

A White Paper By:



**Googleopoly VIII* The FTC's Antitrust Investigation of
How Google's Deceptive & Predatory Search Practices Harm Consumers**
*2004-2011 Evidence From Google's Publicly-Reported Financials Show the
Cumulative Effect of Google Anti-Competitively Manipulating Search to Limit Competition*

Scott Cleland**

President, Precursor® LLC***

scleland@precursor.com

Publisher of: www.Googleopoly.net & www.GoogleMonitor.com

July 22, 2011

** See Appendix B for links to Googleopoly I-VII research series.*

*** The views expressed in this presentation are the author's; see Scott Cleland's full biography at: www.ScottCleland.com*

****Precursor LLC serves Fortune 500 clients, some of which are Google competitors. www.Precursor.com*

Outline

- Evidence of Google's predatory search self-dealing
 - Google's misrepresentation of its search platform as unbiased
 - Chart: Google taking revenue share from search-dependent competitors
 - Chart: Google's search business dominance limits competitive opportunity
 - Chart: Competitive content can't compete with self-dealing market power
 - Illustrative list of Google content offerings Google can self-deal
- Google's Deceptive Search Practices
 - What's deceptive about Google's predatory self-dealing?
 - How do Google's deceptive practices enable predatory self-dealing?
 - Google's denial of conflicts is a Section 5 deceptive practice
- Google's Predatory Search Practices
 - What are Google's predatory search practices?
 - What is Predatory Search Tying (Self-dealing)?
 - What are Predatory Search Penalties?
 - What is Predatory Search Exclusion?
- Conclusion
 - How are consumers and innovation harmed by Google?

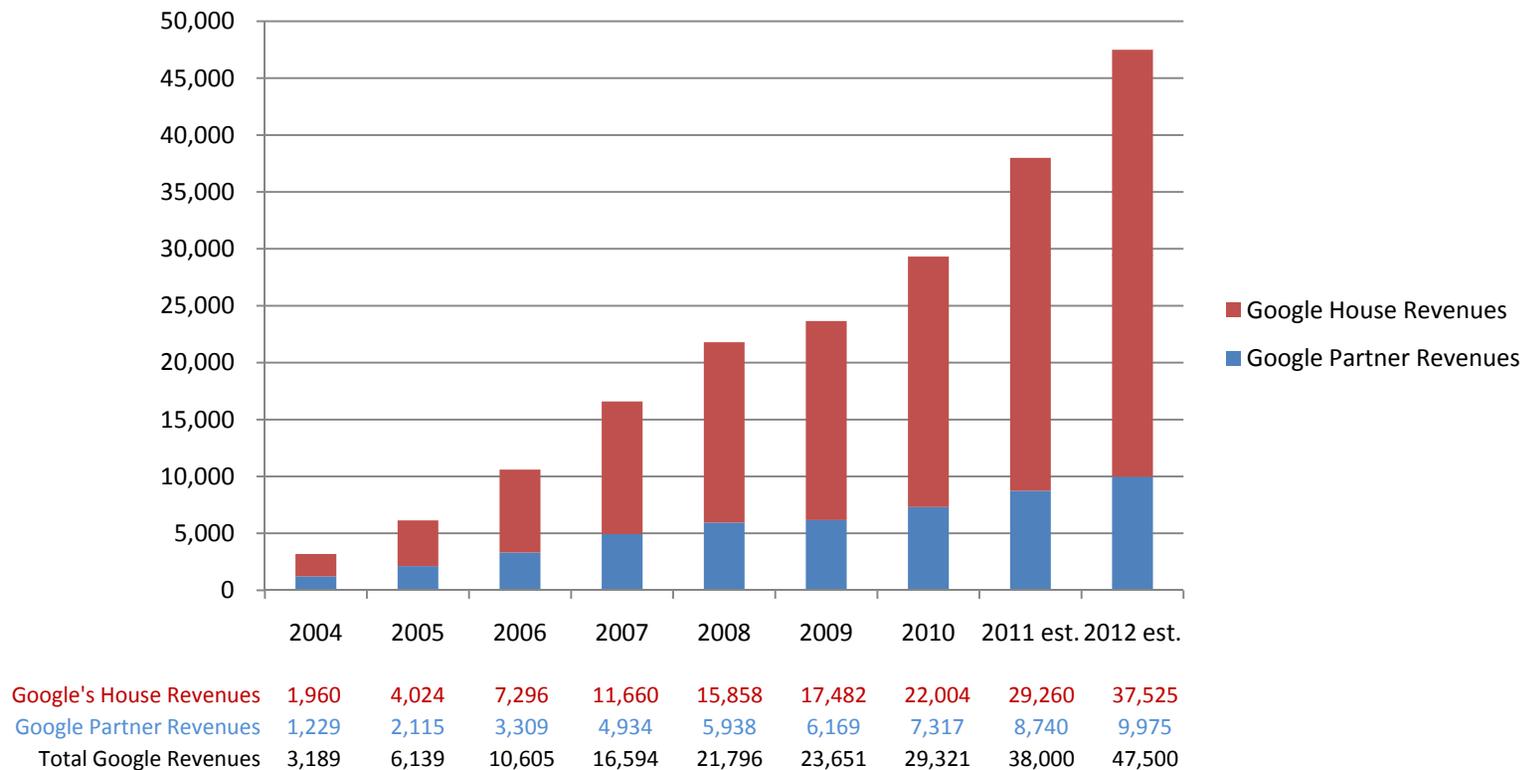
Appendixes

- Scott Cleland Bio & Congressional Testimonies
- Googleopoly Research Series and links

Google Has Publicly Represented Google's Search Business As a Never-Manipulated-Platform Where Competitive Content Has a Fair Opportunity to Compete for Users & Advertising Dollars

- From Google's Webpage under "Our Philosophy" "You Can make Money Without Being Evil"
 - "We never manipulate rankings to put our partners higher in our search results and no one can buy better PageRank. Our users trust our objectivity and no short-term gain could ever justify breaching that trust."
<http://www.google.com/intl/en/about/corporate/company/tenthings.html>
 - GoogleBlog 2008: "Our third philosophy: no manual intervention...The final ordering of the results is decided by our algorithms..., not manually by us. We believe that the subjective judgment of any individual is...subjective, and information distilled by our algorithms...is better than individual subjectivity." <http://googleblog.blogspot.com/2008/07/introduction-to-google-ranking.html>
- However, Google's co-founders knew going into the business that search manipulation would be very difficult to detect and could have a significant effect on competition.
 - From Google Co-founder Larry Page & Sergey Brin's academic abstract in 2000:
 - "...we expect that advertising funded search engines will be inherently biased towards the advertisers and away from the needs of the consumers. ... Since it is very difficult even for experts to evaluate search engines, search engine bias is particularly insidious. ... This type of bias is very difficult to detect but could still have a significant effect on the market. ... we believe the issue of advertising causes enough mixed incentives that it is crucial to have a competitive search engine that is transparent and in the academic realm." <http://infolab.stanford.edu/%7Ebackrub/google.html>
- Nevertheless, the *cumulative macro effect*, over several years of Google's deceptive and predatory manipulation of the Google search platform, is *easier to detect*; and it also represents a very significant multi-billion revenue opportunity loss for the competitive content which depends on Google's platform to be found and monetized.
 - Google's publicly reported financial data from 2004-2011 (in the following slides) show a clear historical megatrend of Google's market power at work as Google's market power enables Google to increasingly capture a disproportionate share of revenues generated by the purported unbiased Google platform.
- Simply, Google's financial reporting confirms that Google is leveraging its search business market power to advantage Google-owned content (information, products & services) -- most likely via deceptive representation of Google as an unbiased broker to enable guaranteed dis-intermediation of competitive content.

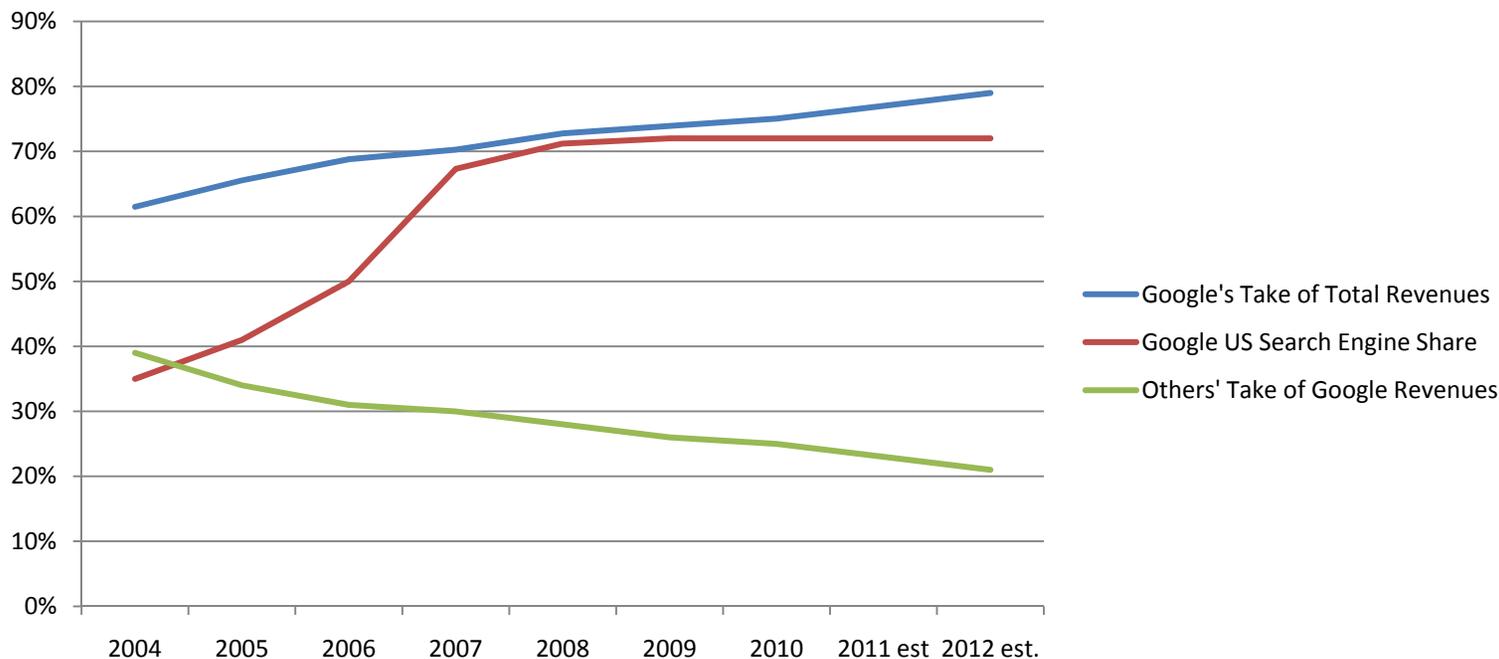
Google Is Rapidly Taking Revenue Share From Google's Partners/Competitors Who Depend on Google's "Unbiased" Platform to Be Found & Monetized



Source: Google Inc. Financial Tables at: <http://investor.google.com/financial/tables.html> for 2004-2011.5. Precursor LLC estimated 2011 & 2012 revenues based on 30% & 25% Y/Y revenue growth respectively; and 2011 & 2012 Traffic Acquisition Costs (Google partner revenues) declining share 23% & 21% based on 2004-2010.5 trend including Google's 1Q11 & 2Q11 earnings reports

Google's Search Business Market Power

Increasingly Limits Competitors' Opportunity to Monetize Their Content
As Google-Owned/Favored Content Squeezes Out Competitive Content



Google's Take of Total Revenues	61%	66%	69%	70%	73%	74%	75%	77%	79%
Google US Search Engine Share	35%	41%	50%	67%	71%	72%	72%	72%	72%
Others' Take of Google Revenues	39%	34%	31%	30%	28%	26%	25%	23%	21%

Source: Revenue shares based on Google Inc. Financial Tables at: <http://investor.google.com/financial/tables.html> for 2004-2011.5. Precursor LLC estimated 2011 & 2012 revenues based on 30% & 25% Y/Y revenue growth respectively; and 2011 & 2012 Traffic Acquisition Costs (Google partner revenues) declining share 23% & 21% based on 2004-2010.5 trend including Google's 1Q11 & 2Q11 earnings reports; U.S. search market share from Comscore for 2007-2011.5, see: http://www.comscore.com/Press_Events/Press_Releases; 2004-2006 shares based on ComScore press releases and Search Engine Watch reports of ComScore data; 2011-2012 are Precursor LLC estimates based on trend.

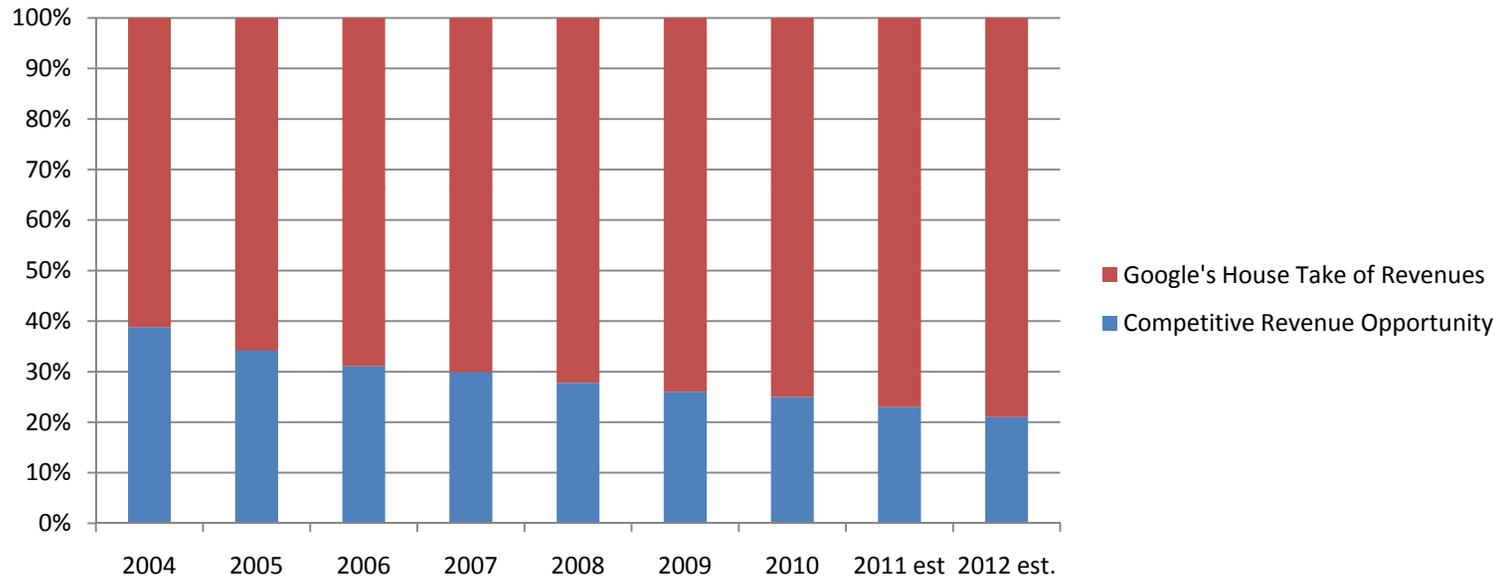
Competitive Content Can't Compete with Google's Self-Dealing Market Power

In 2004: Google kept \$3 to \$2 dealt to competitive content

In 2007: Google kept \$2 to \$1 dealt to competitive content

In 2010: Google kept \$3 to \$1 dealt to competitive content

In 2012: Google keeps \$4 to \$1 dealt to competitive content



Google's House Take of Revenues	61%	66%	69%	70%	73%	74%	75%	77%	79%
Competitive Revenue Opportunity	39%	34%	31%	30%	28%	26%	25%	23%	21%

Source: Google Inc. Financial Tables at: <http://investor.google.com/financial/tables.html> for 2004-2011.5. Precursor LLC estimated 2011 & 2012 revenues based on 30% & 25% Y/Y revenue growth respectively; and 2011 & 2012 Traffic Acquisition Costs (Google partner revenues) declining share 23% & 21% based on 2004-2010.5 trend including Google's 1Q11 & 2Q11 earnings reports

Illustrative List of Google Content Offerings That Google Can Self-Deal and Use to Anti-Competitively Disintermediate Competitive Content Via Google's Deceptive & Predatory Search Practices

- Media Offerings:
 - YouTube, News, Books, Blogger, Videos, Images, Reader, Knols, Scholar...
- Location-Related Offerings:
 - Maps, Earth, Android, Places, StreetView, Latitude...
- Financial Offerings:
 - Finance, Advisor, Checkout, Wallet, Credit Card...
- Retail Offerings:
 - Shopping, Product Search, Travel, Offers...
- Software Offerings:
 - Chrome, Cloud Computing, Docs, Calendar, Toolbar, Desktop, Pack, Translate...
- Social Media Offerings:
 - Google +, Orkut, Hangouts, Groups, Picassa, Photos...
- Communications Offerings:
 - Android, Gmail, Voice, Talk, Chat, Video Conferencing...

Plus ~500 other Google products and services...

What is Deceptive about Google's Self-Dealing?

- **Under the FTC's Section 5 authority, "deceptive acts and practices...are...unlawful."**
 - Google's deceptive search practices manipulate search results to anti-competitively advantage some Google content and disadvantage some competitors' content, all while misrepresenting to the public that Google's search business is unbiased and never manipulates search results.
- **Misrepresentation:**
 - Google has publicly represented its search business as user-aligned, un-conflicted and unbiased, when the facts powerfully show Google has:
 - An advertiser-aligned business model;
 - Serious undisclosed financial conflicts of interest; and
 - Biases its dominant search business by self-dealing some Google content top rankings while burying the rankings of some of their competitors.
 - There is no consumer benefit, competitive justification, or First Amendment right to engage in deceptive practices for financial gain.
- **No Disclosure of Financial Conflicts-of-Interest:**
 - Throughout Google's public representations to consumers that users' interests come first, there is no meaningful disclosure that:
 - Virtually all of Google's revenues come from advertisers;
 - Users are essentially the product that Google sells to advertisers and publishers; and
 - The reason Google wants to collect more information on users is not just to provide better search results but also because Google makes more money the less privacy is protected.
 - If Google was fairly representing its business, Google would disclose the facts that:
 - Google's financial interests are not aligned with users interests;
 - It is in Google's financial interest to *exploit* not protect users privacy and private information; and
 - Google's search results are not unbiased, but based on the subjective judgments of human website raters, programmers, and executive decisions to rank Google content first.
- **At core, Google's systematic deception and misrepresentation have denied consumers their first and most important line of defense to protect themselves from harm and fraud – *honest information and disclosure.***

How Do Google's Deceptive Practices Enable Google Self-Dealing?

- **Google deals itself Aces that are hidden in its sleeve.**
 - Google manually ranks Google-owned content first: Maps, YouTube, Mobile, etc., despite representations that Google *“never manipulates search rankings to put our partners higher in search results”*
- **Google deals its competitors bad cards opaquely from bottom of the deck.**
 - Google's “human raters” opaquely and mysteriously assign *“quality scores”* so certain competitors rank low in results and have to pay more to get less traffic
- **Google alone sees & counts everyone's else's cards -- so they can't lose.**
 - Only Google tracks all players information, connections, interests, click-paths
 - Only Google profiles/categorizes each user into demographic target groups
 - Only Google can reverse-engineer publishers' audience and advertiser lists to create Google content/products/services that front-run/skim off publishers
 - Only Google knows all advertiser demographic demand so Google can front-run its publisher-partners with Google-owned content/products/services
- **Google alone decides: who can play which hands; what the specific ante is.**
 - Google alone: decides who can bid on which keywords, & sets price minimums
- **Google runs a 'black box' – no transparency to keep the dealer honest.**
 - Google excludes competitors from the game who could spot double-dealing
 - Google alone keeps score and counts clicks with no one watching
 - Google alone decides the worth of each click type with no one watching

Google's Denial of Conflicts Is FTC Section 5 Deceptive Practice

Google Is Not an Honest Broker in Hiding Its Conflicts

- **Google may have devised the most conflicted business model ever** – in funneling and ranking all the world's information, for most all the world's users, advertisers, and publishers, *through one single gateway*, for money, without anyone's permission, and without any independent third-party accountability mechanisms.
- **Who does Google work for?**
 - Google users whom Google represents that it works for, but who don't pay Google for most anything?
 - Google advertisers who actually are Google's real customers?
 - Google publishers/competitors, who Google calls its "partners," since they revenue-share with Google?
 - Google shareholders whose votes don't matter since Founders granted their stock 10 votes per share?
- **Which Google role rules** and how are Google's conflicting roles represented and/or resolved?
 - Google as *player/competitor* in owning content that directly competes with search-dependent content?
 - Google as *referee* in manually setting website quality scores or censoring info from search/advertising?
 - Google as *scorekeeper* in ranking everyone's information?
 - Google as *paymaster* in running "derivative non-auctions" for most all of the online content economy?
 - Google as *proprietary owner* of the dominant consumer Internet media platform?
- **Unlike every other public broker role** in finance, real estate, auctions etc. -- which must disclose and publicly manage conflicts-of-interest fairly in order to operate as an "honest broker" and avoid charges of misrepresentation or fraud -- Google does not even publicly acknowledge the existence of its multiple serious conflict-of-interest, or that they could potentially harm consumers, customers, or the public.

What is Predatory About Google's Search Practices?

- The FTC would not have launched this investigation if it did not believe Google has dominant market power in search advertising, and as such, has special legal obligations to not abuse its market dominance to impede competition -- market obligations that non-dominant firms do not have.
- Gaining or enjoying dominant market power or a monopoly is not illegal, but it is illegal to employ deceptive practices and to *anti-competitively* gain, maintain or extend dominant market or monopoly power.
- Thus the focus of the FTC's antitrust investigation will most likely center around three complementary forms of Google deceptive predatory search practices that:
 - Anti-competitively undermine competition throughout the online content economy;
 - Are provable;
 - Violate Google's longstanding blanket [public representations](#) that: "*We never manipulate rankings to put our partners higher in our search results...*"
- **The three complementary forms of Google deceptive and predatory search practices are:**
 - **Predatory Search Tying** a top search result to Google content;
 - **Predatory Search Penalties** to undermine Google competitors' search ranking; and
 - **Predatory Search Exclusion** to block key data sets from competitors' search results.

What is Predatory Search Tying (self-dealing)?

- Predatory search tying is when the dominant search advertising business leverages its market power to "hardcode" algorithmic search results to guarantee Google content (like Google Maps or Google Places) the top search result ranking and the 34% of clicks/traffic that such a top ranking confers (See Chitka's Research).
- This practice is deceptive, predatory and anti-competitive because Google has:
 - Represented that it never manipulates search results; and
 - Leveraged its unique market power to guarantee its own "partner" content automatically secures top search ranking, so that:
 - Any new Google content can become dominant over time because of the anti-competitive hardcode tying advantage -- regardless of the competitive merit of the tied Google content; and
 - **No competitor has the opportunity to compete for the full Google audience and the most lucrative top result clicks** because Google ties the top 34% of clicks/traffic to Google's benefit alone.
 - Simply, no competitive provider of content can compete with a dominant search engine's content that gets an automatic top ranking regardless of merit, because the **tying forecloses the opportunity for competitive content to compete for the most valuable search result ranking based on competitive merit.**
 - In a word, **deceptive predatory search tying means competitive online content can never win a market long term.**
- It is important to note that Google is well aware of the market value and power of top ranks in Google's search results.
 - Mr. Amit Singhal, characterized Google search as "*the biggest kingmaker on this earth.*"

What Are Predatory Search Penalties?

- Predatory Search Penalties are the deceptive anti-competitive practices of a dominant search advertising business that ensure that a vertical search or other competitor to Google cannot compete with Google.
- **Google can penalize competitors** in many ways so that they cannot be found by users or compete. Google can:
 - "Blacklist" or ban a site;
 - Have a human "rater" subjectively lower the "quality score" of the site of a competitor so that it ranks low; or
 - Raise the price of clicks for a competitor unilaterally and without warning.
 - (This list is illustrative, not comprehensive.)
- **There is substantial evidence of Google Predatory search penalties** and practices in the following lawsuits against Google: [Foundem](#), [MyTriggers](#), [TradeComet](#), [Navx](#), [IPlusV](#), to name the most public.
 - Google has great economic incentive to impede or eliminate vertical search competitors because vertical search represents the revenue growth frontier and real pricing power for Google.
 - In normal search, Google search ad auction prices are limited by the economics/margin ceiling of the item being searched.
 - That is not the case with vertical search as Google can get paid a much higher "advertising" price by more intimately and completely walking a potential customer through a complex search process to an ultimate sale.
 - Simply businesses will pay more for a delivered sale than a referral they must sell and land themselves.
- Google is also aware of its unilateral power to penalize others' rankings. Google Senior Vice President Jonathan Rosenberg [said](#):
 - *"We won't (and shouldn't) try and stop the faceless scribes of drivel, but we can move them to the back of the arena."*

What is Predatory Search Exclusion?

- Google has long been aware of the exclusionary power of owning the easiest access to content that users most want to search.
 - This has been a key anti-competitive practice Google has used to augment and abuse its market power.
- Google excludes search competitors' searchbots from crawling some of the largest searchable data sets in the world; YouTube and Google Books being two of the most prominent.
- Denying search competitors access to providing potential search results which many users demand:
 - Anti-competitively reinforces Google's dominance; and
 - Facilitates the other deceptive predatory search practices of search tying and search penalties.

Conclusion: How Are Consumers & Innovation Harmed by Google?

- **How do Google's deceptive and predatory search practices harm consumers?**
 - Google systematically misrepresents itself to the public as *working for* users, and caring first and foremost for users' interests, in order to gain consumers' trust, when in fact users are the *product* Google sells to advertisers/publishers.
 - The fact is Google is an advertiser-aligned, advertiser-funded model as virtually all of Google's revenues come from their advertiser and publisher customer clients, and is not user-aligned as Google's search, products and services are free.
 - Google's deceptive trade practice is the equivalent of: a real estate broker, who works for the seller, representing oneself as working in the buyers' interest; or a doctor that advises a patient to undergo expensive dangerous tests without disclosing their financial interest in the testing facility. (In March, the FTC sanctioned Google for Section 5 deceptive privacy practices.)
 - The consumer harm is that Google has deceived consumers to believe Google is user-aligned, and thus consumers: can trust Google to not bias its search results in favor of Google or Google's advertisers interests, and also can trust Google to safeguard their privacy when in fact it is Google's business model to maximally leverage consumer privacy for financial gain.
- **How is the consumer harmed by more Google innovation?**
 - The problem is not Google's innovation, but how **Google anti-competitively torpedoes competitive innovation**.
 - By leveraging its search advertising monopoly to subsidize 500+ free Google products/services, Google's advertiser-aligned monopoly model destroys user-aligned/user-paid, product/services innovations in privacy/security/customer service.
 - Most investors ask start-ups seeking funding: "what happens if Google copies it?" Googleopoly kills innovators in the crib.
 - Google leverages the market inside information its monopoly generates to spot trends that identify earliest emerging "first movers," so Google can buy them before they can become a competitive threat. Google has made 99 acquisitions to date.
- **How is the consumer harmed by free Google products & services?**
 - The crux here is not whether consumers benefit from the free product or service being offered, but whether or not the system will remain competitive so that other products and services critical to a competitive ecosystem, like accountability measurement, analytics, comparison tools, and many others, remain competitive, independent, and user-aligned.
 - Undercutting quality paid-for products or services with free ones (based on advertising or cross-subsidization) **can harm consumers by defunding consumer value and protection: i.e. responsive customer service, privacy/security protections.**
 - Free, one-sided analytics that are not independent of Google foster a rigged game, allowing Google to be the only player that owns the referee and scorekeeper, so that future products and services need not operate in the interests of users.
 - A Googleopoly that only promotes free ad-funded content undermines higher-quality, specialized, user-paid-for content.
 - Competitive products/services can never fairly compete, if Googleopoly routinely claims the #1 spot worth 34% of all clicks.

Appendix A: Bio: Scott Cleland, President, Precursor[®] LLC

- **Bio:** Scott Cleland is a precursor: a research analyst with a track record of industry firsts and a history of spotlighting harmful industry behavior and misrepresentation. Cleland is President of Precursor[®] LLC, a Fortune 500 research consultancy focused on the future of Internet competition, privacy, security, property rights, innovation and algorithmic markets. Scott Cleland is author of the book: *Search & Destroy: Why You Can't Trust Google Inc.* Cleland also authors the widely-read www.PrecursorBlog.com; publishes www.GoogleMonitor.com; and serves as Chairman of www.NetCompetition.org, a pro-competition e-forum supported by broadband interests. Eight Congressional subcommittees have sought Cleland's expert testimony and *Institutional Investor* twice ranked him the #1 independent telecom analyst. Scott Cleland has been profiled in *Fortune*, *National Journal*, *Barrons*, *WSJ's Smart Money*, and *Investors Business Daily*. Cleland's Full Biography can be found at: www.ScottCleland.com
- **Scott Cleland's Three Congressional Testimonies on Google:**
 1. Before the Senate Judiciary Subcommittee on Antitrust on the Google-DoubleClick Merger, September 27, 2007. http://googleopoly.net/cleland_testimony_092707.pdf
 2. Before the House Energy and Commerce Subcommittee on the Internet on Google Privacy issues, July 17, 2008. http://www.netcompetition.org/Written_Testimony_House_Privacy_071707.pdf
 3. Before House Judiciary Antitrust Subcommittee, on Evolving Digital Marketplace, September 16, 2010. http://www.googleopoly.net/Written_Testimony_House_Judiciary_Competition_Subcommittee_9-16-10.pdf
- **FTC-Google Antitrust Primer: Top Ten Q&A**
 - <http://www.googleopoly.net/FTC-Google%20Antitrust%20Primer.pdf>
- **Presenting at the Federalist Society: "Why Google is a Monopoly"**
 - <http://www.precursorblog.com/content/why-google-a-monopoly-presenting-case-federalist-society>

Appendix B: www.Googleopoly.net Research

Googleopoly Research Series:

- Googleopoly I: The Google-DoubleClick Anti-competitive Case -- 2007
 - <http://googleopoly.net/merger.html>
- Googleopoly II: Google's Predatory Playbook to Thwart Competition -- 2008
 - http://googleopoly.net/googleopoly_2.pdf
- Googleopoly III: Dependency: The Crux of the Google-Yahoo Ad Agreement Problem -- 2008
 - http://googleopoly.net/googleopoly_3_dependency.pdf
- Googleopoly IV: How Google Extends its Search Monopoly to Monopsony Control over Digital Info-- 2009
 - http://googleopoly.net/Googleopoly_IV_The_Googleopsony_Case.pdf
 - Chart: Google's Digital Information Distribution Bottleneck
 - http://googleopoly.net/Googles_Digital_Information_Distribution_Bottleneck_Chart.pdf
- Googleopoly V: Why the FTC Should Block Google-AdMob -- 2009
 - http://www.googleopoly.net/Why_The_FTC_Should_Block_Google.pdf
 - Chart: Google-AdMob Monopoly Bottleneck Chart http://googleopoly.net/merger_to_monopoly.pdf
- Googleopoly VI: Seeing the Big Picture: How Google is Monopolizing Consumer Internet Media --2010
 - http://googleopoly.net/Googleopoly_VI_Presentation.pdf
- Googleopoly VII: Monopolizing Location Services – Why Skyhook is Google's Netscape --2011
 - http://www.googleopoly.net/Skyhook_Wireless_is_GooglesNetscape_Googleopoly_VII_Monopolizing_Location_Services.pdf

Please visit: www.GoogleMonitor.com or www.SearchAndDestroyBook.com for more info.