

‘Veil of secrecy’: outrage as Google limits public access to antitrust trial

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The landmark antitrust trial pitting the US justice department against Google is now in its third week, and the government continues to roll out its case arguing that the internet search behemoth abused its power and resources to maintain a monopoly. The trial has widespread implications for the tech industry, antitrust law and potentially the way that hundreds of millions of people engage with and access the internet. But in the courtroom, much of the proceedings have unfolded behind closed doors, in sessions that are inaccessible to the public or the media. The secrecy has outraged transparency experts and tech critics, who allege that Google is trying to sweep the trial under the rug. “People are right to be concerned about the lack of transparency in this trial,” said Katherine Van Dyck, senior legal counsel at the American Economic Liberties Project, a non-profit that advocates for corporate accountability. “We aren’t seeing the most basic evidence in this case and that’s a serious problem.” Government prosecutors have tried to present Google’s status as the de facto search browser for most Americans as a story of a tech giant abusively and unfairly cutting out competitors. Google’s lawyers have vehemently denied the allegations, countering that its prominence is the result of consumers choosing a superior product. Google successfully petitioned Judge Amit Mehta to block public access to both evidence and testimony throughout the opening weeks of the trial, arguing that trade secrets could be disclosed. Even before the trial began, Mehta agreed with Google’s lawyers that public audio and video of the trial should be prohibited to prevent any potential undue harm to the company. Getting out information about the trial has instead fallen to the reporters, activists and observers that are physically in the courtroom, increasing the costs and resources involved in actively following the case. Google’s lawyers, as well as attorneys for other major companies like Apple whose executives are involved in the trial, have also pushed to have documents and testimony kept private at the risk of competitive harm. Many of the witnesses called so far have therefore given a brief amount of public testimony before being moved to closed sessions. The former Google official John Yoo, Verizon executive Brian Higgins and search engine DuckDuckGo CEO, Gabriel Weinberg, all had the majority of their testimony conducted in private. Apple’s AI chief, John Giannandrea, testified on both Thursday and Friday of last week, but it was conducted almost entirely out of view with only about 10 minutes made public. Mehta last week temporarily ordered the justice department to pull down documents from the trial that it posted online, after Google issued a complaint. Legal observers and media have frequently compared the Google trial to the justice department’s landmark antitrust suit against Microsoft in the 1990s, which garnered widespread attention and led to spectacles such as Bill Gates’s notorious deposition video. But those blockbuster moments and the public interest that followed were possible because of the public access to the trial and the amount of resources news outlets devoted to it. In the Google case, the government has been able to publicly

present internal documents and communications that the justice department alleges show Google has long intended to maintain its monopoly through unfair and anticompetitive practices. Crucial to these, the government says, is Google spending billions of dollars a year in partnerships with companies like Apple to make sure it is the default browser on their devices. The secrecy of the trial and Google's push to limit evidence has also mirrored the way it operates internally, Van Dyck argues. Early in the case, the government presented internal emails from Google's chief economist, Hal Varian, and employee Penny Chu in which the two discussed the importance of avoiding certain terms such as "market share". "I'm aware of not using the word 'market'," Chu told Varian in one email. "The one big thing I learned from legal training. :)" The government has argued in the trial that Google created a system in order to obfuscate their operations from regulators, which included utilizing Google's internal chat function which deletes messages after a 24-hour period. "Google has trained employees to maintain this veil of secrecy around how they operate," says Van Dyck. The government received a break on Tuesday in the debate over how much of the trial should be public, with Judge Mehta ruling that the justice department can resume putting exhibits for the trial online at the end of each day. Google's lawyers will have until 9pm to contest whether those documents should not be allowed for public viewing. The company's lawyers had previously argued that the government could potentially post sensitive information which had no public interest, but which would serve as "clickbait". Meanwhile, transparency advocates saw Google and the government's debate over what exhibits should be allowed online as yet another attempt from the tech giant to keep its affairs as private as possible. "Google kind of made itself the keeper of all the information on the internet and wants itself out there publicly as this great public resource," Van Dyck said. "But it really wants to keep what it's doing under wraps and out of public view." The US justice department and representatives of Google did not return a request for comment.