



Senate Judiciary Subcommittee on the Constitution
Hearing on “Google and Censorship Through Search Engines”

Testimony of Jason Kint
CEO
Digital Content Next

July 16, 2019

Thank you for the opportunity to appear before you today. I am the CEO of Digital Content Next, the only association exclusively focused on paving the future for high-quality digital publishers. Our members include hundreds of the most trusted brands on the web, big and small, old and new, from The New York Times to The Wall Street Journal, Disney, WarnerMedia, NBC and Fox to native digital publishers like Texas Tribune, Vox Media, Independent Journal Review (IJR) and The Insider.

I was invited here today to specifically address Google, a company which reaches billions of people across its multiple platforms on which it determines the rules and limits access to its massive data pool. At the same time, Google leverages this data to compete against those who depend on its platforms. Even the inventor of the web, Tim Berners-Lee, has shone a light on this issue. The web was supposed to be competitive and open, but it has simply lost much of that vision as Google’s dominance has grown.

Google is the primary gatekeeper to any digital content business in four ways, which I’ll cover today. I call them the Four D’s: Discovery and design of the content and the data and dollars from consuming the content.

First, Discovery. Prior to my move to Washington, I spent twenty years running digital media businesses. Like publishers today, we had entire teams focused on optimizing our content to receive maximum clicks from Google Search as it controls more than 90%¹ of the search market. Over time, Google has pushed search results off the first screen in favor of more lucrative Google ads and Google-owned properties.

Second, Design. Google, more than any company, influences the design of our members’ content. Google’s web browser Chrome delivers more than 60%² of the web traffic. Therefore, publishers design their websites to work best on Google’s browser. With the increase of mobile device usage, Google

¹ <https://www.statista.com/statistics/216573/worldwide-market-share-of-search-engines/>

² <https://www.statista.com/statistics/544400/market-share-of-internet-browsers-desktop/>

developed its own code for the mobile web called AMP which promises better search results for the publishers who adopt it, but it also tightens Google's grip on the web.

Third, Data. Today, personal data is collected and used to target consumers across the web as cheaply as possible. Our industry's opaque, data-driven ecosystem has mostly benefited intermediaries – primarily Google – at the expense of publishers and advertisers. Last month, for the first time, empirical research³ has demonstrated this. These intermediaries have unique leverage as gatekeepers and miners of our personal data. Google's revenue concentration ties directly to its ability to collect data⁴ in ways that no one else can. Research⁵ from Princeton and Vanderbilt University has also shown the extent to which Google is able to mine much of your browsing history and your location history. It is important to understand that Google owns the top five domains that track consumers online and it does so across more than 75% of the top one million websites. Data is the source of Google's power and it leverages it to the hilt.

With this in mind, the industry's rules around privacy and data are heavily determined by Google's best interests. Legal teams at publishers are forced to accept Google's rules or choose not to do business with Google. There simply is no other choice. We witnessed this last year. After years of the industry preparing to comply with the EU's General Data Protection Regulation (GDPR), Google announced⁶ new terms of service for its products and services just a few weeks before the roll-out of GDPR. In a nutshell, Google asserted itself as co-controller over all data it collected from publisher websites with independent rights to use the data as it sees fit, refused to tell any company how it would use that data, required the publisher to gain consent from the consumer for Google's data collection and use (even though consent cannot be valid without information from Google); and assigned all liability to the publisher for any violations of GDPR. No other company could get away with such a brazen legal maneuver.

Finally, the Dollars. We've been on record since 2015 describing the "duopoly" of digital advertising dollars where nearly all of the incremental growth in the industry is going to Google and Facebook. But in the case of Google, it has cornered nearly the entire advertising server market. On the supply side, advertising teams are optimizing for Google's Ad Server and the often opaque business rules and measurements Google establishes. And on the demand side, because Google oversees more advertising demand than any of the top five advertising agencies, Google is able to, in effect, set the price of ads in the open-auction market. Google determines the rules of their auctions with full knowledge whether they will help Google or help publishers.

³ https://weis2019.econinfosec.org/wp-content/uploads/sites/6/2019/05/WEIS_2019_paper_38.pdf

⁴ <https://digitalcontentnext.org/wp-content/uploads/2018/08/DCN-Google-Data-Collection-Paper.pdf>

⁵ https://senglehardt.com/papers/princeton_phd_dissertation_englehardt.pdf

⁶ <https://digitalcontentnext.org/blog/2018/04/12/google-to-publishers-on-gdpr-take-it-or-leave-it/>

To make matters worse, all of these products hinge on Google's algorithms which are shrouded in a proprietary black box of secrecy that absorbs most of the data across the web and spits out profits according to how Google decides to tune them.

In closing, I want to thank Chairman Cruz and Ranking Member Hirono for convening today's hearing. It is incredibly important for Congress to shed a light on the current state of the marketplace. From my perspective, it is abundantly clear that Google dominates the digital landscape and uses its dominance to enhance its own bottom line to the detriment of the marketplace and consumers. In the absence of meaningful competition or constraints, the question we as a society should be asking is whether we're comfortable with the world Google is creating. It is time to end Google's stranglehold on digital media. Thank you and I look forward to your questions.