



**Comments on Federal Trade Commission’s News Media Workshop
and Staff Discussion Draft on “Potential Policy Recommendations
to Support the Reinvention of Journalism”
July 20, 2010**

Introduction

Google Inc. submits these comments in connection with the Federal Trade Commission’s news media workshop regarding the intersection of journalism and technology. We also provide comments on the FTC’s recently released Discussion Draft on “Potential Policy Recommendations to Support the Reinvention of Journalism.”¹

The news industry is undergoing significant changes that present a number of challenges and opportunities. Because quality journalism matters so much to our users and to society as a whole, Google is committed to helping news organizations develop innovative ways to serve consumers and foster revenue generation models that will sustain the continued vitality of the news industry. These models will succeed only if they meet the needs of two groups: Consumers looking for news that is relevant to them, and advertisers who wish to reach those consumers with information about their products or services. On the consumer side, Google makes it easy for users to find the news they are looking for and to discover new sources of information. In fact, Google works constantly to provide the most relevant information through Google Search, Google News, and other products. As a result, we send more than four billion clicks each month to news publishers via Google Search, Google News, and other products. That is, every minute we send approximately 100,000 visitors to news publishers around the world.

Each click – each visit – provides publishers with an opportunity to show users ads, register users, charge users for access to content, and so forth. As we discuss in detail below, how publishers interact with users who visit them through Google is largely in the publishers’ hands.

¹ FED. TRADE COMM’N, FEDERAL TRADE COMMISSION STAFF DISCUSSION DRAFT: POTENTIAL POLICY RECOMMENDATIONS TO SUPPORT THE REINVENTION OF JOURNALISM (2010), <http://www.ftc.gov/opp/workshops/news/jun15/docs/new-staff-discussion.pdf> (hereinafter DISCUSSION DRAFT).

For example, publishers may charge for their content if they choose to do so. In fact, publishers can and do charge for content while ensuring that it is discoverable through Google – charging for content and availability on Google are not mutually exclusive. Indeed, Google is currently working with news organizations that want to create online subscription services about ways to use our tools to achieve their goals.

On the advertising side, Google’s AdSense platform helps publishers generate revenue from their content by providing relevant advertising and improving the connection between advertisers and consumers. In 2009 alone, Google shared more than \$5 billion in revenue with AdSense partners. In addition, many major media companies, including online newspapers, use Google’s DoubleClick platforms to manage, and maximize the value of, their most valuable online advertising inventory – the display ads they sell directly – to ensure that the right ad is placed in front of the right consumer at the right time. Google has invested significantly in these products, launching the new DoubleClick Ad Exchange and the upgraded DoubleClick for Publishers platform in the past 12 months.

Google is also developing new formats for displaying and consuming news – such as Fast Flip, Living Stories, and YouTube Direct – which aim to improve the user experience and, consequently, increase the amount of time people spend with news on the Web.

Finally, Google engages in regular conversations with news-industry trade associations, provides financial sponsorships and speakers for journalism conferences, and educates journalists on how to use Google tools to do their jobs better.

In these and other ways, Google has worked productively with many individual news organizations and the broader journalism community. Most of these news providers share Google’s vision that the future lies in embracing consumer preferences and collaborating with Internet companies.

Business Problems Require Business Solutions Rather than Regulatory Ones

The Discussion Draft contains several potential policy proposals designed to maximize the accessibility of government information, and Google supports many of these proposals. The recommendations on copyright, hot news, and antitrust, however, put forward by certain members of the news industry, will not solve the problems the news industry faces, but rather will stifle the very innovation that provides hope for its future. Our views on the specific proposals are set forth in subsequent sections.

Here, we discuss a more fundamental point, which is that the current challenges faced by the news industry are business problems, not legal problems, and can only be addressed effectively with business solutions. Regulatory proposals that undermine the functioning of healthy marketplaces and stall the pace of change are not the solution. Indeed, the very innovation on the Internet that has led to so many improvements in the lives of consumers around the world is likely to be harmed by many of these proposals rather than enhanced by them.

Newspapers have had periodic business model challenges since long before the Internet: Circulation by U.S. household has been on decline since the early twentieth century; the number of

newspapers distributed peaked between 1890 and 1920.² Indeed, the debates over newspapers and competition, while less good-natured in tone, easily fit within Yankees catcher Yogi Berra's famous malapropism, "It's like déjà vu all over again."³

In 1922 at the onset of the great Newspaper-Radio War, the same arguments and the same rhetoric currently being used to describe the Internet were used by newspapers about radio. Professor Gwenyth Jackaway of Columbia University details this period in her book, *Media at War: Radio's Challenge to the Newspapers, 1924-1939*. Professor Jackaway writes:

In the battle between radio and the press, one of the most common tactics employed by print journalists in their efforts at institutional self-defense against the invasion of broadcasting was the invocation of sacred rhetoric. When making their arguments about the dangers of this new technology, they frequently called upon the hallowed ideals of the culture, claiming their sacred value would in some way be endangered if radio took over the job of journalism. Radio journalism, they warned, posed a threat to the journalistic ideals of objectivity, the social ideals of public service, the capitalist ideals of property rights, and the political ideals of democracy. In the name of preserving these ideals, print journalists argued that they, and not the broadcasters, were the only ones suited to gather news and disseminate news in this country. Thus, as a means of defending their own interests they invoked the interests of the nation.⁴

In 1957, newspaper editors – foreshadowing the rhetoric used by some against the Internet – called television reporters “parasites” and observed that they “should handle their own news instead of cashing in on our brains and experience.”⁵ In 1955, newspapers vociferously objected to President Eisenhower's decision to open up White House press briefings to television reporters: Famed *New York Times* reporter James Reston complained that the “press conference is an instrument vital to democratic processes and it is being overwhelmed by paraphernalia.”⁶

After print journalists lost their “war” against television journalists in the Eisenhower era, newspaper companies fought the phone companies.⁷ Indeed, as Professor Jackaway has observed, with each communications innovation of the last 100 years we have seen a repetition of the discussion that's taking place today over the future of journalism. Although the Discussion Draft suggests that the

² JOSEPH D. STRAUBHAAR AND ROBERT LAROSE, *MEDIA NOW: UNDERSTANDING MEDIA, CULTURE, AND TECHNOLOGY*, at 94 (2005).

³ Yogi is reported to have uttered this in reaction to Yankees pitcher Dave Cone hurling a perfect game against the Montreal Expos on July 18, 1999.

⁴ GWENYTH L. JACKAWAY, *MEDIA AT WAR: RADIO'S CHALLENGE TO THE NEWSPAPERS, 1924-1939*, at 7 (1995).

⁵ Quoted in DAVID R. DAVIES, *THE POSTWAR DECLINE OF AMERICAN NEWSPAPERS, 1945-1965: THE HISTORY OF AMERICAN JOURNALISM*, at 57 (2006).

⁶ *Id.* at 56.

⁷ *Id.* at 1.

challenges faced by newspapers are driven by 21st century technology, the opposite view seems correct: The Internet, rather than being the cause of journalism's downfall, provides a unique opportunity for news organizations to renew and reinvigorate journalism.

Maximizing the monetization of online traffic will require innovation and experimentation in how news is delivered online, and how advertising can support it. Google is working with publishers to make this transition, including developing new and improved monetization methods, and believes that the news industry will emerge from the transition better equipped to serve its customers – and thus to flourish – in the online world. The ultimate solutions that will result in a new online equilibrium for the news industry cannot, however, be mandated by changes in the regulatory framework or a change to the copyright laws. The solutions, instead, must be driven by the industry itself, working with technology providers like Google and experimenting with its customers to develop new and innovative ways of delivering the news online.

Reaching Broader Audiences through Search and Other Services

Search engines and services like Google News provide audience-finding opportunities for newspapers that circulate in a limited geographic area or that target a specific section of the reading public. If these more localized sources of news produce content that is valued by consumers, Google's services enable them to reach larger and more diverse audiences than they otherwise would be able to reach. In addition, purely online publishers, and recently established publishers, gain a new opportunity to engage with and generate revenues from new traffic through these services. By increasing the diversity of perspectives available to a user, these services promote competition for the production of content that consumers value and enhance consumer welfare.⁸ Online services like Google News deliver substantial traffic to larger publishers too, but the increased competition also provides these publishers a greater incentive to improve the quality of their content and, more generally, the attractiveness of their websites. That may be difficult for incumbents but it is good for consumers.

The goal of Google News has always been to offer users the ability to access varied perspectives on a story in order to help them better understand current events. To that end, Google indexes more than 50,000 sources in dozens of languages from around the world. The big news events of the day are identified and ranked by computer algorithms that reflect the publishing activity – the collective news judgment – of news organizations. Then individual articles are automatically selected and ranked based on factors such as freshness, location, relevance, and diversity of their content, without regard to political viewpoint or ideology. Google News shows only a headline and sometimes a “snippet” – just enough for someone to decide if they're interested in reading the story. Clicking on the link takes them directly to the publisher's website. They do so at a rate of about one billion times a month from Google News alone.

⁸ See, e.g., Erick Schonfeld, “Who Dominates Online News In Italy? Not Google News,” TECHCRUNCH, Aug. 31, 2009, <http://www.techcrunch.com/2009/08/31/who-dominates-online-news-in-italy-not-google-news/> (last visited July 2, 2010) (“Google News promotes competition among news outlets. It creates hyper-competition, which is really why newspapers (everywhere) are up in arms against Google. They don't like the Web, but they can't sue the Web. So they are going after Google instead”).

Google believes that by helping users more efficiently find different points of view they can better inform themselves as citizens. Quality content is complementary to Google's search services – if there is better content on the Web, people are likely to do more searches, which will be good for Google's business and for users. Users' willingness to continue using Google to conduct Web searches is entirely dependent on Google's ability to help users identify relevant, useful search results. It is, therefore, in Google's interest to help content owners create and find better ways to monetize content.

The key to this synergistic relationship between Google's services and online content providers is Google Search. Search is at the heart of what Google does. Consistent with this, Google News is a product that makes it easier for consumers to search for journalistic content and to connect with the websites that have the news that most interests them. With Google News, users do not have to scour the Web for up-to-date news stories. Moreover, Google News is not designed to encourage users to linger on the Google News website; rather, it is designed to help users identify the articles they want to read and to move them as quickly as possible to the publisher's site to do so.

Unfortunately, the Discussion Draft does not acknowledge the basic economics of search engines and similar services and instead erroneously suggests that search engines are somehow cannibalizing newspaper advertising revenue rather than serving as an important connection to potential consumers. In fact, search engines do not derive a significant amount of revenue from news content. Many search engines generate revenue from displaying simple text ads near organic search results; advertisers bid for that placement and pay only if someone clicks on the ad, making it a highly targeted, relevant, and measurable form of advertising. But the real money in search engine advertising is in highly commercial queries for goods and services in such areas as shopping, health, and travel. (For example, Google generates only a tiny fraction of its search revenue from queries that we categorize as News & Current events; while searches for terms like "canon powershot digital camera" are very attractive to advertisers, news-related queries often trigger few or no ads at all.)

This result should not be surprising because it mirrors the experience of newspapers themselves, which have never made much money from news. They have instead made money from special-interest sections on topics such as automotive, travel, and home & garden. These sections attract contextually targeted advertising, which is much more effective than non-targeted advertising. Someone reading the automotive section is likely to be more interested in cars than the average consumer, so advertisers will pay a premium to reach those consumers.

Traditionally, the advertising revenue from these special sections has been used to cross-subsidize the core news production; in other words, the automotive and real estate sections pay for the Baghdad bureau. Nowadays, Internet users go directly to websites like Edmunds, Orbitz, Epicurious, and Amazon to look for products and services in specialized areas. Advertisers follow those eyeballs, which makes the traditional cross-subsidization model that newspapers have used far more difficult. That cross-subsidization was possible only because the print format allowed newspapers to capture their audiences and keep them.

Design Innovations to Attract and Retain Audiences

The newspaper business is not immune from the truism that, in order to succeed, a business must respond to the demands of its consumers by delivering products and services that they want. Indeed, John Temple, former editor, president, and publisher of the Rocky Mountain News, described and applied it to the news industry in his blog post about the lessons he had learned from his newspaper's demise on February 27, 2009. As Mr. Temple explained, the paper's online service was not viewed by management as providing consumer value in its own right, but rather solely as a way to support the print edition. This mistake proved to be fatal:

[W]hy did the Rocky disappear? Looking back now on that difficult day, the word that stands out . . . is "newspaper."

...

Being a "great newspaper" isn't enough in the Internet era. You have to know what business you're in. We thought we were in the newspaper business. Working on the Web, you need to think of now and forever. At a newspaper, people largely think about tomorrow. Thinking about tomorrow isn't enough anymore. Consumers today want services when, where and how they want them, and they want to be able to participate, not just receive.

...

We perceived the Web site as a newspaper online, as a complement to the paper, not as its own thing. That's not a strategy.

...

Which brings me to the final lesson: Know your customers. If newspapers would spend more time trying to understand their customers instead of focused on their own internal issues - such as which newspaper department should get credit for Web revenue - they're more likely to be successful. That's a hard switch for traditional manufacturing operations like newspapers to make.

For the news industry to adapt and thrive in the digital world, it must first take into account how the Internet has changed its ability to sell consumers a bundle that may be more than the consumer wants or needs. Google calls this the "atomic unit of consumption" – the basic form of content that consumers desire.⁹ News organizations did not have to confront this possibility in the hard copy world because consumers did not have the capability to demand a disaggregated news (or other media) product. And, to the extent that consumers did wish to acquire a single article, song, or film clip, the content provider could control how or whether it made such a product available. If a consumer wanted

⁹ See *The Future of Journalism: Hearing Before the Subcomm. on Comm'n's, Tech., & the Internet of the S. Comm. on Commerce, Sci., & Transp.*, 111th Cong. (2009) (statement of Marissa Mayer, Vice President, Search Products and User Experience, Google, Inc.).

to buy a single song from a vinyl album, for example, the possibility existed only if the copyright owner also sold it as a single.

Over time, the emergence of digital media has repeatedly altered the unit of consumption for existing media. For example, digital music caused many consumers to think about their purchases as individual songs rather than as full albums. Digital and on-demand video has similarly caused many to view variable-length clips when it is convenient for them, rather than fixed-length programs on a fixed broadcast schedule. This is simply not a new phenomenon.

In the news field, the structure of the Internet has caused the unit of consumption for news to migrate from the full newspaper to the individual article. As with music and video, millions of people today still consume physical newspapers in their original full-length format. But with online news, readers often go directly to specific articles that match their interests, referred there by a link from search engines, Facebook, Twitter, Wikipedia, blogs, or even other news websites.

Treating the article as the atomic unit of consumption online has several powerful consequences. When producing an article for online news, the publisher must assume that a reader may be viewing the article on its own, independent of the rest of the publication. Among the challenges caused by this new atomic unit of consumption is developing a different approach to monetization: Not only must each individual article be self-sustaining, but beyond this, publishers must provide sufficient context for first-time readers so that the reader will then stay on the publisher's site and view other articles, photos, videos, databases, or other content. This is imperative because engaged readers are more attractive to advertisers and more likely to pay subscription fees.

Such engagement can be accomplished only by news publishers, who are in a position to innovate and compete to provide their online audiences with compelling products and services that bring them the news and other information that they want. Search engines, blogs, and social networks can direct traffic to publishers' sites, but once readers land on a site, it is the publisher who bears the responsibility of keeping them on the site and generating revenue.

The data suggest that publishers have yet to come close to maximizing their ability to attract and keep users engaged with their online offerings. While the average reader of print newspapers spends about 25 minutes with them per day, according to government statistics, studies have found that the typical online reader of even the most well-trafficked news website spends just 70 seconds per day there.¹⁰ Some news organizations are heavily focusing on taking advantage of this opportunity by improving the user experience on their sites, and Google is committed to working with them on technology and design solutions.

In this regard, an important factor for online news providers to consider in today's digital age is the fundamental design and presentation of their content. For example, the simple and effective navigational elements that the Web offers can provide publishers with ways to keep readers engaged on

¹⁰ Hal Varian, "Newspaper economics: online and offline," GOOGLE PUBLIC POLICY BLOG, Mar. 9, 2010, <http://googlepublicpolicy.blogspot.com/2010/03/newspaper-economics-online-and-offline.html> (last visited July 2, 2010).

their sites for longer periods of time. When a reader finishes an article online, rather than flipping the page to see what is next, the reader needs information about where she might go next to find another story of interest. Here, the online publication should help provide the consumer with readily identifiable options: Click on a related article or advertisement? Post a comment? Read earlier stories on this topic? Much like Amazon.com suggests related products and YouTube makes it easy to play another video, publications can provide obvious and engaging next steps for users.

Google's experimentation with the *New York Times* and the *Washington Post* on a project called Living Stories is an example of how newspapers and technology companies can collaborate on ways to better engage users with news.¹¹ The Living Stories experimental news format compiles a news organization's coverage of an ongoing event on a single, dynamic Web page, making it easy for users to understand the broader context, sort the coverage by timeline or by type of media, and highlight the news published since their last visit. During the experiment, 75% of respondents said they preferred Living Stories to traditional online news articles, and the average user spent nearly 9 minutes with each topic.¹² These results suggest that if publishers produce great journalism and present it in compelling ways, people will engage with it. Since the experiment, Google has released the Living Stories code through an open-source license, meaning that anyone is free to take it and build their own Living Stories. Living Stories has also served as a design inspiration for news outlets, including the Pulitzer Prize-winning ProPublica.¹³

Advertising and Other Revenue Streams

The task for any content owner is to find a business model that matches consumer expectations. Who is the consumer in this context? In any discussion of lost revenues, the consumer is the person who pays, directly or indirectly. The Discussion Draft states that 80% of newspapers' revenue comes from advertising,¹⁴ 40% from retail advertising, 32% from classified advertising and 8% from national advertising. The remaining 20% of revenue is from sales, with newsstands making up 17% and subscription revenue 3%. In the context of advertising revenue, the consumer is the advertiser who seeks advertising space and the promise of reaching an audience likely to buy the advertiser's products. In the context of subscription revenues, the consumer is the person who purchases a subscription.

Pay walls could be an effective way to raise the 3% revenue figure; whether to implement them (and how) is any given publisher's choice and requires no regulatory change to make it work. Consumers will either pay for content or not, depending upon their assessment of whether the content is of sufficient value to them. Forcing consumers to buy certain content, however – an end result

¹¹ See Google Living Stories, <http://livingstories.googlelabs.com/> (last visited July 2, 2010).

¹² See Abby Brownback, "A Web-Centric Approach To Traditional Journalism," AMERICAN JOURNALISM REVIEW, June/July 2010, <http://www.ajr.org/Article.asp?id=4880> (last visited July 16, 2010).

¹³ Megan Garber, "ProPublica's website redesign puts 'future of context' ideas to work," NIEMAN JOURNALISM LAB, June 30, 2010, <http://www.niemanlab.org/2010/06/propublicas-website-redesign-puts-future-of-context-ideas-to-work/> (last visited July 2, 2010).

¹⁴ DISCUSSION DRAFT, *supra* note 1, at 2.

sought by some of the policy proposals recounted in the Discussion Draft – is not only bad policy but it is also bad for the industry itself because it creates a very short-term prospect of additional revenue that has no promise of durability. Innovating to create products and services that consumers want to pay for is the only way to guarantee long-term subscription revenue growth, and none of the policy proposals are designed to foster that kind of innovation.

This leaves the 80% of newspaper revenue that comes from advertising. The Discussion Draft laments that newspapers' classified advertising revenue has fallen from \$19.6 billion in 2000 to \$6 billion in 2009.¹⁵ However, the loss of this revenue is the result of a changing business environment: Many businesses do not place classified ads with newspapers because the people they want to reach no longer look for advertisements in print newspapers. As with the issues relating to subscription revenues, the issues that newspapers face with diminished classified advertising revenue are not an appropriate candidate for regulatory intervention. This is revenue that has been lost due to a change in the classified advertising business, a change that reflects, moreover, more and more vigorous competition. Indeed, the loss of classified advertising to Craigslist, eBay and other online advertisers has nothing to do with copying or free-riding, and everything to do with the emergence of a new, more effective and more efficient product into the marketplace. The FTC would ordinarily regard such a situation as a cause for celebration – consumers are getting a better product at a lower price – not an opportunity to slow down that innovation through regulation.

In the case of advertising revenues, therefore, the challenge for the industry is to provide a product (online advertising space and audience share) that is of sufficient value to the consumer (the advertiser) that the advertiser is willing to pay for it. One of the largest flaws of the proposals outlined in the Discussion Draft is their failure to take this basic economic fact into account. Any long-term improvement in news companies' fortunes is likely to come from increased advertising and subscription revenues – revenues that can only be increased by new and effective business models *for advertisers and readers*.

The large profit margins newspapers enjoyed in the past were built on an artificial scarcity: Limited choice for advertisers as well as readers. With the Internet, that scarcity has been taken away and replaced by abundance. No policy proposal will be able to restore newspaper revenues to what they were before the emergence of online news. It is not a question of analog dollars versus digital dimes, but rather a realistic assessment of how to make money in a world of abundant competitors and consumer choice.

In addition to abundance, the Internet facilitates the delivery of effective advertising and the measurement of advertising effectiveness. An online advertiser can measure the effectiveness of advertising at a very granular level and target ads very precisely and relevantly. With contextual advertising, for example, Google serves relevant advertisements on its publisher partners' websites that are tailored to the particular page or article that the user is viewing. The advertisers can get detailed information about how effective a particular ad is – including how often the ad was clicked (or otherwise engaged with) and whether, once clicked, the consumer actually made a purchase on the

¹⁵ DISCUSSION DRAFT, *supra* note 1, at 2.

advertiser's website. With interest-based advertising, advertising effectiveness and precision is even more pronounced. Interest-based ads are served based upon the browsing history of a user (with the user's consent and control) and the advertiser or advertising agency can obtain aggregated data on the effectiveness of any given ad. In short, the Internet makes it possible for advertisers to deliver more relevant advertising to consumers and to measure the effectiveness of that advertising, so that consumers continue to hear about the products and services in which they are interested.

Content Producers Control the Terms of Access

An open Internet where all content is “findable” (although not necessarily free of charge) is a critical part of the surplus-enhancing aspect of the Internet. It is what makes it possible to deliver the best “matches” of consumers to the information that is relevant and useful to them. As the newspaper industry manages the transition into the digital world, however, Google believes that publishers should have the ability to control whether their sites are indexed at all, what of their sites is indexed (if they choose to allow indexing), and whether and on what terms a consumer is permitted to access their sites (e.g., whether the content sits behind a pay wall of some sort or, at the other end of the spectrum, is freely available).

Publishers have simple tools at their disposal to communicate instructions about whether they want search engines to index their sites, and Google's policy is to respect those instructions. For example, using what is called the Robots Exclusion Protocol (REP) (which is the *de facto* industry standard used throughout the Web for over 15 years), a site administrator who wishes to remove her website from Google's index can easily do so using a “robots.txt” file. To remove sites or prevent search engines from crawling parts of a site, a webmaster may:

- **Use a “robots.txt” file to designate the content not to be indexed.** A robots.txt file enables site owners to restrict access to a website by search engine robots that crawl the Web. A website owner can choose to block some pages or the entire site from Google's Web crawler by using a robots.txt file. If a website owner uses a robots.txt file to restrict access, Google will not crawl or index the content of pages blocked by the robots.txt file. However, Google may still index the website's URL, if Googlebot finds those URLs on other pages on the Web. As described below, Google will remove the website from its index if a noindex meta tag is present.¹⁶
- **Use a “noindex” meta tag.** When the Google crawler finds a website with a noindex meta tag on a page, Google will completely drop that page from its search results, *even if other pages link to it*. If the site is currently in Google's index, Google will remove it the

¹⁶ See Google Webmaster Central, Block or Remove Pages Using a Robots.txt File, <http://www.google.com/support/webmasters/bin/answer.py?answer=156449> (last visited June 30, 2010).

next time the crawler crawls the site. The meta tag allows the website owner to control access completely, on a page-by-page basis.¹⁷

Through the use of the robots.txt file and the noindex meta tag, website owners are able to prevent their sites – or specific content on their sites – from being indexed by Google’s crawler. In fact, website owners are even able to specifically prohibit Google from indexing their site while allowing other Web crawlers to do so.¹⁸ Thus, website owners may easily exclude content from the Google index.

Meta tags also allow a much deeper level of granularity. For example, publishers can instruct Google or other search engines to index articles but not images or to display headlines but not snippets.

Inclusion of news content in the Google Web Search index is not conditional on inclusion in Google News. To remove content from Google News, publishers can simply fill out a contact form in Google’s Help Center.¹⁹ In addition, since December 2009, the Google News Web crawler (Googlebot-News) has extended REP controls specifically to Google News. This means that if publishers want to opt out of Google News, they do not even have to contact Google – they can put instructions just for Googlebot-News in the same robots.txt file they have today. This change allows publishers to do more than just allow/disallow access to Google News. They are also able to apply the full range of REP directives just to Google News, such as excluding specific articles or images or instructing Google to show headlines but not snippets.²⁰ While this means even more control for publishers, the effect of opting out of News is the same as it has always been: Content will not be in Google News or in the parts of Google that are powered by the News index, but will still show up as natural Web Search results. And removal of content from Google News does not affect how publishers’ content appears in Google Web Search results.

Comments on Policy Proposals in Discussion Draft

Google appreciates the opportunity to comment on the proposed recommendations contained in the Discussion Draft. The Discussion Draft contains several potential policy proposals designed to increase the accessibility of government information. Google generally supports these proposals. However, the Discussion Draft also contains some potential policy recommendations that Google

¹⁷ See Google Webmaster Central, Using Meta Tags to Block Access to Your Site, <http://www.google.com/support/webmasters/bin/answer.py?answer=93710> (last visited June 30, 2010).

¹⁸ See Google Webmaster Central, Removing Your Entire Website Using a Robots.txt File, <http://www.google.com/support/webmasters/bin/answer.py?answer=35302> (last visited June 30, 2010).

¹⁹ See Google News, Contact Us, http://www.google.com/support/news/bin/request.py?contact_type=report_news (last visited June 30, 2010).

²⁰ For further details on the Google News web crawler, see Posting of Josh Cohen, Senior Business Product Manager to Google News Blog, “Same Protocol, More Options for News Publishers,” <http://googlenewsblog.blogspot.com/2009/12/same-protocol-more-options-for-news.html> (Dec. 2, 2009, 8:10) (last visited July 16, 2010).

believes are ill-founded and, if adopted into actual recommendations, would result in significant harm to consumer welfare.

We first address the potential recommendations relating to the accessibility of government data. We then continue with comments relating to the Discussion Draft's policy proposals relating to statutory limits and fair use, licensing the news, federal hot news legislation, and, finally, collaborative actions and antitrust exemptions.

Policy Proposals Relating to Maximizing the Accessibility of Government Information

We support the FTC's commitment to openness on the Internet and to adopting recommendations designed to foster more efficient, ready, in-depth access to public government information in a manner that protects individuals' privacy (e.g., by ensuring that personal data such as Social Security numbers are redacted from public records prior to their public disclosure). Google thus believes in the direction taken by the recommendations contained in the Discussion Draft that relate to maximizing the accessibility of public government information, implementing interactive data, and harnessing government-funded technology investments to better support journalistic applications. The proposed innovations hold out the possibility of increasing the availability of public government information and thereby enhancing transparency and openness on the Internet and improving consumer welfare.²¹

As an initial matter, we note that the copyright status of government information under Federal law is well-settled, in that Section 105 of the Copyright Act states explicitly that "[c]opyright protection under this title is not available for any work of the United States Government"²² Many states and municipalities,²³ however, have more restrictive statutes relating to the protectability of government information by copyright, making it possible that state or local government information could be subject to greater restrictions on availability, dissemination, and use. Google finds the logic of the Federal government's longstanding policy in favor of the broad availability of government information compelling:

[A]s a matter of principle, material produced by the Government is public property and should be freely available to the public for reproduction; the widest possible dissemination

²¹ Google has a longstanding practice of advocating for an open Internet and for taking steps to ensure that its users have the freedom and ability to find the information they want and need, to use the products and services that best suit them, and to control their personal data. *See, e.g.*, Letter from Pablo L. Chavez, Managing Policy Counsel, Google Inc., to Donald S. Clark, Secretary, Federal Trade Commission (Apr. 14, 2010), at 4-5, *available at* <http://www.ftc.gov/os/comments/privacyroundtable/544506-00134.pdf> (last visited July 2, 2010).

²² 17 U.S.C. § 105 (2005).

²³ Google believes that at least eight states assert copyright over state statutes and twenty-one assert copyright over state administrative regulations. Similarly, more than 50% of California municipalities assert copyright over their municipal codes.

of information developed by the Government should be encouraged and dissemination might be inhibited by copyright²⁴

Underlying this “principle” is the belief that taxpayers should not be made to pay twice, “first in taxes and second in procuring a copy of the work.”²⁵ We, therefore, encourage further study of the question of harmonization of state and federal law relating to the copyrightability of government information such that any inconsistencies in the availability of such non-sensitive information to the public would be resolved in favor of broad dissemination.

Google supports the Discussion Draft’s recommendation that federal, state, and local authorities be encouraged to maximize access to publicly available information online and to establish the routine release of certain types of records. Indeed, Google makes tools available on its website for public sector organizations that provide guidance to such organizations on how to make their websites accessible to search engines and thereby expand citizen access to government information and services.²⁶

Similarly, Google supports the proposals that would enhance the availability of audio and video recordings of public and government meetings, hearings, and other public events including through live webcasting. Google has worked with federal and state governments to improve video-on-demand facilities and citizen access to those facilities.

Finally, the Discussion Draft contains a proposal relating to development of a “common taxonomy of metadata tags” for government information.²⁷ Google supports this proposal.

Policy Proposals Relating to Statutory Limits and Fair Use, Licensing the News, and Federal Hot News Legislation

We note at the outset that the Discussion Draft begins the section on Copyright and Fair Use with a brief summary of the current state of the law that appears designed to “set the stage” by providing context for the policy proposals subsequently outlined in the draft. While Google appreciates that all questions relating to the application of the copyright law to particular factual scenarios involving search engines and news may not yet have been answered, we do not believe that there is as much uncertainty in the state of the law as the Discussion Draft appears to suggest.

²⁴ Caruthers Berger, *Copyright in Government Publications*, in COPYRIGHT LAW REVISION: STUDIES PREPARED FOR THE SUBCOMMITTEE ON PATENTS, TRADEMARKS, AND COPYRIGHTS OF THE SENATE JUDICIARY COMMITTEE, 86th Cong., 2d Sess. 33-34 (Comm. Print 1961), *quoted in* Sharon K. Sandeen, *Preserving the Public Trust in State-Owned Intellectual Property: A Recommendation for Legislative Action*, 32 MCGEORGE L. REV. 385, 399-400 (2001).

²⁵ Marvin J. Nodiff, *Copyrightability of Works of the Federal and State Governments under the 1976 Act*, 29 ST. LOUIS U. L.J. 91, 92 (1984).

²⁶ See Google, Tools for Public Sector Organizations, <http://www.google.com/publicsector/content/> (last visited June 30, 2010).

²⁷ DISCUSSION DRAFT, *supra* note 1, at 33.

Cases, for example, may always be overruled or decided differently in a different circuit or where different facts are presented. But that does not make them any less the law where – as in copyright – the law is developed through the common law process of successive court decisions. We, therefore, strongly suggest that, notwithstanding the comments of some interested parties regarding the “uncertainty” of the law in this area, the Commission formulate its recommendations against the backdrop of an objective analysis of the case law as it currently stands.

Proposed Recommendations Relating to Modifications of the Copyright Act

Google believes that the Discussion Draft’s somewhat skeptical treatment of the proposals made through the workshop relating to amendment of the Copyright Act to limit the fair use doctrine as it applies to “aggregators and search engines” is wholly warranted. The Federal courts are the most appropriate venue for further exploration of the application of the fair use doctrine to “aggregators and search engines” and have already demonstrated the capability to handle these issues in *Perfect 10, Inc. v. Amazon.com, Inc.*²⁸ There is simply no reasonable basis for the view that amending the Copyright Act is necessary here.

First, Google believes strongly in the capability of the Federal court system to interpret the fair use doctrine consistently with the Copyright Act. *Perfect 10* is the law in the Ninth Circuit and has been cited favorably by a number of other federal courts.²⁹ To the extent that proponents of an amendment to the Copyright Act believe that *Perfect 10* was wrongly decided, we are aware of no court that has criticized the analysis in the three years since the opinion was issued.

More substantively, we believe it important that the Commission recognizes that the proposed recommendation to limit the fair use doctrine through the construction of some statutory analytical framework for “aggregators and search engines” appears to be based on a fundamental misunderstanding of the fair use doctrine. Fair use is a common law doctrine – statutorily recognized but not codified.³⁰ It is intended to be *ad hoc*; it is a flexible doctrine, not an exemption as exists in other sections of the Copyright Act.³¹ As the Supreme Court wrote in *Campbell v. Acuff-Rose Music, Inc.*: “The task is not to be simplified with bright-line rules, for the statute, like the doctrine it recognizes, calls for case-by-case analysis.”³²

²⁸ 508 F.3d 1146 (9th Cir. 2007).

²⁹ See DISCUSSION DRAFT, note 16 (citing cases).

³⁰ See DISCUSSION DRAFT, *supra* note 1, at 36-37 n.16 (citing cases).

³¹ 17 U.S.C. § 107 (2005).

³² 510 U.S. 569, 577 (1994). See also Pierre Leval, Toward a Fair Use Standard, 103 Harv. L. Rev. 1105, 1110 (1990) (“Fair use should not be considered a bizarre, occasionally tolerated departure from the grand conception of the copyright monopoly. To the contrary, it is a necessary part of the overall design.”).

We are aware of no difficulties in the application of the fair use doctrine to “aggregators and search engines.” Changes in existing law are typically prompted by actual shortcomings in case law and, in the absence of those, should not be undertaken.

Proposal to License the News

The Discussion Draft includes a section relating to a proposal made by some participants in the workshops that “some sort of industry-wide licensing arrangement be adopted, perhaps with the government’s help and support.”³³ The draft also mentions the proposal of another participant that the copyright law be amended to levy a licensing fee on every Internet Service Provider in the amount of five to seven dollars for every account it provides.³⁴ Google believes that there is good reason to reject both proposals.

First, we note (as does the Discussion Draft) that there are no current laws preventing news organizations from licensing their content, and the Associated Press and others in fact do. While the precise nature of the proposal relating to licensing of news content is unclear, if the proposal were to involve the licensing of facts or other uncopyrightable material then it is unconstitutional under the Supreme Court’s 1991 opinion in *Feist Publications, Inc v. Rural Telephone Service Co.*³⁵ (as described below).

Second, as the Discussion Draft notes, the levy recommendation imposes a tax on people who may never go to the sites of those receiving the money. There is, moreover, no realistic suggestion for how such staggering amounts of money – there are an estimated 260 million Internet users in North America – would be distributed fairly. Google, therefore, believes that the adoption of such a policy recommendation would be a mistake.

Proposed Recommendations Relating to Hot News

The Discussion Draft recounts proposals by “some stakeholders” to amend the Copyright Act to grant copyright protection to “hot news” and to encourage the development of state hot news misappropriation laws.³⁶ It also provides a brief summary of the pros and cons of these legislative proposals, as articulated by participants in the workshops. For the reasons set forth below, these proposals should be rejected.³⁷

³³ DISCUSSION DRAFT, *supra* note 1, at 12.

³⁴ *Id.* This person is the chairman of the Joint Washington Committee, a coalition of national broadcast, print and journalism organizations.

³⁵ 499 U.S. 340 (1991).

³⁶ DISCUSSION DRAFT, *supra* note 1, at 9.

³⁷ For a more complete discussion of the issues raised by the proposed “hot news” legislation recommendations, see Brief for Amici Curiae Google, Inc. and Twitter, Inc. in Support of Reversal, *Barclays Capital, Inc. v. Thefbyonthewall.com, Inc.*, No. 10-1372 (2d Cir. June 21, 2010), <http://www.citmedialaw.org/sites/citmedialaw.org/files/Google%20Twitter%20Amicus.pdf> (last visited July 16, 2010).

Facts, hot or cold, cannot be protected by copyright since there is no author of them. This has been the law of copyright since its inception,³⁸ but was given Constitutional import in the Supreme Court’s 1991 *Feist* opinion where the Court noted that “[t]he first person to find and report a particular fact has not created the fact; he or she has merely discovered its existence.”³⁹ Thus, as a Constitutional matter, even a competitor “remains free to use the facts contained in another’s publication to aid in preparing a competing work. . . .”⁴⁰ Central to *Feist*’s holding is its rejection of the notion that the “sweat of the brow” creates intellectual property rights, and it is precisely this sweat-of-the-brow theory on which hot news rests.

Protecting hot news under state misappropriation law is not compatible with Constitutional principles enunciated in *Feist*. As *Feist* explains, the Copyright Clause leaves facts in the public domain for all to freely use, precluding any claim of a property right in those facts.⁴¹ In other words, the freedom to copy facts at will is an essential component of the “promot[ion of] the Progress of Science and useful Arts.”⁴²

Even if one could legislate hot news protection, doing so would actually run counter to the interests of news organizations. For example, reporters use search engines in their research, and indexing of articles allows stories to be found on the Web, which drives users to the news sites. It is longstanding industry practice for news outlets to report on other outlets’ breaking stories (e.g., “The Associated Press is reporting that Elena Kagan is President Obama’s Supreme Court nominee”; “CNN.com is reporting the possible presence of a bomb in Times Square”). For decades, television and radio news readers have broadcast information obtained from newspapers without controversy. Newspaper, radio, and, more recently, Internet news organizations learn and write about breaking events on television. Endorsing “hot news” misappropriation would not only create uncertainty in news outlets across America as to how long they must “sit” on important factual information, but it would

³⁸ In *Feist*, the Supreme Court wrote: “That there can be no valid copyright in facts is universally understood.” 499 U.S. at 344. See also *N.Y. Mercantile Exch., Inc. v. Intercontinental Exch., Inc.*, 497 F.3d 109, 114 (2d Cir. 2007) (“[A]ll facts—scientific, historical biographical, and news of the day . . . may not be copyrighted and are part of the public domain available to every person.”) (quoting *Feist*, 499 U.S. at 348); *Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 418 (2d Cir. 2004) (quoting Justice Brandeis’s dissent in *INS* in holding that a domain name registrar “must make WHOIS information publicly accessible from the registrar’s site and generally ‘free as the air to common use’”); *Sparaco v. Lawler, Matusky, Skelly, Eng’rs LLP*, 303 F.3d 460, 466-67 (2d Cir. 2002) (recognizing that under modern understanding of copyright law, “historical, scientific, or factual information belongs in the public domain, and . . . allowing the first publisher to prevent others from copying such information would defeat the objectives of copyright by impeding rather than advancing the progress of knowledge. . . . [Under *Feist*,] the publication of facts, regardless how much effort was expended in discovering them,” is not subject to copyright protection); *Attia v. Soc’y of the N.Y. Hosp.*, 201 F.3d 50, 54 (2d Cir. 1999) (stating that as copyright law developed, “[i]t became accepted as orthodox that ideas, like facts, belong in the public domain”).

³⁹ 499 U.S. 340, 347 (1991).

⁴⁰ *Id.* at 349.

⁴¹ See *id.* (stating that it is a “constitutional requirement” that a competitor “remains free to use the facts contained in another’s publication to aid in preparing a competing work”); *id.* at 350 (concluding that “raw facts may be copied at will. This result is neither unfair nor unfortunate. It is the means by which copyright advances the progress of science and art.”).

⁴² U.S. Const. art. I, § 8, cl. 8.

also disserve the public interest by preventing citizens from receiving important, time-sensitive, factual information.

Indeed, the notion that “established” media outlets should have a monopoly (even for a limited period of time) on facts is anachronistic. Today, breaking news is often reported first by individuals on the scene and equipped with nothing more than a cell phone and a connection to a social media site such as Twitter. For example, on January 15, 2009, when a US Airways flight went down into the Hudson River, it was a passenger on the first ferry that disseminated the first photographs and reporting of the incident.⁴³ This is also true of natural disasters and ongoing events like the clashes between Iranian dissidents and the government of that country. It is simply not possible to formulate a hot news tort that would exclude the important role played in news collection and dissemination by individuals but provide a factual monopoly for established news organizations.

Moreover, the flow of information between traditional media and individuals using social networking sites is constant and inseparable. As the same story about the US Airways incident noted, “Newspapers and news sites are constantly trying to use the [social networking] sites['] popularity to their own benefit, with direct links and Facebook-ing journalists – but with the head start that Twitter had over the New York Times last Thursday, it seems they may have to try a little harder.”⁴⁴

A hot news right would also run afoul of the First Amendment. The reporting of truthful information is one of the most closely guarded forms of speech under the Constitution, the injunction of which is a “most extraordinary remed[y],”⁴⁵ that can only be imposed “where the evil that would result from the reportage is both great and certain and cannot be militated by less intrusive measures.”⁴⁶

The Proposed Recommendations Relating to New Antitrust Exemptions Will Harm Consumer Welfare

The Discussion Draft mentions two proposals for antitrust exemptions: the first would allow news organizations to agree jointly to erect pay walls protecting their online content, and the second would allow news organizations to agree jointly on a mechanism requiring “news aggregators and others” to pay for the use of online content.⁴⁷ These proposals amount to the same thing: Allowing news organizations to coordinate on payment schemes. Adopting either would be a significant mistake, as a matter of public policy and as a matter of fairness.

⁴³ Helena Deards, “Twitter First Off the Mark with Hudson Plane Crash Coverage,” EDITOR’S WEBLOG, Jan. 19, 2009, http://www.editorsweblog.org/multimedia/2009/01/twitter_first_off_the_mark_with_hudson_p.php (last visited July 2, 2010).

⁴⁴ *Id.*

⁴⁵ *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 562 (1976).

⁴⁶ *CBS Inc. v. Davis*, 510 U.S. 1315, 1317 (1994).

⁴⁷ DISCUSSION DRAFT, *supra* note 1, at 13.

Historically, legislation granting antitrust exemptions has been disfavored by the FTC and its commissioners. For example, the FTC has repeatedly opposed legislation aimed at providing antitrust exemptions for health care providers.⁴⁸ The FTC likewise opposed legislation to provide an antitrust exemption in the 1997 tobacco settlement⁴⁹ and legislation exempting self-regulation by the entertainment industry.⁵⁰ Generally, the antitrust community agrees that “immunity from the antitrust laws should be disfavored.”⁵¹

The Discussion Draft does an excellent job of describing the history of antitrust exemptions in the newspaper industry; it likewise provides several explanations for why antitrust exemptions are at best ineffective and at worst actively harmful to consumers. In particular, the Discussion Draft points out two criticisms of the Newspaper Protection Act: First, it did not even succeed in ensuring the survival of competing regional papers. And second, it harmed consumers by increasing advertising and circulation prices while enriching corporations who were not the intended beneficiaries of the legislation.⁵² These criticisms can and should be extended to the proposals mentioned in the Discussion Draft, which would create immunity from liability for jointly setting prices, the primary result of which would be anticompetitively high prices for consumers.

Participants in the FTC’s December 2, 2009, workshop expressed additional concerns about the proposed antitrust exemptions. As described in the Discussion Draft, one public comment noted that these exemptions could favor large news organizations, putting “smaller, emerging media companies at a

⁴⁸ See, e.g., Press Release, Fed. Trade Comm’n, FTC Testifies on Importance of Competition and Antitrust Enforcement to Lower-Cost, Higher-Quality Health Care (July 16, 2009), <http://www.ftc.gov/opa/2009/07/healthcare.shtm>; Press Release, Fed. Trade Comm’n, FTC Opposes Bill that Would Grant Antitrust Exemption for Health Care Providers (July 29, 1998), <http://www.ftc.gov/opa/1998/07/healanti.shtm>; Letter from William J. Baer to Rene O. Oliveira, Texas State Representative (May 13, 1999), <http://www.ftc.gov/be/v990009.shtm>; Janet D. Steiger, Comm’r, Fed. Trade Comm’n, Health Care Enforcement Issues, Remarks Before the Health Trustee Institute (Nov. 9, 1995), <http://www.ftc.gov/speeches/steiger/stg119.shtm>; Press Release, Fed. Trade Comm’n, FTC Testifies on Community Pharmacy Fairness Act of 2007 (Oct. 18, 2007), <http://www.ftc.gov/opa/2007/10/pharmacyact.shtm>; Press Release, Fed. Trade Comm’n, FTC Staff Opposes Ohio Bill to Allow Physician Collective Bargaining (Oct. 21, 2002), <http://www.ftc.gov/opa/2002/10/physicians.shtm> (all last visited July 2, 2010).

⁴⁹ Press Release, Fed. Trade Comm’n, FTC Chairman Testifies Before Senate Subcommittee on Antitrust Exemption in Proposed Tobacco Settlement (Oct. 29, 1997), <http://www.ftc.gov/opa/1997/10/tobsen.shtm> (last visited July 2, 2010).

⁵⁰ Press Release, Fed. Trade Comm’n, Federal Trade Commission Testifies on the Antitrust Implications of Entertainment Industry Self-regulation (Sept. 20, 2000), <http://www.ftc.gov/opa/2000/09/violanti.shtm> (last visited July 2, 2010).

⁵¹ See Antitrust Modernization Commission, Immunities and Exemptions Discussion Outline (July 10, 2006), <http://govinfo.library.unt.edu/amc/pdf/meetings/IE-Statutory%20DiscOutline060710circ1.pdf> (last visited July 2, 2010).

⁵² DISCUSSION DRAFT, *supra* note 1, at 14 (citing Leonard Downie, Jr. & Michael Schudson, *The Reconstruction of American Journalism*, COLUM. JOURNALISM REV., Oct. 19, 2009, at 28-29, available at http://www.cjr.org/reconstruction/the_reconstruction_of_american.php?page=all; Robert G. Picard, Tremors, Structural Damage and Some Casualties, but No Cataclysm: The News about News Provision, Background Paper to the Presentation by the Author at the Federal Trade Commission Workshop: From Town Crier to Bloggers: How Will Journalism Survive the Internet Age? (Nov. 7, 2009), at 11, <http://www.ftc.gov/os/comments/newsmediaworkshop/544505-00029.pdf>) (last visited July 2, 2010).

distinct competitive disadvantage.”⁵³ Another participant observed, along the same lines, that because barriers to entry for media companies are lower than ever, all antitrust exemptions would do is unbalance the playing field.⁵⁴ Another workshop participant was skeptical that the proposed exemptions would be effective, because the payment schemes would still be dependent on consumer demand for online content.⁵⁵

Perhaps the clearest repudiation of antitrust exemption policies was delivered in the Commission-authorized statement of Alden F. Abbott, the FTC’s associate director for policy and coordination in connection with the Antitrust Modernization Commission’s consideration of statutory exemptions and immunities:

Basic economic theory teaches that an unregulated competitive market generally leads to the economically efficient level of output. In contrast, a restraint that effectively raises price above the competitive level (or, equivalently, reduces output below the competitive level) generally will result in consumers purchasing less of the product or service, and firms producing less, at the higher price, than would be the case under competitive conditions. Consequently, such a restraint results in a decrease in economic welfare. Further, it is well accepted that competition itself is an engine that drives economic efficiency. Therefore, logic suggests that antitrust exemptions may well handicap the economic progress of industries they are intended to protect. Individual firms may enjoy the benefits of antitrust exemptions, but consumers and the economy bear the harm – and the sheltered sector is rendered less efficient overall.⁵⁶

Abbott continues, explaining that even industries that currently enjoy antitrust exemptions do not need them to grant amnesty to “efficient, socially useful forms of conduct,” because such conduct should pass the antitrust test of reasonableness.⁵⁷ The Discussion Draft mentions two examples, “proposed collaborations for tracking online content and creating platforms potentially to allow individual content holders to monetize the use of content,” which the Antitrust Division of the DOJ has already indicated satisfy the requirements of antitrust law as it stands.⁵⁸ News organizations, rather than

⁵³ *Id.* (quoting Northern California Chapter of the Society of Professional Journalists, Public Comment to the Federal Trade Commission Workshop: From Town Crier to Bloggers: How Will Journalism Survive the Internet Age? (Nov. 6, 2009), at 3, <http://www.ftc.gov/os/comments/newsmediaworkshop/544505-00020.pdf>) (last visited July 2, 2010).

⁵⁴ *Id.* (quoting Jeff Jarvis, Remarks Before the Federal Trade Commission Workshop: From Town Crier to Bloggers: How Will Journalism Survive the Internet Age? (Dec. 1, 2009), at 238, <http://www.ftc.gov/opp/workshops/news/transcripts/091201transcript.pdf>) (last visited July 2, 2010).

⁵⁵ *Id.* (quoting Picard, *supra* note 52, at 10-11).

⁵⁶ Alden F. Abbott, Assoc. Dir. for Policy & Coordination, Bureau of Competition, Fed. Trade Comm’n, Prepared Statement Before the Antitrust Modernization Commission on Statutory Immunities and Exemptions (Dec. 1, 2005), at 3-4, <http://www.ftc.gov/os/2005/12/051202statutory.pdf> (citations omitted).

⁵⁷ *Id.* at 6-7.

⁵⁸ DISCUSSION DRAFT, *supra* note 1, at 15 (citing Letter from Christine A. Varney, Assistant Attorney General, U.S. Dep’t of Justice Antitrust Division, to William J. Baer, Esq., Arnold & Porter LLP (Mar. 31, 2010),

seeking immunity for anticompetitive behavior, should instead work within the antitrust framework to establish payment schemes that allow them to benefit from their online content without engaging in price-fixing.

Ultimately, the issue of antitrust exemptions is a unifying one; aside from individual firms or industries that stand to gain from narrow immunities shielding them from the efficiency and consumer benefit of true competition, the antitrust community as a whole agrees that these exceptions are ineffective at best, and counterproductive at worst. The FTC's long-standing position regarding antitrust exemptions properly subordinates a desire to advantage individual firms (here, print news organizations) to the need for a competitive, even playing field that offers the maximum good to consumers.

Conclusion

Through all of the initiatives we describe above, and more to come, Google continues to work with publishers to find ways to ensure that journalism survives and thrives on the Web. We remain optimistic about the future of journalism: The Fourth Estate is too crucial a part of a functioning democracy, and the Internet too powerful a medium, for journalism to die in transition to a Web-first approach. News organizations have more readers than ever, more sources of information than ever, more ways to report and tell stories than ever, and more potential ways to generate revenue than ever. Journalism will change, but the free market and free society will ensure that it won't die.

<http://www.justice.gov/atr/public/busreview/257318.pdf> (concerning the Associated Press's proposed News Registry); Letter from Christine A. Varney, Assistant Attorney General, Dep't of Justice Antitrust Division, to Charles E. Biggio, Esq., Wilson Sonsini Goodrich & Rosati (Feb. 24, 2010), <http://www.justice.gov/atr/public/busreview/255624.pdf> (concerning MyWire's proposal to develop and operate an Internet media subscription news aggregation service)).