Googleopoly IV* -- The Googleopsony Case:

How Google Extends its Search Monopoly to Monopsony over Digital Information

Google's Anti-Competitive Pattern of Restraining Digital Commerce in: News, Books, Broadcasting, Artwork, Documents, & Analytics

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Abstract: In blocking the Google-Yahoo Ad Agreement November 5, 2008, the Department of Justice (DOJ) determined Google was a search advertising monopoly attempting to use the ad agreement to extend its monopoly into search advertising syndication. Google's pattern of anti-competitive restraint of digital commerce continues largely undeterred. Google currently is extending its monopsony market power -- as the dominant digital information wholesale broker to the global Internet audience -- by restraining digital commerce in: news, books, broadcasting, artwork, documents and analytics.

- The *thesis* of this white paper is that Google is systematically extending its monopoly selling power in search advertising as monopsony buying power over much of the world's digital information.
- The *core insight* of this white paper is that Google has learned that to fulfill its information-organizing mission it **does not need to <u>own</u> the world's information, it only needs to effectively gain and maintain <u>control</u> of many of the derivative digital uses of that information** that are necessary for Google's model to make the information accessible and useful: i.e. search-ability, storage in Google's datacenters, compiling usage and monetization data, and the analytical ability to utilize that data.
- The *warning* of this white paper is that the old adage "*information is power*," is particularly apt here, because arguably Google has assembled more global market power over more information, more information types, and more information sources -- with less checks and balances on that power -- than any entity ever.

This heavily-documented 22-page white paper has 59 cites from ~30 different mainstream sources. It uses 32 Google quotes to prove Google's monopsonistic vision and clear self-awareness of its monopsony power. It also documents a pattern of anti-competitive Google behavior across six different info industries.

Conclusions:
1. Access control of digital information now matters more than ownership of digital information.
2. If digital information is to be valuable, the digital information monetization mechanism must value it.
3. Google's game is rigged against traditionally valuable information and non-Google information.
4. Google has converted wanton disregard of copyrights into a powerful anti-competitive network effect.
5. The Internet or technology does not make information free. However, Google is trying to make info free.
6. Information is power and de facto control of "*all the world's digital information*" is unprecedented power.

Recommendations:
1. The DOJ/FTC should establish/publicize a hotline phone number and web address where those who believe they have been harmed by Google's monopoly/monopsony market power can confidentially report evidence.
2. The varied interests which have publicly filed copyright infringement or antitrust suits against Google should come together and file a cross-industry class action antitrust suit against Google.
3. The DOJ should investigate, and if the evidence warrants it, prosecute Google for a broad pattern of anti-competitive exercise of monopsony power over digital information competitors.

* *Googleopoly III: Dependency: The Crux of Google-Yahoo Ad Agreement 10-3-08*
Googleopoly II: Google's Predatory Playbook to Thwart Competition; 9-23-08
Googleopoly: The Google-DoubleClick Anti-Competitive Case; 9-17-07
See www.Googleopoly.net

** The views expressed in this white paper are solely the author's and not the views of any Precursor clients. See Scott Cleland's Full Biography at: http://www.precursor.com/bio_long.htm

I. Introduction

In blocking the Google-Yahoo Ad Agreement November 5, 2008,[1] the Department of Justice (DOJ) determined Google was a search advertising monopoly attempting to use the ad agreement to extend its monopoly into search advertising syndication. Google's pattern of anti-competitive restraint of digital commerce continues largely undeterred. Google currently is extending its monopsony[2] market power -- as the dominant digital information wholesale broker to the global Internet audience -- by restraining digital commerce in: news, books, broadcasting, artwork, documents and analytics.

- The *thesis* of this white paper is that Google is systematically extending its monopoly selling power in search advertising as monopsony buying power over much of the world's digital information.

- The *value* of this white paper is it, for the first time, identifies documents and synthesizes the broader pattern of Google's anti-competitive conduct and wholesale monopsony buying power over digital information in fulfilling its unique "*mission to organize the world's information and make it universally accessible and useful*."[3]

- The *core insight* of this white paper is that Google has learned that to fulfill its information-organizing mission it **does not need to <u>own</u> the world's information, it only needs to effectively gain and maintain <u>control</u> of many of the derivative digital uses of that information** that are necessary for Google's model to make the information accessible and useful: i.e. search-ability, storage in Google's datacenters, compiling usage and monetization data, and the analytical ability to utilize that data.

- The *warning* of this white paper is that the old adage "*information is power*," is particularly apt here, because arguably Google has assembled more global market power over more information, more information types, and more information sources -- with less checks and balances on that power -- than any entity ever.

The structure of this white paper is as follows. First it explains the Google monopsony problem. Second, it documents Google's monopsonistic vision -- largely in Google's own words. Third, it documents Google's clear self-awareness of its monopsony power -- largely in Google's own words. Fourth, it presents the evidence pattern of Google's anti-competitive exercise of monopsony power. Finally, it offers conclusions and recommendations.

The Googleopoly Research Series: Googleopoly IV is the first public analysis to explain, document, and advance the antitrust case that Google is anti-competitively exercising monopsony bottleneck power over a wide variety of digital information markets. It is the latest in a series of prescient and public Precursor® LLC antitrust analyses, which can be accessed at www.googleopoly.net.

- *Googleopoly I* was the first public analysis to foresee, document, and advance the antitrust case that Google was an emerging monopoly that competition could not cure, because of overwhelming and lasting network effects and barriers to competition.

- *Googleopoly II* was the first public analysis to foresee, document, and advance the unified theory of Google's monopoly, i.e. the twenty-six different sources of Google's market power; and the five different anti-competitive strategies Google employs to foreclose competition.

- *Googleopoly III* was the first public analysis to focus on and document the crux of the anti-competitive problem with the proposed Google-Yahoo Ad Agreement -- that it would make the #2 competitor Yahoo dependent on Google, the dominant provider, substantially lessening Yahoo's incentive to compete against Google.

II. The Googleopsony Case

A. The Google Monopsony Problem

1. The Harm of "*Information Wants to be Free*"

In discussing the business model problems of journalism in an interview with Fortune's editor-at-large, Google CEO Eric Schmidt said: "*the culture of the Internet is that information wants to be free*."[4]

The words "*information wants to be free*" were reportedly first spoke by Stewart Brand[5], at the first Hackers conference in 1984. Mr. Brand presciently foresaw the growing tension over the value of information.

- *"On the one hand information wants to be expensive, because it's so valuable. The right information in the right place just changes your life. On the other hand, information wants to be free, because the cost of getting it out is getting lower and lower all the time. So you have these two fighting against each other."*[6]

Google CEO Eric Schmidt clearly understands the destructive impact that the '*information wants to be free*" view has had on Internet information.

- Before an audience of magazine executives at Google headquarters, Mr. Schmidt called the Internet a "*'cesspool', a festering sea of bad information*."[7]

- Mr. Schmidt went on to tell this audience: *"Narrative sustains the [media] business," said Schmidt, "…but the future of high quality journalism is a huge problem. A reasonable prediction is that there will be fewer voices. More money is needed to fund high quality work."*[8]

Nevertheless, since Google's monopoly search advertising business model is predicated on no-cost access to information, **Google continues to expect that most all information be free to Google regardless of the impact that has on competition, property rights, or the quality of information**. As this white paper documents, Google is anti-competitively extending its monopsony power over access to the world's digital information, to keep information largely free to Google. Increasingly Google is the only entity that can make the free-information-for-advertising Internet model work -- due to the fact that Google uniquely controls the only truly global information audience.

- Simply, free information best serves Google, the world's search advertising monopoly and the world's wholesale information access monopsony. However, free information does not serve either, competitive information-producers/distributors that depend on fee/subscription/hybrid business models; or consumers who seek choice, quality, diversity and innovation in information.

So how could free information harm consumers or be anti-competitive? When a dominant Internet gatekeeper undermines competition in information production/distribution, consumers ultimately have less information choice, quality, diversity and innovation as a result. That harm can occur if retail information producers/distributors are anti-competitively forced by a dominant wholesaler to:

- Change/weaken/subordinate their business models to advertising;

- Lower their product prices, often to zero, as the "admission price" to enter the sole Internet information distribution platform that can reach the global Internet audience; and/or

- Shoulder all the business risks and costs of information production.

These are anti-competitive outcomes of exercised market power; these are not outcomes that emerge from competitive market negotiations.

At core, Google is a wholesale distributor/broker that buys and sells access to information.

- Per the DOJ Google-Yahoo decision,[9] DOJ determined Google to be a monopoly bottleneck selling advertisers access to consumers seeking certain information.

- This paper explains how **the flip side of Google's monopoly bottleneck selling position to advertisers seeking access to Google's audience is Google's monopsony buying position to information-producers seeking access to Google's audience**.

- Whereas Google's search advertising monopoly anti-competitively shortchanges advertisers, Google's information access monopsony anti-competitively shortchanges information-producers.

2. Why Forcing Digital Information Prices near Zero is Anti-competitive

First, it dictates a "lose-lose" business model for info-producing competitors in that:

- It shifts all the production cost and risk to the info-producer and shields Google completely because Google only pays when a customer clicks on a Google controlled ad, not when the user actually consumes/reads/views the digital information; and

- It dis-intermediates the info-producer from customer contact by shifting most all of the selling and customer interaction to Google's control, making the info-producer heavily-dependent on Google for monetization of their info-production.

Second, it forces information that can be revenue-optimized via a fee or usage model, to revenue-sub-optimize through an advertising model, which basically only works for Google because of its uniquely dominant Internet audience of users.

Third, it prevents info-producers which have fixed-costs, from recovering those costs through fee arrangements, and forces uncertain and less likely cost recovery via advertising. (Simply, a variable advertising model suits Google as an information bottleneck, however, it can be the worst model for a fixed cost info-producer.)

Fourth, it allows Google to supplant the market mechanism and assume control of supply, demand, and most all elements of pricing.

Fifth, it enables **Google to gain control over most all of the necessary derivative market information an info-producer needs to know to continue to compete** (demand, price sensitivity/elasticity, preferences, dislikes, etc.) so that Google can ultimately replace the info-producer.

Finally, it allows Google to operate a "Black Box" market where only Google knows what consumer valued what information. Info-producers simply get a check of a revenue split that Google ultimately has the market power to change at its discretion.

3. Why Google's Monopsony Position is Best of All Worlds – for Google

The *core insight* of this white paper is that Google has learned that to fulfill its information-organizing mission it **does not need to <u>own</u> the world's information, it only needs to effectively gain and maintain <u>control</u> of many of the derivative digital uses of that information** that are necessary for Google's model to make the information uniquely accessible and useful: i.e. search-ability, storage in Google's datacenters, compiling usage and monetization data, and the analytical ability to utilize that data.

Google has learned it does not have to literally "own" information when it can effectively "own" information by being able to access, manipulate and profit off the information. Google does not want ownership because with ownership of information comes the obligation of cost, risk, rights management and liability. Google's selling monopoly power combined with its monopsony buying power affords Google the best of both possible worlds. It can minimize costs and risks by forcing competitors and/or info-suppliers to absorb them, and it can maximize revenue and profit because as a completely opaque "Black Box" broker mechanism, they have the market power to disproportionately and anti-competitively profit at competitors' and consumers' expense.

- **A business model that can effectively and consistently disconnect the natural market mechanism of market risk from market reward is powerful evidence of market power.** Increasingly, Google is not a competitive market participant, but a market in and of itself.

Google also uniquely and solely controls the monetization of the information. Google anti-competitively extracts the derivative forward-looking and necessary market information (supply, demand, pricing, consumer/supplier profiles, etc.) which are the key to monetization, growth, revenue maximization and control in the future. With control of the derivative value of information -- Google then can tilt the marketplace that it controls -- to value the derivative manipulation of data about information more highly than the information itself. This perversely evolves the marketplace to the point where the ability to find and manipulate information is more important and valuable than the information itself.

- **A business model that can effectively and consistently disconnect the market mechanism of cost to price/value is additional powerful evidence of monopsony power**.

B. Google's Monopsonistic Vision

Google is unabashed in its uniquely ambitious corporate mission: "*to organize the world's information and make it universally accessible and useful*."[10] This is also **an unabashed monopsony mission** to be the dominant digital wholesale information broker to the global Internet audience**.**

- First, Google understands that to make the world's information universally accessible to everyone else, Google first must have universal access to the world's information, so it can then organize it and make it accessible to others. "*Search is critical. If you are not found, the rest cannot follow*" said Santiago de la Mora, Google's head of printing partnerships in London.[11]

- Second, Google is well aware that Google is the one and only entity with a world monopsony information access vision. Google CEO Eric Schmidt told *Wired.co.uk* this summer: "*one day Larry and Sergey and I were sitting in a room and Sergey looked at us and said, 'It's obvious what our strategy should be. It's to work on problems on a scale no one else can*.'"[12]

- Third, Google CEO Eric Schmidt effectively admitted Google's monopsony information access vision at a search engine conference: "*Ultimately our goal at Google is to have the strongest advertising network and all the world's information*."[13] Moreover, it is also clear that Google fully appreciates the power of that goal because Google also said: "*Advertising is the lifeblood of the digital economy*."[14]

- Fourth, Google officially has declared it sees itself as a "distribution network" and a "conduit" for information, not owners of content. Google CEO Eric Schmidt told the Financial Times: "*We see ourselves as a technology provider and a distribution network. We're not in the content business*."[15] A Google spokesperson, Gabriel Stricker, said: "*Our vision remains to be the best conduit that we can be, connecting people between whatever their search is and the answer they are looking for. For that reason we are not interested in owning or creating content*."[16]

- Fifth, Google's scale of ambition for accumulating others' information is unprecedented.

- From Google's Corporate page on its philosophy: "*"The perfect search engine," says Google co-founder Larry Page, "would understand exactly what you mean and give back exactly what you want." Given the state of search technology today, that's a far-reaching vision requiring research, development and innovation to realize. Google is committed to blazing that trail*." [17]

- Google CEO Eric Schmidt told the Financial Times*: "We are very early in the total information we have within Google. The algorithms will get better and we will get better at personalisation." "The goal is to enable Google users to be able to ask the question such as 'What shall I do tomorrow?' and 'What job shall I take?'"* [18] *"We cannot even answer the most basic questions because we don't know enough about you. That is the most important aspect of Google's expansion."*[19]

- Finally, a couple of high-profile gifts to Google employees from Google's founders Larry Page and Sergey Brin suggest a knowing and unabashed appreciation for Google's feared market power and ability to destroy others.

    - It is telling that of all the potential Google corporate "mascots" or symbols Google's founders could have given Google, they chose to install at headquarters a life size replica of a Tyrannosaurus Rex,[20] arguably the most fearsome and dominant animal the world has ever known.

    - Moreover, it is also telling the type of gift the Google founders gave Google CEO and pilot Eric Schmidt, a gift which he displays prominently in his office; it is a "*deactivated B-52 bomber's chair*,"[21] which is the aircraft that is widely known to have carpet bombed and destroyed more property and killed more people than any aircraft in world history.

C. Google's Understanding and Admission of their Monopsony Power

Consider Google's own words to discern if Google is aware of its market power.

- Google CEO Eric Schmidt:

    - *"I didn't really understand the power of Google until I was here for several years. Looking back, even looking at the memos I wrote in the first year I was here, you could see (Google co-founders Larry Page and Sergey Brin) viewed Google at the level it is today. They saw it, I didn't."*[22]

    - A "*fundamental point for newspapers to understand is that Internet distribution does not work if it is built on the economics of scarcity, but only works with ubiquity and abundance economics*."[23]

    - *"The brutal economic answer is that the Internet does in fact change other people's businesses because of this massive distribution," he said. "We should just acknowledge that and not hide from it."*[24]

- Steve Levy of Wired shares Google Chief Economist Hal Varian's take on "Googlenomics":

    - *"Googlenomics actually comes in two flavors: macro and micro. The macroeconomic side involves some of the company's seemingly altruistic behavior, which often baffles observers. Why does Google give away products like its browser, its apps, and the Android operating system for mobile phones?* ***Anything that increases Internet use ultimately enriches Google, Varian says.*** *And since using the Web without using Google is like dining at In-N-Out without ordering a hamburger,* ***more eyeballs on the Web lead inexorably to more ad sales for Googl****e."*[25] [Bolds added for emphasis.]

    - *"The microeconomics of Google is more complicated****. Selling ads doesn't generate only profits; it also generates torrents of data about users' tastes and habits,*** *data that Google then sifts and processes in order to predict future consumer behavior, find ways to improve its products, and sell more ads. This is the heart and soul of Googlenomics. It's a system of constant self-analysis: a* ***data-fueled feedback loop that defines not only Google's future but the future of anyone who does business online****."*[26] [Bolds added for emphasis.]

    - *"…Varian believes that a new era is dawning for what you might call the datarati—and* ***it's all about harnessing supply and demand****, "What's ubiquitous and cheap?" Varian asks. "Data." And* ***what is scarce? The analytic ability to utilize that data.****"*[27] [Bolds added for emphasis.]

    - *"Varian, of course, knows that his employer's success is not the result of inspired craziness but of an early recognition that the Internet* ***rewards fanatical focus on scale, speed, data analysis,*** *and customer satisfaction."*[28] [Bold added for emphasis.]

- Google CEO Eric Schmidt on Google's network effects: "*…we get more users and that gets us more advertisers. More advertisers gives us more cash, more cash gives us more data centers, more data centers means we can get more engineers who want to build even bigger data centers… that cycle is very real at Google.*"[29]

- The Economist shares Google Chief economist Hal Varian's description of Google's efficiency and power:

    - "*…the infrastructure means that Google can launch any new service at negligible cost or risk.*"[30]

    - *"…"Its costs are mostly fixed, so any incremental revenue is profit. It makes good sense for Google to push into television and other markets, says Mr Varian. Even if Google gets only one cent for each viewer (compared with an average of 50 cents for each click on the web), that cent carries no variable cost and is thus pure profit."* [31]

- Google CEO Eric Schmidt on how Google can achieve ownership benefits without ownership:
  - *"I think the solution is tighter integration. In other words, we can do this without making an acquisition. The term I've been using is 'merge without merging.' The Web allows you to do that, where you can get the Web systems of both organizations fairly well integrated, and you don't have to do it on exclusive basis."*[32]

D. Evidence Pattern of Google's Anti-competitive Exercise of Monopsony Power

Again, this paper endeavors to explain and document Google's pattern of anti-competitive monopsony abuse of a wide and diverse range of information producers/distributors. There is a clear, widespread, and mounting pattern of evidence of Google's anti-competitive exercise of its monopsony market power over information producers/distributors. More specifically, there is a broad and public pattern showing that Google exercises monopsony market power to anti-competitively force info-producers/distributors to:

- Change their business models from what works best for them (fee, subscription, usage, hybrid, etc.) to what solely works best for Google (advertising);

- Lower their product prices, often to zero, as the "admission price" to enter the only truly global-Internet distribution platform; and

- Shoulder all the business risks and costs of information production.

Consider the following documented pattern of anti-competitive monopsony market power over industries and across content/information industries. The following list of examples is illustrative; it is not meant to be comprehensive.

1. Design Artwork

In soliciting for design artwork to be featured in its Chrome browser, Google demanded that design artists provide Google their artwork for free, because they would get the benefit of exposure to Google's global audience. However, that is a business model that does not recognize designers' need for payment for their time, creativity and materials. Google understands that craftspeople need to get paid for their work to stay in business, yet Google still offered no payment to sustain their business or model.

- This is evidence Google is using its monopsony audience market power to shift its costs to its competitors, lessening their ability to compete long term. Surely Google knows that design artists and other suppliers cannot stay in business if they can not recover their costs and earn a profit. In expecting to not to pay, Google is implicitly acknowledging its monopsony power and shifting its normal costs to competitors. Long term, Google's competitors cannot compete if they must shoulder Google's core costs in addition to their own.

The New York Times exposed this abuse of market power, in its 6-15-09 article "*Use their work free? Some artists say no to Google*."[33]

- Google: "*While **we don't typically offer monetary compensation for these projects**," the statement said, "through the positive feedback that we have heard thus far we believe these projects provide a unique and exciting opportunity for artists to display their work in front of millions of people*."[34] [Bold added for emphasis.]

- *"…"There's a lot of concern that newspapers and all of print is becoming a bit of an endangered species," said Brian Stauffer, an illustrator based in Miami whose work has appeared in publications including Rolling Stone, Esquire and Entertainment Weekly, and who also rejected Google's offer. "When a company like Google comes out very publicly and expects that the market would just give them free artwork, it sets a very dangerous precedent."*[35]

In a letter to the editor,[36] in response to the above New York Times article, Ted Rall, President of the Association of Editorial Cartoonists, strongly opposed Google's blatant exercise of its market power and calls for Government action.

- *"It's offensive that a company that reports annual profits in the billions refuses to pay independent artists for their labor. Sadly, the Web revolution has turned "information wants to be free" into a mantra. Whether it's illustrators, cartoonists or musicians, working for free ought to have gone out with slavery. Congress ought to act to make it illegal for a profitable corporation to solicit work without paying for it."*

2. Web Analytics

Brandt Dainow, a competitor to Google's Web Analytics, had this to say about Google's exercise of free pricing in a post at iMedia Connection.[37]

- *"In my opinion, Google Analytics does for the web metrics industry what the Google search engine did for online search, it kills everyone else off."*

- *"What Google has done is simply take every feature in every product on the market and put them all into one system, and then make it available for free."*

- *"…I say this as someone who, until this month, ran a company that produced web analytics software and directly competed with Google Analytics. No more. There is simply no way my organization can produce the range of features Google offers and make them available for nothing."*

3. Internet Broadcasting – YouTube

Digital content owners have sued Google for trying to force their content to be priced at/near zero. Viacom effectively alleged Google-YouTube to be anti-competitively exercising monopsony market power in their copyright infringement suit against Google, which alleged that Google's business model was illegal in attempting to profit from the use of others content for free.

- Per Viacom's Press Release:[38] *"YouTube is a significant, for-profit organization that has built a lucrative business out of exploiting the devotion of fans to others' creative works in order to enrich itself and its corporate parent Google. Their business model, which is based on building traffic and selling advertising off of unlicensed content, is clearly illegal and is in obvious conflict with copyright laws. In fact, YouTube's strategy has been to avoid taking proactive steps to curtail the infringement on its site, thus generating significant traffic and revenues for itself* ***while shifting the entire burden – and high cost – of monitoring YouTube onto the victims of its infringement****."* [Bold added for emphasis.]

- *"****This behavior stands in stark contrast to the actions of other significant distributors****, who have recognized the fair value of entertainment content and have concluded agreements to make content legally available to their customers around the world."* [Bold added for emphasis.]

- *"There is no question that YouTube and Google are continuing to take the fruit of our efforts without permission and* ***destroying enormous value in the process. This is value that rightfully belongs to the writers, directors and talent who create it and companies*** *like Viacom that have invested to make possible this innovation and creativity."* [Bold added for emphasis.]

Several of the largest producers of digital content in the world also sued Google for aiding and abetting the distribution of pirated copyrighted digital content for free. While this is a copyright and piracy case, it is also powerful evidence of the pervasiveness and persistence of Google's model expecting and even forcing expensive digital content to be made available for free.

- Per the Wall Street Journal:[39] *"The media companies, including NewsCorp,Viacom, Sony Corp., General Electric Co.'s NBC Universal, Time Warner Inc. and Walt Disney Co., based their claims against Google on sworn statements made late last year as part of a civil lawsuit brought by Hollywood studios against two men accused of operating Web sites that allegedly helped users illegally access copyrighted material. These statements indicated that* ***Google representatives sold ads to these two sites knowing they were doing this, and had a close relationship with the two defendants****, according to people familiar with the matter."* [Bold added for emphasis.]

- *"The defendants in the case, Brandon Drury and Luke Sample, said in sworn statements that* ***Google representatives offered them credit to buy advertising on Google's search engine****. They also said Google supplied them with keywords, including terms such as "bootleg movie download," "pirated," and "download harry potter movie," which boosted traffic to their sites, according to people familiar with the case. In court filings, both men deny any wrongdoing."* [Bold added for emphasis.]

4. Digital Books

A number of authors, publishers, and other creators/producers of digital content have objected to Google extracting effective monopsony market power advantages from the Google Book Settlement.[40] The DOJ is formally investigating[41] the potentially anti-competitive effects of the Book Settlement. A compendium of formal objections to the Google Book Settlement can be found at ThePublicIndex.org.[42]

In objecting to the illegal aspects of the Google Book Settlement before the House Judiciary hearing on the settlement, Marybeth Peters, the U.S. Register of Copyrights, testified that:

- *"Key elements of the settlement are fundamentally at odds with the law."*[43]

- The Google Book Settlement *"would create mechanisms by which Google could continue to scan with impunity, well into the future, and to our great surprise,* ***create yet additional commercial products without prior consent of rights holders****."* [44] [Bold added for emphasis.]

The Register of Copyrights understands that if Google can create and control derivative products/services from copyrighted material, (material which can include much more than books, but also: photos, art, design, songs, plays, screenplays, cartoons, comic books, audio books, etc.) without the permission of rights holders, Google has more effective control over the digital books marketplace than any other entity.

At the 9-10-09 House Judiciary Committee hearing on the book settlement, Google Chief Legal Officer, David C. Drummond, said: "*Any bookseller--Amazon, Barnes & Noble, Microsoft--would be able to sell the books covered by the settlement,"* and that the reseller could get *"the significant majority" of Google's 37 percent share of any digital book sale."*[45]

- The irony of Google's offer to allow resellers to resell off Google's digital book platform and pay Google a slice of their book sale proceeds, is that it is a surprising implicit acknowledgement by Google that the settlement would create a monopoly "essential facility" that competitors would need access to in order to compete.

- Even more ironic would be if the DOJ did not object to the anti-competitive creation of a digital book monopoly platform and to rewarding the alleged mass copyright violator, Google, with a going-forward monopoly revenue stream for mass disrespect of copyrights.

- The ultimate irony may be Google expecting that digital book competitors Amazon, Barnes and Noble and Microsoft, should preemptively and unilaterally surrender to Google's proposed ill-gotten monopoly platform, subordinate their digital book businesses to Google, and accept Google's anti-competitive dis-intermediation of competitor's direct relationships with customers and book publishers/authors.

The Google Book Settlement may be the most fully developed and understood anti-competitive extension of Google's search advertising monopoly since the heavy industry focus on the ill-fated Google-Yahoo Ad Agreement.

5. Google News

In discussing the business model problems of journalism in an interview with Fortune's editor-at-large, Google CEO Eric Schmidt said: "*the culture of the Internet is that information wants to be free*."[46]

Several news organizations have sued Google for profiting off their digital property without compensation – i.e. expecting information from competitive info-producers/distributors to be free.

Associated Press Chief Curley effectively accused Google of exercising monopsony market power over the "long tail" market as reported by Forbes.[47]

- *"But Google applies no such algorithmic discretion to general searches. The broader search rankings spread AP content out across the Web, says Curley, encouraging misappropriation by other sites. Curley wants **Google to "protect content from unauthorized use and pay us for the longtail**." By "longtail," Curley refers to the thousands of small sites that collectively drive vast herds of traffic using AP content."* [Bold added for emphasis.]

Agence Presse sued Google for profiting from their digital information without compensation, i.e. again expecting the information from info-producers/distributors to be free.

- *Per CNET:*[48] *"Agence France Presse, the world's oldest news agency and the third-largest behind the Associated Press and Reuters, claims Google News unlawfully incorporated AFP photographs, headlines and excerpts from the beginning of articles. Also, AFP argues, Google News removed photo credits and copyright notices in violation of federal law.*

- *For its part, Google claims AFP's headlines are not "original and creative" enough to be protected under copyright law. "Typical AFP headlines are factual, simple and contain only one idea--unprotectable as a matter of law," Google says."*

Google CEO Eric Schmidt has given news organizations good reason to believe that Google sees them as competitors in the information aggregation business, and also that Google has monopsony market power, by suggesting that journalism businesses become not-for-profit enterprises – per Advertising Age:[49]

- "*...when asked where the industry ends up if there aren't outlets willing to pay journalists to create quality content, Mr. Schmidt was a bit Palin-esque, saying that he didn't have an answer but one thing to look at is whether journalism should be a for-profit enterprise."*

A telling affirmation of Google's effective monopsony information access market power came from a video interview[50] last month with Federal Communications Commission Chairman Julius Genachowski, in which Chairman Genachowski, when asked twice what news sites he checks first thing in the morning each day, said only Google News.

6. Google News – Micropayments Proposal

In response to a request for proposal from the Newspaper Association of America to devise a micropayment system for news, (in part because newspapers believe Google is not paying them for profiting off their content) it is ironic and telling that Google responded with a submission[51] ostensibly to protect its dominance as the Internet's paymaster for digital information.

It is clear from the submission that Google is aware of its dominance over the monetization of digital information, and that it does not want to lose that dominance to a competitive business model like micropayments. The document suggests that Google's strategy to address the growing potential competitive threat to its single-payer, search advertising dominance is to co-opt the new model with a single cashier for micropayments and to effectively tie it to Google's dominant search advertising platform.

- From Google's NAA Submission: "*We believe that content on the Internet can thrive supported by multiple business models – including content available only via subscription. While we believe that advertising will likely remain the main source of revenue for most news content, a paid model can serve as an important source of additional revenue. In addition**, a successful paid content model can enhance advertising opportunities rather than replace them***." [Bold added for emphasis.]

- *"…Beyond the mechanics of any payment system,* ***users must know the product exists****.* ***Discovery and distribution are just as, if not more, important to premium content as they are to free content*** *given the smaller audience of potential subscribers.* ***Google is uniquely positioned*** *to help publishers* ***create a scalable e-commerce system*** *via our Checkout product and also enable users to find this content via search – even if it is behind a paywall."* [Bolds added for emphasis.)

Google understands that since it already has a relationship with 25,000 sources of news on the Internet it starts with an entrée to all potential micro-payment users that no other competitor can match. The question for the DOJ, in the context of Google's broader monopsony catalogued in this white paper, is it pro-competitive or anti-competitive for Google to seek to:

- Tie/integrate its dominant ad platform with its nascent micropayments model; and

- Cross-subsidize its micropayment platform with free software and services from its dominant search advertising platform.

7. Google Docs

For an enlightening example into how deeply ingrained Google's expectation is to profit off of content produced by others for free, consider the terms-of-service arrangement embedded for Google Docs and spreadsheets, Google's free applications for users to produce content. Users of Google's "free" docs and spreadsheet applications are largely unwittingly legally forfeiting some of their property rights to Google in agreeing to Google's one-side terms-of-service.[52]

- *"By submitting, posting or displaying Content on or through Google services which are intended to be available to the members of the public, **you grant Google a worldwide, non-exclusive, royalty-free license to reproduce, adapt, modify, publish and distribute such Content** on Google services for the purpose of displaying, distributing and promoting Google services. **Google reserves the right to syndicate Content** submitted, posted or displayed by you on or through Google services and use that Content in connection with any service offered by Google. **Google furthermore reserves the right to refuse** to accept, post, display or transmit any Content in its sole discretion." [Bold added]*

Like the derivative terms of the Google Book Settlement, which provides Google exclusive and preferential access to key data about the use and value of digital book information, the Google Docs terms of use are an effective formalization of its monopsony market power over access to others' digital information. In other words, if one uses Google applications to produce content that might someday be for public use, the user grants Google derivative ownership rights in advance to profit off that content in most any way Google sees fit – for free.

- **Clearly further research is warranted** to determine the extent to which, Google's monopsony power and view that information should be free, is embedded in Google's many terms of use for its wide product/service suite.

- Given the pattern of evidence accumulated here that Google expects information to be free, a systematic review of all Google's Terms of Service policies is necessary to determine if its Google's standard operating procedure to expect information is and should be free. The review should include at least: YouTube, Knol, Blogger, Feedburner, Google Books, Google Maps, Latitude, Picassa, gmail, Google Voice, Postini, etc.

III. Conclusions and Recommendations

A. Conclusions

1. Access control of digital information now matters more than ownership of digital information.

The *core insight* of this white paper is that Google has learned that to fulfill its information-organizing mission it **does not need to own the world's information, it only needs to effectively gain and maintain control of many of the derivative digital uses of that information** that are necessary for Google's model to make the information accessible and useful: i.e. search-ability, storage in Google's datacenters, compiling usage and monetization data, and the analytical ability to utilize that data.

2. If digital information is to be valuable, the digital information monetization mechanism must value it.

Google's search advertising monopoly largely depends on no-cost/free digital information. Thus, it is in Google's interest to leverage its search advertising monopoly as an information-access monopsony and force the cost of information access to Google to be free or near free.

3. Google's game is rigged against traditionally valuable information and non-Google information.

Google's dominance of search is effective dominance over what digital information is found. Google's algorithm and "quality score" is a "black box" mechanism that no advertiser or information-producer is allowed to understand, cross-check, or audit. Thus, Google's famed PageRank® search algorithm increasingly "ranks" and thus implicitly "values" much of the world's digital information.

- While the PageRank® algorithm has hundreds of refining variables, at core it is devilishly simple – it is "popularity" driven. "Popularity" is mathematically calculated based generally on how many people have "linked to" the information, which in turn is a mathematical proxy for information "authority" or the implicit *value* of information.

- Implicit in this "valuation" of information are value judgments by Google. Two big implicit value judgments are: first, that only an online sample is necessary, (which is a bias toward an "information wants to be free" culture); and second, that it is biased toward the passion of an online few that went to the trouble of posting a link, rather than a statistical sample of all the consumers, users, readers or viewers of the information being valued.

- Moreover, implicit in this information valuation system is a blind spot for offline, transactional, or usage/reader/viewer-based measures of popularity, and hence monetize-ability. Thus Google's valuation mechanism implicitly rewards its blogger-based authority system over offline brand-recognition authority.

- Furthermore, Google's link-based popularity measure for value, also disproportionately rewards Google-affiliated information, Google Maps, YouTube, Knol, etc. over others' information, because Google's content/information that is affiliated with the world's #1 search engine and the world's #1 brand[53] is almost tautologically the most popular.

Make no mistake the system described above is powerfully skewed to discover no-cost or Google-affiliated content/information. Others would describe it as monopsony-power, a rigged game, or a very unlevel playing field -- where the outcome long term -- is pre-determined and not really contestable.

4. Google has converted wanton disregard of copyrights into a powerful anti-competitive network effect and monopsony power enhancer.

Google has been sued by most every type of copyright holder, with basically the same complaint. Google profits unfairly from the free use of their property. Either all these copyright owners are individually and collective wrong in their interpretation that Google is violating copyright law or they all are sour grapes and there is little merit to their charges. Google's uninhibited pattern of forcing valuable copyrighted digital information to be supplied to Google for monetization at no cost, strongly suggests Google is anti-competitively exercising monopsony power.

5. The Internet or technology does not make information free, Google and other like-minded people and business models are proactively trying to make information free.

Chris Anderson,[54] editor-in-chief of Wired Magazine, and author of the "*Long Tail*" and "*Free – The Future of a Radical Price*," gives Google much of the credit for advancing the notion that "information wants to be free," and that the Internet ends the economics of scarcity and enables the "economics of abundance," (because the incremental cost of processing, storage and bandwidth are so low.)

- At the Google-hosted book signing/discussion of "*Free – The Future of a Radical Price*" in Washington D.C. this past July, Mr. Anderson said: [55]
  - Google's chief economist Hal Varian "*taught me everything I know about free*."
  - "*Google…is the citadel of free*."
  - "*Google is the poster child of making money around free*."

Moreover, Google CEO Eric Schmidt publicly underscored the importance of free to the Newspaper Association of America conference[56] in April of 2009 by saying that Internet distribution does not work if it is built on the economics of scarcity, but only works with ubiquity and abundance economics.[57]

With Google commanding 74% of U.S. Internet searches in June 2009 per Hitwise,[58] the Internet is increasingly becoming "GooglesNet."

6. Information is power and de facto control of "all the world's digital information" is unprecedented power.

The *warning* of this white paper is that the old adage "information is power," is particularly apt here, because Google arguably has assembled more global market power over more information, more information types, and more information sources -- with less checks and balances on that power -- than any entity ever. This increasingly enables Google to dictate what information is found or buried, which information competitors win or lose, and what political views are favored or disfavored.

- Per Google CEO Eric Schmidt on this very point:
    - *"Politicians "don't in general understand the implications" of the internet, Mr Schmidt argued. "One of my messages to them is to think about having every one of your voters online all the time, then inputting 'is this true or false?'. We [at Google] are not in charge of truth but we might be able to give a probability."*[59]

B. Recommendations

1. The DOJ/FTC should establish and publicize a hotline phone number and web address where those who believe they have been harmed by Google's monopoly/monopsony market power can confidentially report evidence.

2. The varied interests which have publicly filed copyright infringement or antitrust suits against Google should come together and file a cross-industry class action antitrust suit against Google.

3. The DOJ should investigate, and if the evidence warrants it, prosecute Google for a broad pattern of anti-competitive exercise of monopsony power over digital information competitors.

Appendix

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Summary: Scott Cleland is a precursor, a prescient analyst with a long track record of industry firsts. Cleland is President of Precursor® LLC, which consults for Fortune 500 clients; authors the "widely-read" PrecursorBlog.com; and serves as Chairman of NetCompetition.org®, a pro-competition e-forum supported by broadband interests. Eight different Congressional subcommittees have sought Cleland's expert testimony on a wide range of complex emerging issues related to competition; and *Institutional Investor* twice ranked him as the top independent telecom analyst in the U.S. Cleland has been profiled in *Fortune*, *National Journal, Barrons, WSJ's Smart Money, Investors Business Daily,* and *Washington Business Journal.*

Cleland's Full Biography can be found at: http://www.precursor.com/bio_long.htm

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