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ONLINE PLATFORMS AND MARKET POWER, PART 6: EXAMINING THE DOMINANCE OF AMAZON, APPLE, FACEBOOK, AND GOOGLE

HEARING

BEFORE THE

SUBCOMMITTEE ON ANTITRUST, COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

JULY 29, 2020

Serial No. 116–94

Printed for the use of the Committee on the Judiciary



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41–317 WASHINGTON : 2020

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CONTENTS

JULY 29, 2020

OPENING STATEMENTS

	Page
The Honorable David Cicilline, Chairman, Subcommittee on Antitrust, Commercial and Administrative Law	2
The Honorable James Sensenbrenner, Ranking Member, Subcommittee on Antitrust, Commercial and Administrative Law	4
The Honorable Jerrold Nadler, Chairman, Committee on the Judiciary	5
The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary	7

WITNESSES

Jeff Bezos, Chief Executive Officer, Amazon.com, Inc.	
Oral Testimony	11
Prepared Testimony	13
Sundar Pichai, Chief Executive Officer, Alphabet Inc.	
Oral Testimony	21
Prepared Testimony	23
Tim Cook, Chief Executive Officer, Apple Inc.	
Oral Testimony	27
Prepared Testimony	29
Mark Zuckerberg, Chief Executive Officer, Facebook, Inc.	
Oral Testimony	33
Prepared Testimony	35

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Exhibits Used at Hearing	42
"Police Requests for Google Users' Location Histories Face New Scrutiny," a Wall Street Journal article for the record from the Honorable Kelly Armstrong, Member, Subcommittee on Antitrust, Commercial and Administrative Law	89
Letter to Apple by Representatives Greg Walden and Cathy McMorris Rodgers from the Honorable Kelly Armstrong, Member, Subcommittee on Antitrust, Commercial and Administrative Law	95
Letter to Google by Representatives Greg Walden and Cathy McMorris Rodgers from the Honorable Kelly Armstrong, Member, Subcommittee on Antitrust, Commercial and Administrative Law	98

APPENDIX

Statement for the record from Paul Rafelson, Executive Director, Online Merchants Guild	169
Letter to Mark Zuckerberg from Dr. Arthur C. Evans, Jr., Chief Executive Officer, American Psychological Association	212
Statement for the record from the Leadership Conference on Civil and Human Rights	216
Statement for the record from Richard Stables, Chief Executive Officers, the Kelkoo Group	223
Statement for the record from Color of Change	225
Statement for the record from Caitriona Fitzgerald, Interim Associate Director and Policy Director, Electronic Privacy Information Center	232
Statement for the record from Christine Bannan, Policy Counsel, New America's Open Technology Institute	237

Page

Statement for the record from Michael Beckerman, Vice President and Head of US Public Policy, TikTok 245
Statement for the record from Dr. Ajintha Pathmanathan, ClinIQ 251
Statement for the record from Michael Kleinman and Charanya Krishnaswami, Amnesty International 263
Statement for the record from Margrethe Vestager, Executive Vice-President, European Commission 267
Statement for the record from Dirk Van Dongen, President and CEO, National Association of Wholesaler-Distributors 275
Statement for the record from Jake Ward, President, Connected Commerce Council 278
Responses to Questions for the Record from Jeff Bezos, Chief Executive Officer, Amazon.com, Inc. 280
Responses to Questions for the Record from Sundar Pichai, Chief Executive Officer, Alphabet Inc. 335
Responses to Questions for the Record from Tim Cook, Chief Executive Officer, Apple Inc. 395
Responses to Questions for the Record from Mark Zuckerberg, Chief Executive Officer, Facebook, Inc. 421
Documents Referenced by Members at Hearing 437

ONLINE PLATFORMS AND MARKET POWER, PART 6: EXAMINING THE DOMINANCE OF AMAZON, APPLE, FACEBOOK, AND GOOGLE

WEDNESDAY, JULY 29, 2020

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON ANTITRUST, COMMERCIAL, AND ADMINISTRATIVE LAW

COMMITTEE ON THE JUDICIARY

Washington, DC.

The subcommittee met, pursuant to call, at 1:05 p.m., in Room 2141, Rayburn House Office Building, Hon. David Cicilline [chairman of the subcommittee] presiding.

Present: Representatives Cicilline, Nadler, Johnson, Raskin, Jayapal, Demings, Scanlon, Neguse, McBath, Sensenbrenner, Jordan, Buck, Gaetz, Armstrong, and Steube.

Staff Present: Phillip Berenbroick, Counsel; Joseph Ehrenkrantz, Special Assistant; David Greengrass, Senior Counsel; Madeline Strasser, Chief Clerk; Anthony Valdez, Staff Assistant; John Williams, Parliamentarian; Amanda Lewis, Counsel, ACAL; Joseph Van Wye, Professional Staff Member, ACAL; Lina Khan, Counsel, ACAL; Slade Bond, Chief Counsel, ACAL; Catherine Larsen, Special Assistant, ACAL; Chris Hixon, Minority Staff Director; David Brewer, Minority Deputy Staff Director; Tyler Grimm, Minority Chief Counsel for Policy and Strategy; Stephen Castor, Minority General Counsel; Katy Rother, Minority Deputy General Counsel and Parliamentarian; Ella Yates, Minority Director of Member Services and Coalitions; Douglas Geho, Minority Chief Counsel for Administrative Law; and Kiley Bidelman, Minority Clerk.

Mr. CICILLINE. The subcommittee will come to order.

Without objection, the chair is authorized to declare a recess at any time.

We welcome everyone to today's hearing on "Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google."

Before we begin, I'd like to remind members that we have established an email address and distribution list dedicated to circulating exhibits, motions, or other written materials that members might want to offer as part of our hearing today. If you'd like to submit materials, please send them to the email address that has been previously distributed to your offices, and we will circulate the materials to members and staff as quickly as we can.

I would also remind all members that guidance from the Office of the Attending Physician states that face coverings are required for all meetings in an enclosed space, such as committee hearings. I expect all members on both sides of the aisle to wear a mask except when you are speaking.

I now recognize myself for an opening statement.

More than a year ago, this subcommittee launched an investigation into digital markets. Our two objectives have been to document competition problems in the digital economy and to evaluate whether the current antitrust framework is able to properly address them.

In September 2019, the chairmen and ranking members of the full committee and the subcommittee issued sweeping, bipartisan requests for information to the four firms that will testify at today's hearing. Since then, we've received millions of pages of evidence from these firms as well as documents and submissions from more than 100 market participants. We've also conducted hundreds of hours of interviews.

As part of this investigation, we have held five hearings to examine the effects of online market power on innovation and entrepreneurship, data privacy, a free and diverse press, and independent businesses in the online marketplace. We've held 17 briefings and roundtables with over 35 experts and stakeholders in support of our work.

This investigation has been bipartisan from the start. It's been an honor to work alongside my colleague Congressman Jim Sensenbrenner, the subcommittee's ranking member, as well as the former ranking member of the full committee, Congressman Doug Collins.

We've worked closely with all members of the subcommittee on both sides of the aisle who have taken this work seriously and studied these issues carefully. As my colleague Congressman Ken Buck recently commented, and I quote, "This is the most bipartisan effort that I've been involved with in 5½ years of Congress," end quote.

The purpose of today's hearing is to examine the dominance of Amazon, Apple, Facebook, and Google.

Amazon runs the largest online marketplace in America, capturing 70 percent of all online marketplace sales. It operates across a vast array of businesses, from cloud computing and movie production to transportation logistics and small-business lending. Amazon's market valuation recently hit $1.5 trillion, more than that of Walmart, Target, Salesforce, IBM, eBay, and Etsy combined.

Apple is a dominant provider of smartphones, with more than 100 million iPhone users in the United States alone. In addition to hardware, Apple sells services and apps, including financial services, media, and games.

Facebook is the world's largest provider of social networking services, with a business model that sells digital ads. Despite a litany of privacy scandals and record-breaking fines, Facebook continues to enjoy booming profits—$18 billion last year alone.

Lastly, Google is the world's largest online search engine, capturing more than 90 percent of searches online. It controls key

technologies in digital ad markets and enjoys more than a billion users across six products, including browsers, smartphones, and digital maps.

Prior to the COVID–19 pandemic, these corporations already stood out as titans in our economy. In the wake of COVID–19, however, they're likely to emerge stronger and more powerful than ever before. As American families shift more of their work, shopping, and communication online, these giants stand to profit. Locally owned businesses, meanwhile, mom-and-pop stores on Main Street, face an economic crisis unlike any in recent history. As hard as it is to believe, it's possible that our economy will emerge from this crisis even more concentrated and consolidated than before.

These companies serve as critical arteries of commerce and communications. Because these companies are so central to our modern life, their business practices and decisions have an outsized effect on our economy and our democracy. Any single action by one of these companies can affect hundreds of millions of us in profound and lasting ways.

Although these four corporations differ in important and meaningful ways, we've observed common patterns and competition problems over the course of this investigation.

First, each platform is a bottleneck for a key channel of distribution. Whether they control access to information or to a marketplace, these platforms have the incentive and ability to exploit this power. They can charge exorbitant fees, impose oppressive contracts, and extract valuable data from the people and businesses that rely on them.

Second, each platform uses its control over digital infrastructure to surveil other companies, their growth, business activity, and whether they might pose a competitive threat. Each platform has used this data to protect its power by either buying, copying, or cutting off access for any actual or potential rival.

Third, these platforms abuse their control over current technologies to extend their power. Whether it's through self-preferencing, predatory pricing, or requiring users to buy additional products, the dominant platforms have wielded their power in destructive, harmful ways in order to expand.

At today's hearing, we'll examine how each of these companies have used this playbook to achieve and maintain dominance and how their power shapes and affects our daily lives.

So why does this matter? Many of the practices used by these companies have harmful economic effects. They discourage entrepreneurship, destroy jobs, hike costs, and degrade quality. Simply put, they have too much power. This power staves off new forms of competition, creativity, and innovation. And while these dominant firms may still produce some new, innovative products, their dominance is killing the small businesses, manufacturing, and overall dynamism that are the engines of the American economy.

Several of these firms also harvest and abuse people's data to sell ads for everything from new books to dangerous so-called "miracle" cures. When everyday Americans learn how much of their data is being mined, they can't run away fast enough. But, in many cases, there is no escape from the surveillance, because there's no alternative. People are stuck with bad options.

Open markets are predicated on the idea that, if a company harms people, consumers, workers, and business partners will choose another option. We're here today because that choice is no longer possible.

In closing, I'm confident that addressing the problems we see in these markets will lead to a stronger, more vibrant economy. Because concentrated economic power also leads to concentrated political power, this investigation also goes to the heart of whether we, as a people, govern ourselves or whether we let ourselves be governed by private monopolies.

American democracy has always been at war against monopoly power. Throughout our history, we've recognized that concentrated markets and concentrated political control are incompatible with democratic ideals. When the American people confronted monopolists in the past, be it the railroads or the oil tycoons or AT&T and Microsoft, we took action to ensure no private corporation controls our economy or our democracy. We face similar challenges today.

As gatekeepers of the digital economy, these platforms enjoy the power to pick winners and losers, to shake down small businesses, and enrich themselves while choking off competitors. Their ability to dictate terms, call the shots, upend entire sectors, and inspire fear represent the powers of a private government. Our Founders would not bow before a king, nor should we bow before the emperors of the online economy.

And, with that, I now recognize the ranking member of the subcommittee, Mr. Sensenbrenner, for his opening statement.

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

I want to thank the CEOs for quickly working with the subcommittee to appear today. The memorial service for John Lewis on Monday required our attention. However, this hearing is vital to our oversight work, and I appreciate your flexibility.

Throughout my long time in Congress, I have prioritized oversight as one of our seminal responsibilities. Part of that responsibility is to periodically review the effectiveness of our laws. And I think it's a good and timely thing that we are now turning our attention to technological innovations, which brings us to all of your companies.

Our country stricken by a pandemic becomes a dramatic illustration of the extraordinary reliance Americans have on technological innovations. In these unexpected and unprecedented times, your companies have provided innovations so our Nation can meet a myriad of our daily needs: the delivery of groceries, virtual visits with doctors, connecting socially distant families, or keeping our small and large businesses connected. With that responsibility comes an increased scrutiny of your dominance in the marketplace.

I want to reiterate something I've said throughout this investigation: Being big is not inherently bad. Quite the opposite. In America, you should be rewarded for success.

We are here to better understand the role your companies have in the digital marketplace and, importantly, the effect they have on consumers and the public at large. You lead some of today's most powerful companies, and my colleagues and I have great interest in what your companies do with that accumulated power.

We also know that the tech marketplace is driven by data. So it follows that those who control the data in essence control the marketplace. There are broader questions surrounding data, however: Who owns the data? What responsibilities do companies have to share it with their customers or their competitors? What is the fair market value of that data? Is there anything monopolistic in acquiring this data? And what about monetizing it? These are complex issues that Congress, regulators, and even your own companies are wrestling with in the current technological landscape, and the answers to which we owe the American consumers.

Since the tech investigation began, we have heard rumblings from many who are quick to say your successful companies have grown too large. Since this hearing was announced, it seems that those complaints have gotten even louder. While I find these complaints informative, I don't plan on litigating each of these complaints today.

Antitrust law and the consumer welfare standard have served this country well for over a century. Those laws have provided the framework and creativity to make way for some of our most successful and innovative companies. I will be the first to highlight that. However, as the business landscape evolves, we must ensure that our existing antitrust laws are applied to meet the needs of our country and its consumers.

I share the concern that market dominance in the digital space is ripe for abuse, particularly when it comes to free speech. As we know, companies like Facebook, Google's YouTube, and Twitter have become the public square of today, where political debate unfolds in real-time. But reports that dissenting views—often conservative views—are targeted or censored is seriously troubling. Conservatives are consumers too, and they need the protection of the antitrust laws. The power to influence debate carries with it remarkable responsibilities.

So let the facts be our guide here. Your companies are large. That's not a problem. Your companies are successful. That's not a problem either. But I want to leave here today with a more complete picture of how your individual companies use your size, success, and power and what it means to the American consumer.

And I yield back the balance of my time.

Mr. CICILLINE. I thank the gentleman.

The chair now recognizes the distinguished chairman of the full committee, the gentleman from New York, Mr. Nadler, for his opening statement.

Chairman NADLER. Thank you, Mr. Chairman.

I want to thank you, Ranking Member Sensenbrenner, and the subcommittee members for the tremendous effort that you have all put into this subcommittee's investigation. I appreciate your calling this hearing today so that we can hear directly from the leaders of Amazon, Apple, Facebook, and Google, and I look forward to an important dialogue.

Today, it is effectively impossible to use the internet without using, in one way or another, the services of these four companies. I have long believed, with Thomas Jefferson and Louis Brandeis, that concentration of power in any form, especially concentration of economic or political power, is dangerous to a democratic society.

That is why we must examine these and other companies that play a dominant role in our economy and in our society and ensure that our antitrust laws give enforcers the tools they need to preserve a healthy marketplace. These principles have guided this committee's year-long investigation into competition in digital markets, and they are the lens through which I approach today's hearing.

The open internet has delivered enormous benefits to Americans, including a surge of economic opportunity, massive investment, and new pathways for education online. But there's growing evidence that a handful of corporations have come to capture an outsized share of online commerce communications.

From providing the dominant search platform, retail platform, and online messaging platform, to providing the underlying mapping services and cloud computing on which hundreds of thousands of other businesses rely, these dominant platforms now comprise the essential infrastructure for the 21st century.

By virtue of controlling essential infrastructure, these companies have the ability to control access to markets. In some basic ways, the problem is not unlike what we faced 130 years ago when railroads transformed American life, both enabling farmers and producers to access new markets but also creating a key chokehold that the railroad monopolies could exploit.

Railroads notoriously abused this gatekeeper power in a variety of ways. They charged tolls, extorting the producers reliant on their rails. They discriminated among farmers, picking winners and losers across the economy. And by expanding into lines of business that competed directly with producers, they could use their dominance in transportation to pay for their own services.

These tactics by the railroads spurred fury and despair across the country. Congress initiated investigations to document these problems and enacted legislative solutions to halt and outlaw these anticompetitive practices in the railroad industry and other industries dominated by unregulated monopolies and trusts.

Importantly, congressional oversight and legislative reforms during this period did not prevent or encumber the inexorable arrival of new technology or human progress. Instead, Congress recognized that these powerful new technologies had reshaped the balance of power in our economy and that it was the role of Congress to ensure that the new monopolists could not abuse their power.

Today, the digital economy poses similar challenges. While the underlying technology is dramatically different, of course, new digital intermediaries have the ability to control access to critical markets. If you are an independent merchant, developer, or content producer, you are increasingly reliant on these powerful intermediaries to access markets and consumers. Across the economy, many businesses live in fear of exclusion from these platforms, a fact that some companies have shared with the committee over the past year during this investigation.

The subcommittee's current review of competition in the digital marketplace continues a long tradition in this committee of oversight of the antitrust laws and our economy. From the days of Chairman Emanuel Celler, the House Judiciary Committee and its Antitrust Subcommittee have conducted careful, fact-based inquiries into industrial sectors showing signs of consolidation and anti-

competitive conduct. This has continued on a bipartisan basis over the years, from Chairmen Brooks and Hyde to Chairmen Sensenbrenner and Conyers and others.

As a 1950 report from the then-named Subcommittee on Monopoly Power described our mandate, quote, "It is the province of this subcommittee to investigate factors which tend to eliminate competition, strengthen monopolies, injure small businesses, or promote undo concentration of economic power, to ascertain the facts, and to make recommendations based on those findings."

Following in this proud tradition, our investigation has held hearings with industry and government witnesses, consultations with subject matter experts, and the careful and at times painstaking review of large volumes of evidence provided by industry participants and regulators.

While ultimately it is the responsibility of the antitrust enforcement agencies to enforce the law, Congress has an obligation to assess whether existing antitrust laws and competition policies and the will to enforce those laws and policies are adequate to address the competition issues facing our country and to take action if they are found to be lacking.

Given the dominant role that these four companies play in our economy and our society, it is only reasonable that our careful examination of the antitrust laws begin with them.

I appreciate the participation of all of our witnesses today. Our investigation would not be complete—indeed, it has hardly begun—without hearing directly from the decisionmakers of these companies. And I look forward to their testimony and to today's discussion.

I yield back the balance of my time.

Mr. CICILLINE. I thank the gentleman.

And I now recognize the ranking member of the full committee, the gentleman from Ohio, Mr. Jordan, for his opening statement.

Mr. JORDAN. Thank you, Mr. Chairman.

And I also want to thank the ranking member of this subcommittee, Mr. Sensenbrenner. I'm not sure how many more committee hearings this subcommittee or the full committee are going to have this Congress, but I want to thank Jim for his great work for the constituents of his district in Wisconsin for this many years and for the work he has done for this entire committee.

I'll just cut to the chase: Big Tech's out to get conservatives. That's not a suspicion. That's not a hunch. That's a fact.

July 20, 2020, Google removes the homepages of Breitbart and The Daily Caller. Just last night, we learned Google has censored Breitbart so much traffic had declined 99 percent.

June 16, 2020, Google threatens to demonetize and ban The Federalist.

April 19, 2020, Google and YouTube announce a policy censoring content that conflicts with recommendations of the World Health Organization. Now, think about that. The World Health Organization, an organization that lied to us, the organization that shilled for China, and if you contradict something they say—they can say whatever they want. They can lie for China. They can shill for China. You say something against them, you get censored.

June 29, 2020, Amazon bans President Trump's account on Twitch after he raises concerns about defunding the police.

June 4, 2020, Amazon bans a book critical of the coronavirus lockdowns written by a conservative commentator.

May 27, 2020, AmazonSmile won't let you give to the Family Research Council and the Alliance Defense Fund, but you can give to Planned Parenthood.

Facebook, June 19, 2020, takes down posts from President Trump's reelection campaign.

November 1, 2018, Facebook silences a pro-life organization's advertisement.

May 19, 2016, former Facebook employees admit Facebook routinely suppresses conservative views.

And I haven't even mentioned Twitter, who we actually invited, Mr. Chairman. We asked for you guys to invite them as one of our witnesses. You guys said no. I haven't even mentioned them.

Two years ago, they shadow banned two members of this committee. Four Members of Congress were shadowed banned 2 years ago. Four-hundred-and-thirty-five in the House, 100 in the Senate, 535. Only four—only four—Gaetz, Meadows, Nunes, Jordan—only four get shadowed banned.

And, of course, what did Mr. Dorsey tell us? He said, oh, it was just a glitch in our algorithm. Just a glitch. I asked him, what did you put in the algorithm, the names "Gaetz," "Meadows," "Nunes," "Jordan"? I mean, if I had a nickel for every time I heard it was just a glitch, I wouldn't be as wealthy as our witnesses but I'd be doing all right. We've heard that excuse time and time again.

May 28, Twitter censors President Trump's tweet on the riots in Minneapolis.

May 29, 2020, Twitter censors the White House for quoting the President's comments about the riots in Minneapolis.

June 23, 2020, Twitter censors the President again for saying he'll enforce the rule of law against any autonomous zone in Washington, D.C. You can tweet all you want about the autonomous zone that happened in Seattle, but the President tweets that he's not going to have one in Washington, D.C.—oh, oh, oh, nope, you can't do that. You get banned, you get censored.

Dozens of examples—oh, I forgot one. I forgot one. Just last week, July 21, July 21, here's what Twitter did. The leader of Iran, the Islamic Republic of Iran—this is from the largest state sponsor of terrorism. Twitter allows this tweet: Quote, "The Islamic Republic of Iran will never forget the martyrdom of Soleimani and will definitely strike a reciprocal blow in the United States."

So you can threaten the citizens of this great country, the leader of the largest state sponsor of terrorism, that's just fine. But, oh, the President says he's not going to allow some autonomous zone in D.C., and he gets censored.

Mr. JORDAN. All kinds of examples, most of them from this year. And that's what's, I think, critical for us all to understand: most of them from this year, an election year. And that's what concerns me and so many Americans.

Because we saw what Google did in 2016. We all know about the email the day after the election, where top executives at Google—email chain where they talked about the silent donation Google

made to the Clinton campaign. Now, thank goodness, it wasn't enough and, in spite of their efforts to help Clinton, President Trump won.

But we're 97 days before an election. And the power, as the previous chairman and ranking member have said, the power these companies have to impact what happens during an election, what American citizens get to see prior to their voting, is pretty darn important. That's why this committee hearing's important.

Look, we all think the free market's great. We think competition's great. We love the fact that these are American companies. But what's not great is censoring people, censoring conservatives, and trying to impact elections. And if it doesn't end, there has to be consequences. There has to be consequences. That's what I'm concerned about and, I think, what so many Americans are concerned about.

So I look forward to hearing from our witnesses, Mr. Chairman.

And before I yield back, Mr. Chairman, we have a colleague—I would ask unanimous consent that Mr. Johnson, the ranking member of the Constitution Subcommittee, be allowed to participate in today's hearing, which is our customary practice for subcommittee hearings.

Mr. CICILLINE. The gentleman makes a unanimous consent request——

Mr. RASKIN. Mr. Chairman, I would object.

Mr. CICILLINE. Objection is heard.

I now have the pleasure of introducing today's witnesses——

Mr. JORDAN. Mr. Chairman, why are we not allowing—it is customary.

Mr. CICILLINE. Mr. Jordan, there was a unanimous consent request. Objection was heard. I now will introduce our witnesses.

It is now my pleasure——

Mr. JORDAN. This has never happened in the history of the Judiciary Committee.

Mr. CICILLINE. It is now my pleasure to introduce today's witnesses.

Our first witness is Jeff Bezos, the chief executive officer——

Mr. JORDAN. And this is——

Mr. CICILLINE. Mr. Jordan, I have the time.

Mr. JORDAN. But this is the ranking member of the—we're talking about people's liberties here, and we've got the ranking member——

Mr. CICILLINE. Mr. Jordan, you made a unanimous consent request. Objection was heard. Those are our rules.

Mr. JORDAN. The objection was not——

Mr. CICILLINE. It is now my pleasure to introduce today's witnesses.

Mr. JORDAN [continuing]. Law professor——

Mr. CICILLINE. Our first witness is Jeff Bezos——

Mr. RASKIN. Put your mask on.

Mr. CICILLINE [continuing]. The chief executive officer of Amazon.com. Mr. Bezos founded Amazon in——

Mr. JORDAN. I'm still speaking——

Mr. CICILLINE. Excuse me. I'm going to remind members of this committee, unless you are speaking, our rules require you to wear a mask, according to the Attending Physician.

Mr. JORDAN. I'm still——

Mr. CICILLINE. No, I'm speaking about another member of this committee.

I'll begin again.

It is now my pleasure to introduce today's witnesses.

Our first witness is Jeff Bezos, the chief executive officer of Amazon.com. Mr. Bezos founded Amazon in 1994 as an online bookstore. Since then, Amazon has grown to be the largest online retailer on the internet. Mr. Bezos also oversees his company's expansion into areas including cloud computing, digital streaming, and artificial intelligence. Mr. Bezos received his bachelor's of science from Princeton University.

Our second witness, Sundar Pichai, is the chief executive officer of both Alphabet and its subsidiary, Google. Mr. Pichai joined Google in 2004 and has helped manage a number of successful products, including Google Chrome, Gmail, and the Android operating system. Mr. Pichai also oversaw the company's popular search products. Prior to his time at Google, Mr. Pichai worked in management consulting at McKinsey. Mr. Pichai received a degree in metallurgical engineering from the Indian Institute of Technology, a master's degree from Stanford University, and an MBA from the Wharton School at the University of Pennsylvania.

Our third witness is Tim Cook, the chief executive officer of Apple. Mr. Cook joined Apple in 1998 and served as its chief operational officer under Steve Jobs. In 2011, Mr. Cook was named CEO. While at Apple, he has overseen their expansion into new markets through the launch and development of products and services like Apple Pay, Apple Watch, iCloud, Apple Card, and HomePod. Prior to joining Apple, Mr. Cook served as the director of North American fulfillment for IBM. Mr. Cook received a bachelor of science from Auburn University and an MBA from Duke University's Fuqua School of Business.

The last witness at today's hearing is Mark Zuckerberg, founder, chairman, and CEO of Facebook. Mr. Zuckerberg initially launched Facebook in order to help connect college students at his school more easily. Since then, the company has grown into the world's largest social media platform, with 1.7 billion global daily active users. Mr. Zuckerberg attended Harvard University, leaving in 2005 to focus full-time on developing Facebook.

We welcome all of our distinguished witnesses and thank them for participating in today's hearing.

And now we'll begin by swearing you in. And before I do that, I want to also remind you that you are the only ones from your respective companies invited to testify today and that, in accordance with normal House practice and section G of the House remote committee proceeding regulations, your sworn testimony must be your own. Please let me know if at any point in the hearing you wish to mute yourself so you can confer with your counsel.

So will you please unmute your microphones and raise your right hands?

Do you swear or affirm under penalty of perjury that the testimony you're about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Mr. BEZOS. Yes.

Mr. PICHAI. I do.

Mr. ZUCKERBERG. Yes.

Mr. COOK. I do.

Mr. CICILLINE. Let the record show the witnesses answered in the affirmative.

Thank you, and you may remain seated.

Please note that your written statements will be entered into the record in their entirety. Accordingly, I ask that you summarize your testimony in 5 minutes. To help you stay within that time, there is a timing light in Webex. When the light switches from green to yellow, you have 1 minute to conclude your testimony. When the light turns red, it signals your 5 minutes have expired.

Mr. Bezos, you may begin.

TESTIMONY OF JEFF BEZOS, CHIEF EXECUTIVE OFFICER, AMAZON.COM, INC.; SUNDAR PICHAI, CHIEF EXECUTIVE OFFICER, ALPHABET INC.; TIM COOK, CHIEF EXECUTIVE OFFICER, APPLE INC.; AND MARK ZUCKERBERG, CHIEF EXECUTIVE OFFICER, FACEBOOK, INC.

TESTIMONY OF JEFF BEZOS

Mr. BEZOS. Thank you, Chairman Cicilline, Ranking Member Sensenbrenner, and members of the subcommittee.

I was born into great wealth, not monetary wealth but, instead, the wealth of a loving family, a family that fostered my curiosity and encouraged me to dream big.

My mom, Jackie, had me when she was a 17-year-old high school student in Albuquerque. Being pregnant in high school was not popular. The school tried to kick her out, but she was allowed to finish after my grandfather negotiated terms with the principal. She couldn't have a locker, no extracurriculars, and couldn't walk across the stage to get her diploma. She graduated and was determined to continue her education, so she enrolled in night school, bringing me, her infant son, to class with her throughout.

My dad's name is Miguel. He adopted me when I was 4. He was 16 when he came to the U.S. from Cuba by himself shortly after Castro took over. My dad didn't speak English, and he did not have an easy path. What he did have was grit and determination. He received a scholarship to college in Albuquerque, which is where he met my mom.

Together with my grandparents, these hardworking, resourceful, and loving people made me who I am.

I walked away from a steady job on Wall Street into a Seattle garage to found Amazon, fully understanding that it might not work. It feels like just yesterday I was driving the packages to the post office myself, dreaming that one day we might afford a forklift.

Customer obsession has driven our success, and I take it as an article of faith that customers notice when you do the right thing. You earn trust slowly, over time, by doing hard things well, delivering on time, offering everyday low prices, making promises and

keeping them, and making principled decisions, even when they are unpopular.

And our approach is working. Eighty percent of Americans have a favorable impression of Amazon overall. Who do Americans trust more than Amazon to do the right thing? Only their doctors and the military.

The retail market we participate in is extraordinarily large and competitive. Amazon accounts for less than 1 percent of the $25 trillion global retail market and less than 4 percent of U.S. retail. There's room in retail for multiple winners. We compete against large, established players like Target, Costco, Kroger, and, of course, Walmart, a company more than twice Amazon's size.

Twenty years ago, we made the decision to invite other sellers to sell in our store, to share the same valuable real estate we spent billions to build, market, and maintain. We believed that combining the strengths of Amazon's store with the vast selection of products offered by third parties would be a better experience for customers and that the growing pie of revenue and profits would be big enough for all. We were betting that it was not a zero–sum game. Fortunately, we were right. There are now 1.7 million small and medium–size businesses selling on Amazon.

The trust customers put in us every day has allowed Amazon to create more jobs in the United States over the past decade than any other company—hundreds of thousands of jobs across 42 states. Amazon employees make a minimum of $15 an hour, more than double the federal minimum wage. And we offer the best benefits—benefits that include comprehensive health insurance, 401(k) retirement, and parental leave, which includes 20 weeks of paid maternity leave.

More than any place on Earth, entrepreneurial companies start, grow, and thrive here in the U.S. We nurture entrepreneurs and startups with stable rule of law, the finest university system in the world, the freedom of democracy, and a deeply accepted culture of risk–taking.

Of course, this great Nation of ours is far from perfect. Even as we remember Congressman John Lewis and honor his legacy, we're in the middle of a much–needed race reckoning. We also face the challenges of climate change and income inequality, and we're stumbling through the crisis of a global pandemic.

Still, with all of our faults and problems, the rest of the world would love even the tiniest sip of the elixir we have here in the U.S. Immigrants like my dad see what a treasure this country is. They have perspective and often can see it even more clearly than those of us who were lucky enough to be born here.

It is still day one for this country, and even in the face of today's humbling challenges, I have never been more optimistic about our future.

I appreciate the opportunity to appear before you today, and I'm very happy to take your questions.

[The statement of Mr. Bezos follows:]

amazon

Statement by Jeffrey P. Bezos
Founder & Chief Executive Officer, Amazon
before the U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Antitrust, Commercial, and Administrative Law
July 29, 2020

Thank you, Chairman Cicilline, Ranking Member Sensenbrenner, and members of the Subcommittee. I'm Jeff Bezos. I founded Amazon 26 years ago with the long-term mission of making it Earth's most customer-centric company.

My mom, Jackie, had me when she was a 17-year-old high school student in Albuquerque, New Mexico. Being pregnant in high school was not popular in Albuquerque in 1964. It was difficult for her. When they tried to kick her out of school, my grandfather went to bat for her. After some negotiation, the principal said, "OK, she can stay and finish high school, but she can't do any extracurricular activities, and she can't have a locker." My grandfather took the deal, and my mother finished high school, though she wasn't allowed to walk across the stage with her classmates to get her diploma. Determined to keep up with her education, she enrolled in night school, picking classes led by professors who would let her bring an infant to class. She would show up with two duffel bags—one full of textbooks, and one packed with diapers, bottles, and anything that would keep me interested and quiet for a few minutes.

My dad's name is Miguel. He adopted me when I was four years old. He was 16 when he came to the United States from Cuba as part of Operation Pedro Pan, shortly after Castro took over. My dad arrived in America alone. His parents felt he'd be safer here. His mom imagined America would be cold, so she made him a jacket sewn entirely out of cleaning cloths, the only material they had on hand. We still have that jacket; it hangs in my parents' dining room. My dad spent two weeks at Camp Matecumbe, a refugee center in Florida, before being moved to a Catholic mission in Wilmington, Delaware. He was lucky to get to the mission, but even so, he didn't speak English and didn't have an easy path. What he did have was a lot of grit and determination. He received a scholarship to college in Albuquerque, which is where he met my mom. You get different gifts in life, and one of my great gifts is my mom and dad. They have been incredible role models for me and my siblings our entire lives.

You learn different things from your grandparents than you do from your parents, and I had the opportunity to spend my summers from ages four to 16 on my grandparents' ranch in Texas. My grandfather was a civil servant and a rancher—he worked on space technology and missile-defense systems in the 1950s and '60s for the Atomic Energy Commission—and he was self-reliant and resourceful. When you're in the middle of nowhere, you don't pick up a phone and call somebody when something breaks. You fix it yourself. As a kid, I got to see him solve many seemingly unsolvable problems himself, whether he was restoring a broken-down Caterpillar bulldozer or doing his own veterinary work. He taught me that you can take on hard problems. When you have a setback, you get back up and try again. You can invent your way to a better place.

I took these lessons to heart as a teenager, and became a garage inventor. I invented an automatic gate closer out of cement-filled tires, a solar cooker out of an umbrella and tinfoil, and alarms made from baking pans to entrap my siblings.

The concept for Amazon came to me in 1994. The idea of building an online bookstore with millions of titles—something that simply couldn't exist in the physical world—was exciting to me. At the time, I was working at an investment firm in New York City. When I told my boss I was leaving, he took me on a long walk in Central Park. After a lot of listening, he finally said, "You know what, Jeff, I think this is a good idea, but it would be a better idea for somebody who didn't already have a good job." He convinced me to think about it for two days before making a final decision. It was a decision I made with my heart and not my head. When I'm 80 and reflecting back, I want to have minimized the number of regrets that I have in my life. And most of our regrets are acts of omission—the things we didn't try, the paths untraveled. Those are the things that haunt us. And I decided that if I didn't at least give it my best shot, I was going to regret not trying to participate in this thing called the internet that I thought was going to be a big deal.

The initial start-up capital for Amazon.com came primarily from my parents, who invested a large fraction of their life savings in something they didn't understand. They weren't making a bet on Amazon or the concept of a bookstore on the internet. They were making a bet on their son. I told them that I thought there was a 70% chance they would lose their investment, and they did it anyway. It took more than 50 meetings for me to raise $1 million from investors, and over the course of all those meetings, the most common question was, "What's the internet?"

Unlike many other countries around the world, this great nation we live in supports and does not stigmatize entrepreneurial risk-taking. I walked away from a steady job into a Seattle garage to found my startup, fully understanding that it might not work. It feels like just yesterday I was driving the packages to the post office myself, dreaming that one day we might be able to afford a forklift.

Amazon's success was anything but preordained. Investing in Amazon early on was a very risky proposition. From our founding through the end of 2001, our business had cumulative losses of nearly $3 billion, and we did not have a profitable quarter until the fourth quarter of that year. Smart analysts predicted Barnes & Noble would steamroll us, and branded us "Amazon.toast." In 1999, after we'd been in business for nearly five years, Barron's headlined a story about our impending demise "Amazon.bomb." My annual shareholder letter for 2000 started with a one-word sentence: "Ouch." At the pinnacle of the internet bubble our stock price peaked at $116, and then after the bubble burst our stock went down to $6. Experts and pundits thought we were going out of business. It took a lot of smart people with a willingness to take a risk with me, and a willingness to stick to our convictions, for Amazon to survive and ultimately to succeed.

And it wasn't just those early years. In addition to good luck and great people, we have been able to succeed as a company only because we have continued to take big risks. To invent you have to experiment, and if you know in advance that it's going to work, it's not an experiment. Outsized returns come from betting against conventional wisdom, but conventional wisdom is usually right. A lot of observers characterized Amazon Web Services as a risky distraction when we started. "What does selling compute and storage have to do with selling books?" they

wondered. No one asked for AWS. It turned out the world was ready and hungry for cloud computing but didn't know it yet. We were right about AWS, but the truth is we've also taken plenty of risks that didn't pan out. In fact, Amazon has made billions of dollars of failures. Failure inevitably comes along with invention and risk-taking, which is why we try to make Amazon the best place in the world to fail.

Since our founding, we have strived to maintain a "Day One" mentality at the company. By that I mean approaching everything we do with the energy and entrepreneurial spirit of Day One. Even though Amazon is a large company, I have always believed that if we commit ourselves to maintaining a Day One mentality as a critical part of our DNA, we can have both the scope and capabilities of a large company and the spirit and heart of a small one.

In my view, obsessive customer focus is by far the best way to achieve and maintain Day One vitality. Why? Because customers are always beautifully, wonderfully dissatisfied, even when they report being happy and business is great. Even when they don't yet know it, customers want something better, and a constant desire to delight customers drives us to constantly invent on their behalf. As a result, by focusing obsessively on customers, we are internally driven to improve our services, add benefits and features, invent new products, lower prices, and speed up shipping times—*before* we have to. No customer ever asked Amazon to create the Prime membership program, but it sure turns out they wanted it. And I could give you many such examples. Not every business takes this customer-first approach, but we do, and it's our greatest strength.

Customer trust is hard to win and easy to lose. When you let customers make your business what it is, then they will be loyal to you—right up to the second that someone else offers them better service. We know that customers are perceptive and smart. We take as an article of faith that customers will notice when we work hard to do the right thing, and that by doing so again and again, we will earn trust. You earn trust slowly, over time, by doing hard things well—delivering on time; offering everyday low prices; making promises and keeping them; making principled decisions, even when they're unpopular; and giving customers more time to spend with their families by inventing more convenient ways of shopping, reading, and automating their homes. As I have said since my first shareholder letter in 1997, we make decisions based on the long-term value we create as we invent to meet customer needs. When we're criticized for those choices, we listen and look at ourselves in the mirror. When we think our critics are right, we change. When we make mistakes, we apologize. But when you look in the mirror, assess the criticism, and still believe you're doing the right thing, no force in the world should be able to move you.

Fortunately, our approach is working. Eighty percent of Americans have a favorable impression of Amazon overall, according to leading independent polls. Who do Americans trust more than Amazon "to do the right thing?" Only their primary physicians and the military, according to a January 2020 Morning Consult survey. Researchers at Georgetown and New York University found in 2018 that Amazon trailed only the military among all respondents to a survey on institutional and brand trust. Among Republicans, we trailed only the military and local police; among Democrats, we were at the top, leading every branch of government, universities, and the press. In Fortune's 2020 rankings of the World's Most Admired Companies, we came in second place (Apple was #1). We are grateful that customers notice the hard work we do on

their behalf, and that they reward us with their trust. Working to earn and keep that trust is the single biggest driver of Amazon's Day One culture.

The company most of you know as Amazon is the one that sends you your online orders in the brown boxes with the smile on the side. That's where we started, and retail remains our largest business by far, accounting for over 80% of our total revenue. The very nature of that business is getting products to customers. Those operations need to be close to customers, and we can't outsource these jobs to China or anywhere else. To fulfill our promises to customers in this country, we need American workers to get products to American customers. When customers shop on Amazon, they are helping to create jobs in their local communities. As a result, Amazon directly employs a million people, many of them entry-level and paid by the hour. We don't just employ highly educated computer scientists and MBAs in Seattle and Silicon Valley. We hire and train hundreds of thousands of people in states across the country such as West Virginia, Tennessee, Kansas, and Idaho. These employees are package stowers, mechanics, and plant managers. For many, it's their first job. For some, these jobs are a stepping stone to other careers, and we are proud to help them with that. We are spending more than $700 million to give more than 100,000 Amazon employees access to training programs in fields such as healthcare, transportation, machine learning, and cloud computing. That program is called Career Choice, and we pay 95% of tuition and fees toward a certificate or diploma for in-demand, high-paying fields, regardless of whether it's relevant to a career at Amazon.

Patricia Soto, one of our associates, is a Career Choice success story. Patricia always wanted to pursue a career in the medical field to help care for others, but with only a high school diploma and facing the costs of post-secondary education, she wasn't sure she'd be able to accomplish that goal. After earning her medical certification through Career Choice, Patricia left Amazon to start her new career as a medical assistant at Sutter Gould Medical Foundation, supporting a pulmonary medicine doctor. Career Choice has given Patricia and so many others a shot at a second career that once seemed out of reach.

Amazon has invested more than $270 billion in the U.S. over the last decade. Beyond our own workforce, Amazon's investments have created nearly 700,000 indirect jobs in fields like construction, building services, and hospitality. Our hiring and investments have brought much-needed jobs and added hundreds of millions of dollars in economic activity to areas like Fall River, Massachusetts, California's Inland Empire, and Rust Belt states like Ohio. During the COVID-19 crisis, we hired an additional 175,000 employees, including many laid off from other jobs during the economic shutdown. We spent more than $4 billion in the second quarter alone to get essential products to customers and keep our employees safe during the COVID-19 crisis. And a dedicated team of Amazon employees from across the company has created a program to regularly test our workers for COVID-19. We look forward to sharing our learnings with other interested companies and government partners.

The global retail market we compete in is strikingly large and extraordinarily competitive. Amazon accounts for less than 1% of the $25 trillion global retail market and less than 4% of retail in the U.S. Unlike industries that are winner-take-all, there's room in retail for many winners. For example, more than 80 retailers in the U.S. alone earn over $1 billion in annual revenue. Like any retailer, we know that the success of our store depends entirely on customers' satisfaction with their experience in our store. Every day, Amazon competes against large, established players like Target, Costco, Kroger, and, of course, Walmart—a company more than

twice Amazon's size. And while we have always focused on producing a great customer experience for retail sales done primarily online, sales initiated online are now an even larger growth area for other stores. Walmart's online sales grew 74% in the first quarter. And customers are increasingly flocking to services invented by other stores that Amazon still can't match at the scale of other large companies, like curbside pickup and in-store returns. The COVID-19 pandemic has put a spotlight on these trends, which have been growing for years. In recent months, curbside pickup of online orders has increased over 200%, in part due to COVID-19 concerns. We also face new competition from the likes of Shopify and Instacart—companies that enable traditionally physical stores to put up a full online store almost instantaneously and to deliver products directly to customers in new and innovative ways—and a growing list of omnichannel business models. Like almost every other segment of our economy, technology is used everywhere in retail and has only made retail more competitive, whether online, in physical stores, or in the various combinations of the two that make up most stores today. And we and all other stores are acutely aware that, regardless of how the best features of "online" and "physical" stores are combined, we are all competing for and serving the same customers. The range of retail competitors and related services is constantly changing, and the only real constant in retail is customers' desire for lower prices, better selection, and convenience.

It's also important to understand that Amazon's success depends overwhelmingly on the success of the thousands of small and medium-sized businesses that also sell their products in Amazon's stores. Back in 1999, we took what at the time was the unprecedented step of welcoming third-party sellers into our stores and enabling them to offer their products right alongside our own. Internally, this was extremely controversial, with many disagreeing and some predicting this would be the beginning of a long, losing battle. We didn't have to invite third-party sellers into the store. We could have kept this valuable real estate for ourselves. But we committed to the idea that over the long term it would increase selection for customers, and that more satisfied customers would be great for both third-party sellers and for Amazon. And that's what happened. Within a year of adding those sellers, third-party sales accounted for 5% of unit sales, and it quickly became clear that customers loved the convenience of being able to shop for the best products and to see prices from different sellers all in the same store. These small and medium-sized third-party businesses now add significantly more product selection to Amazon's stores than Amazon's own retail operation. Third-party sales now account for approximately 60% of physical product sales on Amazon, and those sales are growing faster than Amazon's own retail sales. We guessed that it wasn't a zero sum game. And we were right—the whole pie did grow, third-party sellers did very well and are growing fast, and that has been great for customers and for Amazon.

There are now 1.7 million small and medium-sized businesses around the world selling in Amazon's stores. More than 200,000 entrepreneurs worldwide surpassed $100,000 in sales in our stores in 2019. On top of that, we estimate that third-party businesses selling in Amazon's stores have created over 2.2 million new jobs around the world.

One of those sellers is Sherri Yukel, who wanted to change careers to be home more for her children. She started handcrafting gifts and party supplies for friends as a hobby, and eventually began selling her products on Amazon. Today, Sherri's company employs nearly 80 people and has a global customer base. Another is Christine Krogue, a stay-at-home mother of five in Salt Lake City. Christine started a business selling baby clothes through her own website before taking a chance on Amazon. She has since seen her sales more than double, and she's been able

to expand her product line and hire a team of part-time employees. Selling on Amazon has allowed Sherri and Christine to grow their own businesses and satisfy customers on their own terms.

And it is striking to remember how recent all of this is. We did not start out as the largest marketplace—eBay was many times our size. It was only by focusing on supporting sellers and giving them the best tools we could invent that we were able to succeed and eventually surpass eBay. One such tool is Fulfillment by Amazon, which enables our third-party sellers to stow their inventory in our fulfillment centers, and we take on all logistics, customer service, and product returns. By dramatically simplifying all of those challenging aspects of the selling experience in a cost-effective way, we have helped many thousands of sellers grow their businesses on Amazon. Our success may help explain the wide proliferation of marketplaces of all types and sizes around the world. This includes U.S. companies like Walmart, eBay, Etsy, and Target, as well as retailers based overseas but selling globally, such as Alibaba and Rakuten. These marketplaces further intensify competition within retail.

The trust customers put in us every day has allowed Amazon to create more jobs in the United States over the past decade than any other company—hundreds of thousands of jobs across 42 states. Amazon employees make a minimum of $15 an hour, more than double the federal minimum wage (which we have urged Congress to increase). We've challenged other large retailers to match our $15 minimum wage. Target did so recently, and just last week so did Best Buy. We welcome them, and they remain the only ones to have done so. We do not skimp on benefits, either. Our full-time hourly employees receive the same benefits as our salaried headquarters employees, including comprehensive health insurance starting on the first day of employment, a 401(k) retirement plan, and parental leave, including 20 weeks of paid maternity leave. I encourage you to benchmark our pay and benefits against any of our retail competitors.

More than 80% of Amazon shares are owned by outsiders, and over the last 26 years—starting from zero—we've created more than $1 trillion of wealth for those outside shareholders. Who are those shareowners? They are pension funds: fire, police, and school teacher pension funds. Others are 401(k)s—mutual funds that own pieces of Amazon. University endowments, too, and the list goes on. Many people will retire better because of the wealth we've created for so many, and we're enormously proud of this.

At Amazon, customer obsession has made us what we are, and allowed us to do ever greater things. I know what Amazon could do when we were 10 people. I know what we could do when we were 1,000 people, and when we were 10,000 people. And I know what we can do today when we're nearly a million. I love garage entrepreneurs—I was one. But, just like the world needs small companies, it also needs large ones. There are things small companies simply can't do. I don't care how good an entrepreneur you are, you're not going to build an all-fiber Boeing 787 in your garage.

Our scale allows us to make a meaningful impact on important societal issues. The Climate Pledge is a commitment made by Amazon and joined by other companies to meet the goals of the Paris Agreement 10 years early and be net zero carbon by 2040. We plan to meet the pledge, in part, by purchasing 100,000 electric delivery vans from Rivian—a Michigan-based producer of electric vehicles. Amazon aims to have 10,000 of Rivian's new electric vans on the road as early as 2022, and all 100,000 vehicles on the road by 2030. Globally, Amazon operates

91 solar and wind projects that have the capacity to generate over 2,900 MW and deliver more than 7.6 million MWh of energy annually—enough to power more than 680,000 U.S. homes. Amazon is also investing $100 million in global reforestation projects through the Right Now Climate Fund, including $10 million Amazon committed in April to conserve, restore, and support sustainable forestry, wildlife and nature-based solutions across the Appalachian Mountains—funding two innovative projects in collaboration with The Nature Conservancy. Four global companies—Verizon, Reckitt Benckiser, Infosys, and Oak View Group—recently signed The Climate Pledge, and we continue to encourage others to join us in this fight. Together, we will use our size and scale to address the climate crisis right away. And last month, Amazon introduced The Climate Pledge Fund, started with $2 billion in funding from Amazon. The Fund will support the development of sustainable technologies and services that in turn will enable Amazon and other companies to meet The Climate Pledge. The Fund will invest in visionary entrepreneurs and innovators who are building products and services to help companies reduce their carbon impact and operate more sustainably.

We recently opened the largest homeless shelter in Washington state—and it's located inside one of our newest headquarters buildings in downtown Seattle. The shelter is for Mary's Place, an incredible Seattle-based nonprofit. The shelter, part of Amazon's $100 million investment in Mary's Place, spans eight floors and can accommodate up to 200 family members each night. It has its own health clinic and provides critical tools and services to help families fighting homelessness get back on their feet. And there is dedicated space for Amazon to provide weekly pro-bono legal clinics offering counsel on credit and debt issues, personal injury, housing and tenant rights. Since 2018, Amazon's legal team has supported hundreds of Mary's Place guests and volunteered more than 1,000 pro-bono hours.

Amazon Future Engineer is a global childhood-to-career program designed to inspire, educate, and prepare thousands of children and young adults from underrepresented and underserved communities to pursue a computer science career. The program funds computer science coursework and professional teacher development for hundreds of elementary schools, introductory and AP Computer Science classes for more than 2,000 schools in underserved communities across the country, and 100 four-year, $40,000 college scholarships to computer science students from low-income backgrounds. Those scholarship recipients also receive guaranteed internships at Amazon. There is a diversity pipeline problem in tech, and this has an outsized impact on the Black community. We want to invest in building out the next generation of technical talent for the industry and expanding the opportunities for underrepresented minorities. We also want to accelerate this change right now. To find the best talent for technical and non-technical roles, we actively partner with historically Black colleges and universities on our recruiting, internship, and upskilling initiatives.

Let me close by saying that I believe Amazon should be scrutinized. We should scrutinize all large institutions, whether they're companies, government agencies, or non-profits. Our responsibility is to make sure we pass such scrutiny with flying colors.

It's not a coincidence that Amazon was born in this country. More than any other place on Earth, new companies can start, grow, and thrive here in the U.S. Our country embraces resourcefulness and self-reliance, and it embraces builders who start from scratch. We nurture entrepreneurs and start-ups with stable rule of law, the finest university system in the world, the freedom of democracy, and a deeply accepted culture of risk-taking. Of course, this great

nation of ours is far from perfect. Even as we remember Congressman John Lewis and honor his legacy, we're in the middle of a much-needed race reckoning. We also face the challenges of climate change and income inequality, and we're stumbling through the crisis of a global pandemic. Still, the rest of the world would love even the tiniest sip of the elixir we have here in the U.S. Immigrants like my dad see what a treasure this country is—they have perspective and can often see it even more clearly than those of us who were lucky enough to be born here. It's still Day One for this country, and even in the face of today's humbling challenges, I have never been more optimistic about our future.

I appreciate the opportunity to appear before you today and am happy to take your questions.

Mr. CICILLINE. Thank you, Mr. Bezos.

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

TESTIMONY OF SUNDAR PICHAI

Mr. PICHAI. Thank you, Mr. Chairman, Ranking Member Sensenbrenner, and members of the subcommittee.

Before I start, I know this hearing was delayed because of the ceremonies to honor the life of your colleague, Representative John Lewis. Because of his courage, this world is a better place. He'll be deeply missed.

At its heart, a discussion about competition is a discussion about opportunity. This has never been more important, as the global pandemic poses dual challenges to our health and our economy.

Expanding access to opportunity through technology is personal to me. I didn't have much access to a computer growing up in India, so you can imagine my amazement when I arrived in the U.S. for graduate school and saw an entire lab of computers to use whenever I wanted.

Accessing the internet for the first time set me on a path to bring technology to as many people as possible. It inspired me to build Google's first browser, Chrome. I'm proud that, 11 years later, so many people experience the web through Chrome for free.

Google takes pride in the number of people who choose our products. We are even prouder of what they do with them. From the 140 million students and teachers using G Suite for education to stay connected during the pandemic, to the 5 million Americans gaining digital skills through Grow with Google, to all the people who turn to Google for help, from finding the fastest route home to learning how to cook a new dish on YouTube.

Google's work would not be possible without the long tradition of American innovation, and we are proud to contribute to its future. We employ more than 75,000 people in the U.S. across 26 States. The Progressive Policy Institute estimated that in 2018 we invested more than $20 billion in the U.S., citing us as the largest capital investor in America that year and one of the top five for the last 3 years.

One way we contribute is by building helpful products. Research found that free services like Search, Gmail, Maps, and Photos provide thousands of dollars a year in value to the average American, and many are small businesses using our digital tools to grow.

Stone Dimensions, a family-owned stone company in Pewaukee, Wisconsin, uses Google My Business to draw more customers. Gil's Appliances, a family-owned appliance store in Bristol, Rhode Island, credits Google Analytics with helping them reach customers online during the pandemic. Nearly one-third of small-business owners say that without digital tools they would have had to close all or part of their business during COVID.

Another way we contribute is by being among the world's biggest investors in research and development. At the end of 2019, our R&D spend had increased tenfold over 10 years, from $2.8 billion to $26 billion, and we have invested over $90 billion the last 5 years. Our engineers are helping America remain a global leader in emerging technologies like artificial intelligence, self-driving cars, and quantum computing.

Just as America's technology leadership is not inevitable, Google's continued success is not guaranteed. New competitors emerge every day, and, today, users have more access to information than ever before. Competition drives us to innovate, and it also leads to better products, lower prices, and more choices for everyone. For example, competition helped lower online advertising costs by 40 percent over the last decade, with savings passed down to consumers.

Open platforms like Android also support the innovation of others. Using Android, thousands of mobile operators build and sell their own devices without paying any licensing fees to us. This has enabled billions of consumers to offer cutting-edge smartphones, some for less than $50. Whether building tools for small businesses or platforms like Android, Google succeeds when others succeed.

Competition also sets higher standards for privacy and security. I've always believed that privacy is a universal right. And Google is committed to keeping your information safe, treating it responsibly, putting you in control. And we've long supported the creation of comprehensive Federal privacy laws.

I've never forgotten how access to technology and innovation changed the course of my life. Google aims to build products that increase access to opportunity for everyone, no matter where you live, what you believe, or how much money you earn. We are committed to doing this responsibly, in partnership with lawmakers, to ensure every American has access to the incredible opportunity technology creates.

Thank you.

[The statement of Mr. Pichai follows:]

Alphabet

Written Testimony of Sundar Pichai, Chief Executive Officer, Alphabet Inc.
Before the House Committee on the Judiciary,
Subcommittee on Antitrust, Commercial, and Administrative Law
Hearing on "Online Platforms and Market Power, Part 6:
Examining the Dominance of Amazon, Apple, Facebook, and Google"
July 29, 2020

Chairman Cicilline, Ranking Member Sensenbrenner, and distinguished members of the Subcommittee, thank you for this opportunity to appear before you today.

At its heart, a discussion about competition is a discussion about opportunity. This has never been more important, as the global pandemic poses dual challenges to our health and our economy.

Expanding access to opportunity through technology is deeply personal to me. I didn't have much access to a computer growing up in India. So you can imagine my amazement when I arrived in the U.S. for graduate school and saw an entire lab of computers I could use whenever I wanted.

Accessing the internet for the first time in that computer lab set me on a path to bring technology to as many people as possible. It's what inspired me to join Google 16 years ago. And it's what led me to help create Google's first browser, Chrome . . . not because I thought the world needed another browser, but because a better browser could open up the web to more people. I couldn't have imagined then that, eleven years later, so many people would experience the web through Chrome, for free.

At Google, we take pride in the number of people who choose our products and services; we're even prouder of what they do with them — whether it's the 140 million students and educators using G Suite for Education to stay connected during the pandemic . . . the 5 million Americans gaining digital skills through Grow with Google, part of our $1 billion initiative to expand economic opportunity . . . or the millions of small business owners connecting with customers through Google products such as Maps and Search.

Our work would not be possible without the long tradition of American innovation, and we're proud to contribute to its future. Founded in Silicon Valley, we now employ more than 120,000 Googlers around the world — more than 75,000 here in the U.S., across offices and data centers in 26 states. PPI estimated that in 2018 alone we invested more than $20 billion across the U.S., citing us as the largest capital investor in America that year. It's also ranked us in the top five U.S. investors for the last three years.

An important way we contribute is by building products that are helpful to American users in moments big and small, whether they are looking for a faster route home, learning how to cook a new dish on YouTube, or growing a small business. Survey research found that free services like Search, Gmail, Maps, and Photos provide thousands of dollars a year in value to the average American.

Many are small business owners who have used our digital tools to grow. For example, Fat Witch Bakery is a New York City-based bakery that for decades has been known for its delicious brownies. For over 17 years, Fat Witch and its founder Patricia Helding have been Google Ads customers. The Fat Witch team uses free tools like Google My Business to interact with their customers and to keep them informed, with over 200 reviews on their profile and counting. They also use free tools like Google Analytics to track the effectiveness of their marketing spend.

Online has been a lifeline for so many businesses, especially during the global pandemic. For example, by the time COVID-19 forced Texas to shelter in place, Kettlebell Kings, an Austin-based fitness company, had already been investing in Google Ads and Analytics for nearly a decade. When the lockdown orders led to a surge in sales for home fitness equipment, Kettlebell was prepared to adjust its digital offerings to capture the market, and its YouTube Channel grew 20%, helping them to grow their digital revenue and sales, which are up 3000% since COVID hit. Nearly one-third of small business owners say that without digital tools they would have had to close all or part of their business during COVID.

I am deeply proud that because of our tools, businesses on Main Street can compete in a way that wasn't possible 20 years ago, including globally. For example, Berry Digital Solutions is a digital marketing firm in Urbana, Ohio, that supports local small businesses. They use Google tools to work remotely during the pandemic, coordinating meetings through Google Calendar and collaborating on content in Google Docs. They help their clients use Google Ads, and they appreciate that you only pay when someone clicks on your ad. The Berry Digital team also uses Google

Analytics to learn more about the customers of their clients and how they can better serve them.

Another way we contribute is by making deep technology investments in America's future. Every year, we are among the world's biggest investors in research and development. At the end of 2019, our R&D spend had increased almost 10 times over 10 years, from $2.8 billion to $26 billion. We've invested over $90 billion over the last 5 years.

Through these investments, our teams of engineers are helping America solidify its position as the global leader in emerging technologies like artificial intelligence, self-driving cars, and quantum computing. For example, last fall, our team of researchers based here in the U.S. was the first to reach a quantum computing milestone, a discovery that could eventually lead to new breakthroughs in medicine and more efficient batteries.

Just as American leadership in these areas is not inevitable, we know Google's continued success is not guaranteed. Google operates in highly competitive and dynamic global markets, in which prices are free or falling, and products are constantly improving. Today's competitive landscape looks nothing like it did 5 years ago, let alone 21 years ago, when Google launched its first product, Google Search.

For example, people have more ways to search for information than ever before — and increasingly this is happening outside the context of only a search engine. Often the answer is just a click or an app away: You can ask Alexa a question from your kitchen; read your news on Twitter; ask friends for information via WhatsApp; and get recommendations on Snapchat or Pinterest. When searching for products online, you may be visiting Amazon, eBay, Walmart, or any one of a number of e-commerce providers, where most online shopping queries happen. Similarly, in areas like travel and real estate, Google faces strong competition for search queries from many businesses that are experts in these areas.

A competitive digital ad marketplace gives publishers and advertisers, and therefore consumers, an enormous amount of choice. For example, competition in ads — from Twitter, Instagram, Pinterest, Comcast and others — has helped lower online advertising costs by 40% over the last 10 years, with these savings passed down to consumers through lower prices.

We also deliberately build platforms that support the innovation of others. Using Android — a product I worked on for many years — thousands of device makers and

mobile operators build and sell devices without any licensing fees to us or any requirement to integrate our products. This greatly reduces device prices, and today billions of consumers around the globe are now able to afford cutting-edge smartphones, some for less than $50. And in doing so they are able to access new opportunities — whether it's sharing a video with friends and family around the world, gaining an education for themselves or their children, or starting a business.

Competition also sets higher standards for privacy and security. I've always believed that privacy is a universal right and should be available to everyone, and Google is committed to keeping your information safe, treating it responsibly, and putting you in control of what you choose to share. We also never sell user information to third parties. But more must be done to protect users across industries, which is why we've long supported the creation of comprehensive federal privacy laws.

To this day, I haven't forgotten how access to innovation and technology altered the course of my life. Google aims to build products that increase access to opportunity for everyone — no matter where you live, what you believe, or how much money you earn. We are committed to partnering with lawmakers, including the members of this Committee, to protect consumers, maintain America's competitive technological edge in the world, and ensure that every American has access to the incredible opportunities that technology creates.

Thank you.

Mr. CICILLINE. Thank you, Mr. Pichai.

Mr. Cook is now recognized for 5 minutes.

TESTIMONY OF TIM COOK

Mr. COOK. Chairmen Cicilline and Nadler, Ranking Members Sensenbrenner and Jordan, members of the subcommittee, thank you for the opportunity to offer testimony.

Before I begin, I want to recognize the life and legacy of John Lewis. I join you in mourning not only a hero but someone I knew personally, whose example inspires and guides me still. Every American owes John Lewis a debt, and I feel fortunate to hail from a state and a country that benefited so profoundly from his leadership.

My name is Tim Cook. I've been Apple's CEO since 2011 and a proud employee of this uniquely American company since 1998. At Apple, we make ourselves a promise and our customers a promise; it's a promise that we'll only build things that make us proud. As Steve put it, we only make things that we'd recommend to our family and friends.

You can try to define this difference in a lot of ways. You can call it the seamless integration of hardware and software. You can call it simplicity of design or a great ecosystem. All of those things are true. But if you want to put it simply, products like iPhone just work. When customers consistently give iPhone a 99 percent satisfaction rating, that's the message they're sending about the user experience.

But we also know that customers have a lot of choices and that our products face fierce competition. Companies like Samsung, LG, Huawei, and Google have built successful businesses with different approaches. We're okay with that. Our goal is the best, not the most. In fact, we don't have a dominant share in any market or in any product category where we do business.

What does motivate us is that timeless drive to build new things that we're proud to show our users. We focus relentlessly on those innovations, on deepening core principles like privacy and security, and on creating new features.

In 2008, we introduced a new feature of the iPhone called the App Store. Launched with 500 apps, which seemed like a lot at the time, the App Store provided a safe and trusted way for users to get more out of their phone.

We knew the distribution options for software developers at the time didn't work well. Brick-and-mortar stores charged high fees and had limited reach. Physical media, like CDs, had to be shipped and were hard to update.

From the beginning, the App Store was a revolutionary alternative. App Store developers set prices for their apps and never pay for shelf space. We provide every developer with cutting-edge tools like compilers, programming languages, and more than 150,000 essential software building blocks called APIs.

The App Store guidelines ensure a high-quality, reliable, and secure user experience. They are transparent and applied equally to every developer.

For the vast majority of apps, developers keep 100 percent of the money they make. The only apps that are subject to a commission

are those where the developer acquires a customer on an Apple device and where the features or services would be experienced and consumed on an Apple device.

In the App Store's more-than-10-year history, we have never raised a commission or added a single fee. In fact, we've reduced it for subscriptions and exempted additional categories of apps.

I'm here today because scrutiny is reasonable and appropriate. We approach this process with respect and humility. But we make no concession on the facts. What began as 500 apps is now more than 1.7 million, only 60 of which are Apple software. If Apple is a gatekeeper, what we've done is open the gate wider. We want to get every app we can on the Store, not keep them off.

The App Store's economic contributions are significant. The ecosystem is responsible for 1.9 million jobs in all 50 states, and it facilitated $138 billion in commerce in the U.S. in 2019 alone.

I share the committee's belief that competition promotes innovation, that it makes space for the next great idea, and that it gives consumers more choices. Since Apple was founded, these things have defined us. The first Mac brought opportunity and possibility into the home. The iPod helped musicians and artists to share their creations and be paid fairly for it. This legacy does much more than make us proud; it inspires us to work tirelessly to make sure tomorrow will be even better than today.

Thank you very much. I look forward to responding to your questions.

[The statement of Mr. Cook follows:]

Statement of Tim Cook
Apple Inc.

U.S. House of Representatives Judiciary Committee
Subcommittee on Antitrust, Commercial and Administrative Law

July 29, 2020

Chairmen Cicilline and Nadler, Ranking Members Sensenbrenner and Jordan and Members of the Subcommittee, thank you for the opportunity to offer testimony.

Before I begin, I want to recognize the life and legacy of John Lewis. I join you in mourning a hero and someone I knew personally. Getting to host Congressman Lewis at Apple was one of the great honors of my life, and his example inspires and guides me. Every American owes him a debt, and I feel fortunate to hail from a state and a country that benefitted profoundly from his leadership.

My name is Tim Cook. I have been Apple's chief executive officer since 2011 and a proud employee since 1998.

Apple is a uniquely American company whose success is only possible in this country. Motivated by the mission to put things into the world that enrich people's lives, and believing deeply that the way we do that is by making the *best* not the *most*, Apple has produced many revolutionary products, not least of which is the iPhone.

We do this, in part, by making ourselves and our customers a promise—a promise that we will only build things that make us proud. Apple's founder Steve Jobs used to put it a little differently: we only make things that we would recommend to our family and friends.

Since 2007, the iPhone has been one such product. The iPhone has redefined the mobile phone through its seamless integration of hardware and software, its effortless user experience, its simplicity of design and a high-quality ecosystem.

To our customers, these are essential to why they choose Apple—and why they keep coming back. We focus ceaselessly on our users and their experience, and we see the iPhone's 99% satisfaction rating in consumer surveys as not only a key driver of the product's growth over time, but also our best measure today that we are still on the right track.

As much as we believe the iPhone provides the best user experience, we know it is far from the only choice available to consumers.

The smartphone market is fiercely competitive, and companies like Samsung, LG, Huawei and Google have built very successful smartphone businesses offering different approaches.

Apple does not have a dominant market share in any market where we do business. That is not just true for iPhone; it is true for any product category.

What motivates us is the continuous improvement of the user experience, and we focus relentlessly on and invest significantly in new breakthroughs, innovative features and deepening the principles that set us apart.

Privacy and security are key examples of this drive. This is true for the iPhone and for every device we make. We build products that, from the ground up, help users protect their fundamental right to the privacy of their personal data. This principle is foundational and touches everything else we do.

We created the App Store in 2008 as a feature of the iPhone. Launching with a little more than 500 apps, it was our ambitious attempt to dramatically expand the features and customizability of every user's device. We wanted to create a safe and trusted place for users to discover apps—and a means of providing a secure and supportive way for developers to develop, test and distribute apps to iPhone users globally.

Curation has always been one of the App Store's chief features and sources of value for our users. We held a quality department store as a model: a place where customers can find a great variety of options, but can feel confident that the selection is high-quality, reliable and current.

But we held ourselves to an even higher standard. In our pursuit of improving the user experience, we wanted to provide a venue for creators large and small to not only bring their ideas to life, but to reach many millions of users and build a successful business in the process.

When the App Store was created, the prevailing distribution options available to software developers at the time did not work well. Brick-and-mortar stores charged high fees and had limited reach. Physical media like CDs had to be shipped and were hard to update.

From the beginning, the App Store was a revolutionary alternative.

App Store developers set prices for their apps and never pay for "shelf space."

Apple continuously improves, and provides every developer with cutting-edge tools like compilers, programming languages, operating systems, frameworks and more than 150,000 essential software building blocks called APIs. These are not only powerful, but so simple to use that students in elementary schools can and do make apps.

The App Store guidelines ensure a high-quality, reliable and secure user experience. They are transparent and applied equally to developers of all sizes and in all categories. They are not set in stone. Rather, they have changed as the world has changed, and we work with developers to apply them fairly.

For the vast majority of apps on the App Store, developers keep 100% of the money they make. The only apps that are subject to a commission are those where the developer acquires a customer on an Apple device and where the features or services would be experienced and consumed on an Apple device.

Apple's commissions are comparable to or lower than commissions charged by the majority of our competitors. And they are vastly lower than the 50 to 70 percent that software developers paid to distribute their work before we launched the App Store.

In the more than a decade since the App Store debuted, we have never raised the commission or added a single fee. In fact, we have reduced them for subscriptions and exempted additional categories of apps. The App Store evolves with the times, and every change we have made has been in the direction of providing a better experience for our users and a compelling business opportunity for developers.

I am here today because scrutiny is reasonable and appropriate. We approach this process with respect and humility. But we make no concession on the facts.

After beginning with 500 apps, today the App Store hosts more than 1.7 million—only 60 of which are Apple software. Clearly, if Apple is a gatekeeper, what we have done is open the gate wider. We want to get every app we can on the Store, not keep them off.

More than 1.9 million American jobs in all 50 states are attributable to the App Store ecosystem—from Fortune 500 companies that got their start on the iPhone, to small independent developers and students bringing the next big idea to life.

An Apple-commissioned study by economists at the Analysis Group found that, in 2019 alone, the App Store ecosystem facilitated over half a trillion dollars in commerce worldwide and $138 billion just in the United States. This is nothing short of an economic miracle in a relatively brief span of time.

We continue to invest heavily and constantly in the App Store's improvement, giving every developer access to the very latest technology. We relentlessly evangelize coding education at all levels, from elementary schools to community colleges. We do these things not out of obvious financial interest, but because we realize that we have a long-term stake in the health, dynamism and vitality of the whole system.

We recognize that with pride in what we have built, comes responsibility for what it contains. Our users expect and deserve the highest standard of privacy, security and quality in what they discover on the App Store.

I share the Subcommittee's belief that competition is a great virtue, that it promotes innovation, that it makes space for the next great idea and that it gives consumers more choices.

Since Apple was founded, these things have defined us. The first Mac brought opportunity and possibility into the home. The iPod created new opportunities for musicians and artists to share their creations and be paid fairly for it.

This legacy does much more than make us proud. It inspires us to work tirelessly to make sure tomorrow will be even better than today.

Thank you very much. I look forward to answering your questions.

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Mr. CICILLINE. Thank you, Mr. Cook.

Mr. Zuckerberg is now recognized for 5 minutes.

TESTIMONY OF MARK ZUCKERBERG

Mr. ZUCKERBERG. Thank you.

Before I begin, I want to add my voice to those honoring Congressman John Lewis and his service to our country. America has lost a real hero who never stopped fighting for the rights of every person.

Chairman Cicilline, Ranking Member Sensenbrenner, members of the subcommittee, thank you for the opportunity to testify.

The tech industry is an American success story. The products we build have changed the world and improved people's lives. Our industry is one of the ways that America shares its values with the world and one of our greatest economic and cultural exports.

Facebook is part of this story. We started with an idea: to give people the power to share and connect. And we've built services that billions of people find useful.

I'm proud that we've given people who've never had a voice before the opportunity to be heard and given small businesses access to tools that only the largest players used to have.

Since COVID emerged, I'm proud that people have used our services to stay in touch with friends and family who they can't be with in person and to keep their small businesses running online when physical stores are closed.

I believe that Facebook and the U.S. tech industry are a force for innovation and empowering people, but I recognize that there are concerns about the size and power of tech companies.

Our services are about connection, and our business model is advertising, and we face intense competition in both. Many of our competitors have hundreds of millions or billions of users. Some are upstarts, but others are gatekeepers with the power to decide if we can even release our apps in their app stores to compete with them.

In many areas, we are behind our competitors. The most popular messaging service in the U.S. is iMessage. The fastest growing app is TikTok. The most popular app for video is YouTube. The fastest growing ads platform is Amazon. The largest ads platform is Google. And for every dollar spent on advertising in the U.S., less than 10 cents is spent with us.

We're here to talk about online platforms, but I think the true nature of competition is much broader. When Google bought YouTube, it could compete against the dominant player in video, which was the cable industry. When Amazon bought Whole Foods, it could compete against Kroger's and Walmart. When Facebook bought WhatsApp, we could compete against telcos who used to charge 10 cents a text message but not anymore. Now, people can watch video, get groceries delivered, and send private messages for free. That's competition.

New companies are created all the time, all over the world, and history shows that if we don't keep innovating, someone will replace every company here today. And that change can often happen faster than you expect. Of the 10 most valuable companies a decade ago, only 3 still make that list today. And if you look at where

the top technology companies have come from, a decade ago, the vast majority were American. Today, almost half are Chinese.

Aside from competition, there are other serious issues related to the internet, including questions about elections, harmful content, and privacy. And while these are not antitrust issues and are not specifically the topic of today's hearing, I recognize that we are often at the center of these discussions.

We build platforms for sharing ideas, and important debates play out across our services. I believe that this ultimately leads to more progress, but it means we often find ourselves in the middle of deep disagreements about social issues and high-stakes elections.

I personally don't believe that private companies should be making so many decisions about these issues by themselves. And that's why, last year, I made the case that there needs to be new regulation for the internet.

Facebook stands for a set of basic principles: giving people voice and economic opportunity; keeping people safe; upholding democratic traditions like freedom of expression and voting; and enabling an open and competitive marketplace. These are fundamental values for most of us but not for everyone in the world—not for every company we compete with or the countries they represent. And as global competition increases, there is no guarantee that our values will win out.

I am proud of the services we build and how they improve people's lives. We compete hard. We compete fairly. We try to be the best. That's what I was taught matters in this country. And when we succeed, it's because we deliver great experiences that people love.

Thank you, and I look forward to answering your questions.

[The statement of Mr. Zuckerberg follows:]

HEARING BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Subcommittee on Antitrust, Commercial, and Administrative Law

July 29, 2020

Testimony of Mark Zuckerberg
Facebook, Inc.

I. Introduction

Chairman Cicilline, Ranking Member Sensenbrenner, and members of the Subcommittee, thank you for the opportunity to be here today. I'd also like to thank your staff for their professionalism and courtesy in working with our team over the course of your investigation.

Facebook is part of an industry that has changed the world. We face intense competition globally and we only succeed when we build things people find valuable. I'm proud that we stand for American values like giving every person a voice and expanding access to opportunity. As a platform for ideas we'll always be at the center of important debates about society and technology, which is why I've called for new rules for the internet.

II. Facebook's value and the role of competition

Every day, millions of Americans use our services to stay in touch with friends and family and talk about issues that matter to them. People use our apps to share videos, photos, livestreams, posts and private messages; to join communities, set up fundraisers for good causes, and even register to give blood. These services create a lot of value in people's lives, and our business model means we can offer them for free.

We also help millions of businesses connect with customers. Facebook gives small businesses and individual entrepreneurs access to sophisticated tools that previously only the largest players had. Now any business can use our services to establish an online presence, reach potential customers and grow.

We're constantly building new ways to empower people to connect and share. Since Covid-19 emerged, we've seen how important this can be. People use our services to stay in touch with friends and family they can't be with in person; they use our tools to keep their businesses running since the internet stays open even when physical stores cannot.

Facebook supports its mission of connecting people around the world by selling ads, and we face significant competition. We compete against the companies appearing at this hearing, plus many others that sell advertising and connect people. We also compete globally, including against companies that have access to markets that we aren't in.

Our story would not have been possible without U.S. laws that encourage competition and innovation. I believe that strong and consistent competition policy is vital because it ensures that the playing field is level for all. At Facebook, we compete hard, because we're up against other smart and innovative companies that are determined to win. We know that our future success is not guaranteed, especially in a global tech industry defined by rapid innovation. The history of technology is often the history of failure, and even industry leading tech companies fail if they don't stay competitive. This is why we're focused on delivering better services for people and businesses, and competing as vigorously as we can within the rules.

Although people around the world use our products, Facebook is a proudly American company. We believe in values -- democracy, competition, inclusion and free expression -- that the American economy was built on. Many other tech companies share these values, but there's no guarantee our values will win out. For example, China is building its own version of the internet focused on very different ideas, and they are exporting their vision to other countries. As Congress and other stakeholders consider how antitrust laws support competition in the U.S., I believe it's important to maintain the core values of openness and fairness that have made America's digital economy a force for empowerment and opportunity here and around the world.

III. Facebook's History of Innovation

In a competitive economy, innovation leads to improvements that benefit consumers. I understand this is one of the key goals of antitrust law, and it is what Facebook has been focused on since day one. We've consistently added new products for people that enhance their ability to connect and share what matters most to them.

Our service began as a text-based website. Today on Facebook you can share almost any type of digital content; read news; broadcast or watch live video; play games; connect with businesses; buy or sell products; send and receive payments; organize groups and events; and raise money for important causes. WhatsApp provides secure and reliable communication, including voice and video calls. Instagram offers photo sharing with tools to connect and create. And the Facebook family goes beyond software, with hardware products like Oculus and Portal.

We built these new products and services because the intense competitive pressures we face push us to experiment with new ideas. We are always working to develop technologies that will change how people connect and communicate in the future, and we invest around $10 billion per year in research and development. We know that if we don't constantly keep improving, we will fall behind.

Many of our products were new concepts when we introduced them, and they have served as models for other companies and apps that have used and iterated on our ideas -- including features like News Feed ranking and the Like button that have become foundational to many competitive services. We have also helped advance nascent technologies like artificial intelligence (AI), augmented reality (AR), and virtual reality (VR).

We actively contribute to the open-source community. For example, we developed the PyTorch open-source project, which has become one of the most successful AI development tools and is now used worldwide to create new AI technology and applications. We also released Detectron2, our computer vision technology which we use for integrity work; FAISS, a state-of-the-art search tool for finding similar multimedia documents; and DensePose, for 3D interpretation of 2D images. We offer hundreds of projects like these on Facebook Open Source and GitHub, where our projects have hundreds of thousands of followers. We also share the results of our hardware research: for example, we developed the world's most efficient servers and published the plans so everyone could use them as part of our Open Compute Project. I believe sharing our intellectual property this way helps the entire ecosystem move forward and develop new products.

We create technology to enable social good. For example, our Crisis Response tools allow people to let family and friends know they are safe, share information during a crisis, and help communities recover. Our Safety Check tool has been activated in more than 1,400 crises. In 2018 alone, our community used Crisis Response tools for over 300 crises in more than 80 countries. We've also developed charitable giving tools that make it easy for our community to raise money for causes they care about on Facebook.

People, nonprofits and verified Pages can collect donations from their friends and supporters on Facebook, and so far our community has raised more than $3 billion. To take just one example, the nonprofit No Kid Hungry has raised over $5 million from more than 200,000 donors to help feed children across the United States. We also invest in our communities, and have committed to making over $1 billion in investments in Black and diverse suppliers and communities in the US.

Like many companies, we've both built our own products from the ground up, and we've moved others forward through mergers and acquisitions. Our acquisitions have helped drive innovation for people who use our own products and services and for the broader startup community. Acquisitions bring together different companies' complementary strengths. When you acquire a company, you can benefit from their technology and talent, and when you are acquired you get access to resources and people you otherwise might never have been able to tap into.

Facebook has made Instagram and WhatsApp successful as part of our family of apps. Instagram and WhatsApp have been able to grow and operate their services using Facebook's bespoke, lower-cost infrastructure and tackle spam and harmful content with Facebook's integrity teams and technology.

Following its acquisition, Instagram was able to get help stabilizing infrastructure and controlling runaway spam. It also benefited from the ability to plug into Facebook's self-serve ads system, sales team and existing advertiser relationships to drive monetization, and was able to build products including IG Direct and IG Video that used Facebook's technology and infrastructure. Before it was acquired, WhatsApp was a paid app with a reputation for secure communications; together we built on that by introducing end-to-end encryption and making it free to use. Since its acquisition, WhatsApp has also been able to develop products such as voice and video calling that were built on Facebook's technology stack.

These benefits came about as a result of our acquisition of those companies, and would not have happened had we not made those acquisitions. We have developed new products for Instagram and WhatsApp, and we have learned from those companies to bring new ideas to Facebook. The end result is better services that provide more value to people and advertisers, which is a core goal of Facebook's acquisition strategy.

IV. Facebook Platform

In 2007, we launched the Facebook Platform, a set of tools for developers and businesses to build complementary services on Facebook. Our vision for Platform has always been to foster an ecosystem of apps that build on top of Facebook and create a richer and more interesting experience for people. At the same time, we have developed rules to make Platform work better for everyone and to protect the significant investments we made in capital and talent to develop it. We've made changes to those policies over time to deal with issues as they arose, and to protect user privacy and give people more control over their data. We stand by those changes and will continue to evaluate our policies to address any new issues that arise.

V. The Benefits of Scale

I understand that people have concerns about the size and perceived power that tech companies have. Ultimately, I believe companies shouldn't be making so many judgments about important issues like harmful content, privacy, and election integrity on their own. That's why I've called for a more active role for governments and regulators and updated rules for the internet. If we do this right, we can preserve

what's best about this technology — the freedom for people to connect and express themselves and for entrepreneurs to build new things — while also protecting society from broader harms.

In the meantime, Facebook is working to address problems at scale. From election security to building more privacy-protective products, we are bringing significant technical and financial resources to bear on the challenges we face. For example, we now have more than 35,000 people working on safety and security — three times as many as we had just three years ago. We've built sophisticated systems to find and remove harmful content. We're funding new technologies to tackle emerging threats like deepfakes. And we're building products to connect people to authoritative information, like our recently introduced Covid-19 and voter information centers.

We have a responsibility to work constantly to keep people safe on our platform, and to make sure we're investing to fix our issues and get ahead of new risks. Facebook's size is an asset in those efforts.

VI. Supporting Our Community Through the COVID-19 Pandemic

Our services have supported people and businesses throughout the Covid-19 pandemic. People turn to Facebook to stay connected with their families and friends and get authoritative and up-to-date health information. For many, our services are critical communications tools: group calls in Italy during the early stages of the pandemic jumped by more than 1,000 percent, and in April 700 million people were making video calls every day on Messenger and WhatsApp. Businesses also use our tools to stay connected to customers, shift sales online, and run fundraisers. For many small businesses, being able to operate online is vital and I'm proud that our tools enable this.

We built new products to respond to the crisis. We launched Community Help, which lets people find and offer help in their local area -- everything from volunteering to pick up groceries and assisting with errands to sharing goods and checking in on one another. This is the kind of social infrastructure that companies like Facebook are well positioned to provide.

We connect people to authoritative health information and we're taking aggressive steps to stop Covid-19-related misinformation and harmful content from spreading. In January, we started displaying educational pop-ups in Facebook and Instagram connecting people to authoritative Covid-19-related information from organizations including the CDC, regional health authorities, and the WHO. We also launched the Covid-19 information center, which is now featured at the top of News Feed on Facebook and includes real-time updates from national health authorities and global organizations. Through these efforts across Facebook and Instagram, we've directed more than 2 billion people to resources from health authorities, and we're giving millions in ad credits to health authorities so they can reach people.

We're also using data in new ways to inform the public health response. We partnered with Carnegie Mellon University to launch a Covid-19 Symptom Survey that can help researchers predict the spread of the disease. With millions of responses, researchers are able to get a much more detailed picture of the pandemic. We also contributed aggregated anonymized location data to the Covid-19 Mobility Data Network, a group of 40 health researchers whose work helps governments determine if and where it's appropriate to roll back social distancing orders. I'm proud that we've been able to support people, businesses and the public health effort during this crisis.

VII. Our Responsibility to Our Community

This is an incredibly challenging time, and that's why it's more important than ever that people can have conversations on our platforms about the issues that matter to them – whether that's Covid-19, racial and

social injustice, family and economic concerns, or the upcoming elections. We recognize that we have a responsibility to stop bad actors from interfering with or undermining these conversations through misinformation, attempted voter suppression, or speech that is hateful or incites violence. I understand the concerns people have in these areas, and we are working to address them. While we are making progress – for example, we have dramatically improved our ability to proactively find and remove harmful content and prevent election interference – I recognize that we have more to do.

I know our primary goal at this hearing is to talk about antitrust and competition issues, but with four major tech CEOs appearing before Congress, we also have an opportunity to talk about how technology can better serve society. Each of our companies is doing important work to meet our current responsibilities to our communities, while also planning and investing for a time where we are likely to see significant economic and social disruption. I hope at least some of today's hearing will touch on the future, and how our collective scale and resources could be harnessed to help people and businesses.

For instance, many families are worried about schooling and how to balance home and work obligations going forward. How can we leverage our products to lessen this burden for people? What else can we do to support communities if social distancing orders remain in place? How can we better equip our small businesses to compete, including on the world stage? How else can technology companies assist the public health effort? We don't have all the answers yet, but I hope that our industry continues to look for innovative ways to support our communities through this difficult time.

VIII. Conclusion

Our success rests on our ability to build products that bring value to people's lives -- whether it's finding a supportive Facebook group, starting a business on Instagram, video calling loved ones on Messenger or staying in touch with a friend on WhatsApp.

Facebook is a successful company now, but we got there the American way: we started with nothing and provided better products that people find valuable. As I understand our laws, companies aren't bad just because they are big. Many large companies that fail to compete cease to exist. This is why we're focused on building and updating our products to give people the best possible experiences. Provided we continue investing in new ideas and living up to our broader social responsibilities, I'm hopeful that we'll keep making progress and deliver better products and services -- for the people and businesses that use our products, for the wider tech ecosystem, and for the world.

Several years ago, Facebook moved our headquarters to the campus where Sun Microsystems used to be. We kept their sign out front, on the back of ours, to remind us that things change fast in tech. I've long believed that the nature of our industry is that someday a product will replace Facebook. I want us to be the ones that build it, because if we don't, someone else will. Thank you, and I look forward to your questions.

Mr. CICILLINE. Thank you.

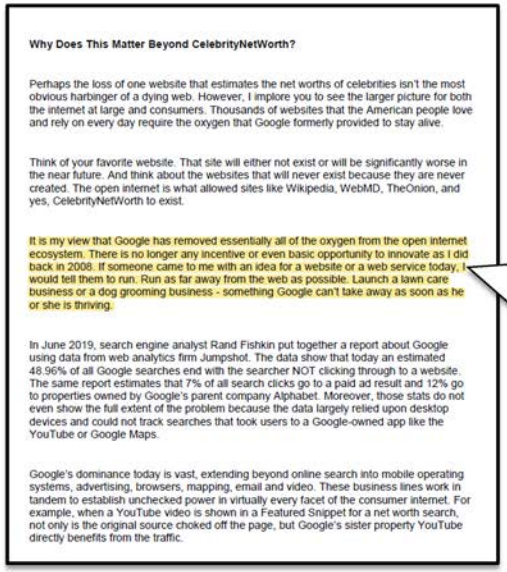
And I thank the witnesses for your opening statements.

Before I begin recognizing members for questioning under the 5-minute rule, without objection, I'm going to enter into the hearing record the documents and exhibits majority members will be referencing in their questioning today. These materials have been distributed to the witnesses.

[The information follows:]

MR. CICILLINE FOR THE OFFICIAL RECORD

Brian Warner, Founder, Celebrity Net Worth



Why Does This Matter Beyond CelebrityNetWorth?

Perhaps the loss of one website that estimates the net worths of celebrities isn't the most obvious harbinger of a dying web. However, I implore you to see the larger picture for both the internet at large and consumers. Thousands of websites that the American people love and rely on every day require the oxygen that Google formerly provided to stay alive.

Think of your favorite website. That site will either not exist or will be significantly worse in the near future. And think about the websites that will never exist because they are never created. The open internet is what allowed sites like Wikipedia, WebMD, TheOnion, and yes, CelebrityNetWorth to exist.

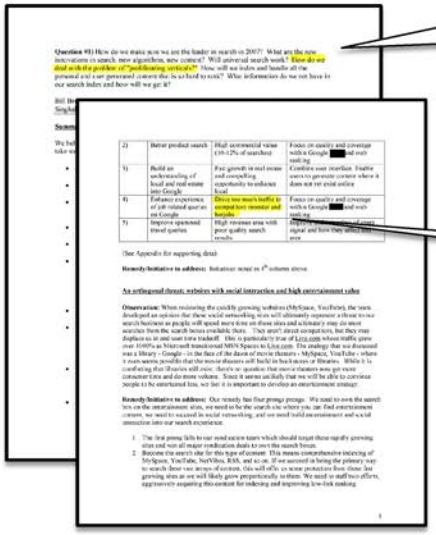
It is my view that Google has removed essentially all of the oxygen from the open internet ecosystem. There is no longer any incentive or even basic opportunity to innovate as I did back in 2008. If someone came to me with an idea for a website or a web service today, I would tell them to run. Run as far away from the web as possible. Launch a lawn care business or a dog grooming business - something Google can't take away as soon as he or she is thriving.

In June 2019, search engine analyst Rand Fishkin put together a report about Google using data from web analytics firm Jumpshot. The data show that today an estimated 48.96% of all Google searches end with the searcher NOT clicking through to a website. The same report estimates that 7% of all search clicks go to a paid ad result and 12% go to properties owned by Google's parent company Alphabet. Moreover, those stats do not even show the full extent of the problem because the data largely relied upon desktop devices and could not track searches that took users to a Google-owned app like the YouTube or Google Maps.

Google's dominance today is vast, extending beyond online search into mobile operating systems, advertising, browsers, mapping, email and video. These business lines work in tandem to establish unchecked power in virtually every facet of the consumer internet. For example, when a YouTube video is shown in a Featured Snippet for a net worth search, not only is the original source choked off the page, but Google's sister property YouTube directly benefits from the traffic.

"If someone came to me with an idea for a website or a web service today, I would tell them to run. Run as far away from the web as possible. Launch a lawn care business or a dog grooming business - something Google can't take away as soon as he or she is thriving."

Eliminating the 'Threat' of Verticals



"How do we deal with the problem of 'proliferating verticals'?"

"Driv[ing] too much traffic to competitors monster and hotjobs."

01099367; 01099371

“Instagram was our threat.”

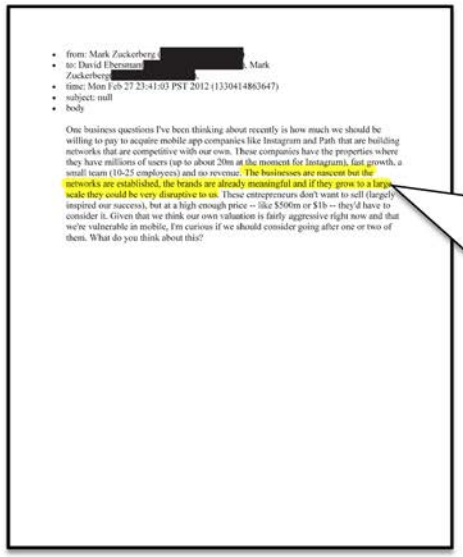
Posted 2012-01-26 23:52:32 UTC
Status Instagram is eating our lunch. We should've owned this space but we're already losing quite badly. Lots of new friends are joining and following me every week, and I find myself checking it far more often than FB Mobile. It's a far more focused, compelling way to keep up with what my friends are doing. Google+ is a red herring — we are getting distracted by a shitty clone while guys like Instragram and Pinterest ramp up and create new markets that we should've seen coming.
Mobile

- from: Mark Zuckerberg ([redacted]
- to: [redacted], Mark Zuckerberg([redacted]),
- time: Mon Apr 09 10:51:24 PDT 2012 (1333993884473)
- subject:
- body

Yeah, I remember your internal post about how Instagram was our threat and not Google+. You were basically right. One thing about startups though is you can often acquire them. I think this is a good outcome for everyone.

00063367; 00063341

"[T]hey could be very disruptive to us."

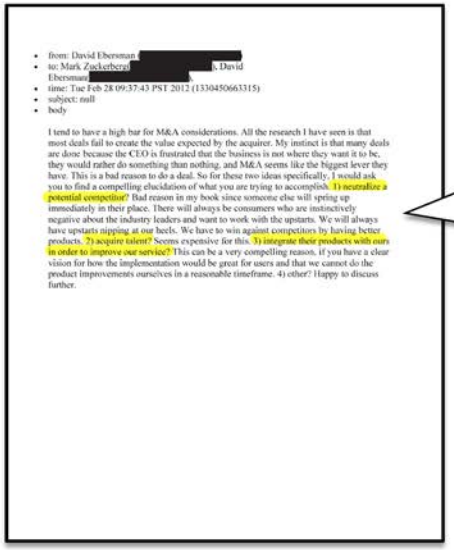


- from: Mark Zuckerberg [redacted]
- to: David Ebersman [redacted], Mark Zuckerberg [redacted]
- time: Mon Feb 27 23:41:03 PST 2012 (1330414863647)
- subject: null
- body

One business questionis I've been thinking about recently is how much we should be willing to pay to acquire mobile app companies like Instagram and Path that are building networks that are competitive with our own. Those companies have the properties where they have millions of users (up to about 20m at the moment for Instagram), fast growth, a small team (10-25 employees) and no revenue. The businesses are nascent but the networks are established, the brands are already meaningful and if they grow to a large scale they could be very disruptive to us. These entrepreneurs don't want to sell (largely inspired our success), but at a high enough price -- like $500m or $1b -- they'd have to consider it. Given that we think our own valuation is fairly aggressive right now and that we're vulnerable in mobile, I'm curious if we should consider going after one or two of them. What do you think about this?

"The businesses are nascent but the networks are established, the brands are already meaningful and if they grow to a large scale they could be very disruptive to us."

"[N]eutralize a potential competitor?"



- from: David Ebersman [redacted]
- to: Mark Zuckerberg [redacted], David Ebersman [redacted]
- time: Tue Feb 28 09:37:43 PST 2012 (1330450663315)
- subject: null
- body

I tend to have a high bar for M&A considerations. All the research I have seen is that most deals fail to create the value expected by the acquirer. My instinct is that many deals are done because the CEO is frustrated that the business is not where they want it to be, they would rather do something than nothing, and M&A seems like the biggest lever they have. This is a bad reason to do a deal. So for these two ideas specifically, I would ask you to find a compelling elucidation of what you are trying to accomplish. 1) neutralize a potential competitor? Bad reason in my book since someone else will spring up immediately in their place. There will always be consumers who are instinctively negative about the industry leaders and want to work with the upstarts. We will always have upstarts nipping at our heels. We have to win against competitors by having better products. 2) acquire talent? Seems expensive for this. 3) integrate their products with ours in order to improve our service? This can be a very compelling reason, if you have a clear vision for how the implementation would be great for users and that we cannot do the product improvements ourselves in a reasonable timeframe. 4) other? Happy to discuss further.

"1) [N]eutralize a potential competitor?"

"2) [A]cquire talent?"

"3) [I]ntegrate their products with ours in order to improve our service?"

"[W]hat we're really buying is time."

- from: Mark Zuckerberg [redacted]
- to: David Ebersman [redacted], Mark Zuckerberg [redacted]
- time: Tue Feb 28 09:55:42 PST 2012 (1330451742327)
- subject: null
- body

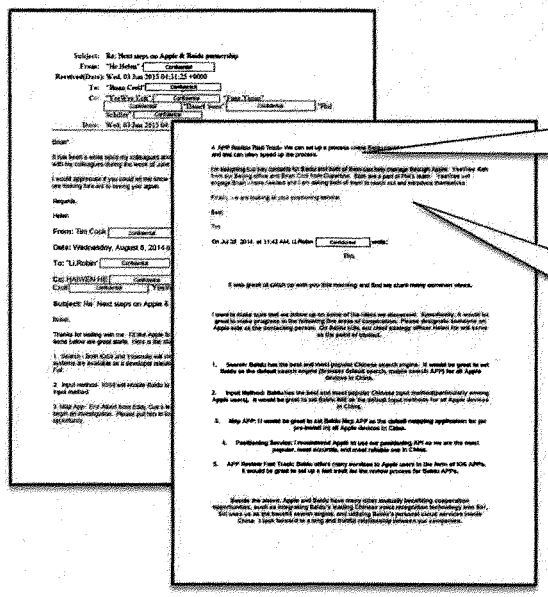
It's a combination of (1) and (3). The basic plan would be to buy these companies and leave their products running while over time incorporating the social dynamics they've invented into our core products. One thing that may make (1) more reasonable here is that there are network effects around social products and a finite number of different social mechanics to invent. Once someone wins at a specific mechanic, it's difficult for others to supplant them without doing something different. It's possible someone beats Instagram by building something that is better to the point that they get network migration, but this is harder as long as Instagram keeps running as a product. (3) is also a factor but in reality we already know these companies' social dynamics and will integrate them over the next 12-24 months anyway. The integration plan involves building their mechanics into our products rather than directly integrating their products if that makes sense. By a combination of (1) and (3), one way of looking at this is that what we're really buying is time. Even if some new competitoes springs up, buying Instagram, Path, Foursquare, etc now will give us a year or more to integrate their dynamics before anyone can get close to their scale again. Within that time, if we incorporate the social mechanics they were using, those new products won't get much traction since we'll already have their mechanics deployed at scale.

"There are . . . a finite number of different social mechanics to invent."

"[W]hat we're really buying is time."

47

Apple Offers Preferential Treatment to Baidu



"APP Review Fast Track"

"I'm assigning two key contacts for Baidu and both of them can help manage through Apple."

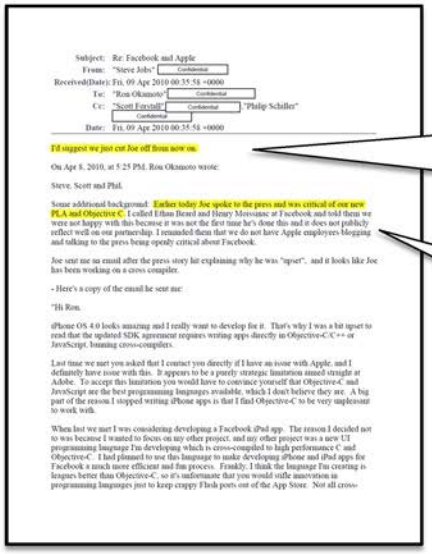
Apple Gives Amazon Preferential Treatment



"It's difficult to express how strange this is: for over a decade, Apple has stuck to the rule that *all* digital goods sold in iOS apps *must* use Apple's payment methods, including Apple's 30 percent cut."

"Suddenly, that rule appears to apply to all developers except those who have the leverage to cut a special deal with Apple."

Apple Cuts Off Developers



Subject: Re: Facebook and Apple
From: "Steve Jobs" [Confidential]
Received(Date): Fri, 09 Apr 2010 00:35:58 +0000
To: "Ron Okamoto" [Confidential]
Cc: "Scott Forstall" [Confidential], "Philip Schiller" [Confidential]
Date: Fri, 09 Apr 2010 00:35:58 +0000

I'd suggest we just cut Joe off from now on.

On Apr 8, 2010, at 5:25 PM, Ron Okamoto wrote:

Steve, Scott and Phil.

Some additional background. Earlier today Joe spoke to the press and was critical of our new PLA and Objective C. I called Ethan Beard and Henry Moniaux at Facebook and told them we were not happy with this because it was not the first time he's done this and it does not publicly reflect well on our partnership. I reminded them that we do not have Apple employees blogging and talking to the press being openly critical about Facebook.

Joe sent me an email after the press story hit explaining why he was "upset", and it looks like Joe has been working on a cross compiler.

- Here's a copy of the email he sent me:

"Hi Ron.

iPhone OS 4.0 looks amazing and I really want to develop for it. That's why I was a bit upset to read that the updated SDK agreement requires writing apps directly in Objective-C/C++ or JavaScript, banning cross-compilers.

Last time we met you asked that I contact you directly if I have an issue with Apple, and I definitely have issue with this. It appears to be a purely strategic limitation aimed straight at Adobe. To accept this limitation you would have to convince yourself that Objective-C and JavaScript are the best programming languages available, which I don't believe they are. A big part of the reason I stopped writing iPhone apps is that I find Objective-C to be very unpleasant to work with.

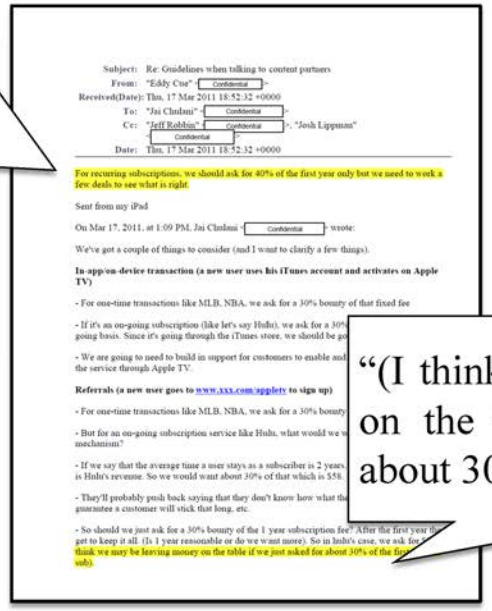
When last we met I was considering developing a Facebook iPad app. The reason I decided not to was because I wanted to focus on my other project, and my other project was a new UI programming language I'm developing which is cross-compiled to high performance C and Objective-C. I had planned to use this language to make developing iPhone and iPad apps for Facebook a much more efficient and fun process. Frankly, I think the language I'm creating is leagues better than Objective-C, so it's unfortunate that you would stifle innovation in programming languages just to keep crappy Flash ports out of the App Store. Not all cross-

"I'd suggest we just cut Joe off from now on."

"Earlier today Joe spoke to the press and was critical of our new PLA and Objective C."

"Leaving [M]oney on the [T]able"

"For recurring subscriptions, we should ask for 40% of the first year only but we need work a few deals to see what is right."



Subject: Re: Guidelines when talking to content partners
From: "Eddy Cue" <[redacted]>
Received(Date): Thu, 17 Mar 2011 18:52:32 +0000
To: "Jai Chulani" <[redacted]>
Cc: "Jeff Robbin" <[redacted]>, "Josh Lippman" <[redacted]>
Date: Thu, 17 Mar 2011 18:52:32 +0000

For recurring subscriptions, we should ask for 40% of the first year only but we need to work a few deals to see what is right.

Sent from my iPad

On Mar 17, 2011, at 1:09 PM, Jai Chulani <[redacted]> wrote:

We've got a couple of things to consider (and I want to clarify a few things).

In-app/on-device transaction (a new user uses his iTunes account and activates on Apple TV)

- For one-time transactions like MLB, NBA, we ask for a 30% bounty of that fixed fee

- If it's an on-going subscription (like let's say Hulu), we ask for a 30% [illegible] going basis. Since it's going through the iTunes store, we should be go[illegible]

- We are going to need to build in support for customers to enable and[illegible] the service through Apple TV.

Referrals (a new user goes to www.xxx.com/applety to sign up)

- For one-time transactions like MLB, NBA, we ask for a 30% bounty

- But for an on-going subscription service like Hulu, what would we w[illegible] mechanism?

- If we say that the average time a user stays as a subscriber is 2 years, [illegible] is Hulu's revenue. So we would want about 30% of that which is $58.

- They'll probably push back saying that they don't know how what th[illegible] guarantee a customer will stick that long, etc.

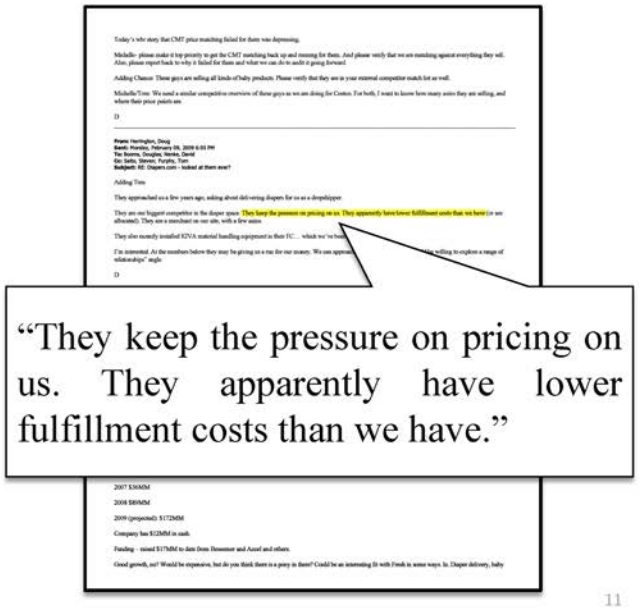
- So should we just ask for a 30% bounty of the 1 year subscription fee? After the first year th[illegible] get to keep it all. (Is 1 year reasonable or do we want more). So in Hulu's case, we ask for [illegible] think we may be leaving money on the table if we just asked for about 30% of the first[illegible] sub).

"(I think we may be leaving money on the table if we just asked for about 30% of the first year of sub)."

Amazon Viewed Diapers.com as Top Competitor



"The benchmarking team recently completed a study of Diapers.com. They are our largest and fastest growing competitor in the on-line diaper and baby care space."

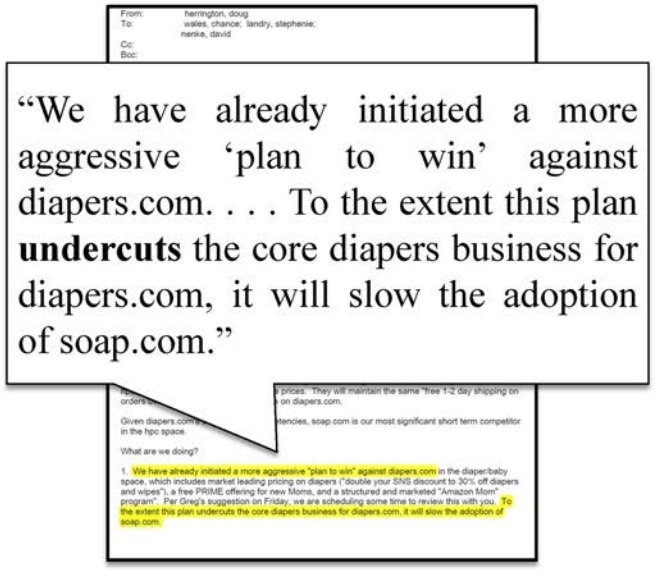


"They keep the pressure on pricing on us. They apparently have lower fulfillment costs than we have."

00142833; 00151723

11

Amazon's Plan to Weaken Diapers.com

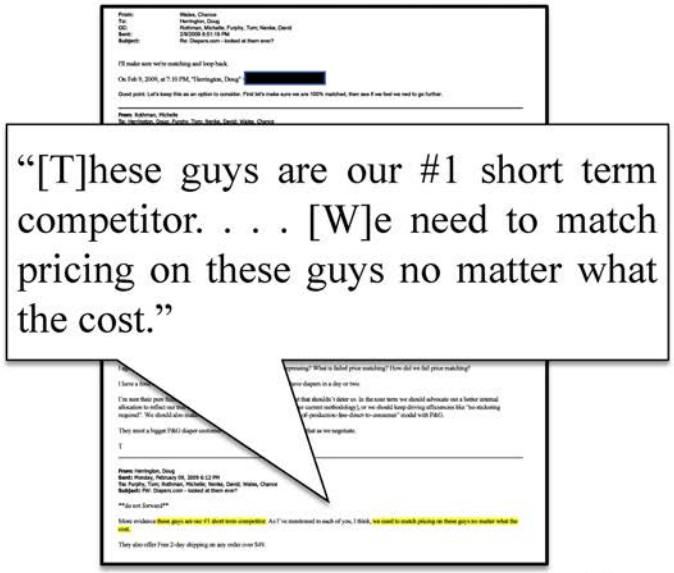


From: herrington, doug
To: wales, chance; landry, stephenie; nenke, david
Cc:
Bcc:

"We have already initiated a more aggressive 'plan to win' against diapers.com. . . . To the extent this plan **undercuts** the core diapers business for diapers.com, it will slow the adoption of soap.com."

What are we doing?

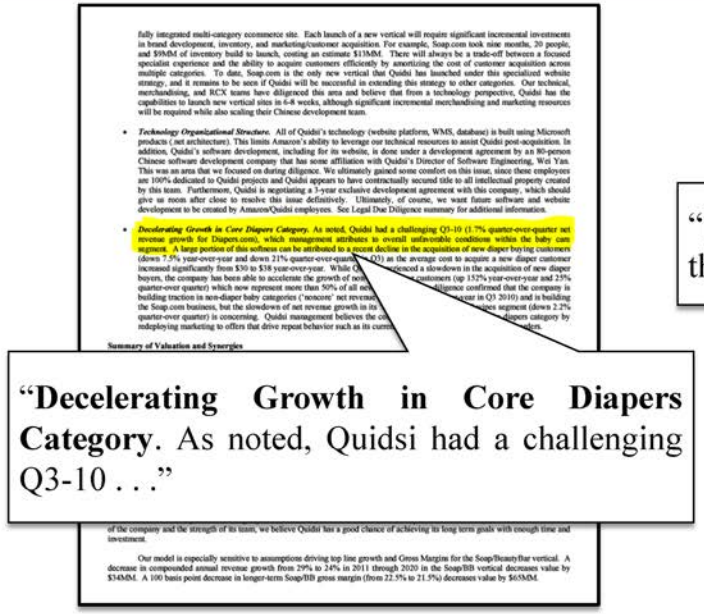
1. We have already initiated a more aggressive "plan to win" against diapers.com in the diaper/baby space, which includes market leading pricing on diapers ("double your SNS discount to 30% off diapers and wipes"), a free PRIME offering for new Moms, and a structured and marketed "Amazon Mom" program". Per Greg's suggestion on Friday, we are scheduling some time to review this with you. To the extent this plan undercuts the core diapers business for diapers.com, it will slow the adoption of soap.com.



"[T]hese guys are our #1 short term competitor. . . . [W]e need to match pricing on these guys no matter what the cost."

00132026; 00151722

The Plan Worked



fully integrated multi-category ecommerce site. Each launch of a new vertical will require significant incremental investments in brand development, inventory, and marketing/customer acquisition. For example, Soap.com took nine months, 20 people, and $9MM of inventory build to launch, costing an estimate $13MM. There will always be a trade-off between a focused specialist experience and the ability to acquire customers efficiently by amortizing the cost of customer acquisition across multiple categories. To date, Soap.com is the only new vertical that Quidsi has launched under this specialized website strategy, and it remains to be seen if Quidsi will be successful in extending this strategy to other categories. Our technical, merchandising, and RCX teams have diligenced this area and believe that from a technology perspective, Quidsi has the capabilities to launch new vertical sites in 6-8 weeks, although significant incremental merchandising and marketing resources will be required while also scaling their Chinese development team.

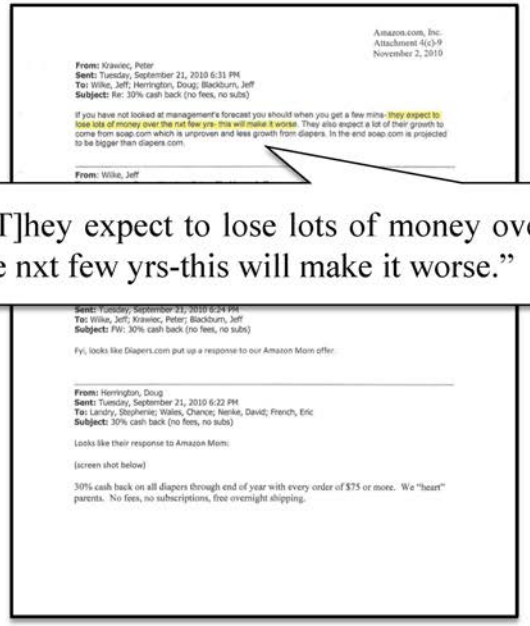
- ***Technology Organizational Structure.*** All of Quidsi's technology (website platform, WMS, database) is built using Microsoft products (.net architecture). This limits Amazon's ability to leverage our technical resources to assist Quidsi post-acquisition. In addition, Quidsi's software development, including for its website, is done under a development agreement by an 80-person Chinese software development company that has some affiliation with Quidsi's Director of Software Engineering, Wei Yan. This was an area that we focused on during diligence. We ultimately gained some comfort on this issue, since these employees are 100% dedicated to Quidsi projects and Quidsi appears to have contractually secured title to all intellectual property created by this team. Furthermore, Quidsi is negotiating a 3-year exclusive development agreement with this company, which should give us room after close to resolve this issue definitively. Ultimately, of course, we want future software and website development to be created by Amazon/Quidsi employees. See Legal Due Diligence summary for additional information.
- ***Decelerating Growth in Core Diapers Category.*** As noted, Quidsi had a challenging Q3-10 (1.7% quarter-over-quarter net revenue growth for Diapers.com), which management attributes to overall unfavorable conditions within the baby care segment. A large portion of this softness can be attributed to a recent decline in the acquisition of new diaper buying customers (down 7.5% year-over-year and down 21% quarter-over-quarter in Q3) as the average cost to acquire a new diaper customer increased significantly from $30 to $38 year-over-year. While C… enced a slowdown in the acquisition of new diaper buyers, the company has been able to accelerate the growth of net… customers (up 152% year-over-year and 25% quarter-over quarter) which now represent more than 50% of all net… diligence confirmed that the company is building traction in non-diaper baby categories ("noncore" net revenue… year in Q3 2010) and is building the Soap.com business, but the slowdown of net revenue growth in its… pers segment (down 2.2% quarter-over quarter) is concerning. Quidsi management believes the co… diapers category by redeploying marketing to offers that drive repeat behavior such as its curre… ders.

Summary of Valuation and Synergies

of the company and the strength of its team, we believe Quidsi has a good chance of achieving its long term goals with enough time and investment.

Our model is especially sensitive to assumptions driving top line growth and Gross Margins for the Soap/BeautyBar vertical. A decrease in compounded annual revenue growth from 29% to 24% in 2011 through 2020 in the Soap/BB vertical decreases value by $34MM. A 100 basis point decrease in longer-term Soap/BB gross margin (from 22.5% to 21.5%) decreases value by $65MM.

"**Decelerating Growth in Core Diapers Category**. As noted, Quidsi had a challenging Q3-10 . . ."



Amazon.com, Inc.
Attachment 4(c)-9
November 2, 2010

From: Krawiec, Peter
Sent: Tuesday, September 21, 2010 6:31 PM
To: Wilke, Jeff; Herrington, Doug; Blackburn, Jeff
Subject: Re: 30% cash back (no fees, no subs)

If you have not looked at management's forecast you should when you get a few mins- they expect to lose lots of money over the nxt few yrs- this will make it worse. They also expect a lot of their growth to come from soap.com which is unproven and less growth from diapers. In the end soap.com is projected to be bigger than diapers.com.

From: Wilke, Jeff

Sent: Tuesday, September 21, 2010 6:24 PM
To: Wilke, Jeff; Krawiec, Peter; Blackburn, Jeff
Subject: FW: 30% cash back (no fees, no subs)

Fyi, looks like Diapers.com put up a response to our Amazon Mom offer.

From: Herrington, Doug
Sent: Tuesday, September 21, 2010 6:22 PM
To: Landry, Stephenie; Wales, Chance; Nenke, David; French, Eric
Subject: 30% cash back (no fees, no subs)

Looks like their response to Amazon Mom:

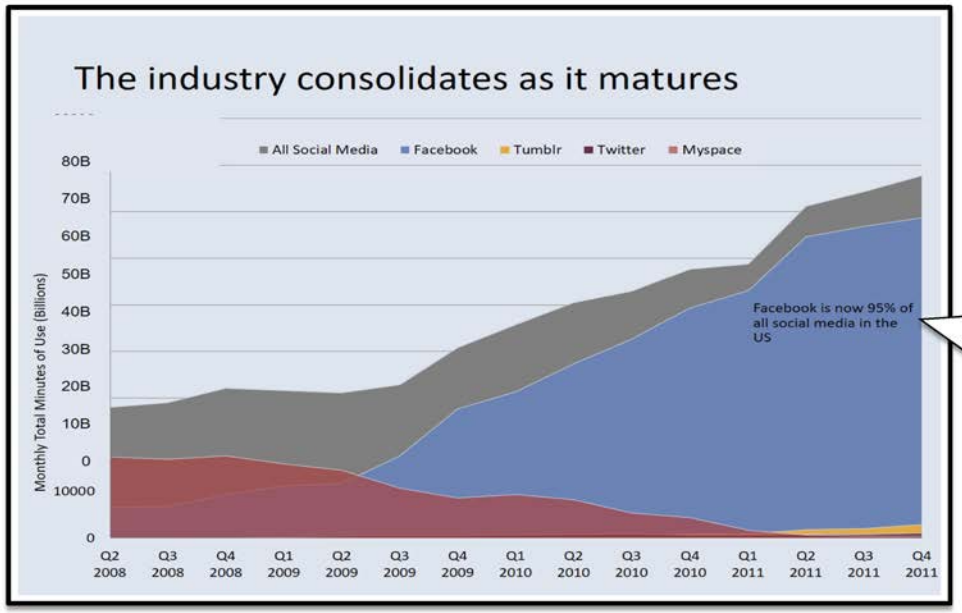
(screen shot below)

30% cash back on all diapers through end of year with every order of $75 or more. We "heart" parents. No fees, no subscriptions, free overnight shipping.

"[T]hey expect to lose lots of money over the nxt few yrs-this will make it worse."

00154656; 00009716

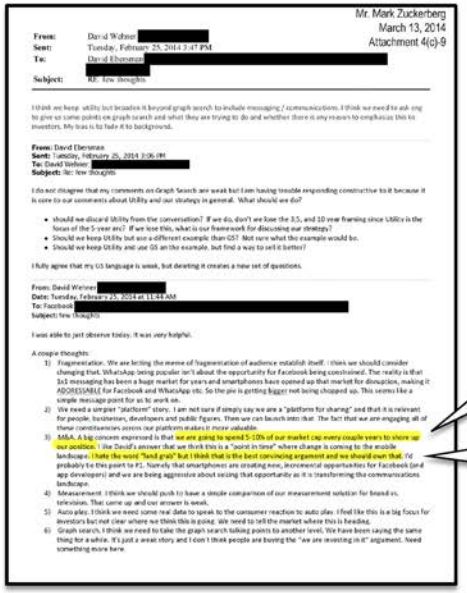
"95% of [A]ll [S]ocial [M]edia in the US."



"Facebook is now 95% of all social media in the US."

00057113

"[L]and [G]rab"



Mr. Mark Zuckerberg
March 13, 2014
Attachment 4(c)-9

From: David Wehner [redacted]
Sent: Tuesday, February 25, 2014 3:47 PM
To: David Ebersman [redacted]
Subject: RE: few thoughts

I think we keep utility but broaden it beyond graph search to include messaging / communications. I think we need to ask org to give us some points on graph search and what they are trying to do and whether there is any reason to emphasize this to investors. My bias is to fade it to background.

From: David Ebersman
Sent: Tuesday, February 25, 2014 3:06 PM
To: David Wehner [redacted]
Subject: Re: few thoughts

I do not disagree that my comments on Graph Search are weak but I am having trouble responding constructive to it because it is core to our comments about Utility and our strategy in general. What should we do?

- should we discard Utility from the conversation? If we do, don't we lose the 3.5, and 10 year framing since Utility is the focus of the 5-year era? If we lose this, what is our framework for discussing our strategy?
- Should we keep Utility but use a different example than GS? Not sure what the example would be.
- Should we keep Utility and use GS as the example, but find a way to sell it better?

I fully agree that my GS language is weak, but deleting it creates a new set of questions.

From: David Wehner [redacted]
Date: Tuesday, February 25, 2014 at 11:44 AM
To: Facebook [redacted]
Subject: few thoughts

I was able to just observe today. It was very helpful.

A couple thoughts:

1) Fragmentation. We are letting the meme of fragmentation of audience establish itself. I think we should consider changing that. WhatsApp being popular isn't about the opportunity for Facebook being constrained. The reality is that 1x1 messaging has been a huge market for years and smartphones have opened up that market for disruption, making it ADDRESSABLE for Facebook and WhatsApp etc. So the pie is getting bigger not being chopped up. This seems like a simple message point for us to work on.
2) We need a simpler "platform" story. I am not sure if simply say we are a "platform for sharing" and that it is relevant for people, businesses, developers and public figures. Then we can launch into that. The fact that we are engaging all of these constituencies across our platform makes it more valuable.
3) M&A. A big concern expressed is that we are going to spend 5-10% of our market cap every couple years to shore up our position. I like David's answer that we think this is a "point in time" where change is coming to the mobile landscape. I hate the word "land grab" but I think that is the best convincing argument and we should own that. I'd probably tie this point to #1. Namely that smartphones are creating new, incremental opportunities for Facebook (and app developers) and we are being aggressive about seizing that opportunity as it is transforming the communications landscape.
4) Measurement. I think we should push to have a simple comparison of our measurement solution for brand vs. television. That came up and our answer is weak.
5) Auto play. I think we need some real data to speak to the consumer reaction to auto play. I feel like this is a big focus for investors but not clear where we think this is going. We need to tell the market where this is heading.
6) Graph search. I think we need to take the graph search talking points to another level. We have been saying the same thing for a while. It's just a weak story and I don't think people are buying the "we are investing in it" argument. Need something more here.

"[W]e are going to spend 5-10% of our market cap every couple years to shore up our position . . ."

"I hate the word 'land grab' but I think that is the best convincing argument and we should own that . . ."

"[W]e can likely always just buy any competitive startups."



From: Mark Zuckerberg
Sent: 4/9/2012 10:09:37 AM
To: [redacted]
Subject: RE: CONFIDENTIAL ANNOUNCEMENT

Thanks. One reason people underestimate the importance of watching Google is that we can likely always just buy any competitive startups, but it'll be a while before we can buy Google.

From: [redacted]
Sent: Monday, April 09, 2012 10:04 AM
To: Mark Zuckerberg
Subject: Re: CONFIDENTIAL ANNOUNCEMENT

Well played.

Sent from my iPhone

On Apr 9, 2012, at 9:58 AM, "Mark Zuckerberg" > wrote:

Confidential – DO NOT SHARE

Hey everyone,

I'm excited to share the news that last night we reached an agreement to acquire Instagram.

Below is a post about the deal that I'm about to put on my timeline. Instagram has built a successful network and mainstream brand by focusing on building the best mobile photos experience. After spending a lot of time with the Instagram team over the last few months working on Open Graph, and over the last couple of weeks discussing this, it's clear we share the same values and vision for the future of mobile photos.

We are committed to keeping the Instagram brand and growing their app independently. We will also continue on our FB Camera work. Over time we can build these two products to move closer together as it makes sense.

As always, feel free to ask me any questions you have about this at this week's open Q&A.

Mark

Timeline post below:

I'm excited to share the news that we've agreed to acquire Instagram and that their talented team will be joining Facebook.

For years, we've focused on building the best experience for sharing photos with your friends and family. Now, we'll be able to work even more closely with the Instagram team to also offer the best experiences for sharing beautiful mobile photos with people based on your interests.

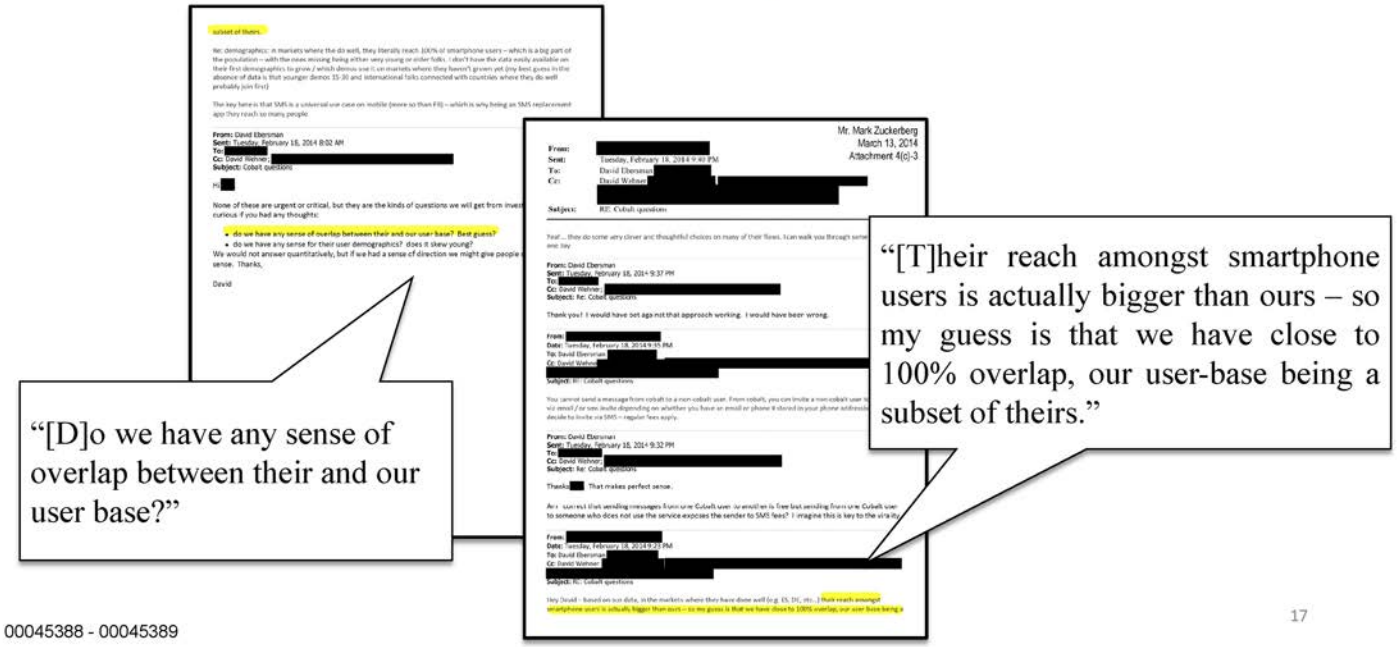
We believe these are different experiences that complement each other. But in order to do this well, we need to be mindful about keeping and building on Instagram's strengths and features rather than just trying to

"[W]e can likely always just buy any competitive startups, but it'll be a while before we can buy Google."

57

00067600

WhatsApp: "[W]e have close to 100% overlap."

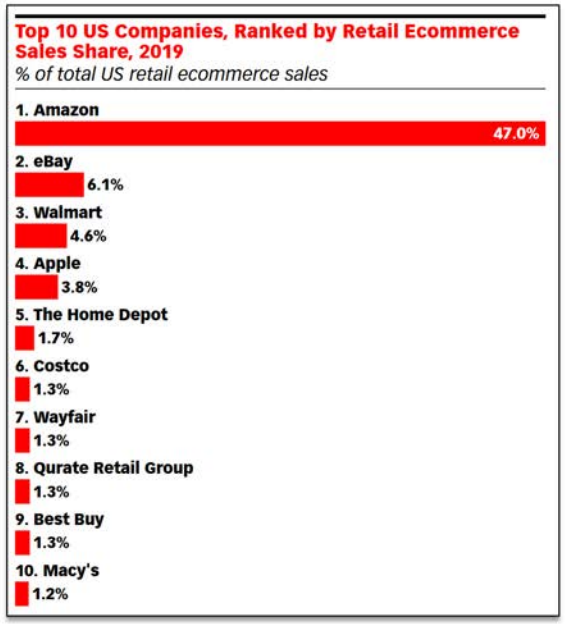


00045388 - 00045389

Amazon Bookseller's Story

We were a top bookseller on Amazon.com, and we worked day-and-night very hard towards growing our business and maintaining a 5-star feedback rating with, um, 99 positive reviews. And, uh, most importantly, this business feeds a total of 14 people, which includes three children and one 90-year-old granny.

Amazon's Dominance

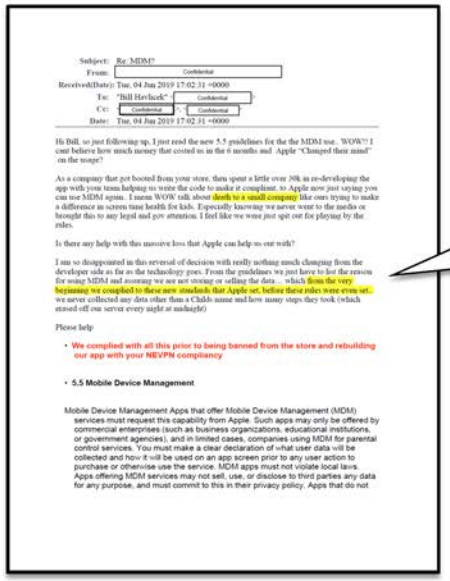


eMarketer, May 2020

Amazon Bookseller's Please

Mr. Bezos, we increased our sales on Amazon by five times in the past three years. And we have contributed that much proportional seller fees to Amazon. We have contributed that much to your business—five times. We followed all the rules that were set by you. We, we—please you know just help us in earning our livelihood.

“Death to a [S]mall [C]ompany”



Subject: Re: MDM?
From: [redacted]
Received(Date): Tue, 04 Jun 2019 17:02:31 +0000
To: "Bill Havlicek" [redacted]
Cc: [redacted] [redacted]
Date: Tue, 04 Jun 2019 17:02:31 +0000

Hi Bill, so just following up, I just read the new 5.5 guidelines for the the MDM use. WOW!!! I cant believe how much money that costed us in the 6 months and Apple "Changed their mind" on the usage?

As a company that got booted from your store, then spent a little over 30k in re-developing the app with your team helping us write the code to make it compliant, to Apple now just saying you can use MDM again. I mean WOW talk about death to a small company like ours trying to make a difference in screen time health for kids. Especially knowing we never went to the media or brought this to any legal and gov attention. I feel like we were just spit out for playing by the rules.

Is there any help with this massive loss that Apple can help us out with?

I am so disappointed in this reversal of decision with really nothing much changing from the developer side as far as the technology goes. From the guidelines we just have to list the reason for using MDM and assuring we are not storing or selling the data... which from the very beginning we complied to these new standards that Apple set, before these rules were even set.. we never collected any data other than a Childs name and how many steps they took (which erased off our server every night at midnight!)

Please help

- **We complied with all this prior to being banned from the store and rebuilding our app with your NEVPN compliancy**

- **5.5 Mobile Device Management**

Mobile Device Management Apps that offer Mobile Device Management (MDM) services must request this capability from Apple. Such apps may only be offered by commercial enterprises (such as business organizations, educational institutions, or government agencies), and in limited cases, companies using MDM for parental control services. You must make a clear declaration of what user data will be collected and how it will be used on an app screen prior to any user action to purchase or otherwise use the service. MDM apps must not violate local laws. Apps offering MDM services may not sell, use, or disclose to third parties any data for any purpose, and must commit to this in their privacy policy. Apps that do not

“[F]rom the very beginning we complied to these new standards that Apple set, before these rules were even set.”

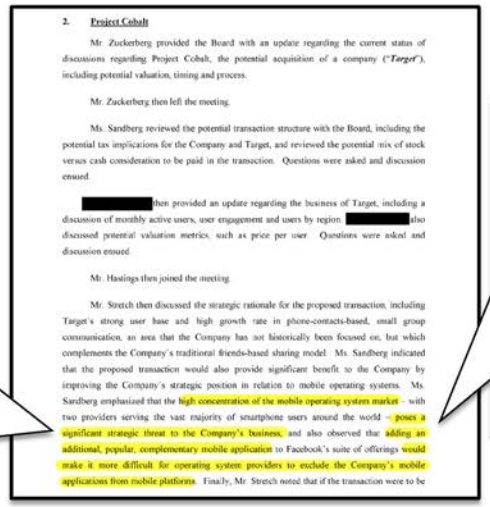
012273

Facebook Felt Threatened by Apple's Gatekeeper Power



MINUTES OF A MEETING
OF THE BOARD OF DIRECTORS OF
FACEBOOK, INC.

DATE: February 14, 2014
TIME: 5:15 p.m., Pacific Time
PLACE: Via Teleconference
DIRECTORS PRESENT: Erskine Bowles
Susan Desmond-Hellmann
Donald E. Graham
Reed Hastings
Sheryl Sandberg
Mark Zuckerberg
DIRECTORS ABSENT: Marc Andreessen
Peter Thiel
OTHERS PRESENT: [redacted]
Colin Stretch
[redacted]



2. **Project Cobalt**

Mr. Zuckerberg provided the Board with an update regarding the current status of discussions regarding Project Cobalt, the potential acquisition of a company ("*Target*"), including potential valuation, timing and process.

Mr. Zuckerberg then left the meeting.

Ms. Sandberg reviewed the potential transaction structure with the Board, including the potential tax implications for the Company and Target, and reviewed the potential mix of stock versus cash consideration to be paid in the transaction. Questions were asked and discussion ensued.

[redacted] then provided an update regarding the business of Target, including a discussion of monthly active users, user engagement and users by region. [redacted] also discussed potential valuation metrics, such as price per user. Questions were asked and discussion ensued.

Mr. Hastings then joined the meeting.

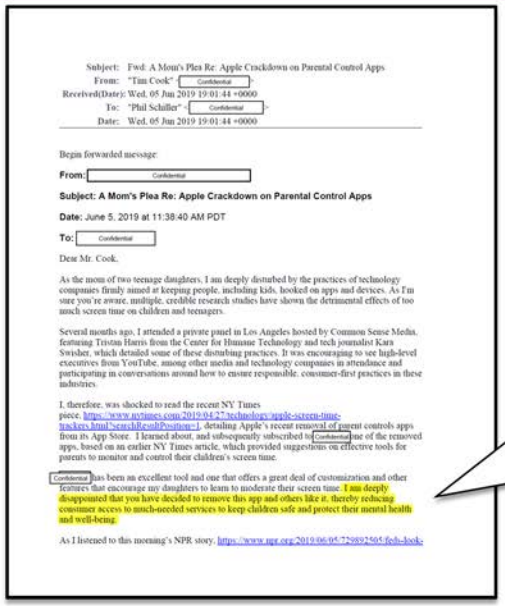
Mr. Stretch then discussed the strategic rationale for the proposed transaction, including Target's strong user base and high growth rate in phone-contacts-based, small group communication, an area that the Company has not historically been focused on, but which complements the Company's traditional friends-based sharing model. Ms. Sandberg indicated that the proposed transaction would also provide significant benefit to the Company by improving the Company's strategic position in relation to mobile operating systems. Ms. Sandberg emphasized that the high concentration of the mobile operating system market – with two providers serving the vast majority of smartphone users around the world – poses a significant strategic threat to the Company's business, and also observed that adding an additional, popular, complementary mobile application to Facebook's suite of offerings would make it more difficult for operating system providers to exclude the Company's mobile applications from mobile platforms. Finally, Mr. Stretch noted that if the transaction were to be

"[H]igh concentration of the mobile operating system market . . . poses a significant strategic threat to the Company's business."

"[A]dding an additional, popular, complementary mobile application . . . would make it more difficult for operating system providers to exclude the Company's mobile applications from mobile platforms."

00045376 - 00045377

"When children's health is at stake, Apple should do the right thing."



Subject: Fwd: A Mom's Plea Re: Apple Crackdown on Parental Control Apps
From: "Tim Cook" <Confidential>
Received(Date): Wed, 05 Jun 2019 19:01:44 +0000
To: "Phil Schiller" <Confidential>
Date: Wed, 05 Jun 2019 19:01:44 +0000

Begin forwarded message:

From: Confidential

Subject: A Mom's Plea Re: Apple Crackdown on Parental Control Apps

Date: June 5, 2019 at 11:38:40 AM PDT

To: Confidential

Dear Mr. Cook,

As the mom of two teenage daughters, I am deeply disturbed by the practices of technology companies firmly aimed at keeping people, including kids, hooked on apps and devices. As I'm sure you're aware, multiple, credible research studies have shown the detrimental effects of too much screen time on children and teenagers.

Several months ago, I attended a private panel in Los Angeles hosted by Common Sense Media, featuring Tristan Harris from the Center for Humane Technology and tech journalist Kara Swisher, which detailed some of these disturbing practices. It was encouraging to see high-level executives from YouTube, among other media and technology companies in attendance and participating in conversations around how to ensure responsible, consumer-first practices in these industries.

I, therefore, was shocked to read the recent NY Times piece, https://www.nytimes.com/2019/04/22/technology/apple-screen-time-trackers.html?searchResultPosition=1, detailing Apple's recent removal of parent controls apps from its App Store. I learned about, and subsequently subscribed to Confidential one of the removed apps, based on an earlier NY Times article, which provided suggestions on effective tools for parents to monitor and control their children's screen time.

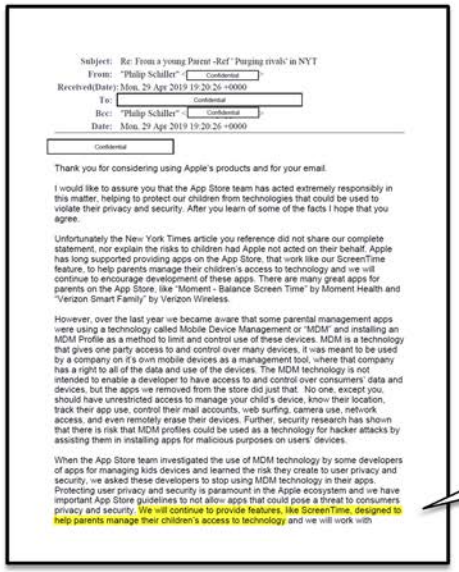
Confidential has been an excellent tool and one that offers a great deal of customization and other features that encourage my daughters to learn to moderate their screen time. I am deeply disappointed that you have decided to remove this app and others like it, thereby reducing consumer access to much-needed services to keep children safe and protect their mental health and well-being.

As I listened to this morning's NPR story, https://www.npr.org/2019/06/05/729892505/feds-look-

"I am deeply disappointed that you have decided to remove this app and others like it, thereby reducing consumer access to much-needed services to keep children safe and protect their mental health and well-being."

012247

Pushing Users to ScreenTime



Subject: Re: From a young Parent -Ref ' Purging rivals' in NYT
From: "Philip Schiller" <[redacted]>
Received(Date): Mon, 29 Apr 2019 19:20:26 +0000
To: [redacted]
Bcc: "Philip Schiller" <[redacted]>
Date: Mon, 29 Apr 2019 19:20:26 +0000

[redacted]

Thank you for considering using Apple's products and for your email.

I would like to assure you that the App Store team has acted extremely responsibly in this matter, helping to protect our children from technologies that could be used to violate their privacy and security. After you learn of some of the facts I hope that you agree.

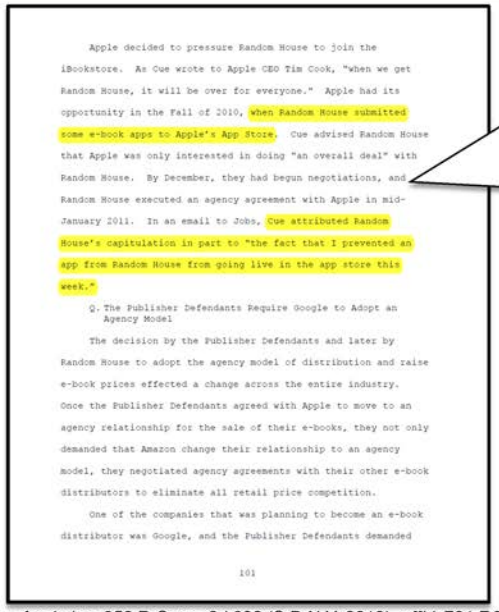
Unfortunately the New York Times article you reference did not share our complete statement, nor explain the risks to children had Apple not acted on their behalf. Apple has long supported providing apps on the App Store, that work like our ScreenTime feature, to help parents manage their children's access to technology and we will continue to encourage development of these apps. There are many great apps for parents on the App Store, like "Moment - Balance Screen Time" by Moment Health and "Verizon Smart Family" by Verizon Wireless.

However, over the last year we became aware that some parental management apps were using a technology called Mobile Device Management or "MDM" and installing an MDM Profile as a method to limit and control use of these devices. MDM is a technology that gives one party access to and control over many devices, it was meant to be used by a company on it's own mobile devices as a management tool, where that company has a right to all of the data and use of the devices. The MDM technology is not intended to enable a developer to have access to and control over consumers' data and devices, but the apps we removed from the store did just that. No one, except you, should have unrestricted access to manage your child's device, know their location, track their app use, control their mail accounts, web surfing, camera use, network access, and even remotely erase their devices. Further, security research has shown that there is risk that MDM profiles could be used as a technology for hacker attacks by assisting them in installing apps for malicious purposes on users' devices.

When the App Store team investigated the use of MDM technology by some developers of apps for managing kids devices and learned the risk they create to user privacy and security, we asked these developers to stop using MDM technology in their apps. Protecting user privacy and security is paramount in the Apple ecosystem and we have important App Store guidelines to not allow apps that could pose a threat to consumers privacy and security. We will continue to provide features, like ScreenTime, designed to help parents manage their children's access to technology and we will work with

"We will continue to provide features, like ScreenTime, designed to help parents manage their children's access to technology . . ."

Apple Leverages Control of App Store



Apple decided to pressure Random House to join the iBookstore. As Cue wrote to Apple CEO Tim Cook, "when we get Random House, it will be over for everyone." Apple had its opportunity in the Fall of 2010, when Random House submitted some e-book apps to Apple's App Store. Cue advised Random House that Apple was only interested in doing "an overall deal" with Random House. By December, they had begun negotiations, and Random House executed an agency agreement with Apple in mid-January 2011. In an email to Jobs, Cue attributed Random House's capitulation in part to "the fact that I prevented an app from Random House from going live in the app store this week."

Q. The Publisher Defendants Require Google to Adopt an Agency Model

The decision by the Publisher Defendants and later by Random House to adopt the agency model of distribution and raise e-book prices effected a change across the entire industry. Once the Publisher Defendants agreed with Apple to move to an agency relationship for the sale of their e-books, they not only demanded that Amazon change their relationship to an agency model, they negotiated agency agreements with their other e-book distributors to eliminate all retail price competition.

One of the companies that was planning to become an e-book distributor was Google, and the Publisher Defendants demanded

101

"[W]hen Random House submitted some e-book apps to Apple's App Store . . . , Cue attributed Random House's capitulation in part to "the fact that I prevented an app from Random House from going live in the app store this week."

U.S. v. Apple Inc, 952 F. Supp. 2d 638 (S.D.N.Y. 2013), *aff'd*, 791 F.3d 290 (2d Cir. 2015).

Instagram's Growth Rate

Top OG Apps by Publishing DAU

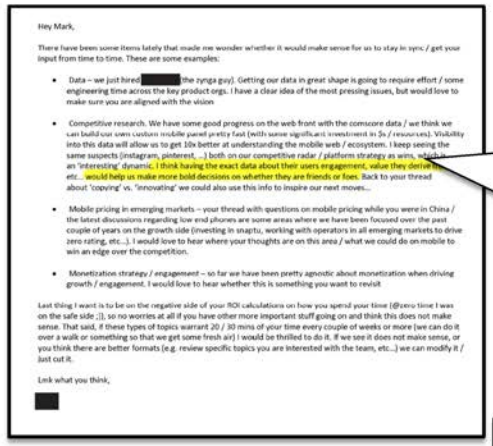
Average Publishing DAU	3/30/12	Δ W/W %	3/23/12	Δ M/M %	3/2/12
Application					
Yahoo!	1,754,262	-1%	1,77		
Spotify	1,327,071	3%	1,28		
İzlesene	735,746	11%	66		
Pinterest	673,783	3%			
Social Reader	648,208	-4%			
foursquare	525,253	-2%	533,442	8754117%	6
Instagram	183,625	1765%	9,846	9181150%	2
The Guardian	180,564	4%	173,054		
Cities I've Visited	167,807	16%	144,362	2326%	
Deezer	142,523	2%	139,296	9%	
iHeartRadio	117,389	5%	112,198	14%	
Dailymotion	111,184	30%	85,288	-80%	
SoundCloud	107,030	20%	89,066	45%	73,590
schoolFeed	106,446	85%	57,688	253343%	42
Netflix	105,396	-4%	109,443	9%	96,767
MyVideo	98,884	-9%	108,577	-29%	138,978
Myspace	69,010	6%	65,311	20%	57,438
The Independent	67,480	154%	26,544	-30%	96,865
AMERICAN IDOL Online Voting	55,975	25%	44,858	98%	28,326
21 questions	47,732	N/A	0	2386500%	2
Slacker Radio	39,220	5%	37,337	8%	36,369
Siz.net	37,865	445%	6,945	N/A	0
GetGlue	36,163	10%	32,919	81%	20,006
Grooveshark	34,418	3%	33,574	20%	28,794
VEVO	33,397	11%	30,173	310%	8,150

"1,765%" week over week

"9,181,150%" month over month

00091650

"[F]riends or [F]oes"



Hey Mark,

There have been some items lately that made me wonder whether it would make sense for us to stay in sync / get your input from time to time. These are some examples:

- Data – we just hired [redacted] the zynga guy). Getting our data in great shape is going to require effort / some engineering time across the key product orgs. I have a clear idea of the most pressing issues, but would love to make sure you are aligned with the vision
- Competitive research. We have some good progress on the web front with the comscore data / we think we can build our own custom mobile panel pretty fast (with some significant investment in $s / resources). Visibility into this data will allow us to get 10x better at understanding the mobile web / ecosystem. I keep seeing the same suspects (instagram, pinterest, ...) both on our competitive radar / platform strategy as wins, which is an 'interesting' dynamic. I think having the exact data about their users engagement, value they derive from etc... would help us make more bold decisions on whether they are friends or foes. Back to your thread about 'copying' vs. 'innovating' we could also use this info to inspire our next moves...
- Mobile pricing in emerging markets – your thread with questions on mobile pricing while you were in China / the latest discussions regarding low end phones are some areas where we have been focused over the past couple of years on the growth side (investing in snaptu, working with operators in all emerging markets to drive zero rating, etc...). I would love to hear where your thoughts are on this area / what we could do on mobile to win an edge over the competition.
- Monetization strategy / engagement – so far we have been pretty agnostic about monetization when driving growth / engagement. I would love to hear whether this is something you want to revisit

Last thing I want is to be on the negative side of your ROI calculations on how you spend your time (@zero time I was on the safe side ;)), so no worries at all if you have other more important stuff going on and think this does not make sense. That said, if these types of topics warrant 20 / 30 mins of your time every couple of weeks or more (we can do it over a walk or something so that we get some fresh air) I would be thrilled to do it. If we see it does not make sense, or you think there are better formats (e.g. review specific topics you are interested with the team, etc...) we can modify it / just cut it.

Lmk what you think,

[redacted]

"I think having the exact data about their users engagement . . . would help us make more bold decisions on whether they are friends or foes."

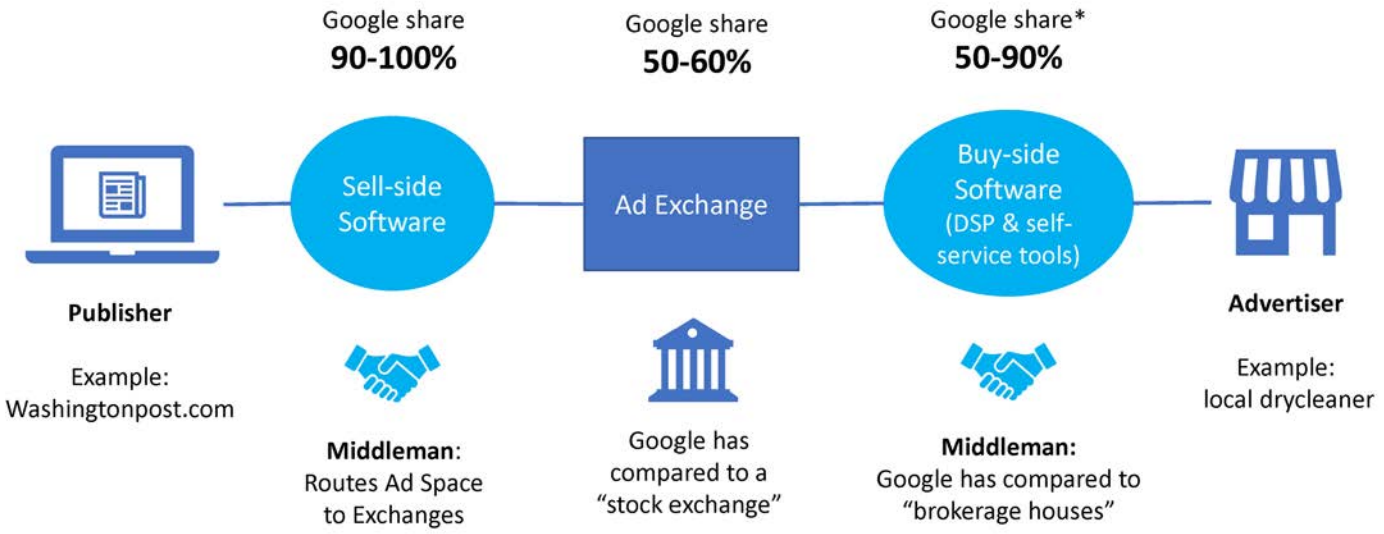
"Yeah, let's do it."

From: Mark Zuckerberg
Sent: 4/4/2012 1:28:10 AM
To: [redacted]
Cc: Chris Cox
Subject: Re: Sync fro[illegible]me to time

Yeah, let's do it. We can find some time periodically during my weekly reviews to go over this stuff.

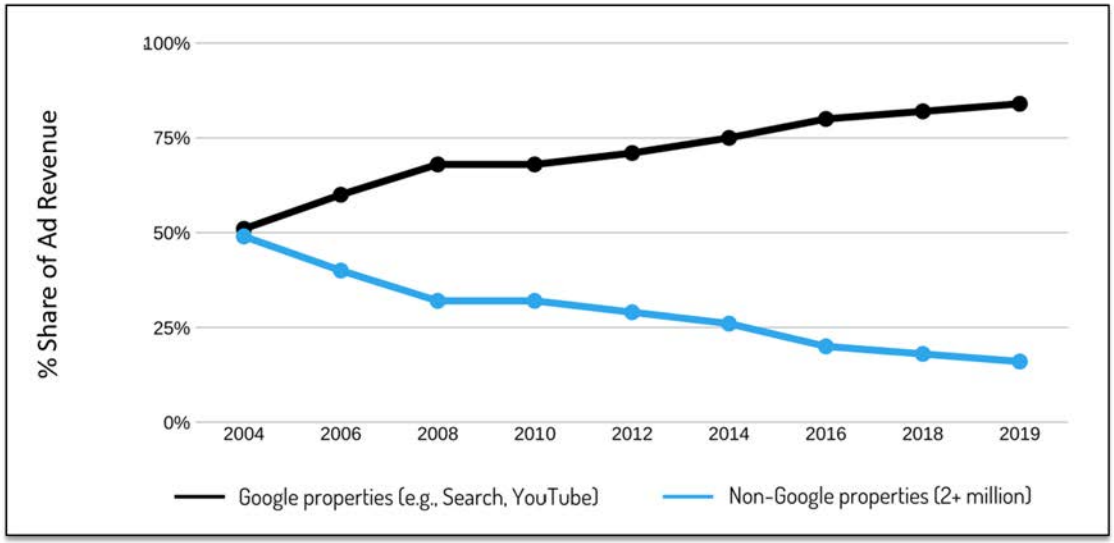
00068928 - 00068929

Google Dominates the Online Ad Market



Online Platforms and Digital Advertising CMA Market Study July 1, 2020

Share of Google Ad Revenues Going to Google vs. Non-Google Properties 2004-2019



Google Annual Reports from 2004 through 2019 (Srinivasan, 2020. Why Google Dominates Advertising Markets.)

Apple Bans Copycat Apps, but Permits Apple Copycats

4. Design

Apple customers place a high value on products that are simple, refined, innovative, and easy to use, and that's what we want to see on the App Store. Coming up with a great design is up to you, but the following are minimum standards for approval to the App Store. And remember that even after your app has been approved, you should update your app to ensure it remains functional and engaging to new and existing customers. Apps that stop working or offer a degraded experience may be removed from the App Store at any time.

4.1 Copycats

Come up with your own ideas. We know you have them, so make yours come to life. Don't simply copy the latest popular app on the App Store, or make some minor changes to another app's name or UI and pass it off as your own. In addition to risking an intellectual property infringement claim, it makes the App Store harder to navigate and just isn't fair to your fellow developers.

10. Term and Termination. Apple may terminate or suspend you as a registered Apple Developer at any time in Apple's sole discretion. If Apple terminates you as a registered Apple Developer, Apple reserves the right to deny your reapplication at any time in Apple's sole discretion. You may terminate your participation as a registered Apple Developer at any time, for any reason, by notifying Apple in writing of your intent to do so. Upon any termination or, at Apple's discretion, suspension, all rights and licenses granted to you by Apple will cease, including your right to access the Site, and you agree to destroy any and all Apple Confidential Information that is in your possession or control. At Apple's request, you agree to provide certification of such destruction to Apple. No refund or partial refund of any fees paid hereunder or any other fees will be made for any reason. Following termination of this Agreement, Sections 1, 3-5, 7 (but only for so long as the duration specified by Apple for such usage), 10-19 shall continue to bind the parties.

11. Apple Independent Development. Nothing in this Agreement will impair Apple's right to develop, acquire, license, market, promote or distribute products, software or technologies that perform the same or similar functions as, or otherwise compete with, any other products, software or technologies that you may develop, produce, market, or distribute. In the absence of a separate written agreement to the contrary, Apple will be free to use any information, suggestions or recommendations you provide to Apple pursuant to this Agreement for any purpose, subject to any applicable patents or copyrights.

12. Use Of Apple Trademarks. You agree to follow Apple's trademark and copyright guidelines as published at: [illegible]lelinesfor3rdparties.html ("**Guidelines**") and as may be modified [illegible] the marks "Apple," the Apple Logo, "Mac", "iPhone," "iPod touc[illegible] to Apple in

PARTIES. TO THE EXTENT THAT APPLE MAKES ANY PRE-RELEASE SOFTWARE,

"11. Apple Independent Development. Nothing in this Agreement will impair Apple's right to develop, acquire, license, market, promote or distribute products, software or technologies that perform the same or similar functions as, or otherwise compete with, any other products, software or technologies that you may develop, produce, market, or distribute. In the absence of a separate written agreement to the contrary, Apple will be free to use any information, suggestions or recommendations you provide to Apple pursuant to this Agreement for any purpose, subject to any applicable patents or copyrights. "

Mr. CICILLINE. I will now recognize myself for 5 minutes.

Mr. Pichai, over 85 percent of all online searches go through Google. Every online company in the United States depends on Google to reach users. A business may sink or swim based on Google's decisions alone.

Numerous online businesses told us that Google steals their content and privileges its own sites in ways that profit Google but crush everyone else. Most businesses asked to stay anonymous due to fears that Google would retaliate against them.

One entrepreneur, Brian Warner, told us his website was thriving until Google stole his content. After Google's decision, traffic to his website dropped by 80 percent. He had to downsize his business and lay off half his staff. He told us, and I quote, "If someone came to me with an idea for a website or a web service today, I'd tell then to run—run as far away from the web as possible. Launch a lawn-care business or a dog-grooming business, something Google can't take away as soon as he or she is thriving."

So my first question, Mr. Pichai, is why does Google steal content from honest businesses?

Mr. PICHAI. Mr. Chairman, with respect, I disagree with that categorization.

Just last week, I met with many small businesses. In fact, today, we support 1.4 million small businesses, supporting over $385 billion in economic activity.

We see many businesses thrive, particularly even during the pandemic. An example: Kettle Kings in Texas, which sells kettlebells, they've really expanded——

Mr. CICILLINE. Mr. Pichai, I have a limited amount of time, so I don't want to interrupt you, but my question is very specific.

We've heard throughout this investigation that Google has stolen content to build your own business. These are consistent reports. And so your testimony that that doesn't happen is really inconsistent with what we've learned during the course of the investigation.

But I'll move on to a new question.

Mr. Pichai, most Americans believe that when they enter a search query that what Google shows are the most relevant results. But, increasingly, Google just shows whatever is most profitable for Google, be it Google Ads or Google's own sites.

And so my question, Mr. Pichai: Isn't there a fundamental conflict of interest between serving users who want to access the best and most relevant information and Google's business model, which incentivizes Google to sell ads and keep users on Google's own sites?

Mr. PICHAI. We have always focused on providing users the most relevant information. And we rely on that trust for users to come back to Google every day.

In fact, the vast majority of queries in Google, we don't show ads at all. And we show ads only for a small subset of queries where the intent from users is highly commercial. For example, they may be looking for something like TV sets or so on. So——

Mr. CICILLINE. But, Mr. Pichai, what is the value of the part that you do use the Google Ads for? I mean, it's a substantial part of your business. What's the actual value? $200 billion? $300 billion?

Mr. PICHAI. You know, in terms of revenue, it's around $100-plus billion.

Mr. CICILLINE. Okay.

Mr. PICHAI. But——

Mr. CICILLINE. That's a lot of money, Mr. Pichai.

Let me move on.

Really, Mr. Pichai, it's Google's business model that is the problem. Our documents show that Google evolved from a turnstile to the rest of the web to a walled garden that increasingly keeps users within its sites.

Emails show that, over a decade ago, Google started to fear competition from certain websites, web pages that could divert search traffic and revenue from Google. These documents show that Google staff discussed the "proliferating threat," is how it was described, that these web pages posed to Google. Any traffic lost to other sites was a loss in revenue. One of Google's memos observed that certain websites were getting, and I quote, "too much traffic," so Google decided to put an end to that.

Mr. Pichai, you've been at Google since 2004. Were you involved in these discussions about the threat from vertical search?

Mr. PICHAI. Congressman, without knowing the specifics, you know, I'm not really clear of the context.

But, definitely, when we look at vertical searches, it validates the competition we see. For example, when users come looking to shop online, independent studies show that over 55 percent of product searches originate with Amazon and over 70 percent originate with the major e-commerce companies.

In the few categories which are commercial in nature, we see vigorous competition, be it travel, be it real estate. And we are working hard for——

Mr. CICILLINE. Well, let me ask very specifically, Mr. Pichai: The evidence that we collected shows that Google pursued a multipronged attack.

First, Google began to steal other web pages' content. For example, in 2010, Google stole restaurant reviews from Yelp to bootstrap its own rival local search business.

Mr. Pichai, do you know how Google responded when Yelp asked you to stop stealing their reviews?

Well, I'll tell you. Our investigation shows that Google's response was to threaten to delist Yelp entirely. In other words, the choice Google gave Yelp was: Let us steal your content, or effectively disappear from the web.

Mr. Pichai, isn't that anticompetitive?

Mr. PICHAI. Congressman, you know, when I run the company, I am really focused on giving users what they want. We conduct ourselves to the highest standard. Happy to engage, understand the specifics, and answer your questions further.

Mr. CICILLINE. Thank you.

And I just have one final series of questions, Mr. Pichai. Did Google ever use its surveillance over web traffic to identify competitive threats?

Mr. PICHAI. Congressman, just like other businesses, we try to understand trends from, you know, data which we can see, and we

use it to improve our products for our users. But we are really focused on improving our products, and that's how——

Mr. CICILLINE. I appreciate that, Mr. Pichai.

Google's own documents and numerous interviews with companies affected by this conduct show that Google did just that, which is very disturbing and very anticompetitive.

In addition to stealing content, Google also began to privilege its own sites. An investigative report published just yesterday found that 63 percent of web searches that start on Google also end somewhere on Google's own websites.

And, to me, that's evidence that Google is increasingly a walled garden which keeps users on Google sites even if Google doesn't have the most relevant information. And it's economically catastrophic for other companies online.

And so my time is running out, but, Mr. Pichai, I'll just end by saying, the evidence seems very clear to me. As Google became the gateway to the internet, it began to abuse its power. It used its surveillance over web traffic to identify competitive threats and crush them. It has dampened innovation and new business growth. And it's dramatically increased the price of accessing users on the internet, virtually ensuring that any business that wants to be found on the web must pay Google a tax.

And, with that, I recognize the ranking member of the subcommittee, Mr. Sensenbrenner, for his first round of questions.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

I've been in Congress 42 years. That's coming to an end at the end of this year. I'm breathing a sigh of relief. But during that period of time, during the decade of the 1990s and the 2000s, you know, I was involved, as chairman of the Science Committee and chairman of this committee, in trying to make the net universal, you know, and open it up to everybody.

And one of the theses that we used is that the net should end up becoming basically the debate on issues, not only in our country but throughout the world. And in exchange for that, this committee and the Congress gave internet service providers immunity, so if somebody said something defamatory in what they posted, the ISPs could not be a part of a lawsuit for defamation.

Now, after hearing Mr. Jordan give a long line of censorship of conservative viewpoints, you know, I am concerned that the people who manage the net—and the four of you manage a big part of the net—you know, are ending up using this as a political screen.

Conservatives are consumers too. And the way the net was put together, in the eyes of Congress, is that everybody should be able to speak their mind.

Mr. Zuckerberg, Mr. Jordan's litany of censorship zeros in on Facebook. Exactly what are your standards in, quote, "filtering out" political speech that maybe some people out there don't agree with?

Mr. ZUCKERBERG. Congressman, thank you for the opportunity to address this.

Our goal is to offer a platform for all ideas. We want to give everyone in the world a voice to share their experiences and ideas. A lot of that is day-to-day things that happen in their lives; some of it is political. And, frankly, I think that we've distinguished our-

selves as one of the companies that defends free expression the most.

We do have community standards around things that you can and cannot say. I think you would likely agree with most of them. They ban categories of harm such as promoting terrorist propaganda, child exploitation, incitement of violence, some more legalistic things like intellectual property violations. And they also ban things like hate speech that could lead to dehumanizing people and——

Mr. SENSENBRENNER. Now, if I——

Mr. ZUCKERBERG [continuing]. Encouraging violence down the road.

Mr. SENSENBRENNER [continuing]. May ask a specific question of you. It was reported that Donald Trump, Jr., got taken down for a period of time because he put something up on the efficacy of hydroxychloroquine.

Now, I wouldn't take it myself, but there still is a debate on whether it is effective either in treating or preventing COVID–19, and I think that this is a legitimate matter of discussion. And it would be up to a patient and their doctor to determine whether hydroxychloroquine was the correct medication, you know, given the circumstances.

Now, why did that happen?

Mr. ZUCKERBERG. Congressman, well, first, to be clear, I think what you might be referring to happened on Twitter. So it's hard for me to speak to that. But I can talk to our policies about this. We do prohibit content that will lead to imminent risk of harm, and stating that there's a proven cure for COVID when there is, in fact, none might encourage someone to go take something that could have some adverse effect. So we do take that down.

We do not prohibit discussion around trials of drugs or people saying that they think that things might work or personal experiences with experimental drugs. But if someone is going to say that something is proven when, in fact, it is not, that could lead people to make the decision——

Mr. SENSENBRENNER. Wouldn't that be up to somebody on the other side of the issue to say that this is not proven? And, you know, I know as a fact that, you know, for people with certain conditions, it's contraindicated, and they shouldn't take it on that. But wouldn't that be up to somebody else, you know, to say, "Okay, what somebody posted on this really isn't true, and here's what the facts are," rather than having Twitter or Facebook take it down?

Mr. ZUCKERBERG. Congressman, in general I agree with you, and we do not want to become the arbiters of truth. I think that that would be a bad position for us to be in and not what we should be doing.

But on specific claims, if someone is going to go out and say that hydroxychloroquine is proven to cure COVID when, in fact, it has not been proven to cure COVID and that statement could lead people to take a drug that in some cases some of the data suggests that it might be harmful to people, we think that we should take that down. That could cause imminent risk of harm.

Mr. SENSENBRENNER. Thank you. I yield back.

Mr. CICILLINE. I thank the gentleman.

I now recognize the distinguished chair of the full Judiciary Committee, Mr. Nadler, from New York for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Zuckerberg, I want to thank you for providing this information during our investigation. However, the documents you provided tell a very disturbing story, and that story is that Facebook saw Instagram as a powerful threat that could syphon business away from Facebook. And so, rather than compete with it, Facebook bought it. This is exactly the type of anticompetitive acquisition that the antitrust laws were designed to prevent.

Now, let me explain what I mean. Mr. Zuckerberg, you have written that Facebook can likely always just buy any competitive startups. In fact, on the day Facebook bought Instagram, which you describe as a threat, you wrote, quote, "One thing about startups is you can often acquire them," closed quote. Mr. Zuckerberg, you were referring to companies like Instagram in that quote, weren't you?

Mr. ZUCKERBERG. Congressman, I don't have the exact document in front of me, but I have always been clear that we viewed Instagram both as a competitor and as a complement to our services. In the growing space around—after smartphones started getting big, and they competed with us in the space of mobile cameras and mobile photo sharing, but at the time, almost no one thought of them as a general social network. And people didn't think of them as competing with us in that space.

And, you know, I think that the acquisition has been wildly successful. We were able to, by acquiring them, continue investing in it and growing it as a stand-alone brand that now reaches many more people than I think either Kevin, the cofounder, or I thought would be possible at the time while also incorporating some of the technology into making Facebook's photos—sharing products better. So, yes.

Mr. NADLER. Okay. Now, in early 2012, when Facebook contemplated acquiring Instagram, a competitive startup, you told your CFO that the nascent Instagram could be very disruptive to us. And in the weeks leading up to the deal, you described Instagram as a threat, saying that, quote, "Instagram can meaningfully hurt us without becoming a huge business," unquote.

Now, Mr. Zuckerberg, what did you mean when you described Instagram as a threat, as disruptive, and when you said that Instagram could meaningfully hurt Facebook? Did you mean that consumers might switch from Facebook to Instagram?

Mr. ZUCKERBERG. Congressman, thanks for the opportunity to address this. At the time, there was a small but growing field of——

Mr. NADLER. Did you mean that consumers might switch from Facebook to Instagram? That was my question.

Mr. ZUCKERBERG. Thanks. Congressman——

Mr. NADLER. Yes or no? Did you mean that?

Mr. ZUCKERBERG. In the space of mobile photos and camera apps, which was growing, they were a competitor. I've been clear about that.

Mr. NADLER. Okay. Fine.

Mr. ZUCKERBERG. And——

Mr. NADLER. Fine. In February of that year, in February 2012, you told Facebook's chief financial officer that you were interested in buying Instagram. He asked you whether the purpose of the deal was to neutralize a potential competitor or to integrate their products with ours in order to improve our services.

You answered that it was a combination of both, saying: What we're really buying is time. Even if some new competitors springs up, those products won't get much traction since we'll already have their mechanics deployed at scale.

Mr. Zuckerberg, what did you mean when you answered that the purpose of the deal was to neutralize a potential competitor?

Mr. ZUCKERBERG. Congressman, well, those aren't my words, but, yes, I've been clear that Instagram was a competitor in the space of mobile photo sharing. There were a lot of others at the time that competed with apps like VSCO Cam and PicPlease and companies like Path.

It was a subset of the overall space of connecting that we exist in. And by having them join us they certainly went from being a competitor in the space of being a mobile camera to an app that we could help grow and help get more people to be able to use and be on our team, and I think that that's been wildly successful.

Mr. NADLER. Reclaiming my time. Well, Mr. Zuckerberg, mergers and acquisitions that buy off potential competitive threats violate the antitrust laws. In your own words, you purchased Instagram to neutralize a competitive threat. If this was an illegal merger at the time of the transaction, why shouldn't Instagram now be broken off into a separate company?

Mr. ZUCKERBERG. Well, Congressman, I think the FTC had all of these documents and reviewed this and unanimously voted at the time not to challenge the acquisition. I mean, I think with hindsight, it probably looks like obvious that Instagram would have reached the scale that it has today, but at the time, it was far from obvious.

A lot of the competitors that Instagram competed with in mobile sharing, I'm including companies like Path, which were hot at the time and had great founders and entrepreneurs running them, like Dave Morin and I worked closely with him, I mean, I don't even think Path exists today. It was not a guarantee that Instagram was going to succeed.

The acquisition has done wildly well, largely not just because of the founders' talent but because we invested heavily in building up the infrastructure and promoting it and working on security and working on a lot of things around this, and I think that this has been an American success story.

Mr. NADLER. Well, thank you. Mr. Zuckerberg, you're making my point.

In closing, Mr. Chairman, I want to end where I began. Facebook, by Mr. Zuckerberg's own admission and by the documents we have from the time, saw Instagram as a threat that could potentially syphon business away from Facebook. And so, rather than compete with it, Facebook bought it. This is exactly the type of anticompetitive acquisition that the antitrust laws were designed to prevent. This should never have happened in the first

place. It should never have been permitted to happen, and it cannot happen again.

I yield back.

Mr. CICILLINE. Thank you, Mr. Chairman. I would remind the witness that the failures of the FTC in 2012, of course, do not alleviate the antitrust challenges that the chairman described.

And, with that, I'm going to recognize the gentleman from Colorado and, again, thank him for co-hosting one of the most important hearings we had along with Mr. Neguse in Colorado that I think was very critical in this investigation. And you're recognized for 5 minutes, Mr. Buck.

Mr. BUCK. Thank you, Mr. Chairman. And I want to offer my appreciation to you for the bipartisan way that you have approached the subcommittee's investigation.

I want to start by saying that capitalism is the greatest instrument for freedom this world has ever seen. Capitalism has given the United States the freedom and means to defeat the Soviet Union, beat back fascism, and put a man on the moon.

This economic system has lifted millions out of poverty. It has made America the freest, most prosperous nation in the world. Our witnesses have taken ideas born out of a dorm room, a garage, a warehouse and built these dreams into four of the biggest power players in the digital global economy. You have all enjoyed the freedom to succeed.

Now, let me be clear: I do not believe big is necessarily bad; in fact, big is often a force for good. However, I want to address one particularly disturbing issue. Mr. Pichai, in October 2018, Google dropped out of the running for a Pentagon contract to complete the joint enterprise defense infrastructure, or JEDI contract, which was valued at more than $10 billion. Google's stated reason for removing itself from the bidding process is that the U.S. military's project did not align with Google's corporate values and principles.

This is the same U.S. military that fights for our freedoms and stands as a force for good across the globe. These are the same soldiers, sailors, and airmen that sacrificed their lives to ensure you have the freedom to build your company and set your corporate policies without fear of government interference, unlike in Communist China.

I also find it very interesting that only months after making this decision to withdraw from the JEDI contract, Marine General Joseph Dunford, the Chairman of the U.S. Joint Chiefs of Staff, warned the Senate Armed Forces Committee that the Chinese military was directly benefiting from Google's work.

It made me wonder, what values Google and Communist Red China had in common? I asked myself, self, is it that the Chinese Communist Party imprisons Uighur Muslims in concentration camps like is shown on the chart behind me? Could it be that China forces slaves to work in sweatshops? Maybe they align on the design to suppress free speech in Hong Kong.

Did Google agree with CCP's decision to lie to the world about the COVID–19 pandemic? Then I thought about Google's dragonfly experiment. I wondered if perhaps you agreed with the Chinese Government's use of technology platforms to spy on its own people and enforce draconian security laws. Maybe it's that your company

is aligned with the Chinese Communist Party's corporate espionage policies where the strategy is to steal whatever can't be produced domestically.

These values that allow Google to work with the Chinese military but not the U.S. military help explain why Google wouldn't think twice about blatantly stealing a competitor's product, right down to the watermark, without any hint of attribution.

Mr. Pichai, during our field hearing in my home state of Colorado, I heard a story that sounded so brazen and contrary to free market principles that I thought it must have been straight from the Chinese Communist Party's corporate espionage playbook.

Google took advantage of a company that relied on your search engine to build its brand and compete. Google misappropriated lyrics from Genius Media Group's website and published those lyrics on Google's own platform. However, Genius caught Google in the act, quite literally red-handed.

When Genius suspected this corporate theft was occurring, the company incorporated a digital watermark in its lyrics that spelled out "red-handed" in Morse code. Google's lyric boxes contained the watermark showing that your company stole what you couldn't or didn't want to produce yourself.

After Google executives stated that they were investigating this problematic behavior, Genius created another experiment to determine the scope of the misappropriation. It turns out that, out of 271 songs where the watermark was applied, 43 percent showed clear evidence of matching. Your company, which advertises itself as a doorway to freedom, took advantage of this small company, all but extinguishing Genius' freedom to compete.

Google is supposed to connect people to information. Your corporate values once stood for freedom, a platform that let capitalism flourish and helped bring countless people across the globe out of poverty.

My question to you, Mr. Pichai, do you think that Google could get away with following China's corporate espionage playbook if you didn't have a monopolistic advantage in the market?

Mr. PICHAI. Congressman, I want to be able to address the important concerns you raised. First of all, we are proud to support the U.S. Government. We recently signed a big project with the Department of Defense where we are bringing our world-class zero trust-based cybersecurity approach to help protect our networks from cybersecurity attacks.

We have projects underway with the Navy, with the Department of Veterans Affairs. Happy to follow up and explain more. We have a very limited presence in China. We don't offer any of our services, Search, Maps, Gmail, YouTube, et cetera, in China.

And with respect to music, we license content fair, in fact, we license content from other companies, and so this is a dispute between Genius and the other companies in terms of where the source of the content is. But, again, happy to engage and explain what we do here further.

Mr. BUCK. Thank you. I yield back, Mr. Chairman.

Mr. CICILLINE. I thank the gentleman.

I now recognize the gentleman from Georgia, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Cook, with over 100 million iPhone users in the United States alone, and with Apple's ownership of the App Store giving Apple the ability to control which apps are allowed to be marketed to Apple users, you wield immense power over small businesses to grow and prosper.

Apple is the sole decisionmaker as to whether an app is made available to app users through Apple's App Store. Isn't that correct?

Mr. COOK. Sir, the App Store—thank you for the questions. The App Store is a feature of the iPhone much like the camera is and the chip is, and so what the——

Mr. JOHNSON. Yeah. My point is—and I'm sorry to interrupt, but I want to get to the point. The point is that Apple is the sole decisionmaker as to whether an app is made available to app users through the Apple store. Isn't that correct?

Mr. COOK. If it's a native app, yes, sir. If it's a web app, no.

Mr. JOHNSON. All right. Okay. Thank you. Thank you. And throughout our investigation, we've heard concerns that rules governing the App Store review process are not available to the app developers. The rules are made up as you go. They are arbitrarily interpreted and enforced and are subject to change whenever Apple sees fit to change them. And developers have no choice but to go along with the changes or, more, they must leave the App Store. That is an enormous amount of power.

Also, the rules get changed to benefit Apple at the expense of app developers, and the App Store is said to also discriminate between app developers with similar apps on the Apple platform and also against small app developers versus large app developers. So, Mr. Cook, does Apple not treat all app developers equally?

Mr. COOK. Sir, we treat every developer the same. We have open and transparent rules. It's a rigorous process. Because we care so deeply about privacy and security and quality, we do look at every app before it goes on. But those apps—those rules apply evenly to everyone. And as you can tell by going from——

Mr. JOHNSON. Some developers are favored over others though. Isn't that correct?

Mr. COOK. That is not correct. And as you can tell from going from just 500——

Mr. JOHNSON. Sir, I'll give you example. Baidu has two App Store employees assigned to help it navigate the App Store bureaucracy. Is that true?

Mr. COOK. I don't know about that, sir.

Mr. JOHNSON. Well, you don't have other app developers who have that same access to Apple personnel, do you?

Mr. COOK. We do a lot of things with developers including looking at their beta test apps regardless of whether they're small or large.

Mr. JOHNSON. Okay. Well, let me ask you this question: Apple has negotiated exceptions to its typical 30 percent commission for some apps like Amazon Prime. Is that—is a reduced commission such as the one that Amazon Prime gets available to other app developers?

Mr. COOK. It's available to anyone meeting the conditions, yes.

Mr. JOHNSON. Okay. Well, let me ask you this: Apple requires all app developers to use Apple's payment processing system if those developers want to sell their goods or services to Apple users through Apple's App Store. Isn't that correct?

Mr. COOK. That is correct because it's——

Mr. JOHNSON. And by processing payments for apps that you allow into the App Store, you collect their customer data and you use that data to inform Apple as to whether Apple should—whether or not it would be profitable for Apple to launch a competing app. Isn't that correct?

Mr. COOK. Sir, 84 percent of the apps are charged nothing. The remaining 16 percent either pay 15 or 30 depending upon the specifics. If it's in the second year of a subscription, as an example, it only pays 15 percent. If you look back at history——

Mr. JOHNSON. Well, what's to stop Apple from increasing its commission to 50 percent?

Mr. COOK. Sir, we have never increased commissions in the store since the first day it operated in 2008.

Mr. JOHNSON. There's nothing to stop you from doing so, is there?

Mr. COOK. No, sir, I disagree strongly with that. There's a competition for developers just like there's a competition for customers, and so the competition for developers, they write their apps for Android or Windows or Xbox or PlayStation.

So we have fierce competition at the developer side and the customer side, which is essentially—it's so competitive I would describe it as a street fight for market share in the smart phone business.

Mr. JOHNSON. Has Apple ever retaliated against or disadvantaged a developer who went public about their frustrations with the App Store?

Mr. COOK. Sir, we don't—we do not retaliate or bully people. It's strongly against our company culture.

Mr. CICILLINE. The time of the gentleman has expired.

The chair now recognizes the gentleman from Florida, Mr. Gaetz.

Mr. GAETZ. Mr. Zuckerberg in his written testimony made the claim that Facebook is an American company with American values. Do any of the rest of you take a different view, that is to say that your companies don't embrace American values? It's great to see that none of you do.

Mr. Pichai, I'm worried about Google's market power, how it concentrates that power, and then ultimately how it wields it. Project Maven was a collaboration between Google and the Department of Defense that Google pulled out of, citing ethical concerns, and you made the decision to pull out of that joint venture following receipt of a letter from thousands of your employees saying that Google should not be in the business of war.

My question, Mr. Pichai is, did you weigh the input from your employees when making the decision to abandon that project with the United States military?

Mr. PICHAI. Congressman, thanks for your concern. As I said earlier, we are deeply committed to supporting the military and the U.S. Government. We have undertaken several projects since then. We do take our employees' input into account, but it's one input.

We make decisions based on a variety of factors. As a company, we were new in the cloud space at that time. Since then we have——

Mr. GAETZ. Thank you. That is a sufficient answer, that you did take their feedback into account. And, in fact, some of your Googlers have recently sent you a letter where they've asked you to exit other partnerships as a consequence of ethical concerns.

They've asked you to stop doing business with American law enforcement, saying that police broadly uphold white supremacy and that Google should not be engaged in any services to police. And as you well know, you provide some of the most basic services to police, like email, but you also provide services that help keep our cops safe when they're doing their job.

And so my question is here, in front of Congress and the American people, will you take the pledge that Google will not adopt the bigoted antipolice policy that is requested in the most recent letter?

Mr. PICHAI. Congressman, we have a long track record of working with law enforcement when it is supported by due process and the law. We push back against over broad requests. We are transparent about the requests we get. But we have a long history of following the law and cooperating with law enforcement.

Mr. GAETZ. I understand the history. I'm asking about the future. To the law enforcement that are watching today, can they rest assured that, under your leadership, Google will not adopt these bigoted antipolice policies?

Mr. PICHAI. Congressman, we have committed to continuing to work with law enforcement in a way that's consistent with law and due processes in the U.S.

Mr. GAETZ. Well, I greatly appreciate that, and I know that will be very comforting to the police who utilize your services.

You mentioned earlier in the discussion about China that your engagement in China was very limited. But yet Google has an AI China center. The Chinese Academy of Sciences has published a paper that enhanced the targeting capabilities of China's J–20 fighter aircraft.

You collaborate with Chinese universities that take millions upon millions of dollars from the Chinese military. As a matter of fact, one of your Googlers, Fei-Fei Li, while under your employ, was cited in Chinese state media saying, "China is like a sleeping giant; when she wakes, she will tremble the world."

The former Secretary of Defense, Mr. Shanahan, said that the lines have been blurred in China between commercial and military application. And as Mr. Buck cited, General Dunford says that your company is directly aiding the Chinese military. And Peter Thiel, who actually serves on Mr. Zuckerberg's board at Facebook, said that Google's activities with China are treasonous. He accused you of treason.

So why would an American company with American values so directly aid the Chinese military but have ethical concerns about working alongside the U.S. military on Project Maven? And I understand your point about cybersecurity and those things, but Project Maven was a specific way to ensure that our troops are safe on the battlefield. And if you have no problem making the J–20 Chinese fighter more effective in its targeting, why wouldn't you want to make America as effective?

Mr. PICHAI. Congressman, with respect, we are not working with the Chinese military. It's absolutely false. I had a chance to meet with General Dunford personally. We have clarified what we do in China compared to our peers. It's very, very limited in nature. Our AI work in China is limited to a handful of people working on open-source projects. I'm happy to share and engage with your office to explain our work in China further.

Mr. Gaetz. Gosh, I mean, when the Chairman of the Joint Chiefs of Staff says that an American company is directly aiding China, when you have an AI center, when you're working with universities, and when your employees are talking about China trembling the world, it seems to really call into question your commitment to our country and our values.

I see my time is expired. I hope we have an additional round, Mr. Chairman.

Mr. CICILLINE. I thank the gentleman.

I now recognize the gentleman from Maryland, Mr. Raskin, for 5 minutes.

Mr. RASKIN. Thank you, Mr. Chairman.

Mr. Zuckerberg, as you know, the proliferation of fake Facebook accounts was a key tool in the strategy of Russian interference in the American election in 2016. American law enforcement, the Senate, the House, have all found that Vladimir Putin engaged in a sweeping and systematic campaign to undermine American democracy in 2016 and to work for a victory for Donald Trump.

In his remarkable book "Mind" blank—and I'm being polite here—"Cambridge Analytica and the Plot to Break America," whistleblower Christopher Wylie, who worked for several years at Cambridge Analytica recounts how the Russian assault on America in Cambridge Analytica's research depended on Facebook, quote: "When Cambridge Analytica launched in the summer of 2014, Steve Bannon's goal was to change politics by changing culture. Facebook's data, algorithms, and narratives were his key weapons. The Cambridge Analytica team used these tools to identify people who exhibited the three traits in what they called the dark triad: narcissism, Machiavellianism, and psychopathy.

They then proceeded to bombard and activate these people, a small percentage of the American public, but still millions of people with increasingly dark and manipulative messages from fake Facebook pages, both to get them to vote for Trump but, more importantly, to activate them as racist and white nationalists."

And they go on to describe—he goes on to describe the remarkable success of this campaign, both electorally but also politically in the country in terms of sowing the terrible racial and ethnic divisions that you see in America today. So they waged a mass campaign of psychological warfare to polarize America around race and religion and to activate racists and anti-Semites. And it worked splendidly for them, but it didn't work so well for America.

So, Mr. Zuckerberg, which parts of this narrative have you addressed or are you planning to address, or do you just see that essentially as the cost of being a forum in a marketplace for ideas? Is there nothing that can be done about the use of Facebook to engender social division in America?

Mr. ZUCKERBERG. Congressman, thank you.

Since 2016, there have been a lot of steps that we've taken to protect the integrity of elections. We've hired, I think it's more than 30,000 people to work on safety and security. We've built up AI systems to be able to find harmful content, including being able to find more than 50 different networks of coordinated and authentic behavior, basically nation-states trying to interfere in elections around the globe, not just——

Mr. RASKIN. Let me just pause you there for a second because I'm interested in that. The Stop Hate for Profit campaign is a coalition that includes the Color of Change, the Anti-Defamation League and other civil rights groups, and they're targeting Facebook right now for a boycott because of the rapid spread of hate messages online, the presence of boogaloo and other right-wing extremist groups trying to infiltrate and disrupt Black Lives Matter protests and the fact that alt-right racist and anti-Semitic content flourishes on Facebook. So they're asking you to remove these pages and essentially to join the movement for civil rights by not allowing that kind of content. Their boycotters include a lot of big companies, including Patagonia, Levi's, McDonalds, VW, Heineken, and so on. But you seem not to be that moved by their campaign, and I just wonder what you think about what they're asking you to do?

Mr. ZUCKERBERG. Congressman, thanks. We're very focused on fighting against election interference, and we're also very focused on fighting against hate speech. And our commitment to those issues in fighting them go back years before this recent movement.

Since 2016, the defenses that the company has built up to help secure elections, not just in the U.S. but around the world, I think are some of the most advanced that any company or government has in the world now. We routinely now collaborate with law enforcement and intelligence agencies and are able to sometimes identify threats coming from other countries before governments are even able to.

In terms of fighting hate, we've built really sophisticated systems. Our goal is to identify it before anyone even sees it on the platform. And we've built AI systems, and as I mentioned, have tens of thousands of people working on safety and security with the goal of getting this stuff down so that way—before people even see it.

And, right now, we're able to proactively identify 89 percent of the hate speech that we take down before I think it's even reported by other people. So I want to do better than 89 percent. I'd like to get that to 99 percent. But we have a massive investment here. We invest in billions of dollars——

Mr. RASKIN. Because my time is almost out, can you just address the proliferation of fake accounts? I understand annually you get 6.5 billion fake accounts produced there, but in some sense, you have a profit motive that's linked to that because that's what's reported to your investors, the number of accounts. Are you working zealously to try to ferret out these fake accounts that are used to spread hate and disinformation?

Mr. CICILLINE. The gentleman's time has expired, but the witness may answer the question.

Mr. ZUCKERBERG. Congressman, absolutely. We work hard on this. We take down billions of fake accounts a year. A lot of that is just people trying to set up accounts to scam people for commercial reasons. A very small percent of that are nation-states trying to interfere in elections, but we are very focused on trying to find those.

Having fake and harmful content on our platform does not help our business. It hurts our business. People do not want to see that stuff, and they use our services less when they do. So we are aligned with people in order to take that down, and we invest billions of dollars a year in doing so.

Mr. RASKIN. I yield back. Thank you.

Mr. CICILLINE. The committee will stand in recess for 10 minutes while we fix a technical feed with one of our witnesses.

[Recess.]

Mr. CICILLINE. The committee will come back to order.

I now recognize the gentleman from North Dakota, Mr. Armstrong, for 5 minutes.

Mr. ARMSTRONG. Google has received criticism about bias against conservatives and content moderation. There were threats of demonetizing the Federalist and numerous other complaints of viewpoint suppression. As a result, a significant portion of the American public has lost trust in your company.

A lack of public confidence in a product usually means there is economic harm to the company, but that just isn't the case with Google. So I think it's a legitimate question as to whether Google's market power insulates it from loss of revenue normally associated with offending half the people who use your product. I also think it's a legitimate question to ask if other attempts to regulate your industries have worked.

So, Mr. Pichai, Google has restricted advertising analytics or the portability of user data related to advertising due to compliance with the General Data Protection Regulation. Specifically, in 2018, Google restricted the ability to export the Double ID, a cookie-based identifier that compiles individual user data and creates profiles through Google data transfer. Is that correct?

Mr. PICHAI. Congressman, I'm not familiar with the specifics of the particular issue, but happy to follow up more once I understand it better.

Mr. ARMSTRONG. So you're not particularly familiar with how you're complying with GDPR?

Mr. PICHAI. Congressman, we have long been working to comply with GDPR. We think it's an important regulation, and, you know, we have—we are in full compliance, to the extent of my knowledge. I just meant not aware of the specific issue with the identifier you mentioned there, but happy to understand it better and follow up.

Mr. ARMSTRONG. All right. So, in order to comply with GDPR, Google must retain control over more user data and restrict the ability to combine this user data with other platforms to conduct cross-platform analysis. It seems as if that ultimately limits the ability of advertisers to make comparisons between Google-based campaigns and non-Google-based campaigns. Would you agree with that?

Mr. PICHAI. In all these ecosystems, we are balancing between users, advertisers, and publishers. We deeply care about the privacy and security of our users, and so, when we serve these ecosystems, we have to take that into account. We have to comply with important laws and regulations in every country we operate in. And so that's the delicate balance we are constantly striking, but we are focused on our users and trying to do the best we can.

Mr. ARMSTRONG. And I just want to be perfectly clear, I personally believe that just the market power consolidation is significant, but I also want to be clear that when we're moving forward to regulate this, that we aren't actually squeezing out competition in our quest to do something, because I've said that before in this hearing and I'll say it again: Usually in our quest to regulate big companies, we end up hurting small companies more.

And I'm a strong privacy advocate, but the consequences of GDPR have been to further entrench large established actors like Google, leading to regulatory capture that exasperates competition concerns. And Google's digital ad market share has increased since the implementation of GDPR. Do you know that to be correct?

Mr. PICHAI. Congressman, to just give you a sense of the robust competition we see, ad prices have fallen down by 40 percent in the past 10 years. And, in fact, in the U.S., advertising as a share of GDP has come down from 1.4 percent in 1992, less than 1 percent today.

So we see robust competition in the marketplace. And as I said earlier, you know, we have to comply with regulation, we have to interpret it strictly, and we have to balance the ecosystem. But our utmost care is ensuring privacy and security of our users as we serve these markets.

Mr. ARMSTRONG. And I'm glad you mentioned privacy, because I would be remiss if I didn't deal with this issue, because it is so relevant. And I think, generally speaking, outside of the political issues and the biases with all of this, and this is for essentially all four of our witnesses, I think one of our bigger concerns when we talk about data and value—and that data having value, and privacy, which is where people really get concerned with how the digital age is moving forward.

And there are news reports that law enforcement has made increasing use of what are called geo-fence warrants, and these geofence warrants allow authorities to compel technology companies to disclose location records for any device in a certain area at a particular time. Court filings suggest that Google received about 1,500-percent increase in geo-fence requests from 2017 to 2018 and a 500-percent increase from 2018 to 2019.

Unless—and so the Fourth Amendment requires probable cause and specificity, and that's not what these are. These warrants are essentially for any person in an area at a particular time, and geofence warrants require neither. So, unless a company by particularized information and identifying a subject, geo-warrants are essentially general warrants.

I believe that location information should be considered as a contents of the Electronic Communications Act under the historic Communications Act. Do you agree?

Mr. PICHAI. You know, happy to understand more. We deeply care about—this is why we issue transparency reports because we think it's an important area for Congress to have oversight. And we recently made a change by which we automatically delete location activity after a certain period of time by default for our users. So we are happy to engage with your office, Congressman, and engage more.

Mr. ARMSTRONG. And I'm using you because these are going on in Virginia and New York, I think, right now, but, I mean, this equates for everything. I think people would be terrified to know that law enforcement could grab general warrants and get everybody's information anyway. So it requires Congress to act, and it requires everybody that is a witness in this hearing to be willing to work too because it is the single most important issue I think we are going to——

Mr. CICILLINE. The time of the gentleman is expired, but I believe he has a unanimous consent request.

Mr. ARMSTRONG. I do. I have a unanimous consent request for Wall Street Journal article, "Police Requests for Google Users' Location Histories Face New Scrutiny."

Mr. CICILLINE. Without objection.

MR. ARMSTRONG FOR THE OFFICIAL RECORD

Police Requests for Google Users' Location Histories Face New Scrutiny

WSJ wsj.com/articles/police-requests-for-google-users-location-histories-face-new-scrutiny-11595842201

Biography July 27, 2020



Police use of a type of warrant to monitor Google users' locations en masse is staring down its first legal and political challenges as scrutiny of law enforcement tactics grows.

Criminal defendants in Virginia and San Francisco are disputing "geofence" warrants, which authorities can use to scan geographic areas and time periods for suspects through user location histories stored by technology companies. As these motions await arguments and potential decisions as soon as August, New York lawmakers are pushing legislation to ban the practice.

Police turned in both cases to Alphabet Inc.'s Google, which says the number of such requests grew 1,500% from 2017 to 2018, and an additional 500% from 2018 to 2019. The search and advertising giant created a special process to fulfill the warrants but has raised concerns that the demands made by law enforcement invade privacy.

Privacy advocates fear that compliance by Google could lead authorities to seek similar data from fitness trackers, ride-share apps and other companies if more of those businesses begin to store users' granular location histories to hone their products and services.

"We're going to see this ever-expanding universe of geolocation warrants that will be tracking huge numbers of people if we don't outlaw the practice," said Albert Fox Cahn, executive director of the Surveillance Technology Oversight Project, a nonprofit advocacy group.

The pushback coincidentally comes amid a drumbeat of criticism of law enforcement after the killing of George Floyd in Minneapolis police custody in May.

New York state Sen. Luis Sepúlveda, a Democrat who chairs the state senate's Crime Victims, Crime and Correction Committee, co-sponsored a bill in April to outlaw the warrants and informal requests for such data. Mr. Sepúlveda warned that geofence warrants would be used disproportionately in communities of color like many other police tactics, such as stop-and-frisk.

San Francisco public defenders filed a motion last month to quash such a warrant used in the February 2019 arrest of LaQuan Dawes, 30, in connection with a home burglary in the city's Sunset District. They argued authorities' search for Google users within a half-block radius of the house over more than a two-hour period, which eventually zeroed in on Mr. Dawes, violated his Fourth Amendment rights against unreasonable search and seizure.

Separately in Virginia, defense lawyers are seeking an August hearing to make similar arguments on behalf of Okello Chatrie, 25, who is accused of armed robbery of a bank outside of Richmond.

How Google Complies With Geofence Warrants

The tech company created a three-step process for fulfilling authorities' geofence warrants while maintaining as much user privacy as possible, according to court documents.

- Google searches its entire database of accounts with location history enabled to check which users passed through the general area and time period specified in a warrant. The company compiles the information into an anonymized data set for police.
- Authorities review which devices may be of interest, potentially asking for additional location data about specific users for context.
- Authorities may compel Google to de-anonymize account data to identify specific users.

After police requested information about devices that passed within 150 meters of the crime scene over an hourlong period, Google combed through every user who opted into the location-history feature to narrow down potential matches, according to documents filed in the U.S. District Court for the Eastern District of Virginia.

Roughly one-third of all Google users opted in as of last year, according to the company's filings in the case, sending information related to tens or potentially hundreds of millions of people to a database known internally as Sensorvault. A Google representative declined to provide precise numbers.

Lawyers for the company didn't take a position on the warrant in Mr. Chatrie's case, according to court documents. But they called the tactic "a significant incursion on privacy" while highlighting a potential for imprecise data. A company spokesman declined to share the number of warrants it receives.

Google built a special protocol to process the requests. First, Google searches Sensorvault to check which users passed through the area and during the time period specified, providing anonymized information to authorities. After police decide which devices are of interest, they may compel Google to identify specific users.

"We vigorously protect the privacy of our users while supporting the important work of law enforcement," Richard Salgado, Google's director of law enforcement and information security, said in an email.

It is unclear how many other companies comply with these police demands.

Facebook Inc. receives such warrants but doesn't fulfill them because the social media platform has less-precise location data than device makers and limitations in how the data is stored, a spokesperson said. He declined to explain those limitations.

Ride-sharing company Lyft Inc. potentially would comply if warrants don't target "all users in a large geographical area," a spokeswoman said, or for "overly broad time periods," among other criteria. She didn't define those terms.

Fitness-tracking firm Garmin Ltd. hasn't received such requests and wouldn't fulfill them because "it would be very invasive of our users' privacy rights," according to a representative.

The bill to ban such searches in New York has stalled amid the coronavirus pandemic, but Mr. Sepúlveda and Sen. John Liu, another co-sponsor in the state senate, hope to take it up again as the crisis subsides.

The Facebook spokesperson said the company has "been supportive" of the bill but declined to elaborate. Google's Mr. Salgado said the company is encouraged to see a discussion about "the need for rules to govern untargeted access to data by law enforcement."

Mr. Sepúlveda, the New York state senator, urged in an interview that Google push back harder against authorities. "They stand to lose a lot if people realize what's going on," he said.

Mr. ARMSTRONG. And then I have two letters, the letters are from Congressman Walden and Congresswoman McMorris Rodgers. The first letter is to Mr. Cook of Apple. The second letter is to Mr. Pichai of Google.

Mr. CICILLINE. Without objection, both may be entered into the record.

[The information follows:]

MR. ARMSTRONG FOR THE OFFICIAL RECORD

FRANK PALLONE, JR., NEW JERSEY
CHAIRMAN

GREG WALDEN, OREGON
RANKING MEMBER

ONE HUNDRED SIXTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

July 29, 2020

Tim Cook
CEO
Apple Inc.
One Apple Park Way
Cupertino, CA 95014

Mr. Cook:

We write to you regarding Apple's application (app) store and the policies you have in place to ensure apps are appropriately vetted, particularly those with close ties to China and the Chinese Communist Party (CCP). As you know, we have been engaged in oversight to ensure a safe and secure experience for all users online. As we deal with the ongoing COVID-19 pandemic, the growth of smart device use and reliance on teleconferencing has only increased our dependence on apps, and with that an additional layer of protection that virtual private networks (VPNs) can provide.

As with any crisis, there are those that seek to exploit opportunities for their own malicious intent. We believe that bad actors may be taking advantage of the American people's trust in your brand, which likely extends to apps available through your store. While we want an open and transparent marketplace that does not limit innovators outside your company, we know there are those that seek to use apps as a means to push through pop-up ads or hijack devices to make it a tool for eavesdropping.

The level of permissions that these apps require may include access to camera, microphone, and contacts, as well as functionality to load other malware for bad actors to control a device even after the original app has been removed. This is especially alarming when it comes from companies with direct or indirect links to the CCP.

It is even more alarming as this relates to the private sector and our committee's jurisdiction over critical infrastructure, including the telecommunications, health, and energy

sectors. Employees in these sectors could become targets of such app-driven malware as they work from home. We appreciate the joint public-private sector efforts to address these concerns, but your company must do more to screen such apps so that consumers are not reliant just on news articles to bring this to the attention of policymakers.

Especially alarming are those apps marketed as VPNs, which may create a man-in-the-middle vulnerability and a virtual pipeline for our adversaries to our critical data. This was highlighted in a piece in Forbes earlier this year.[1] We are pleased that companies act quickly when questionable activities are raised on companies like Shenzhen Hawk, which is a subsidiary of Chinese conglomerate TCL, that is partially state-owned. However, it also raises questions on the level of scrutiny that these apps receive when they are admitted to your app store.

Accordingly, please provide written answers and any related documentation to the following questions no later than August 12, 2020:

1. It was recently reported that TikTok was spying on users who were using iOS 14 by accessing the clipboard on users' iPhone. Please detail how this was allowed to happen and what steps have been taken to ensure TikTok can no longer do this.

2. Given the reported close ties between TikTok's parent company – ByteDance – and the CCP, do you apply additional scrutiny to the app, including regular audits to ensure the app is in compliance with your policies?

    a. If yes, please detail the additional scrutiny TikTok undergoes.

    b. If no, please explain why not given the national security concerns at play.

3. Please detail your policies as they relate to admittance on your apps store, including what factors are considered to determine if an app meets your data privacy and security standards.

4. Do you proactively audit apps to ensure they comply with your policies or only if a user flags a concern?

    a. If yes, how often do you audit apps on your app store?

    b. If no, why not?

5. If you determine an app is in violation of your policies, what steps do you take to address such violation?

[1] https://www.forbes.com/sites/zakdoffman/2020/02/24/android-very-dangerous-app-warning-105-million-of-you-have-these-10-threats-on-your-phones/#74c2b3a3a995

6. Do you maintain a list of app developers who have abused user information or otherwise violated your policies to ensure such developers will not be allowed back on your platform?

    a. If yes, please explain.

    b. If no, why not?

7. Do you review each app for foreign sourcing prior to admitting such app onto your app store?

    a. If yes, what steps do you take to vet each app regarding foreign sourcing, including whether apps or app developers have a direct or indirect relationship with foreign governments?

    b. If no, why not?

8. Do you review each app to determine whether the app or app developer has a direct or indirect relationship with the CCP? Such relationship may include, but is not limited to, a financial stake in the company by the Chinese state, Chinese state-owned entities, or a CCP board operating within the company.

    a. If yes, what steps do you take to vet such apps?

    b. If no, why not?

9. How are apps on your app store reviewed for critical vulnerabilities?

10. Is there a review of the justifications of the level of permissions that apps seek?

If you have any questions, please contact Tim Kurth and Bijan Koohmaraie at (202) 225-3641. Thank you for your prompt attention to this request.

Sincerely,

Greg Walden
Republican Leader

Cathy McMorris Rodgers
Republican Leader
Subcommittee on Consumer Protection
and Commerce

FRANK PALLONE, JR., NEW JERSEY
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July 29, 2020

Sundar Pichai
CEO
Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043

Mr. Pichai:

We write to you regarding Google's application (app) store and the policies you have in place to ensure apps are appropriately vetted, particularly those with close ties to China and the Chinese Communist Party (CCP). As you know, we have been engaged in oversight to ensure a safe and secure experience for all users online. As we deal with the ongoing COVID-19 pandemic, the growth of smart device use and reliance on teleconferencing has only increased our dependence on apps, and with that an additional layer of protection that virtual private networks (VPNs) can provide.

As with any crisis, there are those that seek to exploit opportunities for their own malicious intent. We believe that bad actors may be taking advantage of the American people's trust in your brand, which likely extends to apps available through your store. While we want an open and transparent marketplace that does not limit innovators outside your company, we know there are those that seek to use apps as a means to push through pop-up ads or hijack devices to make it a tool for eavesdropping.

The level of permissions that these apps require may include access to camera, microphone, and contacts, as well as functionality to load other malware for bad actors to control a device even after the original app has been removed. This is especially alarming when it comes from companies with direct or indirect links to the CCP.

It is even more alarming as this relates to the private sector and our committee's jurisdiction over critical infrastructure, including the telecommunications, health, and energy sectors. Employees in these sectors could become targets of such app-driven malware as they work from home. We appreciate the joint public-private sector efforts to address these concerns, but your company must do more to screen such apps so that consumers are not reliant just on news articles to bring this to the attention of policymakers.

Especially alarming are those apps marketed as VPNs, which may create a man-in-the-middle vulnerability and a virtual pipeline for our adversaries to our critical data. This was highlighted in a piece in Forbes earlier this year.[1] We are pleased that companies act quickly when questionable activities are raised on companies like Shenzhen Hawk, which is a subsidiary of Chinese conglomerate TCL, that is partially state-owned. However, it also raises questions on the level of scrutiny that these apps receive when they are admitted to your app store.

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1. Given the reported close ties between TikTok's parent company – ByteDance – and the CCP, do you apply additional scrutiny to the app, including regular audits to ensure the app is in compliance with your policies?

    a. If yes, please detail the additional scrutiny TikTok undergoes.

    b. If no, please explain why not given the national security concerns at play.

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[1] https://www.forbes.com/sites/zakdoffman/2020/02/24/android-very-dangerous-app-warning-105-million-of-you-have-these-10-threats-on-your-phones/#74c2b3a3a995

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Sincerely,

Greg Walden
Republican Leader

Cathy McMorris Rodgers
Republican Leader
Subcommittee on Consumer Protection
and Commerce

Mr. CICILLINE. I now recognize the gentlelady from Washington, Ms. Jayapal.

Ms. JAYAPAL. Thank you, Mr. Chairman.

And thank you all for being with us.

Mr. Bezos, in July 2019, your employee Nate Sutton told me under oath in this committee that Amazon does not, quote, "use any specific seller data when creating its own private brand product." So let me ask you, Mr. Bezos, does Amazon ever access and use third-party seller data when making business decisions? And just a yes or no will suffice, sir.

Mr. BEZOS. Thank you for the question. I know it's an important topic, and I also want to thank you for representing us. I can't answer that question yes or no. What I can tell you is we have a policy against using seller-specific data to aid our private label business, but I can't guarantee you that that policy has never been violated.

Ms. JAYAPAL. Mr. Bezos, you're probably aware that an April 2020 report in *The Wall Street Journal* revealed that your company does access data on third-party sellers both by reviewing data on popular individual sellers and products and by creating tiny product categories that allowed your company to categorically access detailed seller information in a supposedly aggregate category. Do you deny that report?

Mr. BEZOS. I'm familiar with *The Wall Street Journal* article that you're talking about, and we continue to look into that very carefully. I'm not yet satisfied that we've gotten to the bottom of it, and we're going to keep looking at it. It's not as easy to do as you would think because some of the sources in the article are anonymous, but we continue to look into it.

Ms. JAYAPAL. I'll take that as you're not denying that; you're looking into it. I will tell you, a former Amazon employee in third-party sales and recruitment told this committee, quote, "There's a rule, but there's nobody enforcing or spot checking. They just say, don't help yourself to the data. It's a candy shop. Everyone can have access to anything they want."

Do category managers have access to nonpublic data about third-party products and businesses?

Mr. BEZOS. Here's what I can tell you. We do have certain safeguards in place. We train people on the policy. We expect people to follow that policy the same way we would any other. It's a voluntary policy. As far as I'm aware, no other retailer lists their——

Ms. JAYAPAL. So there's no——

Mr. BEZOS [continuing]. User data at all. And then I think we have——

Ms. JAYAPAL. So there's no actual enforcement of that policy?

Mr. BEZOS. Oh, no, I was going to say——

Ms. JAYAPAL. So it's voluntary, and there's no actual enforcement, so maybe that answers my——

Mr. BEZOS. Sorry. No, I think I may have misspoke. I'm trying to say that Amazon's—the fact that we have such a policy is voluntary. I think no other retailer even has such a policy.

Ms. JAYAPAL. Well, that's——

Mr. BEZOS. Our enforcement of that policy, we would treat that like any internal policy, and if we found that someone violated it, we would take action against them. I recognize this——

Ms. JAYAPAL. Well, there's numerous reports and the committee has conducted interviews with former employees who confirm that there are employees who do have access to that data and are using it. And so my next question was going to be, if you thought you were actually enforcing these rules, do you think that it's working?

And, again, I would just say that there's credible reporting that's documented breaches of these rules that you have put into place. And the committee has interviewed employees that typically—say that these breaches typically occur.

Let's talk about aggregate data for a minute. Your rules do allow for you to access combined data on a product when there are only one or two sellers in the marketplace, correct?

Mr. BEZOS. Yes, aggregate data is allowed under our policies; that is correct.

Ms. JAYAPAL. Okay. And interviews with former employees have made it clear that that aggregate data essentially allows access to highly detailed data in those product categories. There's the example of Fortem, a small business that had no direct competitors except for Amazon Warehouse Deals, a resale clearance account that only sold 17 units.

An Amazon employee accessed a detailed sales report on Fortem's product with information on how much the company spent on advertising per unit and the cost to ship each trunk. And then Amazon launched its own competing products in October 2019.

That's a major loophole. And I go back to the general counsel's statement to this committee very clearly that there was no access to this data, that Amazon does not use that data for its own benefit. And I'm now hearing you say, well, you're not so sure that that's going on.

And the issue that we're concerned with here is very simple. You have access to data that far exceeds the sellers on your platforms with whom you compete. You can track consumer habits, interests, even what consumers clicked on but then didn't buy.

You have access to the entirety of sellers' pricing and inventory information, past, present, and future, and you dictate the participation of third-party sellers on your platform. So you can set the rules of the game for your competitors but not actually follow those same rules for yourself. Do you think that's fair to the mom-and-pop third-party businesses who are trying to sell on your platform?

Mr. BEZOS. I appreciate that question, and I like it a lot because I really wanted a chance to address that. I'm very proud of what we have done for third-party sellers on this platform. We started our third-party platform 20 years ago, and we had zero sellers on it.

Ms. JAYAPAL. The question I'm asking——

Mr. BEZOS [continuing]. eBay I'm sorry. Go ahead.

Ms. JAYAPAL. I'm so sorry. My time is expiring. And the question I wanted to ask you is that you have access to data that your competitors do not have. So you might allow third-party sellers onto your platform, but if you're continuously monitoring the data to

make sure that they're never going to get big enough that they can compete with you, that is actually the concern that the committee has.

And, you know, I think your company started in my district. I want to thank you for that. I want to thank you for the work that you've done and say that the whole goal of this committee's work is to make sure that there are more Amazons, that there are more Apples, that there are more companies that get to innovate and small businesses that get to thrive, and that is what we're trying to get at. That is why we need to regulate these marketplaces so that no company has a platform so dominant that it is essentially a monopoly.

Thank you, Mr. Chairman. I yield back.

Mr. CICILLINE. The time of the gentlelady has expired.

I just want to remind the witnesses, we appreciate the gratitude for the questions and your description of them as good questions, but we'll just assume that they're good questions and you're happy to answer them so we can make sure we're making good use of your time.

And, with that, I recognize the gentleman from Florida, Mr. Steube.

Mr. STEUBE. Thank you, Mr. Chairman.

Mr. Pichai, I would like to start with you, and I'm just going to illustrate my question with a factual incident that actually occurred to me. Several months ago my wife called and said, "Hey, there's a good article on The Gateway Pundit that you should read."

So out of curiosity—I was up here in Washington. Out of curiosity, I Googled Gateway Pundit. And it didn't show up on the first page, and it didn't show up on the second page. There was a bunch of different blogging sites about how there were disagreements with what was on The Gateway Pundit.

But I actually had to type in GatewayPundit.com to get to it. Interestingly, Google didn't allow me to get to the actual website. That was a couple months ago. Before this hearing was set to be heard, before this hearing was noticed, before you knew that you would be appearing before us today and that this is an issue that obviously conservatives and Republicans have had.

Last week, after this was noticed, this hearing was noticed, I did the exact same thing here in the Capitol. And wouldn't you know it, I Googled Gateway Pundit, and that was the very first website that came up.

Now, this isn't from a constituent in my district. This isn't from somebody telling me, this isn't a news report. I actually physically did this on my laptop here in the Capitol several months ago and then today. So, clearly, something had happened between not being notified that you were going to be appearing before our committee and then, last week, knowing that you would be appearing before our committee and suddenly conservative websites are now at the top of the bar when you search for them.

So was there anything done at Google between a couple of months ago and last week or the week before you appearing today that has changed your approach to silencing conservative websites?

Mr. PICHAI. Congressman, we approach our work with a deep sense of responsibility without—in a nonpartisan way. We want to serve all our users, no matter where they are. In fact, it's in our long-term business incentive to do so. And I believe on our platforms, including YouTube, there are more conservative voices than ever before, and we believe in freedom of expression.

On the specific issue, you know, I will have to look into it. You know, I obviously wasn't aware of it. We do—it could be a number of reasons. We constantly get reports from both sides of the aisle——

Mr. STEUBE. So, if you're going to look into it for me, is there—can I expect a response from you say in the next 2 weeks as to why that occurred?

Mr. PICHAI. Congressman, we'll do our best to follow up, and I'll engage with your office to respond on that

Mr. STEUBE. Okay. We'll follow up on that. I've got a similar question. So I've been in elected politics for almost 10 years, and when I was in the Florida Senate and the State Senate, I never had a problem with my campaign emails being marked as spam or going to junk folders or anything along those lines. And we had 30,000, 40,000, 50,000 people on our email list.

And suddenly I get elected to Congress and I'm now up here in Washington, D.C., and my parents who have a Gmail account aren't getting my campaign emails. My supporters, just last week, one of my supporters called me and said, "Hey, I just want you to know this, that my Gmail account suddenly is taking your campaign emails that I've received for almost 10 years and suddenly they're going to spam and junk folders." This appears to only be happening to conservative Republicans.

I don't see anything in the news or anything in the press or other Members on the other side of the aisle talking about their campaign emails getting thrown into junk folders in Gmail. So my question is, is why is this only happening to Republicans? And it's a fact it's happening, because I can have my supporters testify that they've received my emails for 8 years, 8, 9 years, and suddenly this last year all of their Gmail—my campaign emails in their Gmail are going to their spam folder. So, if you could give me some clarification on that, I would appreciate it.

Mr. PICHAI. In Gmail, we are focused on what users want, and users have indicated they want us to organize their personal emails, emails they receive from friends and family, separately. And so all we have done is we have a tabbed organization, and, you know, the primary tab has emails from friends and family and the secondary tab has other notifications and so on. These things are applied——

Mr. STEUBE. Okay. Well, it was my father who is not receiving now my campaign emails, so clearly that familial thing that you're talking about didn't apply to my emails.

Mr. PICHAI. Our systems probably are not able to understand that your campaign—I mean that it's your father. Obviously, we don't have that context there. We just apply it neutrally across, you know, all organizations and, you know——

Mr. STEUBE. Well, what assurances can you give me that there's—my time is short. One last question. What assurances can

you give me that any bias amongst your employees isn't influencing your spam folder algorithms?

Mr. PICHAI. Congressman, there's nothing in the algorithm which has anything to do with political ideology, and, you know, we do get complaints across the aisle. For example, the World Socialist Review complained in January of this year that, you know, their site wasn't found in Google Search results.

And so we get complaints. We look into it, but, you know, we approach our work in a nonpartisan way, and it's in our long-term incentive to serve users across the country. And today that's why we invest in our raters in 49 States across the U.S. so that we can capture all viewpoints.

Mr. CICILLINE. Thank you. The gentleman's time is expired.

I now recognize the gentlelady from Florida, Mrs. Demings, for 5 minutes.

Mrs. DEMINGS. Thank you so much, Mr. Chairman.

And let me just say just for the record: I'm a Democrat from Florida, and I've had—heard complaints about my emails going into spam as well. And I'm sure other Democratic Members have had the same experiences, unfortunately.

Mr. Pichai, in 2007 Google purchased DoubleClick, the leading provider of certain advertising tools. Is that correct?

Mr. PICHAI. That is correct, Congresswoman.

Mrs. DEMINGS. When Google proposed the merger alarm bells were raised about the access to data Google would have, specifically the ability to connect users' personal identity with their browsing activity. Google, however, committed to Congress and to the antitrust enforcers that the deal would not reduce user privacy.

Google's chief legal adviser testified before the Senate Antitrust Subcommittee that Google wouldn't be able to merge this data even if it wanted to, given contractual restrictions. But in June of 2016, Google went ahead and merged its data anyway, effectively destroying anonymity on the internet.

Mr. Pichai, you became CEO of Google in 2015. Is that correct?

Mr. PICHAI. That's right.

Mrs. DEMINGS. Okay. And this change was made in 2016. Is that correct?

Mr. PICHAI. That's my understanding.

Mrs. DEMINGS. Okay. Thank you for that. Did you sign off on this decision to combine the sets of data with—that Google had told Congress would be kept separate?

Mr. PICHAI. Congresswoman, any changes we made, you know, we complied——

Mrs. DEMINGS. Mr. Pichai, with all due respect, please, did you sign off on the decision or not?

Mr. PICHAI. I review at a high level all important decisions we make. We deeply care about privacy and security of our users, and we——

NEW LINE: [continuing]. And we provide user consent for——

Mrs. DEMINGS. So you signed off on the decision?

Okay. You signed off on the decision.

Practically, this decision meant that your company would not combine all of—would now combine, for example, all of my data on Google, my search history, my location from Google Maps, informa-

tion from my emails, from Gmail, as well as my personal identity with the record of almost all of the websites I visited. That is absolutely staggering.

According to an email from a DoubleClick executive, that was exactly the type of reduction in user privacy that Google's founders had previously worried would lead to a backlash. And I quote, they were unwavering on the policy due to philosophical reasons, which is Larry and Sergey's fundamentally not wanting users associated with a cross-site cookie. They were also worried about a privacy storm as well as damage to Google's brand. So, in 2007, Google's founders feared making this change because they knew it would upset their users, but in 2016, Google didn't seem to care.

Mr. Pichai, isn't it true that what changed between 2007 and 2016 is that Google gained enormous market power. So. While Google had to care about user privacy in 2007, it no longer had to in 2016? Would you agree that what changed was Google gained enormous market power?

Mr. PICHAI. Congresswoman, this is an important issue, if I could explain. You know, we today make it very easy for users to be in control of their data. We have simplified their settings. They can turn ad personalization on or off. We have combined most of activity settings into three groupings. We remind users to go do a privacy checkup. 1 billion users have done so, and 20 million people do it——

Mrs. DEMINGS. Okay, Mr. Pichai, thank you so much for that. I am concerned that Google's bait and switch with DoubleClick is part of a broader pattern where Google buys up companies for the purposes of surveilling Americans, and because of Google's dominance users have no choice but to surrender.

In 2019, Google made over 80 percent of its total revenue through selling of ad placement. Is that correct, Mr. Pichai?

Mr. PICHAI. You know, a majority of the business——

Mrs. DEMINGS. About 80 percent? Yeah, okay.

And because Google sells behavioral ads, ads targeted to each of us as individuals, the more user data that Google collects, the more money Google can make. More user data means more money. Is that correct?

Mr. PICHAI. In general, that's not true. For example there's common sites, when you type——

Mrs. DEMINGS. More user data, not the more money Google collects?

Mr. PICHAI. Most of the data we need is built into the——

I'm sorry, please. So you're saying that the more user data does not mean the more money that Google can collect?

Mr. PICHAI. Congresswoman, most of the data today we collect is to help users and provide personal experiences back. Ad data is not relevant at that time at all——

Mrs. DEMINGS. Okay. Thank you so much, Mr. Pichai.

Mr. Chairman, I yield back.

Mr. CICILLINE. I thank the gentlelady.

The chair now recognizes the ranking member of the full committee, Mr. Jordan, for 5 minutes.

Mr. JORDAN. Thank you, Mr. Chairman.

Mr. Pichai, is Google going to tailor its features to help Joe Biden win the 2020 election?

Mr. PICHAI. Congressman, we approach our work—you know, we support both campaigns today. We think political ads is an important part of free speech in democratic societies, and we engage with campaigns, you know, according to law, and we approach our work in a nonpartisan way.

Mr. JORDAN. It was a yes or no question. Can you assure Americans today you won't tailor your features to help Joe Biden in the upcoming election?

Mr. PICHAI. You know, we support work that campaigns do. I just want to make sure I am answering that clearly.

Mr. JORDAN. We understand that. We all do all kinds of online social media, all kinds of that kind of—that outreach, that communication. This is a simple question: Can you today assure Americans you will not tailor your features in any way to help—specifically help one candidate over another? And what I'm concerned about is you helping Joe Biden over President Trump.

Mr. PICHAI. We won't do any work, you know, to politically tilt anything one way or another. It's against our core values, Congressman.

Mr. JORDAN. But you did it in 2016. There's an email in 2016 that was widely circulated amongst the executives at your company that got public where Ms. Eliana Murillo, head of your multicultural marketing, talks about the silent donation Google made to the Clinton campaign, and you applauded her work. She points that out in the email.

I'm just curious, if you did it in 2016, I want to make—and, you know, in spite of the fact you did it in 2016 President Trump won, I just want to make sure you're not going to do it again in 2020?

Mr. PICHAI. Congressman, I recall our conversation at that time, and I appreciate your concern. We didn't find any evidence of such activity, and I took the opportunity after our conversation to reinforce to the company—we realize even an appearance could be improper, so we have clearly communicated to our employees any personal political activity, while it's their right, needs to happen on their own time and resources and should avoid any use of company time.

Mr. JORDAN. Well, of course, everyone has got their First Amendment rights to campaign for who they want. What they can't do is configure your features to help one candidate over the other. So you might not have found any evidence, but here's what she wrote to the email to a number of key executives in your company, quote, "We push to get out the Latino vote with our features." Second quote, "We push to get out the Latino vote with our features in key states."

It seems to me those last three words are the real qualifier here. That is electioneering when you're trying to increase the Latino vote in key states. And she'd already communicated that she was supporting Clinton, that she wanted Clinton to win.

So, when she talks about increasing the Latino vote, which she assumes is going to help candidate Clinton, and she's doing that in key states—it's one thing if you're going to increase the Latino vote around the country. If you're just a good, corporate citizen, you're

urging people to vote. It's quite another when you're focusing on in key states. And you know what those key states were? Nevada and Florida, the swing states. So, again, I want to make sure this isn't going to happen in 2020.

Mr. PICHAI. I can assure you that we complied with laws in 2016. As a company, any work we do around elections is nonpartisan. Users do come to us for understanding where polling places are, where to vote, which is the date to vote, what the voting hours are. We have committed to providing that information, and I can assure you that we'll approach our work in a nonpartisan——

Mr. JORDAN. So, Mr. Pichai, here's the question I think's on so many Americans' minds. They saw the list that we read here earlier on in our opening statements, all the things Google has done. Google is siding with the World Health Organization over anyone who disagrees with them, even though the World Health Organization obviously lied to America, obviously shills for China. Google's siding with them; YouTube is siding with them.

We have the history of all the things Google has done and the history of what happened in 2016 in the election, where they obviously, according to one—your multicultural marketing executive tried to help Clinton. And here we are, 97 days before the election, and we want to make sure it's not going to happen again.

Can you give us two assurances: one, you're not going to try to tailor your features, configure your platform in a way to help Joe Biden; and, second, that you're not going to use your search engine to silence conservatives? Can you give us those two assurances today?

Mr. PICHAI. Congressman, on our search engine, conservatives have more access to information than ever before——

Mr. JORDAN. And we appreciate that. That wasn't the question. Can you assure us today you're not going to try to silence conservatives? And can you assure us today you're not going to try to configure your features, as Ms. Murillo said you did for Clinton in 2016—can you assure us today you're not going to do the same thing for Joe Biden in 2020?

Mr. PICHAI. You know, you have my commitment. It's always been true, and we'll continue to conduct ourselves in a neutral way.

Mr. JORDAN. Appreciate it.

I yield back.

Mr. CICILLINE. The chair now recognizes the gentlelady from Pennsylvania, Ms. Scanlon.

Ms. SCANLON. Thank you, gentlemen. I'd like to redirect your attention to antitrust law rather than fringe conspiracy theories.

Mr. Bezos, our investigations——

Mr. JORDAN. Mr. Chairman, we have the email. There is no fringe conspiracy——

Mr. CICILLINE. Excuse me.

Mr. RASKIN. It's not your time.

Mr. CICILLINE. Mr. Jordan, you do not have the time.

Mr. JORDAN. But—but—but——

Mr. CICILLINE. Please be respectful of your colleague.

Mr. JORDAN [continuing]. When someone directly——

Mr. CICILLINE. She controls the time.

Mr. JORDAN [continuing]. Directly——

Mr. RASKIN. Put your mask on. Put your mask on.
Mr. JORDAN. Mr. Raskin——
Mr. CICILLINE. Mr. Jordan——
Mr. JORDAN [continuing]. If you want to talk about masks——
Mr. CICILLINE. Mr. Jordan, Ms. Scanlon holds the time.
Mr. JORDAN [continuing]. Why would the Deputy Secretary of the Treasury unmask Michael Flynn's name, Mr. Raskin?
Mr. CICILLINE. Ms. Scanlon——
Mr. JORDAN. And what I want to know is——
Mr. CICILLINE. Ms. Scanlon——
Mr. JORDAN. When someone comes after my motives for asking questions, I get a chance to respond.
Mr. CICILLINE. The gentlelady is recognized.
Ms. SCANLON. Thank you, Mr. Chairman.
Mr. Bezos, our investigation uncovered documents that show that Amazon sometimes doesn't play fairly, crossing the line from robust competition to predatory pricing to destroy rivals rather than outcompete them.
And let's take the example of Quidsi, which used to own diapers.com and provided online baby care products. In 2009, your team viewed diapers.com as Amazon's largest and fastest growing online competitor for diapers. One of Amazon's top executives said that diapers.com keeps the pressure on pricing on us. And strong competition from diapers.com meant that Amazon was having to work harder and harder so that customers didn't pick diapers.com over Amazon. And the customers we're talking about were hard-working families, single parents with babies and young children.
Now, because diapers.com was so successful, Amazon saw it as a threat. The documents that we've obtained show that Amazon employees began strategizing about ways to weaken this company, and, in 2010, Amazon hatched a plot to go after diapers.com and take it out.
In an email that I reviewed—and we've got these up on the slides—one of your top executives proposed to you a, quote, "aggressive plan to win," end quote, against diapers.com, a plan that sought to undercut their business by temporarily slashing Amazon prices. We saw one of your profit-and-loss statements, and it appears that, in 1 month alone, Amazon was willing to bleed over $200 million in diaper profit losses.
Mr. Bezos, how much money was Amazon ultimately willing to lose on this campaign to undermine diapers.com?
Mr. BEZOS. Thank you for the question.
I don't know the direct answer to your question. This is going back in time, I think, maybe 10 or 11 years or so. You could give me, maybe, the dates on those documents.
Ms. SCANLON. Okay.
Mr. BEZOS. But what I can tell you is that the idea of using diapers and products like that to attract new customers who have new families is a very traditional idea. We didn't invent——
Ms. SCANLON. Sure. Well, let's delve into this——
Mr. BEZOS [continuing]. That idea. Neither did diapers.com.
Ms. SCANLON [continuing]. A little further. I'm sorry. You know I only have a few minutes here, so I just——
Mr. BEZOS. Of course.

Ms. SCANLON [continuing]. Want to press on.

Mr. BEZOS. Please.

Ms. SCANLON. Your own documents make clear that the price war against diapers.com worked, and within a few months it was struggling, and so then Amazon bought it.

After buying your leading competitor here, Amazon cut promotions, like Amazon.mom, and the steep discounts it used to lure customers away from diapers.com and then increased the prices of diapers for new moms and dads.

Mr. Bezos, did you personally sign off on the plan to raise prices after Amazon eliminated its competition?

Mr. BEZOS. I don't remember that at all.

Ms. SCANLON. Okay. Thank you.

Mr. BEZOS. What I remember is that we matched competitor prices, and I believe we followed diapers.com—again, this is 11 years ago, so you're asking a lot of my memory—but I believe we followed diapers.com.

I can also tell you, after we bought diapers.com——

Ms. SCANLON. I understand that. Okay.

Mr. BEZOS [continuing]. We put more than——

Ms. SCANLON. Just moving on——

Mr. BEZOS [continuing]. $300 million into trying——

Ms. SCANLON. Reclaiming my time, sir. I'm——

Mr. BEZOS [continuing]. To make it successful.

Ms. SCANLON [continuing]. Sorry.

So you said that Amazon focuses excessively on customers. So how would customers, especially single moms, new families, how would they benefit when the prices were driven up by the fact that you eliminated your main competitor?

Mr. BEZOS. Well, I don't agree—with great respect, I don't agree with the premise. At the same time, you should recognize, in context, diapers is a very large product category sold in many, many places——

Ms. SCANLON. Right, but this was——

Mr. BEZOS [continuing]. Not just at Amazon and diapers.com.

Ms. SCANLON [continuing]. The online diaper market.

Mr. BEZOS. It sold at——

Ms. SCANLON. Now, we do have evidence——

Mr. BEZOS. It sold at drugstores and Costco——

Ms. SCANLON [continuing]. That these predatory—I'm sorry, Mr. Bezos——

Mr. BEZOS [continuing]. And Kroger and Walmart——

Ms. SCANLON [continuing]. I need to push on here.

Mr. BEZOS. Of course. Sorry.

Ms. SCANLON. The evidence we've collected suggests that predatory practices weren't unique here. In 2013, it was reported that you instructed Amazon employees to approach discussions with certain business partners, and I quote, "the way a cheetah would pursue a sickly gazelle."

Is the gazelle project still in place? And does Amazon pursue similar predatory campaigns in other parts of its business?

Mr. BEZOS. I cannot comment on that because I don't remember it.

What I can tell you is that we are very, very focused on the customer, as you started——

Ms. SCANLON. Okay. Well, I'm concerned with——

Mr. BEZOS [continuing]. And, of course, that does include——

Ms. SCANLON [continuing]. The customers as well, especially those families——

Mr. BEZOS [continuing]. Bargaining very hard with vendors and suppliers to get the lowest prices——

Ms. SCANLON [continuing]. In my district.

Mr. BEZOS [continuting]. So that we can offer those to customers.

Ms. SCANLON. I'm sorry, Mr. Bezos. I'm almost out of time.

I'm concerned too, because, especially with the current pandemic, one of the biggest needs I'm seeing at the food drives and the giveaways that we're having to run in my district is that families don't have diapers, and we have to collect them to give them out. So it certainly is something that has a really hard impact on families, and I'm really concerned that pricing might have been driven up here by this tactic.

And I yield back.

Mr. CICILLINE. The gentlelady yields back.

I would just announce that votes have been called, but we're going to continue with the hearing, so I invite colleagues to vote. You know, it's a rolling vote, so vote according to your own schedule.

I now recognize the gentleman from Colorado, Mr. Neguse, for 5 minutes.

Mr. NEGUSE. Thank you, Mr. Chairman.

And I want to thank each of the witnesses today for your testimony.

Mr. Zuckerberg, in 2004, when you had launched Facebook, it's fair so say, I think you'd agree with me, that you had quite a few competitors. Would you agree with that?

Mr. ZUCKERBERG. Congressman, yes.

Mr. NEGUSE. Myspace, Friendster, Google's Orkut, Mixi, Psy World, Yahoo! 360, AOL's Bebo, they were all competitors?

Mr. ZUCKERBERG. Congressman, those were some of the competitors at the time, and it's only gotten a lot more competitive since.

Mr. NEGUSE. Well, let's talk about that. Because, by 2012, Mr. Zuckerberg, none of those companies that I just identified existed. You're certainly aware of that. They were all basically gone. Facebook, in my view, I think, was in a monopoly by then.

I wonder whether you would agree with that. I take it you don't?

Mr. ZUCKERBERG. Congressman, that's correct, I don't. We face a lot of competitors in every part of what we do, from connecting with friends privately, to connecting with people in communities, to connecting with all your friends at once, to connecting with all kinds of user-generated content. And I would bet that you or most people here have multiple apps for each of those on your phones, multiple——

Mr. NEGUSE. Well, Mr. Zuckerberg, let's—why don't we dig into this a bit further. So you and I clearly disagree about that.

In 2012—I'm looking at a document that was produced by Facebook in response to the subcommittee's investigation. It's a presentation prepared for Sheryl Sandberg to deliver to the board

of directors of a major telecommunications firm, boasting that, quote, "Facebook is now 95 percent of all social media in the United States." The title of the slide is even, quote, "The Industry Consolidates As It Matures."

So, as I look at that graph, I, you know, certainly think most folks would concede that Facebook was a monopoly as early as 2012. But, nonetheless, I understand that we disagree on that point.

Would you agree with me that Facebook, its strategy since that time, to essentially protect what I describe as a monopoly but obviously what you would describe as market power, that Facebook has been engaged in purchasing competition, in some cases replicating competition, and in some cases eliminating competition? Would that be a fair statement?

Mr. ZUCKERBERG. Congressman, the space of people connecting with other people is a very large space, and I would agree that there were different approaches that we took to addressing different parts of that space, but it's all in service of building the best services——

Mr. NEGUSE. And I——

Mr. ZUCKERBERG [continuing]. For people to help connect——

Mr. NEGUSE. I appreciate that, Mr. Zuckerberg. I appreciate the latter point. It sounds like you are conceding that at least some of those strategies were what I identified, and so I want to talk a little bit about that.

In 2014—here's an email. It's from Facebook's current chief financial officer, describing the company's acquisition strategy as, quote, "a land grab" and saying that "we are going to spend 5 to 10 percent of our market cap every couple of years to shore up our position." And my sense of the facts is that that is, in fact, what has occurred.

Facebook, as you conceded—you conceded earlier that Instagram was a competitor of Facebook's. You acquired Instagram in 2012. Instagram is now the sixth-largest social media platform in the world. Is that right?

Mr. ZUCKERBERG. Congressman, I'm not sure what rank it is, but it's certainly grown beyond our wildest expectations.

Mr. NEGUSE. I can represent to you that the statistics demonstrate—the empirical data shows it's the sixth-largest.

In 2014, Facebook bought its competitor WhatsApp. Is that correct?

Mr. ZUCKERBERG. Congressman, yes, WhatsApp was also both a competitor and complementary. They competed with us in the space of mobile messaging, which is a growing and important space and is, again, one part of the global space of how people connect more broadly.

Mr. NEGUSE. Understood. And, at that time, WhatsApp had over 400 million monthly users, a clear path towards 1 billion monthly active users. And WhatsApp is now the second-largest social media platform in the world, with 2 billion users worldwide, more than Facebook Messenger. And, of course, your company owns WhatsApp.

Facebook also tried to buy other competitive startups. In fact, as Chairman Nadler noted, you did tell one of Facebook's senior engi-

neers in 2012 that you can, quote, "likely just buy any competitive startup, but it'll be a while before we can buy Google."

Do you recall writing that email?

Mr. ZUCKERBERG. Congressman, I don't specifically, but it sounds like a joke.

Mr. NEGUSE. Well, it certainly—I don't take it as a joke, you know, as I review the email. It was in regards to having just closed the Instagram sale. And the response from this individual, this engineer, to you was, quote, "Well played."

Your response was, "Thanks. One reason people underestimate the importance of watching Google is that we can likely always just buy any competitive startups, but it'll be a while before we can buy Google."

And given the purchases that Facebook had made previous to this and the attempted purchases—my understanding is that Facebook made several overtures to Snapchat, for example, which rebuffed those efforts—clearly demonstrates, in my view, that that email was not made in jest.

But here's why I ask these questions, Mr. Zuckerberg. It strikes me that, over the course of the last several years, Facebook has used its market power to either, you know, purchase or replicate the competition. And Facebook, Facebook Messenger, WhatsApp, and Instagram are the most now downloaded apps of the last decade. Your company, sir, owns them all. And we have a word for that; that word is "monopoly."

With that, I would yield back, Mr. Chairman.

Mr. CICILLINE. I thank the gentleman.

I now recognize the gentlelady from Georgia, Mrs. McBath, for 5 minutes.

Mrs. MCBATH. Thank you, Mr. Chairman.

Mr. Bezos, you referred to third-party sellers today as "Amazon's partners" and that your success depends on their success.

But, over the past year, we've heard a completely different story. As part of this investigation, we've interviewed many small businesses, and they use the words like "bullying," "fear," and "panic" to describe their relationship with Amazon.

And I'm going to share the story of a small-business owner who is also a wife and a mother, so you can understand how this is actually affecting the lives of everyday people and why this truly matters.

[Video played.]

Mrs. MCBATH. So, Mr. Bezos, after Amazon delisted this small business without any apparent reason or notice, she told us that they sent more than 500 separate communications to Amazon, including to you, Mr. Bezos, over the past year, and there was not a single meaningful response.

Do you think this is an acceptable way to treat someone that you described as both a partner and a customer?

Mr. BEZOS. No, Congresswoman. And I appreciate you showing me that anecdote, and I would like to talk to her. It does not at all, to me, seem like the right way to treat her, and I'm surprised by that. And it's not the systematic approach that we take, I can assure you.

I don't even understand what's going on in that anecdote, because we would love for third-party sellers to sell books——

Mrs. MCBATH. Well, respectfully, sir——

Mr. BEZOS [continuing]. On the website. So I don't understand it, but I would like to understand it better. And——

Mrs. MCBATH. That's the point, sir.

Mr. BEZOS [continuing]. With your permission, I would like to get in touch with your office.

Mrs. MCBATH. I think, though, that you're missing the point. This is not just about one business. I'm concerned that this is a pattern of behavior. And, basically, this pattern of behavior has to change.

Mr. Bezos, my question is simply: Are you willing to make sure, going forward, that, you know—the numerous sellers that we've talked to, they have problems just like this. And there are more sellers who have told us that they have exhausted all of their options before finally reaching out to you directly as a last resort, but they're still waiting for your response.

So what do you have to say to the small businesses who are talking to Congress because you simply won't listen to them?

Mr. BEZOS. Well, I'd say that's not acceptable. If we aren't listening to you, I'm not happy about that at all.

And I—but, you know, if you would allow me to disagree a little bit with a piece of this, I do not think that's systematically what's going on. And the evidence that I would suggest would be useful for you to consider in that regard is that third-party sellers, in aggregate, are doing extremely well on Amazon. They grew from—you know, 20 years ago it was zero, and today it's 60 percent——

Mrs. MCBATH. Great. Okay.

Mr. BEZOS [continuing]. Of sales.

Mrs. MCBATH. Thank you very much.

Mr. BEZOS. Third-party sellers are growing even faster——

Mrs. MCBATH. Thank you so much.

Mr. BEZOS [continuing]. Than first-party retail. So——

Mrs. MCBATH. Mr. Bezos, you said——

Mr. BEZOS. Thank you.

Mrs. MCBATH. Thank you so much.

You said that sellers have many other attractive options to reach customers, but that's not at all what we found in our investigation. According to eMarketer, a source Amazon cited in submissions to this committee, Amazon has nearly seven times the market share of its closest e-commerce competitor. One seller told us that, and I quote, "Amazon continues to be the only show in town. No matter how angry sellers get, they have nowhere else to go."

So are you saying that these people aren't being truthful when they say that Amazon is the only game in town?

Mr. BEZOS. Yeah, Congresswoman, with great respect, I do disagree with that. I believe that there are a lot of options. And some of them are not even listed on that chart. I just looked at it briefly, but I didn't see some that I know of, for example.

So I think there are a lot of——

Mrs. MCBATH. Okay. Thank you——

Mr. BEZOS [continuing]. Things in this dynamic.

Mrs. MCBATH. All right. Thank you for that.

Mr. BEZOS. There are more and more every day.

Mrs. MCBATH. Mr. Bezos, my time is short.

If Amazon didn't have monopoly power over these sellers, do you think they would choose to stay in a relationship that is characterized by bullying, fear, and panic?

Mr. BEZOS. With all respect, Congresswoman, I do not accept the premise of your question. That is not how we operate the business.

Mrs. MCBATH. Okay. All right.

Mr. BEZOS. And, in fact, we work very hard to——

Mrs. MCBATH. Thank you for that.

Mr. BEZOS [continuing]. Provide a fantastic pool for sellers——

Mrs. MCBATH. Thank you for that.

Mr. BEZOS [continuing]. And that's why they've been successful.

Mrs. MCBATH. Thank you for that.

Mr. Bezos, I'm going to close with giving the bookseller the opportunity to finally be heard by you.

[Video played.]

Mrs. MCBATH. With that, I yield back the balance of my time.

Mr. CICILLINE. I thank the gentlelady.

We've now concluded our first round.

I now recognize myself for 5 minutes.

Mr. Bezos, according to your testimony, the marketplace is competitive. But Amazon controls as much as 75 percent of all online marketplace sales. And eMarketer, a source you cited to us in submissions to this committee, reports that Amazon has nearly seven times the market share of its closest competitor.

Isn't it true that small businesses have no real option but to rely on Amazon to connect with customers and make online sales?

Mr. BEZOS. No, sir. With great respect, I do have a different opinion on that. I believe there are a lot of options for small sellers. I believe Amazon is a great one, and we've worked very hard. I think we are the best one.

Mr. CICILLINE. Well, Mr. Bezos——

Mr. BEZOS. We have a lot of different programs that help sellers. But——

Mr. CICILLINE. Thank you.

Mr. BEZOS [continuing]. We are not the only option.

Mr. CICILLINE. There are 2.2 million active sellers as of yesterday. About 37 percent of those sellers rely on Amazon as their sole source of income. That is over 800,000 people relying on Amazon to feed their families, put their kids through school, and keep a roof over their heads.

Mr. Bezos, you have referred to third-party sellers as both your partners and customers. But isn't it true that Amazon refers to third-party sellers as "internal competitors"?

Mr. BEZOS. I think in—it wouldn't surprise me. In some ways, we are competing. And they're also competing with each other.

Mr. CICILLINE. Well, that's right.

Mr. BEZOS. And the marketplace does allow that.

Mr. CICILLINE. Your own document, Mr. Bezos, Amazon's own documents that you produced refer to the very same sellers that you've described as Amazon partners as "internal competitors."

In fact, we've heard from third-party sellers again and again during the course of the investigation that Amazon is the only game

in town. One small-business owner we interviewed described it this way, and I quote: "We're stuck. We don't have a choice but to sell through Amazon." Another said, and I quote, "They've never been a great partner, but you have to work with them."

During this investigation, we have heard so many heartbreaking stories of small businesses who sunk significant time and resources into building a business and selling on Amazon, only to have Amazon poach their best-selling items and drive them out of business.

So I want to talk to you about one company that really stood out from the rest. I want you to pay close attention to how they described your partnership, Mr. Bezos. We heard from a small apparel company that makes and sells what they call "useful apparel" for people who work on their feet and with their hands, like construction workers and firefighters.

This particular business discovered and started selling a unique item that had never been a top seller for the brand. They were making about $60,000 a year on just this one item. One day, they woke up and found that Amazon had started listing the exact same product, causing their sales to go to zero overnight. Amazon had undercut their price, setting it below where the manufacturer would generally allow it to be sold so that, even if they wanted to, they couldn't match the price.

Here's how the apparel company described working with Amazon, and I quote: "Amazon strings you along for a while because it feels so good to get that paycheck every week. And in the past, for lack of a better term, we called it 'Amazon heroin' because you just kept going and you had to get your next fix, your next check. But, at the end of the day, you find out that this person, who was seemingly benefiting you, making you feel good, was just ultimately going to be your downfall," end quote.

So, Mr. Bezos, this is one of your partners. Why on Earth would they compare your company to a drug dealer?

Mr. BEZOS. Sir, I have great respect for you and this committee, but I completely disagree with that characterization.

What we have done is create in the store a place—if you go back in time, we sold only our own inventory. It was a very controversial decision inside the company to invite third-party sellers to come into what is really our most valuable retail real estate, our product detail pages.

We did that because we were convinced that it would be better for the consumer, it would be better for the customer——

Mr. CICILLINE. Well, Mr. Bezos——

Mr. BEZOS [continuing]. To have all of that selection. And I think we were right, and I think it's worked——

Mr. CICILLINE. Reclaiming my time——

Mr. BEZOS [continuing]. Out well for the customer and——

Mr. CICILLINE [continuing]. Unfortunately, this is one of——

Mr. BEZOS [continuing]. Third-party sellers and for——

Mr. CICILLINE. Reclaiming my time, Mr. Bezos, this is one of many small companies that have told us during this year-long investigation that they were mistreated, abused, and tossed aside by Amazon.

Now, Mr. Bezos, you say that Amazon is only focused on doing what's best for the customer—you just said it again—and also third-party sellers.

But how is that possible, when you compete directly with third-party sellers with your own products that undercut the competition? Isn't it an inherent conflict of interest for Amazon to produce and sell products on its platform that compete directly with third-party sellers, particularly when you, Amazon, set the rules of the game?

Mr. BEZOS. Thank you. No, I don't believe it is. We have—the consumer is the one ultimately making the decisions. They're making the decisions about what to buy, what price to buy it at, who to buy it from. And our—what we try to do is make it an easy——

Mr. CICILLINE. That's not the question, Mr. Bezos. The question is, is there an inherent conflict of interest? Because you are a data company. You know when customers put something in their cart, when they take it out. Traditional brick-and-mortar stores, like a grocery store, where competition occurs, don't have that.

And so I just want to follow up, finally, on an answer to the question that you gave to Congresswoman Jayapal. You said that you can't guarantee that the policy of not sharing third-party sellers' data with Amazon's own line hasn't been violated; you couldn't be certain.

Can you please explain that to me? Can you list examples of where that policy has been violated?

Because it's particularly concerning to me, Mr. Bezos, that—shouldn't third parties know for sure that data isn't being shared with your own line, their competitors? Why should a third-party seller list their product on Amazon if they're just going to be undercut by Amazon's own product as a result of data you take from them?

Mr. BEZOS. Sir, I think what I want you to understand, and I think is important to understand, is that we have a policy against using individual seller data to compete with our private-label products. And——

Mr. CICILLINE. You couldn't assure Ms. Jayapal that that policy isn't violated routinely.

Mr. BEZOS. Well, we are investigating that. And I do not want to sit here and I do not want to go beyond what I know right now. But we are—as a result of that *Wall Street Journal* article, we are looking at that very carefully——

Mr. CICILLINE. Thank you, Mr. Bezos.

Mr. BEZOS [continuing]. And we want to get this back, and we will surely share them with you.

Mr. CICILLINE. Thank you. And we look forward to that.

The evidence we've collected shows that Amazon is only interested in exploiting its monopoly power over the e-commerce marketplace to further expand and protect this power. This investigation makes clear that Amazon's dual role as a platform operator and competing seller on that platform is fundamentally anti-competitive. And Congress must take action.

And, with that, I recognize the gentleman from Wisconsin, the ranking member of the subcommittee, Mr. Sensenbrenner, for 5 minutes.

Mr. SENSENBRENNER. Well, Mr. Chairman, I think that the history proves that Congress does a poor job in picking winners and losers. And I've looked over a lot of the material that has been assembled. I've been working with the chairman for over a year on this bipartisan investigation. And I have reached the conclusion that we do not need to change our antitrust laws. They have been working just fine. The question here is the question of enforcement of those antitrust laws.

Now, we've heard a lot about the Facebook acquisition of Instagram. That happened in 2012. Obama's FTC signed off on that. So, regardless of what you think happened at that time, the fact is that this acquisition did pass the smell test of the regulators involved. Now, maybe they made a mistake, or maybe something else happened. I don't know. But the fact is that there is not a problem with the law.

Now, you know, back about 35 years ago, AT&T was broken up because it was determined that one-stop shops were monopolistic. And AT&T, because you had to get your long-distance service from your local phone company, that was monopolistic. So the Baby Bells were spun off.

A whole lot has happened since then. There were mergers and acquisitions in the telecom industry. Technology advanced a huge amount. And guess what? We're back to exactly where we were in 1984. So this goes to show that congressional pressure is not the best.

Now, using the AT&T example, which I think was a big flop and counterproductive, let me ask Mr. Bezos, you know, say the AT&T example was applied to Amazon and you were required to spin stuff off. So you might have no more one-stop shop, but you have to go to separate places for books or groceries or videos or electronics. How are the consumers helped by that?

Mr. BEZOS. Sir, thank you. They would not be.

Mr. SENSENBRENNER. Right.

Mr. BEZOS. That's very clear.

Mr. SENSENBRENNER. Now, Mr. Pichai, let me ask about Google. If you were forced to split up your business lines, say, spin off ad tech and YouTube, can you describe what happens to consumers there?

Mr. PICHAI. Congressman, today, consumers in most of the areas we are dealing with, they see prices free or falling, and they get more choice than ever before. So I think it serves them well.

Mr. SENSENBRENNER. And you're right there.

So, you know, I'm not going to be on this committee in the next Congress. I am going to put my feet up and become a "senior, statesman."

But, you know, let me say that we have heard a whole lot of complaints about Big Tech. Some of them are political in nature, and I share the complaints and the concern of Mr. Jordan and others. And others talk about allegedly anticompetitive activity.

It seems to me that it's not for Congress that legislates to toss all of our antitrust laws and the precedent that has been established through litigation over the last 100-plus years, but it's something where we ought to go back to the regulators, to the enforcers, have them look at this stuff, and have them make a determination

on whether or not the law has been violated. I think the law is good on that, and we don't need to throw it all in the wastebasket.

But there are some matters of concern that we have heard from both sides of the aisle that I think need to be addressed. And if it requires an agency like the FTC to say that they've made mistakes in the past, so be it. We're all human; we all make mistakes. And even government agencies do that.

I yield back.

Mr. CICILLINE. The gentleman yields back.

I now recognize the gentlelady from Washington, Ms. Jayapal.

Ms. JAYAPAL. Thank you, Mr. Chairman.

Mr. Zuckerberg, in March of 2012, you suggested by email to your management team that moving faster in copying other apps could, quote, "prevent our competitors from getting footholds."

Sheryl Sandberg responded that, quote, "it is better to do more and move faster, especially if that means you don't have competitors build products that take some of our users."

Facebook's product management director added that, quote, "I would love to be far more aggressive and nimble in copying competitors."

Has Facebook ever taken steps to prevent competitors from getting footholds by copying competitors?

Mr. ZUCKERBERG. Congresswoman, I view it as our job to understand what people are finding valuable in all of the services that they use. And, certainly, if someone——

Ms. JAYAPAL. Do you copy your competitors?

Mr. ZUCKERBERG. Congresswoman, we've certainly adapted features that others have led in, as others have copied and adapted features that we've led in.

Ms. JAYAPAL. I'm not concerned about others. I'm just asking you, Mr. Zuckerberg.

Since March of 2012, after that email conversation, how many competitors did Facebook end up copying?

Mr. ZUCKERBERG. Congresswoman, I can't give you a number of companies who have——

Ms. JAYAPAL. Was it less than five?

Mr. ZUCKERBERG. Congresswoman, I don't know. I——

Ms. JAYAPAL. Less than 50? Any estimates?

Your team was making a plan. How did it play out?

Mr. ZUCKERBERG. Congresswoman, I'm not sure I agree with the premise here. Our job is to make sure that we build the best services for people to connect with all the people they care about. And a lot of that is done by innovating and by building new things that are——

Ms. JAYAPAL. Thank you.

Mr. ZUCKERBERG [continuing]. Leading the way internally——

Ms. JAYAPAL. Thank you, Mr. Zuckerberg. Let me go on.

Has Facebook ever threatened to clone the products of another company while also attempting to acquire that company?

Mr. ZUCKERBERG. Congresswoman, not that I would—not that I recall.

Ms. JAYAPAL. And I'd like to just remind you that you are under oath, and there are quotes from Facebook's own documents.

Prior to acquiring Instagram, Facebook began developing a similar product called Facebook Camera, correct?

Mr. ZUCKERBERG. Congresswoman, that's correct. I've said multiple times that we were competing in the space of building mobile cameras with Instagram. That's what they did at the time. Their competitive set was companies like what we were building with Facebook Camera——

Ms. JAYAPAL. Great.

Mr. ZUCKERBERG [continuing]. And VSCO Cam and——

Ms. JAYAPAL. Thank you, Mr.——

Mr. ZUCKERBERG [continuing]. We were certainly competing with that.

Ms. JAYAPAL. Thank you, Mr. Zuckerberg.

Did you ever use this very similar Facebook Camera product to threaten Instagram's founder, Kevin Systrom?

Mr. ZUCKERBERG. Congresswoman, I'm not sure what you would mean by "threaten." I think it was public that we were building a camera app at the time. That was a well-documented thing.

Ms. JAYAPAL. Let me tell you that Mr.—in a chat, you told Mr. Systrom that Facebook was, quote, "developing our own photo strategy, so how we engage now will also determine how much we're partners versus competitors down the line."

Instagram's founder seemed to think that was a threat. He confided in an investor at the time that he feared you would go—that you would go into, quote, "destroy mode" if he didn't sell Instagram to you.

So let's just recap. Facebook cloned a popular product, approached the company you identified as a competitive threat, and told them that if they didn't let you buy them up, there would be consequences.

Were there any other companies that you used this same tactic with while attempting to buy them?

Mr. ZUCKERBERG. Congresswoman, I want to respectfully disagree with the characterization. I think it was clear that this was a space that we were going to compete in, one way or another. I don't view those conversations as a threat in any way. I was trying to figure out——

Ms. JAYAPAL. I'm just using the documents and the testimony that the committee has collected from others.

Did you warn Evan Spiegel, the founder of Snapchat, that Facebook was in the process of cloning the features of his company while also attempting to buy Snapchat?

Mr. ZUCKERBERG. Congresswoman, I don't remember those specific conversations.

But that was also an area where it was very clear that we were going to be building something. People want to be able to communicate privately. They want to be able to communicate with all of their friends at once. And we're going to make sure that we build the best products in all of the spaces that we can around helping people stay connected with the people they care about.

Ms. JAYAPAL. I appreciate that, Mr. Zuckerberg. I think the question, again, here is, when the dominant platform threatens its potential rivals, that should not be a normal business practice.

Facebook is a case study, in my opinion, in monopoly power, because your company harvests and monetizes our data, and then your company uses that data to spy on competitors and to copy, acquire, and kill rivals. You've used Facebook's power to threaten smaller competitors and to ensure that you always get your way. These tactics reinforce Facebook's dominance, which you then use in increasingly destructive ways.

So Facebook's very model makes it impossible for new companies to flourish separately. And that harms our democracy, it harms mom-and-pop businesses, and it harms consumers.

Mr. Chairman, I yield back.

Mr. NEGUSE [presiding]. The gentlewoman yields back.

The gentleman from Colorado, Mr. Buck, is recognized for 5 minutes.

Mr. BUCK. Thank you, Mr. Chairman.

Mr. Bezos, thank you for being here today. I'm concerned that you've used Amazon's dominant market position to unfairly harm competition. We've heard from a number of companies that Amazon uses proprietary data from third-party companies to launch its own private-label products, meets with startups to discuss investing in the product and then uses the proprietary data from these meetings to create its own private-label products, and allows the sale of counterfeit items through its web platform.

During this subcommittee's field hearing in Boulder this January, PopSockets' CEO and inventor, David Barnett, detailed how Amazon allowed counterfeit products to appear on Amazon's marketplace ahead of PopSockets' products. Mr. Barnett told CNBC that PopSockets found at least 1,000 counterfeit products for sale on Amazon's marketplace, which Amazon allegedly failed to remedy until PopSockets agreed to a nearly $2 million marketing deal with Amazon.

We've also seen troubling reports in *The Wall Street Journal* detailing Amazon's use of third-party sellers' proprietary data to develop and market its own competitive private-label products.

The Wall Street Journal also reported last week that Amazon's venture capital fund used meetings with unsuspecting startup companies to gain access to secret proprietary product information and financial details. Amazon then reportedly used that information to launch competing products, often with disastrous results for the original startup company.

There are many examples of this behavior, but one allegation in the *Journal*'s reporting sticks out in particular. In 2011, Amazon contacted Vocalife, LLC's inventor about the possibility of investing in the speech-detection technology. Vocalife's founder accepted the meeting, thinking this was the company's big break.

After displaying Vocalife's microphone technology and providing proprietary information, including engineering data, to Amazon employees, the relationship came to an abrupt halt. Amazon employees allegedly stopped responding to emails before the technology eventually found its way into the Amazon Echo device.

These allegations are serious, especially because the size and scope of these practices couldn't happen without Amazon's monopolistic control of the marketplace.

I'm also concerned that, given Amazon's allowance of counterfeit goods on its marketplace, especially counterfeit goods from China, that Amazon's marketplace may be knowingly or unknowingly furthering China's use of forced and slave labor conditions.

This is especially important following recent reports that at least 80 global companies that sell on the Amazon marketplace, including Nike, Starbucks, and Samsung, have ties to Chinese factories that use enslaved Uighur Muslims.

Following these concerning reports, Senator Hawley introduced an important bill last week requiring American businesses to certify that their supply chain does not rely on forced labor. I will be introducing the House companion bill later this afternoon.

While I do not expect you to have intimate knowledge of the legislation, I do want to ask all four of our witnesses a simple yes-or-no question.

Will you certify here today that your company does not use and will never use slave labor to manufacture your products or allow products to be sold on your platform that are manufactured using slave labor?

Mr. Cook, you were kind enough to visit with me on the phone. I think we briefly discussed this issue. If you——

Mr. COOK. Yes.

Mr. BUCK [continuing]. Can, give a yes-or-no answer. And I understand you haven't read the details of the bill. But would you agree to this idea?

Mr. COOK. I would love to engage on the legislation with you, Congressman. But let me be clear: Forced labor is abhorrent, and we would not tolerate it in Apple. And so I would love to get with your office and engage on the legislation.

Mr. BUCK. Thank you.

Mr. Pichai.

Mr. PICHAI. Congressman, I share your concern in this area. I find it abhorrent as well. Happy to engage with your office and discuss this further.

Mr. BUCK. So I really don't want to even engage with my office half the time. Will you guys agree that slave labor is not something that you will tolerate in manufacturing your products or in products that are sold on your platforms?

Mr. PICHAI. I agree, Congressman.

Mr. BUCK. And Mr. Cook?

Mr. COOK. We wouldn't tolerate it. We would terminate a supplier relationship if it were found.

Mr. BUCK. Mr. Zuckerberg?

Mr. ZUCKERBERG. I agree, we wouldn't tolerate this, and if we found anything like this, we would also terminate any relationship.

Mr. BUCK. And Mr. Bezos?

Mr. BEZOS. Yes, I agree completely.

Mr. BUCK. Great. Thank you very much, gentlemen.

And I yield back.

Mr. CICILLINE [presiding]. I thank the gentleman.

I now recognize the gentleman from Maryland, Mr. Raskin, for 5 minutes.

Mr. RASKIN. Thank you, Mr. Chairman.

I want to thank Mr. Buck for that excellent line of questioning and for the upcoming legislation. I look forward to joining that.

You know, in the 19th century, we had the robber barons. In the 21st century, we've got the cyber barons. And we want to make sure that the extraordinary power and wealth that you've been able to amass is not used against the interests of democracy and human rights around the world and not against the interests of a free market at home.

So, Mr. Bezos, let me turn to you. I'm interested in the role that you play as a gatekeeper. A lot of consumers want to know when the HBO Max app will be available on your Fire device. And I understand that negotiations are ongoing but that your company is not only asking for financial terms but also for content from Warner Media. Is that right? And is that a fair way to proceed?

In other words, is it fair to use your gatekeeper-status role in the streaming device market to promote your position as a competitor in the video streaming market with respect to content?

Mr. BEZOS. I'm not familiar with the details of those negotiations. As you said, they're underway right now. I predict that the companies will eventually come to an agreement. And I think this is kind of—two large companies negotiate an agreement; this is kind of normal case of simple commerce——

Mr. RASKIN. Right. But here's why I pursue it: Precisely because it is a large company, and, in a way, they stand in for hundreds of thousands of much smaller companies, who are even in a more disadvantageous position with respect to negotiating with you.

I guess, the general proposition, then, you can speak to, if you don't know the details of this, which is: Is it okay to negotiate not just for financial terms in having someone be part of your Fire unit but also to try to extract in that negotiation leverage with respect to getting content from them?

Mr. BEZOS. Well, again, I'm not familiar with the details. What I would say is I think——

Mr. RASKIN. I'm not asking about that one. In general. In general.

Mr. BEZOS. In general, I think that when two companies are negotiating, you are negotiating not just the amount of money that's going to change hands but also what you're going to get in exchange for the amount of money. That is a very fundamental way that business works——

Mr. RASKIN. Do you see, at least to outsiders, that would look like a structural conflict of interest? Like, you're using your control over access to people's living rooms essentially, you're using that in order to obtain leverage in terms of getting creative content that you want. And are you essentially converting power in one domain into power in another domain where it doesn't belong?

Mr. BEZOS. I think what I should do is offer to get you information. I'll get it to your office for you. Because I'm not familiar enough with this, and I could imagine that there would be scenarios, if we're just talking in the abstract, where it would be inappropriate, and I could imagine scenarios where it would be very normal business——

Mr. RASKIN. Okay.

Mr. BEZOS [continuing]. And very appropriate.

Mr. RASKIN. Fair enough.

I want to talk about an emerging market, smart homes. And I want to start with the hub of the smart home, smart speakers. Does Amazon price the Echo device below cost?

Mr. BEZOS. Not its list price, but it's often on promotion, and sometimes when it's on promotion it may be below cost, yes.

Mr. RASKIN. Well, several other companies did tell us, in fact, that Amazon is pricing Echo devices way below cost, making it nearly impossible for them to compete, and aggressively discounting Alexa-enabled speakers as a strategy to own the smart home.

Like many markets we've heard about today, smart speakers with voice assistants, like Alexa, along with the myriad of smart-home appliances that Alexa can interact with, make up the next ecosystem or platform for tech companies to lock in customers.

Would you say the smart-home market, for which the Echo, Ring security system, and other smart devices operate, is a winners-take-all market, yes or no?

Mr. BEZOS. No, I wouldn't, especially if we're able to succeed at what we want, which is, we would like—our vision for this is that smart-home speakers should answer to different wake words. So, you know——

Mr. RASKIN. So, when considering the acquisition of——

Mr. BEZOS [continuing]. On a case-by-case basis. And I think in that—just if I could, because I think it's important. If we could achieve that, then I think you would get really good behavior on the part of——

Mr. RASKIN. Okay.

Mr. BEZOS [continuing]. You know, competitive voice agents helping you.

Mr. RASKIN. When you were looking at acquiring Ring, you wrote to your executive team, quote, "We're buying market position, not technology. And that market position and momentum is very valuable."

So, if smart homes are not a market with lock-in effects, why would a leading market position and momentum be so very valuable?

Mr. BEZOS. Sir, market position is valuable in almost any business, and it's one of the primary things that one would look at in an acquisition.

There are multiple reasons that we might buy a company. Sometimes we're trying to buy some technology or some IP. Sometimes it's a talent acquisition. But the most common case is market position, that the company has traction with customers, they've built a service, maybe they were the first mover. There could be any number of reasons why they have that market position. But that's a very common reason to acquire a company.

Mr. RASKIN. Well, once a company becomes dominant in a market, it can favor its own products and services. Alexa-enabled smart speakers make up over 60 percent of the smart-speaker market.

Mr. Bezos, when I ask Alexa to play my favorite song, Prime Music is the default music player. Is that right?

Mr. BEZOS. If you're—I think that's true if you're a Prime member, yes.

Mr. RASKIN. And a *New York Times* report found that, when users say, "Alexa, buy batteries," Alexa responds, "Would you like to buy double A AmazonBasics batteries?"

So has Alexa ever been trained to favor Amazon products when users shop by voice?

Mr. CICILLINE. The time of the gentleman has expired, but the witness may answer the question.

Mr. BEZOS. I don't know if it's been trained in that way. I'm sure there are cases where we do promote our own products, which is, of course, a common practice in business. You know, so it wouldn't surprise me if Alexa sometimes does promote our own products.

Mr. RASKIN. Thank you, and I yield back.

Mr. CICILLINE. The chair recognizes the gentleman from Florida, Mr. Gaetz, for 5 minutes.

Mr. GAETZ. Mr. Pichai, during our prior discussion earlier today, you said that Google doesn't work with the Chinese military. That answer was deceptive, because Google works with many of the entities that work with the Chinese military in common collaboration.

And just one example would be Tsinghua University, where Jeff Dean, who is the head of Google AI, served on the Computer Science Advisory Committee for the university, and then the university takes nearly $15 million from China's Central Military Commission.

So you can see how, even if you don't literally show up at the offices of the Chinese military, if you're all showing up at the same place, working together on AI, that would lead to my concern.

But I want to talk about search, because that's an area where I know Google has real market dominance.

On December 11, you testified to the Judiciary Committee, and in response to a question from my colleague Zoe Lofgren about Search, you said, "We don't manually intervene on any particular search result."

But leaked memos obtained by The Daily Caller show that that isn't true. In fact, those memos were altered December 3, just a week before your testimony, and they describe a "deceptive news blacklist" and a process for developing that blacklist, approved by Ben Gomes, who leads Search with your company, and also something called a fringe ranking, which seems to beg the question, you know, who gets to decide what's fringe?

And, in your answer, you know, you said to Ms. Lofgren that there is no manual intervention of search. That was your testimony. But now I'm going to cite specifically from this memo from The Daily Caller. It says—or that, I'm sorry, that The Daily Caller obtained from your company.

It says, "The beginning of the workflow starts when a website is placed on a watchlist." It continues, "This watchlist is maintained and stored by Ares, with access restricted to policy and enforcement specialists." It sort of does beg the question who these enforcement specialists are.

"Access to the listing can also be shared on a need-to-know basis to enforce or enrich the policy violations. The investigation of the watchlist is done in the tool Athena, the Ares manual review tool."

So you said to Congresswoman Lofgren that there was no manual review tool, and then your documents indicate that there is a manual review tool. So help us understand the inconsistency.

Mr. PICHAI. Congressman, there are two parts to this.

In general, you know, we algorithmically approach our search results. We have robust policies to do so. And we test it both with user feedback and we use raters to validate. Last year alone, we ran over 300,000 experiments and launched around 3,000 improvements to Search.

And we don't manually tune. The question last time was in the context of, is there someone behind the curtain manually tuning an individual search result? We don't. We generally approach it algorithmically.

We, however, in order to comply with the law in every country we operate in—for example, there may be an actor or a website identified as interfering in elections, and we then have to put that site on a list so that that doesn't appear in our search results against queries. So other examples would be violent extremism——

Mr. GAETZ. And is that done manually, Mr. Pichai? That process you described, is that done manually?

Mr. PICHAI. And we could get reports from law enforcement agencies. You know, we are complying with—or it's a known—DMCA-based copyright violation

Mr. GAETZ. There is either a manual component or there is not a manual component. Which is it?

Mr. PICHAI. For creating those lists, that process can involve manual portions, too.

Mr. GAETZ. Okay. Great. Well, that is sort of the concern that I have. You've now said something different today than you said to Ms. Lofgren, because you've confessed that there is a manual component to the way in which you blacklist content. And it seems to be no coincidence that sites like Gateway Pundit, The Western Journal, American Spectator, Daily Caller, and Breitbart receive ire or negative treatment as a consequence of your manual tooling.

And it also seems noteworthy that whistleblowers at your own company have spoken out. You said that one of the reasons you maintain this manual tool is to stop election interference. I believe it is, in fact, your company that is engaging in election interference. And it's not just my view. Mike Wacker came out and was a whistleblower, indicating that the manual blacklist targets that Google specifically goes after are those who support President Trump, who hold a conservative viewpoint. And he left your company in 2019 because he was speaking out against these "outrage mobs."

So can you see how, when you empower individuals, some of the same individuals that Project Veritas has exposed as labeling people as terrorists who say "Make America Great Again" or who support the President, that, in fact, can be the very election interference that we're concerned about and that you're using your market dominance in search to accomplish that election interference?

Mr. PICHAI. Congressman, with respect, I strongly disagree with that characterization. We don't approach this work with any political viewpoint. We do that to comply with law, known copyright violations, in very narrow circumstances. And we have to do that

to comply with the law. And, in many cases, those requests can come from law enforcement agencies——

Mr. GAETZ. Your own employees are saying——

Mr. CICILLINE. The time of the gentleman——

Mr. GAETZ [continuing]. You're doing it for a different reason.

Mr. CICILLINE. The time of the gentleman has expired.

Mr. GAETZ. Your own employees are saying it's political bias.

I yield back.

Mr. CICILLINE. Thank you, Mr.——

Mr. GAETZ. Oh, I'm sorry. May I be recognized for a unanimous consent request?

Mr. CICILLINE. Yes.

Mr. GAETZ. Mr. Chairman, just, given the productivity of our discussion, I'd request that we be permitted a third round of questioning.

Mr. CICILLINE. Without objection.

I now recognize the chairman of the full committee, Mr. Nadler.

Chairman NADLER. Yeah. You know, the documents prove—the news and journalism industry in this country are in economic free fall. Over 200 counties in America no longer have a local newspaper, and tens of thousands of journalists have been laid off in recent years.

The reason journalism is in free fall is that Google and Facebook now capture the vast majority of digital ad revenue. Although news publishers produce valuable content, it is Google and Facebook that increasingly profit off their content. Publishers have told us that Google and Facebook maintain their dominance in these markets in part through anticompetitive conduct as well as conflict of interest.

Mr. Zuckerberg, in 2015, Facebook reported high and quickly growing rates of video viewership on its platform. Based on these metrics, news publishers fired hundreds of journalists, choosing instead to boost their video divisions.

In 2018, it was discovered that Facebook had inflated these metrics and had known about the inaccuracies several years before Facebook publicly disclosed this.

Mr. Zuckerberg, did you know that these metrics were inflated before they were publicly released?

Mr. ZUCKERBERG. Congressman, no, I did not. And we regret that mistake and have put in place a number of other measures since then to make sure that we——

Chairman NADLER. And do you realize the harm that this caused journalists across the country?

Mr. ZUCKERBERG. Congressman, I certainly know how important it is that the metrics that we report are accurate, and we've put in place additional measures to make sure we can audit those.

Chairman NADLER. And what do you have to say to the journalists who lost their jobs because of Facebook's deception?

Mr. ZUCKERBERG. Well, Congressman, I disagree with that characterization and also your description of what——

Chairman NADLER. Okay. Reclaiming my time.

Google, meanwhile, maintains its dominance in part through aggregating data from across its products and services.

Mr. Pichai, I understand that Google collects user data on users' browsing activity through its Chrome browser. Does Google use that data for its own purposes, either in advertising or to develop and refine its algorithms?

Mr. PICHAI. Mr. Chairman, we do use data to improve our products and services for our users. Anytime we do it, we believe in giving users choice, control, and transparency; we make it very clear. And we give them simplified settings to choose how would they like their data to be used.

Chairman NADLER. So you do use the data that you get from these companies for your purposes.

Mr. PICHAI. My understanding was whether we use data in general to improve our products and services. And, you know, we do use data to show ads, but we give users a choice; they can turn ads personalization on or off. And——

Chairman NADLER. No, this—obviously, the use of this data from all these companies gives you a tremendous advantage over them and over any competitor.

Does the ability to make money in any way affect Google's algorithm in terms of what news appears in a typical user's search results?

Mr. PICHAI. The way we rank our search results, you know, we don't take into account a commercial relationship that we have.

Chairman NADLER. Okay. But Facebook and Google have gravely threatened journalism in the United States. Reporters have been fired. Local newspapers have been shut down. And now we hear that Google and Facebook are making money over what news they let the American people see. This is a very dangerous situation.

And, unfortunately, my time has expired and I have to yield back.

Mr. CICILLINE. I thank the gentleman for yielding.

I now recognize the gentleman from Florida, Mr. Steube, for 5 minutes.

Mr. STEUBE. Thank you, Mr. Chairman. I'm just going to pick up where I left off.

Mr. Pichai, there are rioting groups that are going unchecked with the posting of what I would contend is very violent video. Yet, yesterday, I was sent a YouTube video about doctors discussing hydroxychloroquine and discussing the not-dangers of children returning to school, and when I clicked on the link, it was taken down.

And then I was sent a different link on YouTube, and it was taken down. I just checked again, just to make sure, and it says that this video has been removed for violating YouTube's community guidelines.

How can doctors giving their opinion on a drug that they think is effective for the treatment of COVID–19 and doctors who think it's appropriate for children to return back to school violate YouTube's community guidelines, when all of these videos of violence are all posted on YouTube?

Mr. PICHAI. Congressman, we believe in freedom of expression. And there is a lot of debate on YouTube about effective ways to deal with COVID. We allow robust debate.

But in the area, during a pandemic, we look to local health authorities—so, for example, in the U.S., it would be CDC—for guidelines around medical misinformation in a narrow way which could cause harm in the real world.

And so, for example, if there are aspects of a video and if it explicitly states something could be a proven cure, and that doesn't meet CDC guidelines, you know, we would remove that video——

Mr. STEUBE. But it's free expression of speech. And you have these doctors who are giving their opinion as doctors. And I don't understand why YouTube and, therefore, Google thinks it's appropriate to silence physicians and their opinion of what can help and cure people with COVID–19.

I'm going to switch quickly to Mr. Zuckerberg.

I think at this point it's fairly obvious that technology platforms have been stifling conservative news and opinions. You employ a panel of content moderators. Can you explain how Facebook chooses who these moderators are?

Mr. ZUCKERBERG. Thanks, Congressman. We do hire a lot of people around the world to work on safety and security. Our team is more than 30,000 or 35,000 people working on that now. We certainly try to do this in a way that is neutral to all viewpoints. We want to be a platform for all ideas. I don't think you build a social product with the goal of giving people a voice if you don't believe that people being able to express a wide variety of things is ultimately valuable for the world. And we try to make sure that our policies and our operations ultimately reflect and carry that out.

Mr. STEUBE. Is there an ideological diversity amongst the content moderators?

Mr. ZUCKERBERG. Congressman, I don't think we choose to hire them on the basis of an ideology. They're hired all over the world. There is certainly a bunch in the U.S. There's diversity in where they're hired, but certainly we don't want to have any bias in what we do, and we wouldn't tolerate it if we discovered that.

Mr. STEUBE. So you don't specifically hire, say, conservative moderators and Democrat or liberal moderators so that there's a balance in your content moderators?

Mr. ZUCKERBERG. Congressman, in terms of the 30,000 to 35,000 people or more at this point who are doing safety and security review, that is correct. In terms of the people setting the policies, I think it is valuable to have people with a diversity of viewpoints involved so we can make sure that we have the different viewpoints represented in the policy development process.

And we also consult with a number of outside groups whenever we develop new policies to make sure that we're taking into account all perspectives.

Mr. STEUBE. What are some of those outside groups that would be conservative leaning?

Mr. ZUCKERBERG. Congressman, I need to get back to you with a list of specific groups, but it would depend on what the topic is that we're talking about.

Mr. STEUBE. Yeah. Can you just think of one? I mean, you said that you reach out to outside groups. Can you think of one conservative outside group that you reach out to and use as a content moderator?

Mr. ZUCKERBERG. Oh, Congressman, I'm talking about different external stakeholders and groups that are inputs to our policy development process. And I'm not involved in those conversations directly. So I would have to get back to you with specifics on that. But I am quite confident that we speak with people across the ideological spectrum when we're developing our policies.

Mr. STEUBE. I would very much appreciate a followup on that.

Real quickly, can you briefly explain the approval process for third-party fact-checkers, and how many fact-checkers does Facebook employ?

Mr. ZUCKERBERG. Yes, thanks. We work with about 70 fact-checking partners around the world, and the goal of the program is to limit the distribution of viral hoaxes, so things that are clearly false, from getting a lot of distribution. But we don't ourselves want to be in the business of determining what is true and what is false. That feels like an inappropriate role for us to play.

We rely on an organization called the Poynter Institute, and I think it's called the independent fact-checking organization that has a set of guidelines of what makes an independent fact checker, and they certify those fact-checkers. And then any organization that gets certification from that group is qualified to be a fact-checking partner within Facebook.

Mr. CICILLINE. Thank you. The gentleman's time has expired.

I'm going to recognize Mr. Johnson for 5 minutes, and then we are going to take a short break of the committee.

Mr. Johnson, you are recognized.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Bezos, Amazon has a significant problem with counterfeit products being sold on its platform. Counterfeit products not only rip off the owners of legitimate businesses, they also can be dangerous. Counterfeit medicine, baby food, automobile tires, and other products can kill. Amazon has said its fixing its counterfeit problem, but counterfeiting seems to be getting worse, not better.

Amazon is a trillion-dollar company, but Amazon customers are not guaranteed that the products purchased on your platform are authentic. Amazon acts like it's not responsible for counterfeits being sold by third-party sellers on its platform, and we've heard that Amazon puts the burden and cost on brand owners to police Amazon's site, even though Amazon makes money when a counterfeit good is sold on its site.

More than half of Amazon's sales come from third-party seller accounts. Why isn't Amazon more aggressive in ensuring that counterfeit goods are not sold on its platform, and why isn't Amazon responsible for keeping all counterfeit products off of its platform?

Mr. BEZOS. Thank you. This is an incredibly important issue and one that we work very hard on. Counterfeits are a scourge. They are a problem that is not—does not help us earn trust with customers. It's bad for customers. It's bad for honest third-party sellers.

We do a lot to prevent counterfeiting. We have a team of more than a thousand people that does this. We invest hundreds of millions of dollars in systems that do this. We have something called Project Zero, which helps brands serialize individual products,

which really helps with counterfeiting. We have other programs as well——

Mr. JOHNSON. I'm glad that you have those features in place, but why isn't Amazon responsible for keeping all counterfeit products off of its platform?

Mr. BEZOS. We certainly work to do so, Congressman, and we do so not just for our own retail products but for third-party products as well. We do work closely with brands——

Mr. JOHNSON. Thank you. We've heard from numerous third-party sellers and brand owners that Amazon has used knockoffs as leverage to pressure sellers to do what Amazon wants. For example, the founder of Popsockets testified in January that Amazon itself was selling knockoffs of its product.

After reporting the problem, it was only after his company committed to spending $2 million on advertisements that Amazon appears to have stopped diverting sales to these knockoffs. What is your explanation for that business practice?

Mr. BEZOS. That's unacceptable. If that is—if those are the facts and if someone somewhere inside Amazon said, you know, "Buy X dollars in ads, and then we'll help you with your counterfeit problem," that is unacceptable. And I will look into that, and we'll get back to your office with that.

What I can tell you is that we have a counterfeit crimes unit. We attempt to prosecute counterfeiters. I would encourage this body to pass stricter penalties for counterfeiters and to increase law enforcement resources to go after counterfeiters because they are bad actors.

Mr. JOHNSON. But your company still makes money off of counterfeit goods being sold on your platform. Isn't that correct?

Mr. BEZOS. If it does, in my view, sir, it would only be in the short term. I would much rather lose a sale than lose a customer. We make money when the customer comes back.

Mr. JOHNSON. All right. Fair enough, sir.

Making companies pay extra to avoid having their products disappear in rankings seems to be so unfair, especially to small businesses. The American Dream is threatened when that happens. Don't you think so?

Mr. BEZOS. Sir, I'm not exactly sure what you're referring to. If you're talking about what we were just talking about a second ago, I agree completely.

Mr. JOHNSON. No, I'm talking about a totally different situation now, where a company that is selling on your platform but is not paying anything extra gets buried in the rankings, but companies that pay extra are able to get their products pushed up and they avoid getting pushed down. Is that an acceptable practice?

Mr. BEZOS. Sir, I think what you're referring to is the fact that we offer an advertising service basically for third-party sellers to drive additional promotion to their products. That is a voluntary program. Some sellers use it. Some don't. And it's been very effective at helping people promote their products.

Mr. JOHNSON. With that, I yield back. Thank you.

Mr. CICILLINE. The gentleman yields back.

The committee will stand in a brief recess.

[Recess.]

Mr. CICILLINE. The committee will come to order.

I recognize the gentlelady from Florida, Mrs. Demings, for 5 minutes. I'm sorry?

I recognize the gentleman from North Dakota, Mr. Armstrong, for 5 minutes.

Mr. ARMSTRONG. Thank you, Mr. Chairman.

Mr. Bezos, earlier, my colleague brought up what I think is an important issue, and they were discussing Amazon's stated policy against using third-party seller information to inform business decisions regarding Amazon's private label brands. Ms. Jayapal specifically noted that a possible loophole allows Amazon to review nonpublic aggregate data to inform private brands even in instances where there are only a few third-party sellers.

I just want to drill down on that just a little more. Where exactly does Amazon draw the line?

Mr. BEZOS. I'm sorry. Aggregate data would be more than one seller. And the—of course you have to remember that the person seeing the report would have no way of knowing how many sellers are inside that group or what the, you know, what the breakdown would be between those sellers. And I would remind you that it's not that different from perhaps a bestseller list or a product ranking, which we do make public for all.

Mr. ARMSTRONG. And I just want to be clear, does Amazon allow the use of aggregate data to inform private label Amazon brands when there are only three sellers for a product?

Mr. BEZOS. Yes, sir.

Mr. ARMSTRONG. Okay. Does Amazon look at aggregate data when there are only two sellers of a product?

Mr. BEZOS. Yes, sir.

Mr. ARMSTRONG. And am I correct in my understanding that Amazon is conducting an internal investigation on the use of third-party data?

Mr. BEZOS. Yes. We're basically trying to understand some of the anecdotes that we saw in the *Wall Street Journal* article.

Mr. ARMSTRONG. Will you commit to informing this committee on the outcome of that investigation, including on the exact circumstances of when Amazon is allowed to view and/or use aggregate data?

Mr. BEZOS. Yes. Yes, we will do that.

Mr. ARMSTRONG. And now I want to move, just really quick, music can be used to drive revenue. And obviously there is a reason it's important, and I want to talk about Twitch for a second. News reports have indicated that Twitch users are receiving notice and takedown requests pursuant to the Digital Millennium Copyright Act. My understanding is that Twitch allows users to stream music but does not license the music. Is that correct?

Mr. BEZOS. I'm going to have to ask that I could get back to your office with an answer to that question. I don't know.

Mr. ARMSTRONG. Okay. So that would be great. And then—so my—I just have two more questions related to that. If Twitch is responding to DMCA notice and takedown requirements, should we—or should, one, Twitch consider proactively licensing music instead of retroactively adhering to those notices?

So these are the questions we're interested in. I'm primarily concerned about small, up-and-coming musicians, different people that aren't necessarily labels, to make it easy for them to at least get cease-and-desist notices out as well and as we continue to move forward there.

Mr. BEZOS. Yes, Congressman. That is an important issue, and I understand it, and we will get—I will get back to your office on that.

Mr. ARMSTRONG. All right. Earlier this year, Google announced plans to retire third-party cookies that websites attached to users' browsers, and this allows users to be tracked across the internet. A consequence of that change is that it will put other digital advertising market participants at a disadvantage because they can no longer track users.

And at the very, very danger of being pro-cookie, because I'm not when I use my computer as well, but—and I understand that there are legitimate privacy concerns with third-party cookies, but I do want to focus on the competition aspect.

Did this asset—action also place Google at a disadvantage, or does Google have alternative means of collecting that user data to inform its digital advertising activities, Mr. Pichai?

Mr. PICHAI. Congressman, as you rightly pointed out, this is an area where we have focused on user privacy, and users clearly don't want to be tracked with third-party cookies. In fact, other browser vendors, including from Apple and Mozilla Foundation have also implemented these changes.

We are doing it thoughtfully, giving time for the industry to adapt because we know publishers depend on revenue in this area. But it's an important change, and I think we have to be focused on privacy to drive the change forward.

Mr. ARMSTRONG. But you have other ways of collecting that information, correct?

Mr. PICHAI. On our first-party services, you know, we don't rely on cookies, and obviously when people come and type into search, to give an example——

Mr. ARMSTRONG. I'm not asking if you rely on cookies. I'm asking you, you have other ways of collecting it through Gmail or consumer facing platforms, right?

Mr. PICHAI. We don't use data for Gmail for ads, Congressman. But to the extent on the services where we provide ads and if users have consented to ads personalization, yes, we do have data.

Mr. ARMSTRONG. Thank you. I yield back.

Mr. CICILLINE. The gentleman yields back.

I now recognize the gentlelady from Florida, Mrs. Demings, for 5 minutes.

Mrs. DEMINGS. Thank you so much, Mr. Chairman.

Mr. Zuckerberg, during discussions of changing Facebook's platform policy in 2012, you said that, and I quote, "in any model, I'm assuming we enforce our policies against competitors much more strongly." It sounds like Facebook weaponizes its policies to target competitors. Why would Facebook enforce its policies against competitors more strongly?

Mr. ZUCKERBERG. Congresswoman, when we were a much smaller company, we saw that——

Mrs. DEMINGS. This is 2012 now. This was in 2012, so, please, go right ahead.

Mr. ZUCKERBERG. Sure. We've had policies in the past that have prevented our competitors, which at the time we were primarily worried about larger competitors, from using our platforms to grow and compete with us. So we had some of those policies. We continually reviewed them over time and since then we've——

Mrs. DEMINGS. Okay. Mr. Zuckerberg, in 2013, a senior Facebook employee identified MessageMe as a fast-growing app on Facebook and said that we will restrict their access. Was this another example of enforcing Facebook's policies against competitors much more strongly, against MessageMe?

Mr. ZUCKERBERG. Congresswoman, I'm not familiar with that specific example, but we did have that policy. We evaluated it since then and changed our policies.

Mrs. DEMINGS. Okay. Let's move to another one and see if you remember this one. In 2014, other Facebook product managers openly discuss removing Pinterest's access to Facebook's platform tools.

As one employee said, "I am 100 percent in favor of the idea of moving it from Pinterest, but I am not recommending removing it from Netflix going forward." Why would Facebook product managers want to restrict Pinterest's access to Facebook but not Netflix?

Mr. ZUCKERBERG. Congresswoman, I'm not familiar with that exchange. I don't think I was on that.

Mrs. DEMINGS. Why do you think—you wouldn't have to be on that, but why do you think they made that decision or would make a decision like that?

Mr. ZUCKERBERG. Well, Congresswoman, as I said, we used to have a policy that restricted competitors from using our platform, and Pinterest is a social competitor with us. It's one of the many competitors that allow people to share——

Mrs. DEMINGS. Okay. All right. Mr. Zuckerberg, these examples and supporting documents strongly suggest that Facebook does weaponize its policy—platform policies, enforcing them selectively to undermine competitors. But let's move on.

Mr. Cook, I am concerned that Apple's policies are also picking winners and losers in the app economy and that Apple rules mean Apple apps always win. Mr. Cook, in 2019, Apple removed from the Apple Store certain apps that helped parents control their children's devices. Do you remember what justification Apple cited?

Mr. COOK. Yes, Congresswoman, I do. It was that the use of technology called MDM, mobile device management, placed kids' data at risk, and so we were worried about the safety of kids.

Mrs. DEMINGS. Okay. All right. So you were concerned about—that the app basically undermined kids' privacy. But another app that used the same tool was AppSure, an app owned by the Saudi Arabian Government. Do you recall what Apple's position was towards this app?

Mr. COOK. I'm not familiar with that app.

Mrs. DEMINGS. Okay. Apple allowed this Saudi app to remain. So there are two types of apps. They use the same tool. Apple kicks one out and said that that was help—one that was helping parents,

but keeps the one owned by a powerful government. If that is correct, Mr. Cook, that app that supposedly did the same thing, why do you—why would you keep the one owned by a powerful government?

Mr. COOK. I'd like to look into this and get back with your office. I know——

Mrs. DEMINGS. Because it sounds like you applied different rules to the same apps.

Mr. COOK. We apply the rules to all developers evenly. What we were worried about——

Mrs. DEMINGS. Did the fact that Apple had its own—Mr. Cook, let me just ask you this. Did the fact that Apple had its own parental control apps that were competing with these third-party apps contribute to Apple's decision to kick them off the Apple store? Mr. Cook, what do you think about that?

Mr. COOK. It did not. There's over 30 parental controls on the App Store today. So there's plenty of competition in this area. And I would point out that this is not an area where Apple gets any revenue at all. We do this because——

Mrs. DEMINGS. Mr. Cook, I didn't ask you anything about revenue. I didn't—that was not my question. But I'm out of time, and thank you so much, Mr. Chair. I yield back.

Mr. CICILLINE. I thank the gentlelady for yielding back.

I now recognize the ranking member of the full committee, Mr. Jordan, for 5 minutes.

Mr. JORDAN. Thank you, Mr. Chairman. I would yield to the gentleman from Florida, Mr. Gaetz.

Mr. GAETZ. I thank the gentleman for yielding.

Mr. Zuckerberg, just as Mr. Pichai gave prior testimony to Congress saying there wasn't editorial manipulation on their platform, you have previously given testimony to the Congress saying that there is not editorial manipulation that disadvantages conservatives.

And just like in the case of Google, there have been whistleblowers from Facebook that not only have offered evidence indicating your testimony was not truthful, but there is even video that suggests that content moderators that you employ are out there disadvantaging conservative content.

I'm wondering if you are familiar with the experiences of Zach McElroy and Ryan Hartwig, two people who participated in Facebook content review, and what is your response to the very damning video evidence and the testimony from them that the culture that you lead within Facebook is one that disadvantages conservatives and leads to content manipulation?

Mr. ZUCKERBERG. So, Congressman, I'm somewhat familiar with the concerns that they have raised, and as I've said, we aim to be a platform for all ideas. We got into this because we want to give everyone a voice. I certainly do not want our platforms to be run in a way that has any ideological bias, and I want people to be able to discuss a range of issues.

When people raise concerns like that, we do look into them to make sure that everyone in our operation is behaving in upholding the standards that we would like. And if the behavior that they cited is true, then that would be unacceptable in our operation.

Mr. GAETZ. And in following the release of those videos in that evidence from Project Veritas, will you then describe the investigation that Facebook undertook to root out these very corrosive effects on your platform?

Mr. ZUCKERBERG. Congressman, I'd have to get back to you with more details on that, but I know that we have ongoing training in what we do, and we certainly will look into any complaints that come up. And we want to make sure that in how we run the content review teams, that it's done in a way that reflects the values of the company around giving everyone a voice and being a platform for all ideas.

Mr. GAETZ. I'm concerned that the content review does reflect the values of the company, but those values don't, in fact, give everyone a voice. They prejudice against certain content. And while I appreciate training as a prophylactic endeavor to try to guide future content, it seems disingenuous for you to suggest that these videos come out that are very damning that show the people that you trust with content moderation admitting on video that they disadvantage conservatives, that they label people who support the President as a way to push down their content and limit the reach of that content.

For you to then come to us many months later after that was all over the news and the internet and say, well, you know, you'll get back to us and you do a little training, it seems to suggest that you don't take these allegations and this evidence very seriously.

And so I'll ask the question perhaps in a different way, would you revise your prior—you know, in your prior testimony to Energy and Commerce, you said that does not happen. It cannot happen. Would you at least be willing to acknowledge, based on the irrefutable evidence before us that you don't seem to have investigated that it is possible that at Facebook your employees do have the power to disadvantage conservative viewpoints and that they, in fact, have used that power in ways that we need to root out?

Mr. ZUCKERBERG. Congressman, my testimony in the past and today is about what our principles are as a company and what we try to do. Of course, when you have tens of thousands of employees, people make mistakes, people have some of their own goals some of the time, and it's our job in running the company to make sure that we minimize errors and that we make sure that the company's operations reflect the principles that we intend to run it on.

Mr. GAETZ. And when you fire people as a consequence of their politics, do you think that impacts the culture and perhaps empowers some of the content moderators to also treat people worse as a consequence of their politics?

Mr. ZUCKERBERG. Congressman, I'm not sure what you're referring to, but I'm not aware of any case where we have fired someone because of their politics, and I would say that would be an inappropriate thing for us to do.

Mr. GAETZ. Why did you fire Palmer Luckey?

Mr. ZUCKERBERG. Congressman, I'm not sure it's appropriate to get into a specific personnel issue publicly, but I can assure you it was not——

Mr. GAETZ. I mean, I could just tell you that Palmer Luckey's NDA with you—I only have 10 seconds, but Palmer Luckey's NDA

with you doesn't allow him to talk to anyone except government officials. I'm a government official. I've seen the messages where you have specifically directed Mr. Luckey to make statements regarding his politics for the benefit of your company.

So I think both in the case of these content moderators and in the case of the testimony you just gave regarding Mr. Luckey and firing people over their politics, there is serious question as to whether or not you're giving truthful testimony here or whether it's lying before Congress.

I see my time is expired, and I'll yield back.

Mr. CICILLINE. The gentleman yields back.

I now recognize the gentlelady from Pennsylvania, Ms. Scanlon.

Ms. SCANLON. Thank you, Mr. Chairman.

Mr. Pichai, I wanted to focus a little bit on Google's acquisition of YouTube and some of the consequences of that move for consumer privacy and competition. Now, Google purchased YouTube in 2006 after identifying it as a potential rival that could eventually draw business away from Google, and it's my understanding Google paid $1.65 billion for that acquisition, nearly 30 times its original bid of $50 million.

So could you tell us why Google was willing to pay so much more beyond the initial proposed bid, and was this the result of any analysis on the harm Google would suffer if a competitor had purchased YouTube?

Mr. PICHAI. Congresswoman, we acquired YouTube in 2006, and this was well before my time there as CEO, and I wasn't directly involved, but, you know, what I do recall at the time is that we saw it as a new emerging area, and we are—our mission is to help users with information. We saw an opportunity and it wasn't clear. YouTube only had 67 people.

Ms. SCANLON. Okay. Was Mr. Page in charge of that decision?

Mr. PICHAI. Congresswoman——

Ms. SCANLON. You don't know, okay.

Mr. PICHAI [continuing]. I wasn't directly involved, but I am pretty sure our senior leadership team at that time definitely looked into it.

Ms. SCANLON. Okay. I would encourage the subcommittee to take the steps necessary to have us hear from whoever it was in charge of that.

Moving on, Google is now by far the top online site where Americans watch videos, including children's videos. And as I'm sure you're aware, Federal law prevents companies from collecting data on children under 13. However, just last year, the Federal Trade Commission found that Google had spent years knowingly collecting data on children under 13 on YouTube and offering advertisers the ability to target those children directly.

Mr. Pichai, did YouTube use the data it illegally acquired to improve its ability to target ads to children?

Mr. PICHAI. We are—you know, we are—this is an area, you know, we take it very seriously. I'm a parent too. We have invested tremendously. We have a dedicated product for kids in YouTube Kids on the main YouTube platform. We make sure we have clear policies. We enforce them rigorously.

Just in Q4 in 2019, we flagged and removed almost close to 1 million videos potentially for concerns around child safety. So it is an area we are investing rigorously, and we'll continue to do so.

Ms. SCANLON. Okay. Well, I'm more concerned about the fact that you're investing rigorously in luring in advertisers like toy makers Mattel and Hasbro by telling them that YouTube is the number one website regularly visited by kids. So that sounds like you're targeting the kids and then targeting advertisers to bring them on board. Is that correct?

Mr. PICHAI. Today, in the main site of YouTube, we don't allow anyone under 13 to create accounts. There are scenarios in which there could be family viewing, and today there are creators who create content oriented towards families, and as part of that, there are advertisers which are interested in connecting with those users. But everything we do here we obviously comply with all the applicable regulations and it's——

Ms. SCANLON. Okay. Well, let's look at some of the content that is specifically for children. COPPA makes it illegal to target those kids, but we've got an issue where content creators are in a very difficult position now. So, if a show like Sesame Street doesn't want to show ads for junk food on YouTube, does YouTube allow it to make that choice?

Mr. PICHAI. Today, we do—you know, we have choices both for creators in terms of, you know, tools and preferences, and we have extensive tools for advertisers. And above all, for users we give the choice, they can either use YouTube as a subscription service without seeing those types of ads, or, you know, they can use it for free with ads.

So we give choice, and, you know, for us it is of utmost importance that YouTube is a place where people come to learn, and, you know, we find increasingly small and medium businesses use YouTube to thrive especially even during COVID particularly many——

Ms. SCANLON. Okay. Let's go back to content that's designed for children. So, you know, if there's an organization like Sesame Street that wants to provide child-centered content but they don't want that content to be sullied, shall we say, with junk food ads or something, my understanding is that you say that the content creators can do that.

But we've got a recent report from *The Wall Street Journal* that says YouTube hasn't been honoring those requests, and it's been making it difficult for independent auditing companies like OpenSlate to independently audit that and then report back to those content creators about whether or not YouTube is honoring those. Is that correct?

Mr. PICHAI. I'm not familiar with the particular report, but I'm happy to understand it better and, you know, have my office follow up with your staff, Congresswoman.

Ms. SCANLON. I would appreciate that. And my time is expired. I yield back.

Mr. NEGUSE [presiding]. The gentlewoman yields back.

The chair will now recognize himself for 5 minutes.

Mr. Bezos, thank you for being here today. In your opening statement, you—I reviewed your written testimony—you indicated, and

I'll just quote, that Amazon accounts for less than 1 percent of the $25 trillion global retail market and less than 4 percent of retail in the U.S., end quote.

When you refer to retail—I take it based on the empirical studies I reviewed—you're referring to a broad definition of retail that includes restaurants, bars, gas stations, it's a fairly all-encompassing view of retail. I wonder if you know what percentage of Amazon's sales are represented in the terms of online retail sales, the e-commerce market stream?

Mr. BEZOS. The figures I've seen for—you know, I don't—with all respect, I don't accept that e-commerce is a different market. But as a different channel, what I've seen is sort of 30 to 40 percent is the outside studies that I've seen were Amazon's share of that e-commerce channel.

Mr. Neguse. And that's consistent with the data that I have seen.

Mr. BEZOS. Okay.

Mr. NEGUSE. The latest figure I saw was 40 percent. And so, in terms of how we define it, whether it's a stream or a channel, nonetheless, I do think that factually it's important. It's an important distinction that I want to make sure we clear here.

Obviously, I suspect you understand more than most that the early stages of a startup where entrepreneurs are undertaking risks to bring up their products and services to market. Over the course of our investigation, we've heard directly from startups who rely on Amazon services, and that includes obviously Representative Jayapal's questions, Representative Buck, my colleague from Colorado, with respect to concerns about the way in which Amazon uses confidential information.

But we've also heard that, not just with respect to the marketplace but Amazon's cloud computing arm, AWS, the notion that that computing arm essentially identifies startups' best technologies and rolls out replica products and services. So, Mr. Bezos, does Amazon use confidential information that companies share via AWS to build competing services?

Mr. BEZOS. No, sir, not that I'm aware of. AWS does often—you know, they do keep expanding their services. AWS started, you know, 15 years ago. We invented this entire category.

Mr. NEGUSE. Let me just clarify that, Mr. Bezos. I appreciate that, sorry. Apologies for interrupting. But last week one of Amazon's former engineers posted online that he and his team, quote, "proactively identified growing businesses on AWS," that they built competing products, and that they targeted those products to the businesses' customers, and there's been public reporting on that strategy. So I guess I wonder if you can comment on that and how you would account for those statements.

Mr. BEZOS. Well, I think there may be categories—I know some—databases of different kinds and so on where we see that it's an important product for customers, and we make our own product offering in that arena. But it doesn't mean we stop servicing the other companies that are also making those products. We have competitors using AWS, and we work very hard to make them successful. Netflix is one example, Hulu is another, and so on.

Mr. NEGUSE. I think the concern, Mr. Bezos, with respect, is that the pattern emerges across the different components in Amazon,

whether it's the marketplace or whether it's the cloud services I mentioned.

In addition, there was an article, I'm sure you're aware, in *The Wall Street Journal* regarding the Alexa Fund, that according to news reports Amazon's venture capital fund, the Alexa Fund, had invested in a number of different companies. I believe you're familiar with the Alexa Fund investing, for example, in DefinedCrowd Corp.? Does that ring a bell?

Mr. BEZOS. No, sir, I'm afraid it doesn't.

Mr. NEGUSE. Okay. Well, I'll represent to you, according to *The Wall Street Journal*, and I'll just quote from them, "When Amazon, Incorporated's venture-capital fund invested in DefinedCrowd Corp., it gained access to the technology startup's finances and other confidential information. Nearly 4 years later, in April, Amazon's cloud-computing unit launched an artificial intelligence product that does almost exactly what DefinedCrowd does, said DefinedCrowd founder and chief executive Daniela Braga. Does that refresh your recollection? Are you aware of those allegations?

Mr. BEZOS. I read that article, but I didn't remember that piece of it. I apologize for that. I don't know the specifics of that situation, and I would be happy to get back to your office with more information about that.

Mr. NEGUSE. Well, I would appreciate it. I certainly would welcome that, and to the extent that you all can follow up with the subcommittee, with respect to this particular article and the different episodes that are referenced both in terms of DefinedCrowd Corp. There's also another company called Nucleus that you may be familiar with.

The reason why I ask these questions, the reasons why it matters, Mr. Bezos, to me is that we are very concerned about this innovation kill zone that seems to be emerging. I represent Boulder and Fort Collins, two of the fastest growing and most innovative tech hubs in the country.

And entrepreneurs and founders shared their stories with this committee during one of our field hearings, actually a field hearing that we held at the University of Colorado Law School just earlier this year. And they are extremely dependent on big technology firms, including in terms of investment in capital, yet they live in constant fear that the platforms could steal their core technologies or ideas making it impossible to compete because of those existing advantages.

So I see my time has expired, but we will certainly be following up with respect to the episodes that I referenced. With that, I would yield back. The gentleman's time is expired.

And the gentlewoman from Georgia, Mrs. McBath, is recognized for 5 minutes.

Mrs. MCBATH. Thank you, Mr. Chair.

Mr. Cook, Facebook acquired WhatsApp in 2014, and at that time, Sheryl Sandberg told the board that the deal was critical for countering the App Store power of Apple and Google who choke off Facebook's access to mobile devices. Was Sheryl Sandberg correct? Does Apple have the power to exclude apps from the App Store?

Mr. COOK. If you look at the history of this, Congresswoman, we've increased the number of apps from 500 to 1.7 million. So

there's a very wide gate for the App Store, and there's fierce competition for developers, and we want every app we can on the platform.

Mrs. MCBATH. Okay. So, but, Mr. Cook, then what you're saying is that Apple can exclude apps from the App Store; in fact, it has. In 2018, Apple introduced an app called Screen Time, which helps people limit the amount of time they or their kids spend on their iPhones. Is that correct?

Mr. COOK. It sounds right.

Mrs. MCBATH. Okay. But before Screen Time existed, there were other apps in the App Store that gave parents control over the kids' phone usage, apps like OurPact and Kidslox, and parents depended on them.

Soon after you introduced Screen Time, however, you removed these competing apps from the App Store. One mother wrote to Apple saying, and I quote her, "I am deeply disappointed that you have decided to remove this app and others like it, thereby reducing consumer access to much-needed services to keep children safe and protect their mental health and well-being."

Mr. Cook, why did Apple remove competing apps right after you released Screen Time?

Mr. COOK. We were concerned, Congresswoman, about the privacy and security of kids. The technology that was being used at that time was called MDM, and it had the ability to sort of take over the kid's screen and a third party could see it, and so we were worried about their safety.

Mrs. MCBATH. Okay. Thank you. I appreciate that.

Mr. COOK. Today we have——

Mrs. MCBATH. I appreciate that, but the timing of the removal seems very coincidental. If Apple wasn't attempting to harm competitors in order to help its own app, why did Phil Schiller, who runs the App Store promote the Screen Time app to customers who complained about the removal of rival parental control apps?

Mr. COOK. Congresswoman, I can't see this email. I am sorry. My eyes are not good enough to read it. But I see Screen Time as just an alternative, that there are over 30 parental control apps that are in the App Store today, and so there is vibrant competition for parental controls out there.

Mrs. MCBATH. Okay. Well, Mr. Cook, the fact is that Apple sidelined Screen Time's competition by keeping them out of the App Store. And while Apple claims these competitors weren't meeting Apple's privacy standards, these app creators say that you admitted them back in 6 months later without requiring significant privacy changes.

And, of course, 6 months is truly an eternity for small businesses to be shut down, even worse if all the while a larger competitor is actually taking away customers. And, you know, this is not the first time something like this seems to have happened, Mr. Cook. Let me give you another example, you know, of the harm that's been caused to your competitors.

In 2010, Apple introduced an online bookstore called the iBookStore where it offered e-books, and the only major publisher that didn't agree to join iBookStore was Random House. Random

House wanted to offer its own e-books through its own apps and submitted their apps to be added to the App Store.

Amidst continued negotiations between Apple and Random House, senior VP Eddy Cue said, and I'm quoting him when he said, it prevented an app from Random House from going live in the App Store. Cue himself cited this app rejection as a factor in finally getting Random House to give in and join iBookStore.

Mr. Cook, is it fair for Apple to use its power over the App Store to pressure a business to join Apple's own app?

Mr. COOK. I can't see the email and so I don't know the context of it, but there are many reasons why an app might not initially go through the App Store gate, because it may not work properly. There may be other issues with it. So it's very difficult to see.

What I would say though on a macro basis, the gate to the App Store is very wide. We have 1.7 million apps in it. It has become an economic miracle with over $138 billion of commerce just in the United States.

Mrs. MCBATH. Well, Mr. Cook, I really, really appreciate that sentiment, but, you know, I want to say to you that Apple enjoys enormous power to control which apps can reach consumers. Even some of the largest companies in the country fear your power.

Our evidence suggests that your company has used its power to harm your rivals and boost your own business. This is fundamentally unfair and harms small businesses that rely on you to reach customers and stifles the innovation that is the life blood of our economy. Ultimately, it reduces the competition and choices that are made available to consumers, and that is a great concern to all of us.

And I yield back.

Mr. CICILLINE [presiding]. The gentlelady yields back.

That concludes that round. In light of the request of Mr. Gaetz for a third round and because many of my colleagues would like to get more fulsome answers on a number of issues, we'll proceed to a final round, and my expectation is we will conclude within the hour. And I'll recognize myself for 5 minutes.

Mr. Zuckerberg, we've seen the dominance of several of the companies appearing before us today, that it's not just harmful to our economy and competition, but it's harmful to the founding principles of our democracy. Facebook and Google are designed to keep users on their platforms whatever the cost. Because disinformation, propaganda, and hateful speech are good for engagement, they're good for business.

But over 100 years ago, the Supreme Court Justice Oliver Wendell Holmes, Jr. wrote, "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing panic."

My first question is, Mr. Zuckerberg, do you agree with that principle, that there are limits to harmful and false speech and that are particularly important when it comes to the health and safety of the public?

Mr. ZUCKERBERG. Congressman, I certainly do, and I actually think that our policies go further than just limiting those types of things.

Mr. CICILLINE. Well, Mr. Zuckerberg, you have 1 billion users and almost 50,000 employees, and so you agree you have a responsibility to remove harmful lies from your platform, correct?

Mr. ZUCKERBERG. Congressman, I think we have a responsibility to limit the spread of content that's going to be harmful for people. And also if—I'd like to add that I do not believe that we have any incentive to have this content on our service. People don't like it——

Mr. CICILLINE. Mr. Zuckerberg, with all due respect, except that it is often the most engaging. It's the most—it brings the most likes or it brings the most activity which, of course, produces great profit. So you do have an incentive. The more engagement there is, the more money you make on advertising.

So let me ask you a question. Let me give you some specific examples that will illustrate my concerns. These are some of the top ten most shared articles on Facebook in 2020: "Trump Suggests 'Injection' of Disinfectant to Beat Coronavirus and Clean the Lungs," "Coronavirus Hype Biggest Political Hoax in History," "U.S. Hospitals Getting Paid More to Label Cause of Death As Coronavirus."

During the greatest public health crisis of our lifetime, don't you agree that these articles viewed by millions on your platform will cost lives?

Mr. ZUCKERBERG. Congressman, with respect, we certainly have policies that prohibit false information about COVID that would lead to imminent harm, and we've been quite aggressive about taking that down as some of the questioning from the other side of the aisle has shown so far.

Mr. CICILLINE. Well, Mr. Zuckerberg——

Mr. ZUCKERBERG. I am proud of our efforts here. We've——

Mr. CICILLINE. With all due respect, the problem is Facebook is profiting off of and amplifying disinformation that harms others because it's profitable. This isn't a speech issue. It's about Facebook's business model that prioritizes engagement in order to keep people on Facebook's platform to serve up more advertisements.

So I'll ask it very specifically, what are you doing right now to protect people from demonstrably false claims related to this deadly pandemic?

Mr. ZUCKERBERG. Congressman, I'll certainly answer that, but I have to disagree with the assertion that you're making that this content is somehow helpful for our business. It is not what people want to see, and we rank our—what we show in News feed is based on what is going to be the most meaningful to people and is going to create long-term satisfaction, not what's just going to get engagement or clicks today. That is a common misperception about the company.

Mr. CICILLINE. Sir, if that's true—if that's true, Mr. Zuckerberg, how do you explain that on Monday, the second most popular post on Facebook was a Breitbart video claiming that you don't need a mask and hydroxychloroquine is a cure for COVID, and in the first 5 hours after being posted on Facebook, it racked up 20 million views and over 100,000 comments before Facebook acted to remove it?

Mr. ZUCKERBERG. Well, Congressman, a lot of people shared that, and we did take it down because it violates our policies. We work with the CDC to——

Mr. CICILLINE. After 20 million people saw it over the period of 5 hours. I mean, doesn't that suggest, Mr. Zuckerberg, that your platform is so big that, even with the right policies in place, you can't contain deadly content?

Mr. ZUCKERBERG. Congressman, I don't think so. I think we have, on COVID misinformation in particular, a relatively good track record of fighting and taking down lots of false content, as well as putting up authoritative information. We have built a COVID information center——

Mr. CICILLINE. Well, I understand that.

Mr. ZUCKERBERG [continuing]. With authoritative information from health officials that we have put——

Mr. CICILLINE. Thank you, Mr. Zuckerberg. One more question.

Mr. ZUCKERBERG [continuing]. And shown more than 2 billion people.

Mr. CICILLINE. I appreciate that, Mr. Zuckerberg.

When a television station runs a false political advertisement, they're held liable for that. Why should Facebook or any other platform be different? While you may not be a publisher, you're responsible maybe not for the first posting, but you then take that posting and you apply a set of algorithms that decide how you will disseminate that, which is a business decision, not a First Amendment decision. And it's hard to understand why Facebook shouldn't be responsible for those business decisions.

Mr. ZUCKERBERG. Congressman, in terms of political ads, we've modeled a lot of our policies off of the FCC guidelines on broadcasters and their requirements to run political ads equally from all different sides——

Mr. CICILLINE. I think these examples unfortunately, Mr. Zuckerberg, are just the tip of the iceberg. It's not just about COVID. Facebook hosts or enables countless of pages in ads that are dedicated to conspiracy theories and calls to violence, including content that led to the white supremacist rally in Charlottesville in 2017.

And Facebook gets away with it because you're the only game in town. There's no competition forcing you to police your own platform. Allowing this misinformation to spread can lead to violence, and, frankly, I believe it strikes at the very heart of the American democracy.

And, with that, I now recognize the gentleman from Florida, Mr. Gaetz, for 5 minutes.

Mr. GAETZ. Thank you, Mr. Chairman.

Mr. Pichai, in 2016, there was an internal Google meeting. You attended that meeting along with Sergey Brin. A video of that meeting was leaked to Breitbart. And at the meeting, top Google executives, including Kent Walker, lamented Trump's victory, they compared Trump voters to extremists, and it was discussed that there was an intent to make the Trump win a blip in the populous movement in American history.

Now, I know you've testified today in response to my questions and Mr. Jordan's questions that you don't intend this time to en-

gage in electioneering on behalf of the former Vice President. But given the video evidence of senior members of your team in your presence saying that they had the intent to make the Trump victory a blip, why should we believe that testimony today?

Mr. PICHAI. Congressman, we do not have a view on—we respect the democratic process. We are deeply committed to it. As a company, we take pride in the information we provide to help people participate in free elections, and we are deeply committed to it, as I said to Congressman Jordan as well.

Mr. GAETZ. Do you remember that meeting in 2016?

Mr. PICHAI. Congressman, yes, I do. Yes, I do. It was in the context of, you know, to the election across both sides, there was a lot of opinions. And as you know, elections are kind of a polarizing moment generally in the country, and there was a lot of rhetoric about certain issues which were affecting our employees and——

Mr. GAETZ. Oh, I understand rhetoric. I guess the question is, when the senior members of your team in your presence said that they did have the intent to change the outcome in a subsequent election and then, since that moment in time, where we've seen all of these conservative websites and conservative viewpoints censored, you can understand why people would be concerned.

So, after your employees and top executives said in your presence that they intended to make the Trump victory a blip, what action did you take as the CEO to protect and preserve the neutrality of your platform?

Mr. PICHAI. Congressman, no one had a view on, you know, ever interfering with elections or so on. But what I can tell you is we have made it very clear—about 2 years ago, we announced new community guidelines for within Google clearly making it clear that, you know, employees can—obviously are free to have their political views.

But none of that should ever—they shouldn't bring that as they work on any of our products, and if we found any evidence that people are using a political agenda to manipulate any of our content platforms, we will take strong enforcement action.

Mr. GAETZ. Well, unfortunately, we have sort of a string of events here. We have the 2016 meeting, where people demonstrated their intent to make changes to hurt the President. Then we have your testimony today that's a little different than your testimony from December where you say people can manipulate blacklists.

And then you have the outcome, where sites like Breitbart and Gateway Pundit and others see that disparate treatment. So it really doesn't take Sherlock Holmes here to connect the dots and see what Google is doing.

I'm going to move on with my final 90 seconds. Mr. Bezos, I am deeply moved by your personal story. I am not here accusing you as someone who would ever traffic in hate, but it seems you have empowered people who do. And I'm particularly talking about the Southern Poverty Law Center.

The Southern Poverty Law Center, which you allow to dictate who can receive donations on your AmazonSmile platform, have said the Catholic Family News, Catholic Family Ministries, the Federation for American Immigration Reform, the American Fam-

ily Association, the Family Research Council, the Jewish Defense League, and even Dr. Ben Carson are extremists and should be treated differently.

Dr. Carson is on the Cabinet and is one of the most renowned minds in America. I'm just wondering why you would place your confidence in a group that seems to be so out of step and seems to take mainstream Christian doctrine and label it as hate?

Mr. BEZOS. Sir, it's a good question. We have—for those of you that don't know what AmazonSmile is, it's a program that allows customers to designate a certain fraction of their purchases to go to charity that we then pay for, and they can select from any one of millions of charities. And we use the Southern Poverty Law Center data to say which charities are extremist organizations. We also use the U.S. Foreign Asset Office to do the same thing, so those two together——

Mr. GAETZ. But why? Since they're calling Catholics and these Jewish groups hateful groups, why would you trust them?

Mr. BEZOS. Sir, I'm going to acknowledge this is an imperfect system.

Mr. GAETZ. No doubt.

Mr. BEZOS. And I would love suggestions on better—or better or additional sources for how to——

Mr. GAETZ. My suggestion would be a divorce from the SPLC, and I see that I'm out of time and I yield back.

Mr. CICILLINE. The gentleman yields back.

I now recognize the chair—sorry. I recognize the gentleman from Georgia, Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

Facebook is dominant, not just in the social media market but also in its digital surveillance capabilities. In 2012, Facebook had several tools that allowed it to conduct digital surveillance, including trackers, Facebook's Like button, Facebook login, and a series of application programming interfaces, or APIs.

Mr. Zuckerberg, these tools provide Facebook with insights into its competitors' websites and apps. Isn't that correct? Yes or no.

Mr. ZUCKERBERG. Congressman, I'm—I think broadly the answer to what you're saying is, yes.

Mr. JOHNSON. All right.

Mr. ZUCKERBERG. We—every other company here do market research to understand what people are finding valuable and——

Mr. JOHNSON. Okay. So you're going beyond the scope of my question. I appreciate that answer though.

Mr. Zuckerberg, a few days before Facebook acquired Instagram, a Facebook vice president emailed you suggesting ways to improve Facebook's, quote, "competitive research," end quote. By building a custom model Facebook could improve its understanding of its competitors and, quote,"make more bold decisions on whether they are friends or foes", end quote.

Mr. Zuckerberg, how does Facebook improve its competitive research to distinguish friends from foe?

Mr. ZUCKERBERG. Congressman, I'm not sure exactly what he was referring to in that email there, but he is one of the people involved in running our analytics organization, and I think it's nat-

ural that he would, as part of his responsibility, be focused on market research and understanding more there.

Mr. JOHNSON. And, certainly, isn't it true that Facebook, after that conversation, purchased the web analytics company Onavo in 2013 to give Facebook more capability to monitor its competitors?

Mr. ZUCKERBERG. Congressman, I think you have the timing correct. We purchased Onavo as part of our broader market research capacity.

Mr. JOHNSON. And that would give you the capability to monitor your competitors, correct?

Mr. ZUCKERBERG. Congressman, it gave aggregate analytics as to what people were using and what people were finding valuable, sort of like the type of product you would get from Nielsen or Comscore, or some of the other third–party companies that provide similar data.

Mr. JOHNSON. Well, Mr. Zuckerberg, that acquisition gave you nonpublic real–time data about engagement, usage, and how much time people spend on apps. And when it became public that Facebook was using Onavo to conduct digital surveillance, your company got kicked out of Apple's App Store. Isn't that true?

Mr. ZUCKERBERG. Congressman, I'm not sure I'd characterize it in that way. I think this is part of the problem——

Mr. JOHNSON. Well, Onavo did get kicked out of the App Store. Isn't that true?

Mr. ZUCKERBERG. Congressman, I believe we took the app out after Apple changed their policies about protecting VPN apps.

Mr. JOHNSON. And it was because of the use of these surveillance tools?

Mr. ZUCKERBERG. Congressman, I'm not sure that the policy was worded that way or that that's exactly the right characterization of it, but——

Mr. JOHNSON. Okay, well, let me ask you this question. Let me ask you this question. After Onavo was booted out of the App Store, you turned to other surveillance tools, such as Facebook Research app, correct?

Mr. ZUCKERBERG. Congressman, in general, yes, we do a broad variety of——

Mr. JOHNSON. And, also, isn't it true, Mr. Zuckerberg, that Facebook paid teenagers to sell their privacy by installing Facebook Research app?

Mr. ZUCKERBERG. Congressman, I'm not familiar with that, but I think it's a general practice to be able to—that companies used to have different surveys and give—understand data from how people are using different products and what their preferences are.

Mr. JOHNSON. Facebook Research app got thrown out of the App Store too. Isn't that true?

Mr. ZUCKERBERG. Congressman, I'm not familiar with that.

Mr. JOHNSON. Okay. Well, over nearly a decade, Mr. Zuckerberg, you led a sustained effort to surveil smaller competitors to benefit the Facebook—to benefit Facebook. These were steps taken to abuse data, to harm competitors, and to shield Facebook from competition. You tried one thing and then you got caught, made some apologies, then you did it all over again. Isn't it true?

Mr. ZUCKERBERG. Congressman, I respectfully disagree with that characterization. I think every company engages in research to understand what their customers are enjoying so they can learn and make their products better. And that's what we were trying to do. That is what our analytics team was doing. And I think, in general, that allowed us to make our services better for people to be able to connect in a whole lot of different ways, which is our goal.

Mr. JOHNSON. Did you use that capability to purchase WhatsApp?

Mr. ZUCKERBERG. Congressman, it was one of the signals that we had about WhatsApp's trajectory, but we didn't need it. Without a doubt, it was pretty clear that WhatsApp was a great product. I already had a relationship with Jan Koum, the founder, and——

Mr. JOHNSON. And it was a competitor.

Mr. CICILLINE. The gentleman's time has expired.

I now recognize the gentleman from Florida, Mr. Steube.

Mr. STEUBE. Thank you, Mr. Chairman.

I have a question for all four, a yes-or-no answer. Do you believe that the Chinese Government steals technology from U.S. companies?

We'll start with Mr. Cook.

Mr. COOK. I don't know of specific cases where we have been stolen from by the government.

Mr. STEUBE. So you don't believe that the Chinese Government is stealing technology from U.S. companies? Or you're just saying not from yours?

Mr. COOK. I'm saying I know of no case, ours, where it occurred, which is—I can only speak to firsthand knowledge.

Mr. STEUBE. Mr. Pichai, do you believe that the Chinese Government steals technology from United States companies?

Mr. PICHAI. Congressman, I have no firsthand knowledge of any information stolen from Google in this regard.

Mr. STEUB. Mr. Zuckerberg.

Mr. ZUCKERBERG. Congressman, I think it's well-documented that the Chinese Government steals technology from American companies.

Mr. STEUBE. Yeah. Thank you.

Mr. Bezos.

You're on mute.

Mr. CICILLINE. Mr. Bezos, I believe you're on mute.

Mr. BEZOS. I'm sorry. I was saying I have heard many reports of that, and I haven't seen it personally, but I've heard many reports of it.

Mr. STEUBE. So, of all the different products that Amazon carries, you haven't seen that in any of the companies that sell products on Amazon or your company yourself?

Mr. BEZOS. Well, certainly, there are knock–off products, if that's what you mean, and there are counterfeit products and all of that. But the Chinese—if the answer is the Chinese Government is stealing technology, that's the thing I have read reports of but don't have personal experience with.

Mr. STEUBE. It's no secret that Europe increasingly seems to have an agenda of attacking large, successful U.S. tech companies. Yet Europe's approach to regulation in general, and antitrust in

particular, seems to have been much less successful than America's approach.

America is a remarkable nursery for innovation and entrepreneurship and pursuit of the American Dream. As you all know from direct experience, this is a country where it's possible to start a company from a garage or a dorm room and experience tremendous success.

Do you have any recommendations on how Congress can better protect U.S. firms and U.S. companies from aggression and government intervention abroad, not just in Europe but in China as well?

Anybody that would like to chime in. I'll open it up to any of you.

None of you have any recommendations on how Congress can better protect U.S. companies like yourself?

All right. Well, I'll yield the remainder of my time to Mr. Gaetz.

Mr. GAETZ. I thank the gentleman for yielding.

Mr. Zuckerberg, what is a digital land grab?

Mr. ZUCKERBERG. Congressman, I'm not sure what you're referring to.

Mr. GAETZ. Well, in the emails that your company produced to the committee, there's one from David Wehner in 2014 where he's describing, under the mergers and acquisitions advice within the company, that you need to engage in a land grab. And he says, "I hate the word 'land grab,' but I think that's the best convincing argument, and we should own that."

And it goes on to describe a strategy wherein Facebook would spend 5 to 10 percent of its market cap each year to shore up its market position.

Does that refresh your recollection?

Mr. ZUCKERBERG. Yes, Congressman. Thanks for the opportunity to address this and, frankly, to correct the record, because I believe that what he was referring to was a question that was incoming from investors about whether we would continue to acquire different companies. I don't think that was—that wasn't referring to an internal strategy; it was referring to an external question that we were facing about how investors should expect us to act going forward.

And I think he was discussing the fact that, as mobile phones were growing in popularity, there were a lot of new ways that people could connect and communicate that were part of this overall broader space and market around human connection and helping people stay connected and share their experiences that were——

Mr. GAETZ. Okay, but, Mr. Zuckerberg, it seems to be both internal and external, because then in an email from you in 2012, we see a similar sentiment expressed. You write, "We can likely always just buy any competitive startups."

So is your desire to limit competition by purchasing your competitors consistent with the message to your investors that the way you'll run your company is through digital land grabs?

Mr. ZUCKERBERG. Congressman, I'm not sure I agree with the characterization of how we communicated with investors, but——

Mr. GAETZ. Your words, Mr. Zuckerberg.

Mr. ZUCKERBERG. But I think the broader point is that there were a lot of new ways that people can connect that were created by smartphones, and we——

Mr. GAETZ. But this is about your merger and acquisition strategy. You went on to say, "One thing about startups is you can often acquire them."

So, I mean, I'm not interested in how people connect. I'm interested in how you acquire businesses to limit competition.

Mr. CICILLINE. The gentleman's time has expired, but the witness may answer the question.

Mr. ZUCKERBERG. Congressman, in order to serve people better and help people connect in all the ways that we want, we innovated and built a lot of new use cases internally and we acquired others.

And that, I think, has been a very successful strategy at serving people well. And a lot of the companies that we've been able to acquire have gone on to reach and help connect many more people than they would've been able to on their own. You know——

Mr. GAETZ. You've grabbed a lot of land, I would say.

I yield back, Mr. Chairman.

Mr. CICILLINE. Thank you.

The gentleman yields back.

I now recognize the chair of the full committee, Mr. Nadler, for 5 minutes.

Chairman NADLER. Thank you, Mr. Chairman.

Mr. Cook, we've heard from businesses that Apple is canvassing the App Store to determine whether it can extract commissions from apps that have changed their business models in response to the pandemic. Businesses that relied on in-person interactions have moved online, and Apple is looking for its cut.

My staff has heard from some of the affected businesses. They say you're calling them up, demanding your 30 percent. Isn't this pandemic profiteering?

Mr. COOK. We would never do that, Mr. Chairman. The pandemic is a tragedy, and it's hurting Americans and many people from all around the world, and we would never take advantage of that.

I believe the cases that you're talking about are cases where something has moved to a digital service, which technically does need to go through our commission model. But in both of the cases that I'm aware of, we are working with the developers.

To sort of zoom out and to give you some historical context on this, when we entered the app store market, the cost of distributing software was 50 to 70 percent. And so we took the rate in half, to 30 percent, and we've held it in that same level over time or lowered it.

It's now responsible for 2 million jobs across America. And 84 percent of the apps on the store are distributed for free, where 100 percent of the proceeds go to the developer. Only that 16 percent is subject to a commission of either 15 or 30 percent.

Chairman NADLER. And school is about to start around the country, and millions of parents and students will attend school online. They will rely on apps to talk to teachers, tutors, and virtual learning tools.

Are these online learning tools next on Apple's—are they on Apple's list to monetize?

Mr. COOK. They're not, Mr. Chairman. We would—we will—we're very proud of what we've done in education. We are serving that market in a significant way, including tons of donations. And we will work with the people that happen to move from a physical to a virtual world because of the pandemic.

Chairman NADLER. And——

Mr. COOK. We've done a lot to address COVID, in general, as a company. We've sourced and donated 30 million masks, turning our supply chain into something that would be great for America. We've designed a face shield and donated 10 million of those. We're donating significant——

Chairman NADLER. Okay.

Mr. COOK [continuing]. Amounts of money across the U.S.

Chairman NADLER. Thank you. Thank you.

Now——

Mr. COOK. Thank you.

Chairman NADLER [continuing]. We've heard that Apple is now trying to extract commissions from various apps that previously didn't pay you anything. You approved, we're told, the email app HEY and then, days later, threatened to kick it out of the App Store unless it built a way to give you a cut of revenue.

The COO of Basecamp, maker of the HEY app, testified before our committee earlier this year. He was concerned about Apple's monopoly over software distribution on iOS devices. And he seems to have been right. Apple says services like HEY have always been required to cut Apple in, but you previously didn't interpret your rules that way—you didn't enforce your rules this way.

So would you comment on this, please?

Mr. COOK. Mr. Chairman, I would. HEY is in the store today, and we're happy that they're there. I believe that they have—a version of their product is for free, and so they're not paying anything on that.

I would also say, the 30 percent—I hope you give me a time to explain this—or 15 percent is for lots of different services, from programming languages, to compilers, to 150,000 APIs. It has been an economic miracle to allow the person in their basement to start a company, a global company, and serve 175 countries in the world. It is amazing. Likely the highest job creator in the last decade.

Chairman NADLER. I see.

And you haven't changed the rules in such a way as to make apps pay when they weren't paying before?

Mr. COOK. I know of no case where we've done that. I'm sure we've made errors before. We get 100,000 different apps submitted a week, and we've got 1.7 million on the store. But across that period of time, we've never raised commissions, from the first day the App Store went into effect back in 2008. We've only lowered them.

Chairman NADLER. Well, thank you.

I see my time has expired. I yield back.

Mr. CICILLINE. The gentleman yields back.

Mr. COOK. Thank you for the question.

Mr. CICILLINE. I now recognize the gentleman from North Dakota, Mr. Armstrong.

Mr. ARMSTRONG. Thank you, Mr. Chairman.

Mr. Pichai, in 2015, Google announced that it would not allow third parties to buy YouTube ads via AdX. That means that ad buys on YouTube are conducted only through Google demand-side products.

Google justified this change by citing privacy and user experience. My understanding is that Google cited a concern that third-party digital ad participants would develop user profiles based on this viewing. It is also my understanding that, even under the GDPR, you allow users to provide consent which would authorize this type of activity.

It seems that this policy, regardless of the privacy concerns, reduced competition for demand-side platforms on YouTube. Do you agree?

Mr. PICHAI. Congressman, we are always looking to improve the YouTube experience. Part of being able to integrate the space while in YouTube, we've been able to innovate with something called TrueView ads. So, for users, we give them skippable ads. If they find the ads not to be relevant, they can skip past those ads.

And, you know, monetizing YouTube well is what allows—today, we have many, literally hundreds of thousands of creators earning a livelihood. And many of them are small and medium businesses. So we want to support that well, and so we are focused on that. Allowing this type of integration is what allows us to create that user experience.

Mr. ARMSTRONG. But after Google stopped allowing third parties to buy YouTube ads via AdX, Google limited the interoperability of third-party analytics on YouTube. You now require the use of ads on Data Hub.

Again, the justification is based on user privacy. Other ad market participants may not have access to that data, but it doesn't disappear, does it?

Mr. PICHAI. Congressman, this is consistent with how today many services, be it Facebook or Snapchat or Pinterest, you work with their ad tools to buy ads on their properties. I think we are trying——

Mr. ARMSTRONG. Well, I understand that, but the excuse is privacy. But the data doesn't disappear; you just have greater control over it, right?

Mr. PICHAI. Congressman, it's a service we provide to our users. We obviously want to make sure we protect the privacy of users there.

We do monetize with ads. We give users a choice of either consuming it as a subscription service or using it with ads. And we've been very focused on making YouTube a great platform for creators, and I think the model is working well. It's really helped many small and medium businesses to invest on the platform and grow their businesses.

Mr. ARMSTRONG. So, regardless if the intent was to lessen competition or not, the action resulted in smaller competitors unable to participate in placing ads on YouTube. Isn't that correct?

Mr. PICHAI. Congressman, we see robust choice for, you know, advertisers. You know, there are several alternatives. There is, obviously, Facebook's suite of products. There is Amazon with their ads marketplace. There is companies like Snapchat, Pinterest,

Twitter that are new competitors who have emerged. And this is why we have seen advertising costs decline by 40 percent in the last 10 years. And so we see dynamism in the marketplace. We are focused on——

Mr. ARMSTRONG. Yeah, but here is my issue. And there are policies that actually protect user privacy: Apple's encryption policy. Microsoft just came out on facial recognition policy. My concern is that your—the position is that, when we're using privacy, we're trying to use privacy and we're using privacy as a shield, but what we're really doing and what your company is really doing is using it as a cudgel to beat down the competition.

And when we're talking about privacy, it's a great word that people care about, but not when it's utilized to control more of the marketplace and squeeze out smaller competitors.

And, with that, I'd yield the remainder of my time to Mr. Gaetz.

Mr. GAETZ. I thank the gentleman for yielding.

Mr. Bezos, we were cut short in our last discussion. I just wanted to give you the chance to clear this up. You don't believe Dr. Ben Carson is an extremist, do you?

Mr. BEZOS. No, sir, I don't.

Mr. GAETZ. So help me understand why you would partner with a group that labels him as someone worthy of an extremist watchlist.

Mr. BEZOS. Well, I want you to hopefully appreciate, when we're trying to make it possible for people to donate to any number of—from millions of different charities, and we need to have some source of data to use. And while I accept what you're saying, that the Southern Poverty Law Center and the U.S. Foreign Assets Office are not perfect—and I would like a better source if we could get it—that is what we use today. But I would happily engage with you——

Mr. GAETZ. Well, that's breaking news. It's great to hear that you do recognize the infirmities in the Southern Poverty Law Center.

And I guess Mr. Zuckerberg and Mr. Pichai's companies use them as well.

Mr. Zuckerberg, do you believe that Dr. Ben Carson is an extremist?

Mr. ZUCKERBERG. No, Congressman.

Mr. GAETZ. And so why would you trust the people who think he is?

Mr. ZUCKERBERG. Congressman, I'm not aware of where we work with the organization that you're saying——

Mr. GAETZ. Oh, the Southern Poverty Law Center?

Mr. CICILLINE. The gentleman's time has expired.

Mr. GAETZ. Okay. That's all.

Mr. CICILLINE. And I recognize the gentleman from Maryland, Mr. Raskin, for 5 minutes.

Mr. RASKIN. Thank you, Mr. Chairman.

I read Richard Hofstadter's "The Paranoid Style in American Politics," so I suppose it's futile to try to cure the obsessive persecution complex and victimology of some of our colleagues. But they should check out the top-performing Facebook link posts by the United States pages today or yesterday or any day for the last week, and 7 or 8 out of the 10 each day are right-wing sites: Ben Shapiro,

FOX News, Dan Bongino, Ben Shapiro, FOX News, Blue Lives Matter, and so on.

So, if Facebook is out there trying to repress conservative speech, they're doing a terrible job at it. And so I don't understand just the endless whining about how Facebook or Twitter, or Facebook and Twitter, are somehow discriminating against conservatives.

The removal of Donald Trump and Donald Trump, Jr., from Twitter, their tweets, was all about their spreading disinformation, false statements about COVID–19. That was an absolute public health measure which I hope all of us would endorse. We don't want anybody, including the President of the United States, spreading false information about COVID–19.

So I think they essentially destroy their own case when they pick that as their cause for going after all of you.

And I don't understand, for the life of me, the line of questioning about electioneering taking place by some of your companies. If you're opposed to electioneering by corporations, as I am, and you're opposed to Citizens United, then you've got no problem.

Citizens United is what gave corporations the power to go out and spend money. And if you don't like the way that some companies are spending money, then, you know, either start your own company or tell them what's wrong with it. But the idea that electioneering is something you're opposed to just strikes me as completely inconsistent with the history and the facts.

So I want to go to Mr. Cook, if we could, but, first, a quick question: Are any of your companies benefit corporations, and is that something you've considered doing? Is there any one—any one of you that have thought about becoming a B corp, or a benefit corporation?

Okay. I take it the answer's "no" there.

Mr. Cook, I'm hung up on this whole 30 percent question that several members have talked to you about. And you said sometimes it's 15 percent, sometimes it's 30 percent. Can you explain when it's 15 and when it's 30 and why it's 15 sometimes and why it's 30?

Mr. COOK. Sure. Thank you for the question, Congressman.

In eighty-four percent of the time, it's zero. Sixteen percent of the time, it's 15 or 30. In the case of—it's 15 if it's in the second year of a subscription.

Mr. RASKIN. Okay. So you just graduate from—your first year, you're taking no toll, essentially. The second year, it's 15. And then it's 30 after that. Is that right?

Mr. COOK. No, no. If it's a subscription product, it's 30 percent in the first year, and then it drops to 15 in the second year and every year thereafter.

Mr. RASKIN. I gotcha. Okay.

Well, what troubles me is just what one businesswoman told me when I was looking at this, which is, she said, I pay around 25 percent of my income to Uncle Sam, to the government, and then I pay 30 percent of my income to Apple. And so I get half of it, and it's very hard to make ends meet.

And I just wonder—you know, look, all of you are in business and all of you are tremendously successful at what you do, and obviously this model has worked for you. But the question is, does this model actually squeeze out the next generation of entre-

preneurs? And is it an unjust arrangement because you're, you know, the 10,000-pound gorilla and they're just trying to get started?

Mr. COOK. No, I don't think so. And, in fact, keep in mind, we've gone from 500 apps to 1.7 million. And so there's a lot of apps on the store, and a lot of people are making a very good living from it——

Mr. RASKIN. And you've said that—forgive me for interrupting, but you've said that several times. But that, to me, might just underscore the monopoly nature of your business, that everybody's got to go through you. There's really no alternative.

And so, I mean, I don't blame you for taking them all, but that doesn't mean that the terms that are being dictated are, in fact, fair terms. So how would you defend, substantively, that bargain?

Mr. COOK. That whether you look at it from a customer point of view or a developer point of view, there are enormous choices out there. If you're a developer, you can write for Android, you can write for Windows, you can write for Xbox or PlayStation. If you're a customer and you don't like the setup, the curated experience of the App Store, you can buy a Samsung, you can buy——

Mr. RASKIN. Okay. I appreciate that. Forgive me for cutting you off. I've got one more final question for Mr. Zuckerberg.

You spend a lot of your time speaking to our conservative colleagues who have this persecution complex that you're somehow going after them. Will you have time to meet with this broad coalition of civil rights groups that are engaged in a boycott because of what they think is the proliferation of hate speech and Holocaust revisionism and other affiliated topics on Facebook?

Mr. ZUCKERBERG. Congressman, yes. I already have taken the time to meet with them. I think that the topics that they're pushing on are important. On a lot of the goals, we agree. These are issues around fighting hate that we have focused on for years. And we are committed to continuing to improve the way that our company works and just continually getting better on these issues.

Mr. RASKIN. I appreciate that, and I will tell them of your answer.

Thank you.

Mr. CICILLINE. Thank you, Mr. Zuckerberg.

I now recognize the gentleman from Ohio, Mr. Jordan, for 5 minutes.

Mr. JORDAN. Thank you, Mr. Chairman.

Mr. Cook, is the cancel culture mob dangerous?

Mr. COOK. It's something I'm not all the way up to speed on. But if you're talking about where somebody with a different point of view talks and they're canceled, I don't think that's good. I think it's good for people to hear different points of view and decide for themselves.

Mr. JORDAN. Yeah, I agree with that.

And I want to just reference a letter. Bari Weiss, who resigned as an editor at *The New York Times,* she wrote a letter explaining why she resigned. And I'll just read three sentences for—for all of you, actually.

She says, first of all, "My own forays into Wrongthink have made me the subject of constant bullying by my colleagues who disagree with my views."

She then says later in the letter, "Everyone lives in fear of the digital thunderdome. The online venom is excused so long as it is directed at the proper targets." And those targets aren't just conservative. In fact, Ms. Weiss is actually center-left. She's not conservative. The targets are anyone who disagrees with the mob.

Are the rest of you concerned about the cancel culture mob and what it's up to?

Mr. Pichai.

Mr. PICHAI. Congressman, I'm sorry. I had momentary difficulty hearing.

But, you know, I can—we've built platforms which allow for freedom of expression. And we take pride in the fact that, across our platforms, including YouTube, there are more diverse voices than ever before. It is something we have committed——

Mr. JORDAN. That's fine. That's fine. I'm just saying, are you—I'm concerned about it. And, again, I'm concerned about it not just because conservatives get attacked. I'm concerned when anyone gets attacked for expressing a viewpoint. I thought we had a First Amendment, and yet they constantly get attacked.

How about you, Mr. Zuckerberg?

Mr. ZUCKERBERG. Yes, Congressman, I believe strongly in free expression. Giving people a voice is an important part of what our services do. And I am very worried about some of the forces of illiberalism that I see in this country that are pushing against free expression. I think that this is one of the fundamental democratic traditions that we have in our country, and it's how we make progress over the long term on a number of issues. And our company is committed to doing what we can to——

Mr. JORDAN. Mr. Bezos.

Mr. ZUCKERBERG [continuing]. Protect people's voice.

Mr. JORDAN. Thank you, Mr. Zuckerberg.

Mr. Bezos.

Mr. BEZOS. Yes, sir, I am concerned in general about that. And what I find, and I find a little discouraging, is that it appears to me that social media is a nuance-destruction machine, and I don't think that's helpful for a democracy.

Mr. JORDAN. Do you agree with the term she used, Ms. Weiss, she used, "digital thunderdome"?

Mr. BEZOS. I see that, yes.

Mr. JORDAN. Yeah, I see it too.

And I think—I guess my point is, you are four pretty important guys leading four of the most important companies on the planet, and it would sure be helpful if you spoke out against this.

I mean, Mr. Cook, there was a 1984 Super Bowl ad in black and white, had this Big Brother-type figure as the narrator saying over the screen to a bunch of these workers—looks like it was straight out of the Soviet Union—saying to a bunch of these workers, as they're sort of marching along, he says—one of the lines that the narrator uses is, "Our unification of thoughts is more powerful a weapon than any fleet or army on the Earth." And then the ad

ends with this lady running in in color and smashing the screen, busting the groupthink, busting the mobthink.

Do you remember that ad, Mr. Cook? What company had that ad?

Mr. COOK. I remember it very well. It was Apple versus IBM at the time.

Mr. JORDAN. Yeah, but the point was mobthink, cancel culture, groupthink is not what this country's about. And we are seeing it play out every single—just take the sports world, for goodness' sake. In the last few weeks, Drew Brees had to bow to the mob simply because he suggested you should stand for the anthem. There was a football coach at Oklahoma State who wore the, quote, "wrong" T-shirt fishing with his boys, and he got in all kinds of trouble. James Harden wears a mask saying back the police, help the police, support the police; he gets attacked.

Why don't we just let the First Amendment work? That's all we're asking.

And you are four individuals who have so much influence. It would sure help if you're out there—if you're out there criticizing what the cancel culture mob is doing to this country. And people see it every single day. And I hope you'll do it. I hope you'll—you all said you disagree with it. I hope you'll really speak out against it and be fair with all viewpoints.

I yield back.

Mr. CICILLINE. The gentleman yields back.

I recognize the gentlelady from Washington, Ms. Jayapal.

Ms. JAYAPAL. Thank you, Mr. Chairman.

Mr. Pichai, I direct my questions to you. Many of us feel a deep urgency to protect independent journalism, and I wanted to talk a little bit about ad revenue and independent journalism.

Google makes most of its revenue through selling advertising. And Google's advertising exchange is a, quote, "real-time marketplace to buy and sell display advertising space," correct?

Mr. PICHAI. Yes, Congresswoman, that's correct.

Ms. JAYAPAL. And over 2 million websites, including online newspapers, use that exchange, correct?

Mr. PICHAI. We are very proud to support publishers, and I don't have the exact numbers, but, yes, that seems——

Ms. JAYAPAL. Okay. Well, that's an estimate put forth by tech expert Dina Srinivasan. And your own website for Google Display Network says you have access to over 2 million sites.

What is Google's share of the ad exchange market?

Mr. PICHAI. Congressman, I'm not exactly familiar. I've seen various reports, but, you know——

Ms. JAYAPAL. Okay.

Mr. PICHAI [continuing]. We are a popular choice.

Ms. JAYAPAL. Great. Let me put it up for you. If you look at the screen, you will see that 50 to 60 percent—Google has 50 to 60 percent, according to the online platforms and digital advertising CMA market study that was just released.

And, in order to buy and sell on these exchanges, websites and advertisers go through a middleman, like Google's DV360 and Google Ads. If you look at the slide, Mr. Pichai, you can see that

the share of this buy-side market that Google has is 50 to 90 percent, according to the same study.

And I just want to simplify how these exchanges work. So, say, in Seattle, Dee's Electronics, a mom-and-pop business, wants to buy online ad space in *The Seattle Times.* Dee's Electronics would need to go to a middleman, like Google Ads, which would then bid for ad space on an ad exchange.

And the problem is that Google controls all of these entities. So it's running the marketplace, it's acting on the buy side, and it's acting on the sell side at the same time, which is a major conflict of interest. It allows you to set rates very low as a buyer of ad space from newspapers, depriving them of their ad revenue, and then also to sell high to small businesses who are very dependent on advertising on your platform.

It sounds a bit like a stock market, except, unlike a stock market, there's no regulation on your ad exchange market. If there were regulation, it would actually prohibit insider trading, which means that the broker can't use the data in the broker division to buy and sell for their own interest. Instead, brokers have to serve the clients, their clients.

Does Google have a similar obligation to serve its clients, the businesses that are selling and buying ad space?

Mr. PICHAI. Congresswoman, if I could explain this for a minute. We paid over $14 billion to publishers. We are deeply committed to journalism. In this area, on average, we pay out 69 percent of the revenue when publishers use Google's buy and sell side tools. And, you know, out of—it's a low-margin business for us. We do it because we want to help support publishers——

Ms. JAYAPAL. Right.

Mr. PICHAI [continuing]. In this area.

Ms. JAYAPAL. No, I understand that, Mr. Pichai. What I'm trying to get at is, when any company controls the buy and the sell side—I worked on Wall Street a very long time ago. There are reasons that insider trading is regulated. And this ad exchange is essentially the same thing. And without accountability, it isn't meaningful to just care about the newspapers. We're seeing them die all over, and ad revenue is a big reason.

Let me put up a graph here that shows that Google's ad revenue is increasingly coming from ads on Google-owned sites and less so from other websites. Can you explain that trend?

Mr. PICHAI. I can't quite see whether this is net revenue or gross revenue. Obviously, when it comes to non-Google properties, we share the majority of revenue back to publishers, whereas, on our own properties, we obviously—you know, we have the inventory.

But I would need to understand more. I just quickly looked at it. I'm not sure I fully grasp the——

Ms. JAYAPAL. Okay. We can send it to you and make sure you have it.

You know, Google has not made its search traffic volumes public in years, so there's no way for us to know exactly what's happening here. And there's no way for businesses to verify whether they've been treated fairly or left behind in favor of Google-owned companies.

Is Google steering advertising revenue to Google Search?

Mr. PICHAI. Congresswoman, users come to Google Search. It is that traffic and—you know, that's where our source of revenue comes from.

So we are focused on providing users the information they are looking for. We work hard to earn that trust. We know competition for information is just a click away——

Ms. JAYAPAL. Thank you, Mr. Pichai.

I just want to make the point that independent journalism is incredibly necessary to our democracy, and we want to do what we can to protect it.

I want to just ask one last question of Mr. Zuckerberg.

Over 1,100 companies and organizations pulled their advertising business from Facebook as part of the Stop Hate for Profit campaign to protest the spread of hate speech and disinformation. But you had a staff meeting earlier this month where you told employees, "We're not going to change our policies or approach because of a threat to any percent of our revenue. My guess is all these advertisers will be back on the platform soon enough."

Mr. Zuckerberg, are you so big that you don't care how you're impacted by a major boycott of 1,100 advertisers?

Mr. ZUCKERBERG. No, Congresswoman. Of course we care. But we're also not going to set our content policies because of advertisers. I think that that would be the wrong thing for us to do.

We've cared about issues like fighting hate speech for a long time, and we've invested billions of dollars—and I've talked about today how we have tens of thousands of content reviewers. We've built AI systems that proactively identify the majority—we're now at 89 percent of the hate speech that we remove before anyone even reports it to us.

We're going to continue getting better at that. And I think that those investments over time and the results that we put up will be recognized by people, since I do believe that they are industry-leading.

And I think that our advertising also is, for a lot of small businesses, the most effective or among the most effective ways that they can find and reach new customers——

Ms. JAYAPAL. Thank you—thank you, Mr. Zuckerberg.

My time has expired, but I would just say that, I know you've commissioned your own civil rights audit. I don't think that you've implemented all those recommendations yet. I hope you will move quickly to implement those. This is a critical time, as we watched the body of John Lewis leave us here in the Capitol, that we focus on civil rights.

Thank you, Mr. Chairman. I yield back.

Mr. CICILLINE. Before I call on the next witness, I want to recognize Mr. Pichai, who I think wants to make a correction for the hearing.

Mr. PICHAI. The only correction—thanks, Mr. Chairman.

There was a question earlier about information with respect to China. I just wanted to acknowledge on record that I recall in 2009 we had a well-publicized cyber attack originating there, which did exfiltrate some code from there. I just wanted to correct that.

Mr. CICILLINE. Thank you, Mr. Pichai. The record will so reflect.

I recognize the gentlelady from Pennsylvania for 5 minutes.

Ms. SCANLON. Thank you, Mr. Chairman.

In March 2020, Amazon announced that it was going to start delaying shipments of nonessential products in order to better serve customers and meet need while helping to ensure the safety of their warehouse workers. In practice, however, it appears that this policy was applied selectively, as Amazon appeared to continue to designate its own products as essential even as it delayed competing products from third-party sellers.

So the essential items were supposed to include household staples, medical supplies, high-demand products, and that many factors were considered when determining eligibility to be essential. But we've had several employees report that Amazon continued to ship nonessential items like hammocks, fish tanks, pool floaties, et cetera.

Mr. Bezos, were Amazon devices like Fire TV, Echo speakers, and Ring doorbell designated as essential during the pandemic?

Mr. BEZOS. I don't know the answer to that question. What I can tell you is that we had—there was no playbook for this. We moved very quickly. Demand went through the roof. It was like having a holiday selling season, but in March. And we had to make a lot of decisions very rapidly.

Ms. SCANLON. Okay.

Mr. BEZOS. Our goal was to limit it to essential supplies, but I'm sure we did not do that perfectly.

Ms. SCANLON. Okay.

I know the Ring doorbell has two competing products, including Arlo and—Eufy maybe? Do you know if they were designated as essential?

Mr. BEZOS. I do not.

Ms. SCANLON. Okay.

Are you able to testify to Congress today whether Amazon's profit was a factor in giving an "essential" classification distinction?

Mr. BEZOS. No, not to my knowledge. We were working to achieve two objectives. One was to get essential products to customers, and the second was to keep our frontline employees safe. And we did a tremendous amount of work in both categories, and that's what we were focused on. We were not focused on profitability at that time.

Ms. SCANLON. Pushing out the elusive Clorox Wipe, I guess.

But, at any rate, moving along, let's talk about the fees that Amazon charges sellers. According to a recent report, seller fees netted Amazon almost $60 billion in 2019, nearly double the $35 billion in revenue from AWS, Amazon's massive cloud-computing division.

Five years ago, Amazon took an average of 19 percent of each sale made by a third party on its site. Today, Amazon keeps an average of 30 percent. Doesn't Amazon's ability to hike those fees so steeply suggest that Amazon enjoys market power over those sellers?

Mr. BEZOS. No, Congresswoman, I don't believe so. I think what you're seeing there, when you see that go from 19 to 30 percent, is that more and more sellers are taking advantage of the incremental services that we offer.

And a big piece of that is Fulfillment by Amazon, which is probably the greatest invention that we ever created for sellers. And it's working for sellers. That's why, today, 60 percent of sales are going through third-party sellers, up from zero 20 years ago.

Ms. SCANLON. Right. But I think a little more concerning is the 11-percent hike.

Since 2014, Amazon's revenue from seller fees has grown almost twice as fast as its overall sales. So seller fees now account for 21 percent of Amazon's total revenue.

Mr. Bezos, aren't seller fees now effectively subsidizing Amazon's retail division?

Mr. BEZOS. Congresswoman, no, I don't believe so. I think what you're seeing there, when you see these fees going up, what's really happening is that sellers are choosing to use more of our services that we make available.

There are, you know, previously, perhaps, they were shipping their own products from their own fulfillment centers. So they would've had costs doing that. If you're operating your own fulfillment center and buying transportation services to the customer through the postal service or through UPS or whoever it would be, you——

Ms. SCANLON. Okay. So let's talk a little bit about the fulfillment centers.

Mr. BEZOS [continuing]. Have those fees anyway. But now you're doing that with Fulfillment by Amazon.

Ms. SCANLON. Right.

Mr. BEZOS. Yes, please. Go ahead. Sorry.

Ms. SCANLON. Okay. So we've got Fulfillment by Amazon. And, a year ago, we asked whether a merchant who was enrolled in Fulfillment by Amazon, also known as FBA, is a factor in whether they can be awarded the Buy Box. And, at that time, Amazon said no.

But the evidence is indicating and your own documents are showing that being enrolled in that program is a major factor, and it effectively forces sellers to pay for fulfillment services from Amazon if they want to make sales.

Mr. Bezos, has Amazon's big Buy Box algorithm ever favored third-party sellers who buy fulfillment services from Amazon over other sellers?

Mr. BEZOS. I think, effectively, the Buy Box—maybe directly or indirectly—I'm not sure if it's direct, but, indirectly, I think the Buy Box does favor products that can be shipped with Prime. So especially if you're a Prime member, the Buy Box is trying to pick the offer—if we have multiple offers from multiple sellers for the same item, a customer wants to buy that item, the Buy Box is trying to pick the offer that we predict the customer would most like. That includes price, delivery speed, and if you're a Prime member, it includes whether the item is eligible for Prime.

And so, I think at least indirectly——

Ms. SCANLON. Thank you, Mr. Bezos. I think my time has expired.

Mr. CICILLINE. The gentlelady's time has expired.

Before I recognize our last two colleagues, I think Mr. Zuckerberg would like to clarify something for the record as well.

Mr. ZUCKERBERG. Chairman, thank you.

In response to Congressman Johnson's question before, I said that I wasn't familiar with the Facebook research app, when I wasn't familiar with that name for it. But I just want to be clear that I do recall that we used an app for research, and it has since been discontinued. And I would be happy to follow up with his staff on any more details that he would like on that.

Mr. CICILLINE. Thank you, Mr. Zuckerberg.

Mr. ZUCKERBERG. Thank you.

Mr. CICILLINE. The record shall so reflect.

I recognize the gentleman from Colorado, Mr. Neguse.

Mr. NEGUSE. Thank you, Mr. Chairman.

Good afternoon, Mr. Cook. I wanted to direct a few questions to you and wanted to talk a little bit about the App Store and app development.

So, just taking a step back, my understanding from your testimony today is that, essentially, Apple has to operate by the same rules that the app developers operate by, in terms of being able to access the App Store. Is that correct?

Mr. COOK. We have 60 apps on the App Store. They go through the same rules that the 1.7 million do.

Mr. NEGUSE. Okay. So here's, kind of, why I ask that question. My understanding is the App Store review guidelines tell app developers not to submit copycat apps. Is that correct?

Mr. COOK. I'm not totally familiar, but I believe that's the case, because we were getting a number of apps that were essentially the same thing, like sort of a cookie cutter.

Mr. NEGUSE. And I can represent to you, Mr. Cook, we've reviewed—our subcommittee staff has obviously reviewed the guidelines, and they—precisely. They say that app developers should have original ideas, that copycat ideas aren't fair, and Apple's customers don't want those.

On the other hand, the app developer agreement, which you require every developer to agree to, does give Apple the right to copy other apps.

And so I guess the question is, why one rule for the developers that compete with you and the opposite rule for Apple?

Mr. COOK. Congressman, I'm not familiar with that, but I could follow up with your office on it.

Mr. NEGUSE. Well, I would appreciate if you could follow up with our office. My understanding, again, is that the app developer agreement explicitly says that Apple can use any information that an app developer provides to Apple for any purpose.

And so, obviously, you have complaints from any number of, you know, app developers who have testified before our committee—and I, as I said, represent the State of Colorado. We heard from a company called Tile, which said that Apple had access to confidential information about the apps distributed by the App Store. And, given that, juxtaposed against this language in the exclusive agreement, you can understand why we would have concerns about anticompetitive conduct.

Mr. COOK. Yeah, Congressman, we run the App Store to help developers, not hurt them. We respect innovation. It's what our company is built on. We would never steal somebody's IP.

But I will follow up with your office on more detail on this.

Mr. NEGUSE. Well, and I appreciate that, Mr. Cook. Because I think, to the extent that Apple were willing to commit—and I intend to ask Mr. Pichai a similar line of questioning, because I believe this is consistent across multiple different platforms. To the extent Apple was willing to commit within the developer agreement to say that, while you have access to that data, that you are not going to use that data and are not permitted to use that data to replicate your own app, a copycat app, if you will, that would certainly, in my view, be a reflection of a step away from any type of anticompetitive conduct. And it sounds like you'll follow up, and we can learn more with respect to that issue.

Mr. Pichai, similarly, there was an article just today, or, excuse me, yesterday, from The Verge. The title is, "Google reportedly keeps tabs on usage of rival Android apps to develop competitors."

And I'll quote from the article. "Google said that the data doesn't give information about how people behave while they're using individual apps, but it wouldn't say whether it had been used to develop competing apps."

So I guess, first, I take it you would confirm that Google does have access to confidential information or, ultimately, competitively sensitive information about apps on the Android devices?

Mr. PICHAI. Congressman, if I could clarify this, today we have an API, which is available for other developers as long as users consent. This gives us system health metrics. This is how we can launch digital well-being features on Android. This is how we understand which apps are using battery and we can give a dashboard which shows, you know, maybe for crashing or quality control or for battery usage or for digital well-being.

So, at a high level, this data is available through a public API, and other developers can avail as long as the users give consent to it.

Mr. NEGUSE. So, Mr. Pichai, I just want to clarify. Again, I'll quote from this article. The article refers to this data as "sensitive data about other apps, including how often they're opened and for how long they're used."

I'm not asking how you use that information. I'm just asking whether or not, in fact, what the article alleges is correct, that you do have access to that data.

Mr. PICHAI. Yeah, with user consent, and the APIs exist. Yes, we do.

Mr. NEGUSE. And does Google——

Mr. PICHAI. And it's critical for us to have access to that so that we can maintain the—you know, this is how we understand and we can, you know, improve resource usage of applications——

Mr. NEGUSE. Understood.

Mr. PICHAI [continuing]. Just like——

Mr. NEGUSE. My time's limited. Sorry. I just want to get to this core question: Given that Google does have access to that data, does Google use that data to develop competing apps?

And if your answer is no, will Google commit to making the necessary changes within its Android developer app agreements to ensure that developers have that sense of clarity that, in fact, the

data will not be used for Google to be able to develop a competing application?

Mr. PICHAI. Congressman, like other businesses today, we do look at trends. And, you know, in fact, in Play Store, we do publish the number of installs of application, and we give ranges. And so there's a wide variety of ways by which we try to understand what's happening in the market. But I appreciate your concern about making sure there's clarity in this area, and we'll continue to invest and give more clarity.

Mr. NEGUSE. Yeah, just I must, I guess—I want to just follow up very quickly, Mr. Chairman, if you're willing.

So I guess I'm wondering if you can just answer that fundamental question: Does Google use that information to develop competing apps?

I understand the purposes you've described in terms of how you use the information. I'm just asking if one of those, in fact, is to develop competing apps.

Mr. CICILLINE. The gentleman's time has expired, but the witness may answer the question.

Mr. PICHAI. Congressman, because we try to understand what's going on in market and we are aware of, you know, popularity of apps, you know, I don't want to—I want to be accurate in my answer.

But, in general, the primary use for that data is to improve the health of Android. But, you know, any data we get, we have user consent for it, and we make it available through an API to other developers as well.

Mr. CICILLINE. The gentleman's time has expired.

I now recognize the gentlelady from Georgia, Mrs. McBath.

Mrs. MCBATH. Thank you, Mr. Chairman.

And, gentlemen, thank you so much for spending so much of your time with us today. We really appreciate it.

And many of you have mentioned John Lewis today and his fight for equality and that I know that all my colleagues and I will carry on.

Very quickly, can each of you simply commit to improving racial and gender equity at your companies, including Black leadership and women in your senior ranks? Just a yes-or-no answer, please.

Mr. Zuckerberg?

Mr. ZUCKERBERG. Yes.

Mrs. MCBATH. Mr. Cook?

Mr. COOK. Yes. I am very personally committed.

Mrs. MCBATH. Thank you.

Mr. Bezos?

Mr. BEZOS. Absolutely, yes.

Mrs. MCBATH. Thank you.

Mr. Pichai?

Mr. PICHAI. Yes. And we've made public commitments to this regard.

Mrs. MCBATH. Thank you so much.

Mr. Zuckerberg, in 2004, there were dozens of social media companies. Facebook distinguished itself from the competitors by focusing specifically on privacy. You had a short, clear privacy policy; it was just 950 words. It made a promise to users, and I quote, "We

do not and will not use cookies to collect private information from any user."

And you said "will not." That's a commitment about the future. And that was 2004. Mr. Zuckerberg, today, does Facebook use cookies to collect private information on users?

Mr. ZUCKERBERG. Congresswoman, my understanding to that is, no, we're not using cookies to collect private information about people who use our services, and I believe we've upheld that commitment.

Mrs. MCBATH. Okay. Thank you.

So, Mr. Zuckerberg, do you think that your company would be as successful if it had started with today's cookies policy in place?

Mr. ZUCKERBERG. Congresswoman, I'm not sure exactly what you're referring to, but, in general, cookies are not a big part of how we're collecting information. We've primarily used them to make sure that someone can stay logged in on the web. We use them, to some degree, for security to make sure that you don't have someone trying to log in under a lot of different accounts for one computer or something like that.

Mrs. MCBATH. So, Mr. Zuckerberg, once again, you do not use cookies.

Mr. ZUCKERBERG. Congresswoman, just to make sure——

Mrs. MCBATH. Yes or no?

Mr. ZUCKERBERG [continuing]. I'm clear—we do use cookies. We do use cookies.

Mrs. MCBATH. Okay.

Mr. ZUCKERBERG. Yes, we do use cookies.

Mrs. MCBATH. Okay. So, Mr. Zuckerberg, the bottom line here is that you broke a commitment to your users. And who can say if you may or may not do that again in the future? The reality is that Facebook's market power grew and Facebook sacrificed its user policy.

Mr. Bezos, my colleagues have touched on counterfeit goods, and I share their concerns very deeply. I'm also concerned about stolen goods. Mr. Bezos, are stolen goods sold on Amazon?

Mr. BEZOS. Congresswoman, not to my knowledge, although, you know, there are more than a million sellers, and so I'm sure that there have been stolen goods——

Mrs. MCBATH. Really, Mr. Bezos?

Mr. BEZOS [continuing]. Sold on Amazon.

Mrs. MCBATH. Really, Mr. Bezos?

Mr. BEZOS. I'm sorry?

Mrs. MCBATH. There's not? You don't believe that there is? That surprises me.

Mr. BEZOS. No, I just said, with over a million sellers, I'm sure that it has happened. But, certainly, I don't think it's a large part of what we're selling.

Mrs. MCBATH. Okay. So, Mr. Bezos, basically, then, you're saying "yes."

Mr. BEZOS. I guess so.

Mrs. MCBATH. Okay.

So I want to ask you about information that you require from sellers to prevent the sale of stolen goods. Do you require a real name and address, yes or no?

Mr. BEZOS. For sellers?

Mrs. MCBATH. Once again, do you require a real name and address from sellers?

Mr. BEZOS. I believe we do. But let me get back to your office with a—I'd rather give you the accurate answer, but I think we do.

Mrs. MCBATH. All right. And I am aware that you are. So, yes, you do require a name and address.

Do you require a phone number, yes or no?

Mr. BEZOS. I don't know if it's required. I think we often have it. But I don't know.

Mrs. MCBATH. So, briefly, then, how do you verify that each of these pieces of information is accurate?

Mr. BEZOS. I don't know the answer to your question.

Mrs. MCBATH. So you don't know how many people work on seller verification before the seller is allowed to sell on Amazon?

Mr. BEZOS. No, Congresswoman, I don't.

Mrs. MCBATH. Okay. Then I'm going to ask you, sir, will you commit to reporting all sales of stolen and counterfeit goods to law enforcement and to victims to track large-scale offenders engaged in organized retail crime?

Mr. BEZOS. To the degree that we're aware of it, we will certainly pursue it. In fact, I would encourage——

Mrs. MCBATH. Sir, can you just make a blanket commitment—can you just make a blanket commitment, whether you're aware of it or not?

Mr. BEZOS. A blanket commitment to what? Sorry, Congresswoman. I'm trying to be helpful.

Mrs. MCBATH. Reporting all sales of stolen and counterfeit goods to law enforcement and to victims to track large-scale offenders engaged in organized retail crime.

Mr. BEZOS. I see no reason why, if we're aware of stolen goods, we wouldn't report it. We would want the correct law enforcement authorities to be involved.

Mrs. MCBATH. Okay. Thank you so much.

I yield back my time.

Mr. CICILLINE. I thank the gentlelady for yielding back.

I want to thank the witnesses for their testimony today and my colleagues on both sides of the aisle.

I also want to acknowledge the extraordinary work of our team, led by Slade Bond, Lina Khan, Amanda Lewis, Phil Berenbroick, Anna Lenhart, and Joe Van Wye, who have done an extraordinary job throughout this investigation and in preparation for our hearing today.

Today, we had the opportunity to hear from the decisionmakers at four of the most powerful companies in the world. This hearing has made one fact clear to me: These companies, as they exist today, have monopoly power. Some need to be broken up. All need to be properly regulated and held accountable.

We need to ensure the antitrust laws first written more than a century ago work in the digital age. When these laws were written, the monopolists were men named Rockefeller and Carnegie. Their control of the marketplace allowed them to do whatever it took to crush independent businesses and expand their own power.

Well, the names have changed, but the story is the same. Today, the men are named Zuckerberg, Cook, Pichai, and Bezos. Once again, their control of the marketplace allows them to do whatever it takes to crush independent business and expand their own power. This must end.

This subcommittee will next publish a report on the findings of our investigation. We will propose solutions to the problems before us.

As the great American Supreme Court Justice Louis Brandeis once said, "We must make our choice. We may have democracy, or we may have wealth concentrated in the hands of a few, but we can't have both."

This concludes today's hearing.

Thank you again to our witnesses for attending.

Without objection, all members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record.

Mr. CICILLINE. And, without objection, this hearing is adjourned.

[Whereupon, at 6:33 p.m., the subcommittee was adjourned.]

APPENDIX



August 4, 2020

U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Antitrust, Commercial,
and Administrative Law
Washington, DC 20515-6216
116th Congress

Re: Testimony by Mr. Jeff Bezos on Behalf of Amazon

Dear Subcommittee Members:

The Online Merchants Guild ("OMG"), is a trade association made up of third-party sellers from around the country. We provide a common voice for the diverse group of merchants who sell on Amazon and elsewhere online. Our membership is limited to non-publicly traded companies who sell goods in eCommerce using marketplace platforms such as Amazon, eBay, Walmart or their own eCommerce site.

The majority of our members are small businesses with less than $1 million in revenue. Many of our members are true kitchen-table enterprises. Often, eCommerce provides our members a means of earning self-sufficiency for those without educational advantages and access to capital, or after economic setbacks.

Our members have real-world experience with how Amazon actually works in practice. eCommerce stores like Amazon's have brought many benefits to us and to society, but there are several aspects of the eCommerce world—and Amazon's store in particular—that deserve Congress's close attention.

Below, we outline some key issues for the Subcommittee to consider. We would welcome the opportunity to discuss these matters further with Subcommittee staff.

Anti-Competitive Aspects of Amazon's Fulfilled by Amazon and Amazon Prime Programs

The Subcommittee is likely aware of Amazon's Fulfilled by Amazon ("FBA") program, which comprises the vast majority of physical product sales on Amazon. And no doubt the Committee has heard of Amazon Prime.

Participating in FBA and Prime are essential to our members' businesses, but Amazon deploys anti-competitive features in both programs.

In general, FBA works as follows. Third-party merchants, such as OMG members, source products for possible sale on Amazon. The merchant will propose a sale price to Amazon. Amazon has full discretion to approve the products for sale, and to approve the price. (Amazon's pricing algorithm is largely inscrutable to merchants; it warrants transparent scrutiny by the Subcommittee.) Amazon also retains editorial control over the product listing.

After Amazon approves the offer and sale price, Amazon will direct the merchant to ship the products to a warehouse of Amazon's choosing. From there, Amazon may keep the goods in that warehouse, or ship them anywhere for positioning, including after breaking up the lot.

After a consumer purchases the product, Amazon is responsible for shipment to the consumer. Amazon also collects payment, and—after holding onto the funds for several weeks—credits the merchant's account. On FBA sales, Amazon charges merchants a **45% commission**. By contrast, merchants who fulfill their own orders only pay a 15% commission.

Our members depend on FBA as their primary source of revenue; FBA can account for over 90% of sales for many members.

FBA is essential in Amazon's store because it is the primary way to become "Prime Eligible." Being Prime Eligible is critical, because in general products that are not Prime Eligible are not offered the "Buy Box"—the most prominent, and Amazon-endorsed listing. Products without Buy Box access are at a significant competitive disadvantage, because consumers tend to favor the items that Amazon has so promoted. The practical effect of this, as we have observed in the seller community, is that many of our members made their leap from being casual sellers to multi-million dollar sellers on Amazon once they adopted Amazon's FBA system and the goods they sold in Amazon's store become Prime Eligible.

Because FBA is a necessity for most participants to be successful on Amazon, as it leads to exponential sales volume growth far beyond any other platform, such as eBay or Walmart, participating in Amazon's FBA program—and paying Amazon a 45% commission—is effectively necessary to meaningfully access customers on Amazon's store.

We believe Amazon's arrangement raises anti-competitive concerns. There is a tying aspect to how Amazon effectively requires our members to "buy" access to Prime. Further, Amazon's heavy—and practically unavoidable—commissions limit the ability to compete on price.

Amazon's Pricing Controls

We also believe Amazon's control over pricing raises anti-competitive concerns in its own right. As explained above, third-party merchants do not actually have final control over pricing of "their" products in Amazon's store—Amazon does, through an inscrutable pricing algorithm that will reject proposed prices Amazon deems too high or too low. Not only does that make it difficult for third-party merchants to compete against other third-party merchants on price, our members have experienced *Amazon's system reject attempts to compete with Amazon's own*

listings on price. The potential for direct suppression of competition deserves close scrutiny by the Subcommittee.

Amazon's Sales Tax Collection Practices

One of Amazon's most striking anti-competitive practices was successfully avoiding collecting sales tax for years. Until very recently, Amazon refused to collect sales tax on sales of third-party products, which are the majority of sales on Amazon. That deprived state and local governments of billions of dollars in revenue and allowed Amazon to undercut other stores on price. By offering, for example, electronic goods at tax-free prices, Amazon could artificially reduce its prices relative to brick-and-mortar stores or online retailers who collected sales taxes on their sales. The success of that effort should be no surprise—many consumers chose the "cheaper" option, perhaps not appreciating the anti-competitive basis for the lower price. (Consumers were also misled into personal exposure for use tax, although it appears unlikely that tax collectors are going to systematically pursue consumers on that basis.).

For example, consider the case of Stan Grosz. Mr. Grosz owns a small camera store in Fresno. For years, Mr. Grosz watched as potential customers would use his store employees to do their "homework" on various cameras that they were interested in purchasing, only to then purchase the actual product from Amazon, from their phones, often times while standing in his store, just to save 8%. Amazon, as a convenience to its customers, would allow sellers to sort products by price, taking into account sales tax, so buyers would know which sellers to pick in order to avoid their local tax.

Mr. Grosz has since filed a lawsuit against the state of California, under California's Government Waste doctrine, to hold the state accountable for the lost revenue that the state helped facilitate by refusing to make Amazon collect sales tax.[1] That's right, California had their heavy hand in ensuring Amazon was treated differently among other retailers, intentionally putting small California retailers at a disadvantage. And while there is nothing Mr. Grosz can do about the economic impact of Amazon being granted the sales tax equivalent of "duty free" status while its local competition was not, Mr. Grosz, has sought to challenge the state's effort to pick a winner, as Amazon's obligation to collect sales tax in California was not a matter of discretion, and therefore seeks to recover those taxes for the state's benefit. States don't have discretion to say we like Home Depot better than Walmart or Target, so Home Depot doesn't have to collect a consumer=borne tax, yet that's exactly what states were doing with respect to Amazon, as Amazon was "wooing" them with jobs, capital investments and even an HQ.

For example, when California's Treasurer Fiona Ma went to Seattle to meet with Amazon and investigate why Amazon wasn't collecting sales tax on half of its sales, claiming that it was a marketplace, she concluded that this was incorrect. At the time, Treasurer Ma was not the Treasurer, she held a seat on the state's sales tax board. After meeting with Amazon, she concluded that this was incorrect, Amazon should have been collecting tax, but when she told the

[1] Mederios Babb, "Fresno Business Files Lawsuit Claiming Amazon Owes Billions in Back Taxes," *Your Central Valley*, https://www.yourcentralvalley.com/news/fresno-business-files-lawsuit-claiming-amazon-owes-billions-in-back-taxes/ (August 12, 2019).

Governor ("Brown") he refused. His response, according to Treasurer Ma's statement in a 2018 article featured in Capital and Main was:

> "Number one," Ma explained, "the governor's office has been trying to woo Amazon into putting a headquarters here. I've been pushing [for the Governor to make Amazon collect tax] and they haven't wanted to do anything up front." Indeed, Los Angeles is on the shortlist for the massive HQ2 project.[2]

Not only did Amazon not want to collect tax, they didn't want California to proactively encourage Amazon's merchants to do it either. So, merchants who were absolutely clueless of Amazon's illegal attempts to shift their obligations to collect tax on to them, as it is Amazon's store, only found out years later that, rather than enforcing the tax obligation against Amazon as the store, that these small out-of-state businesses with no due-process connection to California were being targeted, like this Philadelphia-based merchant who received a million dollar tax bill from California, related to taxes that Amazon was legally required to collect, not him.[3]

The following year, as California ramped up its efforts to pursue Amazon merchants for back taxes, Treasurer Ma wrote a letter to Governor Brown, explaining how, in her experience, it would be illegal to pursue Amazon's sellers. She discusses how in the past, California's sales tax enforcement arm had been threatening sellers, asking them to fork-over their life's savings, everything they earned on Amazon to cover the tax shortfall caused by Amazon's failure to follow state law, and how the state had even gone as far as to threaten sellers with felony jail time if they didn't come forward and pay the tax. Her letter can be found here: https://onlinemerchantsguild.org/wp-content/uploads/2019/03/Letter-to-Governor-Newsom.pdf, fully discussing the nature of this fraudulent tax grab California has engaged in over the last three years. In her letter Treasurer Ma recites a situation where she was contacted by a small business owner in Renton, WA, Mindy Wright. In the letter, Treasurer Ma includes Mrs. Wright's recounting of her experience dealing with California's illegal tax assertion, as the state looks to hold Mrs. Wright responsible for Amazon's tax avoidance.

> "Recently in last December we received a letter from California's CDTFA asking us to comply with their tax rules and we did [without considering whether it was legal in the first place]. After signing up with California business license department we are now collecting and remitting sale[s] tax starting 1-1-2019. We did not realize the CDTFA would go after us for the uncollected sales tax and income tax up to 8 years. Now we are facing tens of thousands of dollars in back taxes, penalties and interest. This alone will force us out of business and into bankruptcy. We just do not make much money and we are distraught and frightened."

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[2] David Dayen, "The 'Amazon Tax' Ruling: Disrupting the Disruptors," *Capital & Main*, https://capitalandmain.com/the-amazon-tax-ruling-disrupting-the-disruptors-0710 (July 10, 2018).
[3] Harold Brubaker, "California Hits Philly-Area Amazon Seller with $1.6 Million Sales-Tax Bill," *The Philadelphia Inquirer*, https://www.inquirer.com/business/california-sales-tax-amazon-seller-philadelphia-business-20191105.html (November 5, 2019).

More information about state efforts to give Amazon a distinct competitive advantage over brick and mortar is discussed in more detail in testimony OMG provided to the U.S. House Committee on Small Business - Subcommittee on Economic Growth, Tax and Capital Access – Hearing on *South Dakota v. Wayfair, Inc.*, How Mainstreet is Fairing and Whether Federal Intervention is Necessary, March 3, 2020 (enclosed as Exhibit 1).

In our experience, Amazon has defended its sales tax practices by disclaiming any role in the sale, but respectfully we find that argument difficult to accept. It's Amazon's store, and Amazon approves the product listing—including the price. Then, Amazon takes a large portion of the sale via commission payments. Amazon is not a hands-off intermediary like, say, a common carrier or even a classified ad service, as Amazon has likened itself to.

Another Amazon approach has been to "settle" tax disputes with state revenue departments in exchange for the promise of job creation or economic development in the state. We all remember the HQ2 scramble. Setting aside the dubious lawfulness as a matter of tax law, the effect was anti-competitive—it privileged Amazon over retailers that complied with sales tax collection laws.

A recent decision by a South Carolina court revealed the absurd nature of Amazon's positioning, upholding a finding that Amazon acts like a store, controls sales and the customer relationship like a store, and must collect sales taxes like a store.[4]

More recently, our members have seen Amazon try to shift the blame to third-party merchants. In our understanding, Amazon has been providing state revenue officials with the names and personal information of merchants and pushing tax officials to seek back sales tax payments from them rather than from Amazon. The potential retroactive tax burden is crushing for small businesses, which raises a host of legal and practical issues. An additional dynamic to consider is that a large fraction of third-party merchants are overseas, mostly in China, and therefore beyond the practical reach of state tax officials. U.S.-based small businesses are at a disadvantage because state tax officials, working with Amazon, can target them. And for various practical and legal reasons, it is difficult for individuals to challenge Amazon's sales tax practices in individual tax disputes. The net effect leaves Amazon's capture of state tax collection policy beyond meaningful scrutiny.

We respectfully urge the Subcommittee to use its oversight powers to explore Amazon's manipulation of the sales tax collection system, which has occurred on an interstate scale.

Amazon's Arbitration Clause and Internal "Judicial" System

Amazon's arbitration clause, and Amazon's internal "judicial" system more broadly, are ripe for anti-competitive abuse. It is relatively easy for bad actors to attack competitors and have their accounts frozen or suspended, with little effective recourse. The net effect is not only bad for

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[4] *Amazon Services, LLC v. S.C. Dep't of Rev.*, No. 17-ALJ-17-0238-CC (S.C. Admin. Law Ct. Sept. 10, 2019), https://src.bna.com/Leb.

merchants, but also harms consumers by facilitating market distortion and preventing fair competition.

Amazon relies heavily on its arbitration provisions to deny payments to sellers, suspend sellers' right to sell goods on the platform without sufficient cause, and does little to police abuse from other sellers, especially those domiciled in foreign countries where there is little repercussion for engaging in such abuses. This has led to behavior such as foreign sellers establishing fake law firms to send cease and desist letters which result in the suspension of an unsuspecting user.

Amazon succeeds in its ability to abuse sellers by relying on its arbitration provision. Through arbitration, Amazon knows it holds all the cards, and in many ways has the final say whenever there is a dispute. Sellers, knowing their arbitration remedies will likely be limited, are often left to appeal their disputes internally within Amazon. There, an Amazon representative will review the seller's complaint, typically in the form of a plan of action. Plans of action often require sellers to admit fault, even when there is no fault, and explain why what happened won't happen again. Once submitted the seller may have to wait days, weeks, or sometimes indefinitely for a response. If the response isn't favorable, the seller may have to resubmit the plan of action, often with the help of consultants who specialize in dealing with Amazon. At a certain point, if there is no relief, the seller has one option, that is to appeal to the Supreme Court of Amazon, also known as submitting a "Jeff Letter."

A "Jeff Letter" is almost like a Writ of Certiorari within Amazon's internal court system. It's an email to Amazon CEO's Jeff Bezos' email address Jeff@Amazon.com where someone from Jeff's executive team will review your issue and decide whether or not to offer relief. When emailing Jeff, sellers will often work with consultants or attorneys who have experience with the process, to ensure the email sent to Jeff meets all the requirements of what is generally known to be effective. If an email is sent to Jeff prematurely, it may not work, you are expected to run down all other notice-dispute avenues within Amazon before going to Jeff and should actually plead that such action was taken before sending the email. By no means does an email to Jeff mean that your account will be reinstated, payment no longer withheld, or false infringement claim lifted, it's merely a higher-level Amazon employee reviewing your case and making a determination.

By this point, a seller could be locked out of their account, or denied funds, for weeks, losing hundreds of thousands of dollars, even if the mistake was Amazon's. In one instance, a US seller lost their ability to sell online because someone in China impersonated an owner of an unrelated patent and claimed infringement. Amazon does not want to get involved in patent disputes, so it typically tells sellers to resolve any patent dispute on their own with the patent owner. However, in this case, we knew the patent owner didn't file the infringement claim, because the owner was deceased. The person who emailed Amazon wasn't claiming to be a successor-in-rights to the patent, but actually the patent owner, who again, was deceased. They were impersonating them using a generic email account with the person's name as the address but hosted on a public email service such as Gmail.

Nonetheless, Amazon repeatedly refused to take action to reinstate the seller's account. Claiming over and over again that there must be a retraction from the patent owner. Eventually,

an email to Jeff@Amazon did result in a reinstatement, but the seller lost out on substantial sales during a crucial holiday period. So if it wasn't the patent owner, who complained to Amazon? Most likely it was a competitor based in China, as this is fairly common in the seller community, and commonly referred to as "Black Hat" tactics.

In another instance, an Amazon seller lost $200,000 because a company in China created a fake US law firm website, and filed an infringement claim. Had Amazon performed any diligent investigation into the origin of that website, it would have reinstated the seller right away, realizing the website had only been established for a week using a hosting service in China, despite claiming the law firm had a long history in New York. Instead, the seller ended up losing a substantial amount of money waiting a week for Amazon to reinstate them.

Even without provocation from a malicious person, Amazon's treatment of sellers has been notably unfair. In one instance, a seller who sold organic pesticides had their inventory destroyed by Amazon because they didn't comply with a certain labeling requirement. What Amazon didn't realize, despite numerous attempts by the seller to make them aware, is that their product didn't contain the ingredient Amazon claimed it did. Ultimately, before the seller had the opportunity to reclaim their inventory, Amazon destroyed it. However, with arbitration as the only costly remedy, the seller was discouraged from attempting to hold Amazon accountable.

In California, these recounts of unfair treatment led to the passing of Assembly Bill 1790, a first of its kind eCommerce marketplace seller rights bill. This bill is meant to require Amazon to offer sellers more transparency with respect to under what conditions will result in a suspension, and how can the suspension be cured. This law was based on a law passed by the European Union to accomplish the same objective. We've yet to see meaningful change come out of this bill, and Amazon's lobbyists even noted that such attempts to regulate Amazon are futile, as they would likely be ruled as an unauthorized circumvention of arbitration by the state.

Disclaiming Responsibility for Unsafe Products While Facilitating their Sale

Amazon has quietly undone many of the product safety measures that keep Americans safe and the marketplace honest. How? By facilitating the sale of dangerous goods by ephemeral sellers, mostly in China, who are effectively beyond the reach of U.S. law, and then by Amazon denying responsibility in U.S. courts. Amazon courts products made in China, where production costs are low—in part because of lower safety standards. Although Amazon nominally requires sellers to carry insurance, it is widely known that Amazon rarely enforces that policy. Nor, in our experience, does Amazon police the safety and sourcing of Chinese-made goods. Amazon is now apparently even subsidizing shipping for China-based sellers.[5]

But Chinese sellers are effectively beyond the reach of U.S. law. It is nearly impossible to locate the seller, much less serve them and bring them into U.S. courts. The net effect leaves American consumers without tort remedies, and the marketplace without the discipline that product liability

[5] Elizabeth Weise, "Amazon Pushing Hard into Ocean Shipping, Making it Easier for Chinese Goods to Get to You," *USA Today* (Jan. 18, 2019), https://www.usatoday.com/story/money/2019/01/18/amazon-pushing-hard-into-ocean-shipping-china-u-s/2589422002/.

law imposes. Instead, overseas manufacturers can beat U.S. suppliers on price by skimping on safety and insurance.

To offer just one example, a hoverboard purchased from a China-based seller caught on fire and burned down the customer's house. The customer had no way of making the China-based seller pay—they had disappeared. The American customer's only option was Amazon, but Amazon denied liability, likening themselves to a classified ad service such as Craigslist. Amazon's strategy has been, and continues to be, disclaiming all responsibility. Recently the Wall Street Journal published a study identifying that thousands of banned or dangerous products were available for sale on Amazon. And just recently, CNBC published an article about how moldy and expired food products were also being regularly sold on its platform. With limited exceptions, the courts have accepted Amazon's self-serving characterization—in part because the full reality of how Amazon operates is only just starting to come to light.

A similar dynamic involves Amazon facilitating intellectual property theft by overseas sellers. Almost as predictable as clockwork, the moment a product begins to gain traction we are met with foreign competition from out-of-country sellers who don't play by the rules, copying our members' designs and marketing while undercutting on price. Amazon still benefits, as the demand for the products we initiate will continue to sell via our China-based imitators, and Amazon will continue to take commission profits on the sales. Similarly, consumer often don't know when they are buying from Amazon versus a seller, an argument pointed out in a recent lawsuit involving Williams and Sonoma, where it accuses Amazon of infringement by leading people to believe they were buying authentic Williams and Sonoma products on its site. And with the ability to make verbal orders through Amazon's Alexa program, consumers are even more likely to assume the goods they are buying come direct from Amazon and therefore meet the health and safety standards that we expect Fortune 10 companies to abide by.

Amazon has little incentive to police intellectual property theft and deceptive sales practices, and its arbitration clause and byzantine internal "judicial" system leave sellers with little ability to protect their IP from rampant infringement.

Amazon attempts to evade responsibility for the products it sells by redefining itself as something other than a powerful retailer with total control over its store. Amazon's self-definition deserves the Subcommittee close scrutiny. In testimony to this body, Amazon has repeatedly represented that it is a **store**, with all of the power and responsibility that entails

For example, Mr. Bezos's recent written testimony acknowledged that "the success of our store depends entirely on customers' satisfaction with their experience in our store," including "offering everyday low prices," among other things.[6]

In prior testimony, Amazon has repeatedly emphasized that it is a store:

- "In some cases, typically in highly negotiated agreements that impose significant obligations on Amazon, such as obligations to carry a vendor's products, Amazon asks

[6] Statement by Jeffrey P. Bezos, Committee on the Judiciary, Subcommittee on Antitrust, Commercial, and Administrative Law (July 29, 2020).

vendors and sellers to agree to provisions designed to prevent discrimination against **Amazon's store and Amazon's customers**."[7]

- "Amazon seeks to provide customers with a vast selection of products with great prices and convenient delivery options. In support of those efforts and like most other retailers, Amazon uses software and employees to monitor publicly available information about products offered by other stores, including information about product pricing and availability. This information helps to ensure that customers continue to find a competitive range of selection at great price in **Amazon's store**."[8]
- Customers come to Amazon for a vast selection of products with great prices and convenient delivery. If customers are disappointed in the offerings at Amazon, they will quickly turn to other stores to find the best selection, prices, and convenience. **To maintain trust with customers that they will find low prices in the Amazon store**, Amazon sets the prices on its first party sales to match competitors across all channels of retail. For sales by third parties, who are responsible for setting their own prices in the **Amazon store**, Amazon may suggest that a seller lower its price in its store, offer an Amazon-funded discount on the product, or choose not to feature higher-priced offers on a product's detail page.[9]
- To maintain trust with customers that they will find low prices in the **Amazon store**, Amazon may take steps to ensure that customers can continue to find great prices in **Amazon's store**, such as suggesting that a seller lower its price, offering an Amazon-funded discount on the product, or choosing not to feature higher-priced offers on a product's detail page.[10]

Amazon's testimony to the Subcommittee goes on like that at length. But when Amazon wants to dodge liability, it represents that it is not a store without power and accountability, but rather a "marketplace"—a self-made definition that Amazon likens to a classified ad service or a shopping mall. That, along with other apparent rhetorical sleight-of-hand by Amazon, should make the Subcommittee skeptical of Amazon's high-level claims about its business practices.

We respectfully urge the Subcommittee to drill down on just how much control Amazon actually exercises over its store. Documents and depositions, not general, pre-packaged statements, will illuminate the commercial reality against which the Subcommittee can generate policy. For the Subcommittee's convenience, we include further detail at the end of this submission about just how much Amazon differs from a shopping mall.

Amazon Competing Against Sellers – Wholesale

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[7] Amazon, Responses to Questions for the Record following the July 16, 2019, Hearing of the Subcommittee on Antitrust, Commercial, and Administrative Law, Committee on the Judiciary, Entitled "Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship," (Oct. 11, 2019), at 1, https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-20190716-SD038.pdf.

[8] *Id.*

[9] *Id.* As noted above, Amazon's answer on third-party pricing is incomplete and gives the false impression that Amazon does not retain final control over the price of third-party goods in Amazon's store. We respectfully urge the Subcommittee to explore that issue in detail with Amazon, including by exploration of how Amazon operates its pricing algorithm in practice.

[10] *Id.* at 2.

Many of our members, and others in the seller community, have reported situations where Amazon competing against them both in private-label and in wholesale. Wholesalers will often recount scenarios of Amazon asking them to verify their goods are authentic by sharing invoices with them, only to find later on that Amazon will use that information to contact their source in order to cut them out.

Amazon Competing Against Sellers – Private Label Brands

Has Amazon abused this unique position as their market share has grown? Yes.

As consumers have searched for other brands, Amazon has instead redirected their consumers to Amazon's own brands in a targeted manner (a practice they recently limited or stopped). And in many instances, the brands Amazon uses to compete against sellers aren't obvious, as they may carry a unique name, as opposed to more obvious ones like Amazon Basics. While Amazon had access to complete information on customer interest (search volume) and sales of top competitors, non-Amazon brands were not given the same access to information.

Amazon has retained various advantages for a limited set of brands including their own—curated reviews for new products, ability to launch new products leveraging the sales momentum of existing winners, and protection and exceptions from Amazon processes that can often stop or slow sales of competing products. But their own brands usually start with the benefit of the doubt and exceptional marketing treatment by Amazon.

Amazon is quick to stop sales of a small company's products, reluctant to explain why, and not always correct in their reasons. When they do so, Amazon can be both punitive and surprisingly mercenary, such as indefinitely holding the funds that a small company needs to survive.

These kinds of behaviors, this ownership of both the engines and rails of ecommerce, has caused countries like India to force Amazon to split their business as a manufacturer of products from their core as a marketplace of products.

As Amazon's market share has grown, especially in the US, it has just begun recognizing its responsibility to provide a level playing field. A fair platform for itself and its competitors. Especially in 2019, some proactive steps are visible. In its DNA as a company, however, Amazon largely remains focused on using all available information and tools to maximize its competitiveness at every level.

Pay Per Click Advertising – Another Example of Tying

It is now common belief in the Amazon seller community that the only way to sell on Amazon is through Amazon's Pay-Per-Click ("PPC") offering. In the past, the belief was more reviews would create a trending product, Amazon in the wake of the review manipulation, Amazon has now adopted a pay-to-play model. Sellers now have to contend with spending on PPC in order to maintain prominent display over the competition, however, some sellers have reported that competitors are using bots to click on their ads to drive up their ACOS / PPC cost. As one

reporter stated in an article how Amazon surpassed $3 Billion in Q4' 2018, making it the 3rd largest ad revenue company, behind Google and Facebook:

> *With advertising becoming less of an option and more of a requirement for sellers to compete on the e-commerce platform, every one of those 200,000 Small Businesses is either a current or likely near-future advertiser.*

PPC has become a major point of frustration for many sellers, with many sellers left feeling as if they are paying a mandatory fee, and have even described PPC as a way for Amazon to increase their seller fees without looking like they are increasing their seller fees.

Amazon's Buy Box

Amazon's Buy Box, referenced above, presents several opportunities for anti-competitive practices, but Amazon's operation of the Buy Box is shrouded in secrecy. We urge the Subcommittee to explore the Buy Box in detail.

Over 80% of desktop sales on Amazon occur in what is the known as the "Buy Box"; in a commodity market, consumers are more likely to choose the Amazon-recommended and highly-visible Buy Box item over other similar offerings. Sellers who offer the same products therefore are left to compete for the Buy Box. Amazon's power over the Buy Box and Amazon's product display practices actually reduce price-competition while purporting to guarantee lower prices.

Some observations we and our members have made are as follows:

1. As of approximately mid-2019, Amazon would "suppress" or hide the Buy Box when the product was listed for a lower price elsewhere online. That may sound pro-consumer, but it's actually not in practice. Because of Amazon's dominant market share, sales on Amazon are more important than online sales anywhere else. Losing sales on Amazon is more costly than gaining sales in other e-commerce stores. So sellers are actually incentivized to *raise* prices on Amazon, and/or reduce distribution outside of Amazon. In essence, Amazon penalizes sellers for offering lower prices elsewhere. Not only does that depress price-competition across e-commerce, it inflates the premium that Amazon can charge for Prime by inflating the value of Prime membership.

2. More recently, Amazon appears to have updated its tactics. Amazon's AI is constantly scraping the web. When Amazon's AI spots a product listed for lower than the price on Amazon, Amazon's search results will actually display those nominally "competing" listings. But, as with the above illustration, instead of actually being pro-consumer, the effect is to prevent lower prices in e-commerce generally. Amazon actually ends up driving sellers off competing stores, and/or incentivizing sellers to raise their non-Amazon prices to match their Amazon prices.

3. Geography may determine the Buy Box so that Amazon can lower its operating costs at the expense of lower consumer prices. Amazon may display a higher priced good in the Buy Box because it is closer to the buyer's destination. For example, if there are two

sellers A & B who are selling the same product, A's product is located in Amazon's facility in Washington, where the prospective customer is located and B's product is located in New York, Amazon will be more likely to give A's product the Buy Box in that instance because the shipping cost for Amazon is lower, even if B's product is being offered at a lower price. That benefits Amazon, but not the consumer (or the harmed seller).

4. Sellers are substantially less likely to get the buy box when Amazon is a seller. Sellers have reported that when Amazon is one of the competing sellers of a product, they are less likely to get the Buy Box, as Amazon is trying to move their own inventory first.

5. Sellers must be enrolled as a pro-seller to gain access to the Buy Box: Amazon has to seller subscription models; one is free and the other $39.99 a month. By paying the subscription fee your cost of sale is $1.00 less, so any seller who makes 40 sales a month or more would opt for the subscription.

6. Amazon rotates the Buy Box: Amazon does not want any one seller to "dominate" the Buy Box. The exact criteria as far as when a seller achieves the Buy Box is not known, however, it is not always based on price. Amazon seems to have its own antitrust approach within its platform designed to prevent larger sellers from squeezing out smaller sellers, by offering an artificially low price for a sustained period of time and then raising the price at a later time once competition has dropped off. Amazon wants to ensure prices are low within its platform, as high prices would impact the perceived value of Prime Membership.

Review Manipulation, Acceleration & Hijacking

Review Manipulation: Amazon reviews have lost a lot of credibility over the years, given the ability to manipulate reviews. While Amazon claims to police review manipulation, even going so far as scanning sellers' Facebook pages to see if any of their friends may have left a review, a number of independent companies still provide incentivized review programs using coupon codes, rebates, or PayPal payments. In many instances, consumers are promised a full refund of their purchase if they submit a review and send the company a screenshot. Most recently, it was discovered that Amazon sellers were using Facebook chatbots promising reimbursements through PayPal to drive incentivize reviews. Many Amazon sellers are unaware of the legal issues surrounding incentivized reviews as there are many seemingly legitimate companies offering review generation services. As eCommerce businesses are often touted by SBA as a great way to start a business, we would ask that this Subcommittee suggest that FTC establish a layman's guide to what is and is not permitted when it comes to generating reviews online.

Acceleration: Another way to increase the popularity of a product sold on Amazon is through acceleration of sales. As your product gains in popularity it gets picked up as a trending product by Amazon. Companies will help sellers facilitate this acceleration by offering sellers the opportunity to feature their product at a steep discount to their own user base. Users will click on the link and purchase the product in Amazon at a discount. The end result will drive

acceleration of the products sales, and cause Amazon's algorithm to flag that product as a trending product and suggest it to other users.

Hijacking: Hijacking is where a dead listing is brought back to life to sell another product. For example, a listing for a product that was popular five years ago and has a substantial number of five-star reviews may be changed in its entirety to promote an entirely different product. While the listing content has changed, the products reviews remain intact. A consumer, unaware of the change may not know to look and actually read the reviews to realize that the product being reviewed isn't the product they are actually buying. As one Consumer Reports journalist noted:

> *In one afternoon I spotted more than a dozen listings that all followed the same general pattern: an item, usually sold by a company I'd never heard of before, with lots of positive reviews for products different from the one listed at the top of the page.*

In some instances, review hijacking has been used as a "Black Hat" tactic to result in a suspension of a seller's listing, or to sabotage their ability to sell the product. A hijacker might alter a listing to say things like "contains dangerous chemicals" which will cause Amazon to automatically suspend the listing or will upload erroneous pictures that would deter the customer from buying the product.

Amazon has little incentive to police this state of affairs, because Amazon's profits are apparently not harmed. In essence, Amazon facilitates—or is willfully blind to—grossly anti-competitive practices in its store, which harms both U.S. consumers and U.S. businesses.

Amazon Prohibits Direct Ship Online Arbitrage

Amazon prohibits what is known as direct ship online arbitrage on their platform. The effect insulates Amazon from potential marketing competition by other retailers.

Direct ship online arbitrage is where a product is listed on Amazon and shipped directly to the consumer from a known competing retailer. For example, a merchant lists a product on Amazon as seller fulfilled, meaning they will ship the product themselves, not Amazon. When the consumer purchases the product on Amazon for $40, the merchant will go on a competing website, such as Costco.com and purchase the same product for $30. Instead of inputting their shipping address on the Costco website, the merchant will use the buyer's address so that Costco ships the product directly to the Amazon buyer. This activity is prohibited on Amazon and will result in a suspension and potential withholding of funds if Amazon discovers that the seller engaged in this activity. Amazon does not want customers receiving shipments from Costco, as it might have the effect of driving the customer away from Amazon, knowing that the product was purchased from Costco. Amazon utilizes this policy to limit marketing competition.

Addendum: Amazon Is Not a Mall or a Hands-Off Platform

When it comes to claiming to be a marketplace and not a retailer, Amazon tells different stories to different audiences. When it comes to tax and accountability for the safety or integrity of

products sold, Amazon will claim it's just a marketplace, but when it comes to the customer, Amazon wants the customer to think of them as the retailer, not the seller.

However, one way to analyze it and see the flaw in their approach is to compare Amazon to traditional marketplaces or malls. For example, consider Mall of America, an iconic marketplace where individual retail stores establish storefronts to sell goods to consumers. Each store front has its own unique logos prominently displayed, store layouts, product mix, warranties, return policies, and overall approach to customer service. That's not the case with Amazon.

With Amazon, sellers are forbidden from engaging with the customer unless they are being asked a product specific question, which they can reply to using Amazon's monitored scrambled messaging service. Return policies are set by Amazon, customer service disputes resolved by Amazon (almost always in the customer's favor). Unlike a mall where there is a giant Apple representing the Apple store, only Amazon's logos are prominently displayed on its site. Only Amazon can collect email information, offer a store credit card, extended warranties, etc. Sellers names are not-prominently displayed, and almost ignored, which is why the typical Amazon customer cannot tell you the name of the seller they bought from. Consumers might remember the brand, but they typically pay no attention to the individual seller they are buying from. And even the confirmation email sellers receive from Amazon after purchasing from a seller lack any mention of the seller's name, stating at the top "Thank You For Shopping with Amazon" (see link pp. 16).

Attempts by sellers to make contact with the customer are forbidden, and if caught, could result in a permanent suspension. Such actions are known as diversions. Amazon terms of service even prevent sellers from using store names like "lightbulbs.com" because the .com at the end might clue the customer in on the fact that the same product might be available cheaper elsewhere.

Amazon also demands a level of control over customer contact that no mall could hope to impose:

- "You may not send unsolicited or inappropriate messages. All communications to customers must be sent through Buyer-Seller Messaging and be necessary for fulfilling the order or providing customer services. Marketing communications are prohibited."
- "If you receive customer information such as addresses or phone numbers to fulfill orders, you may use that information only to fulfill orders and must delete it after the order has been processed. You may not use customer information to contact customers (except through Buyer-Seller Messaging) or share it with any third-party."
- "You may not attempt to circumvent the Amazon sales process or divert Amazon customers to another website. This means that you may not provide links or messages that prompt users to visit any external website or complete a transaction elsewhere."[11]

As a true marketplace, The Mall of America, would not prohibit their retailers from engaging in such actions. Mall of America allows Apple to prominently display their logos and determine

[11] Amazon, "Selling Policies and Seller Code of Conduct," https://sellercentral.amazon.com/gp/help/external/G1801?language=en_US&ref=efph_G1801_cont_200386250.

their own return policy. Mall of America allows their tenants to suggest the customer shop online instead of in the mall, collecting their emails to send them online promotions. And the customer service desk at Mall of America is certainly not going to force Apple to give a customer a refund because they claim there was a brick inside of their iPhone box (this happens so often, that it's become a right of passage for many sellers).

We could continue, but this limited illustration should explain why the Subcommittee should carefully scrutinize how Amazon works in practice, not how Amazon describes itself in high-level terms.

Scapegoating Merchants

During the COVID crisis, we saw another Amazon practice come to light, that is not all that different than what they do with sales tax. Sellers who purchased COVID-related goods from home-depots in middle America, in January, were being accused of price gouging by state governments. These sellers, who did not understand the price gouging laws, and were misled by Amazon's use of terms like "match lowest price" and the use of automatic re-pricing software that Amazon didn't take appropriate steps to control during the pandemic, would protect them. We wrote an open letter to the AG's discussing why Amazon needs to be held accountable, no the individual small merchants, when it comes to making pricing rules clear on Amazon. We also successfully challenged the constitutionality of price gouging as applied to Amazon, because states flat out refused to see Amazon as anything other than their partner. When all the states are bending over backwards to protect the world's largest company, in order to remain at the top of Amazon's list for the next state to receive Amazon jobs, we will never see sellers protected, and we will never see Amazon do the right thing if they know states will always allow them to use their merchants as scapegoats. Our letter to the AG's is attached as Exhibit 2.

Policy Suggestions

Among the many policy responses the Subcommittee might consider are the following:

Solution 1: Prime Delivery as a Quasi-Public Company

With the help of state subsidies Amazon's fulfillment network has become the railroad of eCommerce. There is no platform out there that can compete with the volume of sales Amazon brings to small businesses. However, like the railroads did in their time, Amazon takes advantage of its position of power. State governments diverted billions in public funds to Amazon to help the company build warehouses and "create jobs" in their state (jobs that Amazon needed anyway), while the states were not aware of the collective impact of their efforts across the nation, or had no option but to "compete" for those jobs.

One could imagine a hypothetical scenario where, during the dawn of the automobile era, Henry Ford had travelled state to state offering to build a highway system in each state, which he would retain rights to own, in exchange for incentives and job creation, at the end of the day Ford would have owned a national highway system, maintaining full control with the right to exclude other cars from using it. This would have resulted in tremendous inorganic growth, due to

Ford's unmatchable competitive advantage of selling the only car that comes with access to the nation's highway system.

However, in the context of eCommerce, one does not need to imagine such a scenario, as Amazon has done just that, building a sophisticated and unmatchable logistics network that has allowed it to thrive by growing its Prime membership base. Prime members are addicted to the convenience that Amazon brings with it, and it remains unlikely that other retailers are in a position to match it, especially without the state subsidies Amazon received. But the fact remains this network was paid for using public funds, and its significance cannot be understated as Amazon's Prime user base continues to surpass 100 million users and penetrating 62% of US households in just a few short years.

Amazon's dominance is undeniable, but concerns need to be raised about how it obtained its position. In addition to the billions in state subsidies it has received over the years, Amazon has also manipulated the market by engaging in price suppression. Because Amazon values dominance over profit it was able to redirect funds from its highly profitable cloud business to its retail business. Investors saw losses, because funds from its cloud business were being used to subsidize its FBA business, offering FBA to sellers at below its true cost, in order to build a dependence on their platform. Many sellers will often joke that FBA was like a drug addiction, cheap at the beginning, in order to get them hooked, but now as the cost of selling begins to rise less and less US sellers are able to continue operating on the platform.

Meanwhile, it is well known among OMG's manufacturing experts in China that China has been subsidizing its manufacturers who sell into the US, offering substantial tax breaks to manufacturers that can "bring in US dollars" through the Amazon platform. Manufacturers in China already have the ability to operate at lower margins, especially since they are not subject to US regulations, and with the added tax incentives are better suited to weather the storm of Amazon's increased FBA costs, or mandatory PPC requirements. Many sellers in the US have a bleak outlook for their Amazon business but feel as if they are unable to compete in any other meaningful way, as it is difficult to build an eCommerce site without the help of Amazon's logistics.

A solution to this problem therefore should involve government regulation of the Amazon delivery platform. Regulating the eCommerce railroad can come in many forms. One viable option would be to spin off into a public-private company, structured like Amtrak. Through an independent delivery network, Prime delivery could become a feature of any eCommerce website, whether Walmart, Target, Bloomingdales, Macys or a seller's own eCommerce site.

Further, we believe that allowing Prime members to use their Prime credentials to shop on participating eCommerce websites, big or small, would enhance competition in eCommerce, as the consumer would be more likely to go through the check-out process on a small eCommerce site if they could do so conveniently with a Prime single sign-on. Similarly, consumers would appreciate not having to re-enter their details every time, and without having to worry about things like data theft, since the transaction was processed with Prime, as consumers may be concerned that small eCommerce sites may not have the security features that larger sites have.

Plug-in technology is available, similar to Google Checkout, that would allow eCommerce site operators to offer this feature.

Overall, we believe this would be a substantial step forward in leveling the playing field, making Amazon a level competitor with other eCommerce and brick and mortar hybrids who can offer Prime delivery. Just as it would seem absurd in the analogy above that Henry Ford could build and control the national highway system with public support and exclude other car manufacturers from using it, it is equally absurd that Amazon should be permitted to retain exclusive control over the eCommerce Highway, especially when so much of it was built using public funds.

Solution 2: Holding Amazon Accountable as Retailer

Laws and regulations by their nature are burdensome, but time has proven that they are a necessity. Companies spend billions of dollars every year seeking to maintain compliance with laws put in place to protect the public. However, laws and regulations can also result in unfair advantages if one company is exempt from those laws while its competitors have to follow them. Amazon is the product of such an advantage.

As noted above, by classifying itself as a marketplace, not a retailer, Amazon refuses to hold itself accountable for the rules and regulations passed by our legislators to protect the people. Strict product liability, environmental regulations, copyright, all are a serious concern for big-box retailers, causing them to invest billions in audit and vendor accountability programs to ensure the public is safe, as these companies know that they can be held to answer if something goes wrong.

Rather than a patchwork of state-by-state definitions (and perhaps federal definitions) of whether Amazon is subject to the same consumer safety and fair business practices laws that other eCommerce giants abide by, a uniform federal law could be a solution.

Further, the Subcommittee's national scope, and ability to investigate broad patterns of business conduct with great efficiency, could help shine a light on the effects that Amazon's practices are having on consumers and competitors.

Solution 3: Seller Bill of Rights

Finally, small businesses need to be protected. Amazon's monopoly power over eCommerce, gives it a tremendous advantage to overreach when it comes to how it deals with its sellers. With over a million small businesses reliant on Amazon to "eke" out a living, Congress needs to take immediate action to protect these business owners, who take all of the risk, but only receive a fraction of the benefit. It used to be that being a million-dollar-seller meant something. Today that means you are earning $75,000 a year on average. But in light of the risks sellers take to earn that salary, sourcing enough inventory to sell a million, with the threat of Amazon shutting down their account at any moment, something needs to be done to make sure these small businesses are protected.

Conclusion

The Online Merchants Guild thanks the Subcommittee for its time and attention to these important issues. We would welcome the opportunity to discuss these issues further with Subcommittee staff. We also have some potential regulatory solutions for consideration, which we would be pleased to outline in further detail as the Subcommittee gathers information.

Sincerely,



Paul Rafelson
Executive Director
Online Merchants Guild

680 S. Cache Street
Suite 100-9149
Jackson, WY 83001
(617) 903-7255
paul@onlinemerchantsguild.org

EXHIBIT 1



The Honorable Andrew N. Kim
Chairman
U.S. House Committee on Small Business
Subcommittee on Economic Growth, Tax and Capital Access
2361 Rayburn HOB
Washington, DC 20515

The Honorable Kevin R. Hern
Ranking Member
U.S. House Committee on Small Business
Subcommittee on Economic Growth, Tax and Capital Access
2361 Rayburn HOB
Washington, DC 20515

Written Testimony of

Paul Rafelson, Online Merchants Guild

Hearing on *South Dakota v. Wayfair, Inc.* : How Mainstreet is Fairing and Whether Federal Intervention is Necessary

March 3, 2020

Chairman Kim, Ranking Member Hern, and Members of the Subcommittee, thank you for holding this hearing on state taxation. I am honored to offer my perspective during this critical moment in history.

My name is Paul Rafelson, and I am the volunteer Executive Director of the Online Merchants Guild ("OMG"). In addition to my role at OMG, I am an attorney in private practice, where I represent Online Merchants in tax and other eCommerce related legal matters. Prior to being in private practice, I was an attorney with some of the largest companies in the world including Microsoft, Walmart and GE, defending them in tax state tax matters throughout the United States.

OMG is a trade association for small eCommerce sellers. Our members are small, non-publicly traded businesses, and our mission is to advocate on behalf of our members and provide them with a voice. Most of our members generate between $500,000 to $1,000,000 per year in gross revenue and earn between $50,000 to $100,000 per year in total income (including salary).

Some of our members have also submitted written testimony for the record, detailing their struggles in trying to comply with unreasonable state tax laws, as well as their recent experiences in dealing with states such as California, Washington and Massachusetts, all of which systematically targeted these small business owners, falsely accusing them of sales tax evasion, and illegally and unconstitutionally seeking to recover back taxes from them.

For our members and those non-members who decided to speak and submit their testimony, I commend their bravery. But please know, that for every small business owner who submitted testimony, there are thousands who were too afraid. Too afraid to tell the United States Congress about how top officers of state tax agencies engage in goon-like tactics to shake down small out-of-state business owners for taxes that their own state laws said these businesses do not owe, nor would they owe due to longstanding constitutional precedent.

I'll share with you some of those comments I received from those who were too afraid to come forward and tell their tragic story, as just because they are too afraid to speak openly, doesn't mean they shouldn't be heard:

> *After really looking into this I have decided not to make a [statement]. Although I am on the side of small business, I am afraid to bring attention to myself for past years.*

EXHIBIT 1

Does this put a bigger target on our back?

I don't want to draw attention to ourselves at the state tax level. I am sure you understand. We believe the impact has been about $250k+ in software development costs, and another $50-$100k per year in accounting costs, in case you can use that information anonymously.

As a nation whose forefathers took arms and defeated an oppressive empire imposing tyrannical taxes, I'm here to tell you that the document forged to prevent such tyranny from ever recurring again, The United States Constitution, has failed to protect these thousands of business owners from the recent and currently ongoing tyrannical acts of these state tax authorities. Small business cannot survive in this environment, where many are even too scared to tell Congress about what they are facing, in fear that states may read it and more will take unlawful action against them. For as long as states choose to continue to operate with zero regard for the foundational constitutional protections of due process, fair notice and preventing undue burdens from being placed on interstate commerce, small business owners simply do not stand a chance.

Congress Must Protect eCommerce Sellers From Unconstitutional Actions of State Tax Enforcers

Before I address the how Congress can fix the sales tax crisis, I want to spend some time explaining the why. In order to do that, I want to share with you the recent and ongoing shameful behavior of state tax administrators who are terrorizing small out-of-state business owners, as we speak. Over the last few years, state tax administrators have become overzealous prosecutors, not interested in enforcing their laws, but instead flexing their muscles in an effort to extort tax revenues from defenseless business owners. Their bullying-style of tax enforcement has demonstrated that the states cannot be trusted, as they will only think in terms of the revenue they can get, not in terms of the legality of their actions, or the unconstitutional burdens they place on interstate commerce when they indulge in such chicanery.

Over the last 12 years, eCommerce has grown into a form of self-reliance, giving people of all backgrounds the same opportunity for success, and many have taken advantage of this new opportunity to become self-reliant. I personally am proud of the diversity of our membership base, and the eCommerce community as a whole, but I am also appalled by the fact that these pioneers of eCommerce, people that we should be lauding, are being treated as criminals by various state tax authorities.

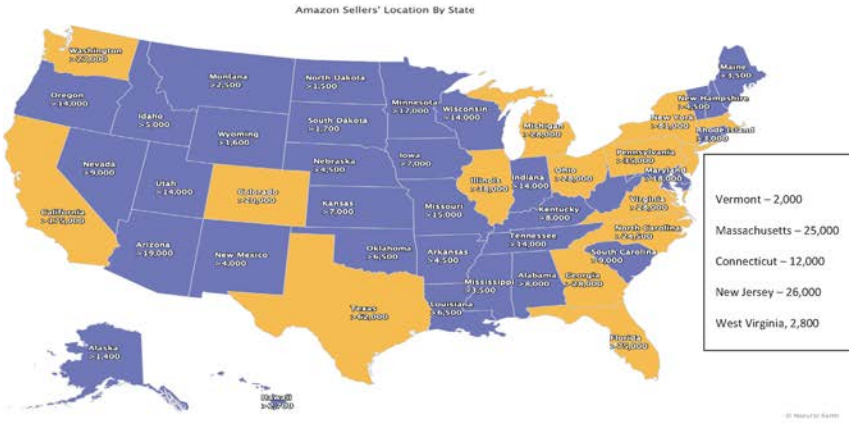
Part of the reason for the growth of eCommerce has to do with how it is conducted. Biases that sadly exist in real world commerce have completely been eradicated in the world of eCommerce. With eCommerce, people of all backgrounds are given equal opportunity to succeed, as business owners in eCommerce are only judged by the merits of what they bring to market, not their gender or ethnic background. This is why, through eCommerce, we have seen a welcome expansion of successful women and minority owned business. As Congresswoman Robin Kelly of Illinois noted:

We're in the middle of a black entrepreneurship renaissance fueled by the internet and ecommerce. Companies like Amazon have reduced the barrier to entry and made it easier to sell goods, products and services online. And black entrepreneurs have taken advantage of this opportunity and are chasing their dreams.

But chasing their dreams would slowly turn into a nightmare for small business owners, as in the eyes of these state government officials, business owners would fall prey to unethical actions of state tax enforcers who claimed that all of them are in violation of state sales tax laws, going back to 2012, simply because they participate in a program called Fulfillment by Amazon (FBA).

In 2008, Amazon revolutionized eCommerce with the introduction of Fulfillment by Amazon (FBA), which led to the birth of hundreds of thousands of eCommerce business owners throughout the United States. The Map below, prepared by Marketplace Pulse using Amazon seller data, shows just how many eCommerce businesses there were on Amazon alone in 2018.

EXHIBIT 1



Source: https://www.marketplacepulse.com/amazon/top-states

For as little as a few dollars, a small business owner can now supply their goods to Amazon, have them listed on Amazon's website as "Prime", and capitalize on Amazon's large member-base of convenience driven customers. To participate in FBA, sellers pack a box full of products they wish to sell, place an Amazon provided UPS label on the box, and voila! Their products now are featured on Amazon's website as "Prime". Carrying the "Prime" designation on their listing is a crucial requirement for most sellers to succeed on Amazon. Without "Prime" designation, sellers do not have access to the "buy box." The buy box is critical, as the seller who is in the "buy box" receives the Amazon customer's purchase when they add a product to their cart.

It's so simple to start an FBA business. Anyone can simply drive to the nearest Walmart or TJ Maxx, roam the clearance aisles, and purchase some items that are popular on Amazon. To discover these products, they may have researched from their smartphone while standing in the clearance aisle. Once someone understands how to look at product rankings on Amazon, they can determine what **sells** well on Amazon. Next, they simply pack the items in a box, slap on an Amazon issued UPS label, and they suddenly have a viable business. In fact, in the eCommerce community, this is known as retail arbitrage, and is often seen as a first steppingstone towards eventually becoming a brand owner who makes their own product. Many of our members have pulled themselves out of poverty and have grown into successful brand owners by starting out in retail arbitrage.

The UPS label Amazon provides tells UPS which Amazon warehouse to ship the seller's product to. Usually Amazon chooses the closest facility to the seller's location, but it is **ALWAYS** at Amazon's discretion (not the seller's). For most FBA sellers, that's all they know. In reality, what Amazon actually does once the product arrives at a facility, is re-sort it. Amazon's algorithm tells them which facilities to send the seller's products to, based on where Amazon expects to sell it. Amazon then bulk ships the seller's inventory to that facility, which could be in any number of states, as Amazon operates fulfillment centers in the majority of states. Before Wayfair in 2018, most Amazon sellers were none-the-wiser that this was going on. In essence, they were supplying Amazon with inventory, much like a maple syrup manufacturer in Vermont might supply product to Williams-Sonoma. In reality, once Amazon receives products at the original fulfillment center the seller ships it to, they redistribute the goods across their network of fulfillment centers. This process, in actuality, is the same process brick and mortar retailers use to distribute their products among their nationwide retail stores.

Through FBA, Amazon takes as much inventory as sellers, many of whom are small businesses, are willing to supply, and sells it for them through their online store. When setting up their seller account, Amazon sellers have

two choices of how to sell their products, either fulfillment by merchant (i.e., seller), or fulfillment by Amazon (FBA). Most sellers in the US start out with the fulfillment by merchant option. By switching to FBA, sellers suddenly can go from selling tens of thousands of dollars a year on Amazon's webstore, to over a million dollars, and often times more. But there is one catch, Amazon's terms and conditions with the merchant (i.e., seller) who supplied them these goods, claims that they (the seller) are the retailer, not Amazon, despite it being Amazon's store.

FBA triggered an explosive revolution for eCommerce. Today, any one operating from their kitchen table can now scale their sales instantly, by selling on Amazon with "Prime" (or two-day) delivery to the customer. This "Prime" customer, in many cases, believes they purchase directly from Amazon since the item they purchased is labeled as "Prime". Prime (or FBA) sellers often ship as much product as they can get their hands on to Amazon. There seemingly is no limit, this is the Wild West of eCommerce, and Amazon is the Gold Rush.

In the 2011 Supreme Court case *McIntyre*, the Court found the fact that machines owned by *McIntyre* "ended up in New Jersey" was not enough to show that "*McIntyre* purposefully availed itself of the New Jersey Market." Yet, when one Amazon customer returned a book they bought from Amazon, supplied by Jennifer Jenson (whose testimony has been submitted to this committee) via FBA, and that returned item wound up in Amazon's warehouse in Washington State, without Jenson's knowing, little did she know that six years later, Washington would come for her business. The use of Amazon's facility does not constitute nexus under the Due Process clause, but states do not care. Truly, they know that the cost of litigating a case like that would be impossible for small business owners like Jenson, and the thousands of others they have chased down over the last few years, and that is all that matters to them. Wayfair does not change this fundamental principal of nexus, as Wayfair only addresses the commerce clause element, the Due Process element still stands as it has for centuries. *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011).

Even with respect to the Commerce Clause, states also ignore their responsibility not to burden interstate commerce, as the Commerce Clause requires states to consider less burdensome means to accomplish state interests, especially if less burdensome means are available for the state to accomplish its goals. *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). In the case of Amazon, it is Amazon's store, Amazon's website, Amazon's customer, and Amazon customers interacting with Amazon to checkout, just as a customer does on competing websites that are tax compliant. Rather than simply imposing a tax collection obligation on Amazon, as it is in the best position to do so, and who is already collecting tax on the sales it is the seller for, states assert that a small supplier operating out of their kitchen table is best suited to register in all fifty states, simply for using FBA. When sellers do not register, they often learn (up to six years later) that they should have registered, at least in the eyes of the state. This is despite the law and the constitution saying otherwise.

Of course for Amazon, collection is the last thing they want to do. As senior editor of Bloomberg and Amazon tell author, Brad Stone, notes in his book "The Everything Store", Amazon sees sales tax avoidance as competitive advantage, and he even dedicates a whole chapter on how committed Amazon is to maintaining that advantage. Amazon is known to invest more money in trying to avoid collecting tax from the customer than most companies spend trying to avoid paying the taxes that they are actually accountable for, such as income tax. By the time the book was published, Amazon was only through the first phase of its tax avoidance game. Phase two had just begun, emphasizing itself as a marketplace, in order to avoid tax collection on half of its sales, even after claiming it was collecting tax in every state. For this to work, they needed to get state tax officials on their side.

For Amazon, the FBA marketplace fallacy creates a technicality that fuels their perception that they can successfully avoid sales tax collection in almost every state. And in some states such as Florida, Amazon's second largest consumer state, that tax avoidance continues today. Many of you may have read news articles in the past stating that Amazon collected tax in every state. Often those authors remain very misinformed. Until very recently, (October 2019 in the case of California, Amazon's largest consumer state), Amazon asserts that they collected tax in every state, but in actuality that collection only pertained to less than half of their sales.

This resulted because Amazon cleverly, and with clear intent to avoid sales tax, imagined up this notion that, by opening up their "store" to third parties offering their inventory to Amazon on consignment, that they are merely a mall, or marketplace. Even though Amazon owns the website, Amazon claims the customers are theirs, Amazon sets the return policy, Amazon controls all customer service aspects, Amazon previously told the states that

for sales tax purposes they are just a mall. By making this legally baseless argument that their store is actually a mall, and using their influence of job creation to get states to buy their "bridge in Brooklyn" equivalent of tax law interpretation, Amazon would focus more and more of its efforts to drive what it called "marketplace" sales, so that its customers would still have the ability to shop tax free, even though it is Amazon's store.

Of course, my saying its Amazon's store could sound as self-serving, but Amazon has said the same thing, under oath, to another House committee. In nearly 70 pages of inquiry responses sent to the House Antitrust Committee, Amazon makes it abundantly clear that it is their store. Of course, for antitrust purposes, when Amazon is accused of competing against its sellers, (using their sales data), they want to claim that their Amazon Basics brand is simply the equivalent of Costco's Kirkland brand, so they need to emphasize the fact that they are a store, not a marketplace. When it comes to sales tax and tax avoidance, Amazon is quick to say, also under oath as they recently did in a South Carolina appeal, that their website is just a mall. So which one is it? Is Amazon a store or a mall? I guess it just depends on who is asking. Here is just one of many examples from their responses to the committee below:

Q. Please identify whether Amazon modifies its treatment of or relationship with Marketplace merchants if it learns that merchants are selling products on non-Amazon websites at a lower price than on Amazon or on an Amazon-owned or operated website.

A. To maintain trust with customers that they will find low prices in the Amazon store, Amazon may take steps to ensure that customers can continue to find great prices in Amazon's store, such as suggesting that a seller lower its price, offering an Amazon-funded discount on the product, or choosing not to feature higher-priced offers on a product's detail page.

https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-20190716-SD038.pdf

To put into perspective just how absurd Amazon's tax avoidance strategy is, claiming it is merely a marketplace, let us consider this in the context of how its tax avoidance strategy would sound if Amazon were a brick and mortar not the webstore that is physically present in all 50 states. Imagine if a local Target store decides it does not want to collect tax, and rather than focus on its unavoidable nexus, it decides to re-brand itself as not a retail store, but merely a marketplace. To make it seem legit, it claims that its cashiers are merely "facilitators" of sales not actually the seller of record, while also claiming that the true seller is really the supplier of the goods on its shelves, which it now calls sellers. But, that is not how the customer sees it.

Customer Confirmation Email

(Actual Taxpayer Order)

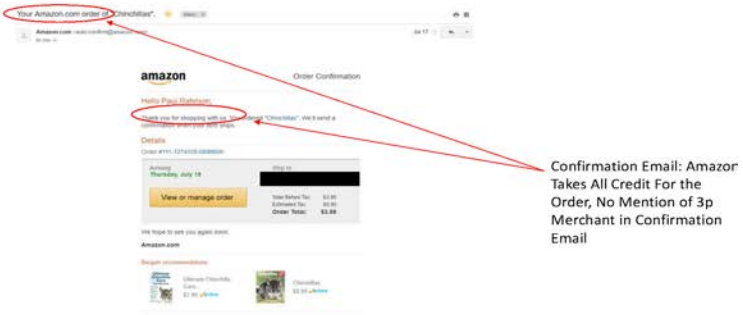


EXHIBIT 1

This represents an absurd distinction that would never work, and in fact it did not work in the one state that challenged Amazon on this issue, South Carolina. The court in that case, using Target as an example noted:

> *Customers meaningfully interact with Amazon Services to consummate the sales of Merchant products and no one else. Moreover, Amazon Services' self-characterization as a service provider could be employed by any brick-and- mortar retail store or consignment shop to evade tax responsibility as a seller. Either could claim that instead of being engaged in the business of selling tangible personal property, they just provide an array of discrete, non-taxable services, charging the same types of "service" fees as Amazon Services even though, in reality, they are selling products. Separating the actions of a retail seller such as Target into discrete, non-taxable services would be absurd, and so it is here. Amazon Services, LLC v. South Carolina Dept. of Rev.*

It is not just the State of South Carolina who finds the distinction between marketplace and retailer to be nothing more than self-serving contractual formality, the type courts, and usually state tax administrators are keen to look right past. The United States Supreme Court quickly shot down Apple's attempts to rebrand its App store as merely a marketplace for individual application retailers. The Court in that case made rather quick work of Apple's attempts to rebrand itself as a marketplace, in the context of antitrust, holding that:

> *Yet Apple's proposed rule would allow a consumer to sue the monopolistic retailer in the former situation but not the latter. In other words, under Apple's rule a consumer could sue a monopolistic retailer when the retailer set the retail price by marking up the price it had paid the manufacturer or supplier for the good or service. But a consumer could not sue a monopolistic retailer when the manufacturer or supplier set the retail price and the retailer took a commission on each sale. Apple's line-drawing does not make a lot of sense, other than as a way to gerrymander Apple out of this and similar lawsuits. In particular, we fail to see why the form of the upstream arrangement between the manufacturer or supplier and the retailer should determine whether a monopolistic retailer can be sued by a downstream consumer who has purchased a good or service directly from the retailer and has paid a higher-than-competitive price because of the retailer's unlawful monopolistic conduct. As the Court of Appeals aptly stated, "the distinction between a markup and a commission is immaterial. Apple v. Pepper (2019).*

Substance over form is the most basic foundational principle in tax enforcement, but with Amazon it is all form, and the states have been willing to turn a blind eye to it, but why?

Even With Joint Shopping Cart (1p & FBA) Amazon Uses Single Checkout Claims Amazon Claims Only to be a Partial Retailer



Even when an item Amazon sells and an FBA item are purchased in the same shopping cart, Amazon claims it is only the retailer for one of the two, even though the checkout process is through Amazon. Therefore, Amazon is only charging state tax on the item it lists itself as the seller, and not the item it credits to the third party, despite being a singular retail transaction for the consumer.

EXHIBIT 1

With tens of billions in lost revenue over the last twelve years, starting from when Amazon first agreed to start collecting on what it deemed its own sales, this marketplace versus retailer distinction used by Amazon to avoid tax collection on over half of its sales is the biggest tax avoidance scheme in history, and Amazon is getting away with it. But, when the avoidance is so obvious, and with the states openly allowing this to happen, one has to question the ethics of the very state tax authorities that allow Amazon to get away with this, especially in light of their actions to recoup their losses by illegally persecuting thousands of small out-of-state business owners, and not to mention the harm to the state itself; hundreds of billions of dollars remain in uncollected tax revenue nationwide, and local competition suffers from an unlevel playing field.

Years ago, states were falsely claiming that Wayfair was the main reason for their lost revenue, yet in reality, it was their backroom deals with Amazon, that allowed Amazon to avoid billions of dollars a year in tax collection. States claim this unlevel playing field remains mainly a Wayfair issue, because they do not want to hold the largest online retailer, Amazon, accountable for taxes they are required to collect from their customers. The fact is, until January of 2018 (when Washington became the first state to finally require Amazon to collect tax, and over six months before Wayfair was decided), Amazon avoided an obvious tax collection burden. This is what hit the local businesses harder. It would take the states two more years to make Amazon a tax collector in forty of the forty-five sales tax states.

But only one state has asked the question, why didn't Amazon collect the tax earlier? This state is South Carolina, but all states should have asked this question, especially with respect to FBA. Instead, the rest of the states decided to go after the out-of-state merchants who supplied product for Amazon's FBA program. States complain about a lack of a level playing field, meanwhile every local business owner wonders why the world's largest retailer in their state, has not collected tax when they have major operations going on in their state for years. This scenario was fixable before Wayfair, but as you will see, every state was trying to "woo" Amazon for more jobs and investment, so how could they insist Amazon collect tax like everyone else in their state?

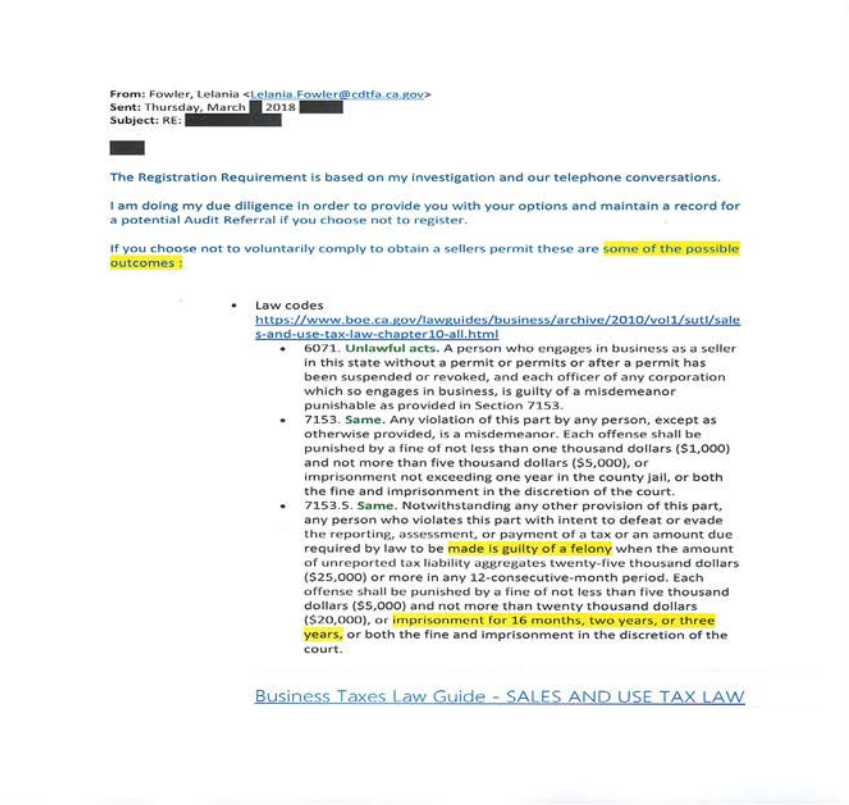
Why did so many states choose to give Amazon a pass, and seek to recover their losses by taking a nefarious, and unlawful tax position against out-of-state sellers? To answer that, I would like you to consider what California's Treasurer, and again former Sales Tax Board Member, said, in her own words, as she is quoted in a 2018 article in the publication Capital & Main. Treasurer Ma, who also submits her testimony before this committee, calling out her state's unconstitutional and unlawful actions against out-of-state Amazon sellers, is quoted in the article as follows (Article quote below, Ma's direct statement as underlined below):

> *Ma finds the aggressive enforcement of small sellers, when Amazon controls practically every aspect of the transactions, to be* ***unconscionable****. But why has California been so reluctant to force Amazon's hand? "Number one," Ma explained, "the governor's office has been trying to woo Amazon into putting a headquarters here. I've been pushing and they haven't wanted to do anything up front."*
> https://capitalandmain.com/the-amazon-tax-ruling-disrupting-the-disruptors-0710

Trying to "woo" Amazon, that is what led these states to abandon their obligation to evenly enforce the tax law, giving Amazon a pass so that it could sell tax free in the state, while local businesses could not compete. Amazon's anticompetitive approach to tax avoidance is equivalent to outright bribery, convincing states to sell out their own local economies, by letting Amazon sell goods tax free, in exchange for the promise of Amazon's jobs and warehouses. To be clear just how obvious Amazon's obligation is to collect, consider the fact that in just about every state the definition of a sale is the transfer of title or possession, both of which Amazon does, when it ships inventory supplied by third-party merchants from their warehouses when customers make a purchase in their store. But in this case, states routinely pursue Amazon's small out-of-state business owners, who act as their suppliers.

In California, the most aggressive state when it comes to falsely accusing sellers of tax avoidance, sellers have been harassed by California's call-center debt collectors, and are told to say anything to scare sellers into believing they owe this tax that **Amazon** actually owes, just as California Treasurer, and former sales tax board member, Fiona Ma points out in her testimony. Some sellers have received letters and emails, claiming they may face felony incarceration, due to their failure to comply with California's requests. See below:

EXHIBIT 1



From: Fowler, Lelania <Lelania.Fowler@cdtfa.ca.gov>
Sent: Thursday, March [redacted] 2018 [redacted]
Subject: RE: [redacted]

[redacted]

The Registration Requirement is based on my investigation and our telephone conversations.

I am doing my due diligence in order to provide you with your options and maintain a record for a potential Audit Referral if you choose not to register.

If you choose not to voluntarily comply to obtain a sellers permit these are some of the possible outcomes :

- Law codes
  https://www.boe.ca.gov/lawguides/business/archive/2010/vol1/sutl/sales-and-use-tax-law-chapter10-all.html
  - 6071. **Unlawful acts.** A person who engages in business as a seller in this state without a permit or permits or after a permit has been suspended or revoked, and each officer of any corporation which so engages in business, is guilty of a misdemeanor punishable as provided in Section 7153.
  - 7153. **Same.** Any violation of this part by any person, except as otherwise provided, is a misdemeanor. Each offense shall be punished by a fine of not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000), or imprisonment not exceeding one year in the county jail, or both the fine and imprisonment in the discretion of the court.
  - 7153.5. **Same.** Notwithstanding any other provision of this part, any person who violates this part with intent to defeat or evade the reporting, assessment, or payment of a tax or an amount due required by law to be made is guilty of a felony when the amount of unreported tax liability aggregates twenty-five thousand dollars ($25,000) or more in any 12-consecutive-month period. Each offense shall be punished by a fine of not less than five thousand dollars ($5,000) and not more than twenty thousand dollars ($20,000), or imprisonment for 16 months, two years, or three years, or both the fine and imprisonment in the discretion of the court.

Business Taxes Law Guide - SALES AND USE TAX LAW

So, what does **California law actually say** about who is the responsible party for tax collection? Is the responsibility on Amazon, or its third-party merchants? In addition to California's definition of a sale, the transfer of title or possession, you'll see that California law states that Amazon's third party merchants are not the seller for sales tax purposes, that Amazon is the responsible party, not the small business owners who supplied them with goods to sell in Amazon's store, and the state law couldn't be more clear about it:

> *A person who has possession of property owned by another, and also the power to cause title to that property to be transferred to a third person without any further action on the part of its owner, and who exercises such power, is a retailer when the party to whom title is transferred is a consumer. Tax applies to his gross receipts from such a sale.* Cal Rev & Tax Code Section 1569

Amazon is a person (tax codes refer to corporations as persons) who has possession of property owned by another (the goods are legally titled to me but they sit in Amazon's warehouse – meaning it's in their possession) and also the power to cause title to that property to be transferred to a third person (when a customer purchases

EXHIBIT 1

goods merchants ship to Amazon, Amazon packs and ships those goods out immediately) without any further action on the part of its owner (Amazon ships goods automatically, merchants are not required to approve any orders) is a retailer…:

So, by all definitions under a plain reading of their law, it's unfathomable how small businesses could be considered a retailer, when the law is written so clearly. Yet when Amazon sellers reply to California's tax division, asking for an explanation of the law, what they get in return is another surprise, a letter ruling from the state tactfully avoiding the question of who is the retailer altogether, claiming they (the seller) are the retailer, but the real surprise comes when sellers who received this letter from the CDTFA, realize that it contains hidden data that indicates Amazon was involved in helping the CDTFA write the letter.

STATE OF CALIFORNIA

EDMUND G. BROWN JR.
Governor

MARYBEL BATJER
Secretary, Government Operations Agency

NICOLAS MADUROS
Director

CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION
OUT-OF-STATE OFFICE
3321 POWER INN ROAD, SUITE 130
SACRAMENTO, CA 95826-6641
916-227-6600 • FAX 916-227-6641
www.cdtfa.ca.gov

TAXPAYER
5th Avenue
New York, NY 10012

Dear Ms. Taxpayer:

This is in response to your letter dated ——————— which was in response to the correspondence we sent you on ——————. In that correspondence, we informed you that if you own inventory that is stored in warehouses or fulfillment centers in California for delivery to consumers in this State, then you are required to register with the California Department of Tax and Fee Administration (CDTFA), file sales and use tax returns, and pay tax on sales to consumers in California.

Attached to your response is a letter signed by Mr. Paul Rafelson, who you identify as a state tax attorney and state tax law professor at Pace University Law School. In this letter, Mr. Rafelson argues that the State of California is placing an unconstitutional burden on retailers located in and out of California to collect and report the applicable taxes to CDTFA on sales they made on Amazon and other marketplaces. He further argues that Amazon has nexus with California and is responsible for the tax on sales made on its marketplace.

However, California Revenue and Taxation Code (RTC) section 6203, subdivision (c)(1), provides in part that a retailer who maintains, occupies, or uses, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, warehouse or storage place, or other place of business, may meet the definition of "retailer engaged in business in this state," thereby establishing a requirement to register with CDTFA. CDTFA Regulation 1684 contains similar nexus provisions and can be found on CDTFA's website.

Thus, under current law, you are considered the retailer of the inventory you sell through Amazon and other marketplaces. As such, you are required to register with CDTFA or demonstrate to us that you do not have nexus in California by completing the California Nexus Questionnaire we previously sent you and returning it to the address shown above. We are taking this matter seriously; failure to comply may result in necessary enforcement action

EXHIBIT 1

including issuance of a deficiency determination in accordance with Revenue and Taxation Code section 6487.

To register, visit our website at www.cdtfa.ca.gov and select *Register*, then select *Register a business activity with CDTFA*. If you need assistance in registering, filing your returns, or have any additional questions, please contact the Out-of-State office at 1-916-227-6600.

Out-of-State Office
California Department of Tax and Fee Administration

The state's explanation in their letter obviates the fact that they have no reasonable explanation for why they terrorize entire communities of sellers in places like Brooklyn, NY or Lakewood, NJ, instead holding Amazon accountable. And their explanation for why Amazon's metadata is in the letter is simply that it was "inadvertent", to which I agree. I have no doubt the CDTFA did not intend to leave Amazon's data in their letter ruling. The letter avoids the obvious question though. Who is the actual retailer? Amazon asserts, and has successfully convinced California, that the retailer is the merchant (i.e. third-party merchant) who provides their goods to the end consumer. This is what sellers are asking, but it is not the question CDTFA and Amazon willingly address. The law cites, by CDTFA and with Amazon's help, that there is no reasonable explanation for why they are pursuing sellers, other than they just want to give Amazon a pass, and cover their losses by going after out-of-state sellers.

There is even more evidence of Amazon's influence over the state's decision to hold me and thousands of small sellers accountable for taxes we don't owe. In 2012, after Amazon agreed to collect sales tax in the state, after closing a back room deal with California to collect tax "voluntarily" in exchange for what would amount to 20,000 jobs, a CNET reporter sent an inquiry to the tax board. In the inquiry, the reporter asks why Amazon would not also be the seller on the goods sold by sellers like me, especially when goods are packaged and delivered by Amazon under the "Prime" badge. The Board's initial response to the reporter asserts that Amazon is responsible, not the third parties that supply the goods, stating that:

> *Since Amazon is handling the merchandise and all aspects of the sale, the Board of Equalization [the organization in charge of sales tax in California until 2017, when the responsibility was shifted to the CDTFA) would consider them the retailer, and Amazon would have to collect tax on the transaction," the initial statement said.*

So, even reasonable minds within California's tax division initially agreed that Amazon is the seller, not third parties. However, the article goes on to state, that this quickly changed, after the reporter took the Board's comment to Amazon seeking their response. Shortly after informing Amazon of the Board's comments, something suddenly changed, as the reporter notes in the article:

EXHIBIT 1

> *Late last night, a few hours after CNET contacted Amazon for a response, the board responded with what it described as "updated" information...*

That updated information, was the sales tax agency's revised quote featured in the article:

> *It's difficult for us to comment on the way Amazon is set up within its family of companies (and) whether there would be a consignment relation," the representative said.*

Even the reporter was surprised by the sudden change in direction, referring to it as:

> *The State Board of Equalization's maybe-yes-maybe-no approach is a significant departure from its position yesterday, when a representative sent CNET a statement saying that Amazon would have to collect taxes on orders it fulfills.*

All of this can be read (and should be read) in the article below:
https://www.cnet.com/news/amazon-shoppers-will-squeeze-through-calif-tax-loophole/

In an effort to recover from that CNET article, the Board issued an unpublished ruling for Amazon's benefit, the same day the article was published, articulating a tax strategy that never would work for any other taxpayer, saying that Amazon could avoid taxes by simply using a wholly-owned and controlled subsidiary to conduct fulfillment. (Ruling available upon request). These strategies are regularly shot down in California, and just about every state, and even the Supreme Court has found such tax avoidance structures to be baseless:

> *To permit such formal "contractual shifts" to make a constitutional difference would open the gates to a stampede of tax avoidance. Scripto v. Carson*, 362 US 207 (1960).

With the extreme departure from state ethical norms in administrating their tax laws, Amazon's merchants are now being told they should have known for six years that they are responsible for these taxes, and those letters, emails and threats are still going on today, even though they are not responsible under the law, or in accordance with the Constitution of the United States.

Sellers have also been told over and over again by some of the best tax and constitutional lawyers, that they better prepare for a long multi-year tax court case, as their ability to seek relief in their home federal court, or even the federal courts of California, is blocked by the State Tax Anti-Injunction Act. To make matters worse, California's state Constitution prohibits any taxpayer from seeking injunctive relief in state courts. And, after the recent Supreme Court decision in Hyatt, state courts are under the impression they cannot issue such relief to protect their own state businesses, because they do not have jurisdiction to enjoin another state's tax agency. Small sellers have no remedy to fight back against the unconstitutional assaults when states like California, Washington and Massachusetts go after them, other than to engage in multi-year tax litigation, like the Fortune 500, something the impacted small businesses cannot afford to do.

The fact that California and other states think they can simply choose to go after small out-of-state businesses, who lack sufficient nexus under both the due process and commerce clauses, amounts to tyranny. Even if they have nexus, they are not retail sellers under the law. Even though it is not the law, sellers have no right to protect themselves in their home state. This amounts to tyranny. It is deplorable behavior, which I doubt anyone in Congress is aware of, and I hope that this testimony today, shed light on the hostile and unconstitutionally discriminatory realities small businesses are dealing with today. Therefore, as a first step to fixing the sales tax problem that plagues small businesses, I ask you to take steps to bring forth legislation that will amend the State Tax Anti-Injunction Act, and allow small sellers the right to seek sanctuary from the unconstitutional assaults and abuses that are happening right now, as told by our organization and the many others who submitted their testimony to this Committee.

The Solution Moving Forward: Make It Easy

It is fundamentally important for this Committee to be aware of how the states have aggressively targeted small businesses in the past, and just how willing states are to violate the constitutional rights of small self-reliant

business owners. For if this were a different story, states respecting the constitution and their own laws, then certainly that might dictate a different response from Congress.

To fix the sales tax problem Congress needs to do two things. One, they need to amend the Tax Injunction Act, and give small businesses who fall victim to the overzealous prosecutor mentality of the states a chance to seek sanctuary in their home state federal court. Second, Congress must require states to streamline the sales tax compliance process, but what does that look like?

We view thresholds as a temporary fix to the sales tax solution, but even as a temporary fix they don't work for many of us, as most small businesses sell on their own website **AND** use FBA. For many states that means no threshold at all. When a seller utilizes FBA, many states have said that there is no threshold. Keep in mind that selling products through FBA is something any one of us could do in a matter of five minutes for as little as five dollars. Yet by doing so, even just selling one item, many of the states are claiming this constitutes "Quill" nexus, not Wayfair nexus, therefore no threshold pertains. Suddenly a kitchen-table enterprise will now have to be fully invested with hundreds of thousands of dollars of sales tax implementation costs, if they want to have their own website independent of Amazon, who only recently started collecting tax in 40 of the 45 sales tax states.

We believe that there is no reason in today's technological age that a central clearinghouse solution cannot be created that would make it easy for any small business to collect and remit sales tax. So easy in fact, that the whole concept of threshold could be done away with entirely. After all, if it is easy, then there is no burden. But we are far from that point, and without Congress, we many never get there.

Why does it need to cost hundreds of thousands of dollars to collect tax in every state, when a bureaucracy free technologically sound solution is fathomable? Such a solution will only occur if Congress mandates it. Personally, I am shocked that in the 26 years between Quill and Wayfair, the states have the nerve to cry foul, yet have done nothing to mitigate the burdens they place on small businesses.

The Small Business Administration Loan Program, a program many of our members rely on, is a federal program that helps launch new businesses. Do you think it was Congress' intent that the first $200,000 of loan proceeds would be spent by a new-business owner on tax compliance, or should that money be invested in growing the business and hiring employees? It is obvious that states have a problem, and they need Congress to mandate a fix.

The good news is that states do not have to drastically revamp their tax laws to fix this, they just need to be required to embrace a single software solution that can handle those nuances. This is not hard to do, as most small eCommerce companies use one of just a few platforms to run their business such as Shopify, BigCommerce and Wix. Certainly, the states can develop a standardized collection and reporting software package for eCommerce platforms to offer, that would take advantage a central clearinghouse that would receive certified data from these platforms. This clearinghouse would generate all the information states need for tax reporting, even if they have hundreds of small jurisdictions.

That's what sound solution looks like, and in today's technologically advanced world, and by offering sellers this type of solution, there would be **no need for states to audit** these companies, as long as the sales occurred on eCommerce platforms that were certified by a state or federal entity responsible for administering sales tax. There is no excuse for states making the burden of sales tax compliance exponentially more complicated than it needs to be. When states' refusal to "get with the times" suppresses the ability of citizens to become self-reliant business owners, it becomes a per se burden on interstate commerce, and it needs to be fixed.

Stop putting the burden on the small business owners, depriving them of their right to be self-reliant small businesses, and put the burden where it belongs, on the states. States had 26 years between Quill and Wayfair to come up with a workable solution, yet what they accomplished in that time frame is an embarrassment; a streamlined sales tax program that less than half the states participate in, and still requires small businesses to individually register in each of the states. Why should small business and the principles of being a self-reliant business owner be burdened by the states' unwillingness to get with the times and embrace technological efficiency? Congress needs to put the burden on the states to make tax compliance easy. That is all we want- for you, Congress, to make it easy. If tax compliance is easy, then there is no need for a threshold, which is exactly what the Court

found in Wayfair. Remove the burden, by making the process easy and inexpensive, and the issue of commerce clause nexus goes away.

Finally, Congress must ask what this is really about. States are aggressively using sales tax registration as a gateway to sales tax, or to "non-income" based taxes states impose that circumvent the intent of the income tax protection law known as Public Law 86-272. But is it really necessary for a kitchen-table enterprise to be registered as a taxpayer in all fifty states if they simply want to collect sales tax? Therefore, Congress needs to reinforce Public Law 86-272 and stop states from using creative taxes, such as the Commercial Activity Tax to circumvent it. And, in the process of addressing the sales tax problem, make sure that the solution involves one where a small business owner only has to register and report to one entity or state, their home state (as is the case with the International Fuel Tax Agreement), or a central clearinghouse where sellers can simply upload all of their data at once, pay one amount, and leave it to the states to divide the revenue among themselves. We are asking you to force the states to make it easy and safe, and we will all be happy to comply. The technology is there to solve this problem, and if you remove the bureaucracy of states unwillingness to work together, you realize it is actually not a hard problem to solve. But we need Congress to force states to cut through the bureaucracy that prevents technology from being the solution to this problem.

Therefore, I propose the Congress enact the following requirements, an eCommerce sellers' sales tax "Bill of Rights" requiring that, for small business owners, states administer their sales tax laws as follows:

1. **eCommerce Sellers shall be entitled to a state guaranteed (meaning if it doesn't work it is the state's fault) free plugin application that works with eCommerce platform providers (i.e. Shopify, BigCommerce, Wix), which automatically calculates the tax due durng the customer check-out process.**

2. **eCommerce Sellers should only be burdened with a single monthly certified sales and collection report upload provided through their eCommerce platform provider (e.g. Shopify, BigCommerce, Wix) to either their home state, or a central state clearinghouse run by the states.**

3. **eCommerce Sellers, when remitting sales taxes collected, shall only make one payment, representing all of the taxes they collected throughout the US, to their home state, or a central clearinghouse, based on the sales data generated by certified eCommerce platform companies.**

4. **Once data is uploaded, and the tax is remitted to the clearinghouse or to the seller's home state, the burden then shifts on to the states to use the uploaded data to redistribute the taxes remitted.**

5. **Sellers shall not have to register with every state, if their only obligation is to collect and remit the sales tax, one state or centralized agent is enough.**

In conclusion, I urge Congress to mandate the parameters for what an innovative and streamlined sales tax solution looks like. Do not let the states destroy the culture of self-reliance that eCommerce has brought us. I urge Congress to take **immediate emergency action** and introduce a separate State Tax Sanctuary law allowing small businesses to seek refuge (injunctive relief) in the federal courts of their home state when states break the law and violate the constitutional rights of small business owners who are operating outside of that state's sovereign territory.

Thank you for taking the time to consider my testimony on behalf of the small eCommerce businesses worldwide who only want a workable solution to sales tax, so they can be self-reliant business owners, and protection from states that engage in tyrannical tax enforcement tactics.

Sincerely,



Paul Rafelson
Executive Director, Online Merchants Guild

EXHIBIT 2



ONLINE MERCHANTS GUILD
OPEN LETTER TO STATES' ATTORNEYS GENERAL:

STOP PURSUING ONLINE "MARKETPLACE" MERCHANTS FOR PRICE GOUGING
AND
WITHDRAW ALL SUBPOENAS, DEMANDS, OR OTHER INQUIRIES

My name is Paul Rafelson, and I am the Executive Director of The Online Merchants Guild. In addition to my role at The Online Merchants Guild, I am also an adjunct professor at Pace Law School in New York, where I teach a course on Constitutional Law (The Commerce Clause) and taxation. The Online Merchants Guild is a trade association that advocates for small eCommerce businesses, many of whom sell products in Amazon's store.

I am writing because it has come to our attention that a number of States' Attorneys have issued subpoenas, demand letters or inquiries requesting information from third-party merchants who supply goods to Amazon's national retail store; the very store that has disclosed merchant information to you, without prior warning. It also appears that Amazon may be assisting you in drafting the language of these subpoenas, demand letters and inquiries.

Please be advised that the subpoenas you are issuing pertain to laws that, when applied to Amazon's third-party merchants, are unconstitutional. However, even if the laws were constitutionally applicable to these merchants, these laws are being misapplied. Consumer price gouging laws protect the consumer, and it is the party that sells to the consumer that is accountable, not the supplier. Amazon's merchants are not retail stores operating in a mall, they don't have rights to solicit the customer and don't even receive the name and information of the customer, unless they direct ship, nor do they set their own return policies or make customer service decisions. In fact, if you took the time to compare how a shopping mall operates versus how Amazon operates, you'll see pretty quickly, that Amazon's claims that it's not a store and just a marketplace or mall are merely smoke and mirrors. Amazon's goal is to deflect your attention away from its wrong-doing, and to put the blame on your resident merchants, Amazon's scapegoats.

And while I understand that in some states Amazon has a way of getting away with things that no other large company would, with its promise of jobs or even a headquarters (or three), in their political efforts to placate to Amazon, I often find states don't consider how many small Amazon merchants live in their state. Therefore, I've provided a link to a map of sellers by state in the footnote, and just to highlight a few: 175,000 in California; 85,000 in New York; 75,000 in Florida; and 60,000 in Texas. Also, keep in mind that this map is a few years old, and

based on Amazon's marketplace growth over the last two years, the numbers are likely to be larger.[2]

Frankly, I am not surprised to see Amazon sell-out their merchants in an effort to save itself from liability for its price gouging, it's an all too common practice in other areas of the law. In fact, unless you're the South Carolina, Amazon is probably getting away with the biggest tax evasion scheme in US history, federal or state, and owes your state a substantial amount of back taxes, for sales taxes it didn't collect for the last few years. In fact, the tax evasion Amazon perpetuated in your state was based on the same excuse it's using now with price gouging, that it is just a "marketplace" platform and not a store.

This is the excuse that Amazon relied on when it was selling goods tax free in your state, while the local businesses in your state could not, and had to operate at a competitive disadvantage.[3] In some states, such as Florida (Amazon's second largest state in terms of customers) and Missouri, Amazon is still taking advantage of that loophole as it sells freely in those states by claiming it's a marketplace, while local businesses struggle to compete. Sadly, many of your tax department leaders are under enormous political pressure to let Amazon get away with exploiting your market while depriving your state of much needed revenue and leaving local business owners helpless because they just couldn't compete with Amazon's quasi "duty-free" treatment in your state. It certainly wasn't the law that stopped them, as you'll see that, Amazon is the store factually, by their own admission, and under the law.

And just like with price gouging, when states wanted to collect back taxes, not only had Amazon denied it was a store it, it also helped state tax authorities go after business owners in your state. Amazon provided them with your resident merchants' personal information, leaving your residents small business owners fending for themselves as the State of California (30,000 Amazon Jobs), Washington (Amazon's Home State) and Massachusetts, have been systematically persecuting the merchants in your state. These tax witch-hunts are not only unconstitutional, and in violation of state law, as California's own Treasurer and former Sales Tax Chief stated in a six page letter to the governor, they were also destructive, as California and others were claiming these sellers owed their life savings in back taxes, even though under their state law Amazon was the liable party. You can read the California Treasurer's eye-opening letter using the link in the footnote.[4]

This is what Amazon does, they distort the law to benefit themselves, and use their political influence to shift the blame on to their merchants. The tax witch hunt is still going on today, and many small business owners in your state that are suffering right now are even more helpless, because they cannot defend themselves in the complex multistate tax litigation reserved for the Fortune 500, like the Philadelphia Amazon merchant who received a $1.5 million dollar tax assessment from California, for taxes that Amazon owed under the law, not the merchant, as reported in the Philadelphia Inquirer.[5] Meanwhile, Amazon is taking advantage of this price gouging crisis by inciting States' Attorneys to adopt a fundamental assumption to Amazon's

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[2] https://www.marketplacepulse.com/amazon/top-states
[3] https://www.yourcentralvalley.com/news/fresno-business-files-lawsuit-claiming-amazon-owes-billions-in-back-taxes/
[4] https://onlinemerchantsguild.org/wp-content/uploads/2019/03/Letter-to-Governor-Newsom.pdf
[5] https://www.inquirer.com/business/california-sales-tax-amazon-seller-philadelphia-business-20191105.html

"duty free" status, namely that it is not a seller and is just a mall, which only helps Amazon further their efforts to avoid liability for the tens of billions in back taxes it collectively owes the sates, but likely won't ever be held liable for because states seem to be ok with letting them off the hook (except South Carolina).

Now, the purpose of this letter isn't to address Amazon's sales tax avoidance via its marketplace, or the tens of billions it currently owes across the states. But it is important, highlight Amazon's sordid history, as Amazon's claims to be merely a passive marketplace has become its modus operandi for violating your tax laws, environmental laws, consumer safety laws as well as many other laws, including price gouging. And what is worse, states choose to let Amazon get away with it.

For example, when inventors and brand owners in your state are regularly ripped off by counterfeiters in China, Amazon makes it tedious if not impossible for these intellectual property rights owners to stop them, forcing these rights owners to play a never-ending game of whack-a-mole, while profiting handsomely on every illegal sale. In fact, it's not uncommon for an intellectual property rights owner to report infringers to Amazon, only to have those products receive the Amazon's choice badge.

Then of course there is the issue of dangerous products being sold to consumers in your state, such as products containing lead sold to children by Amazon merchants based in China. The Wall Street Journal did an in-depth investigation into this, but what action did you take to protect your residents?[6] What happens when those products hurt your residents, like Mrs. Oberdorf in Pennsylvania who lost eyesight in one eye after buying a product in Amazon's store, only to have the so called "retailer" disappear, and be left with trying to bring a claim against Amazon, which of course claims they can't be held liable because they aren't the store.

Did Amazon act responsibly, Absolutely not! Once again, Amazon claims they're not the store so they can't be held accountable, and you are letting them get away with it, by refusing to take action against Amazon's fiction. With over half of Amazon's 4-5 million merchants based in China, and with no incentive for those merchants carry any liability insurance since it's nearly impossible to sue them, your citizens are left with no path to recover damages when they are injured by the countless dangerous products Amazon sells. Their only option is to take on Amazon, who routinely denies liability for the harm caused the products they sold to your in-state consumers, claiming they are not the store. The fact that Amazon has over two million merchants operating in China with complete impunity is no coincidence. As long as you allow Amazon to get away with its "we're just a mall or marketplace" defense, your citizens will continue to be victims of dangerous goods sold by sellers on Amazon.

However, there are scenarios where Amazon "wants to" be the store, so much so that they even said it was their store under oath, multiple times, to a House Subcommittee on Antitrust.[7] So, when it comes to antitrust law, Amazon wants to make it abundantly clear that it is their store, not a marketplace, which is what they did in their testimony to the House

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[6] https://www.wsj.com/articles/amazon-has-ceded-control-of-its-site-the-result-thousands-of-banned-unsafe-or-mislabeled-products-11566564990

[7] https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-20190716-SD038.pdf

Subcommittee and in a 70-page written response to a Congressional inquiry issued by the House Subcommittee on Antitrust. But why would Amazon want to offer such an inconsistent statement?[10]

Perhaps it has to do with the fact that Amazon is being investigated for its unfair business practices, including how it uses information it receives from its merchants, the local business owners in your state, to compete against them.[12] For example: When a seller in your state comes up with a great product, Amazon is known to come in and push them out of the market with their "Amazon Basics" or other private-label brands. In addition, Amazon is known to manipulate the search results so that when a customer is searching for the merchants branded goods, Amazon's brand comes up instead. For a neutral marketplace that could sound alarming. But not for a store. As a store, Amazon can argue that promoting Amazon Basics is no different than a store brand offering, such as: Kirkland at Costco, Great Value at Walmart, or Method at Target.

So, which one is it, is Amazon a store, or is it a mall? Well, if you ask Amazon the answer clearly depends on who's asking. However, who's asking is not how the law works. In the law, substantive fact carries over pretextual formalities used to avoid it. The substance in Amazon's case says that the clear answer is that Amazon is a store. Therefore, if anyone can be held accountable for state price gouging, the law says it can only be Amazon.

I. Price Gouging Laws, When Applied to Amazon's Third-Party Merchants, Are Unconstitutional

A state price gouging law cannot be applied to merchants whose goods are sold by online websites like Amazon, because the merchant cannot control the price of a commodity on a state by state basis, only Amazon can. When a state law seeks to restrict a merchant's ability to sell goods on a national platform, but those merchants lack the ability to direct their activity towards or away from a particular state, as they are simply placing goods into the stream of commerce, that law has the effect of regulating extraterritorial commerce. Therefore these laws as applied to Amazon's merchants, is in violation of the commerce clause.

For example: If Florida issues a state of emergency during a hurricane and institutes its price gouging law, constitutionally, that law could only be applied to local business, stores, that sell intrastate. When Florida seeks to apply that law to merchants who sell in interstate commerce, via national eCommerce web stores such as Amazon, it creates an undue burden on interstate commerce, because the law is restricting the ability of that seller to engage in transactions in other states, as the seller doesn't have the ability to choose what markets to sell to, nor do they have the ability to set a price based on each state's law. Only Amazon can do that.

In other words, while a hammer selling for $20.00 in a Florida hardware store might be considered price gouging during a state of emergency, under Florida law, if that same hammer is offered for sale on Amazon, and available to be purchased by anyone in the US, it cannot be

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[10] *Id.*

[12] 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

subject to Florida's price gouging law, even in a state of emergency, just because there is a possibility that a Floridian might buy it, as this application of law restricts the sellers ability to sell into the 49 other states.

Since Amazon's merchants are not given the option by Amazon to price commodities on a state by state basis, only the ability to offer their goods nationally via Amazon's webstore, they cannot be held liable for violating a state's price gouging law, even if the merchant resides in the state. By attempting to apply state price gouging law to Amazon's merchants, you are regulating the price, supply and availability of goods extraterritorially, in violation of the commerce clause.

The principle factors of extraterritoriality are outlined by The United States Supreme Court in *Healy v. Beer Institute*[13]. The three factors established by the *Healy* Court are as follows:

1. A state statute may not regulate "commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State.

2. A statute that directly controls commerce occurring wholly outside the [legislating state's] boundaries ... is invalid regardless of whether the statute's extraterritorial reach was intended (emphasis mine).

3. In evaluating a statute's "practical effect," the Court considers "not only ... the consequences of the statute itself, but also ... how the challenged statute may interact with the legitimate regulatory regimes of other States and what effect would arise if ... every state adopted similar legislation." This is because "the Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another State.[14]

In 2018, The Fourth Circuit Court of Appeals had addressed a similar issue involving a pharmaceutical price gouging law enacted in Maryland, noting that:

> [T]he fundamental problem with the Act is that it "regulate[s] the price of [an] out-of-state transaction." The Act instructs prescription drug manufacturers that they are prohibited from charging an "unconscionable" price in the initial sale of a drug, which occurs outside Maryland's borders. Maryland cannot, even in an effort to protect its consumers from skyrocketing prescription drug costs, impose its preferences in this manner. The "practical effect" of the Act, much like the effect of the statutes struck down in *Brown-Forman* and *Healy*, is to specify the price at which goods may be sold beyond Maryland's borders (emphasis mine). *See Healy*, 491 U.S. at 336, 109 S.Ct. 2491 ("The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State." (citing *Brown-Forman*, 476 U.S. at 579, 106 S.Ct. 2080)). The district court erred by failing to account for this impact[15]

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[13] *Healy v. Beer Institute*, 491 U.S. 324 (1989).
[14] *Assoc. for Accessible Medicines v. Frosh*, 887 F.3d 664 (April 13, 2018), cert denied.
[15] Id.

Similarly, the practical effect of the state price gouging laws when applied to Amazon sellers, is to limit the price which goods may be sold, beyond the state's borders.

However, that does not mean that state price gouging laws can't be applied to Amazon. Certainly, Amazon did have the power to limit price increases by category of goods (e.g. N95 masks or Hand Sanitizer), and block attempts to set prices above a certain average price for a state that has declared a state of emergency. And, because Amazon's buy box algorithm is partial to the location of goods relative to the location of the consumer, we know Amazon was also able to limit the available prices of a commodity, on a state by state basis. This means that if a state declared a state of emergency Amazon could have rejected the ability to offer that commodity at a price above a trailing average price (e.g. 30,60,90 days), so that the products would not be sold at those prices to consumers in your state.

Therefore, based on a longstanding principle of constitutional law, the commerce clause, Amazon merchants cannot be subject to state price gouging laws for goods sold via Amazon's store, as such application has the effect of regulating extraterritorial commerce when applied to Amazon's third-party merchant suppliers.

II. Only Amazon Can Be Liable for Price Gouging Under State Law

In addition to the constitutional barrier, the price gouging laws have another defect when applied to Amazon's merchants, and that's the fact that the merchants residing in your state are not retail sellers; they are not the store. Amazon is the store, the merchants are the suppliers of Amazon's store.

When consumers buy products supplied by the merchant, the customer is Amazon's customer. Amazon's Business Solutions Agreement expressly forbids its third-party merchants from soliciting their customers. Customers check out via Amazon's shopping cart (online equivalent of a cash register), regardless of whether the goods are offered by Amazon, by its merchants or if its a mix of the two in the same shopping cart transaction.

Additionally, as an Amazon merchant, it is Amazon that sets the return policy, handles all customer service disputes (almost always siding with the buyer), sets pricing policies, suspends selling activities, charges the consumers credit card (Amazon.com), withholds funds for period of time after goods were delivered. Even the emails Amazon sends to its customers for products supplied by third-party merchants say thank you for shopping with Amazon, with no mention of the merchant. Most importantly, Amazon is the sole party in privity of contract with its customer, and their business services agreement specifically states that there is no agency relationship between Amazon and its third-party merchants.

This is quite the opposite of how an actual mall works, where stores are free to encourage their customers to transact outside of the mall (e.g. Skip the trip to the mall: Shop online next time and save 10%). Similarly, malls don't dictate the terms of each sale of their independent retailers, they do not set the return policy, and they do not make customer services decisions. In other words, if a person is upset about their iPhone warranty, they don't go to the Mall of

America's customer service desk with the expectation that the Mall of America will force The Apple Store to give that customer their money back. With Amazon it's quite the opposite, because Amazon is a store, not a mall.

A. Amazon's Antitrust Admissions Under Oath: It's Our Store

If you are still not convinced that Amazon is the store, perhaps you should refer to Amazon's recent statements to the House Antitrust Committee, which are deemed to be made under penalty of perjury. For example, when Amazon was asked by Committee Member Cicilline to "[D]escribe how Amazon responds when it discovers that a product sold by a Marketplace merchant is being sold at a lower price on a non-Amazon website," Amazon responded as follows:

> Customers come to Amazon for a vast selection of products with great prices and convenient delivery. If customers are disappointed in the offerings at Amazon, they will quickly turn to other stores to find the best selection, prices, and convenience. To maintain trust with customers that they will find low prices in the Amazon store, Amazon sets the prices on its first party sales to match competitors across all channels of retail. For sales by third parties, who are responsible for setting their own prices in the Amazon store, **Amazon may** suggest that a seller to lower its price in its store, offer an Amazon-funded discount on the product, or **choose not to feature higher-priced offers on a product's detail page**.[17]

So, not only does Amazon makes it clear in their near 70-page statement to the committee, and under penalty of perjury, that it is, in fact, Amazon's store, Amazon also admits that it has the ability to block prices, if they deem them to be too high. These pricing error notifications Amazon is referring to are a regular occurrence on Amazon, and have even led to a class action lawsuit for price fixing. This is because Amazon regularly suspends its sellers' ability to sell a product at a certain price if Amazon's scanner software discovered that the same product was offered in another marketplace, such as eBay, at a lower price.[18]

B. Amazon Retains Ultimate Control of the Price Ceiling and Price Floor

Amazon has the final say when it comes to the prices that are set in its store. Sellers suggest a price, just as manufacturers suggest prices, but Amazon, like any other retail store has the ultimate right to decide what price goods can sell for in its store. But by baking in a little ambiguity into how goods are priced, by not telling sellers what an acceptable price is and leaving them to guess, while retaining the right to reject a price, Amazon can claim it didn't set the price, even though it accepted it, in order to weasel out of its obligations not to price gouge, which is exactly what Amazon did, and continues to do, during the Covid-19 crisis.

With the outbreak, Amazon saw it was in their financial interest to allow high priced, counterfeit or sub-standard goods to be sold to a panicking public, earn the higher fees and

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[17] https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-20190716-SD038.pdf
[18] https://www.law.com/2020/03/20/amazon-hit-with-antitrust-class-action/?slreturn=20200304185550

commission and shift the blame to the merchants who supply them, the usual scapegoat. Many of these merchants would list their products using Amazon's "match lowest price option," thinking that how could it be price gouging if Amazon's offering them a low price button. What they did not know, was that Amazon was going to make their merchants think their price was legitimate by allowing the price to go live, collect their fees, only to later sell those merchants out to their own state officials.

C. Amazon Could Have Prevented Price Gouging by Blocking Automatic Reprice Software

Many of the merchants use automatic repricing software that can change a merchant's price, automatically re-pricing a product as the market conditions change, via Amazon's application protocol interface ("API"). This means that a commodity originally listed for 10, can be automatically adjusted to 15 based on the software's algorithm, and unless the seller is paying attention, they may not even know. As the panic began to grow, so did the prices of various commodities, and the repricing tools appeared to get out of control. But, had Amazon simply turned off the feature in their API that allows these repricing tools to work, many of the high prices inflated via the repricing tools would have been mitigated. But why would Amazon want to do that when the repricing tools enable Amazon to earn higher commission and fees, and especially when Amazon can shift the blame onto its sellers.

This model of no accountability, just profits, has worked really well for Amazon. Even if states were successful at stopping every supposed "price-gouger" in the US, Amazon will still profit from its over two million merchants in other countries, especially China where many of the masks sold on Amazon right now are coming from. These merchants will continue to sell goods into the marketplace at any price and without any adherence to consumer or safety standards, with complete impunity. And that impunity will extend to Amazon as well, as long as States' Attorneys allow Amazon to get away with this distortion of the law; that they are merely a marketplace or a mall, not the store.

D. Courts (including SCOTUS) Are Aware of the Marketplace Fallacy

As convenient as Amazon's split personality is for them, our legal system certainly operates under the principle of substance over form. In other words, just because someone says they aren't a duck, doesn't mean they aren't. In fact until Amazon, we were pretty sure it was just the opposite. Thankfully, courts, including The Supreme Court of the United States, have seen through this charade, meaning now is the time for the States' Attorneys to who are charged with enforcing the law to take action.

For example, a South Carolina tax court recently found that Amazon was liable for uncollected sales tax pertaining to its marketplace, despite Amazon claims that each of its 4-5 million sellers where individually responsible (over half of whom are not in the US). The Court made pretty quick work of Amazon's claims, holding that:[19]

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[19] *Amazon Services, LLC v. South Carolina Dept. of Revenue* 17-ALJ-17-0238-CC (September 10, 2019) *Available at* https://src.bna.com/Leb.

> Customers meaningfully interact with Amazon Services to consummate the sales of Merchant products and no one else. Moreover, Amazon Services' self-characterization as a service provider could be employed by any brick-and- mortar retail store or consignment shop to evade tax responsibility as a seller. Either could claim that instead of being engaged in the business of selling tangible personal property, they just provide an array of discrete, non-taxable services, charging the same types of "service" fees as Amazon Services even though, in reality, they are selling products. Separating the actions of a retail seller such as Target into discrete, non-taxable services would be absurd, and so it is here.

Then there is the Supreme Court's ruling in *Apple v. Pepper* where the Court found a similar claim made by Apple, that its app store was merely a marketplace or mall (as opposed to a retail seller of the apps) to be nonsensical, holding that:[20]

> Under Apple's rule a consumer could sue a monopolistic retailer when the retailer set the retail price by marking up the price it had paid the manufacturer or supplier for the good or service. But a consumer could not sue a monopolistic retailer when the manufacturer or supplier set the retail price and the retailer took a commission on each sale. Apple's line-drawing does not make a lot of sense, other than as a way to gerrymander Apple out of this and similar lawsuits. In particular, we fail to see why the form of the upstream arrangement between the manufacturer or supplier and the retailer should determine whether a monopolistic retailer can be sued by a downstream consumer who has purchased a good or service directly from the retailer and has paid a higher-than-competitive price because of the retailer's unlawful monopolistic conduct. As the Court of Appeals aptly stated, "the distinction between a markup and a commission is immaterial."

Frankly, I think the world is a little tired of Amazon's benefitting from constantly breaking the rules, and acting as if rules don't apply because they label their retail store a "marketplace.[21]" By letting Amazon off the hook and shifting the blame to the small sellers in your state, you only encourage Amazon to continue with its reckless disregard for your laws, while using its sellers, your local business owners, as scapegoats, in order to get away with it. Amazon is not above the law, and it's time somebody let them know.

III. Amazon Should Have Acted Responsibly

So, while you can blame the merchants, the in-state small business owners, the employers, the second-income earners known as retail arbitragers, who all year round sell things online found in stores for substantial multiples over what they paid for it, please understand that this is what they do. This is how they earn a living. This is how many of your residents pulled themselves out of poverty, got through hard times, support their families, all year round to earn

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[20] *Apple v. Pepper 587*, U.S. ___; 139 S. Ct. 1514 (2019).
[21] *See Oberdorf v. Amazon, Inc.*, 930 F.3d 136 (2019); *See also* https://www.inquirer.com/business/amazon-online-sale-product-liability-law-oberdorf--20191202.html

income and become self-reliant. When a person buys a bathing suit on clearance for 90% off at a Boston retail store in November and resells it online for 1,500% profit to Amazon's customer in Florida, it's a perfectly legal activity, and it's pretty typical. Now, in this one instance, we see that you are seeking to punish these people because they didn't fully understand the implications of a pandemic in January or February of 2019, but who really did?

Is it fair to blame a single-mother in Tennessee for failing to understand the gravity of Covid-19 in January or February, when no state of emergency had been declared, and the idea that we would all be forced to shelter-in-place had not crossed most people's mind? I'm going to go out on a limb and say, no.

What about Amazon? Did Amazon understand the potential for higher prices due to Covid-19 in January and February? Did Amazon foresee that there was potential for price-panic in their store? Could Amazon have taken swift action early on to have prevented the panic buying from ensuing in their store? Absolutely! But did Amazon take any reasonable measures to stop it? No, they did not. They chose to allow the panic to ensue, profit from it, and pass the blame on to its merchants.

$700 toilet paper in Amazon's store could have been avoided if Amazon had done the right thing by preventing it from ever happening, implementing price ceilings pro-actively on essential products, such as masks and sanitizer, based on trailing price averages. Their systems saw that prices were starting to move into panic mode, and once they allowed those prices to go live in their store, they became accountable for the further panic in the market that ensued. It was a cascading effect, Amazon could have prevented. Yes, Amazon could have done that, but why would they if they could profit from it instead, especially when they have the perfect scapegoat, their merchant business owners in your state that you are now punishing, while predictably falling for Amazon's alibi, it's not our store.

Let me put it another way, as a hypothetical: imagine walking into your local Walmart store and seeing a $700 "rollback" on toilet-paper. You immediately speak to the manager, raising your concerns, and the manager responds: "We've adopted a new business model here at Walmart where our physical store acts as a marketplace for some of the items we sell. Now, we let the toilet paper suppliers tell us what price to sell toilet paper for, and we just earn a commission on every sale. Therefore, technically we're not the ones price gouging, and can't be held responsible."

Do you honestly think this type of excuse, our store is now a marketplace, would end well for Walmart in this hypothetical? I didn't think so. But, for some reason when it comes to Amazon, it does. It ends well every single time, whether its tax, avoiding responsibility for dangerous goods, counterfeits and now price gouging. Why? Because, whether you realize it or not, you let Amazon get away with it every time, and by letting them get away with it, you only enable them to take it further and further. It's time to put a stop to it.

Now, perhaps the reason it always ends well for Amazon is that you haven't taken the time to learn the facts (hopefully). Or, perhaps the political pressure of Amazon's promise of jobs has limited your ability to take adverse action against them (sad but quite common). Which

one is it for you? Is Washington going to continue to look the other way because Amazon is their home state? Is California going to blame the small business owners because Amazon has 20,000 jobs in the state, like they are currently doing when it comes to holding Amazon accountable for billions in back taxes, going after the out-of-state merchants instead?[22] The right answer here is to hold Amazon accountable, not to let them off the hook just so you don't hurt your state's chances at Amazon's HQ 3, 4 or 50.

Not only should you be taking action because Amazon allowed the transactions to go on, but for using the crisis as an opportunity to profit while misleading and entrapping the merchants in your state. Fooling your local business owners into doing Amazon's dirty work by telling them their prices were acceptable, even offering sellers a "match lowest price" option so they would think they were operating within the rules is deplorable behavior. Amazon knew that when the price gouging inquiries came Amazon would sell their merchants out; your citizens, your small business owners, your voters.

To Amazon the merchants are merely pawns, every one of which are disposable to them. Take this merchant from Redmond, WA featured in a recent New York Times Article. This merchant was once one of Amazon's most celebrated electronics brand-owner merchants, and now Amazon is using all their dirty tricks to push him out, and drive his customers to Amazon basics.[23] This is what ruthless Amazon thinks of your small business owners, and this is what they do to them time and time again, so is it any surprise that they were entrapping your local businesses to do Amazon's dirty work, while Amazon earned its commission?

Let me repeat that, Amazon earned between 15% to 30% commission (again what the Supreme Court says is synonymous with a markup in the Apple case) on every sale of abnormally high priced commodities sold to your residents, more profit than most of the merchants actually made, especially those who had to pay for shipping the goods. Yet, Amazon receives none of the accountability. This is Amazon's fault, Amazon could have prevented it. But they chose not to, because they had the perfect scapegoat, your constituent residents and business owners.

IV. Withdraw Your Subpoenas

Enough is enough, don't put your merchants through more misery than they have already been through. Message received, you have scared the heck out of our merchants to the point where they are afraid to sell travel pillows in this environment, because they think they could get accused of price gouging. But this has to end now, because your message is having an unconstitutional chilling effect, that is restricting their ability to engage in interstate commerce.

Now is the time for Amazon to be taught a lesson. From the merchants' perspective, this is long overdue, and would be a nice change after decades of watching Amazon act as if they are above the law after robbing the states of tens of billions of tax revenue, allowing dangerous

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[22] https://www.forbes.com/sites/kirimasters/2019/08/08/california-lawsuit-says-amazon-should-pay-billions-in-back-taxes/#613be5eb729a
[23] https://www.nytimes.com/2019/12/19/technology/amazon-sellers.html

products to harm consumers, profiting from counterfeits, and take advantage of your in state merchants, all the while hiding behind arbitration clauses in their adhesive agreements that prevent the merchants from having any meaningful recourse against them.

I have spent a lot of time over the last few years educating people on the realities of Amazon's marketplace, as it is very misunderstood. Most people, especially in government only hear Amazon's explanation of how the marketplace works, so we are willing to accept that this is a misunderstanding, and we want to help you understand the realities of being an Amazon seller. Reach out to us at Online Merchants Guild, speak to the merchants in your community, learn the truth. We are here to help you in any way we can to make that happen.

But now that you have heard the real story. Now that you know the facts, not Amazon's fairytale, we expect you to do the right thing and withdraw every subpoena. However, if this continues, if our merchants continue to be harassed, based on unconstitutional and unconscionable legal theories, we are prepared to take action which may include filing for a temporary restraining order in federal court (in light of the fact that multiple states are pursuing these unconstitutional inquiries, civil and criminal). We are also prepared to seek damages under 42 USC 1983, as the Supreme Court has recognized that damages for commerce clause violations are recoverable in civil rights cases.[24]

But, our hope is that this won't be necessary. Our hope is that you will do the right thing: Withdraw the subpoenas; revisit your facts; stop taking Amazon's side and stand up for your small businesses and residents FOR ONCE! Stop acting as Amazon's enforcer, facilitating Amazon's efforts to turn your constituents into Amazon scapegoats, while Amazon profited in violation of your state's price-gouging laws.

Sincerely,



Paul Rafelson
Executive Director
Online Merchants Guild
paul@onlinemerchantsguild.org

[24] *Dennis v. Higgins* 498 U.S. 439 (1991).



AMERICAN PSYCHOLOGICAL ASSOCIATION

August 2, 2020

Mark Zuckerberg
Founder and Chief Executive Officer
Facebook
1 Hacker Way
Menlo Park, CA 94025

Dear Mr. Zuckerberg:

I am writing on behalf of the American Psychological Association (APA) to urge Facebook, as the dominant social platform in the Internet age, to help stop the spread of hate. APA is the largest scientific and professional organization representing psychologists in the United States with more than 121,000 members and affiliates who are researchers, educators, clinicians, consultants, and students. While we recognize that hate speech is protected speech under the First Amendment, leaders in academia and industry, including social media platforms, can restrict hate speech if they so choose. We are asking Facebook to recognize and utilize the science that demonstrates hate speech causes significant psychological harm to the welfare of consumers, observers, and society as a whole. We ask that you immediately move to ban the use of hate speech on your online platform.

We applaud Facebook's recognition of the need to change through the series of audits designed to ensure that important civil rights laws and principles are respected, embraced, and robustly incorporated into the work at the company. The recently released *Facebook Civil Rights Audit – Final Report* recognized actions that Facebook has already taken, such as: taking steps to build greater civil rights awareness and accountability; changing various content moderation practices; investing in a dedicated team to focus on studying responsible artificial intelligence methodologies; and more.[1] Yet, the auditors advocated for the company to "go further to address civil rights concerns in a host of areas that are described in detail," including those related to more visible and consistent prioritization of civil rights; increased investment of resources to study and address organized hate; increased commitment to go beyond banning explicit references to white separatism and white nationalism; and addressing concerns about algorithmic bias or discrimination. Clearly Facebook needs to stand up and do more.

Based on decades of psychological research, we know that racial discrimination, and specifically hate speech, can cause significant psychological harm. Experiencing racial discrimination can undermine core executive functions and may have significant negative implications for performance in educational, employment, and other settings.[2] And this damage can be experienced by those who are the direct targets of the hate speech, as well as those who are observers. Furthermore, the effects are seen whether the hate speech is verbal, written, or on social media platforms. For example, in the context of Twitter, an online experiment conducted with Black Americans showed that hate tweets from multiple sources, when compared to the identical hate messages from a single source, led to greater emotional distress.[3]

Psychological research also tells us that the use of hateful language against others in national issue campaigns and venues, such as online platforms, can have devastating consequences. For

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example, a study on the effects of Proposition 8 in California highlighted that people who are LGB had to contend not only with the results of the passage of an anti-gay marriage law but also with the stress of the campaign itself. The study found that participants experienced many negative emotions due to "media campaigns that disparage gay and lesbian people, seeing yard signs and bumper stickers of individuals who are against same-sex marriage, and/or having stressful conversations with people regarding the ballot measure."[4]

Furthermore, not only does hate speech affect the target audience and observers, but also society writ large and even those who are engaging in the hateful speech itself. International research has shown that derogatory language about immigrants and minority groups can lead to extremism and the breaking down of relationships between disparate groups.[5] In a study where people were exposed to frequent and repetitive hate speech, the more often the hateful speech was heard, the more prejudiced toward hate speech victims the participants became.[6] The findings also revealed that experiencing hate speech multiple times and persistently leads to people becoming numb to its use and lowers the perceived value and worth of the victims, increasing prejudice. In fact, researchers believe that repeated exposure to hate speech actually "dampen(s) the response of neural mechanisms of pain empathy to (and thereby reduces empathy for)" targets.[7]

While there is often an assumption that those engaging in hate speech are adults, adolescents have been known to engage in similar behaviors with very damaging effects. In a study that examines the associations among being bystanders of online hate, being perpetrators of online hate, and the disregard of social online norms found that 53.7% of the youth had observed at least one online hate incident, 11.3% reported having perpetrated at least one incident of online hate, and 16.9% reported being victimized at least once by online hate.[8]

When businesses or organizations allow for discrimination of any form to take place, it also impacts the discrimination target and those who witness it inside and outside of the organization. Discrimination allowed within workplace and educational contexts communicates to targets the extent to which the representatives of the business respect their group and implicates the morality of the larger group or organization in which it occurs.[9,10,11,12] The threat to the organization's perceived moral code can have a broad and adverse impact on observers.

In other words, Facebook's sharing of hate speech not only traumatizes both the intended victims and observers but may also prompt those who see it to become more prejudiced. By not taking needed corrective action, Facebook is knowingly harming the welfare of consumers, employees, and its shareholders.

Psychologist Dr. Ervin Staub has dedicated his life to the psychology of mass violence and genocide, having been the founding director of the doctoral program on the psychology of peace and violence at the University of Massachusetts Amherst. His research concludes that hate speech can change the norms of an organizational/community, which is inclusive of a virtual community and the people it represents.

Specifically, he found that people and communities change as a result of harmful actions, which has the ability to start "an evolution of increasingly harmful and violent actions."[13] As stated earlier, the perpetrators of such actions justify their stances by dehumanizing the targeted group and systematically excluding them from moral and social realms, thus changing social norm and establishments.[14]

When bystanders are silent or passive, it encourages harmful behavior.

Facebook must take a leadership role to be proactive in reversing this trend.

We are asking for Facebook to act as a leader and intervenor as opposed to a bystander. Taking action such as: establishing and empowering permanent civil rights infrastructure; creating an internal mechanism to automatically flag hateful content; and enabling individuals facing severe hate and harassment to connect with a live Facebook employee, have been recommended strategies to develop proactive actions that are inclusive and embracing of all groups that provides hope for people who are targets. Taking these actions will stop spreading fear and feelings of low self-worth of the targets of hate speech by Facebook. And taking such actions have been shown to have positive outcomes in educational settings where high schools that had developed robust, inclusive, and supportive school climates through practices, such as having a point person for LGBT student issues, discussing bullying based on sexual orientation, and providing professional development around LGBT inclusion and LGBT student issues, saw drastic reductions in rates of bullying.[15]

School administrators determined there was a problem and took proactive steps to move from being a bystander to being an intervenor by creating positive school climates. Being a witness and intervening has a positive impact on individuals and target groups as well as on the customs of the "community."

This is our request of Facebook -- to recognize the serious psychological harm caused by hate speech if unaddressed and to utilize the psychological science on the effects of hate speech presented in this letter as the basis for doing what is morally right - eliminating hate speech from your online platform.

Thank you for your consideration on this critically important matter.

Sincerely,



Arthur C. Evans, Jr., PhD
Chief Executive Officer

Footnotes

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Mary Kay Henry
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Sherrilyn Ifill
NAACP Legal Defense and Educational Fund, Inc.
David H. Inoue
Japanese American Citizens League
Derrick Johnson
NAACP
Virginia Kase
League of Women Voters of the United States
Michael B. Keegan
People for the American Way
Samer E. Khalaf
American-Arab Anti-Discrimination Committee
Marc Morial
National Urban League
Janet Murguia
UnidosUS
Debra L. Ness
National Partnership for Women & Families
Rabbi Jonah Pesner
Religious Action Center Of Reform Judaism
Lisa Rice
National Fair Housing Alliance
Anthony Romero
American Civil Liberties Union
Maria Town
American Association of People with Disabilities
Richard L. Trumka
AFL-CIO
Toni Van Pelt
National Organization for Women
Randi Weingarten
American Federation of Teachers
John C. Yang
Asian Americans Advancing Justice | AAJC

President & CEO
Vanita Gupta

The Leadership Conference

August 4, 2020

The Honorable David N. Cicilline
Chair
Subcommittee on Antitrust, Commercial, and Administrative Law
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable F. James Sensenbrenner
Ranking Member
Subcommittee on Antitrust, Commercial, and Administrative Law
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Cicilline and Ranking Member Sensenbrenner,

On behalf of The Leadership Conference on Civil and Human Rights ("The Leadership Conference"), a coalition charged by its diverse membership of more than 220 national organizations to promote and protect the rights of all persons in the United States, we thank you for the opportunity to submit our views regarding the need for social media platforms to address online voter suppression and improve civil rights infrastructure and ask that this statement to be entered into the record of the Subcommittee hearing entitled "Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google," which was held on Wednesday, July 29, 2020.

Ensuring a fair, inclusive, and accessible election demands extreme vigilance. With less than 100 days until the November election, Congress must use its convening and oversight power to ensure that tech platforms and companies do everything they can to meaningfully address and counter online voter suppression while protecting civil rights. For the last several years, The Leadership Conference has engaged with social media platforms to encourage them to address these issues. We have made a series of recommendations to obviate false, misleading, and harmful content that could lead to voter suppression on the companies' platforms. While Facebook and other social media platforms have made some policy changes, their uneven enforcement makes them insufficient to prevent the spread of voter suppression. Additional background and details about our work and proposals are contained in a statement for the record that The Leadership Conference submitted for the House

Energy and Commerce joint hearing on June 24, 2020, "A Country in Crisis: How Disinformation Online is Dividing the Nation."[1]

Facebook in particular has come under scrutiny for its practices. As stated in the final report of the Facebook Civil Rights Audit that was released on July 8, there is a deficit in the lack of understanding and application of civil rights at the company.[2] When Facebook and the few other companies who dominate and control social media do not address content that leads to voter suppression and attacks civil rights, the result is a corrosive effect on our democracy. As stated in the final Facebook civil rights audit report released on July 8:

> *If politicians are free to mislead people about official voting methods (by labeling ballots illegal or making other misleading statements that go unchecked, for example) and are allowed to use not-so-subtle dog whistles with impunity to incite violence against groups advocating for racial justice, this does not bode well for the hostile voting environment that can be facilitated by Facebook in the United States. We are concerned that politicians, and any other user for that matter, will capitalize on the policy gaps made apparent by the president's posts and target particular communities to suppress the votes of groups based on their race or other characteristics. With only months left before a major election, this is deeply troublesome as misinformation, sowing racial division and calls for violence near elections can do great damage to our democracy.*[3]

Given the market power that tech companies currently wield, Congress must urge social media platforms and tech companies to (1) improve and enforce their current community standards policies on voter engagement/interference and civic activities to prevent voter suppression; (2) use COVID-19 policy and procedures as a model for how positive steps can be taken to both provide accurate information and prevent disinformation for voting and elections; (3) prevent disinformation in political ads; and (4) improve civil rights infrastructure.

Platforms Must Enforce and Improve Their Current Policies

The Antitrust, Commercial, and Administrative Law Subcommittee is appropriately using its oversight authority to review the market power of the tech companies. The subcommittee can also push the platform companies to enforce and improve their current community standards policies on voter engagement and civic activities. The platforms must implement their policies fairly, swiftly removing voter suppression content that violates those policies; downranking the content in search results; or labeling content and including correct voting information, regardless of the speaker.

While Facebook has policies to remove content that has false or misleading information on how to vote/participate in the election process[4], the company is not consistently enforcing them. For example,

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[1] http://civilrightsdocs.info/pdf/policy/letters/2020/Leadership_Conference_Statement_6.24.20_House_EC_Hearing.pdf

[2] https://about.fb.com/wp-content/uploads/2020/07/Civil-Rights-Audit-Final-Report.pdf, p.10

[3] Ibid.

[4] https://about.fb.com/news/2019/10/update-on-election-integrity-efforts/#voter-suppression

Facebook made an intentional decision to take no action to address a post by President Trump on May 26 that contained false information about mail-in ballots in Michigan. Facebook has likewise decided to take no action on similar posts by the president with false information about mail-in ballots in Nevada and California.

Facebook must consistently enforce its current policies on election integrity and voter interference and not "pick and choose" when it will enforce its standards. As stated in the third civil rights audit report:

> *Facebook's voter interference policy prohibits false misrepresentations regarding the "methods for voting or voter registration" and "what information and/or materials must be provided in order to vote." The ballots and ballot applications issued in Nevada and Michigan were officially issued and are current, lawful forms of voter registration and participation in those states. In California, ballots are not being issued to "anyone living in the state, no matter who they are." In fact, in order to obtain a mail-in ballot in California one has to register to vote.*
>
> *Facebook decided that none of the posts violated its policies. Facebook read the Michigan and Nevada posts to be accusations by President Trump that state officials had acted illegally, and that content challenging the legality of officials is allowed under Facebook's policy. Facebook deemed the California post to be non-violating of its provision for "misrepresentation of methods for voter registration".*[5]

In addition, the report stated:

> *To the civil rights community, there was no question that these posts fell squarely within the prohibitions of Facebook's voter interference policy. Facebook's constrained reading of its policies was both astounding and deeply troubling for the precedents it seemed to set.*[6]

The subcommittee and Congress must urge the platforms to take a wider range of affirmative steps to address this content, including removal, labeling, and/or fact-checking of inaccurate and misleading posts. Without doing so, the content on platforms can directly lead to voter suppression and adversely affect the integrity of elections.

Platforms Must Apply Disinformation Prevention Tools to Voting

Platforms must improve processes and work on solutions that prevent the posting and spread of content in a myriad of ways – from user accounts, ads, organic posts, open and closed groups – which could suppress or manipulate voting rights towards African Americans and other targeted communities. Facebook's proactive response to the COVID-19 pandemic models the range of actions that can be taken to effectively combat voter suppression content. Recognizing public responsibility to protect and keep its users safe, the company has worked to push out reliable and factual information about the virus and how to stay safe during its spread. Facebook also takes affirmative steps to inform users that they have

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[5] https://about.fb.com/wp-content/uploads/2020/07/Civil-Rights-Audit-Final-Report.pdf, p. 38
[6] Ibid.

interacted with harmful information or myths about COVID-19.[7] Google/YouTube and Twitter have also instituted polices to either label or prevent content that contains misinformation about COVID-19.[8]

Despite these efforts, disinformation about COVID-19 is unfortunately still being spread rapidly. As reported this week, a video with false claims about COVID-19 was posted on Facebook, YouTube, and Twitter. The video received 14 million views on Facebook and was previously shared 600,000 times and was viewed 40,000 times on YouTube. President Trump and Donald Trump, Jr. shared the video on their Twitter account.[9] All three platforms eventually took the videos down. While this response was far from perfect because immediate action was not taken before the damage was done, it does show that the platforms have the ability to address false information. In our ongoing discussions with Facebook, we have asked the company to utilize the same tools and resources to remove voter suppression content and proactively disseminate truthful information from trusted sources on the ways that voters can cast a ballot safely this year. If Facebook and the other platforms can address false information about COVID-19, they should and must do the same to address voter suppression.

At the same time, efforts to exploit fears surrounding COVID-19 can lead to the spread of disinformation and voter suppression content that can adversely affect and prevent citizens from voting, particularly communities of color, who are disproportionately impacted by COVID-19 and historically faced and continue to face barriers to the ballot box. Unless the public has accurate information making them aware of the range of options through which to request and submit completed ballots, many voters – particularly people of color, Native Americans, people with disabilities, limited-English proficient citizens, students, and other historically marginalized citizens – simply will not have equal access to the ballot box, and the promise of our democracy will not be fulfilled.

Facebook is taking some steps to address voter education and provide authenticated voter information with the creation of its Voter Information Center. In addition, they have made policy changes prohibiting false claims about polling place conditions in the 72 hours before Election Day, and limiting exemptions for politicians' exemptions newsworthiness content.[10] Facebook states that the Center will provide accurate and authentic information about how to vote, including information and deadlines about mail-in ballots, early voting, and in-person voting.[11] If implemented properly, providing factual information on Facebook platforms about voting is a positive step and is an important request that we have asked for in our discussions with Facebook.

However, these efforts, while well-intentioned, do not address the larger issue of the spread of underlying content and disinformation that leads to voter suppression on the platforms, which adversely affects and prevents the ability of citizens to vote, particularly for communities of color. It is also unclear how and whether these changes will be enforced, especially since Facebook does not fully implement its current

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[7] https://about.fb.com/news/2020/07/coronavirus/
[8] https://blog.twitter.com/en_us/topics/product/2020/updating-our-approach-to-misleading-information.html; https://support.google.com/youtube/answer/9891785
[9] https://www.cnn.com/2020/07/28/tech/facebook-youtube-coronavirus/index.html
[10] https://www.facebook.com/zuck
[11] https://about.fb.com/news/2020/06/voting-information-center/

voter interference polices. Moreover, Facebook has indicated that it will attach a link to the Voting Information Center for posts that discuss voting. While this can be useful, a blanket labeling system that treats all information equally is not the preferred approach. Labeling should be used to help the user determine when they are viewing misleading posts, which means links or labels should only be attached to posts that contain disinformation and misinformation about voting or elections.

Facebook has shown us, through its efforts to provide accurate information on COVID-19, that it is equipped to monitor and prevent misinformation. Facebook, Google, and the other platforms must make similar efforts to ensure that their platforms are not used to spread inaccurate and misleading information that suppresses voting rights and manipulates voters. We urge the subcommittee to press Facebook and Google to detail solutions that they plan to take to fix these issues before the election.

Platforms Must Prevent Disinformation in Political Ads

Disinformation that is included in political ads can often make its way onto platforms as organic content that is spread and leads to voter suppression. Twitter recently announced a prohibition of political ads,[12] while Google/YouTube limits the targeting of ads to age, gender, and general location.[13] Contextual targeted advertising, such as serving ads to people reading or watching a story about a specific issue like the economy, is still allowed by Google.[14] Google states that it will not allow political advertisers to make false claims[15] and has also stated that it will remove election-related content on YouTube that may pose a risk of serious harm.[16] Facebook, however, has not made substantive changes to its political ads policy. Microtargeting based on a large number of characteristics, interests, and demographics are still allowed, and there is scant language in Facebook's policy about addressing false claims in political ads.[17] In addition, the concentration of political ads appearing on so few political platforms, particularly on Facebook, can lead to market power concerns.

Facebook's hands-off policy also means that content in political ads is largely unchecked. In addition, despite Google's ban of false claims in political ads and removal of certain types of harmful content, it is unclear how widely it enforces this policy or what types of ads are removed, which can allow false information to still spread widely on YouTube.[18]

Facebook announced in June that it is giving users more control over the political ads that users can see[19], and is expanding its ads policy to prohibit claims that people from a specific race, ethnicity, national origin, religious affiliation, caste, sexual orientation, gender identity, or immigration status are a threat to the physical safety, health, or survival of others.[20] There are also reports that Facebook is considering a

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[12] https://business.twitter.com/en/help/ads-policies/prohibited-content-policies/political-content.html
[13] https://www.blog.google/technology/ads/update-our-political-ads-policy/
[14] Ibid
[15] Ibid.
[16] https://youtube.googleblog.com/2020/02/how-youtube-supports-elections.html
[17] https://www.facebook.com/policies/ads/restricted_content/political
[18] https://www.nytimes.com/2020/02/03/technology/youtube-misinformation-election.html
[19] https://about.fb.com/news/2020/06/voting-information-center/
[20] https://www.facebook.com/zuck

temporary ban on political ads for a short time leading up to the November election.[21] But giving users more choice over what ads they can see or banning ads for a limited amount of time does little to address the underlying subject matter and disinformation that is often prevalent in ads, and leads to voter suppression. Moreover, the prohibition of claims in ads that people from a specific race, ethnicity, and other backgrounds are a threat to safety are already covered in Facebook's community standards. We request that the subcommittee and Congress urge Facebook and other platforms to take affirmative steps to address disinformation in political ads, including:

- Ensuring that any advertisements containing previously verified falsehoods by their standards can be prevented from running again instead of forcing each ad to be individually examined
- Preclearing political ads in the 72 hours before the general election to avoid ones with disinformation from going viral before they are detected and taken down

Improving Civil Rights Infrastructure

Structural changes within the platforms will also help better protect voting and other civil rights by ensuring platforms can hold themselves accountable to their commitment to civil rights, diversity and inclusion. Among the companies appearing at the subcommittee hearing, only Facebook has undertaken a civil rights audit with outside auditors, though civil rights groups have urged all the major platforms to do so. Congress must urge the other tech companies to conduct credible independent civil right audits. But even in Facebook's case, without the institutional changes we have been urging the company to make, the audit's impact will be limited and short-lived.

The audit has been an incredible tool for ensuring that Facebook continues to examine its impact on the civil rights of all people in the United States, to identify in real time critical upcoming moments where Facebook's policies and enforcement require modification, and to provide crucial internal and external benchmarks for examining progress. However, without a clear structural commitment from Facebook, the benefits of two years of work on the civil rights audit are unlikely to last beyond its conclusion. And while Facebook's oversight board – if properly staffed and structured – has the potential to be of assistance to Facebook's content moderation decision-making, it cannot substitute for staff internal to the organization whose sole objective is protection and promotion of civil rights.

Congress must urge Facebook, Google, Amazon, Apple, and other tech companies to adopt structural reforms that comply with federal civil rights law and demonstrate that the companies understand that civil rights are not a partisan issue, but instead are fundamental to protecting the constitutional rights of all people and thus should be part of the organic structure and operations of these companies. This means that tech companies must hire staff with civil rights expertise in senior leadership. The civil rights infrastructure within the companies must be well-resourced and empowered within the company and consulted on the companies' major decisions. New and clarified policies should be subject to vetting and review by internal teams with real civil rights expertise and experience, prior to their implementation. Finally, tech companies should provide a process and format through which civil rights advocates and the public can engage with the companies and monitor their progress.

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[21] https://www.washingtonpost.com/technology/2020/07/10/facebook-ads-politics-ban/

The Leadership Conference

Congress must also press tech companies to do more to address meaningful diversity and inclusion at their workplaces and the lack of people of color in senior executive, engineering, and technical positions. People of color who are working at the companies often face discrimination and unequal pay, as well as a culture where they are devalued. Tech companies must ensure that this does not happen in their workplaces and must address the inequities that may have already occurred. They also must expand strategies to attract and retain talent in diverse communities to expand access to jobs and opportunities.

Prevention of harm, not damage and after-the-fact repair, must be the goal. This goal cannot be fully accomplished if those with civil rights expertise are not part of the decision-making processes. Congress must continue to review and scrutinize tech companies to make sure that they are taking the necessary steps to accomplish this goal.

Conclusion

The threat of online voter suppression to the integrity of our democracy and the need for civil rights infrastructure, especially when content is concentrated in a limited number of platforms, cannot be understated. The threat to safe and fair elections and civil rights can have a corrosive effect to the fabric of our country. After largely ignoring these issues, social media platforms and tech companies have taken some small steps in recent months to address the problems. But far more needs to be done and the companies need to be more engaged on solutions to address the proliferation of false, misleading, and harmful content. As the election approaches, it is critical to fix these issues as soon as possible. The Leadership Conference urges Congress to press the companies to institute the reforms outlined in this letter. We also stand ready to work with Congress and elected officials to find solutions that will keep our democracy safe, limit the concentration of content, and stop the suppressive effect that disinformation is having on civil rights and racial justice. Should you require further information or have any questions regarding this issue, please contact David Toomey at toomey@civilrights.org.

Sincerely,

Vanita Gupta
President and CEO

LaShawn Warren
Executive Vice President for Government Affairs

CC: The Honorable Jerrold Nadler, Chair, House Committee on the Judiciary
The Honorable Jim Jordan, Ranking Member, House Committee on the Judiciary

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The Hon. David Cicilline
Chairman, House Antitrust Subcommittee

2138 Rayburn HOB
Washington, DC 20515

The Hon. James Sensenbrenner
Ranking Member, House Antitrust Subcommittee
2449 Rayburn HOB
Washington, DC 202515

House Judiciary Committee, Antitrust Sub-committee

Majority Staff and Minority Staff

By Email and Electronic Transfer

3 August 2020

Dear Chairman Cicilline and Ranking Member Sensenbrenner

Please allow me to congratulate you both and all the members of the House Judiciary Subcommittee on Antitrust for the hearing held on Wednesday last week. I admired the way the hearing was conducted and your bipartisan approach. Holding Big Tech to account for its long history of monopolistic and abusive market behaviour is key for not only businesses but for consumers too. The hearing has set a precedent and, no doubt, will set the agenda and tone for further probes, not least the forthcoming Senate Antitrust Subcommittee Hearing on Google Advertising in September.

Our business continues to be damaged by Google and its self-preferencing behaviour. Wednesday's hearing made it even more clear to us that there is irrefutable evidence that Google has been excluding competitors like us from search to the detriment of consumers and that its tentacles are clearly spreading further. As you rightly said, a business can sink or swim based on Google's decisions alone. How utterly terrifying not to have control over your own business – and this is how we feel about our business. I empathise with entrepreneur Brian Warner.

It is clear that Google is feeling the immense scrutiny that it is under. The Subcommittee posed a great number of pertinent and challenging questions that Sundar Pichai had difficulty answering. The case against stealing content from competitors and small businesses for its own gain is compelling. In line with this, as your questioning highlighted, Google's business model puts Google first and privileges its own properties.

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There is one outstanding point that I believe is worthy of further focus and which I would like to draw your attention to. That is whether Google deliberately (through manual penalties or simply the design of its algorithm) demotes competitor results on its search pages. Google has consistently said that it simply displays the most relevant results, and yet it also consistently displays its own services and hides competitors even if they are more relevant. Google does not seem to follow its own rules. The leaked FTC report in 2012 referred to demotions for shopping competitors and we expect that the same has happened in other verticals. We think that a follow up question on this, if answered fully and truthfully, could provide additional material for the forthcoming report.

To recap, I am encouraged that the US authorities, led by your Subcommittee, are taking the lead to seek workable remedies for Big Tech's anti competitive behaviours. We all know only too well that leaving Google to create its own remedies has seen a continued and predictable continuation of its abuses in Europe. I noted with interest that following the hearing Commissioner Vestager outlined her proposed strategy to tackle Big Tech in a written statement to the US House Judiciary Committee. My view remains that more can be done in Europe, but I am hopeful that your work will result in significant steps forward for businesses like ours in the US.

We look forward to the publication of the forthcoming report. If there is anything else I can assist either of you or your staff with, please do not hesitate to ask.

Richard Stables
CEO, Kelkoo Group



July 23, 2019

The Honorable David Cicilline
Chairman
U.S. House Antitrust, Commercial, and Administrative Law Subcommittee
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable F. James Sensenbrenner
Ranking Member
U.S. House Antitrust, Commercial, and Administrative Law Subcommittee
2138 Rayburn House Office Building
Washington, D.C. 20515

Re: Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google Hearing

Dear Chairman Cicilline, Ranking Member Sensenbrenner, and Members of the Subcommittee:

On behalf of Color Of Change ("COC") and Liberation in a Generation, we submit this letter for the record in connection with the House Antitrust, Commercial, and Administrative Law Subcommittee's hearing, "Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google" hearing, which is scheduled for July 27, 2020.

The 21st century internet age, which, in its infancy, allowed for the decentralization of media voices and provided digital oxygen to emerging movements like the Movement for Black Lives, has given rise to new tech and e-commerce juggernauts that have accelerated racial inequities. These companies occupy an overwhelming amount of market, social, and political power and yet operate unbehoven to the civil rights legislation that has been the law of the land for multiple generations. In fact, these companies have actively eroded away hard-fought civil rights wins in the areas of voting rights and ethical labor practices, have opened the door to predatory housing, finance, and employment discrimination, and have created back doors to statutes like Violent Interference with Federally Protected Rights, 18 U.S.C. § 245, and Conspiracy Against Rights, 18 U.S.C. § 24, which were created to protect communities from hate crimes.

This erosion of civil rights by tech giants is especially concerning given the salience of Black users on these platforms. Black millennials spend more time on social networking sites than any other racial group. Additionally, Black people of all ages over-index in membership on all of the Big Tech social media platforms and in ownership of gaming devices. Black people are also more likely than other races to be considered tech trailblazers by their friends and colleagues.





This isn't a new phenomenon—historically, Black people have consistently been early adopters of new media sources and social media technology. The symbiotic relationship between Black users and emerging platforms helped to extend the cultural cachet of platforms while amplifying the voices of those not served by traditional communication mechanisms. Beyond the public display and trafficking of Black aesthetic, social media offered an opportunity to publicly center Black lives, move messages from margin to center, and challenge narratives and policies that reinforce racial inequities. But the promise of equality and opportunity has been crushed by the weight of consolidated communications and commerce power and corporate gatekeepers tipping the scale away from progress and circumventing the civil rights laws that have existed for generations.

Further, the disappearance of choice and competition have destroyed the entrepreneurial spirit of innovation and have created de facto segregated access to opportunities for socio-economic mobility, privacy, access to information, and community autonomy. These corporations wield increasing power over our society and play a clear role in driving the racial wealth gap all while benefiting from Black labor and talent and erasing Black-owned businesses. The centralized power over the flow of information and access to data privacy, as well as the trading of goods and services that these platforms have, has triggered economic, health, and social disparities on par with what we saw during the Gilded Age before the U.S. plunged into The Great Depression.

Oftentimes inequities in our economy come from corporations being able to act together to neutralize attempts at oversight or from a single corporation or unregulated industry growing to a size that is too unwieldy or "too big to fail." In that context as well as the micro context of consolidated corporate power, the re-emergence of unrestrained monopoly power in the 21st century is a continuation of history—history that has shown that forward progress in civil rights will always be met with attempts to consolidate power. Whether race is deployed as an underlined wedge issue or racial inequities are a byproduct of power grabs, the impact to marginalized communities is still the same. We are left bearing the brunt of harms that stem from an economy that lacks the freedom of choice and competition. **We encourage Congress to undo Amazon, Apple, Facebook, and Google mergers in order to create healthy competition and to promote choice in the market as a means to force more accountability, responsiveness, and good governance in service of racial equity.**

Below we address the dimensions of racialized harm related to Amazon, Apple, Facebook, and Google. These harms warrant Congressional action and regulation of the tech industry.





Dimensions of Racialized Harm Correlated to an Unregulated and Consolidated Tech Industry

Economic Harms

Data shows that it would take the average Black family 228 years to build the wealth of the average white family today, but if we keep going at the current rate, by 2053 the median wealth of Black Americans will fall to zero. Even where there are gains made, it's too often not sustainable. Black children raised in the middle 20 percent of wealth distribution are much more likely than their white peers to fall into the bottom 40 percent as adults. Unregulated and consolidated Big Tech firms drive this racial wealth gap through:

1. **The unregulated and consolidated tech industry has eroded worker rights, wages, and fair labor practices that ensure a U.S. economy built to better withstand a global health crisis.** Research by EPI shows that the presence of an Amazon fulfillment center actually has a negative impact on local labor markets by increasing low-wage warehouse jobs, crowding out and lowering the number of available jobs in other sectors.[1]

2. **The accelerated demise of Black-owned and local businesses and the stunted growth of Black innovation correlates with the increased market power of Big Tech.** Big Tech firms use monopoly rents to charge exorbitant prices for prime real estate on pages and to undercut competitors and confuse buyers (e.g., if a consumer sorts products by low to high cost, paid ads may bump a higher-priced item to the middle of the list and give the false impression that there are no lower-priced versions of the items available). These monopoly rents disproportionately impact Black business owners as they have less access to capital to invest in their businesses.[2] As a result, Amazon has an unfair competitive advantage over Black-owned businesses because the market is structured in a way that allows tech giants to serve as both participant and owner of the platform.

   Tech giants also use their power in one market to crush would-be competitors in other markets (e.g., artificially deflating the price of goods and services to knock competitors out of the market; overinflating costs once the market is cleared; algorithmic gaming; arranging the order or labeling of products on a page to prioritize their content and

[1] Janelle Jones and Brian Zipperer, "Unfulfilled promises: Amazon fulfillment centers do not generate broad-based employment growth," *Economic Policy Institute*, February 1, 2018, https://www.epi.org/publication/unfulfilled-promises-amazon-warehouses-do-not-generate-broad-based-employment-growth/

[2] "2016 Small Business Credit Survey: Report on Minority-owned firms," Federal Reserve Banks of Cleveland and Atlanta, November 29, 2017, https://www.clevelandfed.org/en/community-development/reports-by-topic/small-business/about-the-joint-small-business-credit-survey/2016-small-business-credit-survey.aspx

apps). For example, take-it-or-leave-it negotiations around usage and access to platforms harm independent business owners forced to overly rely on specific platforms to market or sell goods and services.

3. **Predatory data collection and targeting practices from private actors leads to price gouging, substandard products and goods, and exclusion of Black communities from equitable employment, credit, and housing opportunities.** Big Tech relies on data from consumers to power their business models. The outsized market power and lack of regulation of these firms fosters an environment where advertisers use these platforms to prey on consumers using algorithmic profiling.[3] These tech platforms participate in rampant data collection that provides insight into the psychology of a consumer-user and allows for highly specified target marketing that drives the algorithmic profiling of advertisers. Advertisers then use algorithmic profiling to engage in price discrimination that negatively impacts Black users and benefits Big Tech firms who depend on these same Black users to power their platforms.[4]

4. **The large-scale nature of Big Tech allows for predatory data collection through a complex and Internet-wide surveillance network.** Other industries, such as telecommunications, have been prohibited from spying on customers to gather data for marketing purposes. The Telecommunications Act prohibits phone companies from collecting private and personal data while monopolistic tech companies routinely engage in similar practices through the use of their market position to extract user data without consent and undermine potential competitors.[5] Without competition, Facebook is able to run an internet-wide network of "plug-ins" and tracking "pixels" that allows them to follow users across the internet and devices. Because these plug-ins and pixels are on nearly all sites, Facebook is able to copy and ultimately crowd out rival corporations.

5. **Unlike telecommunication companies, Big Tech is completely unregulated in its capacity as a 21st century public utility, thus exposing people—especially Black people—to the harm that can be created by unregulated entities.** Big Tech controls a service that is a necessary public utility. Big Tech, particularly social media companies, have become the primary source of information of millions of people in the United States and across the country. As stated above, Big Tech has become a deeply relied-upon source of information for Black people. Through these platforms, people get critical

[3] Nathan Newman, "How Big Data Enables Economic Harm to Consumers, Especially to Low-Income and Other Vulnerable Sectors of the Population," Federal Trade Commission Comments, August 2014, https://www.ftc.gov/system/files/documents/public_comments/2014/08/00015-92370.pdf
[4] Ibid.
[5] Harold Feld et. Al, "Protecting Privacy, Promoting Competition: A Framework for Updating the Federal Communications Commission Privacy Rules for the Digital World," *Public Knowledge*, February 2016, https://www.publicknowledge.org/assets/uploads/blog/article-cpni-whitepaper.pdf

information to help them navigate our nation's economic and democratic systems, among other critical information. The larger these companies become, the greater control they have over this flow of information. In effect, these companies behave as public utilities with information being the product (similar to telecommunications companies that control the flow of information across the airwaves and fiber optic networks).

Social Harms

1. Predatory data collection and targeting practices by law enforcement agencies and third-party contractors serve as agents of the surveillance state, disproportionately compromise the physical and mental safety of Black communities, and infringe on constitutionally protected rights.

2. Big Tech firms engage in unethical health data collection—access and usage that routinely operate out of compliance with the Health Insurance Portability and Accountability Act—that degrades equitable health access.

Political Harms

1. **Rampant disinformation on these platforms jeopardizes the physical, social, and political health of our society at large—and Black communities specifically—while limiting access to organic, independent, local, and accurate news and information.** The U.S. Senate Select Committee on Intelligence found that the Russian Internet Research Agency (IRA) especially targeted Black Americans with disinformation on social media platforms like Facebook and Instagram during the 2016 elections.[6] These disinformation campaigns intend to dilute public trust in digital news information and sway Black voters to act in alignment with Russia's political agenda.[7]

2. **Big Tech's active tax avoidance, as a result of their outsized lobbying power, weakens our public infrastructure and government services at all levels of government (federal, state, and local). Further, these companies' failure to contribute their fair share in taxes means they operate at an uncompensated cost to the public (e.g. road wear and harmful emissions).** Sixty of America's biggest corporations zeroed out their federal income taxes on $79 billion in U.S. pretax income, including Amazon, Netflix, General Motors, Delta Airlines, Salesforce, and Prudential

[6] Select Committee on Intelligence, "Russian Active Measures Campaigns and Interference in the 2016 U.S. Election," United States Senate, https://www.intelligence.senate.gov/sites/default/files/documents/Report_Volume2.pdf

[7] Harry Zahn and Joshua Barajas, "What we learned—and still don't know—from Senate reports on Russian election propaganda," *PBS Newshour*, December 19, 2018, https://www.pbs.org/newshour/politics/what-we-learned-and-still-dont-know-from-senate-reports-on-russian-election-propaganda

Financial.[8] Amazon, in particular, fielded a competition among local jurisdictions to site its second headquarters and sought to extract billions in public subsidies from the winning jurisdiction.[9] In another example, the Economic Roundtable calculated that Amazon trucks last year created $642 million in "uncompensated public costs" for noise, road wear, accidents, and harmful emissions that weakened our public infrastructure.[10]

Amazon, Apple, Facebook, and Google's dominance in the market corresponds with decreasing levels of competition and freedom of choice. The market power of these firms erodes the social, political, and economic power of the Black community at a time when civil rights are continuously threatened. This hearing marks an opportunity for Congress to further investigate the consolidation of these firms and enact much-needed racially equitable reforms that regulate the tech industry in efforts of promoting competition, fair wages, and economic sustainability.

If you have questions, please contact Color Of Change's Senior Director of Campaigns, Jade Magnus Ogunnaike (jade.magnus@colorofchange.org), or Liberation in a Generation's Co-Founders/Co-Executive Directors, Solana Rice (solana@liberationinageneration.org) and Jeremie Greer (jeremie@liberationinageneration.org).

Sincerely,

Brandi Collins-Dexter

Brandi Collins-Dexter
Senior Campaign Director, Color Of Change

Jade Magnus Ogunnaike

Jade Magnus Ogunnaike
Senior Campaign Director, Color Of Change

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[8] Matthew Gardner, Lorena Roque, and Steve Wamhoff, "Corporate Tax Avoidance in the First Year of the Trump Tax Law," *Institute on Taxation and Economic Policy*, December 2019, https://itep.org/wp-content/uploads/121619-ITEP-Corporate-Tax-Avoidance-in-the-First-Year-of-the-Trump-Tax-Law.pdf

[9] Jeffrey Dastin, "Billions in tax breaks offered to Amazon for second headquarters," *Reuters*, October 19, 2017, https://www.reuters.com/article/us-amazon-com-headquarters/billions-in-tax-breaks-offered-to-amazon-for-second-headquarters-idUSKBN1CO1IP

[10] David Streitfield, "Activists Build a Grass-Roots Alliance Against Amazon," *The New York Times*, November 26, 2019, https://www.nytimes.com/2019/11/26/technology/amazon-grass-roots-activists.html

Solana Rice
Co-Founder/Co-Executive Director, Liberation in a Generation

Jeremie Greer
Co-Founder/Co-Executive Director, Liberation in a Generation

epic.org

Electronic Privacy Information Center
1519 New Hampshire Avenue NW
Washington, DC 20036, USA

+1 202 483 1140
+1 202 483 1248
@EPICPrivacy
https://epic.org

July 28, 2020

The Honorable David Cicilline, Chair
The Honorable F. James Sensenbrenner, Ranking Member
House Committee on the Judiciary
Subcommittee on Antitrust, Commercial, and Administrative Law
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Cicilline and Ranking Member Sensenbrenner:

We write to you regarding "Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google." For over 25 years, the EPIC has focused public attention on emerging privacy issues, including the growing concentration of the Internet industry.[1] We write to you today to highlight the damage market consolidation in online platforms has done to consumer privacy, the need to consider data protection in merger review, and encourage the creation of a U.S. Data Protection Agency and a hearing on H.R. 4978, the Online Privacy Act.

Market Consolidation in Online Platforms Threatens Consumer Privacy

Data collection is at the core of most online platforms' business models. For this reason, mergers and acquisitions in the Internet industry pose acute risks to consumer privacy. That is why EPIC was among the first organizations to urge enforcement agencies to consider data protection in the context of merger reviews.[2] More than a decade ago, EPIC urged the FTC to block Google's proposed acquisition of DoubleClick. EPIC said that the acquisition would enable Google to collect the personal information of billions of users and track their browsing activities across the web.[3] EPIC correctly warned that this acquisition would accelerate Google's dominance of the online advertising industry and diminish competition. The FTC ultimately allowed the merger to go forward over the compelling dissent of Commissioner Pamela Jones Harbour.[4]

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[1] *See An Examination of the Google-DoubleClick Merger and the Online Advertising Industry: Hearing Before the S. Comm. on the Judiciary*, 110th Cong. (2007) (statement of Marc Rotenberg, Exec. Dir., EPIC), https://epic.org/privacy/ftc/google/epic_test_092707.pdf.

[2] In 2000, EPIC and the TransAtlantic Consumer Dialogue urged anti-trust authorities reviewing the AOL-Time Warner deal to "condition approval of the proposed merger on the adoption of enforceable Fair Information Practices that would guarantee consumer privacy safeguards at least equal to those that would be provided under the EU Data Directive" TACD, *Merger of American Online and Time Warner an Privacy Protection* (Feb. 2000), http://test.tacd.org/wp-content/uploads/2013/09/TACD-ECOM-17-00-Merger-of-America-Online-and-Time-Warner-and-Privacy-Protection.pdf; *See also*, EPIC Complaint to FTC regarding DoubleClick's proposed acquisition of Abacus Direct (Feb. 10, 2000).

[3] EPIC, Complaint and Request for Injunction, Request for Investigation and for Other Relief In the Matter of Google, Inc. and DoubleClick, Inc. (Apr. 20, 2007), https://epic.org/privacy/ftc/google/epic_complaint.pdf.

[4] Dissenting Statement of Commissioner Pamela Jones Harbour, *In re Google/DoubleClick*, FTC File No. 070-0170 (Dec. 20, 2007), https://www.ftc.gov/sites/default/files/documents/public_statements/statement-matter-google/doubleclick/071220harbour_0.pdf.

EPIC has since repeatedly warned FTC that other mergers posed similar risks to consumer privacy and competition. In 2011, EPIC warned the FTC that Google's dominance in the search algorithm marketplace was allowing it to preference its own content in search results.[5] Today Google occupies 91% of the search market worldwide.[6]

Google's Acquisition of Nest, and Facebook's Acquisition of WhatsApp Broke Privacy Commitments

Over the last decade, we have witnessed another trend in corporate consolidation that threatens consumer privacy: companies that have promised to protect user privacy are being taken over by companies that have repeatedly failed to protect user privacy.

In 2014, EPIC warned the FTC about the privacy risks of Google's acquisition of Nest Labs, a maker of "smart thermostats," stressing that "Google regularly collapses the privacy policies of companies it acquires," and urged the FTC to block the deal.[7] Yet the FTC let the deal go forward without any qualifications.[8] There have been multiple privacy issues with Nest since, including the inclusion of "secret microphones" in Nest home-security devices.[9]

Most notably, in 2014, Facebook purchased WhatsApp, a text-messaging service that attracted users precisely because of strong commitments to privacy.[10] WhatsApp's founder stated in 2012 that, "[w]e have not, we do not and we will not ever sell your personal information to anyone."[11] EPIC and the Center for Digital Democracy urged the FTC to block the deal.[12]

The FTC ultimately approved the merger after Facebook and WhatsApp promised not to make any changes to WhatsApp users' privacy settings.[13] However, Facebook announced in 2016 that it would begin acquiring the personal information of WhatsApp users, including phone numbers, directly contradicting their previous promises to honor user privacy.[14] Following this, EPIC and CDD filed another complaint with the FTC in 2016, but the Commission has taken no further

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[5] Letter from EPIC to the Fed. Trade Comm'n (Sept. 8, 2011), https://epic.org/privacy/ftc/google/Google_FTC_Ltr_09_08_11.pdf.
[6] *Search Engine Market Share Europe*, Statcounter, http://gs.statcounter.com/search-engine-market-share/all/europe.
[7] EPIC, *Google Plans Advertising on Appliances, Including Nest Thermostat* (May 22, 2014), https://epic.org/2014/05/google-plans-advertising-on-ap.html.
[8] Fed. Trade Comm'n, Early Termination Notice: 20140457: Google Inc.; Nest Labs, Inc. (Feb. 4, 2014), https://www.ftc.gov/enforcement/premerger-notification-program/early-termination-notices/20140457.
[9] Jon Porter, *Google claims built-in Nest mic was 'never intended to be a secret'*, The Verge (Feb. 20, 2019), https://www.theverge.com/circuitbreaker/2019/2/20/18232960/google-nest-secure-microphone-google-assistant-built-in-security-privacy.
[10] EPIC, *In re: WhatsApp*, https://epic.org/privacy/internet/ftc/whatsapp/.
[11] WhatsApp, *Why We Don't Sell Ads* (June 18, 2012), https://blog.whatsapp.com/245/Why-we-dont-sell-ads.
[12] EPIC and Center for Digital Democracy, Complaint, Request for Investigation, Injunction, and Other Relief In the Matter of WhatsApp, Inc., (Mar. 6, 2014), https://epic.org/privacy/ftc/whatsapp/WhatsApp-Complaint.pdf.
[13] *See*, Letter from Jessica L. Rich, Dir., Bureau of Consumer Prot., Fed. Trade Comm'n, to Facebook and WhatsApp (Apr. 10, 2014), https://epic.org/privacy/internet/ftc/whatsapp/FTC-facebook-whatsapp-ltr.pdf (concerning the companies' pledge to honor WhatsApp's privacy promises).
[14] WhatsApp, *Looking Ahead for WhatsApp* (Aug. 25, 2016), https://blog.whatsapp.com/10000627/Looking-ahead-for-WhatsApp.

action.[15] Meanwhile, antitrust authorities in the EU fined Facebook $122 million for making deliberately false representations about the company's ability to integrate the personal data of WhatsApp users.[16] And last month, Germany's Federal Court of Justice sided with antitrust regulators in a case challenging Facebook's practice of combining user data across different sources, including WhatsApp and Instagram.[17] The Court held that Facebook's terms of use were abusive because they did not allow users to use the platform without also consenting to Facebook's collection of their data from other sites. The decision emphasized Facebook's dominant market position in Germany and recognized that Facebook thus had a special responsibility towards maintaining market competition.

Inaction by the FTC has empowered Facebook to disregard the privacy interests of WhatsApp users. Facebook recently said it would target WhatsApp users with ads, despite earlier statements to the contrary and opposition from WhatsApp's founders.[18] And last year, Mark Zuckerberg confirmed Facebook's plans to merge WhatsApp, Facebook Messenger, and Instagram into a single messaging platform.[19] If the FTC had stood behind its commitment to protect the data of WhatsApp users, this would not be possible. But the FTC failed to act. Now consumers have fewer options, Facebook has less competition, and the increased amount of data available to Facebook will make it even easier to crush the next competitor.

In the Commission's recent settlement with Facebook, the FTC chose not to undo the mistaken approval of the WhatsApp acquisition against the advice of consumer groups.[20] ***Far from protecting market competition and promoting innovation, the Commission is facilitating industry consolidation.***

Now U.S. antitrust regulators are reviewing Google's proposed acquisition of Fitbit, which has been widely opposed by consumer organizations and those who favor market-based competition. If the Google/Fitbit merger goes through, Fitbit will be the 230th firm that Google/Alphabet has acquired with little action from U.S. antitrust regulators.[21]

Google CEO Sundar Pichai should be asked: Last year, the Department of Defense prohibited military personnel from using geolocation features on their fitness devices because of

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[15] EPIC and Center for Digital Democracy, Complaint, Request for Investigation, Injunction, and Other Relief In the Matter of WhatsApp, Inc. (Aug. 29, 2016), https://epic.org/privacy/ftc/whatsapp/EPIC-CDD-FTC-WhatsApp-Complaint-2016.pdf.
[16] Mark Scott, *E.U. Fines Facebook $122 Million Over Disclosures in WhatsApp Deal*, N.Y. Times (May 18, 2017), https://www.nytimes.com/2017/05/18/technology/facebook-european-union-fine-whatsapp.html.
[17] Adam Satariano, *Facebook Loses Antitrust Decision in Germany Over Data Collection*, N.Y. Times (Jun. 23, 2020), https://www.nytimes.com/2020/06/23/technology/facebook-antitrust-germany.html.
[18] Anthony Cuthbertson, *WhatsApp to Start Filling Up with Ads Just Like Facebook*, Independent (Oct. 1, 2018), https://www.independent.co.uk/life-style/gadgets-and-tech/news/whatsapp-update-targeted-ads-status-facebook-brian-acton-a8563091.html.
[19] Mike Issac, *Zuckerberg Plans to Integrate WhatsApp, Instagram and Facebook Messenger*, N.Y. Times (Jan. 25, 2019), https://www.nytimes.com/2019/01/25/technology/facebook-instagram-whatsapp-messenger.html.
[20] Letter from EPIC et al. to Joseph Simons, Chairman, Federal Trade Comm'n (Jan. 24, 2019), https://epic.org/privacy/facebook/2011-consent-order/US-NGOs-to-FTC-re-FB-Jan-2019.pdf.
[21] Wikipedia, *List of Mergers and Acquisitions by Alphabet* (Nov. 10, 2019), https://en.wikipedia.org/wiki/List_of_mergers_and_acquisitions_by_Alphabet#cite_note-303

privacy and security concerns. If Google obtains FitBit, will it also obtain the sensitive personal data on millions of Americans that FitBit has collected? If so, how does Google plan to use this personal data?

Facebook CEO Mark Zuckerberg should be asked: When Facebook acquired WhatsApp, you pledged that Facebook would not make changes to WhatsApp users' privacy settings. But two years later, Facebook did just that when it said it would begin acquiring the personal information of WhatsApp users. Now, you want to merge WhatsApp, Facebook Messenger, and Instagram. Why should antitrust regulators trust any representations you or Facebook make given this history?

Antitrust Authorities Should Take Data Protection and Security Implications As Part of Their Merger Review Process

The United States stands virtually alone in its unwillingness to address privacy as an increasingly important dimension of competition in the digital marketplace. The merger of Facebook and WhatsApp has prompted countries in Europe to scrutinize the deal and issue fines.[22] But the FTC has repeatedly failed to consider consumer privacy and data security issues in its merger review process.[23] If the largest Internet firms continue to buy up new market entrants and assimilate their users' data into the existing platforms then there will be no meaningful opportunity for firms to compete with better privacy and data security practices.

EPIC has underscored the dangers posed by lax enforcement in recent comments to the FTC, noting that Google and Facebook's access to consumer data "is at the very heart of why the digital platforms have been able to entrench their dominance."[24] But as Facebook and Google have developed increasingly invasive tracking of their users, the FTC failed to act. Despite an active consent decree against Facebook, the FTC allowed the company to disclose the personal information of 87 million Americans. The Commission had the power to stop the scandal, simply by enforcing its previous orders in a way that protected consumer privacy.[25]

Antitrust enforcers must treat consumer privacy as the competitive harm it so clearly is. Assistant Attorney General Delrahim recently warned: "it would be a grave mistake to believe that

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[22] *Fuel of the Future: Data is Giving Rise to A New Economy,* Economist (May 6, 2017), http://www.economist.com/news/briefing/21721634-how-it-shaping-up-data-giving-rise-new-economy.
[23] Nathan Newman, *15 Years of FTC Failure to Factor Privacy into Merger Reviews*, Huffington Post, (Mar. 19, 2015), https://www.huffingtonpost.com/nathan-newman/15-years-of-ftc-failure-t_b_6901670.html; EPIC, Comments of the Electronic Privacy Information Center: Assessing the FTC's Prior Actions on Merger Review and Consumer Privacy, FTC File No. P143100, (Mar. 17, 2015), https://epic.org/privacy/internet/ftc/Merger-Remedy-3-17.pdf.
[24] EPIC et al., Comments on Competition and Consumer Protection in the 21st Century Hearings at 19 (Aug. 20, 2018), https://epic.org/apa/comments/EPIC-FTC-CompetitionHearings-August2018.pdf.
[25] Marc Rotenberg, *How the FTC Could Have Prevented the Facebook Mess*, Techonomy (Mar. 22, 2018), https://techonomy.com/2018/03/how-the-ftc-could-have-avoided-the-facebook-mess ("If the FTC had enforced the Facebook consent order, Cambridge Analytica could not have accomplished its unprecedented data harvest.").

privacy concerns can never play a role in antitrust analysis."[26] Mr. Delrahim stated further, "Without competition, a dominant firm can more easily reduce quality — such as by decreasing privacy protections — without losing a significant number of users."[27]

This is precisely what EPIC has documented in antitrust and privacy complaints to the FTC for more than a decade: each acquisition by a dominant firm has led to a reduction in both competition and privacy protection. ***This is agency negligence. The Federal Trade Commission's disregard for privacy protection and lax record of antitrust enforcement are diminishing innovation and competition in the United States economy.***

It has become increasingly clear that data protection, competition, and innovation are all on the same side in a healthy Internet economy. The consolidated market power of online platforms today is not healthy. A handful of companies dominate the market. The privacy of Internet users is under assault. The revenue model allowed small businesses to break into the market is broken. The current model is not sustainable. Privacy rules can help level the playing field.

Enforcement is critical – Congress must establish an Independent Data Protection Agency

The United States urgently needs a Data Protection Agency. Virtually every other democratic government has recognized the need for an independent agency to address the challenges of the digital age. Given the enormity of the challenge, the United States should create a dedicated Data Protection Agency, based on a legal framework that requires compliance with baseline data protection obligations.[28] An independent agency could more effectively police the widespread exploitation of consumers' personal data and would be staffed with personnel who possess the requisite expertise to regulate the field of data security.

The Online Privacy Act, filed by Representatives Eshoo and Lofgren (H.R. 4978), creates an independent data protection agency with strong enforcement powers. The Online Privacy Act also sets out robust rights for internet users and clear obligations on data controllers, and promotes innovation. The Subcommittee should schedule a hearing on this excellent bill and give it a favorable report without delay.

Thank you for your timely attention to this pressing issue. We ask that this statement be entered in the hearing record.

Sincerely,

/s/ *Caitriona Fitzgerald*
Caitriona Fitzgerald
EPIC Interim Associate Director and Policy Director

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[26] Tony Romm, *DOJ issues new warning to big tech: Data and privacy could be competition concerns*, Wash. Post (Nov. 8, 2019), https://www.washingtonpost.com/technology/2019/11/08/doj-issues-latest-warning-big-tech-data-privacy-could-be-competition-concerns/.
[27] *Id.*
[28] EPIC, *The U.S. Urgently Needs a Data Protection Agency*, https://epic.org/dpa/.





July 29, 2020

The Honorable David N. Cicilline
Chairman, House Judiciary
Subcommittee on Antitrust,
Commercial, and Administrative Law
2141 Rayburn House Office Building
Washington, D.C. 20515

The Honorable F. James Sensenbrenner
Ranking Member, House Judiciary
Subcommittee on Antitrust,
Commercial, and Administrative Law
2141 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Cicilline and Ranking Member Sensenbrenner:

New America's Open Technology Institute (OTI) appreciates the opportunity to submit a statement for the record for the hearing entitled, "Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google," being held by the Subcommittee on Antitrust, Commercial, and Administrative Law. OTI works at the intersection of technology and policy to ensure that every community has equitable access to digital technologies that are open and secure, and their benefits. OTI commends the Chairman's leadership and looks forward to the results of the subcommittee's investigation.

This statement describes examples of conduct that OTI believes are illustrative of larger patterns in the industry, and offers policy recommendations for addressing these patterns. OTI recommends that antitrust enforcers expand their understanding of consumer welfare to better reflect platform market dynamics and that Congress pass comprehensive privacy legislation with strong data portability requirements.

I. Platform Dominance Has Degraded Consumer Welfare and Led to Excessive Concentrations of Economic Power

As the dominant platforms have amassed market power, they have become increasingly unaccountable to the public and to the government. Rampant misinformation, civil rights violations, and privacy intrusions are all evidence of the digital market's failure to promote consumer welfare. Americans do not understand the extent to which their personal data are collected and used, and feel powerless to protect their privacy and civil rights online. Platforms obfuscate the true costs of using their services and market consolidation has decreased the platforms' incentives to act in the best interests of consumers.

Attempts by regulators and the public to check the power of tech giants have been largely ineffective. The FTC and DOJ have not updated their antitrust enforcement strategies to address the differences between the tech industry and traditional industry. Although the DOJ and FTC recently updated their vertical merger guidelines, as discussed below, the new guidelines miss the mark and fail to address the harms presented in digital markets. This institutional resistance to challenge acquisitions by Amazon, Apple, Facebook, and Google has allowed these



companies to become so dominant as to become immune to reform efforts. The outsized market power of the firms has made consumer protection actions fall flat. Even the FTC's $5 billion settlement with Facebook[1] was not enough to affect the company's bottom line.[2]

Consolidation in the tech industry is driven by Silicon Valley's venture capital funding model that incentivizes startups to build their company with a strategy to sell to one of the dominant firms. This singular focus on exit strategy entrenches the market power of dominant firms and stunts the development of innovative companies before they have the opportunity to disrupt incumbents.[3] The deference antitrust regulators typically give to vertical mergers has been inappropriate for the tech industry due to both the incentives of the venture capital funding model and of business models reliant on vast amounts of user data. The dominance of the major tech platforms has degraded consumer welfare by violating user privacy and civil rights.

A. Vertical Mergers Have Harmed User Privacy

Privacy is a competition issue. Antitrust regulators have applied inadequate scrutiny to vertical mergers in the tech industry and have neither accounted for the ways in which collecting massive amounts of consumer data can create anti-competitive effects nor for the negative impacts of such mergers on user privacy. Acquisitions have led to less privacy for users of the acquired product, and to less privacy overall when companies combine that user data with data sets in other categories of their business.

Platforms are able to merge the user data of the companies they acquire with user data from other product verticals to further entrench their market dominance. Google's recent proposed acquisition of FitBit is a key example of this practice. OTI joined an international coalition of twenty civil society organizations in releasing a common statement outlining the groups' serious concerns regarding Google's intention to acquire Fitbit.[4] The coalition said: "Regulators must assume that Google will in practice utilise the entirety of Fitbit's currently independent unique, highly sensitive data set in combination with its own." Merging FitBit's

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[1] Lesley Fair, "FTC's $5 Billion Facebook Settlement: Record-Breaking and History-Making," Federal Trade Commission, July 24, 2019, https://www.ftc.gov/news-events/blogs/business-blog/2019/07/ftcs-5-billion-facebook-settlement-record-breaking-history.

[2] Open Technology Institute, "FTC Announces Historic, Yet Insufficient, Settlement with Facebook for Privacy Violations." New America, July 24, 2019. https://www.newamerica.org/oti/press-releases/ftc-announces-historic-yet-insufficient-settlement-facebook-privacy-violations/.

[3] Lemley, Mark A. and McCreary, Andrew, Exit Strategy (December 19, 2019). Stanford Law and Economics Olin Working Paper #542, https://ssrn.com/abstract=3506919.

[4] "OTI and Coalition Urge Global Regulators to Closely Scrutinize Google/Fitbit Merger." New America, Open Technology Institute, July 2, 2020. https://www.newamerica.org/oti/press-releases/oti-and-coalition-urge-global-regulators-closely-scrutinize-googlefitbit-merger/.



sensitive health data with Google's data—including patient health records[5]—would enable Google to build more detailed user profiles for both its current and future products.[6] Regulators should press Google on how it plans to integrate FitBit data with other data sets and use that information to expand into healthcare verticals.

B. Dominant Platforms Have Failed to Protect Civil Rights

The dominant platforms have been resistant to making changes to protect the civil rights of their users. Targeted advertising business models disincentive platforms from moderating harmful misinformation and preventing discriminatory ad placement.[7] The majority of users think misinformation online is a major problem, and 79 percent of U.S. adults feel that steps should be taken to restrict made-up news and information online.[8] However, the market power of platforms is so large that they are generally not responsive to public pressure to improve civil rights protections and stem misinformation. Although the First Amendment strictly limits the extent to which the government can regulate how platforms moderate content, anti-discrimination laws should apply to the behavior of online platforms, such as when a platform serves an employment or housing ad in a discriminatory manner.[9] Moreover, in the antitrust context, enforcers should recognize and address the civil rights harms caused by the dominance of certain platforms.[10]

Facebook's resistance to address civil rights concerns is an example that illustrates how dominant platforms are often not incentivized to implement reforms in the best interests of users. The company has instituted some positive changes in response to settling multiple lawsuits

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[5] Copeland, Rob. "Google's 'Project Nightingale' Gathers Personal Health Data on Millions of Americans." *Wall Street Journal*, November 11, 2019.
https://www.wsj.com/articles/google-s-secret-project-nightingale-gathers-personal-health-data-on-millions-of-americans-11573496790.

[6] Becky Chao, "Pressure on Google Is Ramping Up. Could the Antitrust Probes Help Address Privacy Harms?," New America (Open Technology Institute, June 24, 2020),
https://www.newamerica.org/weekly/pressure-google-ramping-could-antitrust-probes-help-address-privacy-harms/.

[7] Maréchal, Nathalie, and Ellery Roberts Biddle. Rep. *It's Not Just the Content, It's the Business Model: Democracy's Online Speech Challenge*. Ranking Digital Rights, March 17, 2020.
https://www.newamerica.org/oti/reports/its-not-just-content-its-business-model/.

[8] Mitchell, Amy, Jeffrey Gottfried, Galen Stocking, Mason Walker, and Sophia Fedeli. "Americans Think Made-up News and Videos Create More Confusion than Other Types of Misinformation." Pew Research Center's Journalism Project, May 30, 2020.
https://www.journalism.org/2019/06/05/3-americans-think-made-up-news-and-videos-create-more-confusion-than-other-types-of-misinformation/.

[9] Overton, Spencer. "State Power to Regulate Social Media Companies to Prevent Voter Suppression ." University of California, Davis Law Review 53 (2020): 1793–1829.
https://lawreview.law.ucdavis.edu/issues/53/4/53-4_Overton.pdf.

[10] Miller, Joe. "Race, Competition & the Tech Marketplace: Questions Washington Elites Don't Want Congress to Ask." Medium, July 28, 2020.
https://medium.com/@joemillerjd_17144/race-competition-the-tech-marketplace-questions-washington-elites-dont-want-congress-to-ask-a5849db4207e.



brought by civil rights organizations and undergoing an extensive two-year civil rights audit at the urging of civil society groups. However, the final audit report outlined a variety of remaining discriminatory practices. The auditors found that Facebook has made "painful decisions over the last nine months with real world consequences that are serious setbacks for civil rights," including policy and enforcement gaps related to voter suppression and misinformation.[11] The auditors have recommended a series of concrete actions to address the harms, but there are no enforcement mechanisms to ensure Facebook implements the recommendations.

The #StopHateForProfit campaign organized an advertiser boycott in response to the misinformation and stoking of racial violence on Facebook.[12] In response, Mark Zuckerberg stated that the boycott's threat to a percent of Facebook's revenue will not cause the company to change its policies.[13] Facebook feels immune from this public and market pressure because almost 76 percent of Facebook's ad revenue comes from small businesses that do not have the brand recognition to be able to afford to boycott the platform.[14]

The prevalence of these issues is by no means limited to Facebook. Google's search engine and ad buying portal is also rife with racially biased content. A recent investigation by *The Markup* found that Google's keywords planner—the tool advertisers use to decide which search terms to use for their ads—suggested primarily pornographic terms in response to searches for "Black girls," "Latina girls," and "Asian girls" and suggested no pornographic terms for "White girls."[15] In addition, in 2017 *Buzzfeed News* found that Google's ad platform permitted advertisers to target users using discriminatory terms, and its automated ad targeting tools even suggested some terms. For example, entering "white people ruin" as a potential advertising keyword returned automated suggestions to run ads next to searches including "black people ruin everything."[16]

These civil rights harms are exacerbated on platforms such as Facebook and Google, as these companies rely on business models which seek to monetize user data by maximizing engagement and retaining user attention. As a result, algorithmic systems including ad targeting and delivery, content ranking, and recommendation systems on these platforms are calibrated so that they optimize for and tend to promote sensationalized content, which can often be harmful in

[11] Murphy, Laura W., and Megan Cacace. Rep. *Facebook's Civil Rights Audit – Final Report*, July 8, 2020. https://about.fb.com/wp-content/uploads/2020/07/Civil-Rights-Audit-Final-Report.pdf.
[12] Stop Hate for Profit, June 17, 2020. https://www.stophateforprofit.org/.
[13] Sonnemaker, Tyler. " Mark Zuckerberg Reportedly Said Facebook Is 'Not Gonna Change' in Response to a Boycott by More than 500 Advertisers over the Company's Hate-Speech Policies." *Business Insider*, July 1, 2020. https://www.businessinsider.com/zuckerberg-facebook-not-gonna-change-due-to-advertising-boycott-report-2020-7.
[14] Wagner, Kurt. "A Facebook Ad Boycott Is Gaining Steam, but Small Business Can't Just Quit the Social Media Giant so Easily." Financial Post. June 24, 2020. https://financialpost.com/technology/facebook-ad-boycott-gains-steam-small-business-cant-quit-easily.
[15] Yin, Leon, and Aaron Sankin. "Google Ad Portal Equated 'Black Girls' with Porn ." The Markup, July 23, 2020. https://themarkup.org/google-the-giant/2020/07/23/google-advertising-keywords-black-girls.
[16] Spandana Singh, *Special Delivery How Internet Platforms Use Artificial Intelligence to Target and Deliver Ads*, February 18, 2020, https://www.newamerica.org/oti/reports/special-delivery/.



nature, with the aim of retaining user attention and accruing more revenue through avenues such as advertising.[17]

The fomentation of racial animosity online is detrimental to consumer welfare, as well as our society. Antitrust enforcers would be wise to consider these dynamics as a factor in their analysis. A definition of consumer welfare that does not include racial discrimination and misinformation as harms is ill-equipped to understand the power of platforms.

II. Stronger Antitrust Enforcement and Data Regulation are Needed to Promote Competition and Protect Users

A. Modernize Antitrust Law, Doctrines, and Guidelines

Current antitrust doctrine largely relies on an analysis of "consumer welfare" that often centers on an understanding of harm as short-term price increases.[18] But antitrust enforcement must have a broader understanding of consumer harm in order to regulate the digital market effectively. Because the business models of many tech companies are built on data, an antitrust approach must center on the connection between data and competition. Merger guidelines already consider non-price based harms including reduced product quality, reduced product variety, reduced service, and diminished innovation.[19] These harms should be expanded and redefined to match the realities of the digital market.

Earlier this month, the FTC and DOJ released new Vertical Merger Guidelines that govern how the antitrust agencies evaluate vertical mergers.[20] Unfortunately, the agencies rushed the development of the new Guidelines—the first update in 36 years—and discouraged adequate public participation. The results are disappointing: the new Guidelines do not sufficiently reflect the reality of digital markets and largely reiterate outdated thinking from 1984.[21] The agencies also failed to adopt OTI's recommendation to establish a dominant platform presumption.[22] We

[17] Singh, *Special Delivery*.
[18] Khan, Lina M. "Amazon's Antitrust Paradox." The Yale Law Journal 126, no. 3 (January 2017): 564–907. https://www.yalelawjournal.org/note/amazons-antitrust-paradox.
[19] Horizontal Merger Guidelines, U.S. Department of Justice and Federal Trade Commission, August 19, 2010, http://perma.cc/SQ8H-AB7P.
[20] Vertical Merger Guidelines (2020), U.S. Department of Justice and Federal Trade Commission, https://www.ftc.gov/system/files/documents/reports/us-department-justice-federal-trade-commission-vertical-merger-guidelines/vertical_merger_guidelines_6-30-20.pdf.
[21] "OTI Says New Merger Guidelines 'Miss the Mark.'" *New America*. Open Technology Institute, July 1, 2020. https://www.newamerica.org/oti/press-releases/oti-says-new-merger-guidelines-miss-the-mark/.
[22] Slaiman, Charlotte, and Joshua Stager. Publication. *Comments on the Draft Vertical Merger Guidelines*. Public Knowledge and Open Technology Institute, February 26, 2020. https://newamericadotorg.s3.amazonaws.com/documents/VMG_Comments-_PK__OTI.pdf.



support the American Antitrust Institute's call for the agencies to withdraw the new Guidelines and start over.[23]

B. Mandate Data Portability to Remove Barriers to Entry

Data portability is the ability of a user of an online service to extract an archive of the data they've provided to that service or that the service has collected about them, in a structured, commonly used and machine-readable format, suitable for transfer to a different service of that person's choosing.[24] Data portability serves purposes for the end user, direct competitors, and other market participants. It allows users to transport their data to another service and to use the data for their own purposes (e.g., backing up their photos and files onto a harddrive). And it allows competitors to both provide similar services and build innovative services using the same data. OTI developed the Data Portability Act,[25] proposed legislative language intended to guide deliberations in Congress. The model bill builds on the data portability provisions in Europe's General Data Protection Regulation and the California Consumer Protection Act to encourage the free flow of data between online services.

Data portability reduces switching costs: the difficulties associated with moving from one service provider to another. The success of phone number portability provides a useful model for this aspect of data portability. Studies of the effects of mobile number portability in the EU have demonstrated the policy promotes consumer welfare and lowers the market price of wireless service.[26]

In addition to the reduction of switching costs, data portability has two additional features that promote competition. First, user data can be used by multiple competing services simultaneously allowing users to try and compare the offerings of different companies. For example, a user who stored her photos in Google could port them to Flickr and choose to continue storing them in Google or choose to delete them from the Google account. Second, porting data from one company to another could allow the data to be used in ways not contemplated by the first company. This allows users to explore innovative offerings not offered by incumbents.

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[23] "AAI Says New Vertical Merger Guidelines 'Fall Short," Suggests Next Administration Start Over." American Antitrust Institute, June 30, 2020.
https://www.antitrustinstitute.org/aai-says-new-vertical-merger-guidelines-fall-short-suggests-next-administration-start-over/.

[24] Schulman, Ross. "A Tech Intro to Data Portability." New America. Open Technology Institute, June 15, 2018.
https://www.newamerica.org/oti/blog/tech-intro-data-portability/.

[25] Null, Eric, and Ross Schulman. "The Data Portability Act: More User Control, More Competition." New America. Open Technology Institute, August 19, 2019.
https://www.newamerica.org/oti/blog/data-portability-act-more-user-control-more-competition/.

[26] Cho, Daegon, Pedro Ferreira, and Rahul Telang. "The Impact of Mobile Number Portability on Price, Competition and Consumer Welfare," September 29, 2016,
http://pedro-ferreira.org/wp-content/uploads/2016/10/Mobile-Number-Portability.pdf.



Tech companies have made significant progress toward data portability. Apple, Facebook, and Google (as well as Microsoft and Twitter) are all contributors to the Data Transfer Project "to create an open-source, service-to-service data portability platform so that all individuals across the web could easily move their data between online service providers whenever they want."[27] Amazon is notably absent from this initiative. Antitrust enforcers should assess the degree to which a company limits data portability and use that as a metric by which to identify anticompetitive behavior.[28]

There are tensions between data portability and privacy,[29] but strong user privacy protections can address these tensions and build user trust. OTI envisions and recommends that data portability requirements would be incorporated into comprehensive privacy legislation. Without strong privacy rights, users will be more likely to keep their data with brands they recognize rather than to lesser known companies, further entrenching platform dominance.

C. Enact Comprehensive Privacy Legislation

Beyond the specific areas covered by a sectoral privacy law such as HIPAA or FERPA, U.S. law generally relies on a "notice and consent" framework to protect consumer privacy. But this framework does not give individuals real choices about how their data are used and is insufficient to protect user privacy.[30] There is a growing consensus among stakeholders to abandon this model in favor of a new approach that places restrictions on how data can be used and gives users enforceable rights over their personal information.

When Congress began contemplating passing comprehensive privacy legislation in 2018, OTIas part of a group of 34 civil rights, consumer, and privacy organizations released public interest principles for privacy legislation:[31]

1. Privacy protections must be strong, meaningful, and comprehensive.

2. Data practices must protect civil rights, prevent unlawful discrimination, and advance equal opportunity.

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[27] "Data Transfer Project," 2018. https://datatransferproject.dev/.
[28] Chao, Becky, and Ross Schulman. Rep. *Promoting Platform Interoperability*. Open Technology Institute, May 13, 2020. https://www.newamerica.org/oti/reports/promoting-platform-interoperability/.
[29] Bankston, Kevin, Eric Null, and Ross Schulman. "Competition and Consumer Protection in the 21st Century: The Intersection Between Privacy, Big Data, and Competition." Comments of New America's Open Technology Institute, August 20, 2018. https://d1y8sb8igg2f8e.cloudfront.net/documents/OTI_Final_FTC_portability_comments_Question_4_fixed.pdf.
[30] Park, Claire. "How 'Notice and Consent' Fails to Protect Our Privacy." New America. Open Technology Institute, March 23, 2020. https://www.newamerica.org/oti/blog/how-notice-and-consent-fails-to-protect-our-privacy/.
[31] "Principles for Privacy Legislation." New America. Open Technology Institute, November 13, 2018. https://www.newamerica.org/oti/press-releases/principles-privacy-legislation/.



3. Governments at all levels should play a role in protecting and enforcing privacy rights.

4. Legislation should provide redress for privacy violations.

Privacy and competition are often framed as opposing goals that require tradeoffs, and this may be true in some instances. But this framing fails to consider that a major source of the power of the dominant platforms is the scale of their data collection. Germany's competition regulator has recognized this, and has characterized Facebook's data as "the essential factor for establishing the company's dominant position."[32] If there were restrictions on how companies could use data, smaller companies could compete with dominant firms based on the merits of their service rather than the amount of user data collected. Therefore, OTI recommends that the subcommittee consider how privacy legislation could further its goals of promoting competition and consumer welfare in the tech industry.

III. Conclusion

Promoting competition in the tech industry will require Congress and antitrust agencies to reevaluate antitrust enforcement strategies in light of the characteristics unique to platform markets. As Chairman Cicilline said at an OTI event, "portability is not a substitute for the robust enforcement of antitrust and consumer protection laws. The benefits of data portability and social networks will be lost if we continue to allow dominant platforms to perpetuate their stranglehold over commerce through serial acquisitions of potential and future competitors."[33] Congress will be most effective at mitigating the harms of outsized market power with a regulatory strategy that combines modernized antitrust enforcement with data portability and privacy protections.

Thank you again for your efforts to hold online platforms accountable and protect users in digital markets. We welcome any feedback or questions about these matters.

Sincerely,

/s/ Christine Bannan
Policy Counsel

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[32] "Bundeskartellamt Prohibits Facebook from Combining User Data from Different Sources." Bundeskartellamt, July 2, 2019.
https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2019/07_02_2019_Facebook.html.
[33] "A Deep Dive Into Data Portability: How Can We Enable Platform Competition and Protect Privacy at the Same Time?" New America. Open Technology Institute, June 6, 2018.
https://www.newamerica.org/oti/events/deep-dive-data-portability-how-can-we-enable-platform-competition-and-protect-privacy-same-time/.

TikTok

July 29, 2020

The Honorable David Cicilline
Chair, Subcommittee on Antitrust,
Commercial, and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable James Sensenbrenner
Ranking Member, Subcommittee on Antitrust,
Commercial, and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
2142 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jerrold Nadler
Chair, Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jim Jordan
Ranking Member, Committee on the Judiciary
U.S. House of Representatives
2142 Rayburn House Office Building
Washington, D.C. 20515

Re: Letter for the Record, July 29, 2020, Hearing on "Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google"

Dear Chairman Cicilline and Ranking Member Sensenbrenner,

TikTok strongly supports a competitive marketplace, particularly in the digital space. Choice benefits everyone -- it leads to better products and services, and greater innovation. TikTok commends the Committee and Subcommittee for its focus on these important issues.

Our Company

Our mission at TikTok is to inspire creativity and bring joy. TikTok is a global platform for users to express their ideas by sharing short videos with a broader community. TikTok is available in over 150 markets and nearly 50 languages. TikTok is not offered in China. Hundreds of millions of people globally rely upon the platform every day to express themselves creatively, share their talent, enjoy entertaining content, and engage with a diverse and global community.

There is a lot of confusion and misconceptions about our company and the TikTok app. Most of our investors are global institutional venture funds such as General Atlantic, KKR, Sequoia, Softbank, Coatue, Fidelity, Goldman Sachs, and New Enterprise Associates. In the United States, TikTok is led by a strong and empowered team, comprised of hundreds of employees in Washington State, California, New York, Texas, Illinois, Florida, and Washington, D.C. We recently announced our plans to expand our workforce in the US by adding an additional 10,000 employees over the next three years. The TikTok mobile application is distributed in the US by TikTok, Inc., a US company that is a part of ByteDance Ltd., a global technology company. ByteDance has a global board, including Bill Ford of General Atlantic, Arthur Dantchik of Susquehanna International Group, Philippe Laffont of

Coatue, Neil Shen of Sequoia, and the company's founder Yiming Zhang. Additionally, TikTok CEO & ByteDance COO Kevin Mayer, a 23-year Disney veteran, is based out of our Los Angeles office.

Since its launch, TikTok has experienced exponential growth, and we continue to build out key teams in the United States to focus on product operations, legal affairs, policy and communications, trust and safety, sales, marketing and business development, creator partnerships, and music operations.

Misconceptions About TikTok

We recognize that with success and growth comes scrutiny and accountability. TikTok has been actively engaging with Congress and other key stakeholders to tell our story, explain our commitment to safety and security, and address questions and concerns. We have a talented and experienced US team to keep our users' data safe and protect their privacy. And we are defending ourselves against cyber threats under the leadership of a world-class security head who has decades of US military and law enforcement experience.

Despite these efforts, rumors and misinformation about TikTok proliferate throughout Washington and in the media. We would like to take this opportunity to set the record straight. TikTok is not available in China. We store Americans' user data in the US, with back-up in Singapore, with strict access controls for employees. We have never provided any US user data to the Chinese government, nor would we do so if asked. Any allegations to the contrary are unfounded.

Allegations regarding TikTok as a national security threat are also unfounded. But don't just take our word for it -- experts around the world agree.

- Jim Lewis, a cybersecurity expert at the Center for Strategic and International Studies, rightly points out that Chinese intelligence services would have no use for the information on TikTok, even if they got a hold of it. "It's right to be suspicious of the Chinese but I'm not sure TikTok is a good intelligence tool for them."
- Joseph Steinberg, a cybersecurity expert and author of Cybersecurity for Dummies, said, "the reality is that the type of data that Facebook gathers likely gives it far more detailed intelligence about its users than TikTok ever could assemble with its current platform."
- Daniel Castro, a vice president at ITIF, has noted that "TikTok has stated clearly and unambiguously that it has not and will not provide U.S. user data to the Chinese government. If the U.S. government has evidence to the contrary, it should share this information with lawmakers and the public. Similarly, if the app is not complying with U.S. data privacy or other laws, regulators should hold it accountable for any violations." Castro also said that the punishment by the United States of foreign tech firms based on "rumors and innuendo" sets a precedent for other countries to retaliate and freely "impose trade restrictions on digital goods and services for vague and undefined national security threats."
- Across government and the private sector, we must do better to build up our cyber defenses, but as Tae Kim, a technology columnist for Bloomberg wrote, "On a relative basis, TikTok isn't an obvious target in terms of data collection. Its focus is sharing creative short-form videos, like dancing and lip-syncing. The app's algorithm surfaces relevant content, using metrics like how many similar videos you watched. And compared to an app like Facebook, TikTok doesn't require a large amount of data entry."

*****

The TikTok team is working to do our part to provide an outlet for creativity and fun entertainment, while protecting user safety and privacy. We are confident that TikTok will continue to give creators, users, and brands an entertaining outlet for many years to come, and we will take the necessary steps to make this happen. But ultimately, this is not just about the success of TikTok. It is about a competitive marketplace that provides people with choices on how to spend their time online.

Without TikTok, all that users would be left with is copycats offered by the same players who already dominate the online landscape. Gone with the competition, would also be the creative energy, fun, and innovation that people love and people find on TikTok.

Attached to this letter, for inclusion in the Hearing record, is a copy of a blog post by TikTok CEO & Bytedance COO, Kevin Mayer. Thank you for the opportunity to address these important issues and to provide more information on our company and our mission. Should the Committee have any questions for TikTok, we welcome the opportunity to speak with you.

Sincerely,



Michael Beckerman
Vice President, Head of US Public Policy

cc: Congressional Leadership

Attachment: Blog Post by Kevin Mayer, CEO, TikTok

Fair competition and transparency benefits us all

By Kevin Mayer, CEO, TikTok
July 29, 2020

Innovation is one of the defining characteristics of a competitive market. The introduction of a successful new product fuels growth and dynamism in any industry. It is unfortunate for creators, brands, and the broader community that it has been years since a company came along and reimagined what a social entertainment platform could be. But TikTok did just that.

TikTok brought a unique and intuitive interface. It gave creators easy, powerful tools. It also encouraged the formation of inclusive and meaningful communities. In short, TikTok brought successful competition to the marketplace. This is why I joined the company as CEO earlier this year: to help lead the next generation of creators to connect with their newly energized audience, while bringing fun entertainment to people's lives.

TikTok has become the place where new music is discovered and explodes onto the scene, such as Lil Nas X's "Old Town Road." During the pandemic, we saw the resonance of Curtis Roach, whose "Bored in the House" mantra became an anthem for putting a positive spin on tough times and helped people better cope with the lockdowns. And best of all, we witnessed many examples of families coming together to perform multi-generational song and dance, which warmed all of our hearts.

With our success comes responsibility and accountability. The entire industry has received scrutiny, and rightly so. Yet, we have received even more scrutiny due to the company's Chinese origins. We accept this and embrace the challenge of giving peace of mind through greater transparency and accountability. We believe it is essential to show users, advertisers, creators, and regulators that we are responsible and committed members of the American community that follows US laws.

Even more, we believe our entire industry should be held to an exceptionally high standard. That's why we believe all companies should disclose their algorithms, moderation policies, and data flows to regulators. We will not wait for regulation to come, but instead TikTok has taken the first step by launching a Transparency and Accountability Center for moderation and data practices. Experts can observe our moderation policies in real-time, as well as examine the actual code that drives our algorithms. This puts us a step ahead of the industry, and we encourage others to follow suit.

Beyond our commitment to accountability, we also believe all players in the industry should make a positive impact in the community. Our $200 million Creator Fund will help American creators get the most out of TikTok, and we expect that this will grow to over $1 billion in the US in the next 3 years, and more than double that globally. In addition to supporting these creative entrepreneurs, we are also on track to create 10,000 new TikTok jobs across the US.

At TikTok we welcome competition. We think fair competition makes all of us better. To those who wish to launch competitive products, we say bring it on. Facebook is even launching another copycat product, Reels (tied to Instagram), after their other copycat Lasso failed quickly. But let's focus our energies on fair and open competition in service of our consumers, rather than maligning attacks by our competitor – namely Facebook – disguised as patriotism and designed to put an end to our very presence in the US.

Without TikTok, American advertisers would again be left with few choices. Competition would dry up and so too will an outlet for America's creative energy. We are not political, we do not accept political advertising and have no agenda – our only objective is to remain a vibrant, dynamic platform for everyone to enjoy. Consumers can only benefit from the growth of healthy, successful platforms like TikTok and we will fight to continue to give American creators, users and brands an entertaining outlet for many years to come.

We are willing to take all necessary steps to ensure the long-term availability and success of TikTok. The one thing that will not change is our commitment to ensuring

that TikTok remains a safe and secure platform for the tens of millions of American families that derive joy from it.

For our skeptics, I am confident we have the answers and where we do not, we will improve. The onus is on us to step up. We are doing so, and will continue to take the bold steps needed. I accept and appreciate the challenge.

TikTok has become the latest target, but we are not the enemy. The bigger move is to use this moment to drive deeper conversations around algorithms, transparency, and content moderation, and to develop stricter rules of the road. We are taking the first step of many to address these concerns, and call on the industry to follow our lead for the benefit of users and creators everywhere.

Written Submission to the House Subcommittee on
Antitrust, Commercial and Administrative Law Regarding
Anti-Competitive and Discriminatory Behavior by Apple Inc. and Alphabet Inc. towards
Independent Software Application Developers by
Dr. Ajintha Pathmanathan

The Honorable Jerrold Nadler, Chairman
The Honorable Jim Jordan, Ranking Member
House Committee on the Judiciary
United States House of Representatives

The Honorable David N. Cicilline, Chairman
The Honorable F. James Sensenbrenner, Jr., Ranking Member
Subcommittee on Antitrust, Commercial and Administrative Law

ClinIQ Inc.
8 The Green Suite A
Dover, Delaware 19901
1 617 682 9416
June 20, 2020

Attachments:
Exhibit I: Key ClinIQ Capabilities in Information and Cyber Security
Exhibit II: Chronology of Communication with Apple and Google
Exhibit III: Details on Google's Requests Related to their "Sensitive Events" Policy
Exhibit IV: Select Apple and Google Questions that Encroach on FDA and MHRA Authorities

Introduction

I would like to begin by thanking Chairman Cicilline, Ranking Member Sensenbrenner, and the members of the Subcommittee on Antitrust, Commercial and Administrative Law for your attention to this matter and continued commitment to promoting competition in software application ("app") marketplaces.

My name is Dr. Ajintha Pathmanathan, MD, MPH, MBA, LLM. I am the Founder and CEO of ClinIQ Inc., a medical technology company, which leads the VirusIQ public health project. As a doctor and small business owner, I am very concerned by Apple and Google's arbitrary, cumbersome and invasive app review processes that discourage or prevent small businesses from making their apps and services available to mobile phone users—especially when Apple and Google decide to develop and publish their own competitor apps.

While we know many other businesses have faced similar discriminatory practices, they depend too much on Apple and Google's continued approval and fear retaliation in the form of blacklisting from their App Stores.

This discriminatory behavior calls to mind Shakespeare's line from *Measure for Measure,* "it is excellent to have a giant's strength, but it is tyrannous to use it like a giant". I ask the Subcommittee for your assistance in stopping tech giants from using their power to discriminate against and potentially copy smaller, innovative competitors like ClinIQ that seek to provide affordable, timely, and life-saving products to the public.

ClinIQ Inc., Background

ClinIQ launched the VirusIQ public health project in January 2020, before the pandemic hit in full force. Our digital health screening app provides a first line of defense against any viral outbreak—not just COVID-19. Our screening service combines a user's self-reported symptoms with wearable or mobile technology data to assess a user's risk level for a contagious viral disease. Those at risk of testing positive for COVID-19 are directed to a more detailed screening and/or a physician. **Our app is powered by a clinical algorithm that has been reviewed and cleared by the U.S. Food and Drug Administration (FDA).** We prioritized privacy and security from day one and have taken a more rigorous approach to information and cyber security than larger competitors and currently deployed healthcare technologies (see Exhibit I).

Our screening service helps people understand how likely it is that they have contracted a virus such as COVID-19. For companies, ClinIQ assesses viral risk across their employee and/or customer base as they open up. At a macro level, ClinIQ helps governments shape infectious disease, such as COVID-19 response plans and protect people. The platform enables businesses and governments to implement the Centers for Disease Control (CDC) guidelines to ensure safer venues, and in so doing, to save lives and the economy. ClinIQ is vital in our collective effort to detect, prevent, and contain the virus.

ClinIQ has the potential to help millions stay safe and healthy and enable economies to return to stable and sustainable growth. In our efforts to develop a global public health solution, we are committed to partnering with like-minded organizations to provide as comprehensive a solution as possible. We want to make our inexpensive, simple, mobile app available to the widest possible audience, but our issues with the Apple and Google app stores have prevented those who need it most from accessing ClinIQ.

Vertical Integration of the Mobile Application Market

The duopoly of Apple and Google dominates the mobile app store market, which has spurred recent Congressional and Department of Justice investigations.[1] This is even more troubling given that these tech giants have integrated across the entire mobile app vertical. They create apps, manage the marketplaces for downloading apps, control the operating systems that run apps, and manufacture and sell the essential hardware devices that customers need to use these apps. This provides Apple and Google with an augmented ability to engage in anticompetitive behavior because they can create choke points at multiple stages along the mobile app value chain to block any app they deem a threat to success.

The dominance of Apple and Google in the mobile app market harkens back to Standard Oil's vertical integration of the oil industry.[2,3,4] Just as Standard Oil dominated the production of oil, controlled the process for delivering oil to the customer, and built the equipment/facilities to store and transport oil, Apple and Google now dominate in the production of apps, control the process of "delivering" apps to customers (marketplaces and operating systems), and build the equipment (devices) to store and use apps.

Apple and Google's Pattern of Anti-Competitive and Discriminatory Behavior Towards ClinIQ

We listed the ClinIQ app on the Apple App Store and Google Play Store in March/April 2020. Shortly afterwards, Apple and Google put the ClinIQ app "up for review." Over the past several months, we have responded promptly to their requests, but they have used their review processes to systematically exclude our app from their App Stores. Google has gone so far as to entirely exclude us from their PlayStore. Apple has refused to even allow us to test our app via TestFlight, their platform usually available to app developers to help with beta testing. With Apple, we cannot update our app from the first version, which remains on their App Stores, to the latest version that has critical security fixes.

Apple and Google's anti-competitive actions have included:

1. Subjecting our app to a continuous and invasive review process despite documented support from the FDA before eventually rejecting it because of their "sensitive events" policy (Google);
2. Preventing us from listing the latest version of our app with vague claims of violation of non-applicable or irrelevant "policies" (Apple);
3. Overloading our team with unduly burdensome questions as part of an ever-demanding and protracted "review" process;
4. Pressuring our team to divulge proprietary and confidential trade secrets;
5. Demanding our offering integrate with their proprietary systems beyond levels necessary for our app/system/solution to function (Apple);

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[1] Eadicicco, Lisa. "The Department of Justice Is Reportedly Gearing up for a Battle with Apple over Its Controversial App Store Policies, Which Have Sparked Backlash and Criticism from Developers." *Business Insider*, Business Insider, 24 June 2020, www.businessinsider.com/apple-antitrust-probe-over-app-store-from-doj-2020-6.

[2] In the late 19th century, Standard Oil expanded beyond its traditional refinery business into all stages of oil and gas production. It acquired pipelines, railroad cars, terminal facilities, and barrel manufacturing factories, gaining a monopoly in oil. A U.S. Supreme Court antitrust ruling broke up the oil giant in 1911, at which point Standard Oil owned 85 percent of the oil market.

[3] History.com Editors. "John D. Rockefeller: Oil, Money and Power." *History.com*, A&E Television Networks, 30 May 2012, www.history.com/topics/early-20th-century-us/john-d-rockefeller-oil-money-and-power-video.

[4] Kielmas, Maria. "Stages of Vertical Integration in the US Oil Industry." *Small Business - Chron.com*, Chron.com, 21 Nov. 2017, smallbusiness.chron.com/stages-vertical-integration-oil-industry-58830.html.

6. Supplanting the role of government to operate as *de facto* regulators of digital health apps; and,
7. Abusing the public trust by rejecting submissions without due process in a manner that is arbitrary and capricious.

1. Subjecting our app to a continuous and invasive review process despite documented support from the FDA before eventually rejecting it because of their "Sensitive Events" policy (Google)

On March 27, Google flagged our app on the pretext of violating their Sensitive Events policy (Exhibit III), which prevents apps that serve during natural disasters, conflicts, or tragedies (i.e. the COVID-19 pandemic). ClinIQ should never have been subject to this policy in the first place, as our app is not specific to COVID-19, and as a physician, I have spent my entire career serving during a "Sensitive Event" in people's lives. Still, we provided documentation verifying that we met the requirements, including correspondence confirming that the FDA had reviewed and cleared our app and that it was not subject to regulatory approval as a medical device. Google rejected the many different types of verification we provided and continuously shifted requirements, suggesting they are hiding behind an arbitrary and invasive review process to block us from listing our app.

2. Preventing us from listing the latest version of our app with vague claims of violation of non-applicable or irrelevant "policies" (Apple)

Apple made baseless assertions about the risks of our application and neglected to clarify when we — in the spirit of cooperation — sought additional information. For instance, without pointing to any evidence or conclusion drawn from reasonable belief, Apple claimed that our app *would* cause physical harm. Obviously, this concerned us, and when we asked Apple to explain the deficiency they had detected, they were conspicuously silent.

Despite these accusations, Apple has not removed the first version of our application, a version that contains the same functionality and design they have deemed unsuitable, from their App Store. This inaction demonstrates the arbitrary, capricious, and inconsistent nature of their review processes. If Apple truly has determined that our app will cause physical harm due to the sensors, then the sensors should not be part of the phone, and they would have removed the App from their App Store, or otherwise assume liability for the sensors and their use. Our app's sustained presence on the App Store affirms that Apple's questions sought to discriminate against our product, not due to any genuine safety risk or intention to resolve any safety risk that they had detected, and points to Apple's desire to wield tyrannous power.

3. Overloading our team with unduly burdensome questions as part of an ever-demanding and protracted "review" process

Beginning in March 2020, Apple inundated ClinIQ with an inordinate amount of questions as part of the review process for our app in an attempt to overwhelm and discourage our small team which, as a start-up, is limited in its resources (see Exhibit II). A pattern quickly emerged over several weeks, where every time we responded to a series of onerous questions, Apple would return with more questions that increased in complexity, invasiveness, and/or scale.[5] Apple made additional requests over telephone calls that seemed to have no legal or medical basis—they were simply throwing up hurdles at every juncture.

[5] This culminated in a list of 17 burdensome demands on June 10, 2020. While 17 questions may not seem onerous, some questions were of an incredibly technical, legal, or vague nature and required a tremendous amount of extra resources.

We addressed their questions, which we believed were necessary to move forward, in good faith. However, as the questions increased in volume and complexity from both Apple and Google, we had reason to believe that Apple acted in bad faith. Like the Hydra in Greek mythology, every time we chopped off one head, another two would appear. We have tried to cooperate with Apple and Google despite their arbitrary, capricious, demanding, and endless review processes, but the unpredictability and growing scope of questions has denied us access to the AppStores and forced us to appeal to the committee as a last resort.

4. Pressuring our team to divulge proprietary and confidential trade secrets

Apple and Google attempted to coerce us to divulge proprietary information and trade secrets, effectively in exchange for listing our app. For instance, Apple asked us for specific information on how ClinIQ performs screening, for us to list every bit of evidence, disclose our algorithm and how we have digitised the contact tracing process—two features crucial to a competitor service provided by Apple.[6]

5. Demanding our offering integrate with their proprietary systems beyond levels necessary for our app/system/solution to function (Apple)

Certain questions appeared designed to compel ClinIQ to use Apple and Google systems, including requests from Apple that we transition to using the joint Apple-Google contact tracing framework. Our integration with Apple's competing system should have no bearing on whether ClinIQ can be listed on the App Store, and yet Apple's question suggested that ClinIQ's approval could be conditional on it.

6. Supplanting the role of government to operate as *de facto* regulators of digital health applications

Apple and Google's questions often encroached on the authority of healthcare regulators, including the U.S. FDA and UK Medicines and Healthcare products Regulatory Agency (MHRA) (Exhibit IV). Apple and Google arbitrarily applied an even higher level of scrutiny to our app beyond what was required for FDA clearance, including demands for information to evaluate the safety, efficacy, and methodology of our services. Both companies compete in the virus screening market and combined hold over 99 percent market share for smartphone operating systems, presenting a clear conflict of interest.[7] Apple and Google have dangerously positioned themselves as *de facto* regulators and gatekeepers of digital health products, amid an unprecedented public health crisis.

7. Abusing the public trust by rejecting submissions without due process in a manner that is arbitrary and capricious

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[6] Their tactics resemble those used in strategic lawsuits against public participation (SLAPP suits), which intend to silence or intimidate critics by overburdening them and straining their resources with costly legal defense fees until they abandon their position. Over 30 states have enacted anti-SLAPP laws to prevent people from using the courts or threat of a lawsuit to intimidate people who are exercising their First Amendment rights. We ask that the Subcommittee take steps to address these same tactics used to intimidate small businesses from competing in the mobile app market.

[7] "Subscriber share held by smartphone operating systems in the United States from 2012 to 2019." *Statista*, November 2019, https://www-statista-com.stanford.idm.oclc.org/statistics/266572/market-share-held-by-smartphone-platforms-in-the-united-states/.

Apple and Google's review processes are representative of bad faith practice, process and procedure that does not genuinely clarify and improve apps to meet a predetermined and transparently presented set of relevant criteria—they are merely arbitrary barriers to entry for smaller competitors like ClinIQ. While we sought to address the Apple and Google queries initially in the spirit of collaboration, we quickly realized they would evolve and twist their review process to increase our developer and legal costs and dissuade us from listing our app on their App Stores.

Apple and Google Launch Competitor Apps

In the midst of the review process, Apple and Google both launched competitor products to ClinIQ, including Project Baseline,[8] the Apple COVID screening app and the Apple and Google Exposure Notification System.[9] Now that Apple and Google are working together, they wield even more power and have a stronger incentive— together or independently — to exclude us from their app stores. These tech giants do not just control the marketplaces, operating systems, and hardware necessary for the ClinIQ app, they also now directly compete with us in the digital virus screening and detection market.

Consequences of Apple and Google's Anti-Competitive Behavior

ClinIQ's mission is to provide an affordable, simple, and scalable public health solution for early detection, prevention, and containment of viruses. Apple and Google's onerous, arbitrary, capricious, and discriminatory review processes have caused significant damages to ClinIQ, draining our resources and obstructing our access to consumers. Apple and Google's scrutiny appears to be targeted specifically at ClinIQ and the VirusIQ public health project, suggesting they pick apps at their own discretion for a higher degree and misapplication of scrutiny.[10] As discussed with various independent bodies, we believe Apple and Google view us as a legitimate threat — given our early success and FDA clearance — to their market dominance. As such, they have taken steps to systematically exclude our app from their marketplaces. This has dissuaded us from pursuing a direct-to-consumer business model, potentially causing hundreds of thousands of dollars in lost potential revenue, loss of opportunity to further our development and to save lives.

Restricting access to our app not only damages us and helps Apple and Google consolidate power and eliminate their competition in the digital health space, but it also harms the American public in two key ways: 1) it prevents the public from accessing a digital health tool providing timely and critical personal health risk assessments, and 2) it favors access to inferior, competitor products developed by Apple and Google, which have minimal experience in healthcare. Apple and Google's anti-competitive behaviors do a tremendous disservice to citizens, small businesses, and governments.

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[8] "Project Baseline - Apps on Google Play." *Google*, Google, play.google.com/store/apps/details?id=com.google.android.apps.baselinestudy&hl=en_US.

[9] "Exposure Notifications: Helping Fight COVID-19." *Google*, Google, www.google.com/covid19/exposurenotifications/.

[10] It is worth noting that there are several other COVID-19 apps on their marketplaces, many developed by companies without healthcare expertise. This raises the question of whether we would have even faced such scrutiny had we described ourselves as a social network or lifestyle app.

An Emory University study found that daily screening can reduce cumulative cases of COVID-19 by greater than 90%.[11] The people need medically-informed daily screening, developed by physicians, not repurposed and repackaged advertising algorithms. We're not asking for Google and Apple to stand down, but merely to not interfere or replace the FDA in determining which apps are safe for the public.

Conclusion

Amid these uncertain and trying times, consumers need access to critical, affordable and life-saving public health products. In order to access these products, consumers need marketplaces to be fair and open, foster innovation, promote healthy technological partnerships, and enable timely access to these affordable and life-saving public health products. Put simply, a marketplace cannot favor the owner of that marketplace for it to be considered competitive. We have endeavored to resolve these concerns collaboratively, but to date Apple and Google's approach to communication has proved intractable. We hope these marketplaces can one day be fair and open, and support the efforts of Congress to explore how Apple and Google's dominance in the mobile app vertical and discriminatory treatment of competitive software apps could limit competition, hinder consumer choice, and harm public health.

Thank you again, Chairman Cicilline, Ranking Member Sensenbrenner, and members of the Subcommittee on Antitrust, Commercial and Administrative Law for your attention to this critical matter to the economy and our democracy.

[11] Lopman, B et al, 2020. "A model of COVID-19 transmission and control on university campuses." *Emory University.*

Exhibit I: Key ClinIQ Capabilities in Information and Cyber Security

- An evidence-based, dynamic informed consent module to protect data privacy rights and the personal information of users. Users are the ultimate owners of their data;
- Privacy and security compliance certifications, which we aim to undergo auditing for, including ISO 27001[12] and HITRUST[13]. We are General Data Protection Regulation (GDPR)[14] and Health Insurance Portability and Accountability Act (HIPAA)[15] compliant and will be compliant with the California Consumer Privacy Act (CCPA); and
- A 7-person team of cybersecurity policy and data protection experts, including U.S. Office National Coordinator for Health Information (ONC) blockchain in healthcare IT prize winner.

[12] "ISO/IEC 27001 - Information Security Management." *ISO*, 3 Apr. 2020, www.iso.org/isoiec-27001-information-security.html.
[13] "HITRUST CSF." *HITRUST*, hitrustalliance.net/hitrust-csf/.
[14] "Data Protection." *European Commission - European Commission*, 3 July 2020, ec.europa.eu/info/law/law-topic/data-protection_en.
[15] "Health Information Privacy." *HHS.gov*, 4 Jan. 2019, www.hhs.gov/hipaa/index.html.

Exhibit II: Chronology of Communication with Apple and Google

Google Chronology

Date	Event
March 27, 2020	• Google informs ClinIQ of suspension due to Sensitive Event policy violation for COVID-19 apps, asks that ClinIQ demonstrate that it is a government/healthcare organization, has been commissioned by government or official health organization, or has been supported/acknowledged by government or health agency
April 3, 2020	• Acknowledgement of FDA clearance of ClinIQ app provided to Google • Google returns additional questions • ClinIQ clarifies that app is not a COVID-19 specific app, and therefore should not be subject to terms of Sensitive Event policy
April 10, 2020	• Google rejects FDA documentation, adds new questions
April 14, 2020	• ClinIQ replies asking for clarification, does not receive response
April 27, 2020	• ClinIQ again replies to Google, providing additional information validating ClinIQ's status as healthcare organization, even though as stated earlier ClinIQ should not be subject to Sensitive Event policy • Google rejects ClinIQ as healthcare organization, requests "endorsement" from FDA or Oxford University

Apple Chronology

Date	Event
April 2020	• ClinIQ listed on App Store
Late April, 2020	• Apple starts review of VirusIQ app, raises six questions/issues • ClinIQ responds with answers
Early May, 2020	• Apple raises five new questions/issues • ClinIQ responds
Early June, 2020	• Apple raises 17 new questions, including questions that appear arbitrary to the review process, require disclosing sensitive information, and demonstrate overreach of Apple's authority • ClinIQ responds, raising concerns about the discriminatory nature of the review process • Apple replies with the same questions, does not address ClinIQ concerns • ClinIQ sends two follow-up emails

Mid June, 2020	• Apple replies with request for a phone call and four additional questions • ClinIQ addresses questions and raises concerns via telephone

Exhibit III: Details on Google's Requests Related to their "Sensitive Events" Policy

On March 27, Google flagged our app for violating their Sensitive Events policy, which prevents apps that capitalize on natural disasters, conflicts, or tragedies (i.e. the COVID-19 pandemic). In order to approve our app, Google asked that we provide verifiable documentation demonstrating that:

1. A government body/healthcare organization developed the app;
2. The developer was commissioned to build this app by a government or an official health organization entity (examples include WHO, Red Cross, Hospital, etc.); and/or
3. This app was supported/acknowledged by a government or official health entity for use.

ClinIQ should never have been subject to this policy in the first place, as our app is not specific to COVID-19. Still, we provided documentation verifying that we met these requirements, only for Google to reject our documentation and change its requirements:

- We provided documentation demonstrating that ClinIQ is a verified healthcare organization (point #1 above), supported by Oxford University and led by a physician. Upon reviewing this documentation, Google requested an official "endorsement" from Oxford University and refused to recognize us as a healthcare organization in our own right.
- We provided email correspondence confirming that the FDA reviewed and cleared our app and that the app would not require regulatory approval as a medical device (point #3 above). Google rejected this, so we asked the FDA for additional documentation. The FDA informed us that it has no legal authority or need to provide additional documentation as the app was cleared for use and not subject to regulatory approval. Google continued to push, even though the FDA has no obligation or ability to provide such documentation, and despite the fact that we should have already met the original requirements as a certified healthcare organization (not to mention that ClinIQ should not have even been subject to the policy).

Exhibit IV: Select Apple and Google Questions that Encroach on FDA and MHRA Authorities

Example 1: Apple asked whether we planned to "remove any app with quarantine management or contact tracing functionality from the App Store once the need for those apps has passed (i.e. once the COVID-19 pandemic is over)." This question would require us to disclose proprietary business strategy, and implied that our "virus screening" app would only prove useful during the pandemic.. In fact, our app is not specific to COVID-19, and will serve users, companies, and governments well beyond the pandemic. The FDA has even asked us to use the product to cater to Influenza epidemics. Most concerningly, this line of questioning demonstrates that Apple lacks the knowledge to determine which apps serve critical public health needs. Without proper authority or expertise, Apple is wielding its power to block apps from the store that will save lives and free up limited healthcare resources.

AMNESTY
INTERNATIONAL

July 23, 2020

Congressman David Cicilline
Chair, Subcommittee on Antitrust, Commercial, and Administrative Law

Congressman F. James Sensenbrenner
Ranking Member, Subcommittee on Antitrust, Commercial, and Administrative Law
House Judiciary Committee

RE: Amnesty International Statement for the Record for July 27 Hearing on "Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google"

On behalf of Amnesty International USA and our members and supporters in the United States, we hereby submit this statement for the record to address how the dominant power of Big Tech represents a systemic threat to human rights.

Competition and antitrust remain key tools for challenging the power of Big Tech. However, at this unprecedented juncture, Amnesty urges you to consider taking this opportunity to question the surveillance-based business model itself.

In Amnesty's November 2019 report *Surveillance Giants: How The Business Model Of Google And Facebook Threatens Human Rights*,[1] we drew attention to Google and Facebook as pioneers of a business model that is predicated on harvesting, analyzing, and profiting from people's data. This surveillance-based business model fundamentally undermines the right to privacy and threatens other human rights, including the rights to freedom of expression and opinion, freedom of thought, and the right to equality and non-discrimination.

One of our key concerns is how Google's and Facebook's business models have enabled them to establish near-total dominance over the primary channels through which people connect and engage with the online world and access and share information online, making them gatekeepers to the "public square" for much of humanity. The dominance of Google and Facebook over core platforms of the internet poses unique risks for human rights.

Google and Facebook have unparalleled power over people's lives online through having established control over the primary channels that most of the world relies on to engage with the internet. Outside of China, the dominance of Google and Facebook is starkly evident in each of the following areas: Social media, messaging, search, video, web browsing, mobile platforms and digital advertising. These platforms mediate the ways people seek and share information, engage in debate, and participate in society. These products have become fundamental to the modern world and how people interact with each other.

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[1] Amnesty International, "Surveillance Giants: How the Business Model of Google and Facebook Threatens Human Rights," Nov. 2019, https://www.amnesty.org/en/documents/pol30/1404/2019/en/.

Access to the internet has long been recognised as a critical enabler of human rights in the digital age.[2] The role of Google and Facebook as "gatekeepers" to the digital world means that they have significant influence over people's enjoyment of human rights online; indeed, most internet users are reliant on the services the companies provide. As such, the platforms have become fundamental to how people are able to exercise their human rights online and are used every day in ways that facilitate freedom of expression, the rights of peaceful assembly and association, and other rights.

The dominance of the companies' platforms means it is now effectively impossible to engage with the internet without "consenting" to their surveillance-based business model. This has created a paradoxical situation in which, in order to access the internet and enjoy their human rights online, people are forced to submit to a system predicated on interference with the right to privacy on an unprecedented scale, with corresponding impacts on a range of other human rights. This false choice was recently recognised by Germany's highest court in a ruling on Facebook and antitrust.[3]

The increasing power of Google and Facebook as gatekeepers to the ways people engage with the digital world has been a key driver of the erosion of privacy online. Various analyses charting the rise to dominance of Google and Facebook show that the companies were able to incrementally increase the breadth and depth of their surveillance in parallel with their control over the primary channels of the internet and the decline in any meaningful alternatives.[4] Last year, the UK House of Lords found that "Providers of these services currently have little incentive to address concerns about data misuse or online harms, including harms to society."[5]

Google and Facebook's business model has in-built tendencies to exponentially increase the platforms' dominance and scale, and as such, the abuse of privacy and other rights has also helped concentrate power. The business model's extraction and analysis of data results in specific data-driven network effects. The accumulation of greater amounts of data enables a company to be better able to train the machine=learning models and algorithms which produce behavioural predictions. In turn, these predictive functions are deployed to keep people on the platform, generating further data and maintaining control over data flows. Better predictive functions also lead to greater advertising revenue, enhancing the value of the platform and the company's power in the market. This system of feedback loops, combined with traditional network effects, has been instrumental in rapidly expanding the scale and impact of the platforms, and thereby concentrating the power of Google and Facebook over the digital world.

Google and Facebook have also been able to use their data-driven advantages to actively prevent the development of alternative services. They do this in several ways: by "tying" one service to

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[2] Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report to the Human Rights Council, 16 May 2011, UN Doc A/HRC/17/27,
[3] New York Times, *Facebook Loses Antitrust Decision in Germany Over Data Collection*, 23 June 2020 https://www.nytimes.com/2020/06/23/technology/facebook-antitrust-germany.html,
[4] See for example Zuboff, 2018; Dina Srinivasan, The Antitrust Case Against Facebook: A Monopolist's Journey Towards Pervasive Surveillance in Spite of Consumers' Preference for Privacy, 16 Berkeley Bus. L.J. 39, 2019,
[5] UK House of Lords Select Committee on Communications, Regulating in a Digital World, March 2019, para 45,

another, leveraging dominance in one area to try to increase dominance in another; by downranking the services offered by would-be competitors on their own platforms (in, e.g., search results); and by stifling companies offering similar or potentially competing services by either copying them or purchasing the company outright.

Power obstructs corporate accountability

The speed at which Google and Facebook's platforms have grown to such a vast scale, operating across borders, has meant that state-based regulation has struggled to keep pace with the companies' impacts on people's rights.

The scale and complexity of the human rights harms linked to the surveillance-based business will require a smart mix of structural solutions to address the systemic nature of the threat. Those solutions must include measures that disrupt the market and its incentives for corporate surveillance-based business models. Lawmakers and regulators must limit the depth and scale of data harvesting, prevent major gatekeeper platforms from combining data across services, and ensure that key components of the data infrastructure are not concentrated into the hands of a few companies. Measures that "break up" the platforms, while potentially important, will fail to address systemic human rights abuses unless they holistically tackle the underlying surveillance-based business model itself.

Only a combination of enforcement actions and new legislation and regulatory frameworks will meaningfully address an underlying business model that threatens the rights to privacy and freedom of expression and generate greater government oversight of technology companies such as Facebook and Google. These efforts also have the potential to ensure such companies meet their responsibility to respect human rights.

Congress must enact statutory frameworks to ensure people are able to practically exercise their right to choose privacy-respecting alternatives to surveillance-based business models. For example, rather than merely focusing on data access, lawmakers should adopt measures to ensure interoperability between platforms so so companies are consistent in how they store, process, and transfer data so that people can easily move between services without social detriment and to lessen network effects. This is a key proposal under discussion for Europe's current digital reforms.[6]

For too long Big Tech has been held unaccountable. Amnesty thanks the House Subcommittee on Antitrust, Commercial, and Administative Law for holding ths landmark hearing bringing together the CEOs of four of the world's most powerful tech companies to investigate their dominance of the online economy. Legislators cannot allow Big Tech to continue to abuse its colossal power over our everyday lives. Congress must ensure that public digital space is reclaimed from a powerful and unaccountable few and demand that it is accessible to all, with respect for human rights at its core.

These companies testifying before the Subcommittee have a responsibility to respect our human rights, including the right to privacy, wherever and however they operate. To make sure they fulfil

[6] Joint letter to European Commission's Executive Vice-President Vestager, *Call to include interoperability provisions as part of the Digital Services Act*, 6 July 2020 https://www.eff.org/document/letter-vestager-interoperability

that responsibility, we need effective government regulation to set stricter limits on the kind of data these firms collect, what inferences can be drawn from that data and how that data is used to target and influence us by third parties, including advertisers. Governments are required under international human rights law to protect our rights against abuse by companies. Crucially, that also means challenging the dominance of the platforms through regulatory tools including, but not limited to, antitrust measures.

Recommendations

In this light, Amnesty International calls on the Subcommittee to support the enactment of legislation to:

- Ensure that access to and use of essential digital services and infrastructure – including those provided by Google and Facebook – are not made conditional on interference with the right to privacy. This means guaranteeing people a right not to be tracked by advertisers and other third parties;
- Prevent companies from making access to their services conditional on individuals "consenting" to the collection, processing or sharing of their personal data for marketing or advertising;
- Enact measures that will enable consumers to choose privacy-respecting alternatives to surveillance-based business models.

For further information, please contact Michael Kleinman, Director of Amnesty International's Silicon Valley Initiative, at mkleinman@aiusa.org, and Charanya Krishnaswami, Amnesty's Americas Advocacy Director, at ckrishna@aiusa.org.

Sincerely,



Michael Kleinman
Director, Silicon Valley Initiative



Charanya Krishnaswami
Americas Advocacy Director

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON ANTITRUST, COMMERCIAL AND ADMINISTRATIVE LAW

UNITED STATES HOUSE OF REPRESENTATIVES

STATEMENT BY MARGRETHE VESTAGER

EXECUTIVE VICE-PRESIDENT, EUROPEAN COMMISSION

Introduction

Chairman Cicilline, Ranking Member Sensenbrenner, members of the subcommittee, thank you for accepting this written statement for submission with regard to the subcommittee's investigation into competition in the digital economy and the role of digital platforms.

I provided my previous submission to this subcommittee in my capacity as the European Union's Commissioner for Competition. Following the entry into office of the new European Commission on 1 December 2019, in addition to the portfolio of Commissioner for Competition which I have retained, in my capacity as Executive Vice-President of the Commission for a Europe fit for the Digital Age, I also have the broader policy responsibility of coordinating the Commission's work in addressing the varied challenges arising from today's digital economy, and ensuring that the digital world works better for European citizens.

Although only 9 months have passed since my previous submission, policy reflections on the issues and challenges raised by digital platforms have intensified around the world, and so it is a very timely moment for me to be able to address you again, and inform you of the latest developments and the nature of our own reflections, both as regards the application of competition policy itself, as well as policy initiatives that are complementary to competition policy.

I have followed closely the hearings conducted by the subcommittee over the last year, and I am comforted to see that the issues you are looking at overlap to a large extent with what we are examining and seeking to address on this side of the Atlantic.

Main issues and challenges

Many if not most parts of today's economy are becoming increasingly digitised. One important element of this online economy is the development of digital platforms, which act as intermediaries between different businesses and consumers. To be sure, these platforms can bring significant benefits, not least in bringing consumers and businesses together. At the same time, in the context of considerations in relation to a level and competitive playing field, we have a concern that the reach and role of some platforms is unprecedented, and that they have a gatekeeper role which means that if they act unchecked, they can also cause significant harm to competition, innovation and ultimately to consumers. This is the context of our ongoing policy reflections.

Let me briefly highlight two categories of issue that are of increasing relevance when we consider digital platforms. The first is the dual role that digital platforms often have. By this, I mean that a company both operates a platform upstream, and at the same time competes with others who operate on the platform downstream. The company therefore has the possibility to influence the conditions of

competition downstream in its favour in a way that may be detrimental to choice and innovation and that ultimately harms consumers. To use a sporting analogy, the platform is both a player on the downstream market against rivals, and at the same time is the referee which determines the conditions of that competition on the upstream platform and can therefore influence the result in its own favour. It's of course true that in one sense, the platform provides a potentially valuable way for businesses to reach consumers, but when the platform has in practice become the whole market upstream or at least the key route to consumers, for example because of network effects and consumer lock-in, the question has to be asked whether the power to be the referee and exclude or diminish downstream players is beneficial for competition and ultimately society.

The second issue that I would like to highlight relates to the role and importance of data. It has become commonplace to refer to data as the new currency of the digital economy. This description is obviously pithy but there is a lot of truth in it. Many digital services, especially those offered by digital platforms, are or at least appear to be free of charge, but in practice, in exchange for the service, consumers have to provide vast amounts of data about their habits, preferences and personal lives to those platforms. One port of call to limit the potential consumer detriment of this "data hungriness" of large platforms is strong privacy regulation. The European General Data Protection Regulation (GDPR) already provides many safeguards for individuals in this respect, but data protection enforcement, no matter how robust, may not capture all the complexities that the accumulation of "big data" sets by digital platforms can give rise to in markets for digital services. It is precisely the ability of large digital platforms to accumulate and exploit these big data sets about consumer behaviours and transactions which may lead to competition problems.[1] Such big data sets may consist of many different data that consumers hand over to the platform such as their e-mail addresses ("volunteered" data), or that platforms deduce from consumer behaviour such as data about transactions on a platform (observed data) or about predictions on consumer behaviour (inferred data). The competitive value of data therefore largely depends on the exact nature of the gathered data. The impact of data accumulation by large digital platforms on competition can be manifold. For example, the concentration of big data in the hands of a few digital platforms may act as a strong barrier to entry for newcomers. Conglomerate platforms may use data gathered by one service to inform business decisions with regard to other services they offer, thereby leveraging their market position in one market into another. Dual role digital platforms may use data about platform users to compete downstream with business users on the platform. In short, the shift to a data driven economy we are currently experiencing will also need a shift in how we look at markets and in particular consumer harm, which in data driven markets does not necessarily manifest itself in price increases but in less choice and innovation.

The European Commission's policy reflection

Our own reflections in recent years on the role of competition policy in the increasingly digital and globalised world have been part of a broader policy debate. On 2 June 2020, the European Commission launched a broad public consultation seeking to gather evidence, data and views from citizens, businesses, academics, civil society and any other interested parties on how to make a modern regulatory framework for digital services and online platforms in the EU.

[1] Of course, there may be very well be issues in relation to data that go well beyond the competition sphere, for example in terms of what individuals are in practice obliged to share as a condition of having access to certain services, and the transparency of such arrangements.

One key part of this aims to address the issue of the level playing field in European digital markets, where currently a few large online platforms act as gatekeepers. We are exploring rules to address these market imbalances, to ensure that consumers have the widest choice and that the EU single market for digital services remains competitive and open to innovation. On the basis of our own knowledge and experience, which are complemented by many varied contributions from different stakeholders, our view is that to ensure the contestability and fair functioning of markets across the economy, there is a need for a holistic and comprehensive policy response. This comprises three complementary and mutually reinforcing pillars:

1. **Continued vigorous competition law enforcement** using our existing case framework;
2. **Possible *ex ante* regulation** of digital platforms, including additional requirements for those that have a gatekeeper role; and
3. **A possible new competition tool** to deal based on case-by-case investigations with structural competition problems across markets which cannot be tackled or addressed in the most effective manner on the basis of the current competition rules.

Let me now address each of these pillars in turn.

Competition enforcement

The first pillar is and remains vigorous enforcement against anti-competitive conduct under our existing rules.

These rules are based on Article 101 of the EU Treaty on anticompetitive agreements (the equivalent of Section 1 of the Sherman Act) and Article 102 of the EU Treaty on abuse of a dominant position (the equivalent of Section 2 of the Sherman Act[2]). Pursuing, sanctioning and remedying anticompetitive conduct is the bread and butter of competition policy, and effective case enforcement will continue to have a key role to play - it can address and remedy harmful conduct in each individual case at the same time as having a broader benefit in terms of deterring similar harmful conduct in the future. As with every public authority, our resources are limited, and so our task must always be to focus on those conducts that have the greatest harmful effect, and hence where our intervention can bring the greatest benefits to consumers. When we pursue a case, we have to meet high procedural and evidentiary thresholds to prove a competition violation that will withstand in-depth scrutiny by our European Courts.

Let me take this opportunity to briefly outline our most recent and ongoing case activity in the area of digital platforms.

In relation to Google, we have adopted three prohibition Decisions in 2017, 2018, and 2019 (*Google Shopping*, *Google Android* and *Google AdSense* respectively). Each of these has been appealed by Google to the General Court of the European Union in Luxembourg (our court of first instance), and we continue to monitor implementation and compliance with the respective remedies in each case. I outlined the main elements of the cases in my previous submission, so will not dwell on them in any detail here. One noteworthy point that is common to all in my view, however, relates to the analytical framework. I sometimes hear it said that digital platform markets are characterised by new phenomena

[2] although Article 102 does not contain a provision on monopolisation - it relates solely to abuse of an existing dominant position.

such as network effects, two-sided markets and the role of data, and that antitrust cannot analyse such phenomena effectively. Whilst the role and importance of data may be orders of magnitude more significant than was the case in the past, the phenomena themselves are not new, and our framework has shown that our tools can be flexibly adapted to analyse the relevant issues. Indeed, what was striking in all three Google cases was that whilst the specific markets concerned in each case had not been dealt with by us before, the types of conduct that we sanctioned were rather "traditional" and involved *inter alia* tying, exclusivity requirements, and other types of contractual restriction.

Let me now turn to two ongoing investigations, which illustrate issues that may arise in relation to dual role platforms and which in my view merit a very close look to ensure that competition is not distorted.

On 17 July 2019, we started an in-depth investigation into Amazon's business practices. When providing a marketplace for independent sellers, Amazon continuously collects data about their activity on its platform. Our investigation focuses on the use by Amazon of accumulated, competitively sensitive information about marketplace sellers, their products and transactions on the Amazon marketplace, which may inform Amazon's retail business decisions. On 16 June 2020, the Commission also started an in-depth investigation regarding the terms that govern the use of Apple's App Store by developers of apps that compete with Apple's apps, and the conditions under which these developers can distribute their apps to users of devices running on Apple's mobile operating systems.

Both investigations concern companies which at the same time offer platform services and downstream services in competition with the business user on their platform. Both investigations will explore whether this dual role leads to conflicts of interest and distortions of competition. As these investigations are ongoing, we have not yet drawn any conclusions in this regard.

Our experience shows that enforcement needs to be grounded in in-depth market knowledge. For this purpose, in order to obtain a good overview of how markets work and identify potential competition problems that may arise, the Commission has the possibility to launch inquiries into specific sectors of the economy (sector inquiries). In 2017, we successfully completed such a sector inquiry into e-commerce markets, which gave us valuable insights and led to follow-on enforcement - I outlined the details in my previous submission.

Earlier this month, we opened a new sector inquiry into the markets for consumer products and services linked to the Internet of Things. The consumer Internet of Things is now becoming a reality as more and more devices like TVs, fridges, wearables, smartwatches and fitness trackers become connected to the Internet and voice assistants allow us to control those smart devices. With this sector inquiry, we want to examine the relevant issues and ensure that these nascent markets remain open to competition, and that in particular data gathered through millions of connected devices are not monopolised by big online platforms to the detriment of consumers.

Whilst I consider that the cases and the sector inquiry that I have outlined illustrate our commitment to vigorous antitrust enforcement, we must not be complacent. There is always scope for improvement, both in terms of the way that we analyse issues substantively, but in particular in the efficiency of our interventions. In my view, this has two main dimensions: speed and effectiveness of remedies.

In terms of speed, I am sensitive to the criticism that our cases take too long, and that when our intervention does come, it can be too late, particularly in the context of digital markets where due to network effects, markets may be prone to tipping. I should first stress that in our system, which is

based on the rule of law and where our decisions are subject to intense judicial scrutiny by the European Courts, it is most important to fully prove the case in full respect of the parties' procedural rights, and that in complex markets, the substantive analysis is not something that can be carried out from one day to the next. At the same time, this does not mean that improvements are not possible. For example, in terms of substantive analysis, whilst it is our burden of proof to demonstrate that a certain practice has harmful effects, when we undertake an effects analysis, I sometimes wonder how much needs to be shown to demonstrate that a company with a 95% market share which locks up more than half the market by imposing exclusivity on customers has harmed choice and competition. Another example where improvements are possible relates to interim measures. This is a part of our toolkit that we had not used for some time, but it allows us to stop behaviour that is likely to result in serious and irreparable harm to competition, provided that we can prove that a *prima facie* infringement of competition rules is ongoing. We have made use of this instrument in October last year in the Broadcom investigation, by issuing an order on Broadcom to suspend obligations on its customers to buy all or nearly all their requirements from Broadcom, as well as pricing and non-pricing advantages that were conditional on such obligations. Since then, Broadcom has offered commitments to close the investigation - we are currently assessing these in light of the market feedback that we have received. It is too early to speculate on the outcome of this case but the interim measures tool is one that we are likely to be using more frequently in the future when the circumstances justify it.

Another area in which I take a particular interest is the need to ensure that our remedies are effective. But what should that mean in practice? When we conclude that there has been a competition infringement, we certainly have the power to order the company to stop the conduct in question (a so-called "cease-and-desist" remedy). But in a scenario where that conduct had been going on for many years and has allowed the company to illegitimately benefit to the detriment of others, I often find myself asking the question whether such a cease-and-desist order is sufficient, or whether we shouldn't impose remedies that go beyond such an order - the aim being to restore the competition that has been lost, rather than just levelling up the playing field where the company has already gained a competitive advantage due to its illegal conduct. Of course, this very much depends on the specifics of each case, but this aspect of restorative remedies is something that we will be looking at more closely in the months and years to come.

Naturally, whilst what I have outlined above relates to enforcement as regards "conduct" (or "antitrust" as we would say in Europe), a critical part of our enforcement framework also relates to merger control. It is clear that digital and platform-related issues will also be highly relevant in this sphere. I outlined in my previous submission a broad range of digital-related merger cases where data aspects were an important part of our analysis, be it as an input, a potential barrier to entry or a parameter of competition, and I believe that such considerations can be fully integrated within our framework of analysis. These cases also raise specific questions for merger control when it comes to the need to ensure effective and appropriate remedies, especially as regards the risks of data accumulation in some already concentrated markets. Traditional divestitures may not always be conceivable to address such issues, hence the need to reflect on whether alternatives - such as data silos ensuring strict limitations on data usage, or alternatively, data access by third parties - could be operational and effective.

Regulation

The second pillar is potential *ex ante* regulation of digital gatekeeper platforms.

Beyond ensuring that our core competition rules are fit for purpose in the context of individual case enforcement, we observe that there are a number of large online platforms which operate as gatekeepers between businesses and citizens, benefitting *inter alia* from strong network effects and data advantages of the type I described above. Some such platforms exercise control over whole platform ecosystems that may be impossible to contest by existing or new market operators, irrespective of how innovative and efficient they may be. What is more, the platforms often have a dual role of the type I outlined above where they compete downstream with rivals which operate on their platform, and they are able to leverage their platform advantage, for example in relation to their access to large amounts of data or their ability to compete in downstream markets in a way that they would otherwise not be able to do. Whilst there is the benefit that I outlined from the platform bringing consumers and businesses together, we are concerned that the economic power and the gatekeeper role of such platforms may hinder entry and innovation possibilities from others, which is ultimately to the detriment of consumers and business users.

We therefore consider that additional rules at EU level may be needed to ensure contestability, fairness and innovation and the possibility of market entry that go beyond competition or purely economic considerations. On this basis, the Commission is exploring possible *ex ante* rules to ensure that markets characterised by large platforms with significant network effects acting as gatekeepers, remain fair and contestable for innovators, businesses, and new market entrants. This new framework would complement the horizontally applicable provisions of our Platform-to-Business Regulation which I outlined in my previous submission, and which entered into force on 12 July 2020. These provisions primarily contain transparency and information-related obligations which apply to all online intermediation services. In contrast, the additional *ex ante* regulatory framework would apply to a more limited subset of large online platforms which have a gatekeeper role, and which would be identified on the basis of clear criteria.

Our reflections on such a framework are ongoing, and they will be enriched by the results of the ongoing public consultation, which concludes on 8 September 2020. Whilst the precise nature and scope of any provisions are still to be determined, one option would be to establish a clear list of dos and don'ts that the platforms concerned would be required to comply with - in other words, a specifically defined set of obligations and prohibitions that would be of general applicability to the platforms concerned. That might include, for example, rules to stop platforms misusing their position as both player and referee - both owning a platform, and competing with others that rely on that very same platform. One possible rule could be one that prohibits platforms from displaying their own downstream services more prominently than those of rivals. Another possible rule in relation to data might be a so-called "data silo" rule, where a conglomerate platform is prohibited from using specific data sets for certain business purposes in order to prevent it leveraging from one market to another. Reflections are also ongoing on how to best ensure that the rules remain effective and pertinent against the background of the heterogeneity and fast evolution of platforms' business models.

Possible new competition tool

The third pillar is a possible New Competition Tool to address structural competition problems that cannot be tackled or addressed in the most effective manner on the basis of Articles 101 and 102 of the EU Treaty. This is also part of the ongoing public consultation that was launched on 2 June 2020.

The proposal is based on our experience with enforcing the EU competition rules in digital and other markets, as well as the many contributions to the worldwide reflection process about the need for changes to the current competition law framework to allow for enforcement action preserving the competitiveness of markets. This includes the report of the Special Advisers that I outlined in my previous submission,[3] as well as economic evidence suggesting increasing market concentration and firm profitability levels in digital and other markets.[4] The reflection process has identified certain structural competition problems that we believe that our existing competition rules cannot tackle (such as monopolisation strategies by non-dominant companies which nevertheless have market power) or cannot address in the most effective manner (e.g. parallel leveraging strategies by dominant companies into multiple adjacent markets).

While structural competition problems can arise in a broad range of different scenarios across markets, they can be generally grouped into two categories - structural risks for competition and structural lack of competition - depending on whether harm is about to affect or has already affected the market.

Structural risks for competition refer to scenarios where certain market characteristics (such as network and scale effects, lack of multi-homing and lock-in effects) and the conduct of the companies operating in the markets concerned create a risk for competition. This applies in particular to markets that are prone to tipping. The ensuing risks for competition can arise through the creation of powerful market players with an entrenched market and/or gatekeeper position, the emergence of which could be prevented by early intervention. Other scenarios falling under this category include unilateral strategies by non-dominant companies to monopolise a market through anti-competitive means.

Structural lack of competition refers to scenarios where a market is not working well and not delivering competitive outcomes due to its structure (i.e. structural market failures). These can include (i) markets displaying systemic failures going beyond the conduct of a particular company with market power due to certain structural features, such as high concentration and entry barriers, consumer lock-in, lack of access to data or data accumulation, and (ii) oligopolistic market structures with an increased risk of tacit collusion, including markets featuring increased transparency due to algorithm-based technological solutions (which are becoming increasingly prevalent across sectors).

While the exact scope and the procedural design of the possible New Competition Tool are subject to our ongoing review, its overall functioning would be based on the following general principles, which correspond to the well-functioning market investigation powers of a number of other competition authorities around the world. First, to establish the existence of a structural competition problem, the Commission would carry out a thorough market investigation into the particular features and dynamics of the market(s) concerned and, if confirmed, design a well-tailored and proportionate remedy package to address the structural competition problems identified. Second, there would be no finding of an infringement against any of the companies active in the market concerned (therefore also no fines nor damages actions), while the principles of fair process and judicial review would be guaranteed.

On this basis, the New Competition Tool would complement both existing case enforcement under Articles 101 and 102 of the EU Treaty, as well as the possible *ex ante* regulation that would apply to digital gatekeeper platforms.

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[3] Report by Jacques Crémer, Yves-Alexandre de Montjoye and Heike Schweitzer on *"Competition policy for the digital era"*, published in April 2019.

[4] Staff Working Document, Single Market Performance Report 2019.

Conclusion

During my first mandate as European Commissioner, when my sole responsibility was as Commissioner for Competition, I was already keenly aware of two broad themes: first, that an effective competition policy could play a key role in keeping digital markets competitive; and second, that it was not and should not be for competition policy alone to address all the issues and challenges arising in digital markets - competition policy is of course an important part of our overall policy toolkit, but there also needs to be a coherent and complementary policy response involving other areas of policy. If anything, given my additional, broader responsibilities, I am even more keenly aware of this now, and I hope that I have conveyed the nature of our main ongoing policy reflections in relation to digital platforms in this respect.

As I highlighted in my previous submission, digital markets are generally international, and so I consider it of great value that we can learn from our respective knowledge and experiences in different jurisdictions. We hold regular dialogues with a range of competition enforcers as well as governments and other public bodies from around the world, including of course from the United States, with which we have a long history of close and effective cooperation. Of course, every jurisdiction has its own specific market context, as well as its own legal and policy framework and traditions, and so it is unrealistic to expect that there will be a precise, one-size-fits-all solution to address the range of issues that digital platforms present. Having said that, if we can formulate appropriate policy responses around the world on the basis of shared experiences and knowledge and if possible, common visions, I consider that that can only be beneficial, both for citizens and businesses. Once again, I am grateful for the opportunity to have again been able to share my thoughts with you - I wish you all the best with your ongoing work and look forward to cooperating closely with you on these issues in the future.

N · A · W

July 22, 2020

Honorable David N. Cicilline
Chairman
Subcommittee on Antitrust, Commercial
and Administrative Law
U.S. House of Representatives
Washington, DC 20515

Honorable F. James Sensenbrenner
Ranking Member
Subcommittee on Antitrust, Commercial
and Administrative Law
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Cicilline and Ranking Member Sensenbrenner:

On behalf of the National Association of Wholesaler-Distributors (NAW), we write to urge you to delve deeply into Amazon's monopolistic mistreatment of its third-party sellers when its CEO Jeff Bezos testifies before your Subcommittee on Monday, July 27th.

NAW is the "national voice of wholesale distribution," an association comprised of employers of all sizes, and national, regional, state and local line-of-trade associations spanning the $6 trillion wholesale distribution industry that employs more than 5.9 million workers in the United States. Approximately 35,000 enterprises with places of business in all 50 states and the District of Columbia are affiliated with NAW.

Amazon's exploitative conduct in Business-to-Business (B2B) commerce mirrors the playbook it has executed in the Business-to-Consumer (B2C) marketplace. Unchecked, Amazon's dominance threatens to cripple the highly competitive B2B system which exists in our country. Wholesaler-distributors – most of them small and medium size businesses – will quite literally be driven out of existence, leaving customers with fewer alternatives and less choice.

Amazon Business (the company's B2B unit) has taken the B2B marketplace, in which NAW members operate, by force. Analysts expect Amazon Business to surpass $50 billion in sales by 2023. In 2019, analysts report that gross sales at Amazon's B2B marketplace grew by 60% year-over-year – *more than triple Amazon's overall growth rate*, including B2C and Amazon Web Services. At this rate, Amazon's B2B is projected to surpass the size of the core B2C segment. Over 200,000 independent sellers and over 2 million customers are already captive to this increasingly dominant B2B platform.

Robust competition is the bulwark of this nation's free market economy, but Amazon Business is anything but competitive. Amazon Business is repeating its anticompetitive tactics already used by Amazon to dominate the B2C marketplace. Like its B2C business, Amazon plays "both sides" of B2B by selling its own products in direct competition against third-party sellers who sell on Amazon's B2B marketplace.

-more-

NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS
1325 G Street N.W., Suite 1000, Washington, DC 20005 • 202-872-0885 • FAX: 202-785-0586 • www.naw.org

Amazon's B2B marketplace is rigged. It operates to extract and drive customers away from independent third-party sellers to Amazon Business through a series of anticompetitive practices. Our members' concerns are that Amazon:

- Misuses third-party seller data. Amazon collects massive amounts of competitively sensitive data from third-party sellers, including product information and transaction data around prices, terms and customer identities. Amazon uses this competitive intel to launch its own competing private label products to undercut NAW members. Congressional testimony and media reports have separately shown that Amazon has used its position to appropriate and misuse supplier information and transactional data to favor Amazon's own products.

    - As one of our members told us, *"We decided to sell a very limited line on Amazon business early on to test the waters. My feelings were then, and continued to be, that we were paying Amazon to collect competitive information (12% of a sale at that time). When sales of any item reached critical mass, all Amazon had to do is go to a manufacturer with the data, demand a price based on purchases amalgamated from national sales data and take the business from the very distributors that provided the data."*

    - Another one of our members stated, *"I worked in Hong Kong with US brands who used factories in Asia. It was common knowledge that Amazon would use sales records from our sales to create competitive products and undercut our pricing structure."*

- Abuses its position and access to competitive intel to steer customers—through promotion, advertising, or other preferential treatment—to Amazon Business' own private-label products over the products offered by third-party sellers on its site.

    - Another member said, *"Amazon allows anyone to advertise brands that they have no authorization to sell those products and they use trademarks and copy pictures of models with prices to sell them. The sellers are unauthorized and cause many problems with our marketing plans."*

    - Another member shared, *"Amazon allowed the distributor to sell the product for about a year, then went out and replicated the product and began selling their own branded product, terminating the distributor. Multimillion-dollar product swap where Amazon became the winner and the distributor was left empty handed.*

- Manipulates its search algorithms to steer customers towards Amazon Business' own products and products that earn Amazon higher profits.

    - Another member told us, *"I'm glad someone is finally helping third-party sellers to make a stand. Amazon has been gouging us for years and everyday it is a battle with them to try and keep our products listed. I have 24 items that Amazon removed the listings for and I tried for 3 months to get them reactivated. Amazon is now selling the items and took all our images and descriptions and of course they are selling it cheaper than we were because they own all the shipping carriers and don't have to pay the costs of shipping that all of us small businesses do."*

    - Another member shared, *"Amazon not only uses their price advantage (because of fee they charged sellers) but would use the sales history of third party sellers to then bring in the same products and buy large quantity's to get better pricing while at the same time not having to pay themselves a fee. Totally wipes out third party sellers because you can't compete against that."*

Amazon's conduct harms third-party sellers and consumers. The current regulatory regime has failed to protect the competitive process from Amazon's exclusionary and unfair practices in the B2C industry. It's no surprise that Amazon clearly now has B2B in its same sights. It is imperative that the Subcommittee moves to restore competition to Amazon's marketplace in both B2B and B2C. Small businesses that depend upon Amazon for access to their markets, including many of our members, fear retribution by Amazon if they speak up. They are relying upon you and your colleagues to curb Amazon's stranglehold on them.

Sincerely,

Dirk Van Dongen
President & CEO

Blake Adami
Vice President-Government Relations

cc: All Members of the House Judiciary Subcommittee on Antitrust, Commercial, and Administrative Law

Connected Commerce Council

July 21, 2020

The Honorable David Cicilline
U.S. House of Representatives
2233 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jim Sensenbrenner
U.S. House of Representatives
2449 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Cicilline and Ranking Member Sensenbrenner:

Next week, the Subcommittee on Antitrust, Commercial and Administrative Law will hold its most important hearing this Congress when you hear testimony from the Chief Executive Officers of four leading online platforms. This hearing is especially crucial to the Connected Commerce Council (3C) and our more than 10,000 small business members nationally, as our mission is to promote and optimize small businesses' adoption of digital technologies and tools. We chose this mission deliberately because data incontrovertibly demonstrates that small business owners who invest in digital technologies are more successful, as they generate more revenue, hire more people, and are much more likely to survive today's pandemic economy.

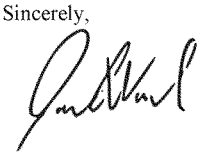
The story of "Online Platforms and Market Power" is not only about big companies competing against each other, or about big companies competing against slightly less big companies. It is also about online platforms and technologies offering low-cost and free digital tools that power small businesses in every city and state. These services and tools help small businesses compete and win against chain stores and restaurants and even against large online retailers that collectively for several decades have nearly destroyed America's downtowns. 3C members exemplify the millions of small businesses that use online platforms to create, market, and operate their businesses more efficiently and more profitably than ever before. They are an essential story of digital competition; they deserve to be heard by the Subcommittee.

As the Subcommittee finalizes the witness list and considers future hearings about online platforms and market power, 3C and our small business members urge you to consider online platforms' promotion of small businesses. Do not be misled into thinking that only large companies and competition between platforms matters, or that individual consumers are the only relevant consumers. Small businesses are also consumers, and they benefit by robust competition between Facebook and Google for advertising dollars; between Etsy, Shopify, and Amazon as commerce platforms; and between Intuit and Gusto as accounting and human resources platforms.

America is facing a once-a-century economic and public health crisis that has particularly hurt small businesses. One of the few small business bright spots has been the ability of many to operate online, powered by the digital tools and services offered by the very companies you have invited to testify. In fact, according to research 3C recently commissioned, 30% of small businesses would have shut down all or part of their business during the crisis if they did not have access to digital tools.

Small businesses cannot afford to be the collateral damage in a short-sighted battle between Congress and "Big Tech." I know that is not your goal; I hope it is not the result.

Sincerely,



Jake Ward
President
Connected Commerce Council

cc:

Members, Subcommittee on Antitrust, Commercial and Administrative Law

The Honorable Hank Johnson
The Honorable Jamie Raskin
The Honorable Pramila Jayapal
The Honorable Val Demings
The Honorable Mary Gay Scanlon
The Honorable Joe Neguse
The Honorable Lucy McBath
The Honorable Ken Buck
The Honorable Matt Gaetz
The Honorable Kelly Armstrong
The Honorable Greg Steube

Amazon

Questions for the Record for Amazon following the July 29, 2020, Hearing of the Subcommittee on Antitrust, Commercial, and Administrative Law, Committee on the Judiciary

September 4, 2020

Questions from Chairman David Cicilline

1. **When and how did you first become aware of any incidents involving Amazon employees accessing third-party seller data (a) to benefit themselves; and/or (2) in support of Amazon Retail's business? Please describe the actions that Amazon has taken to respond to these incidents since you first became aware Amazon employees were engaging in this type of conduct.**

   Amazon first learned about the alleged violations of Amazon's voluntarily adopted Seller Data Protection Policy recently reported in *The Wall Street Journal* from *The Wall Street Journal*. The *Journal*'s reporting conflates product-pricing and top-seller data—both of which are publicly displayed in Amazon's store—with the individual seller data protected by Amazon's Seller Data Protection Policy. Amazon encourages employees to report any indication of potential lack of compliance with all internal policies, including the Seller Data Protection Policy, and Amazon responds appropriately to any such reports.

2. **Please describe all audits or analyses of Amazon's access to third-party seller data conducted by or on behalf of Amazon within the past five years, and for each audit describe: (a) the process; (b) goals; (c) reasons for initiating; (d) results or findings; and (e) recommendations, including whether they were implemented and their effectiveness.**

   Amazon's Internal Audit team conducted company-wide audits of compliance with Amazon's Seller Data Protection Policy in 2015 and 2018, at the request of counsel. Amazon has previously produced to the Committee non-privileged material related to these audits. In addition, internal lawyers regularly interact with employees who work on the private brands business, answer questions regarding the appropriate use of data as necessary, and regularly review the private brands business's data queries for compliance with the Seller Data Protection Policy.

3. **Last year, Nate Sutton testified that "we don't use individual seller data to directly compete with them," and "we do not use [sellers'] individual data when we're making decisions to launch private brands." Is any anonymized data (not linked to any named seller) considered to be a seller's "individual data" or "seller-specific"? If yes, please describe the relevant circumstances.**

   By definition, "anonymized data" is not "seller-specific" because it does not identify any specific seller. Amazon's policy nonetheless prohibits the use of anonymized data, if related to a single seller, when making decisions to launch private brand products.

4. **How has Amazon chosen to define the terms "aggregate" versus "seller-specific" data in its Seller Data Protection Policy? Has Amazon ever changed these definitions in any way since any version of this policy has been in place? If yes, please describe (a) the definitions that have been used since this policy was put in place; (b) who was responsible for making each change; and (c) f reason(s) for each change.**

   Under Amazon's voluntarily adopted Seller Data Protection Policy, "aggregated data" is data that is aggregated across multiple third-party sellers and, where available, Amazon's first-party sales, and is therefore not specific to an individual seller. It includes data such as aggregate sales reports at higher levels of generality, for example, concerning a category of products (*e.g.*, consumer electronics). Amazon has made no changes to the definition of "aggregated data" in the Seller Data Protection Policy since voluntarily adopting the policy in 2014. Due to the nature of aggregated data, the identity of and the particular sales attributed to any particular seller are not discernible from the aggregated data.

5. **Please describe the specific type and level of information third-party sellers can access regarding views ("glance views") on their own product listings. For example, do they get access to the number of views of their overall listings, per product category, and at the ASIN level? How frequent are the observations they get access to (e.g., monthly, weekly, daily, and hourly values of glance views)?**

   Amazon makes relevant information on glance views in Amazon's store available to third-party sellers through Seller Central and Brand Registry. Through Seller Central, Amazon provides product-specific information on the total number of glance views for each of the products for which a third-party seller has an offer, as well as aggregated glance view information for all products offered by that seller. Amazon also provides each seller with information regarding the proportion of product detail page visits for any product for which the seller's offer is the featured offer. This information is available for the trailing two years, and sellers can select to view any period of days (*e.g.*, daily, weekly, or monthly values) within that two-year period. This data is updated daily, meaning sellers have access to the data for the two-year period up to and including the preceding day.

6. **Please explain the extent to which employees whose job responsibilities are focused on Amazon Retail's business (including product category managers) use third-party seller data (either on an aggregate basis or seller-specific) when deciding on product launches.**

   Like any other store owner, Amazon uses aggregate data that it collects from sales in Amazon's store to improve customers' experiences and the store's performance. Employees may use aggregated data about activities in Amazon's store consistent with their responsibilities, and numerous Amazon teams have access to such aggregated data, including teams responsible for Amazon's Private Brands business. Like anyone else at Amazon or in the general public, members of these teams can also visit Amazon's product detail pages to learn a product's best

seller ranking and read customer reviews and star ratings to assess whether a product is selling well in Amazon's store.

7. **Has Amazon ever designed the Buy Box algorithm to consider profitability to Amazon as a determining factor in whether to award the Buy Box to itself or to a third-party seller? If yes, please describe the relevant circumstances, including whether contribution profit or another measure of profit to Amazon was used.**

   Amazon does not consider profitability as part of the Featured Merchant Algorithm, which determines the featured offer on a product's detail page.

8. **Does Amazon's mechanism for awarding the Buy Box vary based on certain criteria (e.g., product category, product subcategory, individual or groups of product(s), particular seller groups, geographic regions, different marketplace websites)? If yes, please describe the reason(s) and the relevant circumstances.**

   Amazon's Featured Merchant Algorithm determines which eligible offer should be featured on a product's detail page by considering criteria that experience proves are important to customers, such as price, delivery speed and cost, Prime eligibility, and seller performance. The relative importance of these criteria is weighted to allow Amazon to provide the best offer to all of its customers. There may be multiple featured offers on a product, and there may be no featured offer if none meets the store's customer experience standards, such as being priced competitively.

9. **Please describe all studies and analyses conducted by or on behalf of Amazon that assess Fulfillment by Amazon's performance relative to other fulfillment options available to Amazon third-party sellers within the past five years and for each study or analysis describe: (a) the process; (b) goals; (c) reasons for initiating; (d) results; and (e) findings.**

   Amazon's data has consistently shown that customers prefer offers fulfilled using Fulfillment by Amazon ("FBA"). For example, a Q1 2020 customer survey found a 946 basis point difference in trust between offers fulfilled using FBA and offers fulfilled by sellers.

   Amazon continuously measures its operational performance and has a strong focus on, and track record of, high quality and timely delivery of orders. To assess comparative performance between FBA and other fulfillment services, Amazon uses data such as promised delivery speed, delivery estimate accuracy, customer-cancelled order volume, and service chargeback rates as metrics for the speed and reliability of shipping.

Amazon

10. According to Amazon's recent 10-Q filing, net sales for third-party seller services increased from $23 billion in the first six months of 2019 to $32 billion in the first six months of 2020. Please identify what factors accounted for this 39% increase, including the role of fee increases for third-party seller services.

The growth in Amazon's net sales for third-party seller services reflects primarily the growth of sales by third-party sellers in Amazon's store. Third-party sellers continue to succeed in Amazon's store and now account for approximately 60% of the value of physical items sold in the store. During the relevant period, Amazon's referral fees decreased overall, while the moderate fee increases for Amazon's fulfillment services were below industry average. The growth in sales by third-party sellers has continued to outpace the growth by Amazon's retail business.

11. Please describe the eligibility, components, and benefits of the Amazon Mom program (now known as Amazon Family) from September 2010 to the present, including (a) when the program was open to new members and when it was closed to new members; (b) changes to the name of the program; (c) changes to discount levels generally or for specific items; (d) length of free Prime membership; (e) changes to any other benefits included at any time in the program; and (f) whether you were personally involved in the decision to make any of these changes.

Amazon launched Amazon Mom in 2010 along with other programs, including Amazon Student, to focus on attracting key customer groups to Amazon's store. As with many programs, Amazon has modified the program benefits over time. The Amazon Mom/Amazon Family program benefits also have been included as part of other, more expansive Amazon initiatives, such as Amazon Prime and Subscribe and Save, which themselves have changed over time. Program benefits have varied from promotional discounts on wipes and diapers, free Prime memberships and partial Prime memberships, and bigger discounts on orders of various baby items purchased through the Subscribe and Save program. In 2015, Amazon made the Amazon Mom program benefits available to all Prime members and renamed the program Amazon Family to more properly reflect the customer segment Amazon was seeking to attract. Except for a brief, approximately three-month-long pause of the entire program in 2011–2012, the program has always been open to all Prime members and free to join.

12. In Amazon's earnings call on July 30, 2020, Chief Financial Officer Brian Olsavsky said, "Prime members shop more often with larger basket sizes." On average, how much more often do Prime members shop on Amazon than non-Prime members, and how much more do Prime members spend on Amazon than non-Prime members?

Amazon Prime offers members numerous benefits, including unlimited free shipping on eligible items, digital streaming video and music, and early access to deals on Amazon.com. These benefits have evolved over time to deliver ever-greater value to members; for example, while members were previously offered discounted one-day shipping, members now receive free one-

day shipping on over ten million products. Due to the nature of these benefits and the freedom customers have to opt in and out of the program at any time, customers may be more likely to register for Prime when they intend to purchase more in Amazon stores—and in fact, Prime members in the United States tend to shop more often and spend more per purchase. Amazon's audited financial reports do not separately identify Prime-specific customer expenditures.

13. **Please identify (a) the total number of days in 2019 on which Amazon priced Amazon Echo below-cost; and (b) the percentage of the total number of Amazon Echo speakers sold in 2019 that were sold below-cost.**

The costs to produce Amazon's Echo devices fluctuate during the product lifespans. Amazon strives to minimize these costs so that it can offer the devices to customers and other retailers at appealing prices. At all times, Amazon seeks to price the Echo devices as competitively as possible. These prices can fluctuate, for example, when Amazon seeks to match prices for competing devices. Like most manufacturers and retailers, Amazon also occasionally offers deals and promotions on its products—including Echo devices—providing additional value to customers. Amazon's audited financial reports do not separately identify revenues and costs for Echo devices.

14. **Please identify (a) the total number of Amazon Retail (first-party products) sold through Alexa since 2017; and (b) the total number of third-party products sold through Alexa since 2017.**

To best serve our customers, Amazon focuses on products that customers are likely to prefer, regardless of whether the products are sold by Amazon or third-party sellers. Amazon designed Alexa with this same principle in mind. There are a variety of ways to shop using Alexa, and Amazon is still in the early stages of learning what is most helpful to customers and designing tools and features that improve their shopping experience. One popular way Alexa helps customers, for example, is by suggesting products that customers frequently purchase based on their past orders, whether those orders are from Amazon or a third-party seller. If a customer has not purchased an item from Amazon's store before, Alexa may highlight a highly- rated, well-priced product. In addition, most Alexa shopping interactions provide product suggestions customers can review later on their phone or computer. Customers only complete the purchase of a product suggested by Alexa on Alexa a low, single-digit percent of the time.

Since 2017, the percentage of third-party sales purchased directly through Alexa has more than doubled, accounting for 45% of all sales made through Alexa this year. This percentage is lower than overall third-party sales on Amazon (about 58% of physical items), in part because customers disproportionately use Alexa to order household consumable items (like paper towels or batteries) for which Amazon's offers are particularly competitive.

15. Please describe all instances in which Amazon Web Services (AWS) has created a cloud offering by forking open source software.

AWS has not created cloud offerings by forking open-source projects. When it launches a managed service for an open-source project, AWS is making a long-term commitment to support customers and developers in the community built around that open-source software ("OSS"). To launch those services, AWS employs the common software engineering practice of modifying the OSS to adapt it for use within AWS's services, including by fixing bugs, improving performance, and integrating with AWS-specific systems. In connection with this, AWS often contributes those changes to the upstream projects.

These types of changes have not generally been considered a "fork" because forking involves starting a separate open-source project, based on a pre-existing open-source project's source code, which is intended to compete with the original, upstream version. Rather than fork, AWS strives to keep the OSS in managed services close to the upstream project versions and to evolve along with the projects because (1) customers want managed services to operate similar to the upstream projects, and (2) divergence from the upstream projects can make it difficult to adopt future versions of the OSS and their improvements. Projects where AWS has developed distributions on top of OSS, like Open Distro for Elasticsearch and Amazon Corretto, add to, not supplant, the set of capabilities provided by the upstream open-source projects.

Basing Amazon's managed services on OSS while avoiding forking benefits customers because it allows them to move between deploying OSS themselves and using managed services for open-source—relying on AWS's expertise where managed services work for them, and using and modifying the OSS if that better suits their needs. It benefits communities because AWS and customers of managed services have vested interests in the health of the upstream projects, and therefore often contribute code and financial and operational support to the upstream projects.

16. When AWS offers open source software as a managed service, which Amazon policies ensure that new developments are shared back to the open source community?

AWS internal policy encourages AWS teams, including managed service teams, to contribute to the upstream projects, including the bug fixes and security, compatibility, maintainability, performance, and feature enhancements that Amazon makes. Although AWS regularly contributes to upstream projects, AWS's policies do not require these teams to contribute these changes in every case for many reasons. In particular, with regard to the changes AWS makes to improve how OSS operates in the context of AWS's managed services, OSS communities have expressed that they are not interested in AWS contributing most of these AWS-specific changes.

By way of example, over the years Amazon has made major financial, operational, and code contributions to a myriad of open-source projects, including Xen, Linux, KVM, Java, Kubernetes, Chromium, Robot Operating System, Lucene (which underpins Elasticsearch), Hadoop, Spark,

and Hive. AWS has also taken a leadership role in important open source projects like s2n, FreeRTOS, AWS Amplify, Apache MXNet, AWS SageMaker NEO, Firecracker, and Bottlerocket. When AWS uses or depends on OSS, AWS teams believe in contributing to that software to ensure the longevity and viability of the open-source projects.

17. **Do any Amazon policies prohibit employees from accessing and reading keys in AWS Key Management Service (KMS)? If yes, (a) have employees ever been disciplined for inappropriately accessing keys in KMS; and (b) can employees at Amazon access and read the keys in AWS KMS without explicit approval from the customer storing those keys?**

Yes, Amazon policies prohibit employees from accessing and reading customer keys in KMS. KMS is designed such that customer keys in the service cannot be retrieved in plain text (unencrypted) form by anybody, including AWS employees.

KMS uses custom-built Hardware Security Modules ("HSMs"). An HSM is a specialized device for cryptographic key management, and KMS HSMs are validated under the FIPS 140-2 program, a U.S. federal security standard managed by the National Institute of Standards and Technology. Customers can use KMS to create a customer key in a KMS HSM for the encryption or decryption of data. Once this customer key is created, it is immediately encrypted under a different set of key-encrypting keys ("KEKs"), which were also created in the KMS HSM. The resulting encrypted customer key is stored outside the KMS HSM. This encrypted customer key cannot be used to encrypt or decrypt customer data without first being sent to the KMS HSM to be decrypted by the KEK that exists only in the HSM. Nobody, including AWS employees, can retrieve customer keys or the KEKs from KMS HSMs in plaintext form. This security control is unique in comparison to other commercial HSM vendors that may provide an option for a customer to export keys from their HSM that can be used in plaintext form outside the HSM. KMS offers no such feature.

18. **From March 1, 2020 through April 30, 2020, did Amazon at any point designate its own products as "essential," while designating competing products as "non-essential," or otherwise treat competing products differently from Amazon Retail products? If yes, please describe the relevant circumstances, including how the average shipping times during this period compare for the following products: (a) Ring Doorbells, Arlo Doorbells, and Nest Doorbells; and (b) Fire TV Sticks and Roku Boxes.**

No. During the COVID-19 pandemic, and particularly at its outset, Amazon's fulfillment operations faced significant challenges, including from social distancing, expanded policies for leave and voluntary time off, and the over 150 process changes and other health and safety measures that Amazon implemented for the benefit of its Associates. These challenges required Amazon to make decisions and take unprecedented steps in a compressed timeframe to be able to fulfill customer promises. Amazon identified product categories anticipated to be high priorities for customers during this time, including health and personal safety and work- and study-at-home products. Amazon prioritized making these categories of products available for purchase and delivery, while many non-priority products fulfilled via the Amazon Fulfillment

Network had longer delivery promise times than normal. On March 21, 2020, Amazon first applied these prioritization decisions to all products in those categories, regardless of brand owner or whether the items were sold by Amazon or a third party. Amazon had no playbook or automated tools to make these significant business changes across a catalog of hundreds of millions of products. After instituting these changes, Amazon became aware that shipments of certain Amazon devices that did not fall into the priority categories had been inadvertently included in the list of products with faster delivery promises. This was unintentional. As soon as Amazon realized this mistake, the company addressed it using the most expeditious means Amazon had, which was to provide comparable delivery promises for similar third-party products. Amazon made this change on March 29, 2020.

19. **Since March 1, 2020, has Amazon requested that any first-party seller give Amazon priority in product allocation in response to a COVID-19 supply issue over its competitors? If yes, please describe the relevant circumstances, including whether Amazon offered any threat or inducement to obtain priority, the outcome of the request, and the manufacturer(s) and product(s) at issue.**

Amazon has worked hard to obtain allocation of high-priority products to ensure their availability for our customers during this time of need amid the COVID-19 pandemic. It is not Amazon's practice to direct employees to threaten suppliers, and Amazon is not aware of any employee doing so.

Questions from Rep. Henry "Hank" Johnson, Jr.

1. Amazon touts Project Zero as a solution to counterfeits on its platforms. Please explain the following with respect to Project Zero:

1.1 How does a brand owner apply for Project Zero? What criteria are used to determine eligibility for Project Zero?

Any brand can apply to enroll in Project Zero by visiting http://www.projectzero.com/. To be eligible for Project Zero, a brand must have a registered trademark, an Amazon account with access to Brand Registry, and have maintained an accuracy rate of higher than 90% for all notices of infringement submitted to Amazon in the prior six months. Requiring a high rate of accuracy for notices of infringement is critical to protecting honest sellers from abusive removals.

1.2 How many brands currently participate in Project Zero?

There are more than 10,000 brands currently enrolled in Project Zero.

1.3 Project Zero puts the onus on brand owners to police Amazon's website. What more can Amazon do to relieve that burden on brand owners, particularly for smaller companies?

Project Zero does not put the onus on brand owners to police Amazon's website. Project Zero utilizes proactive measures such as automated brand protections to scan Amazon's store and remove suspicious listings, reducing the need for brand owners to ever file a notice of infringement. Although Project Zero does give brand owners the unprecedented ability to directly remove counterfeit items from Amazon's store when they find a counterfeit, because of the effectiveness of Amazon's proactive measures, Amazon proactively removes more than 100 items suspected of infringement based on automated protections for every takedown conducted by a brand owner.

Further, Amazon is proud to support millions of small and medium-sized businesses in the United States and around the world. Amazon invests significant resources to help businesses succeed, including by developing innovative anti-fraud and anti-abuse tools that can be easily used by entrepreneurs, no matter the size of their businesses.

Amazon also launched IP Accelerator, a new program that helps brands—including small and medium-sized businesses—more quickly obtain intellectual property rights and brand protection in Amazon's store. IP Accelerator connects brands with a curated network of trusted intellectual property-focused law firms that provide high quality trademark registration services at competitive rates to help brands secure a U.S. trademark. As of the end of December 2019, Amazon has been able to connect more

than 1,500 brands with its network of vetted intellectual property-focused law firms, and more than 500 brands have received accelerated protection in Amazon's store.

1.4 What are the costs involved in project serialization, a featured component of Project Zero? Does Amazon offer a no-cost option for project serialization? Why should brands have to pay Amazon to keep counterfeits off its site?

Serialization is an optional component of Project Zero; brands are not required to serialize products in order to participate. For brands that choose to serialize their products using the Transparency program, the cost ranges from one to five cents per unit, depending on the number of units included in the program.

Brands that enroll in Transparency are not paying to keep counterfeits off of Amazon. Transparency works across sales channels and allows brands to better protect their entire supply chain from counterfeits. In addition to enabling customers in any sales channel to authenticate products, brands can use Transparency to communicate unit-level product information everywhere they sell, including manufacturing date, manufacturing place, and enhanced product information (*e.g.*, ingredients).

2. In July, Amazon announced that it would begin displaying the names and addresses of its third-party sellers on each seller's profile page. Seller transparency is an important step in addressing the scourge of counterfeits, but the accuracy of this information is critical to its effectiveness.

2.1 What vetting practices has or will Amazon put in place to ensure that the published contact information for third-party sellers is accurate?

Amazon leverages a combination of computer-based machine learning and expert human review to vet every third-party seller when they attempt to register in Amazon's store, before they are permitted to sell certain products, and during the course of their activities in Amazon's store. During registration, all third-party sellers are required to provide a government-issued photo ID and information about their identity, location, and taxpayer information, as well as a bank account and a credit card. After collecting identity information from sellers, Amazon uses a proprietary system to analyze hundreds of unique data points to verify the information and identify potential risks. This includes human review of documents that sellers provide, as well as matching certain information against third-party or government records, such as IRS records to verify taxpayer identification number, and charging credit cards to ensure successful authorization verification from payment processors.

Amazon continues to innovate on these processes to proactively block bad actor attempts to complete the registration and identity verification process. In 2019 alone, Amazon stopped more than 2.5 million bad actor accounts before they were able to publish a single listing in Amazon's store. Amazon also continually monitors the

activities of sellers who do complete registration and identity verification, and requires additional information to sell certain products that pose a higher safety or authenticity risk.

2.2 If a seller changes its public contact information, will additional vetting be conducted at the time of such change?

Amazon requires all sellers to inform Amazon if their information changes, and continuously monitors sellers' activities in Amazon's store for various types of risk, including the risk that a seller is not who they claim to be. When an issue is detected, Amazon takes swift action to deactivate the account or ask the seller for more information. These risk evaluations are performed on an ongoing and continuous basis.

3. **The pandemic has significantly scaled back the public's ability to visit brick-and-mortar retailers, leading many to turn to online marketplaces like Amazon for their shopping. Yet, as I discussed at the hearing, counterfeit products are prevalent on Amazon, and these counterfeits are susceptible to being defective, dangerous, and even fatal. What steps does Amazon take to ensure that the products offered by the third-party sellers on its platform are legitimate, safe, and compliant with the standards required in the brick-and-mortar context?**

Amazon disagrees with the premise that counterfeit products are prevalent in Amazon's store. In 2019 alone, Amazon invested more than $500 million and employed more than 8,000 people focused on fighting fraud and abuse. As a result of these investments, Amazon ensured that 99.9% of all products viewed by customers in Amazon's store did not have a valid counterfeit complaint.

Amazon is committed to ensuring that only safe and authentic products are offered in Amazon's store. To that end, Amazon strictly prohibits the sale of counterfeit or stolen products and requires all products in Amazon's store to comply with applicable laws, regulations, and Amazon policies, including qualification requirements for sellers offering products that pose higher potential safety and counterfeit risks. These efforts go well beyond any legal obligations, and Amazon invests heavily in proactive efforts to prevent bad listings from ever reaching Amazon's store.

Amazon emphasizes preventative, technology-driven tools designed to proactively stop fraud and abuse at scale before it affects a customer or selling partner. In 2019, these tools stopped more than 2.5 million suspected bad actor accounts before they were able to publish a single item for sale, and blocked more than 6 billion suspected bad listings before they were published to Amazon's store. Amazon has also developed industry-leading brand protection tools to empower brands to partner with Amazon to drive counterfeits to zero, and has robust mechanisms to enable rights owners to file notices of infringement. Amazon maintains a dedicated team of investigators to evaluate such notices and takes appropriate action in response to confirmed infringement, which may include removing the product for sale,

terminating the infringing seller's account or related accounts, withholding funds, destroying inauthentic inventory, pursuing civil litigation, and working with law enforcement to support criminal prosecution. Amazon also ensures that any customer who purchased a counterfeit product is able to receive a refund.

Finally, to ensure customer safety, Amazon requires all selling partners to have applicable safety documents on hand when they list a product and to immediately provide those documents upon request. Amazon regularly contacts selling partners to request safety documentation to help ensure the products in Amazon's store meet relevant product safety standards. Likewise, Amazon proactively seeks out potential safety concerns, investigates those concerns, and removes potentially unsafe products from Amazon's store. In connection with these efforts, Amazon works regularly with relevant regulatory authorities to help identify trends, develop regulations, and determine whether actions like a recall are warranted.

Amazon

Questions from Rep. Jamie Raskin

Plastic Packaging:

1. **What specifically is Amazon doing to address its plastic problem and to reduce (and disclose) its plastic footprint in the United States as it has in countries like India (where it has made real commitments to reduce plastic packaging)?**

   Amazon is reimagining packaging by applying technology solutions to minimize waste from the manufacturer to the customer's doorstep. Over the past five years, Amazon has eliminated more than 880,000 tons of packaging materials—the equivalent of 1.5 billion shipping boxes. As these efforts continue, Amazon is also creating new packaging designs and materials that can be easily recycled in the waste stream, like Amazon's lightweight paper cushioned mailer, which Amazon is using increasingly in the United States. Amazon is also working to recycle more of the plastic used in Amazon's own operations and to expand collection and recycling infrastructure nationwide. These innovations support Amazon's carbon reduction goals, including a "Shipment Zero" goal that 50% of Amazon shipments are net-zero-carbon by 2030.

   As the first signatory of The Climate Pledge, Amazon is committed to achieving the goals of the Paris Climate Agreement—10 years early. That means Amazon will be a net-zero-carbon business by 2040, and, as previously noted, 50% of Amazon shipments will be net-zero-carbon by 2030. Additional information on Amazon's sustainability programs, including packaging initiatives, can be found in Amazon's annual sustainability report: https://sustainability.aboutamazon.com/.

2. **Will Amazon offer its customers the option to select plastic free choices at checkout?**

   Amazon is continuously innovating to provide our customers with the best possible online shopping experience, including shipping and packaging options that are responsive to customer needs.

* * *

HBO MAX:

1. **Is Amazon asking for the rights to carry HBO Max content or any other Warner Media content on its Amazon Prime Video service as part of the negotiations to grant HBO Max access to Fire TV or the Fire TV Stick? Has Amazon sought similar access to the rights to content from any other streaming services, including but not limited to Hulu, Disney+, or Netflix, which are featured on Fire TV or the Fire TV Stick? If so, what content did Amazon seek and obtain and why is Amazon seeking it for its competing video service?**

   Like other companies, Amazon is unable to reveal details about ongoing, confidential negotiations with a business partner. As has been publicly reported, however, Amazon and HBO

are negotiating a broad deal across a number of business lines, including Prime Video and Fire TV. As a general matter, Amazon takes a customer-centric approach with respect to negotiations, and recognizes that customers come to Amazon for a vast selection of products, including content. Given significant competition in the content distribution space, Amazon believes customers disappointed in the offerings on Prime Video or Fire TV will turn to other options. With this in mind, Amazon is committed to providing a great selection to our Prime Video customers, and licensing content for distribution via Prime Video can be a good way to add value for customers.

2. **Is Amazon asking for any other concessions from HBO Max or Warner Media that could benefit Amazon Prime Video or any other Amazon service as part of the negotiations for HBO Max or Warner Media to access Fire TV or the Fire TV Stick?**

Like other companies, Amazon is unable to reveal details about ongoing, confidential negotiations with a business partner. As is standard practice during a negotiation between two companies, the terms under negotiation between Amazon and HBO Max are not solely financial, and also include marketing, advertising, and distribution commitments, amongst others.

3. **Has Amazon offered HBO Max access to Fire TV or the Fire TV Stick on terms that are similar to the terms Amazon has agreed to with Hulu, Disney+ and Netflix? If not, why not and what conditions or concessions are different?**

Like other companies, Amazon is unable to reveal details about ongoing, confidential negotiations with a business partner. As a general matter, Amazon takes a customer-centric approach with respect to negotiations and recognizes that customers come to Amazon for a vast selection of products, including content. Even with this basic guiding principle, the precise contours of Amazon's business relationships with current and prospective partners vary widely. As a result, negotiations with different businesses naturally present different considerations. This is particularly true in the differentiated—and highly competitive—content distribution space, where many companies offer a host of unique offerings to viewers.

4. **Please provide examples where it would be <u>appropriate</u> and normal business to leverage a dominant market position in one line of business to benefit the same firm's market position in another line of business.**

Amazon is focused on negotiating for the best prices and selection for the benefit of customers. In the normal course of business, it is common to negotiate non-financial terms during negotiations. Amazon is a relatively new entrant in both the device and content services businesses and customers have many available options to consume video content—including smart TVs, streaming media players, mobile phones and tablets, game consoles, set-top boxes, and personal computers. Amazon does not have a dominant market position in any putative device or content services market segment. Amazon competes and negotiates with well-established competitors in this space, such as NBCU/Comcast, Google/YouTube, Apple, Roku,

Samsung, Sony, Netflix, Hulu, and Disney, amongst others. Amazon, and its competitors, often find that negotiating a broad deal across more than one line of business helps both companies to achieve the desired result—lower prices and more choices for customers.

5. Please provide examples where it would be inappropriate to leverage a dominant market position in one line of business to benefit the same firm's market position in another line of business.

While this question is highly theoretical, Amazon's business is built on being obsessively focused on improving the customer experience in Amazon's store, including by providing access to a broad selection of products. This customer-centric approach is good for customers and the businesses with which Amazon partners, including the content creators who continue to thrive on Prime Video and Fire TV. Amazon does not have a dominant market position in any putative device or content services market segment. Amazon competes and negotiates with well-established competitors in this space, such as NBCU/Comcast, Google/YouTube, Apple, Roku, Samsung, Sony, Netflix, Hulu, and Disney, amongst others.

6. Please provide the additional information that Mr. Bezos committed to get to the Subcommittee regarding Amazon's current negotiations with HBO Max and Warner Media.

See responses to Questions 1–5 above. As explained above, Amazon takes a customer-centric approach with respect to negotiations, and recognizes that customers come to Amazon for a vast selection of products, including content. As a general matter, Amazon's negotiations with other established companies—like HBO Max and Warner Media/AT&T—often involve examining multiple opportunities across Amazon's business to create value for our customers. And, as with any negotiation regarding an important business relationship, both Amazon and HBO/WarnerMedia/AT&T have vigorously pursued their respective goals in these ongoing negotiations.

Questions from Rep. Ken Buck

1. **Mr. Bezos, Amazon is conducting an investigation into the use of third-party company data to launch its own products. Can you please list each alleged incident of misuse or Amazon policy violation and your conclusion as to whether Amazon's internal policies were violated? Please explain any disciplinary or corrective action that is taken in the event of a violation being substantiated.**

   Amazon is fully committed to complying with its voluntarily adopted Seller Data Protection Policy. Amazon trains employees on the policy and regularly audits its systems and processes for compliance. Likewise, Amazon encourages employees to report any indication of potential lack of compliance with internal policies, including the Seller Data Protection Policy, and Amazon responds appropriately to any such reports. And, as with any other Amazon policy, Amazon takes appropriate action in response to any policy violations.

2. **As our nation faces continued shortages of personal protective equipment (PPE), prices on ecommerce platforms for these desperately needed products have skyrocketed while ecommerce platforms have failed to guarantee product safety and have failed to remove counterfeit products. How will Amazon ensure the safety of PPE products for sale on its platform and marketplace?**

   Amazon has long-standing policies against counterfeiting and price gouging and has processes in place to proactively block suspicious products and egregious prices. When Amazon finds a bad actor violating its policies, Amazon works quickly to remove the products and take action against the bad actor. Amazon also invests heavily in proactive efforts to prevent bad listings—including counterfeits—from ever reaching its store. In 2019 alone, Amazon invested over $500 million into this issue, and has more than 8,000 employees who focus on fighting fraud and abuse. Amazon's efforts have ensured that 99.9% of all products viewed by customers on Amazon did not have a valid counterfeit complaint.

   Additionally, Amazon has called on Congress to establish a federal price gouging law, and is committed to continuing to work with policymakers on a bill that would hold bad actors accountable for artificially raising prices on high demand basic necessities, including PPE, during this pandemic. Amazon is disappointed that bad actors are attempting to take advantage of this global health crisis, and it has already removed more than half a million offers for attempted price gouging, suspended more than 6,000 selling accounts for violating Amazon's policies, and provided data to law enforcement to hold them accountable. Amazon's teams continue to actively monitor its store and remove offers that violate Amazon's policies.

   Amazon's "Amazon Business Solutions Agreement" ("BSA") requires sellers to provide accurate information about their products on product detail pages. Amazon has automated tools that scan hundreds of millions of listings 24/7 to proactively block inaccurate claims about COVID-19.

Amazon's efforts have blocked or removed more than 6.5 million products suspected of making inaccurate COVID-19 claims from Amazon's store.

In March, 2020, Amazon recognized that many PPE products were in short supply and took the unprecedented action of setting up a dedicated storefront for those PPE products, providing exclusive access to government agencies, healthcare institutions, first responders, and other customer segments with the greatest needs. Key products available on this storefront are subject to additional verification. For example, N95 respirator masks can only be sold by pre-approved sellers and purchased by pre-approved customers (*e.g.*, hospitals, first responders, etc.). Sellers of N95 masks are required to provide documentation demonstrating the authenticity of the product, and Amazon checks that the product appears on the list of approved N95 masks published by the National Institute for Occupational Safety and Health before the seller can list the product. Amazon utilizes automated tools and manual auditing to prevent sellers from circumventing this approval process.

3. Mr. Bezos, in January, DHS released a comprehensive report entitled: "Combatting Trafficking in Counterfeit and Pirated Goods." The report contained ten specific *Best Practices for E-Commerce Platforms and Third-Party Marketplaces* (cited below). Can you provide the Committee with a detailed assessment of how Amazon is in compliance with each of these best practices? And if you are not in compliance, how Amazon plans to adhere to them in the future?

Amazon has already implemented many of the "Best Practices for E-Commerce Platforms and Third-Party Marketplaces" recommended in the Department of Homeland Security ("DHS") report. For example, the report recommends that marketplaces should have "protocols and procedures to place limitations on the sale of products that have a higher risk of being counterfeited or pirated and/or pose a higher risk to the public health and safety." DHS also recommends that marketplaces publish lists of such restrictions. Amazon fully agrees with these particular recommendations and already follows these practices. Amazon prohibits the sale of certain high-risk categories, like prescription medications and airbag components, and publishes a list of prohibited items.

Further, as detailed in response to Rep. Johnson's questions above, Amazon also engages closely with law enforcement when a counterfeit product is discovered to help bring counterfeiters to justice. Amazon also believes that some of the DHS recommendations are not sound policy and would have unintended adverse effects on honest third-party sellers and customers.

Amazon's existing systems for preventing counterfeits are industry leading and continually updated to meet the challenge of fighting counterfeits. Even as Amazon continues to adhere to the practices described above, Amazon believes it is critical that legislative and regulatory processes enable Amazon to remain flexible, constantly innovate, and adapt technology and processes to best prevent counterfeits and block bad actors.

Amazon

* * *

1. **Do you employ end to end encryption for communications on your products in China?**

   Amazon does not sell communications devices in China.

2. **Do you provide user enabled and controlled encryption on the communications devices you sell in China?**

   Amazon does not sell communications devices in China.

3. **Do you provide China and the Chinese Communist Party access to users' information and content as required by Chinese law?**

   As stated in the privacy notice for Amazon's Chinese Website, Amazon releases account and other personal information when the company believes release is appropriate to comply with the law.

4. **What user information or content do you provide the Chinese government under Chinese law?**

   As is stated in the privacy notice for Amazon's Chinese Website, Amazon releases account and other personal information when the company believes release is appropriate to comply with the law.

5. **If you deploy Artificial Intelligence to identify illegal content consistent with Chinese law:**

   - **What data points does your AI examine?**
   - **How is your AI trained to identify and keep up with the changing language, vocabulary and codes used by pedophiles and other criminals?**

   Amazon uses automated processes in China and the other jurisdictions in which it operates to help ensure compliance with applicable law, including by screening for illegal products and content. Amazon's automated processes use multiple software techniques, such as searches for keywords, which are updated periodically.

6. **Does China require you to submit either your encryption of AI algorithms to Chinese authorities for technical evaluation before you are permitted to deploy them in China?**

   Amazon has not been asked by the Chinese government to submit Amazon's encryption or AI algorithms for technical evaluation.

Amazon

7. Does China require providers to back up the contents of all devices into the either the company's data center or a government data center in China?

The only Amazon device available for sale in China is the Kindle E-reader. Amazon is not aware of any Chinese laws requiring Amazon to back up the contents of Kindle E-readers into private or government data centers in China.

8. Does China require information on any or all of your devices that access the Chinese cellular telephone infrastructure or Internet to backup their content and user information in Chinese datacenters? Does this apply to tourists and business travelers, to include United States citizens?

Amazon is not aware of any Chinese laws requiring Amazon to back up the contents of Kindle E-readers—the only Amazon device available for sale in China—into private or government data centers in China.

Amazon

Questions from Rep. Pramila Jayapal

1. **Please explain what kinds of information Amazon can access about third party seller sellers that Amazon third party seller sellers do not have access to.**

Amazon invests heavily in supporting third-party sellers, including by creating tools to support them and providing them with immense data resources. Those resources start with providing third-party sellers data about all of their own sales in Amazon's store. To help third-party sellers succeed, Amazon also provides them with aggregated data regarding what customers are looking for and buying in Amazon's store. For example, Amazon provides third-party sellers data through dashboards and customizable business reports available through Seller Central, data feeds available through the Marketplace Web Service APIs, and recommendations Amazon makes available through the Selling Coach tool. These tools have proven successful and continue to grow in popularity and sophistication.

Amazon also uses third-party seller data to support sellers or to enhance or protect Amazon's customers' experience. In connection with these efforts, numerous Amazon teams have access to aggregated third-party seller data, including Amazon's Retail team, Private Brands team, and the teams that build tools and services to help Amazon's selling partners succeed and to help prevent fraud and abuse in Amazon's store. In certain cases, seller data utilized for these purposes is not made available to third-party sellers. In addition, to protect against fraud and protect customer privacy, Amazon limits the customer personal data that it provides to third-party sellers.

2. **How many Third-Party Seller Data Audits has Amazon conducted within the past ten years? Please provide the dates and results of each audit**

Amazon's Internal Audit team conducted company-wide audits of compliance with Amazon's Seller Data Protection Policy in 2015 and 2018, at the request of counsel. Amazon has previously produced to the Committee non-privileged material related to these audits. In addition, internal lawyers regularly interact with employees who work on the private brands business, answer questions regarding the appropriate use of data as necessary, and regularly review the private brands business's data queries for compliance with the Seller Data Protection Policy.

3. **Who at Amazon conducts Third-Party Seller Data Audits?**

Amazon's Internal Audit team conducted company-wide audits of compliance with Amazon's Seller Data Protection Policy in 2015 and 2018, at the request of counsel. In addition, internal lawyers regularly interact with employees who work on the private brands business, answer questions regarding the appropriate use of data as necessary, and regularly review the private brands business's data queries for compliance with the Seller Data Protection Policy.

4. Who at Amazon sees the results of the Third-Party Seller Data Audits?

Amazon's Internal Audit team conducted company-wide audits of compliance with Amazon's Seller Data Protection Policy in 2015 and 2018, at the request of counsel. Amazon has previously produced to the Committee non-privileged material related to these audits. In addition, internal lawyers regularly interact with employees who work on the private brands business, answer questions regarding the appropriate use of data as necessary, and regularly review the private brands business's data queries for compliance with the Seller Data Protection Policy. Amazon takes the results of its audits seriously and ensures that any relevant stakeholders receive those results.

5. Please provide the number of category managers that have accessed non-public data about third-party products and businesses.

Like any other store owner, Amazon uses aggregate data that it collects from sales in Amazon's store to improve customers' experiences and the store's performance. Employees, including category managers, may use aggregated data about activities in Amazon's store consistent with their responsibilities, and numerous Amazon teams have access to such aggregated data. Like anyone else, members of these teams can visit Amazon's public product detail pages to learn a product's best-seller ranking, in addition to its product reviews and star ratings, and make a determination on all of those bases about whether a product is selling well in its store.

6. Please explain what measures Amazon has taken to prevent Amazon employees from accessing third party seller data and information.

Amazon trains employees on the voluntarily adopted Seller Data Protection Policy and regularly audits its systems and processes for compliance. All Amazon Retail team members are required to complete a policy-specific training module upon onboarding, and again every two years thereafter. In addition to these mandatory trainings for all Retail employees, members of Amazon's Private Brands teams receive both an annual general training on the policy and an additional Private Brands-specific training on the use of third-party seller data. Amazon is also continually improving its technical controls to enforce this policy, and many tools in use today are already configured to omit seller data or have strict permissioning requirements.

7. Please list all types of aggregate data that Amazon first party sales staff can access on third party sellers.

Like any other store owner, Amazon uses aggregate data that it collects from sales in Amazon's store to improve customers' experiences and the store's performance. Employees may use aggregated data about activities in Amazon's store consistent with their responsibilities, and numerous Amazon teams have access to such aggregated data, including teams responsible for Amazon's Private Brands business. Like anyone else, members of these teams can visit Amazon's product detail pages to learn a product's best seller ranking, in addition to its product

reviews and star ratings, and make a determination on all of those bases about whether a product is selling well in its store.

8. **If there is a product on Amazon Marketplace where one third-party seller accounts for 99% of the sales and another third-party seller accounts for 1%, does Amazon designate data about that product as "aggregate" data?**

Under Amazon's voluntarily adopted Seller Data Protection Policy, "aggregated data" is data that is aggregated across multiple third-party sellers and, where available, Amazon's first-party sales, and is therefore not specific to an individual seller. Due to the nature of aggregated data, the identity of and the particular sales attributed to any particular seller is not discernible from the aggregated data, so the data would not reveal the relative proportions of each sellers' sales.

9. **If there is a product on Amazon Marketplace where there are three sellers and each accounts for one-third of the sales, does Amazon designate data about that product as "aggregate" data?**

Under Amazon's voluntarily adopted Seller Data Protection Policy, "aggregated data" is data that is aggregated across multiple third-party sellers and, where available, Amazon's first-party sales, and is therefore not specific to an individual seller. Due to the nature of aggregated data, the identity of and the particular sales attributed to any particular seller is not discernible from the aggregated data, so the data would not reveal the relative proportions of each sellers' sales.

10. **Please identify each type of data that Amazon collects on actual and potential customers on Amazon.com.**

Amazon's privacy notice (www.amazon.com/privacy) describes what information Amazon collects and how that information is used, and is provided in **Appendix A**. Amazon collects customers' information to provide, and continually improve, Amazon's products and services.

First, Amazon receives information that customers provide related to their use of Amazon.com. For example, customers provide information when they shop for or purchase products or services, use features on Amazon.com, and enter information in their account settings. As a result of those actions, customers might provide Amazon the following categories of information: contact information, payment information, location information such as the customer's preferred shipping address, address book information, and account profile information.

Second, Amazon automatically collects and stores certain types of information when a customer uses Amazon.com, including information about their interaction with products or content available through Amazon.com. Like many websites, Amazon uses cookies and other unique identifiers and obtains certain types of information when a customer's web browser or device accesses Amazon.com. Examples of the categories of information Amazon collects and analyzes include: IP address, login, or email address; device information; clickstream information to,

through, and from Amazon.com; products and/or content viewed or searched; and webpage interaction and metrics information. Amazon may also use device identifiers, cookies, and other technologies on devices, applications, and Amazon webpages to collect browsing, usage, or other technical information.

Third, Amazon might receive information about customers from other sources. Examples of information Amazon receives from third parties include: updated delivery and address information from Amazon's carriers or other third parties; search results and links, including paid listings (such as sponsored links); and credit history information from credit bureaus that Amazon uses to help prevent and detect fraud.

11. For each of the following product categories, please identify the percentage of product listings that are (i) Amazon first-party vs. Amazon third-party, and (ii) within Amazon first-party, the percentage that are Amazon private label vs. non-private label.

a. Consumer electronics
b. Beauty
c. Kitchenware
d. Apparel
e. Children's apparel
f. Sports apparel
g. Textbooks
h. Trade fiction books
i. Trade non-fiction books
j. Batteries
k. Toys
l. Smart speakers

Amazon seeks to deliver the best combination of price, selection, and convenience to our customers—whether those products are sold by a third-party seller or by Amazon. Over the past 20 years, third-party sellers have grown from 3% of sales of physical products by value in our store, to nearly 60%. Conversely, private brands sales represent only about 1% of our total sales. Amazon offers private brand products in highly competitive categories and Amazon's total sales lag far behind the percentage of sales that rival private brand retailers have achieved.

The table below provides responsive information for comparable categories. Apparel is included within Softlines, which also includes other non-apparel products such as footwear and accessories. Our store offers a wide range of batteries, which are included in various categories. Most types of batteries are included within Total Consumer Electronics and Consumables, each of which include additional products. Smart Speakers are also included within the Total Consumer Electronics category. These data are for Amazon's 2019 Fiscal Year.

Listings	First-Party			Third-Party
Category	% of Total Listings	Private Brand % of First-Party	Non-Private Brand % of First-Party	% of Total Listings
Consumer Electronics	4%	< 1%	> 99%	96%
Beauty	4%	< 1%	> 99%	96%
Home & Kitchen	1%	< 1%	> 99%	99%
Softlines	8%	< 1%	> 99%	92%
Books	34%	< 1%	> 99%	66%
Consumables	3%	< 1%	> 99%	97%
Toys	9%	< 1%	> 99%	91%

12. For each of the following product categories, please identify the percentage of product sales that are (i) Amazon first-party vs. Amazon third-party, and (ii) within Amazon first-party, the percentage that are Amazon private label vs. non-private label.

a. Consumer electronics
b. Beauty
c. Kitchenware
d. Apparel
e. Children's apparel
f. Sports apparel
g. Textbooks
h. Trade fiction books
i. Trade non-fiction books
j. Batteries
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Sales $	**First-Party**			**Third-Party**
Category	**% of Total Sales $**	**Private Brand % of First-Party**	**Non-Private Brand % of First-Party**	**% of Total Sales $**
Consumer Electronics	43%	3%	97%	57%
Beauty	35%	< 1%	> 99%	65%
Home & Kitchen	33%	4%	96%	67%
Softlines	28%	9%	91%	72%
Books	74%	< 1%	> 99%	26%
Consumables	41%	2%	98%	59%
Toys	42%	< 1%	> 99%	58%

13. What are Amazon's policies with regards to offering marketing co-ops, also known as Base Accrual / MDF, to third party sellers?

Like many retailers, Amazon has a longstanding practice of entering into marketing co-op agreements with its vendors—suppliers that sell inventory to Amazon at wholesale, which Amazon then sells to customers at retail. These co-op agreements, such as Marketing Development Fund ("MDF") agreements (also known as base accrual agreements), allow Amazon to better promote vendors' products by helping offset investments in activities like marketing communications, in-store promotions, catalog improvements, and premium brand stores. These investments support the success of retail vendors on Amazon. It is not Amazon's practice to enter into MDF agreements with third-party sellers, whom Amazon supports through a variety of other programs.

14. Does Amazon ever execute contracts for marketing co-ops that are self-extending unless the third-party seller opts out?

Amazon's MDF agreements are typically set to a one-year term. For the convenience of Amazon and its vendors, these agreements also commonly include an auto-renewal provision that extends the MDF terms, typically for one year, unless the parties negotiate different terms or either party provides notice to terminate the agreement. In general, vendors may access the terms of their MDF agreements—including the auto-renewal and termination provisions—at any time through Amazon's Vendor Central, a portal that allows vendors to manage their businesses with Amazon. As noted above, it is not Amazon's practice to enter into MDF agreements with third-party sellers, whom Amazon supports through a variety of other programs.

15. Is Amazon's Vendor Central website regularly updated with all binding contracts entered into by third-party sellers? That is, should a third-party seller be able to always access a full listing of all current, binding contracts into which they have entered with Amazon by accessing that website?

Amazon Vendor Central is a portal for companies that sell to Amazon wholesale to supply Amazon's first-party retail offerings. Amazon Seller Central is a portal for third-party sellers that sell in Amazon's store. Amazon Seller Central includes a webpage regarding "Policies, agreements, and guidelines" which includes the "Amazon Services Business Solutions Agreement" ("BSA") and information about recent changes to the agreement.

16. Does Amazon ever unilaterally update binding contracts with third-party sellers, without providing them an opportunity to negotiate or opt-out?

Amazon's BSA governs Amazon's relationships with third-party sellers and the suite of optional Amazon services available to them, such as Selling on Amazon and Fulfillment by Amazon. Third-party sellers may access the terms of the BSA and information about recent changes to the agreement at any time through their Seller Central accounts. Typically, Amazon provides 15 days' notice to sellers of any modifications to the terms of the BSA through Seller Central. A seller's continued use of Amazon's services constitutes acceptance of the updated agreement, and they can terminate their agreement with Amazon at any time without advance notice. In certain limited circumstances described in the BSA, Amazon may change the agreement immediately to comply with government regulation, prevent fraud, launch new or modified services, or prevent unsafe products or activities.

17. What type of notice does Amazon provide third-party sellers of any contractual changes? Specifically, how much notice does Amazon provide and how does Amazon communicate this information?

As described above, third-party sellers may access the terms of the BSA and information about recent changes to the agreement at any time through their Seller Central accounts. Typically, Amazon provides 15 days' notice to sellers of any modifications to the terms of the BSA through Seller Central. A seller's continued use of Amazon's services constitutes acceptance of the updated agreement, and they can terminate their agreement with Amazon at any time without advance notice. In certain circumstances described in the BSA, Amazon may change the agreement immediately to comply with government regulation, prevent fraud, launch new or modified services, or prevent unsafe products or activities.

18. News reports document that in March 2020, Amazon was providing delivery drivers with a single disinfectant wipe to clean their vans.

a. Does Amazon still provide delivery drivers with a single disinfectant wipe to clean their vans?

b. Please specify all steps that Amazon has taken to ensure the safety of Amazon delivery drivers.

The health and safety of Amazon's employees and contractors—including Amazon's delivery service partners ("DSPs") and their delivery drivers—has been Amazon's top priority since the pandemic began (we address DSPs in our response as it is the most relevant program to the question's focus on delivery drivers using vans). DSPs and the delivery drivers they employ (Delivery Associates, or "DAs") are not Amazon employees.[i] Amazon has worked closely with DSPs in response to the pandemic. In particular, throughout the pandemic Amazon has worked to ensure that DSPs have access to an ample supply of disinfectant wipes and other disinfecting materials. Like many businesses during the early stages of the pandemic in March 2020, Amazon had to react quickly to a rapidly evolving situation and secure scarce disinfecting materials as supply chains dwindled. To help DSPs protect their DAs, Amazon provided not only disinfectant wipes, but also disinfecting sprays, cloth/paper towels, and gloves to supplement the availability of disinfecting wipes, particularly during the early days of the pandemic when supply chains were more constrained.

Amazon has continuously monitored recommendations from local public health authorities, the Occupational Safety and Health Administration ("OSHA"), the Centers for Disease Control ("CDC"), and the World Health Organization ("WHO"), and has acted promptly alongside DSPs to reduce the threat of virus transmission to Amazon employees, DSPs, and those with whom they interact through measures including those described below:

Vehicle Cleaning and Hand Hygiene:

Amazon has increased the frequency and intensity of cleaning at all Amazon sites, including regular sanitization of door handles, handrails, touch screens, scanners, and other frequently touched areas. Amazon requires that all employees and DSPs clean and disinfect their work areas. At the start and end of routes, DSPs must clean all frequently touched surfaces in the delivery vehicle and other work equipment.

Amazon provides disinfectant wipes and other cleaning supplies daily to DSPs, including paper towels, bottled disinfectant spray, and hand sanitizer. When Amazon is informed by a DSP that their driver has a confirmed or presumptive COVID-19 diagnosis, Amazon determines whether there is a need to do an enhanced cleaning. Once the determination is made and the vehicle used by the DA is identified, the vehicle is immediately "red tagged" (taken out of service) and an order is placed for enhanced cleaning with a third-party cleaning service.

[i] Where context and brevity allows, DSPs and their DAs are referred to collectively as DSPs.

Social Distancing:

Amazon employees and DSPs must adhere to the CDC's guidance on social distancing while at work, and maintain a distance of at least 2 meters/six feet (2m/6ft) from others.

Amazon's delivery protocols require DSPs to avoid physical contact with customers, and maintain a 2m/6ft distance from them. Where possible, DSPs complete deliveries with no customer interaction—for example, leaving packages on doorsteps instead of handing packages to recipients, and wearing masks when they are making deliveries or around others.

Age verification for deliveries is also completed without contact between the delivery driver and the customer. Where an ID is needed, delivery drivers are instructed to check the ID without touching or handling it (*i.e.*, by asking the customer to place it against a glass window, or on the ground). The customer's identification details may also be entered into the Amazon Flex App.

For locker deliveries, the locker doors open by themselves. Delivery drivers are to avoid touching the locker doors directly with their hands. If a locker door is touched, the surface must be cleaned. The locker screen must also be cleaned. Upon returning to the vehicle, the delivery driver must wash his or her hands and clean the delivery device and the vehicle door handle.

Masks:

Amazon is providing disposable and reusable masks to employees, contractors (including DSPs), and all visitors at worksites. Amazon requires that everyone wear a mask covering over the nose and mouth.

As discussed above, DSPs must wear masks when making deliveries or when around other people. An Amazon yard marshal checks to ensure that all delivery drivers entering Amazon delivery stations are wearing masks. If a delivery driver needs a mask, Amazon makes those available. Delivery drivers who refuse to wear masks are not permitted to pick up packages for delivery, and their employer is notified.

There is also an option in the Amazon app for customers to rate their delivery experience. One of the options allows the customer to confirm whether a driver was wearing a mask. Any DSP whose driver receives negative feedback receives a report and is instructed to coach the DA on wearing a mask.

Confirmed Case Management of DSPs and Contact Tracing:

When Amazon receives confirmation from a DSP that an identified DA has been on an Amazon site and also diagnosed with COVID-19, Amazon takes several steps:

- Inform the DSP that their employee may not return to work at an Amazon site until they have satisfied CDC requirements, including Amazon's self-isolation requirements.

- Deactivate the DA's badge to prevent entry onto an Amazon site until their symptoms are gone and the DA has recovered.
- Confirm when the DSP's employee was last on premises at the Amazon site and/or in a delivery vehicle and determine if the vehicle needs to be taken out of service so that enhanced cleaning may be completed.
- Perform contact tracing per Amazon's confirmed case management protocols to confirm whether the DA had close prolonged contact with others, and notify any close contacts.

If Amazon learns that an Amazon employee, contractor, or DSP had a confirmed COVID-19 case, and came in close prolonged contact with a DA, Amazon will notify the DSP of the contact-tracing findings, and request that the DSP send the DA home to quarantine and self-monitor for COVID-19 symptoms per CDC guidance.

Temperature Checks:

Amazon requires temperature checks for all employees and contractors (including DSPs) who enter Amazon sites through an employee entrance. At most Amazon sites where DSPs operate, Amazon provides on-premises temperature checks for each DSP employee who enters the site through an employee entrance. At sites where this is not available, DSPs must implement a daily temperature check for their delivery drivers who operate out of that site. Delivery drivers use an app-based system to confirm that they took their temperature and that it is below 100.4ºF (or other temperature threshold established by local authorities). If a delivery driver has an elevated temperature, he or she is prohibited from entering the Amazon site or undertaking a delivery route, and must follow CDC guidelines, including staying home until they are able to confirm that they are fever-free.

Driver Relief Fund:

Amazon has set up a $25 million relief fund to pay DSP DAs for up to two weeks if they get sick with the virus or miss work due to quarantine.

19. How does Amazon track employee complaints about workplace safety?

Amazon encourages employees to raise workplace safety concerns and report noncompliance to any manager, the Workplace Health and Safety ("WHS") team, or to HR. The company will promptly investigate and take appropriate corrective action. Amazon does not tolerate retaliation against employees who report workplace safety concerns.

In responding to the pandemic, Amazon has sought feedback from employees. For example, Amazon uses a daily employee opinion survey called "Connections" to seek employee feedback about the effectiveness and consistency of Amazon's safety practices. Connections questions during the pandemic have covered topics such as social distancing compliance, proper facemask use, and the availability of cleaning supplies. Some examples of Connections questions are, "Are

you able to keep at least 6ft/2M from others at workstations/breakrooms?" and "Do you see crowding at breaks, meals, or shift changes?" In order to track and take actions on feedback collected from these questions, Amazon has employed a team of design engineers working with WHS professionals and operations to ensure that Amazon is meeting social distancing requirements. Sites have added breakrooms to address these concerns, in addition to staggering shifts and break times.

Amazon also has an open-door policy for employees. If they have safety concerns or ideas on how the company can improve (including COVID-19 measures), they are encouraged to bring these concerns to their managers, the WHS team, or HR. Through Amazon's open door process, employees are free to raise concerns to the highest executive levels, including by emailing Jeff Bezos directly. Amazon's executive escalations team will then assign the concerns for investigation through WHS, Legal, HR, and other departments, depending on the types of concerns raised. Executive escalations are thoroughly investigated, and Amazon reports back to the employee on the findings and the corrective actions taken (where applicable). Employees may also post concerns anonymously on the Voice of the Associate ("VOA") whiteboard—a board that appears in open areas of fulfillment centers and other buildings in Amazon's network where employees may anonymously write out a workplace safety or other concern. WHS, HR, and/or other management teams (depending on the issue raised) then investigate and respond to the concern, noting the corrective action taken (where applicable). A recent example of action taken from an issue flagged on a VOA board was a problem involving charging ports for powered industrial trucks. The issue was investigated, and the closed-out corrective item was then posted on the VOA board, noting that all charging ports were audited, faulty equipment was red-tagged, and repairs were completed.

Where the complainant's identity is known (meaning that the complaint was not anonymous), the complainant receives confirmation of case closure and a high-level summary of findings at the close of an investigation.

20. What is Amazon's system for responding to those complaints?

Amazon's system of responding to employee complaints is discussed in detail in response to Question 19 above.

21. How does Amazon track subcontractor complaints about workplace safety?

Amazon also welcomes workplace safety concerns and reports of noncompliance from subcontractors, including DSP drivers. Subcontractors are free to report safety concerns to their employers, who, in turn, notify Amazon of concerns. Employees of subcontractors are also free to use the same open-door policy available to Amazon employees by raising concerns with Amazon managers and executives, the WHS team, or HR. DSPs are contractually required to follow Amazon's safety policies while onsite at Amazon premises, and to comply with all applicable laws pertaining to motor vehicle operation and workplace safety. DSPs must report

any significant safety incidents to the On Road Emergency Hotline. DSPs can contact the On The Road team to make a complaint, and DAs can also make a complaint through a hotline managed by the DSP Relations and Risk team. The DSP and DA complaints are then logged and triaged to the appropriate team for investigation. All safety incidents reported to Amazon are tracked and disseminated through Amazon's Global Operations Center ("GSOC") so that appropriate responses, safety measures, and corrective actions may be taken for the safety of the DSPs and their drivers.

Amazon's contractor population also includes the Amazon Flex delivery model, where individuals download the Flex App on their personal devices, then use their own personal vehicles to deliver packages and groceries. Flex drivers can contact support via the Amazon Flex app for workplace safety or other concerns. The Shipping, Delivery & Support team within Amazon Flex receives and tracks complaints from delivery partners. For high-severity complaints, support will escalate management of the complaint to Amazon's GSOC. The GSOC team manages and reviews incidents and complaints and takes action to protect the safety of all delivery partners, affected co-workers, community members, and any other affected persons to mitigate any potentially unsafe situation.

22. What is Amazon's system for responding to those complaints?

Workplace safety complaints from subcontractors are just as important to Amazon as concerns raised by Amazon employees, and the responses to the above questions regarding responses to employee complaints are also applicable here. Complaints from subcontractors and/or their employees are reviewed, assigned for investigation as needed, corrective action taken where appropriate, and case/closure and investigation summary provided as discussed in response to Questions 19–21.

23. Does Amazon track employee complaints about racial bias in the workplace?

Yes. Amazon tracks employee complaints about race discrimination in order to engage in appropriate investigation and action.

24. What is Amazon's policy on addressing those complaints?

Amazon maintains a zero-tolerance policy with respect to racial, sexual, and religious discrimination and harassment. Amazon provides equal opportunity in all aspects of employment and will not provide refuge to any individual or act that diminishes its discrimination and harassment standards. Amazon's policies encourage any employee who believes that they have been discriminated against, harassed, or have suffered retaliation for reporting discrimination or harassment to report it to any manager or to HR. Employees may also report complaints about racial bias, discrimination, or harassment confidentially and anonymously through the Amazon Ethics Line. Amazon does not tolerate retaliation against employees who report unlawful discrimination or harassment and Amazon will promptly investigate and take appropriate corrective action when incidents are reported.

25. Please share the titles of all Amazon staff who play a role in charge of reviewing employee and subcontractor complaints about workplace safety and racial discrimination, identifying and implementing responses to those complaints, and making changes and interventions in the workplace based on those complaints.

Amazon professionals who play a role in responding to and resolving workplace complaints include WHS professionals (WHS Specialists, Managers, Regional Managers, Multi-Regional Managers, and Directors), HR Business Partners, Employee Relations Specialists and investigators, and HR Managers. Where a complaint involves the operations team within the Amazon Customer Fulfillment network, titles for operations managers include Site Leader, General Manager, Senior Operations Manager, Area Manager, and Regional Operations Director. The Loss Prevention team may also be utilized where relevant to the complaint. Professionals in the employee's management chain may also be involved. Additionally, Amazon Employee Relations teams include specialized HR investigatory functions, which provide unbiased investigative services to Amazon employees raising or escalating complaints. For complaints involving DSPs, the Amazon staff involved in reviewing, responding, and making changes/interventions based on the DSP or DA complaints will vary based on the issues raised in the complaint. Depending on the issues raised, stakeholders include DSP Relations and Risk Contract Relations Manager, Amazon Central Investigations HR Investigator, Loss Prevention on the Road Risk Manager, and Legal. For Flex complaints, Amazon staff involvement will also vary based on the issues raised in the complaint. Usual stakeholders for complaints involving Flex are: WW Flex Safety, Voice of the Driver, Flex Field Ops, Head of Flex, NA, SDS Operations, and Legal.

26. Please share the names and titles of Amazon staff who have final decision-making authority over Amazon's responses to worker complaints.

All of the above-referenced HR professionals can have decision-making authority. Matters are addressed on a case-by-case basis.

27. How does Amazon track COVID-19 infections in warehouses, with subcontracted warehouse cleaning workers, with subcontracted delivery workers, and with Whole Foods employees?

When Amazon receives notice that an individual employed at a particular Amazon facility has a confirmed diagnosis[ii] of COVID-19 or is presumed[iii] to have COVID-19, Amazon has protocols in place for managing the situation. These protocols also apply when Amazon is notified about a COVID-19 case (either confirmed or presumptive) by a third-party cleaning vendor whose

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[ii] A case is considered "confirmed COVID-19" when the diagnosed individual has a written viral laboratory (PCR test) confirmation of COVID-19 viral infection.

[iii] A case is "presumptive" or "presumed COVID-19" (also known as "probable") when the individual is diagnosed with COVID-19 by a healthcare professional, without laboratory testing, but has a medical note/certificate stating the COVID-19 diagnosis.

employee worked inside an Amazon building, and DSPs regarding their DAs. These protocols are based on recommendations from health and safety regulators and experts, including the CDC, OSHA, WHO, and state and local health authorities. Amazon confirms when the diagnosed person was last on site in order to determine whether routine COVID-19 cleaning and disinfection (beyond Amazon's standard, extensive COVID-19 cleaning protocols) are necessary. In making this determination, Amazon evaluates where the diagnosed person was in the building, for how long, with whom they interacted, and how much time has passed since they were on site, among other factors. Amazon then manages the case consistent with CDC guidance and Amazon's protocols.

In addition, following a confirmed COVID-19 case, Amazon completes contact tracing where appropriate based on CDC guidance to identify those who were in close prolonged contact with the diagnosed worker. Third-party vendors (including DSPs and their DAs) are also notified when their employees are identified as a "close contact" under Amazon's policy, where the procedures described here also apply. Per CDC Guidance, Amazon defines "close contact" as being within six feet of the diagnosed individual for more than 15 minutes. From the outset, Amazon's policy has been that the contact tracing period should begin two days (48 hours) prior to the date of the diagnosed worker's first symptoms, and end on the last date the diagnosed worker was on site. In late June 2020, Amazon's policy was further revised to reflect CDC guidance on asymptomatic cases, which requires that the contact tracing period begin two days prior to the laboratory test confirming that the diagnosed individual has COVID-19. For diagnosed employees, Amazon conducts contact tracing by reviewing closed-circuit television monitoring video (where available) and interviewing the diagnosed employee[iv] about, among other things, whether the diagnosed individual recalls having close contact with anyone who works at an Amazon facility (including contractors). The scope of Amazon's contact tracing also includes identifying close contacts on site, as well as those who have carpooled with a diagnosed employee for periods longer than 15 minutes, and those who cohabitate with a diagnosed employee. In addition, Amazon proactively reaches out to local health authorities to advise of confirmed COVID-19 cases and to ensure alignment in definitions of close contacts.

See the below response to Question 28 regarding notification by Amazon to employees who were in close contact with a diagnosed individual as part of Amazon's contact tracing analysis, which provides additional responsive information to Question 27.

Whole Foods Market tracks COVID-19 positive cases through its Global Team Member Services and HR teams. Whole Foods Market also engages in case management as described above, including contact tracing when the store learns that an individual employed at a particular Whole Foods Market facility has a confirmed diagnosis of COVID-19. Whole Foods Market

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[iv] In cases where Amazon is notified by a third-party vendor that their employee has a confirmed or presumptive COVID-19 diagnosis, Amazon would ask them to collect relevant information for contract tracing purposes and provide it to their Amazon contract manager.

provides appropriate information to state and local health authorities, and complies with any reasonable follow-up information requests.

28. How does Amazon disseminate information about COVID-19 infections to potentially impacted workers in Amazon facilities?

Amazon notifies employees about individuals employed at their facility who have been diagnosed with COVID-19 or who are presumed to have COVID-19 (but not the identity of the individuals diagnosed), in line with guidance from the CDC and the U.S. Equal Employment Opportunity Commission. These notifications are made through small-group, in-person discussions with management (that comply with social distancing guidelines), text notifications, and/or Amazon's "A to Z" application. Individuals, including employees of third-party vendors (including DSPs) identified as having had close, prolonged contact with diagnosed individuals are also notified as part of the contact tracing process, discussed in response to Question 27.

29. Please provide a list identifying the number of COVID-19 cases and infection rates in each of Amazon's warehouses or fulfillment sites in the United States.

Amid this public health crisis, there is community spread of COVID-19, including in many of the communities where Amazon employees live and work. Amazon has acted quickly to implement safety procedures to keep employees safe and to try to avoid the transmission of COVID-19 in Amazon facilities even where it exists in the communities where Amazon has a presence. Amazon's process updates include some of the measures discussed throughout these responses to your questions, such as routine COVID-19 cleaning, staggering shift times to maintain distancing as employees enter and exit buildings, rearranging work stations and breakrooms to facilitate social distancing, conducting thermal screenings, and mandating usage of masks/face coverings by employees. But, COVID-19 still exists outside of the workplace, and has continued to spread in communities across the United States in homes or places with no relation to Amazon. The U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA") recognized the significant likelihood of transmission through many other sources in communities outside of work in its May 2020 enforcement guidance concerning COVID-19, stating that "[g]iven the nature of the disease and the ubiquity of community spread[,] . . . in many instances, it remains difficult to determine whether a COVID-19 illness is work-related, especially when an employee has experienced potential exposure both in and out of the workplace."

Amazon believes the best use of tracking case counts is accomplished by local health authorities ("LHAs"), who then use case data to assist their efforts to prevent the spread of COVID-19 within their communities. As Amazon learned of the first cases of COVID-19 with employees at Amazon sites in the United States in the early days of the pandemic, Amazon began engaging with LHAs across the nation to notify them of confirmed or presumed COVID-19 cases. The purpose is to arm LHAs with the information they need to investigate COVID-19 cases in their communities, to clarify their definitions of "close contact," and to advise them of actions taken

based on Amazon's case management policy. When Amazon receives confirmation that an employee has been diagnosed with COVID-19, among other steps, an Amazon safety professional attempts to contact the LHA where the employee resides. Amazon has been proactively reaching out to state and local health authorities to determine their preferred methods of contact, to better partner with them and provide notifications, and to learn about other opportunities to collaborate.

30. Since all of the warehouse and contract delivery workers fired by Amazon after speaking out about working conditions have been Black workers (including Chris Small and Gerald Bryson, NY; Bashir Mohammed, MN; Courtney Bowden, PA; and Andre Kirk, IN), has Amazon examined its workplace policies and enforcement practices to determine whether those policies have a disparate impact or are being enforced in a manner that place a disparate burden on Black workers?

Amazon supports every associate's right to raise concerns to their manager, and has zero tolerance for retaliation against associates who do so. However, that does not come with blanket immunity against any and all internal workplace policies. All U.S. associates are expected to follow the company's Standards of Conduct. The Standards of Conduct contain a list of examples of infractions that may result in corrective action, up to and including termination of employment. The Standards of Conduct are only guidelines; of course, it is not possible to list all the forms of behavior that are unacceptable in a workplace, and the Standards of Conduct are not intended to be all-inclusive or exhaustive. Similarly, Amazon maintains the ability in all circumstances to apply the appropriate level of corrective action, up to and including immediate termination of employment, without prior corrective action. Disciplinary decisions are made on a case-by-case basis, depending on the facts of the specific occurrence. Amazon continuously reviews these standards.

31. Does Amazon plan on adjusting the wages for non-supervisory warehouse workers up to or above $19.22, the nationwide average hourly wage for non-supervisory warehouse workers?

In 2018, Amazon announced an increased minimum wage of $15 for all full-time, part-time, temporary (including those hired by agencies), and seasonal employees across the United States. In many places around the country, Amazon's starting wage is even higher—in fact, 45% of entry-level fulfillment center employees make more. Amazon is proud that its minimum wage is more than what most other retailers offer even after their temporary increases in recent months, and Amazon hopes its peers will bring their minimum pay closer to Amazon's. Amazon has publicly advocated that Congress should raise the federal minimum wage to $15 as well. Amazon hopes others follow its lead, like Target and Best Buy did only recently. Fifteen dollars should be the minimum anyone is paid in the U.S.—but 42% of U.S. workers make less for an hour's work. In addition to its industry-leading minimum wage, Amazon's benefits package on Day One includes: medical, vision, and dental insurance; generous parental leave, including five months of maternity leave; and a network of support programs. Full-time, hourly employees have the same benefits as corporate employees, ensuring every Amazonian has access to the

best health care and insurance programs. Amazon will continuously evaluate its pay structure for hourly workers and will update it as appropriate.

32. What is Amazon's written policy on how the company responds to union drives and other protected, concerted activities designated under the National Labor Relations Act?

Amazon respects the rights of employees to engage in protected, concerted activities, including protests, and follows applicable law with respect to protected activities. Amazon believes that candid and constructive communication is essential to the smooth functioning of the workplace and to maintaining an atmosphere of mutual respect. Accordingly, Amazon has an "open door" policy, which means that employees are welcome to discuss any suggestion, concern, or other feedback with any member of the company's management. Amazon believes that this direct communication is the most effective way to understand and respond to the needs of its workforce. Associates are encouraged to provide feedback—through public channels like team meetings or the "Voice of Associate" whiteboard, or through private channels such as Connections surveys and closed-door meetings with their managers. Amazon does not tolerate retaliation against employees who raise concerns.

33. Please identify all complaints filed against Amazon with OSHA, the EEOC and the National Labor Relations Board since 2015.

NLRB charges and petitions are available at https://www.nlrb.gov/reports/graphs-data/recent-filings and decisions are available at https://www.nlrb.gov/search/case. OSHA activity is available at https://www.osha.gov/pls/imis/establishment.html. EEOC charges of discrimination are not public. And, while Amazon, like most large U.S. employers, receives many such charges each year, the vast majority are dismissed by the agency or otherwise amicably resolved by the parties. As a result, such nonpublic charges necessarily provide an incomplete perspective of Amazon's commitment to its obligations under U.S. employment law. Amazon's initial search has found approximately 1,480 charges since 2015. Over the same period, approximately 16 of those cases resulted in a "cause" or "partial cause" finding after an investigation.

34. What is Amazon's written policy as to whether employees (including Whole Foods and warehouse workers) are permitted to wear masks, buttons, and other clothing with expressive speech, including "Black Lives Matter"? How have supervisory employees in warehouses and Whole Foods been informed of this policy?

Amazon maintains a neutral dress code policy. In customer-facing operations, among other guidelines, Amazon requires that shirts/tops, pants, hats and personal protective equipment ("PPE") *(e.g.*, masks/gloves) be free of any slogan, flags, symbols or advertising patterns, or logos that could be visible to customers, other than Amazon branding.

Amazon's general dress standard for non-customer facing associates permits pictures, symbols, statements, and slogans on clothing or visible tattoos as long as they are not offensive such that they would violate Amazon's harassment, discrimination, or other related policies. In order to

operate in a customer-focused environment, all Whole Foods Market Team Members must comply with the longstanding company dress code, which prohibits clothing with visible slogans, messages, logos or advertising that are not company-related. Amazon and Whole Foods Market managers are in charge of enforcement of such policies, which are included in Amazon's Owner's Manual and Guide to Employment and Whole Foods Market's General Information Guide, which every employee receives at the beginning of their employment.

35. Your general counsel recently declared that Chris Smalls, a Black worker who Amazon fired after he raised workplace safety issues, is "not smart or articulate." Has your General Counsel faced any consequences from the company for this statement?

The comment was made at an internal meeting after General Counsel David Zapolsky heard about Mr. Smalls's public misstatements about Amazon and his deliberate violations of policies that protect the health of Amazon's workers. Mr. Zapolsky was not aware of Mr. Smalls's race. He has taken full responsibility for his word choices and he publicly apologized, explaining: "My comments were personal and emotional. I was frustrated and upset that an Amazon employee would endanger the health and safety of other Amazonians by repeatedly returning to the premises after having been warned to quarantine himself after exposure to virus COVID-19. I let my emotions draft my words and get the better of me."

Amazon

Questions from Rep. Kelly Armstrong

1. **Please explain the types of music licenses Twitch has secured for Twitch Sings.**

Twitch Sings is a product that enables Twitch users to create and share videos of their personal vocal performances of popular, licensed songs. The app offers a digital karaoke experience and, as such, provides users with so-called "karaoke" recordings (*i.e.*, instrumental recordings) for them to sing along to, rather than original sound recordings featuring original artists.

Prior to the launch of Twitch Sings, Twitch secured and paid for global catalog-wide license agreements with music publishers. These licenses enable users to create videos of their performances with the Twitch Sings app, and to stream these videos in the Twitch Sings app and the Twitch service. The licenses also include a limited right to use excerpts of performance videos in marketing channels to promote Twitch Sings.

Additionally, Twitch secured global license agreements under which it pays royalties to record labels for Twitch Sings, which grant similar rights to Twitch with respect to their karaoke recordings.

2. **Please explain whether Twitch secures music licenses for other types of Twitch streaming besides Twitch Sings.**

Twitch is a global community that comes together each day to create the future of entertainment, with streaming content ranging from casual gaming and world-class e-sports to cooking shows, comedy programs, and sporting events.

Twitch has secured and paid for copyright licenses with the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., the Society of European Stage Authors and Composers, and equivalent performing rights organizations around the world, which cover the public performance of musical compositions embodied in music streamed on the service.

Like other businesses that produce original content, Twitch secures and pays for music licenses for the use of sound recordings and musical compositions in the content that it produces. These licenses typically grant Twitch the right to distribute the production music, as included in Twitch-created content, across a variety of media channels including Twitch.

3. **Does Twitch provide resources to streamers on how to obtain music licenses that would mitigate Digital Millennium Copyright Act takedown notices on Twitch streams?**

Twitch seeks to provide streamers with clear parameters regarding the use of music on the Twitch service. As part of this effort, Twitch publishes Music Guidelines and Terms of Service that state that it is a violation of Twitch policies to stream content containing copyrighted music, unless a streamer has the necessary rights or authority to do so. In addition, Twitch will be providing other educational resources to its creators as part of its Creator Camp educational

video series, including with respect to music licensing. These resources are anticipated to launch before the end of 2020 and will augment the music licensing resources that Twitch already shares directly with streamers engaged in monetizing their videos on Twitch. These resources supplement existing third-party applications and services which Twitch creators can use to add rights-cleared music to their streams.

Amazon

Questions from Rep. Mary Gay Scanlon

1. **The General Services Administration (GSA) awarded Amazon one of three contracts to conduct a pilot commercial e-commerce program. Do you feel it is a conflict of interest for Amazon to sell its own products on a government platform it is in charge of running and maintaining? If not, how can non-Amazon sellers be assured that there will be a level playing field for their products in the portal?**

No, Amazon does not believe that Amazon's commercial practice of offering products sold by Amazon and third-party sellers represents a conflict of interest. Indeed, Amazon believes it provides the best customer experience, including low prices, great selection, and convenience, by making it easy for customers to shop for all selection in Amazon's store, whether sold by Amazon or a third-party seller.

Pursuant to Section 846 of the National Defense Authorization Act for Fiscal Year 2018 ("FY18 NDAA"), GSA awarded Amazon and two other businesses contracts to conduct a pilot for its Commercial Platforms Initiative. GSA analyzed numerous online shopping models to determine which one was best suited for the pilot and selected the "e-marketplace model," under which customers can purchase from the operator of the store and third parties. Consistent with the FY18 NDAA, the pilot provides GSA with access to Amazon's store with the same features, products, and prices that Amazon offers to other organizational customers, not a custom site experience.

Amazon invests heavily to ensure third-party sellers' success. For example, over the course of 2019 and 2020, Amazon will have invested more than $30 billion in logistics, tools, services, programs, and people to help Amazon's selling partners reach more customers worldwide. These tools allow sellers to get access to data to help them increase sales, manage inventory, and more efficiently keep their books. Today, third-party sellers account for nearly 60% of sales of physical products by value in Amazon's store. Revenues earned by American small to medium-sized businesses from Amazon Business customers exceeded $7 billion between June 2019 and June 2020.

To further assist third-party sellers, Amazon Business's Seller Certification Program allows sellers, including small and disadvantaged businesses, to claim and display nationally and state-recognized diversity and ownership certifications, including Small Business, Minority-Owned Business, SBA-Certified HUB Zone Firm, SBA-Certified 8(a) Firm, Veteran-Owned Small Business, and Service Disabled Veteran-Owned Small Business. Buyers can use filters to refine search results to items with offers from certified sellers.

Amazon

2. How will Amazon ensure that Amazon employees do not access and improperly use proprietary information collected from independent or third party sellers via the GSA pilot? Noting your inability to "guarantee" to the subcommittee that Amazon's policy against using seller-specific data to aid its private-label business "has never been violated," please explain how you will communicate this policy to employees and how you will ensure compliance during the pilot?

Consistent with the authorization provided in the FY18 NDAA and with GSA's Request for Proposal, Amazon Business uses the same practices with regard to third-party seller information that Amazon uses across its store. Amazon recognizes that third-party sellers are our customers too, and their trust is critical to Amazon's success. In an effort to further this partnership, Amazon decided years ago to take additional voluntary steps to protect seller data by instituting its voluntarily-adopted Seller Data Protection Policy, which prohibits Amazon Retail teams from using non-public seller-specific data to compete against third-party sellers. Amazon trains employees on the policy and regularly audits its systems and processes for compliance. Likewise, Amazon encourages employees to report any indication of potential lack of compliance with its internal policies, including its Seller Data Protection Policy, and Amazon responds appropriately to any such reports. And, as with any other Amazon policy, Amazon takes appropriate action in response to any policy violations.

3. It is critical that federal government employees be able to reliably purchase legitimate, verified products via the GSA's new commercial e-commerce program pilot. How will Amazon ensure that counterfeit products are not sold to government officials? Will you commit to providing contact information for any independent or third party sellers who list their products on the GSA's commercial e-commerce platform?

Amazon is committed to ensuring that only safe and authentic products are offered in Amazon's store. Amazon strictly prohibits the sale of counterfeit products, and requires that all products in Amazon's store comply with applicable laws, regulations, and Amazon policies. In addition, Amazon Business regularly checks for any sellers that appear on the Office of Inspector General's and SAM.gov's debarment lists, which gives a government purchaser the ability to block or restrict purchases from such sellers.

Amazon goes well beyond its legal obligations and invests heavily in proactive efforts to prevent bad listings—including counterfeits—from ever reaching Amazon's store. In 2019 alone, Amazon invested over $500 million and has more than 8,000 employees who focus on fighting fraud and abuse. Amazon has built industry-leading tools like Brand Registry, which uses machine learning to block counterfeits. Additionally, Amazon developed Project Zero, a program that empowers brands to help Amazon drive counterfeits to zero in Amazon's store, and Transparency, a program that enables customers to verify product authenticity. Amazon's efforts have ensured that 99.9% of all products viewed by customers on Amazon did not have a valid counterfeit complaint.

On July 8, 2020, Amazon informed third-party sellers that Amazon is enhancing the seller profile page, and beginning September 1, 2020, will display sellers' business names and addresses.

4. What processes will Amazon put in place for federal purchasers if they believe they have purchased a counterfeit, unsafe, or stolen good via the e-commerce program pilot? Should Amazon be liable for a counterfeit – say, counterfeit furniture – sold through its platform that fails and results in injury or harm to a government official?

Amazon's mission is to be Earth's most customer-centric company; Amazon works vigorously to earn and keep customer trust, and an obsession with delivering an amazing customer experience is at the heart of everything Amazon does. Stores like Amazon provide tremendous selection, convenience, and value to consumers, as well as unprecedented opportunities for millions of small and medium-sized businesses. Unfortunately, this also presents an attractive target for criminals and bad actors to attempt to attack Amazon's store. That is why Amazon invests heavily in machine learning and other systems, as noted above, to proactively detect and remove suspect listings. In addition to proactive technology investments and industry-leading brand protection tools, Amazon also continuously scans feedback from customers, such as customer reviews and contacts to Amazon's customer service team, for signs of any safety or authenticity issues and takes action on any suspected product, and uses this information to improve the proactive controls.

Amazon also has robust mechanisms in place for enabling rights owners to file notices of infringement. Once a notice of infringement is received, a dedicated team of investigators evaluates the claim and takes appropriate action. Amazon has employees around the world who are able to investigate reports of counterfeits 24 hours per day, seven days per week. If a notice is determined to be valid, Amazon's actions may include removing the product for sale (or other similar actions that address the specific infringement), terminating the seller's account or related accounts, withholding funds, destroying inauthentic inventory, pursuing civil litigation, and working with law enforcement to support criminal prosecution.

If a bad actor is able to evade Amazon's detection mechanisms and sell counterfeit products, Amazon makes it easy for customers to report those concerns. Amazon ensures that any customer who purchased a counterfeit product is able to receive a refund. Every Amazon customer is also protected by the "A-to-Z Guarantee": if a customer suspects a product they purchased from a third-party seller through Amazon's store is inauthentic, Amazon will refund the purchase price if the seller refuses to do so. However, even if a customer does not report an issue, if Amazon believes a customer purchased a counterfeit, it proactively notifies and refunds customers, even when those products are sold by third-party sellers in Amazon's stores.

Amazon prohibits the sale of stolen products and provides options for rights owners and law enforcement to report suspected stolen goods. If aware that a product is stolen, Amazon takes action against the party who sold that product, including by removing the product for sale (or other similar actions that address the specific violation), terminating the seller's account or

related accounts, withholding funds, destroying suspect inventory, pursuing civil litigation, and working with law enforcement to support criminal prosecution.

Amazon is absolutely committed to keeping our customers safe. Amazon invests heavily to ensure the products in Amazon's store are safe, and works closely with relevant government agencies when made aware of products that may be unsafe. Amazon welcomes further discussion about how industry and government can collaborate to ensure customers' safety and root out bad actors.

5. Will Amazon share with Congress the names and contact information of third party or independent sellers who agree to list and sell their products on the GSA's new commercial e-commerce program pilot, along with the products that are listed?

Consistent with the authorization provided in the FY18 NDAA and with GSA's Request for Proposal, pilot participants can purchase from any third-party seller who offers products via Amazon Business—sellers do not agree to list and sell products specifically to government purchasers through the pilot program. Amazon uses the same practices with regard to seller identification that Amazon uses across its store. Information identifying sellers is shown on the detail page of each product sold on Amazon. As explained in response to Question 3, beginning September 1, 2020, Amazon will display sellers' business names and addresses on seller profile pages.

6. For any products that will be offered by both Amazon and (a) third party seller(s) on the GSA portal, will you provide to Congress the product lists and relative pricing of each?

Consistent with the authorization provided in the FY18 NDAA and with GSA's Request for Proposal, no products or prices are unique to GSA's use of the Amazon Business store. Amazon uses the same practices with regard to listed products and pricing that Amazon uses across its store. One of the benefits of GSA purchasing in the Amazon store is that all offers and their corresponding prices for a product are easily viewable directly in the store and government purchasers benefit from commercially available pricing.

Amazon

Questions from Rep. Lucy McBath

1. **Please describe the process for a third-party seller who has a complaint or issue in need of resolution, including the seller's options for initial outreach and how a seller can escalate a complaint or issue to a supervisor or otherwise if a response is unsatisfactory to the seller.**

Selling partners have a variety of ways to contact Amazon employees. They can always contact Amazon directly through email and engage with moderators through Amazon's public online forums. In addition, selling partners with a Professional Selling Plan can contact Amazon through phone and chat. The most common way for sellers to reach an Amazon employee is to use the "Contact Us" option within the "Help" section of Seller Central (the online portal for third-party sellers). They have numerous other options to initiate a conversation with Amazon, including through their account health dashboard in Seller Central, through help pages and forums in Seller Central, through links included in emails that Amazon sends, and through Amazon's mobile selling app. Amazon proactively monitors support cases to help ensure that sellers receive timely and accurate information. In some cases, Amazon calls sellers before suspending their accounts to try to address the underlying issue and prevent account suspension.

2. **What number and percentage of total seller complaints are resolved through responses that are individualized responses, that are not the result of artificial intelligence for each month over the past five years? Please describe the relevant circumstances, including the channel of communication, degree and type of human involvement in the response, and time permitted for an individualized, human-generated response.**

Amazon's Selling Partner Support team handled more than 58 million contacts from selling partners in 2019 and strives to respond to and resolve every contact expeditiously. To do this, Amazon relies on nearly 15,000 people around the world and, to help sellers resolve issues quickly, provides fast, automated responses to some questions; sellers seek additional clarification from an associate in less than 20% of these cases. Overall, more than 90% of emails are responded to in under 12 hours, more than 95% of phone calls are answered in under 90 seconds, more than 90% of chats are answered in under 90 seconds, and more than 85% of all seller issues are fully resolved in under 24 hours.

3. **Has Amazon implemented any measures aimed at reducing the costs of providing support to third-party sellers within the past ten years. If yes, (a) describe each of those measures; (b) whether Amazon received any complaints from third-party sellers about these changes; and (c) describe the number and nature of the complaints associated with each change.**

Amazon makes significant investments to support Amazon's selling partners 24 hours per day, 7 days per week with nearly 15,000 people around the world dedicated to understanding, responding to, and providing support to selling partners. Amazon employs more than 7,000 people worldwide to build and maintain the systems and tools that make it easier for selling

partners to reach our customers. We aim to reduce costs by eliminating the root cause issues that led to a seller having an issue—whether that's an issue in a product feature, more clear communication, or better self-service tools.

4. **For Amazon employees who are responsible for providing support and assistance to third party sellers, (a) provide the number of employees, broken down by full-time, part-time, specific department, and location, who are devoted exclusively to the resolution of seller concerns and complaints; (b) describe the amount and type of training and/or education Amazon provides to each employee upon initial hiring and on a continuing basis to equip them with the information they need to provide meaningful support and assistance to third-party sellers; and (c) specify the types of authority each employee involved in seller support has to implement any changes to a seller's listing or account, including the number of employees who have each type of authority.**

   Amazon makes significant investments to support Amazon's selling partners 24 hours per day, 7 days per week with nearly 15,000 people around the world dedicated to understanding, responding to, and providing support to selling partners. Amazon's Selling Partner Support and Account Health Support associates are supported by dedicated training programs that provide at least 20 days of instructor-led training in their first 90 days, additional training based on areas of specialization, databases of information that help them answer questions quickly, and ongoing accuracy reviews to maintain high quality service.

5. **Please identify the number of times over the past five years that Amazon's responded to a third-party seller concern or complaint by telling the seller that it cannot disclose the reason why it has taken an action or refused to take an action with respect to a seller's listing or account due to proprietary reasons, leaving the seller with no explanation for the action or inaction?**

   Amazon strives to make its selling policies clear and easy to understand for sellers. Amazon provides account health dashboards and alerts, inventory management tools, a host of performance reports, and dedicated APIs that help selling partners track the performance of their products and accounts, and that give them warning of issues as they arise. Amazon offers self-service resolution for many issues, enabling sellers to edit their listings or fix other common problems instantaneously.

   When a seller has violated Amazon's policies, Amazon may take enforcement action to protect customers, such as removing offers or suspending a seller's account. Amazon proactively notifies sellers when taking these actions, often through various communication channels. Amazon's notices aim to provide clear and actionable information to sellers. They describe the policy violation that led to the action, and include instructions for how to appeal and how to contact Amazon for help. In some cases, Amazon calls sellers before suspending their accounts to try to address the underlying issue and prevent account suspension.

Amazon also offers an appeals process where sellers can explain how they will prevent the violation from happening in the future or let Amazon know if they believe the enforcement action was a mistake. Those appeals are handled by specialized teams, and sellers are able to submit information to support their case. Even when sellers are suspended for policy violations they committed, Amazon realizes 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. Sellers whose accounts are suspended can contact Amazon's trained account health support specialists for assistance with an appeal.

Amazon must protect both our customers and selling partners from fraud, counterfeits, and other forms of abuse, and in order to do so, Amazon sometimes takes swift action to suspend selling accounts that have violated Amazon's selling policies. To prevent demonstrated bad actors from gaming the system or obtaining insights into how Amazon detected them, Amazon may limit the information provided in suspension notices for egregious violations (*e.g.*, stolen identity, credit card fraud, efforts to defraud our customers, counterfeits, etc.). Amazon wants to provide honest sellers with every opportunity to be successful while at the same time ensuring that customers have a safe and trustworthy shopping experience.

6. **Please confirm that it is Amazon's position that for a third-party seller, Amazon can "limit the ability to sell in a category," without disclosing any reason for doing so, including for "reasons that are internal to Amazon." If this is not the case, please explain how Amazon's position is different and what limitations, if any, exist on Amazon's ability to restrict a third-party seller's ability to sell on Amazon Marketplace without providing any substantive reason or justification for doing so.**

Amazon is focused on making sure our customers receive products that are safe, authentic, and meet their expectations for competitive prices and availability. Amazon wants as many sellers of a product as possible; that is why Amazon invited independent sellers into its store. And, of course, Amazon occasionally limits who can sell a product. For example, to list certain product categories, brands, or other types of products with heightened authenticity or safety concerns, third-party sellers must meet additional requirements.

When it places these limitations, Amazon notifies sellers that it is implementing additional requirements for certain products they are selling, and tells them which products they are no longer eligible to sell. In many cases, sellers are eligible to submit an application to sell the affected products and can contact Amazon's seller support team to appeal the decision.

7. **Please describe the process through which e-mails sent to Jeff@Amazon.com are handled over the past five years, including (a) who reviews these e-mails; (b) how often these emails are reviewed; (c) how it is decided which seller issues raised in those e-mails will be addressed; and (d) how those issues will be addressed (e.g., whether sellers receive an automated response and whether an Amazon representative will follow up with sellers in order to work toward a resolution).**

   Amazon strives to be Earth's most customer-centric company, and listening to our customers, including selling partners, is at the core of what Amazon does every day. Emails sent to Mr. Bezos are reviewed by him or by members of his team, and questions from selling partners are transferred to the Selling Partner Support team to reach a timely and accurate resolution as part of the normal course of its work.

8. **If a third-party seller or first-party seller requests that Amazon return its inventory to the seller, please describe whether (a) Amazon will continue to charge the seller storage fees; and (b) whether there is any time limit on how long Amazon will continue to charge the seller storage fees, despite having received a request to return the inventory and refusing to return or delaying the return of the seller's inventory.**

   Amazon's Fulfillment by Amazon ("FBA") program is available only to third-party sellers; it does not apply to Amazon's first-party sales, where Amazon purchases products from vendors and resells them in its store. For the FBA program, sellers pay storage fees based on the space that their inventory takes up in Amazon's fulfillment centers. Sellers can remove inventory from a fulfillment center by submitting a removal request, and Amazon's practice is to stop charging sellers for storage within a day of receiving a removal request, regardless of whether Amazon continues to store the inventory.

Amazon

APPENDIX A

Amazon Privacy Notice

Last updated: January 1, 2020. To see prior version, click here.

We know that you care how information about you is used and shared, and we appreciate your trust that we will do so carefully and sensibly. This Privacy Notice describes how Amazon.com and its affiliates (collectively "Amazon") collect and process your personal information through Amazon websites, devices, products, services, online and physical stores, and applications that reference this Privacy Notice (together "Amazon Services"). **By using Amazon Services, you are consenting to the practices described in this Privacy Notice.**

- What Personal Information About Customers Does Amazon Collect?
- For What Purposes Does Amazon Use Your Personal Information?
- What About Cookies and Other Identifiers?
- Does Amazon Share Your Personal Information?
- How Secure Is Information About Me?
- What About Advertising?
- What Information Can I Access?
- What Choices Do I Have?
- Are Children Allowed to Use Amazon Services?
- EU-US and Swiss-US Privacy Shield
- California Consumer Privacy Act
- Conditions of Use, Notices, and Revisions
- Related Practices and Information
- Examples of Information Collected

What Personal Information About Customers Does Amazon Collect?

We collect your personal information in order to provide and continually improve our products and services.

Here are the types of personal information we collect:

- **Information You Give Us:** We receive and store any information you provide in relation to Amazon Services. Click here to see examples of what we collect. You can choose not to provide certain information, but then you might not be able to take advantage of many of our Amazon Services.
- **Automatic Information:** We automatically collect and store certain types of information about your use of Amazon Services, including information about your interaction with content and services available through Amazon Services. Like many websites, we use "cookies" and other unique identifiers, and we obtain certain types of information when your web browser or device accesses Amazon Services and other content served by or on behalf of Amazon on other websites. Click here to see examples of what we collect.
- **Information from Other Sources:** We might receive information about you from other sources, such as updated delivery and address information from our carriers, which we use to correct our records and deliver your next purchase more easily. Click here to see additional examples of the information we receive.

For What Purposes Does Amazon Use Your Personal Information?

We use your personal information to operate, provide, develop, and improve the products and services that we offer our customers. These purposes include:

- **Purchase and delivery of products and services.** We use your personal information to take and handle orders, deliver products and services, process payments, and communicate with you about orders, products and services, and promotional offers.
- **Provide, troubleshoot, and improve Amazon Services.** We use your personal information to provide functionality, analyze performance, fix errors, and improve the usability and effectiveness of the Amazon Services.
- **Recommendations and personalization.** We use your personal information to recommend features, products, and services that might be of interest to you, identify your preferences, and personalize your experience with Amazon Services.
- **Provide voice, image and camera services.** When you use our voice, image and camera services, we use your voice input, images, videos, and other personal information to respond to your requests, provide the requested service to you, and improve our services. For more information about Alexa voice services , click here.
- **Comply with legal obligations.** In certain cases, we collect and use your personal information to comply with laws. For instance, we collect from sellers information regarding place of establishment and bank account information for identity verification and other purposes.
- **Communicate with you.** We use your personal information to communicate with you in relation to Amazon Services via different channels (e.g., by phone, e-mail, chat).
- **Advertising.** We use your personal information to display interest-based ads for features, products, and services that might be of interest to you. We do not use information that personally identifies you to display interest-based ads. To learn more, please read our Interest-Based Ads notice.
- **Fraud Prevention and Credit Risks.** We use personal information to prevent and detect fraud and abuse in order to protect the security of our customers, Amazon, and others. We may also use scoring methods to assess and manage credit risks.

What About Cookies and Other Identifiers?

To enable our systems to recognize your browser or device and to provide and improve Amazon Services, we use cookies and other identifiers. For more information about cookies and how we use them, please read our Cookies Notice.

Does Amazon Share Your Personal Information?

Information about our customers is an important part of our business, and we are not in the business of selling our customers' personal information to others. We share customers' personal information only as described below and with subsidiaries Amazon.com, Inc. controls that either are subject to this Privacy Notice or follow practices at least as protective as those described in this Privacy Notice.

- **Transactions involving Third Parties:** We make available to you services, products, applications, or skills provided by third parties for use on or through Amazon Services. For example, you can order products from third parties through our stores, download applications from third-party application providers from our App Store, and enable third-party skills through our Alexa services. We also offer services or sell product lines jointly with third-party businesses, such as co-branded credit cards. You can tell when a third party is involved

in your transactions, and we share customers' personal information related to those transactions with that third party.

- **Third-Party Service Providers:** We employ other companies and individuals to perform functions on our behalf. Examples include fulfilling orders for products or services, delivering packages, sending postal mail and e-mail, removing repetitive information from customer lists, analyzing data, providing marketing assistance, providing search results and links (including paid listings and links), processing payments, transmitting content, scoring, assessing and managing credit risk, and providing customer service. These third-party service providers have access to personal information needed to perform their functions, but may not use it for other purposes.
- **Business Transfers:** As we continue to develop our business, we might sell or buy other businesses or services. In such transactions, customer information generally is one of the transferred business assets but remains subject to the promises made in any pre-existing Privacy Notice (unless, of course, the customer consents otherwise). Also, in the unlikely event that Amazon.com, Inc. or substantially all of its assets are acquired, customer information will of course be one of the transferred assets.
- **Protection of Amazon and Others:** We release account and other personal information when we believe release is appropriate to comply with the law; enforce or apply our Conditions of Use and other agreements; or protect the rights, property, or safety of Amazon, our users, or others. This includes exchanging information with other companies and organizations for fraud protection and credit risk reduction.

Other than as set out above, you will receive notice when personal information about you might be shared with third parties, and you will have an opportunity to choose not to share the information.

How Secure Is Information About Me?

We design our systems with your security and privacy in mind.

- We work to protect the security of your personal information during transmission by using encryption protocols and software.
- We follow the Payment Card Industry Data Security Standard (PCI DSS) when handling credit card data.
- We maintain physical, electronic, and procedural safeguards in connection with the collection, storage, and disclosure of personal customer information. Our security procedures mean that we may occasionally request proof of identity before we disclose personal information to you.
- Our devices offer security features to protect them against unauthorized access and loss of data. You can control these features and configure them based on your needs. Click here for more information on how to manage the security settings of your device.
- It is important for you to protect against unauthorized access to your password and to your computers, devices, and applications. Be sure to sign off when finished using a shared computer. Click here for more information on how to sign off.

What About Advertising?

- **Third-Party Advertisers and Links to Other Websites:** Amazon Services may include third-party advertising and links to other websites and apps. Third-party advertising partners may collect information about you when you interact with their content, advertising, and services. For more information about third-party advertising at Amazon, including interest-based ads, please read our Interest-Based Ads policy. To adjust your advertising preferences, please go to the Advertising Preferences page.
- **Use of Third-Party Advertising Services:** We provide ad companies with information that allows them to serve you with more useful and relevant Amazon ads and to measure their effectiveness. We never share

your name or other information that directly identifies you when we do this. Instead, we use an advertising identifier like a cookie or other device identifier. For example, if you have already downloaded one of our apps, we will share your advertising identifier and data about that event so that you will not be served an ad to download the app again. Some ad companies also use this information to serve you relevant ads from other advertisers. You can learn more about how to opt-out of interest-based advertising by going to the Advertising Preferences page.

What Information Can I Access?

You can access your information, including your name, address, payment options, profile information, Prime membership, household settings, and purchase history in the "Your Account" section of the website. Click here for a list of examples that you can access.

What Choices Do I Have?

If you have any questions as to how we collect and use your personal information, please contact our Customer Service . Many of our Amazon Services also include settings that provide you with options as to how your information is being used.

- As described above, you can choose not to provide certain information, but then you might not be able to take advantage of many of the Amazon Services.
- You can add or update certain information on pages such as those referenced in What Information Can I Access?. When you update information, we usually keep a copy of the prior version for our records.
- If you do not want to receive e-mail or other communications from us, please adjust your Customer Communication Preferences . If you don't want to receive in-app notifications from us, please adjust your notification settings in the app or device.
- If you do not want to see interest-based ads, please adjust your Advertising Preferences .
- The Help feature on most browsers and devices will tell you how to prevent your browser or device from accepting new cookies or other identifiers, how to have the browser notify you when you receive a new cookie, or how to block cookies altogether. Because cookies and identifiers allow you to take advantage of some essential features of Amazon Services, we recommend that you leave them turned on. For instance, if you block or otherwise reject our cookies, you will not be able to add items to your Shopping Cart, proceed to Checkout, or use any Services that require you to Sign in. For more information about cookies and other identifiers, see our Cookies Notice .
- If you want to browse our websites without linking the browsing history to your account, you may do so by logging out of your account here and blocking cookies on your browser.
- You will also be able to opt out of certain other types of data usage by updating your settings on the applicable Amazon website (e.g., in "Manage Your Content and Devices"), device, or application. For more information click here . Most non-Amazon devices also provide users with the ability to change device permissions (e.g., disable/access location services, contacts). For most devices, these controls are located in the device's settings menu. If you have questions about how to change your device permissions on devices manufactured by third parties, we recommend you contact your mobile service carrier or your device manufacturer.
- If you are a seller, you can add or update certain information in Seller Central , update your account information by accessing your Seller Account Information , and adjust your e-mail or other communications you receive from us by updating your Notification Preferences .
- If you are an author, you can add or update the information you have provided in the Author Portal and Author Central by accessing your accounts in the Author Portal and Author Central, respectively.

In addition, to the extent required by applicable law, you may have the right to request access to or delete your personal data. If you wish to do any of these things, please contact Customer Service . Depending on your data choices, certain services may be limited or unavailable.

Are Children Allowed to Use Amazon Services?

Amazon does not sell products for purchase by children. We sell children's products for purchase by adults. If you are under 18, you may use Amazon Services only with the involvement of a parent or guardian. We do not knowingly collect personal information from children under the age of 13 without the consent of the child's parent or guardian. For more information, please see our Children's Privacy Disclosure .

EU-US and Swiss-US Privacy Shield

Amazon.com, Inc. participates in the EU-US and Swiss-US Privacy Shield frameworks. Click here to learn more.

California Consumer Privacy Act

Click here to read additional disclosures required under the California Consumer Privacy Act.

Conditions of Use, Notices, and Revisions

If you choose to use Amazon Services, your use and any dispute over privacy is subject to this Notice and our Conditions of Use , including limitations on damages, resolution of disputes, and application of the law of the state of Washington. If you have any concern about privacy at Amazon, please contact us with a thorough description, and we will try to resolve it. Our business changes constantly, and our Privacy Notice will change also. You should check our websites frequently to see recent changes. Unless stated otherwise, our current Privacy Notice applies to all information that we have about you and your account. We stand behind the promises we make, however, and will never materially change our policies and practices to make them less protective of customer information collected in the past without the consent of affected customers.

Related Practices and Information

- Conditions of Use
- Seller Program Policies
- Help Department
- Most Recent Purchases
- Your Profile and Community Guidelines

Examples of Information Collected

Information You Give Us When You Use Amazon Services

You provide information to us when you:

- search or shop for products or services in our stores;

- add or remove an item from your cart, or place an order through or use Amazon Services;
- download, stream, view, or use content on a device or through a service or application on a device;
- provide information in Your Account (and you might have more than one if you have used more than one e-mail address or mobile number when shopping with us) or Your Profile ;
- talk to or otherwise interact with our Alexa Voice service;
- upload your contacts;
- configure your settings on, provide data access permissions for, or interact with an Amazon device or service;
- provide information in your Seller Account , Kindle Direct Publishing account , Developer account , or any other account we make available that allows you to develop or offer software, goods, or services to Amazon customers;
- offer your products or services on or through Amazon Services;
- communicate with us by phone, e-mail, or otherwise;
- complete a questionnaire, a support ticket, or a contest entry form;
- upload or stream images, videos or other files to Prime Photos, Amazon Drive, or other Amazon Services;
- use our services such as Prime Video;
- compile Playlists, Watchlists, Wish Lists or other gift registries;
- participate in Discussion Boards or other community features;
- provide and rate Reviews ;
- specify a Special Occasion Reminder; or
- employ Product Availability Alerts , such as Available to Order Notifications.

As a result of those actions, you might supply us with such information as:

- identifying information such as your name, address, and phone numbers;
- payment information;
- your age;
- your location information;
- your IP address;
- people, addresses and phone numbers listed in your Addresses;
- e-mail addresses of your friends and other people;
- content of reviews and e-mails to us;
- personal description and photograph in Your Profile ;
- voice recordings when you speak to Alexa;
- images and videos collected or stored in connection with Amazon Services;
- information and documents regarding identity, including Social Security and driver's license numbers;
- corporate and financial information;
- credit history information; and
- device log files and configurations, including Wi-Fi credentials, if you choose to automatically synchronize them with your other Amazon devices.

Automatic Information

Examples of the information we collect and analyze include:

- the internet protocol (IP) address used to connect your computer to the internet;
- login, e-mail address, and password;
- the location of your device or computer;
- content interaction information, such as content downloads, streams, and playback details, including duration and number of simultaneous streams and downloads, and network details for streaming and download quality, including information about your internet service provider;

- device metrics such as when a device is in use, application usage, connectivity data, and any errors or event failures;
- Amazon Services metrics (e.g., the occurrences of technical errors, your interactions with service features and content, your settings preferences and backup information, location of your device running an application, information about uploaded images and files such as the file name, dates, times and location of your images);
- version and time zone settings;
- purchase and content use history, which we sometimes aggregate with similar information from other customers to create features like Top Sellers ;
- the full Uniform Resource Locator (URL) clickstream to, through, and from our websites, including date and time; products and content you viewed or searched for; page response times, download errors, length of visits to certain pages, and page interaction information (such as scrolling, clicks, and mouse-overs);
- phone numbers used to call our customer service number; and
- images or videos when you shop in our stores, or stores using Amazon Services.

We may also use device identifiers, cookies, and other technologies on devices, applications, and our web pages to collect browsing, usage, or other technical information.

Information from Other Sources

Examples of information we receive from other sources include:

- updated delivery and address information from our carriers or other third parties, which we use to correct our records and deliver your next purchase or communication more easily;
- account information, purchase or redemption information, and page-view information from some merchants with which we operate co-branded businesses or for which we provide technical, fulfillment, advertising, or other services;
- information about your interactions with products and services offered by our subsidiaries;
- search results and links, including paid listings (such as Sponsored Links);
- information about internet-connected devices and services linked with Alexa; and
- credit history information from credit bureaus, which we use to help prevent and detect fraud and to offer certain credit or financial services to some customers.

Information You Can Access

Examples of information you can access through Amazon Services include:

- status of recent orders (including subscriptions);
- your complete order history;
- personally identifiable information (including name, e-mail, password, and address book);
- payment settings (including payment card information, promotional certificate and gift card balances, and 1-Click settings);
- e-mail notification settings (including Product Availability Alerts, Delivers, Special Occasion Reminders and newsletters);
- recommendations and the products you recently viewed that are the basis for recommendations (including Recommended for You and Improve Your Recommendations);
- shopping lists and gift registries (including Wish Lists and Baby and Wedding Registries);
- your content, devices, services, and related settings, and communications and personalized advertising preferences;
- content that you recently viewed;
- voice recordings associated with your account;
- Your Profile (including your product Reviews, Recommendations, Reminders and personal profile);

- If you are a seller, you can access your account and other information, and adjust your communications preferences, by updating your account in Seller Central .
- If you are an author, you can access your account and other information, and update your accounts, on the Kindle Direct Publishing (KDP) or Author Central website, as applicable.
- If you are a developer participating in our Developer Services Program, you can access your account and other information, and adjust your communications preferences, by updating your accounts in the Developer Services Portal.

KING & SPALDING

King & Spalding LLP
1700 Pennsylvania Ave, NW
Washington, D.C. 20006-4707
Tel: (202) 737-0500
Fax: (202) 626-3737
www.kslaw.com

Alicia C. O'Brien
Direct Dial: 202-626-5575
aobrien@kslaw.com

September 11, 2020

BY ELECTRONIC MAIL

Google – Highly Confidential

The Honorable Jerrold Nadler
Chairman
The Honorable Jim Jordan
Ranking Member
Committee on the Judiciary

The Honorable David N. Cicilline
Chairman
The Honorable F. James Sensenbrenner, Jr.
Ranking Member
Subcommittee on Antitrust, Commercial, and Administrative Law

United States House of Representatives
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

RE: Google's Response to Subcommittee Questions for the Record Received August 14, 2020

Dear Chairman Nadler, Ranking Member Jordan, Subcommittee Chairman Cicilline, and Subcommittee Ranking Member Sensenbrenner:

On behalf of our client Alphabet Inc. ("Alphabet," its subsidiary "Google," or "the Company"), we write in response to your August 14, 2020 letter and follow up email on August 19, 2020, requesting responses to questions for the record from the Subcommittee on Antitrust, Commercial, and Administrative Law, following the Subcommittee's July 29, 2020 hearing

titled, "Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google." Google has asked me to formally submit information responsive to the Subcommittee's questions for the record (see attached Appendix A). Today's submission supplements information Google has provided to the Subcommittee at the hearing on July 29 and throughout its long-standing and productive engagement with the Committee.

In responding to the Subcommittee's questions at the July 29 hearing, Sundar Pichai used his best efforts to be as accurate and responsive as possible based on his knowledge and recollection of the facts. Similarly, in responding to the Subcommittee's subsequent questions, Google has used its best efforts to be as accurate and responsive as possible based on its understanding of the terms used in your questions. The representations herein are based on reasonably available information and are not intended to, and do not, capture every fact related to the topics raised during the hearing or in your questions for the record.

In providing information and documents in response to your requests, the Company does not waive, nor does it intend to waive, any of its rights or privileges with respect to this inquiry, including any applicable attorney-client, work product, or other evidentiary privilege, or any objections to the assertions or questions in your letter.

Should you have any questions concerning the information provided herein, please contact me directly at 202-626-5575.

Sincerely,



Alicia C. O'Brien

Enclosure

Appendix A

GOOGLE'S SUBMISSION IN RESPONSE TO SUBCOMMITTEE QUESTIONS FOR THE RECORD FOLLOWING JULY 29, 2020 HEARING

Written Questions for the Record from the Honorable David N. Cicilline

1. According to data from Jumpshot, more than half of desktop searches on Google keep users on Google's properties, rather than resulting in clicks to the rest of the web.[1] Do you agree that more than half of desktop searches on Google now result in users staying on Google's properties rather than clicking to a non-Google site? If not, please identify data supporting your view.

2. According to data from Jumpshot, more than 70% of mobile searches on Google keep users on Google's properties, rather than resulting in clicks to the rest of the web.[2] Do you agree that more than 70% of mobile searches on Google now result in users staying on Google's properties rather than clicking to a non-Google site? If not, please identify data supporting your view.

Because the answers to these questions are related, we have grouped together our response to Question Nos. 1 and 2.

Google's core business model depends on providing users with the information they are seeking. The success of Google Search depends on providing the most relevant and reliable information possible, whether it comes from Google or non-Google domains. Today's users expect to get the right answer for their search queries right away, no matter where they are or what device they are using. And there are more ways than ever for users to find those answers, including websites, apps, and social media, in addition to search engines. This competition puts intense pressure on Google to provide users with the best possible answers for their queries. It is not in Google's interest to make it harder for users to get the information they want.

The article cited in these questions does not provide detailed information on data collection or study methodology, so Google cannot comment on Jumpshot's specific findings. But it is inaccurate to say that the data cited in the article shows that any searches on Google "keep users on Google's properties." The article states that 50.33% of the desktop Google queries and that "almost 2/3rds" (not "more than 70%") of mobile Google queries in the study set

[1] Rand Fishkin, *Less than Half of Google Searches Now Result in a Click*, SparkToro (Aug. 13, 2019), https://sparktoro.com/blog/less-than-half-of-google-searches-now-result-in-a-click/.

[2] *Id.*

resulted in zero website referrals. The fact that a user does not click on a link on a Google Search results page does not mean that the user has been "kept" on Google properties.

Searches on Google may result in zero website clicks for many reasons, which is not discernable without directly asking the user why they did not click a link. For example, a user may be satisfied by the information shown on the Search results page and have no need to click through to another page (including another Google domain), for instance because they searched for something like the weather and Google was able to supply the information immediately. At other times, users may not immediately click through to a page, but may instead use one of Google's features to help refine their query to one that they think will return more relevant search results. In many cases, after users refine to a better query, they then click on a website result and get the information they originally had in mind. For instance, if a user seems to have misspelled their query, Google offers a "Did you mean?" feature allowing the user to rerun it with the correct spelling. That second query might be counted in a survey as a second visit to a Google search property, but it has helped the user find on the Web the information they originally asked for. Still other users may be dissatisfied with Google's results and either terminate their search task or switch to an alternative, such as Bing, Amazon, Yelp, or Wikipedia.

As the data cited in the article reflects, the vast majority of clicks on Google Search results pages are to non-Google domains. For more than two decades, Google has sent extraordinarily large amounts of traffic to third-party websites at no charge. We drive billions of visits to sites across the web every day, and the volume of traffic we've sent to the open web has increased every year since Search was created. 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.

3. Has Google ever been approached by another business about giving access to its cache of web crawl data? If so, what was Google's response?

Like many other firms that create and maintain indexes for web search, Google offers syndication options that allow other providers to show search results on their own sites that customize or extend Google's search results. Google's syndication program, known as Google Programmable Search Engine (formerly known as Google Custom Search), is based on Google's core search technology and allows providers to create a search engine for individual sites, collections of sites, or the whole web. Providers can select and customize the categories of content they receive from Google's indexes, allowing them to create custom "topical" search engines that focus on specific sources or kinds of content (https://developers.google.com/custom-search/docs/topical). Google also offers APIs for certain kinds of content,

such as Google Maps (https://cloud.google.com/maps-platform) and Google News (https://newsapi.org/s/google-news-api). Providers can customize the look and feel of the search results they receive from Google and can supplement those results with additional information or promotions from other sources. For partners that want even greater control and customization, Google also individually negotiates syndication agreements. For more information, please see the guide for users available at https://developers.google.com/custom-search/docs/overview.

4. Google reviews no longer appear in Google's search index. Why did Google remove its reviews from its search index?[3]

We are always working to improve our services to be the most useful to our users. When a user enters a query, Google constructs a single set of search results by drawing on different indexes—each organized around a particular type of content—based on Google's assessment of what kind of content would be most useful for answering the user's query. Google has assembled indexes for categories of content such as websites, images, videos, book excerpts, scholarly articles, news, information about local places, and numerous other categories. Maintaining separate indexes for different kinds of content allows Google to provide more relevant and useful search results that take account of the distinct features and attributes of different kinds of content.

Google user reviews at one time appeared on Google+ Local pages, which had public-facing URLs that were indexed by our search engine. However, Google+ Local pages were deprecated several years ago, and Google+ was later shut down. Information about local places is maintained in what we call our local index. Because Google user reviews do not appear on web pages apart from Google Search results pages, they are not included in Google's index of web pages found on the Internet. Instead, Google user reviews are part of the local index that Google maintains for information about local places, which also includes information such as addresses, hours of operations, and phone numbers.

Today, reviews about local places from Google users may appear in a formatted search unit on Google Search results pages when a user searches for information about local places. The local index is used to display relevant search results when a user enters a query related to a place or with a local intent, such as "cascal," "pizza washington dc," or "restaurants near me." Google uses ranking systems to validate that information from the local index is likely relevant to show to the user; just as with other parts of our search engine, we rigorously test and evaluate these systems to help ensure that they are showing information only when it's useful.

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[3] Ethan Wolff-Mann, *Google might be hiding the fact that its own reviews are shoddy*, Yahoo Finance (Aug. 23, 2018), https://finance.yahoo.com/news/google-might-hiding-fact-reviews-shoddy-135640955.html.

Google maintains and makes available in Search a number of other pieces of structured information and treats that information in a similar way. For instance (as described above), just as factual information from our local index may be shown in response to a query about a place, factual information from our Knowledge Graph may be shown in response to a query about a person or thing. The Knowledge Graph likewise does not have its own distinct set of URLs; rather, information from it appears in response to users' queries.

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. Did Google.com see any decrease in usage after adding (a) a third ad to mobile search results, and (b) a fourth ad to mobile search results?[4]

Google's core business model for Search depends on providing users with relevant and reliable information—both paid and organic—on the search results page. There are a maximum of eight text ad positions open to advertisers on every Google search engine results page (SERP): four at the top and four at the bottom. We don't run ads against the vast majority of our searches, and typically the most ads appear on commercial queries. Those are typically queries for "TV set" or "sneakers," where people are looking to buy a good or service. And for those queries, there's lots of competition, both on and off-line, around the globe. People go to sites like Amazon and eBay for general retail searches. In fact, independent studies show that 55% of product queries in the U.S. now start on Amazon. (See https://www.vox.com/2016/9/27/13078526/amazon-online-shopping-product-search-engine.) Plus, there are retail ads on platforms like Facebook, Bing, Snap, Twitter, Amazon, and Pinterest. People search Trulia, Redfin, and Zillow for real estate.

Whether Google shows eight ads or no ads in response to a particular query, or any number of ads in between, depends on a number of factors including: The context of the query (for example, whether it is a highly commercial query such as a query for car insurance); the competitiveness of the auction (that is, how many advertisers are participating and how high those advertisers are willing to bid); and the quality of each advertiser's ad and landing page. We provide information to advertisers regarding ad position and ranking and how an advertiser may get their ad above the organic search results (as an example, see https://support.google.com/google-ads/answer/1722087?hl=en.

Google's decisions on ad load are informed by research into ads blindness, which is a measure of how users respond to low-quality ads over time by becoming 'blind' to them (the idea being that users learn to skip over ads which they believe are less relevant). Ads blindness harms the

[4] Gerrit De Vynck, *Google Search Upgrades Make it Harder for Websites to Win Traffic*, Bloomberg (July 13, 2020), https://www.bloomberg.com/news/articles/2020-07-13/how-google-search-changes-make-it-more-expensiveto-Win-traffic.

long-term profitability of ad-funded platforms because it makes clicks less valuable to advertisers and trains them to lower the prices they are willing to pay for inventory. Google therefore has no incentive to increase ad load in favour of short-term gains. This is demonstrated by the changes that Google has made in practice. For example, on the basis of studies run in 2013, Google decreased the search ad load on its mobile traffic by 50%. For more information regarding research into ads blindness, see https://research.google/pubs/pub43887/.

Given concerns about ads blindness, Google's eight-ad limit (and the number of ads it shows in response to each individual query) is designed to maintain the long-term profitability of the ecosystem by ensuring that users only see high-quality ads that promote a good experience. Many ad-funded platforms have failed in the past (at least in part) because they sought to maximise short-term commercial interests and displayed too many ads—low quality or otherwise.

With regard to the presentation of search ads, Google's 'honest results' policy (https://www.google.com/about/honestresults/) means that search ads must be clearly labelled and set apart from the organic search results. This means that changes to the labelling of search ads are generally driven by changes to the presentation of organic search results in order for ads to remain detectable within the new organic format.

Changes to the presentation of search ads are rigorously tested across a wide variety of metrics, including impact on users and advertisers. For example, a proposed change may lead to more "short clicks" (where users quickly hit the back button on their browser to return to the Google SERP) and fewer "long clicks" (where users stay on the advertiser's landing page for a relatively long time, suggesting that they found the ad and corresponding website useful). Or, a proposed change may affect the amount of time it takes users to decide on what to click (known as "time to first click") or adversely affect quality trade-offs between paid and organic content (known as "whole-page metrics"). Google analyses dozens of similar variables, including the impact on short-term and long-term revenue, when deciding whether or not to launch globally any change to the design of its SERP.

Changes to the format, display, and presentation of search ads can have complicated effects, which is why Google reviews all changes to the layout of its SERP according to both design and engineering principles by running live traffic experiments that compare the new layout to the old. These experiments are extensive and can test dozens of metrics. No one metric is "best," and Google strives to make decisions in a holistic way that takes into account the trade-offs. This makes it difficult for Google to generalize about the effect any particular change may have on user behavior, advertiser behavior, or click-through rates.

6. What percentage of bids does Google win on its own ad exchanges?

Publishers utilizing Google Ad Manager's auction to sell their ad inventory are able to solicit bids from Authorized Buyers (e.g., third-party demand side platforms ("DSPs"), ad networks, and trading desks) and Open Bidders (third-party ad networks and ad exchanges), as well as

buyers utilizing Google-owned platforms such as Google Ads and Display & Video 360. These bidders compete in a unified auction against each other, the publisher's guaranteed sales, and other demand sources configured by the publisher. All participants in the unified auction, including those using Google-owned platforms, compete for each impression on a net basis, and no auction participant receives any information about any other party's bids prior to completion of the auction. The highest net bid wins. The channel through which a bid is received does not otherwise affect the determination of the winning bidder.

7. Does Google leverage data from Android and Chrome while bidding on its ad exchanges? And does Google make this data from Android and Chrome data available to third parties?

Like all DSPs and programmatic buyers, Google uses a wide range of data to inform its bids. The primary data Google uses for bidding from Android and Chrome are identifiers such as browser cookies and Android Advertising ID values, which Google's ad exchange makes available to all eligible bidders.

8. Does Google in any way limit advertisers from working with non-Google parties to audit or assess the efficacy of Google's advertising and/or advertising tools?

Advertisers are free to work with a variety of verified third-party measurement providers that comply with our policies to measure the effectiveness of their ads across Google's advertising products. Supporting these third-party offerings promotes user choice by offering a variety of vendors that advertisers may choose to use in verifying their advertising campaigns' success.

9. Google's search and ad server site "tags" collect user data from thousands of websites.

Please identify (a) whether Google stores this data; (b) how Google uses this data; and (c) whether Google's advertiser tools gain access to this information.

Publishers using Google's sell-side advertising technology products embed in their pages pieces of HTML code that are referred to as ad "tags." Whenever a web page is visited, the user's web browser tries to load the content of that page. If the page uses Google's ad server, the HTML code in the page will contain an instruction to the user's browser to request a file from Google Ad Manager or AdSense. In response to such a request, Google Ad Manager or AdSense can return an ad or record an event in its logs (e.g., the fact that a user arrived at this particular page, information that is stored in accordance with customer and user settings, as well as Google's Privacy Policy). The ad request typically includes information about the user's IP address, any cookies on the user's browser that are associated with the ad server's domain, and the URL of the page that issued the request.

When Google Ad Manager or AdSense is requested to conduct an auction for an impression, it typically includes that information in the bid requests it sends to eligible participants, including

third-party bidders participating as Authorized Buyers (e.g., ad networks, trading desks, and DSPs), ad exchanges, and ad networks participating in Google's Open Bidding service, and Google-owned bidders such as Google Ads and DV360. All participating bidders receive broadly the same information in their bid requests, including information regarding the impression, the site or app on which the impression is located, the cookie ID, and the user's browser. Each bidder then may combine that information with its own data to calculate an appropriate bid.

Google also provides conversion tracking through a combination of code "tags" and cookies for both search and display advertisers. Floodlight is a conversion tracking system for the Google Marketing Platform and is available to users of Google Campaign Manager, Search Ads 360, and DV360. For more information about Floodlight, see its support page at https://support.google.com/searchads/answer/7298761?hl=en&ref_topic=6054260. Google Ads provides its own conversion tracking functionality, and reports can be accessed through Search Ads 360 as well. For more information about Google Ads conversion tracking, see the support page at https://support.google.com/google-ads/answer/1722022. Finally, Google Campaign Manager, Search Ads 360, and DV360 also can access certain Google Analytics session data for users that reach an advertiser's site through ads placed through each respective channel. For more information about accessing Google Analytics data for conversion tracking, see the relevant support pages at https://support.google.com/analytics/answer/3339192?hl=en; https://support.google.com/analytics/answer/7068033?hl=en&ref_topic=6186449; and https://support.google.com/analytics/answer/6261873?hl=en. Conversion tracking data is provided to advertisers in aggregated reports. For an explanation of differences in the data provided by each conversion tracking option, see https://support.google.com/searchads/answer/2791195?hl=en.

10. In 2019, how much did Google pay Apple for Google Search to be the default on iOS?

We compete with other companies to provide Google Search in Apple's Safari browser. While we cannot speak publicly about the specific terms of an agreement, we are proud that companies like Apple choose Google Search as a default search engine because it gives their users "the best" search experience. (See, for example, the November 19, 2018 article in Fast Company, titled "Apple CEO Tim Cook says this is the best search engine out there," https://www.fastcompany.com/90269911/apple-ceo-tim-cook-says-this-is-the-best-search-engine-out-there.) We're constantly innovating so that we continue to provide the highest quality results that reflect the most relevant and reliable information on the web. We think consumers benefit from giving them easy access to our products, but users can (and do) easily change their default search engine and turn to our competitors.

11. Does Google permit hardware device manufacturers to run Android and gain access to the Google Play Store without also making Google the default search engine on that device?

Yes. Device manufacturers can obtain licenses to the Play Store for their devices running Android, through Mobile Application Distribution Agreements ("MADAs"). MADAs are negotiated commercial agreements that contain no restrictions on the default search engine.

12. In its response to Questions for the Record sent Google on September 13, 2019, Google stated that since 2014 it had not changed in methods for determining which apps must use Google's in-app payment or purchasing services. Please identify: (a) If Google has changed its criteria since then; (b) what criteria Google applies when identifying which developers must use the Google Play credit card processing system; and (c) whether Google plans to expand the type of apps that must use its payment processing service.

Google's policy regarding the use of Google Play In-App Billing has remained consistent over the past five years. Android developers offering products within a game downloaded on Google Play, or providing access to game content, must use Google Play In-App Billing. Developers offering products within another category of app downloaded on Google Play must use In-App Billing unless: 1) payment is solely for physical products, or 2) payment is for digital content that may be consumed outside of the app itself (e.g., songs that can be played on other music players). The second exception relates to instances where the user is able to purchase and own downloadable, portable file formats which can then be played on other players. Google Play supports flexibility for Android developers to choose how to run their businesses and make money. Developers choose whether to offer their apps for free or not, whether to offer in-app purchases or not, and whether to serve advertisements or not. Google Play also supports a variety of payment methods, including credit and debit cards, Google Play gift cards, direct mobile carrier billing, and Paypal. Android developers can also choose to distribute their apps outside of Google Play. Most Android devices come preinstalled with more than one app store, and users may also add additional app stores or install apps directly from a developer's website.

13. What amount of notice does Google provide developers ahead of suspending their apps from the Google Play Store?

When publishing in Google Play, developers agree to follow the Google Play Developer Program Policies and Developer Distribution Agreement. We work hard to help developers avoid policy violations (see https://www.youtube.com/watch?v=ZDS4diFfBmQ), but when violations do occur, we're committed to ensuring developers understand how they can bring their app into compliance. When we detect serious violations of our policies that put users or their devices at risk, we remove the app immediately from Google Play. In other cases, we may warn developers and require them to fix the policy violation within a certain amount of time before we remove the app from Google Play. If a developer feels that their app has been removed in error, they can reach out to Google Play's Policy Support Team (using the instructions provided in the email notifying them of the policy violation, or directly from Google Play's Help Center) to easily appeal the removal decision. For more information, please

see https://play.google.com/about/developer-content-policy/ and https://play.google.com/about/developer-distribution-agreement.html.

In addition, Google Play app developers have access to many resources that provide guidance on common violations, the policy review process, and how to get an app back on the Play Store, including:

- How to Handle a Policy Violation on Google Play, https://www.youtube.com/watch?v=xjRqFbTHUOQ&feature=youtu.be; and
- Play Console Help support, https://support.google.com/googleplay/android-developer/answer/2491922?hl=en&ref_topic=3453554.

14. Please identify how often and at what level of precision Android registers an Android user's location when that user is not using an app that requires location services.

Our goal is to provide users with robust tools to control what data they share. All Google-licensed Android phones have a device location toggle that is accessible in device settings. If a user turns this toggle off, the phone does not share device-based location information with any apps (and thus, features that use location may not work properly). The user can still receive search results and ads based on IP address.

When device location is turned on, users can control the frequency with which Google and other apps and services access device location. A user can decide to deny permission, allow permission only when an app is in use, or allow permission all the time. The precision and frequency of location data transmitted depends on many factors, such as the functionality of the apps and an individual user's settings.

15. Please identify all purposes for which Google uses location data collected on Android users through Google Maps or Waze.

As Google describes in its Privacy Policy (https://policies.google.com/privacy?hl=en&gl=de#infocollect), Policies site (https://policies.google.com/technologies/location-data?hl=en&gl=de), and various product pages, location information plays an important role in providing useful and meaningful experiences with Google's products and services. Google provides users with granular control to turn on or off device, app, and Account settings that manage uses of location data. Depending on a user's settings, when device location is enabled, Google Maps and Waze can provide turn-by-turn directions, and show restaurants and other destinations nearby. When a user enables ads personalization and other Google Account settings, Google may also use account information, including user activity that includes location information, to serve more relevant ads to the user. Google does not target ads based on an individual's precise location, like GPS coordinates. Instead, we may use broader location signals to allow advertisers to direct ads in areas most geographically relevant

to an individual. For example, a deep dish pizza restaurant in Chicago doesn't usually want to direct ads to people in London.

16. In July, the Information reported the existence of "Android Lockbox," which "for years tapped what the company has referred to as 'sensitive' data collected by Android to selectively monitor how users interact with non-Google apps."[5] Please identify: (a) All Google acquisitions or product decisions that were made based off or were informed by data from Android Lockbox; and (b) what steps developers of non-Google apps can take to prevent Google from collecting usage data on their Android apps.

Android is the first of its kind: a privacy-centric open-source platform, open to all, even to our competitors. We are constantly innovating to ensure our users are getting the best possible experience on Android. Each year, we develop and improve upon the Android system, including supporting previous versions. Like all smartphone manufacturers, we need to understand how users use their device, whether certain apps are constantly crashing, and the health metrics of phones to address system operating issues and improve the product.

We also believe in choice, transparency, and control. Our users can choose whether or not they want to allow us to understand how they use our products and services to give them a better experience. If they prefer we do not use their usage and diagnostic data, they can also choose not to provide it or opt-out at any time. This data is available to other Android developers as well, assuming their users agree, so they too can better serve their users.

Since 2014, the Android App Usage Data API has been used by Google and Android developers who have been authorized by Android OEMs or users to access basic data about app usage—such as how often apps are opened—to analyze and improve services. The API does not obtain any information about in-app activity, and our collection of this data is disclosed to and controllable by users.

More information on this topic appears in Google's Help Center under the topic "Share usage & diagnostics information with Google" (https://support.google.com/accounts/answer/6078260?hl=en).

17. In 2019, Google was fined $170 million by the FTC and New York Attorney General for violating the Children Online Privacy Protection Act (COPPA) by knowingly collecting the data of children under 13 without their parents' consent.

a. Did YouTube use the data it illegally acquired from children to draw more advertisers to YouTube?

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[5] Alex Heath et al., *Internal Google Program Taps Data on Rival Android Apps*, The Information (July 23, 2020), https://www.theinformation.com/articles/internal-google-program-taps-data-on-rival-android-apps.

b. Did YouTube feed the data it illegally acquired from children back into its YouTube algorithm?

Because the answers to these questions are related, we have grouped together our response to Question Nos. 17.a and 17.b.

We are committed to ensuring that content made for kids on YouTube follows all applicable rules and requirements, and, as part of that commitment, we make YouTube creators stipulate whether each video they create is child-targeted. YouTube settled the inquiry into the alleged COPPA issues referenced above by agreeing to a Stipulated Order with the FTC and the New York Attorney General, which was approved by a federal district court on September 10, 2019. The Stipulated Order specifically addressed, and limited, the use of information covered by the Order, including certain data that YouTube had historically collected. YouTube has complied with the terms of the Order and remains committed to compliance in the future.

18. Please identify all factors that determine how Google ranks videos, including whether YouTube videos are in any way favored by Google in search results.

Our success in Search is dependent upon providing users with the highest quality results in response to their queries. Google Search is not designed to favor YouTube over other online digital platforms in Search ranking. Our organic Search algorithms look at many factors that apply to all relevant sites, such as freshness of the page, when ranking our organic content. Whether the site is owned and operated by Google is not one of those factors. Our Search algorithm applies the same standards to find, index, and rank sites, whether or not they are Google owned and operated. Search uses external Search Quality Raters from across the vast majority of U.S. states to ensure we are providing users with relevant information. We have published our webmaster guidelines (https://support.google.com/webmasters/answer/35769) and search quality rater guidelines (https://static.googleusercontent.com/media/guidelines.raterhub.com/en//searchqualityevaluatorguidelines.pdf) publicly so that website owners can understand how we do that.

When a user conducts a query, YouTube is one of several online sources for video that may appear in Search results for inquiries that may call for video content. Unless a user specifies that they are seeking a result specifically from YouTube, or another platform like Twitch, Search will attempt to provide the most relevant result for their query. If a user specifies a prefered website (for example, by searching for "cat videos on Vimeo"), Search will produce results from that website.

19. The Wall Street Journal reported that Google has changed its algorithm to effectively privilege YouTube in search results.[6] Please identify these changes.

[6] Sam Schechner et al., *Searching for Video? Google Pushes YouTube Over Rivals*, Wall St. J. (July 14, 2020), https://www.wsj.com/articles/google-steers-users-to-youtube-over-rivals-11594745232.

We disagree with the claims in that article and the methodology used. The article's methodology relies heavily on the number of views, likes, or comments a video has to determine its assessment as to what is the most relevant information. Those kinds of "self-reported" signals are specific to a site or platform, and each platform has its own way of counting them.

To ensure that our signals are used equally and fairly for all sites, we use signals that are not specific to any one site or platform. As noted in response to Question No. 18, instead, our organic Search algorithms look at many factors that apply to all relevant sites, such as the freshness of the page, when ranking our organic content. Whether the site is owned and operated by Google is not one of those factors. Our Search algorithm applies the same standards to find, index, and rank sites, whether or not they are Google owned and operated. Search uses external quality raters from across a vast majority of states to ensure we are providing users with relevant information. We have published our webmaster guidelines (https://support.google.com/webmasters/answer/35769) and search quality rater guidelines (https://static.googleusercontent.com/media/guidelines.raterhub.com/en//searchqualityevaluatorguidelines.pdf) publicly so that website owners can understand how we do that.

20. Over what time period did Google's homepage include the "Install Google Chrome" promotion (below) for Internet Explorer users?



Google periodically markets Chrome on Google.com to visitors using Internet Explorer. Chrome offers a simple, secure, and fast browsing experience for all internet users, including users of Google's web-based services, and Google wants to promote that to its users. These periodic promotional campaigns on Google.com on Internet Explorer have been run for over a decade.

21. Over this time period, how many users downloaded Chrome by clicking on this promotional button?

Chrome's user base has grown since its launch in 2008. We continue to see the value in providing users of Google services on Internet Explorer with information about Chrome

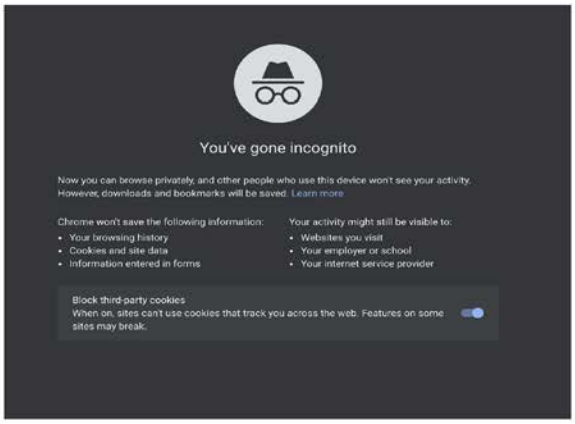
browser because it provides a secure and fast browsing experience for Google's web-based services.

22. Chrome used "bundle partners" to package Chrome browser downloads with other downloadable software such as DivX player.[7] Please identify these bundle partners, the stipulations of these partnerships, the time frame in which the bundle partnerships were in place, and the number of Chrome downloads that resulted from the partnerships.

At times, we partner with companies on promotion and distribution agreements of certain products, including Chrome. For example, we partner with Avast, where Avast distributes Chrome and Google Toolbar products with Avast's consumer antivirus products. Google pays Avast a fee in connection with these offerings. While we can't publicly disclose the details of our confidential and commercially sensitive agreements, these types of agreements have benefitted both Google and our partners, alongside partners' offerings, as well as users, by offering users the opportunity to use Chrome, which is a simple, secure, and fast way to browse the internet.

23. If a user is browsing through Chrome's "incognito mode," does Google have the ability to connect that user's browsing data and activity with the user's identity?

Chrome's Incognito mode allows users to browse the internet without their browsing history being saved to their device. This is helpful, for instance, where users share a device. But, as presented on each new Chrome Incognito window, a user's browsing activity in Incognito is still visible to the websites they visit:



[7] *See, e.g.*, DivX Inc., Form 10-K (2010), https://sec.report/Document/0001193125-10-055714/d10k.htm.

If a user chooses to sign in to their Google Account while browsing in Chrome Incognito, their browsing activity would be stored in their Google Account and associated with their use of those services. For example, if a user signs into their Gmail account on gmail.com while in Incognito mode, Google would have a record that the user had logged into their Gmail account.

24. Please explain why Google now hides full URLs in the Chrome address bar.[8]

Protecting Chrome users from security issues like phishing and dangerous sites has been a priority for Google. Security is the primary reason for improving how URLs are displayed in the Chrome address bar, and we constantly explore opportunities to further user security. As we shared in an August 12, 2020 Chromium Blog post titled "Helping people spot the spoofs: a URL experiment" (https://blog.chromium.org/2020/08/helping-people-spot-spoofs-url.html), on today's web, URLs remain the primary way users determine the identity and authenticity of a site, yet we know URLs suffer from usability challenges. For example, there are many ways that attackers can manipulate URLs to confuse users about a website's identity, which leads to rampant phishing, social engineering, and scams. In one study, more than 60% of users were fooled when a misleading brand name appeared in a URL's path.

Google is in the business of providing consumers with helpful and relevant tools and information, and Chrome is no exception. Different browsers approach this URL challenge in a number of ways, including showing only the domain by default, or visually highlighting the registrable domain (the "most significant" part of the domain name). In Chrome Milestone 86, we're experimenting with how URLs are shown in the address bar on desktop platforms. Our goal is to understand—through real-world usage—whether showing URLs this way helps users realize they're visiting a malicious website, and protects them from phishing and social engineering attacks. This experiment is planned to roll out to a small percentage of users of Chrome's stable channel (more information on Chrome's stable channel is available at https://support.google.com/chromebook/answer/1086915?hl=en). If users participating in the M86 experiment want to see the full URL, they can simply hover over the URL and the full URL will appear. If users want to opt out of this feature, they can right click on the URL and select "Always show full URLs." The measured increase in user protection will inform whether Chrome launches it as a full feature for all users. In previous years, we have likewise explored other security-minded improvements to URL display.

[8] Corbin Davenport, *Google resumes its senseless attack on the URL bar, hides full address on Chrome 85*, Android Police (June 12, 2020), https://www.androidpolice.com/2020/06/12/google-resumes-its-senseless-attack-on-the-url-bar-hides-full-addresses-on-chrome-canary/.

25. In January, Google announced its Chrome browser would phase out the use of third-party cookies.[9] Will Google designate Google Analytics as a first-party cookie?

a. Will Google's changes to Chrome curb Google's own data collection to the same extent that these changes will curb data collection by non-Google firms?

b. Will non-Google advertising technology services have the same access to Chrome data as Google's advertising technology services?

c. Please identify all forms of data that Google will collect through Chrome that will no longer be available to non-Google firms.

d. Please identify how competing browser cookies are any different than Google's own tracking devices.

e. After Google retires third-party cookies in Chrome, will Google still be able to engage in cross-site tracking?

Users are demanding greater privacy—including transparency, choice, and control over how their data is used—and we recognize that the web ecosystem needs to evolve to meet these increasing demands. Some browsers, including Apple's Safari and Mozilla's Firefox, have reacted to these concerns by blocking third-party cookies without first developing alternative ways to support key existing use-cases. We believe this blunt approach has unintended consequences for both users and the web ecosystem. It undermines the business model of publishers who rely on ads to make their content freely available to the public. It also encourages the use of invasive workarounds like fingerprinting, which can actually reduce user privacy and control. That is why Chrome is working actively across the ecosystem to build technologies that enable a more private and sustainable web before phasing out support for third-party cookies.

In August 2019, we announced a new initiative, known as the Privacy Sandbox, to work with the web community to develop privacy-preserving and open-standard mechanisms that can sustain a healthy, ad-supported web and so render third-party cookies obsolete (see https://www.blog.google/products/chrome/building-a-more-private-web/). Subsequently, in January 2020, we announced our intention to phase out support for third-party cookies in Chrome over the next two years, while working across the ecosystem with browsers, publishers, and advertisers on new technologies to build a more trustworthy and sustainable web (see https://blog.chromium.org/2020/01/building-more-private-web-path-towards.html).

These changes to Chrome will affect all companies that currently rely on third-party cookies, including Google. A cookie is generally considered first party when the domain of the website

[9] Dieter Bohn, *Google to 'phase out' third-party cookies in Chrome, but not for two years*, The Verge (Jan. 14, 2020), https://www.theverge.com/2020/1/14/21064698/google-third-party-cookies-chrome-two-years-privacysafari-firefox.

visited by the user matches the domain of the cookie; if the domains don't match, then the cookie is considered third party to the website. Accordingly, Chrome treats Google cookies set on non-Google websites—including the websites of publishers using Google's ad products—as third-party cookies. This is the same treatment Chrome applies to the third-party cookies of others in the ad-tech industry.

By contrast, the website publisher itself can continue to use first-party cookies to understand its relationship with its users as it always has. As a tool designed to help publishers achieve that goal, once publishers implement Google Analytics tags on their sites, Google Analytics sets a first-party cookie on behalf of the publisher on the publisher's domain; this is a standard practice for site analytics services, and Google additionally provides a browser extension tool for users to disable Google Analytics tags running on publisher sites from sharing information about their visit activity with Google Analytics. Regardless of which vendor's tools are used to actually set a first-party cookie, however, they are only transmitted when the user visits that specific domain (not other domains using the same tools). They thus can be used to, for example, avoid showing the user the same ad on repeated visits to that site, but cannot be used to track the user's behavior across sites.

26. Please identify the total number of days in 2019 on which Google priced Nest smart speakers below-cost.

27. For the total number of Nest smart speakers sold in 2019, what percentage did Google sell below-cost?

Because the answers to these questions are related, we have grouped together our responses to Question Nos. 26 and 27.

Google Nest smart speakers compete with a range of products from companies including Apple, Amazon, Sonos, and more. The smart home market is rapidly expanding, and we continue to face competition from around the globe. The current price of Google Nest smart speakers is available on the Google Store at https://store.google.com/us/category/connected_home, and pricing is largely driven by the significant competition from these other companies. Sales data for these speakers ranges widely by retailer, region, and promotional period, and we don't have more detailed public metrics on the particular pricing and sales information requested.

28. Does Google require that automobile manufacturers seeking to use Google Maps also use Google Assistant?

Google Maps is designed to allow our users to fully explore the world around them, from finding new restaurants to obtaining traffic updates while on their way. Our goal is always to provide a user with the most accurate and useful information while on Google Maps. We are proud of our partnerships with many automobile companies who value the experience provided to their customers by Google Maps.

Under our Google Automotive Services Agreements, automobile manufacturers that elect to preinstall Google Automotive Services Applications, which include Google Maps and Google Assistant and others, are free to also preinstall other competing assistant services, as are the users upon purchasing the vehicle.

29. When Google Assistant receives an implicit invocation or voice command, what factors does Google consider when determining which "Action" to invoke?

Google Assistant helps people get things done, anytime, anywhere. When someone asks a question or tells it to do something, Assistant responds to the request in the most helpful way possible—whether someone is seeking assistance with everyday tasks, controlling smart home devices, enjoying music or games, communicating with friends and family, getting quick answers or local information, or a variety of other things.

When Assistant receives an implicit invocation, such as, "Hey Google, play a game," the Assistant analyzes that request, in combination with useful information such as recent requests or the type of device being used, to identify possible interpretations of the user's intent. Assistant can then present the user with a list of Actions that developers have mapped to those intents, and the user can select which Action he or she wishes to use.

For more information on implicit invocations, please see https://developers.google.com/assistant/conversational/df-asdk/discovery/implicit and https://developers.google.com/assistant/conversational/build/invocation?tool=builder#create_implicit_invocations.

For more information on the signals that help Assistant rank available responses and how they are weighted based on how a user engages with Assistant and his or her personal preferences, please see https://developers.google.com/assistant/howassistantworks/responses.

30. Are there instances in which voice application developers must pay to make their "Action" an available option to an implicit invocation?

No. Developers can design their Action so that users can make a request to perform a task without invoking the Action by name. Please see: https://developers.google.com/assistant/conversational/df-asdk/discovery/implicit.

31. When consumers order food directly through Google Search, Google Maps or Google Assistant, Google's services choose a delivery partner such as DoorDash or Postmates.

a. How does Google determine which delivery partner is selected to complete the delivery? For example, does Google run a real-time auction or are delivery partners for specific vendors pre-selected?

b. What steps must a delivery company take to become a delivery partner?

c. How much does Google charge delivery companies who become delivery partners?

d. Does Google have similar programs in place for voice commands?

Providing users information on how to order from local restaurants is another way we help users find the information they are looking for while supporting businesses that seek to reach customers. When a user searches for food delivery, Google will display providers to fulfill their online orders. Users can order food on Google if they have a Google Account, and restaurants can receive online orders for pickup or delivery directly from Google Search, Maps, or Assistant.

Google partners with a number of third-party delivery services including Postmates, Delivery.com, Slice, ChowNow, and Hungr, to provide this service. Restaurants must be supported by at least one partner to be available via Google for food ordering. Restaurants can use their Google My Business dashboard to manage the "Order Online" button on their Business Profile. This button can be turned on or off for restaurants that work with supported partners. Restaurants can remove a selected unauthorized provider from their Business Profile on Google Search, Maps, or Assistant, using an opt out form available at https://support.google.com/business/contact/business_food. If a restaurant reports that they have no business relationship with any provider, the "Order Online" button will be removed.

Which delivery partner is selected to complete the delivery is dependent on a number of factors, including which partner(s) the restaurant has selected to work with and which partner the user selects. If a restaurant is supported by more than one partner, users can select which partner they want to use; this also applies when users order food with Assistant.

Google currently does not have fees associated with food delivery. Service and delivery fees are set by the partner.

For more information, please see Google Food Ordering Help https://support.google.com/foodordering#topic=9780529, Google My Business Help https://support.google.com/business/answer/9503613, and Actions on Google https://developers.google.com/actions/Food-ordering.

32. Would buying Fitbit enable Google to use a Fitbit user's heart rate to sell ads targeted to that user?

We have publicly committed that "Fitbit health and wellness data will not be used for Google ads." (Google Company Announcements post dated November 1, 2019, "Helping more people with wearables: Google to acquire Fitbit," https://www.blog.google/products/hardware/agreement-with-fitbit/). This commitment extends to Fitbit user's heart rate. We will keep that promise.

33. Google recently announced it is investing in home security provider ADT. Please identify: (a) How Google will collect, process, analyze, or store data from currently

installed ADT devices; and (b) How Google will integrate ADT data into its advertising technology.

Our strategic partnership with ADT is aimed at furthering a central goal of our smart home efforts, to create the next generation of the helpful home with new security solutions that will better protect and connect people to their homes and families. We plan to use Google's machine learning capabilities to enhance ADT's security monitoring to give customers fewer false alarms, more ways to receive alarm events, and better detection of potential incidents inside and around the home.

Google cares deeply about giving users transparency, choice, and control over their data in our products and services, and our partnership with ADT is no different. We have committed that, for our Nest home products, video footage, audio recordings, and home environment sensor readings are not used in advertising or for ad personalization. When a user interacts with the Assistant, we may use those interactions for ad personalization. For example, if a user asks, "Hey Google, what's the weather today?" we may use the text of that voice interaction (but not the audio recording itself) to show personalized ads. Of course, users can always review their Google settings to control the ads they see, including opting out of ad personalization completely. Learn more about the Google Assistant and the choices available at https://support.google.com/accounts/answer/2662856 and https://myaccount.google.com/yourdata/assistant?pli=1.

Google has also published FAQs on Privacy for Google Nest, which are available at https://support.google.com/googlenest/answer/9415830?hl=en&ref_topic=7173611, to describe and provide more details about how Google collects and uses user data for its Nest products and services, including its Google Home devices.

<u>Written Questions for the Record from the Honorable Henry "Hank" Johnson, Jr.</u>

1. "Efficient infringement"—the use of another company's patents without authorization, based on the understanding that litigation will be too slow to meaningfully stop the infringement and will ultimately only result in the payment of a royalty if the suit is lost (approximately the same royalty that would be paid up front if a license were taken) is a way in which dominant companies currently may be stifling innovation and undermining competitors.

As the Chairman of the subcommittee with responsibility for oversight of the patent system, I am concerned about the impact of efficient infringement on the ability of patents to spur innovation and allow startups to effectively compete against established companies.

1.1 To me, these factors suggest that the Supreme Court's decision in *eBay v. MercExchange*, 547 U.S. 388 (2006), to reverse the presumption of awarding injunctive

relief to a prevailing patent owner should be reevaluated to ensure that smaller patent owners are playing on a level playing field in patent disputes. Do you agree or disagree, and why?

Google participates in the patent system in many ways. We have built a valuable portfolio of over 60,000 worldwide patents and applications, with over 30,000 U.S. patents and applications. We license out that portfolio, which covers our most innovative and valuable technologies, and enforce those patents in litigation when necessary. We also regularly engage in negotiations that result in Google taking a license to patents in the technology areas in which we operate. As a result, we have a balanced view of the patent system.

Google believes that the Supreme Court decision in *eBay v. MercExchange*, 547 U.S. 388 (2006) provides a balanced and practical framework for awarding injunctive relief to patent owners, especially when the patent owner makes or is actively developing a product that practices the patent. Legislation overturning the Supreme Court's unanimous *eBay* decision would disrupt this balance and force courts to end the careful, fact-specific analysis that they currently conduct. This would be harmful to innovation and to competition because it takes away the discretion of courts and would allow a permanent injunction against a product, even if the patent holder makes or sells no product, the patent covers only a trivial aspect of the accused product, or the patent's validity is doubtful. Although there are many circumstances in which injunctions are appropriate and currently granted, the issuance of this remedy based on a presumption, without full consideration of the important equitable factors as outlined by the Supreme Court, would fail to take into account the interests of the public in supporting innovation and the interests of consumers in the specific markets concerned.

1.2 What steps does your company take to ensure that any intellectual property it gains access to during acquisition negotiations is not copied or used without authorization if those acquisition negotiations prove to be unfruitful?

Google takes intellectual property rights seriously. Google complies with all contractual and other legal requirements regarding intellectual property, trade secrets, or other confidential business information that business partners and potential business partners provide to Google, including during acquisition negotiations.

Written Questions for the Record from the Honorable Pramila Jayapal

1. What is Google's market share of the ad exchange?

It is difficult to accurately measure market share for these types of products, as companies in the digital advertising space do not disclose their sales, volume, or profits on a product-by-product basis. And advertisers and publishers often use multiple, different advertising technology solutions and vendors for the same purpose. Industry reports suggest that large advertisers on average are using four or more competing advertising technology tools at any given time, while large publishers on average are using six competing advertising

technology tools at any given time. For more information on publishers' use of multiple advertising technology tools, see https://www.adexchanger.com/platforms/google-ad-manager-policy-changes-dont-hurt-publishers-according-to-advertiser-perceptions/. Some publishers like *The Wall Street Journal*, *The New York Times*, and *The Washington Post*, for example, use even more. (See, for example, ads.txt specifications publicly disclosed by those publishers at wsj.com/ads.txt, nyt.com/ads.txt, and washingtonpost.com/ads.txt.) It is also common for publishers and advertisers to use several exchanges or even a combination of open and private exchanges. As a result, Google reiterates that it is not currently aware of any definitive internal or external measures of market share in the Ad Tech sector, and by providing an answer to this question, Google is not agreeing that the ad exchange is the proper or relevant antitrust market given the numerous ways in which publishers and advertisers transact online. Further, in order to provide a true definition of market share for a legal competition analysis purposes, it would be necessary to undertake a rigorous analysis—one including economic evidence of actual consumer behavior, information concerning capabilities of numerous industry players, and expert analysis.

Our products face robust competition in a crowded advertising technology industry. Google Ad Manager competes within a large, diverse, and constantly evolving advertising marketplace and faces competition from hundreds of companies, including well-known tech companies with ad exchanges, supply side platforms (which are now largely functional equivalents), or those that sell their own inventory, such as Amazon, Facebook, Adform, and Twitter. Other companies include OpenX (which reported 450 million unique users and 300 billion impressions per month); AT&T's Xandr (which acquired AppNexus, a leading global advertising marketplace and digital advertising service provider); Verizon (Verizon Media Exchange); Index Exchange (which reported a four-year growth rate of 509%, handles 90 billion requests everyday, more than the New York Stock Exchange, and was recently selected by GroupM, the largest media buyer in the world, to receive a majority of GroupM's demand); PubMatic (which processes over 55 billion daily ad impressions); Genesis; Beachfront; Comcast's FreeWheel (largest SSP for OTT inventory); Smart+; RTL Group's SpotX; AdTelligent; AppLovin (which expected to achieve over $1 billion in revenue in 2019); Chartboost (which in 2019 grew to be a top 4 exchange at a few different points throughout the year); Altice's Teads; Sovrn; Magnite (formerly Telaria and Rubicon Project, which claimed to have reached over 1 billion consumers and that it would be the world's largest independent sell-side advertising platform, grew 32% year-over-year by mid 2019 (above expectations), and now has a combined market cap of roughly $750 million); TripleLift; Smaato; Epom; Fyber (which reported 20% year-over-year programmatic business growth in November 2019); IronSource (which expected to achieve $1 billion in revenue in 2019, and also acquired Supersonic with a reported 1 billion monthly users and expected to generate $250 million in sales); and InMobi (which recently launched what was reportedly the world's largest native advertising exchange).

2. What policies and practices does Google use to ensure that it is serving the interests of businesses selling and buying ad space?

Google designs its advertising technology products to meet the needs of advertisers, publishers, and users, all of whom benefit from a healthy ad-supported Internet ecosystem. Google designs its products for advertisers to help them increase return on their ad spend, reach the right audiences at the right time, and avoid ad fraud. On the publisher side, Google designs its ad technology products to enable publishers to facilitate competition and increase revenues for their ad inventory, while protecting their site or app from fraud, malware, and unsafe or inappropriate ads. Our policies prohibit, for example, promoting content that contains malware, using techniques that hide the true destination that a user would be directed to by the ad, and advertising counterfeit products, tobacco, or drugs. And throughout, Google seeks to protect users' privacy and otherwise enhance the user experience. Google has a comprehensive set of ads policies that are designed to promote all of these objectives. For more information, please see https://support.google.com/adspolicy/answer/6008942?visit_id=636993873482636863-2861675087&rd=1.

3. According to Google's 2019 shareholder report, Search accounts for 73% of Google's share of advertising revenues. Please identify all factors that make it more likely that advertising revenue will go to Google properties rather than non-Google properties.

Advertisers decide where to focus their advertising spend, on Google properties and/or non-Google properties, and may do so based on a variety of factors unique to an advertiser and its advertising goals. For ads on Google Search, a business pays only when someone clicks on or interacts with an ad. Plus, the business can decide how much it is prepared to pay—making search advertising far more affordable than other types of advertising. So rather than having to launch a big pricey campaign, merchants can start with small budgets and scale as they grow. Merchants can also reach customers that they might not be able to through other forms of advertising—for example, more than 36 percent of clicks to American advertisers come from overseas. For more information, see Google's Economic Impact reports, https://economicimpact.google.com/.

Google does not restrict an advertiser's ability to spend on third-party sites or apps. And, when advertisers use Google tools to buy ads on third-party sites, publishers keep an average of 69% of the revenue generated. See: https://blog.google/products/admanager/display-buying-share-revenue-publishers.

4. Does Google allow third party auditors to verify whether the company's metrics for third party advertising Return on Investment (ROI) are accurate?[10]

[10] Competition and Markets Authority, *Digital Advertising Services: Qualitative Research Report* (June 2020), https://assets.publishing.service.gov.uk/media/5efb3fded3bf7f769d2695af/Digital_Advertising_Services_Research.pdf at 8 (Return on investment was seen as an issue by some respondents for both Facebook and Google. It was recognised that ROI was more difficult to calculate for display advertising, but some respondents mentioned that they needed to use third parties to help calculate it – and also that they felt both Facebook and Google's own metrics tended to overstate their effectiveness.)

Yes. Many of Google's metrics across search, display, and video ads on the web and in apps have been audited and accredited by the Media Ratings Council. These metrics include various aspects of our clicks, served impressions, viewable impressions, and invalid traffic detection and filtration. Google also has developed partnerships with leading measurement technology providers to deliver third-party measurement solutions in a way that gives advertisers the ability to obtain independent measurement data. Certain of these integrations have likewise undergone an independent audit by the Media Rating Council for accreditation. Together, these efforts help ensure that the metrics Google's advertising solutions deliver are trusted, align with industry standards, and can be compared across providers.

Written Questions for the Record from the Honorable Jamie Raskin

A recent trend the online news space is that platforms, including Google via its search function and Google News product, can scrape news content from newspaper websites, host significant portions of news stories in their curated news service, and pass back none of the ad revenue they generate through Google News to the publishers who fund a crucially important public service. By some accounts, as much as 40% of Google News users never look beyond your site.

Professional news coverage is a costly and sometimes dangerous proposition that has seen enormous reductions in revenue from local and national news in the past decade. Between 2007 and 2017, newspapers' ad revenue shrank from $45 billion to $16 billion a year. During the same period of time Google's ad revenue skyrocketed. And a recent study released by the News Media Alliance found that in 2018 Google received over $4 Billion in revenues from crawling and scraping news content without paying the publishers for that use.

Because of Google's dominance in Internet search, local news outlets need to design their websites in a way to maximize the prevalence of their content in search results. According to a 2018 study by Advance Web Rankings, Google's top three search results get 30%, 15%, and 10% of all desktop clicks respectively, with 75% of all clicks going to the first page of search results. Google has previously stated that the purpose of search was to connect the user out into the internet as quickly as possible. However, the use of Accelerated Mobile Pages (AMP) within Google's mobile architecture upends that proposition by allowing Google to host newspaper content on their servers via its Content Delivery Network (CDN) so the reader remains inside the Google ecosystem when they click on a story. This permits Google to further collect consumer data and determine how to monetize ad services.

Further, in January, Google announced a plan to phase out allowing third party cookies that allow marketers to target web advertising for its Chrome browser business, which accounts for 70 percent of desktop browsing and over 40 percent of mobile browsing.

This will take away the tool that allows news websites to analyze user data, seriously hampering competitive engagement in the digital ad space with Google.

1. Does the acceptance of the use of AMP by a publisher affect the placement of the publisher in Google's search results on mobile devices?

Accelerated Mobile Pages (AMP) is an open-source HTML framework overseen by the AMP Open Source Project (now an OpenJS Foundation project due to a recent transition, see https://openjsf.org/projects/). Open-source projects are designed for the benefit of all users and the digital ecosystem. AMP helps webmasters create web pages that are fast, smooth-loading, and that prioritize the user-experience, which helps publishers create mobile-friendly websites.

Google's Search ranking is based on over 200 factors that interact in complex ways. A web page's status as an AMP Page is not one of the factors considered. Specifically, content does not receive any ranking advantage in general Google Search results merely because it is AMP, and content is not penalized in organic Google Search results for being non-AMP.

Some limited Search features require AMP content for technical reasons. (Specifically, the carousel user experience involves being able to click on an article in the carousel and then quickly swipe between pieces of full pages of content. The interface that allows this quick swiping between results uses privacy-preserving pre-rendering, caching, and embeddability, which are implemented via the AMP framework on the technical level.) Historically this was also the case for the Top Stories carousel in mobile devices; however, as explained in a recent blog post titled "Evaluating page experience for a better web" (https://webmasters.googleblog.com/2020/05/evaluating-page-experience.html), Google is introducing a new ranking signal called page experience and once that ranking update goes into effect, the Top Stories carousel in mobile will no longer be limited to AMP content.

2. Does Google require publishers to use AMP to appear in their News Carousel on Mobile devices?

As discussed in response to Question No. 1, a web page's status as an AMP Page is not one of the factors considered in a search ranking. There is a type of specialized search result called the "Top Stories carousel" on mobile devices, in which a selection of links to fast-loading mobile pages of news stories are displayed together to allow a user to quickly access them. When a user clicks on a story, the feature is designed so they can then quickly swipe between other stories from the carousel. As noted above, the interface that allows this quick swiping between results uses caching, privacy-preserving pre-rendering, and embeddability (implemented via the AMP framework on the technical level).

Non-AMP content can and does appear everywhere else on the Search results page, including as part of the "Top Stories" block—which can display content above the AMP carousel—or in the organic links that make up the remainder of the page.

As explained in response to Question No. 1, once Google launches the new page experience ranking signal, non-AMP pages will be eligible to appear in the Top Stories carousel on mobile devices.

3. What user data does Google collect when users access an AMP page? Is any of that data shared with or sold to the news publishers whose reporting was accessed? If not, why not; if so, what fees, if any, does Google charge to news publishers? If the data collected through AMP and CDN is not shared with news publishers or is sold to them, please explain why this is not an anticompetitive practice levied against news publishers.

Accelerated Mobile Pages (AMP) is an open-source HTML framework overseen by the AMP Open Source Project. Open-source projects are designed for the benefit of all users and the digital ecosystem. Ensuring publishers are able to get robust analytics insight is a core design goal for the Project, and AMP strives to create parity between the user data that publishers can collect on AMP pages and the data that publishers could collect in a traditional non-AMP environment, without violating user privacy expectations.

The type of data Google is able to collect depends on the means through which a user accesses a page (e.g., on the publisher's origin website, through the Google AMP viewer, or through other means, such as a third-party AMP viewer). However, generally, Google limits its data collection from the Google AMP Cache, the Google AMP Viewer, and AMP JS serving to the data collection that is necessary to continue operating its service.

AMP currently supports publishers' collection of analytics information using features like "amp-analytics," which can integrate with third-party systems without compromising the AMP file speed or size. All major analytics providers are participating in the project and more information can be found at https://amp.dev/support/faq/publisher-monetization/.

4. With the phase out of third-party cookies in Google Chrome, please describe that change that Google is making, when it will be implemented, and Google's justification for the change.

5. With the phase out of third-party cookies in Google Chrome, does Google plan also to cease data collection of user browsing activity within Chrome for both desktop and mobile? If not, describe each category of data that Google will continue to gather.

Because the answers to these questions are related, we have grouped together our response to Question Nos. 4 and 5.

As we discuss in our answer to Chairman Cicilline's Question No. 25, last year, we announced a new initiative known as Privacy Sandbox to develop a set of open standards to fundamentally enhance privacy on the web. As we explained in a blog post in January of this year (https://blog.chromium.org/2020/01/building-more-private-web-path-towards.html), our goal

for this open source initiative is to make the web more private and secure for users, while also supporting advertisers and publishers.

This initiative includes our plan for ending support for third-party cookies in Chrome, a change that will apply equally to Google as to other third parties. This change will provide increased privacy for users. Other major browsers, including Apple's Safari and Mozilla's Firefox, have already phased out third-party cookies, but they did so without first developing alternatives to support key existing use-cases. We believe such moves could actually undermine user privacy by encouraging invasive workarounds like device fingerprinting, which reduce user privacy and control.

We are actively working with the web community and forums like the W3C to develop improved privacy protections for users while providing publishers and advertisers the tools they need to sustain a healthy, ad-supported web. We plan to phase out support for third-party cookies in Chrome within two years, while addressing the needs of users, publishers, and advertisers.

6. Please describe why the phase out of third-party cookies in Google Chrome does not effectuate an anticompetitive practice given Google's share of the online search market and online targeted advertising market.

Google's plan to eventually phase out support for third-party cookies is not anticompetitive. Rather, it reflects Google's pro-consumer response to user demands and is consistent with actions taken by other web browser providers.

Users are demanding greater privacy and controls over their data, and we are working to meet those demands. When other browser developers, including Apple and Mozilla, acted to block third-party cookies, their steps were not pre-announced and were implemented without offering alternative solutions to support key existing use-cases, like anti-fraud and ad measurement efforts. We believe these actions may result in unintended consequences for both users and the web ecosystem, including by encouraging the use of invasive workarounds like fingerprinting, which can actually reduce user privacy and control.

As explained in response to Question Nos. 4 and 5, in January 2020, we announced our initiative called Privacy Sandbox, an open, collaborative process to develop new privacy-preserving ways to support key use-cases for third party cookies, with the goal of ultimately phasing out support for third-party cookies. In contrast to Apple and Mozilla, however, we outlined a phased two-year rollout to work across the ecosystem to build technologies for sustaining a healthy, ad-supported web.

Google is committed to working with the web community and industry forums to create replacements for third-party cookies that better protect user privacy while meeting the needs of publishers and advertisers. Google believes that its collaborative approach to developing

open standards that respect the needs of all stakeholders is a better solution in the long run for users, publishers, and advertisers.

Written Questions for the Record from the Honorable Kelly Armstrong

1. In 2018, Google restricted export of the DoubleClick ID through Google Data Transfer, correct?

a. If correct, please explain the reasoning for this action.

In 2018, Google announced that it was in the process of making important changes to its Data Transfer feature in YouTube, Display & Video 360, and Campaign Manager as part of Google's ongoing commitment to user privacy and compliance with privacy laws. Google no longer provides the DoubleClick user IDs in Data Transfer for impressions served on YouTube and recorded in Campaign Manager and Display & Video 360. As of March 31, 2021, this change will also be applied to all global events recorded in Campaign Manager. Google is committed to partnering with advertisers to help refine strategies to effectively use and manage data based on these changes. Google is investing heavily in the expansion of Ads Data Hub and providing alternative solutions and services for many key use-cases such as custom attribution, audience management, media optimization, and offline-to-online.

b. Did this action reduce competition from other digital advertising participants?

No. Advertisers remain free to (and do) choose from among Google's many competitors that facilitate the purchase of ad inventory (e.g., Amazon, Facebook, Snap, AT&T's Xandr, Adform, Smart, Twitter, Adobe, The Trade Desk, MediaMath, and Verizon Media, among others). These companies have their own policies with respect to use of personal identifiers for ads reporting and measurement.

2. In 2015, Google prohibited third parties from buying YouTube advertisements via Google's AdX, which resulted in all YouTube demand-side activity being conducted through Google products, correct?

In 2015, Google decided to make the considerable investment to expand the ways in which advertisers could purchase the increasingly popular TrueView skippable video ad format—which gives users control over the ads they see before watching videos on YouTube. This investment gave advertisers the ability to purchase TrueView reservation ads programmatically (albeit not by a real-time auction) using its Display and Video 360 product, which increased the availability of the format beyond Google Ads. The expansion of TrueView to this new channel required significant engineering resources and, at the same time, Google decided to wind down support for offering YouTube ad inventory for sale via AdX. Only display (non-video) ad inventory shown adjacent to YouTube video watch pages and non-TrueView video ads, viewed using a desktop computer (not a mobile device), had been available via AdX and represented a small portion of overall YouTube ad spend.

YouTube ad inventory is not exclusively available to advertisers through Google "products"; rather, advertisers can purchase YouTube inventory through the following channels:

- YouTube Partner Sales Program: Certain YouTube partners work directly with advertisers to sell and serve ads on content they own and show on YouTube.
- Direct Reservation: A direct contract is negotiated between the advertiser and Google. These can be booked directly through the YouTube sales team.
- Google Ads: Advertisers can purchase YouTube inventory through Google Ads, Google's online ad buying storefront.
- Display & Video 360: Advertisers can purchase instream inventory, including ads in YouTube TrueView format, and bumper ads through DV360.

In addition to serving video ads on YouTube, an advertiser has a multitude of other options for serving video ads to users, as video ads are shown on many news websites, social media sites, mobile applications, streaming services, connected TVs, and more.

a. If correct, please explain the reasoning for this action.

As of 2015, YouTube was shifting its focus to TrueView because the skippable ad format provided a better experience for users and better return on investment for advertisers. At that time, third-party buying platforms accounted for a small percentage of overall YouTube ad buys despite Google investing considerable amounts to support that capability. Based on that, and because Google had made a substantial investment to build a complex API integration between Display & Video 360 and Google Ads (which ultimately took almost three years to complete), Google decided to not allocate engineering resources to continue to support the purchase of YouTube inventory through AdX and instead decided to focus those resources on maintaining and further developing its more popular YouTube formats and buying channels.

b. Did this action reduce competition from other demand-side advertising participants?

No. Google's demand-side platform competitors remain highly successful and can access valuable video ad inventory just about anywhere, including on popular video and social platforms like Facebook, Dailymotion, Vimeo, Instagram, Amazon, Pinterest, Twitter, and Snapchat, as well nearly every other website and mobile application. Amazon's DSP, for its part, typically vies with Google's Display & Video 360 to be the most used demand-side platform (according to industry surveys), and The Trade Desk, which went public in 2016 at an approximate $1 billion market capitalization, is now worth approximately $22 billion. Advertisers also have many other demand-side platforms to choose from, including: Adform, Addition, Adobe, Adot, Criteo, Epom, MediaMath, Rakuten Marketing, Roku's DataXu, SingTel's Amobee, Tabmo, RTL Group's SpotX, Verizon Media, AT&T's Xandr, and Zeta. Advertisers can also decline to utilize a DSP entirely and purchase video inventory directly from publishers,

particularly large publishers like Facebook, Twitter, LinkedIn, and Snapchat that have developed their own buying platforms.

c. Google subsequently limited the interoperability of third-party analytics on YouTube and required the use of Google's Ads Data Hub, correct?

i. If correct, please explain the reasoning for this action.

To enhance user privacy, Google has been in the process of deprecating the use of third party ad tracking pixels on You Tube, including by third-party measurement vendors. Google instead offers Ads Data Hub, a privacy-centric measurement solution that enables third-party measurement vendors to continue to provide measurement on ad campaigns.

ii. Did this action result in reduced competition for advertising analytics products?

Google has not reduced competition for advertising measurement products. Third-party measurement vendors still interoperate with YouTube (via Ads Data Hub) to inform advertisers about the viewability, reach, and other metrics of the ads they paid for and to confirm the return on their investment in advertising. To enhance user privacy, Google has been deprecating the use of third-party ad tracking pixels on YouTube, including by third-party measurement vendors. Google instead offers Ads Data Hub, a privacy-centric measurement solution that enables third-party measurement vendors to continue to provide measurement on ad campaigns. This allows our YouTube advertising product to provide for the best and privacy-safe user experience.

3. Please list the first party services that Google uses to collect user information. Please include the first party services that only collect user information after the user consents to such collection.

Our mission is to organize the world's information and make it universally accessible and useful, and we are committed to giving users access and control over their data. We also develop tools for our users, from our Android-based products to smart home products like Nest, to improve their lives. We have an array of first-party services, apps, and devices available to the public, from our core tools like Search, Gmail, and YouTube, to Chrome and ChromeOS, to our Android Platform and the Google Play Store, and even to devices like Pixel and Nest. A partial list of products can be found at https://blog.google/products/. Like any modern technology or internet-based company, most of these first-party services collect some user information to provide them with the services they request. Many of our services require a user to create a Google account, which presents them with information about Google's data practices, the company's privacy policy, and a number of privacy controls. Some services can be used without an account, and users can learn about Google's collection and use of data through our industry-leading, in-context notices, privacy reminders, and of course our Privacy Policy (https://policies.google.com/privacy). We are happy to work with the Committee to identify which products are of interest.

4. Mr. Pichai testified that Google no longer collects user data on Gmail for advertising purposes. Does this include when the user consents to such collection?

We announced in 2017 that we would no longer scan users' Gmail for the purposes of delivering ads. We do not seek users' consent to have their email content scanned for the purpose of delivering ads because we do not scan emails for that purpose in any case.

5. Please list the categories of information that Google collects on users (e.g., location, education level, search history, etc.)

As we also noted in response to Representative Armstrong's Question No. 3, Google's Privacy Policy explains what information Google collects, why Google collects it, and how users can update, manage, export, and delete their information (https://policies.google.com/privacy). We are committed to giving users access and control over their data. We were one of the first companies to offer users a centralized portal to see and manage their data through easy-to-use tools with the launch of MyAccount in 2015 (now Google Account), and we encourage Google users to visit their Google Account (https://myaccount.google.com/), where they can review the data Google has collected and can choose to export or delete the data we store.

The types of data Google collects or stores may be different for users based on various settings the user has selected and what products they use. For example, if a user has signed in to their account and has "Web and App Activity" enabled, we may collect and store in the user's Account data about their activity on Google's services, like the user's search query and the URL they select on the Search results page. This can be helpful to users who wish to store this history; it also allows us to make better predictions about helpful results. If that user is not signed-in, however, we may still collect information about that query for use in some of our tools, like Google Trends (https://trends.google.com/), or to improve our products. We would not, however, associate that information with the user's Google account.

Our Privacy Policy describes in detail the categories of information we collect. The most common of these include:

- Identifiers such as name, phone number, and address, as well as unique identifiers tied to the browser, application, or device used.
- Demographic information, such as age, gender, and language.
- Commercial information such as payment information and a history of purchases made on Google's services.
- Internet, network, and other activity information such as search terms; views and interactions with content and ads; and activity on third-party sites and apps that use our services.
- Geolocation data, such as may be determined by GPS, IP address, and other data from sensors on or around a user's device, depending in part on the device and account settings.

- Other information created or provided by users, such as the content created, uploaded, or received (like photos, videos, emails, docs, or spreadsheets).
- Inferences drawn from the above, like ads interest categories, if permitted by the user's settings.

We continue to build and improve upon our services to ensure users understand the data they are sharing and can make informed choices about their data.

6. At what frequency does an Android phone record a user's location? At what frequency is this information relayed back to Google?

Google provides users with granular control to manage device location settings. The frequency and type of location information that we collect depends on a number of factors, including the service being used and an individual user's settings.

When users enable device location settings on their mobile phones, including a setting called Google Location Accuracy, the phone can use sources to determine the most accurate device location, including GPS, Wi-Fi, mobile networks, and device sensors.

Users can choose to share their device location with Google products and services, or choose to disable device location settings. Users can also control the frequency with which Google and other apps and services access device location, by, for example, deciding to deny permission, or, on Android version 11 and up, allowing permission only when an app is in use.

More information is available in Google's Help Center under the topics "Manage your Android device's location settings" (https://support.google.com/android/answer/3467281) and "Choose which apps use your Android phone's location" (https://support.google.com/accounts/answer/6179507?hl=en).

Written Questions for the Record from the Honorable Ken Buck for Sundar Pichai, CEO, Alphabet:

1. Mr. Pichai, Google's most popular products, each with more than one billion active users, including Search, Maps, YouTube and Gmail are supposedly free to use. Of course, most consumers don't necessarily understand they are in fact paying Google to use these products, but with another type of valuable asset – their data. Google has made repeated claims that you do not sell consumer data. Let's try to clear this up:

a. Yes or no, does Google monetize – not sell, but otherwise monetize – consumer data?

b. Does Google use consumer data in order to offer a targeted/behavioral advertising service to advertisers?

c. What percentage of Google's revenue is comprised of Google's various advertising services?

We do not sell our users' personal information to anyone. That is not our business model, and we have always made this a touchstone of Google's relationship with our users. Google also provides users with a range of controls over how their information is used, including for personalized ads.

Users can permit Google to personalize the ads they see using their activity and account data, but they do not have to allow this. Our services remain free for users who choose not to allow the use of their data to target ads. Indeed, ads on Google Search primarily rely on the context of the current search query to select ads, and not on any user information. A user can see how ads are personalized to them and change their advertising settings at https://adssettings.google.com/.

Information regarding revenue generated by Google, by segment and source, is disclosed on a quarterly and annual basis in our Forms 10-K and 10-Q. Recent filings are available at https://abc.xyz/investor/.

2. Mr. Pichai, could you tell me all the types of data that Google collects on its users? I'm going to run through some categories.

i. **Gender identity**
ii. **Sexual preference**
iii. **Race**
iv. **Age**
v. **Marital status**
vi. **Income**
vii. **Location data**
viii. **Education level**
ix. **Health or fitness data**
x. **Search history**
xi. **Websites and locations visited including in Incognito Mode sessions of**
xii. **Chrome and Google Maps**
xiii. **Online purchases made**

Google's Privacy Policy explains what information Google collects, why Google collects it, and how users can update, manage, export, and delete their information (https://policies.google.com/privacy). We are committed to giving users access and control over their data. We were one of the first companies to offer users a centralized portal to see and manage their data through easy-to-use tools with the launch of MyAccount in 2015 (now Google Account), and we encourage Google users to visit Google Account (https://myaccount.google.com/), where they can review the data Google has collected and can choose to export or delete the data we store. Note that Google has a policy of not showing personalized ads based on sensitive categories, such as race, religion, sexual orientation, or health.

The types of data Google collects or stores may be different for users based on various settings the user has selected and what products they use. For example, if a user has turned on "Web and App Activity" settings, when that user is signed in and conducts searches on Google, we may collect and store in a user's Account, for example, the user's search query, IP address, and the URL they select on the Search results page. This can be helpful to users who wish to store this history; it also allows us to make better predictions about helpful results. If that user is not signed-in, however, we may still collect information about that query for use in some of our tools, like Google Trends (https://trends.google.com/), or to improve our products. We would not, however, associate that information with the user's Google account.

Our Privacy Policy describes in detail the categories of information we collect. The most common of these include:

- Identifiers such as name, phone number, and address, as well as unique identifiers tied to the browser, application, or device used.
- Demographic information, such as age, gender, and language.
- Commercial information such as payment information and a history of purchases made on Google's services.
- Internet, network, and other activity information such as search terms; views and interactions with content and ads; and activity on third-party sites and apps that use our services.
- Geolocation data, such as may be determined by GPS, IP address, and other data from sensors on or around a user's device, depending in part on the device and account settings.
- Other information created or provided by users, such as the content created, uploaded, or received (like photos, videos, emails, docs, or spreadsheets).
- Inferences drawn from the above, like ads interest categories, if permitted by the user's settings.

We continue to build and improve upon our services, to ensure users understand the data they are sharing and can make informed choices about their data.

3. Mr. Pichai – is it fair to say that Google uses all of that data to create a profile on the user - even those without Google Accounts? Do you use that profile for the purposes of targeted advertising?

Depending on users' settings, Google will show personalized ads based on information provided by the user or inferred from the user's activity. Every Google user can visit https://adssettings.google.com/ to turn off personalized ads altogether. Users who are signed in to a Google Account can see the information used to personalize ads and make changes.

We make many Google Services, such as Search, Maps, or YouTube, available to individuals even without a Google Account. Like the vast majority of internet services, when an individual uses our services without a Google Account, we store the data we collect with unique identifiers (such as a cookie ID) tied to the browser, application, or device with which the user accesses our services. The data associated with those cookie IDs may be used for personalized advertising, if permitted by the user's settings. Users can also manage some of the ways their data is collected, by configuring their browser settings (e.g., to clear or block all or some cookies) or device settings. As described in our Privacy Policy, we also provide individuals who use Google Services without a Google Account with additional ways to manage the data Google associates with their browser or device. For example, users without a Google Account can choose whether their Search activity is used to offer more relevant Search results and recommendations by visiting https://google.com/history/optout.

4. Mr. Pichai, two weeks ago, the Global Project Against Hate and Extremism found that campaign ads for both Joe Biden and President Trump ended up on Russian propaganda channels on YouTube. I assume neither campaign asked for their ads to be there, how did they end up on those channels?

i. Can you guarantee all of us on this Committee that ads we purchase through Google will never be on an extremist, hateful, or exploitive video or web site?

ii. If our ads do appear on extremist content, am I correct that if someone views or clicks on that ad a portion of the money Google takes from our campaign will go to the purveyors of that content? And Google gets paid as well, correct?

iii. How can advertisers guarantee that their ads will remain brand safe? Do they just have to rely on Google?

iv. To be clear, I pay Google to place my ad, my ad makes money for Google wherever it is placed, and I rely on Google to tell me how well Google performed. Is that a conflict of interest?

v. Can I use another service to put my ad on YouTube?

Google helps to enable a free and open web by helping publishers monetize their content and advertisers reach prospective customers with useful, relevant products and services. Maintaining trust in the ads ecosystem requires setting limits on what we will monetize.

Google policies prohibit a range of misconduct by those who place content on our platforms, including dangerous or derogatory content; content that is illegal, promotes illegal activity, or infringes on the legal rights of others; and content that misrepresents the owner's origin or purpose. We, for instance, put significant effort into curbing misinformation in our products, including a policy against news content by foreign state-sponsored news organizations that conceal their affiliations with foreign governments. We also actively work to provide users and

advertisers with more information about the content they are seeing to allow them to make educated choices, including whether they advertise alongside specific content.

We have thousands of people working across our teams to make sure we're protecting our users and enabling a safe ecosystem for advertisers and publishers, and each year we share a summary of the work we've done. In 2019, we blocked and removed 2.7 billion bad ads—that's more than 5,000 bad ads per minute. We also suspended nearly 1 million advertiser accounts for policy violations. On the publisher side, we terminated over 1.2 million accounts and removed ads from over 21 million web pages that are part of our publisher network for violating our policies. Terminating accounts—not just removing an individual ad or page—is an especially effective enforcement tool that we use if advertisers or publishers engage in egregious policy violations or have a history of violating policy.

Candidates, campaigns, and other types of political spenders are treated the same as other similarly situated advertisers. We understand the concerns of our advertisers, who do not want their advertisements to appear on content that they find objectionable. We have long standing guidelines that prohibit ads from running on videos that include extremist or hateful content, and we enforce these rigorously. We've publicly discussed these actions in recent blogs, available at https://blog.youtube/news-and-events/expanding-our-work-against-abuse-of-our and https://youtube.googleblog.com/2019/06/our-ongoing-work-to-tackle-hate.html.

More generally, YouTube provides advertisers with many tools to control the placement of their ads. Advertisers can target specific topics, so that their ads appear alongside content related to those topics, and they can also target specific placements, so that their ads appear alongside certain YouTube channels or videos. Just as advertisers can target specific topics and placements, they can also exclude topics or placements where they don't want their ads to show. More information about how advertisers can ensure that their ads don't run on certain channels or alongside certain content can be found at https://support.google.com/google-ads/topic/3119080?hl=en&ref_topic=3119122.

YouTube ad inventory is not exclusively available to advertisers through Google "products"; rather, advertisers can purchase YouTube inventory through the following channels:

- YouTube Partner Sales Program: Certain YouTube partners work directly with advertisers to sell and serve ads on content they own and show on YouTube.
- Direct Reservation: A direct contract is negotiated between the advertiser and Google. These can be booked directly through the YouTube sales team.
- Google Ads: Advertisers can purchase YouTube inventory through Google Ads, Google's online ad buying storefront.

- Display & Video 360: Advertisers can purchase instream inventory, including ads in YouTube TrueView format, and bumper ads through DV360.

Advertisers can also use a range of third-party measurement vendors that interoperate with YouTube (via Ads Data Hub) to get information about the viewability, reach, and other metrics of the ads they paid for and to confirm the return on their investment in advertising.

5. Mr. Pichai, in a 2018 letter to Senators Markey and Blumenthal, Google's Vice President for Public Policy Susan Molinari explained that Google uses a phone's geolocation to "infer demographic information", certainly demographic information can mean things like race and income. How do these demographic inferences from where a phone is located impact the ads, offers, and opportunities a person might see?

Our Google Ads policies are written to protect users, advertisers, and publishers, and to prohibit advertisers from unlawful behavior like discriminating against users. We also give users control over the kinds of ads they see, including the ability to opt out of seeing any personalized ads. Our ads policies apply to all of the ads we serve, and if we find ads that violate our policies, we take action.

The types of location information that Google uses for ads depend on a number of factors, including the services and individual settings a user chooses. Our goal is to give users transparency, choice, and control as they navigate these options. As explained in our Privacy Policy (https://policies.google.com/privacy?hl=en&gl=de#whycollect), we don't show personalized ads based on sensitive categories, such as race, religion, sexual orientation, or health. Nor do we infer these sensitive categories, including race, from location information. We also do not allow advertisers to target precise locations for ads. We do use broader location signals to allow advertisers to direct ads in areas most geographically relevant to them. For example, a deep dish pizza restaurant in Chicago doesn't usually want to direct ads to people in London.

i. If there is a predominantly white neighborhood next to a predominantly Black neighborhood, would a Black person see different offers and opportunities on their phone than a white person a few streets away?

For over a decade, we've had personalized advertising policies that prohibit advertisers from targeting users on the basis of sensitive categories related to their identity, beliefs, sexuality, or personal hardships. This means we don't allow advertisers to target ads based on categories such as race, religion, ethnicity, or sexual orientation. We regularly evaluate and evolve our policies to ensure they are protecting users from behaviors like unlawful discrimination. For more information on our personalized advertising policies, please see https://support.google.com/adspolicy/answer/143465?hl=en.

6. Mr. Pichai, I understand that in the advertising business, mobile ads served on people's phones are most valuable especially if they take into account that person's

location. I know that Google through its Android operating system on phones knows where people using Android phones are located.

7. Please tell me how often does a Google Android phone check a user's location and communicate that back to Google and how accurate is that location data?

Because the issues raised in Nos. 6 and 7 are related, we have grouped together our responses. Google provides users with granular control to manage device location settings. The frequency and type of location information that we collect depends on a number of factors, including the service being used and an individual user's settings.

When users enable device location settings on their mobile phones, including a setting called Google Location Accuracy, the phone can use sources to determine the most accurate device location, including GPS, Wi-Fi, mobile networks, and device sensors.

Users can choose to share their device location with Google products and services, or choose to disable device location settings. Users can also control the frequency with which Google and other apps and services access device location by, for example, deciding to deny permission, or, on Android version 11 and up, allowing permission only when an app is in use.

We do not allow advertisers to target precise locations for ads. We do use broader location signals, to allow advertisers to direct ads in areas most geographically relevant to them. As we noted in response to Question No. 5 from Representative Buck, an example of this is that a deep dish pizza restaurant in Chicago doesn't usually want to direct ads to people in London.

8. Does it check location so frequently as to be fair to say that it is continuous?

The frequency with which Google collects location information depends on a number of factors, including the service being used and an individual user's settings. Users can choose to disable device location settings, and also control the frequency with which Google and other apps and services access device location by, for example, deciding to deny permission, or, on Android version 11 and up, allowing permission only when an app is in use.

9. Does an Android phone know when its user is at home or at work? Does it for example know that when an Android phone is in the same location without moving for say 8 hours at night that its user is likely sleeping and at home? Or the same with if the user is in the same location for 8 hours during the day that the user is at work?

Users can choose to share their device location with Google products and services, or choose to disable device location settings.

Users who want to type less and get directions faster when using Google Maps and other services can decide to set their home and work addresses. If users have decided to save their home and work addresses to Google, the addresses will appear when the user is signed in and

opens Google Maps and may also be used to help personalize their experience in other Google products and services.

Additionally, users can opt-in to a feature called Location History. Location History is a Google Account–level setting that saves location information to a private timeline. If a user turns this feature on, Google receives Location History for each device where that user is signed in and has Location Reporting turned on.

But, again, it's important to note: not all Android users opt-in to Location History, and not all Android users use Google Maps.

10. Does Google change the type of ads it sends to a user based on whether the user is at home or at work, or some other location?

The types of location information that Google uses for ads depend on a number of factors, including the services and individual settings a user chooses. Our goal is to give users transparency, choice, and control as they navigate these options. General location data, such as your current city or country, or whether you are in a residential or business area, may be used for ads, but we do not offer location targets that are precise, like GPS coordinates. This approach allows advertisers to reach a local audience, without using information that could identify a person's specific address. As noted in responses to other questions, this helps ensure that a deep dish pizza restaurant in Chicago doesn't have to direct ads to people in London.

11. Mr. Pichai if I use a Google Android phone to open Google Maps or Waze for directions while I'm driving, I understand that the phone must know my location to provide directions. How else is my location data used within Google's products?

Providing useful, meaningful experiences is at the core of what Google does, and location information plays an important role in doing just that. Google collects information about a user's location when they use our services, which helps us offer features like driving directions in Google Maps. In addition to driving directions and traffic conditions, location information helps make sure your search results include things near you, as well as providing information such as showing you when a restaurant nearby is typically busy. Location information also helps with other product functionality, like providing a website in the right language or helping to keep Google's services secure. Ads can be served based on general location. We use broad location signals to allow advertisers to direct ads in areas most geographically relevant to them. This allows a local, small business to ensure that its ads are directed to people who are likely to visit them (e.g., users in the same city) rather than at individuals located on the other side of the state or country.

i. Is my location data also used for advertising purposes or is it used to build an advertising profile of me that tells what businesses I have gone to or frequently visit?

Location data is used for advertising purposes. For example, we use broader location signals to allow advertisers to direct ads in areas most geographically relevant to them. As noted in other responses, this enables a deep dish pizza restaurant in Chicago to know they are not directing ads to people in London.

Whether and how information may be used for personalized ads will depend on a number of factors, including the services and individual settings a user chooses. In addition, depending on a user's settings, location data may be converted into anonymous, aggregated statistics for advertiser metrics. Ultimately, we work to ensure users have control over their data. For example, Web & App Activity can be disabled or deleted at any time, and Location History, which is opt-in only, can also be disabled or deleted at any time, including automatically after 3 or 18 months.

ii. If so, how long does Google keep that information about me?

We give users robust controls over their data. Both location data stored under Location History and Web & App Activity have user retention controls and tools that enable users to automatically delete data after either 3 or 18 months. We also recently announced that, by default, we will set the retention for new accounts, or for users turning on Location History for the first time, to 18 months. Users can also see all of the data associated with their account by visiting their Google Account page and can delete specific activity or bulk-data according to their preferences. Users can always modify these settings or change their auto-delete option. For more information, please see https://www.blog.google/technology/safety-security/keeping-private-information-private/.

iii. Can I view this data as part of my Google takeout, and can I delete it?

Users can view and delete their Google Accounts and Account information at any time, including Location History and Web & App Activity. Google also enables users to download or export their user data from the Google products they use. Google's "Download Your Data" (also known as "Takeout") tool allows users to export and download their content from several of our products, such as email, documents, Calendar, Photos, and YouTube.

12. Mr. Pichai, in recent weeks we have seen massive protests all over our country. I assume most of these protestors carried a phone and based on Google's market share more than half of them carried Google Android phones.

i. Is it possible for Google to use location to advertise to people at similar demonstrations?

ii. Did this type of advertising occur? And if so, did Google receive premium bids for this kind of location-based advertising?

Because the answers to these questions are related, we have grouped together our responses to Question Nos. 12.i and 12.ii. The location information that Google uses for ads depends on a

number of factors, including the services and individual settings a user chooses. Our goal is to give users transparency, choice, and control as they navigate these options. We do not allow advertisers to choose precise locations for ads targeting, like GPS coordinates. We do use broader location signals to allow advertisers to direct ads in areas most geographically relevant to them. It would be possible, for example, for an advertising campaign to target ads to geographically large neighborhoods in a metropolitan area, although they would not be able to target a specific street corner. On the question of whether there was a particular surge of ads related to demonstration locations, again, we do not allow advertisers to choose precise locations for ads targeting, like GPS coordinates.

iii. Are advertisers able to choose political affiliation as a filter for these types of ads?

We understand that political speech is a central part of the democratic process and advertising is an important part of that. We have never allowed microtargeting, and last November, we restricted audience targeting for election ads to only age, gender, and general location (zip code level). Additionally, we do not permit advertisers to target ads based on users' political affiliation. This aligns our approach to the way political ads have been running on TV, radio, and print media.

We want to improve voters' confidence in the political ads they may see on our ad platforms. We review all ads, including political ads, to ensure that they comply with our ads policies (https://support.google.com/adspolicy/answer/6008942?hl=en), which we make publicly available. We also have a number of protections to ensure our political advertising is appropriately supportive of the democratic process, including:

- Mandatory verification for all advertisers purchasing election ads, requiring that advertisers confirm they are a U.S. citizen or a lawful permanent resident (https://www.blog.google/topics/public-policy/supporting-election-integrity-through-greater-advertising-transparency/).
- A publicly accessible, searchable, and downloadable transparency report of election ad content and spending on our platforms, going beyond what's offered by most other advertising media (https://transparencyreport.google.com/political-ads/region/US).
- We require all election ads to contain a disclosure identifying who has paid for the ad. For most ad formats, we will automatically generate a "Paid for by" disclosure, using the information provided during the verification process. The disclosure displays the name of the entity that paid for the ad to users who see the ad (https://support.google.com/adspolicy/answer/9002729?hl=en).

iv. Does Google note in a consumer's profile that they have likely attended political protests?

v. Does Google create advertising audiences based on consumer protest activity or interest?

Because the issues raised in Nos. 12.iv and 12.v are related, we have grouped together our responses. We have never allowed microtargeting. If users have enabled personalized advertising in their account, they can view and edit how ads are targeted to them by visiting https://adssettings.google.com/. Attendance at or interest in a political protest is not a filter we use for targeted ads. As noted in prior responses to questions above, we've restricted personalized advertising for election ads to only age, gender, and general location (similar to zip code level). This aligns with our approach to the way political ads have been running on TV, radio, and print media.

13. Mr. Pichai, throughout this pandemic mobile phone data has been used to show the movement, or non-movement of people. Did Google use location data of Android phone users to generate these type of maps?

We are proud of our efforts to support public health officials and provide the public with helpful information about the COVID-19 pandemic through our COVID-19 Community Mobility Reports (https://www.google.com/covid19/mobility/), and we have created stringent privacy protocols in order to protect people's privacy concerning these efforts. No personally-identifiable information, such as an individual's location, contacts, or movement, will be made available at any point.

Insights in these reports are created with aggregated, anonymized sets of data from users who have turned on the Location History setting, which is off by default. People who have Location History turned on can choose to turn it off at any time in their Google Account and can always delete Location History data directly from their Timeline in addition to turning it off.

i. Did Google ask consumers to consent to their location data being used for potential COVID mapping for shelter in place orders or as states reopened?

In accordance with our Privacy Policy (https://policies.google.com/privacy?hl=en-US), Google only shares personally-identifiable data under limited circumstances, such as with consent or for legal reasons. Insights in Community Mobility Reports are created with aggregated, anonymized sets of data from users who have opted into using Location History, which is off by default. People who have Location History turned on can choose to turn it off at any time from their Google Account and can always delete Location History data directly from their Timeline. In Google Maps, we use similarly aggregated, anonymized data showing how busy certain types of places are—helping identify when a local business tends to be the most crowded.

ii. Could this consumer location data be used to identify or target a business for being open even if it wasn't categorized as essential?

The Community Mobility Reports show aggregate movement trends by region, across different categories of places. The reports are created with aggregated, anonymized sets of data, so no personally-identifiable information, such as an individual's location, contacts, or movement, will be made available at any point. The reports show types of places, such as transit stations or parks, and not individual businesses or addresses.

iii. Could this user location data be used to find or target a large gathering of people?

The Community Mobility Reports are created with aggregated, anonymized sets of data, so no personally-identifiable information, such as an individual's location, contacts, or movement, will be made available at any point. The reports show mobility trends based on types of places, such as transit stations or parks, and not specific places or numbers of people. For example, a Community Mobility Report may show that there has been a 5% change in mobility in parks in a certain country. Additionally, the data in the reports is not real-time information but rather the most recent information is from at least a few days prior.

iv. Could this user location data be used to infer that an Android user was diagnosed with COVID because he or she spent time at a hospital or clinic, or went to a testing facility? Maybe not the location by itself but when Google combines the location data with information you have from the user's Search history or the text from their emails?

The information in the mobility reports does not show trips to hospitals or COVID test centers. The Community Mobility Reports are created with aggregated, anonymized sets of data, so no personally-identifiable information, such as an individual's location, contacts or movement will be made available at any point. We do not scan a user's emails—or use a user's Search history—to attempt to make a medical diagnosis or inference concerning their health.

14. Mr. Pichai, Google has made a series of announcements over the last couple of years all framed as protecting consumer privacy. Some of those announcements restrict competitors in the advertising industry from collecting various types of consumer data. Yet, Google itself continues to collect more and more information. Please explain why in Google's view, consumers are better off if Google stops third-party cookies used by competitors, but still collects even more data on consumers for its own purposes?

Our business model is dependent upon meeting user demands, including users' interest in greater transparency and control over their data. We, and the broader tech industry, are developing our products to meet that demand.

In August 2019, we announced a new initiative, known as the Privacy Sandbox, to work with the web community to develop privacy-preserving and open-standard mechanisms that can sustain a healthy, ad-supported web without the need for third-party cookies. Previously, both Apple's Safari and Mozilla's Firefox announced that they would block third-party cookies, but they took these actions without first developing alternative ways to support key existing use-cases. We believe this approach may have unintended consequences for both users and

the web ecosystem, and can undermine the business model of publishers who rely on ads to make their content freely available to the public.

Because of these concerns, Chrome has committed to working actively to build technologies that enable a more private and sustainable web before phasing out support for third-party cookies. In January 2020, we announced our intention to phase out support for third-party cookies in Chrome over the next two years.

These changes to Chrome will affect all companies that currently rely on third-party cookies, including Google. Chrome treats Google cookies set on non-Google websites—including the websites of publishers using Google's ad products—as third-party cookies. This is the same treatment Chrome applies to the third-party cookies of others in the ad-tech industry.

i. Does Google collect data- from anywhere online – about consumers who do not have a Google account? Can these consumers opt out of Google's data collection about them, and if so, how?

Many of our services, including popular offerings like Search, Maps, or YouTube, do not require a Google account to use. Like many other internet services, when an individual uses our services without a Google account, we may collect the data associated with the user's use of our services. Depending on the service, such data may include unique identifiers (such as a cookie ID) tied to the browser, application, or device with which the user accessed our services. Whether any data is collected by Google, and, if so, what types of data, depends on which service the user used and the user's demonstrated preferences. Users have options to manage some of the ways data is collected—even without a Google account—by configuring their browser settings or device settings, or within the Google services themselves, as described in the Google Privacy Policy. For example, even without an account, users can opt out of their Search activity being used to to offer more relevant Search results and recommendations by visiting https://google.com/history/optout.

15. In June, you reorganized Google's reporting structure to have Google's Search team report into the Head of Ads and Commerce. In essence, Google's search algorithm now answers to the monetization team. Why did you make this change?

We sell ads, not search results. Our core mission is to provide the most helpful and relevant tools and information, and we do not allow ads to drive how we deliver organic search results. In June 2020, Prabhakar Raghavan's role was broadened as the new Senior Vice President of Search, Ads, Commerce, Geo, Payments, and NBU. There remain separate leads for our Search and Ads teams, each reporting to Mr. Raghavan, and the Search leads do not report to the Ads leads.

16. We talked about Google's relationship with China during the hearing. What is the status of Google's work in China?

We welcome the opportunity to answer your questions about Google's presence in Mainland China. We do not offer our main consumer products, including Google Search, Gmail, Google Drive, Google Play, and YouTube in Mainland China. We have a deep appreciation for the challenges of doing business in Mainland China. We have and will continue to consult widely—including with the U.S. Government—on those issues. We will continue to be thoughtful in any decisions that we make about offering products and services in China, and we will be transparent and consult with policymakers and other stakeholders about our decisions. Our activities in Mainland China are limited and carefully scoped, and we hope our answers will prevent our work from being unfairly characterized.

i. Are you working with the Chinese government, or any government supported companies, in any way?

Our business operations in Mainland China have several primary components. Our Ads business helps Chinese companies advertise their products. This is almost entirely for reaching potential customers abroad—clearly we do not have owned-and-operated publishing inventory within China. Our Cloud business serves multinational Chinese businesses in their Cloud operations outside of China. There is also a significant Android developer community in China that we support with our standard developer outreach. In addition, we occasionally participate in local level Chinese initiatives, such as with local arts and cultural institutes and forums that aim to get SMBs online.

ii. Are you in discussions to work with them? If so, what is the nature of your collaborations or the potential projects?

As discussed above in response to Question No. 16.i, our engagement in Mainland China is very limited, we will continue to be thoughtful in any decisions that we make about offering products and services in China, and we will be transparent and consult with policymakers and other stakeholders about our decisions.

17. Does Google sell ad space?

Yes, Google sells ad space on its owned and operated properties (e.g., Google Search, YouTube, Google Maps, and Gmail) and also provides technology to facilitate the purchase and sale of its partners' ad space. Google's digital advertising tools help publishers to generate revenue. In 2018, we paid our publisher partners more than $14 billion. Google's advertising solutions also help small and medium businesses connect directly with their customers online, whatever their advertising budget. They level the playing field with larger advertisers. Most recently we provided $340 million in ad credits to help small and medium sized businesses stay in touch with their customers during COVID-19 pandemic. Today, Google is just one player in a crowded advertising market, competing against Amazon, Facebook, Twitter, Snap, TikTok, and Pinterest, whose digital advertising businesses have and continue to grow. Ad competition has helped lower online advertising costs by 40% over the last 10 years. See, for example, the Progressive Policy Institute's July 8, 2019 report, "The Declining Price of Advertising: Policy

Implications," https://www.progressivepolicy.org/issues/regulatory-reform/the-declining-price-of-advertising-policy-implications-2/.

i. Does Google remarket ad space to advertisers?

Remarketing campaigns are one type of ad campaign that advertisers can choose from when marketing with Google. Remarketing is a type of ad campaign that allows advertisers to connect with people who previously interacted with the advertiser's website, mobile app, or video channel. Remarketing allows advertisers to position their ads in front of these audiences as they browse Google or its partner websites. We do not, however, allow personalized ads based on sensitive categories, such as race, religion, sexual orientation, or health.

ii. Does Google run the auctions to determine which ad can fill a specific ad box?

Publishers using Google's publisher-side ad tech products (e.g., Google Ad Manager, AdMob, or AdSense) can, among other sales methods, use those products to sell their ad inventory via an auction. Publishers use multiple platforms to sell ads and are not required to use Google. According to a recent independent survey, publishers use four to six different platforms to sell ads, while the top 100 advertisers use an average of four to seven platforms to buy ads. This recent study is available at https://www.adexchanger.com/platforms/google-ad-manager-policy-changes-dont-hurt-publishers-according-to-advertiser-perceptions/. Likewise, Google largely uses an auction format to sell ad inventory from its owned and operated properties. Which ads can show for a particular impression depends on a variety of factors, including the set of eligible auction participants set by the publisher, whether the publisher has blocked a certain advertiser from showing ads on its inventory, and the applicable floor price as set by the publisher.

18. Under Google's last-touch accounting, if I put in "running shoes" into a Google search, Google attributes to itself my purchase of new shoes when you show stats to Wall Street or to shoe company clients. Does this overstate the value of Google's contribution?

Google offers ad customers multiple ways to determine attribution for sales. We recognize that while some advertisers measure the success of their online advertising on a "last click" basis—giving credit for a conversion to the last-clicked ad or corresponding keyword—this methodology ignores the other ad interactions customers may have had. Google offers several attribution models, in addition to a last-click, including the following models:

- First interaction, which gives all credit for the conversion to the first-clicked/interacted ad and corresponding keyword.
- Linear, which distributes the credit for the conversion equally across all ad interactions on the path.
- Time decay, which gives more credit to ad interactions that happened closer in time to the conversion.

- Position-based, which gives a % of credit to both the first and last ad interactions and corresponding keywords, with the remaining % spread out across the other ad interactions on the path.
- Data-driven, which distributes credit for the conversion based on your past data for this conversion action.

More information about our attribution models are available at:
https://support.google.com/google-ads/answer/6259715?hl=en,
https://support.google.com/google-ads/answer/7002714?hl=en,
https://support.google.com/google-ads/answer/7003286?hl=en,
https://support.google.com/analytics/answer/1662518, and
https://support.google.com/analytics/answer/6148697.

19. Would Google approve of advertisers working with other companies to judge the effectiveness of Google's advertising?

Yes, Google makes available to advertisers a number of Google's own proprietary measurement solutions. Advertisers are also free to choose from verified third-party analytics services to collect detailed event-level data about Google ad campaigns and measure advertising effectiveness. Please see our response to Representative Buck's Question No. 4, above, for additional information relevant to this question.

20. Google has said that when publishers earn less than they think they should from advertising, it's because the quality of their ad inventory isn't as high as they think. What are some examples of the highest quality ad inventory, with the best earning potential?

Respectfully, we believe the premise of this question is inaccurate. Google does not take the position that when publishers earn less than they think from advertising, it must be because the quality of their ad inventory isn't as high as they think. The earning potential of a publisher's ad inventory depends on a variety of factors, including the size and location of the ad space relative to the publisher's web page or app, the volume and characteristics of users the publisher typically attracts, and user engagement with the web page or app, among others. For example, a banner ad at the top of ESPN.com or large news outlets such as nytimes.com or wsj.com is typically considered inventory with high earning potential.

i. Google's search and ad server site "tags" collect user data from thousands of websites. Is this data stored by Google and do Google's advertiser tools gain access to or benefit from this information?

Publishers using Google's sell-side advertising technology products embed in their pages pieces of HTML code that are referred to as ad tags (and also insert tags that correspond to the many other advertising technology products that publishers typically use simultaneously

with Google's products). Whenever a web page is visited, the user's web browser tries to load the content of that page. If the page uses Google's ad server, the HTML code in the page will contain an instruction to the user's browser to request a file from the Google sell-side advertising technology products, for example, Google Ad Manager. Ad requests typically include information about the user's IP address, the content of any cookies on the user's browser that are associated with the ad server's domain, and the URL of the page that issued the request ("Ad Request Data") and can be sent at the publisher's discretion to multiple different exchanges or platforms, not just Google. In response to such a request, Google Ad Manager can return an ad or record an event in its logs (e.g., the fact that a user arrived at this particular page, information that is valuable to its customers and stored in accordance with Google's Privacy Policy). Publishers control whether Google's advertiser tools such as Google Ads or DV360 are permitted to log user data related to the impression.

When Google Ad Manager is requested to conduct an auction for an impression, it typically includes key elements of that Ad Request Data in the bid requests it sends to eligible participants, including third-party bidders participating as Authorized Buyers (i.e., ad networks, trading desks, and DSPs), ad exchanges and ad networks participating in Google's Open Bidding service, and Google-owned bidders such as Google Ads and DV360. All participating bidders receive broadly the same information in their bid requests, including non-personally-identifiable information regarding the impression, the site or app on which the impression is located, the user, and the user's browser. Each bidder may then combine that information with its own data to calculate an appropriate bid.

ii. I have heard reports that companies are under pressure by Google to buy more ads and ad services from you than they normally would in order to qualify for various incentives.

Google does not pressure companies to buy more ads and ad services than they normally would in order to qualify for incentives. The fees associated with some Google advertising technology products can decrease as advertisers increase their advertising spend or publishers increase their sales volumes, thereby decreasing the overall cost of buying and selling advertising space when using Google services. Such fee structures are commonplace in the sale of online advertising, as they are in many industries, and are often demanded by Google's partners. How much a company ultimately spends on advertising through Google's advertising products is entirely up to them.

21. Does Google engage in any pressure tactics- such as incentive programs, ad placements, auction rigging or any other conduct- to facilitate ad purchases above and beyond what a given company may ordinarily spend?

Google does not pressure companies to buy more ads and ad services than they ordinarily would to qualify for incentives or otherwise. As discussed above, like many other service providers, Google offers certain fee structures, often in response to requests from Google's

partners, that can reduce overall cost as volumes and spend increases. Google respectfully disagrees that such structures are appropriately characterized as "pressure tactics."

22. Mr. Pichai, I am going to mention a Google product, for each one please describe in full detail what data that product collects from a user:

We've worked hard to ensure our Privacy Policy (https://policies.google.com/privacy) is accessible and easy to understand. For users with Google Accounts, they can use our Privacy Checkup Tool (https://myaccount.google.com/privacycheckup) to walk through their various settings and update what data Google collects, how long the data is stored, and whether they want to export or delete any data. As we note in our Privacy Policy, we collect information to provide better services to all our users—from users' preferred languages to what YouTube videos they may like. The information Google collects, and how that information is used, depends on how individuals use our services and manage their privacy controls.

Below, in response to your questions, we provide an overview of the types of information that may be collected but note that many factors, including users' settings, can alter what types of data are collected.

i. The Google Android smartphone operating system -

Google's Android operating system is an open-source platform that can be used in many products, including TVs, vehicles, and smartphones. Google does not always receive data from an Android device, depending on how it has been developed by other manufacturers and developers. For Android devices with Google apps, like Google Play Services, the device may periodically contact Google servers to provide information about the device and its connection to our services. This information includes information like device type, carrier name, crash reports, and which apps have been installed on the device. Depending on which Google apps are on the device, we may also collect other data, as described in our Privacy Policy (https://policies.google.com/privacy).

ii. The Chrome browser

Information regarding how Chrome handles users information is available at Chrome's privacy notice, available at https://www.google.com/intl/en/chrome/privacy/. Like all browsers, the basic browser mode for Chrome stores information locally on the user's device, including browsing history, personal information and passwords (if a user opts to save them to the browser), a list of permissions that they have granted to websites (like whether they've granted a food delivery website access to their location), cookies or data from websites visited, data saved by extensions, and a record of downloads. In addition, by default, Chrome sends usage statistics and crash reports to Google to help us improve our products.

Users may use Chrome with or without a Google Account. If a user signs in to the Chrome browser or a Chromebook and enables "sync with your Google Account," their personal

information is saved in their Google Account on Google's servers so they may access it when they sign in and sync to Chrome on other computers and devices. This personal information is subject to Google's Privacy Policy and can include browsing history, bookmarks, tabs, passwords and autofill information, and other browser settings, like installed extensions.

iii. Google Search

Users may use Google Search with or without a Google Account. What data might be collected is dependent upon the user's Google Account setting. On a given user's Google Account page (http://myaccount.google.com/), that user can view his or her activity (if he or she has opted in to having it stored), delete it manually, and/or choose to delete it automatically using the controls provided on that page. Users without a Google Account can choose whether or not their Search activity is used to offer more relevant Search results by visiting https://google.com/history/optout.

Search collects user activity including what users search for, the results they click, and the user's IP address (for example, for language identification and to aid in displaying local results). This information is used for things like improving a user's experiences by giving faster searches and more relevant results.

For more information about users' data in Search, users can visit: https://myactivity.google.com/privacyadvisor/search?pli=1.

iv. DoubleClick

DoubleClick is no longer used as a product name by Google, but in the past was used to refer to multiple advertising products we offer to online marketers and publishers. In general, like many other companies with competing services, Google collects information from user's interaction with these services when they are visiting the sites and apps of those marketers and publishers. This includes information about each ad impression or ad click, basic information about the user, including IP address, a unique cookie or device identifier, and the time and URL of the event. We collect this information for the purposes we list in our Privacy Policy, and in particular in order to personalize advertising (if permitted by the user's settings), to provide aggregated reports to advertisers and publishers, and to combat fraud and abuse.

v. YouTube viewing and search history

Users may use YouTube with or without a Google Account. Depending on a user's settings, YouTube may retain information about the user's watch history and queries from their search history. To help users with a Google account control this information, we created "Your data in YouTube," available at https://myaccount.google.com/yourdata/youtube, a feature designed to makes it easy for user to understand and control what data is saved and how it is used on YouTube and across Google. For example, users can remove specific videos from their watch

history and specific queries from your search history, pause their watch and search history, and/or delete their entire watch and search history.

vi. Google Analytics

Google Analytics collects data related to a user's device or browser, IP address, and activity on sites or apps owned by our customers in order to measure and report statistics about user interactions on those sites or apps on behalf of those customers. We offer a number of tools to Google Analytics customers to allow them to control the data we collect about their users, including IP masking and data retention controls, and user data deletion.

23. Earlier this year, Google announced that the Chrome browser would phase out third-party browser cookies. These so-called third-party cookies are how ad tech competitors and independent web sites understand consumer behavior. How are these competing browser cookies any different than Google's own tracking devices?

As we discuss in response to Question No. 14, our announcement to phase out third-party cookies is part of an industry-wide movement away from these tools. When Chrome stops accepting third-party cookies, it will treat Google third-party cookies the same way it treats all other third-party cookies.

It's important to understand that third-party cookies are just one way for advertisers to understand consumer behavior. Advertisers also can make use of data obtained through a first-party relationship that an ad tech provider may have with consumers—such as Amazon's extensive data on its users' shopping habits—or through third-party services that do not rely on cookies.

Additionally, even with these changes, website publishers can continue to use first-party cookies to understand its relationship with its users as it always has.

i. Will Google's changes to Chrome have similar impacts on Google's and its rivals' data collection capabilities?

ii. What data will Google collect from Chrome that will no longer be available to Google competitors?

As explained in more detail above, the changes to Chrome will apply equally to all companies that currently rely on third-party cookies, including Google.

iii. Does Google treat different streams of consumer data differently? For instance, how many types of consumers' data are incorporated into Google's adtech products to generate audiences?

We have strict policies on what types of advertisements can be placed through Google and how users may be targeted. Advertisers are not allowed to use sensitive interest categories to target ads to users or to promote advertisers' products or services, including targeting users

based on personal hardships, their identity, beliefs, or sexuality. We also have policies to ensure that ads promoting access to opportunities, like housing and jobs, cannot be targeted to users based on social biases like race or gender.

iv. Are any types of consumer data more valuable to advertisers or Google?

Yes, Google's understanding is that advertisers value different types of consumer data differently depending on a variety of factors, including the goal the advertiser is trying to achieve or the product or service they offer. For example, an advertiser conducting a direct response campaign may value information about whether the user has visited their website before more than an advertiser that wants to increase their brand recognition. Google wants to help advertisers deliver more relevant ads and therefore strives to provide advertisers with targeting options that meet all of their needs, consistent with Google's policies regarding sensitive interest categories or personal characteristics as described in response to Question No. 23(iii).

v. How does Google's advertising pricing change based on various types of consumer data?

Google does not set the prices of ad inventory on its owned and operated properties based on consumer data. Instead, Google sells that inventory largely through an auction format. The price of that inventory depends on the result of those auctions and relative advertiser demand.

24. Google just announced an investment into home security provider ADT. Google currently has a substantial position in the connected home market with the Nest line of products. What will the market share be of the combined Google-Nest-ADT collaboration?

i. Will Google collect, process, analyze, or store data from currently installed ADT devices?
ii. How about future devices?
iii. How will Google integrate ADT data into its advertising technology?

Our mission for smart home products is to build devices and services that allow a user's home to take care of the people inside it and the world around it. We are committed to giving users transparency, choice, and control over their data in our products and services, and our partnership with ADT is no different. We have committed that, for our Nest home products, video footage, audio recordings, and home environment sensor readings are not used in advertising or for ad personalization. When a user interacts with the Assistant, we may use those interactions for ad personalization. For example, if a user asks, "Hey Google, what's the weather today?" we may use the text of that voice interaction (but not the audio recording itself) to show personalized ads. Of course, users can always review their Google settings to control the ads they see, including opting out of ad personalization completely. Learn more

about the Google Assistant and the choices available at https://support.google.com/accounts/answer/2662856 and https://myaccount.google.com/yourdata/assistant?pli=1.

Google has also published FAQs on Privacy for Google Nest, which are available at https://support.google.com/googlenest/answer/9415830?hl=en&ref_topic=7173611, to describe and provide more details about how Google collects and uses user data for its Nest products and services, including its Google Home devices.

Written Questions for the Record from the Honorable Ken Buck
Questions for Jeff Bezos, Tim Cook, and Sundar Pichai

1. Do you employ end to end encryption for communications on your products in China?

2. Do you provide user enabled and controlled encryption on the communications devices you sell in China?

Because the answers to these questions are related, we have grouped together our responses to Question Nos. 1 and 2. We are conscious of our responsibility to safeguard user data, and our presence in Mainland China today is very limited and carefully scoped. We do not offer our communications products like Gmail or YouTube in Mainland China, and we do not have any data centers in Mainland China. We also do not offer our Pixel phone in Mainland China.

3. Do you provide China and the Chinese Communist Party access to users' information and content as required by Chinese law?

4. What user information or content do you provide the Chinese government under Chinese law?

Because the answers to these questions are related, we have grouped together our responses to Question Nos. 3 and 4. We do not produce users' information or content to the authorities in Mainland China, and instead suggest they invoke diplomatic procedures with the U.S. government, like a mutual legal assistance treaty (MLAT). The only exceptions are in the very limited circumstances when non-content user data is needed immediately to prevent death or serious physical injury or for information about advertisers who purchase services through the Shanghai subsidiary. We provide information about government requests to produce data, including requests from the Chinese government, in our transparency report found here: https://transparencyreport.google.com/user-data/overview?hl=en

5. If you deploy Artificial Intelligence to identify illegal content consistent with Chinese law:

- **What data points does your AI examine?**

We know that how AI is developed and used will have a profound impact on society. As a leader in AI, we know we have to get this right. Along those lines, in 2018 Google announced a

set of AI Principles that govern how we develop and deploy AI technology. In these AI Principles, which we use to assess AI applications globally, we outline AI applications we will not pursue, including AI technologies that gather or use information for surveillance in violation of internationally accepted norms, and AI technologies whose purpose contravenes widely accepted principles of international law and human rights. For more information, please see https://ai.google/principles/.

Because we do not offer services like YouTube or Search in Mainland China, we do not use AI to identify such content in China.

- **How is your AI trained to identify and keep up with the changing language, vocabulary and codes used by pedophiles and other criminals?**

Google has long been a leader in the battle against child sexual abuse material (CSAM). In 2018, we introduced a tool that leveraged cutting-edge artificial intelligence (AI) to improve how service providers, NGOs, and other technology companies review content at scale. Using our Content Safety API, we can assist reviewers sorting through many images by prioritizing the most likely CSAM content for review. Previous tools focused on matching images against hashes of known CSAM; our tool is able to keep up with offenders by also targeting content that has not been previously confirmed as CSAM. Quick identification of new images means that children who are being sexually abused today are much more likely to be identified and protected from further abuse. Our work has been praised by the Internet Watch Foundation, among others. For more information, see our blog at https://www.blog.google/around-the-globe/google-europe/using-ai-help-organizations-detect-and-report-child-sexual-abuse-material-online/.

We are dedicated to this fight and will continue to develop AI to battle these types of activities on our platform, and to support other companies in this fight as well.

6. Does China require you to submit either your encryption of AI algorithms to Chinese authorities for technical evaluation before you are permitted to deploy them in China?

We do not share the encryption of our AI algorithms with authorities in China for technical evaluation.

7. Does China require providers to back up the contents of all devices into the either the company's data center or a government data center in China?

8. Does China require information on any or all of your devices that access the Chinese cellular telephone infrastructure or Internet to backup their content and user information in Chinese datacenters? Does this apply to tourists and business travelers, to include United States citizens?

Because the answers to these questions are related, we have grouped together our responses to Question Nos. 7 and 8. We are neither aware of any such requirements, nor are we storing

data as described in the questions. Indeed, we have no data centers in Mainland China and we do not offer our main consumer products, including Google Search, Gmail, Google Drive, Google Play, and YouTube in Mainland China. As noted above, we also do not offer our Pixel phone in Mainland China. As we discussed in response to Question No. 4, any requests for access to user data from Mainland China on our services like Gmail, YouTube, and Search, regardless of the location of the user, would be required to go through the MLAT process except in the very limited circumstances when the data is needed immediately to prevent death or serious physical injury or for information about advertisers who purchase services through the Shanghai subsidiary. We provide information about government requests to produce data, including requests from the Chinese government, in our transparency report found here: https://transparencyreport.google.com/user-data/overview?hl=en.

Written Questions for the Record from the Honorable James Sensenbrenner

1. The Certificate Authority/Browser Forum (CA/B Forum) is an industry body that collaborates on the "best practices" baseline requirements that govern Certificate Authorities (CA) and the issuance of public-facing digital certificates. Browsers participate in the CA/B Forum but, in practice, create their own rules. They have all the power and can unilaterally make changes to internet security through their root store policies.

a. Why is there no federal oversight of the backbone of internet security?

b. Why should Google (or any single company) be able to do anything they deem appropriate just because they have dominant share in the browser market?

c. What role do the people who are impacted (i.e., anyone with a website) have in this process of rulemaking?

d. Can Google confirm that the policies that it recommends and promotes in the CA/B Forum are purely designed to accomplish security outcomes or does Google use the CA/B Forum as a tool to enforce technology changes that benefit Google's business at the expense of security professionals and their ability to practically manage their infrastructure?

Safeguarding user security is an obligation we take very seriously and in which we invest considerable technical resources. Every software vendor, including Google, is responsible for the security of their own products, and designing secure products often requires balancing security, interoperability, and stability. Digital certificate technology was specifically designed to allow this kind of interoperable flexibility on the internet.

To enable the secure, encrypted transfer of data, like credit card information or credentials, web browsers have historically used SSL/TLS, which was originally developed by Netscape

Corporation for the Netscape browser. To establish an SSL/TLS connection, a site provides a digital certificate to the application contacting it, which establishes that the site is who it says. Sites obtain digital certificates from Certification Authorities (CAs) that have been certified by the application to work with and comply with the security policies of that application.

To promote interoperability among different competing products, both between different CAs and between different browsers, the CA/Browser Forum (CA/B Forum) was created. At the time of the CA/B Forum's creation, there was no consistent way for a single vendor, such as a browser, to obtain independent evaluation of different CAs, and there were very large differences in the quality, consistency, and reliability of digital certificates produced by different CAs. Each browser needed to audit and evaluate each CA, as they would any other partnership or product integration. Similarly, each CA needed to carefully evaluate all of a particular browser's product and security requirements, to ensure their certificate issuing process complied.

The Baseline Requirements were developed to provide a minimum, consistent, and interoperable standard for certificates used by browsers, and which browsers could voluntarily adopt. By producing a common minimum baseline, rather than best practices, this further enabled the development of a common set of auditable criteria against those requirements. The most popular widely accepted criteria, the WebTrust criteria developed by AICPA and CPA Canada, were modeled after the System and Organization Controls (SOC) approach from AICPA, which is used to help vendors evaluate their suppliers and service providers. The WebTrust criteria reflect that the certification authority is acting as a service provider for the browser vendor, and thus can affect the safety, security, and reliability of that browser vendor's product.

This development of common audit criteria allowed for CAs to obtain a single audit, rather than separate audits per vendor, and provide that single result to multiple different vendors to demonstrate compliance with common requirements. For CAs, this reduced the cost and complexity of audits. For vendors, such as browser and operating system vendors, the use of common criteria and third-party audits allowed them to rely on third-parties to assess common criteria, and to instead focus on their specific needs and requirements above and beyond those common criteria. Although an important component, they are only part of the evaluation that a browser vendor does before partnering with a certification authority as part of their due diligence into any business relationship.

Website operators, like browser vendors, are consumers of the services that CAs provide. They are therefore important stakeholders in identifying features that are important to them, including security of the issuance process and ease of use and administration. When a CA misissues certificates, then the website operator may be involved in a process like the one described in Question No. 3 in which browser vendors and website operators determine the best path for protecting user security while minimizing disruption.

Google only makes decisions about the certificates that will be trusted by Google products. The security of Google's products is an important reason that users choose to use those products. Other browser vendors can and do make different decisions.

The policies that Google recommends in the CA/B Forum are designed to accomplish security outcomes. In general, Google promotes policies that will increase the strength and ubiquity of encrypted connections on the web. This means we want certificates to be technically strong, as well as easy to issue, deploy, and replace. This benefits users because it makes it more likely that websites will opt to use encrypted connections, and it benefits website operators who can more easily and regularly switch to a CA that may offer a better product. We would be happy to engage with Congress on these issues.

2. Should Google be allowed to set certification rules directly or indirectly (e.g., through Mozilla, where Google is a primary funding source) and also *compete* as a certificate authority either through its own certificate authority or by funding other certificate authorities?

As discussed above, Google does not set policies for certificates other than in determining which certificates Google's own products will trust. Website operators are free to select any CA that best meets their needs and other browser vendors make independent decisions about which certificates to trust. In many cases, browser vendors may reach the same conclusion about trust because they're each considering the same facts and acting out of concern for the security of their users.

Google does participate in standards development bodies like the CA/B Forum, but the CA/B Forum's Baseline Requirements are developed by both CAs *and* browsers, each of which has an interest in interoperable and consistent minimum standards for the management of CAs and issuance of SSL certificates. The Baseline Requirements benefit CA service providers because they have a clearer understanding of the standards they need to adhere to when providing SSL and authentication services. Consumers benefit because they are assured of a certain level of security when they encounter SSL certificates offered by CAs that have met the best practices described in the Baseline Requirements.

Google is invested in creating a more secure internet and empowering other software vendors to make informed decisions about security. One example of Google's initiatives to improve the security of the entire certificate ecosystem is Certificate Transparency (https://www.certificate-transparency.org/), a distributed multi-stakeholder system relied on by multiple browsers and platforms to publicly monitor and audit certificates. Specifically, Certificate Transparency makes it possible for browsers, CAs, website owners, and the general public to detect unauthorized or incorrectly issued SSL certificates, whether issued mistakenly or maliciously. This in turn protects users from having their security or privacy compromised by the use of these certificates. To date, there have been over 10 billion entries made to the set of Certificate Transparency logs that Google and other browsers monitor. Overall, Certificate Transparency has been widely successful at strengthening the certificate

ecosystem, and the Cybersecurity and Infrastructure Security Agency requires federal agencies to monitor Certificate Transparency logs for unauthorized certificates. For more information, please see CISA's January 22, 2019 Emergency Directive 19-01, "Mitigate DNS Infrastructure Tampering." (https://cyber.dhs.gov/assets/report/ed-19-01.pdf.)

Because it is an open and public framework, anyone can build or access the basic components that drive Certificate Transparency. This is particularly beneficial to Internet security stakeholders, such as domain owners, certificate authorities, and browser manufacturers, who have a vested interest in maintaining the health and integrity of the SSL certificate system.

The Certificate Transparency framework also lets CAs monitor the operation and behavior of other CAs. This oversight capability helps drive better adherence to standard practices across the industry, and it helps lessen the impact of missteps on the entire Internet. By opening the SSL certificate system to near real-time scrutiny, mistakes and malicious behavior are difficult (if not impossible) to hide.

3. I've become aware that Google and other browsers periodically decide to remove trust from certificates for reasons that may not be very clear. How would you propose to make the certificate trust revocation process more sensible and transparent?

When we learn that a Certification Authority has operated in an untrustworthy manner, such as by repeatedly incorrectly issuing certificates or otherwise violating Chrome's policies and public expectations of CA security, it may merit removing trust from that CA. In those cases, we must balance the security risk to our users with minimizing disruption to the ecosystem. In these situations, Google's first obligation is to protect the security of our users and our products, and there is generally no way to avoid disruption completely. However, we do our best to provide public notice to website operators who will be affected, in a forum where we can hear feedback from those website operators and the general public.

A recent example of this process is when Chrome removed trust in Symantec's CA in 2017. In that case, Google learned about a security incident with Symantec's CA that involved incorrectly issued certificates for major web properties, and began investigating in mid-January. After investigating this incident, and taking into account Symantec's history of compliance and security issues with certificate issuance, we were confident that trust in Symantec's CA represented an ongoing threat to the security of Chrome users. As a result, we announced in March, in a public discussion forum (see https://groups.google.com/a/chromium.org/g/blink-dev/c/eUAKwjihhBs/m/EI1mH8S6AwAJ?pli=1), that we intended to stop trusting Symantec certificates in August of 2017, and described the rationale for that decision.

Because we knew this decision would affect many web ecosystem participants, we decided to also use our standard process (available at https://www.chromium.org/blink#new-features) for previewing upcoming changes to the web platform, to describe our concerns and initial plans. This allowed us to gather feedback from website operators, the Chromium community, other browsers (see, for example, MozillaWiki, "CA:Symantec Issues," https://wiki.mozilla.org/CA:Symantec_Issues), and the broader ecosystem about how to balance interoperability and

compatibility risks. As a result of that feedback, Google adapted our final plan (available at https://groups.google.com/a/chromium.org/g/blink-dev/c/eUAKwjihhBs/m/El1mH8S6AwAJ) to delay the date Chrome would no longer trust Symantec certificates by roughly 8 months, to April 2018.

It is always possible to improve on complex processes like these. However, removal events like this are uncommon, usually representing severe systemic failures of a third party, and the best process for each one may vary depending on the circumstances. Overall, our goal during these scenarios is to balance risk by designing unambiguous and interoperable solutions that minimize disruption, and provide as much transparency as feasible into the decision making process. In the end, Google's core responsibility is to make product decisions that best protect the interests of Chrome users, while doing our best to minimize the impact on website operators.

Online Platforms and Market Power Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google

Questions for the Record from the Honorable David N. Cicilline, Chairman, Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary

Questions for Mr. Tim Cook, CEO, Apple, Inc.

1. You testified that Apple's apps "go through the same rules" that third-party apps are required to follow.

The App Store Guidelines ("Guidelines") are designed to ensure that the App Store remains a safe and trusted place for consumers to discover and download software for their Apple devices. The Guidelines apply to any app, Apple or third-party, that is available on the App Store in the first instance.

a. How many Apple apps are pre-loaded on current iPhone models?

The first iPhone included 13 integrated Apple apps. There were no third-party apps available for that iPhone. Apple's subsequent decision to open the iPhone to third-party app development unleashed a wave of innovation and competition. Thirteen years later, there are more than ***1.8 million third-party apps*** available through the App Store and only about 40 Apple apps integrated into the current iPhone models.

Apple's focus has always been to deliver a great consumer experience out of the box. That is why the iPhone comes with Apple apps like Phone, Notes, Settings, Files, Clock, Tips, Measure, and Reminders to provide basic functionality. In addition, apps like FaceTime, iMessage, Apple Music, TV, and others help differentiate the iPhone in a competitive smartphone market.

The few apps that Apple has integrated into the iPhone are a drop in the bucket of the overall app ecosystem. Since 2016, Apple has integrated six new apps into the iPhone: Shortcuts, Measure, Clips, Files, Home, and TV. Hundreds of thousands of new third-party apps have launched on the App Store during that same time. In every category in which our software competes today, we face strong competition from very successful apps.

b. How many third-party apps are pre-loaded on current iPhone models?

Apple has never pre-installed third-party apps on the iPhone. Apple wants to ensure the best overall user experience out of the box (e.g., maximize performance, optimize battery life, and/or fix bugs). It would be difficult, if not impossible, to integrate third-party applications that would be consistent with Apple's exacting standards for quality, security, performance, and privacy. Third-party developers do not share the same focus on iOS. In addition, third-party developers have their own release timetables and schedules that do not align with Apple's internal development cycle. The logistical and technical challenges would make it very difficult to integrate third-party apps with the iPhone.

Apple opened iOS to third-party app development in 2008. Since that time, Apple has licensed an ever-increasing suite of proprietary software, technology, and services to allow third parties to build great apps for iOS and then distribute those apps through the App Store. The App Store started with only 500 apps at launch, and today it has more than 1.8 million apps.

c. Which Apple apps are set as the default apps on current iPhone models?

Apple has long embraced a holistic product development approach from hardware to software to services. From the very first Macintosh that launched in 1984, Apple has built software applications that are fully integrated with the rest of its products. This approach allows Apple to design products so that the user experience is seamless across devices, from the user's Mac to iPhone to iPad.

Most pre-installed apps can be deleted by the user. A small number have historically been "operating system apps"—integrated into the phone's core operating system—that are part of the combined experience of iOS and iPhone. These have included the Safari browser, Mail, Messages, and Apple Maps, although with iOS 14, customers will have the option to select a third-party web browser and mail client as their default apps.

Users have a number of choices available to them. Third-party developers have created more than 1.8 million apps using Apple's development tools and software and distribute them through the App Store. A user can find alternatives—often many alternatives—to the Apple applications. There are dozens of browser apps, mail apps, music apps, television apps, cloud apps, news apps, and other apps that consumers download. For example, the App Store offers American consumers more than two dozen third-party mail apps. And consumers have downloaded those apps more than 60 million times in the last twelve months alone. Each and every day consumers can, and do, download third-party apps that compete with each and every Apple app that we make available to consumers.

d. Which third-party apps are set as the default apps on current iPhone models?

There are no third-party apps set as default apps on iPhone. However, in iOS 14, customers will have the option to select a third-party default web browser and mail client.

e. Are users able to rate and review Apple apps the same way they rate and review third-party apps? If not, why not?

Apple apps that are available only through the App Store are rated and reviewed by users, just like other apps on the App Store. The apps that are integrated into the iPhone are not reviewable by users on the App Store.

f. Describe any differences between the default permissions set for Apple apps versus the default permissions for third-party apps, including privacy permissions;

Apple has made strong, public commitments to its users on privacy and data protection. Apple holds itself to exacting standards that often go above and beyond what Apple applies to third parties.

In large part, Apple uses the same consent mechanism to request access to private user data from its own apps that third-party apps do using our standard APIs. In cases where Apple does not utilize the same mechanism to request access to private user data, Apple designs its implementation to provide extensive transparency and control, which accomplishes the same purpose. This is the case, for example, when data does not leave the device without an action on the part of the user (e.g., on-device intelligence analyzes a user's use of their device and apps to provide a more personalized experience without any information leaving the user's device), or the use of a particular sensitive data type is inherent to the function of the app (e.g., the Camera app needs access to the Camera).

g. Describe any differences between access to private application programming interfaces (APIs) that Apple grants its own apps versus third-party apps;

Apple has invested and continues to invest heavily in creating tools and services that enable app developers to provide high-quality apps on iOS. For example, Apple created the Swift coding language to level the playing field for developers. Swift makes it easy for anyone—from the student at home to the individual entrepreneur to the small business—to create great iOS apps.

Apple made 10,000 APIs available to developers when it first opened iOS to third-party development in 2008. Apple has invested significant engineering time and resources to make more APIs available to third-party developers, and each year Apple has opened more and more APIs to developers. To that end, there will be more than 250,000 APIs available to developers in iOS 14.

Some sensitive APIs, however, are not made available if doing so would compromise the security or privacy of Apple's users. For example, Apple has invested heavily in accessibility features to make its products and technology available to all of its users. Apple offers VoiceOver, a built-in screen-reading feature, as an accessibility tool for the visually impaired. VoiceOver lets you know what is happening on your iPhone, even if you cannot see the screen. You can touch the screen to hear what is under your finger, then use gestures to navigate and interact with every built-in app. However, Apple cannot give third-party developers unfettered access to the VoiceOver APIs. This would grant those third parties unfettered access to all of the content available on a user's screen.

h. Describe any differences between access to iPhone device features and functionality (such as the near-field communication chip) granted to Apple apps versus third-party apps;

As described in the response to Question 1(g), Apple provides numerous APIs for developers to access the functionality of the iPhone, including APIs that use the sensors of the device, such as the microphone, camera, GPS, Bluetooth, and the NFC chip. These APIs enable a wide array of uses. However, there are some limits on third-party access to features and functionality to safeguard security or privacy, or where access could compromise the user experience.

i. If third-party apps employ robust privacy practices that meet or exceed Apple's own privacy practices, are those apps granted the same user interface access and permissions as native Apple apps? If not, why not?

Apple has 27 million registered developers and 1.8 million apps on the App Store. It would be logistically impossible to review the privacy practices of each and every third-party developer to determine whether their practices meet or exceed Apple's own privacy practices. Nor would it be realistic for Apple to monitor those third parties on an ongoing basis to ensure that the developers are adhering to Apple's privacy practices.

Apple provides app developers significant latitude in developing apps with access to more than 250,000 APIs. As mentioned in the response to Question 1(g), we add thousands of new APIs every year. Apple cannot provide the same access to third parties that it provides to its own integrated development teams. The privacy, security, and logistical challenges are insurmountable. For example, Apple is unaware of a way to validate, with complete confidence, that a particular third party is not abusing an interface access or permission. For this reason, we develop APIs with built-in safeguards to ensure the privacy and security of our customers.

2. App developers have complained that the App Store Review Guidelines and review processes are opaque.

Apple works hard to make the App Store a great opportunity for developers and to create a fair process. We provide developers with a robust set of tools, compilers, languages, APIs, software frameworks, and SDKs. And we have created programs that help not only current developers, but anyone who wants to learn to code and ultimately become a developer. These investments reflect the reality that Apple must compete for developers' mindshare in a marketplace with an ever-growing number of choices for developers. We are proud of the fact that we now have more than 1.8 million apps on our App Store.

Apple's focus is first and foremost on the consumer. Our rules, and our review process, are driven by Apple's desire to protect our customers. We created the Guidelines to provide clear guidance to developers on building the best apps for our customers. The five pillars of the guidelines—Safety, Performance, Business, Design, and Legal—require that apps offered on the App Store are safe, provide a good user experience, adhere to our rules on user privacy, secure devices from malware and threats, and use approved business models. For example, with respect to COVID-19-related apps, Apple is evaluating apps to ensure data sources are reputable and that developers presenting these apps are from recognized entities.

Apple has done its best to ensure its rules and decision-making are as transparent as possible. Apple was the first software distributor to make its distribution requirements publicly available when it published the Guidelines in 2010. The Guidelines reflect this commitment to transparency and act as a practical guide to help developers better understand the app approval process.

Apple's commitment to fairness and transparency extends to the review process. Our app review process is ongoing seven days a week, in three global time zones, in order to review more than 100,000 apps *every week*. Together, our reviewers speak 81 different languages. We provide the developer the reason for any app that is rejected. All developers have the opportunity to have a rejection reviewed by the App Review Board. And the App Review team makes about 1,000 calls a week to developers to help them diagnose and resolve any issues that led to the rejection—so they can get their app onto the App Store.

We have built a developer portal with tools for developers to check the status of their reviews. We host developer programs all around the world, including our annual worldwide developer program, which specifically includes sessions to assist developers with the App Store submission and review processes. At the end of the day, we want the developer to be able to release their app on our store.

We are constantly working to improve. In June, we announced changes to address some concerns that have been raised by developers. For example, developers now have the ability to challenge our Guidelines. Our process is not perfect, and we sometimes make mistakes, but we believe in the system we have built, and the results speak for themselves.

a. Describe all modifications to Apple's App Store Review Guidelines from 2015 to 2020, including any changes in interpretation, prioritization, or emphasis on enforcement;

Apple reviews and approves apps submitted by developers to the App Store, applying technical, content, and design criteria outlined in the Guidelines. This helps protect privacy, security, and reliability by curating the App Store as a safe and trusted place for customers.

The Guidelines provide transparency and act as a practical guide to help developers better understand the app approval process. The Guidelines provide information to developers about what is and is not appropriate for the App Store. Apple attempts to apply the Guidelines uniformly to all developers and all types of apps.

The Guidelines have been updated 16 times since the start of 2015 to address new technical or commercial issues, clarify ambiguities, address new business models, or reflect developments in technology. Major updates to the Guidelines are announced at Apple's Worldwide Developer Conference ("WWDC").

b. Identify all "unwritten rules" that app developers are expected to comply with in addition to Apple's App Store Review Guidelines. Describe all modifications to these "unwritten rules" from 2015 to 2020, including any changes in interpretation, prioritization, or emphasis on enforcement.

Apple does not maintain "unwritten rules" to the Guidelines. As described in response to Question 2(a), the Guidelines are not static; rather, they articulate broad principles that are to be used in the review of all apps. As a result, Apple interprets and at times revises the Guidelines, often in response to developer feedback, to ensure the Guidelines are appropriate as new apps emerge and new technologies are introduced. Apple then works to ensure that the Guidelines are fairly and consistently applied to all developers. When the App Review team rejects an app based on an interpretation of those rules, it sends the developer a message that includes the specific guideline (or guidelines) that the app violates, along with an explanation of the factual circumstances of the violation.

3. App developers have explained they often see disruptions to their apps and incur significant costs when Apple makes changes or updates to iOS. Apple's Developer Agreement explicitly disclaims any liability that Apple may cause third-party app developers.

Apple relentlessly innovates day after day, month after month, year after year to improve its products and the consumer experience. Apple innovates at the component level, the hardware level, and the software level. This innovation can have an impact on software applications—both Apple apps and third-party apps. For example, Apple recently announced a transition from Intel CPUs to Apple silicon for its Mac lineup. This will have a significant impact on Apple and third parties who create software for the Mac. Apple also regularly introduces new privacy features to give consumers greater transparency and control over their data. These changes can also have an impact on Apple and third parties alike.

As explained in greater detail in response to Question 3(b), Apple holds an annual developer conference to introduce upcoming changes to iOS and its product line-up. Apple also engages with the developer community throughout the year to respond to questions, discuss changes, and work with

developers to take advantage of the new features and technologies Apple makes available through iOS.

a. Identify the type of communications that Apple's app product teams have with relevant iOS teams regarding changes to iOS that may affect app performance, including advance notice of iOS updates.

From the very first Macintosh launched in 1984, Apple has built software applications that are fully integrated with the rest of the product. This allows Apple to design products so that the user experience is seamless across devices, from the user's Mac to iPhone to iPad. This would be very difficult to accomplish with third parties in accordance with Apple's demanding standards of quality, security, and privacy.

The benefits of Apple's long-standing integrated approach to product development are enabled by regular collaboration between teams. Apple's engineering teams work side-by-side in many cases. The teams share ideas, collaborate on projects, and work together to develop the best possible experience for consumers.

b. Do third-party app developers receive the same communications and have the same access to relevant iOS teams regarding changes to iOS that may affect app performance?

It would be very difficult, if not impossible, to replicate Apple's product development philosophy with third parties. Apple's teams work together each and every day to create the best possible Apple products. Third-party developers cannot make the same level of commitment or focus as Apple can. Third-party developers are creating apps for multiple computing environments such as Android, Windows, Playstation, and Nintendo (to name a few).

Apple has invested significant resources to support third-party developers. It is in Apple's interest to ensure that all third-party app developers have the latest information on upcoming changes to iOS that could affect their apps. This information helps ensure an optimal experience for users of Apple products who use third-party apps.

Apple announces the changes and updates to iOS publicly each year at Apple's WWDC. The changes are described in detail in live and recorded presentations that are then made available to the public free of charge on Apple's WWDC website (available at <https://developer.apple.com/wwdc20/>) along with hundreds of documents, pieces of sample code, and other supplemental materials. Apple's Developer Relations team provides guidance to third-party developers on how to implement these changes, provides information on how they may impact app performance, and addresses developer questions. Developers are provided ample time to conform their apps to any changes before the changes are implemented in iOS.

4. You testified that Apple currently offers 60 Apple-owned applications:

Apple has integrated approximately 40 of its own apps into the iPhone. Apps like Phone, Notes, Settings, Files, Clock, Tips, Measure, and Reminders provide basic functionality, while apps like FaceTime, iMessage, Apple Music, TV, and others help differentiate the iPhone in a competitive smartphone market. Apple also makes an additional two dozen apps available solely through the App Store. Apps like App Store Connect, Apple TV Remote, Apple Events, Apple Support and TestFlight are examples. The approximately 60 Apple applications are a drop in the bucket when compared to the more than ***1.8 million third-party apps*** available through the App Store today.

a. Identify all paid Apple apps that pay the traditional 30% commission for distribution by the App Store, including subscriptions that pay a 30% commission for the first year and a 15% commission for subsequent years;

The vast majority of apps that Apple makes available to consumers, either out of the box or through the App Store, are free of charge. There are a very small number of apps that sell digital products or services to consumers to which this rule would apply. Apple TV+, Apple News+, Apple Books, and Apple Music are examples. Apple does not apply a 30% commission to these services as this would be an artificial accounting exercise that would make little economic sense.

Apple creates its own services and apps to provide an even broader and unique range of options to enhance the desirability of its devices and differentiate itself from an increasingly competitive smartphone market.

b. Identify all paid Apple apps that pay a reduced commission or no commission. Explain what conditions those apps meet in order to qualify for a reduced commission or no commission; and

See response to Question 4(a).

c. Identify all paid third-party apps that currently pay a reduced commission or no commission because they meet these conditions.

The vast majority of apps on the App Store—84%—pay 0% of what they make to Apple. Apple has introduced new rules that allow developers to avoid or reduce transactions that are subject to a commission, rules like the Reader Rule and the Multi-Platform Rule. And there are thousands of other apps that pay a reduced commission of 15% for subscriptions that have been renewed for a second year, or because they participate in our Video Partner Program for Apple TV. Apple's unfailing practice over the last 12 years has been to consistently reduce commissions.

5. The United States District Court for the Southern District of New York found evidence during the eBooks litigation that Apple used its control over the App Store to pressure Random House to join Apple's iBookstore.[1] As the court noted, Eddy Cue, Apple's Senior Vice President Internet Software and Services, wrote to Steve Jobs that he "prevented an app from Random House from going live in the app store this week," and attributed Random House's decision to join the Apple iBookstore to Apple's rejection of Random House's eBook apps from the App Store.

a. Has Apple rejected or removed any other apps from the App Store, or threatened to do so, to pressure app developers to participate in other Apple services? If yes, please provide a list of all such instances.

No. I am not aware of a situation whereby Apple rejected or removed apps from the App Store, or threatened to do so, to pressure app developers to participate in other Apple services.

[1] *United States v. Apple Inc.*, 952 F.Supp. 2d 638, 686 (S.D.N.Y. 2013), *aff'd*, 791 F.3d 290 (2d Cir. 2015).

6. You testified that Apple's App Store treats every developer the same, and that Apple does not favor some developers over others. Documents Apple has produced to the Committee indicate that you negotiated partnership agreements between Baidu and Apple that included an "App Review Fast Track" that you indicated would speed the review process for a developer's app,[2] or that included reduced commissions for in-app subscriptions.[3]

Every developer, whether they are large multi-billion dollar corporation or a student who creates apps in her dorm room, is subject to the same contractual terms and must comply with the App Store Review Guidelines. There are no exceptions. Apple frequently gets requests from developers for specific terms or support. We listen to these requests and accommodate them if we can, consistent with our values of safety, security, and privacy. We do so in the same manner for all developers who wish to participate in the program or are similarly situated.

The question takes the two emails out of context. As reflected in the email exchange with Baidu, Apple was exploring a number of different opportunities with Baidu. There is no partnership agreement that provides for a unique Baidu "App Review Fast Track." Baidu is subject to the same process and the same rules as every other developer.

The suggestion that Apple granted unique terms to the Amazon Prime Video app that allows it to pay a lower commission is false. Apple does not play favorites in this manner. That would be counter to our goal of attracting the highest-quality developers to the App Store.

The negotiations with Amazon, and a number of other video-streaming providers, were difficult and challenging on a number of levels. Apple ultimately developed a set of standard terms for Amazon, and every other video-streaming service that met the criteria, to launch their service on Apple TV and iOS. The Video Partner Program allows third-party premium video apps to integrate with a variety of Apple services and features that enhance the consumer experience of watching premium subscription video entertainment on Apple TV and tvOS, and across their other devices. Today, there are over 130 apps that participate in this program. The reduced 15% commission is available to all developers offering premium video content on the same terms as Amazon Prime Video, with the same qualification criteria.

a. Has Apple provided other app developers with similar treatment? If yes, list all other app developers that have or had access to the "app review fast track" or have been assigned "key contacts" for the purpose of helping to "manage through Apple."

Apple provides a number of developers, both large and small, with additional support as part of its partnership management program. Apple supports developers who have questions about technical issues, or require assistance integrating new technology into their apps. A developer's size or prominence is not what drives support from Apple—there are many developers with hundreds or even thousands of apps that have not received this support, and there are sole proprietors with only a handful of apps that have benefitted from this support.

There is no "fast track" for App Review special to Baidu, as was requested by Baidu in the referenced email. In fact, any developer can request expedited review from App Review by submitting a formal expedite request at <https://developer.apple.com/contact/app-store/?topic=expedite>. The beta app review process I referenced in my email has been available to developers since 2009.

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[2] HJC-APPLE-011083-85, https://judiciary.house.gov/uploadedfiles/011083.pdf.
[3] HJC-APPLE-015111, https://judiciary.house.gov/uploadedfiles/015111.pdf.

The key contacts referenced in my email were focused on the other strategic opportunities outlined by Baidu. Neither individual had responsibility for App Store review.

b. Does Apple make other exceptions to its traditional 30% commission for paid digital goods and services apps? If yes, describe those exceptions and provide a list of all app developers that paid reduced commission rates.

Apple has never increased the commission or its fees for the Developer Program. Apple has time and again introduced flexibility in its commission structure with rules like the Reader Rule and the Multi-Platform Rule. These rules, and others like them, have resulted in a marketplace where 84% of the apps pay nothing for all of the benefits available from Apple, other than the $99 program fee.

Apple has also reduced the commission for certain transactions. For example, Apple reduced its commission on subscription purchases to 15% after the first year of a subscription. The Video Partner Program is another example of Apple reducing its commission. There are nearly 130 developers in this program. Premium subscription video entertainment providers earn a lower commission if they agree to integrate their apps with Apple TV.

7. In March Apple acquired Dark Sky, a popular weather app. Apple announced it will be shutting down Dark Sky Android and no longer making its API available for new third-party apps.

a. Why did Apple decide to shut down Dark Sky Android and to stop allowing new third parties from signing up to access the API?

Apple has a long history of developing groundbreaking technological innovations that deliver significant benefits to consumers. These innovations are made possible through significant investments in internal research and development, as well as acquisitions of complementary niche technologies and "acqui-hires," or acquisitions of personnel.

Apple acquired Dark Sky for the app's unique engineering talent, to help innovate and improve Dark Sky's technology so that we can make it accessible to more developers and more consumers by expanding its functionality and reach. It would be difficult to achieve these improvements if Dark Sky's very small team were engaged on other projects at the same time.

b. What plans, if any, does Apple have to shut down API access for third-party apps who already have API access?

When Apple announced the acquisition on March 31, 2020, we explained that Dark Sky would continue to make its API available to Dark Sky's existing customers until the end of 2021. But even without access to Dark Sky's API, third-party apps have a number of alternatives for weather data, including services like AccuWeather, AerisWeather, the Weather Channel, ClimaCell, Meteomatics, and WeatherBit.

There are thousands of weather apps currently available on the App Store.

Online Platforms and Market Power Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google

Questions for the Record from the Honorable Henry "Hank" Johnson, Jr.

Questions for Tim Cook, CEO, Apple, Inc.

1. **"Efficient infringement"—the use of another company's patents without authorization, based on the understanding that litigation will be too slow to meaningfully stop the infringement and will ultimately only result in the payment of a royalty if the suit is lost (approximately the same royalty that would be paid up front if a license were taken) is a way in which dominant companies currently may be stifling innovation and undermining competitors.**

   Apple's former patent chief even admitted as much: "efficient infringement, where the benefits outweigh the legal costs of defending against a suit, could almost be viewed as a 'fiduciary responsibility,' at least for cash-rich firms that can afford to litigate without end."[1] As the Chairman of the subcommittee with responsibility for oversight of the patent system, I am concerned about the impact of efficient infringement on the ability of patents to spur innovation and allow startups to effectively compete against established companies.

Apple is a leading innovator in the fields of wireless communication and mobile devices. Over the past decade, Apple products like the iPhone and iPad have revolutionized these industries. Innovating on this scale requires an extraordinary investment of energy and resources, and Apple relies in part upon a healthy patent system to protect this investment. Apple owns thousands of U.S. patents and is licensed to use thousands more. And when disputes arise, Apple sometimes finds itself in court, whether to enforce its own rights or to defend against allegations of infringement levied by another firm. Apple therefore has a keen interest in a balanced patent system that encourages competition and innovation, and discourages hold-up and waste.

The concept of "efficient infringement" is an anathema to Apple. This is not a concept or idea embraced by our company. As for the individual cited in the article, he is not an Apple employee, he was never the "patent chief" at Apple, and he does not speak for the company. And, since leaving Apple seven years ago, he has gone on to work for several patent assertion entities ("PAEs"), sometimes referred to as patent trolls. He is currently employed by Conversant, one of the largest PAEs in the world. These entities are hardly champions of innovation, entrepreneurs, or start-ups.

The verdict in *Wisconsin Alumni Research Foundation v. Apple Inc.* referenced in the article was overturned two years ago. The Federal Circuit found that, as a matter of law, the jury was incorrect, and that Apple did *not* infringe WARF's patent. WARF petitioned for and was denied further review by the Supreme Court in October 2019.

[1] Joe Nocera, *Why Sonos Has Already Lost Its Patent Suit Against Google*, Bloomberg (Jan. 10, 2020), https://www.bloomberg.com/opinion/articles/2020-01-10/even-if-sonos-wins-its-suit-against-google-it-loses.

1.1 To me, these factors suggest that the Supreme Court's decision in *eBay v. MercExchange*, 547 U.S. 388 (2006), to reverse the presumption of awarding injunctive relief to a prevailing patent owner should be reevaluated to ensure that smaller patent owners are playing on a level playing field in patent disputes. Do you agree or disagree, and why?

Injunctive relief is equally available to "smaller patent owners" and larger ones. *eBay* properly emphasizes that injunctive relief should only be available to avoid irreparable harm, when monetary relief is not sufficient, and after weighing both the balance of hardships and the public interest. Injunctions remain available to protect true innovation from infringement by competitors. Over 1,000 permanent injunctions have been granted in patent litigation matters in the last five years. When requested, permanent injunctions are granted in almost 90% of cases.[2]

eBay has made it difficult for PAEs to secure an injunction. These entities exist only to acquire and litigate patents. They "don't actually produce anything themselves."[3] Instead, their business model is "to essentially leverage and hijack somebody else's idea and see if they can extort some money out of them."[4] Because these entities' only aim is monetary relief, courts have correctly recognized that injunctive relief should not be available to them—they would abuse their injunctions to obtain improper leverage and extract outsized monetary settlements. Apple believes that *eBay* strikes a fair balance by making injunctive relief available only when monetary relief is insufficient.

Apple respectfully submits that a concern that requires further study and action is the plague of PAEs. Apple's commercial success has made it a target for PAEs. Our experience confirms what many others have documented: although PAE activity is not necessarily harmful in theory, far too many PAEs exist only to extract undeserved royalties. For example, one study estimated that patent litigation brought by PAEs in the United States resulted in expenditures of $29 billion in 2011 for licensing fees, legal fees, and other costs of responding to PAE litigation.[5] Another study found, by looking at the impact on stock price, that lawsuits by PAEs from 1990 through 2010 were responsible for the defendants losing half a trillion dollars.[6] And those losses are not offset by corresponding gains to patent holders that promote innovation. One study found that the profits received by PAEs from litigation amounted to less than 10% of the lost share value of companies targeted by the PAEs.[7]

1.2 What steps does your company take to ensure that any intellectual property it gains access to during acquisition negotiations is not copied or used without authorization if those acquisition negotiations prove to be unfruitful?

Apple respects the intellectual property rights of third parties and strictly protects third-party confidential information.

Apple enters into Non-Disclosure Agreements ("NDAs") with potential acquisition targets that set forth the requirements and restrictions for treatment, use, and destruction or return of information received

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[2] Josh Landau, *Much Ado About Injunctions*, Patent Progress (Aug. 1, 2019), https://www.patentprogress.org/2019/08/01/much-ado-about-injunctions/.
[3] *President Obama Participates in a Fireside Hangout on Google+*, YouTube (Feb. 14, 2013), https://www.youtube.com/watch?v=kp_zigxMS-Y.
[4] *Id.*
[5] James Bessen & Michael J. Meurer, *The Direct Costs from NPE Disputes*, 99 Cornell L. Rev. 387, 389–90 (2014).
[6] James Bessen, Jennifer Ford, & Michael J. Meurer, *The Private and Social Costs of Patent Trolls*, 34 Regulation 26, 31 (2011-12).
[7] Bessen & Meurer, *supra*, at 411.

during negotiations. The NDAs typically permit Apple to use the potential acquisition targets' information solely for evaluating and implementing a potential transaction and require Apple to limit disclosure of the potential acquisition targets' information to those with a need to know who are bound by confidentiality obligations to Apple. When acquisition negotiations terminate, a target may ask Apple to destroy or return its confidential information. Apple takes steps to ensure compliance with these requests and all other operative provisions in the NDAs, including requirements that information be used solely for a potential acquisition and no other purpose.

Apple also has policies that expressly prohibit the unauthorized use of third-party intellectual property. When Apple hires an employee, the parties' employment agreement expressly provides that no third-party intellectual property may be used for work at Apple. Apple also has an internal Business Conduct Policy for employees that prohibits the unauthorized use of third-party intellectual property.

Online Platforms and Market Power Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google

Questions for the Record from the Honorable Pramila Jayapal

Questions for Tim Cook, CEO, Apple, Inc.

1. What percentage of your supplier spending is with Black-owned businesses?

Apple is committed to ensuring that it supports a diverse set of suppliers, and our Supplier Diversity Program has made tremendous progress over the last several years. Apple's Supplier Diversity Program was formally established in 1993, and since that time, Apple has continued growing and supporting the suppliers who participate.

Apple actively engages in industry diversity leadership activities through non-profits such as the National Minority Supplier Development Council ("NMSDC"), Women's Business Enterprise National Council ("WBENC"), National Veterans Business Development Council ("NVBDC"), National LGBT Chamber of Commerce ("NGLCC"), Disability:IN, Canadian Aboriginal & Minority Supplier Council ("CAMSC"), Minority Supplier Development UK, Minority Supplier Development China, as well as supplier diversity business opportunity trade fairs around the world.

In 2016, Apple was inducted into the Billion Dollar Roundtable ("BDR"), where we remain a member in good standing. The BDR was created in 2001 to recognize and celebrate corporations that achieved spending of at least $1 billion with minority and woman-owned suppliers.

We are proud that our spending with all diverse firms in 2019 was $4.2 billion. Our supplier spending is focused on ensuring we have diverse representation in a number of professional areas including: Professional Services (e.g., law, accounting), Construction, Facility Services, Technology, and Marketing & Advertising. As an example, Apple has worked with Black-owned investment firms to help facilitate its public debt offerings for years.

Having said that, we recognize that we have much more work to do to support Black-owned businesses. While our annual spend on Black-owned businesses has increased in the past several years, more must be done, and we are committed to doing that work. We will keep your office updated on our progress.

2. What responsible supplier practices is your company adopting to increase participation from smaller Black-owned businesses and providers?

We have deployed an aggressive set of business practices to ensure that Apple increases supplier participation from diverse businesses, including smaller Black-owned businesses. Such efforts include holding those responsible for spending decisions accountable for continued improvement, hosting weekly meetings with prospective Black-owned businesses, maintaining aggressive spend goals with Black-owned suppliers, encouraging increased stakeholder engagement across the board, and transmitting regular updates on progress to Apple executives.

In addition, Apple recently announced a new $100 Racial Equity and Justice Initiative ("REJI"), which aims to combat systemic racism. While the details are still being finalized, part of the REJI will include programs aimed at building capacity among Black app developers and entrepreneurs, and we can share those details with you at the appropriate time.

3. Nine percent of Apple's workforce is composed of Black workers, but Black employees only make up three percent of those in leadership roles. Since the company made a declaration in "Speaking up on racism" that Black lives matter at Apple, what is the company's plan to recruit, hire and retain Black workers in representative numbers in Apple's leadership ranks and technical workforce?

The strength of our innovation depends on a diverse workforce that is a reflection of the world around us. Apple is deeply committed to hiring and promoting inclusively, as well as fostering a culture that allows people to do their life's best work, earn equal compensation, and work to create more access and opportunities. Apple is a multigenerational company with employees from 18 to 87 years old, and we are proud that many of our employees choose to stay at Apple for a long time.

Apple also has a long-standing commitment to diversity and inclusion. Since our earliest days, Apple has believed that education is the great equalizer. So we are dedicated to empowering students and educators at all levels. We partner with community colleges, Historically Black Colleges and Universities ("HBCU"s), and minority-serving institutions to help promote access and opportunity. And we develop diverse leaders through programs like our Apple HBCU Scholars program and Apple Entrepreneur Camp. And we remain committed to doing better. For example:

- We are redoubling our diversity and inclusion efforts, including both recruitment and retention, as well as our internal accountability measures so that teams can make meaningful and measurable progress.
- We are working to attract more diverse talent for jobs at all levels across Apple. This includes accessing candidates from more diverse pipelines, and we are expanding our efforts to prevent bias throughout the hiring process. We are also supporting our recruiting teams with the tools and knowledge needed to bring in diverse talent to Apple.
- An important part of our hiring approach is our partnerships with organizations that are dedicated to the education, development, and advancement of diverse populations. Apple partner organizations include the Thurgood Marshall College Fund, AnitaB.org, Rewriting the Code, and many others. Every year, we continue to engage our top diverse talent by supporting employee attendance at conferences and networking events presented by diversity organizations Apple is proud to sponsor.
- Education and training is part of our employee experience as well. We will continue to provide mandatory unconscious bias training—among other learning opportunities such as our educational series on race and justice—to all employees to create an even more inclusive environment where all can thrive.
- Beyond training, our Diversity Network Associations ("DNA"s) create an even greater sense of belonging, community, and allyship across the company—and we continue to grow our DNAs at Apple.
- Apple has committed $100 million to Apple's REJI, which will challenge the systemic barriers to opportunity that exists for communities of color and particularly for the Black community.
- We also acknowledge that the obstacles communities face are often deeply interconnected, so we are proud of our strong track record of speaking out and taking action for Dreamers and LGBTQ+ community, and creating even more educational opportunities.

As part of Apple's Community Education Initiative, there are now 24 locations across the U.S., including a number of HBCUs, which will serve as technology hubs bringing coding, creativity and workforce development opportunities to their communities.

Online Platforms and Market Power Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google

Questions for the Record from the Honorable Ken Buck

Questions for Tim Cook, CEO, Apple, Inc.

1. **Apple has reduced the measurability of ads in iOS 14. Is Apple pushing developers to monetize their apps through in-app purchases and subscription services? What impact would such ad monetization have on independent developers and innovators seeking to build sustainable businesses.**

Apple has long made consumers a promise that it will do everything it can to ensure that the user has transparency over the data that could be collected about them and control over that data. The decisions to introduce new privacy enhancements and controls year after year is not driven by commercial interests. Apple is not pushing developers to monetize their apps through in-app purchases or subscription services in iOS 14. Apple's decisions are driven by what it believes are the best interests of the consumer. The changes in iOS 14 empower the consumer, not Apple.

Apple has viewed privacy as a fundamental human right long before it became trendy. As Steve Jobs explained in 2010, "We've always had a very different view of privacy than some of our colleagues in the Valley. We take privacy very seriously."[1] Apple has a track record of designing privacy protections into its products. Data privacy and security are fundamental pillars of the App Store and are crucial elements of its success. Consumers trust that Apple will equip them with tools to control the data they share with apps, and that Apple continuously seeks to improve the App Store's user privacy and security features to confront novel privacy and security risks.

iOS 14 empowers consumers by giving them a greater ability to control their data. It is not intended to reduce the measurability of ads. Rather, the changes in iOS 14 will require developers to obtain user permission in order to track users across different developer apps and company websites. The consumer will get to decide, and we believe that is unambiguously a good thing. Having listened to developers, we want to give them sufficient time to make the necessary changes, and as a result, the requirement to use this tracking permission will not go into effect until early next year.

Apple is not pushing developers to monetize through in-app purchases and in-app subscription purchases. The intent of these changes is to put users in charge of their data and their devices, and we are doing this because we believe it is right. We believe that Apple's new tracking protections will spark further innovation that respects user privacy and inspire developers to treat privacy as a chance to innovate and to build trust with their users while building great businesses.

The App Store has become a great business opportunity for all developers, including independent developers, and allows for a number of business models that do not monetize through in-app purchases or subscription services. Apps with different business models have flourished on the App Store: (1) apps that are ad-supported, (2) apps with sales of physical goods and services, (3) apps where users consume or access content that they purchased or subscribed to outside the App Store, and (4) apps that have some other business model not generated from app revenue. Since the launch of the App Store, an entire industry has been built around app design and development, generating over 1,500,000 U.S. jobs. When distributing through the App Store, independent and small developers get immediate access to the free

[1] *See* Paul Resnikoff, *What Steve Jobs Said About Protecting Privacy In 2010*, Digital Music News (Mar. 25, 2018), https://www.digitalmusicnews.com/2018/03/25/steve-jobs-user-privacy-2010/.

tools, technology, and software that Apple has created to help developers distribute their apps to one billion App Store customers around the world.

2. **Mr. Cook how frequently does Apple's iPhone report location data of its users back to Apple for advertising purposes?**

Apple's advertising platform does not access a user's device location unless they have enabled Location Services on their device and they have granted permission to the App Store or Apple News apps—where Apple offers its ad services—to access their device location. Users can disable Location Services, as well as change Location Services permissions for App Store or News, on their iOS or iPadOS device by going to Settings > Privacy > Location Services. Apple's advertising platform does not receive device location information when a user turns off Location Services on their device or does not grant permission to the App Store or Apple News to access location.

If the user grants the App Store or Apple News access to device location, Apple's advertising platform may use the current location of the user's device to provide the user with geographically relevant ads on the App Store and on Apple News. Apple's advertising platform does not store the user's precise device location and does not construct profiles from this information.

In iOS 14, users can choose to share only their approximate location with an app, even if the app asks for precise location. For Apple News, users can limit access to approximate location. The App Store only requests approximate location.

3. **The App Store is the only practical way for app developers to reach iPhone and iPad users. I'm concerned that Apple is using this power to dictate the terms of service for app developers. This prevents app developers from controlling their own services and insulates Apple from competition. How will Apple ensure that free choice by app developers and app users will drive innovation in user experience, privacy, and security?**

I respectfully disagree with the premise that "the App Store is the only practical way for developers to reach iPhone and iPad users." We believe that the App Store is a great choice for developers to reach Apple customers, but it is not the only choice. Distribution of digital content over the Internet remains an important option for developers. This includes developer websites and web apps (like those available from Instagram and Starbucks), which can be accessed through any web browser on iPhone and iPad. Indeed, many developers interact with users on their websites, including by allowing users to purchase digital content, and then making that digital content available through their iOS apps. The App Store terms and conditions, including its commission, do not apply to any transactions that take place through a web browser or web app.

The App Store also competes directly with software distribution on other smartphone platforms—including Google Play, Samsung Galaxy, and Amazon app stores—as well as across a range of devices that is growing larger and more diverse. Every desktop computer, notebook, television, phone, camera, car, game console, tablet, speaker, eBook reader, watch, and more are becoming methods of distributing software to consumers. This list will continue to grow with the emergence of 5G. These are all options for developers, and this competitive dynamic drives Apple to innovate and create new features and technologies to convince developers to create great apps for iOS.

We do not prevent developers "from controlling their own services." The guiding principle of the App Store is to provide a safe, secure, and reliable experience for users on their devices and a great opportunity for all developers to be successful. Our users trust Apple—and that trust is also critical to how we operate a fair, competitive store for developer app distribution. We believe competition makes

everything better and results in the best apps for our customers. We support third-party app developers and we want them to succeed, so we created the App Store to give developers a great opportunity to reach our customers.

And we work hard to get third-party apps into the App Store, not keep them out. We started the App Store with just 500 apps, and in just 12 years, we now have about 1.8 million apps. Apple's own apps represent a tiny fraction of the apps available on the App Store. In every category where our software competes, we face strong competition from numerous successful apps. For example, iCloud competes with Box, DropBox, Google Drive, Microsoft OneDrive, and so on. Mail competes with Gmail, Microsoft Outlook, Spark, Yahoo Mail, and others. Apple Music competes with Amazon Music, Pandora, Spotify, YouTube Music, and others. Apple's business incentives are completely aligned with promoting competition and choice by developers and users.

We want a vibrant and rich app ecosystem because that is what our customers want. We remain committed to ensuring our customers have the best possible experience. We have a fundamental interest in making sure that our platform and the apps on our platform will continue to drive innovation in user experience, privacy, and security. User experience, privacy, security, and innovation are the values on which we compete.

Questions for Jeff Bezos, Tim Cook, and Sundar Pichai

1. **Do you employ end to end encryption for communications on your products in China?**

Apple makes products for customers, not countries—we design them with privacy and security woven in, regardless of where they are sold or used. That is why, all around the world, our products are equipped with the same encryption and security features. The encryption that we use for each of our services is described at <https://support.apple.com/guide/security/welcome/web>. Apple's iMessage and FaceTime communication services are end-to-end encrypted everywhere in the world, including in China.

2. **Do you provide user enabled and controlled encryption on the communications devices you sell in China?**

We do not provide any way for users—anywhere in the world—to reduce the strong levels of encryption that our devices use.

3. **Do you provide China and the Chinese Communist Party access to users' information and content as required by Chinese law?**

Apple only provides information or content to law enforcement when we receive a request from law enforcement that is narrowly tailored, provides a valid legal basis, and provides an appropriate jurisdictional scope. We carefully vet every request to ensure it is as narrow as possible and jurisdictionally appropriate. We do not allow backdoors into our devices or servers. We do not provide information or content in response to bulk requests.

More details about the cases in which we provide information and content to law enforcement are available in our transparency report at <https://www.apple.com/legal/transparency/>.

4. **What user information or content do you provide the Chinese government under Chinese law?**

Requests for customer data are received from government agencies related to device, financial identifiers, account, and emergency matters involving imminent danger. Requests can be made in various formats such as subpoenas, court orders, or warrants. If we determine a request does not have a valid legal basis, or if we consider it to be unclear, inappropriate, and/or over-broad, we challenge or reject it.

A detailed listing of the requests we receive from global law enforcement is available in our transparency report at <https://www.apple.com/legal/transparency/>. We publish these reports so customers can understand how their personal data is managed and protected.

5. **If you deploy Artificial Intelligence to identify illegal content consistent with Chinese law:**

   - **What data points does your AI examine?**
   - **How is your AI trained to identify and keep up with the changing language, vocabulary and codes used by pedophiles and other criminals**?

We do not use artificial intelligence to identify illegal content under Chinese law.

6. Does China require you to submit either your encryption of AI algorithms to Chinese authorities for technical evaluation before you are permitted to deploy them in China?

No.

7. Does China require providers to back up the contents of all devices into the either the company's data center or a government data center in China?

China does not require that all devices have their content backed up. China's 2017 Cybersecurity Law requires that some personal information and content from Chinese citizens be hosted in data centers in China. The iCloud service in China is subject to this requirement. Chinese citizens who use Apple's iCloud service and choose to back up their devices will have their data backed up to servers hosted in China. iCloud users who do not have "China" selected as their country do not use Apple's iCloud service in China. "China" can only be selected in device settings by users that have a China Apple ID, which requires a local phone number.

8. Does China require information on any or all of your devices that access the Chinese cellular telephone infrastructure or Internet to backup their content and user information in Chinese datacenters? Does this apply to tourists and business travelers, to include United States citizens?

As noted in response to Question 7, we do not store content or information inside China for our users unless they have selected "China" as their country.

Online Platforms and Market Power Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google

Questions for the Record from the Honorable Kelly Armstrong
Questions for Tim Cook, CEO, Apple, Inc.

1. Does Apple allow third-party digital wallet providers to transmit information via iPhone to Near Field Communication chips?

Apple designed Apple Pay to enable a wide array of third parties to offer services to their consumers on Apple devices. Apple currently works with banks, car manufacturers, transit operators, loyalty providers, sporting/entertainment venues, universities, building access providers, electric vehicle charging providers, and more to enable them to provide their customers with innovative uses of Near Field Communication ("NFC") technology.

Banks and payment card issuers (including third-party digital wallets that issue payment credentials like Square Cash and Affirm) can store payment credentials on the Secure Element of Apple devices and transmit information through the NFC chip. Apple developed the Wallet app as a user-interface to enable consumers to easily manage the different cards that have access to NFC on an Apple device. Apple currently has over 8,400 issuers participating in Apple Pay, with most of these issuers having multiple card portfolios. This means that there are tens of thousands of card portfolios that Apple Pay supports.

Apple does provide access to the NFC; however, such access is not unfettered. Apple does not provide uncontrolled access by third parties to the NFC chip in its devices because Apple seeks to ensure the highest level of security and provide the simplest, most consistent customer experience for making payments on its devices. Apple developed hardware and software components that are seamlessly integrated to achieve what it considers the highest security for payments. These include the Secure Element, the Secure Enclave, Wallet, the NFC chip, and Apple servers. Card issuers (including a digital wallet provider with its own payment credential) can store their payment credentials in the Secure Element, and these are transmitted from the Secure Element to the NFC terminal by the NFC chip. This architecture uses EMVCo specifications, allowing any card issuer to store its payment credentials on the Secure Element and use the NFC chip to transmit information to an NFC terminal.

Granting third parties uncontrolled access to the NFC chip for payments would undermine the security offered by this tightly integrated architecture, providing avenues and incentives for third parties to hack into Apple devices and the Secure Element. Indeed, Android devices, which provide open access to their NFC chip to third-party applications for payments, have been shown to be susceptible to third-party attacks that can compromise the customer's card information.[1]

The user experience would also be severely undermined by granting unrestricted access to third parties for payments would undermine the simplicity and ease of use of NFC by card issuers and other providers (such as car manufacturers, transit operators, loyalty providers, sporting/entertainment venues, universities, building access providers, electric vehicle charging providers, and more). NFC technology is designed such that the NFC chip is paired on a one-to-one basis with a particular application. In the case of Apple Pay, because the Apple Wallet app enables multiple payment cards from multiple issuers to be

[1] *See* Cammy Harbison, *New Android NFC Attack Could Steal Money From Credit Cards Anytime Your Phone Is Near*, Player.One (June 29, 2016), http://www.player.one/new-android-nfc-attack-could-steal-money-credit-cards-anytime-your-phone-near-445497; Larry Seltzer, *NFC Phone Hacking and Other Mobile Attacks*, Information Week (July 25, 2012), https://www.informationweek.com/wireless/nfc-phone-hacking-and-other-mobile-attacks/d/d-id/1105508.

stored within Wallet, consumers can easily choose between any of the cards (as well as cards from other non-payment providers such as loyalty/rewards cards) within Wallet at the point of sale, without needing to change any settings on the device or opening a particular app prior to making the NFC transaction. In cases where NFC is paired with a single app from one bank, the consumer would have to manually change the one-to-one NFC chip setting each time she wanted to use a different payment app. Apple believes that these unnecessary steps would significantly impact consumer adoption of mobile payments, undermine the growth of non-payment use cases for NFC, and undermine Apple's reputation for providing a seamless customer experience.

2. Does Apple allow third-party digital wallet providers to store information on iPhone Secure Elements?

The Secure Element and the NFC chip are deeply integrated in order to maximize the security and simplicity of the payment experience. As with Apple's response to Question 1, Apple does provide access to the Secure Element; however, such access is not unfettered. Apple does not provide third parties uncontrolled access to the Secure Element because granting third-party access to the Secure Element for payments would break this tightly integrated framework.

As also noted in our response to Question 1, the Apple Pay architecture uses the same tokenization framework (i.e, EMVCo) available to card issuers (including third-party digital wallet providers that issue a payment credential), allowing them to store their payment credentials on the Secure Element. The Secure Element is a tamper-resistant hardened module in which all payment credentials for Apple Pay are stored. The Secure Element hosts a specially designed applet to manage Apple Pay. It also includes payment applets certified by the payment networks. Credit, debit, or prepaid card data is sent from the payment network or card issuer encrypted to these payment applets using keys that are known only to the payment network and the payment applets' security domain. This data is stored within these payment applets and protected using the Secure Element's security features. During a transaction, the terminal communicates directly with the Secure Element through the NFC chip over a dedicated hardware bus.

3. Does Apple allow third-party digital wallet providers to launch directly from iPhone "lock" screens? If not, please explain why.

Yes, a third-party digital wallet provider with its own payment credential can launch its payment credential directly from an iPhone lock screen using Apple technology and APIs that are provided by Apple to developers. The capability to present a payment credential directly from an iPhone lock screen requires the use of the NFC chip. As further set forth in our response to Question 1, Apple does not provide third parties with unfettered access to the NFC chip because doing so would undermine the security and simplicity of Apple Pay. The NFC can only be paired with one app. Apple pairs the NFC chip with the Wallet app.

The Wallet app can store myriad credentials such as credit cards, debit cards, merchant loyalty/rewards cards, public transit cards, university ID cards, and building access cards. The Wallet app gives users the ability to seamlessly use a variety of credentials without unlocking the iPhone. An Apple Pay user may purchase a cup of coffee, collect merchant reward points, get on the subway, and then enter her place of work without unlocking her iPhone. Giving third parties the ability to launch their payment credentials outside of Wallet and directly from the iPhone lock screen would compromise this seamless functionality.

4. If an Apple iPhone user sets up an iPhone, what prompts does the user receive to set up Apple Pay?

When a user initially sets up an iPhone using the Set Up Assistant, the user is given the option to set up Apple Pay if Apple Pay is enabled for the particular region. Users may elect to skip setting up Apple Pay at this stage.

5. If the iPhone user "skips" past Apple Pay enrollment during the initial setup of an iPhone, what other notifications or prompts would the user receive to set up Apple Pay?

If the user skips adding a card in an Apple Pay supported region, the iPhone will follow up at a later time by placing a "badge" in Settings. In Settings a "Finish Setting Up Your iPhone" option will be shown to the user, in which Apple Pay will be listed as an option for set-up completion.

6. Are there features the Apple Wallet enables for Apple Card or Apple Cash that are not enabled for other banks products on that platform?

The Wallet app is the only way users can interact with their Apple Card and Apple Cash accounts (as opposed to other credit and debit cards, for which users can go to the bank's mobile app, website, or physical branch to interact with the account). Thus, Wallet does provide the following features to Apple Card and Apple Cash that are not available to other cards:

- Apple Card and Apple Cash include historical transactions, organized by month, category, or merchant, and include a category or brand icon (other Apple Pay credentials show the last ten transactions);
- users can load funds from a debit card or bank account to their Apple Cash account;
- users can transfer funds from their Apple Cash account to their bank account;
- when possible, we present a location match in Maps for Apple Card transactions; and
- users can apply for Apple Card from the Wallet app (other Apple Pay credentials can be provisioned through Wallet, or through a Bank app).

7. Are there payment cards that Apple does not allow on Apple Wallet? If so, what are the reasons that a certain payment card would not be approved for Apple Wallet?

Apple's incentive is to have as many cards in Apple Pay as possible, as this enhances the overall consumer experience when using our products. Apple currently has over 8,400 issuers participating in Apple Pay, with each of these issuers having multiple card portfolios. This means that there are tens of thousands of card portfolios that Apple Pay supports.

Participation in Apple Pay requires that payment credential issuers agree to Apple's bi-lateral agreement for Apple Pay. Some issuers have chosen not to enter into our agreement, meaning that their cards are not eligible to participate in Apple Pay. There are also emerging types of payment products that differ from traditional credit or debit cards (e.g., cryptocurrency-backed cards, staged wallets, and short-term installments). Because our users expect Apple Pay to be secure, easy to use, and private, Apple may not approve these emerging payment products until Apple is comfortable with the safety, security, privacy, and ease of use of these new products.

Online Platforms and Market Power Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google

Questions for the Record from the Honorable Guy Reschenthaler

Questions for Tim Cook, CEO, Apple, Inc.

1. **What is Apple's current revenue from advertising growth, and what is their expected growth? What steps has the company taken in their advertising business to protect user privacy?**

Apple generates very little of its revenue from advertising. Ads that are delivered by Apple's advertising platform may appear on the App Store, Apple News, and the Stocks app. Apple's advertising platform has been carefully designed to adhere to Apple's privacy standards. Our advertising platform is designed to protect user information and give users control over how we use their information:

- Apple's advertising platform does not share personally identifiable information with third parties.
- Apple's advertising platform does not track users across companies. We define tracking as the act of linking user or device data collected from an app with user or device data collected from other companies' apps, websites, or offline properties—for advertising or advertising measurement purposes or sharing user or device data with data brokers.
- Apple's advertising platform is limited from using information about the user for ad targeting (i.e., to serve more relevant ads to the user), if Personalized Ads is turned off on the user's device. Users can turn off Personalized Ads on their iOS or iPadOS device by going to Settings > Privacy > Apple Advertising and tapping to turn off Personalized Ads. On Mac, they can go to System Preferences > Security & Privacy > Privacy, select Apple Advertising, and deselect "Personalized Ads."
- We create segments, which are groups of people who share similar characteristics, and use these groups for delivering targeted ads. To protect user privacy, targeted ads will be delivered only if more than 5,000 people meet the targeting criteria.
- Users can see information about them that may be used to deliver targeted ads by Apple's advertising platform, including the segments that they are in. To see this information on their iOS or iPadOS device, users can go to Settings > Privacy > Apple Advertising and tap View Ad Targeting Information. On Mac, they can go to System Preferences > Security & Privacy > Privacy, select Apple Advertising, and then click View Ad Information. If users believe their listed account information is inaccurate, they can update their Apple ID account information. Users have the ability to understand why a specific ad was shown to them on the App Store, Apple News, or Stocks, by tapping the "Ad" button on the ad. This will present the segments and other data, such as demographic information, that were used to determine which ad they received.
- Apple does not know or make available to advertisers information about the user's sexual orientation, religious beliefs, or political affiliations.
- No Apple Pay transactions or Health app data is used by Apple's advertising platform.
- A user's precise device location is not stored by Apple's advertising platform, and profiles are not constructed from this information.
- Users can opt out of the use of device current location by Apple's advertising platform. Users can opt out on their iOS or iPadOS device by going to Settings > Privacy > Location Services, selecting App Store or News from the list, and setting it to Never. On Mac, they can go to System Preferences > Security & Privacy > Privacy, select Location Services, and deselect "News." Apple's advertising platform also does not receive location-based information when

Location Services is turned off on the device.

2. Did Apple reduce ad measurability in iOS 14? If so, why?

Apple has viewed privacy as a fundamental human right long before it became trendy. As Steve Jobs explained in 2010: "We've always had a very different view of privacy than some of our colleagues in the Valley. We take privacy very seriously."[1]

Apple has a track record of designing privacy protections into its products. Data privacy and security are fundamental pillars of the App Store and are crucial elements of its success. Consumers trust that Apple will equip them with tools to control the data they share with apps, and that Apple seeks continuously to improve the App Store's user privacy and security features and to confront novel privacy and security risks.

iOS 14 will give users even greater control and transparency over their data. Developers will be required to obtain the user's permission before tracking that user's activity across other apps. This change will enhance transparency for users and further empower them.

We define tracking as the act of linking user or device data collected from an app with user or device data collected from other companies' apps, websites, or offline properties—for advertising or advertising measurement purposes or sharing user or device data with data brokers. An example of tracking is displaying targeted ads in an app based on user data collected from apps and websites owned by other companies. Another example is sharing a list of emails, advertising IDs, or other IDs with a third-party advertising network that uses that information to retarget those users in other developers' apps. When a user is tracked, her data can end up in the hands of other companies without the user knowing. We believe users should be aware of this practice and should be able to choose whether their data is used and shared in this manner. It is not considered tracking when the data is linked solely on the user's device and not sent off the device in a way that can identify the user or device externally, or when the data broker uses the data shared with them solely for fraud detection or prevention or security purposes, and solely on the developer's behalf.

In iOS 14, when a user declines to give permission to be tracked, Apple will not provide the Identifier for Advertising ("IDFA") and will relay the user's choice to the developer. When enabled, a system prompt will give users the ability to allow or reject tracking on an app-by-app basis. To be clear, we are not prohibiting tracking—a developer will still be able to track users with the IDFA and other means so long as they gain user permission. This change reflects Apple's ongoing efforts to add innovative privacy features into each new generation of its software.

Apple recently announced that it would delay the implementation of this feature in iOS 14 to give developers more time to make the necessary changes. The requirement to use this tracking permission will go into effect early next year.

At the same time, Apple is developing an innovative solution to help developers with a more privacy-friendly alternative to tracking that they may use for advertising attribution and, by extension, measurement of in-app advertising. For many developers, tracking is a side effect of trying to answer business questions like which advertising campaign is most effective. Apple is making major improvements to SKAdNetwork, a free framework that gives developers a privacy-friendly way to understand advertising performance. SKAdNetwork is engineered to hold advertising data on-device

[1] *See* Paul Resnikoff, *What Steve Jobs Said About Protecting Privacy In 2010*, Digital Music News (Mar. 25, 2018), https://www.digitalmusicnews.com/2018/03/25/steve-jobs-user-privacy-2010/.

separate from apps, allowing advertising conversion measurement to be reported without users being tracked. By way of example, if a developer decided to advertise its app through ads in other apps, SKAdNetwork can help that developer determine which ads led to how many app installations and new user acquisitions. With SKAdNetwork, third-party advertising networks serving ads across a wide variety of apps can provide advertising attribution to developers without knowing the identity of the user. Apple doesn't monetize this API. SKAdNetwork is free to use.

3. Does Apple have plans to open iOS 14 to alternative app stores?

No. Apple has no plans to open iOS to alternative app stores. Not only would allowing third-party app stores be inconsistent with Apple's longstanding and consistent approach to product development, it would also create significant privacy, performance, and security vulnerabilities.

The App Store is an integral part of the integrated iOS experience and a feature of the iPhone. Customers buy iPhones for the whole experience—from unparalleled design, to cutting-edge technology, to the first truly mobile operating system, to services and software. Having one app store on the iPhone allows us to fulfill our promise to our customers that the apps they download will meet our high standards for privacy, performance, and security.

Nothing is more important to Apple than maintaining the trust of its users. The App Store ensures that Apple delivers on its promise that apps are held to a high standard for privacy and security. Apple has reviewed every app distributed through the App Store since the opening of the App Store in 2008. Apple expended significant effort to put various "controls in place," allowing the company to "turn off the spigots" when harmful third-party apps are detected.[2] This is critical, as the iPhone operates in a different environment than a computer. Products like the iPhone could offer access to a trove of users' personal data—data that unscrupulous actors could seek to collect or exploit. As Steve Jobs explained in 2007, "[y]ou don't want your phone to be like a PC. The last thing you want is to have loaded three apps on your phone and then you go to make a call and it doesn't work anymore."[3]

Apple's rigorous App Review process is designed to protect users and developers alike from fraud, malware, and unwarranted intrusion into their privacy. Apple reviews, on average, 100,000 submissions for apps or app updates per week—most within 24 hours of submission. This process includes roughly 1,000 calls per week to developers to diagnose and cure issues. Apple rejects approximately 40% of the reviewed apps. Many of these apps are rejected because they have software glitches or bugs, and/or would compromise users' data privacy or security. There is a significantly smaller number of malicious iOS apps than those available on Android.[4] In 2018, the iPhone platform accounted for just 0.85% of malware infections. By contrast, Android accounted for 47.15% and Windows/PC accounted for 35.82%.[5] And among app stores, Android app stores have significantly higher numbers of malicious apps than the App Store.[6]

Incorporating third-party app stores into iOS would undermine Apple's carefully created privacy and

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[2] *Steve Jobs Introduces the App Store – iPhone Software Roadmap Event*, YouTube (Mar. 6, 2008).
[3] John Markoff, *Steve Jobs Walks the Tightrope Again*, N.Y. Times (Jan. 12, 2007), https://www.nytimes.com/2007/01/12/technology/12apple.html.
[4] *Internet Security Threat Report*, Symantec, at 11 (Apr. 2016) ("Apple is well-known for its stringent screening processes, which is why the number of malicious iOS apps is so much smaller than for Android."), https://docs.broadcom.com/doc/istr-21-2016-en.
[5] *See Nokia Threat Intelligence Report – 2019*, Nokia, https://pages.nokia.com/T003B6-Threat-Intelligence-Report-2019.html.
[6] *See* Jordan Herman, *2019 Mobile App Threat Landscape Report*, RiskIQ (2019), https://www.riskiq.com/research/2019-mobile-threat-landscape-report/.

security safeguards, and would seriously degrade the consumer experience and put Apple's reputation and business at risk. Apple would have no reliable way of delivering on its commitment to consumers that every app available for download meets Apple's rigorous standards for security and privacy.

September 9, 2020

Chairman Jerrold Nadler
Committee on the Judiciary
Subcommittee on Antitrust, Commercial, and Administrative Law
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515
ATTN: Joseph Van Wye

Dear Chairman Nadler, Ranking Member Jordan, Subcommittee Chairman Cicilline, Subcommittee Ranking Member Sensenbrenner, and Members of the Subcommittee,

Thank you for your questions for the record from the Subcommittee on Antitrust, Commercial, and Administrative Law's July 29, 2020 virtual hearing entitled "Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google." Per your request, attached are the answers for the record to your questions.

While not a question included in the questions for the record, we would like to follow up on Mark Zuckerberg's exchange with Congresswoman McBath regarding how Facebook uses "cookies" to make clear for the record that Facebook has honored the commitments in its privacy policies. Mark correctly testified that Facebook has used cookies for a variety of purposes, including those he enumerated in his testimony. Those purposes have evolved as our services have evolved, and include helping to serve relevant ads. Our privacy policies have always been transparent about the way we use cookies.

Sincerely,

Facebook, Inc.

1 HACKER WAY
MENLO PARK, CA
94025

FACEBOOK

Questions from Chairman Cicilline

1. **Please confirm whether Giphy enables Facebook to track the following types of data:**

   a. **The number of users accessing Giphy images on any non-Facebook app;**

   b. **Individual Giphy images used by individual users on non-Facebook apps;**

   c. **An individual user's keystrokes searched using Giphy tools on non-Facebook apps; and**

   d. **A Giphy user's browsing activity across the web.**

Facebook purchased GIPHY because it had a quality service, a highly skilled team, and an expressive creator community. Data was not the motivation. Becoming part of Instagram represents a tremendous opportunity for GIPHY to build upon and expand users' and content creators' ability to make and share the creative content that they are passionate about.

On June 9, 2020, the U.K. Competition and Markets Authority issued an Interim Enforcement Order to Facebook requiring Facebook to hold the GIPHY business separate from the rest of Facebook until the Order is lifted or modified. As a consequence, Facebook has limited information about GIPHY's data practices.

2. **Please identify all types of individual and aggregate data that Facebook will be able to track on non-Facebook apps that make Giphy images available.**

   Please see the response to your Question 1.

3. **Will Giphy enable Facebook to track usage rates of non-Facebook apps that use Giphy?**

   Please see the response to your Question 1.

4. **Documents Facebook provided to the Committee reveal that Facebook used Onavo to track usage rates of actual and potential competitors. What, if anything, prevents Facebook from using Giphy for the same purpose?**

   Please see the response to your Question 1.

5. **Can a non-Facebook app enable Giphy services while preventing Facebook from collecting individual or aggregate data on its users?**

   Please see the response to your Question 1.

6. **Did Facebook report its acquisition of Giphy in a Hart-Scott-Rodino filing? If not please identify any reporting exemption that Facebook claimed.**

The relevant statutory test did not require an HSR filing with respect to the GIPHY transaction. *See* 15 U.S.C. § 18(a).

7. In 2019, Facebook reported over 6 billion fake accounts on Facebook's platforms. Does Facebook permit independent auditing of its fake account numbers?

Our goal is to keep fake accounts off of Facebook, and we continue to improve our ability to detect and remove them. We estimate that our detection systems help us prevent millions of attempts to create fake accounts every day, and to detect and remove millions more, often within minutes after creation. Of the nearly 6 billion fake accounts we disabled in 2019, over 99% of them were identified proactively by Facebook and removed before users reported them to us.

To track our progress and demonstrate our continued commitment to making Facebook safe and inclusive, we regularly release a Community Standards Enforcement Report, which includes metrics on how Facebook is performing in preventing and removing content that violates our Community Standards, including fake accounts. For more information, please see https://transparency.facebook.com/community-standards-enforcement#fake-accounts.

In the context of our Community Standards Enforcement Report, the metrics we report are based on methodologies that aim to provide an accurate representation of what's happening on our platform. For more information, please see the guide to the Community Standards Enforcement Report at https://transparency.facebook.com/community-standards-enforcement/guide. However, we are always working to improve and, to this end, over a year ago we worked with international experts in measurement, statistics, law, economics, and governance to provide an independent, public assessment of whether the metrics we share in the Enforcement Report provide accurate and useful measures of Facebook's content moderation challenges and our work to address them. They broadly agreed that we are looking at the right metrics and provided some recommendations for improvement, including launching appeals reporting. For more information, please see https://law.yale.edu/sites/default/files/area/center/justice/document/dtag_report_5.22.2019.pdf.

We are also working to further validate that the metrics are measured and reported correctly. Over the past year, we have been working with auditors internally to assess how the metrics we report can be audited most effectively. We have issued a Request For Proposal to external auditors to conduct an independent audit of these metrics. We hope to conduct this audit starting in 2021 and have the auditors publish their assessments once completed. For more information, please see https://about.fb.com/news/2020/08/independent-audit-of-enforcement-report-metrics/.

8. Has Facebook ever cut off or denied platform access to apps or services that would be able to independently detect fake accounts on Facebook?

As explained above, we remove as many fake Facebook accounts as we can, and we continue to improve our ability to do so. We estimate that our detection systems help us prevent millions of attempts to create fake accounts every day. We regularly measure and report out

information on our enforcement efforts against fake accounts, and we intend to conduct an external audit of our metrics next year.

Our policies do not deny access to apps or services on the basis that they seek to detect fake accounts.

9. Last week Facebook released Reels, a direct competitor to TikTok. Did Facebook use Onavo, or any other internal device, to track TikTok's usage patterns or growth?

Like all companies in the technology sector and beyond, Facebook closely follows commercial developments in its industry. We are constantly striving to improve the user experience, and an important part of that is responding to new features users demand. To analyze these trends, Facebook has relied on a variety of sources, including Onavo, Comscore, App Annie, and others. Websites and apps have used industry research services for years, including the same sources Facebook uses.

We use these insights to improve products like Facebook, Instagram, WhatsApp, Portal, and Oculus, and to benefit the broader community. This type of industry research is common and central to improving our products and services.

10. In 2018, TikTok was one of Facebook's largest Chinese advertisers. In 2019, however, TikTok essentially stopped advertising on Facebook.[1] Did Facebook in any way attempt to limit TikTok's reach prior to its decision to reduce advertising on Facebook?

TikTok has become a Facebook ad success story. They continue to use our ad platform to grow, becoming the successful platform they are today, including competing with Facebook's services.

11. In your view, does Apple in any way impede Facebook on iOS?

We face stiff competition from a variety of services that compete for user time and attention. With Apple, we compete in areas including messaging, photo, video sharing, and advertising. With Google, we compete in areas including advertising, messaging, photo, and video sharing.

Importantly, while we compete with these companies, we also rely on them to be able to operate. As mobile operating system providers, Apple iOS and Google Android are the primary distribution channels between Facebook and its users.

Indeed, today most people access Facebook through mobile applications we have developed for the world's leading smartphone operating systems, Apple's iOS and Google's Android. Apple and Google provide online stores that enable users of their operating systems to download third-party software applications—or apps—onto their devices, including versions of

[1] Paresh Dave & Katie Paul, Facebook defies China headwinds with new ad sales push, REUTERS (Jan. 7, 2020). https://www.reuters.com/article/us-facebook-china-focus/facebook-defies-china-headwinds-with-new-ad-salespush-idUSKBN1Z616Q.

Facebook that we build for those devices. If Apple or Google decide to block Facebook from their online stores, Facebook's ability to reach users will be severely impacted.

12. In your view, does Google in any way impede Facebook on Android?

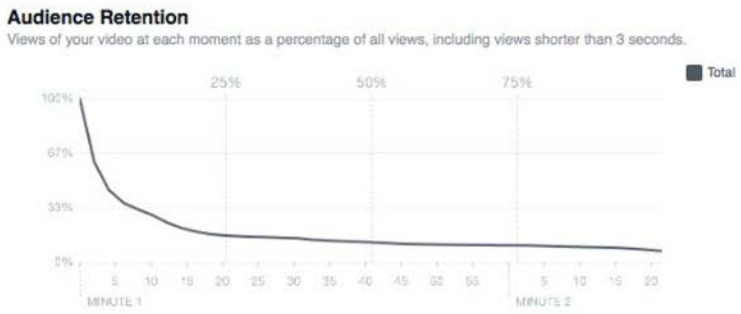
Please see the response to your Question 11.

13. Between 2014 and 2016, Facebook inflated metrics measuring average viewership of video ads by 900 percent. Numerous news organizations made major editorial decisions and laid off journalists based on Facebook's inflated metrics.

a. Facebook disclosed this error in 2016. A group of advertisers alleged that Facebook executives knew as early as January 2015 that its metrics were flawed. When did you personally learn that Facebook's metrics on video ad viewership were erroneous?

In August 2016, Facebook announced that it had discovered an error in the way it was calculating two metrics it provided to its video advertisers: average duration of video viewed ("ADVV") and average percentage of video viewed ("APVV"). The error was inadvertently introduced by a coding change in February 2015. Facebook discovered the error in the summer of 2016, and publicly announced it by, among other things, placing a notice in the product itself and issuing a blog post. Facebook also deprecated and replaced the two erroneous metrics, and it undertook a systematic review to verify the accuracy of its other video metrics. In addition, Facebook improved the processes that allowed the error to be introduced and to go undetected.

Facebook regrets making this error, and it takes any error extremely seriously. We note, however, that ADVV and APVV were two of numerous video metrics that Facebook made available, and that advertisers at all times had access to accurate information about how long viewers were viewing their ads. For example, Facebook provided four additional view-duration metrics—the number of people who watched each video to 25%, 50%, 75%, and 100% completion—which were not affected by the error. In addition, Facebook provided a retention graph (an example of which is depicted below) showing the percentage of viewers who watched the video to different lengths, which also was not affected by the error.



In 2019, Facebook settled a class action lawsuit filed on behalf of video advertisers related to the ADVV and APVV error. In 2020, the court approved the settlement, and affected US advertisers have now begun receiving distributions. If news publishers purchased video ads on Facebook between February 2015 and September 2016, they may be entitled to a pro rata share of the settlement fund.

We at Facebook care a great deal about making sure that a healthy news and journalism ecosystem can thrive. In January 2017, we announced the Facebook Journalism Project ("the Journalism Project"), an initiative to establish stronger ties between Facebook and the news industry. Over the past three years, this project has invested more than $425 million to help the journalism industry by developing news products; providing grants, training, and tools for journalists; and working with publishers and educators on how we can equip people with the knowledge they need to be informed readers in the digital age. Since launching the Journalism Project, we have met with more than 2,600 publishers around the world to understand how they use our products and how we can make improvements to better support their needs.

This investment includes support for organizations like the Pulitzer Center, Report for America, the Knight-Lenfest Local News Transformation Fund, the Local Media Association and Local Media Consortium, the American Journalism Project, and the Community News Project.

Also through the Journalism Project, in February 2018, we launched our $3.5 million Local News Subscriptions Accelerator, a pilot program designed to help news publishers build their digital subscription revenues. In August 2018, we introduced our Membership Accelerator, another $3.5 million program designed to help non-profit news organizations and local, independent publishers with membership models to build sustainable businesses by providing supporters access to exclusive content and experiences through memberships. In January 2019, we also committed more than $20 million to continue these programs in the United States and expand the model globally. Additionally, in August 2018, we made a $1 million donation to NewsMatch, a national matching campaign that doubles donations to non-profit newsrooms and promotes giving to journalism among US donors.

b. In 2019 Facebook agreed to pay advertisers $40 million to settle a lawsuit over Facebook's exaggerated video ad metrics. What compensation, if any, has Facebook provided to news publishers who suffered due to Facebook's inflated metrics?

Please see the response to your Question 13.a.

14. In October 2019, Facebook introduced the News Tab and began paying select publishers to be included.

a. Are the pricing and terms that Facebook offers publishers negotiable or does Facebook require any publisher seeking to participate in the program to accept the pricing and terms that Facebook lists?

We launched Facebook News in October 2019, making a $300 million commitment to help publishers invest in building their readership and subscription models. In so doing, we have

established a long-term financial partnership between publishers and Facebook—a multi-year commitment that should give publishers the confidence to plan ahead.

People want to see high-quality news on Facebook, and we are proud to partner with many leading media outlets to bring them that content through Facebook News. We now have multi-year partnerships with ABC News, The New York Times, The Wall Street Journal, The Washington Post, BuzzFeed, The Dallas Morning News, and many more publishers. We are constantly evaluating the product to ensure it meets our users' needs and we will consider doing deals with additional publishers as the product evolves. Our guiding principle is that journalism plays a critical role in our democracy. When news is deeply reported and well-sourced, it gives people information on which they can rely.

We have built tools to help publishers increase their subscribers by driving people from Facebook links to publisher websites. Among other benefits, Facebook provides publishers with free, organic distribution of news (and other content), which grows the audience and revenue for news publishers; customized tools and products to help news publishers monetize their content; and initiatives to assist publishers to innovate with online news content, along with bringing indirect value to publishers such as brand awareness and community-building.

Publishers are able to decide when a reader sees a paywall. They control the relationship with their readers with subscription payments taking place directly on publishers' websites. We do not take any cut of the subscription revenue because we want as much of the revenue as possible to go toward funding quality journalism. Helping publishers reach new audiences has been one of our most important goals, and we have found that over 95% of the traffic Facebook News now delivers to publishers is incremental to the traffic they already get from News Feed.

We negotiate directly and bilaterally with publishers on compensation terms for inclusion in Facebook News. We identify these publishers by considering many factors, including the content they produce across four categories (general, topical, local, and diverse), and we aim to ensure that we have the volume and type of content we need in order to create a compelling user experience within the Facebook News product. We worked closely with publishers as we built the Facebook News product, and we strive to maintain an open dialogue with each of our publisher partners about all aspects of our relationship, including, as appropriate, issues related to licensing fees.

Beyond news publishers with whom we have deals, Facebook News also features a wide range of content across four categories of publishers: general, topical, diverse, and local news. These publishers need to be in our News Page Index, which we developed in collaboration with the industry to identify news content; abide by our Publisher Guidelines, which include prohibitions on publishing misinformation, clickbait, and engagement bait; and abide by our Community Standards.

For more information about Facebook News, please visit https://www.facebook.com/news/howitworks. For more information about our News Page Index, please see https://www.facebook.com/help/publisher/377680816096171.

b. Please identify all factors that Facebook considered when identifying which publishers it would compensate for inclusion in the News Tab.

Please see the response to your Question 14.a.

Questions from Representative Jayapal

1. Please list all companies that Facebook negotiated with about an acquisition while Facebook was also developing or had developed a competing product to those companies' products.

Where user demand exists for a new product or feature that we believe is complementary to our existing service, Facebook often tries to meet that demand, sometimes by developing the product or feature ourselves and sometimes by acquiring a company with the right talent and/or technology in order to drive innovation more quickly and effectively. Facebook may bring its own expertise to the challenge of innovating for the acquired company, it may introduce the technology or expertise of the acquired company to innovate with Facebook, or it may do both.

Facebook invests heavily in research and development and seeks to continuously offer new products, as well as refine existing ones, in order to deliver innovative products and experiences to its users. Facebook's goal in any acquisition is to maximize the use and benefit of the acquired company's assets in order to achieve the strategic need for which the acquisition was undertaken.

2. Please list all companies that Facebook has sued since 2005 using causes of action delineated by the Computer Fraud and Abuse Act.

Since 2005, based on a review of available records, Facebook has brought 11 lawsuits against the following companies in federal district court alleging, inter alia, violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030:

1. OneAudience LLC
2. ILikeAd Media International Company Ltd.
3. NSO Group Technologies Ltd. and Q Cyber Technologies Ltd.
4. JediMobi Tech Pte. Ltd. and LionMobi Holding, Ltd.
5. Social Media Series Limited
6. MaxBounty, Inc.
7. Choko Systems LLC, Harm, Inc., PP Web Services LLC, and iMedia Online Services LLC
8. Power Ventures, Inc. d/b/a Power.com, Power Ventures, Inc.,
9. StudiVZ, Ltd, Verlagsgruppe Georg Von Holtzbrinck GmbH, Holtzbrinck Networks GmbH, and Holtzbrinck Ventures GmbH
10. Istra Holdings Inc., Slickcash.com, and 1564476 Ontario Limited
11. ConnectU, Inc. and Pacific Northwest Software, Inc.

3. Please explain whether Facebook has any plans to gather country-specific data about the spread of hate speech on the platform.[i]

To track our progress and hold ourselves accountable on enforcement of our Community Standards, including our hate speech policy, we regularly release a Community Standards Enforcement Report, which includes metrics on content removals and proactive detection. In the second quarter of 2020, Facebook removed 22.5 million pieces of content for violating our hate speech policies, up from 9.6 million pieces of content in the first quarter of 2020. We detected and actioned 94.5% of that content before users reported it, up from 88.8%. Starting in the first quarter of this year, we made improvements to our proactive detection technology and expanded automation to the Spanish, Arabic, and Indonesian languages. In the second quarter, we followed up by expanding automation to the English, Spanish, and Burmese languages, which helped us detect and remove more content. For more information, please visit https://transparency.facebook.com/community-standards-enforcement#hate-speech.

We do not currently report these numbers on a country-specific basis, due to challenges of measuring data in this way. For example, bad actors often mask the country where they are located, which makes it almost impossible to accurately report where the person who posted the content was located. A piece of content may also be viewed across multiple locations, and therefore we cannot easily split content or proactive rate by consumer country (the country where the person who viewed the content was located).

4. Does Facebook allow third party auditors to verify whether the company's metrics for third-party advertising Return on Investment (ROI) are accurate?[ii]

Yes. As a partner to over 9 million advertisers across a wide range of organizations and objectives, we want to provide transparency, choice, and accountability. We provide transparency through verified data that shows which ad campaigns drive measurable results, choice in how advertisers run campaigns across our platforms, and accountability through an audit and third-party verification.

We undertake significant work to ensure and verify the accuracy of the information we deliver to our partners, and we are now working with the Media Rating Council ("MRC") to evaluate compliance with industry standards. We also work closely with marketers to understand their measurement needs on key topics such as reach, attribution, brand lift, offline sales, and

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[i] United Nations Office of the High Commissioner, Human Rights Council, *Report of the independent international fact-finding mission on Myanmar* (September 2018) https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.pdf ("The role of social media is significant. Facebook has been a useful instrument for those seeking to spread hate, in a context where, for most users, Facebook is the Internet. Although improved in recent months, the response of Facebook has been slow and ineffective. The extent to which Facebook posts and messages have led to real-world discrimination and violence must be independently and thoroughly examined. The mission regrets that Facebook is unable to provide country-specific data about the spread of hate speech on its platform, which is imperative to assess the adequacy of its response.")

[ii] Competition and Markets Authority, *Digital Advertising Services: Qualitative Research Report* (June 2020), https://assets.publishing.service.gov.uk/media/5efb3fded3bf7f769d2695af/Digital_Advertising_Services_Research.pdf at 8 (Return on investment was seen as an issue by some respondents for both Facebook and Google. It was recognized that ROI was more difficult to calculate for display advertising, but some respondents mentioned that they needed to use third parties to help calculate it – and also that they felt both Facebook and Google's own metrics tended to overstate their effectiveness.)

mobile app measurement. We now have over 30 global, third-party measurement partners so marketers can work with their preferred vendor.

Questions from Representative Raskin

1. **Please state any and all concessions Facebook has made to—or agreements it has made with—political organizations, news organizations, officials, or spokespersons to address perceived political or ideological bias on Facebook. Please identify all figures, operatives, leaders, businesspeople, journalists, former elected officials, and news organizations who have been named to Facebook's board or employed by Facebook to address complaints of political or ideological bias at Facebook.**

Facebook is a platform for ideas across the political and ideological spectrum. Suppressing content on the basis of political viewpoint is directly contrary to Facebook's mission and our business objectives.

In developing and iterating on our policies, we consult with outside academics and experts from across the political spectrum and around the world, and we provide in-depth examples and explanations of what policy changes would entail. As a matter of policy, we do not share the names of the groups we consult with for a number of reasons, including safety and security concerns—which are especially acute in places around the world where the government may exercise censorship or control—and the fact that groups may not want to be named.

We have engaged two outside advisors to conduct external reviews. We engaged former Senator Jon Kyl to advise the company on potential bias against conservative voices. We also asked Laura Murphy, a highly respected civil rights and civil liberties leader, to lead a civil rights audit of Facebook.

2. **The United Nations recognizes that Holocaust denial and distortion are "generally motivated by strong anti-Semitism, and build on the claim that the Holocaust was invented or exaggerated as part of a plot to advance Jewish interests. That view perpetuates long-standing anti-Semitic prejudices and stereotypes, accusing Jews of conspiracy and world domination and of hateful charges that were instrumental in laying the groundwork for the Holocaust…."**

   Recent surveys by the Conference on Jewish Material Claims Against Germany have shown a spreading lack of knowledge about the history of the Holocaust, especially among younger generations. For example, over half the millennials in the U.S. cannot name a single Nazi concentration camp. This lack of knowledge, especially among young people, makes the dissemination of Holocaust distortion and denial through social media platforms like Facebook especially dangerous.

   After bearing witness to the atrocities perpetrated during the Holocaust, survivors and their families now bear witness to the venom and lies spread on social media platforms. Holocaust deniers not only try to destroy historical memory of these atrocities but denigrate survivors and their families in asserting that they are perpetrating a "hoax" for financial gain, power, or some other purpose implicating classic antisemitic tropes.

Facebook has been alerted to the proliferation of Holocaust denial on its platform. Facebook has community standards which prohibit the dissemination of hate speech but has so far refused to classify Holocaust denial as hate speech.

(1) Will Facebook commit to removing Holocaust denial content and posts in the United States as it does in other countries?

Anti-Semitism is abhorrent and has no place on our platform. Facebook removes any post that celebrates, defends, or attempts to justify the Holocaust. The same goes for any content that mocks Holocaust victims, accuses victims of lying about the atrocities, or advocates for violence against Jewish people in any way. In countries where Holocaust denial is against the law, such as Germany, France, and Poland, we will also take steps to restrict access in accordance with the law.

While we object to certain ideas expressed on Facebook, including those who deny facts about the Holocaust, we do not remove content from Facebook simply for being false. We recognize this means that sometimes people are permitted to post material that runs counter to historical and factual evidence.

However, what we do with that kind of content is work to prevent its spread, which has a significant effect on distribution in News Feed. We also remove from recommendations Groups and Pages that discuss Holocaust denial, and we remove references to Holocaust denial from predictions when people type into search.

We're also exploring ways to provide people with educational information about the Holocaust when they search for Holocaust denial material. This is one of the ways by which we want to help build a more informed community. We have also partnered with Yad Vashem on an online commemorative project for the victims of the Holocaust and sponsored events in Israel to help share the stories of Holocaust survivors.

We know many people strongly disagree with our position—and we respect that. It is really important for us to engage on these issues and to hear from people to understand their concerns. We have a team that is dedicated to developing and reviewing our policies, and we welcome collaboration with industry, experts, and other groups to ensure we are getting it right.

As part of this outreach, we have engaged with the Jewish Claims Conference and other organizations in the Jewish diaspora about our policies, and we agree that the perspective of survivors is important.

(2) Will Mr. Zuckerberg commit to meeting with Holocaust survivors (virtually, for health and safety reasons) to discuss ways of resisting the obliteration of historical memory and understanding relating to the Holocaust?

We agree that the perspective of survivors is important. We have partnered with Yad Vashem on an online commemorative project for the victims of the Holocaust and sponsored events in Israel to help share the stories of Holocaust survivors. We have a team that is dedicated

to developing and reviewing our policies and we welcome collaboration with industry, experts, and other groups to ensure we are getting it right.

Questions from Representative Scanlon

1. **For financial products and services advertised on Facebook's platform, does Facebook currently employ algorithms or other technologies that limit or influence ad delivery to consumers on the basis of any demographic identified as protected classification under the Equal Credit Opportunity Act (ECOA) or the Fair Housing Act (FHA)?**

Discrimination and discriminatory advertising have no place on Facebook's platform, and we remove such content as soon as we become aware of it.

Our policies have long prohibited discrimination, and we have made significant changes to help prevent advertisers from misusing our tools to discriminate in their ad targeting. As part of settlement agreements with civil rights organizations like the National Fair Housing Alliance ("NFHA"), and based on ongoing input from civil rights experts, we have taken the industry lead by changing the way advertisers may select the audience for housing, employment, and credit ("HEC") ads. Specifically, we have eliminated the ability to target HEC ads based on age, gender, or zip code, and we have severely restricted the number of interest category targeting options available. We have expanded our enforcement of this process across all of the tools businesses use to buy ads on Facebook. Even before we made these changes, advertisers were prohibited from using any multicultural affinity interest segments, either for inclusion or exclusion, when running HEC ads.

We have also added a housing ad section in the Ad Library, so it is easy to search for and view US ads about housing opportunities. People can search for and view all active housing opportunity ads targeted at the US that started running—or were edited—on or after December 4, 2019, regardless of the advertiser's intended audience. People are able to search the housing ad section by the name of the Page running an ad or the city or state to which the ad is targeted. This year, we will also include ads that offer employment or credit opportunities in the Ad Library. We are actively working with civil rights groups to inform our approach as we prepare to roll this out.

Concerns about bias and fairness in algorithms are important—not just for Facebook, but for the industry at large. We take this topic seriously, and we want to be a leader in this space. We have built and continue to expand teams that work on and study the potential for algorithmic bias. As part of the NFHA settlement, we have committed to engaging on and studying the topic of algorithmic fairness as it relates to our ad delivery systems, with input from the civil rights community, industry experts, and academics, which we have done and will continue to do. Our efforts to date include:

- Creating a series of "Design Jams" workshops through Facebook's Trust Transparency and Control Labs initiative, in which stakeholders from industry, civil society, and academia focused on topics like algorithmic transparency and fairness both in the advertising context and more broadly. More such workshops are planned over the coming months.
- Conducting roundtable discussions and consultations with stakeholders on ways to advance both algorithmic fairness and privacy—given that many approaches to

measuring fairness in algorithms require collecting or estimating additional sensitive data about people, such as their race, which can raise privacy and other concerns. We are working to better understand expectations and recommendations in this area.

2. **Explain what methods and efforts Facebook employs to facilitate an advertising platform that is compliant with federal and state anti-discrimination laws, and also provides a safe place for creditors and housing market participants to advertise their products in a manner consistent with these laws.**

   Please see the response to your Question 1.

3. **Can any advertiser of financial products and services market on Facebook with the assistance of an algorithm that never utilizes a protected class variable under ECOA or FHA in the delivery process?**

   Please see the response to your Question 1.

4. **What actions has Facebook taken in response to the allegation set forth in Paragraph 11 of HUD's complaint against Facebook indicating that ads for housing and housing related services are shown to large audiences that are severely biased based on characteristics protected by the FHA?**

   Please see the response to your Question 1.

5. **What information and data do you have to sufficiently demonstrate how Facebook's advertising platform does not suppress advertisements related to credit products or housing-related services on the basis of age, gender, or any other protected class under the ECOA or FHA.**

   Please see the response to your Question 1.

Amazon.com, Inc.
Attachment 4(c)-4
November 2, 2010

diapers.com

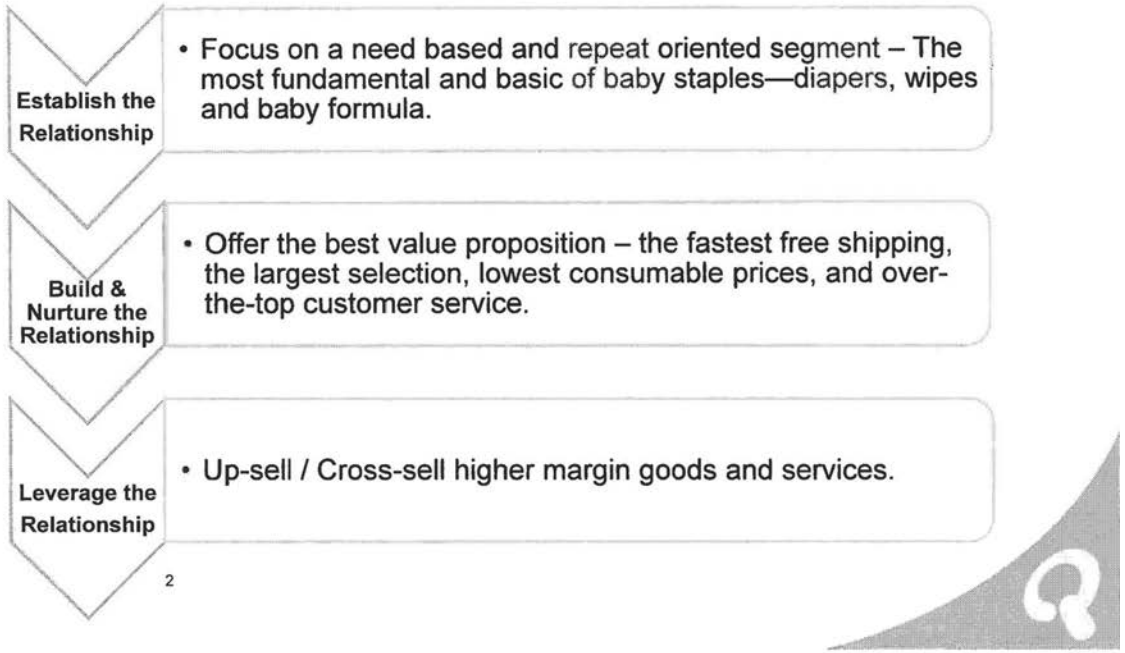
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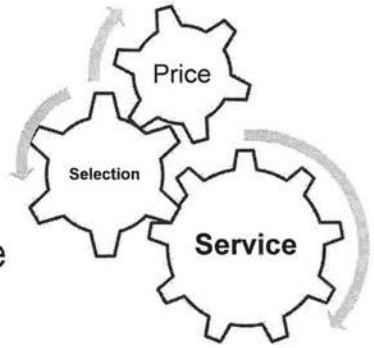
All About Customer Relationships



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Customer Value Proposition

- Fastest Free Shipping
  - Late 6:00pm Local cut-off
  - 74% get Overnight Delivery
  - 99% receive within 2 Days



- Over-the-Top Customer Service
  - Almost No Drop Shipping
  - No Questions Asked Returns Policy
  - Emails Answered within 20 minutes, 24x7
  - High In-Stock Rates in Closest Warehouse
- Widest Selection
- Very Competitive Pricing

A Focus on Logistics, Technology and Efficiency

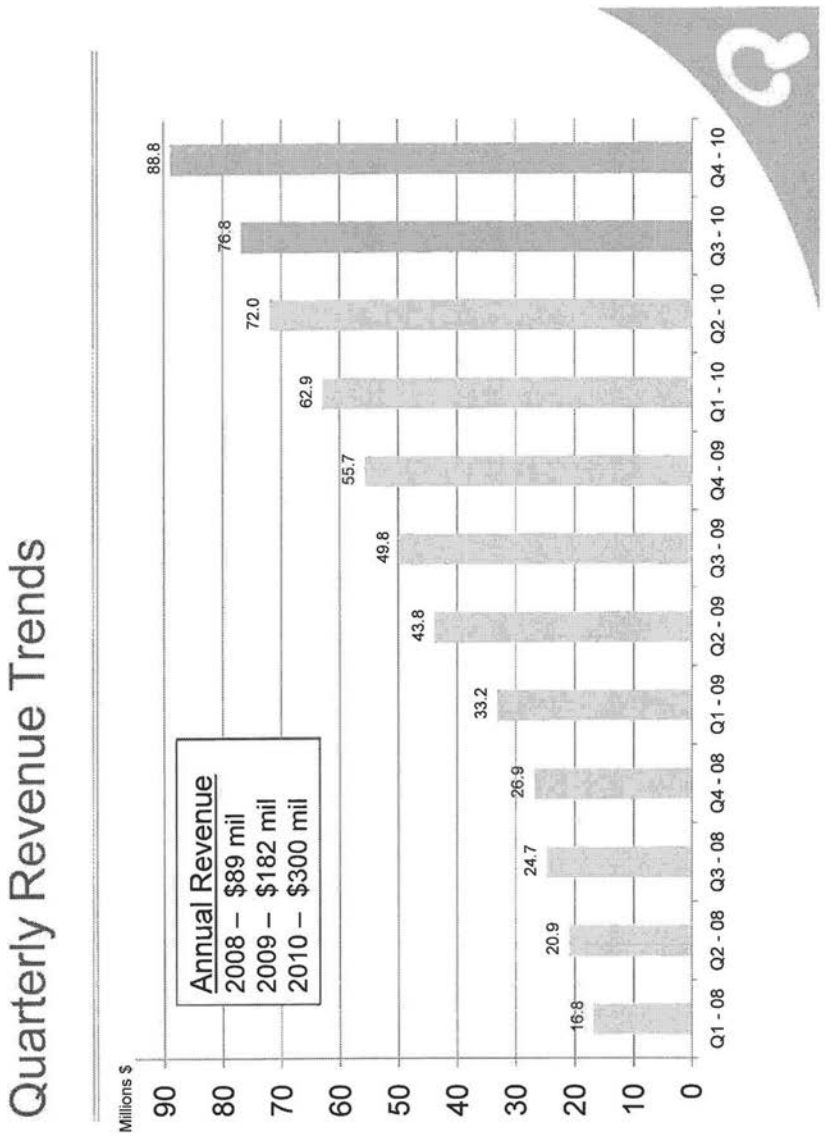
Logistics

- 3 Company Managed Warehouses Strategically Positioned to Maximize Ship Speed and Minimize Cost
- Robotic Picking System
- Multi-Carrier Shipping Network

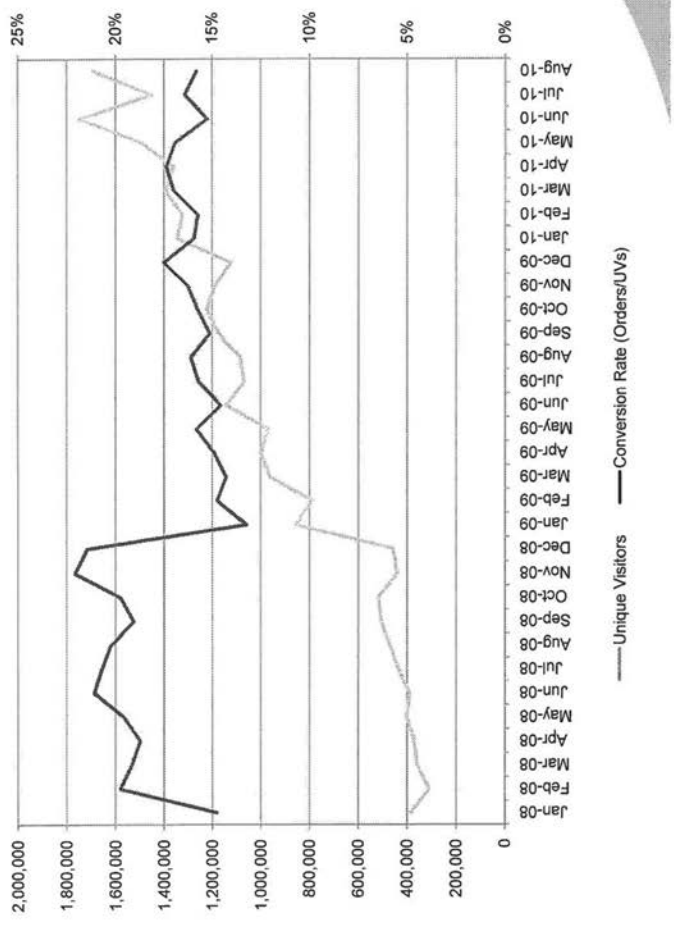
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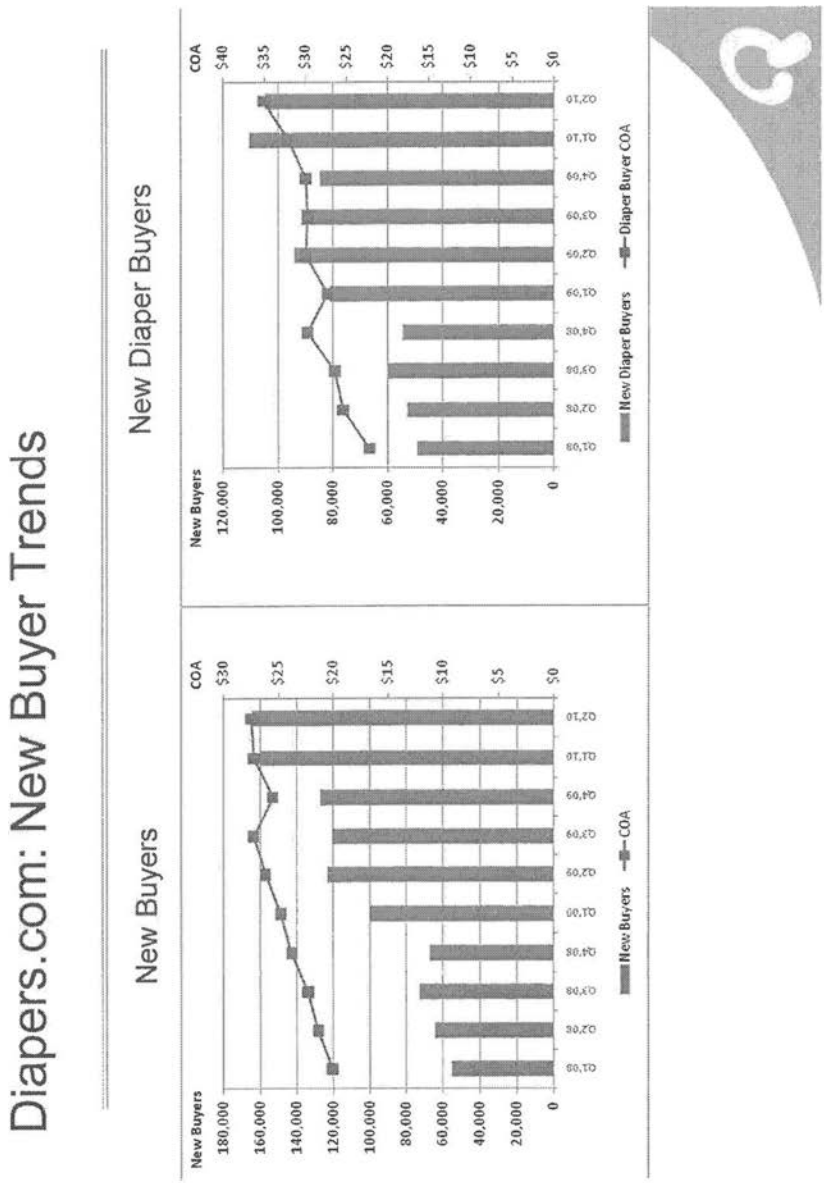
- Custom Built Supply Chain, Inventory Management and Order Management Systems
- Proprietary Algorithms e.g. Boxem
- Technology Team based in China – 70% cost savings

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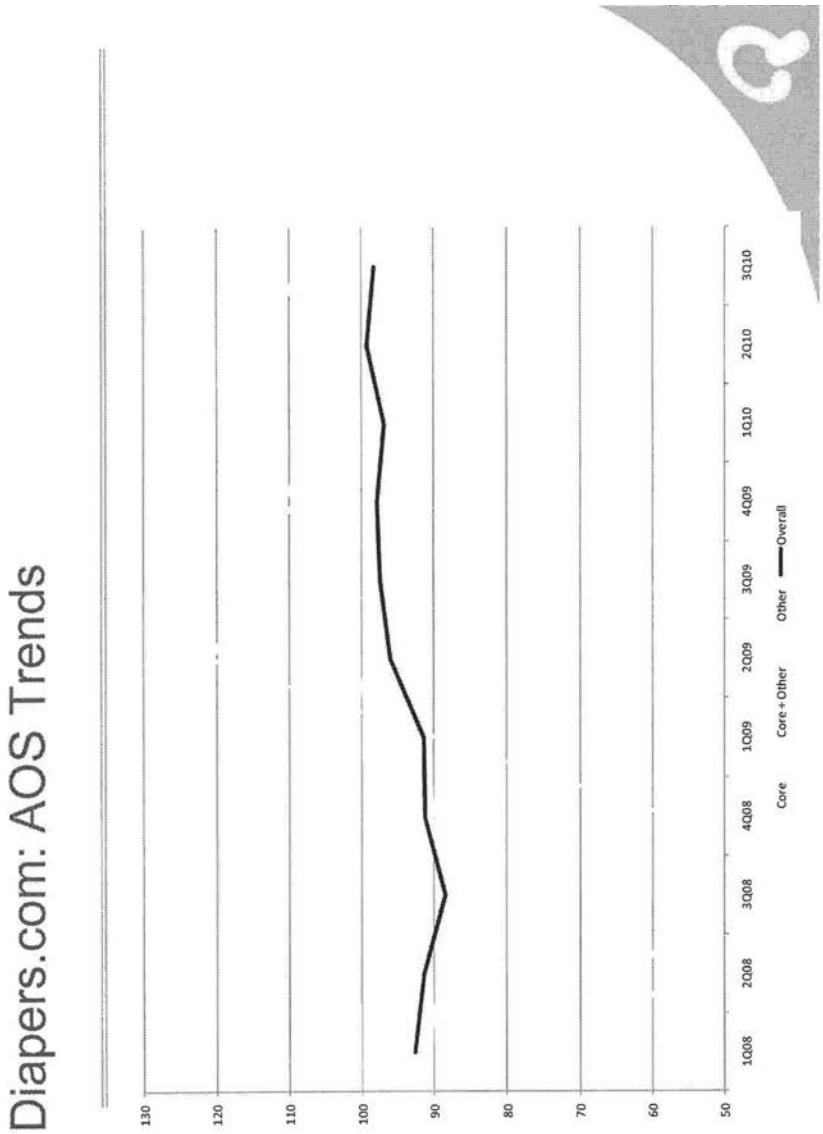

Quarterly Revenue Trends
Millions $
Annual Revenue
2008 – $89 mil
2009 – $182 mil
2010 – $300 mil
16.8
20.9
24.7
26.9
33.2
43.8
49.8
55.7
62.9
72.0
76.8
88.8
Q1 - 08
Q2 - 08
Q3 - 08
Q4 - 08
Q1 - 09
Q2 - 09
Q3 - 09
Q4 - 09
Q1 - 10
Q2 - 10
Q3 - 10
Q4 - 10

Diapers.com: Traffic & Conversion Trends



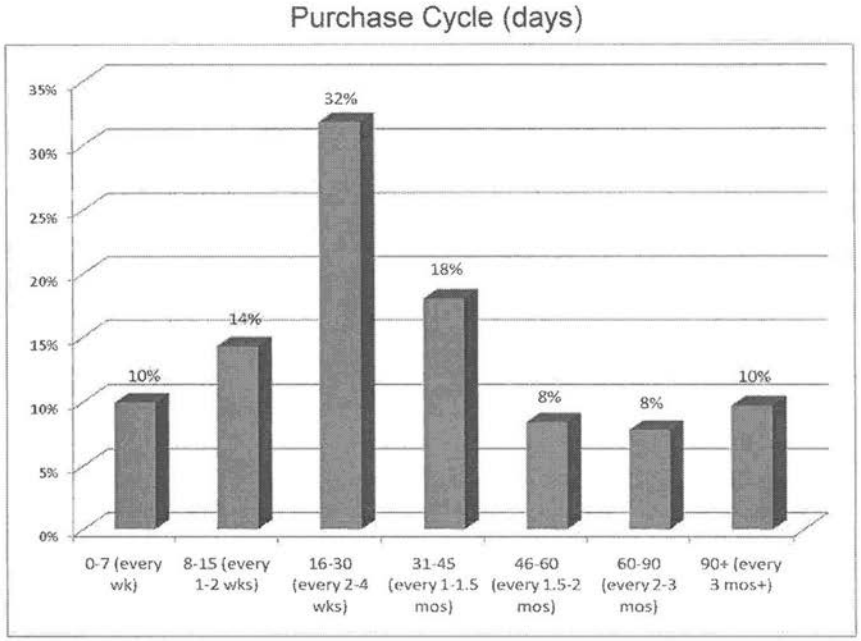


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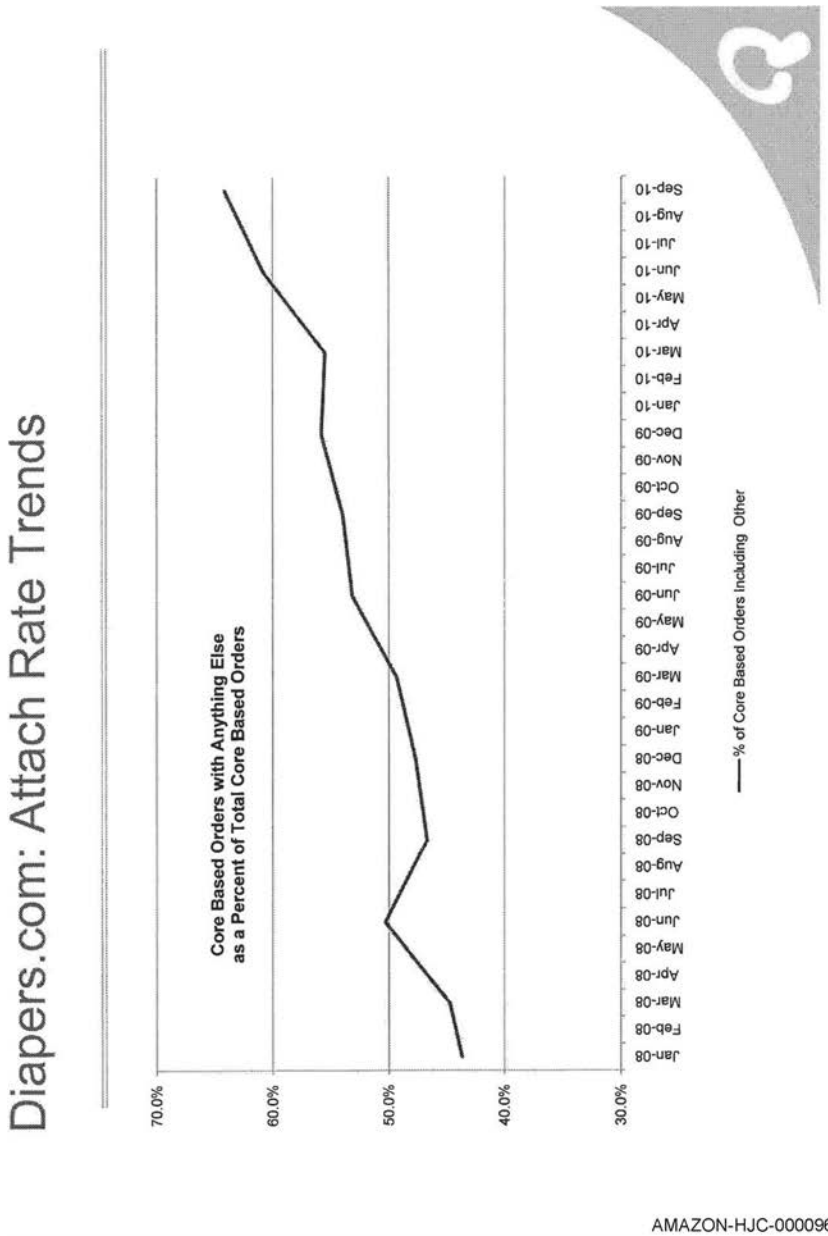
Purchase Frequency



17 Orders
@ $98 AOS

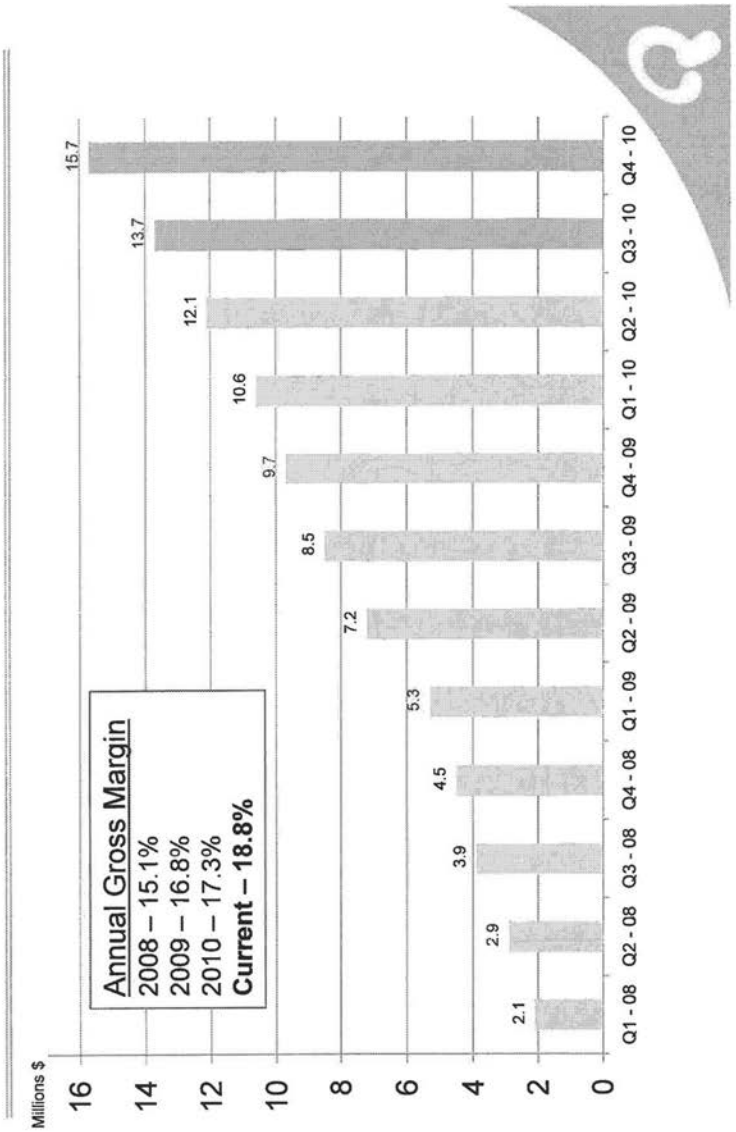


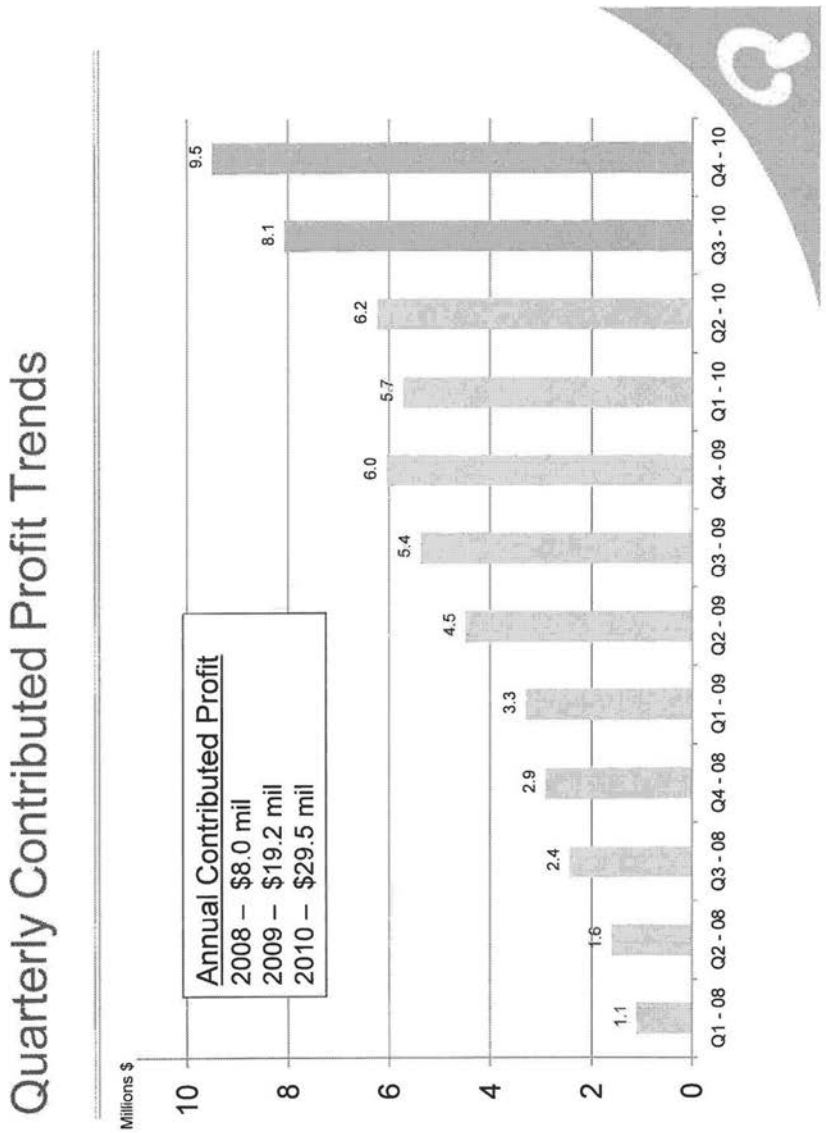
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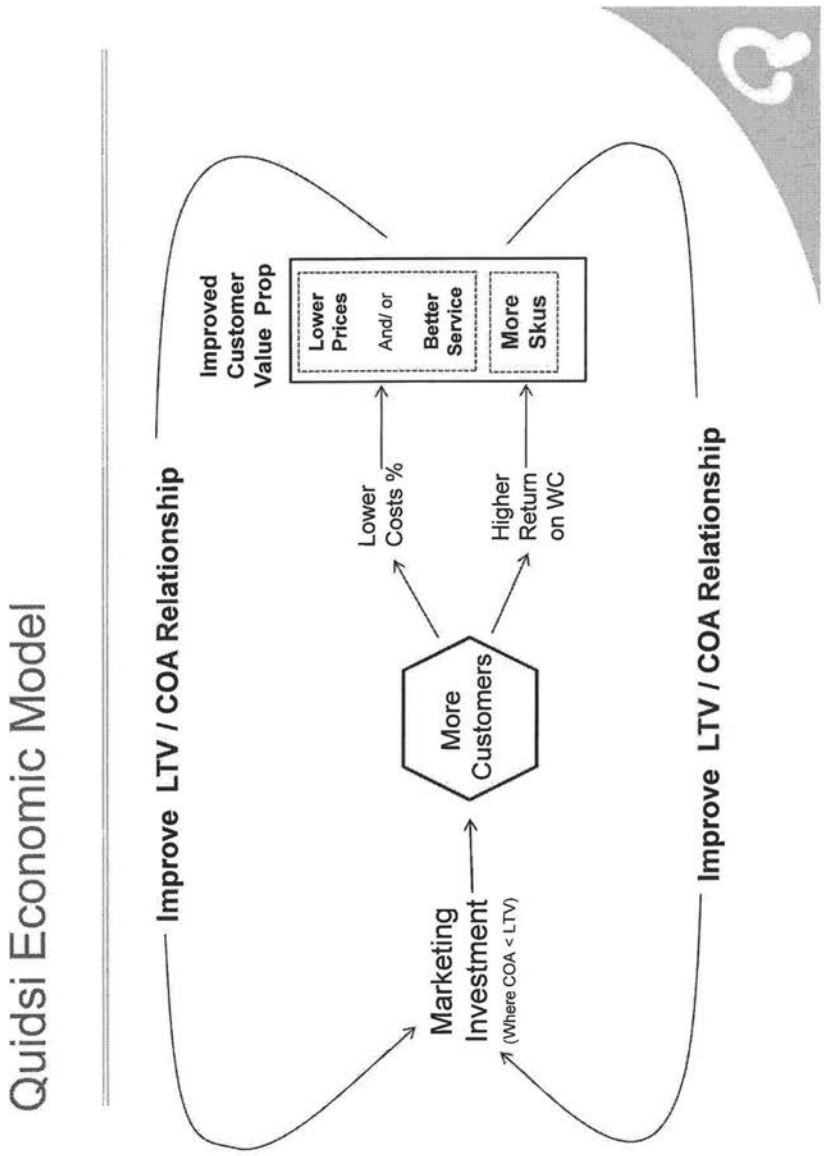
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Quarterly Gross Profit Trends





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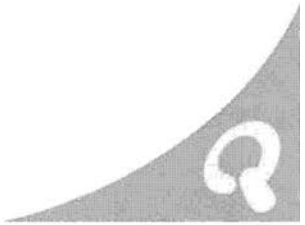
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Lifetime Value of a Customer

Repeat Diaper Buyer LTV

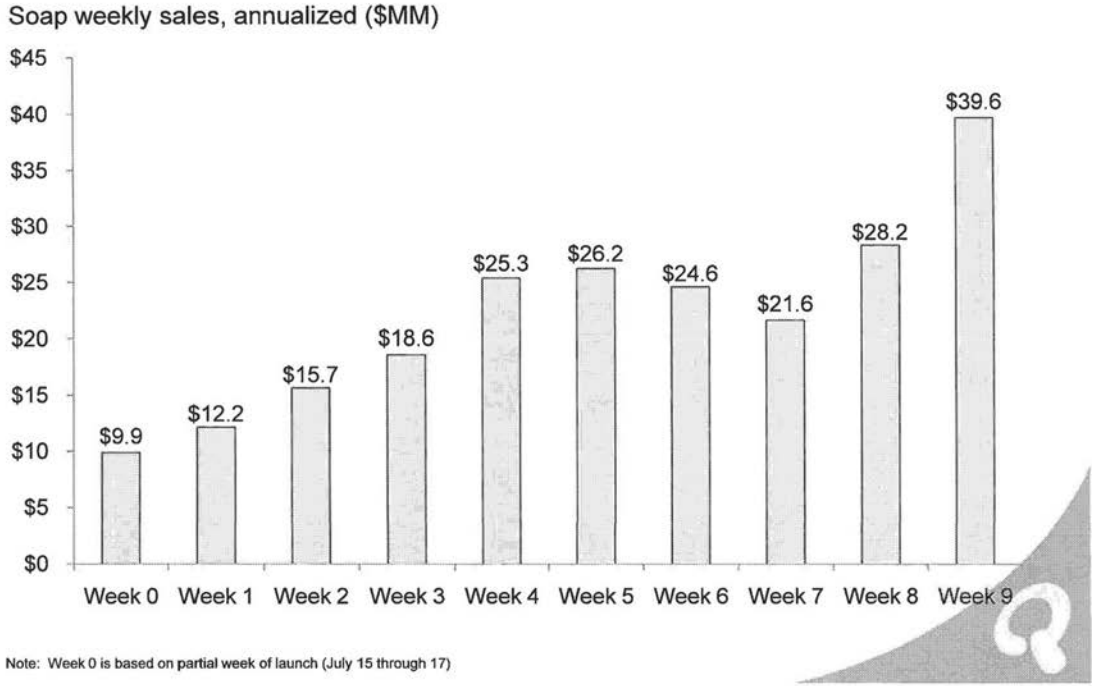
Avg. # Orders	17
Avg. Order Size	$98
Total Revenue	$1,666
Gross Margin	19.20%
Variable Fulfillment / CS	5.70%
Marginal Fixed Expenses	1.70%
EBITDA	11.8%
Free Cashflow	
EBITDA	$197
Working Cap	$21
CapEx	($43)
Cashflow	$219
DCF @ 15%	$160

LTV – $160
(On diapers.com Only)



AMAZON-HJC-00009609

Soap is already a $40 million annual business



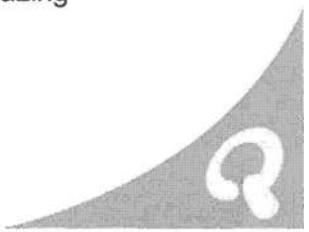
Note: Week 0 is based on partial week of launch (July 15 through 17)

The Vision

Common
Back-End
Quidsi
Common
Shopping Cart
Pets
Home
Paper
Grocery
Shoes
Apparel
Electron
Sports
Jewelry
Diapers
Soap
Toys

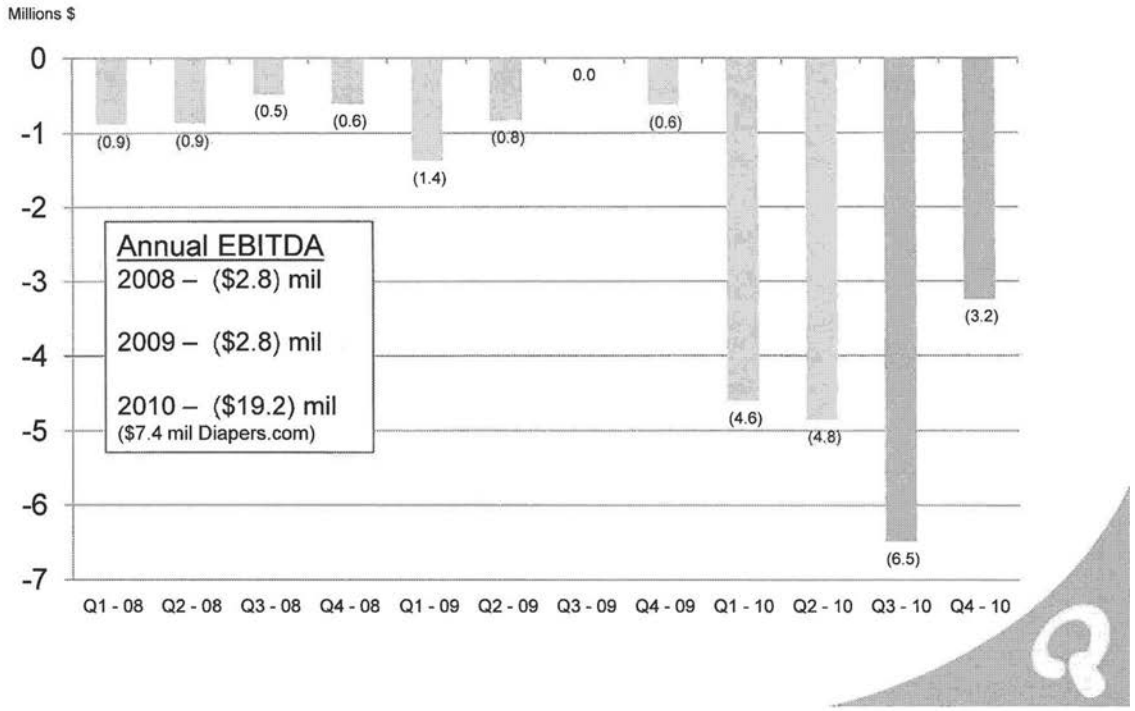
Quidsi Strategy

- Focus on Building Best-in-Class Proprietary Systems and Logistics Capabilities so that we can Distribute Product at the Lowest Cost
- Get to Scale Fast
  - Market Aggressively
  - Focus on US E-Commerce
- Focus on the Mom Demographic
- Build Specialized Brands that Serve Specific Shopping Occasions which Share the Same Back-End Systems/Logistics
- Offer Unmatched Service and Delight the Customer in Amazing Ways (Inspire Passion)
- Selection, Selection, Selection

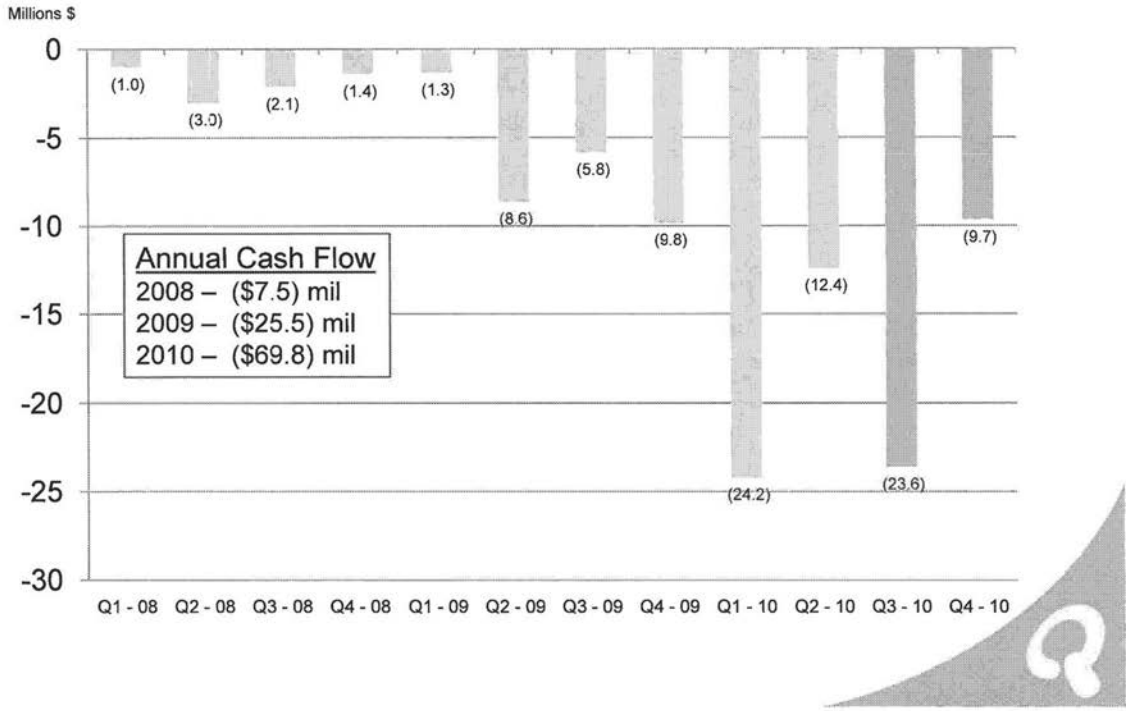


AMAZON-HJC-00009612

Quarterly EBITDA Trends



Quarterly Free Cash Flow Trends



AMAZON-HJC-00009614

10-Year EBITDA Projections

[redacted]

Revenue	
COGS	
Gross Profit	
% Margin	
Fulfillment	
Marketing	
Tech & Content	
G/A	
EBIT	
% Margin	
EBITDA	
% Margin	

10-Year Free Cashflow Projections

[redacted]

	Revenue
EBITDA	
(-) Interest	
(-) Taxes	
(-) Chg. WC	
(-) Capex	
% Revenue	
Free Cash Flow	
% Revenue	
Conversion Ratio	

8 Key Near-Term Strategic Initiatives

1) Get the Right Long Term Partner—Invest in Lower Prices.
2) Selection, Selection, Selection—Add Products to Existing Sites and Launch Yoyo and Pets in 2011.
3) Improve Perfect Fulfillment Order Rate to 98%.
4) Keep Getting Faster—Expand Overnight & Same Day Footprint.
5) Continue to Get Smarter & Better with LTV Marketing.
6) Launch Mobile and iPad Initiatives.
7) Elevate Customer Passion—Small Things Matter.
8) Build Further Capabilities for Growth.



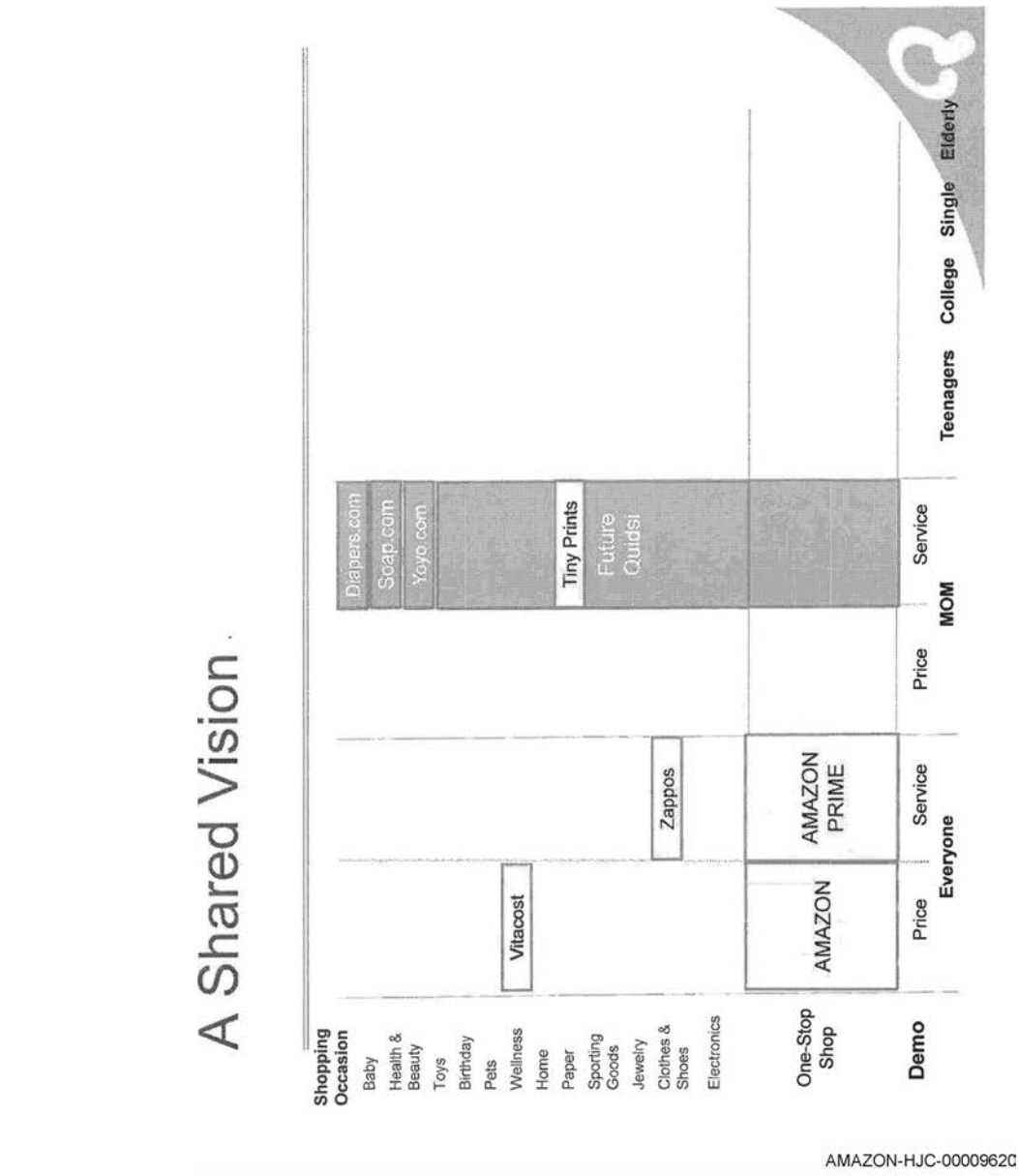
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Near-Term Opportunities

- Faster Growth with Better Pricing
- Add Products & Categories Faster
- Increased LTV & Better Profitability with more Focus
- Mobile

Near-Term Risks

- Increased Competition and/or Predatory Pricing
- Difficult to Maintain Culture with Accelerated Growth and/or Acquisition

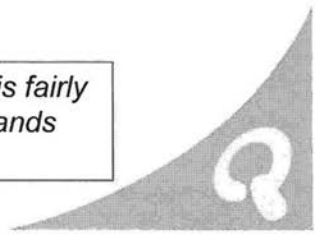


AMAZON-HJC-0000962C

How We Can Work Together

- Fulfillment
  - Better Pricing on Boxes, Dunnage, Shipping Rates, etc.
  - We can Potentially Fulfill Consumables for Amazon (infrastructure built for consumables)
  - Leverage Boxem
- Supply Chain
  - Leverage Purchasing Power
  - Leverage Extended Terms
  - Lower Inbound Freight Costs
  - Increase Inventory Turns

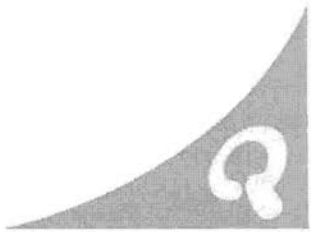
Premise: Quidsi would like to retain its independence and is fairly self-sufficient. Amazon has limited bandwidth. Keep brands separate but leverage obvious back-end synergies.



AMAZON-HJC-00009621

How We Can Work Together (cont.)

- Merchandising
  - Amazon's 2 million SKU's. Valuable Data & Much Faster Set-up.
  - We have access to Premium Brands that we can email Amazon customers.
- Other Areas
  - Leverage Amazon Web Services
  - Culture & Geography (Can we learn from each other and offer our employees more opportunity?)
  - Access to Private Label Credit Card
  - Private Label Consumable Products Become More Accessible with Scale



AMAZON-HJC-00009622

Diaper Customer P&L

	Feb-10	Product Revenue	Total Revenue	Contribution Profit	Units	CP/Unit
1	Diapers	2,303,655	2,208,209	**(200,194)**	62,306	**(3.21)**
2	Baby Care	394,023	389,508	**(14,542)**	12,329	**(1.18)**
3	Baby	844,736	879,127	**125,146**	30,453	**4.11**
4	Other	9,915,128	9,933,946	**895,067**	252,410	**3.55**
5	Total	13,457,542	13,410,790	**805,476**	357,498	**2.25**

	Feb-09	Product Revenue	Total Revenue	Contribution Profit	Units	CP/Unit
1	Diapers	1,751,959	1,773,284	**(57,551)**	44,736	**(1.29)**
2	Baby Care	283,190	301,330	**15,597**	8,437	**1.85**
3	Baby	633,742	655,685	**73,876**	15,351	**4.81**
4	Other	9,207,030	9,314,847	**676,193**	225,007	**3.01**
5	Total	11,875,920	12,045,146	**708,115**	293,531	**2.41**

From: Krawiec, Peter
Sent: Tuesday, September 21, 2010 6:31 PM
To: Wilke, Jeff; Herrington, Doug; Blackburn, Jeff
Subject: Re: 30% cash back (no fees, no subs)

If you have not looked at management's forecast you should when you get a few mins- they expect to lose lots of money over the nxt few yrs- this will make it worse. They also expect a lot of their growth to come from soap.com which is unproven and less growth from diapers. In the end soap.com is projected to be bigger than diapers.com.

From: Wilke, Jeff
To: Herrington, Doug; Krawiec, Peter; Blackburn, Jeff
Sent: Tue Sep 21 18:26:42 2010
Subject: RE: 30% cash back (no fees, no subs)

Interesting. Problem is that you don't get Amazon Prime. We need to emphasize it heavily in our marketing.

JAW

From: Herrington, Doug
Sent: Tuesday, September 21, 2010 6:24 PM
To: Wilke, Jeff; Krawiec, Peter; Blackburn, Jeff
Subject: FW: 30% cash back (no fees, no subs)

Fyi, looks like Diapers.com put up a response to our Amazon Mom offer.

From: Herrington, Doug
Sent: Tuesday, September 21, 2010 6:22 PM
To: Landry, Stephenie; Wales, Chance; Nenke, David; French, Eric
Subject: 30% cash back (no fees, no subs)

Looks like their response to Amazon Mom:

(screen shot below)

30% cash back on all diapers through end of year with every order of $75 or more. We "heart" parents. No fees, no subscriptions, free overnight shipping.

From: Sierra, Cristobal
To: Gunter, Sarah Jane
CC: Nenke, David
Sent: 4/5/2010 9:23:31 AM
Subject: RE: other diaper questions
Attachments: DiaperCustomersPL.pdf; Diapers CP Feb 08-10.pdf

Hi Sarah Jane,
Below is the table for SnS units in February. The total is being driven by Seventh Gen, since 75% of their units are in SnS. I am also enclosing 1. the Diaper P&L including the 2008 numbers and 2. The profitability for Diaper customers. Due to the size of the non-diaper population I am having issues with the query(it has been timing out) but I am hoping to send that later today. Regarding your requests below, Mindy and I will work on this and will send it out as soon as possible.

Diapers - Units

	SnS	Total	SnS%
P&G	9,696	33,944	28.6%
Total	27,902	62,306	44.8%

Thanks,
Cris

From: Gunter, Sarah Jane
Sent: Sunday, April 04, 2010 10:30 PM
To: Sierra, Cristobal
Cc: Nenke, David
Subject: other diaper questions
Cris –
Looking forward to the data on purchases and CP from diaper customers on Monday. I have 2 other questions in the meantime:

1. What's our total 2010 CPPU plan for diapers? For P&G diapers?
2. What % of 2008 diapers customers are prime and have remained prime? (I'm asking this b/c I'm thinking that if the CP from non-diapers purchases of the 2008 first-time diaper buyers doesn't cover the CP loss on diapers, we can use the data we have on order growth from prime customers to illustrate the growing value of these customers)

Thanks again for your help,
Sarah Jane

Sarah Jane Gunter
Grocery & Gourmet
Amazon.com
[redacted]

From: Herrington, Doug
To: Wales, Chance; Landry, Stephenie; Nenke, David
Sent: 6/8/2010 1:38:14 PM
Subject: FW: Soap.com

I'm scheduling a deeper discussion with bezos on the topic: Plan to Win (esp w/in context of soap.com).

I'll craft a doc outline this week that marries the thought below with the "Plan to Win" we used with JAW.

One new initiative, in response to Soap.com, that I'd like sized ASAP is "We match soap.com and offer 2-day free shipping on any H&B order over $50"

I'll ask tara to set up a few review meetings prior to the bezos discussion.

D

-----Original Message-----
From: Herrington, Doug
Sent: Tuesday, June 08, 2010 9:44 AM
To: Bezos, Jeff; Wilke, Jeff; Piacentini, Diego; Hart, Greg; Blackburn, Jeff
Subject: RE: Soap.com

Soap.com is the long rumored expansion of the diapers.com into the hpc product space. From their announcements, they will be launching a 25k SKU assortment of hpc product on July 1st. The assortment can be accessed via a new front door called "soap.com", but from screen shots they released, it will be a "tab" on diapers.com that can be accessed through diapers.com as well. It looks like soap.com and diapers.com will share identity, cart, ordering thresholds, etc.. They have promised hpc pricing that is competitive with offline prices. They will maintain the same "free 1-2 day shipping on orders over $49" that they currently have on diapers.com.

Given diapers.com's strength and competencies, soap.com is our most significant short term competitor in the hpc space.

What are we doing?

1. We have already initiated a more aggressive "plan to win" against diapers.com in the diaper/baby space, which includes market leading pricing on diapers ("double your SNS discount to 30% off diapers and wipes"), a free PRIME offering for new Moms, and a structured and marketed "Amazon Mom" program". Per Greg's suggestion on Friday, we are scheduling some time to review this with you. To the extent this plan undercuts the core diapers business for diapers.com, it will slow the adoption of soap.com.

2. Ensure price and selection parity with the soap.com assortment at launch. This is table-stakes, but we are gearing up CMT and our vendor managers to ensure we have pricing and selection parity day 1 of their launch.

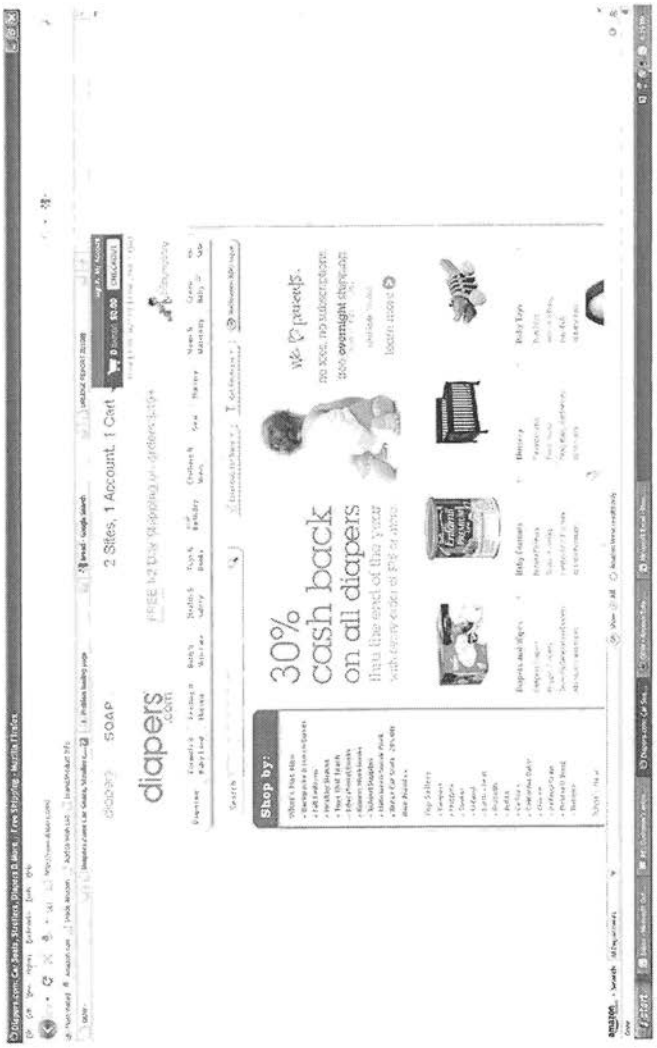
3. Improve our HPC assortment's value and attractiveness to customers. There are two 'weak spots' in our current HPC offering that can be exploited by savvy competitors. First, our price matching aggressively matches online competitors, but in HPC the price leaders are the offline prices of mass merchants and some conventional grocers. This is especially true in heavy/bulky items like paper towels, toilet paper, and laundry detergent. Second, we sell bundles of many products people would prefer to buy as eaches (e.g., shampoo, toothpaste, makeup). Even where our pricing is great, many customers balk at the "multi pack bundles" we require. We've had two recent competitors try to exploit these weaknesses: alice.com and now soap.com (while drugstore.com offers eaches, their pricing is much higher than us or offline). While we find no evidence that alice.com has gotten traction with vendors or customers, and can't see an economic model for them that pencils out, soap.com feels like a more credible threat.

Several weeks ago, we initiated two new efforts in HPC to begin improving these 'weak spots' and testing the customer responsiveness to see how aggressively we can move in these new directions. The two efforts are 'heavy/bulky offline price matching' and 'selective eaches'. For 'heavy/bulky offline price matching' we have focused on P&G's power brands of Tide, Charmin, and Bounty. We have been price matching to walmart and target instore pricing, as we find in circulars and some instore check. We match on base price (excluding Subscribe and Save discount). Offline, these are P&G's biggest volume movers. We want to see if we can build large subscriber bases in these heavy/bulky items, and use those shipments to baseload delivery of other product. For 'selective eaches', we are debundling our most customer-unfriendly multipacks, and testing the sales (and CP) impact of moving back to eaches. We will adjust and perhaps accelerate this effort in response to the specific eaches offered by soap.com.

Doug

-----Original Message-----
From: Bezos, Jeff
Sent: Tuesday, June 08, 2010 7:20 AM
To: Wilke, Jeff; Piacentini, Diego; Herrington, Doug; Hart, Greg; Blackburn, Jeff
Subject: Soap.com

There's a techcrunch post yesterday about diapers.com's parent co launching soap.com. Tens of thousands of skus. What do we make of this?


diapers
Shop by:
30% cash back on all diapers
We ♥ parents.

From: Wilke, Jeff
To: Landry, Stephenie
CC: Herrington, Doug
Sent: 11/10/2010 12:09:20 PM
Subject: RE: Key Amazon Mom Metrics since Launch

Ok. Make sure we get adzinia's complete attention.
Thanks
JAW

From: Landry, Stephenie
Sent: Wednesday, November 10, 2010 12:09 PM
To: Wilke, Jeff
Cc: Herrington, Doug
Subject: RE: Key Amazon Mom Metrics since Launch
We asked Moms during the focus groups what types of questions they wanted to be asked to improve the targeting of our offers (for example: that was where the breastfeeding/formula question came from).
AdZinia knows what advertisers want, but the Moms have some interests as well. The answers to these questions should be used for both on-site merchandising and Ad-targeting, so I think working on these questions together makes sense.
SL

From: Wilke, Jeff
Sent: Wednesday, November 10, 2010 12:02 PM
To: Landry, Stephenie
Cc: Herrington, Doug
Subject: RE: Key Amazon Mom Metrics since Launch
Thanks. Why did you draft the questions? Don't we want to know which questions will help Adzinia sell the most ads?
JAW

From: Landry, Stephenie
Sent: Wednesday, November 10, 2010 11:57 AM
To: Wilke, Jeff
Cc: Herrington, Doug
Subject: RE: Key Amazon Mom Metrics since Launch
Updates in red:

- Additional questions we'll ask Moms to answer so that we can optimize our ad targeting?
    1. We have drafted the questions, sent them to Adzinia for review, and have told the Fresh team (who is our technical resources) that we want to get this code change in this year. So we have a plan to launch-- but not a firm date yet. We should have a firm date next week.
        Proposed Additional Questions:
        1. If the member selects 'expecting', ask if she has an Amazon Registry already or is interested in starting one.
        2. Interested in receiving offers from?
            1. [list other Amazon categories and/or vendors]
        3. What brands do you use most for your child?
            1. List a few top brands in select categories.
        4. Are you most interested in:
            1. Disposable Diapers/Cloth Diapers/Both
            2. Breastfeeding/Formula/Both
        5. Do you have a pet?
            1. If yes, collect type and name

        [After the member enters their children's birthdays, prompt with relevant high-ticket items upon sign-up "do you have an infant car seat yet?"]
- % of customers where we have a birth date for baby?
    1. 73% of Amazon Mom members have provided complete birthday data. 27% have not provided birth date data. We launched a change last week, and it is now required that new members supply this information to join—so this metric will only increase going forward as we build the member base.

Child Birthday Breakdown

Customers who provided...	Customers	%Total
Complete Birthday Information	231,018	72.8%
Partial Birthday Information	453	0.1%
No Birthday Information	85,957	27.1%
TOTAL MOM MEMBERS	317,428	100.0%

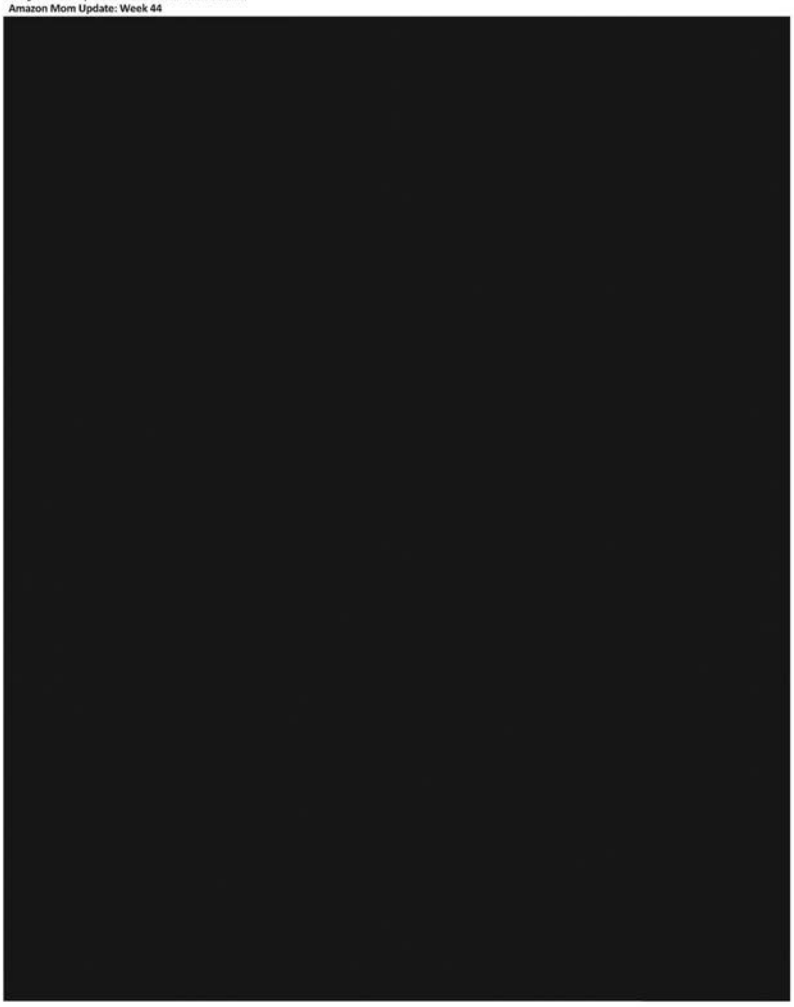
From: Wilke, Jeff
Sent: Wednesday, November 10, 2010 11:38 AM
To: Landry, Stephenie
Cc: Herrington, Doug
Subject: RE: Key Amazon Mom Metrics since Launch
Where are the updates on:

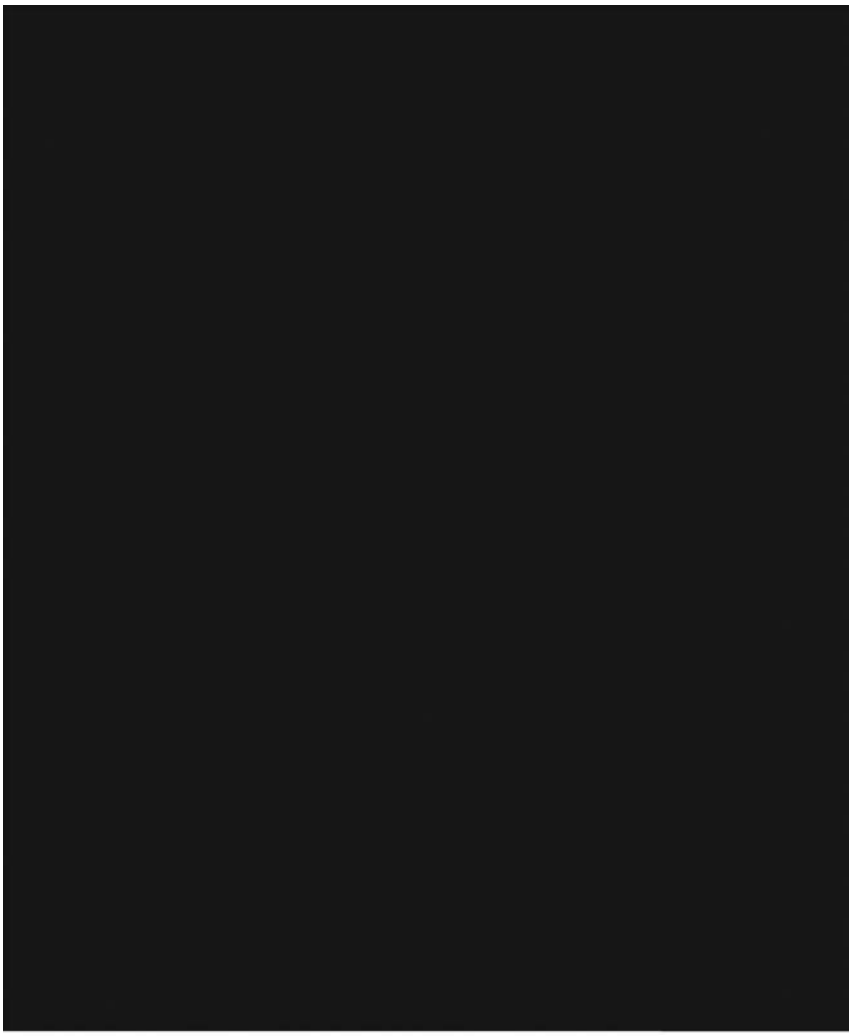
- Additional questions we'll ask Moms to answer so that we can optimize our ad targeting?
- % of customers where we have a birth date for baby?

Thanks
JAW

From: Landry, Stephenie
Sent: Tuesday, November 09, 2010 10:23 PM
To: Landry, Stephenie; Orenstein, Natalie; Wilke, Jeff; Herrington, Doug; Olsavsky, Brian; MacDonald, Ripley; Kalles, Kirstin; Pettifor, Erin; Todaro, Julie; Schwietzer, Robbie; Shure, Steven; Uffelman, David; Kakkar, Atul; Williams, Rich [redacted] Meewes, Brian; Tipton, Rory; amazon-mom-core@amazon.com; Anderson, Land; Stephens, Erica; Griffith,

Gordon; Dalmia, Manish
Subject: RE: Key Amazon Mom Metrics since Launch
Amazon Mom Update: Week 44





COGS Cost Out Update

December 16, 2010

Retail Tenet #3: "We relentlessly lower our costs. We will serve each vendor by being its most efficient and innovative retail channel. We will improve total terms for each vendor every year." Today we provide year-to-date (YTD) progress (through October) on 2010 S-Team goals related to CoGS Cost Out and progress made through the Vendor Negotiation SME.

2010 S-Team Goals - Deliver Vendor Margin Cost Out:

A) US Vendor Margin per Retail unit served increased from $6.65 in 2009 to $7.02 in 2010, an improvement of $0.37 on a mix neutral basis to OP2.
B) Int'l Vendor Margin per Retail unit served increased from $5.88 in 2009 to $6.14 in 2010, an improvement of $0.26 on a mix neutral basis to OP2.

Overall, the **US** goal is green while the **Int'l** goal is yellow through October.

US vs. OP2: YTD US Vendor Margin is favorable to OP2 by $147.6M (+8.2%), $99.3M related to volume and $48.4M to rate (calculated based on the change in per unit Vendor Margin). US Vendor Margin per unit is $7.29 or $0.20 (mix neutral) ahead of OP2. US Media is $115.5M favorable to OP2, with a rate variance of $92.3M due mostly to less aggressive competitor pricing in US Books vs. OP2. Books customer discount is up 150bps YoY, but is 70bps lower than OP2. On a per unit basis, US Media Vendor Margin is $4.76 or $0.52 (mix neutral) ahead of planned OP2 per unit of $4.24. US EGM is $32.2M favorable to plan despite the fact that rate is unfavorable to plan by -$44.0M or -$0.43 per unit (mix neutral). This rate un-favorability is driven primarily by lower ASP across categories and increased price matching in Electronics.

US vs. 2009: YoY through October, US Vendor Margin increased by $450.5M (+30.2%) with $478.8M of volume related margin partially offset by an unfavorable rate variance of -$28.3M coming mostly from Electronics due to ASP declines in TVs and GPS. Vendor Margin per unit in 2009 was $4.71 in US Media and $12.41 in US EGM, and is $4.76 and $12.16 YTD in 2010.

Int'l vs. OP2: Int'l Vendor Margin is unfavorable to OP2 by -$89M (-4%), -$2M related to volume and -$87M to rate. Int'l vendor saving per unit is $5.93 or -$0.28 (mix neutral) behind planned OP2 of $6.21. Int'l Media is -$42M unfavorable to plan, with a rate variance of -$46M due mostly to aggressive competitive pricing in UK Media vs. plan (-$31M) and prior year (-$54M). On a per unit basis, Int'l Media is $5.13 or -$0.17 (mix neutral) behind planned OP2 of $5.30. Int'l Media rate unfavorability (-$46M) is largely driven by our inability to offset price competition shown in PPP (-$64M) with Vendor Funded Contra CoGS (+$19M). Int'l EGM is $47M unfavorable to OP2 due to volume (-$6M) and rate (-$41M) or -$0.65 (mix neutral) per unit ($8.64 against the OP2 plan of $9.29). Rate variance in Int'l EGM is driven by pricing with PPP (-$42.8M), Vendor Funded Contra CoGS is also unfavorable (-$8.0M) and offset by Price Protection (+$5.4M).

Int'l vs. 2009: YoY through October, Int'l is +$414M (+21%) above the Vendor Margin of YTD 2009, with an unfavorable rate variance of -$100M coming completely from the UK. Vendor Margin YTD is unfavorable to 2009 by $0.24 (mix neutral). Overall, although international year over year growth in Vendor Funded Contra CoGS including Price Protection of 44% has outpaced revenue growth of 33%, Pure Product Profit has increased only by 19% driven by aggressive competitive pricing. **For more details on performance by country, see Appendix A.**

Vendor Negotiation (VN) SME Update: VN SME partners with Retail Systems and Finance. We also work with global Retail and non-Retail teams with vendor relationships, like Ops and AdZinia. To execute on our tenets (Appendix B) we highlighted two types of best practices in our last review: **measuring and benchmarking vendors** and **evolving our vendor relationships**. Here, we add two key supporting efforts to enable faster progress: **increasing automation and efficiency** and **sharing best practices** and **positive surprises**.

Vendor Negotiations Vision

Our Vision is for Retail teams to set goals and strategies aligned with opportunities and threats based on complete data. Vendor Managers spend the majority of their time negotiating increased value and strategic relationships with vendors, sharing best practices and developing these skills on their teams. VN SME coordinates vendor service offerings across Amazon, facilitates global best practice sharing, helps plan strategy for key vendor negotiations, and provides robust requirements so systems continue to learn and gain best in class terms for all vendors. Systems provides complete internal

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data, benchmarking, goal setting and recommendations in a user friendly way. They prioritize opportunities and provide workflows with feedback loops for continuous improvement. Again, this is the vision, and we are Day 1 in truly realizing it.

To make progress on this vision, we need to build systems that automate workflows and facilitate data-driven decision making. By way of analogy, our initial efforts, Holistic Vendor View (HVV) and Vendor Goal Automation System (VEGAS) (discussed below), are similar to CMT in the early days. For CMT, we collected and aggregated pricing (and related data like shipping) to provide to category teams to make pricing decisions. HVV does something similar by aggregating and presenting internal vendor data to allow categories to identify negotiation opportunities. We need to develop vendor negotiations systems analogous to Pricing Rules to automate certain negotiation opportunities (e.g., price protection or AP days improvements) or make recommendations where judgment is required (e.g., goals and asks based on internal benchmarking, category or S-Team goals, and historical trends). These system improvements will give Vendor Managers (VMs) time for higher-value activities, like negotiating, by improving overall productivity. See Appendix C for further detail on these efforts.

1. Measuring and Benchmarking Vendors

We need to provide VMs the right Information: To enable goal setting and effective negotiation, VMs need the ability to review a vendor's performance (vendor scorecard) and evaluate a vendor versus its peer group (benchmarking). This requires complete and accurate data. In an early 2010 survey, VMs highlighted a lack of reliable data sources and difficulty in putting the data together. VMs requested a Vendor Negotiations portal which summarizes financial metrics, provides tools for negotiating and integrates with workflows. We launched HVV and VEGAS which begin to address these needs.

A. Holistic Vendor View (HVV) and Vendor Goal Automation System (VEGAS). HVV provides standard reports, allows vendor comparison, and includes metrics to calculate direct free cash flow (FCF) at a vendor level. We increased our user base from 545 in June to at least 701 users (note that users with other DW privileges can access HVV and are not captured) with an average of 122 users using it weekly. The population of potential users is approximately 1000 globally (VMs, In-Stock and Finance). We continue to add functionality. Since June, we added Inbound Receipt Defects and rolled out Global Company Reports. (See Appendix D for a sample.) Before June 2010, a "vendor" was represented by many codes in Vendor Master without complete mapping of the relationships. In June, we introduced the concept of an overall "Company" which allows us to understand complete vendor relationships. We provided Retail with self-service tools to map vendors across geographies and product lines. We are proceeding cautiously, working with teams globally to ensure each hierarchy we map represents the global view. We incorporated vendor hierarchies into HVV.

Peer benchmarking has been a powerful tool to identify negotiation opportunities. A recent **UK** success (built on **US Books** approach) benchmarked terms by looking at vendor profitability down to FCF, identified opportunities, and provided guidance on prioritization. The result was large gains (Disney (£671k FCF), Universal (£729k FCF), Microsoft (£600k FCF), Nintendo (£547k FCF), Random House (£1.2m FCF.) UK identified Fox as an under-indexing DVD vendor and is working on a 3-year commitment to get "best in class" economics. To scale peer benchmarking, we created a prototype system, "VEGAS," testing an automated vendor peer benchmarking and Vendor Tiering framework (e.g., Platinum, Gold, etc.,) in a more user-friendly interface than HVV. To date, VEGAS has 180 users but hasn't had dedicated development resources. HVV was built on OBIEE/ESSbase and as a result, has speed, scalability and flexibility limitations. To address, we are combining development for HVV and VEGAS (since both support negotiation) into one team that will build a Vendor Negotiation portal with design goals of speed and flexibility. We are locating this team in New York to access a large technology talent pool. Our recruiting pitch reflects the opportunity to build sophisticated decision support and apply automated algorithms to negotiations. (You will remember in June you challenged us to be more creative on hiring in this important area.) Since November, we made four offers (three accepted) and an internal Seattle transfer is relocating. To instill our culture, we are pairing employees with a Seattle mentor and requiring managers to interview experienced Amazon leaders on applying the leadership principles.

B. Contribution Profit (CP). In 2010, we launched CP for FBA and 3P in the US, an important improvement to understand the ASIN level CP of the 30%+ of our business not previously captured. Int'l will launch Q1 2011. We made progress in closing gaps between the CP tool and the allocated financials (net variance is about 2%). Some CP elements such as free reps and c-returns are estimated out of necessity at the time of shipment. Another source of variances related to the impact of Contra-CoGS agreements entered after the start date (45% of agreements). Starting mid-November 2010, we began continuously

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backfilling US CP data with actuals, allowing us to correct assumptions or predictions in the model, and implement an ASIN level CP accuracy metric. (We will backfill Int'l CP Q1 2011.) This metric compares CP calculated at time of customer shipment with the value for the same shipment 90 days later once ASIN level transactions are backfilled with actuals (product cost, contra-CoGS, customer returns, liquidation, etc.) This allows accuracy measurement for components where we have ASIN level transactions (See Appendix E). The CP team will prioritize projects based on how they improve ASIN level accuracy. For vendor negotiations, we plan to develop a variation of CP incorporating cost of capital, reflecting the impact of the cash flow cycle, FC fixed and capital costs. VMs can then evaluate the benefit of reducing lead times and increasing payment days.

C. Cost Saving Opportunities. With ~65M cost changes per year, it is not feasible for VMs to manage these updates. As we push for better Contra-CoGS, we risk vendors increasing product cost to compensate. The workflow for product costs with high % increases is currently crude and generates false positives. As a result, VMs tend to approve in bulk. To rectify, we are integrating a rules engine, allowing us to improve the sophistication of cost checks. We will compare cost with prior moving averages to detect outliers and situations where a cost increase will lead to below average CP. First delivery will be in Q1, 2011 and will focus on identifying drop-shippers with outlier costs.

D. Offline Pricing Data. Starting 2010, we captured and matched in-store offline CE and DVD prices. In Q4, we extended to H&G, Sports, Auto, and Tools monitoring 4K ASINs and generating 8K pricing recommendations QTD (approval rate 77%). We also began collecting pricing data for VG, Watches, Books and Music. Next steps are adding Int'l starting with UK DVD & CE, expanding NA, and are exploring using mobile apps to assist.

In-Store Price Matching - Quarter To Date

GL	# ASINs Monitored	# Low Priced Recommendations	# Approved	% Approved
DVD	1509	1464	1397	95%
CE	1407	2241	1291	58%
Grocery	623	4214	3478	83%
Kitchen*	156	53	29	55%
Tools*	70	30	18	60%
Garden*	35	16	12	75%
Sporting*	133	71	46	65%
Automotive*	51	67	36	54%
Total	**3984**	**8156**	**6307**	**77%**

* Price matching began on 11/26/10

2. Increasing Automation and Efficiency

Increasing our automation and efficiency will accelerate progress on improving vendor negotiation results. We identified foundational elements required. The first is having our vendor financial terms contracts online. The second is functionality to allow us to handle groups of vendors as a block both for negotiation and efficiency gains. More details in Appendix C. We also found providing global vendor communication support leads to efficiency gains.

A. Online Contract Approval of Contra-CoGs Agreements. In October, we launched this workflow, eliminating the need to track agreements via email. VMs see pending contracts, select and send them in bulk, track vendor approvals and rejections, and send follow-ups. (See Appendix F). This process eliminates vendor email confirmation and the need for Finance to check these emails correspond to the agreement. Also, it establishes an archive recording the time and date of vendor acceptance of Contra-CoGS terms. This functionality allows VMs to track which contracts vendors approved. We are piloting through Q4, allowing teams to elect whether to go online. The pilot exceeded expectations with more US agreements approved since launch using this process than Vendor Setup Workflow (32.4% of approved in this period). CA is at 14% adoption, EU is under 10% (JP launches Q1). These improvements are big controllership gains. See additional workflow efforts in Appendix G.

B. Automate renewals and create agreements for portfolios of vendors. We recognize a productivity opportunity exists with bulk creation, renewal, and distribution of Contra-CoGS contracts. VMs negotiated over 36K US vendor agreements YTD and 76K globally. Of those, approximately 19K US and 36K globally renew annually (Accrual, DA, or VIR). We can greatly reduce this burden by building workflows to support automated annual renewal of these agreements. We will handle tiers of vendors as a portfolio, allowing VMs to take actions on a group like increasing AP days. Retail portfolio wins in Appendix H.

[redacted]

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4. Sharing Best Practices and Positive Surprises

Best practice sharing is a focus. We developed a Category Leader Module and Deep Dive on Vendor Negotiations for 2010 that we will extend for 2011. We launched our internal newsletter, "The Negotiator," to share successes, systems updates, pitches and other helpful information (Appendix I). We lead best practice sharing in CCO meetings (materials shared with Int'l). We discuss our efforts to support annual negotiations below and in Appendices. Our pushback against MAP similarly works across categories. The Negotiation Bar Raiser Program (NBR) is our newest best practice sharing vehicle.

A. Customer Trust – MAP/TV Low Price Guarantee (LPG): We created new detail page displays which allow us to show below-MAP prices on Comp Shops (overriding the default that shows the MAP price when priced below MAP). Showing our price gave us an OPS lift of over 70% via the Comp Shop channel, and in over three months since implementation, we received no vendor complaints. (See Appendix J.) Improvement is estimated at over $36M in incremental US sales annually. Over 97% of items assigned to MAP are set to this treatment. We work with impacted teams to reduce MAP Enforced asins. In two months, we freed up $1.5M in obsolete, aging inventory from MAP restrictions and reduced MAP Enforced asins from 247K to 49K asins (down 80%) – **US HL, SL, Consumables, SW & VG**. We created a new treatment which shows below-MAP prices on comp shops and eliminates price-hiding for identified Prime customers. Over 60% of MAP Enforced asins are now set to this treatment. We drove a 2010 MAP Holiday for Black Friday-Cyber Monday where we suspended most MAP-related pricing and display restrictions and systematically exposed below-MAP pricing via Comp Shops – our disruptive idea from the last update. We provide VMs an SOP to remove MAP Enforced settings, a list of MAP assignments, and analysis. Each team

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managed their data loads. Catalog flags to override MAP treatment for Prime and 1-Click customers are scheduled for January. We provide VMs regular, mandatory training on antitrust issues and our Vendor Pricing Communication Guide focused on addressing MAP. In October, we launched **TV (LPG)** to build customer trust that Amazon offers competitive prices, despite MAP restrictions limiting display of our retail prices on the detail page. Modeled after Endless' guarantee, LPG allows customers to claim a refund on the price difference between what they paid on Amazon.com and any lower Amazon or online competitor price within 14 days. Since launch, over 1200 customers made a claim, in line with expectations. For 2011, we plan to match offline with the guarantee and may expand to other products that face aggressive MAP policies.

B. Negotiation Bar Raiser Program (NBR): NBR is piloting resources to help VMs prepare for negotiations. VMs can email negotiators@ for advice from experienced retail negotiators or attend office hours with representatives from VN SME, Finance, Retail Systems, and Retail. We hosted two brown bags so far. One on scalable methods to improve AP terms and a second on preparing for annual negotiations. Over 40 US VMs attended each session. We shared materials with Int'l. **DE** and **China** are using some approaches. An upcoming topic is **Countering Vendor Price Increases** to arm buyers to respond appropriately. We started a **Vendor Negotiation Toolkit** to become the handbook for best in class negotiation. (See Appendices K and L.) NBR will include tradeshow preparation. We assisted US CE with negotiation preparation for the last two Consumer Electronics Shows. We plan to build on these efforts and provide similar support prior to important tradeshows. Better preparation leads to results. For example, **US Baby** attended the All Baby & Child Show in October. Baby segmented Brands into groups: 'selection hold-outs', 'co-op opportunity brands', and 'tail selection'. For 'selection hold-outs', Baby had focused meetings with eight key brands and signed five (remaining three were positive conversations). For 'co-op opportunity brands,' Baby partnered with AdZinia to sign three accounts ($1M incremental funding) in 2011. Baby had positive intro meetings with Kolcraft, Dorel, Phillips, RC2, and Britax. For 'tail selection' brands, Baby held three "Amazon 101" with 40-60 attendees each and explained how to work with Amazon to a large groups of potential vendors.

C. CCO Best Practice Sharing: We led a US focused effort (materials shared with Int'l) to better prepare teams for upcoming annual negotiations. UK took a similar approach. We encouraged focused preparation that leverages successful efforts shared by other teams. Ops also participated with Vendor Cost Out Opportunities. See Appendix M. We highlighted two retail examples shared. Annual Terms Best Practice Sharing is in Appendix H. **Correct AP terms to exclude transit time:** Our AP process looks at invoice date for when to start the clock on payment terms. With net 30 terms, we pay 30 days after the invoice date. Most vendors date invoices when the product leaves their facility. For a vendor that pays for shipping ("They Pay"), the clock should start when we take possession at our FC. **US CE** adjusted terms to account for transit days to 188 vendors with ~$500M of annual CoGs. Many large vendors (Samsung, Canon) already accounted for it. CE now has $1.7B of annual CoGs accurately reflecting transit time. **US Books** implemented for 60 vendors and expects AP to be $1.3M higher. **EU** also initiated this approach. **Evaluate We Pay Agreements:** In 2010, Inbound Transportation expenditure where shipping is paid by Amazon ("We Pay") is forecasted to be approximately $125M. We are creating a vendor level P&L to track the inbound costs and freight allowance. With the help of Transportation data, **US CE** reviewed the We Pay P&L to see if we were getting enough funding to offset our cost. CE found 68% of inbound units did not have a specific freight allowance in place, 12% had insufficient funding to cover costs, and 20% had sufficient funding. Where no allowance is in place, CE is reviewing to identify if we received funding another way or if we need an agreement. Ingram is one We Pay vendor that did not have a freight allowance. They agreed to They Pay resulting in annual savings of ~$1.3M. **Other HL categories** are evaluating vendors with low Net PPM and freight costs not offset by freight terms and negotiating large opportunities. If negotiated freight allowance doesn't offset break-even freight terms, they will move to convert to They Pay. For new vendors, we may move default terms to They Pay unless we account for our costs. In our annual Q4-Post Mortem, we discuss what worked and what didn't, including where we lived up to our tenets and where we didn't. We plan to evaluate Q4 vendor interactions and capture decisions where we may have compromised one tenet in service of another. For example, price matched in November but ran out of stock in early December; gating to get selection and being uncompetitive on a portion of the selection.

VN SME Priorities for Next 6 Months: Our priorities are to continue to battle MAP (and other vendor demands that undermine customer trust); develop more workflows to support negotiations; develop the Vendor Negotiations portal; support variations better in ARA Premium and our negotiation tools; establish a credible measurement of ASIN level CP accuracy; expand support of strategic relationships and develop new ones; grow incremental funding through One Amazon and expanded vendor services; and continue to facilitate best practice sharing though all vehicles with particular focus on expanding the NBR Program.

HIGHLY CONFIDENTIAL AMAZON-HJC-00133371

From: Wales, Chance
To: Rothman, Michelle; Harris, Stefanie; Taing, Mardi
CC: Pann (Adams), Jennifer
Sent: 5/12/2009 10:45:33 AM
Subject: RE: Benchmarking- Diapers.com

I've already done part of this.
Andrea- Can you take our review and look at the 3P piece with Stefanie?

From: Rothman, Michelle
Sent: Tuesday, May 12, 2009 10:03 AM
To: Wales, Chance; Harris, Stefanie; Taing, Mardi
Cc: Pann (Adams), Jennifer
Subject: FW: Benchmarking- Diapers.com

Stefanie and Mardi,
I think Chance is out this week, I'm hoping you can help with something asap today. The benchmarking team recently completed a study of Diapers.com. They are our largest and fastest growing competitor in the on-line diaper and baby care space. They are presenting their findings to JeffB this afternoon.
One of the questions Wilke had was related to our selection versus Diapers.com. The CMT did a comparison, but only did it for HPC, not baby GL. Attached are all brands found on Diapers.com that we believe are available in the baby store. I'm wondering if there's a fast way to compare which brands are offered by retail and which are offered by 3p. I just need a simple yes/no (I don't need asin counts). For retail, I think you can do a vlookup of all ABIS brands to find matches. Not sure of the easiest way to do it for 3P, but it may work from fast track data/glance view data as well.
I'm so sorry for short notice, but since this is being presented to JEffB today I want to be sure we're being as comprehensive as possible. Is this something you can do by noon today? I'll owe you both lunch ☺
Cc'ing Jen, as she may have an easy way to pull this info as well.
Thank you, thank you, thank you!!!!!

From: Thekkekara, John Thomas
Sent: Tuesday, May 12, 2009 3:57 AM
To: Rothman, Michelle; Barmish, Kevin; Herrington, Doug
Cc: Jensen, Erik; Stone, Tim; Reddy, Dasaradh; PS, Gopalakrishnan
Subject: RE: Benchmarking- Diapers.com

Michelle,
Brand overlap report (BOR) delivered against US HPC contains brands on Diapers.com which are relevant for HPC. Out of the 246 brands on Diapers.com 121 were found to have products belonging to other categories and hence BOR only had 125 brands. Please find the snapshot of brands not relevant to HPC and product types.

Brand	Product
Bar Goose	mattress
Britax	Car Seat
Belabumbum	Apparels
Belly Basics	Apparels
See Kai Run	shoes

Please find the attached the complete list of brands which did not make it to BOR (not relevant to HPC)for your reference. Let me know if you have any questions.
Regards,
John

From: Rothman, Michelle
Sent: Monday, May 11, 2009 11:45 PM
To: Barmish, Kevin; Herrington, Doug; Thekkekara, John Thomas
Cc: Jensen, Erik; Stone, Tim
Subject: RE: Benchmarking- Diapers.com

John,
Kevin's study of Diapers.com showed 246 brands on Diapers.com versus the 125 or so that your teams study found. My understanding of your methodology is that you start by pulling a list of all brands carried on a competitors site and then work backwards to match that list up against what is currently offered on Amazon.com. If my understanding is correct, what would be a reason that our study would miss half of the brands on Diapers.com?
Thanks for your help.

From: Barmish, Kevin
Sent: Sunday, May 10, 2009 3:46 PM
To: Rothman, Michelle; Herrington, Doug
Cc: Jensen, Erik; Stone, Tim
Subject: RE: Benchmarking- Diapers.com

Michelle-
I am a little skeptical about the CMT's brand analysis results. I ***manually*** crawled Diapers.com and discovered 2x as many brands than stated in Q11's response (246 vs. 125). I have listed all the brands below for your convenience. I did not check to see which of these brands are available on 3P and Retail.
To validate- I also just called Diapers.com CS. (You'd be surprised as to how much competitive intelligence I've gather just by calling various competitors and asking ☺) Here is an excerpt from the call I just made.
Kevin: "I'm doing research on Diapers.com and was wondering how many different products you guys carry"
CS REP: "As of last week I think we were at approximately 1400"
Kevin: "And how many brands are represented over these products?"
CS REP: "Last I heard, I think we sell around 250 different brands. You can find the whole list by going to Diapers.com, clicking *More Brands* and then clicking *View all Brands*."
It's unclear if the "1400 products" included sizes/colors, I didn't want to push my luck or raise suspicion.
Let me know if you have any questions.
Cheers,
Kevin

Brands on Diapers.com

1. 7 A.M. Enfant
2. A+D
3. Aden + Anais
4. Adiri Natural Nurser
5. After-Bite
6. Alex
7. Ameda
8. Anka by Svan
9. Aqua Leisure
10. Aquaphor
11. Avalon Organics
12. Aveeno Baby
13. Avent
14. Baby Bjorn
15. Baby Blanket
16. Baby K'Tan
17. Baby Miro
18. Babyganics
19. BabyPlus
20. Baby's Only
21. Badger Balm
22. Balmex
23. Band-Aid
24. Bar Goose
25. BEABA
26. Bebe Au Lait
27. Belabumbum
28. Bella B
29. Belly Basics
30. Bellybar
31. Benadryl
32. Bibsters
33. Biolane
34. Blue Lizard
35. BOB
36. Boo Boo Buddy
37. Boogie Wipes

38. Books
39. Boon
40. Boppy
41. Born Free
42. Boudreaux
43. Brain Noodles
44. Bravado Designs
45. Bright Beginnings
46. Britax
47. Bug Band
48. bumGenius
49. Bumkins
50. Bundles
51. Burt's Bees
52. California Baby
53. CARES
54. Carter's
55. Chicco
56. Classy Kid
57. Clean Well
58. Clek
59. Clipo
60. Cloud B
61. Clouds and Stars
62. Combi
63. Contours
64. Cosco
65. Country Kids
66. Crayola
67. Crest
68. Crocodile Creek
69. Dapple
70. DaVinci
71. Depend
72. Desitin
73. diapees & wipees
74. Diaper Dekor
75. Diaper Dude

76. Diapers.com
77. Dr. Brown's
78. dreambaby
79. Dreft
80. Dress Up
81. Dutaillier
82. DwellStudio
83. Earth's Best
84. Earth's Best by Jason
85. Easy Expression
86. Edushape
87. Elements Naturals
88. Enfamil
89. ErbaOrganics
90. Ergo Baby
91. Evenflo
92. FertilAid
93. First Juice
94. First Years
95. Fisher Price
96. Flap Happy
97. Fleurville
98. Flintstones
99. Foogo by Thermos
100. Fresh Baby
101. Fuzzi Bunz
102. Gaiam
103. gDiapers
104. Gentle Naturals
105. Gerber
106. Glamourmom
107. Go-Go Babyz
108. Good Start
109. Graco
110. Graco by LaJobi
111. Green to Grow
112. Green Toys
113. Haba

114. Halo
115. Happy Baby
116. Happy Heiny's
117. Hatley
118. Hotslings
119. Huggies
120. Imodium A-D
121. ingrid & isabel
122. IQ Baby
123. Japanese Weekend
124. Jeep
125. Jefferies
126. JJ Cole
127. Johnson & Johnson
128. Juvenile Solutions
129. Kalencom
130. Kandoo
131. Kathe Kruse
132. Kee-Ka
133. Keptin- Jr
134. Kettler
135. Kid Kusion
136. KidCo
137. Kidorable
138. Kirkland
139. Klean Kanteen
140. Kolcraft
141. Kushies
142. La Leche League International
143. Lamaze
144. Lana
145. Lansinoh
146. Latitude Enfant
147. Leachco
148. LeapFrog
149. LilyPadz
150. Little Kids
151. Little Remedies

152. Little Twig
153. L'ovedbaby
154. Luvs
155. Maclaren
156. Made by Moms
157. Majamas
158. Manhattan Toy
159. Manny and Simon
160. Maxi-Cosi
161. Medela
162. Melissa & Doug
163. Method
164. MFS Eyewear
165. Micralite
166. Mini-Shower
167. MiYim
168. MOBI Technologies
169. Moby
170. Motrin
171. Munchkin
172. Music for Little People
173. Mustela
174. My Baby Experts
175. My Brest Friend
176. Mylanta
177. Mylicon
178. Natrapel
179. Nature babycare
180. NaturePedic
181. Nature's Baby Organics
182. Neat Solutions
183. Neosporin
184. Nuby
185. Nuk
186. Oi Oi
187. Once Upon a Potty
188. One A Day
189. Orajel

190. Oral B
191. Orbit Baby
192. OV-Watch
193. Pampers
194. Pedialyte
195. PediaSmart
196. Pediasure
197. PediaVance
198. Peg Perego
199. Penelope Peapod
200. Plan Toys
201. Play-doh
202. Playskool
203. Playtex
204. Pre~Seed
205. Psi Health Solutions, Inc.
206. Puppet Workshop
207. Putumayo Kids
208. Quinny
209. Radio Flyer
210. Reach
211. Robeez
212. Safe Sippy
213. Safety 1st
214. Sassy
215. SC Products
216. Schwinn
217. Sealy by Kolcraft
218. See Kai Run
219. Selecta
220. Seventh Generation
221. Sevi
222. Sigg
223. Similac
224. Skip Hop
225. Snoozer
226. Spielstabil
227. Stokke

228. SunBusters

229. Sunshine Kids

230. Svan

231. Tea Collection

232. The Mommy Hook

233. Tolo

234. Triple Paste

235. TruKid

236. Tushies

237. Tylenol

238. Umi

239. UpSpring Baby

240. Valco Baby

241. Vulli

242. Wall Candy Arts

243. Water Babies

244. Weleda

245. Zutano

246. Zyrtec

From: Rothman, Michelle
Sent: Friday, May 08, 2009 5:24 PM
To: Barmish, Kevin; Parker, Allen; Herrington, Doug
Cc: Jensen, Erik; Stone, Tim
Subject: RE: Benchmarking- Diapers.com

The retail portion needs a little more refining, but I wanted to send you what we have so far. Please see attached. Final edits by EOD Monday.
Questions/comments welcome.
Thanks!

From: Barmish, Kevin
Sent: Friday, May 08, 2009 8:04 AM
To: Parker, Allen; Herrington, Doug; Rothman, Michelle
Cc: Jensen, Erik; Stone, Tim
Subject: Re: Benchmarking- Diapers.com

Doug/Michelle- for rec 1, the response is owned by both ops and retail. Allen Parker would like to know where you guys currently stand on offering free 2-day for baby/diapers so he can adjust Ops response accordingly.
Thanks,
Kevin

Sent from my iPhone
CONFIDENTIALITY NOTICE: This e-mail may contain confidential information. If you are not the intended recipient (or have received this message in error) please notify the sender immediately and destroy this e-mail. Any unauthorized copying, disclosure or distribution of the material in this e-mail is strictly forbidden.

On May 8, 2009, at 7:52 AM, "Parker, Allen" <[redacted]> wrote:

Attached is the latest version of the Diapers Q&A…responses need to be sent to Keven Barmish [redacted] by no later than end of day today.
I have marked FAQ's and recommended actions that require a Ops response in Red
FAQ 1 – Mckenna please read and ensure the response is accurate and complete
FAQ 3 – Samuels/Wegner – please make sure the response is accurate and complete
FAQ4 – Weiland/Samuels – please make sure the response is accurate and complete
FAQX – Seifert /Girish – I think we need an additional FAQ on the standard early arrivals…explaining why and more detail on the extremely early arrivals
10-1 – Girish/Nadia – I believe the answer will be simple if retail moves to free two day shipping… But I think we do need a few sentences that say we currently have a ship option which meets or beats Diapers.com and the same or better cost…Can you guys confirm that statement based on data. We need to be prepared to discuss why we feel moving standard promises or creating different inventory policies for just diapers is not recommended… I think we should at least understand the potential benefits/issues…"If only Mechanical Sensi were here" ☺
10-2 – Girish/Seifert – complete as discussed in the meeting
10-3 – Girish/Seifert – can reference the FAQ we should create above…

10-4 – Weiland/Samuels/Wegner –
Kevin… where do we stand on Retails decision for free 2 day…

From: Barmish, Kevin
Sent: Wednesday, April 29, 2009 1:23 PM
To: Shouraboura, Nadia; Seifert, Michael; Prasad, Kalyanaraman; Lakshman, Girish; Parker, Allen; McKenna, Michael; Weiland, Tom
Cc: Jensen, Erik; Stone, Tim; Barmish, Kevin
Subject: Benchmarking- Diapers.com

Hello-
Apologies for just sending the empty email ☺ Here is the upcoming ops schedule for the Diapers.com benchmarking program.

- (Friday) Pre-Onetto Meeting
- (Tuesday) Onetto Meeting (pre-Bezos)
- (Tuesday) Bezos review

I have attached a draft of the document for your reference. Following this email are recommendations (highlighted require ops responses) and a few questions we came up with for the Q&A (ops Qs are highlighted). Please add any other questions Jeff may ask.
Let me know if you have any questions/comments.

Cheers,
Kevin Barmish
<image001.png>
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Recommendations and Business Actions

10-1: Beat or meet Diapers.com's delivery speed.
Operations Response: <insert response>
Retail Response: <insert response>
Estimated Completion Date: dd/mm/yy

10-2: Beat or meet Diapers.com's 6PM order time cutoff.
Operations Response: <insert response>
Estimated Completion Date: dd/mm/yy

10-3: Re-evaluate our customer shipping charges.
Retail Response: <insert response>
Estimated Completion Date: dd/mm/yy

10-4: Standardize the return/refund process for diapers.
Operations Response: <insert response>
Estimated Completion Date: dd/mm/yy

10-5: Fix the *More Buying Choices* widget on diaper (and other consumable product/categories) product detail pages to not show "used".
RCX Response: <insert response>
Estimated Completion Date: dd/mm/yy

10-6: Consider accepting manufacturer's coupons.
Retail Response: <insert response>
Estimated Completion Date: dd/mm/yy

10-7: Modify CMT to index Diapers.com product prices net of "instant rebates".
Retail Response: <insert response>
Estimated Completion Date: dd/mm/yy

10-8: Modify CMT to factor in the average multi-pack unit price vs. singles price to ensure the multi-pack unit average is not higher than the competitor's single unit price.
Retail Response: <insert response>
Estimated Completion Date: dd/mm/yy

10-9: Display diaper (and other products) sizes sequentially on the detail page and combine duplicate sizes and colors.
RCX Response: <insert response>
Estimated Completion Date: dd/mm/yy

10-10: Consider adding "re-order" functionality on the site as well as email reminders.
RCX Response: <insert response>
Estimated Completion Date: dd/mm/yy

10-11: Consider implementing *My Family*-like personalization functionality to drive product sales based on key baby/child development milestones.
RCX Response: <insert response>
Estimated Completion Date: dd/mm/yy

10-12: Consider adding a "Verified Buyer" badge to customer reviews if the reviewer has purchased the item on Amazon.
RCX Response: <insert response>
Estimated Completion Date: dd/mm/yy

QUESTIONS

Q1. What is our latest assessment of using Kiva?
Operations Response: <insert response>

Q2. What is the standardized return process for products that ship in manufacturer's packaging – where should the customer put the "return slip"? Can customer returned items shipped in manufacturer's packaging be resold?
Operations Response: <insert response>

Q3. What is Amazon's policy on refunding the original ship charge? What is Amazon's policy on charging for the return shipping? Do these policies vary between Prime and non-Prime members?
Operations Response: <insert response>

Q4. What is Amazon's order cutoff time for baby products and how does it compare to Diapers.com's 6PM (local) cutoff?
Operations Response: <insert response>

Q5. What do we know about PowerReviews? Have we looked into their offerings?
RCX Response: <insert response>

Q6. Did Diapers.com violate any terms of our seller agreement by offering cheaper shipping on our site and including the "Amazon Insert" in the orders? Should we monitor their seller account if they become active again?
Merchant Services Response: <insert response>

Q7. How big is the addressable market size for baby products?
Retail Response: <insert response>

Q8. What were our retail (and 3P) sales for baby products in 2007 and 2008?
Retail Response: <insert response>

Q9. What is the Amazon ship option mix for baby products?
What percent of baby products orders are Subscribe and Save? What percent is Prime?
Retail Response: <insert response>

<diapers-q109-FAQ.docx>

From: Wales, Chance
To: Herrington, Doug
CC: Rothman, Michelle; Furphy, Tom; Nenke, David
Sent: 2/9/2009 8:51:19 PM
Subject: Re: Diapers.com - looked at them ever?

I'll make sure we're matching and loop back.

On Feb 9, 2009, at 7:10 PM, "Herrington, Doug" [redacted] wrote:

Good point. Let's keep this as an option to consider. First let's make sure we are 100% matched, then see if we feel we ned to go further.

From: Rothman, Michelle
To: Herrington, Doug; Furphy, Tom; Nenke, David; Wales, Chance
Sent: Mon Feb 09 18:58:53 2009
Subject: Re: Diapers.com - looked at them ever?

BTW: when we first launched the toy and baby stores post TRU, we set up pricing rules that stated that if TRU was the lowest priced competitor, that we would match at a 5% discount.

If we want to be sharper on price to account for diapers.com free two day shipping, we could set up a rule that prices us $xx below them when they are lowest matched competitor for the baby care category??

From: Herrington, Doug
To: Furphy, Tom; Rothman, Michelle; Nenke, David; Wales, Chance
Sent: Mon Feb 09 18:35:27 2009
Subject: RE: Diapers.com - looked at them ever?

The story was that peggy was exploring why our baby sales were down so much, and she saw that they had a sale going on on their site. And she checked the pricing tool, and there were no recommendations. So she hand loaded a bunch of changes.

I have no idea how long this sale has been going on. I just looked on Alexa, and it looks like they've had a boatload of traffic all Jan (for them). I'd be interested if anyone can figure out where this is coming from.

Michelle and Tom: please audit that we are price matching (ignoring SNS, as we agreed) any diapers.com pricing. If this puts us in the soup with P&G on their pampers map price, so be it. We will pull them back out of SNS if they want. Given that these guys are offering free 2day shipping on everything, price matching still leaves us ***behind*** because of the slower delivery speed. Please verify there are no gaps in our price matching for any MAP reasons, etc.

D

From: Furphy, Tom
Sent: Monday, February 09, 2009 6:28 PM
To: Herrington, Doug; Rothman, Michelle; Nenke, David; Wales, Chance
Subject: RE: Diapers.com - looked at them ever?

I agree on all fronts, Doug. What was the wbr CMT story that was depressing? What is failed price matching? How did we fail price matching?

I have a food competitive analysis almost ready to forward. Will also have diapers in a day or two.

I'm sure their pure fulfillment costs are better than our allocated costs. But that shouldn't deter us. In the near term we should advocate out a better internal allocation to reflect our true costs (or at least recognize the limitations of our current methodology), or we should keep driving efficiencies like "no stickering required". We should also make sure that we beat them to the direct "end-of-production-line-direct-to-consumer" model with P&G.

They must a bigger P&G diaper customer than us, and we should recognize that as we negotiate.

T

From: Herrington, Doug
Sent: Monday, February 09, 2009 6:12 PM
To: Furphy, Tom; Rothman, Michelle; Nenke, David; Wales, Chance
Subject: FW: Diapers.com - looked at them ever?

do not forward

More evidence these guys are our #1 short term competitor. As I've mentioned to each of you, I think, we need to match pricing on these guys no matter what the cost.

They also offer Free 2-day shipping on any order over $49.

Today's wbr story that CMT price matching failed for them was depressing.

Michelle- please make it top priority to get the CMT matching back up and running for them. And please verify that we are matching against everything they sell. Also, please report back to why it failed for them and what we can do to audit it going forward.

Adding Chance: These guys are selling all kinds of baby products. Please verify that they are in your external competitor match list as well.

Michelle/Tom: We need a similar competitive overview of these guys as we are doing for Costco. For both, I want to know how many asins they are selling, and where their price points are.

D

From: Herrington, Doug
Sent: Monday, February 09, 2009 6:05 PM
To: Booms, Douglas; Nenke, David
Cc: Saito, Steven; Furphy, Tom
Subject: RE: Diapers.com - looked at them ever?

Adding Tom

They approached us a few years ago, asking about delivering diapers for us as a dropshipper.

They are our biggest competitor in the diaper space. They keep the pressure on pricing on us. They apparently have lower fulfillment costs than we have (or are allocated). They are a merchant on our site, with a few asins.

They also recently installed KIVA material handling equipment in their FC… which we've been looking at.

I'm interested. At the numbers below they may be giving us a run for our money. We can approach them through the "we would be willing to explore a range of relationships" angle.

D

From: Booms, Douglas
Sent: Monday, February 09, 2009 5:59 PM
To: Herrington, Doug; Nenke, David
Cc: Saito, Steven
Subject: Diapers.com - looked at them ever?

Herrington and Nenke,

How are you guys doing? A couple of things.

First of all, have we ever looked at Diapers.com? They participated in the eToys auction (were quite aggressive actually, but didn't win anything) and in the process had to expose some details about the company that were intriguing. Most notably their growth. Check it out:

Founded Jan 2005

Currently has sales over $150MM

650,000 registrants

Sales History:

2005 $2.5MM

2006 $11MM

2007 $36MM

2008 $89MM

2009 (projected): $172MM

Company has $12MM in cash.

Funding – raised $17MM to date from Bessemer and Accel and others.

Good growth, no? Would be expensive, but do you think there is a pony in there? Could be an interesting fit with Fresh in some ways. Ie. Diaper delivery, baby

products delivery on short time frame. Just brainstorming. Let me know your thoughts on that category and if you think it has legs. They were aggressively bidding at the eToys auction, so I think they are feeling they may need to branch out into other categories.

DB

Amazon.com, Inc.
March 9, 2018
Attachment 4(c) - 11

From: Helbling, Jeff
To: Limp, Dave; Williams, Robert; Komorous, Nick; Hayes, Brock; Volkert, Erich; Tritschler, Charlie; Krawiec, Peter; Swartz, Andrew; Jong, Susan; Parker, Allen; Blackburn, Jeff
Cc: Booms, Douglas
Subject: Notes: 10/10 Ring and Blink M&A discussion
Date: Wednesday, October 11, 2017 6:28:06 PM

Main takeaways, next steps:
1. Greenlight on Blink - move forward with deal.
2. Also move forward with Ring due diligence - come back with updated recommendation before we write a big check.

Additional notes:
3. Two senses matter - eyes and ears.
4. Blink feels like a no-brainer.
5. Ring is harder, just in terms of total dollars. But they are doing something right given happy customers and high growth rate.
6. Feel good about moving forward with Ring due diligence, willing to pay for market position as it's hard to catch the leader.
7. In terms of current sales, Arlo is #1, followed by Ring, then Nest, then Blink.

[redacted]

Amazon.com, Inc.
March 9, 2018
Attachment 4(c) - 5

From: Bezos, Jeff
To: Limp, Dave
Cc: Krawiec, Peter; Komorous, Nick; Helbling, Jeff; Booms, Douglas
Subject: RE: Ring update
Date: Friday, December 15, 2017 1:36:03 PM

To be clear, my view here is that we're buying market position – not technology. And that market position and momentum is very valuable.

From: Bezos, Jeff
Sent: Friday, December 15, 2017 10:35 AM
To: Limp, Dave
Cc: Krawiec, Peter; Komorous, Nick; Helbling, Jeff; Booms, Douglas
Subject: RE: Ring update

We could immediately offer improved terms on tomorrow's hundred million. For example, only a [redacted] times preference instead of the [redacted]

From: Bezos, Jeff
Sent: Friday, December 15, 2017 10:18 AM
To: Limp, Dave
Cc: Krawiec, Peter; Komorous, Nick; Helbling, Jeff; Booms, Douglas
Subject: RE: Ring update

Maybe we should do the whole [redacted] of the first series E (the one that closes tomorrow) so we don't make the acquisition too expensive for ourselves.

From: Bezos, Jeff
Sent: Friday, December 15, 2017 9:52 AM
To: Limp, Dave
Cc: Krawiec, Peter; Komorous, Nick; Helbling, Jeff; Booms, Douglas
Subject: RE: Ring update

I'd buy it right now.

From: Limp, Dave
Sent: Friday, December 15, 2017 7:28 AM
To: Bezos, Jeff
Cc: Krawiec, Peter; Komorous, Nick; Helbling, Jeff; Booms, Douglas
Subject: Ring update

Jeff,

I want to provide you with an update on Ring. Corp Dev and our legal team

have been in regular contact with Ring over the past few weeks and just learned that Ring has resolved its lawsuit with ADT. The two companies have reached a binding settlement that gives Ring the perpetual rights to use the Zonoff Z1 Platform, which means that Ring can use the Zonoff team to continue working on the Protect alarm system. [redacted]

We also have an update on Ring's financial performance. For the months of September and October, the company [redacted] (or [redacted] Ring ended October with [redacted] paying subscribers, [redacted] households, [redacted] total users and [redacted] active devices. Ring has yet to close its books for November, but estimates that revenue will come in [redacted] above plan ([redacted]) but that EBITDA will be below budget. The company's topline outperformance and bottom line underperformance is largely attributable to increased marketing and QVC promotions, which is a lower margin channel.

Since we last discussed with you, Ring has been moving forward with its Series E round and now plans to raise a total of [redacted] in new capital at a pre-money valuation of [redacted] The company is going to close the first [redacted] of the round tomorrow, with the remaining [redacted] closing sometime in the next few weeks. All of the Series E shares would be entitled to a [redacted] return if there is an acquisition within 18 months, thereby making an acquisition more expensive for non-Series E investors during that timeframe.

In light of these recent developments we are considering a few options including: 1) Move swiftly to put in an acquisition offer before the second Series E closing, 2) Participate in the Series E round as a way to stay close, 3) Do nothing and keep a close eye on them over the next year.

I am going to try to pull my team together early next week to form a more definitive recommendation as some of the folks don't have conviction yet. Let me know if you would like to be in the room for any of that debate?

Dave-

From: Wilke, Jeff [/O=AMAZON/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=WILKE]
Sent: 1/22/2015 12:37:01 PM
To: Gunningham, Sebastian [redacted]; Piacentini, Diego [redacted]; Herrington, Doug [redacted]
Subject: RE: "From China" Sales signals

Cool. Thanks
JAW

From: Gunningham, Sebastian
Sent: Thursday, January 22, 2015 11:24 AM
To: Wilke, Jeff; Piacentini, Diego; Herrington, Doug
Subject: RE: "From China" Sales signals

Good question, asked the team to build the p/l as a standalone business...

From: Wilke, Jeff
Sent: Thursday, January 22, 2015 11:24 AM
To: Gunningham, Sebastian; Piacentini, Diego; Herrington, Doug
Subject: RE: "From China" Sales signals

Awesome! FCF and OP Income in 2015?

JAW

From: Gunningham, Sebastian
Sent: Thursday, January 22, 2015 9:06 AM
To: Wilke, Jeff; Piacentini, Diego; Herrington, Doug
Subject: "From China" Sales signals

Had a review of our "from China into .com, .eu and .jp" business. This is going to be big:

- GMS going to from $1b to $4B this year...
- I am told by many on the ground that the word is out: We are the place to sell globally. Not ebay, not aliexpress, not taobao. Seems to be a lot of excitement on the ground. Our recruiting numbers are accelerating... going from 15K sellers to 50K sellers by end of year.
- One of the themes is Chinese factories who have made stuff for Walmart and the likes for the past 20 years now realize they have shot at building a brand themselves and selling directly to the world, without the intermediary... and we are that vehicle.
- Lots of competitive dynamics between sellers that make this a very different animal for us. We are building local TRMS, local TAM, local onboarding, local marketing, to aggressively better serve this population of sellers, in some cases in the actual "taobao cities". Looks like our initiatives are also starting to affect prices down and getting closer to aliepress also.
- Team has lots of new ideas which could make us the leader for sales into the world ... FBA adoption growing 200%+. Lots of tech pieces to work on: returns, disbursements, counterfeit, performance, native language support, FBA consolidation ideas, duplicates, asin matching, KYC, price competitiveness, detail page hijacking, etc etc.
- Of course, the risky downside to this is that US and EU based sellers do not find this avalanche of China based sellers very amusing. I have coached the team to be aggressive marketing in China to sell globally, but take a low key approach in the import countries.

Anyway, just a heads up. 100+ people now focused on this fast growth business. Sebastian.

From: Gunningham, Sebastian [/O=AMAZON/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=SGUNNING]
Sent: 6/6/2016 10:16:29 AM
To: Herrington, Doug [redacted]
CC: Wilke, Jeff [redacted]
Subject: Re: supplier tenets

Missed one thing: I would add that there are x,000 suppliers around the world that do not get this choice... I am talking about the apple, nikes and p&g, etc... We dont want to open that door, relationship has to be reseller.

On Jun 6, 2016, at 10:13 AM, Gunningham, Sebastian <[redacted]> wrote:

A few edits in italic. Maybe a bit long, but we can keep iterating. Added 5), not sure i like 6) as stated, tweaked your 7....

From: "Herrington, Doug" <[redacted]>
Date: Thursday, June 2, 2016 at 7:04 PM
To: Jeff Wilke <[redacted]>, "Gunningham, Sebastian" <[redacted]>
Subject: Re: supplier tenets

Here's a v2 version of these supplier tenets.

Supplier Tenets

1. We aspire to have all suppliers on our website, with their full assortment available to our customers with fast track promises and competitive prices.

2. We must have equal or better prices than SIC and IC competitors. We will give up non price competitive selection from a supplier in the short term to "hold out" for competitive pricing in the long term.

3. We want to have all the selection offered by SIC and IC competitors, with fast track promises. We may give up partial selection or non fast track offers from a supplier in the short term to "hold out" for full selection parity and fast track offers in the long term.

4. Our suppliers will use both Direct-to-Consumer (DTC) and Amazon-as-Reseller (AAR) selling options on our website. As long as we have fast track offers and price and selection parity with SIC and IC competitors, we are indifferent if a supplier uses DTC or AAR selling options.

5. Suppliers are free to choose which of the two programs to participate in, under one rule: If it is determined that an Amazon Customer has access to a lower price or selection off of Amazon, Amazon reserves the right to force the supplier to either lower the price, provide the selection or enter the Amazon Reseller program. Suppliers are free to use any combination of both programs for their selection, subject to the one rule.

6. We will adjust the financial terms of our DTC and AAR selling options to provide equivalent economics to Amazon, regardless of which option a supplier uses.

(This probably means we would have to exit retail, certainly for 90% of EU retail selection. Or it means lowering rev shares for 3p to match retail profit, which is also an odd tenet, as it implies we know the million supply chain profit combinations out there, which we dont. I would state this differently:

Both programs will have different cash flow, ordering and logistics benefits. Suppliers are free to chose which one, or combination, works for them, subject to the one rule. (This of course means that suppliers are free to make as much money as they want, which in my book is fine, as long as the rule applies. The marketplace dynamics make sure that over time, efficiencies are weeded out.)

7. We treat all suppliers as our Customers and Partners. Our supplier programs are self service, designed for all suppliers to compete on a level playing field, surrounded by timely and competent service from Amazon. For the Reseller platform, where Amazon negotiates a price with the Supplier, the theme would be: "Amazon is really tough on business terms — but they are timely, competent and easy to work with."

From: "Herrington, Doug" <[redacted]>
Date: Tuesday, May 31, 2016 at 9:18 AM
To: Jeff Wilke <[redacted]>, "Gunningham, Sebastian" <[redacted]>
Subject: supplier tenets

Jeff/Sebastian,

Coming out of our last MoA discussion, I've been noodling on some "tenets" to try and capture where we are aligned. Per Sebastian's comments on another thread, I think it would be helpful to get away from the old language of "Vendor" and "Seller". Below is a start. I've used the word "Supplier" to mean anyone who has product for sale on our website, regardless if they are a traditional vendor or seller.

Comments welcome on this start.

D

Supplier Tenets

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4. We want to have fast track offers on selection offered by SIC and IC competitors. We may give up non fast track offers in the short term to "hold out" for fast track offers in the long term.

5. Our suppliers will use both Direct-to-Consumer (DTC) and Amazon-as-Reseller (AAR) selling options on our website. As long as we have fast track offers and price and selection parity with SIC and IC competitors, we are indifferent if a supplier uses DTC or AAR selling options.

From: Parker, Allen [/O=AMAZON/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=ALLENP]
Sent: 10/11/2017 4:48:49 PM
To: Olsavsky, Brian [redacted]
Subject: Fwd: Notes: 10/10 Ring and Blink M&A discussion

Flag: Follow up

FYI only

There was an ad hoc meeting around two opportunities in the camera space with JeffB yesterday. He asked that we look at both. Let me know if you would like me to setup time to discuss with you

Begin forwarded message:

From: "Helbling, Jeff" [redacted]
Date: October 11, 2017 at 3:28:06 PM PDT
To: "Limp, Dave" [redacted] "Williams, Robert" [redacted] "Komorous, Nick" [redacted] "Hayes, Brock" [redacted] "Volkert, Erich" [redacted] "Tritschler, Charlie" [redacted] "Krawiec, Peter" [redacted] "Swartz, Andrew" [redacted] "Jong, Susan" [redacted] "Parker, Allen" [redacted] "Blackburn, Jeff" [redacted]
Cc: "Booms, Douglas" [redacted]
Subject: Notes: 10/10 Ring and Blink M&A discussion

Main takeaways, next steps:

1. Greenlight on Blink - move forward with deal.
2. Also move forward with Ring due diligence - come back with updated recommendation before we write a big check.

Additional notes:

3. Two senses matter - eyes and ears.
4. Blink feels like a no-brainer.
5. Ring is harder, just in terms of total dollars. But they are doing something right given happy customers and high growth rate.
6. Feel good about moving forward with Ring due diligence, willing to pay for market positior as it's hard to catch the leader.
7. In terms of current sales, Arlo is #1, followed by Ring, then Nest, then Blink.

[redacted]

From: Stites, Robert [/O=AMAZON/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=RSTITES]
Sent: 11/1/2017 4:53:06 PM
To: Limp, Dave [redacted]
CC: St. Angel, Lindo [redacted] Williams, Robert [redacted] Tritschler, Charlie [redacted] Booms, Douglas [redacted]
Subject: Re: Project Darwin (Ring) - call with Dave Limp

This is worth a discussion, We chose to innovate on hardware in Pie well into the design phase requirements and intent were still fluid. This company chooses to limit their hardware capability to what is available and focus on other areas. If you want we can have the company that builds both do a gap Analysis for us as part of the next level due diligence.

Rob Stites
[redacted]

On Nov 2, 2017, at 7:37 AM, Limp, Dave [redacted] wrote:

> This is problem then. [redacted] In facet doing Pie took us a long tine and was fraught with issues. Folks need to convince me a frugal organic plan that can win. I have not seen it, perhaps Rob you have that makes you confident?
>
> On Nov 1, 2017, at 4:31 PM, Stites, Robert [redacted] wrote:
>
> > Dave
> >
> > Based on your answers, I would be very concerned. You can't half integrate them nto mechanisms we use to run the business, things just break everywhere if we treat it as a Chinese menu. They don't have any interesting hardware secret sauce either in IP, manufacturing process, or people. As indicated in the slide I sent last night, from Foxxonn (one of their ODMs) I think we could easily replicate all of their hardware to be better, operate in a more secure and robust infrastructure, for a LOT less than cost of buying them so I am not inclined unless our intent is just to benchmark pricing (which seems to me we could get by hiring one or two people). However at this point could easily disagree and commit given the positive assessment of my team in the early meetings at least we don't think they are broken.
> >
> > Rob Stites
> > [redacted]
> >
> > On Nov 2, 2017, at 12:29 AM, Limp, Dave [redacted] wrote:
> >
> > > Comments inline in blue. Obviously, a lot of these answers are my early thoughts and worthy of a lot of debate. Net/Net are you inclined to give them a term sheet subject to a LOT more diligence?
> > >
> > > ---
> > > **From:** Robert Stites [redacted]
> > > **Date:** Tuesday, October 31, 2017 at 10:22 PM
> > > **To:** Dave Limp [redacted]
> > > **Cc:** "St. Angel, Lindo" [redacted] "Williams, Robert"

[redacted] "Tritschler, Charlie"
Booms, Douglas"

Subject: Re: Project Darwin (Ring) - call with Dave Limp

Dave

I am writing this on my phone in a care so please forgive any typos and crazy confusing statements.

To start, I want to point out that my lead for the early effort was pleased with what he saw in the supply chain. They use tier one components and manufacturing partners with no red flags in his questioning. He believes they are a solid company. I have several of their products and with the exception of needed a special tool to change a battery, I have been impressed.

My concern largely encompassed the intended integration or non-integration with our business. I mentioned Nest and Beats in this regard as those acquisitions are the best comp I can think of to what we are intending to do and I have the benefit of having a lot of insight on their supply chain integration challenges. Below, I have tried to capture several of the issues they have faced over the last years as well as some other. At this point Nest is entirely functionally integrated with Google Hardware, and Beats has slowly and painfully migrated following a series of hardware and roadmap missteps.

While each area below could be perceived as an individual decision that could be made as part of the next level Diligence, when taken in their entirety they encompass a fundamental approach to this potential acquisition that should be well understood now.

1. Planning- Will they still take orders from the CE buying team just like they do today or would we get involved with our planning team. Who owns FTIS, inventory allocation and launch planning? Will they still have independent relationships with the retailer or would they leverage our retail team? IE do the still meet with the best buys of the world independent of our team? Do we plan to assort in our owned stores, if so are they treated as a 3P or 1P product?

[redacted]

2. Cost – Do we want to get involved in areas where their costs are higher than ours, for example, silicon, memory and FATP transformation. We just concluded our relationship with one of their key partners, Chicony, fundamentally because they were a high cost supplier and not interested in competing for our business where cost was so important.

[redacted]

3. Contracts – We have world class contracts in-line with our scale and influence, would we plan to align this with the supply base, or keep separate ones with the same suppliers.

[redacted]

4. CSR and compliance- We know they have limited to no activity around compliance and CSR validation. Are we OK with this? Do we have them roll up separately as part of a standard CE supplier to our retail side. Is that even OK? If they were found to have a problem would PR try to tie them to our ownership?

[redacted]

5. Continuity of supply – Are they on their own here or do we get involved when there is a shortage? This usually ends up being beyond frustrating for the teams involved and because we don't share systems, can be extremely time consuming.

[redacted]

6. Logistics – We expect to find that we get better rates than they do in logistics and our SLA's will be tighter. Is this OK or would we try to improve this? Do we take ownership of their reverse logistics, ours is integrated with the FC process, as a CE vendor they have a separate process that drives cost, do we still keep that if we are separate? Do we move their Offline forward logistics from our systems to theirs?

[redacted]

7. Quality – They currently follow standard quality checks and procedures used at the Contract Manufactures. We have a much higher bar with many additional mechanisms developed by us to ensure world class produces. Would we expect to work towards aligned that or wait until we do it over time as the response to various COE's.

[redacted]

8. Supply base sponsorship, relationship and management. When we meet with Supply Base leaders do we try to act as one company or just tell them we have no idea what company X's plans are or what they are up to so you will have to talk to them separately. Foxconn would be one example here. Do we try to align this at all, or do we treat it like AWS. In AWS case there is very little overlap in either material or factory (Server divisions are separate from the CE division in our CMs) so we coordinate loosely unless we see an opportunity to benefit from

working together. This will be beyond confusing for the leadership at the supply base but do we care?

[redacted]

9. Regional involvement – Do their in-region operations teams continue to sit separately, in their own offices ,with their own HR, IT, Benefits, support or do they become part of our regional team under our regional leader?

[redacted]

10 – Security – I would be shocked if they didn't need major work in this area to meet our expectations. While I expect the primary focus to be their software architecture I am sure that we will find issues in manufacturing and hardware design that need to be addressed? Who does this, or do we just ignore it and hope it doesn't become a problem

[redacted]

10. Comp – Do we try to align comp for the same job titles or do they stay under their current comp system? Is this both in region and in the US?

[redacted]

Many of these areas tripped up Beats and Nest and several are still a mess that they are fighting through. The leader of Beats supply chain was just changed out again sending a director from Cupertino and long term Apple leader to run it.

In addition to the areas above, aren't we concerned that Amazon ownership is going to drive different expectations from our customers. We recently have been celebrating our success in establishing tremendous trust from our customer base. This raises expectations in many areas, not the least of which is things working together. Who ensures that we meet that bar in product timing, capability, reliability, quality seamless integration etc.

[redacted]

I am strongly convinced that ignoring all of these areas will just result in a slow and painful migration over time in response to problems, which is just so painful. If we want to move forward the only viable solution I see is to transition the team into a new product line, largely mirror that structure and integrate them using the right mechanisms we have been building over the last years. This is costly, will slow them down some and may alienate some of their leadership but I am convinced is the only way this works in the mid and long term.

Of course I could be wrong...

Rob

From: "Komorous, Nick" [redacted]
Date: Tuesday, October 31, 2017 at 8:56 AM
To: "Stites, Robert" [redacted]
Cc: "Lindo St. Angel [redacted] "Williams, Robert" [redacted] "Tritschler, Charlie" [redacted] Booms, Douglas"
Subject: RE: Project Darwin (Ring) - call with Dave Limp

Removing the EAs

Rob S – we caught up with Dave this morning and brought up your concerns about integrating Darwin. Our current integration hypothesis is to do the minimum amount of work to ensure that Darwin's products are reliable and safe. So, the goal would be to keep Darwin as independent as possible under the principle of doing no harm and not slowing them down. Dave would like to get your opinion on this approach as well as your overall concerns about doing this deal. Can you send him a note directly and cc' all of us? Given the time zone difference, we will likely have to handle this over email. Also, please highlight what you mean by the reference to Nest and Beats. We discussed this briefly, but weren't able to draw a lot of parallels between those deals and Darwin (with the Nest deal seemingly having gone sideways due to contractual commitments to keep it entirely separate – no integration whatsoever).

Thanks,
Nick

From: Stites, Robert
Sent: Tuesday, October 31, 2017 2:19 AM
To: Komorous, Nick [redacted]
Cc: St. Angel, Lindo [redacted] Williams, Robert [redacted] Tritschler, Charlie [redacted] Booms, Douglas [redacted] Osborne, Maya [redacted] Manila, Marie [redacted] Guterman, Kimberly [redacted] Singh, Wendy [redacted] Roemer, Jamie [redacted]
Subject: Re: Project Darwin (Ring) - call with Dave Limp

Nick

I flew last night and landed today in Taiwan, it is unlikely I will make it to the late night meeting tonight, so thought I would capture my thoughts.

[redacted]

Rob Stites
[redacted]

On Oct 31, 2017, at 2:29 AM, Komorous, Nick
[redacted] wrote:

> All – I am reaching out because Dave asked me to set up a call (or start an email thread) with his leadership team to get everyone's perspective on the potential Darwin acquisition. My preference is to do this in person (on a call) rather than via email. Not surprisingly, getting time with Dave in the next few days is proving to be difficult. It looks like our best option is tomorrow morning at 7:30 am PST. Can everyone make that work? Rob S – I realize that is fairly late China time.
>
> Thanks,
>
> Nick Komorous
> Corporate Development
> Amazon.com
> [redacted]

From: David Thacker [redacted]
To: "'Gokul Rajaram"' [redacted]
Cc: "'Richard Holden"' [redacted], "Salar Kamangar" [redacted] "David Friedberg"' [redacted]
Subject: RE: 3rd parties Eric discussion: 3rd draft.
Sent: Wed, 31 May 2006 10:04:18 -0700

The PE guys running Doubleclick are going to want the same the same valuation multiple that AQNT is getting in the public markets, because AQNT is the closest publicly traded comparable.

As for intl marketshare -- as of late last year, AQNT had overtaken DCLK in European market share for their advertiser/agency products. (according to the stats AQNT showed us when we were evaluating them.)

As far as I can tell, neither Doubleclick nor Atlas has a strong presence in APAC. When we evaluated Doubleclick, they had less than <10 DFP clients in Asia, none of them were doing more than 10MM impressions per months. .

On the Publisher product side, Doubleclick is clearly ahead, and I agree with your arguments for leveraging the existing DFP publishers base.

However, if are looking to enable one of these guys as the "CMO Dashboard" than I think Atlas is clearly a better bet.

-David

From: Gokul Rajaram [redacted]
Sent: Tuesday, May 30, 2006 11:17 PM
To: David Thacker
Cc: Richard Holden; Salar Kamangar; David Friedberg
Subject: Re: 3rd parties Eric discussion: 3rd draft.

This is a good point. One of the biggest issues with Atlas is that since they are a public company with the highest valuation of *any* Internet company (20X revenues), doing a deal will be very very expensive for us. Once we do a deal with Atlas, we will have to pay through the nose for a future deal with DCLK should we decide to do so. EMG wont be happy paying 2X Google's multiples!!!

the other issue is that Atlas doesnt have DFP. Even though we have GFP, it will take years before we penetrate really major publisher installations. Working with DCLK could really accelerate this. (assume we could make DCLK take a rev-share on remnant ad revenue, instead of ad-serving revenue; this could be a win-win).

The final issue is that Atlas has very poor international coverage, vis-a-vis DCLK. DCLK is super-strong in EU and APAC, per Tim. This is important to us.

I do like Atlas more than DCLK from a pure technology perspective, but the costs could be

prohibitively high. EMG has already shot-down Atlas in Jan, maybe we can bring it to them again.

Gokul

On 5/30/06, **David Thacker** [redacted] wrote:

> After the rounds of diligence we did with Madison and Liberty last year, I thought he consensus was that Atlas is a much more suitable partner for an investment/commercial relationship:
>
> -- Atlas doesn't have the negative brand baggage that DCLK has.
> -- Atlas is a better cultural fit with Google and has a stronger mgmt team
> -- They have a better product for advertisers and agencies
> -- Through their relationship with Avenue A, they have direct access to an enormous amount of brand advertiser dollars.
> -- They don't have a strong publisher product, so we could have them resell GFP once we build it out. (or use it in their DRIVE biz) If we did the DCLK deal, merging GFP and DFP would be messy. We'll have very little influence over the product direction of GFP anyway.
> -- I don't get the sense that DCLK is really focused on technology innovation in their products. They are cutting costs, rolling up market share (through the Falk acquisition), and preparing for an exit for their investors.
>
> The main benefit I see of a deal with DCLK is that they are private and so a deal could be executed much more quickly. Am I missing something else?
>
> -David

From: Gokul Rajaram [redacted]
Sent: Tuesday, May 30, 2006 10:30 PM
To: Tim Armstrong; Richard Holden; Nikesh Arora; Susan Wojcicki; Salar Kamangar; Nat Criou; David Thacker; Rohit Dhawan; Satya Patel; Rajas Moonka; Bismarck Lepe; David Friedberg
Subject: 3rd parties Eric discussion: 3rd draft.

Hi guys,

I had a chance to touch base 1:1 with Tim, Susan and Salar today, and also discussed the preso with a couple of other folks. Thanks everyone for your comments - I've incorporated them into the preso.

Major changes from v2:

1. Slide 21: new slide defining the "CMO Dashboard" (Richard - you might want to review this slide).
2. Slide 11: Bottom-up computation of incremental revenue. Still waiting for some additional data from Ching on our image ad pageviews + Yahoo data.
3. Slide 17 and 18: Reformatted to be consistent with slides 15 and 16.
4. Slide 23 and 24: Added a couple of slides about the DCLK proposal.

What's left:

1. Work with David F on more definition of DCLK deal terms, DCLK versus Atlas; what DCLK has been up to in the past year, etc.
2. Get data from Tim on DFA impressions served, DFP impressions served, Atlas impressions served.
3. Flesh out bottoms-up revenue forecasts.
4. Incorporate second round of feedback :)

Thanks in advance for your comments and feedback!

Gokul

From: Neal Mohan [redacted] on behalf of Neal Mohan
Sent: Tuesday, February 09, 2010 12:28 AM
To: Henrique DE Castro
Cc: [redacted]
Subject: Re: Fwd: Fw: 2/1 - AdX Follow-up

+Scott since he understands this issue the best and is leading our agency demand-side platform (aka bidder) strategy...

Thanks for raising this issue, Henrique. I am glad that we are following up on the various action items that came out of our strategy deep dive with Vivaki back in December. Around this specific issue...

1) Fundamentally, we should have agency-level attribution through to AdX. Right now of course this happens at the aggregate level as you describe based on what bidders like Invite are contractually obliged to tell us. I will discuss how we will address this in the future further down in the note.

2) A couple things to note that I want to make sure we are all on the same page on however:

a) This is NOT the top priority from an AdX (or Google agency spend) standpoint. There are several other issues on sales and product that are actual gating factors to spend on AdX right now that we must address urgently and that the teams are working very hard on. This is not a gating factor to spend on AdX for Vivaki (or any of the other agencies for that matter right now).

As discussed today, we can go over the top 5-10 gating factor type issues in next week's GFM. There are several on the product, services and sales sides that are bigger than this one right now.

b) This is NOT the top priority from a Vivaki standpoint either. As we covered in the sessions with them back in December, there are several other product (and inventory) enhancements they would like to see on AdX that will actually increase spend. This is not one that will grow their spend. Curt Hecht reiterated all these points with me again last week when I saw him at an industry event. We are working on those other roadmap items to continue to increase their spend over time (which is already ahead of what they had committed to in our deal).

3) Yes, we should build a bidder and this has been part of our strategy for 2010. But this reporting issue is not the primary benefit of owning our own bidder of course but will be a nice side effect. The primary benefits on having a bidder are eliminating the disintermediation risk and substantially increasing display spend with Google from agencies (through the combined use of DFA - bidder - AdX). However we are in the early days here as you note - the teams are just getting staffed up. We are looking at options to accelerate this (potentially through M&A for example).

4) Until we have our own bidder, there are ways we will address this issue but each option has some strategic implications for us. We can ask Invite to append it to every response on the real-time bidder (however we are still dependent on them reporting on this accurately just like we are today and therefore may be the WRONG

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way to implement a solution). I realize that you suggest this option for speed reasons perhaps but it may not be a good idea from a Google standpoint.

The better answer may be to have them respond to our real time bidder call with parallel responses for each of their clients but of course the bidders are reluctant to do this (extra work, they become a pass through, etc.). We can mandate this but it will take a while for them to negotiate with us how to do this and then implement. In any case, the prod / eng team is working on how we will address this in the short-term.

Let me know if you have any further questions.

- Neal

On Mon, Feb 8, 2010 at 10:14 AM, Henrique DE Castro [redacted] wrote:
Susan, Bellow the issue I mention on the GFM call today regarding Agencies. The teams are on the ball but there is a lot to fix....Henrique

Situation:
1- AdX is currently unable to track agency spend if the agency in question uses a 3rd party bidder. All networks are moving towards 3rd party bidders globally and we will lose all visibility of agency spend on AdX once this happens (because the bidder (not the agency) becomes the buyer in our reporting systems)
2 - Currently, an AdX-linked agency deal e.g. Publicis' Vivaki, requires a signed letter from any 3rd party bidders stating what the agency's AdX spend was for the previous quarter. This is not an acceptable or scaleable solution for further global deals being discussed with Omnicom, WPP, Aegis etc. due to the rebate sums involved
3 - This is also now a very real technical blocker to renegotiating and increasing the scope of the Vivaki AdX deal for 2H 2010 to include additional KPIs for accelerating investment and adoption: (1) additional outperform incentive, (2) incentive to activate strategic publishers, (3) EMEA accelerator. The inability to track spend blocks all of these more expansive dimensions.
4 - As GCN spend migrates to AdX, we may also see GCN display revenue drop with no corresponding increases visible elsewhere
5 - At the broadest level, without visibility on agency investment, we face being dis-intermediated/marginalised and our ability to address under-investment and other opportunities is challenged.

What's needed:
1. Media Platforms build a solution to allow the bidder to pass AdX variables naming the buyer (i.e. VivaKi, OMG Trading Desk, Havas..) plus deeper details on the trade (e.g. publisher, market, advertiser...) This would not only assist with revenue tracking but would also allow us to invoice the Trading Desk or the agency directly. This is probably the preferred solution for the bidders as it would potentially allow them to continue using their own AdX seats. However this is not currently on the AdX product roadmap.
2. - Or... Google builds its own bidder - which is on our roadmap but is unlikely to deliver before end 2010. However, this wouldn't solve the problem for agencies who decide not to use our bidder.
3. - Or... 3rd party bidders are forced to use the relevant agency's seat on the AdX for their bookings rather than their own. However this requires the bidders to make technical changes to their products & is therefore not likely to be in place before Q3.

We urgently need to make the decision regarding whether we press for the delivery of the technical solutions from either our product teams or those of the third parties. The longer we leave this, the harder it will become to implement - and our inability to track AdX will hinder the global display deals currently being negotiated.

From: Susan Wojcicki [redacted]
To: Nikesh Arora [redacted] Neal Mohan [redacted]; Henrique DE Castro [redacted]
Sent: Mon Feb 08 12:55:14 2010
Subject: Fwd: Fw: 2/1 - AdX Follow-up

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this seems like a pretty detailed update on AdX. Thanks for sending. It looks like we have a clear list of what needs to be fixed from product/eng and the we need to keep the same people on it.

Susan

---------- Forwarded message ----------
From: **Henrique DE Castro** [redacted]
Date: Wed, Feb 3, 2010 at 10:09 PM
Subject: Fw: 2/1 - AdX Follow-up
To: [redacted]

Quick update following GFM questions raised on AdX and also some oof the key AdX issues. I personally review AdX progress with Lexi/Laurent/Scott Spencer for an hour weekly. Henrique

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From: Lexi Reese [redacted]
To: Henrique DE Castro <[redacted]>; Eileen Naughton [redacted]>; Barry Salzman [redacted]
Sent: Wed Feb 03 22:32:44 2010
Subject: Re: 2/1 - AdX Follow-up

Henrique, Eileen, Barry,

Follow-up to the meeting from earlier this week: attached is a summary of v2 versus v1 spend (many thanks to Kristin and David for their help with this).

- 37% of clients are spending 100 - 200% of v1 levels
- 14% of clients are spending 50 - 100% of v1 levels
- 49% are spending <50% of v1 levels

Reasons for low spend are mixed, and we are still investigating. but some contributing factors include:.

- **inventory matching problems** - V1 AdX Buyers are not easily able to find the same anonymous inventory in V2; we are diagnosing this, but it seems to be related to a) an issue discovered today regarding incorrect set-up for permissioning remarketing on sellers b) RTB adoption still limited
  - AdWords not able to supplement parity due to an ad server logic issue in which AdWords buyers aren't considered for ad units that are listed with different minimum CPMs for branded and anonymous inventory (spend inhibiting for some of our biggest sellers like NBC and About.com)
- **personnel changes** - a finance glitch stopped orders from AdX buyers this weekend. This was resolved quickly and didn't impact spend in a material way, but it did raise a flag to certain buy-side contracts (i.e., Vivaki, Ad.com, Cossette, MIG) that were not correctly uploaded into the system by AdX employees who recently left Google. We are correcting this in order to make sure these buyers can spend, which should raise the volume on AdX sellers.

Our focus actions are:

1. SELL - migrations, new accounts, specifically focused on high value (go/adxhighvalue)
2. ACCELERATE SPEND - undertake proactive programs on the buy side: a) stimulate buying from migrated buyers by actively helping v1 buyers find the inventory they were successful on; b) begin to form a RTB task force to better understand how this type of buying is happening, and what needs to be done to drive spend
3. DEEPEN OPTIMIZATION CAPACITY - design/execute significant optimization effort to ensure buyers and sellers are transacting to potential
4. HIRE - hire to ensure sufficient coverage for key accounts

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5. RESOLVE BUGS - manage accounts carefully to uncover bugs/escalate/resolve with cross-functional teams as quickly as possible.

Pls. let us know if you have questions/thoughts.

Lexi

On Mon, Feb 1, 2010 at 10:36 PM, Lexi Reese [redacted] wrote:
Henrique -

As requested, attached is a summary of key punch list items (both open and closed).

In real time, this is how we track these things (with notations on when things have been resolved - and there's a lot of that!):

- punch list with key transaction-inhibiting issues, based on sales feedback: (go/adxpunchlist)
- bugs with exhaustive list of issues services team is working through based on sales team logging of bugs: (go/adxissues)

In addition to the cross-functional commercialization meeting where we discuss these things, we are adding a weekly NA management touchbase to make sure me, Scott, Eyal, Kate (sales, product, engineering, services) are communicating well about those issues that impact our biggest clients and we're working towards speedy resolution.

We are still working on an analysis of v1 to v2 spending by sellers so we can identify who is meeting, exceeding, lagging v1 spend. Should have that to you by EOD tomorrow.

We'll also put all relevant AdX material for our Monday management calls (which we'd like to move to every other week) in the go/adx-sales microsite so it's a little easier to access.

Pls let us know if you have questions,

Lexi

ps - you specifically mentioned the following issues; here is update on these with the # corresponding to the priority on our original punch list

- **BUY SIDE -**
  - **# 2 - BOOM** - Boomerang - targeting - available as of 1/29
  - **#4 - API** testing beginning this week on 4 buyer clients including **Criteo**
    - Based on these tests, we will come up with a list of "gating criteria" that we need to solve for before API is generally available to all clients
  - **ADSENSE INVENTORY** - We now have access to 80% of available AdSense inventory , which translates to approximately 60% of total AdSense
    - available = tiers 1 - 6, display-enabled, not opt'd out of AdX 3PAS
- **SELL-SIDE**
  - **#1 UI DELIVERY ERRORS** - Sell-side UI error message has been fixed (the # 1 issue on our sell-side punch list)
  - **#3 ARC** - Sales team is leading meetings with the PM in ARC to a) train the team on existing functionality so we can trouble shoot appropriately, b) answer questions on specific client feedback (prioritized on punch list)

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Lexi Reese | Google, Inc. | Director, Ad Exchange | [redacted]

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Lexi Reese | Google, Inc. | Director, Ad Exchange | [redacted]

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Susan Wojcicki
VP, Ads Product Management

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Neal Mohan | Google | [redacted]

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Message

From: Ornella Indonie [redacted]
Sent: 6/20/2015 11:49:28 PM
To: Philipp Schindler [redacted] Joan Braddi [redacted]
CC: [redacted]
Subject: Quick update on feedback from AT&T on search

Hi Philipp and Joan

Wanted to just share the feedback we just got from AT&T regarding Google.com as the default browser. As you know, we have been pushing hard on compliance of our contract which states that by July 1st they must set the default browser homepage on Android devices to either (a) point to att.net powered by Google, or (b) point to Google.com. As it stands now, the att.net portal is powered by Yahoo search.

We are making positive progress as you can see from what they just sent us below. We will update once implemented.

Thanks

Ornella

We will make Google.com the default browser home page for devices that enter our lab after June 30, 2015. In parallel, we will keep working on an att.net solution that includes Google Search with the understanding that we will be able to switch to that solution once it becomes available.

For clarity, there are devices that entered lab before June 30th that will launch after July 1st and will still have att.net as the default home page. Per the contract language below, the current att.net home page is still permitted on those devices without impacting AT&T's search payment eligibility.

Joan Braddi

From: Joan Braddi
To: [redacted]
Subject: Re: Feedback from Sundar on Dell

Let's discuss next week. We wish to move away from custom start pages so I don't like keeping this option. Dell only care about money anyway and our problem is we have been paying them too much.

Let's strategize next week on what we really want from Dell, then we will work on how to "sell" to Dell.

Thanks
Joan

From: Jim Kolotouros [redacted] *Sent*: Friday, February 18, 2011 08:04 PM *To*: Jim Holden [redacted]; Joan Braddi [redacted] *Subject*: Feedback from Sundar on Dell

hello Joan & Jim,

I spoke with Sundar and solicited his thoughts on Dell yesterday. He had some high level feedback:

1) Pursue Chrome as default aggressively
2) Potentially focus on the market we are most sensitive to: US 3) Google.com as the homepage 4) With respect to IE not pre-loaded, he wanted more detail on whether that option was available to OEM's. I shared the feedback from Toshiba with him (it is below) and he is thinking about it. His initial preference was to not include IE in the pre-load and pursue a Chrome-only deal.
5) If IE is pre-loaded, include Google Toolbar.

My thoughts on this are below:

1) I agree... focus on Chrome as default
2) I agree... potentially expand to include Japan 3) This is a non-starter for Dell. They will insist upon a customized homepage, and I think offering iGoogle from the start would be more productive.
4) & 5) I think a "Chrome only" approach is one that Dell cannot seriously consider. Between the feedback their President, Consumer & Small Business gave Sundar last year and the feedback from Toshiba below, it sounds like it is important for IE to be pre-loaded. Knowing this, pre-loading IE as non-default and including Google Toolbar for IE would be my recommended path.

thanks, JimEK

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

Feedback from Kevin Johnson @ Toshiba: "Yes, you can ship a PC with no IE installed and the â€œeâ€ on the task bar would be removed. DOJ allows this.
Problem is that some of the base operations use IE as a default setting within the utility and Chrome does not work with many Windows sites. I love Chrome, but still leave IE on my personal system for
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some sites that are not Chrome ready."

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From: Salar Kamangar [redacted]
To: Jeff Huber [redacted]
Sent: Wed, 1 Feb 2006 14:23:12 -0800
Subject: Fwd: Youtube, Yahoo, Pure Digital video communities

fyi -- if you have any thoughts on this let me know, but i want to be aggressive about deals that make google the default place to store photos and videos.

--salar

---------- Forwarded message ----------
From: Susan Wojcicki [redacted]
Date: Feb 1, 2006 12:35 PM
Subject: Re: Youtube, Yahoo, Pure Digital video communities
To: Peter Chane [redacted]
Cc: Hunter Walk [redacted], [redacted] Jennifer Feikin [redacted], Nikhil Bhatla [redacted], Jeremy Doig [redacted], Sean Dempsey [redacted], Cosmos Nicolaou [redacted], David Jeske [redacted], Salar Kamangar [redacted]

salar is interested in pursuing or finding out more so lets bring them back to talk,

susan

On 2/1/06, Peter Chane [redacted] wrote:
> More details on this oppty (and adding Salar). I talked to Jonathan their CEO this morning:
>
> - If we pass the deal will go to Yahoo or Youtube. Yahoo wants to create a Yahoo branded camera and have a Yahoo video storage service on the backend. Youtube wants to use the deal to add more users to their service (their goal is to make a MySpace like service but focused around video).
>
> - Pure Digitial estimates 10-20M videos uploaded in the first year; 2-4x that if we do a Google branded camera. Most of the videos are 30sec-2mins long and shot my consumers mostly mom's.
>
> - They are ok if the videos are private for 30 days and then are either converted to public or are purged from our system. They dont care about DVD burning; private is the only key feature requirement for them.
>
> - Looking for a 2 yr deal with an upfront payment to Pure Digital in the millions of dollars.
>
> Send any more thoughts in email about your thoughts on this deal. I'll schedule a quick mtg to discuss.
>
> P.
>
>
>
>
> On 1/27/06, Hunter Walk [redacted] wrote:
> > Pure Digital relationship is a great strategy for Flickr of Video, but that doesn't seem to be our initial vision. We're focused on videos that have some broad public good, more so than hosting everyone's personal video content (caveat that i can't always tell you where the dividing line is between the two). All i

know is that video with broad public interest is likely to not be exclusive to any one service - i.e. if I've made a great travel video I'm going to post it to Yahoo, Google, whatever video service in order to maximize distribution and monetization.
> >
> > WRT YouTube, i'm just not as bullish about buying them for their community. They have a great set of tools, but i think their community is based on the popularity of video identified by David, 2/3rds of which could not exist within Google Video today. YouTube's value to us would be a smart team and a platform we could build from (maybe enough to justify an acquisition on its own), but would we really be able to preserve their community once we start reviewing and pulling copyright or inappropriate content? If anything, that's likely to cast a poor light on Google.
> >
> > hw
> >
> >
> >
> > On 1/27/06, David Lee [redacted] wrote:
> > > i'm not convinced that youtube won't sell. although they're not interested in a quick flip i think they'd be open to listening to what we could offer and how we could help them achieve their vision and objectives. we'd have to sell it to them, though.
> > >
> > >
> > >
> > > On 1/27/06, Peter Chane [redacted] wrote:
> > > > Youtube isn't up for acquisition; they want to get to the $500M+ MySpace valuation before selling. Until then I'm trying to figure out a way for us to work with them (Jeske I want to introduce you to the team there).
> > > >
> > > > Our primary objective with video is to get more of it online. It comes online for multiple reasons. Some like CBS/NBA comes online with distribution/monetization. Other content comes online if there's a community around it.
> > > >
> > > > I think Google needs to support both models although it's not clear that the Video team should build both.
> > > >
> > > > P.
> > > >
> > > >
> > > > On 1/27/06, Jennifer Feikin [redacted] wrote:
> > > >
> > > > > thx peter. i think before we do deals with puredigital or youtube, we first need to have a clearer strategy of where we're headed. what are our plans to host both premium and uploader content in a way that works for both groups, and for users seeking each? then i think we should acquire youtube, but pass on the pure dig deal. here's why...
> > > > >
> > > > > to date, our mission has been to host all video. we've gotten push back from users and content owners that you can't find the premuim content, and that they'd like to see the premium content separated. the community of uploaded content could work as a separated sort of world as well, with rankings, community features, etc. so how will we address each type of content, what community features do we want to have for each, and UI, and how will we combine the two in one product yet keep them separate enough to meet all these needs. they are different experiences -- one is about purchasing, one is about community/coolness/sharing with friends, etc.
> > > > >
> > > > > the group's overwhelming concern when we first talked to pure digital a while back was that we'd be innundated with a lot of home video. then we'd really be the world's largest home video site, as eric likes to say. 2M videos a year on top of our current 350K videos makes us have a lot of home videos.

> > > > >
> > > > > i think perhaps a better route to take would be quickly figure out the strategy of how to work with both types of content in the ideal ways, and then to acquire youtube. youtube has some great community features and they are ahead of us in the area of community. they'd supply us with the community and UI they've built, and we'd supply them with audience and scale. then, if they do a deal with pure dig, we'll get it anyway.
> > > > >
> > > > > i'd be inclined to pass on the pure dig deal right now (also b/c we don't have a private log in or sync right now, and our engineers need to focus on other major product issues right now). but i'd pursue an acquisition of youtube. and set a clear strategy of how we will keep thes two worlds of premium and uploader somehow separate but together.
> > > > >
> > > > > thx
> > > > >
> > > > >
> > > > >
> > > > > On 1/26/06, Peter Chane <[redacted]> wrote:
> > > > > Pure Digital is the company that makes the disposable and one time use video cameras sold at retail. I ran into their CEO today and he said they are close to signing a deal with Yahoo or Youtube to host their videos. They prefer to work with Google Video but we've been lukewarm on the idea to date. I have a feeling that a deal is imminent. At their current sales rate their users will generate about 2M videos a year (our index today is about 350k). Not sure how many of the videos from Pure Digital users will be public vs private.
> > > > > >
> > > > > Pure Digital is responsible for 15% of the video cameras produced in the world right now. Over time they expect that their technology will be in every still camera manufactured. Today the cameras are sold to individuals not professionals.
> > > > > >
> > > > > We need to decide if we want to do this or not. If we do it we'll need to build features to support sync from these cameras to Google Video. And we'll need to support a private video with invitations to others users who can view the videos.
> > > > > >
> > > > > I feel this deal is very compelling for a video site that is community based (youtube and what yahoo is buliding). We're planning adding community features but what Pure Digital needs is a step beyond what we're planning in q1. However a deal like this seems like a powerful way to kickstart a Google Video community. If we pass on this deal we could always index the content via RSS feeds from Yahoo or Youtube but we'll miss out on the community building.
> > > > > >
> > > > > I'd like to understand what folks think about this oppty.
> > > > > >
> > > > > Thx,
> > > > > P.
> > > > > >
> > > > > >
> > > > > >
> > > > > --
> > > > > Peter Chane
> > > > > [redacted]
> > > > > Senior Business Product Manager
> > > > > Google Video, http://video.google.com
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> > > > Peter Chane
> > > > [redacted]
> > > > Senior Business Product Manager
> > > > Google Video, http://video.google.com
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> > > > --
> > > > David S. Lee
> > > > Principal | New Business Development
> > > > Google Inc. | 1600 Amphitheatre Pkway, Mountain View, CA 94043
> > > > [redacted]
> > > > [redacted]
> > > >
> > >
> > >
> > > --
> > > Hunter Walk
> > > Business Product Manager, Google
> > > [redacted]
> > > [redacted]
> > >
> >
> >
> > --
> > Peter Chane
> > [redacted]
> > Senior Business Product Manager
> > Google Video, http://video.google.com

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[redacted]

From: Larry Page [redacted]
To: David Drummond [redacted]
Sent: Mon, 23 Jan 2006 06:12:14 -0800
Subject: Fwd: [Idea 3753] Partner/Acquire YouTube Before the Competition

Where are we at on this?

---------- Forwarded message ----------
From: **Dan O'Connell** [redacted]
Date: Jan 22, 2006 10:54 PM
Subject: [Idea 3753] Partner/Acquire YouTube Before the Competition
To: ideas@google.com

We should look to either strike a significant partnership with YouTube or simply acquire them before someone else (namely Yahoo!) does. Yahoo's been on a tear of late acquiring some very interesting and popular sites such as Flickr and del.icio.us - it would make sense with our release of Video for them to look in this company's direction. They also just so happen to be down the street in San Mateo.

According to a Nielsen/NetRatings YouTube had more than 3 million visitors in December (triple the amount from November) - they get an estimated 20,000 new videos a day with users watching some 10 million. They're really the Flickr of Video with an almost identical interface that users love.

A second option would be to overhaul the UI for Video and finally depart from our standard interface with something similar to Lighthouse? It's apparent that users really want to tag, comment and share.

Rate this idea:
5) Great idea! Make it so.
4) Very good idea.
3) Definitely has potential.
2) May not be worth the effort.
1) Probably not a good idea.
0) Dangerous or harmful if implemented.

Skip the rating and take me to the Ideas Message Board

From: Bill Brougher. Sent:11/29/2005 9:35 PM.
To: [-] Ben Gomes; Ramanathan Guha; Amit Singhal.
Cc: [-]
Bcc: [-]
Subject: vertical search thoughts.

Some considerations for your slides:

first - define verticals. are these things like travel and real estate (big multi-percent chunks of our traffic) or are they things like sports, recipes, celebrities (special interest). how are they different from horizontals - corpora that have broad coverage by topic but are restricted by characteristics such as content type (books, video), user generation (blogs), or fee (premium)

i'll assume we want to talk about verticals, large and small, and not horizontals. what is the real threat if we don't execute on verticals?

(a) loss of traffic from google.com because folks search elsewhere for some queries
(b) related revenue loss for high spend verticals like travel
(c) missing oppty if someone else creates the platform to build verticals
(d) if one of our big competitors builds a constellation of high quality verticals, we are hurt badly

some possible approaches

(1) form teams to go after top verticals. con: we can't put 1000 people on travel like expedia. we should still do it for some areas where search is an application like real estate

(2) heavy investment in onebox. if the top verticals are at the top of the pyramid, use a deliberate onebox approach to go after the middle and bottom tiers of the pyramid using google and third party oneboxes, respectively

(3) build a syndicated search platform for others to build major verticals. if we can't build the next expedia, let others do it with our technology. do it before microsoft does it. they already won the contract for the government search portal, firstgov.

(4) let *anyone* create a vertical (guha's path). addresses (d) above

(5) define key result page templates for main vertical query types and let seti decide which template to show. each page has web results and a big custom onebox section full of stuff we think is useful

(6) let user communities build their own searches (community rollyo) and share them. links to relevant vertical searches/filters/views/restricts appear on the left hand side or as chameleon suggestions

(7) automatically build these filters by identifying similar user groups and tracking their behavior, tailoring result sets for that user group and then providing a link to that result type set when someone in that user cluster comes along

From: Kavi Goel Sent:4/23/2010 9:58 AM
To: [-] Michael Adelberg; Mark Heynen; jmenzel
Cc: [-]
Bcc: [-]
Subject: Search narrative outline

Here is a draft of our search narrative. I've left it as text for now rather than putting it into a presentation, but tried to include whatever relevant data we would want to use to explain and justify our areas of strategic focus. We can discuss this in more depth and iterate in our meeting at 11.

I've included the attached slide (it was created for our quarterly board of directors presentation) because we can reuse the precision graph in our search narrative preso to highlight Bing's progress on core ranking.

Kavi

==========

SEARCH NARRATIVE

THREE AREAS OF FOCUS
1- New UI
2- Core ranking
3- Key genres

1) NEW UI

What:
Modernize the UI. Make it more fresh in terms of look/feel. Provide seamless transitions between Google verticals/modes (SSFE). Show a left side panel so that can provide tools to allow users to slice and dice. Make searching faster and allow slice-and-dice of results.

Major projects in this space
- Single Search Front End
- Skunkworks
- Search as you type
- Search as an app

Why:
Search is about more than just web pages. There is a lot of media. There are entities and attributes, not just web pages. We want to push the envelope in a very core way to the user experience.

Competition:
Bing has differentiated by innovating on the look/feel. Flashy home page, left panel. Yahoo has also added a left panel. Google needs to become a leader in UI innovation.

Metrics:
It's the UX for our company's core product. It affects all users. There is nothing more core to our business from a metrics perspective.

2) CORE RANKING

What:
Accelerate progress improving our search results precision. People should find what they were looking for in the first search result for head queries and long-tail queries.

Why:
Google leads competitors. The is our bread-and-butter. Our long-tail precision is why users continue to come to Google. Users may try the bells and whistles of Bing and other competitors, but Google still produces the best results. As soon as this ceases to be the case, our business is in jeopardy.

Competition:
Bing has recently made clear, significant progress on ranking bringing the two search engines closer to parity. It is critical to redouble our efforts to maintain our lead.

Metrics:
[include precision graph. See attached ppt]

3) KEY GENRES

What:
Historically, Google has focused primarily on general ranking algorithms and UI. Three years ago, with universal search, a shift was made to increase our ability to provide new types of media in search results.

About one year, we began investing heavily in vertical-based improvements beyond universal. Staffed up ranking teams to improve shopping results, began rich snippets. More recently added focus on people.

Major projects/genres and metrics:
- Universal (50%): TV/videos (17%+), local (13%), shopping (6%)
[Provide some stats on universal usage, impact on users?]
Video has grown heavily in recent years.
TV is increasingly online and is an important growing space as well
- People (potentially 4%) / social (potentially 20% or more)
- Entities/shallow verticals (6% today, potentially as big as universal)
Show stats on reviews experiment and clear positive impact on users. Slide 4 here
- Onebox (3%)

Why:
This is the next frontier for search. Vertical search is of tremendous strategic importance to Google. Otherwise the risk is that Google is the go-to place for finding information only in the cases where there is sufficiently low monetization potential that no niche vertical search competitor has filled the space with a better alternative.

Competition:
Many, many strong niche players. Amazon (shopping), Yelp (local), Kayak (flights), Hotels.com (hotels), Edmunds (cars), AllRecipes (recipes), ...

In addition, Bing has explicitly made improving verticals a key part of their strategy to beat Google. Offer cashback (shopping), purchased Farecast (flights), partnered with Wikipedia (reference), Wolfram (calculations and facts), and built verticals for events and recipes. More verticals on the way.

On the people/social front, Facebook is executing well. Becoming a major platform to find information using friends and colleagues rather than web pages.

Our strategy:
a) Staff up large teams around our largest key verticals --> universal and more recently people/social.
b) Build a scalable system getting structured data, showing it in useful ways, and providing faceted search experiences (slice-and-dice) for many other verticals --> rich snippets and google squared. Also Wolfram Alpha partnership, likely Metaweb acquisition, and new extraction efforts.
c) Maintain parity or better with competitors on oneboxes. These are long-tail but also high visibility and are cited all the time by journalists and bloggers when comparing search engine features.

From: Jeff Huber [redacted]
To: Alan Eustace [redacted]
Sent: Fri, 21 Sep 2012 00:46:19 -0700
Subject: Re: URGENT - Naming - Strategy Issue - Vertical Search
Cc: Susan Wojcicki [redacted], Nikesh Arora [redacted], Lorraine Twohill [redacted], Rachel Whetstone [redacted], Larry Page [redacted], Andy Rubin [redacted]

A few thoughts --

1. I fully agree that we can & should to have a common infrastructure/repository and query model for all basic structured data, and be able to do compound queries across it

2. That said, some very valuable data will never be fully modelable in a general structure (e.g., flight+fare searches are np-hard, maps geometries/ vectors), and will require unique structures

3. The open web that we knew & loved is going away, and being replaced with a siloed world on both the web and mobile where companies don't want to make data externally searchable because they want users to be in their brand experience and/or they want to have a commercial relationship for access to their data; some of these are sufficiently concentrated that we either need to submit to a monopoly supplier, or commit to generating/maintaining our own data

4. Much data in the real world is dynamic and changes rapidly; the common repository and ranking is a part of the equation, but success requires engaging users, businesses, and other ecosystem participants with incentives that make sense to provide, update, and curate the underlying data, and we need to have data pipelines to ~instantly normalize and update data (e.g., volcanoes don't change very frequently, local businesses change at ~20%/yr)

5. How the experience is optimized and presented matters a lot, and the experience varies by context; we need to have better browse and session-based experiences -- where either there isn't any query (and we recommend or provide a browse start point), or the initial query narrows the data set that can then be navigated by facets & filters. User expectation is shifting from links to answers being OK to users wanting the answer directly (or the most direct/efficient way to get it).

6. While I agree we shouldn't do verticals generically, there are a set of areas that are pretty fundamental to users day-to-day experiences and needs, and are very, very valuable -- online shopping for goods and services (7% of total commerce and growing), local search (20% of desktop intent and 40% of mobile intent), and travel (>10% of our current revenues, [redacted] global market); if we don't have experiences in these areas that are compelling compared to increasingly concentrated and branded alternatives, we risk losing relevance overall (e.g., Amazon is increasingly becoming the place you search for things and Google is the place you search for information). In these areas, the killer app is the the overall experience from intent to fulfillment (i.e., Amazon isn't winning because they have better search or a more general infrastructure, they're winning because the net experience from intent to fulfillment is much better). We don't have to own everything and we can work with partners, but our bar has to be a great end-to-end experience instead of just handing users off.

-Jeff

On Fri, Sep 21, 2012 at 12:04 AM, Alan Eustace [redacted] wrote:

> Crawling is just one approach to structure. For example, Youtube watches, Gmail, search logs, Chrome tab data, Android call data, etc will give us information that no other site has about the entire process of where the best kite boarding sites are, what you need to do to plan the trip, what times of the year are best to go, what equipment to bring, where to rent, what the temperature is, first-hand reports of being their, pictures, what your friends say, what the experts say. That experience cannot be replicated by verticals. We have that data. I might not be able to book a hotel, but I can create a great experience that drives traffic to the best sites to answer the detailed questions or handle booking. We don't need to own everything. Using the data we already have, there is a good chance that we know you are moving, changing jobs, having a baby, getting married, etc, and we can really help you with the queries that you should have asked but didn't. We have a value proposition that nobody else has. The technology is not quite there, but it is getting really, really close.
>
> Alan
>
> On Thu, Sep 20, 2012 at 11:48 PM, Susan Wojcicki [redacted] wrote:
>
> > I think the issue is more complicated than crawling those remaining 30% of the web. There are too many special purpose sites that offer great SEARCH experiences within their area of expertise and users are willing to go their directly. eg searching for a hotel on Booking.com for example, reserving a restaurant with OpenTable for example. I don't think crawling those sites will mean we offer comparable experiences to help me actually find a hotel or booking a table.
> > We need to distinguish between looking for facts, and taking a commercial action. I agree your solution will work for facts, but not for commercial transactions.
> >
> > On Thu, Sep 20, 2012 at 11:40 PM, Alan Eustace [redacted] wrote:
> >
> > > We absolutely need to create ecosystems that encourage 3rd parties to give us data, or to mark up pages so that we can get the structure as we crawl, or to find ways to get users to give us that data directly, or to use search history and chrome logs to get that data. I believe this is an easier problem than building verticals. For example, 70% of all the pages that are viewed have special purpose markup that the sites added to help Google understand the structure of the content, so that we can better direct traffic to those sites. I don't believe we have pushed hard enough, and because of that, we are making enemies of sites that could be friends.

Alan

On Thu, Sep 20, 2012 at 11:30 PM, Susan Wojcicki [redacted] wrote:

> I agree with what you are saying IF the information is available on the web and not in silos, closed databases on other sites.
> Restaurants in Palo Alto is not the same as comparing cars, or finding car insurance or finding which hotels are available on specific dates and at what prices; restaurants in Palo Alto is based on info that is on the web so we can search and compare it, the other experiences have the information in proprietary databases where different companies have added value by gathering that information.

Susan

On Thu, Sep 20, 2012 at 11:12 PM, Alan Eustace [redacted] wrote:

> You know my position.
> I don't think we want to fight amazon on their turf by building and branding a single purpose experience by a separate team. The same goes for Yelp and Local. What we need is to have the underlying data in the same format and data store, and support operations and user experiences that work across all of them. We should build an interface that makes it as easy to compare products as it is to compare hotels, or resorts, or flights, or hiking trails, or wedding site locations, or colleges.
> Yahoo in 1998 was on top of the world, with a huge fraction of all the traffic on the web. They built narrow verticals in finance, news, autos, etc, but they lost to search engines and the web. Finding great content is more important than owning all content. What google needs is deep generic experiences in a general infrastructure, where the addition of data defines the experience, rather than teams writing special purpose code.
> Restaurants in Palo Alto requires the same infrastructure and ranking as volcanoes in Italy. What we need to do is to use the collective searching experiences of all our users to predict what will be valuable to users across all domains, and guide them to the right places on the web. This is also the right data for Google Now, and for building great browsing experiences.

Alan

On Mon, Sep 17, 2012 at 1:43 PM, Nikesh Arora [redacted] wrote:

> Folks:
> I am keen to have a conversation where we align the strategy we have on the new sets of products we are launching - which are more vertical searches. We are being asked for names for:
> - Hotel Search/ Finder
> - Travel
> - Autos
> - Finance
> - Shopping

While i have a view across them, i am more keen to ensure that we have a common point of view on these, and answer the questions consistently.

Q. Why are we doing this?
Q. What is the organic vs advertising model on these?
Q. What is the future advertising model against these searches? Going from CPC to CPA?
Q. What is the principle we are applying to the UI in each of these cases?
Q. How do we plan to scale these around the world?
Q. Do these have landing pages? Or are they part of the "evolution of search"? Do they need to have individual names, and individual launch times?
Q. Are these new "mobile apps" - are they integrated into GMS - or are they part of Google Now?

I think someone needs to be responsible - i think its somewhere between Susan/Alan/Jeff - and we need to be able to have a common point of view, also think Andy needs to agree from a mobile point of view.

We should get in a room and agree this - we are being asked to name these things, think naming isnt the issue - the issue is alignment on strategy, this will make Rachel's life easier as well.

Nikesh

Question #1) How do we make sure we are the leader in search in 2007? What are the new innovations in search, new algorithms, new content? Will universal search work? How do we deal with the problem of "proliferating verticals?" How will we index and handle all the personal and user generated content that is so hard to rank? What information do we not have in our search index and how will we get it?

Bill Brougher, Ben Gomes, Sepandar Kamvar, Marissa Mayer, Udi Manber, Bindu Reddy, Amit Singhal, Johanna Wright

Summary

We believe that Google will remain the leader in search in 2007. This year, however, we must take steps to strengthen our position in the years to come. Specifically, we must:

- Focus on core search and continue to allocate 35% (1/2 of 70%) of engineering new hires to search in order to keep momentum.
- Create a mechanism that provides for aided exploration for users that have trouble formulating their queries.
- Commit to reinvention -- accept that we will make some user experience mistakes but that mistakes are important as they indicate a lack of fear of change and, hence, are a sign of progress and prevent staleness.
- Build on growing momentum around universal search through increased staffing and tactical execution.
- Invest in ranking excellence of a two-tiered index where [redacted] is the large volume low quality tier.
- Doing different "operations" on results seems very compelling (see on a map, sort by price) but requires structure, the technology to extract it for web content, and an infrastructure to support it. This is a hard problem and we are not focused on it or organized around it, particularly in the case of extraction. We need to organize and staff this effort in 2007 such that we either achieve success or understand with reasonable certainty that it is not feasible in the short term.
- Identify key vertical growth areas and build strength into our core search to support these functions -- identified as particularly important are people, products, and local.
- On the whole, we feel the growth of sites like MySpace and YouTube puts the search business in jeopardy. To secure a safe position in that environment, we should strive to be the search medium for those areas (video, social nets) and also provide some community interaction and entertainment within our core products as well (CCC and iGoogle).
- Turn having the largest user base into an unfair advantage by building out technology that improves linearly with user base size -- initiatives that have this property include: using toolbar data for personalized search, integrating recommendations, question/answering, and creator/trust rank.
- Identify local markets where we are likely to fail in search. Our analysis leads to the conclusion that Arabic, Thai, India, Egypt, Israel, Spanish, and Turkish in particular are at-risk markets. Staff people to analyze, correct, and focus on these markets.

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Continued investment in search quality

Observation: We have many promising ranking initiatives underway for the coming year. Recent gains indicate there is significantly more possible on core ranking. Initiatives include:

- Continued investment in our core ranking via query and document understanding.
- Continued investment in user signals, like clicks. Our search users create the first level of network effect for search quality and we are investing in this heavily.
- Hard queries: Queries for which users are frustrated even when they have told Google all they could, there is a strong effort to improve user experience for such queries.
- Query structure analysis: identify different types and look at past usage of those queries to improve ranking
- Suggestions for popular queries
- Rankboost: continue developing our learning system to take human rating data as input and predict new ranking signals
- Low link and small corpus ranking: important for integrating new deep web and mom & pop and international content
- Non-web ranking in preparation for universal search: improve and standardize ranking for other properties by applying tried and true web search techniques, augmented with domain information
- Continued work on personalization.

Remedy/Initiative to address: Situation doesn't merit remedy. We have built good momentum here through increased allocation and effort. We should continue to allocation 35% of new engineers to Search Quality (half of 70%).

Observation: Often users do not look for something specific, do not know how to formulate their query, or do not even know what they're looking for. We will also need to provide an exploration mechanism for concepts. Consider the query [proper spacing in documents] we could suggest to the user [line spacing] which will give much better results, and this direction is part of our query refinement effort. In addition, a better, and much more difficult solution, will be to try to really understand topics in both web pages and queries. The Prose project started in this direction with fixed attributes, user contributed labeling, and few selected domains. We will need to extend it web wide.

Remedy/Initiative to address: Add query refinements to popular and hard queries, and experiment with other ways to help users formulate the right query.

A commitment to reinventing ourselves

Observation: The threat of becoming "our father's oldsmobile" is very real and, due to the accelerated timeline of the web, it won't be along the same timelines (i.e. a generation), it will happen in a matter of years. On the whole, we have become too conservative and anti-change. There have been many observations of this trend -- tremendous pushback from Googlers on

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small changes like the more box, resistance to things like left nav because they seem big but not compelling enough, etc.

Remedy/Initiative to address: In order breakthrough this, we have to be comfortable with reinvention and change for changes sake. To do this we need to set aggressive goals around user experience changes - even if the changes made are ultimately mistakes - the beauty of running a service is that we can revert those changes or iterate to something new quickly.

Steps to make Universal Search successful

Observation: One of the largest points of user confusion or frustration is not knowing what content we have and how to get it.

Observation: With the deployment of librarian and superroot as well as with a strong team staffed, for the first time ever universal search seems realizable.

Remedy/Initiative to address: Don't let the perfect become the enemy of the good. Much progress has been made in the past year, but for this project to seem like a reality, the team must focus on an initial launch and then iterate. We will place two stakes in the ground to iterate upon. These launches should happen quickly, ideally in Q4 '06, allowing for continued improvements in 2007.

1. Launch a version of the infrastructure project that will enable universal search in the long run: data updated via Librarian to [redacted] and [redacted] layers, merged via a supperroot and support 100% Web QPS. This launch uses conservative ranking and UI in order to get out the door and not disturb our users.

2. Launch UI and ranking changes for news, local, and images integration. Differential UIs for news and local and increased coverage of the images onebox UI will allow users to start interacting with and seeing the benefits of Universal Search. This launch will also enable us to start seeing how users interact with the product changes and help to drive our direction moving forward.

Observation: To improve comprehensiveness and support Universal Search we plan to grow Teragoogle. We will expand the index to include more content and search [redacted] on every query. We will refresh it weekly significantly improving our age distribution and enabling better fall through from the base index when new content is added to base. There are operational changes that will need to occur in our indexing and serving infrastructures to accommodate this. Also, ranking is not as mature and refined in [redacted] as it is in [redacted]. However, Teragoogle can not do several ranking operations that are necessary for maintaining a state-of-the-art ranking system. Therefore, we will need to keep critical corpora in Mustang to maintain our lead in core properties.

Remedy/Initiative to address: Invest in ranking excellence of a two-tiered index. A richer index, Mustang, for advanced ranking operations to maintain our lead in core areas like web

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search, and a cheaper index, Teragoogle, which does not provide the same quality as a richer index but is less expensive for serving everything.

Deeper understanding of structured data

Observation: To enrich search, we must develop a deeper understanding of structured data and the powerful operations that having structured data can make possible for our users. Operations like attribute search over jobs, real-estate and personals as well as the ability to slice and dice existing data based on location, price and date.

Observation: We have fledgling extraction efforts underway right now, but not enough of a focus to take all of our petabytes of unstructured data and successfully extract structure.

Observation: This is a hard problem. It is not clear that it is solvable. Our current staffing and organization, however, is sparse enough that it is hindering our ability to assess feasibility.

Observation: We need a way to store and manipulate a massive amount of structured data. Currently that infrastructure is thought to be Google [redacted], but [redacted] is not ready for many of the requirements that will be placed on it by the extraction efforts above or the search needs.

Observation: For Google [redacted] to be successful and to surface on Google.com with any frequency, we must focus on quality.

Remedy/Initiative to address: Fund and organize to succeed in data extraction efforts. Given that the vast majority of our data is unstructured to provide great attribute search we need comprehensiveness. We will first assess the feasibility of extracting location, time and price as they will affect about 20-25% of the queries on Google.com. We also need to decide what infrastructure should hold structured data if and when we are capable of extracting it. Finally, we must get search quality engineers staffed on the task of ensuring quality in Google [redacted] and in extracted data. Key issues to address are attribute convergence and normalization.

Improving web search in high-growth areas that are weak on Google today

Observation: When Google search is deficient in an area, we open up the opportunity for vertical search engines to fill the gap. Thus, as we assess where Google search needs to improve, one method for finding weaknesses is to look at what sites particularly in vertical search are growing quickly (with the assumption that this generally doesn't happen if Google is filling that need well). The team developed the following analysis of areas where vertical search engines are growing quickly and cross-correlated it with 3rd party data:

Priority	Area	Rationale	Initiative
1)	Better name search	Explosive growth of MySpace (2B pvs/day)	Use SPDs to acquire content. Pay social networking sites to enable crawling. Develop an ads product whereby people can submit their names to appear on Google

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2)	Better product search	High commercial value (10-12% of searches)	Focus on quality and coverage within Google [redacted] and web ranking
3)	Build an understanding of local and real estate into Google	Fast growth in real estate and compelling opportunity to enhance local	Combine user interface. Enable users to generate content where it does not yet exist online
4)	Enhance experience of job related queries on Google	Drive too much traffic to competitors monster and hotjobs	Focus on quality and coverage within Google [redacted] and web ranking
5)	Improve spammed travel queries	High revenue area with poor quality search results	Improve understanding of spam signal and how they affect this area

(See Appendix for supporting data)

Remedy/Initiative to address: Initiatives noted in 4th column above.

An orthogonal threat: websites with social interaction and high entertainment value

Observation: When reviewing the quickly growing websites (MySpace, YouTube), the team developed an opinion that these social networking sites will ultimately represent a threat to our search business as people will spend more time on those sites and ultimately may do most searches from the search boxes available there. They aren't direct competitors, but they may displace us in end-user time tradeoff. This is particularly true of Live.com whose traffic grew over 1000% as Microsoft transitioned MSN Spaces to Live.com. The analogy that we discussed was a library - Google - in the face of the dawn of movie theaters - MySpace, YouTube - where it even seems possible that the movie theaters will build in bookstores or libraries. While it is comforting that libraries still exist, there's no question that movie theaters now get more consumer time and do more volume. Since it seems unlikely that we will be able to convince people to be entertained less, we feel it is important to develop an entertainment strategy.

Remedy/Initiative to address: Our remedy has four prongs prongs. We need to own the search box on the entertainment sites, we need to be the search site where you can find entertainment content, we need to succeed in social networking, and we need build entertainment and social interaction into our search experience.

1. The first prong falls to our syndication team which should target these rapidly growing sites and win all major syndication deals to own the search boxes.
2. Become the search site for this type of content. This means comprehensive indexing of MySpace, YouTube, NetVibes, RSS, and so on. If we succeed in being the primary way to search these vast arrays of content, this will offer us some protection from these fast growing sites as we will likely grow proportionally to them. We need to staff two efforts, aggressively acquiring this content for indexing and improving low-link ranking.

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3. The third prong falls to the CCC team where they need to succeed in social networking (Orkut?).
4. We need to integrate the CCC products as well as more serendipity into our search experiences. We believe that iGoogle, Desktop, and OneGoogle are all good first steps.

More users = Better search; Linear/exponential improvements that leverage Google's user base size

Observation: Google has more users than any other search engine by a large margin. If we could find a way to improve search that scaled linearly, or even better exponentially, with the size of the user base, we could harness an unparalleled advantage.

Remedy/Initiative to address: The best way to find such an advantage is to invest in and explore areas where this kind of finding seems possible.

- Use more pervasively the data that we have available to us, including toolbar and Orkut data. We have a huge number of users and a huge amount of data generated every day that could improve search. We continue to worry about privacy, implications, perceptions, coverage, but we've talked about it for years and we should use toolbar data much more pervasively in 2007.
- Build out recommendations based on user data/behavior. Search is really about recommendations. Even some of our non-search-based products are essentially recommendation engines (News, Desktop, iGoogle). If we can harness signals from user behavior into coherent recommendations, we should be able to build an unsurpassed recommendation engine. In order to do this, we will deploy the generic recommendations infrastructure that the personalized search team has built across various product suites.
- Invest in question-answering. Question-answering remains a highly volatile, highly opportunistic space. We anticipate many changes in this industry in the coming months. If question-answering takes off on in the global market (we can note it already has in Asia), the best question-answering network will be the one with the most users participating and the best sense of user reputation. Our user base and network effects leave us well-positioned. The MUSE project extends the traditional question answering model by adding syndication, one of our core strengths. Questions and answers will be posted on relevant search results, but they will be also syndicated to relevant publishers (using an AdSense-like matching technology) and shown all over the web. Publishers will gain relevant interesting content that will attract users, and they will gain traffic generated from us. We will gain access to users who are more likely to be familiar with the questions. Reputation management will be a core part of this effort.
- Develop creator-centric ranking and browsing of user-generated data. For ranking and discovery of user-generated data, we will develop a ranking of *content creators* and will integrate this ranking as a signal into core search.
- Increase the number of signed-in users and the amount of data per signed-in user in order to broaden the impact of the above three initiatives. Currently, our guarantees of transparency, security, and control allow us only to personalize the Google experience for

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those users who are signed in. Today, 8% of results pages are from signed-in users. We plan to increase the number of signed in users with both internal and external strategies. Internally, we plan to (a) experiment with a tiered login system and (b) continue to invest in products that will incent people to both sign in for search such as iGoogle and Google Notebook and bring their data online where it is accessible and searchable by them such as Writely and Picasa Web. Externally, we recommend the acquisition of facebook.com, which we believe will double the number of signed-in searches on google.com [2] and allow us to provide a higher quality of search and recommendations due to the extent of personal data available. An interesting case study is the impact of orkut.com on the number of Brazil signed-in searches. In June of this year, 1% of queries on google.com.br came from signed-in users. Today, 19.45% of queries from google.com.br come from signed-in users, as compared to 8% from the next highest domain, google.com, and 5.2% from google.com.in (also a country with high orkut usage).

Which international markets are in trouble?

Observation about content: In Korea the ratio of pages in our index to active internet users is 8:1, whereas in the US the ratio is well over 100:1. This relative lack of content created an opening for Naver to seed the search market with Knowledge Search content. Our analysis shows risk the same thing happening in smaller markets including Arabic markets, India and Thailand.

Remedy/Initiative to address: Address lack of content by building systems to encourage generation of content in small markets – Arabic markets, India, and Thailand. Our search ranking algorithms are not useful unless there is enough content to rank to have a broad interest search engine. We estimate we need about 200 million documents to return quality results, about the size of the Google News archive search index.

Observation about coverage: We lose in markets where we don't achieve comprehensiveness. Better coverage than allowed Baidu to get a foothold in China in 2001-2004. Our crawl analysis indicates that we have a similar lack of coverage in Spanish speaking countries and in Turkish speaking countries (See appendix International Content Analysis).

Remedy/Initiative to address: Expand coverage in Spanish and Turkish.

Observation about language specific changes: Yandex beat us in Russian because they had a better understanding of the language. Reinforcing this theory, we saw a small change focused on improving morphology grow our market share from 15% to 22%. This highlights the importance of excellent understanding of the language and good language tools.

Observation about focus: We risk losing in markets where we aren't paying attention. For example, last year at this time we were #1 in Eqypt. Today we are #2 to Yahoo!. This has happened because in the past year they had people working on Egyptian and we did not. Similar things are happening in Israel.

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536

Remedy/Initiative to address: The Search Experience Specialist Program (SESP) program will identify and employ have native speakers in different countries to send us feedback on Search Quality and UI.

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References

[1] Kamvar, Schlosser, Garcia-Molina. The EigenTrust algorithm for reputation Management in peer-to-peer networks
(http://scholar.google.com/scholar?hl=en&lr=&cluster=12096326994709710049)

[2] At approximately 300mm pageviews per day (extrapolated from http://www.facebook.com/jobs_engineering.php), facebook.com has almost as many pageviews as google.com results pages (from https://www.corp.google.com/~logs/newreports/google/2006/10/21/gws.html). If 10% of those pageviews result in a query, then we will have doubled the number of logged in page views. Furthermore, a facebook acquisition would allow our own users to search over a large repository of personal information that google currently does not have access to.

Appendices

Appendix: Vertical Analysis

People search and social networking is the fastest growth area on the internet right now with MySpace as the clear leader. MySpace has 2B daily page views and accounts for 11% of Google traffic up from 4% in January, and [myspace] has surpassed [ebay] in the volume of queries issued from google.com. In the past there have been many popular culture references to "googling" someone to find out more. This points to Google's ubiquity and the idea if people do not know where to go to find information, they should go to Google. In the future, we do not want users "myspace" people for more information. Google should host all information about a person, including myspace info.

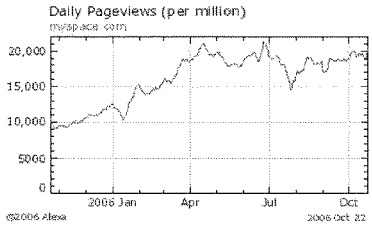
Product search also represents an area of concern. While we have a high percent of google.com query volume, 10-12% and the most comprehensive data-set (250 M products) for products, we are sorely lagging behind on product search. eBay and Amazon are the leaders in this category with more than 400 M/searches per day. Become.com and eDeals are fast growers in this category quickly surpassing Froogle (Forbes - add to sources). Looking at category growth numbers from comscore, retail remains one of the largest categories.

Real Estate is a fast growing vertical and there is no clear winner in this space as yet but Century Remax and Century21. C21 grew 454% in page views but only 1% in unique visitors from Mar-Sept 2006, Remax grew 270% in PV, 2% in UV. So both sites were high growth in that people were looking at a lot of pages -- probably folks looking to purchase RE before interest rates rose any further or people looking to sell before the predicted downturn -- but not a lot of new eyeballs (Fiona Lee's report & ComsScore data)

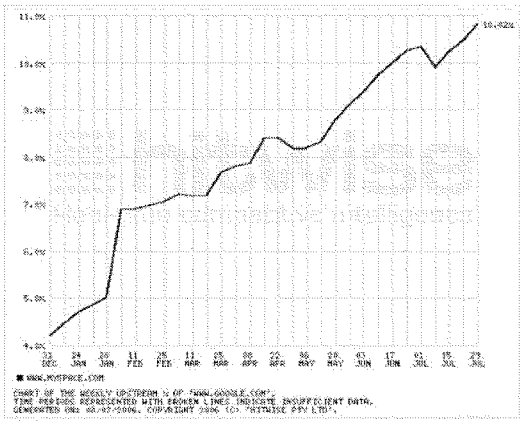
Myspace page view growth reaches 2B

1 year chart from Alexa Internet shows MySpace reached 2 billion page views in October 2006.

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Almost 11% of traffic to Google.com was previously at MySpace

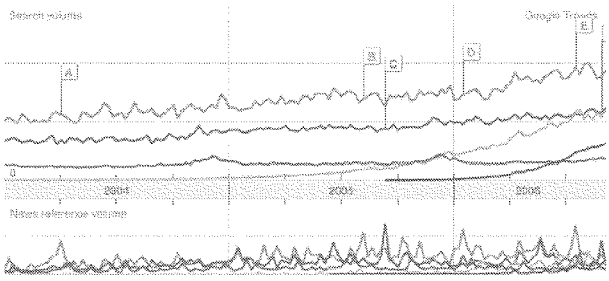


Social networking traffic growth via Google Trends

Query volume to [myspace] and [youtube] surpassing popular sites like ebay and amazon.

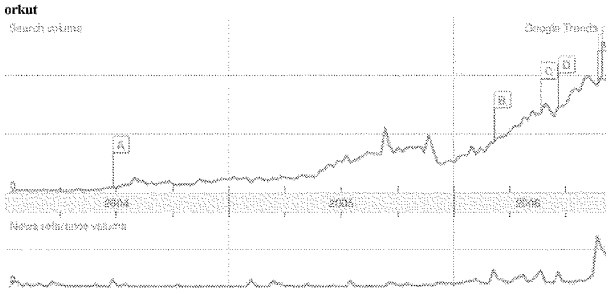
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yahoo **ebay** **myspace** **amazon** **youtube**



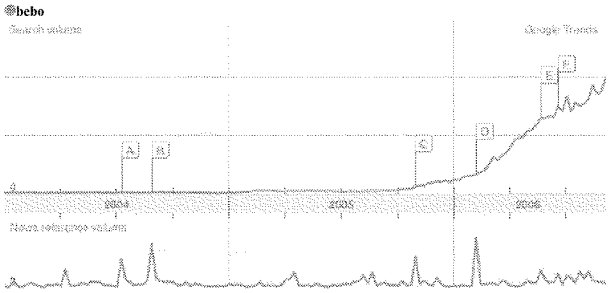
Internationally popular communities sites follow this growth curve, examples are [orkut] and [bebo]

orkut

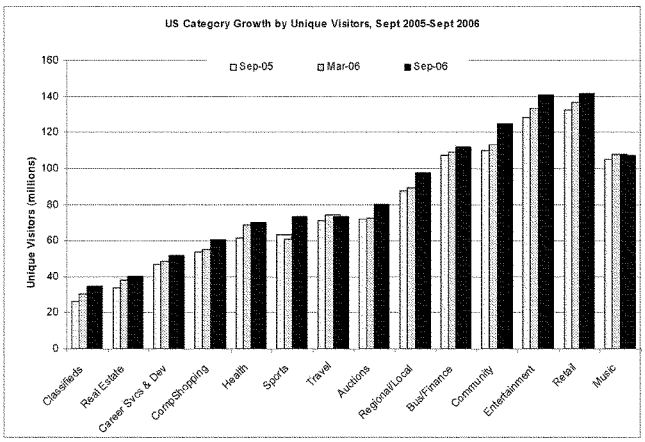


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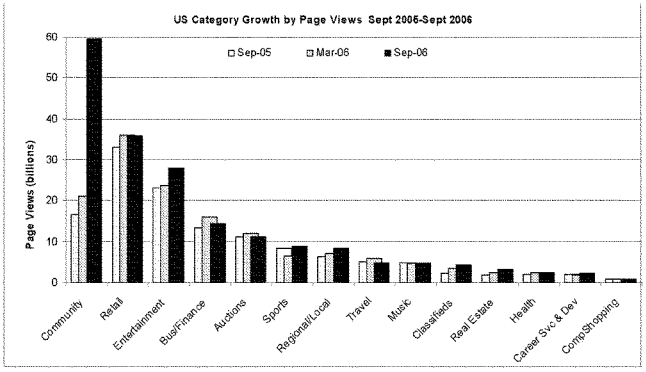
Example 2 [bebo]



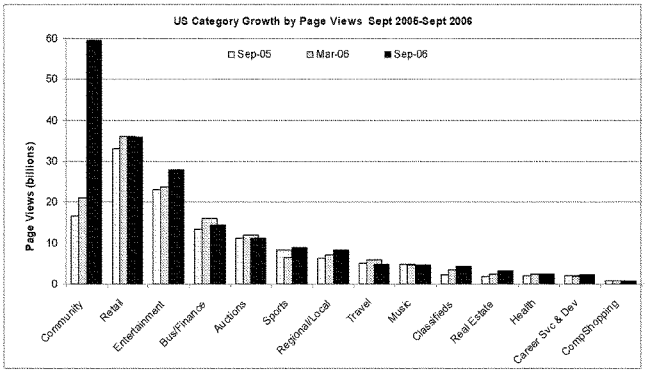
Entertainment, Real Estate, Finance, and Local continue to have high growth and large numbers of visitors



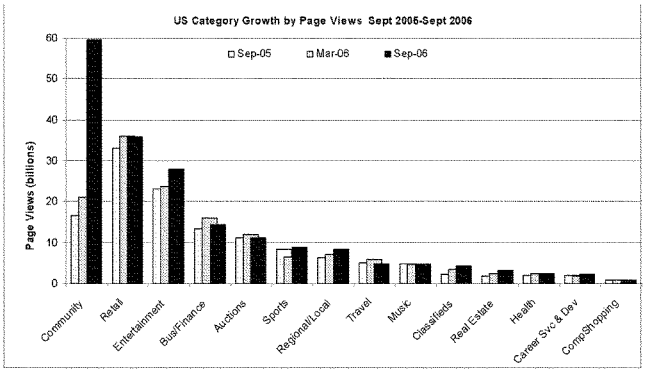
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World wide:



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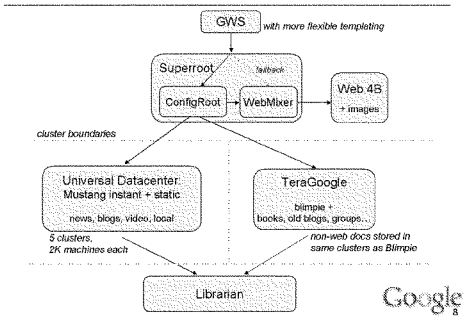


Appendix: Universal Architecture

We will use Librarian for index updates and all teams will be required to add live data updates to Librarian. We'll maximize the use of Teragoogle for data storage in order to minimize the use of machines. All other data will be stored in Mustang. The Mustang instant layer allows for frequently updating types of content and documents (like blogs and news). Superroot will support merging and re-ranking of data from different corpora. We will provide a standard mixing algorithm so that all types of content can be included. Finally, we must invest in a "Universal Front End" system that will enable the UI variety we anticipate. The Universal Front End will be a refactoring of GWS so that we are able to have incremental launches. It is important that this project get staffed and underway soon.

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Universal serving diagram



International Market Share

- Russia: significant product improvements to core search and more aggressive localization of products has yielded improvements to search market share (9/2005: Yandex 47%, Google 15%; 9/2006: Yandex 46%, Google 22%; source: Spylog.ru)
- Japan: Google products & share improving. (1/3 of *all* Google mobile page views now come from Japan, followed by US (1/6), Google Maps Japan PVs has doubled from 8M/day to 16M/day in the past 3 months. Trails only US. Search share is flat.) Partner network under serious threat by Yahoo!Japan and impending launch of MSN AdCenter. (Lost Excite and Biglobe was a difficult renewal) MSN will likely offer large guarantees.
- China: market share slipping further; 2005 (Baidu: 48%, Google 33%), 2006 (Baidu: 62%, Google 25%); source: CNNIC, Annual China Search Engine Report, 2005/2006
- Korea: Naver (65%) and Daum (19%) dominate the search market with Google far behind (<2%); source: Korean Click

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Apple Need to Know Confidential

MEMORANDUM

Date: January 31, 2017

To: Antitrust File

From: Deena Said, Antitrust Compliance Officer

Subject: **Section V.H of Final Judgment**

Pursuant to Section V. H of the Final Judgment, Apple's Antitrust Compliance Officer shall furnish to the United States and the Representative Plaintiff States on a quarterly basis electronic copies of any non-privileged communications with any Person containing allegations of Apple's non-compliance with any provisions of this Final Judgment or violations of the antitrust laws.

For the period October 1 to December 31, 2016 (roughly Apple's First Quarter), Apple did not receive any new allegations of Apple's non-compliance with any provisions of the Final Judgment or violations of the antitrust laws.

In previous reports, I have provided letters from Spotify alleging anti-competitive behavior on the part of Apple as well as Apple's response. I am now providing a letter sent by Apple's General Counsel to Spotify's General Counsel, explaining that Apple had discovered, once again, that Spotify was not complying with the App Store rules. Spotify's General Counsel responded to this letter on November 21, 2016.



October 28, 2016

Horacio Gutierrez
General Counsel and Secretary
Spotify USA Inc.
45 W. 18th Street
7th Floor
New York, NY 10011

Dear Horacio,

It pains me to have to write this letter. I had hoped that we had resolved the issue of Spotify's compliance with our App Store rules when Apple approved Spotify's most recent app update. On the surface that app appeared to comply with Rule 3.1.1, a rule we have discussed with your team at length. Unfortunately, as we have lately discovered, the new app does not comply with Rule 3.1.1 – it merely disguises that non-compliance in a way that makes it difficult for our reviewers to detect. Apple has gone above and beyond to explain its rules to Spotify, spending inordinate time and resources with your team to insure that you are given every opportunity to conform your app – just as every other app developer has done. We have provided multiple opportunities for you to address those issues, including expedited review of Spotify's most recent submission. Despite all of this effort it appears that Spotify is attempting, once again, to receive specialized and privileged treatment.

As you must be aware, Spotify's current app directs users to link out of the App Store and go to Spotify's website for all commercial transactions. The app presents an ad to users acquired via Apple's App Store that encourages the user (at the conclusion of their free trial period) to click on the ad and be directed to Spotify's website to pay for Spotify's premium service. As you and the entire Spotify team know, because we have explained it to you repeatedly, this violates Rule 3.1.1.

Spotify is once again using the App Store as a means to attract potential subscribers while at the same time ignoring the rules of the App Store. As I have stated before in correspondence with you, if a developer is selling digital content from within its app then it must use in-app purchase. If a developer chooses not to use in-app purchase, it is free to do so. A developer is also free to sell traditional content such as music (including via subscription) outside of the app and then offer consumers a way to access that content from within app. What a developer cannot do is seek to use its iOS app as a marketing tool to redirect consumers outside of the app to avoid in-app purchase. This fundamentally undermines the App Store business model.

Apple
1 Infinite Loop
Cupertino, CA 95014

T 408 996-1010
F 408 996-0275
www.apple.com

It is unfortunate that Spotify has decided to willfully and deliberately violate our rules once again. Spotify must immediately bring its app into compliance by removing this latest feature and any other feature that violates our rules. As has been the case throughout this process, we remain available to answer any questions you may have about those rules. The required changes to your app are easy to implement and can easily be explained to your team.

Apple has treated Spotify in a fair and transparent matter throughout this process. However, we cannot allow Spotify to ignore rules that apply equally to all other developers. If our rules change I will let you know at once but for now, and in the future, if Spotify wishes to continue to utilize the App Store, it must follow the rules that apply to every other app developer. Your failure to do so will result in removal from the App Store. I remain hopeful that we can finally move past this issue.

Kind Regards,

Bruce Sewell
Vice President and General Counsel
Apple Inc.



Spotify USA Inc. 45 W. 18th Street 7th Floor New York, NY 10011 USA

November 21, 2016

Bruce Sewell, Esq.
SVP, General Counsel and Secretary
Apple Inc.
1 Infinite Loop
Cupertino, CA 95014

Dear Bruce:

I was surprised by your October 28 letter. Considering that Apple twice approved the latest versions of our app, we thought we had moved past these issues and the sorts of threats your letter makes against us and our users. Since it appears we have not and your team has now taken the remarkable step of revoking approval for Spotify's previously approved app and, once again, threatening us with removal of our app from the App Store, I would like to set the record straight.

First, you say that Spotify's current app *"directs users to link out of the App Store and go to Spotify's website for all commercial transactions."* That is not true. Our app does not include a link to Spotify's payment flow, and Spotify is in no way violating Apple's App Store rules. Instead, Apple seems intent on preventing Spotify from communicating with its customers, even via e-mail outside the app itself. Plainly, there is no legal or contractual basis for Apple to interfere with app developers' right to directly and freely communicate with their customers, especially in a case like this where the communication takes place outside the app itself.

Second, you suggest that Spotify somehow misled Apple into approving its app. But you know that when our app was approved back in September, it was submitted at your team's express invitation and with a specific request to update specific features; it was not conditioned upon any change in the operation of the app or any other commitment on the part of Spotify. It is clear from our correspondence on this topic over the last several months that Spotify's position has been clear and completely above board, and that it has not change during the app review and approval process.

Apple's Unwarranted Complaints About Spotify's Current App

Your letter and Apple's App Review Team complain that our App violates the App Store rules in two ways: (1) because we serve an ad for Spotify's family plan that does not link to any external purchase mechanisms; and (2) because of an off-platform email to Spotify's users. Neither violates Apple's rules.

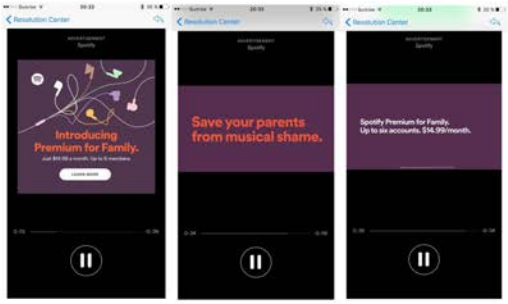
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Spotify

Spotify USA Inc. 45 W. 18th Street 7th Floor New York, NY 10011 USA

Spotify's Family Plan Ad

On November 2, your review team revoked approval of our app and informed us that an ad for Spotify's Premium for Family plan violates Rule 3.1.1. The ad shows three screens.



If a user selects the "Learn More" button, the user is directed to a "walled-off" web-page that provides *information* about Spotify's discounted Family Plan. Spotify specially designed this walled-off web-page to comply with the App Store rules. As such, the ad does not link to Spotify's web-based payment flow nor does it provide information about how to purchase the Family Plan. It is not possible for a user to navigate to Spotify's web-based payment flow from the site. *See* https://www.spotify.com/us/watch-now/family-learn-more/. The ad neither *"link[s] out to external mechanisms"* for purchase (former Rule 11.13) nor *"direct[s] customers to purchasing mechanisms other than IAP"* (Rule 3.1.1). As such, we are confused as to why Apple is now claiming this ad violates the App Store Rules and would appreciate an explanation of why you believe this violates App Store Rule 3.1.1, and why you believe this rule applies to the Spotify app in the first place.[1]

[1] Your letter and the App Review Team repeatedly refer to Rule 3.1.1, which was introduced in June 2016 after months of disagreement with Spotify about these very issues. Apple publicly stated that "the guidelines themselves haven't changed" in that update. *See* https://developer.apple.com/news/?id=06132016c. To the extent that you interpret Rule 3.1.1 as having altered the scope of the previous rule 11.13, it does not apply to our situation because it is a unilateral change designed to prohibit behavior that was previously in compliance with Apple's old rules.

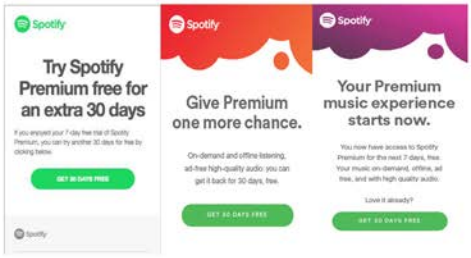
Spotify

Spotify USA Inc. 45 W. 18th Street 7th Floor New York, NY 10011 USA

Free Trial and Off-Platform Communications with Customers

Second, your App Review Team has again taken issue with Spotify's free-trial and email communications with its customers, claiming that these communications violate Apple's App Store rules.

Examples of Spotify Emails Offering Users A Free Trial



To be clear, these communications with our customers about the 30-day trial of Premium service take place over email, entirely outside the iOS app environment. Apple and numerous third party app developers do just the same. I cannot understand how Apple would think it has the right to control or shut down those off-platform and out-of-app communications with Spotify's customers. There is no legal or legitimate business justification for such an intrusion into communications between an app developer and its customers that occur via email, completely outside the app. Indeed, in my July 18, 2016 letter to you, I wrote:

> Given the absence of any in-app mechanism for subscription, it appears once again that Apple takes the position that even off-platform emails sent by Spotify to users of its free app violate Apple's App Store rules unless we agree to use Apple's IAP. Yet, there is no contractual or legal basis for such assertion, and a ban of all such off-platform communications represents an unreasonable (and crippling)

Spotify USA Inc. 45 W. 18th Street 7th Floor New York, NY 10011 USA

interference by Apple in the business of freemium app developers like Spotify, who depend upon such marketing efforts to build their business.

Neither you nor anyone else at Apple ever responded to these concerns. We had no reason to think this was an ongoing issue. But, most importantly, as a general matter Apple's attempt to interfere with Spotify's communication with its users is unlawful, and an unreasonable extension of the letter and spirit of Apple's own App Store Rules with serious anti-competitive effects.

Apple Has Constantly Changed Its Rules and Applied Them Inconsistently

You also claim that these *"rules ... apply equally to all other developers."* This, too, is wrong. Like prior correspondence, your letter ignores that Apple is favoring its own downstream music streaming service by imposing discriminatory and unfair terms and conditions on Spotify--instead of competing on the merits. In addition, Apple applies its IAP rules only to apps that charge for digital goods, which happen to be the apps that compete directly with Apple. But those rules are applied inconsistently. We have observed many inconsistencies in Apple's App Review Process which result in other apps being permitted to do the very things your team actively prohibits Spotify from doing.

To illustrate, Apple rejected Spotify's app for having links to its website in its Terms of Service. Deezer, however, is permitted to have links to its website through its terms and conditions where direct access to an upsell through their web-based payment flow is possible. Other apps that are either freemium or have free trials (*e.g.*, LinkedIn, Instapaper, HootSuite, etc.) are also permitted to have hyperlinks from within the terms and conditions pages to their websites. This all is well beyond what Spotify's app does, and one is hard-pressed to imagine what could drive such obviously discriminatory treatment besides an attempt to unlawfully gain competitive advantage.

Further, Apple has used ad hoc interpretations of its rules to reject Spotify's updates. For example:

- In May 2016, Apple claimed that Spotify could not communicate in-app with its users about discounts and alternative payment systems even though Spotify never presented the user with a "link" or "buy button."

- In June, Apple claimed that both the "email me offer" for a free trial button and Spotify's account registration feature violated the "spirit" of the app store rules and unwritten "business model rules," even though there is no actual rule against it. Spotify removed that button in response to Apple's complaints, though it was clear that the button did not violate Apple's rules at the time.



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- Then, while Spotify's app was still in the review process, in an obvious effort to conform its rules with its business goals, Apple unilaterally replaced Rule 11.13 with new App Store Review Guidelines Rule 3.1.1 prohibiting not just links to external mechanisms but also "calls to action that direct customers to purchasing mechanisms other than IAP."

- Later that month, Apple claimed that Spotify could not communicate with its own customers, inside its own app, about the existence of its own Premium service—even if there was no link, button, or mention of any offer of any kind.

- Shortly after our meeting in early July, Apple objected to an *out-of-app* welcome email to free users, claiming that this email violated the App Store Rules because it mentioned the Premium service.

- Just a few days later, Apple claimed that the combination of the 7-day trial period and out-of-app emails about that trial period violated the rules—even though no financial information was exchanged, and there was no in-app mechanism by which the user could upgrade to the Premium service outside of the app.

- Now again, your App Review Team invokes the same logic for reversing its prior approval of our update.

Throughout this period, we have tried to accommodate your shifting IAP-related demands targeted at Spotify, but it is difficult for us to understand and predict how you are interpreting your rules given how your position continues to change over time.

*****

Spotify does not seek "specialized and privileged treatment;" to the contrary, we are trying to avoid specialized discrimination. Apple has invoked its discretion over the App Store review process to creatively interpret the App Store's Rules in a way that prevents Spotify from operating as other apps can. All developers have a clear and unambiguous legal right to directly and freely communicate with *their customers*, and the playing field must be level. Apple's attempts to control this aspect of Spotify's relationship with its customers is particularly troubling given that Apple and Spotify compete directly in the digital music market.

I remain hopeful that we can put these issues behind us. Apple has built an important platform, and we understand that Apple wants to manage and run it. But like so many other developers, we have invested enormous resources to deliver an innovative product and

Spotify

great user experience to consumers, and we cannot allow Apple use its control over the App Store to harm Spotify's relationships with our customers. As always, we are open and willing to work with Apple on a reasonable solution. But we cannot operate under a cloud of constant threats of removal of our app from the App Store without justification.

Kind Regards,



Horacio Gutierrez
General Counsel

Spotify USA Inc. 45 W. 18th Street 7th Floor New York, NY 10011 USA

HIGHLY CONFIDENTIAL -- SENSITIVE BUSINESS INFORMATION HJC-APPLE-013586

Subject: Re: MDM?
From: Confidential
Received(Date): Tue, 04 Jun 2019 17:02:31 +0000
To: "Bill Havlicek" <Confidential>
Cc: <Confidential>, <Confidential>
Date: Tue, 04 Jun 2019 17:02:31 +0000

Hi Bill, so just following up, I just read the new 5.5 guidelines for the the MDM use.. WOW!! I cant believe how much money that costed us in the 6 months and Apple "Changed their mind" on the usage?

As a company that got booted from your store, then spent a little over 30k in re-developing the app with your team helping us write the code to make it compliant, to Apple now just saying you can use MDM again.. I mean WOW talk about death to a small company like ours trying to make a difference in screen time health for kids. Especially knowing we never went to the media or brought this to any legal and gov attention. I feel like we were just spit out for playing by the rules.

Is there any help with this massive loss that Apple can help us out with?

I am so disappointed in this reversal of decision with really nothing much changing from the developer side as far as the technology goes. From the guidelines we just have to list the reason for using MDM and assuring we are not storing or selling the data… which from the very beginning we complied to these new standards that Apple set, before these rules were even set.. we never collected any data other than a Childs name and how many steps they took (which erased off our server every night at midnight)

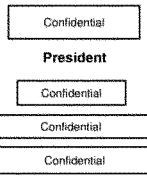
Please help

- **We complied with all this prior to being banned from the store and rebuilding our app with your NEVPN compliancy**

- **5.5 Mobile Device Management**

Mobile Device Management Apps that offer Mobile Device Management (MDM) services must request this capability from Apple. Such apps may only be offered by commercial enterprises (such as business organizations, educational institutions, or government agencies), and in limited cases, companies using MDM for parental control services. You must make a clear declaration of what user data will be collected and how it will be used on an app screen prior to any user action to purchase or otherwise use the service. MDM apps must not violate local laws. Apps offering MDM services may not sell, use, or disclose to third parties any data for any purpose, and must commit to this in their privacy policy. Apps that do not

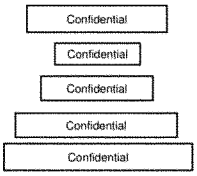
comply with this guideline will be removed from the App Store and you may be removed from the Apple Developer Program.



On Jun 4, 2019, at 7:50 AM, Confidential wrote:

Bill, Good Morning,

I was just reading an article in the NY times that Apple is now allowing MDM apps in the App Store for consumer use? Can you please confirm that this is the case?



Subject: Please Help with our App
From: Confidential
Received(Date): Thu, 17 Jan 2019 16:13:56 +0000
To: Confidential
Date: Thu, 17 Jan 2019 16:13:56 +0000

Eddy,

After my phone call with Bill Havlicek on Tuesday, I know my emails are reaching you and your department. I am hoping that you have read our issue where your App Development Technical Support Department has helped us code our updated app to comply with Apples new NONE MDM compliance and yet the app was still rejected. The amount of money and time that was spent working with your Developer Support Department and hours of coding and implementing the NEVPN solution Apple provided us to use and certificate authentication to make our VPN work, knowing exactly what our app does, only to be rejected by Apple saying "we don't support Parental Control Apps anymore" -

The original App cost us in excess of 200k to build that was approved by your department when we were using MDM.

- We followed Apples MDM documentation/guidelines and created code that falls in your guidelines provided.

- We invested more money into the app with new features and updates which were again approved by your department

- We took on a National PTA partnership as our solution was a solution that made such an impact on schools across the country.

- Additional Updates were made and approved

- We were adopted by users/parents/schools and implemented after spending 100k on a NPTA partnership for marketing to schools and parents around the country.

Then With the latest update to our app, Apple rejected our app, stating that MDM was no longer allowed and that we would have to implement a solution without using MDM. After a few back and forths, we were directed to Apple DTS where we were passed to Quinn who over the period of over a month and half helped us develop the functional NEVPN solution that we recently submitted. Rejected again.

How Can this be? How can the app that your own DTS team participated in building to resolve the rejected MDM issue be then rejected? NEVPN was the proposed solution made by your department.

We spent an additional 30k+ in this fix just to be told "we no longer support Parental Control

Apps" which, in your App Store, you still have parental control apps that are purchasable and downloadable that use MDM and even say in the description they use MDM. (KidsLox)

Please help us out here and help me understand a little more clear than the answer we received from Bill "Sorry, there is nothing I can do"

I understand that you are a very high up exec and VP at Apple. And I know that my last 3 emails that were addressed to you have been answered by your team members, but I am really hoping to have a conversation and hopefully come up with a resolution that works for both of us in regards to this matter. I really do not want to take this issue to press or pursue a legal confrontation, but a small company like ourselves was just highly impacted by these recent actions. I would prefer to work with Apple in a solution keeping its high reputation stated in articles like :

https://www.theguardian.com/technology/2018/jan/09/apple-children-parental-tools-controls-iphone-addiction-claims-open-letter

We would love to continue to work with Apple with our Goya-Move solution in addition to a couple of other solutions that we have that would put Apple on the forefront of Digital Well-Being and brought to the top as a company that cares about Digital Health when it pertains to Children.

Being a National PTA Partner, Im sure that CalSTRS and Jana Partners would appreciate the solutions that we are trying to work with Apple

Looking forward to your prompt reply

Confidential

President

Confidential

Confidential

Subject: Re: Business Interruption
From: "Sievert, Mike" <Confidential>
Received(Date): Thu, 06 Sep 2018 22:31:53 +0000
To: "Philip Schiller" <Confidential>
Date: Thu, 06 Sep 2018 22:31:53 +0000

Thanks Phil. I appreciate the extra time. I'm confident that once we've explained how this product works, including how it requires network infrastructure elements, that the team will understand how it's not helpful to the customer (or particularly feasible) to provide an in-app purchase. In order for 911 service to not be interrupted, for example, we must first make absolutely sure that the user is a T-Mobile customer, properly set up on the T-Mobile network, with a network feature enabled.

Good luck with the big announcement next week.

—Mike

Mike Sievert

President | COO

T-Mobile

Confidential

From: Confidential

Sent: Thursday, September 6, 2018 2:15 PM

To: Sievert, Mike

Subject: Re: Business Interruption

Mike,

I received your email. Thank you for sending it.

I have looked into the timeline and communications to understand what has occurred here.

The App Store team gave T-Mobile notice of the guideline violation for the T-Mobile FamilyMode app on August 17th, again on August 20th, then again September 1st, September 4th, and finally as an escalation on September 5th.

I am told your team did address other issues with the app but only started talking to our team about the IAP issues with any seriousness after the app was finally taken down from the App Store this week. I too am sorry that it came to this.

The App Store guidelines about requiring In App Purchase for any services and features delivered via apps is long standing and clear. It is curious to me that you don't think the guidelines apply in this case.

I heard that something was said about this being in part a business term issue between T-Mobile and the vendor you use for this app service. I don't know if that is accurate, but I can understand that it might take your team a bit of time to fix the business issue blocking properly using IAP in the app. It would be helpful to know if the team is going to address those business issues.

The App Store team will put the T-Mobile FamilyMode app back on the App Store to give the teams a couple of weeks to work together on the IAP guideline violation. We do want to have the teams discuss this in earnest, and hopefully resolve the issue quickly.

I can assure you that there is nothing self-serving in this rejection of the T-Mobile FamilyMode app, the team works very hard to make sure that our guidelines are as clear as possible and applied to all developers fairly.

Thanks,

Phil

On Sep 6, 2018, at 12:16 PM, Sievert, Mike <Confidential> wrote:

Phil,

As you know, Apple took T-Mobile family protection product T-Mobile Family Mode from the App Store last night. We were warned of this yesterday by some junior person at Apple after some back and forth where we made a number of requested changes and submitted a new build yesterday. On the remaining issue (lack of in-app purchase), we responded that we disagree that FamilyMode violates the App Store terms, and that it's not feasible to do in-app purchases for a number of reasons, but here we are, the app has vanished and my business operation across thousands of stores is disrupted this morning.

We are conducting emergency IT mitigation plans and trainings are being completed with tens of thousands of employees across thousands of retail stores, on how to treat customers who are paying for this product but now can't download it. This whole place is turned upside down this morning. This is no way for Apple to treat a partner.

As we have tried to explain to your App Store team several times, FamilyMode doesn't work like other family protection apps. It is a set of protections that requires provisioning IN OUR NETWORK INFRASTRUCTURE, that must be activated in our network biller to work correctly. It must be sold by our reps and/or activated in our own systems. It may look like lesser OTT protection apps out there, but it is NOT one. The App Store says they have pulled the App simply

because we don't offer in-app purchases, but the product requires that the user be a T-Mobile customer with FamilyMode properly provisioned in our network in order for essential telephony services like 911 to work properly. This is a life and death issue for our customers.

FamilyMode doesn't violate Apple's terms. It is a controller for a set of mostly network- and hardware features that protect families from predators on the Internet. We sell the feature like all other T-Mobile features, at our stores and online. But for totally self-serving (and incorrect) reasons, Apple yanked it from the market today with no escalation.

In order to prevent further damage to T-Mobile's business, I'd ask that you immediately restore FamilyMode to the App Store, today, to give our teams more time to explain how the app works to your teams. I need you to personally lean in and get this fixed.

—Mike

Mike Sievert

President | COO

T-Mobile

Confidential

Subject: Safe WiFi / Smart Family
From: Confidential
Received(Date): Tue, 09 Oct 2018 12:13:28 +0000
To: "Phil Schiller" Confidential
Cc: "Doug Beck" Confidential
Date: Tue, 09 Oct 2018 12:13:28 +0000

Phil,

I write to request your personal engagement and intervention on two issues of significance to the our work together and our ongoing relationship.

First, as you may be aware, after extensive discussions and escalations with your team, Verizon has met continued resistance and been forced by Apple to remove a customer-focused capability to block ad tracking from Verizon's Safe WiFi application. This is disappointing to Verizon, as this feature has been a popular service with our customers, and disabling it will cause confusion and concern.

The Safe WiFi app provides consumers the choice to implement the important privacy protections of a VPN and ad tracking blocking. The ad tracking blocker feature is comparable to existing ad tracking blocking that consumers frequently use when browsing the web. Like other apps, Safe WiFi extends this protection to browsing and apps on the mobile device. The feature is only enabled by the consumer, reflecting our shared desire to provide consumers choice in determining their level of privacy protection.

We do not believe our Safe WiFi application violates Apple's policies, because no unauthorized actions are defaulted in the application, and the end user is fully informed on the benefits and impacts associated with invoking this important privacy protection capability.

While my team and I disagree with Apple's demand to remove the ad tracking blocker feature from Verizon's Safe WiFi app, especially given the numerous examples of other applications currently offering similar functionality in the App Store, we have nevertheless made that material modification to our solution – one that we believe unfairly and unnecessarily prevents a privacy protection our customers desire.

In addition to the disconnect between our two teams for Safe WiFi, my team has also made me aware of a new concern regarding our Smart Family application.

Verizon's Smart Family application provides parents or guardians with a long list of cross-OS benefits including location alerts, blocking of harmful content, management of approved contacts, screen time limits, and appropriate downloading of age appropriate applications.

This valuable solution leverages Apple's MDM capability (and similar capabilities from Google) in support of these features. My team was recently advised by Apple that MDM support would be removed from our application. Should Apple maintain that position, it would significantly prejudice Smart Family's current and future capabilities for Apple devices.

Given the well-received benefits of Smart Family, I request that your teams work directly with mine to find a workable solution that will maintain these important features within Smart Family for the Apple ecosystem now and on a go-forward basis.

While we recognize Apple's interest in a well-ordered ecosystem, Apple's recent actions suggest a perilous absence of collaboration and common sense. For example, we were recently forced to seek review by your App Review Board of a nonsensical and arbitrary requirement that Verizon make Smart Family available to non-Verizon subscribers. Even a cursory understanding of that service, as we have explained to your teams, reveals that the service is fundamentally tied to our subscriber's use of our network. Yet, even upon "appeal", Apple has rejected Smart Family on that basis.

Beyond these recent disconnects between our teams, I believe our product groups need to work together more collaboratively, and in the spirit of partnership, on customer-friendly approaches to app store policies and important application enablement features that are in the best interests of our customers.

To that end and as two organizations committed to real customer choice and great customer experience, I'd like to suggest that we get a small group of senior leaders together to discuss how best to avoid some of the most recent disconnects described above, so that we can ensure we are both well positioned to support a comprehensive engagement and support model that puts our

customers' needs first and foremost in all of our future activities together.

I look forward to hearing your thoughts on Safe WiFi and Smart Family, and how best to get the teams together to re-align on our future endeavors together.

Regards,

Confi

Sent from my Verizon iPad

Verizon - *making **5G** impossible to ignore*

Subject: Re: Guidelines when talking to content partners
From: "Eddy Cue" <Confidential>
Received(Date): Thu, 17 Mar 2011 18:52:32 +0000
To: "Jai Chulani" <Confidential>
Cc: "Jeff Robbin" <Confidential>, "Josh Lippman" <Confidential>
Date: Thu, 17 Mar 2011 18:52:32 +0000

For recurring subscriptions, we should ask for 40% of the first year only but we need to work a few deals to see what is right.

Sent from my iPad

On Mar 17, 2011, at 1:09 PM, Jai Chulani <Confidential> wrote:

We've got a couple of things to consider (and I want to clarify a few things).

In-app/on-device transaction (a new user uses his iTunes account and activates on Apple TV)

- For one-time transactions like MLB, NBA, we ask for a 30% bounty of that fixed fee

- If it's an on-going subscription (like let's say Hulu), we ask for a 30% of subscription on an on-going basis. Since it's going through the iTunes store, we should be good.

- We are going to need to build in support for customers to enable and disable a subscription of the service through Apple TV.

Referrals (a new user goes to www.xxx.com/appletv to sign up)

- For one-time transactions like MLB, NBA, we ask for a 30% bounty of that fixed fee

- But for an on-going subscription service like Hulu, what would we want to deal with a referral mechanism?

- If we say that the average time a user stays as a subscriber is 2 years. So $8x24 months = $192 is Hulu's revenue. So we would want about 30% of that which is $58.

- They'll probably push back saying that they don't know how what their churn is, there's no guarantee a customer will stick that long, etc.

- So should we just ask for a 30% bounty of the 1 year subscription fee? After the first year they get to keep it all. (Is 1 year reasonable or do we want more). So in hulu's case, we ask for $29. (I think we may be leaving money on the table if we just asked for about 30% of the first year of sub).

Or in order to not complicate matters like the above we REQUIRE that for subscription services like Hulu the transaction go through an in-app purchase? In that case we would get 30% of the ongoing subscription fee and keep it simple.

In that case (for new customers):

For one-time transactions the content provider can use an in-app transaction or a referral mechanism and we get 30%

For on-going subscription services, the transaction must be in-app and we get 30%

jai

On Mar 17, 2011, at 7:26 AM, Jeff Robbin wrote:

> Adding Josh.
> -Jeff
>
> On Mar 17, 2011, at 7:21 AM, Eddy Cue wrote:
>
> fixed bounty for referral, not percentage
>
> On Mar 17, 2011, at 6:58 AM, Jeff Robbin wrote:
>
> -Jeff
> Sent from my iPad
>
> On Mar 17, 2011, at 6:34 AM, Eddy Cue <Confidential> wrote:
> > On Mar 16, 2011, at 7:35 AM, Jeff Robbin wrote:
> >
> > On Mar 15, 2011, at 10:25 PM, Jai Chulani wrote:
> >
> > As we add more content partners on the platform, I think it may be useful to come up with some guidelines when talking with them. Here's are some thoughts. Let me know what you think.
> >
> > **Cable/Sat operators like Cablevision, Comcast, Canal+, Sky, etc**
> > - These guys are pretty entrenched in the market and we're not going to gain much by trying to make any $ here. Nor are we going to get them many NEW subscribers.
> > - No referral fees or $$ exchanged
> > - They will NOT offer any transactional VOD services
> > - Subscriptions services that are part of their content offering including On-Demand are okay
> >
> > Agreed, no money here
> >
> > **New Sports subscription services like NHL, MLS (Major League Soccer), NFL,**

EuroSport, MotoGP, etc.
- If we get them a NEW subscriber, we get a revenue share/bounty (30% of the first year revenues, or on an on-going basis?)
- For an existing customer, no $$ exchanged. Apple TV is just another platform for them

Look at the deals we did for NBA/MLB. Different %s, couldn't get 30% for them.

Ideally, they let us sign up subs as part of the app using your iTunes account. In that case, we take 30%. If it's like MLB where it is a link, it probably chump change so it doesn't matter much.

Content offerings like Hulu, BBC
- For free, ad-supported content like BBC, no $$ exchanged. Apple TV is just another platform for them
- For paid subscription like Hulu plus, if we get them a NEW subscriber, we get a revenue share/bounty (30% of the first year revenues, or on an on-going basis?)
- For an existing customer, no $$ exchanged. Apple TV is just another platform for them
- They will NOT offer any transactional VOD services

BBC is paid outside UK.
You won't get 30% from Hulu Plus, either. They can't afford it.

News and free sports like CNN, Fox, NY Times, ESPN3 etc.
- Typically these are free, ad-supported content, no referral fees or $$ exchanged

No ads in the UI... only in content.

Internet content like Vimeo, Pandora, NPR
- For free content, no referral fees or $$ exchanged
- If we get them a NEW subscriber, we get a revenue share/bounty (30% of the first year revenues, or on an on-going basis?)

Same % comment.

I don't want to do any deals where we get less than 30%. That is what it is on the app store and we can't be making a different deal here. If that is not possible than I want a one-time bounty but we need to very careful here so this doesn't spillover to the app store.

To be clear, the 30% is for subs purchased through our device, not for referrals.
Eddy

-Jeff

Subject: Fwd: A Mom's Plea Re: Apple Crackdown on Parental Control Apps
From: "Tim Cook" <Confidential>
Received(Date): Wed, 05 Jun 2019 19:01:44 +0000
To: "Phil Schiller" <Confidential>
Date: Wed, 05 Jun 2019 19:01:44 +0000

Begin forwarded message:

From: Confidential

Subject: A Mom's Plea Re: Apple Crackdown on Parental Control Apps

Date: June 5, 2019 at 11:38:40 AM PDT

To: Confidential

Dear Mr. Cook,

As the mom of two teenage daughters, I am deeply disturbed by the practices of technology companies firmly aimed at keeping people, including kids, hooked on apps and devices. As I'm sure you're aware, multiple, credible research studies have shown the detrimental effects of too much screen time on children and teenagers.

Several months ago, I attended a private panel in Los Angeles hosted by Common Sense Media, featuring Tristan Harris from the Center for Humane Technology and tech journalist Kara Swisher, which detailed some of these disturbing practices. It was encouraging to see high-level executives from YouTube, among other media and technology companies in attendance and participating in conversations around how to ensure responsible, consumer-first practices in these industries.

I, therefore, was shocked to read the recent NY Times piece, https://www.nytimes.com/2019/04/27/technology/apple-screen-time-trackers.html?searchResultPosition=1, detailing Apple's recent removal of parent controls apps from its App Store. I learned about, and subsequently subscribed to Confidential one of the removed apps, based on an earlier NY Times article, which provided suggestions on effective tools for parents to monitor and control their children's screen time.

Confidential has been an excellent tool and one that offers a great deal of customization and other features that encourage my daughters to learn to moderate their screen time. I am deeply disappointed that you have decided to remove this app and others like it, thereby reducing consumer access to much-needed services to keep children safe and protect their mental health and well-being.

As I listened to this morning's NPR story, https://www.npr.org/2019/06/05/729892505/feds-look-

into-big-tech-firms-for-anti-competitive-behavior, about the FTC's Bureau of Competition investigating tech companies efforts to squelch competition in favor of their own services, I couldn't help but think of Apple's removal of parent controls apps as an example of unscrupulous behavior that runs counter to consumer protection.

Our family of four are devoted Apple customers. Collectively, we own 4 iPhones, 2 iPads, 2 iMacs, 3 MacBooks, and 2 Apple TV devices. We subscribe to iCloud storage and Apple Music.

I want to be very clear with you that I have never felt such outrage at Apple as I do right now. How a company the claims to value its customers can behave in such a reprehensible and self-serving way makes me question our allegiance to Apple and its products.

When children's health is at stake, Apple should do the right thing. You, as its leader, should do the right thing. I hope you will reconsider this decision and restore these vital consumer protection tools to the App Store and do more to protect young people from the detrimental effects of technology.

Sincerely yours,

Confidential

Subject: Re: Apple Cracks Down on Apps That Fight iPhone Addiction - The New York Times
From: "Tor Myhren" <Confidential>
Received(Date): Sat, 27 Apr 2019 15:08:22 +0000
To: "Michael Lewis" <Confidential>
Cc: <Confidential>, <Confidential>,"Jared Gosler" <Confidential>,"Magdalen Kennedy" <Confidential>, <Confidential>,"Scott Miller" <Confidential>
Date: Sat, 27 Apr 2019 15:08:22 +0000

This quite incriminating. Is it true?

> On Apr 27, 2019, at 8:03 AM, Michael Lewis <Confidential> wrote:
>
> https://www.nytimes.com/2019/04/27/technology/apple-screen-time-trackers.html

Subject: Re: NYT article
From: "Peter Oppenheimer" Confidential
Received(Date): Fri, 16 Mar 2012 17:08:11 +0000
To: "Eric Gray" Confidential
Cc: "Dean Migchelbrink" Confidential "Eddy Cue" Confidential "Chris Keller" Confidential
Bcc: "Peter Oppenheimer" Confidential
Date: Fri, 16 Mar 2012 17:08:11 +0000

Dean,

Can you send something that shows for the last few months our write-offs for fraud that we are getting for charge backs and the level of refunds we are doing for customers.

Peter

Eric,

What would we need to do to provide better responses to developers? In thinking about this, we should not let this sentiment become fact by virtue of our not responding to developers, especially if we can demonstrate that this is not accurate. To the extent that it is, we need to fix it just as we did more than a year ago when ran into problems. This is very strategic to us, and we want to be bullet proof.

Peter

On Mar 15, 2012, at 9:47 PM, Eric Gray wrote:

Peter,

We've repeatedly answered this question and haven't yet identified a case where there is an actual issue. The perceived difference is always associated with developers who have significant levels of refunds and the associated timing of such refunds. Confidential

Confidential

Confidential

In response to the point that we don't provide good support. We intentionally reply with a standard and rather vague response that the reporting is not intended to reconcile due to timing differences and we do not individually investigate each inquiry, but instead review enough of them to ensure both the daily / weekly reporting and the monthly financial reporting continue to be reliable for their intended purposes. We have good user guides and FAQ's that would allow one to reconcile things. Confidential

Confidential It never seem like a great investment, but we could re-consider.

I had heard from PR that this was coming, and it is unfortunate as the issue is very small as a percentage of our business and impacts a very small percentage of our developers.

We are making great progress on anti-fraud measures right now and have a very comprehensive strategy that we are in the early stages of executing on.

Thanks

Eric

On Mar 15, 2012, at 9:21 PM, Peter Oppenheimer wrote:

> Eric and Dean,
>
> This just posted from the New York Times. I know we are working on the customer account fraud points made in the article but I have not heard of the developer payment concerns below (which one cites in the millions). Here is the relevant section:
>
> One successful American game developer, who spoke on condition of anonymity for fear of retribution by Apple, said he started to notice discrepancies in payments last summer. The developer said his team had sent multiple e-mails to Apple, but that it had not addressed whether the missing payments were a result of fraud. Over the last year, the gap has amounted to millions of dollars, according to internal documents provided by the developer.
>
> With little action from Apple, some affected developers have banded together.

One Chinese developer, CocoaChina, has created an antifraud alliance of roughly a dozen developers.

While many of the affected consumers and developers said they did not blame Apple for their misfortunes, nearly all said the company could be more responsive, and noted that it lacked even a dedicated phone line to deal with complaints.

"Apple wants to pretend that everything is magic," said Alex Stamos, co-founder of iSEC Partners, a security firm. "They need to admit that their products can be used by bad people to do bad things."

What is going on here? Why are developer inquires not being answered?

Peter

For Apple, Pressure Builds Over App Store Fraud

By EVELYN M. RUSLI and BRIAN X. CHEN

In a little over an hour, Ryan Matthew Pierson racked up $437.71 in iTunes charges for virtual currency that he could use to buy guns, nightclubs and cars in iMobster, a populariPhone game. One problem: Mr. Pierson, a technology writer in Texas, has never played iMobster.

"This was fraud," said Mr. Pierson, recalling the November incident. "I woke up, checked my e-mail, and I could see these purchases happening in real time."

Mr. Pierson raised the issue with Apple and his bank, and the problem was eventually resolved. But his experience is hardly unique, as reflected by hundreds of online complaints saying that Apple's iTunes Store, and in particular its App Store, which the company portrays as the safest of shopping environments, is not so secure.

The complaints come from consumers like Mr. Pierson, who say that their accounts have been hijacked or that some apps are

falsely advertised. And they come from creators of apps, who say they are having to deal with fraudulent purchases that drain their time and resources. Software makers also complain that competition in the App Store has become so brutal that many companies resort to artificially inflating their popularity rankings to grab attention.

It's a change for Apple, which was once criticized for its micromanaging of the App Store. Now the problem is not too much control, but too little.

"This kind of thing just happens any time a platform is successful," said David Edery, chief executive of Spry Fox, a small software company that sells games in the App Store. "People start flooding into it and it starts to get crazy."

The App Store offers more than 600,000 applications for iPhones, iPads and iPod Touches, and has already generated billions in revenue for Apple and

its developers. That makes it both the best deal going for software makers and consumers, and also a hulking target for those looking to manipulate the system and cheat people.

Apple declined a request for an interview, but said in a statement that it was working to enhance security. It advised customers whose payment information had been stolen to change their iTunes passwords and to contact their financial institutions.

In the shadowy world of hacking, it's often unclear how criminals get iTunes passwords or credit card information. But the App Store, and Apple's broader iTunes Store, have become playgrounds for illicit transactions. And the Web is rife with App Store scams. On Chinese online marketplaces, like Taobao or DHgate, some sellers are offering access to iTunes accounts for as little as $33. One seller on DHgate, for instance, has sold 56 iTunes

accounts for less than $35 each, promising thousands of dollars in "credit."

There are services that claim to generate codes for iTunes gift cards, and forums that explain how to use prepaid Visa cards to get free App Store purchases.

The scale of the problem is difficult to gauge without Apple's cooperation, though there is widespread anecdotal evidence, even on Apple's own site. On one Apple support forum, a thread titled "iTunes store account hacked," there are some 1,370 replies, starting in November 2010 and extending to Thursday. Last week, more than 100 people on Twitter who said they were iTunes users complained about stolen funds.

Last month, Daniel Saewitz, a 20-year-old Syracuse University student, was charged $81 for purchases related to a Chinese iPhone game. He alerted Apple and changed his iTunes password. But 24 hours

later, he said, his account was hacked again. In an e-mail, Apple said it was refunding Mr. Saewitz's money, but added that it was making an exception to its usual rules.

For developers, the scams can cause big headaches, eating up resources and damaging their reputations. Several game makers in China, where many of the hacks appear to originate, said they had lost hundreds of thousands of dollars because of fraud.

Hoolai Game, a Beijing-based developer that introduced an iPhone app last year, looked at its monthly payments from Apple and found that they were roughly 20 to 50 percent less than the sum of the daily reports it gets from the company. Hoolai and others say they believe these missing payments are fraudulent transactions that are wiped out by Apple.

More troubling for developers is that

consumers whose accounts have been improperly charged often blame the game makers. The reviews in the App Store for Kingdom Conquest, from the Japanese game giant Sega, include dozens from incensed users who accuse Sega of robbing them. Sega, which first noticed a burst of fraudulent transactions last summer, is still working on the problem, according to Ben Harborne, a brand manager at the company.

"We are very worried about reputation," said Jian Huang, the president of Hoolai, who hopes to introduce a game in the United States later this year. "We have no way to tell the customer that we're victims too."

One successful American game developer, who spoke on condition of anonymity for fear of retribution by Apple, said he started to notice discrepancies in payments last summer. The developer said his team had

sent multiple e-mails to Apple, but that it had not addressed whether the missing payments were a result of fraud. Over the last year, the gap has amounted to millions of dollars, according to internal documents provided by the developer.

With little action from Apple, some affected developers have banded together. One Chinese developer, CocoaChina, has created an antifraud alliance of roughly a dozen developers.

While many of the affected consumers and developers said they did not blame Apple for their misfortunes, nearly all said the company could be more responsive, and noted that it lacked even a dedicated phone line to deal with complaints.

"Apple wants to pretend that everything is magic," said Alex Stamos, co-founder of iSEC Partners, a security firm. "They need to admit that their products can be used by bad people to do bad things."

One problem, Mr. Stamos said, is that iTunes customers use a single account and password to access all Apple services. For example, the same login can be used to download a $1 game or buy a $2,000 laptop through the Apple Store app. He said that Apple could adopt a two-step verification method like Google's. For example, if a user wanted to log in to the iTunes store on a new device, Apple could send a message to his iPhone containing a code, which he would enter to verify his identity.

Some App Store problems are the fault of the developers themselves — including those who make it harder for consumers to trust the store by cheating the system. The easiest ways to find new apps are Apple's Top 25 lists for different categories, including "most downloaded." But some of those downloads may not be generated by real people.

Walter Kaman, an independent programmer, said he was disheartened by a phone call from a service that offered to put his game in the Top 25. He said the promoter, whom he declined to name so as not to attract clients to the service, had hired someone to build an army of software "bots" that automatically download apps and drive up their rankings. The company wanted $5,000 for this service, said Mr. Kaman, who declined.

Mr. Edery of Spry Fox said his company was approached in October by a firm called GTekna, which offered to push its apps into the Top 25 for $10,000. Chang-Min Pak, GTekna's chief executive, said in an interview this week that it stopped offering such a service because Apple reminded developers in February that it was not allowed.

Then there are the customers who have been tricked into downloading apps that

are not what they seem to be. Apple has strict guidelines for developers, and it has tools and human reviewers to screen apps. But bad ones do slip through. One $2 app, for example, promises extra virtual coins for people playing the game DragonVale. But when customers download the app, no coins appear. The app has received dozens of one-star reviews from customers complaining that it is a scam and should be removed.

John Casasanta, owner of the iPhone app studio Tap Tap Tap, said the issue of developers manipulating the App Store remained largely unaddressed. “Apple has been doing the barest minimum to keep these things under control, because from their perspective, there’s simply not a problem,” Mr. Casasanta said.

Subject: Re: ERB: SPAM from Confidential
From: "Eddy Cue" Confidential
Received(Date): Mon, 30 Aug 2010 21:05:24 +0000
To: "Patrice Gautier" Confidential
Date: Mon, 30 Aug 2010 21:05:24 +0000

Let's prioritize this as it really solves a big problem. I think customers will understand even without seeing all of them. If I search for the 49ers and get NFL app I will understand.

Sent from my iPad

On Aug 30, 2010, at 10:18 AM, Patrice Gautier Confidential wrote:

yep - the difficulty for a user is understanding why all these results are showing up though.. Confi Confidential

Andrew: Confidential

-P

On Aug 29, 2010, at 4:01 PM, Eddy Cue wrote:

This guy has a really good idea! Confidential Confidential
Eddy

On Aug 29, 2010, at 12:55 PM, Phillip Shoemaker wrote:

Privileged and Confidential

Yes, we instituted Step 1 last week. We will work with the developer to determine an appropriate deadline.

thanks Phil.

On Aug 29, 2010, at 12:50 PM, Philip Schiller wrote:

Privileged and Confidential
My suggestion:

Step 1: accept no more app submissions to the app store from this developer
Hopefully we have done that and told them

Step 2: We give them a reasonable deadline to dramatically reduce the number of apps or they will be kicked out of the store

On Aug 29, 2010, at 12:46 PM, Phillip Shoemaker wrote:

Privileged and Confidential

We've had an ongoing relationship with the company Confidenti, as they intend on creating Confidential for the store. We've been having this ongoing conversation with them to consolidate their apps, but I've discovered that they're still submitting apps at the same time. This has got to stop, as they are spamming the store. See the following link:

Confidential

We called them again last week to discuss this, and this is the response we got back. While I believe the developer still needs to comply and consolidate their apps, he has some interesting data, especially with regards to his attempt at consolidation. I'm sending this out mainly so Matt and team can see if there's something they can get from this with regards to discoverability on the App Store.

Phillip

Begin forwarded message:

From: Confidential
Date: August 26, 2010 11:18:03 AM PDT
To: Richard Chipman Confidential
Subject: Re: Your App Store submission Confidential **for iPad**

Richard,

thanks again for your call, and thank you for your invitation to email you my point of view on this.

You state that one of the reasons I need to consolidate my maps into less apps is findability in the app store.

I couldn't agree more. The app store is such a huge success with developers that finding an app is indeed a problem. From my sales numbers and a statistical analysis I've done, I see a couple of things that are relevant to this discussion:

1) people don't use google to find apps. If they did, I would see it in the traffic on my website. Apple has apparently done an excellent job with the app store and people don't look elsewhere for their app needs. A big factor is the app store icon on each device of course, but it's an important point to make anyway.

2) people use the top-25 lists in the app store. I see a direct correlation between maps appearing in the top-25 lists and my downloads. Both the most popular, and the recent apps list are a big influence on sales.

3) If people don't find what they're looking for in the top 25 lists, they use keywords.

And this is where things get interesting. Bear with me for a while while I first talk about consolidation, I'll get back to keywords in a while. You've asked me to consolidate. I have done so, as you know, in this app:

Confidential

I've invested considerable effort in this app - I want it to succeed, because of a few simple reasons: one app is easier to maintain than lots, and the odds that I get returning business from an app that has many in-app sales options are bigger than with a single stand-alone map, where people have to go back to the app store for another map. I've invested time in developing the app, money in getting the server storage and bandwith to deal with the downloads, and time in uploading the 700 in-app purchases. Count about 5 minutes for a completed map to upload the database to my server and enter all the information in the iTunes Connect database, and you see this isn't something I did just to please you. I want this to work, because if it works, it's not just better for Apple. It's better for me as well.

The initial download numbers reflect my earlier point about the top 25 new apps list. The later sales numbers also reflect my point about the keywords: when not in the top-25 list, people use keywords, and they are not finding the consolidated app. People looking for, say, "Ibiza" are finding a lot of stuff - but not the consolidated app, even though it is indeed relevant to the search. Sales numbers are less than 25% of what it should be when I compare it to the stand alone apps.

So, how to fix this? Unfortunately, the only one who can really fix this is Apple. I'll explain how, and I would love to be proven wrong on this by somebody suggesting another solution.

Confidential

Confidential That way, no matter how small a town, if I have a map for it, people will find it. In fact, there are a number of cities that I have no competition for in the iTunes store, and people are downloading those cities as stand-alone apps, but not in the consolidated app. The search algorithm needs to return the consolidated app for those cities, or people will leave the app store thinking there's no map at all if I'm not allowed to have stand-alone apps.

Another way to fix it is to change the category structure. I will limit my remarks to the "Travel" category for now, you'll have to get feedback on the other categories from other developers. Confidential

Confidential

There are other points that need to be made. The "findability" problem in the app store has a lot of causes, and as you rightly state the number of apps is one of them. But there's more. There is a huge amount of, pardon my french, crap in the app store. Flashlights, beer-tilting apps, pull-my-finger apps, etc. Yes, most of them are free, but they make it extremely diffcult for serious apps to do something free. Case in point, my consolidated app is free, and contains zero maps after download (but it does show online map images, so it isn't blank). I've seen negative feedback in the app store and one-star feedback because people found out that the actual in-app purchase of the maps isn't free. The expectations for a free app are utterly tainted by all the free gimmick apps out there, and you'd find me cheering loudly if Apple were to clean those up. What I could do is make the consolidated app non-free and allow one free in-app download, let the user pick a map, but I would require API support for this to prevent people from deleting the app, reinstalling it, and downloading another free map. Again something that Apple would have to change for me to work. And even if you did so, there would still be the keyword problem.

Then there's the requests by users. You're telling me to stop uploading apps, but what do I tell people who email me with requests? Some of these requests have become best-sellers for me, and I get a few every week. If you want, I can send you some email addresses of people who have been very happy with my support of their requirements.

I understand you cannot talk about future changes to the way the app store works. I expect a lot of effort is being put in things I see only rumors about - perhaps I will know more after the September 1 event. This probably means you cannot tell me if the above suggestions are even considerd, let alone accepted or rejected by Apple. This may put you, or even both of us in a bit of an awkward situation in this discussion, because I may be urging for things already accepted or rejected. I can let you know that anything I am told of future changes in any Apple product I consider to be confidential and under non-disclosure, even if not directly told by an Apple employee. If it helps the discussion for you I am willing to sign a non disclosure on this subject. I also realize that if you cannot do such a thing you're also not going to be able to respond at all to this paragraph. That's fine, I just want you to know the option is there.

As to your question on how far down I would be willing to consolidate: down to a number that is as low as possible. If the findability of the 700 City Maps I mention above is fixed, if I see sales go up to numbers that match the sales of the standalone apps, I will immediately start removing lots of maps from the app store. The less apps I have to maintain, the better it is for me. In an ideal world, that number would be one. It's likely that there's a small set of best sellers where it would make sense to keep the stand alone versions along with the consolidated app, but then you're talking numbers lower than 50 or 100 or so. We'll cross that bridge when we get there. The first thing that needs to be done is that people will actually find and download the 700 City Maps app. The next thing after that, but that's probably in-line with your other cleanup work in the app store, is that the image of a free app needs to improve - but that's far less urgent than the problem that people are currently not finding the app.

And in closing, I would really hope that this is a simple fix on your end: Confidential

Confidential

Richard, please feel free to give me any feedback at all, and feel free to have people in your team do the same. I want the same thing as Apple here, but it looks like I've done on my end everything that can be done.

Confidential

Subject: Fwd: Valve Steam Link
From: "Cameron Rogers" <Confidential>
Received(Date): Wed, 30 May 2018 16:41:42 +0000
To: "Phil Schiller" <Confidential>
Date: Wed, 30 May 2018 16:41:42 +0000

Hi Phil,

I think I understand our position on SteamLink now with regards to IAP and UGC, but I just want to point out that it still isn't obvious to people inside the company that work directly on the App Store. I think few people understand the subtleties of the rules as well as you do.

Sent from my iPhone

Begin forwarded message:

From: Mark Hickey <Confidential>

Date: May 29, 2018 at 3:42:50 PM PDT

To: "Michael A. Wong" <Confidential>, Paul Ramsbottom <Confidential>, Mark Grimm <Confidential>, Nicola Sebastiani <Confidential>, Bryan Johns <Confidential>

Cc: Shaan Pruden <Confidential>, Cameron Rogers <Confidential>

Subject: Re: Valve Steam Link

From my understanding the app was just supposed to allow you to browse the games you already own and not access the Steam Store itself (or to transact within it). I'm not sure why launching a game I already own from within the Steam Link app would violate policy. From a functionality standpoint, there seems to be little difference between what Steam Link does and a standard remote access/VMWare app, of which there are plenty on the App Store.

Do we know specifically which App Review guidelines they are in violation of?

Thanks,

Mark

Mark Hickey | App Store Business Manager, Games | M: Confidential

Confidential

Testflight: Confidential

App Store Developer Portal

On 5/29/18 2:53 PM, Michael A. Wong wrote:

> Valve Stakeholders:
> As you probably saw, we put our perspective on the Steam Link rejection via Phil's reply to customer emails.
>
> https://appleinsider.com/articles/18/05/26/apples-phil-schiller-confirms-steam-link-ios-app-failed-to-meet-app-store-guidelines
>
> "We've discussed these issues with Valve and will continue to work with them to help bring the Steam experience to iOS and Apple TV in a way that complies with the store's guidelines."
>
> The direction is clear even though the destination is not.
>
> The question remains how/if the Steam Link app can be made compliant to the App Store guidelines and if we think there is a way forward from an App Review perspective. The only idea I came up with was allowing the app to only stream a game once initiated from the PC/Mac. There would be no browsing of the Steam catalog, regardless if the app is in the customer's own local library.
>
> If you have any other ideas, let's get them together and I'll run them by App Review and see what the road forward looks like before we contact Valve.
>
> Thanks.
>
> Michael

Subject: Re: From a young Parent -Ref ' Purging rivals' in NYT
From: "Philip Schiller" <Confidential>
Received(Date): Mon, 29 Apr 2019 19:20:26 +0000
To: Confidential
Bcc: "Philip Schiller" <Confidential>
Date: Mon, 29 Apr 2019 19:20:26 +0000

Confidential

Thank you for considering using Apple's products and for your email.

I would like to assure you that the App Store team has acted extremely responsibly in this matter, helping to protect our children from technologies that could be used to violate their privacy and security. After you learn of some of the facts I hope that you agree.

Unfortunately the New York Times article you reference did not share our complete statement, nor explain the risks to children had Apple not acted on their behalf. Apple has long supported providing apps on the App Store, that work like our ScreenTime feature, to help parents manage their children's access to technology and we will continue to encourage development of these apps. There are many great apps for parents on the App Store, like "Moment - Balance Screen Time" by Moment Health and "Verizon Smart Family" by Verizon Wireless.

However, over the last year we became aware that some parental management apps were using a technology called Mobile Device Management or "MDM" and installing an MDM Profile as a method to limit and control use of these devices. MDM is a technology that gives one party access to and control over many devices, it was meant to be used by a company on it's own mobile devices as a management tool, where that company has a right to all of the data and use of the devices. The MDM technology is not intended to enable a developer to have access to and control over consumers' data and devices, but the apps we removed from the store did just that. No one, except you, should have unrestricted access to manage your child's device, know their location, track their app use, control their mail accounts, web surfing, camera use, network access, and even remotely erase their devices. Further, security research has shown that there is risk that MDM profiles could be used as a technology for hacker attacks by assisting them in installing apps for malicious purposes on users' devices.

When the App Store team investigated the use of MDM technology by some developers of apps for managing kids devices and learned the risk they create to user privacy and security, we asked these developers to stop using MDM technology in their apps. Protecting user privacy and security is paramount in the Apple ecosystem and we have important App Store guidelines to not allow apps that could pose a threat to consumers privacy and security. We will continue to provide features, like ScreenTime, designed to help parents manage their children's access to technology and we will work with

developers to offer many great apps on the App Store for these uses, using technologies that are safe and private for us and our children.

Thank you,

Phil

From: Confidential

Subject: From a young Parent -Ref ' Purging rivals' in NYT

Date: April 29, 2019 at 9:58:33 AM PDT

To: Confidential

Dear Tim

I am an Apple customer from India.

Until 2017 I was an Android phone user, as I kept looking for a compact phone the search led me to iphone SE.

As I was battling my decision to jump over to Apple ecosystem, you stood strongly against US Govt when requests were made to

weaken the encryption system .

That was the Moment I made the decision and came into iPhone world.

A year ago, I got upset as SE's brand new version never came, However I took as a change that cannot be stopped. Obviously there are multitude reasons why a Manufacturer would

not continue with a range of product.

I am a parent , we have two kids, 4 & 7. My wife owns an Android, a happy android user. In recent weeks we were discussing to get iphone for her too so we can be in same ecosystem thus

start using apps that would become useful for us in managing household activities.

One of the points that made me support this approach was, the ability to secure the phones of children by parent, i.,e Parent controls which I could easily download knowing Apple's app approval process is stronger

than Android.

And now , I read this article in NYT where it is upsetting to read that : ('Purging Rivals' , Jack Nicas The NewYorkTimes. 29 April 2019).

1) In the ambition to win over parental control apps, you are unethically killing entrepreneurs and small business.

2) in this greed , Apple is making kid's safety a collateral damage.

I have put the decision on hold and I am even considering returning to Android, of course a iphone buyer of SE won't affect your bottom-line, I hope as a person who stood up ethically for the customer's privacy you would value our Children's safety too.

I hope a review process in light of the article that appeared in the newspaper would correct the unethical and Unsafe practice Apple is carrying out with blind ambition.

Best regards



--

Truth is a pathless land

Subject: Re: Confident parental restriction app
From: Confidential
Received(Date): Sun, 28 Apr 2019 12:49:32 +0000
To: "Philip Schiller" <Confidential>
Date: Sun, 28 Apr 2019 12:49:32 +0000

Mr Schiller,

Thanks for your reply. We should acknowledge that Apple has been aware that these apps were using MDM for a long time, and continued to approve them to stay in the App Store.

Mobile device management (MDM) is EXACTLY what many parents need to control their kids devices. Please restore this functionality that has existed for years. Screen Time is much less effective and "watered down" in comparison.

My son doesn't get "screen time limits". He has to do his work to be earn access to his game apps each day. 30mins of work grants him 30mins on his apps. Or 45mins etc. This is not something he requests — it is something I initiate and enable from my device thanks to OurPact and its use of MDM. The other option is to physically take away and give back the phone each day. MDM is a software solution that is better than physically taking away the phone away and giving it back. If we cannot have robust control of our children's iPhones once again, we will get them an Android instead so that we can once again have that control.

Please allow parental control software to use MDM. This is just as important as corporations using MDM for their employees. One could even argue that it's more important than the reasons corporations have for using MDM. Our children's health is at stake.

Thank you.

On Apr 27, 2019, at 6:30 PM, Philip Schiller <Confidential> wrote:

Confidential

Thank you for being a customer of Apple's products and for your email.

I would like to assure you that the App Store team has acted extremely responsibly in this matter, helping to protect our children from technologies that could be used to violate their privacy and security. After you learn of some of the facts I hope that you agree.

Unfortunately the New York Times article you reference did not share our complete statement, nor explain the risks to children had Apple not acted on their behalf. Apple has long supported providing apps on the App Store, that work like our ScreenTime feature, to help parents manage their children's access to technology and we will continue to encourage development of these apps. There are many great apps for parents on the App Store, like "Moment - Balance Screen Time" by Moment Health and "Verizon Smart Family" by Verizon Wireless.

However, over the last year we became aware that some parental management apps were using a technology called Mobile Device Management or "MDM" and installing an MDM Profile as a method to limit and control use of these devices. MDM is a technology that gives one party access to and control over many devices, it was meant to be used by a company on it's own mobile devices as a management tool, where that company has a right to all of the data and use of the devices. The MDM technology is not intended to enable a developer to have access to and control over consumers' data and devices, but the apps we removed from the store did just that. No one, except you, should have unrestricted access to manage your child's device, know their location, track their app use, control their mail accounts, web surfing, camera use, network access, and even remotely erase their devices. Further, security research has shown that there is risk that MDM profiles could be used as a technology for hacker attacks by assisting them in installing apps for malicious purposes on users' devices.

When the App Store team investigated the use of MDM technology by some developers of apps for managing kids devices and learned the risk they create to user privacy and security, we asked these developers to stop using MDM technology in their apps. Protecting user privacy and security is paramount in the Apple ecosystem and we have important App Store guidelines to not allow apps that could pose a threat to consumers privacy and security. We will continue to provide features, like ScreenTime, designed to help parents manage their children's access to technology and we will work with developers to offer many great apps on the App Store for these uses, using technologies that are safe and private for us and our children.

Thank you,

Phil

From: Confidential

Date: April 27, 2019 at 8:05:21 AM PDT

To: Confidential

Subject: Confidential **parental restriction app**

Mr Cook,

I am a parent of 3 young children. Apple recently enabled screen time restrictions on iOS, which was a great development. However, Apple then removed several apps from the App Store such as Confidenti which have much more advanced options not available in iOS Screen Time. As a result, for many parents who used Confidenti we have LOST many restrictions options that we had before. It is ironic that Apple's actions through removal of this app have resulted in the loss of many parental controls such as remote locking and unlocking of apps. I am very familiar with ScreenTime functions, and they simply do not replicate what Confidential offers. Not even close.

Please allow Confidenti to continue offering its services on iOS. It is used my many thousands of iOS uses. You have taken away capabilities that are simply not offered on iOS.

Thank you.

Confidential

Subject: Re: Parental controls
From: Confidential
Received(Date): Sat, 27 Apr 2019 22:48:06 +0000
To: "Philip Schiller" <Confidential>
Date: Sat, 27 Apr 2019 22:48:06 +0000

Phil-

Your explanation is very convenient, for Apple to completely dominate the parental controls market with an inferior product.

I have already reached out to both of my Senators about this monopolistic, opportunistic power grab by Apple. It is not right. I have also written a letter to the editor at the Washington post, which will likely be published next week. Next week I will contact the Governor's office of the state of California

Surely Apple can do better than this. If this issue not corrected, we will sign up for an android phone next time. Please, try to help your customers, rather than just your pocketbook. Thank you.

Confidential

What the caterpillar calls the end of the world, the Master calls the butterfly.

- Richard Bach

On Apr 27, 2019, at 3:38 PM, Philip Schiller <Confidential> wrote:

Confidential

Thank you for being customers of Apple and for your email.

I would like to assure you that the App Store team has acted extremely responsibly in this matter, helping to protect our children from technologies that could be used to violate their privacy and security. After you learn of some of the facts I hope that you agree.

Unfortunately the New York Times article you reference did not share our complete statement, nor explain the risks to children had Apple not acted on their behalf. Apple has long supported providing apps on the App Store, that work like our ScreenTime feature, to help parents manage their children's access to technology and we will continue to encourage development of these apps. There are many great apps for parents on the App Store, like "Moment - Balance Screen Time" by Moment Health and "Verizon Smart Family" by Verizon Wireless.

However, over the last year we became aware that some parental management apps were using a technology called Mobile Device Management or "MDM" and installing an MDM Profile as a method to limit and control use of these devices. MDM is a technology that gives one party

access to and control over many devices, it was meant to be used by a company on it's own mobile devices as a management tool, where that company has a right to all of the data and use of the devices. The MDM technology is not intended to enable a developer to have access to and control over consumers' data and devices, but the apps we removed from the store did just that. No one, except you, should have unrestricted access to manage your child's device, know their location, track their app use, control their mail accounts, web surfing, camera use, network access, and even remotely erase their devices. Further, security research has shown that there is risk that MDM profiles could be used as a technology for hacker attacks by assisting them in installing apps for malicious purposes on users' devices.

When the App Store team investigated the use of MDM technology by some developers of apps for managing kids devices and learned the risk they create to user privacy and security, we asked these developers to stop using MDM technology in their apps. Protecting user privacy and security is paramount in the Apple ecosystem and we have important App Store guidelines to not allow apps that could pose a threat to consumers privacy and security. We will continue to provide features, like ScreenTime, designed to help parents manage their children's access to technology and we will work with developers to offer many great apps on the App Store for these uses, using technologies that are safe and private for us and our children.

Thank you,

Phil

From: Confidential
Date: April 27, 2019 at 10:04:02 AM PDT
To: Confidential
Subject: Parental controls

Hi Mr. Cook-
I just read in the New York Times about how Apple is forcing parental control apps out of business. We have been using Confidential and it has made our family life much much better.

Our kids still use their phones, but with appropriate limits. The research on Device use clearly shows that limiting device use leads to happier kids.

Please, Mr. Cook, either drastically improve the Apple parental controls (which are almost completely unhelpful currently) or let the others live again. Thank you.

Confidential

What the caterpillar calls the end of the world, the Master calls the butterfly.

- Richard Bach

Subject: Fwd: App Store Search Changes (iOS)
From: "Philip Schiller" Confidential
Received(Date): Fri, 06 Nov 2015 03:24:39 +0000
To: "Eddy Cue" Confidential, "Matt Fischer" Confidential, "Phillip Shoemaker" Confidential, "Ron Okamoto" Confidential, "C.K. Haun" Confidential
Cc: "Greg Joswiak" Confidential, "Brian Croll" Confidential
Date: Fri, 06 Nov 2015 03:24:39 +0000

FYI

Begin forwarded message:

From: Confidential

Date: November 5, 2015 at 7:32:41 PM EST

To: Philip Schiller Confidential

Subject: App Store Search Changes (iOS)

Phil,

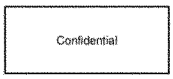
The App Store Search changes introduced earlier this week made finding quality apps even harder than it was. As you know, most non-VC backed companies that are trying to make money selling apps, do rely on search for app discoverability. The app economy is such, that it is not possible to advertise your way into profits, even at scale. Quick and relevant search is vital. It's never been perfect, but the latest changes made bad situation worse. Here's an example:

Consider Tweetbot for Twitter. As you may know, this is an incredibly popular and well made app. If you go to the App Store on your iPhone and search for "twitter", Tweetbot never shows up. The apps that do show up now, often times have nothing to do with Twitter, for example, emoji apps, wallpaper apps etc. Further, the apps that do appear at the top, are often abandoned apps that are no longer maintained, for example, Tweeter (at #10). This is a horrible app, with horrible ratings that hasn't been refreshed since 2008.

This is obviously just one example, but it demonstrates the essence of the problem.

Our apps have literally been obliterated from search. We used to rank high on our target search terms, and we have been updating our apps regularly for the past 7 years. These recent App Store changes have effectively put us out of business, overnight.

Regards,


Confidential

Subject: Re: Reuters: Opera says to introduce faster browser for iPhone
From: "Phillip Shoemaker" Confidential
Received(Date): Wed, 10 Feb 2010 16:12:32 +0000
To: "Natalie Harrison" Confidential
Cc: "Phil Schiller" Confidential, "Greg Joswiak" Confidential, "Eddy Cue" [redacted], "Ron Okamoto" Confidential, "Katie Cotton" Confidential, "Natalie Kerris" Confidential, "Trudy Muller" Confidential
Date: Wed, 10 Feb 2010 16:12:32 +0000

It is unlikely that this Opera release is using our webkit, which is required for all browsers on our platform. Usually we give non-compliant browsers a quick rejection, but in this case I'll bring it to the ERB when the app gets submitted (and give PR a heads-up).

On Feb 10, 2010, at 7:11 AM, Natalie Harrison wrote:

FYI Opera Mobile has issued a press release inviting media to see 'an exclusive preview of Opera Mini for iPhone' at Mobile World Congress. They claim the browser is up to six times faster than Safari and can cut data traffic by up to 90 percent.

Opera co-founder Jon von Tetzchner says: "We have not submitted it yet to the Apple App Store. However, we hope that Apple will not deny their users a choice in Web browsing experience."

Reuters

Opera says to introduce faster browser for iPhone

http://www.reuters.com/article/idUSLDE6190JQ20100210

Wired

Opera Mini on iPhone Next Week

http://www.wired.com/gadgetlab/2010/02/opera-mini-on-iphone-next-week/

PC World

Opera to Reveal Alternative IPhone Browser Next Week

http://www.pcworld.com/article/188990/opera_to_reveal_alternative_iphone_browser_next_week.html

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Natalie Harrison

iPhone PR

mobile: Confidential

Confidential

www.apple.com

Subject: Re: Apple PR Contact
From: Dbeck Confidential
Received(Date): Thu, 01 Nov 2018 05:05:24 +0000
To: "Steve Dowling" Confidential
Cc: Zita Confidential
Date: Thu, 01 Nov 2018 05:05:24 +0000

Thanks, Steve. We'll follow up with Amy.

Sent from my iPhone XS Max on iOS 12

On Oct 31, 2018, at 21:51, Steve Dowl Confidential wrote:

Sorry. We are just slammed with earnings and the product launches. Most of the teams are on the road.

Please reach out to Amy Bessette. She should have bandwidth but will need to be brought up to speed.

Thanks

On Oct 31, 2018, at 6:35 PM, Z Confidential wrote:

> Hi Steve and Doug,
> Amazon is looking to have a conversation with us on the PR related to our deal as soon possible. They too are just trying to formulate the right way to message our deal and tin They are aware and sensitive to us having earnings tomorrow .
>
> This converstaion between us will be timely, starting Friday Amazon plans to start the cl process and will start to reject a hundreds of resellers who are selling Apple products or Amazon today. (They are not authorized resellers by Apple so Amazon agreed to gate They think that will trigger press so want to align with us on the message etc.
>
> Please let me know whom they should work with . I am happy to provide that person an on our new agreements as well.
>
> Thanks !
> Zita
>
> Begin forwarded message:
>
> **From:** "Downer, Steve" Confidential
> **Subject: Apple PR Contact**
> **Date:** October 31, 2018 at 6:21:47 PM PDT
> **To:** " Confidential

Cc: "Torgerson, Lori" Confidential
Confidential , "Kroon, Catie" <

Hi Zita,

Per discussion, can you please connect Lori and Catie with the appropriate PR contact at Apple who would be familiar with the new program on Amazon?

-Steve

Steve Downer | Director, Consumer Electronics | Confidential
| www.amazon.com |

Subject: Re: Warren arguments
From: "Kristin Huguet" Confidential
Received(Date): Tue, 12 Mar 2019 20:49:10 +0000
To: "Steve Dowling" Confidential
Date: Tue, 12 Mar 2019 20:49:10 +0000

Agreed on all.

On Mar 12, 2019, at 1:48 PM, Steve Dowling Confidential wrote:

I agree with your points but I also don't want our arguments to get too narrow. We should just point out what Warren and the press aren't thinking through — and counter or anticipate their arguments:

We are not a monopolist — that's shown by market share — despite our size

The App Store has created 2m jobs in every state (how many in MA? IA? NH?)

How do we handle competition with our own apps? We don't do things like pushing down results, etc., as Google (one of her real targets) has

etc.

So, I think this is more of a legal argument than an App Store issue.

> On Mar 12, 2019, at 1:34 PM, Kristin Huguet Confidential wrote:
>
> We'll work through it but just an FYI...
>
> Begin forwarded message:
>
> **From:** Kristin Huguet Confidential
> **Subject: Re: Warren arguments**
> **Date:** March 12, 2019 at 1:22:39 PM PDT
> **To:** Tammy Levine Confidential
> **Cc:** Fred Sainz Confidential, Tom Neumayr <
> Confidential
>
> Thanks Tammy,
> I feel like the first 3 out of 4 of these are wrong. Because we do have native apps, I don't think we can say our apps don't come pre-loaded and you can't remove them. The reason our services aren't on the app store is because of the native apps.
>
> I think we're better served looking at the success of developers and the thriving businesses it's created.

On Mar 12, 2019, at 12:20 PM, Tammy Levine [Confidential] wrote:

Hi Fred,
Further to Dowling's comments about being prepared for the Elizabeth Warren, below are some initial arguments in support of the App Store. LMK next steps and how I can support further.

Apple is not monopolistic

- The App Store gives users more choice, not less because Apple apps are not pre-loaded on the iOS.
- Users have the freedom to individually select which apps they wish to download from the App Store.
- Apple Apps pass through the same review and approval process as all 3rd party apps.

Many Apple services such as Apple Music and Apple News are not on the App Store.

The App Store is vast, diverse and thrives as a result

- Apple apps represent 0.0001% of all apps on the App Store (311 of 2 million).
- The App Store does not subordinate the exposure of 3rd party apps.
- If Apple apps are featured in App Store marketing, it is for their quality, relevance and appropriateness.

Expanding App Store software download guidelines could harm consumers (store within a store)

- The App Store is the single safest way to protect consumers that are downloading software.
- Downloading unverified software outside of the App Store introduces risk to consumers, and is therefore not allowed.

We may also want to note that the obvious alternative to Apple releasing its apps via the App Store is to pre-load the software on the products in the iOS. This approach would clearly be even more problematic.

Subject: Re: NYT editorial board - right to repair
From: "Lori Lodes" Confidential
Received(Date): Sat, 06 Apr 2019 21:26:06 +0000
To: "Steve Dowling" Confidential
Cc: "Kristin Huguet" Confidential ,"Keri Fulton" Confidential
Date: Sat, 06 Apr 2019 21:26:06 +0000

Here's a proposed revised version based on Tim's feedback, let us know what you think and we'll send back.

"At Apple, customer satisfaction and safety are our top priority. We work hard to provide our customers access to safe and reliable service when their Apple products need repair. In the last two years alone, we've quadrupled the number of locations offering iPhone screen repairs. There are now nearly 5,000 locations worldwide, owned and operated by third parties, offering repairs by trained technicians who use parts certified for safety and quality. We are continuously evaluating our programs and we are committed to making service more convenient for our customers."

On Apr 5, 2019, at 4:04 PM, Lori Lodes Confidential wrote:

It would be reactive depending on how we feel the piece comes out.

The quote looks good, updated the questions. Also, I'm working with AppleCare to get US specific numbers but I don't think we've released those before so may want to keep to worldwide.

> At Apple, customer satisfaction and safety are our top priority. We work hard to provide our customers access to safe and reliable service when their Apple products need repair. In the last two years alone, we've quadrupled the number of locations offering iPhone screen repairs. There are now more than 5,000 locations worldwide offering repairs by trained technicians who use parts certified for safety and quality. We are continuously evaluating our programs and we are committed to making service more convenient for our customers.

Lori

> On Apr 5, 2019, at 3:51 PM, Steve Dowling Confidential wrote:
>
> Is this for use in the editorial, or reactively afterwards?
>
> How about:
>
> At Apple, customer satisfaction and safety are our top priority. We work hard to provide

our customers access to safe and reliable service when their Apple products need repair. In the last two years alone, we've quadrupled the number of locations offering iPhone screen repairs. There are now more than 5,000 locations worldwide offering repairs by trained technicians who use parts certified for safety and quality. We are continuously evaluating our programs and we are committed to making service more convenient for our customers.

On Apr 5, 2019, at 3:22 PM, Lori Lodes [Confidential] wrote:

The editorial is running in Sunday's paper but is slated to post online at 7 or 8 tomorrow morning. It will come out in support of a national right to repair standard for consumer products. The focus is not Apple but it will use us as an example to help make the case. I think our response should focus on what we're doing to give customers more options. AppleCare has validated the stats.

"It's important our customers can easily access safe and effective repairs for the products they rely on every day. For instance, in the last two years, we've quadrupled the number of places our customers can go for screen repairs. There are now more than 5,000 options for a customer to go for a repair that will be done safely, with genuine Apple parts and performed by a trained technician. We'll keep reviewing our repair programs to provide customers with more convenient service options that maintain the integrity of the product and user privacy."

There's other projects we could bring up to show our growth but I think we may need to wait for an exec conversation Lisa is scheduling for next week. For instance, the Genuine Parts program leaked to Motherboard or our expansion to another 763 Best Buy stores in the US over the next couple of months. Worth noting, Best Buy would like to make this announcement at the end of May.

I'll send a heads up about the piece to Jeff, Lisa, Joz, Kaiann, Tara B but let me know what you think about the general framing.

Lori

On Apr 3, 2019, at 2:52 PM, Lori Lodes [Confidential] wrote:

Kaiann spoke on background to Appelbaum about his editorial which is now running in Sunday's paper but he needed to file tonight.

In general, his questions focused on how widely available our repairs are — he spoke to a Nebraska legislator who sponsored legislation a couple of years ago and noted her closest AASP is two hours away. Besides questions around accessibility of repairs, he asked about a claim we made around the Nebraska legislation about hacking.

Kaiann did a great job and emphasized the need for a thoughtful approach to repair policy because of how important it is to balance customer safety with access to more convenient repairs.

Because of the direction of his questions, we may want to consider telling him about our pilot Genuine Parts Repair program to underscore how we are prioritizing making safe and high quality repairs available to more customers in more places than ever before. We also learned today that starting next week we'll be expanding our footprint with Best Buy from 229 stores certified as AASPs to about 1,000. Both of these points could be provided on background and could help differentiate how we're handling repairs versus the farming industry.

Let us know what you think.

Lori

On Apr 3, 2019, at 1:30 PM, Steve Dowling [Confidential] wrote:

I'm fine with Kaiann.

On Apr 3, 2019, at 1:00 PM, Lori Lodes [Confidential] wrote:

Lisa is willing to do it but is traveling so if we're not able to have her do it in the next hour, we'll need for someone else to brief him on background. Joz recommends Kaiann to cover the basics of safety and our overall repair program.
Make sense?

Lori

On Apr 3, 2019, at 9:24 AM, Steve Dowling [Confidential] wrote:

If we are comfortable making that pledge, sure. We should show that it fits with our overall approach.

On Apr 3, 2019, at 9:20 AM, Lori Lodes [Confidential] wrote:

Absolutely, we'll highlight the safety piece and am sending Pierce's tweet. Are you okay with a proactive point about us working for customers to have more options to safe and easy repairs?

On Apr 3, 2019, at 9:08 AM, Steve Dowling [Confidential] wrote:

If it's for the editorial page, I assume we can provide him with our high-level point of view on background and refute any suggestions that we design for obsolescence. I would suggest broader points that emphasize safety over economics:
- Look at what happened when a Wired reporter tried to open his iPhone with a screwdriver
- Explosions happen at landfills and recycling centers all the time because of improper disposal of electronics
- Anecdotally, many of the safety incidents reported with mobile phones are related to faulty repairs

On Apr 3, 2019, at 9:03 AM, Lori Lodes [Confidential] wrote:

He asked about the glass repair based on this August rumor

piece: https://bgr.com/2018/08/22/iphone-screen-repair-simply-mac-official/
We thought mentioning the genuine parts pilot could help us with the public narrative as well as with ongoing right to repair legislation. GA was supportive but we could keep it to how we simplified fixing screens since we already discussed it with media last year and our overall approach to repairs.

On Apr 3, 2019, at 8:36 AM, Steve Dowling [Confidential] wrote:

I worry that we are making some big assumptions here. Is Binyamin Applebaum even following the AppleCare developments?

On Apr 3, 2019, at 7:28 AM, Lori Lodes [Confidential] wrote:

Joz doesn't feel totally comfortable but will do. He asked about Susan Prescott speaking instead.
For the messaging, we want to frame all of the sporadic news from AppleCare positively under one narrative to show that we are exploring how to give our customers even more options for affordable and accessible repairs.

The three proof points we'll use to show our ongoing efforts to make repairs as accessible and easy for customers as possible while maintaining privacy and product safety:

1. The recently leaked Genuine Parts Repair program to make authentic Apple parts available to more trained technicians.

2. Our recent expansion of Authorized Service Provider Network and how we are making the repairs simpler — for instance, no longer requiring specialized equipment for screen repairs.

3. New policies for easier battery repairs and replacements.

We will tread lightly as it relates to commenting on the Right to Repair legislation and reinforce that we are updating our programs regularly while also working with our trade associations to make sure any legislation takes into account privacy and safety concerns.

While this interview will need to happen at the same time as the exec discussions over our broader repair strategy, we think this will strike the right tone and that we'll be able to get buy in on the approach from GA, PM, and AppleCare.

Let us know if you think this makes sense and if you're okay with Susan speaking on background instead.

Lori

Sent from my iPhone

On Apr 2, 2019, at 1:48 PM, Steve Dowling [Confidential] wrote:

I think it's worth giving him a high-level briefing. I doubt our recent documentation is an issue here, but I could be wrong. We should have a ready answer for Joz just in case.

On Apr 2, 2019, at 1:46 PM, Lori Lodes [Confidential] wrote:

Appelbaum was writing for tomorrow but, thankfully, got pushed back to Thursday. The piece is using Warren's new right to repair for agriculture to talk about the broader right to repair effort and plans to use Apple as a symbol in that fight.

We're meeting with everyone shortly about the overall strategy and then I'll connect with Joz.

Appelbaum has, of course, talked with iFixIt and others.

Lori

On Apr 2, 2019, at 10:29 AM, Kristin Huguet [Confidential] wrote:

The larger issue is that our strategy around all of this is unclear. Right now we're talking out of both sides of our mouth and no one is clear on where we're headed. Lori will check in with NYT and Joz and circle back.

Sent from my iPhone

On Apr 2, 2019, at 10:24 AM, Steve Dowling [Confidential] wrote:

We should get him on the phone with Joz or Phil. Is he writing on specific right to repair legislation, or the issue in general?

On Apr 2, 2019, at 10:21 AM, Lori Lodes [Confidential] wrote:

Binyamin Appelbaum is writing on right to repair for NYT editorial board. I can call him to get more information but we're still not clear on our seemingly evolving position. We have a meeting with AppleCare, PM, GA later today and then expect a meeting with Lisa and Jeff later this week.

Let me know what you think makes the most sense.

Lori

Subject: Right to Repair Update
From: "Lori Lodes" Confidential
Received(Date): Sat, 30 Mar 2019 15:17:06 +0000
To: "Steve Dowling" Confidential
Cc: "Kristin Huguet" Confidential "Keri Fulton" Confidential
Date: Sat, 30 Mar 2019 15:17:06 +0000

Dowling,

In addition to the Genuine Parts Purchaser program detailed in the leak to Motherboard yesterday, iMac manuals became available on Apple.com on Wednesday without any sort of clearance. This follows a roll out earlier this month on a repair policy change allowing AASPs to repair iPhones that have non-Apple replacement batteries that also was not flagged for PR.

Right now, it's pretty clear things are happening in a vacuum and there is not an overall strategy. Plus, with one hand we are making these changes and the other is actively fighting Right to Repair legislation moving in 20 states without real coordination for how updated policies could be used to leverage our position.

Here's a quick rundown with a few more details of what we know about:

- **Genuine Parts Repair:** The program that leaked to Motherboard is in its early stages with 12 repair companies in Europe or Asia offering Apple authorized products for out of warranty repair and about 60 more in the works; including several in the US. Unlike AASPs, we're not managing these companies but they have access to our parts, tools and trainings. Originally, we thought it made sense to roll out in early fall once there was a US business on board.

- **Manuals:** The Environmental Technology team who manages the EPEAT certification process posted the iMac repair manuals this week with plans to release manuals for Macs and portable products in May or June and a desire to release an iPhone repair manual at some point. The team failed to receive any clearance across the various teams. Sandy Green thinks we should consider taking down the manuals; however, we think it's important to have a decision about what our strategy is and execute against that direction. We have one reporter inquiry from a freelancer who writes for iFixit and has had pieces run in the New York Times and Popular Science.

- **Mobile Repairs:** Later this fall, AppleCare is planning to roll out a new service that will bring repairs directly to customers. This will be through Verizon or another business with large reach and will include authorized parts.

We've engaged across teams and it's clear no one is on the same page and have a different version of events. We are working to schedule a meeting with AppleCare, PM, GA for early next week to see if there are answers to these questions so we can figure out the right messaging and PR strategy:

- What is our repair strategy?
- Do we believe it's important to get ahead of any additional regulations about repair options in Europe or right to repair legislation in the US?
- Are we comfortable releasing our repair manuals for all products moving forward?
- Do we want to promote the Genuine Parts Repair program as part of our ongoing effort to give our customers more choices?
- How should our public position on Right to Repair change to take into account the updates we are making — should we connect the dots or try to keep everything separate?

Lori

Subject: Re: Facebook and Apple
From: "Steve Jobs" Confidential
Received(Date): Fri, 09 Apr 2010 00:35:58 +0000
To: "Ron Okamoto" Confidential
Cc: "Scott Forstall" Confidential ,"Philip Schiller" Confidential
Date: Fri, 09 Apr 2010 00:35:58 +0000

I'd suggest we just cut Joe off from now on.

On Apr 8, 2010, at 5:25 PM, Ron Okamoto wrote:

Steve, Scott and Phil,

Some additional background: Earlier today Joe spoke to the press and was critical of our new PLA and Objective C. I called Ethan Beard and Henry Moissinac at Facebook and told them we were not happy with this because it was not the first time he's done this and it does not publicly reflect well on our partnership. I reminded them that we do not have Apple employees blogging and talking to the press being openly critical about Facebook.

Joe sent me an email after the press story hit explaining why he was "upset", and it looks like Joe has been working on a cross compiler.

- Here's a copy of the email he sent me:

"Hi Ron,

iPhone OS 4.0 looks amazing and I really want to develop for it. That's why I was a bit upset to read that the updated SDK agreement requires writing apps directly in Objective-C/C++ or JavaScript, banning cross-compilers.

Last time we met you asked that I contact you directly if I have an issue with Apple, and I definitely have issue with this. It appears to be a purely strategic limitation aimed straight at Adobe. To accept this limitation you would have to convince yourself that Objective-C and JavaScript are the best programming languages available, which I don't believe they are. A big part of the reason I stopped writing iPhone apps is that I find Objective-C to be very unpleasant to work with.

When last we met I was considering developing a Facebook iPad app. The reason I decided not to was because I wanted to focus on my other project, and my other project was a new UI programming language I'm developing which is cross-compiled to high performance C and Objective-C. I had planned to use this language to make developing iPhone and iPad apps for Facebook a much more efficient and fun process. Frankly, I think the language I'm creating is leagues better than Objective-C, so it's unfortunate that you would stifle innovation in programming languages just to keep crappy Flash ports out of the App Store. Not all cross-

compilers are going to produce low quality apps.

I hope that you and your peers would be willing to discuss this new policy and consider reasons why it could do more harm to your platform than good.

- Joe

- Here's what was reported earlier today:

Joe Hewitt vocal again.

Silicon Valley Insider

http://finance.yahoo.com/news/Facebooks-iPhone-AppMaker-Is-siliconalley-3738774059.html?x=0&.v=2

Facebook's iPhone App-Maker Is "Angry" About Apple's New SDK

Nicholas Carlson, On Thursday April 8, 2010, 4:47 pm

Joe Hewitt, the guy who made Facebook's very popular iPhone app, is "angry" about changes Apple made today to it's iPhone software developers' kit (SDK).

Reached by email, Joe told us he's "unhappy" about a new rule forcing developers to use one programming language, Objective-C, to write iPhone apps.

"So much for programming language innovation on the iPhone platform," Joe tweeted earlier today.

He sent us this passage from the SDK:

Applications may only use Documented APIs in the manner prescribed by Apple and must not use or call any private APIs. Applications must be originally written in Objective-C, C, C++, or JavaScript as executed by the iPhone OS WebKit engine, and only code written in C, C++, and Objective-C may compile and directly link against the Documented APIs (e.g., Applications that link to Documented APIs through an intermediary translation or compatibility layer or tool are prohibited).

We asked Joe this makes him "angry" (as he wrote in a now deleted tweet), and he explained:

Apple has always banned "virtual machine" languages, presumably for performance reasons, which was understandable. However, there are an increasing number of cross-compilers that allow translating from one language to Objective-C, which allows performance to still be very good while allowing developers to use a language they prefer to Objective-C. Apple is now banning those as well, which means developers who don't enjoy working in Objective-C have no choice if they want to write a native iPhone app.

Back on Twitter, Joe went on. "I'm upset because frankly I think Objective-C is mediocre and was excited about using other languages to make iPhone development fun again."

We're tempted to wonder if this change will make its platform less popular with developers. But we won't, because, for better or worse, when a platform can present so many attractive users the way Apple's iPhone can, developers tend to get in line -- no matter how much they don't want to.

From: Joe Hewitt [Confidential]

Date: April 8, 2010 4:53:58 PM PDT

To: Ron Okamoto [Confidential], Scott Forstall [Confidential]

Subject: Facebook and Apple

Gentlemen,

I just received a call from a VP at Facebook asking me to stop making critical comments about your new SDK agreement in public. They seem to be worried that it might jeopardize Facebook's relationship with Apple. If so, that would be unfortunate, since my opinions are clearly my own and not Facebook's.

Still, I am sure you understand why I am being critical. I am a computer programmer and you are harming my craft. I love your products and I have every reason to believe iPhone/iPad will soon dominate in the marketplace, so shouldn't I be upset that a huge segment of the mobile market will be discouraging innovation in the field of programming languages?

I am sure your view is that if you can stomp out Flash and Android, the world will be a better place, and I'm inclined to agree with you, but I would prefer to help you win that war by making great developers tools to help people make great iPhone/iPad apps. I can't fight with you if you're using legalese as a weapon.

- Joe

Subject: Fwd: iOS evangelist giving up apps based on appreview team
From: "Tim Cook" <Confidential>
Received(Date): Sun, 25 Jan 2015 21:19:52 +0000
To: "Eddy Cue" <Confidential>, "Phil Schiller" <Confidential>, "Craig Federighi" <Confidential>
Date: Sun, 25 Jan 2015 21:19:52 +0000

Thoughts?

Sent from my iPad

Begin forwarded message:

From: Confidential

Date: January 25, 2015 at 1:58:46 AM PST

To: Confidential

Subject: iOS evangelist giving up apps based on appreview team

I fear App Review is getting too powerful. It's no longer about keeping iDevices safe or protecting the user's best interest

Dear Mr. Cook,

I am a long time Apple evangelist who actively reaches millions of iOS users - you won't know me by name but maybe (big maybe here) my company - Confidential . I am writing with a heavy heart tonight. Back in 2008 I swore off anything web related as I believed the future was all about apps and the old web we knew was dead. I now am forced to give up my beliefs and go back to web.

I don't expect my email to change anything, but I do believe you would appreciate some of my thoughts as a developer who has been on the platform since day 1. I am in no way delusional enough to think we are partners or that Apple needs us in any respect. Of course we are insignificant to the success of Apple. Our departure from the App Store won't make even the tiniest blip. Of course I know that and this is no way meant to try to insinuate otherwise.

I truly appreciate Apple and I really **LOVE** iOS. These things will never change (when I was really upset I picked up an Android phone and after 5 mins I couldn't handle how they completely missed delighting the user over and over again). The moment I got an iPhone in 2007 my life changed. I knew I had to drop everything and develop for this platform (even when there was no SDK). I knew it was going to change people's lives forever and I had to be part of it. So I did. We started a company and thankfully Co years later we amassed quite a following helping people learn to truly love their iOS devices, like we do. Confident people each day turned to our apps to explore the magic of their devices.

We didn't care much about Apple rumors or even the latest developments in technology. The thing we obsessed about was apps. So many ways to augment the power of your device - there are apps for everything, and if people only knew about them, it would impact their daily lives. We created several apps to try to solve this problem in many different ways. Of course Apple's App Store serves this need as well, and we enjoyed watching it beef up its editorial presence. But a store focused on hundreds of millions of app users and a marketplace for every single app in the world could not get as granular as we wanted to go. We want to serve the app enthusiast, not the masses that the App Store is perfect for.

At any rate, it's been our life's work over the past 3 years to dedicate ourselves to app exploration. In November last year the App Review team made it clear that our apps were not welcome in the Store anymore as they actively removed our main app from the Store. They pointed to the rule (2.26) created just a couple of years ago about what kind of apps can recommend apps other than its own (by the way I still believe my apps fit the description). We of course have been aware of this rule since it came out, as we already had a healthy business and significant payroll doing app journalism. When we saw some apps get removed, it made us more steadfast in our mission. Because we believed the fact that we were not bothered is because we were doing it the "right" way. We were really serving the user and the App Store. Not selling fake "recommendations" as deceptive ads. We literally turned down millions of dollars in revenues, as developers repeatedly asked to pay per install to be featured in our app (outside of tradition advertising). It was hard to turn down the money even though we knew it was not right to users. One thing that made it easier is our belief that playing it straight would keep us in the App Store and in Apple's good graces. Our primary revenue stream is Apple itself through the affiliate program and Apple invites us to their special media events to see the latest devices. So while others had very big paydays we knew it was a fleeting thing for them, and we were building a company slowly and steadily that would be around for the life of iOS.

About a year and a half ago Apple changed their affiliate program rules and stopped paying commissions on most in-app purchases. This cut our revenue by 55% as the "freemium" model is now so popular. While that hurt, we didn't make a fuss, because it didn't stop us from achieving our core mission. Money was always just a way for us to keep building more things, the product is what matters. But now Apple actively removing our app from the store, an app with almost 10 million downloads, it has stopped us completely from reaching the users we aim for. This is not about money loss, it is not about someone making a product that users like more than ours, this is about getting killed by the company you kill yourself trying to support. We didn't even have a web version of the product because we believed the web was dead.

For the past 2.5 months I have tried everything I can think of to get the app back in the store. I've changed it lots of ways and redesigned it completely. I am always met with swift rejection and generic terminology. No one in app review is interested in seeing our app in the store so we're forced to give up. We have now shifted all our attention back to the old boring web we used to make fun of. We know we are delivering a lower user experience now, but we don't see another choice. So now we have web apps and we've literally received thousands of emails from users who want to download our app and can't find it so we now redirect them to a watered down web app. We'll try to still excite users about new apps via the web, because it's our passion and we love it. We just won't be able to build the products we want and we'll have to scale way down

because the revenue on the web is much smaller than it is in the app. The main reason this saddens me is I don't understand the point. I always thought I knew what these guidelines were trying to protect. People gaming the App Store charts and users being tricked into believing bad apps were the best. But we are not doing that. I can't even make up a reason why I think Apple would not want our app on the Store. It's a great app with Confiden 5 star reviews and countless thank you emails from our users.

I fear App Review is getting too powerful. It's no longer about keeping iDevices safe or protecting the user's best interest. It's now about something else which I don't understand. I am not alone in this observation and it honestly makes developing on the platform scary. Many other prominent developers have shared the same ideas with me. We are working on some new ideas for Apple Watch. We're excited about them. They are not about app recommendations, but cool uses of iBeacons. But in the back of our minds we are already wondering. What if in a few years after we have success in what we are doing, Apple decides to make a rule banning it. And even if we do it in a way that we believe to be in the spirit of Apple and try to make sure we do it as Apple would want, we could still get whacked. We are now scared of Apple. It's very weird to be in love with and scared of the same thing: Apple.

Of course I want my app back in the store, but even more I want Apple to really think of the role of App Review. Why do they exist and do they all understand their role. I no longer believe they are helping the Store thrive, I now think they are hindering user experiences. I know that is not the intention and not what Apple wants. So I implore you to please have someone really look into this. If anything can undermine the success of the App Store it is App Review (it sure isn't Android, that will always be a 2nd rate port your iOS apps to Android if you have time experience).

Thank you for everything you guys do at Apple. I appreciate that you don't make flashy Hololens type videos but ship real products that really think about the problem. I already see what the watch will be in a couple of years when it won't even require a phone and how different Apple's watch is compared to the ones before it. So thank you. Please don't give up on TV. That is still what I am waiting for (I have TV app ideas ready to go too :)

I'll keep bleeding iOS, but I am now truly worried that I won't make enough revenue to continue my passion. That is my problem not yours, but please do think about the role App Review plays and if you want them to be this powerful, as they continue to extend beyond the user experience role they once played. I'd love to talk about this in more depth. We are located in Confidential it would be a honor to meet you to share my learnings in covering iOS apps since the beginning. I know that's a long shot but how awesome would that be for me.

And if you actually made it this far in my email thank you. I know this email is way too long to send to the CEO of the most valuable company in history but I didn't know how to make it any shorter.

Thank you,

Confidential

Subject: Re: Next steps on Apple & Baidu partnership
From: "He,Helen" [Confidential]
Received(Date): Wed, 03 Jun 2015 04:31:25 +0000
To: "Brian Croll" [Confidential]
Cc: "YeeWee Koh" [Confidential], "Fang,Yimin" [Confidential], "Daniel Suen" [Confidential], "Phil Schiller" [Confidential]
Date: Wed, 03 Jun 2015 04:31:25 +0000

Brian*

It has been a while since my colleagues and I visit you at Apple's campus. I will be travelling in Bay Area with my colleagues during the week of June 22nd and would like to meet you for follow-up discussion.

I would appreciate if you could let me know your preferred time of June 22nd week. My colleagues and I are looking forward to seeing you again.

Regards,

Helen

From: Tim Cook [Confidential]

Date: Wednesday, August 6, 2014 at 3:47 AM

To: "Li,Robin" [Confidential]

Cc: HAIWEN HE [Confidential], Phil Schiller [Confidential], Brian Croll [Confidential], YeeWee Koh [Confidential]

Subject: Re: Next steps on Apple & Baidu partnership

Robin,

Thanks for visiting with me. I'd like Apple to have a deeper relationship with Baidu and I think some of the items below are great starts. Here is the status of a few of the items:

1. Search - Both iOS8 and Yosemite will include Baidu as the default search engine. Both operating systems are available as a developer release today and will become available to our customer base in the Fall.

2. Input method- iOS8 will enable Baidu to have significant capability with extensions, such as Baidu's input method.

3. Map App- Eric Albert from Eddy Cue's team is in China this week and I've asked him to contact you to begin an investigation. Please put him in touch with the right person on your side and we will assess this opportunity.

4. APP Review Fast Track- We can set up a process where Baidu could send us a beta app for review and this can often speed up the process.

I'm assigning two key contacts for Baidu and both of them can help manage through Apple: YeeWee Koh from our Beijing office and Brian Croll from Cupertino. Both are a part of Phil's team. YeeWee will engage Brian where needed and I am asking both of them to reach out and introduce themselves.

Finally, we are looking at your positioning service.

Best,

Tim

On Jul 25, 2014, at 11:42 AM, Li,Robin { Confidential } wrote:

Tim,

It was great to catch up with you this morning and find we share many common views.

I want to make sure that we follow up on some of the ideas we discussed. Specifically, it would be great to make progress in the following five areas of cooperation. Please designate someone on Apple side as the contacting person. On Baidu side, our chief strategy officer Helen He will serve as the point of contact.

1. Search: Baidu has the best and most popular Chinese search engine. It would be great to set Baidu as the default search engine (browser default search, mobile search APP) for all Apple devices in China.

2. Input Method: Baidu has the best and most popular Chinese input method(particularly among Apple users). It would be great to set Baidu IME as the default input methods for all Apple devices in China.

3. Map APP: It would be great to set Baidu Map APP as the default mapping application for (or pre-install in) all Apple devices in China.

4. Positioning Service: I recommend Apple to use our positioning API as we are the most popular, most accurate, and most reliable one in China.

5. APP Review Fast Track: Baidu offers many services to Apple users in the form of iOS APPs. It would be great to set up a fast track for the review process for Baidu APPs.

Beside the above, Apple and Baidu have many other mutually benefiting cooperation opportunities, such as integrating Baidu's leading Chinese voice recognition technology into Siri, Siri uses us as the backfill search engine, and utilizing Baidu's personal cloud services inside China. I look forward to a long and fruitful relationship between our companies.

Subject: Fwd: App Store Problem
From: "Tim Cook" Confidential
To: "Cue Eddy" Confidential, "Philip Schiller" Confidential
Date: Wed, 10 Oct 2012 00:33:15 +0000

Begin forwarded message:

From: Confidential
Subject: App Store Problem
Date: October 9, 2012 3:06:05 AM PDT
To: Confidential

Dear Mr. Cook,

I was hoping you might be able to stimulate the resolution of a problem in the Mac app store. My app, Confidential, was approved for sale on the app store on September 13th. The problem is that the app is virtually invisible on the store because searching for it by keyword or even by name yields no results.

I've gone through the proper channels and have been told that the iTunes Connect team is "diligently working to resolve this issue" however the problem was reported on September 17th and there has apparently been no status updates or visible progress since then.

This issue has turned what would have been a big launch opportunity for our company and software into a complete non-event. At this rate we may be better off pulling Confidential from the app store and going back to selling directly from our web site, where we sell many times more copies per day and aren't limited by sandboxing and other app store rules.

I'm hoping that you are willing to intervene and increase the priority of resolving this problem which I believe is a relatively simple matter fixing Confidential entry in the search index. Going without the increased sales from being on the app store has been an unexpected blow to our small company.

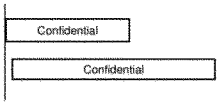
It may be relevant that Confidential is, I believe, the Confidential to be sold on the app store. Confidential

Confidential

Sincerely,

Confidential

--
Confidential


Confidential
Confidential

Subject: Default apps in iOS, iPadOS issue
From: Confidential
Received(Date): Tue, 18 Jun 2019 13:55:02 +0000
To: Confidential
Date: Tue, 18 Jun 2019 13:55:02 +0000

Hi Craig,

I am very excited about iPadOS. Great work to you and your whole team for putting this together. Yay! That, files app and the app switching is just too good. My favorite is the small keyboard on iPadOS. Thank you so much! I've one more request. Please think about this one too.

Everyone can change default email and browser apps on their MacOS but why can't they choose it on the iPhone and iPad? All my emails and browsing history are not available on my iPhone and iPad because of this issue. I've trying to get some help on this for 10 years without any resolution. You agree that it is very important have consistency for a pleasant experience. It is one of the top Lund's usability maxim as well.

As suggested by your support team, I've removed the default email app on my iPhone/iPad, so every-time I accidentally click on an email link, it takes me to the app store to download the email app. There are many times you cannot even copy the email address and so it takes a long and painful procedures just to email someone.

After more than 10 years and persuading many-many people to switch over to iPhones, I had to finally give up last January and move to android just because I wanted to use "3rd-party" email app by default on my iPhone. I can deal with that, but I really do not want to give up my iPad for just this request.

Can you please look into this and provide a way to change default email and browser apps on iPadOS at least. I think it will make many many many customers very very happy. Please!

Thanks,

Confidential

Subject: Default App Policy
From: Confidential
Received(Date): Thu, 15 Aug 2019 15:55:50 +0000
To: Confidential "Craig Federighi" Confidential
Date: Thu, 15 Aug 2019 15:55:50 +0000

Hello Gentleman,

I have been a long time Apple products user. My family loves the Apple products and the incredible value they add to our day to day lives.

One thing that I strongly believe Apple can improve as far as the iphone\ipad user experience is concerned is letting the users choose their default apps.

At this time there are so many apps that Apple provides out of the box which have great alternatives on the appstore. To name a few:

Mail Client, Apple Music, Reminders, Apple Maps, SIRI, Messages, Camera etc.

If Apple believes that they make the best apps in the respective categories why not let users choose what they feel is the best. At this point I cannot have Google Maps as my default maps app, or I cannot slide left on lock screen and launch Halide Camera app instead of default camera.

I am a big time advocate of freedom of choice. And I feel there is some scope of improvement for Apple with its default app policy.

Thank you again for making such wonderful products.

Confidential

Subject: Recap
From: "Eddy Cue" · Confidential >
Received(Date): Tue, 01 Nov 2016 20:37:53 +0000
To: "Jeff Bezos" · Confidential >
Date: Tue, 01 Nov 2016 20:37:53 +0000

Jeff,

I really enjoyed our time together.

Here are the details of what we discussed on Prime Video -
• Amazon Prime Video app in iOS and Apple TV
• 15% rev share for customers that signup using the app (uses our payment); no rev share for customers that already subscribe
• content meta-data is provided for Siri and Spotlight search
• support "Watch [showname]" in Siri which will launch your app to the show page
• support new TV app so that shows/episodes being watched are shown and link directly to your app
• upsell streaming services (e.g. Showtime) in your app - pay 15% only when its a subscriber that originally signed up through us
• understanding any tax issue is an open question - ready to have our tax team engage in discussions

Other items to discuss in the future -

Confidential

• Apple reseller - I've heard we have teams talking now but we both have to do better here

I've got my team ready to engage when you say so. I will think about the other items and ping in a couple of weeks.

Eddy

Subject: Amazon
From: "Nick Leahy" Confidential
Received(Date): Tue, 06 Nov 2018 17:34:32 +0000
To: "Steve Dowling" Confidential
Cc: "Amy Burke-Bessette" Confidential
Date: Tue, 06 Nov 2018 17:34:32 +0000

Dowling,

Some more detail on the Amazon deal in the works and the media approach. The deal will put our full product line (with the exception of HomePod) for sale on Apple's official store on Amazon. Currently we sell Mac, AirPods and various accessories.

As part of the deal Amazon will clear out all of the unauthorized resellers of our products, some of which are counterfeit. This should begin later this week. According to Amazon PR this is "tens of thousands" of resellers. Once the seller notifications go out, Amazon expects press inquiries within hours. Their plan is to work these inquiries on background, explaining they're continually refining their marketplace.

They'll also prepare a reactive statement about the additional Apple products that speaks to their excitement to offer customers more choice this holiday season. I suggest we offer a similar reactive statement.

Waiting on Amazon to send through their draft statements and Q&A and will come back.
Nick

Subject: Sad iOS App Developer
From: Confidential
Received(Date): Tue, 03 Oct 2017 14:58:35 +0000
To: Confidential
Date: Tue, 03 Oct 2017 14:58:35 +0000

Hi Mr. Cook,

I'm Confide, one of two guys who left Confidential Confidential We raised money and built a product people seem to be getting excited about!

Unfortunately, we have a problem. In the iOS App Store, searches for Confidential Confidential and other variations and and exact matches do not show our product in the first ~100 results. I've written to developer support multiple times, and while they are responsive, nothing changes in the result queue. I understand that your algorithm weights different factors, but for an exact match to (effectively) be absent is very surprising and upsetting.

We went to #1 on Confidential two weeks ago and have had some attention, but every time we get exposed to new users, we hear "we can't find your app on the App Store." Providing a direct link doesn't seem to help - people use the App Store to find apps, and if an app isn't discoverable, it simply will not be found, downloaded, and adopted.

I'm writing to you because this going to kill our startup. We believe we're really innovating - building an app that provides value in a new way. But we simply cannot succeed if we can't be searched on your store. This is sad for us, but also sad for the iOS ecosystem.

Thanks for reading,

Confidential

From: [redacted]
To:
Sent: 2/13/2012 3:44:44 AM
Subject: Chat with [redacted]

6:51 PM **me**: hey what's up
driving to dinner but will be able to type more in like 5 min
6:52 PM [redacted]can we talk for a minute now?
or 5 minutes from now is ok too
me: yes
go for it
6:53 PM [redacted]k. so, not surprisingly, zuck pinged me to say "i'm not sure if this is a good idea yet, but i think maybe facebook should buy instagram, what do you think?" i obviously want to discuss with you before i reply to him
me: got it
you know him better than I do
6:54 PM a) will he go into destroy mode if I say no
b) will he understand if we choose to raise instead
6:55 PM c) will he understand that I don't want to shutter the product and that doesn't align with what FB does with companies
[redacted]a) probably (and probably also if we just don't engage at all)
b) no, he'll go harder into destroy mode then
6:56 PM c) what i think he would most likely want to see is for instagram to turn into a stand-alone mobile facebook photos app, like beluga turned into facebook messenger
6:57 PM (re c he hasn't indicated anything to me at all there, i'm just speculating)
me: I thought they were already working on something internally for a long time
6:58 PM well what's our goal here then
[redacted]i could see that merging into instagram
me: fair enough
6:59 PM are we sure we can't downplay our hand
say we're focused on pretty photos and an open name space and we're not sure how that fits in?
I'm riffing here
[redacted]our goal depends on what you want to do. if you're actually interested in considering selling at the right price, then i would (slowly) talk with him and try to talk with twitter in parallel. (do not slow down the series b discussions in any event.) if you are of the mind "i don't want to sell at any price" then we need to figure out how to shut this down with minimal damage. i think that means playing it out REALLY slowly with him.
7:00 PM yeah, downplaying our position could be a way to play it out really slowly in the latter scenario
7:02 PM **me**: well trying to focus on the questions an hesitations he's already having (pretty photos, namespace, open)
I'm not interested really - even at the right price I don't think so
7:03 PM [redacted]ok then we should figure out how to shut it down
me: I think so.
7:04 PM [redacted]any ideas? downplaying our position is a good thought but he's way too smart for "oh never mind little old us, we're just pretty pictures"
me: it's a little bit crazy but I don't think they go away as an option in the future
sure I'd want to be smarter than that too
7:05 PM [redacted]here's one idea: i could tell him "i don't think it makes a ton of sense and i think if you start down that path you risk a bidding war with twitter and google for this, whereas if you leave it alone it'll probably just go its own way"
me: well my q is why would he ask you knowing it would get to me
[redacted]ie facebook is better with an independent instagram than witha n instagram that's part of twitter or

google
it's a way of approaching you indirectly. smart.
me: yep
7:06 PM [redacted]of course if i make the "leave instagram alone for facebook's sake" argument, he will conclude that it's best to crush instagram. i guess there's not that much that can be done about that though.
me: hah
7:07 PM unless we figure out how to show that insta is pushing lots of content in and that a good thing
but he already knows what small % goes in given press articles
and we are going to have overlap in features
7:09 PM or you could respond and get more info
like try to understand why he's thinking abt it
7:10 PM "that depends on why you might think its a good idea and bad idea, I can help give pros and cons"
then we can craft the approach rather than guessing
7:11 PM [redacted]yeah that could make sense. but i doubt he'll tell me his full rationale. he already told me that he thinks it's bad for anybody else to control posting of photos onto fb at large scale (keep that between us please), but i think there's more to it
i suspect that what he's really worried about is twitter.
7:12 PM if twitter and instragram became one company it would make life more difficult for facebook.
me: everything is btw you and I
[redacted]and instagram is a more natural fit for twitter as a product.
yup
me: I'd agree on that hunch
7:13 PM given jack and I having coffee tues
and [redacted]drinks tomorrow
[redacted]why are you meeting with [redacted]directly if you're not serious about doing something with twitter?
7:15 PM **me**: well - he needs to know we're not interested
and they haven't said anything
[redacted]how's this as a reply to mark: "why do you think it's a good idea? i've never heard kevin express interest in selling, and the product seems pretty different to me. i actually think instagram can do well as a stand-alone brand advertising business fwiw."
7:16 PM (he told me he thinks instagram can't be a good independent business because of how much it's about photos, but i think that's partially posturing.)
the only reason to include my last sentence is to remove his fear that there will be a twitter deal
me: to be clear theyve said nothing - and I want to maintain a good relationship so I think avoiding him isn't a good idea when I can just say n
7:17 PM no
that is unless you think there's a better way to turn them down
and also I thought we wanted some leverage of interest for fundraising
7:18 PM [redacted]yeah i think that's fine
7:20 PM **me**: I think instead of product seems diff - you may pt out how the existing structure (following and namespace) doesn't mesh well
or would make it hard to be successful inside
successful acq
7:21 PM [redacted]sure
me: but again he's prob thinking more that he doesn't want twitter to have it
less that it will be successful inside
7:22 PM [redacted]my only concern with that approach is it signals "this is a better fit for twitter". maybe better to leave it more vague.why do you think it's a good idea? i've never heard kevin express interest in selling, and the product seems pretty different to me. i actually think instagram can do well as a stand-alone brand advertising business fwiw
oops never mind everything after "vague" above, i hit paste by accident
me: got it
ya I hear that
7:23 PM I mean honestly he seems like a guy with a clear sense of what he wants

[redacted]umm yeah
me: and I think getting more info is all we can do
I don't know that we'll be able to sway
7:24 PM in fact what worries me abt the response is that we signal that we're trying too hard to avoid it
[redacted]any thoughts on how to not do that?
7:25 PM **me**: I don't know if we need the stand alone biz thing I think
[redacted]ok. so just this: "why do you think it's a good idea? i've never heard kevin express interest in selling, and the product seems pretty different to me."
7:26 PM **me**: "I've never heard Kevin express interest in selling. the product seems pretty different than what you're going after. why do you think it's a good idea?
7:27 PM q at the end?
I dont care abt the middle sentence
meaning I was wordsmithing
7:28 PM [redacted]sure that's fine
me: ok why don't we see where that goes
7:29 PM I do think we have to be careful with twitter conversations so he doesn't get conflicting repts
[redacted]yep
7:30 PM **me**: don't want to make any enemies
[redacted]for sure
but mark doesn't react emotionally, he reacts based on competition
just sent him that language, we'll see what he says
7:31 PM **me**: ok good
that's why i think signaling no competition is good
[redacted]yeah, but he's too smart to take our word for it ;)
7:32 PM i do think the biggest hot button for him is the possibility of a sale to twitter
me: bottom line I don't think we'll ever escape the wrath of mark
[redacted]haha
me: it just depends how long we avoid it
that's why we need to raise 70 build an army and keep our heads down
[redacted]one thing to consider is doing some PR around how much we love facebook platform and how awesome it is to be a complimentary player to facebook
7:33 PM **me**: it will come
when? I don't know
that's a good idea
[redacted]yeah i think that's a key project to point our pr person at
we need to make it as hard as possible for fb to mess with our ability to get distribution on the platform
me: [redacted]reached out to me again - broke his own rule
7:34 PM [redacted]haha
me: yah I agree
[redacted]was he chill
me: yes
[redacted]see he's learning :)
me: good[redacted]
7:35 PM [redacted]i think we should let him in, even if it's a small piece. he's such a good dude
haha
me: yah we have to plan for the inevitability of FB hating us
[redacted]and i actually think we can put him to work recruiting engineers for us
yeah we do
me: I mean twitter is so different
and yet ...
[redacted]i think he spends most of his time partying these days, so he has time to recruit for us
me: :D
I like[redacted]a lot

[redacted] and he actually has a good network out of google which i think is probably complimentary to yours
me: had good time with [redacted] and [redacted]
[redacted] is a good dude
[redacted] benchmark is about to gear up its engineering recruiting effort btw, but that won't spin up for at least a couple of months)
7:37 PM cool re [redacted] and [redacted] [redacted] is keen to do this and i think he can be helpful too. i honestly think [redacted] will help less with recruiting but he's a great guy
yeah [redacted] is a great guy, we should include him too. i think our existing plan to have him "fill in" the round makes sense
me: ya. path stuff with Kleiner?
[redacted] basically i think we have room for one of dst, [redacted] or [redacted] and then we can have [redacted] and/or [redacted] and [redacted] fill in the rest once the lead sets the price
7:38 PM **me**: yep
well I'm planning on sending sig pages on the grants tonight
and we start talking this week
7:40 PM [redacted] mark just replied and asked if anybody else has tried to buy instagram. i think the best reply is "i really shouldn't step over boundaries and talk about that, but the answer is not yet."
is that cool?
oh and then he also asked "should i just talk to kevin directly"? i think he's going to do that anyway, so i should tell him "yes"
me: isn't the first part contradictory with the second?
[redacted] yes it is
7:41 PM **me**: yah tell him to talk to me and that I haven't mentioned anyone
[redacted] but it signals that this won't be a precedent for my telling him that stuff in the future
ok will do
me: ok
then we should talk about how to respond
7:43 PM [redacted] how to respond to what?
me: he will reach out to me
7:44 PM I've avoided chatting once and failed
[redacted] yeah. let's see what he says.
me: k
7:45 PM ok chat me later - just sat down to dinner cool?
or we can talk tomorrow
whatevers easiest
7:46 PM [redacted] sure. i'm landing in about an hour so will lose my wifi in about 30 minutes :)
have a good dinner ttyl
me: thanks - ttys

Posted 2012-01-26 23:52:32 UTC
Status Instagram is eating our lunch. We should've owned this space but we're already losing quite badly. Lots of new friends are joining and following me every week, and I find myself checking it far more often than FB Mobile. It's a far more focused, compelling way to keep up with what my friends are doing. Google+ is a red herring — we are getting distracted by a shitty clone while guys like Instragram and Pinterest ramp up and create new markets that we should've seen coming.
Mobile

Comments User [redacted] Text [redacted]
Time 2012-01-26 23:59:09 UTC

User [redacted] Text Isn't that why we're building an Instagram clone?
Time 2012-01-26 23:59:51 UTC

User [redacted] Text I wouldn't call it a clone
Time 2012-01-27 00:00:05 UTC

User [redacted] Text But we are building something in a similar space
Time 2012-01-27 00:00:21 UTC

User [redacted] Text At 500 Startups demo day yesterday it was really clear that all these awesome new social products are going to be built - either on our platform, or without us. Right now it's not the former. We have our work cut out for us. If Instagram was a solid OG app I don't think it would necessarily be bad that it gets checked more than FB mobile.
Time 2012-01-27 00:02:41 UTC

User [redacted] Text I try to only post artsy things on instagram, where I post social stuff on FB. Different audiences and purposes I think. Also, eventually all the filters will get super old.
Time 2012-01-27 00:03:56 UTC

User [redacted] Text Seems like we're not a place for art/serious photography right now and that might be ok
Time 2012-01-27 00:04:39 UTC

User [redacted] Text We're building something similar but I think we're going to miss out on a lot of the cool Instragram dynamics.

I've heard that we might cut the focused consumption experience from v1 of snap, but I spend most of my time on Instagram looking at other people's photos. Instagram also makes it easy to follow people you don't know (in addition to people you do know), which makes things quite interesting as well. They've done a lot to build an interesting community and I think that's going to be hard to replicate. [redacted]— I don't think most people use Instragram for "art" photography. It's more "fun" photography. Lots of people I follow post at least a photo a day, and it's still really interesting to see how people's lives are unfolding in real time. The filters and the different square format give people artistic licence that they didn't have before, and that makes them more likely to post.
Time 2012-01-27 00:08:43 UTC

User [redacted] ([redacted]) Text Google+ isn't shitty. It's a better implementation of a broad social network than our own in many respects; it just happens to be late to the party. We definitely need to be ahead of the upstarts as well, but most days I'd take a Facebook that just worked better, looked better and wasn't riddled with bugs over a social pin board. Also, as far as I know there are only like 3 people in the company who are focused on Google+, and we haven't shifted our product roadmap in any meaningful way to respond to it.
Time 2012-01-27 00:09:22 UTC

User [redacted] ([redacted]) Text [redacted], I don't really think people make that distinction. More and more of my friends are using Instagram and Path to share their life and I don't think artsy photo filters are to thank. It comes down to how focused and simple these apps are and how frictionless it is to share with them. What's interesting now that more "regular people" adopt these products is that they don't seem to care too much about their friends being a part of it.
Time 2012-01-27 00:13:05 UTC

User [redacted] ([redacted]) Text I've heard really good things about the new Path as well.
Time 2012-01-27 00:13:11 UTC

User [redacted] ([redacted]) Text (Not trolling)
Time 2012-01-27 00:13:18 UTC

User [redacted] ([redacted]) Text Interesting fact: 40% of photos uploaded in instagram don't use a filter. Although this could mean these users are filtering their photos in other apps or using tilt-shift (which doesn't count as a filter)
Time 2012-01-27 00:18:59 UTC

User [redacted] ([redacted]) Text I agree with you. We tend to over-complicate things. Instagram is winning because they just made a really simple thing and they actually just sat down and built it. We need more [redacted] or at least small teams (2-4 people) who can build a complete quality product in short time. When it comes to Snap, it's a more complicated product than Instagram, which is dangerous. Humans are inherently lazy, thus something that's slightly less valuable from a technical standpoint, but easier to use, will win. What [redacted] is getting at here is important too — posting to Instagram implies quality before quantity. The pictures you post are presented in a very clean and simple manner, in seemingly high quality. Today, posting to Facebook implies a context of quantity before quality. This could be the effect of several variables, like us compressing images too hard, not giving images much space or just the fact that 80% of your friends doesn't have an artist's eye. We might not be in a bad place, but just perceiving ourselves differently than our users do. If we want to be a place where beautiful (as in aesthetics) content is shared, we need to work on presentation (e.g. show really large images directly in feeds rather thans mall thumbnails you need to click, stop compressing images so hard details disappear, etc) as well as tools that allow creative freedom with clear constraints (relating to Instagram, this is actually one of the key components to the app's success—its limitations: 1:1 photos only, only prefab filters as postprocessing, no cropping etc and only likes and comments, no re-sharing, saving, starring, categorization, etc).
Time 2012-01-27 00:19:57 UTC

User [redacted] ([redacted]) Text My two cents: I stopped using Instagram very soon after I realized I couldn't post anything to Facebook but a link to the photo on Instagram's site. I've only recently started using it again because they added the ability to upload photos directly to Facebook.
Time 2012-01-27 00:23:01 UTC

User [redacted] ([redacted]) Text [redacted] This is what I use to get Instragram into my Timeline and subscriber's news feeds: http://ifttt.com/recipes/507 In a perfect would, Instagram would have posted actual photos to Facebook, but I guess either our APIs weren't sufficient or they didn't really care to put the effort in.
Time 2012-01-27 00:28:14 UTC

User [redacted] ([redacted]) Text They only started caring once Timeline was out and we made photos posted to our site look a lot better.
Time 2012-01-27 00:29:04 UTC

User [redacted] ([redacted]) Text @[redacted] I'm curious, what are we aiming to do differently with Snap vs. Instagram?

Time 2012-01-27 00:30:21 UTC

User [redacted] ([redacted]) Text No offense, but I personally still wonder why we're trying to play the platform and product game at the same time with Snap. If we make the photo consumption experience better than every other platform out there, then wouldn't external apps that can make it easy to share photos just flock to us?
Time 2012-01-27 00:32:20 UTC

User [redacted] ([redacted]) Text [redacted] I'm certainly not advocating that we create a social pinboard. But there's a bunch of subtle things that we could do to encourage that same kind of sharing. Some of that sharing, like the recent proliferation of re-shared photos, is already happening. Mostly I'm just frustrated by our tendency to pay attention to what the Valley is saying instead of what the real world is doing. Pinterest is a great example of this: Techcrunch et al didn't really pay attention to them until they really started to blow up in the last month or so, and this is because most of their initial popularity came from outside the valley. There may only be 3 people working on Google+ related things (although didn't we have a whole war room of people working on FL redux?), but there's certainly a lot more people devoting energy to thinking about them, when really their product is not that much different than our own. It's fairly easy to one-up G+ on features, and though their distribution is scary, I'm far more scared by things that make us look like dinosaurs (Instragram, Pinterest), in the sense that they're creating categories of experiences that just don't exist (and can't easily exist) on FB. And as [redacted] points out, we're not set up well as a company to innovate with new categories. Snap is taking months and months, and it only exists as a reaction to Instragam. It's not like someone said "Hey, wouldn't it be cool if...", and then went and built a new thing in two months. If everything is strategic then nothing is creative and innovative.
Time 2012-01-27 00:32:27 UTC

User [redacted] ([redacted]) Text @[redacted] as of now, the big differentiator is multi-photo upload (which is what we've been spending a lot of time nailing on design) Face detection for ease of tagging is realistic for 1.0. We're really interested in face recognition, but not sure if it will make it for 1.0
Time 2012-01-27 00:39:30 UTC

User [redacted] ([redacted]) Text A simple multi-photo upload is really tough. No one I know of has done it right yet, I think we'll be the first to nail it.
Time 2012-01-27 00:42:28 UTC

User [redacted] Text The question for me is when it is rational for us as a large, established service to divert significant resources from clear improvements to our product and invest significantly in pure creativity / innovation. Ideally we would do both, but we're always strapped for development resources. Small unestablished startups have a much clearer incentive to go all in on creativity / innovation from the get go. To play devil's advocate, it seems like it might be rational for us, in many situations, to just make sure we're gathering as much information as quickly as possible about what these small companies are doing, and when we see evidence that the innovation has systemic value, mobilize resources to address it.
Time 2012-01-27 00:46:10 UTC

User [redacted] Text Pinterest is a Timeline App now. Instagram now publishes photos directly to Facebook instead of just linking. I'm not concerned when I see all of these start ups leaning on us for distribution.
Time 2012-01-27 00:46:37 UTC

User [redacted] Text To [redacted]'s point, we can also use their reliance on our distribution platform to better understand how valuable these small startups are, in order to augment evidence from personal experience, anecdotes, and the press.
Time 2012-01-27 00:53:51 UTC

User [redacted] Text Here's an idea: s/status update/blog post/, add markdown capabilities and have users invest more in original content creation on Facebook. This goes for any kind of media of course, like videos and photos which we are already talking about.
Time 2012-01-27 01:26:11 UTC

User [redacted] Text A better version of notes?
Time 2012-01-27 01:28:34 UTC

User [redacted] Text [redacted] Merge notes and status updates?
Time 2012-01-27 01:35:39 UTC

User [redacted] Text Anybody want to join the photos team? We're hiring.
Time 2012-01-27 03:38:25 UTC

User [redacted] Text As a Facebook user with only a very recent vested interest, one of the primary reasons I consciously

choose to tap on Instagram/Path/Gowalla/Whatever rather than Facebook to share is because I know that then a set of friends are highly likely to see it. With Facebook, its more of a shot in the dark. I don't know if my content will appear in my friends feeds such that they even have a chance of seeing it. Most of the times I've made one of these conscious choices to share elsewhere but still publish that activity to Facebook I get a significant amount more feedback on the originating application, likely for the reason I'm citing in addition to many of the reasons cited here so far. This then further dilutes any need I might feel to share on Facebook. I just want my friends to see my stuff and I want to know that they did. This, by and large, is the only reason I would opt out of sharing on Facebook over any other service.
Time 2012-01-27 05:55:28 UTC

- from: Mark Zuckerberg ([redacted]
- to: [redacted], Mark Zuckerberg([redacted],
- time: Sun Jan 08 19:59:42 PST 2012 (1326081582332)
- subject:
- body

I'm trying to figure out what the company goals should be, and what I really want to focus on is mobile growth and app usage growth.

Outlook E-mail

From: Mark Zuckerberg
Sent: 4/9/2012 10:09:37 AM
To: [redacted]
Subject: RE: CONFIDENTIAL ANNOUNCEMENT

Thanks. One reason people underestimate the importance of watching Google is that we can likely always just buy any competitive startups, but it'll be a while before we can buy Google.

From: [redacted]
Sent: Monday, April 09, 2012 10:04 AM
To: Mark Zuckerberg
Subject: Re: CONFIDENTIAL ANNOUNCEMENT

Well played.

Sent from my iPhone

On Apr 9, 2012, at 9:58 AM, "Mark Zuckerberg" > wrote:

Confidential – DO NOT SHARE

Hey everyone,

I'm excited to share the news that last night we reached an agreement to acquire Instagram.

Below is a post about the deal that I'm about to put on my timeline. Instagram has built a successful network and mainstream brand by focusing on building the best mobile photos experience. After spending a lot of time with the Instagram team over the last few months working on Open Graph, and over the last couple of weeks discussing this, it's clear we share the same values and vision for the future of mobile photos.

We are committed to keeping the Instagram brand and growing their app independently. We will also continue on our FB Camera work. Over time we can build these two products to move closer together as it makes sense.

As always, feel free to ask me any questions you have about this at this week's open Q&A.

Mark

Timeline post below:

I'm excited to share the news that we've agreed to acquire Instagram and that their talented team will be joining Facebook.

For years, we've focused on building the best experience for sharing photos with your friends and family. Now, we'll be able to work even more closely with the Instagram team to also offer the best experiences for sharing beautiful mobile photos with people based on your interests.

We believe these are different experiences that complement each other. But in order to do this well, we need to be mindful about keeping and building on Instagram's strengths and features rather than just trying to

integrate everything into Facebook.

That's why we're committed to building and growing Instagram independently. Millions of people around the world love the Instagram app and the brand associated with it, and our goal is to help spread this app and brand to even more people.

We think the fact that Instagram is connected to other services beyond Facebook is an important part of the experience. We plan on keeping features like the ability to post to other social networks, the ability to not share your Instagrams on Facebook if you want, and the ability to have followers and follow people separately from your friends on Facebook.

These and many other features are important parts of the Instagram experience and we understand that. We will try to learn from Instagram's experience to build similar features into our other products. At the same time, we will try to help Instagram continue to grow by using Facebook's strong engineering team and infrastructure.

This is an important milestone for Facebook because it's the first time we've ever acquired a product and company with so many users. We don't plan on doing many more of these, if any at all. But providing the best photo sharing experience is one reason why so many people love Facebook and we knew it would be worth bringing these two companies together.

We're looking forward to working with the Instagram team and to all of the great new experiences we're going to be able to build together.

Mr. Mark Zuckerberg
March 13, 2014
Attachment 4(c)-3

From: [redacted]
Sent: Tuesday, February 18, 2014 9:40 PM
To: David Ebersman [redacted]
Cc: David Wehner [redacted]
Subject: RE: Cobalt questions

Yeah... they do some very clever and thoughtful choices on many of their flows. I can walk you through some of them one day

From: David Ebersman
Sent: Tuesday, February 18, 2014 9:37 PM
To: [redacted]
Cc: David Wehner; [redacted]
Subject: Re: Cobalt questions

Thank you! I would have bet against that approach working. I would have been wrong.

From: [redacted]
Date: Tuesday, February 18, 2014 9:35 PM
To: David Ebersman [redacted]
Cc: David Wehner [redacted]
Subject: RE: Cobalt questions

You cannot send a message from cobalt to a non-cobalt user. From cobalt, you can invite a non-cobalt user to join cobalt via email / or sms invite depending on whether you have an email or phone # stored in your phone addressbook. If you decide to invite via SMS – regular fees apply.

From: David Ebersman
Sent: Tuesday, February 18, 2014 9:32 PM
To: [redacted]
Cc: David Wehner; [redacted]
Subject: Re: Cobalt questions

Thanks [redacted]. That makes perfect sense.

Am I correct that sending messages from one Cobalt user to another is free but sending from one Cobalt user to someone who does not use the service exposes the sender to SMS fees? I imagine this is key to the virality.

From: [redacted]
Date: Tuesday, February 18, 2014 9:23 PM
To: David Ebersman [redacted]
Cc: David Wehner [redacted]
Subject: RE: Cobalt questions

Hey David – based on our data, in the markets where they have done well (e.g. ES, DE, etc...) their reach amongst smartphone users is actually bigger than ours – so my guess is that we have close to 100% overlap, our user-base being a

subset of theirs.

Re: demographics: in markets where the do well, they literally reach 100% of smartphone users -- which is a big part of the population -- with the ones missing being either very young or older folks. I don't have the data easily available on their first demographics to grow / which demos use it on markets where they haven't grown yet (my best guess in the absence of data is that younger demos 15-30 and international folks connected with countries where they do well probably join first)

The key here is that SMS is a universal use case on mobile (more so than FB) -- which is why being an SMS replacement app they reach so many people

---

From: David Ebersman
Sent: Tuesday, February 18, 2014 8:02 AM
To: [redacted]
Cc: David Wehner; [redacted]
Subject: Cobalt questions

Hi [redacted]

None of these are urgent or critical, but they are the kinds of questions we will get from investors so I was curious if you had any thoughts:

- do we have any sense of overlap between their and our user base? Best guess?
- do we have any sense for their user demographics? does it skew young?

We would not answer quantitatively, but if we had a sense of direction we might give people some qualitative sense. Thanks,

David

From: David Wehner [redacted]
Sent: Tuesday, February 25, 2014 3:47 PM
To: David Ebersman [redacted]
Subject: RE: few thoughts

I think we keep utility but broaden it beyond graph search to include messaging / communications. I think we need to ask eng to give us some points on graph search and what they are trying to do and whether there is any reason to emphasize this to investors. My bias is to fade it to background.

From: David Ebersman
Sent: Tuesday, February 25, 2014 3:06 PM
To: David Wehner; [redacted]
Subject: Re: few thoughts

I do not disagree that my comments on Graph Search are weak but I am having trouble responding constructive to it because it is core to our comments about Utility and our strategy in general. What should we do?

- should we discard Utility from the conversation? If we do, don't we lose the 3,5, and 10 year framing since Utility is the focus of the 5-year arc? If we lose this, what is our framework for discussing our strategy?
- Should we keep Utility but use a different example than GS? Not sure what the example would be.
- Should we keep Utility and use GS an the example, but find a way to sell it better?

I fully agree that my GS language is weak, but deleting it creates a new set of questions.

From: David Wehner [redacted]
Date: Tuesday, February 25, 2014 at 11:44 AM
To: Facebook [redacted]
Subject: few thoughts

I was able to just observe today. It was very helpful.

A couple thoughts:

1) Fragmentation. We are letting the meme of fragmentation of audience establish itself. I think we should consider changing that. WhatsApp being popular isn't about the opportunity for Facebook being constrained. The reality is that 1x1 messaging has been a huge market for years and smartphones have opened up that market for disruption, making it ADDRESSABLE for Facebook and WhatsApp etc. So the pie is getting bigger not being chopped up. This seems like a simple message point for us to work on.
2) We need a simpler "platform" story. I am not sure if simply say we are a "platform for sharing" and that it is relevant for people, businesses, developers and public figures. Then we can launch into that. The fact that we are engaging all of these constituencies across our platform makes it more valuable.
3) M&A. A big concern expressed is that we are going to spend 5-10% of our market cap every couple years to shore up our position. I like David's answer that we think this is a "point in time" where change is coming to the mobile landscape. I hate the word "land grab" but I think that is the best convincing argument and we should own that. I'd probably tie this point to #1. Namely that smartphones are creating new, incremental opportunities for Facebook (and app developers) and we are being aggressive about seizing that opportunity as it is transforming the communications landscape.
4) Measurement. I think we should push to have a simple comparison of our measurement solution for brand vs. television. That came up and our answer is weak.
5) Auto play. I think we need some real data to speak to the consumer reaction to auto play. I feel like this is a big focus for investors but not clear where we think this is going. We need to tell the market where this is heading.
6) Graph search. I think we need to take the graph search talking points to another level. We have been saying the same thing for a while. It's just a weak story and I don't think people are buying the "we are investing in it" argument. Need something more here.

- from: Mark Zuckerberg ([redacted]
- to: David Ebersman[redacted], Mark Zuckerberg[redacted],
- time: Mon Feb 27 23:41:03 PST 2012 (1330414863647)
- subject: null
- body

One business questions I've been thinking about recently is how much we should be willing to pay to acquire mobile app companies like Instagram and Path that are building networks that are competitive with our own. These companies have the properties where they have millions of users (up to about 20m at the moment for Instagram), fast growth, a small team (10-25 employees) and no revenue. The businesses are nascent but the networks are established, the brands are already meaningful and if they grow to a large scale they could be very disruptive to us. These entrepreneurs don't want to sell (largely inspired our success), but at a high enough price -- like $500m or $1b -- they'd have to consider it. Given that we think our own valuation is fairly aggressive right now and that we're vulnerable in mobile, I'm curious if we should consider going after one or two of them. What do you think about this?

- from: David Ebersman ([redacted])
- to: Mark Zuckerberg([redacted]), David Ebersman([redacted]).
- time: Tue Feb 28 09:37:43 PST 2012 (1330450663315)
- subject: null
- body

I tend to have a high bar for M&A considerations. All the research I have seen is that most deals fail to create the value expected by the acquirer. My instinct is that many deals are done because the CEO is frustrated that the business is not where they want it to be, they would rather do something than nothing, and M&A seems like the biggest lever they have. This is a bad reason to do a deal. So for these two ideas specifically, I would ask you to find a compelling elucidation of what you are trying to accomplish. 1) neutralize a potential competitor? Bad reason in my book since someone else will spring up immediately in their place. There will always be consumers who are instinctively negative about the industry leaders and want to work with the upstarts. We will always have upstarts nipping at our heels. We have to win against competitors by having better products. 2) acquire talent? Seems expensive for this. 3) integrate their products with ours in order to improve our service? This can be a very compelling reason, if you have a clear vision for how the implementation would be great for users and that we cannot do the product improvements ourselves in a reasonable timeframe. 4) other? Happy to discuss further.

- from: Mark Zuckerberg ([redacted])
- to: David Ebersman([redacted]), Mark Zuckerberg([redacted],
- time: Tue Feb 28 09:55:42 PST 2012 (1330451742327)
- subject: null
- body

It's a combination of (1) and (3). The basic plan would be to buy these companies and leave their products running while over time incorporating the social dynamics they've invented into our core products. One thing that may make (1) more reasonable here is that there are network effects around social products and a finite number of different social mechanics to invent. Once someone wins at a specific mechanic, it's difficult for others to supplant them without doing something different. It's possible someone beats Instagram by building something that is better to the point that they get network migration, but this is harder as long as Instagram keeps running as a product. (3) is also a factor but in reality we already know these companies' social dynamics and will integrate them over the next 12-24 months anyway. The integration plan involves building their mechanics into our products rather than directly integrating their products if that makes sense. By a combination of (1) and (3), one way of looking at this is that what we're really buying is time. Even if some new competitors springs up, buying Instagram, Path, Foursquare, etc now will give us a year or more to integrate their dynamics before anyone can get close to their scale again. Within that time, if we incorporate the social mechanics they were using, those new products won't get much traction since we'll already have their mechanics deployed at scale.

- from: Mark Zuckerberg ([redacted])
- to: David Ebersman([redacted]), Mark Zuckerberg([redacted]),
- time: Tue Feb 28 10:43:09 PST 2012 (1330454589214)
- subject:
- body

Above, I didn't mean to imply that we'd be buying them to prevent them from competing with us in any way. Buying them would give us the people and time to incorporate their innovations into our core products, which is how we'd do the integration rather than actually combining the products. I'm mostly excited about what the companies could do together if we worked to build what they've invented into more people's experiences.

Mr. Mark Zuckerberg
March 13, 2014
Attachment 4(c)-7

From: [redacted]
Sent: Sunday, February 16, 2014 4:43 PM
To: Mark Zuckerberg [redacted]
Cc: [redacted]
Subject: RE: 100m+ MAU apps

Hi Mark,

Below are the Engagement (L28) and DAU estimates for the apps. All of the figures are based on figures as of 1/10/2014.

The FB Messenger DAU are lower than the internal numbers since we do not report ChatHeads usage as "Active Users" and thus we under-count Android usage. This will impact DAU and L28 more – MAU figures will be less affected, since there is a higher probability that they will use the Messenger app at least once in the 30 days.

App Name	Global MAU (M)	Engagement (L28)	Est. DAU (M)
Facebook	533	19.3	367
YouTube	490	6.1	106
Google Maps	410	4.3	63
WhatsApp Messenger	392	19.6	274
Gmail	389	11.5	160
WeChat	341*	20.9	254
Chrome - browser by Google	299	14.2	152
Facebook Messenger	214	10.0	76
Instagram	203	14.3	104
QQ	172*	13.9	86
Twitter	184	11.2	74
Google Search	173	8.1	50
Skype	172	5.7	35
Viber	163	8.3	48
淘宝 (Taobao)	138*	8.2	40
LINE	123	16.2	71
Dropbox	121	3.2	14
Candy Crush Saga	119	12.2	52
微博 (Weibo)	112*	15.9	64
Clean Master (Cleaner)	104	6.0	22
Shazam	101	3.3	12
Waze Social GPS, Maps & Traffic	99	4.4	15
Google Translate	93	3.3	11
支付宝钱包 (Alipay)	90*	10.2	33

Thanks,
[redacted]

From: Mark Zuckerberg
Sent: Sunday, February 16, 2014 1:15 PM
To: [redacted]
Cc: [redacted]
Subject: Re: 100m+ MAU apps

HIGHLY CONFIDENTIAL TREATMENT REQUESTED
NOT FOR CIRCULATION/COMMITTEE MEMBERS AND STAFF ONLY

Can you pull DAU for these as well?

Also, do these numbers for FB, Instagram and Messenger line up with our internal numbers?

On Feb 16, 2014, at 1:12 PM, [redacted] wrote:

Hi Mark,

Below are the apps that have at least 90M MAU (based on iPhone & Android figures). We used 90M, since these are projections and figures may vary. There are 24 apps that fit this criteria, 5 of which are Chinese-based apps.

App Name	Global MAU (M)	Notes
Facebook	533	
YouTube	490	
Google Maps	410	
WhatsApp Messenger	392	
Gmail	389	
WeChat	341*	Social Networking
Chrome - browser by Google	299	
Facebook Messenger	214	
Instagram	203	
QQ	172*	Social Networking
Twitter	184	
Google Search	173	
Skype	172	
Viber	163	
淘宝 (Taobao)	138*	eCommerce
LINE	123	
Dropbox	121	
Candy Crush Saga	119	
微博 (Weibo)	112*	Social Networking
Clean Master (Cleaner)	104	
Shazam	101	
Waze Social GPS, Maps & Traffic	99	
Google Translate	93	
支付宝钱包 (Alipay)	90*	Payments

* - Estimates based heavily on Chinese panelists. Due to smaller and self-selected panel, figures have larger error bands.

Please let me know if you have any additional questions.
Thanks,
[redacted]

From: [redacted]
Sent: Sunday, February 16, 2014 1:20 AM
To: Mark Zuckerberg
Cc: [redacted]
Subject: Re: 100m+ MAU apps

We'll find a way. Stay tuned.

- [redacted]

Sent from my mobile

On Feb 16, 2014 1:11 AM, Mark Zuckerberg [redacted] wrote:
Any chance you can do this by Monday evening?

On Feb 16, 2014, at 1:04 AM, [redacted] wrote:

> Sure. + [redacted] will extract this list and send over next week.
>
> - [redacted]
>
> Sent from my mobile
>
> On Feb 16, 2014 1:02 AM, Mark Zuckerberg [redacted] wrote:
> Do guys have a list of all mobile apps with >100m MAU globally? I'm really curious to see this.

- from: Mark Zuckerberg ([redacted])
- to: [redacted], Mark Zuckerberg([redacted],
- time: Thu Apr 05 01:05:16 PDT 2012 (1333613116164)
- subject: null
- body

I just need to decide if we're going to buy Instagram

- from: Mark Zuckerberg ([redacted]
- to: [redacted], Mark Zuckerberg([redacted],
- time: Thu Apr 05 01:12:03 PDT 2012 (1333613523286)
- subject: null
- body

We have this big issue right now because gaming is shifting from us to mobile platforms. It's causing all this negative momentum in a bunch of ways around gamer overall user engagement, ad spend from gamers, overall revenue, etc.

- from: Mark Zuckerberg [redacted]
- to: [redacted], Mark Zuckerberg([redacted]),
- time: Thu Apr 05 01:13:53 PDT 2012 (1333613633057)
- subject: null
- body

Pinterest and Foursquare are likely more valuable markets than photos.

- from: Mark Zuckerberg ([redacted]
- to: [redacted] Mark Zuckerberg([redacted]),
- time: Thu Apr 05 01:14:49 PDT 2012 (1333613689779)
- subject: null
- body

  Instagram can hurt us meaningfully without becoming a huge business though. For the others, if they become big we'll just regret not doing them.

- from: Mark Zuckerberg ([redacted]
- to: [redacted] Mark Zuckerberg([redacted],
- time: Thu Apr 05 01:14:58 PDT 2012 (1333613698394)
- subject: null
- body

Or we can buy them then, or build them along the way.

- from: Mark Zuckerberg ([redacted])
- to: [redacted] Mark Zuckerberg([redacted]).
- time: Thu Apr 05 01:15:10 PDT 2012 (1333613710460)
- subject: null
- body

We're kind of already working on building some version of Foursquare.

Outlook E-mail

From: [redacted]
Sent: 4/3/2012 3:57:08 PM
To: Mark Zuckerberg
Cc: Chris Cox
Subject: Sync from time to time

Hey Mark,

There have been some items lately that made me wonder whether it would make sense for us to stay in sync / get your input from time to time. These are some examples:

- Data – we just hired [redacted] (the zynga guy). Getting our data in great shape is going to require effort / some engineering time across the key product orgs. I have a clear idea of the most pressing issues, but would love to make sure you are aligned with the vision

- Competitive research. We have some good progress on the web front with the comscore data / we think we can build our own custom mobile panel pretty fast (with some significant investment in $s / resources). Visibility into this data will allow us to get 10x better at understanding the mobile web / ecosystem. I keep seeing the same suspects (instagram, pinterest, ...) both on our competitive radar / platform strategy as wins, which is an 'interesting' dynamic. I think having the exact data about their users engagement, value they derive from FB, etc... would help us make more bold decisions on whether they are friends or foes. Back to your thread about 'copying' vs. 'innovating' we could also use this info to inspire our next moves...

- Mobile pricing in emerging markets – your thread with questions on mobile pricing while you were in China / the latest discussions regarding low end phones are some areas where we have been focused over the past couple of years on the growth side (investing in snaptu, working with operators in all emerging markets to drive zero rating, etc...). I would love to hear where your thoughts are on this area / what we could do on mobile to win an edge over the competition.

- Monetization strategy / engagement – so far we have been pretty agnostic about monetization when driving growth / engagement. I would love to hear whether this is something you want to revisit

Last thing I want is to be on the negative side of your ROI calculations on how you spend your time (@zero time I was on the safe side ;)), so no worries at all if you have other more important stuff going on and think this does not make sense. That said, if these types of topics warrant 20 / 30 mins of your time every couple of weeks or more (we can do it over a walk or something so that we get some fresh air) I would be thrilled to do it. If we see it does not make sense, or you think there are better formats (e.g. review specific topics you are interested with the team, etc...) we can modify it / just cut it.

Lmk what you think,

[redacted]

Outlook E-mail

From: Mark Zuckerberg
Sent: 4/4/2012 1:28:10 AM
To: [redacted]
Cc: Chris Cox
Subject: Re: Sync from time to time

Yeah, let's do it. We can find some time periodically during my weekly reviews to go over this stuff.

On Apr 3, 2012, at 3:57 PM, [redacted] wrote:

Hey Mark,

There have been some items lately that made me wonder whether it would make sense for us to stay in sync / get your input from time to time. These are some examples:

<!--[if !supportLists]-->• <!--[endif]-->Data – we just hired [redacted] the zynga guy). Getting our data in great shape is going to require effort / some engineering time across the key product orgs. I have a clear idea of the most pressing issues, but would love to make sure you are aligned with the vision

<!--[if !supportLists]-->• <!--[endif]-->Competitive research. We have some good progress on the web front with the comscore data / we think we can build our own custom mobile panel pretty fast (with some significant investment in $s / resources). Visibility into this data will allow us to get 10x better at understanding the mobile web / ecosystem. I keep seeing the same suspects (instagram, pinterest, ...) both on our competitive radar / platform strategy as wins, which is an 'interesting' dynamic. I think having the exact data about their users engagement, value they derive from FB, etc... would help us make more bold decisions on whether they are friends or foes. Back to your thread about 'copying' vs. 'innovating' we could also use this info to inspire our next moves...

<!--[if !supportLists]-->• <!--[endif]-->Mobile pricing in emerging markets – your thread with questions on mobile pricing while you were in China / the latest discussions regarding low end phones are some areas where we have been focused over the past couple of years on the growth side (investing in snaptu, working with operators in all emerging markets to drive zero rating, etc...). I would love to hear where your thoughts are on this area / what we could do on mobile to win an edge over the competition.

<!--[if !supportLists]-->• <!--[endif]-->Monetization strategy / engagement – so far we have been pretty agnostic about monetization when driving growth / engagement. I would love to hear whether this is something you want to revisit

Last thing I want is to be on the negative side of your ROI calculations on how you spend your time (@zero time I was on the safe side ;)), so no worries at all if you have other more important stuff going on and think this does not make sense. That said, if these types of topics warrant 20 / 30 mins of your time every couple of weeks or more (we can do it over a walk or something so that we get some fresh air) I would be thrilled to do it. If we see it does not make sense, or you think there are better formats (e.g. review specific topics you are interested with the team, etc...) we can modify it / just cut it.

Lmk what you think,

[redacted]

Outlook E-mail

From: [redacted]
Sent: 4/4/2012 12:35:21 PM
To: Mark Zuckerberg
Cc: Chris Cox
Subject: RE: Sync from time to time

Thanks Mark – Chris and I will coordinate to have time on some Fridays.

[redacted]

From: Mark Zuckerberg
Sent: Wednesday, April 04, 2012 1:28 AM
To: [redacted]
Cc: Chris Cox
Subject: Re: Sync from time to time

Yeah, let's do it. We can find some time periodically during my weekly reviews to go over this stuff.

On Apr 3, 2012, at 3:57 PM [redacted] wrote:

Hey Mark,

There have been some items lately that made me wonder whether it would make sense for us to stay in sync / get your input from time to time. These are some examples:

- Data – we just hired [redacted] (the zynga guy). Getting our data in great shape is going to require effort / some engineering time across the key product orgs. I have a clear idea of the most pressing issues, but would love to make sure you are aligned with the vision
- Competitive research. We have some good progress on the web front with the comscore data / we think we can build our own custom mobile panel pretty fast (with some significant investment in $s / resources). Visibility into this data will allow us to get 10x better at understanding the mobile web / ecosystem. I keep seeing the same suspects (instagram, pinterest, ...) both on our competitive radar / platform strategy as wins, which is an 'interesting' dynamic. I think having the exact data about their users engagement, value they derive from FB, etc... would help us make more bold decisions on whether they are friends or foes. Back to your thread about 'copying' vs. 'innovating' we could also use this info to inspire our next moves...
- Mobile pricing in emerging markets -- your thread with questions on mobile pricing while you were in China / the latest discussions regarding low end phones are some areas where we have been focused over the past couple of years on the growth side (investing in snaptu, working with operators in all emerging markets to drive zero rating, etc...). I would love to hear where your thoughts are on this area / what we could do on mobile to win an edge over the competition.
- Monetization strategy / engagement – so far we have been pretty agnostic about monetization when driving growth / engagement. I would love to hear whether this is something you want to revisit

Last thing I want is to be on the negative side of your ROI calculations on how you spend your time (@zero time I was on the safe side ;)), so no worries at all if you have other more important stuff going on and

think this does not make sense. That said, if these types of topics warrant 20 / 30 mins of your time every couple of weeks or more (we can do it over a walk or something so that we get some fresh air) I would be thrilled to do it. If we see it does not make sense, or you think there are better formats (e.g. review specific topics you are interested with the team, etc...) we can modify it / just cut it.

Lmk what you think,

[redacted]

- from: [redacted]
- to: Mark Zuckerberg([redacted]), [redacted]
- time: Mon Apr 09 10:09:06 PDT 2012 (1333991346941)
- subject: null
- body

  Wow, awesome news. I like that you're not killing the independent product. I love instagram.

- from: Mark Zuckerberg ([redacted]
- to: [redacted] Mark Zuckerberg([redacted]),
- time: Mon Apr 09 10:51:24 PDT 2012 (1333993884473)
- subject:
- body

Yeah, I remember your internal post about how Instagram was our threat and not Google+. You were basically right. One thing about startups though is you can often acquire them. I think this is a good outcome for everyone.

Outlook E-mail

From: [redacted]
Sent: 4/1/2012 4:11:40 PM
To: [redacted] Chris Cox; Mike Schroepfer; [redacted] Mark Zuckerberg
Subject: Re:

I personally am pretty in favor of this approach in life generally... I would love to be far more aggressive and nimble in copying competitors at the interface / last mile level -- and far more willing to launch early and then cut or double-down on an ongoing basis.

The only caveat in my mind is being really deliberate about the layers where we are being nimble & fast vs. the lower-down frameworks that should move more slowly and deliberately. The way I think about things, consider FB a giant fly-wheel.... You want the external edge to move very quickly and iteratively -- and small dings when you get things wrong don't cost much, but the deeper you go in the stack / towards the infrastructure core (and really the human capital core even below that), you want things to move more slowly and predictably.

Practically speaking, I think this just means that we all have to be dealing in the same product abstractions, following a consistent privacy model, etc. I absolutely think that we can accomplish this balance.

Let's 'copy' (aka super-set) pinterest!
[redacted]

On 3/31/12 7:36 PM, [redacted] wrote:

>Hey Mark - just some quick thoughts on this:
>
>Copying is *definitely* much faster. When I was 'copying' FB before
>joining back in 2007 I managed to launch a social networking site in
>Spanish with feature set parity to FB with a small team of 3-5 guys in
>India. If you think of all the A/B tests and hundreds of iterations and
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>up spending a lot of engineering / design / analytics cycles that the
>guys cloning don't need to spend. There is a lot of IP on the UI that
>unfortunately is not defensible, and the guy copying can free ride on.
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>The guys copying also don't need to spend time launching products that
>they saw didn't work that well. They just copy whatever they see works /
>can make money and iterate a bit on it (which is much faster than trial &
>error). We spend a lot of time on products and iterations on products
>that are not that used, or not anymore around- e.g. marketplace, Q&A,
>facebook lite, calendar, etc...
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>If you gave the top down order to go ahead, copy e.g. pinterest or the
>gaming dynamics on foursquare, or feature x on product y as is (with a
>couple of minor tweaks to make it fit better on FB), I am sure very small
>team of engineers a PM and a designer would get it done super quickly.
>There would be costs on this approach in terms of how we are perceived in
>the industry (copying vs. innovating), our platform strategy (we would
>scare developers), etc... but the approach is not necessarily a failed
>business technique (Zynga built a multibillion $ company doing this...)
>
>
>-----Original Message-----
>From: [redacted]markzuckerberg
>Sent: Friday, March 30, 2012 12:55 AM

>To: Chris Cox; [redacted] Mike Schroepfer; [redacted]
>Subject:
>
>I spent some time with the Renren founders today and Robin Li from Baidu
>earlier in the week and wanted to pass along a few things:
>
>In China there is this strong culture of cloning things quickly and
>building lots of different products instead of just focusing on one thing
>at a time. This allows them to plant lots of seeds, and although it
>yields lower quality products in the short term as they're cloning and
>the markets are growing quickly, as markets mature there seems to be less
>of a gap between the clones and the originals.
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>As an example, the Renren site now seems almost as clean and polished as
>our own, despite being more of a mess in the past. They also have more
>features than us, including:
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>They have built their own version of Pinterest. In addition to your own
>timeline, you can have board pages that people can follow. They are
>tightly integrated into their NF. This is similar to what we've talked
>about doing in the past, and they have a version of this that seems to
>work well.
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>They have built their own version of Tumblr. Same deal as with their
>version of Pinterest. Both seem relatively well executed to me and are
>two of their fastest growing properties.
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>They have built their own standalone messenger app, where one key feature
>is using it like a walkie talkie -- basically like Voxer. Apparently
>Tencent QQ has also released a Voxer-like app which is really blowing up
>in China. Robin Li confirmed that a lot of people are using it, although
>he wasn't sure if that was because it's relatively harder to type in
>Chinese or if it's a universal need. Still, interesting that it's taking
>off here.
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>Renren has also built their own games and they have 6 of the top 10
>Chinese games in the iOS app store.
>
>They have also built out a full music product where they have licensed
>all the music in China themselves.
>
>They have done some innovative things with commenting, like enabling
>people to easily fork comment threads to turn them into separate threads
>if they want. They also have emoji integrated into basically every text
>input field.
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>They also just implemented a version of divebar with a nice touch where
>whenever you hover over a person's name, you get a little home icon which
>takes you to their timeline. We should implement this as well, although
>we'll probably want to use a different icon than home. (Linking from
>messaging to people's identities has been an issue for a while, so we
>should also fix this in the Messenger app, in the title bars of each chat
>window, etc.)
>
>Overall, seeing all this and the pace that new mobile apps seem to be
>coming out from other companies makes me think we're moving very slowly.
>If we were moving faster, then we might be able to build out more of the
>social use cases ourselves and prevent our competitors from getting
>footholds.
>
>Maybe it's just a lot easier for these guys to move quickly since they're
>just copying other people, but a lot of the stuff that we're doing around
>messages, photos, etc doesn't have a huge number of original problems
>either.
>
>I wonder what we could do to move a lot faster.
>
>Sent from 中国

Outlook E-mail

From: Sheryl Sandberg
Sent: 3/30/2012 7:48:17 AM
To: [redacted]markzuckerberg
Subject: RE:

It is hard not to agree that it is better to do more and move faster, especially if that means you don't have competitors build products that takes some of our users. So of course I agree. The issue is how do we get this to happen.

You come back on Sunday, yes? I want to schedule Monday -- [redacted]says you will come in for our 10 AM and we will have dinner, but checking since you are just back the next day. Is that right or should we move things around?

From: [redacted]markzuckerberg
Sent: Friday, March 30, 2012 1:01 AM
To: Sheryl Sandberg
Subject: Fwd:

You'll probably find this interesting and agree.

Sent from 中国

Begin forwarded message:

> From: [redacted]
> Date: March 30, 2012 4:54:53 PM GMT+09:00
> To: Chris Cox [redacted] Mike Schroepfer [redacted]
>
> I spent some time with the Renren founders today and Robin Li from Baidu earlier in the week and wanted to pass along a few things:
>
> In China there is this strong culture of cloning things quickly and building lots of different products instead of just focusing on one thing at a time. This allows them to plant lots of seeds, and although it yields lower quality products in the short term as they're cloning and the markets are growing quickly, as markets mature there seems to be less of a gap between the clones and the originals.
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> As an example, the Renren site now seems almost as clean and polished as our own, despite being more of a mess in the past. They also have more features than us, including:
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> They have built their own version of Pinterest. In addition to your own timeline, you can have board pages that people can follow. They are tightly integrated into their NF. This is similar to what we've talked about doing in the past, and they have a version of this that seems to work well.
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> They have built their own version of Tumblr. Same deal as with their version of Pinterest. Both seem relatively well executed to me and are two of their fastest growing properties.
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> They have built their own standalone messenger app, where one key feature is using it like a walkie talkie -- basically like Voxer. Apparently Tencent QQ has also released a Voxer-like app which is really blowing up in China. Robin Li confirmed that a lot of people are using it, although he wasn't sure if that was because it's relatively harder to type in Chinese or if it's a universal need. Still, interesting that it's taking off here.
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threads to turn them into separate threads if they want. They also have emoji integrated into basically every text input field.

They also just implemented a version of divebar with a nice touch where whenever you hover over a person's name, you get a little home icon which takes you to their timeline. We should implement this as well, although we'll probably want to use a different icon than home. (Linking from messaging to people's identities has been an issue for a while, so we should also fix this in the Messenger app, in the title bars of each chat window, etc.)

Overall, seeing all this and the pace that new mobile apps seem to be coming out from other companies makes me think we're moving very slowly. If we were moving faster, then we might be able to build out more of the social use cases ourselves and prevent our competitors from getting footholds.

Maybe it's just a lot easier for these guys to move quickly since they're just copying other people, but a lot of the stuff that we're doing around messages, photos, etc doesn't have a huge number of original problems either.

I wonder what we could do to move a lot faster.

Sent from 中国

Outlook E-mail

From: [redacted]
Sent: 4/3/2012 1:27:33 AM
To: [redacted] Mike Schroepfer
Cc: [redacted] Chris Cox; Mark Zuckerberg
Subject: Re:

I agree with what's been said here (especially copying is faster than innovating). Recently, I've been thinking about why we haven't moved faster on Roger and Snap, and as a part of the Apps team, I'm increasingly concerned as I watch startups siphon our graph and create awesome new experiences faster than we can.

I have two additional observations on what slows us down. To be clear, I'm not saying we should change our ways, but some things to be aware of.

1. When it comes to UI, we don't believe "done is better than perfect." We should be aware of the price of iteration.

The WhatsApp UI sucks, but they took the hit on UI to focus on reliable sending and fast growth. Those are arguably the features that win over users, not UI. We had an ugly initial UI for Roger ("Read" on each message), but we iterated on it for the last 3 weeks and spent ~6 eng man weeks on animation alone. [redacted] wrote an animation library for Android, which doesn't exist natively on Android. In that time, [redacted] and [redacted] could have hacked out a faster titan-bypass backend ([redacted] built the MQTT server in roughly the same time as it took him to build the animation library).

I'm glad we iterated on the Roger UI, but it had costs. The solution here is to hire more good frontend engineers so we can prototype faster. Even then, we should be good about recognizing when UI iteration is worth it; when building the product, it's easy for the team to get caught up on making it great, and the reality is that "this just adds another week" adds up to significant delays.

2. We try to fit everything into our system (design conventions, future proofing, friend graph, likes, etc...), and it slows us down sometimes.

The vast majority of the time, our site provides a strong platform for growth. We are building a business for the long-term, and it's important to build value for our whole ecosystem.

However, the downside is that we spend a lot of time making sure our designs fit conventions or settings are future proofed. Startups feel free to make small tweaks whenever, so they can afford to try things faster without fear of being tied to them. I've noticed this being something that has slowed us down on Roger and other projects.

Another consequence is that we have to deal with legacy settings or expectations, and even branding poses a concern (e.g. people don't think of FB messages as mobile messages) or the concept of friends (e.g. We immediately thought of messaging friends as the primary use case with Messenger, but mobile messages requires communicating with anyone).

Startups have the best of both worlds: the siphon our graph to build a new system with a new set of norms that better suits their use case. Instagram and Pinterest are great examples of this; they seed with friends, but their fundamental model is different (follow, board, pins, etc...), and it lets them create a different product experience, one that adapts better to needs.

On this front, I don't think we should change much. There is so much value in building a larger ecosystem. However, more and more, I wonder what it

would be like to invest heavily into a different app -- more heavily than Messenger -- where we actually have a different set of design aesthetics and different norms. I wonder if that would make a difference in iteration speed.

On 4/2/12 11:26 AM, [redacted] wrote:

>I also think that fast-following requires pretty tight / specific project
>goals so everyone is aligned on why we are fast following and what we are
>trying to achieve in doing it.
>
>[redacted]
>
>
>
>
>On 4/2/12 10:21 AM, "Mike Schroepfer" wrote:
>
>>Fast-follow is something I'm a fan of.
>>
>>We have a mixed history of these things, however. The key challenge is
>>to make sure the engineers/pms on the project are excited/motivated by
>>what they are doing. We also need to make sure it is close enough into
>>our core that it makes sense to do. I'm thinking specifically of a few
>>projects: a) questions b) friend lists/subscribe c) nile d) stream search
>>e) location/check-ins. Some of these were direct responses to
>>competitive threats and their execution varied dramatically.
>>
>>In terms of the broader question on "how to move faster" - I think there
>>are only a couple of big levers to pull:
>>
>>a) Reduce design/product churn - fast following is a good way to do this
>>- but we can also do this by becoming more iterative in general
>>b) More product development resources (pm/eng/design)
>>c) Better core infrastructure (e.g. the graphQL stuff and equivalent
>>should make it quicker to build products)
>>d) Even less coupling in our apps - e.g. the extreme is teams building
>>platform apps. Zynga, for example, shares some core code but otherwise
>>operates effectively as independent studios
>>e) Relaxing any "strategic/org taxes" - e.g. growth, revenue, si, legal,
>>etc. all subtly take their toll
>>f) Cancel a big project like Firefly
>>
>>Schrep
>>
>>On Apr 1, 2012, at 4:11 PM, [redacted] wrote:
>>
>>> I personally am pretty in favor of this approach in life generally... I
>>> would love to be far more aggressive and nimble in copying competitors
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>>> the interface / last mile level -- and far more willing to launch early
>>> and then cut or double-down on an ongoing basis.
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>>>> -----Original Message-----
>>>> From: [redacted]markzuckerberg
>>>> Sent: Friday, March 30, 2012 12:55 AM
>>>> To: Chris Cox; [redacted] Mike Schroepfer; [redacted]
>>>> Subject:
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>>>> Sent from 中国
>>>
>>
>

July 29, 2019

Industry Updates

July 2019

MARKET STRATEGY

fburl.com/ms



HIGHLY CONFIDENTIAL TREATMENT REQUESTED
NOT FOR CIRCULATION/COMMITTEE MEMBERS AND STAFF ONLY

Agenda

1/ Overview of Top Apps

- A/ Data Quality
- B/ Industry Updates

2/ Bytedance & TikTok

3/ Trending apps: Photo & Video

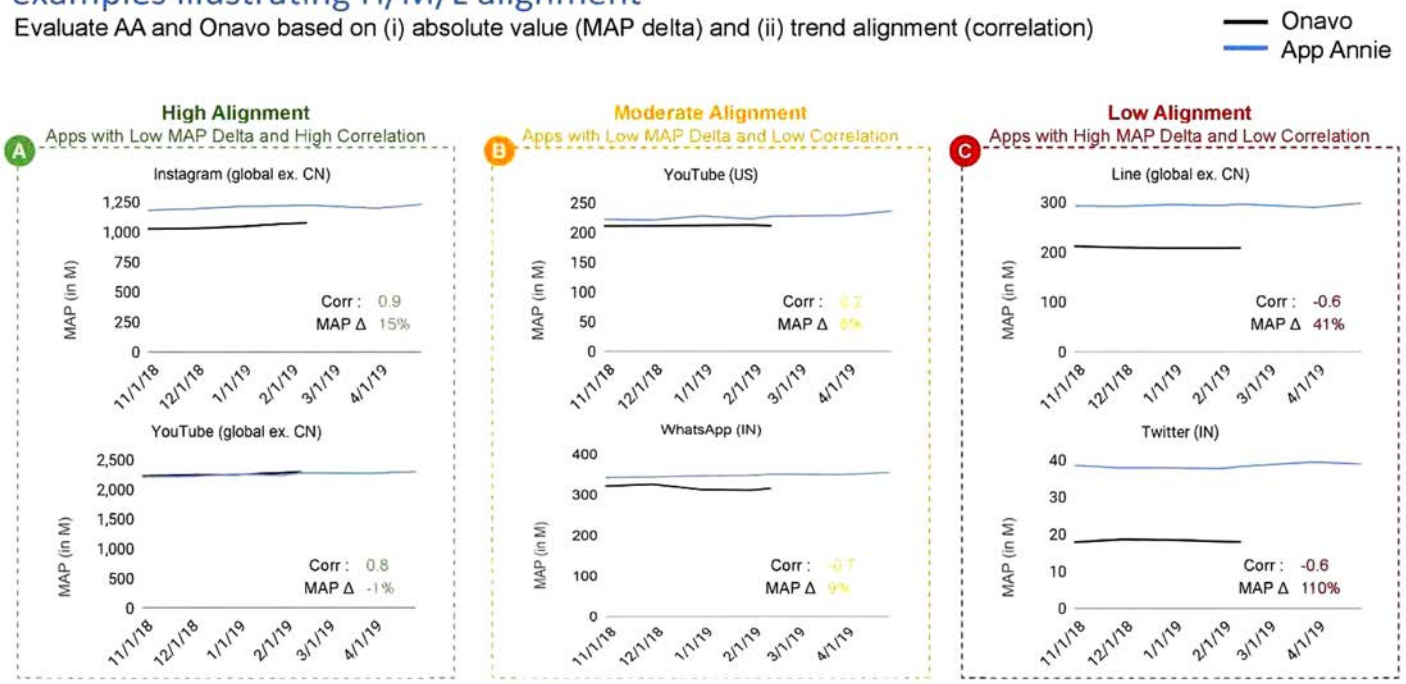
4/ India: Password, Security Paradigms

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1A/ DATA QUALITY

Data source switched from Onavo to AppAnnie (AA). MAP trends for select examples illustrating H/M/L alignment

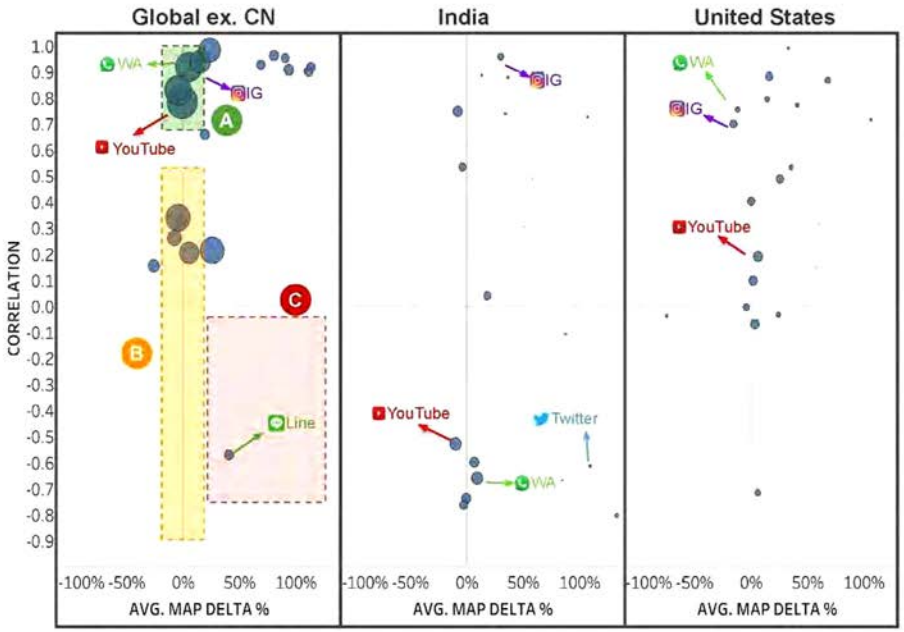
Evaluate AA and Onavo based on (i) absolute value (MAP delta) and (ii) trend alignment (correlation)



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1A/ DATA QUALITY

AppAnnie(AA) vs. Onavo for Top Apps shows alignment varies by market



Key Apps>200M
(X) Avg. MAP Delta %: AA vs. Onavo.
+ means AA is larger
(Y) Correlation: Corr (AA MAP, Onavo MAP)
Oct'18-Feb'19
Bubble: Individual App
Bubble Size: Avg. Onavo MAP

A **High Alignment:** Apps with Low MAP Delta and High Correlation e.g. WhatsApp, IG, Youtube in global ex. CN

B **Moderate Alignment:** Apps with Low MAP Delta but Low Correlation e.g. Youtube (IN, US)

C **Low Alignment:** Apps with High MAP Delta and Low Correlation e.g. Line (Global ex. CN), Twitter (IN)

AA vs FB Family Apps (ground truth set)
Representation Error[1]

	Global ex. CN		IN		US	
	AA	Onavo	AA	Onavo	AA	Onavo
Android	15%	2%	29%	15%	9%	8%
iOS	22%	16%	23%	15%	29%	19%

[1] No significant differences between representation errors

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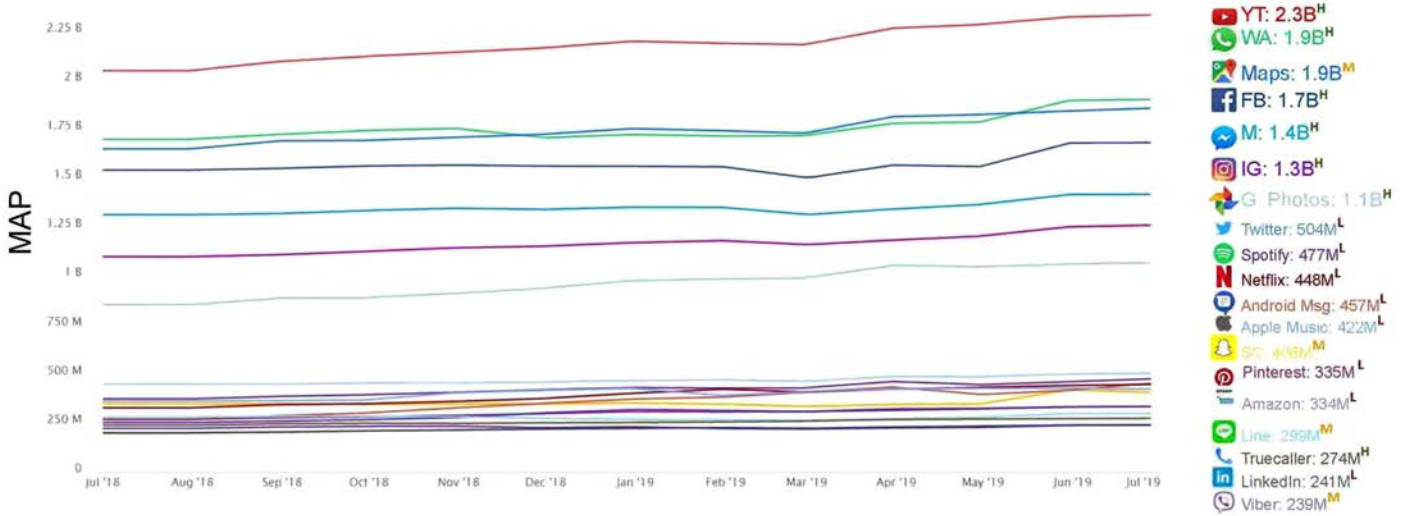
3/ Trending apps: Photo & Video

4/ India: Password, Security Paradigms

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1B/ INDUSTRY UPDATES, KEY APPS> 200M MAP

Google Photos passed **1.1B**[H] MAP (+12% H/H), **Snapchat** up to **406M**[M] MAP (16% H/H): driven by age/gender masks per Snap announcement



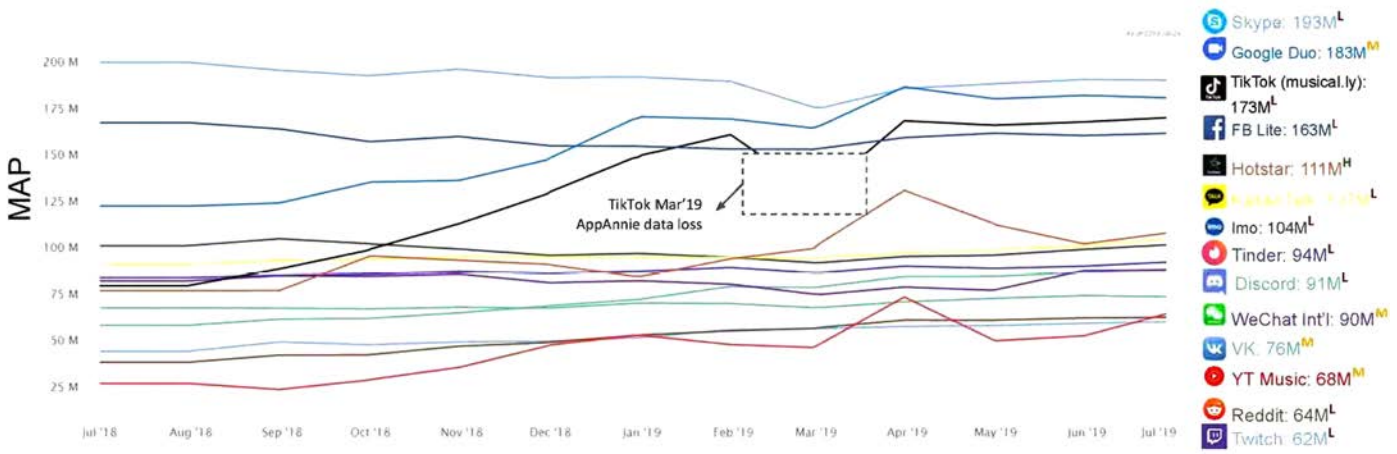
H: High Confidence **M: Medium Confidence** **L: Low Confidence**

Source: MINT (30d rolling average), Facebook Internal Use Only

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1B/ INDUSTRY UPDATES, KEY APPS < 200M MAP

Discord[L] (91M MAP) & Twitch[L] (62M MAP) grew 21% & 16% H/H; TikTok[L] (2 apps) growth slowed down Q/Q (+14% H/H, +1% Q/Q)



H: High Confidence M: Medium Confidence L: Low Confidence

Source: MINT (30d rolling average), Facebook Internal Use Only

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Agenda

1/ Overview of Top Apps

2/ Bytedance & TikTok

3/ Trending apps: Photo & Video

4/ India: Password, Security Paradigms

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TL;DR Bytedance and TikTok: Key Updates

Internal data (MINT)

- TikTok (musical.ly) MAP & engagement growth (global ex. CN) **slowed down** in Q2 (MINT, Jun'19)
  - **MAP 173M**[L] **(**+14% H/H, +1% Q/Q)
  - **TS/DAP 37min**[H] (+13% H/H, +2.6% Q/Q)
  - **DAP/MAP 46%**[H] (+12% H/H, +0.6% Q/Q)
  - **30-day** new user **retention 13%**[L] **US** (+8% H/H), **21%**[L] **India** (+1% H/H) (Android only)[1]
- TikTok Lite - the **consumption-focused** app primarily for India, grew 48% H/H (-29% Q/Q) to **4.9M MAP**[M]

External news reports

- Bytedance announced **1.5B Global MAP** across family of apps (+50% H/H, with **47% DAP/MAP**)[3]
- **Bytedance commits to investing $1B in India over 3 years,** including **adding data center in 6-18 months** and **investing in local startups** in content, commerce, edtech

1. External data source (less reliable), Jun'19
2. MINT, Jun'19
3. ByteDance public announcement, Jul'19

H: High Confidence M: Medium Confidence L: Low Confidence

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BYTEDANCE FAMILY OF APPS - **External News**

Bytedance announced 1.5B Global MAP, with **47% DAP/MAP**

1. **Bytedance** announced **1.5B global MAP** in Jun'19, **+50% H/H**; DAP grew +**16.7%** H/H to **700M**[1]
   a. Announced **TikTok global DAP +28%** H/H to **320M** (Internal data: **350M** undeduped DAP +16% H/H)[2]
   b. Announced **Helo** has **50M MAP** in India (Internal data: **17.6M MAP**, 16% H/H)

2. **TikTok & Helo** fueling growth through **referral programs**
   a. TikTok Rewards (US & IN) recruits college ambassadors, incentivizing referral download[3]
   b. Helo (IN) incentivizes referral download & 7-day engagement[4]



3. Hiring for US office to build[5]
   a. **Lifestyle Community App** targeted to **US youth**
   b. **Gaming partnerships and M&A**

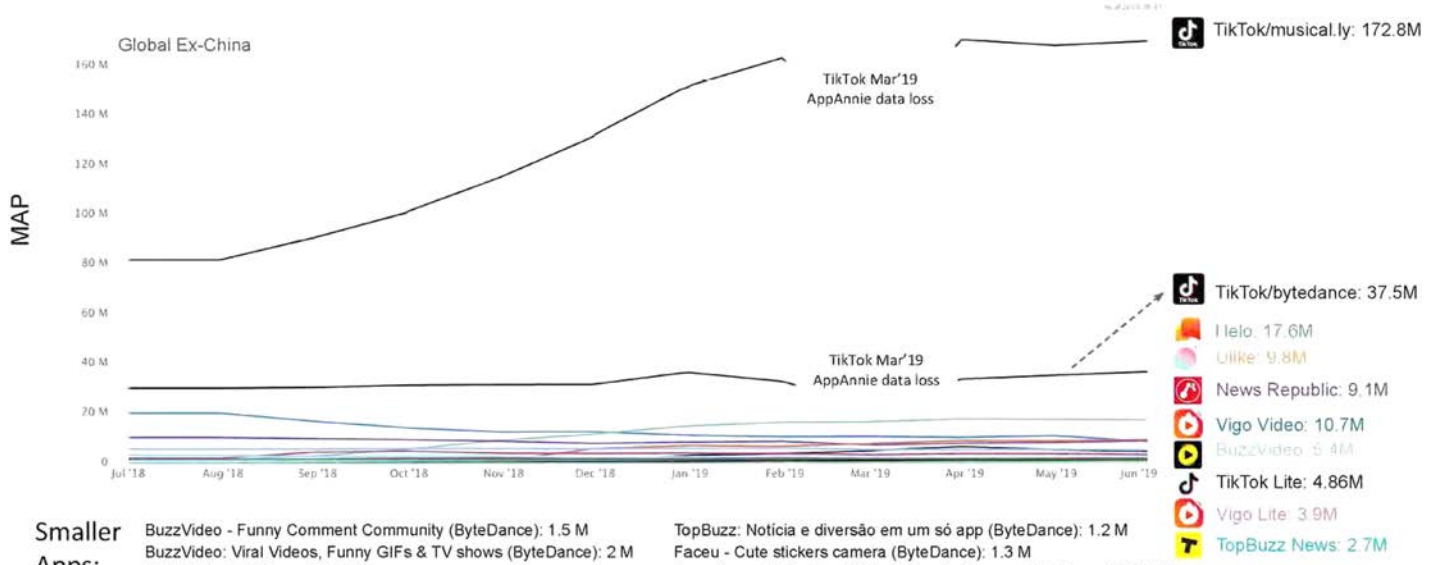
4. **Douyin (TikTok CN)** extended video length from 15 seconds to 1 min (Apr'19); further allowed **15 min videos for celebrities (encouraging vlog)**[6]

1. Source: KrAsia
2. Source: MINT, Jun'19. 95M global ex. CN, 256M in CN
3. Adweek, Apr'19
4. Source: Inc42
5. Source: LinkedIn
6. Source: Sohu CN

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BYTEDANCE FAMILY OF APPS - **Metrics across apps**

TikTok (musical.ly) (173M MAP)[L] growth slowed down last quarter (+1% Q/Q)
Helo +16% H/H to **17.6M MAP (-2% Q/Q)**



Smaller Apps:

BuzzVideo - Funny Comment Community (ByteDance): 1.5 M
BuzzVideo: Viral Videos, Funny GIFs & TV shows (ByteDance): 2 M
TikTok lite (ByteDance): 1.1 M

TopBuzz: Notícia e diversão em um só app (ByteDance): 1.2 M
Faceu - Cute stickers camera (ByteDance): 1.3 M
LemoCam - Selfie. Fun Sticker. Beauty Camera (ByteDance): 795.8 K

Source: MINT (monthly average), Facebook Internal Use Only

H: High Confidence **M: Medium Confidence** **L: Low Confidence**

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BYTEDANCE FAMILY OF APPS - **TikTok (musical.ly) Metrics**

TikTok (musical.ly) (Jun'19): DAP growing faster than MAP H/H, with retention improving

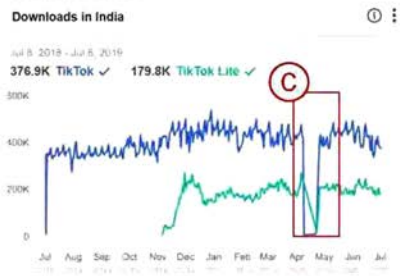
% increase H/H, Jun 30'19	MAP (H/H)	DAP (H/H)	DAP/MAP (H/H)	TS/DAP (min) (H/H)	30-day new user retention*
Global ex. CN	**173M** (+14%)^{L}	**80M** (+28%)^{M}	**46%** (+12%)^{H}	**37** (+13%)^{H}	N/A
US	**22M** (+19%)^{M}	**8.6M** (+41%)^{H}	**39%** (+18%)^{H}	**48** (-8%)^{L}	**13%** (+8%)^{L}
India	**69M** (+23%)^{L}	**39M** (+48%)^{L}	**57%** (+21%)^{H}	**34** (+19%)^{H}	**21%** (+5%)^{L}

(A) DAP growing faster than MAP H/H

(B) 30-day New User Retention grew H/H

(C) Downloads in India resurrected after the ban

Downloads resurrected after ban in India in April



Source: MINT (monthly average), Facebook Internal Use Only
**SimilarWeb, Dec'18-Jun'19, Android only*

H: High Confidence **M: Medium Confidence** **L: Low Confidence**

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BYTEDANCE FAMILY OF APPS - **TikTok Lite Metrics**

TikTok Lite (4.9M MAP[M]) growing predominantly in India

Metrics in India (Jun '19)

- 15MB in size. Launched Oct 29th, 2018 in India as **consumption only app**
  - *Comps: Messenger Lite - 5.7MB, FB Lite - 1.24MB*
- **MAP: 4.9M MAP[M]** Grew w/o FB ads
- **TS/DAP: 23 min[M]**
- **Rank: Top 15-35** in India since December
- **30d New User Retention: 9%[L1]**
  - Hypothesis: low retention because users still have to download the main app for saving videos and creation, thus churning from the Lite app
- **Avg MB/user: 50-200MB/day[L]** Spikes on Sundays [*source: App Annie, India only*]
  - Hovered upto 300MB+ on Sundays between Jan - March
  - Now around 200MB+ per day on Sunday
  - *Comps: YT Go: 60MB[L], FB Lite: 23MB[L] on Sundays*

Slight weakness in MAP since April ban



TikTok Main + Lite app: TS/DAP flat Q/Q



H: High Confidence **M: Medium Confidence** **L: Low Confidence**

1. External data source (less reliable), Jun'19

Source: MINT, Facebook Internal Use Only

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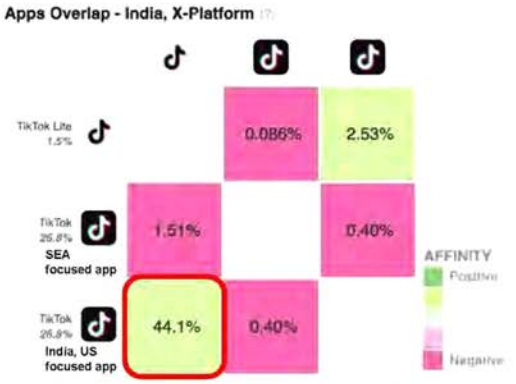
BYTEDANCE FAMILY OF APPS - **TikTok vs TikTok Lite**

TikTok & TikTok Lite have high user overlap; likely due to limited feature set on Lite app

We believe the low retention on TikTok Lite is due to the lack of feature set such as

- **Option to 'save videos' does not exist** (one of the most requested features on reviews). This signals that ***individuals still want to use TT Lite for inbound material on WhatsApp***.
- Recently introduced creation tools on April 4th, but still have **some restrictions on creation**. E.g. features like duets, live photos, save as GIF are not available.
    - This may be due to the difficulty to incorporate the same AI functionality on a smaller app size.
- Many **settings stripped down** in privacy, digital wellbeing, wallet, etc.

44%[M] of TikTok Lite users in India also use TikTok



Source: MINT, Feb 2019

Key Takeaway - The Lite app has to have the most desired features from the main app to make it retentive.

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Section Overview

Context

- Many photo/video editing apps trending in H1'19, fueled by growth of IG, Snapchat, TikTok
- **Snapchat released baby/gender filters** leading to its highest **downloads on May 19th at 1.9M worldwide**.
- **FaceApp (8.8M MAP)[M] & AgingBooth (135K MAP)[L] topped US iOS/GPlay chart on Jul 17**, as old age filter went viral

Key Findings

- **Apps use innovative new features (ex Masks) as a hook to gain new users,** however retention is dependent on the core value proposition.
- Most apps used as tools, few used for sharing (ex G Photos). Most apps not retentive (1-8% 30d new user retention)
- **High user overlap**: May need multiple apps to fulfill various editing needs, esp. **niche features** not in large social apps.
- **Music-focused creation apps** had the **fastest H/H growth.**

Next Steps

- As Music overlay was a key 'hook' for IG stories growth, we need to investigate **an innovation roadmap for FB to create such viral hooks** that encourage connection and sharing.
- Investigate new product and tech e.g. Canva-style IG/FB story templates, TikTok AI music rec.

H: High Confidence M: Medium Confidence L: Low Confidence

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TRENDING SPACE

Many Photo & Video apps trending in H1 2019, with few retentive apps

Examples of trending apps (2019) Source: AppAnnie

iOS top 10, US, Jan 21'19

#	Free
1	Color Bump 3D — Good Job Games
2	Words Story — Worzzle
3	Polysphere — Playgendary
4	TikTok - Real Short Videos — Musical.ly
5	PicsArt Photo Editor + Collage * — PicsArt
6	Instagram — Instagram
7	Netflix — Netflix
8	YouTube: Watch, Listen, Stream — Google
9	Crowd City — Voodoo
10	Wordscapes — PeopleFun

iOS top 30, US, Apr 8'19

#	Free
21	Facebook — Facebook
22	TikTok - Real Short Videos — Musical.ly
23	DoorDash - Order Food Delivery — DoorDash
24	MLB Tap Sports Baseball 2019 — Glu
25	Funimate - Be Music Video Star — Avor
26	Cash App — Square Inc
27	WhatsApp Messenger — WhatsApp
28	Amazon - Shopping made easy — Amazon
29	Bitmoji — Bitstrips
30	House Paint — SayGames

iOS top 10, US, Jul 18'19

#	Free
1	FaceApp - AI Face Editor * — FaceApp
2	Face Aging App - Oldify Camera — Vulcan Labs Company Limited
3	Shootout 3D — Kwalee
4	AgingBooth * — PiVi&Co
5	Origame — Ketchapp Studio
6	Jelly Shift — SayGames
7	Picker 3D — Rollic
8	aquapark.io — Voodoo
9	Battle Disc — SayGames
10	Collect Cubes — Alictus

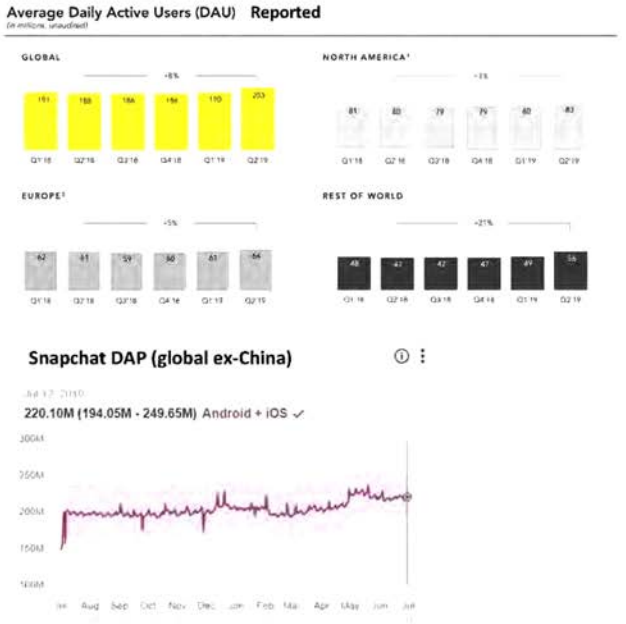
Deep Dive in following slides

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TRENDING APP

Snapchat: Reported DAU increase to 203M(Q2) from 190M(Q1), majority increase attributed to AR lenses per Snap announcement

1. **DAU increase (+7% q/q)**
   a. Largest sequential increase since Q2 '16
   b. 6M+ from North America, Europe
   c. 7M+ from Rest of World
      i. May be due to Android Code rewrite
2. Snap estimates **7-9M (out of 13M) DAU** increase **came from new AR lenses** (baby, gender swap)
3. 30-day new user retention increased from 16% (May'19) to 19% (Jun'19)[1]



1. External data source (less reliable), Jun'19, US, Android only

Sources: Snap Inc., MINT

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FB-HJC-ACAL-00086426

TRENDING APP

Most recently **FaceApp (8.8M MAP)** & **AgingBooth (135K MAP)** topped US iOS/GPlay chart on Jul 17, driven by old age filter going viral

FaceApp (8.8M MAP)[M]

- Similar to SnapChat's gender/ baby masks
- Growth drivers: Celebrities sharing photos
- Now has 150M+ People's Faces And Names (Forbes)
- Increasing privacy concerns around media usage

30-day downloads (Global)

DOWNLOADS

2.9m



What you need to know before using FaceApp

FaceApp has gone viral with people using it to edit pictures of themselves to appear older but privacy experts worry the photo-editin...

ctvnews.ca

AgingBooth (135K MAP)[L]

- Age face in photos, launched in 2012
- Growth driver:
  - People search for 'age/aging' to find FaceApp. Appears in similar apps to FaceApp
  - Trending on social media

30-day downloads (Global)

DOWNLOADS

412,774



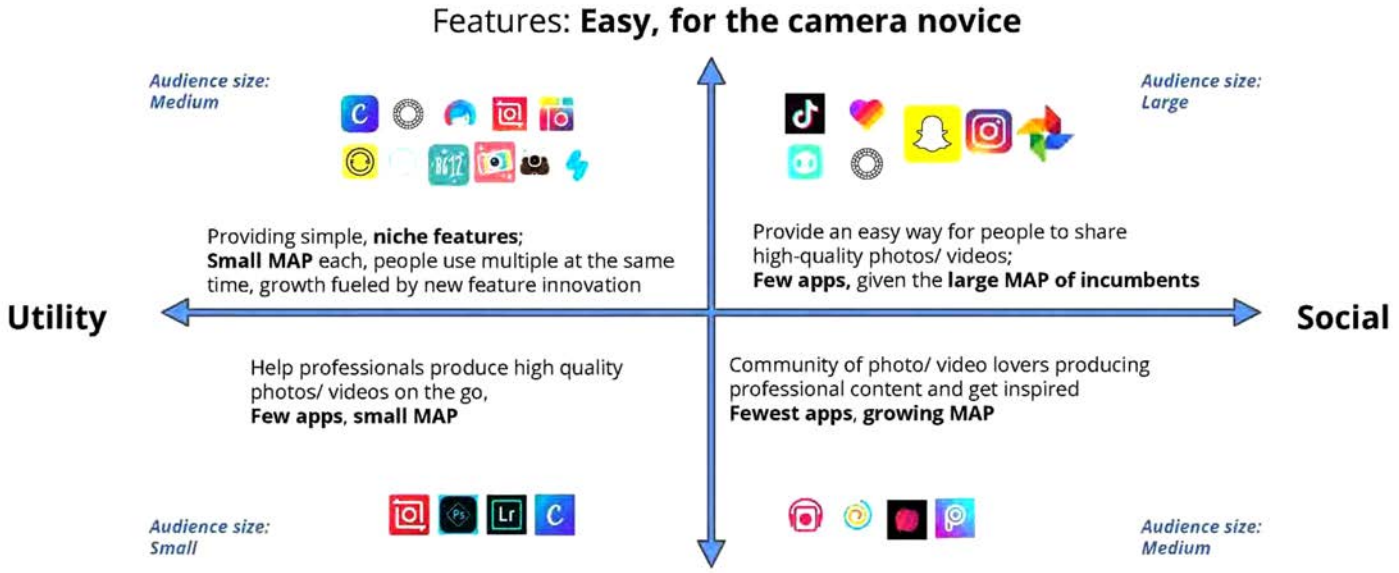
Source: MINT, Jun'19

H: High Confidence **M: Medium Confidence** **L: Low Confidence**

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FRAMEWORK FOR PHOTO, VIDEO APPS

Many new editing apps trying to pivot to social sharing; but few apps that cater to niche, easy editing have scaled



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TRENDING SPACE

Music focused creation apps with social sharing feature had the fastest H/H growth

Top apps by category (Jan - May'19):

Social, Advanced

- Picsart (113M MAP, +14% H/H)
- Funimate (2M MAP, +201% H/H)
- Lomotif (7M MAP, +112% H/H)
- Triller (1M MAP, +54% H/H)

Social, Easy

- TikTok (170 MAP, +29% H/H)
- VSCO (32M MAP, +6% H/H)
- LIKEE (22M MAP, +48% H/H)

Tool, Advanced

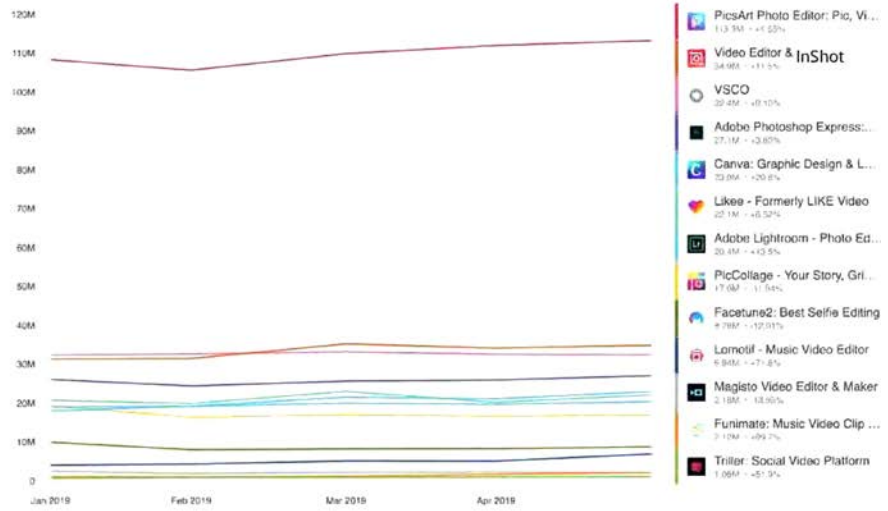
- Adobe Photoshop Express (27M MAP, +12% H/H)
- Adobe Lightroom (20M MAP, +41% H/H)

Tool, Easy

- Facetune 2 (3.5M MAP, +30%H/H)
- InShot (2.2M MAP, +25% H/H)
- PicCollage (17M MAP, +10% H/H)
- Magisto (2M MAP, -11% H/H)
- Canva (23M MAP, +31% H/H)

Music-focused
Beauty-focused

MAP across top photo/video apps, Jan-May'19, Global ex. CN



Source: MINT, Jan-May'19

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TRENDING APP

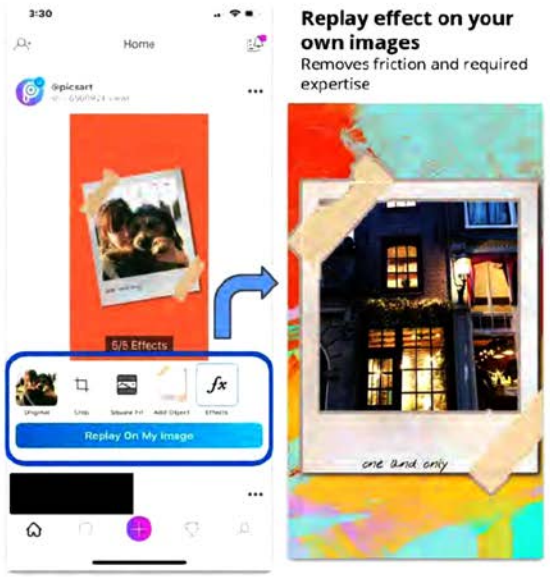
Picsart (113M MAP) is the largest app to emerge in the photo editing space; encourages creation via features like replay image and celebrity contests

Metrics

- **MAP:**
  a. **Global ex. CN: 113M** (May '19)
     i. **130M MAU, 15% in CN* (Reported actuals)**
  b. **US: 4.5M** (May 31'19, new MINT data)
  c. **CN: 14.5M** (May 31'19 from QM)
- **TS/DAP: 9 min**
- Featured on iOS home page collection list since March 14

Value Prop

- **3K tools**, including replay and library
- **Community**: Passion based. Share images for remixing
- **AI features** (30-ppl in AI team across Armenia & Mexico)



*Disclosed by PicsArt team

Source: MINT, Facebook Internal Use Only

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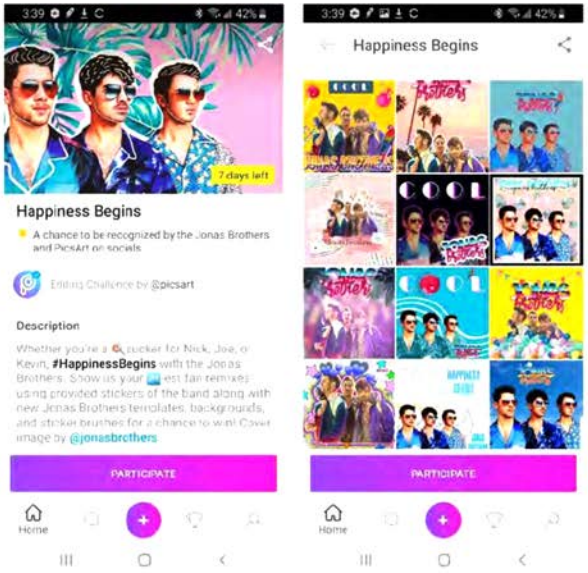
TRENDING APP

Picsart: Initiatives we can learn from to encourage creation

Easy Sticker Creation



Image Remix Challenges w/ celebrities



Leaderboards



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TRENDING SPACE

Google experimenting with **Fabby apps** to keep up with photo editing trends

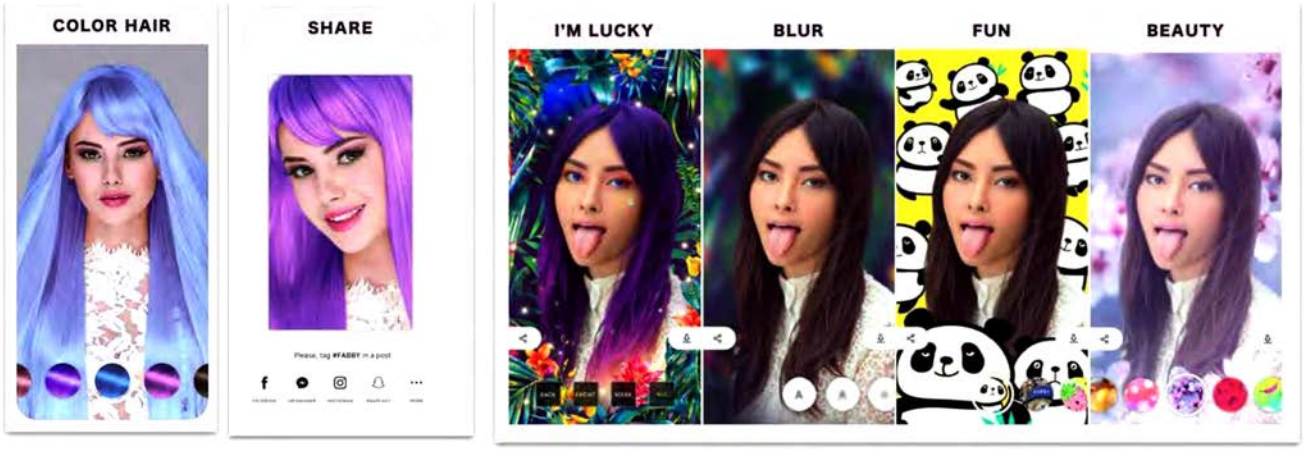
Google

Fabby Look - Hair Color Editor

App too small to track

Fabby - Photo & Video Editor

299k MAP global ex-China[L]



Source: MINT, May'19, Global ex. CN

H: High Confidence M: Medium Confidence L: Low Confidence

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TRENDING SPACE

Google Photos and **Snapseed** are the only editing apps that have meaningfully scaled

Google photos - 1.1B[H] MAP

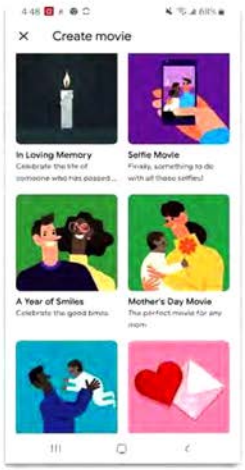
Also has AI generated movies, collages, gifs, editing

Auto suggested animations, edits and collages

Get fun animations, collages, movies & more

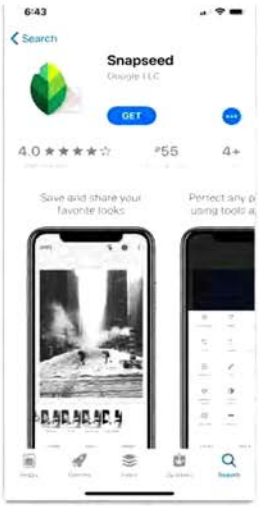


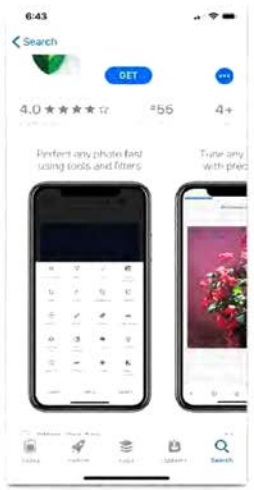
One click movies



Snapseed - 76M[M] MAP

Complex photo editing





Source: MINT, May'19, Global ex. CN

H: High Confidence **M: Medium Confidence** **L: Low Confidence**

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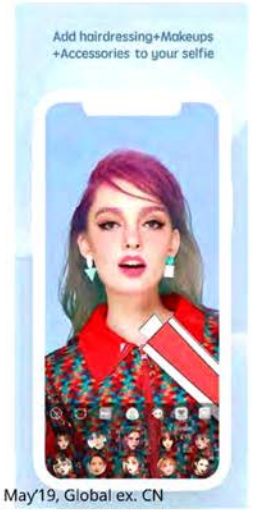
TRENDING SPACE

ByteDance

Bytedance: one of the strongest contenders in photo, video editing with AI

Other photo focused apps owned by BD besides TikTok

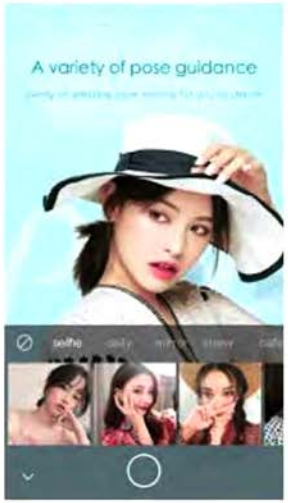
FaceU
(1.2M MAP*)



LemoCam
(794K MAP)



Ulike
(9.7M MAP)



Qmoji (MAP not available)



*MINT, May'19, Global ex. CN

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3/ Trending apps: Photo & Video

4/ India: Password, Security Paradigms

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Section Overview

Context

- Community Integrity and Core Growth wanted design and product inspiration around how other apps handle login and password security in India, since it is one of the largest markets for weak passwords. For this 'Understands' phase, we analyzed 16 apps to understand their login and password reset models.

Key Findings

- Peers like YouTube, TikTok, LIKEE, Vigo, VMate, SHAREit, etc. have cold start options.
- Phone number registration is the most widely available option. When email is used, it is usually to send an OTP rather than to create a password.
- Some apps have differentiated models like guest logins and allowing you to set your password later.

Next Steps

- Investigate cold start options for FB apps
- CI + Core Growth investigating
    - OTP model which can still reduce reliance on SMS. Code generator has some challenges
    - Challenges with phone sharing, number recycling, local passwords, deferred passwords, SUMA

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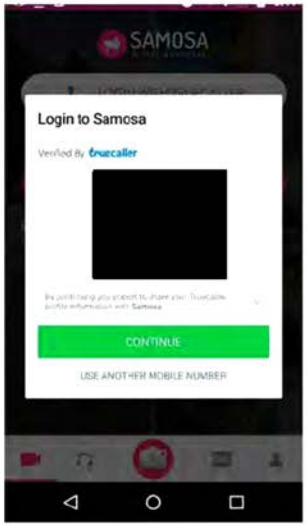
PASSWORD & SECURITY IN INDIA

11/16 apps analyzed had FB, Google login but some are now also using IG, Twitter, TikTok and Truecaller login

Prominent Truecaller login for LIKEE (14M MAP[L])



Truecaller login for Samosa (1.5M MAP[L])



Helo (Sharechat copy) from BD allows Twitter and TikTok Login(17M MAP[M])



H: High Confidence
M: Medium Confidence
L: Low Confidence

Source: MINT, Facebook Internal Use Only

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Phone # is more commonly used mechanism than email

Contributing factors

1. Many people in emerging markets **don't have email**
2. SMS is **already enabled** on the phone. User may not have email client installed on phone by the time they download your app
3. **SMS notifs are easier to read** for checking OTP, and **may not require app switching**
4. Some apps enable **SMS readability**, so you may not even have to input the code.



When email is used, it is generally to send an OTP rather than to create an associated pwd

1. **Method used both during account creation and login** (after you already have an account).
2. Able to **bypass the complexity of having to remember passwords.**

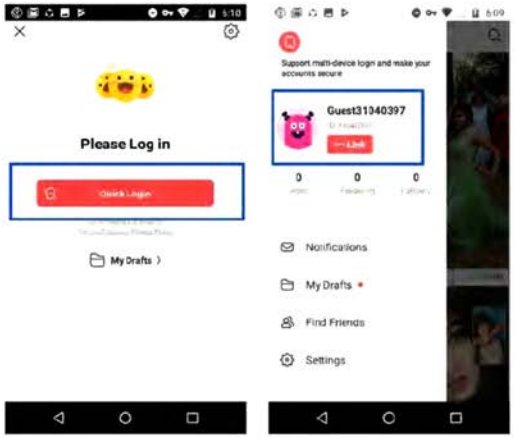
For full list of apps observed and their models, please see Appendix

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Other interesting models

VMate - Quick login creates **guest username** to get in the app ASAP

- 5M MAP^{L}, Quick login only option
- Can edit your Username once in the app



LIKEE - Set your password later

- 14M MAP^{L}; Lets user login with SMS Code each time instead of pwd



Gaana - Get code on FB as a notif

- 44M MAP^{L}



Source: MINT, Facebook Internal Use Only

H: High Confidence **M: Medium Confidence** **L: Low Confidence**

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Appendix

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AppAnnie(AA) vs. Onavo comparison

Evaluate AA based on comparison with (i) Onavo (ii) Ground truth (Representation Error)

Top 15 countries by Internet Pop.

	vs. Onavo : # of Apps with Low Alignment[1] between AA and Onavo (of Apps >200 M MAP)	vs Ground truth : Error with Truth Set (4 FB Apps) (Representation Error)			
		Android		iOS	
Geo	# of apps	AA	Onavo	AA	Onavo
IN	5	29%	15%	23%	15%
US	2	9%	8%	29%	19%
BR	4	8%	6%	9%	19%
ID	2	33%	9%	36%	50%
RU	5	32%	54%	76%	67%
MX	2	41%	10%	8%	14%
JP	8	29%	33%	38%	74%
VN	3	176%	70%	196%	99%
PH	2	199%	74%	124%	53%
TR	7	8%	17%	20%	23%
TH	7	193%	94%	126%	78%
DE	4	9%	11%	13%	10%
GB	3	10%	4%	23%	13%
SK	3	26%	24%	28%	20%
FR	1	18%	6%	15%	7%

Vs. Truth Set

- AA has lower RE in only 4 of the top 15 countries for **Android**
- AA has lower RE for 5 of the top 15 countries for iOS
- For 3 countries (PH, VN and TH) the errors are significant

Vs. Onavo

(For Key Apps>200M)

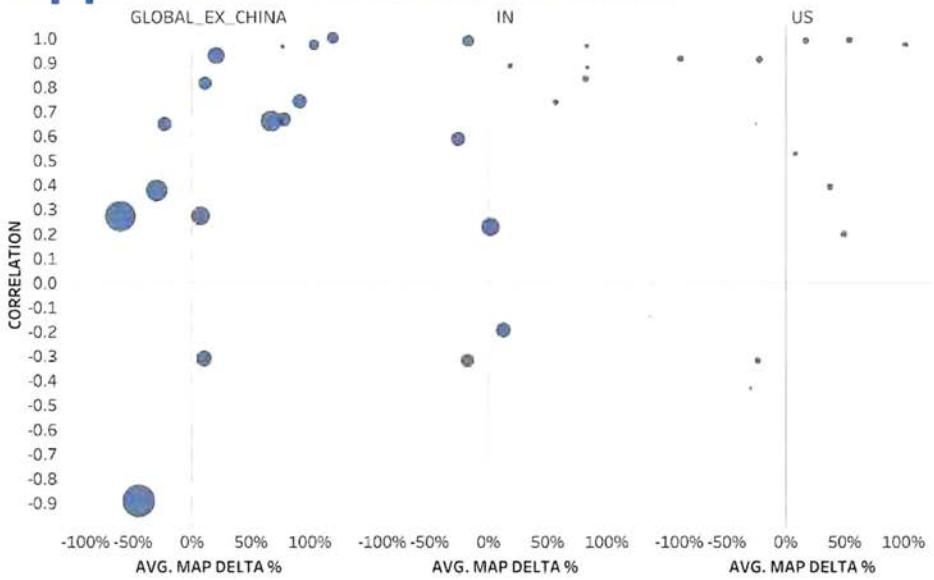
- **5** countries of the top 15 countries have Low alignment with onavo data

[1] **Low Alignment** with Onavo is defined as MAP Delta >20% and correlation <0.7

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KEY APPS < 200M MAP

App Annie vs Onavo MAP



(X) Avg. MAP Delta %: *AA vs. Onavo. +'ve means AA is larger*
(Y) Correlation: *Corr (AA MAP, ONAVO MAP) Oct'18-Feb'19*
Bubble: *Individual App*
Bubble Size: *Avg. Onavo MAP*
Collection: *Key Apps<200M*

706

Source: MINT (monthly average), Facebook Internal Use Only

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KEY APPS > 200M MAP

App Annie vs Onavo MAP - Global_Ex_China

Key Apps >200M - GLOBAL_EX_CHINA

App Name	Avg. MAP Delta%	Avg. Onavo MAP	Correlation
YouTube	-0.85%	2,259,550,791	0.8
WhatsApp Messenger	4.93%	1,742,976,971	0.9
Facebook	-4.55%	1,712,893,899	0.8
Maps - Navigate & Explore	25.85%	1,412,115,791	0.2
Messenger – Text and Video Chat for Free	-4.64%	1,462,489,594	0.3
Gmail	23.64%	1,172,335,585	1.0
SMS/MMS		1,142,626,517	
Instagram	14.96%	1,049,517,590	0.9
Google Photos	5.46%	931,626,240	0.2
Apple Music	-7.59%	469,813,329	0.3
Snapchat	-2.37%	373,671,164	0.3
iMessage - Media only*		288,687,734	
Truecaller: Caller ID, block robocalls & spam ..	19.18%	218,786,468	0.7
Viber Messenger - Messages, Group Chats &..	-26.03%	320,796,169	0.2
Twitter	93.74%	247,236,246	0.9
Netflix	80.67%	225,113,162	1.0
Spotify: Discover music, podcasts, and playl..	111.08%	206,732,819	0.9
Pinterest	68.87%	184,851,173	0.9
Amazon Shopping	90.41%	164,823,772	1.0
Messages	113.42%	177,055,855	0.9
LINE: Free Calls & Messages	40.54%	208,942,123	-0.6
LinkedIn: Jobs, professional profile, & netw..	173.82%	83,340,652	0.9

Avg. MAP Delta%, Avg. Onavo MAP and Correlation broken down by App Name on page GLOBAL_EX_CHINA. The view is filtered on Geo ID, which keeps GLOBAL_EX_CHINA, IN and US.

Source: MINT (monthly average), Facebook Internal Use Only

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KEY APPS > 200M MAP

App Annie vs Onavo MAP - IN

Key Apps >200M - IN

App Name	Avg. MAP Delta%	Avg. Onavo MAP	Correlation
YouTube	-10.03%	319,804,313	-0.5
WhatsApp Messenger	9.11%	318,386,892	-0.7
Facebook	-8.06%	212,566,391	0.7
Maps - Navigate & Explore	-0.54%	216,216,456	-0.7
Messenger – Text and Video Chat for Free	-3.84%	133,352,971	0.5
Gmail	6.39%	198,790,889	-0.6
SMS/MMS		213,656,963	
Instagram	30.12%	99,532,374	1.0
Google Photos	-3.01%	165,233,876	-0.8
Apple Music	13.34%	9,038,808	0.9
Snapchat	34.01%	17,122,241	0.7
iMessage - Media only*		2,193,246	
Truecaller: Caller ID, block robocalls & spam ..	17.97%	141,318,509	0.0
Viber Messenger - Messages, Group Chats &..	57.96%	2,396,890	0.5
Twitter	109.40%	18,163,405	-0.6
Netflix	36.36%	14,271,645	0.9
Spotify: Discover music, podcasts, and playl..	239.75%	1,506,606	-0.7
Pinterest	87.58%	10,695,034	-0.1
Amazon Shopping	84.61%	4,165,873	-0.7
Messages	133.09%	39,322,814	-0.8
LINE: Free Calls & Messages	50.75%	1,466,399	0.3
Linkedin: Jobs, professional profile, & netw..	107.03%	11,414,349	0.7

Avg. MAP Delta%, Avg. Onavo MAP and Correlation broken down by App Name on page IN. The view is filtered on Geo ID, which keeps GLOBAL_EX_CHINA, IN and US.

Source: MINT (monthly average), Facebook Internal Use Only

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KEY APPS > 200M MAP

App Annie vs Onavo MAP - US

Key Apps >200M - US

App Name	Avg. MAP Delta%	Avg. Onavo MAP	Correlation
YouTube	5.94%	211,940,550	0.2
WhatsApp Messenger	-12.04%	59,030,594	0.8
Facebook	3.22%	185,374,762	-0.1
Maps - Navigate & Explore	25.64%	152,632,182	0.5
Messenger – Text and Video Chat for Free	1.58%	178,421,714	0.1
Gmail	16.11%	130,846,128	0.9
SMS/MMS		42,121,110	
Instagram	-15.86%	133,078,994	0.7
Google Photos	5.93%	79,931,271	-0.7
Apple Music	-0.28%	133,038,941	0.4
Snapchat	-4.50%	106,043,567	0.0
iMessage - Media only*		137,577,670	
Truecaller: Caller ID, block robocalls & spam ..	57.18%	2,662,799	0.1
Viber Messenger - Messages, Group Chats &..	-74.51%	24,093,693	0.0
Twitter	40.54%	45,075,654	0.8
Netflix	14.26%	68,504,066	0.8
Spotify: Discover music, podcasts, and playl..	24.00%	53,596,953	0.0
Pinterest	35.35%	53,883,235	0.5
Amazon Shopping	67.85%	71,934,854	0.9
Messages	32.99%	14,528,052	1.0
LINE: Free Calls & Messages	60.37%	3,709,727	0.3
LinkedIn: Jobs, professional profile, & netw..	105.88%	16,241,873	0.7

Avg. MAP Delta%, Avg. Onavo MAP and Correlation broken down by App Name on page US. The view is filtered on Geo ID, which keeps GLOBAL_EX_CHINA, IN and US.

Source: MINT (monthly average), Facebook Internal Use Only

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KEY APPS < 200M MAP

App Annie vs Onavo MAP - Global_Ex_China

Key Apps <200M - GLOBAL_EX_CHINA

App Name	Avg. MAP Delta%	Avg. Onavo MAP	Correlation
Dailyhunt (Newshunt)- Cricket, News,Videos	-23.46%	53,518,220	0.6
Discord - Chat for Gamers	119.84%	35,142,058	1.0
Facebook Lite	-45.08%	293,171,277	-0.9
Hotstar	7.17%	90,960,186	0.3
iMessage - Media only*		288,687,734	
imo free video calls and chat	-60.55%	258,147,071	0.3
KakaoTalk: Free Calls & Text	91.67%	53,980,527	0.7
Patreon	222.45%	512,425	0.0
Reddit	258.06%	15,747,049	1.0
Ring - Always Home	157.26%	6,081,706	1.0
Skype - free IM & video calls	67.34%	117,532,953	0.7
TikTok	-29.81%	125,399,341	0.4
TikTok Lite	76.94%	3,311,337	1.0
Tinder	77.81%	52,306,235	0.7
Twitch: Livestream Multiplayer Games & Es..	103.62%	27,783,633	1.0
VK — social network and calls	10.33%	66,326,031	-0.3
WeChat	20.80%	73,690,448	0.9
YouTube Music - Stream Songs & Music Vide..	11.09%	44,826,474	0.8

Avg. MAP Delta%, Avg. Onavo MAP and Correlation broken down by App Name on page GLOBAL_EX_CHINA. The view is filtered on Geo ID, which keeps GLOBAL_EX_CHINA, IN and US.

Source: MINT (monthly average), Facebook Internal Use Only

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KEY APPS < 200M MAP

App Annie vs Onavo MAP - IN

Key Apps <200M - IN

App Name	Avg. MAP Delta%	Avg. Onavo MAP	Correlation
Dailyhunt (Newshunt)- Cricket, News,Videos	-25.54%	51,283,927	0.6
Discord - Chat for Gamers	84.01%	2,484,370	0.9
Facebook Lite	12.72%	56,761,525	-0.2
Hotstar	1.95%	90,010,649	0.2
iMessage - Media only*		2,193,246	
imo free video calls and chat	-17.51%	44,003,299	-0.3
KakaoTalk: Free Calls & Text	345.00%	105,348	-0.6
Patreon		22,759	
Reddit	367.53%	924,220	0.6
Ring - Always Home		5,748	
Skype - free IM & video calls	82.36%	10,614,014	0.8
TikTok	-17.19%	34,626,201	1.0
TikTok Lite	83.46%	3,005,296	1.0
Tinder	57.12%	5,964,876	0.7
Twitch: Livestream Multiplayer Games & Es..	135.75%	599,543	-0.1
VK — social network and calls	41.35%	176,280	-1.0
WeChat	18.65%	5,144,022	0.9
YouTube Music - Stream Songs & Music Vide..	-62.92%	795,535	0.2

Avg. MAP Delta%, Avg. Onavo MAP and Correlation broken down by App Name on page IN. The view is filtered on Geo ID, which keeps GLOBAL_EX_CHINA, IN and US.

Source: MINT (monthly average), Facebook Internal Use Only

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KEY APPS < 200M MAP

App Annie vs Onavo MAP - US

Key Apps <200M - US

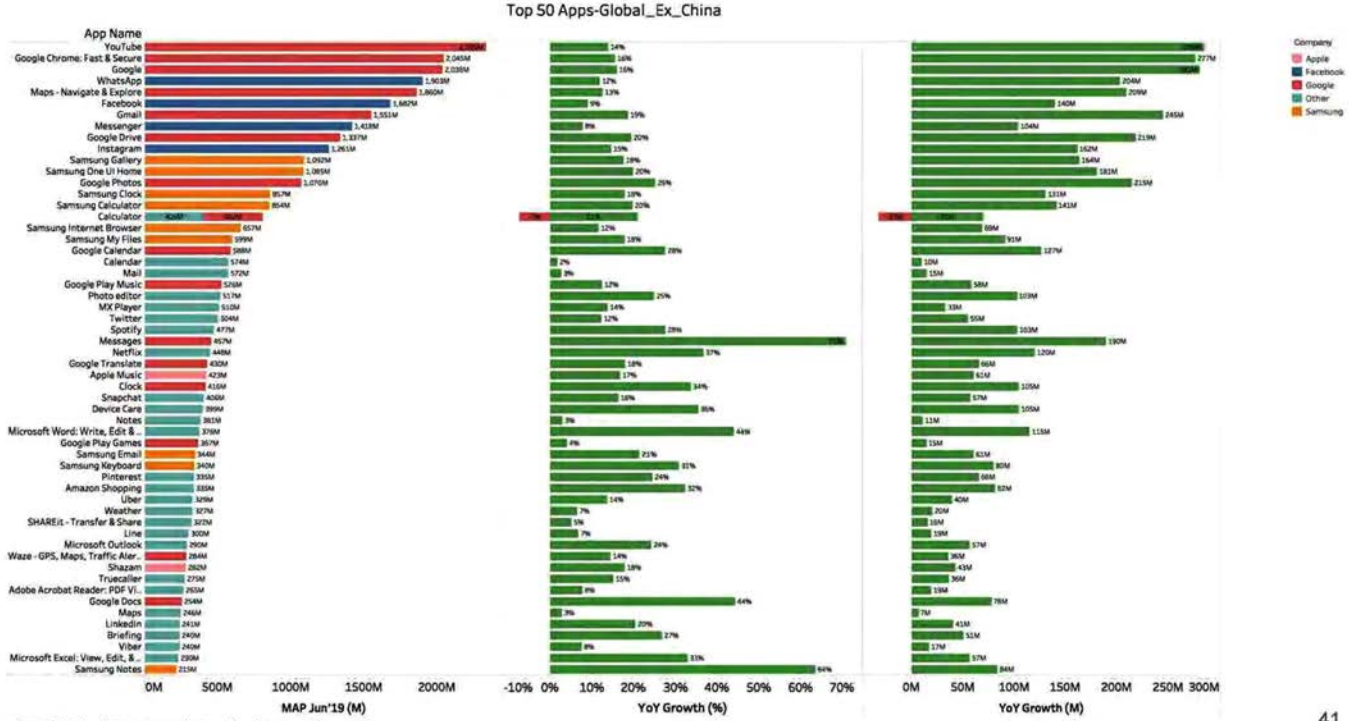
App Name	Avg. MAP Delta%	Avg. Onavo MAP	Correlation
Dailyhunt (Newshunt)- Cricket, News,Videos		27,923	
Discord - Chat for Gamers	54.29%	10,020,297	1.0
Facebook Lite	-29.59%	1,734,895	-0.4
Hotstar	174.14%	57,443	0.3
iMessage - Media only*		137,577,670	
imo free video calls and chat	-89.48%	11,174,632	0.9
KakaoTalk: Free Calls & Text	159.19%	1,192,948	0.5
Patreon	287.00%	242,936	-0.2
Reddit	139.67%	7,484,429	0.9
Ring - Always Home	101.65%	5,313,014	1.0
Skype - free IM & video calls	49.71%	9,887,350	0.2
TikTok	-23.63%	9,831,074	-0.3
TikTok Lite		3,894	
Tinder	37.65%	10,199,946	0.4
Twitch: Livestream Multiplayer Games & Es..	17.03%	9,304,789	1.0
VK — social network and calls	-25.20%	400,662	0.6
WeChat	7.93%	4,609,046	0.5
YouTube Music - Stream Songs & Music Vide..	-22.23%	11,202,865	0.9

Avg. MAP Delta%, Avg. Onavo MAP and Correlation broken down by App Name on page US. The view is filtered on Geo ID, which keeps GLOBAL_EX_CHINA, IN and US.

Source: MINT (monthly average), Facebook Internal Use Only

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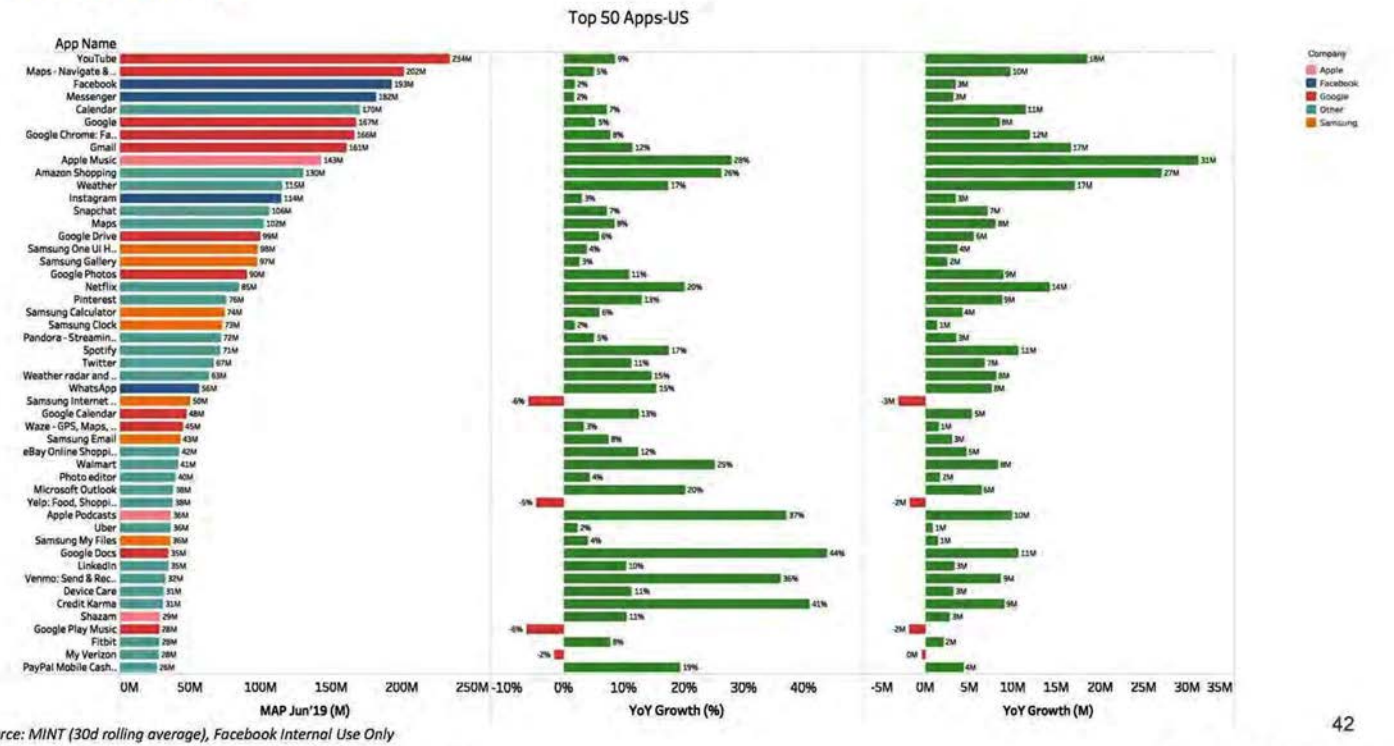
TOP 50 APPS - GLOBAL_EX_CHINA



Source: MINT (30d rolling average), Facebook Internal Use Only

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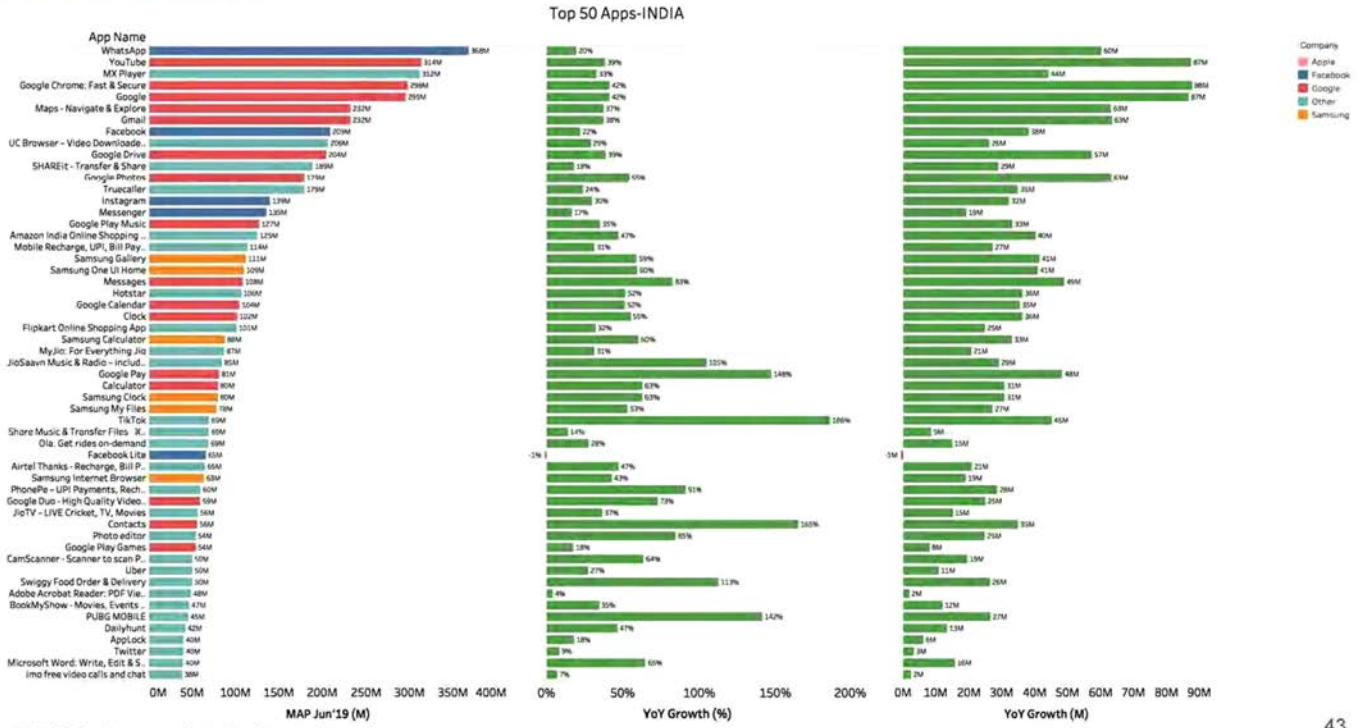
TOP 50 APPS - US



Source: MINT (30d rolling average), Facebook Internal Use Only

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TOP 50 APPS - INDIA



Source: MINT (30d rolling average), Facebook Internal Use Only

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MINT vs actuals

	Onavo (Feb 13)	AppAnnie (Feb 28)	Internal (Feb 28)
YouTube	2,307,255,408	2,182,061,871	
WhatsApp	1,786,098,393	1,718,124,116	1,521,099,585
FB	1,747,440,763	1,499,464,115	2,143,270,379
Messenger	1,485,499,984	1,313,218,208	1,393,665,590
IG	1,076,560,470	1,160,299,144	965,130,972
G.Photos	947,854,233	990,127,446	
Apple Music	488,390,727	412,274,376	
Snapchat	369,347,379	334,721,916	
Viber	320,472,549	219,528,819	
Twitter	252,239,928	462,980,993	
TikTok	223,463,809	129,343,818	
Truecaller	220,280,437	260,333,374	
Spotify	211,304,470	429,678,152	
Line	209,711,297	264,460,201	

	Onavo (Feb 13)	AppAnnie (Feb 28)
Pinterest	194,286,021	308,698,060
Messages	1,136,971,055	409,007,184
Amazon	170,798,635	308,412,818
LinkedIn	87,802,057	223,464,128
TikTok 1	67,037,939	22,633,351
TikTok lite	5,964,569	5,153,337
Maps	1,428,678,080	1,729,302,466
SMS/MMS	#N/A	#N/A
iMessage	#N/A	#N/A
Netflix	241,866,554	408,032,292
Newshunt	56,806,446	41,788,068
FB lite	296,305,530	155,503,215
YT Music	47,014,876	48,525,250

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Comparison across apps login, password models

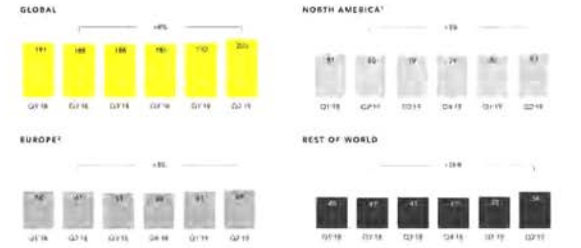
	Cold Start	Ph No	Email	SSO	Details asked	Interesting Models
Social apps						
TikTok	Yes	Yes	Yes	FB, Ggle, IG, Twitter	Asks for bday	Pwd reset using bday and OTP
LIKE	Yes	Yes	No	FB, Ggle, IG, Truecaller	Optional UN, gender, bday	Set pwd later
Vigo	Yes	Yes	Yes	Ggle (main), FB		Email reset uses OTP sent to email
Hike	No	Yes	N/A	N/A	No password needed	
Roposo	No	Yes	Yes	FB, Ggle	No password needed	Use OTP for login
ShareChat	No	Yes	No	No	Name, gender, age range	Pwd not needed. Linked to ph #.
Samosa	No	Yes	No	Truecaller		No OTP needed for Truecaller login
VMate	Yes	Yes (optional)	No	No	Quick login: Nickname, gender	No ph #, email reqd upfront
Media apps						
Hotstar	No	No	Yes	FB	Name, email, pwd, age, gender	
Gaana	Yes	Yes	Yes	FB, Ggle		Option to get a code on FB
Utility apps						
Truecaller	No	Yes	Yes	FB, Ggle		No login reqd as it's always running
UC Browser	Yes	Yes		FB, Ggle	Can create UC account	No option to delete account or logout
ShareIT	Yes	Yes		FB		Ph # login only available in India
Ola	No	Yes		No	Full name and email	
Zomato	Yes	No	Yes	FB, Ggle		Uses email OTP for acc. Creation and login

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Snap Inc. 2019 Q2 Growth and Engagement Update

Highlights	Market Strategy Commentary
DAUs 203 million in Q2 '19, compared to 190 million in Q1 '19 and 188 million in Q2 '18.	• Largest quarterly sequential absolute increase since 2016 Q2 • Largest quarterly sequential percentage increase since 2016 Q3 • Over 50% of the 13 million DAU increase came from "Rest of World", which includes countries like Saudi Arabia, India, and Brazil • The RoW increase may be in part due to the Android code rewrite
Snap estimates that 7-9 million of 13 million additional DAU were attributable to the launch of new augmented reality lenses, which brought in new users and also increased engagement of existing users	• New gender swap lenses launched in mid-May 2019 • Longer term retention of these users uncertain • Perfect example of a "hook" which spurs people to download or open an app
"Snapchatters in the United States who joined five years ago and were active at the end of their first year have retained at more than a 95 percent annualized rate."	• Note that most long term retention loss is within 100 days • However, **95% annualized retention after the first year is impressive** and roughly on par or superior to FB's long term retention from teens in the 2014 confirmed year cohort • This further supports that Snapchat is a multi-generational challenge and that usage continues as users age up
Average number of Snaps created per day is at more than 3.5 billion	• Previously announced figure was 3 billion per day

Average Daily Active Users (DAU)



Average Revenue Per User (ARPU)



46

Sources: Snap Inc., previous Market Strategy analyses

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Thank You!

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- from: Mike Schroepfer [redacted]
- to: Mark Zuckerberg [redacted] Mike Schroepfer [redacted]
- time: Fri Mar 09 10:44:16 PST 2012 (1331318656229)
- subject: null
- body

not losing strategic position in photos is worth a lot of money

- from: Mark Zuckerberg [redacted]
- to: Mike Schroepfer [redacted], Mark Zuckerberg [redacted]
- time: Fri Mar 09 10:45:29 PST 2012 (1331318729568)
- subject:
- body

I generally think we should do this. I think we should be willing to pay even more -- unless we learn something about their business that is weaker than we'd thought.

- from: Mike Schroepfer [redacted]
- to: Mark Zuckerberg [redacted], Mike Schroepfer [redacted]
- time: Fri Mar 09 10:45:59 PST 2012 (1331318759980)
- subject: null
- body

ok - what's next steps?

- from: Mike Schroepfer [redacted]
- to: Mark Zuckerberg [redacted], Mike Schroepfer [redacted]
- time: Fri Mar 09 10:50:08 PST 2012 (1331319008296)
- subject: null
- body

and we should think seriously about what we'd do with it and snap

- from: Mike Schroepfer [redacted]
- to: Mark Zuckerberg [redacted] Mike Schroepfer [redacted]
- time: Fri Mar 09 10:50:29 PST 2012 (1331319029760)
- subject: null
- body

the biggest risk imho is that we either quickly or slowly kill instagram but not investing in i - and open up a window

- from: Mike Schroepfer [redacted]
- to: Mark Zuckerberg [redacted] Mike Schroepfer [redacted]
- time: Fri Mar 09 10:50:32 PST 2012 (1331319032590)
- subject: null
- body

for a new entrant.

- from: Mike Schroepfer [redacted]
- to: Mark Zuckerberg [redacted] Mike Schroepfer [redacted]
- time: Fri Mar 09 10:50:35 PST 2012 (1331319035077)
- subject: null
- body

Specially:

- from: Mike Schroepfer [redacted]
- to: Mark Zuckerberg [redacted], Mike Schroepfer [redacted]
- time: Fri Mar 09 10:51:12 PST 2012 (1331319072364)
- subject: null
- body

we need to figure out:

- from: Mike Schroepfer [redacted]
- to: Mark Zuckerberg [redacted] Mike Schroepfer [redacted]
- time: Fri Mar 09 10:51:15 PST 2012 (1331319075467)
- subject: null
- body

1) Do we keep the brand?

- from: Mark Zuckerberg [redacted]
- to: Mike Schroepfer [redacted], Mark Zuckerberg [redacted]
- time: Fri Mar 09 10:51:47 PST 2012 (1331319107242)
- subject:
- body

Yes

- from: Mike Schroepfer [redacted]
- to: Mark Zuckerberg [redacted] Mike Schroepfer [redacted]
- time: Fri Mar 09 10:52:05 PST 2012 (1331319125307)
- subject: null
- body

2) Do we keep the ability to publish to multiple networks (twitter, et. all)

- from: Mark Zuckerberg [redacted]
- to: Mike Schroepfer [redacted], Mark Zuckerberg [redacted]
- time: Fri Mar 09 10:52:20 PST 2012 (1331319140896)
- subject:
- body

I think the real question is whether we still launch Snap.

- from: Mark Zuckerberg [redacted]
- to: Mike Schroepfer[redacted], Mark Zuckerberg[redacted],
- time: Fri Mar 09 10:52:29 PST 2012 (1331319149517)
- subject:
- body

I think yes on (2) as well.

- from: Mark Zuckerberg ([redacted])
- to: Mike Schroepfer([redacted]), Mark Zuckerberg([redacted]),
- time: Fri Mar 09 10:52:37 PST 2012 (1331319157702)
- subject:
- body

I'd just keep it running. Insurance.

- from: Mike Schroepfer ([redacted]
- to: Mark Zuckerberg([redacted]), Mike Schroepfer([redacted]
- time: Fri Mar 09 10:53:29 PST 2012 (1331319209356)
- subject: null
- body

we'd need to release their android version

- from: Mike Schroepfer ([redacted])
- to: Mark Zuckerberg([redacted]), Mike Schroepfer([redacted]).
- time: Fri Mar 09 10:53:37 PST 2012 (1331319217196)
- subject: null
- body

and invest a few more engineers in it

- from: Mark Zuckerberg ([redacted])
- to: Mike Schroepfer[redacted], Mark Zuckerberg[redacted],
- time: Fri Mar 09 10:54:57 PST 2012 (1331319297143)
- subject:
- body

Yeah, we'd do that.

- from: Mark Zuckerberg ([redacted])
- to: Mike Schroepfer([redacted]), Mark Zuckerberg([redacted]),
- time: Fri Mar 09 10:55:14 PST 2012 (1331319314967)
- subject:
- body

By insurance I don't mean starve it. Just let it run relatively independently.

Mr. Mark Zuckerberg
March 13, 2014
Attachment 4(c)-19

DRAFT

**MINUTES OF A MEETING
OF THE BOARD OF DIRECTORS OF
FACEBOOK, INC.**

DATE:	February 14, 2014
TIME:	5:15 p.m., Pacific Time
PLACE:	Via Teleconference
DIRECTORS PRESENT:	Erskine Bowles Susan Desmond-Hellmann Donald E. Graham Reed Hastings Sheryl Sandberg Mark Zuckerberg
DIRECTORS ABSENT:	Marc Andreessen Peter Thiel
OTHERS PRESENT:	[redacted] Colin Stretch [redacted]

1. Call to Order

Mr. Zuckerberg, presiding as Chairman, called the meeting to order with all individuals listed above as present (except for Mr. Hastings) in attendance. Mr. Zuckerberg announced that a quorum of the Board of Directors (the "***Board***") of Facebook, Inc. (the "***Company***") was present, and that the meeting, having been duly noticed and convened (or notice waived), was ready to proceed with its business. Participants via teleconference indicated that they could hear and be heard clearly. [redacted] reviewed the agenda and acted as Secretary of the meeting.

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DRAFT

2. Project Cobalt

Mr. Zuckerberg provided the Board with an update regarding the current status of discussions regarding Project Cobalt, the potential acquisition of a company ("***Target***"), including potential valuation, timing and process.

Mr. Zuckerberg then left the meeting.

Ms. Sandberg reviewed the potential transaction structure with the Board, including the potential tax implications for the Company and Target, and reviewed the potential mix of stock versus cash consideration to be paid in the transaction. Questions were asked and discussion ensued.

[redacted] then provided an update regarding the business of Target, including a discussion of monthly active users, user engagement and users by region. [redacted] also discussed potential valuation metrics, such as price per user. Questions were asked and discussion ensued.

Mr. Hastings then joined the meeting.

Mr. Stretch then discussed the strategic rationale for the proposed transaction, including Target's strong user base and high growth rate in phone-contacts-based, small group communication, an area that the Company has not historically been focused on, but which complements the Company's traditional friends-based sharing model. Ms. Sandberg indicated that the proposed transaction would also provide significant benefit to the Company by improving the Company's strategic position in relation to mobile operating systems. Ms. Sandberg emphasized that the high concentration of the mobile operating system market – with two providers serving the vast majority of smartphone users around the world – poses a significant strategic threat to the Company's business, and also observed that adding an additional, popular, complementary mobile application to Facebook's suite of offerings would make it more difficult for operating system providers to exclude the Company's mobile applications from mobile platforms. Finally, Mr. Stretch noted that if the transaction were to be

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consummated, the Company intended to prioritize Target's user growth and engagement over short-term monetization. Questions were asked and discussion ensued.

The Board members then indicated that they were supportive of continuing to pursue the proposed transaction at the valuation discussed and comfortable with the proposed timing and process for the transaction.

3. Adjournment

There being no further business to come before the Board, the meeting was adjourned.

[redacted]
Secretary of the Meeting

APPROVED:

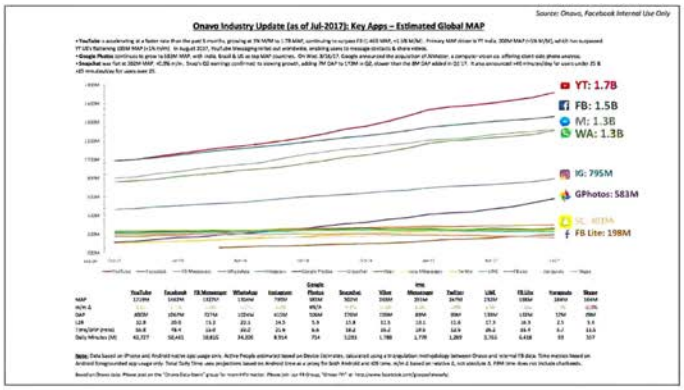
Mark Zuckerberg
Chairman of the Meeting

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Source: Onavo, Facebook Internal Use Only
Onavo Industry Update (as of Jul-2017): Key Apps – Estimated Global MAP
YT: 1.7B
FB: 1.5B
M: 1.3B
WA: 1.3B
IG: 795M
GPhotos: 583M
FB Lite: 198M

1

YouTube adds Messaging (8/7/17)

- New mobile-only feature to share video & chat privately
- Users can also directly reply with another video, reel icon
- Feature built into YT's share button



Reel icon for direct video reply comebacks

Google Photos

Google acquires AIMatter, maker of Fabby Computer Vision app (8/16/17)
Undisclosed price for $2M-funded, Belarus-based company

Fabby Photo Editor App
- Will remain standalone
- Onavo: 300k MAP

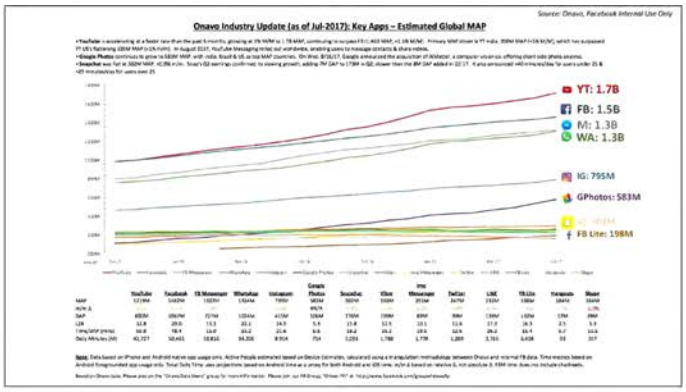
Fabby
- Claim: World's fastest real-time image processing on Mobile, 8x faster than Caffe & TensorFlow
- SDK runs client-side deep learning directly on smartphones, similar to Snap Memories

FUN

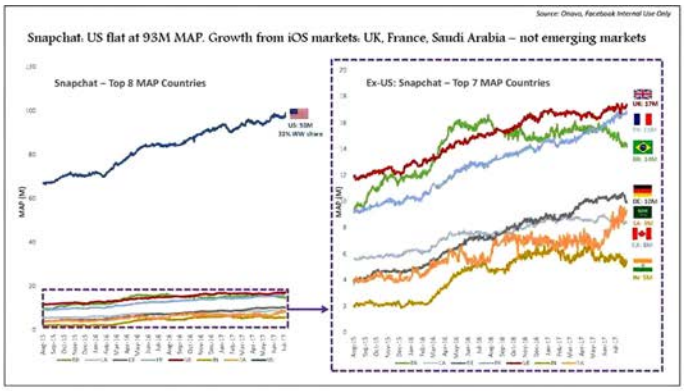




2


Source: Onavo, Facebook Internal Use Only
Onavo Industry Update (as of Jul-2017): Key Apps – Estimated Global MAP
YT: 1.7B
FB: 1.5B
M: 1.3B
WA: 1.3B
IG: 795M
GPhotos: 583M
FB Lite: 198M

3


Source: Onava, Facebook Internal Use Only
Snapchat: US flat at 93M MAP. Growth from iOS markets: UK, France, Saudi Arabia – not emerging markets
Snapchat – Top 8 MAP Countries
US: 93M
31% WW share
MAP (M)
Ex-US: Snapchat – Top 7 MAP Countries
UK: 17M
FR: 14M
BR: 14M
DE: 10M
ES: 9M
CA: 8M
MAU (M)

4

Source: Onavo, Facebook Internal Use Only

Snapchat follow-up: 74% US Teen Reach vs. 36% Adult Reach *(Source: Onavo panel)*

Snapchat US Overall Reach:
36%

United States of America

6-mo Trend	App	30d Reach	m/m Δ	L28
	YouTube	72%	0.4%	13.3
	Facebook	64%	-0.7%	20.5
	Messenger	62%	-0.5%	15.0
	Instagram	45%	-0.2%	17.9
	Snapchat	36%	-0.7%	20.0
	Apple News	28%	-0.1%	18.2
	Samsung Gallery	26%	0.1%	11.6

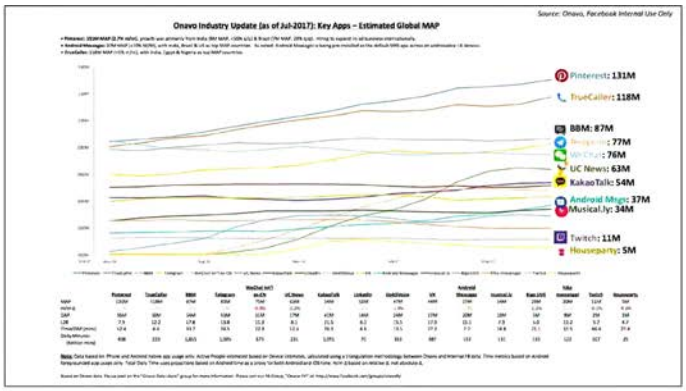
Snapchat US Teen Reach:
74%

United States of America

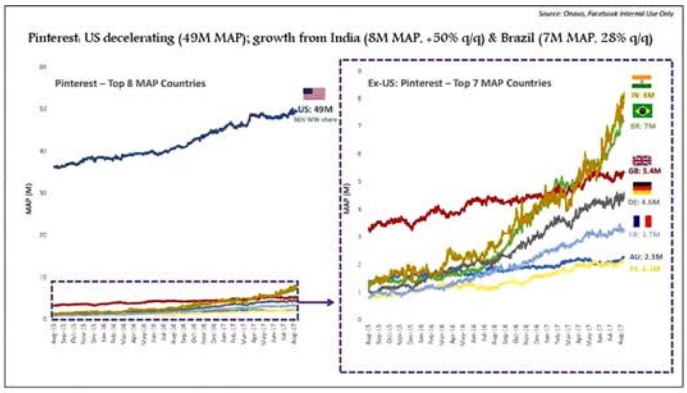
6-mo Trend	App	30d Reach	m/m Δ	L28
	YouTube	81%	0.5%	19.3
	Snapchat	74%	-0.7%	24.0
	Instagram	73%	-0.5%	22.2
	Facebook	54%	-0.4%	17.3
	Messenger	50%	-1.1%	14.0
	Spotify Music	35%	-0.9%	13.7
	Twitter	33%	0.0%	16.6

5

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Source: Onavo, Facebook Internal Use Only
Onavo Industry Update (as of Jul-2017): Key Apps – Estimated Global MAP
Pinterest: 131M
TrueCaller: 118M
BBM: 87M
UC News: 63M
KakaoTalk: 54M
Android Msgs: 37M
Musical.ly: 34M
Twitch: 11M
Houseparty: 5M

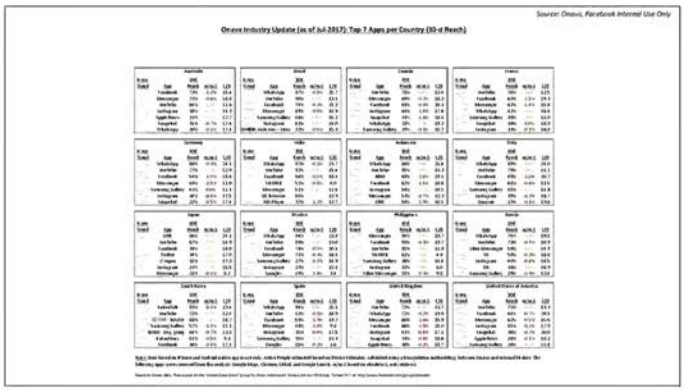
6


Source: Onavo, Facebook Internal Use Only
Pinterest: US decelerating (49M MAP); growth from India (8M MAP, +50% q/q) & Brazil (7M MAP, 28% q/q)
Pinterest – Top 8 MAP Countries
US: 49M
MAU (M)
Ex-US: Pinterest – Top 7 MAP Countries
IN: 8M
BR: 7M
GB: 5.4M
DE: 4.5M
FR: 3.7M
AU: 2.3M
CA: 2.1M
MAU (M)

7

Appendix

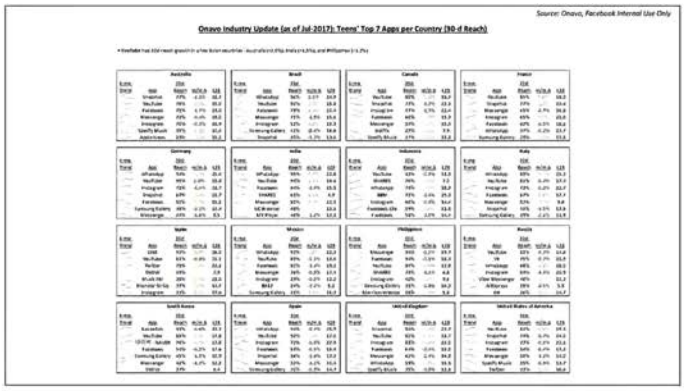
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Source: Onavo, Facebook Internal Use Only

Onavo Industry Update (as of Jul-2017): Top 7 Apps per Country (30-d Reach)

9

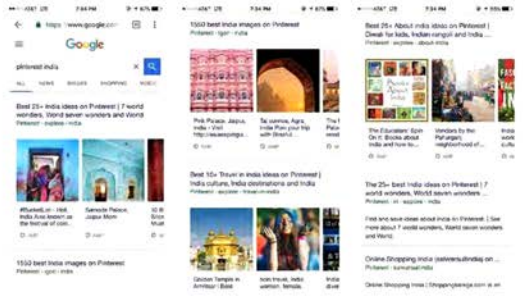


Source: Onavo, Facebook Internal Use Only

Onavo Industry Update (as of Jul-2017): Teens' Top 7 Apps per Country (30-d Reach)

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Pinterest India: **Deep Google AMP integration, ex. [Pinterest India] query has 3 screens of AMP prior to search results. May indicate potential rev-share partnerships.**



11