CQ Researcher

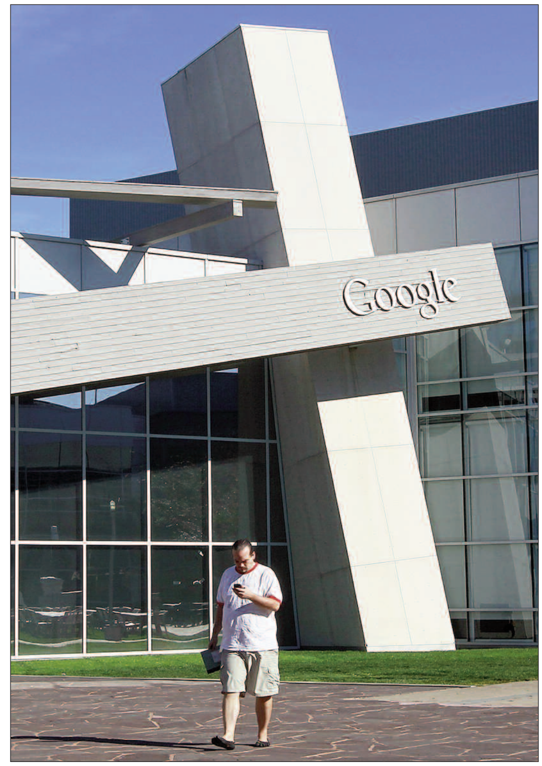
Published by CQ Press, an Imprint of SAGE Publications, Inc.

www.cqresearcher.com

Google's Dominance

Is the online-search giant too powerful?

The meteoric rise of Google in just 13 years has revolutionized the Internet. But competitors are growing wary as the Silicon Valley icon, known for its "Don't Be Evil" motto, strengthens its dominance over online searching and advertising and rapidly expands into new areas. Up to 70 percent of online searches in the United States are conducted on Google, whose vast portfolio includes airline ticketing, comparison shopping, social networking and mobile-phone software. In addition, Google has proposed a $12.5 billion acquisition of Motorola Mobility, a major manufacturer of wireless phones and other electronic devices. Critics portray Google as a monopoly that leverages its power in order to bully rivals. Google strongly denies the accusations and counters that alternatives are one click away. Now, regulators in the United States and abroad are examining whether Google has run afoul of antitrust laws and should be reined in.



A Google employee walks across the campus at the company's Mountain View, Calif., headquarters. Some 70 percent of Internet searches in the United States are conducted on Google, whose vast portfolio also includes airline ticketing, comparison shopping, social networking and mobile-phone software.

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Volume 21, Number 40 • Pages 953-976

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Recipient of Society of Professional Journalists Award for Excellence ◆ American Bar Association Silver Gavel Award

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Cover: Getty Images/Justin Sullivan

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CQ Researcher

Nov. 11, 2011
Volume 21, Number 40

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An Imprint of SAGE Publications, Inc.

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CQ Researcher (ISSN 1056-2036) is printed on acid-free paper. Published weekly, except: (May wk. 4) (July wks. 1, 2) (Aug. wks. 2, 3) (Nov. wk. 4) and (Dec. wks. 4, 5). Published by SAGE Publications, Inc., 2455 Teller Rd., Thousand Oaks, CA 91320. Annual full-service subscriptions start at $803. For pricing, call 1-800-834-9020. To purchase a *CQ Researcher* report in print or electronic format (PDF), visit www.cqpress.com or call 866-427-7737. Single reports start at $15. Bulk purchase discounts and electronic-rights licensing are also available. Periodicals postage paid at Thousand Oaks, California, and at additional mailing offices. POSTMASTER: Send address changes to *CQ Researcher*, 2300 N St., N.W., Suite 800, Washington, DC 20037.

Google's Dominance

BY DAVID HATCH

THE ISSUES

The meeting between Yelp and Google had the makings of a touching romance — a modern-day Internet version of Hollywood's "When Harry Met Sally." Cute, popular restaurant-review site meets fabulously successful, but laid-back, Web goliath.

But, alas, not all Internet relationships work out.

After debuting in 2004, Yelp quickly caught the eye of Google, the world's leading search engine. Google saw the company as a way to build revenue from local merchants, and in 2005 it agreed to have Yelp reviews appear in Google pages highlighting local businesses.

The trouble started two years later, when Google began compiling its own restaurant reviews, prompting Yelp to sever the arrangement. They clashed again in 2009, after Yelp rebuffed Google's offer to buy the company. [1] Yelp claimed Google took its reviews without permission and then, when Yelp protested, laid down an ultimatum: Google would cease the practice only by removing Yelp's content from its search results.

That threat was the kiss of death, Yelp feared. "As everyone in this room knows, not being on Google is the equivalent of not being on the Internet," Yelp co-founder and CEO Jeremy Stoppelman told a Sept. 21 Senate hearing on Google's business practices. "When one company controls the market, it ultimately controls consumer choice." [2]

Google had already relented this summer, after the Federal Trade Commission (FTC) announced a comprehensive probe into allegations of anticompetitive conduct by Google and Yelp aired its grievances at a legal conference. Even so, Yelp's troubles weren't over. In September, Google purchased Zagat, the prestigious restaurant guide, arming itself with content that directly competes with Yelp.

The dustup over Yelp is part of a much bigger controversy over whether Google, famous for its "Don't Be Evil" motto, leverages its size and scale to bully rivals, dictate unfair business terms and give preferential treatment to its own brands. In addition to the FTC probe, the European Union (EU), South Korea and at least five states are conducting similar inquiries. In response to the federal pressure, Google has hired a dozen lobbying firms to make its case in Washington. (*See Current Situation, p. 968.*)


AP Photo/Ben Margot

Since Google's founding 13 years ago in a Menlo Park, Calif., garage by Stanford University computer science graduate students Sergey Brin, left, and Larry Page, the company has mushroomed into a global powerhouse available in 181 countries and 146 languages.

Critics say Google has employed uncompetitive behavior to achieve its explosive growth. (*See graph, p. 960.*) A rising chorus of companies — from industry stalwarts such as Microsoft to newer ventures such as Nextag, a comparison-shopping site — is demanding that the federal government take action. They want regulators to protect them from an Internet juggernaut that they contend has become too powerful and has ample motivation to favor its own products in Google searches.

But Eric Schmidt, Google's executive chairman, insists that his company plays fair with competitors and risks losing its customer base if it misbehaves. "We live in great fear every day that consumers will switch in extraordinary numbers to other services," he told the Senate subcommittee where the Yelp episode was aired. [3]

In Nov. 4 written responses to questions posed by six members of the subcommittee, Schmidt said Google's size does not impede competition. "Google does not believe that scale is a barrier to entry," he wrote. "The Internet provides a level playing field for competition; Google's size has not changed that fact. We believe we are better not because we are bigger but because our technology is better."

Schmidt acknowledged that Google used "snippets" of reviews from Yelp and other sites, but wrote that was permissible under the "fair use" doctrine, which permits the unauthorized reproduction of copyrighted works under limited circumstances. "Although

Google Umbrella Continues to Expand

Google offers a vast array of services and products, including online advertising, social media, email, mapping and video sharing. A pending acquisition of Motorola Mobility, under review by the Justice Department, would increase Google's reach in the wireless-phone industry.

Key Google acquisitions

YouTube — Free video-sharing site, acquired in 2006 for $1.65 billion.

DoubleClick — Internet-ad service, acquired in 2007 for $3.1 billion.

AdMob — Mobile-advertising company, acquired in 2010 for $750 million.

ITA Software — Travel-industry software company, acquired in April 2011 for $676 million.

Zagat — Restaurant-survey company, acquired in 2011 for $151 million.

Clearwire — Provider of 4G wireless connectivity; 12 percent share acquired in 2008 for $500 million.

Pending acquisitions

Motorola Mobility — Major manufacturer of wireless phones and other devices, including tablets and cable TV boxes; $12.5 billion purchase under review by Justice Department and European regulators for antitrust compliance.

Admeld — Service that helps companies increase revenue from online advertising; $400 million purchase subject to Justice Department approval for antitrust compliance.

Notable products and services

AdSense — Program that integrates advertising with Google's search platform; accounts for more than one-fourth of Google revenue.

Android — Mobile-phone and tablet operating software; has 40 percent of smartphone market.

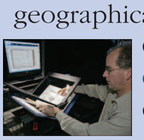
Nexus One — Smartphone marketed by Google and made by HTC; focus of Apple patent-infringement suit.

Google TV — Online platform combining Internet and channel surfing.

Google Wallet — Mobile-payment system allowing storage of credit-card data.

Google+ — Social-networking platform created in response to Facebook.

Google Earth — Online global mapping, satellite-image and geographical-information site.



Gmail — Free, advertising-supported email service.

Google Books — Service that searches full text of books that Google has scanned and stored in its database.

Source: "Exhaustive Google Product List," Google, 2011, spreadsheets.google.com/pub?key=ty_BGDs9hnuBMRvj3AFeB2g&output=html; Jessica Guynn, "Google, Under Fire, Again Boosts Spending on Lobbying," Los Angeles Times*, Oct. 21, 2011, latimesblogs.latimes.com/technology/2011/10/google-under-fire-again-boosts-spending-on-lobbying.html*

Google tries to act responsibly in response to website concerns," he wrote, "ultimately Google builds our search results and search-related products for the benefit of users, not websites." [4]

Looming large in the debate over Google's size and power is Microsoft, Google's fiercest critic and rival. The software giant, itself the focus of an earlier federal antitrust probe, filed an antitrust complaint with the EU against Google in March. [5] Microsoft, which also is helping two small Internet companies with antitrust suits against Google, is a member and funder of the FairSearch Coalition, an industry trade group that argues that Google suffers from an inherent conflict of interest because it competes with sites that rely on it to reach customers. [6]

Yet Microsoft is letting smaller companies take the lead in criticizing Google. The reason, analysts say: Microsoft is sensitive to the fact that it faced questions about its own dominance of the Web-browser market less than a decade ago. As a result, some Google proponents accuse Microsoft of orchestrating much of the criticism in an effort to stymie a formidable competitor it has been unable to halt in the marketplace.

Since Google's founding 13 years ago in a Menlo Park, Calif., garage by two Stanford University computer science graduate students — Larry Page and Sergey Brin — the company has mushroomed into a global powerhouse available in 181 countries and 146 languages. [7]

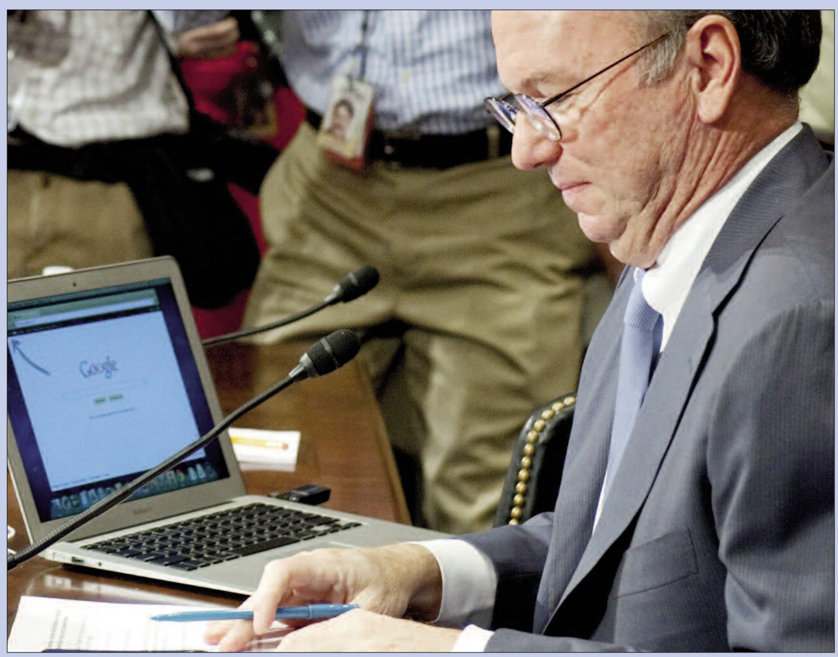
From vivid maps that offer street-level views to an online tool that translates 63 languages, Google offers a panoply of services that have changed how the world does business and socializes. While it still serves up links to other websites when someone needs "ratatouille recipes" or "Machu Picchu travel tips," it is increasingly a destination for its own content and services. It now offers airline ticketing, comparison shopping, maps, news aggregation, restaurant and hotel reviews, social media and more. Google even is contemplating entry into the cable-television business. [8]

In 2010, Google generated more than $29 billion in annual revenue, 96 percent from online ads, helping to fuel its growth and expansion into other businesses. [9] In the United States, the company towers over Microsoft's new Bing search engine, which is a distant second and hemorrhaging billions per year in operating losses. In third place is Yahoo!, a constant subject of takeover speculation. (In late October, reports suggested that Google might be interested in buying Yahoo!) Bing powers Yahoo!'s search capabilities under a 2010 agreement. [10]

Supporters cite Google's rise as a quintessential American success story. "I'm proud of what they're doing," says Rep. Anna Eshoo, D-Calif., whose Silicon Valley district is home to the company's, 26-acre campus and 500,000-square-foot headquarters — the famed Googleplex — where massage chairs, foosball tables and free meals for employees are among the amenities. [11]

Google now employs more than 31,000 people worldwide. [12] That includes 9,000 in California alone, according to Eshoo. (Google declines to provide U.S. employment figures.) And the company says its site generated $64 billion in "economic activity" for hundreds of thousands of small businesses last year. [13] "They're helping small businesses, not just in the [San Francisco] Bay area but around the country and around the world," Eshoo says.

Detractors, however, see a monopoly with the power and incentive to stifle competition. As evidence, they note that at least 65 percent of all online searches in the United States are conducted on Google (the figure rises to about 70 percent if smaller search engines that Google powers are added in), and 90 percent in some countries. [14] Google similarly dominates the lucrative online-advertising business, commanding 79 percent of the U.S. share. [15]



AFP/Getty Images/Saul Loeb (both)

Keeping an Eye on Google

Jeff Smith of Scoops2us, a group that tries to raise awareness of Goggle's business practices in partnership with the Consumer Watchdog Privacy Project, hands out ice cream sandwiches in Washington, D.C., on Sept. 21, 2011, ahead of testimony by Google Executive Chairman Eric Schmidt before the Senate Judiciary Committee's Subcommittee on Antitrust, Competition Policy and Consumer Rights (top). Schmidt, preparing to testify (bottom), defended the company's practices, saying that Google's philosophy is to "always put consumers first." Referring to grievances aired by rivals, he said, "not every website can come out on top."

Critics also view some of the company's tactics as improper. For example, they allege that Google rigs its search algorithms to favor its own services and content and mimics successful Internet ventures to squeeze them out of business. "For a growing percentage of users, Google is the Internet," writes Scott Cleland, a business consultant, author of *Search & Destroy: Why You Can't Trust Google Inc.* and one of Google's staunchest critics. [16]

But in his Nov. 4 written responses to lawmakers, Schmidt rejected the notion that Google is anti-competitive, saying the question of whether Google favors its products and services "is based on an inaccurate premise." The online search results in question are part of Google's search service, he wrote, and "not some separate 'Google product or service' that can be 'favored.' " And rather than undermining other businesses, he wrote, "Google actually provides free promotion to millions of innovative websites through our search results." [17]

Yet Google's reach worries critics. "When they're operating in that many areas, and they have that much market share, you have some risk — some potential — for anticompetitive behavior," Sen. Mike Lee, R-Utah, a member of the Senate panel that held the Google hearing, told *CQ Researcher*.

"It is beyond serious dispute that Google is dominant in search and paid-search advertising" and that it is "expanding into other areas and coming to dominate many of them," says Tom Barnett, a lawyer who headed the Justice Department's Antitrust Division during the Bush administration. He now represents the online travel site Expedia, a Google competitor and member of the FairSearch Coalition.

At the hearing, Schmidt emphasized that Google's philosophy is to "always put consumers first." Referring to grievances aired by rivals, he said, "not every website can come out on top" and that some companies demand to lead Google's rankings "even when they're not the best match."

Google declined to make any executives available for comment for this report.

As regulators, lawmakers and technologists debate Google's future, here's a look at some of the key questions they are asking:

Does Google wield too much control over the Internet?

Purchase a smartphone,* and chances are its default search engine is Google. If its operating system is Android, Google owns that, too. Android software now commands 40 percent of the wireless marketplace. [18]

And that's not all. More than 95 percent of mobile Internet searches in the United States are conducted via Google. [19] The company has an exclusive deal with Apple to serve as the default browser on its popular iPhone and similar arrangements with other manufacturers. And Google's pending $12.5 billion acquisition of Motorola Mobility, a manufacturer of mobile phones, tablet computers and other electronic devices — announced in August and under review by the Justice Department — could make it a major player in the wireless-handset business.

Taken together, Google's swift expansion into mobile phones is only one example of how the company has, in the view of its critics, used its scale and influence to strengthen its grip over the Internet. But Google's defenders argue that far from engaging in unfair competitive practices, the company is merely trying hard to succeed in a crowded field of technology stalwarts and upstarts vying for a piece of the burgeoning Internet industry.

Since its founding by Page (now CEO) and Brin (who directs special projects), Google has acquired dozens of promising Internet-related ventures, including the wildly popular video site YouTube. It also has mimicked the business models of other successful Internet ventures that it didn't, or couldn't, buy. For instance, in September, Google completed its acquisition of Daily Deals, a German-based provider of online discount coupons that is similar to fast-growing Groupon, which Google unsuccessfully tried to buy last year. Google also is testing a new discount coupon service called "Google Offers." [20]

Some Google-watchers worry that these acquisition practices are designed to thwart potential competitors.

John M. Simpson, director of the Privacy Project for Consumer Watchdog, a Los Angeles-based advocacy group, notes that the popularity of AOL's MapQuest service plummeted after Google introduced its own online maps, which he claims receive preferential treatment on its site. Google accomplished this, he says, by giving its maps top billing in searches, even when MapQuest was more popular.

"It's potentially dangerous and troubling to have one profit-making company controlling search that is the gateway to the Internet for most people," he says.

Jeffrey Katz, CEO of the online shopping site Nextag, argues that if Google's power is left unchallenged, the company will crowd out smaller competitors — such as his. "We are pleased to have helped [Google] grow their business, and we are appreciative they helped us grow ours," he told the Senate Judiciary panel in September. "Now, however, they are not innovating, they are copying our business after we invested hundreds of millions of dollars to perfect it, and they are very politely, and deftly, moving us aside."

Katz also said Google increasingly answers queries directly, meaning users have no need to click on links to other sites. Google is so central to e-commerce that failure to appear in its

* A smartphone is a cellphone with advanced features, such as Internet connectivity, video recording and digital-music playback.

top 10 search results, or at least on its main page, can mark the death knell for a company, says Stephen Kaufer, president and CEO of TripAdvisor, a site specializing in hotel reviews. "Their position in the marketplace obligates them to play fair," he says.

Google frames the issue very differently, however. It sees competitive threats from a growing assortment of nimble players. In written testimony for the Senate hearing in September, Google's Schmidt said he views popular sites such as Amazon, eBay, Facebook and even Wal-Mart as forms of search engines that compete directly with Google.

In the shopping category, "they have been extremely successful," he emphasized. "EBay handled more than two billion U.S. searches in the third quarter of 2010, and Amazon saw 847 million searches during the same period, while Google handled only 226 million product searches during that quarter," he wrote. Put another way, "Among these three companies, eBay had 65 percent of product searches for the period while Google had just seven percent." [21]

While Microsoft's Bing and Yahoo! have struggled in recent years, they've also shown signs of renewed vigor. On Oct. 3, Yahoo! entered into an agreement with ABC News for an online-news alliance that will deliver content to more than 100 million people in the United States each month. [22] Days later, Yahoo!'s stock price jumped 10 percent following reports that Microsoft might bid for the company. [23]

On. Nov. 8, Microsoft, AOL and Yahoo! entered into an advertising alliance under which each company can sell inventory for its partners. [24]

Meanwhile, Bing has moved into the No. 2 spot among U.S. search engines just two years after its launch.

Stephen Houck, an antitrust lawyer in New York who represents Google, says rivals such as Microsoft engage in many of the same competitive practices as Google. Bing has cut exclusive deals with Dell, HP and other computer manufacturers and Microsoft's Xbox gaming system to serve as the default browser.

Bing is also the exclusive search provider for Facebook, which presents a substantial competitive threat to Google, he and other Google supporters point out. In March 2010, the popular social-media site achieved a milestone when its traffic surpassed Google's for the first time. Increasingly, many consumers are turning to Facebook, Twitter and other online destinations to search for recommendations from friends about restaurants, movies and nightspots. According to Nielsen's latest "Social Media" report, "Americans spend more time on Facebook than they do on any other U.S. website," while social networks and blogs account for nearly a fourth of the time that Americans spend online. [25]

"You can sometimes draw too much from sheer market-share numbers," says Houck. Complaints about Google's dominance are "somewhat ironic" because the companies grumbling the most "are getting all this free traffic from Google," he says.

Getty Images/Spencer Platt

Yelp, an online restaurant-review site, tangled with Google after complaining the giant search-engine company was using Yelp's reviews without permission. In September, Google purchased Zagat, the prestigious restaurant guide, arming itself with content that directly competes with Yelp.

Does Google violate antitrust law through anticompetitive behavior?

It's not illegal to be a monopoly. But it is illegal for a monopoly to run afoul of antitrust laws intended to prevent powerful companies from leveraging their size and dominance to gain an unfair advantage. When regulators determine a violation of such laws has occurred, they can force a company to sell off divisions or stop it from entering lines of business where it already exerts too much control.

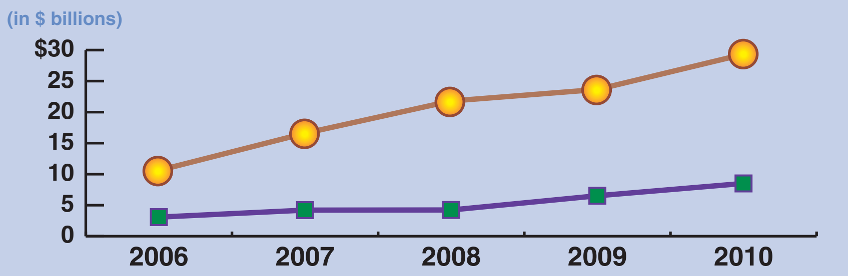
Google says none of its actions come close to meeting that legal threshold. At the September Senate hearing, Google's Schmidt said he was "not aware of any unnecessary, or strange, boosts or biases" that favor his company's content and products on its search engine. And he insisted that Google already has made changes in response to anticompetitive concerns. Last year alone, his company made more than 500 revisions to its search algorithms in an effort to improve results, he said. The "ultimate correction" for any wrongdoing "is how consumers behave," he said, explaining that Internet users would go elsewhere if Google loses their trust.

But detractors claim to have solid evidence of legal violations. Among

Google Rides Growth Wave

Google's revenue nearly tripled between 2006 and 2010, to more than $29 billion, while net income rose from about $3 billion to more than $8.5 billion. Along with its search engine and advertising business, Google's Android mobile software and its video-sharing site YouTube have helped spur the company's growth.

Revenue and Net Income, 2006-2010



Source: Google Inc. Form 10-K, U.S. Securities and Exchange Commission, December 2010, investor.google.com/documents/20101231_google_10K.html

their accusations: Google favors its own offerings on its site, intimidates competitors and manipulates search-engine algorithms and advertising rates to undermine rivals.

Barnett of the FairSearch Coalition asserts that Google prominently features links to proprietary content in its search results that create a "false expectation" because the links are not labeled as sponsored ads. "That enables Google to steer users to its other products and services," such as online maps, Google Finance and Google Places, its pages promoting small businesses, contends Barnett.

Barnett and the FairSearch Coalition also claim Google manipulates its advertising policies to force competing sites to pay rates higher than those charged to comparable sites that don't pose a threat.

Asked to comment, a Google spokesman pointed to a company website about the FTC investigation. "We rank search results to deliver the best answers to users, and that is the only consideration — not political viewpoints, and not advertising dollars," the site says. It emphasizes that most large advertisers run spots "in lots of different places" and that "Google is only responsible for about 3% of all ad revenue." [26]

But Barnett says that at a minimum, he wants regulators to block the company from displaying "deceptive" links and from repurposing content from other sites without permission. He also wants Google barred from what he says is unfair manipulation of competitors' search results or ad rates.

TripAdvisor CEO Kaufer contends that he has been the target of abusive behavior by Google. Similar to Yelp's complaint, he accuses the company of using reviews from his site without authorization. When confronted, he says, Google officials said he could remove TripAdvisor from the search engine to end the practice — an option he dismisses as unfair.

"I blew a gasket," Kaufer recalls. "I don't view what they did to TripAdvisor as a minor infraction. I view it as blatant stealing — unauthorized use of something that took me a decade to create — in order to compete with me."

Kaufer says Google stopped using TripAdvisor's material without permission only after he complained to the Justice Department earlier this year as the agency reviewed Google's acquisition of ITA Software, a company that specializes in airline-ticketing software.

Kaufer says he wonders how Google treats smaller firms, given that, in his view, it was willing to play hardball with a relatively sizable operation such as TripAdvisor that can "make some noise" in Washington.

But others dismiss charges that Google has engaged in unfair business practices. "You can't infer that there's a problem from the fact that Google is large," says Geoffrey Manne, a professor at Lewis and Clark Law School, in Portland, Ore., and co-author of academic papers and a book chapter defending Google on antitrust issues. " 'Big is bad' is not an acceptable antitrust analysis anymore," says Manne, who runs a think tank called the International Center for Law & Economics that promotes regulations encouraging competition and innovation, and that receives funding from Google.

Houck, the antitrust lawyer, who served as the lead trial counsel for 20 state plaintiffs in the federal government's lawsuit against Microsoft, agrees. "Coming from my background on the Microsoft case, this is not the kind of evidence that really leads one to believe that there's a strong antitrust case out there," he says.

Houck says antitrust law focuses on market power — particularly the durability of a dominant company's influence. Google lacks market power, he argues, because it cannot insulate itself from competition and consumers can easily switch to competitors. While rivals may dislike some steps Google has taken to improve its search engine, "it hasn't done what it's done to try to foreclose competition," he contends.

Bert Foer, president of the American Antitrust Institute, a think tank and advocacy group, says Google should attract rigorous oversight from policymakers. "Google is such a new and unique phenomenon that it definitely needs to be looked at and monitored," he says. But he thinks regulators and industry rivals face several hurdles in pursuing antitrust enforcement action against the company. For starters, he says, any restriction on Google's ability to display search results or other content would raise First Amendment issues.

And it won't be easy for Google's accusers to convince federal officials that the company has violated antitrust law. "There's a whole variety of procedural obstacles that have been emplaced by the courts that make successful antitrust enforcement less probable," he observes.

For example, aggrieved parties must demonstrate that the alleged abuse is covered by antitrust law and that their complaints merit attention because their businesses were directly harmed. "I think they're probably going to tread carefully," Foer predicts of antitrust enforcers.

Should the federal government break Google into separate companies?

As Google continues to expand and evolve, chatter is increasing about the possibility of federal regulators forcing the company to divest some assets — if not immediately, then perhaps in coming years. One of the strictest views is held by Consumer Watchdog's Simpson, who argues that Google should be broken up into separate content and distribution companies. He contends that is the only way to ensure that Google doesn't favor its own products on its search engine. But others warn that splitting up Google amounts to overreacting to worries about anticompetitive behavior and ultimately could cause more harm than good.

If it were split apart, Google would possibly revert back to its original mission of serving as a tool for online searches, while its vast portfolio of ancillary services — Gmail, its new social-media site Google+, airline ticketing, online maps, comparison shopping, restaurant reviews and so on — might be spun off. Even YouTube, which mostly features user-generated content, could be subject to divestiture if Google succeeds in its effort to purchase Hulu, a destination for premium television shows and films, Simpson adds. [27]

"Search, in some sense, is like a public utility," Simpson says. "It is the way that everyone gets onto the Internet. [The search industry] needs to be regulated and reviewed in the context of the public utility that it has become."

Simpson claims Google uses its profits from its core search and advertising businesses to "subsidize" its entry into other enterprises that compete with firms that rely on Google to reach customers. "I think there may be some fundamental conflict of interest when you start to provide your own content and you run a search engine," he argues. Google, he says, is "pretty hard to escape" these days when people go online.

The solution, Simpson says, would be to force Google to divest some holdings. "Smart regulations make for level markets, and level playing fields and can actually enhance a fair marketplace," Simpson argues. "If you don't have regulation, things sometimes get completely out of whack and you have monopolists emerging that wield monopoly power."

The concept is loosely modeled on the Justice Department's historic decision in 1982 to break up AT&T into separate Bell telephone companies after determining AT&T was too large and powerful in the phone business.

But Google's proponents dismiss the idea outright. "Breaking them up along those lines would just be stupid," argues Manne, the Lewis and Clark professor. "There are efficiencies to large scale" such as lower operational costs that would be lost if Google were required to sell some of its assets, he contends. That could result in "additional costs on Google [and] on consumers, because we would be losing the benefits of that efficiency."

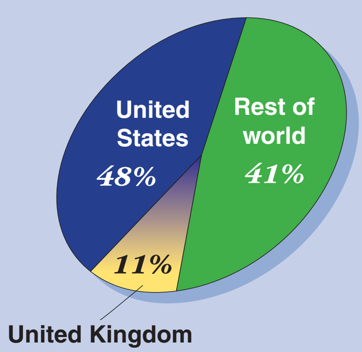
Even if divestitures were required, Google might still be able to offer variations of the services or businesses it sells off by entering into contracts with third parties, Manne says. "Anything you can do by integration [of companies] you can do by contract," he says. "Therefore, forcing them to break up shouldn't be presumed to cause any improvement."

Houck, the antitrust attorney, draws a distinction between the sort of "vertical integration" that Google has engaged in — that is, its expansion into new lines of business beyond its mainstays of Internet search and advertising — and "horizontal integration," which involves the combination of similar companies (say, if Google were to merge

Foreign Markets Boost Google's Growth

More than half of Google's $29 billion in revenue in 2010 came from abroad. Increased acceptance of the company's advertising programs and development of localized versions of its products have spurred the company's overseas expansion.

Google Revenue by Country, 2010



Source: Google Inc. Form 10-K, U.S. Securities and Exchange Commission, December 2010, investor.google.com/documents/20101231_google_10K.html with Bing). "Most antitrust authorities are worried about horizontal mergers" rather than vertical ones, he says.

A breakup of Google would require substantial regulatory action by the government — something that Google's defenders warn could have unintended repercussions. "Ultimately, regulation of Internet search would result in a significant expenditure of government resources and a decline of quality and innovation in search," Susan Creighton, a former senior FTC official who testified at the Senate hearing on behalf of Google, predicted in written testimony. [28] She represented Microsoft rival Netscape during the historic antitrust case against the software giant. [29]

Adam Thierer, senior research fellow at George Mason University's Technology Policy Program, concurred. Discussing the prospect of government regulation of Google+, Facebook, LinkedIn and Twitter, he wrote that "treating these digital services like the equivalent of a local sewage company would be a disaster for consumers" because "public utility regulation is the arch-enemy of innovation and competition." [30]

Even some of Google's fiercest critics caution that talk of breaking up the company may be premature. "I don't think anything should be off the table," says Barnett of the FairSearch Coalition, "but I think it is too early to make a judgment."

Foer of the American Antitrust Institute says an AT&T-style breakup is a long shot — at least now. But he cautions that as Google continues to acquire companies and add more proprietary content, "the more opportunities there are for manipulation and for problems." As a result, he says, forcing Google to make changes to its business practices "should not be off the table if you find that there are serious violations." ■

Stanford computer science graduate students Larry Page and Sergey Brin rented this garage in Menlo Park, Calif., for $1,700 a month in 1998 to set up Google, which they said would "organize the world's information and make it universally accessible and useful." The company, which moved out of the garage five months later, purchased the 1,900-square-foot house in 2006 to preserve a symbol of Silicon Valley entrepreneurship. The house is used to accommodate company guests.

BACKGROUND

Breaking Standard Oil

Debates over corporate dominance have deep historical roots. In the 19th century, concern arose about monopolies eager to abuse their marketplace power. By the 1870s, Standard Oil was rapidly evolving into a corporate monolith as its chairman, the legendary tycoon John D. Rockefeller, leveraged his company's size and influence to his advantage.

Rockefeller pressured the railroad industry into lowering shipping rates and threatened to send competitors into "financial ruin" if they refused to sell to Standard Oil, wrote journalist Steve Weinberg in *Taking on the Trust.* [31] Struggling rivals became easy prey. Over the next two decades, Standard Oil swallowed independent producers and refiners across the country and by 1900 controlled more than 90 percent of refined oil in the United States. [32]

Passage of the Sherman Antitrust Act in 1890, the nation's first antitrust law, forced Standard Oil to alter some practices. But the law was too vague to halt the expansion of Rockefeller's empire without backing from the courts. Moreover, Congress set aside only a small amount of funding for Justice Department enforcement of the act, Weinberg noted. [33]

Standard Oil's reign eventually ended. On May 15, 1911, the U.S. Supreme Court ruled that the giant firm had overstepped the antitrust law and broke it into 34 companies. The historic decision resulted in the creation of brand names that still exist, including Amoco, Chevron, Exxon and Mobil. It also ushered in a new era of antitrust enforcement. [34]

Gobbling Up Competition

When founders Page and Brin first began tinkering with their Internet search engine in 1996, they called it BackRub. A year later, they decided the site needed a new name. [35]

"After some brainstorming, they go with Google — a play on the word 'googol,' a mathematical term for the number represented by the numeral 1 followed by 100 zeros," the company says in its online history. "The use of the term reflects their mission to organize a seemingly infinite amount of

Continued on p. 964

Chronology

1890-1970s

New laws usher in era of antitrust enforcement.

1890
Congress enacts the Sherman Antitrust Act, the nation's first sweeping antitrust law.

1911
U.S. Supreme Court forces the breakup of Standard Oil in first significant victory for trust busters over powerful monopolies.

1914
The Clayton Act clarifies restricted behavior under the Sherman Act and bars transactions that could lessen competition. . . . Congress creates the Federal Trade Commission, charged with monitoring businesses and protecting consumers.

1945
Aluminum Company of America found in violation of antitrust law by U.S. Appeals Court but avoids divestiture.

1976
Hart-Scott-Rodino Antitrust Improvements Act establishes merger-review guidelines for the FTC, Justice Department.

1980s ***Communications, computer giants face antitrust scrutiny.***

1982
In a historic settlement, the Justice Department forces AT&T to divest its local phone companies.

1982
Justice Department drops probe spanning more than two decades into allegations IBM maintains an illegal monopoly over mainframe computers.

1990s-2002

Microsoft faces investigations as Internet blossoms.

1994
Justice Department settles antitrust suit with Microsoft.

1998
Google founded by Stanford University computer science graduate students Larry Page and Sergey Brin in California garage.

2001
Justice Department settles a second antitrust lawsuit against Microsoft.

2005-2009

Google rises from obscure start-up to global Internet superpower.

2005
Google purchases tech start-up Android, a designer of software for mobile devices.

2006
Google purchases video-sharing site YouTube for $1.65 billion.

2007
Google acquires DoubleClick for $3.1 billion; the purchase solidifies Google's dominance over Internet advertising.

2008
Yahoo! rebuffs Microsoft's purchase bid. . . . Google backs out of deal that would have let Yahoo! harness Google's ad-placement technology after Justice Department raises antitrust concerns. . . . Google invests $500 million in Clearwire, a provider of super-fast, 4G wireless voice and Internet service.

2009
Microsoft introduces the search engine Bing as a competitor to Google.

2010-Present

Google continues its expansion despite pressure from Washington, European Union.

2010
Google launches Google TV, which melds Web and channel surfing. . . . European Union begins formal antitrust investigation of Google.

2011
FTC settlement with Google requires company to offer improved privacy protections. . . . Federal judge bars Google from selling digital copies of millions of books it has scanned. . . . Justice Department approves Google's $676 million acquisition of ITA Software, an airline-ticketing company, with conditions. . . . FTC begins comprehensive antitrust investigation of Google's business practices. . . . Google introduces Google+, a new social-media site. . . . Google announces $12.5 billion acquisition of Motorola Mobility, a major manufacturer of wireless handsets and other electronic devices. . . . Google pays $500 million Justice Department fine for permitting Canadian. pharmacies to advertise to U.S. consumers via its site. . . . Google adds Zagat, the popular restaurant-review guide, to its portfolio. . . . Senate Judiciary antitrust subcommittee holds high-profile hearing on Google's business practices.

Great Wall of Censorship Surrounds Google in China

"No one in China ever sees an uncensored version of Google search results."

The world's most populous nation represents a vast, untapped marketplace for Google. But China also symbolizes an enormous challenge for Google: exporting a search engine founded on Western principles of openness to a regime that routinely censors free expression and dissent.

Google launched a Chinese-language version of its site in 2002 and added Google News in 2004. But as the site's popularity grew, Chinese officials increasingly demanded that Google censor material they said would inflame anti-government sentiment. [1]

"Senior Google executives believed they had to make a choice between denying Chinese citizens some political searches and denying them all searches," journalist Ken Auletta recounted in *Googled, the End of the World as We Know It*. In response, the company in 2006 set up a separate website, www.google.cn, that offered "politically sanitized searches in China," Auletta wrote. [2]

Topics such as independence for Taiwan and the 1989 Tiananmen Square massacre were off-limits, while a search for the outlawed spiritual movement Falun Gong led Web users to content condemning the group. [3]

In January 2010, Google revealed that its servers had been hacked from China in a sophisticated operation and that the Google Gmail accounts of Chinese human-rights activists were targeted — with at least two such accounts accessed. The hackers reportedly also breached the servers of at least 20 other large U.S. companies. In the course of investigating the attacks, Google discovered phishing scams and malware* designed to infiltrate the accounts of Gmail users in the United States, Europe and China sympathetic to Chinese dissidents.

"These attacks and the surveillance they have uncovered — combined with the attempts over the past year to further limit free speech on the Web — have led us to conclude that we should review the feasibility of our business operations in China," David Drummond, Google senior vice president and chief legal officer, said in a blog post. "We have decided we are no longer willing to continue censoring our results on Google.cn." [4]

For Google, the hacking signified that the company's "China problem" — as author Steven Levy describes it — could no longer be contained. "After weeks of struggling with the issue, Google's Executive Committee" — including Executive Chairman Eric Schmidt and Google co-founders Larry Page and Sergey Brin — "finally agreed on the most significant and embarrassing retreat in the company's history," Levy writes in his book, *In the Plex*. "On Jan. 12, 2010, they changed course in the country with the world's biggest Internet user base, announcing an effective pullout of their search engine from mainland China." [5]

Google now tries to circumvent communist Chinese censors

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* Phishing is a form of email fraud in which a scammer tricks someone into revealing confidential information. Malware is malicious software that can infect a computer and steal sensitive data.

Continued from p. 962

information on the Web." In 1998, Sun Microsystems co-founder Andy Bechtolsheim gave the budding Internet entrepreneurs $100,000 as seed money for their planned start-up venture. [36]

Google quickly created buzz in technology circles. Page and Brin set as its core mission "to organize the world's information and make it universally accessible and useful." Just months after its launch, *PC Magazine* reported that Google "has an uncanny knack for returning extremely relevant results." [37] It wasn't long before the new search engine with the funny name started to squeeze out less nimble competitors such as AOL and AltaVista.

In his book *Googled, the End of the World as We Know It*, journalist Ken Auletta writes that from the start, Brin and Page had a very different approach to their Internet business compared with other technology entrepreneurs. "They rejected the conventional wisdom embraced by AOL and Yahoo and Microsoft's MSN to create portals and try to keep users in their walled gardens with an array of content," he writes. "They believed the right approach was to get users out of Google and to their search destinations quickly." Another distinguishing feature was that Google kept its site uncluttered, especially with the pop-up and banner ads that were prevalent on other sites. [38]

Also different about Google, author Steven Levy emphasizes in his book, *In the Plex*, is that the company sees value in pursuing risky ideas. "Google spun out projects like buckshot, blasting a spray and using tools and measurements to see what it hit," he writes. "And sometimes it did try ideas that seemed ill-suited or just plain old." [39]

Levy recounts a discussion he had with Marissa Mayer, vice president of Local, Maps and Location Services at Google, about the premium that the company's founders place on nonconformist thinking. " 'It's really ingrained in their personalities to ask their own questions, do their own things. To disrespect authority,' she said. 'Do something because it makes sense, not because some authority figure told you to do it.' " [40]

Another key to Google's success has been its aggressive approach to snapping up promising Internet ventures. Last year, the company completed 48 acquisitions. [41] So far this year it has completed 57. [42] And in its latest an-by automatically rerouting users of Google.cn to Google.com/hk, a site in Hong Kong, a Chinese territory that operates with significant autonomy. "This redirect, which offers unfiltered search in simplified Chinese, has been working well for our users and for Google," Drummond wrote in a June 2010 follow-up blog post. But he also cautioned that Chinese officials "find the redirect unacceptable" and might refuse to renew the company's license. [6]

AFP/Getty Images/Liu Jin

A Chinese flag flies outside the Google China headquarters in Beijing on Jan. 14, 2010. Shortly before, Google, which faced censorship demands from Chinese authorities, announced it would shift its Chinese-language website to Hong Kong, a Chinese territory that operates with significant autonomy.

In a sign that Beijing is accepting Google's "workaround" solution, mainland officials renewed Google's Internet license for a year days after Drummond's post, and this September they did so again. [7]

Siva Vaidhyanatahn, a media-studies and law professor at the University of Virginia, contends in his book, *The Googlization of Everything*, that Google's retreat from China gave the government there exactly what it wanted: "to be rid of a troublesome company that was never comfortable operating under Chinese law."

But he also emphasizes that the arrangement has not ended the censorship. "The Chinese government itself censors and often blocks access to the Hong Kong-based Chinese language version of Google," he writes. "So no one in China ever sees an uncensored version of Google search results." [8]

— David Hatch

[1] Ken Auletta, *Googled, The End of the World as We Know It* (2010), p. 134.

[2] *Ibid.*

[3] For background, see "Google Censors Itself for China," BBC News, Jan. 25, 2006, http://news.bbc.co.uk/2/hi/technology/4645596.stm.

[4] David Drummond, "A New Approach to China," Google blog, Jan. 12, 2010, http://googleblog.blogspot.com/2010/01/new-approach-to-china.html

[5] Steven Levy, *In the Plex* (2011), pp. 267-268.

[6] David Drummond, "An Update on China," Google blog, June 28, 2010, http://googleblog.blogspot.com/2010/06/update-on-china.html.

[7] Loretta Chao, "Chinese Regulators Renew Key License For Google," *The Wall Street Journal*, Sept. 7, 2011, http://online.wsj.com/article/SB10001424053111904836104576556203077777200.html.

[8] Siva Vaidhyanatahn, *The Googlization of Everything (And Why We Should Worry)* (2011), pp. 117-121.

nual filing with the Securities and Exchange Commission, Google said the buying spree would continue. [43]

"Emerging start-ups may be able to innovate and provide products and services faster than we can," Google said. "If our competitors are more successful than we are in developing compelling products or in attracting and retaining users, advertisers, and content providers, our revenues and growth rates could decline." [44]

The company's $1.65 billion purchase in 2006 of YouTube has driven considerable traffic to Google, which is partnering with several media companies to offer roughly 100 free, ad-supported "channels" over the video-sharing site. [45] Acquisition of DoubleClick and AdMob in 2007 and 2010, respectively, helped solidify Google's perch as the leader in online advertising. [46]

In April, the Justice Department approved another major Google acquisition: its $676 million purchase of ITA Software, which specializes in online airline ticketing, over the opposition of established online travel websites, such as Expedia and Travelocity. [47] Justice officials imposed several conditions in an effort to assuage the concerns of competitors.

Google's August announcement that it plans to acquire Motorola Mobility, a major player in the wireless handset business, drew attention to its growing emphasis on mobile communications. [48] Google already has a major presence on smartphones through its Android software and its stake in Clearwire, a provider of high-speed wireless service. The proposed Motorola Mobility deal is under review by the Justice Department's Antitrust Division.

Antitrust Action

The Sherman Act, named for its main author, Republican Sen. John Sherman of Ohio, could play a central role in shaping Google's fate. "As the U.S. and global markets have grown tremendously since their inception, the Sherman Act is ever more relevant and critical in our daily life," the Justice Department said last year in a blog post commemorating the 120th anniversary of the act.

"That means when we pay phone bills, buy flat screen TVs or frozen packaged goods, the Sherman Act plays

Google's Privacy Policies Spark Intense Criticism

"What you do on the Internet should be under your control."

When Google Chairman Eric Schmidt arrived on Capitol Hill in late September to testify before a Senate panel examining Google's market dominance, mimes dressed in track suits were on hand to "track" his movements. Dispatched by the anti-Google group Consumer Watchdog, the mimes followed Schmidt around the Capitol to call attention to what they claim is Google's policy of tracking the keystrokes, clicks and other online activities of Google's billion users worldwide. [1]

Google has faced a steady stream of criticism for privacy policies that some experts call short-sighted and invasive. Helping to galvanize the critics are Schmidt's own words, uttered in 2010, when he said Google's policy is to "get right up to the creepy line, and not cross it." [2]

Google drew flak last year when it introduced the social-media site Buzz as an enhancement to its Gmail service and ran into blistering criticism that it was collecting and disseminating personal information about its users. The Federal Trade Commission charged that many Gmail users were unable to decline to join Buzz, or to leave it. What's more, the FTC said, for those who joined, "the controls for limiting the sharing of their personal information were confusing and difficult to find." In response, Google signed a consent decree with the FTC in March that bars it from making "future privacy misrepresentations," requires it to maintain a comprehensive privacy program and subjects it to independent privacy audits for the next 20 years. [3]

The storm over Buzz was one of a number of controversies facing Google over its privacy policies. The company admitted last year that its fleet of camera-equipped vehicles gathering images for its online maps mistakenly collected unsecure data from wireless networks, including e-mail addresses and financial information. [4] Google's Street View technology, meanwhile, sometimes inadvertently captures sensitive images, such as a Miami woman standing naked outside her front door. [5]

Lawmakers from both major parties were particularly incensed in February after news outlets reported that Google collected the Social Security numbers of children participating in its annual doodling contest, in which youngsters compete to redesign Google's homepage logo. The Internet giant quickly abandoned the data-collection practice following public outrage. [6]

That episode, along with Google's agreement with the FTC over Buzz, suggest to some that the company is willing to bend, but John M. Simpson, director of Consumer Watchdog's Privacy Project, remains skeptical. " 'Don't ask permission, you can always ask forgiveness,' " seems to be Google's guiding principle on privacy, he says. "What you do on the Internet — where you go, and that sort of thing — that information should be under your control so that if you don't want it shared, it shouldn't be."

Many other websites also monitor online behavior by using so-called tracking "cookies" and by targeting ads to Web users based on their Internet activity. But Consumer Watchdog focuses on Google in part because of its market dominance. "If they can be persuaded to adopt some better privacy standards, there is a good chance that they will set standards for the rest of the Internet companies," Simpson says.

In *The Googlization of Everything*, author Siva Vaidhyanathan, a media-studies and law professor at the University of Virginia, wrote that the fine print of the company's privacy policy makes it clear "that Google retains the right to make significant decisions about our data without regard for our interests." While Google states that it will not share information with other companies without a user's consent, "it asserts the right to provide such information to law enforcement or government agencies as it sees fit," Vaidhyanathan wrote. [7]

But Google has defended its practices while also acknowledging their sensitive nature. "In all cases it's a trade-off . . . , where you will give up some of your privacy in order to gain some

a role in preventing companies from illegally monopolizing and colluding and artificially setting prices," the department said. [49]

Two related laws, both enacted in 1914, fortified antitrust protections. The Clayton Act helped clarify the types of anti-competitive practices prohibited under the Sherman Act and barred mergers and acquisitions that could lessen competition, while the Federal Trade Commission Act established the consumer protection agency to guard against unfair business practices. [50]

Another law, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, empowered both the FTC and the Justice Department, which share jurisdiction over antitrust matters, to apply antitrust laws to mergers requiring government approval.

Still, Washington, has had mixed success over the years in efforts to corral major communications companies. Prompted by concerns that AT&T was too dominant in the phone service business, the Justice Department in 1982 forced the divestiture of the company's local phone subsidiaries, known as the Baby Bells, so AT&T could focus on long distance. But as the competitive landscape changed, AT&T largely reconstituted itself, combining with SBC Communications in 2005 and BellSouth in 2006. It now hopes to acquire T-Mobile, the nation's fourth-largest wireless telecom carrier, in a deal under review by Justice officials.

But the antitrust action that casts the longest shadow over Google is the protracted probe of Microsoft that functionality, and so we really need to make those trade-offs really clear to people, what information we are using and what's the benefit to them, and then ultimately leave it to user choice," Google Vice President Marissa Mayer told PBS host Charlie Rose in 2009. [8]

Anne Helmond

Siva Vaidhyanathan, a media-studies and law professor at the University of Virginia, wrote that the fine print of Google's privacy policy makes it clear that the company "retains the right to make significant decisions" about users' data without regard for their interests.

Responding to pressure from U.S. and foreign consumer groups and policymakers, Google has taken steps to strengthen its privacy safeguards in recent years. In 2009 it instituted a Privacy Dashboard that allows for personalized settings, such as deletion of users' Web history and management of their "online reputation," along with the ability to opt out of ads targeted to users' online behavior. Google also is among Internet companies embracing the concept of so-called privacy-by-design, in which privacy safeguards are conceived for new products from the start rather than added late in the process as an afterthought. That ensures that privacy protections are central to the design of a new product or application. [9]

"While we've made some mistakes, if you look at our overall track record it's good," Google spokesman Chris Gaither contends. He says the company is redoubling its efforts "to build privacy and security controls" into products and tries to be "as transparent as possible" about data collection. Last October, longtime Google engineer Alma Whitten was appointed director of privacy for product management and engineering.

As a result, some industry watchers are taking notice — and applauding the changes. "After flunking Privacy 101 with Buzz, which automatically built a public social network using Gmail users' formerly private contact lists, Google has designed a social network with privacy as its building block," *Forbes* wrote in July of the company's new Facebook competitor, Google+. [10]

— David Hatch

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[1] Amir Efrati, "Google Notches One Billion Unique Visitors Per Month," *The Wall Street Journal*, June 21, 2011 http://blogs.wsj.com/digits/2011/06/21/google-notches-one-billion-unique-visitors-per-month/.

[2] Derek Thompson, "Google's CEO: 'The Laws Are Written by Lobbyists,' " *The Atlantic*, Oct. 1, 2010, www.theatlantic.com/technology/archive/2010/10/googles-ceo-the-laws-are-written-by-lobbyists/63908/#.

[3] "FTC Charges Deceptive Privacy Practices in Google's Rollout of Its Buzz Social Network," press release, March 30, 2011, www.ftc.gov/opa/2011/03/google.shtm.

[4] Steven Levy, *In the Plex: How Google Thinks, Works and Shapes Our Lives* (2011), pp. 342-343.

[5] "Google Street View Camera Captures Naked Miami Woman On Her Front Doorstep," Sept. 9, 2011, *The Smoking Gun*, www.thesmokinggun.com/buster/google/google-street-view-naked-woman-094672.

[6] "Markey, Barton Respond to News about Doodle 4 Google," press release, Feb. 24, 2011, http://markey.house.gov/index.php?option=com_content&task=view&id=4236&Itemid=141.

[7] Siva Vaidhyanathan *The Googlization of Everything (And Why We Should Worry)* (2011), p. 85.

[8] Quoted in *ibid.*, p. 87.

[9] For background on privacy by design, see FTC Chairman Jon Leibowitz's speech, "Online and Overexposed: Consumer Privacy, the FTC, and the Rise of the Cyberazzi," Oct. 11, 2011, www.ftc.gov/speeches/leibowitz/111011pressclubremarks.pdf.

[10] Kashmir Hill, "Why 'Privacy By Design' Is The New Corporate Hotness," *Forbes*, July 28, 2011, www.forbes.com/sites/kashmirhill/2011/07/28/why-privacy-by-design-is-the-new-corporate-hotness/.

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ended with a 2002 settlement with the Justice Department.

Testing Antitrust Boundaries

Microsoft has been the target of two antitrust investigations over the past two decades. In 1994, the Justice Department reached a consent decree with the software company that barred it from engaging in unfair contracts and license agreements designed to undercut competition. [51]

In the late 1990s, Justice officials began a second antitrust review that was prompted in part by concerns that Microsoft was trying to prevent a rival, Netscape, from offering a competing Web browser. The Justice Department collected more than 3 million documents for its case against Microsoft, and in 2000 a federal judge ordered the company's breakup. [52] Microsoft ultimately was spared that fate in a 2001 consent decree (finalized a year later) with the Justice Department that imposed extensive restrictions on its business practices. [53]

Critics of Google see striking parallels with the most recent probe of Microsoft. Microsoft used its market power with the Windows operating system to block competition to its Internet browser and other services, Barnett of the FairSearch Coalition says. "Google, in an analogous way, has got a dominant position in search and search advertising and is being accused of using that dominance improperly to expand into other areas," he says. "They are identifying potential threats to that dominance and taking them out one by one," as Microsoft did, he says.

But supporters of Google insist that it has not acted improperly and that its expansion into new business areas is necessary for the company to stay competitive. And they point to what they see as key differences between the Google and Microsoft cases.

Houck, the lawyer who represented state plaintiffs against Microsoft, says Google is less of a threat to its competitors than was Microsoft. "Google's market share, for the most part, is not nearly as high as Microsoft's and hasn't endured like Microsoft's has for decades," he says.

The main question for antitrust lawyers in the Google case is whether the company is "insulated from competition," says Houck, who later acted as enforcement counsel ensuring that Microsoft satisfied the requirements under its consent decree. "Microsoft largely was," he says, explaining that the company tied its browser to its Windows operating software so that consumers could not switch browsers or access alternatives. Microsoft also threatened to retaliate against some large companies, including Apple and IBM, if they offered competing browsers to customers, he says. "I just haven't seen anything tantamount to that [which] Google's done," he says. "Most of what people are complaining about are things that Google has done to try to improve their product."

In his September Senate testimony, CEO Schmidt said Google has learned from Microsoft's experience. "We get it," he said. "We get the lessons of our corporate predecessors."

Whether history is poised to repeat itself with the Obama administration's probe of Google remains to be seen. What is certain is that Google has now joined an elite class of American corporate icons in testing the boundaries of U.S. antitrust law. ■

CURRENT SITUATION

Growing Concern in Washington

First, some good news for Google: The one-time darling of Silicon Valley still has plenty of powerful friends in Washington. The bad news: Its support in political circles is steadily eroding, particularly among Democrats, the party with which Google has made the most inroads.

For Google, the sudden consternation from Washington threatens to unravel the goodwill it has forged with President Obama and his administration. During the 2008 presidential race, Obama included the Googleplex among his campaign stops. Schmidt stumped for Obama and served as an informal economic adviser to his campaign and is now a member of the president's Council of Advisers on Science and Technology. [54] A handful of Google executives left the company for the White House, including Sonal Shah, a global development specialist who worked on Obama's transition team and now heads the White House Office of Social Innovation and Civic Participation. [55]

Google employees and the company's political action committee gave generously to the Obama campaign and have a track record of favoring Democrats over Republicans in political donations, often by wide margins. [56] The close ties prompted headlines such as this one in *Fortune* two years ago: "Obama & Google (a love story)." [57] Now, both the administration and prominent Democratic lawmakers are signaling that their friendship has limits.

The trend was evident during the September Senate hearing when several prominent Democrats were blunt in their criticism of the tech icon.

"I love Google," Sen. Al Franken, D-Minn., the former "Saturday Night Live" comic, declared before launching into an extended critique of the company. "As you get bigger and bigger and bigger, I worry about what that means for the next Larry Page or Sergey Brin who are struggling to build the next innovative product in a garage." He added, "I am admittedly skeptical of big companies that simultaneously control both information and the distribution channels of that information."

Democratic Sen. Richard Blumenthal of Connecticut also had strong words. "Google is really a behemoth in the search market these days," he observed, noting that competitor Bing is losing $2 billion a year. It's "the engine that can't be stopped."

Sen. Herb Kohl, D-Wis., chairman of the Subcommittee on Antitrust, Competition Policy and Consumer Rights, which convened the hearing, was equally worried about Google's size. "Google has grown ever more dominant and powerful, and it appears its mission may have changed," he said in opening remarks.

Several Republicans also weighed in with concerns, including Utah's Lee, who cited data suggesting that Google may be manipulating its search results to favor one of its newer offerings, comparison-shopping selections — an assertion that Google's Schmidt strongly denied. "There's a difference between sites that do product comparison and sites that offer products themselves," he said at the hearing. "Google product search is about getting you to a product." He suggested there may be a "conflation" of these distinct types of sites in the data Lee was referencing.

Reflecting the conflicted feelings that many lawmakers now have about Google, Sen. Charles Grassley, R-Iowa, said he'd heard both "good and bad" about the company from his constituents.

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At Issue:

Is Google too dominant?

JOHN M. SIMPSON
DIRECTOR, PRIVACY PROJECT, CONSUMER WATCHDOG

WRITTEN FOR *CQ RESEARCHER*, NOVEMBER 2011

Google is so pervasive that consumers cannot escape its reach even if they do not use its services. Google's ad network puts down tracking cookies and records consumers' activities as they surf the Internet. It is Google's immense database of consumer information, intentions and desires that gives the Internet giant its power. Google exerts monopoly power over Internet searches, controlling about 70 percent of the U.S. market. For most Americans — indeed, for most people in the world — Google is the gateway to the Internet. In the mobile market Google's monopoly power is even greater: It controls more than 95 percent of mobile searches. Android, Google's smartphone operating system, dominates the mobile sector with 38 percent of the market. Apple's iPhone has 27 percent.

Google's dominance of search forces advertisers to use Google's advertising products — those that do not will not reach their customers. How Google tweaks its proprietary search algorithms can ensure a business's success or doom it to failure. Google's practices determine much of the Internet experience for most consumers by determining what they view. Google demands openness of others, but when it comes to its own activities it is a closed black box.

Other companies find it difficult, if not impossible, to compete with Google in offering the products Google provides for "free" with the subsidies generated from its monopolistic search revenues.

You may think of Google as a technology company. In actuality Google is an advertising business. Consumers make a Faustian bargain, often unknowingly, to provide personal information about their habits, desires and behaviors in return for Google's services. Google mines these massive digital dossiers and uses the information to sell ads, a lucrative business that accounts for 96 percent of its $29 billion annual revenue.

People who use Google aren't its customers. We are the Internet giant's product. The immense database about us, largely gathered without our informed consent, is used to target ads and bring Google billions in advertising profits.

The Internet is too important to allow an unregulated monopolist to dominate it. To ensure that no online company can exercise monopoly power with our data, we must have the right to control how data about our online activities is used or if it is even gathered.

Strict application of antitrust law will thwart Google's most flagrant anticompetitive practices. Do Not Track Me regulations will loosen Google's powerful grasp on the Internet and give consumers the true control over their online activity that they deserve.

ERIC SCHMIDT
EXECUTIVE CHAIRMAN, GOOGLE INC.

FROM TESTIMONY BEFORE THE SENATE COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY, AND CONSUMER RIGHTS, SEPT. 21, 2011

One of the main drivers of Google's constant innovation is the fact that we face an extremely competitive landscape in which consumers have a multitude of options to access information. If we want consumers to keep coming back to Google, we have to give them the best possible experience. And that pushes us to keep putting consumers first.

Google faces competition from numerous sources including other general search engines (such as Microsoft's Bing, Yahoo! and Blekko); specialized search sites, including travel sites (like Expedia and Travelocity), restaurant reviews (like Yelp) and shopping sites (like Amazon and eBay); social media sites (like Facebook); and mobile applications beyond count, just to name a few.

For example, let's say you're looking for a local restaurant. You might search on Google for "local restaurant," but increasingly people are going on to Facebook and Twitter to ask their friends for restaurant recommendations. . . . Consumers have a truly vast array of options — some search and some not — from which to access information.

Well-known shopping sites like Amazon, Wal-Mart and eBay are essentially search engines that focus on product search and provide customers with an opportunity to buy a good at the end of their search. . . . The same holds true for popular travel search sites like Kayak, Priceline and Expedia. Students looking for encyclopedia-like entries on different topics often go directly to sites like Wikipedia and About.com. News seekers can visit the websites of major publications. . . .

Among major search engines, Microsoft's Bing has continued to gain in popularity, perhaps because it comes pre-installed as the search default on over 70 percent of new computers sold. Microsoft's Bing is the exclusive search provider for Yahoo! and Facebook. . . . In addition to Internet Explorer, Microsoft has integrated Bing into its popular gaming console, the Xbox 360. . . . Microsoft's Bing launched in June 2009 and has grown so rapidly that some commentators have speculated that it could overtake Google as early as 2012.

And there's the most popular website on the Internet, by an enormous margin: Facebook. Facebook and similar sites have extensive search and information functions. . . . And because of its exclusive search arrangement with Microsoft's Bing, Facebook and Bing can harness the power of search algorithms and a customer's social graph to answer a query. This is a tremendous competitive advantage.

Most importantly, all of these options for obtaining information can be accessed without ever using Google.

Continued from p. 968

Ongoing Investigations

From Washington to Brussels to Seoul, Google's business practices are under investigation by regulators. At least five states — California, New York, Ohio, Texas and Mississippi — are conducting their own inquiries, and a sixth, Oklahoma, is weighing a probe.[58] Meanwhile, the Justice Department is reviewing Google's planned acquisition of Admeld, an online advertising company. In addition, antitrust scrutiny of Google's planned purchase of Motorola Mobility is forthcoming.

Foer, the antitrust expert, says regulators in the United States and other countries already are communicating with each other about their respective investigations and that a "coordinated strategy" could emerge from the discussions.

The FTC can pursue several paths for its investigation, from declining to take action against Google if it thinks the allegations against it are weak to entering into a settlement with the company that would impose conditions in an effort to address anticompetitive concerns.

If the allegations prove to be true, conditions could range from requiring Google to divest certain assets or barring it from pursuing specific lines of businesses or content to restricting how it uses its search algorithms. But all these ideas are wrought with complexities, Foer says, because even if Google is confined in this manner, the FTC must decide whether the company can develop and launch new enterprises without unduly harming competition.

Meanwhile, the agency might have difficulty defining what constitutes improper behavior and enforcing any restrictions it imposes, he explains. "When Google has all the inside knowledge" about how it operates its site, "it's very hard for a government agency to second-guess it," he says. "You almost need to create a bureaucracy for enforcement."

If the commission thinks it has a strong case against Google but the company refuses to agree to a settlement, it could sue Google, alleging violation of antitrust laws that prohibit unfair methods of competition. Since the agency also has jurisdiction over consumer protection, the potential exists for a lawsuit built on antitrust and consumer grounds, Foer says. The downside to that approach is that the courts have not been particularly sympathetic in recent years to antitrust claims, he says.

The FTC also could issue a report that would assess the competitive landscape on the Internet, document how Google's role has evolved and recommend further action by the agency or Congress. "Some of their reports have had important impacts over the years on legislation that was later passed," Foer says, noting that the FTC might choose that path if unsure whether to bring a case against Google or how the courts might respond.

Getty Images/Chip Somodevilla

Sens. Amy Klobuchar and Al Franken, both D-Minn., listen to testimony from Google Executive Chairman Eric Schmidt during a hearing of the Senate Judiciary Committee's Antitrust, Competition Policy and Consumer Rights Subcommittee on Sept. 21, 2011. Schmidt denied allegations that his company uses its market dominance to squeeze out competitors. But Franken said he was "skeptical of big companies that simultaneously control both information and the distribution channels of that information."

Schmidt, in opening remarks at the September hearing, acknowledged the government's interest in examining Google's corporate practices. It's "natural" for regulators "to have questions about our business — and that's certainly fine," he said. "What we ask is that you help us ensure that the Federal Trade Commission's inquiry means a focused and fair process."

Voluntary Options

Legislation aimed at curtailing Google's business practices appears to be off the table for now as lawmakers give regulatory agencies a chance to conduct their reviews. But some senators are amenable to another option: a voluntary effort by Google to resolve concerns about its market dominance. The September hearing raised the possibility of unilateral steps by Google designed to assuage critics and potentially avoid antitrust action that could be risky for the government.

Blumenthal argued that enforcement actions are "costly, time-consuming, cumbersome, blunt and inexact" methods of promoting competition. "Far better to have voluntary actions that can avoid even the appearance, or complaints about, antitrust violations," he said. Echoing those views, Franken said he sees "merit in Google taking the initiative." He recommended a "technical committee" that would review whether the company is meeting its obligations to advertisers and consumers.

Utah's Sen. Lee, in his interview with *CQ Researcher*, said he agrees with the approach embraced by his Democratic counterparts. "My No. 1 concern in all of this remains not having the government" meddle in "what has to this point been a more or less self-regulated, government-free zone, which is the Internet," the Republican senator said. "When government gets involved, a lot of the time government ends up making the problem worse."

While saying he recognizes that sometimes a need arises for antitrust enforcement, Lee said he firmly believes "that businesses are going to be able to make their own decisions better than government regulators." Lee said he wants Google to provide stronger assurances that its products never receive preferential treatment in its search results. "A lot of that can be tested empirically by a third party," he said.

Google denies that it has operated in an uncompetitive manner and defends its record of openness. "We have taken a number of steps over the past few years to increase transparency for consumers and websites, and we're always open to ideas for how we can improve," Google spokesman Adam Kovacevich said. [59] He pointed to a Google website that reveals details about how the company formulates search algorithms and features tools for optimizing search rankings. [60]

The company has fought back against tighter federal regulation by strengthening its lobbying in Washington. In July, Google announced that it had hired 12 lobbying firms to bolster its message. [61] During the first three quarters of 2011, Google spent $5.4 million on lobbying — more than in 2010, and more than Microsoft. [62] Google also is running Internet videos promoting its benefits to small businesses and television ads promoting its search capabilities.

But critics who argue that Google is undermining competition want more than voluntary action. "Whatever fix is put into place, whether Google initiates it voluntarily or not, needs to be backed up with a judicially enforceable order," Barnett of the FairSearch Coalition contends. He further warns that if policymakers are too lenient with Google, they could unwittingly create a "perverse incentive" for companies to "cross the line, wait until [their behavior] gets noticed and back off" after regulators begin an investigation. "Without the power of an enforceable order, it would very difficult to ensure that Google would live up to a voluntary fix," he maintains.

Simpson of Consumer Watchdog also is skeptical about a voluntary approach. "I've seen nothing watching company behavior over the years to lead me to believe that voluntary things ever really mean very much unless there's at least the possible threat of some kind of regulation or legal action." ■

OUTLOOK

What Next for Google?

While Google is now at or near the top of its industry, the tech sector is littered with reminders of how quickly new competitors can emerge and promising ventures — from the tiniest startup to the mightiest site — can fall. MySpace and Friendster, heralded just a few years ago as cutting-edge, quickly faded in popularity, while Facebook and Twitter are now household words after debuting in 2004 and 2006, respectively.

"Today, Google appears impregnable," author Auletta wrote. "But a decade ago, so did AOL, and so did the combination of AOL and Time Warner." Auletta recounts a conversation with Clayton Christensen, a Harvard business professor and author of *The Innovator's Dilemma*, who said of Google: "There is nothing about their business model that makes them invulnerable." [63] Christensen pointed to other major corporations that once appeared invincible, only to stumble as a result of swift marketplace changes that caught them off-guard.

Duke University engineering professor Vivek Wadhwa also thinks Google's unbridled success should not be taken for granted. "The technology sector moves so quickly that when a company becomes obsessed with defending and abusing its dominant market position, countervailing forces cause it to get left behind," he observed this summer in *The Washington Post.*

Wadhwa explained that during the course of years-long federal probes into allegations of anti-competitive practices by IBM and Microsoft, "their monopolies became irrelevant because both companies could not keep pace with rapid changes in technology" that their competitors embraced. [64]

But according to an opposing view, Google is on track to grow even more dominant on the Internet if regulators decide either not to step in or impose remedies too weak to curb its influence. The result could be an "unaccountable Internet in which Google's power is off the charts and trust is by necessity blind," Cleland, the Google critic, wrote. "Google becomes the exclusive and omniscient editor, observer, distributor, revenue collector and decision maker. There are no checks and balances." [65]

Google's fate may very well rest in the hands of regulators, whose near-term decisions could shape its future. Experts say that if the FTC and other regulatory bodies are lenient, they risk undermining the already fragile state of competition on the Internet. And if they lean too hard, they could squelch the company's appetite for innovation, a key ingredient of its success.

"You can get into a danger zone [with regulation] where you cripple the innovation," warns Eshoo, the California House member and top Democrat on the subcommittee that oversees the communications sector. "I hope Congress does not get so much in the way that they'll kill the goose that continues to lay the golden egg." ■

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FOR MORE INFORMATION

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