Amazon Sellers Can Only Receive It If Their Products Arrive in 2 or Less
    a. Description of the Issue
        i. For products that Amazon sells itself, it often awards itself the prime badge, despite it not being able to fulfill its 2 day delivery promise. Meanwhile, sellers on the platform who use Amazon seller-fulfilled prime

to ship to their customers are only awarded the prime badge for products that arrive at the customer in 2 days.

b. Why It's a Problem
    i. Sellers lose sales to Amazon because they are forced to play on an unfair playing field. As a result, they are encouraged to not compete against Amazon, reducing consumer choice.
c. Solution
    i. Shine light on the issue.
d. Who Submitted This Information
    i. Molson Hart

18. Amazon Has the Power to Destroy the Livelihood of Small Businesses Which Sell on Their Platform Through Suspension
    a. Description of the Issue
        i. Amazon has dominant market share in e-commerce, which compels sellers to sell there. When they suspend your account, rightly or wrongly, you have limited transparency into the reasoning for why, the suspension can be immediate, and they will hold your account balance, preventing you from paying suppliers and employees.
    b. Why It's a Problem
        i. It causes bankruptcy for many small businesses, an extraordinary issue when Amazon sometimes makes mistakes and suspends in response to false allegations.
    c. Solution
        i. Shine light on the issue.
    d. Who Submitted This Information
        i. Anonymous

Theo Prodromitis November 14, 2019
Congressional Hearing: "A Fair Playing Field? Investigating Big Tech's Impact on Small Business"

In answer to the questions posed at the end of the hearing by panelist Mr. Hart that I was not afforded the opportunity to answer, I offer the following:

1. My experience is **not** the exception, I speak at Amazon conferences and meet hundreds of Sellers and I am on the National Retail Council Small Business Advisory Council as well. My positive experience as an Amazon seller is common to thousands of Sellers.
2. The current environment selling against subpar quality, Chinese imports is **not** an issue for us today two reasons.
    a. The Amazon platform allows customers to find us easily with intuitive search functions.
    b. The brand registry program offers us protection when a Chinese counterfeit or generic sponge lists on our premium, brand listing. Amazon handles removal of false information successfully and efficiently because we have proven that we are the brand and trademark owner.
3. Does Amazon give preferential treatment to their own items or advertised items?
    a. No, a Pulitzer Prize winning journalist writing for the New Yorker interviewed me, he didn't believe my brand could compete and tried to prove something by entering a search term "natural sponges".
        i. Spa Destinations came right up on page one because of the "relevance, feedback rating and popularity" and we did not have a sponsored ad running.
4. Fees: Mr. Hart's description of an increase in his fees is due to his choice to use certain features on Amazon. The fees are competitive and offer a customizable solution for any business model. They are detailed in weekly reports and clearly communicated to sellers.

In conclusion, I concur with Mr. Ward in answering Ranking Member Chabot's question about government involvement / oversight on a scale from one to ten. My answer is two. Amazon drives innovation and supports small businesses and it is always prudent to have accountability in place for transparency and fairness in the market. Thank you for your leadership Chairwoman Velasquez and Ranking Member Chabot in ensuring the opportunity for small businesses to innovate, grow and prosper.

November 20, 2019

The Honorable Nydia Velázquez
Chairwoman
House Committee on Small Business
2361 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Steve Chabot
Ranking Member
House Committee on Small Business
2069 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Velázquez and Ranking Member Chabot:

During your committee's hearing on November 14 titled, "A Fair Playing Field? Investigating Big Tech's Impact on Small Business," comments were made regarding the state of competition and shoppers' confidence in the online travel marketplace. The Travel Technology Association (Travel Tech) respectfully submits this letter in response.

Travel Tech represents the leading innovators in travel technology, including online travel agencies (OTA), metasearch engines, short-term rental platforms, global distribution systems, and travel management companies. Our members are independent, multi-supplier companies whose technology has transformed the travel marketplace from end to end – from the way individuals plan, search, and book travel, to the way suppliers market and sell to their customers – creating new efficiencies, promoting competition, and ensuring consumers and travel agents see the full picture.

Despite the repeated claims by the hotel industry that OTAs dominate online hotel bookings, the U.S. Department of Justice (DOJ) recently completed a thorough review of the travel marketplace and found the opposite. In 2015, DOJ was asked to review the acquisition of Orbitz by Expedia. In doing so, they reviewed the competitive marketplace and landscape and came to the following conclusion[1]:

> "We know online travel booking is important to U.S. consumers and to the airlines, car rental companies and hotels that serve those consumers. Over the course of a six-month investigation, lawyers and economists from the Antitrust Division reviewed tens of thousands of business documents, analyzed transactional data from the merging companies and from other industry players and interviewed over 60 industry participants of various types and sizes.
>
> "The Antitrust Division investigated the concerns that have been expressed about this transaction. We took those concerns seriously and factored into our analysis

[1] Department of Justice press release: "Justice Department Will Not Challenge Expedia's Acquisition of Orbitz" (https://www.justice.gov/opa/pr/justice-department-will-not-challenge-expedias-acquisition-orbitz) – September 16, 2015

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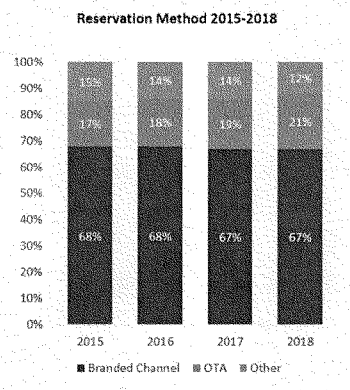
all of the information provided by third parties. At the end of this process, however, we concluded that the acquisition is unlikely to harm competition and consumers."

Even with the tremendous rise of online travel bookings marketplaces, it is important to note that **OTAs account for just 21 percent of all hotel bookings in the U.S.**, with 12 percent of hotel bookings made through other channels, including brick-and-mortar travel agents, credit card companies, and corporate management companies. **Nearly 70% of all bookings are made directly through the hotels**. According to the travel research publication Skift[2], these percentages have remained steady over the past several years. (See chart below.)[3]



Further, on an April 27, 2016, earnings call[4] President and CEO of Hilton Worldwide Chis Nassetta said, "The OTAs are plus or minus 10 percent of our business. So our direct channels are significantly larger than those channels." And on April 15, 2018, Arne Sorenson, CEO of Marriott, revealed that OTAs account for an estimated 12 percent of the company's overall bookings, according to Travel Industry publication Travel Pulse[5]. This demonstrates that two of the largest hotel chains in the world do not

[2] Skift: "Hotel Direct Bookings Remain Flat Despite Big Marketing Push" (https://skift.com/2018/07/25/hotel-direct-bookings-remain-flat-despite-big-marketing-push/) – July 25, 2018

[3] Chart from Skift article – July 25, 2018

[4] Skift: "Hotel CEOs Won't Back Down When It Comes to Pushing Direct Bookings" referencing Hilton Worldwide Quarterly Earnings Call (https://skift.com/2016/05/16/hotel-ceos-wont-back-down-when-it-comes-to-pushing-direct-bookings/)

view OTAs as having an overly dominant influence on the accommodations bookings marketplace.

OTAs partner with travel suppliers large and small to market their products – rooms, flights, cars, cruises, experiences – to consumers. It is clear the American public not only relies on the convenience of shopping across multiple travel brands in a single place, but they continue to trust online travel companies with their vacation and business travel itineraries. By offering worldwide exposure to boutique hotels, bed and breakfasts, small airlines, and other burgeoning businesses, OTAs help thousands of American small businesses compete on an even footing with the biggest names in travel and allow consumers access to offerings they may not have found otherwise.

As DOJ correctly noted, the online travel industry is rapidly evolving and consumer choice for accommodations is only expanding, offering consumers more places to shop for and book accommodations. TripAdvisor's Instant Booking service, Airbnb's acquisition of HotelTonight, and the growth in popularity of short-term rental platforms afford consumers even more choices in booking. The competitive landscape for shopping for travel has never been more diverse and competitive, and as a result, consumers have the power to search, compare, and book travel from the palm of their hand from anywhere in the world.

Comments were also made during the hearing aimed toward undermining the reputation and record of OTAs, but the travelers who book hundreds of millions of hotel room nights each year through OTAs are testament that booking hotel rooms via third-party sites is safe, convenient, and effective. OTAs save consumers money and give them more choices by creating an open, transparent marketplace where hotel properties compete on location, price, and amenities. According to a 2017 study by the research firm Piper Jaffray[6], a consumer finds a lower price for a room on an OTA or a metasearch site 21 percent of the time. The reliability of independent booking sites is why hundreds of thousands of hotels, motels, inns, and bed and breakfasts in every corner of the U.S. and around the world willingly and enthusiastically partner with OTAs.

Integrity in the hotel bookings marketplace is critical. Without it, companies that fail to deliver reliable service and seamless transactions with their hotel partners will not survive in the competitive travel market. And OTAs are on record as offering the highest level of customer service to their clients and have done so for well over two decades.

Thank you for the opportunity to share our industry's perspective. Travel Tech is available to the House Committee on Small Business as a resource and would welcome

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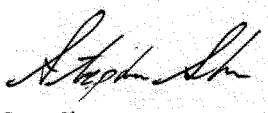
[5] https://www.travelpulse.com/news/hotels-and-resorts/marriott-plans-to-lower-commissions-for-online-travel-agencies.html

[6] Skift: "New Research Suggests It Doesn't Always Pay to Book Direct for a Hotel" (https://skift.com/2017/07/18/new-research-suggests-it-doesnt-always-pay-to-book-direct-for-a-hotel/)

the opportunity to visit with you, your staff, and fellow colleagues to discuss our industry in greater detail.

Sincerely,



Steve Shur
President
The Travel Technology Association