

Autocracy, Automatic?

How to Make Google, Facebook, and Amazon Safe for Democracy Through Traditional Non-Discrimination Rules

**Testimony before the Senate Committee on the Judiciary
Subcommittee on Competition Policy, Antitrust, and Consumer Rights**

**Hearing on:
Competition in the Digital Advertising Ecosystem**

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INTRODUCTION:

The American people today face the gravest set of threats to our democracy and individual liberties ever posed by any corporations in our history. A few vast, far-reaching private actors have captured control over core U.S. communications and commercial networks to an extent far beyond any previous monopolist, including the plutocrats of the Gilded age. The masters of these corporations originally aimed simply to put their hands on the flows of advertising revenue, and thereby concentrate great wealth and power. But along the way they also developed capacities to open and close the gates of communications and commerce in ways that have empowered them to manipulate how individual citizens and businesses speak with and do business with one another. In other words, they developed forms of political power that are overtly autocratic in nature.

These threats become only more acute by the day. We see this in the news last week about the closure of BuzzFeed News, as well as recent layoffs at Vice, Vox, ABC, and NPR, among many other news publishers. We see this in the recent seizure of the nation’s most important platform for public debate – Twitter – by one of the world’s richest men, and his use of this control to blatantly censor mainstream journalists and any other individuals he may dislike. We see this in the rapid introduction by Google, Microsoft, and a few other giant platforms of poorly understood generative AI technologies that are already making it much harder for publishers to connect to advertisers, and for journalists and their readers to connect with one another.

For these reasons and more it is a great honor and privilege to be asked to provide testimony at today’s very important hearing. The members of this subcommittee – from both parties – have bravely led the way in shining a light on these threats and in taking concrete steps to address

them in ways that protect journalists, news publishers, and advertisers, and thereby our democracy and our most basic forms of human liberty.

In presenting this testimony today, I speak as the Executive Director of the Open Markets Institute, which has long led efforts among public interest institutions to understand the nature and extent of the threats posed by Google, Facebook, and other online monopolists, and how to master them. Our team's work on these threats reaches back more than 20 years, including the last six years as an independent organization.

For the last three and a half years, Open Markets has also been home to the Center for Journalism and Liberty, which is supported by the Knight Foundation and other public interest funders committed to the protection of a free press and free debate in America. CJL's core mission is restore an open market system for advertising in the United States, by eliminating or neutralizing the ability of middleman monopolists such as Google and Facebook to divert advertising revenue from news publishers into their own pockets.

Importantly, I also bring to the conversation today the perspective of someone who has worked as a journalist for more than 35 years. This includes stints as a foreign correspondent, newspaper reporter, business reporter, and political economic essayist. Most of value to our discussion today, it also includes seven years running *Global Business* magazine, a monthly 100,000 circulation, four-color, 96-page, perfect-bound business magazine that – until its closure after the September 11 attacks – was supported almost entirely by advertising from a highly diverse set of companies.

In my testimony today, I'd like to make two main points.

First, the AMERICA Act is a brave and important step in the right direction, one that we at Open Markets strongly support. We commend Senator Lee and his staff for drafting a smart bill that – if signed into law – would do much to properly structure a market for online advertising in the Internet age. This includes by making it harder to manipulate automated trading, establishing true transparency and hence the ability by both users and the public to audit the behavior of market actors, and by outlawing favoritism by those who control advertising platforms. Indeed, in many respects, the AMERICA Act can serve as a model for other efforts to rebuild fair and competitive markets online.

Second, unfortunately, the Open Markets Institute believes this bill, on its own, is not sufficient to resolve most of the problems created by having allowed Google, Facebook, and Amazon to monopolize online advertising, let alone to build such wide ranging and powerful systems for surveilling and manipulating the actions of individual citizens and businesses. Even if Congress were to pass the AMERICA Act tomorrow, these corporations would still pose many other immediate threats to our democracy, individual liberty, and economic wellbeing.

That’s why the Open Markets Institute also strongly supports the American Innovation and Choice Online Act (AICOA) and other projects to restore traditional U.S. policies designed to eliminate the ability of middlemen corporations to exploit their power to preference their own services and goods. And why Open Markets supports the Journalism Competition and Preservation Act (JCPA) as a vital first step towards restoring a truly open and competitive market for news and debate in the United States, fully protected from predatory middlemen illegally exploiting their gatekeeper power.

That said, we at Open Markets do not believe that these three bills – taken together – are sufficient to address today’s crisis. None of the three bills, for instance, deal with the power of the middlemen to manipulate what citizens read, or for that matter, whether they read at all.

That’s why I intend to devote most of my testimony today to explaining why the Open Markets Institute believes it is so important to impose a system of non-discrimination on Google, Facebook, Amazon, and other middlemen corporations, one that would require these gatekeepers to provide essentially the same service to all individuals and businesses who depend on these platforms to speak with and do business with one another. This principle – of absolutely equality of treatment – traces to the Declaration of Independence and is one of the core goals of the Constitution of the United States. It was also the practical foundation for the regulation of all network monopolies and other powerful gatekeepers throughout U.S. history, until the Reagan and Clinton administrations overturned these principles and policies in the 1980s and 1990s.

Senator Franken, when he was a member of this committee, captured this basic idea in a speech he gave five and a half years ago. In November 2017, speaking of online platform monopolies including Google, Facebook, and Amazon Senator Franken said: “As tech giants become a new kind of internet gatekeeper, I believe the same basic principles of... neutrality should apply here: no one company should have the power to pick and choose which content reaches consumers and which doesn’t.”

The time has come for us to pick up Senator Franken’s challenge, and to complete the task of making the internet platforms safe for democracy.

AMERICA’S DIGITAL ADVERTISING ECOSYSTEM – A CLUSTER OF THREATS

In retrospect, the speed with which Google and Facebook rose to power is astounding. So too the variety and magnitude of the political, social, and economic crises that are a direct result not merely of their sprawling size and monopoly power, but of a business model based on

manipulation and extortion of the individuals and companies that rely on them to get to market.

Consider, for instance, the changes in the advertising and publishing businesses themselves. Two decades ago advertisers and publishers interacted directly with one another, in a great open market system. No one publisher or advertiser had significant power over the business of advertising or of news, or over what people read or how they communicated with one another. Yes we can point to instances in which a large advertiser exercised some influence over news coverage, especially at smaller publications. But the overall picture is of an amazingly open and robust discussion, run by and for the citizens of the world's greatest democracy, paid for largely by advertisements for local businesses, much as had been true since before the Revolution.

Better yet, the fast-emerging technology of the Internet was providing citizens with all sorts of new ways to share information and ideas with one another, including through the creation of alternative forms of news gathering and publishing. Just two decades ago, true democracy was very much on the march.

Today by contrast the entire digital advertising system is controlled by a few giant middlemen, able to manipulate and sometimes determine what people read and increasingly whether they actually read at all. These same few middlemen also routinely rent out their platforms to political actors – many of them in hostile foreign states – who use them to shape opinion in the United States and to disrupt and warp debate among U.S. citizens.

The effects on American journalism and America's news publishers have been well documented, by news publishers, journalism schools, and organizations like the Center for Journalism and Liberty at Open Markets. But it's worth restating briefly the most immediate

result of how Google, Facebook and other gatekeepers exploit their position as powerful middlemen and gatekeepers. Which is the diversion – or if we are honest, theft – of billions of dollars of advertising revenue every year from trustworthy local and national news outlets and specialized trade publications. This includes, importantly, almost every major online native publisher and broadcaster, such as BuzzFeed.

It's also worth recounting some of the political and social effects of having allowed a few vast and all-powerful online middlemen to insert themselves between journalist and reader, and between advertiser and publisher. These include:

- The de facto corruption of some of our biggest newspapers, by Google and Facebook, as the Open Markets Institute has detailed, and as NewsCorp has admitted, both in articles published in the *Wall Street Journal* and in statements to investors.
- The fear and servility we see among publishers both big and small, who fear not only that Google, Facebook, and Amazon will take their advertising revenue, but that they will divert readers and viewers from them. As Nicholas Thompson, then the executive editor of *Wired*, once put it, “Every publisher knows... they are sharecroppers on Facebook’s massive industrial farm... And journalists know that the man who owns the farm has the leverage. If Facebook wanted to, it could quietly turn any number of dials that would harm a publisher – by manipulating its traffic, its ad network, or its readers.”
- The dramatic shift of many established publishers to subscription-based models, protected by paywalls, which has deprived citizens and students across America and around the world from easy access to much of the quality journalism that remains.

- The prevalence of misinformation, disinformation, and propaganda on the internet, much of it designed to stoke division and even violence in our society and our political system, as has been extensively investigated and detailed by Congress and others.

As the AMERICA Act makes clear, having allowed a few vast and all-powerful online middlemen to insert themselves between journalist and reader, and between advertiser and publisher, has also been bad for advertisers. Senator Lee’s staff, and my friends at this table and elsewhere, have made this case very effectively, so there is little need to add to the facts they have already provided.

One point I can add, based on my own direct personal experience running a business magazine for seven years, is that this has also resulted in the collapse of almost most trustworthy auditing of the effectiveness of advertising on the internet. When I edited *Global Business* magazine, we devoted a large percentage of our revenue each year to proving to publishers that we could prove who our readers were, and to some degree what exactly they were reading. Today by contrast, there is little to no independent auditing, hence no idea how well advertising really works on any particular platforms.

Again and again, day after day, we are reminded that the business model of Google, Facebook, and Amazon – based on monopoly control of the gates to the market, plus monopoly control over digital data and the ability to manipulate that data, plus a license to discriminate in the delivery of essential services across that platform, has resulted in a communications system that poses a direct threat to our national security.

All the way back in November 2017, Senator Franken asked: “Can you ever catch all the signals that seem so obvious in hindsight – for example, political ads that are paid for in rubles?” Yes, there have been some efforts to reduce Russian propaganda in the years since. But is not the same question equally valid today if we change the currency in question to Renminbi? Recently

Congress held extensive hearings that raised very important questions about potential security threats posed by TikTok. But has anyone quantified, by contrast, how much advertising Facebook booked last year from major Chinese corporations, all of which are under the direct sway of the government in Beijing?

And let's be clear, these problems are not isolated to the United States. These monopolists, wielding this discrimination based business model, have disrupted political debate and political outcomes in nations around the world, including in our most important democratic allies.

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Let's remember, for instance, that the basic problem we are discussing here today in relation to news publishers and advertisers also applies to America's market for books. As we at Open Markets have repeatedly detailed, Amazon is able to wield a vast and intricate array of direct and arbitrary powers over book publishers, book authors, and book readers, in ways that distort their commercial and political actions, thoughts, even beliefs.

Yes, the fact that Google and Facebook have captured duopoly control over advertising poses a variety of threats to journalists, news publishers, advertisers, and the public at large. But there is an even larger problem. Which is that Google, Facebook, Amazon and a few others have captured the power to determine, day after day, who gets to sell their wares in the market and who does not, who gets to speak freely and who does not.

Let's also remember how this system of automated top-down extortion, manipulation, and fear affects the actions, public statements, even thoughts of the people and businesses who are subject to these powers day after day.

In 1913, at the height of the power of the plutocrats, President Woodrow Wilson described how their system of control worked on the minds and dreams of even the entrepreneurs who depended on their favor to get to market. "Some of the biggest men in the United States, in the field of commerce and manufacture, are afraid of somebody, are afraid of something," Wilson said. "They know that there is a power somewhere so organized, so subtle, so watchful, so interlocked, so complete, so pervasive, that they had better not speak above their breath when they speak in condemnation of it."

What we must ask ourselves today, here in this room, is whether the same is true of an American economy and society that has been made subject to the automatic arbitrary regulation of Google, Amazon, and a few other giants who have captured direct control over the gates of commerce and communications. The result, if we are honest, is the simultaneous pyramidization of power within our political economy, as even some of America's largest corporations become afraid of the power of Google and Amazon, and the atomization of the public itself, as the manipulation and discrimination machines of the middlemen separate the American people into 330 million discrete bubbles of anger, bewilderment, and ignorance.

MISSING FROM THE RESPONSE – THE RESTORATION OF NON-DISCRIMINATION

Seven years ago next month, in June 2016, Open Markets hosted the first major conference in Washington of the political and economic threats posed by today's most dangerous monopolists, right here on Capitol Hill. Five and a half years ago, in December 2017, I had the

honor of speaking when this subcommittee hosted the first hearing into the underlying source of our monopoly crisis today, namely the pro-monopoly consumer welfare philosophy of Robert Bork and other members of the Chicago School. Five years ago, in June 2018, Open Markets hosted the conference Breaking the News: Free Speech & Democracy in the Age of Platform Monopoly, the first raised many of the questions we are addressing today, and which featured important speeches by Senator Klobuchar and the CEOs of both the New York Times and NewsCorp.

In the years since the American people have witnessed an explosion of legislation, law enforcement actions, and other regulatory efforts – in the United States and around the world – to fix these and related problems. We can now point to heroic actions not only by the senators in this room and by other lawmaking institutions such as the European Parliament, but by enforcers at the Department of Justice and Federal Trade Commission here in Washington, the Bundeskartellamt in Germany, the Competition Markets Authority in the U.K., the European Commission in Brussels, as well as government agencies in France, Italy, the Netherlands, South Africa, Turkey, Brazil, Australia and elsewhere. We can also point to a growing list of important private lawsuits, and even dramatic actions by private corporations, such as Apples new privacy rules.

Within this context, the AMERICA Act stands as one of the most important potential actions we can take. And as I said in my introduction, so too the American Innovation and Choice Online Act (AICOA) and the Journalism Competition and Preservation Act (JCPA).

But as I also made clear earlier, we at Open Markets believe that one idea remains largely missing from our efforts to make Google, Facebook, and Amazon safe for democracy. This is the idea Senator Franken proposed in 2017, which is to enforce America’s traditional regime of non-discrimination rule on these platforms.

To understand the importance of enforcing traditional non-discrimination rules on Google, Facebook, Amazon and other platforms, some history may be of value. What we will discover, if we look to our own past, is that laws designed to ensure that monopolists treat all people the same are among the oldest regulations in human society, and can be traced back thousands of years. Initially, such rules were designed to impose simple common carrier style responsibilities on providers of transportation and other essential services. Requiring, for instance, that every ferry owner and bridge operator provide the same access at the same price to all comers.

In the early days of the modern era, however, legal scholars began to view the requirement that monopolists treat all users the same as essential to democracy. In the early 17th century, for instance Queen Elizabeth and King James attempted to impose systems of absolute control in Britain, much as Louis XIII and Louis XIV were doing in France. Key to their scheme was their claim to have a right to reward their personal allies with licenses to govern some particular economic activity or other – such as the sale of beer, salt, tin, iron, even the manufacture of playing cards. In exchange for this monopoly patent, the new monopolist was expected to kick back much of their monopoly profits to the sovereign.

But this system was much more than simply a way for the sovereign to raise funds. After all, in the same way the sovereign had arbitrarily granted the monopoly license, thus could the sovereign take that license away, at any time and for any reason. The result was a nearly perfectly hierarchical system designed to force every monopolist always to curry the favor of the sovereign, lest the sovereign shift the monopoly patent to some fresh friend. And thus on down the chain of command through all of society.

In Britain, the reaction against this pyramidal system of servility culminated in the 1620s in a rebellion within Parliament against the absolute power of the sovereign. The ultimate goal of leaders of the rebellion, such as the famous legal scholar and legislator Edward Coke, was to

ensure that everyone could speak freely without fear of facing arbitrary punishment by the sovereign. The immediate goal, therefore, was to ensure a rule of law under which all property of the individual was safe from arbitrary lawless seizure, either by the sovereign directly, or by a private monopolist acting more or less directly as an agent of the sovereign. The ultimate result was the Statute of Monopolies of 1624.

Later in the 17th Century, legal scholars began to formalize a vision of common law regulation of monopoly around the idea that any essential service “is become a thing of public interest and use.” Hence, that the public can therefore require the owner of a monopoly to provide service “at due times,” keep their conveyances “in due order,” and collect “but a reasonable toll.”

These political battles and writings had a profound influence on the founding generation in the United States, who embraced their basic tenets from the first. John Adams, for instance, described Coke as “the oracle of the law,” while Thomas Jefferson credited Coke with “the profounder learning” in the “doctrines of the British liberties.” In many respects, America’s revolutionaries saw themselves as completing the work that Coke and other British republicans had started more than a century earlier.

After the American revolution, the citizens of the new United States began to immediately apply this thinking to the political economy of the new nation. This includes passing a special clause in the Constitution that not only created a new Postal Service but ensured that this infrastructure treat every user the same. Americans also devoted much effort to avoid the concentration of arbitrary power in any national or local bank. Then over the long course of the 19th Century, they applied a variety of common carriage rules and related forms of regulation to such then-revolutionary and disruptive communications and transportation technologies as the telegraph, telephone, and railroad, at both the state and then the federal level.

This effort culminated in the passage of the Interstate Commerce Act of 1887, which applied the system of non-discrimination to America’s new railroad networks, both to guarantee equal rights of usage to all Americans and to prevent the managers of these systems from leveraging their power to roll up control over other people’s businesses and properties.

To understand the thinking behind the Interstate Commerce Act, it’s worth quoting the words of one of the experts of that era, Yale professor Arthur Hadley, whose 1885 book “Railroad Transportation” helped guide Congress in its efforts to draft the Act. Discrimination “between individuals,” Hadley wrote, “is the most serious evil connected with our present methods of railroad management. Trade adjusts itself to almost any system of classification, and sometimes even to local discriminations. But where two individuals, under like circumstances, receive different treatment, no such adjustment is possible.”

One result of such personalized discrimination is a dramatic concentration of power and control, Hadley warned. “Differences are made which are sufficient to cripple all smaller competitors, and sooner or later drive them to the wall, and concentrate industry in a few hands.” “[T]he great majority of local and personal discriminations are in favor of the strong,” he added. “As such they do great harm to the community by increasing inequalities of power.”

More dangerous yet, Hadley wrote, was the direct collapse of rule of law under a system of discrimination, hence of the security of private property. “Where the system of granting special privileges becomes deeply rooted,” he explained, “a great many are granted without any principle at all, through the caprice or favoritism of the railroad companies and their agents.”

Today, most scholars of competition policy tend to view the Sherman Antitrust Act of 1890 as the foundation of modern competition policy in the United States. Yet in many respects, the Sherman Act was more of an addendum to the Interstate Commerce Act, in that it was an effort

to break the power of the corporations such as Standard Oil and Carnegie Steel that had taken advantage of the railroads' license to discriminate to crush their opponents and to concentrate enormous power.

The following passage from the book "Railroaded: The Transcontinentals and the Making of Modern America," by the historian Richard White is helpful in understanding how the Sherman Antitrust Act stands on a foundation created by the non-discrimination provisions of the Interstate Commerce Act.

"The second mark of monopoly was the ability to destroy, limit, or distort competition," White writes. "The competition in question was not simply between the railroads themselves and railroads and other forms of transportation; it was competition between all those businesses that used the railroads. By manipulating rates, the railroads could decide who succeeded in business and who failed. They could discriminate among individuals, offering favored shippers lower rates or rebates. They could discriminate among places, giving towns equidistant from the same destination different rates. They could discriminate among things, putting similar kinds of cargo in different categories and charge them different rates. The railroads ability to discriminate – to use another key word in the antimonopolist vocabulary – against republican citizens violated both equity and the basic rules of the market."

Finally, let's turn to Senator John Sherman himself. In a speech in 1890 Sherman defending the bill that bears his name, Sherman made clear that he viewed rules against discrimination by powerful monopolists as a foundation of the "liberty" of the individual. "It is the right of every man to work, labor, and produce in any lawful vocation and to transport his production on equal terms and conditions and under like circumstances. This is industrial liberty, and lies at the foundation of the equality of all rights and privileges," he said. (This passage also makes

clear that the Senator’s main concern in drafting the bill was anything but the “welfare” of the “consumer.”)

In the years to come, Congress made the prohibitions against discrimination by monopolists only that much more clear, while extending the prohibitions to ever more sectors of the U.S. political economy. This includes the Mann-Elkins Act of 1910, which formally extended the basic provisions of the Interstate Commerce Act to the telegraph, telephone, and wireless industries, as well as pipelines. It also includes the Clayton Antitrust Act of 1914, designed in large part to blend the basic goals of the Sherman Act and Interstate Commerce Act into a single system of law. And it includes the Robinson Patman Antitrust Act and federal fair trade pricing laws.

The immediate effect of all these laws was to protect independent U.S. businesses and citizens from the exercise of arbitrary power by private monopolists. As the economist George Stigler explained in 1952, speaking of the Robinson Patman Act, “The prohibition against price discrimination was partly designed to cope with a real evil: the use by a large company of its monopoly power to extort preferential terms from suppliers.”

Thus, as a series of revolutionary new communications and transportation technologies radically disrupted almost every traditional marketplace structure in America, Americans used these antidiscrimination regimes to restore traditional marketplace competition on a new national scale. Importantly, they did so in ways that hugely boosted true innovation and efficiency, through the careful protection and promotion of inter-brand competition. Most importantly, these antidiscrimination regimes helped to ensure that these new technologies truly served the public interest, by making it all but impossible for private actors to leverage these powerful infrastructures to concentrate the sort of wealth, power, and control that could threaten the foundations of democracy.

Much as the Declaration of Independence and Constitution had established equal justice before the law, this series of antimonopoly laws ensured equal treatment of the citizen and business by the monopolist, thereby serving as an essential extension of the American system of checks and balances from the political system into the political economy.

HOW CHICAGO SCHOOL UNLEASHED PRIVATE AUTOCRACY

As this subcommittee has discussed in detail, America's monopoly crisis was set into motion in the early 1980s, when the Administration of President Ronald Reagan embraced the thinking of Robert Bork and other members of the "Chicago School" regulatory philosophy. The single most important teaching of Bork and his allies was that the primary goal of competition policy should be to promote efficiency, which provided an excellent excuse for not enforcing the law against any monopolist that could make a rudimentary case that it was using its power to drive down prices to the consumer.

This thinking was later strongly embraced by the Administration of President Bill Clinton, which extended this basic thinking to how the United States governs international trade, as well as the defense, energy, banking, media, communications, and other industries subject to sector specific regulation.

Less well understood is how Bork in his book "The Antitrust Paradox" also helped to undermine America's traditional prohibitions against first-degree personalized discrimination by the monopolists who control our communications and commercial platforms, and other providers of essential services and goods.

In the “Antitrust Paradox,” Bork delivered his coup in an almost backhanded way. His first step was to recognize that price discrimination might indeed pose a big problem. “[T]he question remains whether antitrust should try to deal with price discrimination in some ... fashion,” Bork wrote. “This is a more difficult question.” Then, in the exact same sentence, he went on to dismiss this “difficult question” entirely without providing any argument to explain his thinking. “[T]he better guess, it seems to me,” he wrote, “is that antitrust policy would do well to ignore price discrimination.”

A few pages later, Bork went further yet by delivering a straightforward defense of price discrimination from the point of view of the seller. “The basic theory of price discrimination is quite simple,” he wrote. “When the demand elasticities of customers are different, no single price can extract the maximum return from each. If they can be segregated . . . the monopolist can charge them different prices and so extract the maximum return from each class.”

Bork then used the same tactics he wielded throughout “The Antitrust Paradox” to claim that what was good for the monopolist must also be good for the public. “There is more to the argument than this, however,” he wrote. “The case for allowing discrimination freely is strengthened by the observation that the more a monopolist is able to discriminate, the more likely becomes the favorable outcome of an increase in output.”

Armed with Bork’s blunt and unsupported defense of first-degree discrimination by powerful middlemen, pro-monopolist thinkers from both the Republican and Democratic parties first took aim at the Robinson Patman Act, largely by deciding simply not to enforce the law. This new license to discriminate in the treatment of suppliers helped to power the rise of Walmart and other vast nation-scale retailers. The political, social, and economic effects were profound. Over the course of the twenty years between the early 1980s and around 2005, the new license to discriminate in the treatment of captive suppliers played a major role in the revolutionary

restructuring of the American retail sector and the structure of business ownership within the average American community, as financial actors exploited this license to buy out or bankrupt America's family businesses and to concentrate power in distant centers such as Wall Street and the City in London.

But it is only with the rise of online platforms like Google and Amazon that we come to understand just how dangerous the Chicago School overthrow of America's traditional non-discrimination regime was to our democracy and individual liberty, and the full extent of the license we ceded to the masters of these corporations.

This history dates back barely twenty years, to 2002, when a Berkeley economics professor named Hal Varian co-wrote a paper titled "Conditioning Prices on Purchase History." Varian's goal was to examine whether the technologies and structures of online commerce made it easier for sellers to charge different people different prices for the same product, or to charge different people the same price for different-quality versions of the same product.

"The rapid advance in information technology now makes it feasible for sellers to condition their price offers on consumers' prior purchase behavior," Varian and his co-author wrote. Whenever a customer purchases at a high price, this "guarantees that" the consumer "will face a high price in the future."

In short, according to Varian, online platforms now had the ability to use what they learned about you through their online surveillance to provide you with prices, terms of service, and information tailored specifically to exploit your most personal weaknesses and needs. Or more simply, to manipulate you and fleece you – automatically, day after day.

One way to understand the importance of Varian's paper is to note who first fully embraced Varian's theory. This was Google's then CEO Eric Schmidt, who in 2002 hired Varian to help the corporation develop a new business model to fully exploit Google's capture of control over search, and many of the other main portals of the internet. Within a few years Varian's vision was built into the core of the most awesome and sophisticated system for manipulating human behavior ever built by private enterprise.

For centuries, U.S. and other societies had strictly outlawed all first-degree discrimination. Our main fear was that monopoly gatekeepers would take advantage of any license to open or close the gate according to their own personal or corporate interests to extort those who needed to get to market, perhaps of cash, perhaps of political favors. Indeed, as we have seen, we viewed simple non-discrimination rules to protect the private property of the individual from arbitrary seizure as one of foundations of democracy – nothing less than a way to ensure basic rule of law and hence the liberty to speak freely.

Yet now masters of a revolutionary and powerful new technology had built a business model based on ignoring all the traditional rules designed to protect the producer and speaker from extortion and manipulation. And they were also perfecting ways to efficiently and effectively extend this system of discrimination to the end user as well, for the first time in history.

For the masters of these corporations, this experiment proved a very big success. In years since Google, Facebook, and Amazon perfected the use of discrimination to manipulate and extort both the supplier and the buyer, these bosses and their allies have exploited this power to seize control over vast swaths of the political economy of the United States and the world, to reorder entire realms of human activity, and to shift trillions of dollars into their pockets and the pockets of their friends.

And thanks to the reckless, blunt, and chaotic introduction of generative AI by Microsoft and Google, and the increasingly blatant disregard for traditional political norms in the governance of communications platforms by powerful actors such as Elon Musk, all of these dangers continue to get more acute by the day.

MAKING GOOGLE AND AMAZON SAFE FOR DEMOCRACY – BREAKING THE BUSINESS MODEL

More than five years ago, Senator Franken, when he was a member of this subcommittee, said “we must now begin a thorough examination of big tech’s practices to secure the free flow of information on the internet.” The Senator also made clear that he believed that traditional prohibitions on discrimination must play a central role in regulating Google, Facebook, and Amazon, among others. “No one company should have the power to pick and choose which content reaches consumers and which doesn’t,” he said.

The members of this subcommittee have performed courageous work. In difficult political times and against dangerous opposition you have developed the ability to reach across party lines and join forces for the sake of protecting American democracy and American capitalism. Along the way, you have helped direct and sometimes inspire a new generation of enforcers who are working overtime to use existing legal authorities to restore traditional philosophies, approaches, and practices.

The AMERICAS Act, AICOA, and JCPA are all valuable steps forward. They can supplement and speed what enforcers in Washington and across the United States are already doing. But it is also vital to move immediately to the next stage in this fight, which is to fully support the efforts of enforcers to restore traditional non-discrimination rules to the legal and regulatory

regimes we use to ensure the political and economic safety of our systems of communications and commerce.

Yes, non-discrimination rules will kill the business model that Google, Facebook, and Amazon have exploited to concentrate so much power and control over the last decade or so. But we have come to a point where the choice is simple. Either we break their business model, or they break our democracy, our prosperity, and all that is good in our society, all that we have fought and bled for over the last 250 years.

And let's be honest. Breaking the business models of these corporations is not the same as breaking these technologies, or depriving the American people of a single benefit of the digital revolution. We have many examples of platforms designed to be run by and for the benefit of the individual citizen and business, on a fair and non-discriminatory basis, without any manipulation by the masters of any of the communications or transportation corporations that help connect them. We need look only at earlier iterations of Twitter, Google, Facebook, Reddit, eBay, Instagram, and WhatsApp – or for that matter to brand new platforms like Bluesky - to remind ourselves of what a truly safe, fair, democratic, and prosperous future can look like in a fully digitalized society.

Support the full restoration of America's traditional non-discrimination regime and the world will not end. On the contrary, you will immediately free the American people to begin to build a far better world – and a far more safe and fair democracy and society – beginning today.

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