

From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: Hello, from NYT Opinion
Date: Friday, July 30, 2021 4:12:35 PM

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Bethany McCorkle
Sent: Wednesday, June 23, 2021 11:23 AM
To: 'Siddhartha Mahanta' <siddhartha.mahanta@nytimes.com>
Subject: RE: Hello, from NYT Opinion

Absolutely, we'd love to put a piece together for you. When do you think it would run? We can probably turn something around relatively quickly.

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[@sidhubaba](https://twitter.com/sidhubaba)

From: [Bethany McCorkle](#)
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Subject: FW: Hello, from NYT Opinion
Date: Friday, July 30, 2021 4:12:51 PM
Attachments: [Google as a Public Utility.docx](#)

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Google Search is the first nationwide utility. Its status changes its legal duties--and Ohio has gone to court seeking a declaration that it is so.

When Ohio prevails, there will be no heavy-handed, "Mother-May-I?" governmental regulation. The lawsuit does not seek to break up the profound network effects of this business, nor to change its algorithms. We are not even asking for money damages. Just a simple declaration that, under the law, Google is a public utility, or more generally, a common carrier. As legal touches go, this is a light one.

The concept goes back to English common law. Imagine John the Ferryman, who owned the only boat for miles in each direction. If you wanted to get across the river, you had to deal with John. That made John the most important man in the economy, because without him, it became nearly impossible to move goods or people.

Recognizing this profound public interest, the common law developed a requirement that John had to take everybody across the river who would pay, without bias. He couldn't charge more for people he did not like, or who were rich enough to pay more, or refuse service.

Google is like John: it transports goods and services and ideas to market, across geographic barriers. At lightning speed, Google connects a student in Columbus with a library in Madrid; or connects a mother in Toledo with a babysitter down the street. Some 5,600,000,000 searches are run on Google every day.

Google Search dominates internet search, with more than 90% of all searches globally. But it uses this dominance to help its other businesses – say Google flights or YouTube – by placing them at the top of its results.

And it works. About two out of three Google searches end as "captured click" transactions – that is, the consumer never leaves Google or one of its properties in reviewing results.

Ohio's lawsuit is simple: To recognize that Google Search meets the centuries-old definition of a public utility and common carrier. When Ohio prevails, Google will have a legal duty to act with consideration of the public interest, to provide equal access and to act without unreasonable bias. That's it.

The "unreasonable" part is critical. It means that those who say being a common carrier will "break" Google Search are wrong. The relevancy determinations that Google Search makes are its utility and will be unimpacted.

Ohio believes one of the duties will include *not* promoting Google products and services over the organic search results its algorithms produce. Google will remain able to advertise its other businesses on its search results pages, but only in the same manner and terms it affords to competitors—no self-preferencing. By establishing the duty of unbiased dealing, Google can choose to conform its practices to its legal duty. The marketplace will do the rest.

If other actors feel that Google is not living up to those duties in some specific way, they can seek redress through the courts. Is this an invitation to a flood of litigation? Hardly: from railroads and motor carriers to electricity and telephony to cell towers, private sector actors deal with common carriers and public utilities without a first resort to court. The common carriers recognize their duty, and act accordingly.

Some critics of Ohio's lawsuit suggest that Section 230 of the Communications Decency Act stands in the way. But the plain meaning of the statute clearly does not reach Google's commercial bias toward its own businesses – it grants immunity from content filtered out on the basis of things like pornography and violence. (The question becomes more nuanced when applying Section 230 to filtering what the statute calls "otherwise objectionable" material – objectionable in what way? Objectionable to whom? But that is a downstream question about applicability *after* Ohio has won its declaratory judgment.)

In any event, a provision not included in the "26 words that built the internet" is precisely on point: "Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section."

The truth of the matter is that foreign governments are already regulating Ohioans' cyberspace. The European Union requires cookie warnings and privacy safeguards. Google just settled France's lawsuit about the way Google serves its ads.

Nor is Ohio's action chilling to Google's right of free speech. To the contrary, Google will remain to say anything it pleases. What it may not do is restrain commerce of others by using its monopolistic powers in search to corner other markets.

Others object that this creates a Dormant Commerce Clause problem – that one state among 50 is using its law to attempt to control the others, a violation of sovereignty and federalism.

But Google is a global company that already uses different business practices in different parts of the world. It can geo-fence Ohio if it chooses (and the other states that will most likely follow Ohio's lead).

Or, Google can follow the advice of its own Code of Corporate Conduct: "Do the right thing – follow the law, act honorably, and treat each other with respect."

Perhaps it might confess judgment?

From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: Hello, from NYT Opinion
Date: Friday, July 30, 2021 4:13:28 PM

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
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Bethany.McCorkle@OhioAttorneyGeneral.gov

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Sent: Thursday, June 24, 2021 10:35 AM
To: 'Siddhartha Mahanta' <siddhartha.mahanta@nytimes.com>
Subject: RE: Hello, from NYT Opinion

Ok, let me read through everything but it shouldn't be an issue to sign it and keep the edits to 900 words. Thanks for reaching out and I'll send it back soon.

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And: can I have the AG's office fill out this contributor agreement?

Cheers,
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Date: Friday, July 30, 2021 4:14:15 PM
Attachments: [Opinion_Contract_2021v2.pdf](#)
[Google as a Public Utility.docx](#)

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Attached is the contract and the revised oped from Ohio AG Dave Yost. Please let me know if you need anything more from me right now. He does prefer Dave vs David for what its worth. Thank so much for the opportunity. I look forward to hearing from you. Take care!

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Your opinion submission to The New York Times has been provisionally accepted.

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2. Read, sign and return the attached agreement, preferably via e-mail to ***opinioncontracts@nytimes.com***. (If you must fax or mail it, tell this to your editor and use the contact information at the end of the contract.) Please return all pages of the agreement. **The return of this agreement is a precondition of publication.**
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New York, NY 10018-1405

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While we usually do not contact the original speaker to check quotations from interviews, we always verify facts within those quotations and, in cases of public remarks, confirm that the quotation is rendered and attributed accurately. We look at empirical evidence to verify that the methodology is sound and that the data is presented with precision and balance. If we determine that a particular fact cannot be verified or defended, we will not publish it.

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We will work to verify the facts in your Guest Essay, but as the writer, you bear the ultimate responsibility for the accuracy of your work. We cannot “fix” anything post-publication without appending a correction — and corrections are permanently archived. Past errors are a factor when we consider whether to accept future work from a writer.

Thank you for your cooperation.

— The Editors

The New York Times

620 Eighth Avenue
New York, NY 10018-1405

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1. (a) You agree to prepare such Material as you and your editors may agree upon for publication, in print and/or online. Subject to the acceptance and publication of the Material, The Times will pay you a fee.
 - (b) The Material will be submitted by a mutually agreed-upon deadline. You agree to cooperate with The Times's normal editing processes, including making and reviewing revisions as requested. You will also comply with The Times's fact-checking policy, which is attached.
2. (a) You acknowledge that the Material has been commissioned by The Times as a contribution to a collective work and that The Times's interest therein arises as a "work-for-hire" under the United States Copyright Act. The Times hereby assigns to you a joint copyright interest in the Material, such that it shall be deemed joint work owned by The Times and by you. (In the event the Material is deemed not to be a "work-for-hire," you hereby assign to The Times a joint copyright interest in the Material, to effect joint copyright ownership.)
 - (b) As joint copyright owners, The Times and you shall each have the irrevocable, non-exclusive right to exercise any and all rights granted by the United States Copyright Act, including, but not limited to, the right to reproduce, display, distribute, sell, translate, create derivative rights and transmit the Material throughout the world, in any media now known or later developed, and to sublicense the foregoing rights, provided that neither you nor The Times shall have the right to grant rights in the Material that would purport to restrict the rights of the other party under this Agreement, and provided that your exercise of these rights shall be subject to paragraph 3 below and shall begin 30 days after The Times first publishes the Material.
- (c) Neither party shall be obligated to share revenues from exercise of the foregoing rights, except that The Times will pay you fifty percent (50%) of the net receipts (that is, receipts after deduction of syndication expenses) from any one-time syndication of the Material ("Syndication Fee"). Material is "syndicated" when it is sold individually to a third party for republication in any form. (The use of Material by regular clients of The New York Times Syndicate is not a "syndication" for which compensation would be owed.) If any Material is syndicated for use in an advertisement or promotion, there will be a maximum Syndication Fee.
- (d) In addition to the foregoing, you hereby grant to The Times a perpetual, worldwide, royalty-free, paid-up non-exclusive transferable license under copyright to reproduce, distribute, display, perform, translate or otherwise publish your Prior Contributions in any form or media, whether now known or that may hereafter be developed, whether or not any such Prior Contribution may be individually accessed, perceived or retrieved from such form or media, and to authorize third parties to exercise such rights, provided that this license shall be limited to the use of Prior Contributions in forms or media that contain other articles from The Times. As used in this Section 2(d), "Prior Contributions" shall mean articles, columns or any other materials written by you and published in *The New York Times* newspaper, the *New York Times International Edition* newspaper, and/or on nytimes.com prior to the date of this agreement, other than such materials as are already covered by a written agreement between you and The Times.
3. You will require any republication of the Material authorized by you to indicate that the Material was originally published in *The New York Times*, *The New York Times International Edition* or nytimes.com. (However, failure by the subsequent publisher or other user to provide such credit will not be deemed a breach of this Agreement, if you can demonstrate that you required crediting as a condition of the grant of rights.) Except for the foregoing requirement, The Times must give you prior written approval to use its name in connection with your use or licensing of the Material.
4. The Times shall have the right to use your name and likeness in connection with the advertising and/or promotion of *The New York Times* newspaper, *The New York Times International Edition* newspaper, and/or nytimes.com and the Material.

-- Please return entire contract. --

Initials _____

5. You warrant that the Material will be original and will not plagiarize another's work, infringe another's copyright or violate any person's rights, including the right of privacy; that the Material will not contain libelous, unlawful, false or misleading material; and that the Material will not have appeared elsewhere, in whole or in part, even in modified form. You agree to cooperate fully with The Times in responding to and defending against any third-party claims relating to the Material, including any complaints about factual errors or inaccuracies.

6. You agree that with regard to the Material, you will take care to avoid any conflict of interest, or the appearance of such conflict, and that you will comply with The Times's policies on Ethical Journalism, set forth at <https://www.nytimes.com/editorial-standards/ethical-journalism.html>. For example, in connection with work submitted to The Times, you will not accept free transportation, gifts, junkets or commissions. You agree to disclose to The Times any potential or actual financial interest you may have in the subject matter of the Material.

7. For 30 days from publication of the Material, you will not permit the Material or any article by you on a similar subject matter to appear in any other publication without prior written approval.

8. You acknowledge that your relationship to The Times is that of an independent contractor. As such, you will not be an employee of The Times, nor will you be entitled to any employee benefits, such as medical benefits, life insurance, retirement benefits, etc. If applicable, at the end of the year, The Times will send you IRS Form 1099 which will reflect all amounts paid to you during the year.

9. This Agreement sets forth the complete understanding and agreement of the parties regarding the Material submitted pursuant to this Agreement, and shall supersede all prior agreements on the Material. This Agreement may not be modified except in writing and signed by both parties. This Agreement has been made in, and shall be construed and enforced in accordance with, the laws of the State of New York. Any action to enforce this Agreement shall be brought in the federal or state courts in the County of New York.

-- Please return entire contract. --

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Please sign and return this Agreement by scanning and e-mailing it to opinioncontracts@nytimes.com. If you are unable to do this, you may fax it to +1 212 556-4100 or mail it to The New York Times, Opinion Department, Attn: Lauren Ricci, 620 Eighth Avenue, 5th Floor, New York, NY 10018, USA

Signed:

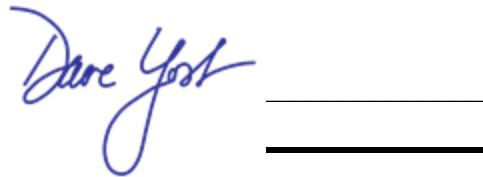


By: Charlotte Greensit
Managing Editor, Opinion
THE NEW YORK TIMES COMPANY

Please provide the following information (please PRINT clearly).	
Full Name:	
Byline (if different):	
Address:	
Phone Number:	
Email Address:	
Other Contact Information:	

Accepted and agreed to by:

Signature: _____



Date: _____

-- Please return entire contract. --

Initials _____

Below please find our Non-Employee Worker Personal Information Notice. Please sign and return to confirm that you have read and acknowledge receipt of this notice.



Signature

Name (please print)

Date

The New York Times
Non-Employee Worker Personal Information Notice

1. Introduction

The New York Times Company and its affiliated entities (together “The New York Times”) value the trust of their non-employee workers and are committed to protecting their personal information. We operate in many different countries. Some of these countries have laws related to the collection, use, transfer and disclosure of the personal information of individuals, including non-employee workers, and we take these obligations very seriously. The purpose of this Non-Employee Worker Personal Information Notice (the “Notice”) is to give you information about what personal information we collect, use, transfer and disclose, and why.

2. What Information About You We Collect, Use, Transfer And Disclose, And Why

In the course of your relationship with a New York Times company (the “Company”) and depending on your business relationship with the Company, the Company collects information about you and the services you provide to the Company. We refer to such information as “Personal Information.” For more specific information regarding what Personal Information about you the Company collects, uses, transfers and discloses, and the purposes for which it is collected, used, transferred and disclosed, please see the end of this Notice. You may have received notices or information from your local relationship partner or business representative that may provide additional detail.

We collect and process information about you for a variety of reasons. For more detail regarding the reasons and purposes for which we process Personal Information, please see the end of this Notice. Where none of these reasons apply, your decision to provide Personal Information to the Company is voluntary. If we collect or process Personal Information based on your consent, you may withdraw your consent at any time.

We receive Personal Information from you as well as from other sources. Please see the end of this Notice for details.

3. Transfer And Joint Use Of Personal Information

Due to the global nature of The New York Times operations, the Company discloses Personal Information to personnel and departments throughout The New York Times to fulfill the purposes described at the end of this Notice. This includes transferring Personal Information to other countries. For example, if you are located in the European Economic Area (or “EEA”), we transfer your Personal Information to countries located outside of the EEA. For more information on transfer, please see the end of this Notice.

All personnel within The New York Times will generally have access to your business contact information such as name, job description, work telephone number, work postal address and work email address.

Access to any other Personal Information within The New York Times will be limited to those who have a need to know the information for the purposes described at the end of this Notice, and will

include your contacts at the Company, managers and their designees, and personnel in Human Resources, Information Technology, Compliance, Legal, Finance, Accounting, Internal Audit, Labor and Occupational Health departments.

From time to time, The New York Times will need to make Personal Information available to other unaffiliated third parties for business purposes. Please see the end of this Notice for a list of the categories of unaffiliated third parties. Some of the unaffiliated third parties will be located outside of your home jurisdiction, including in the United States or any other country in which we or they have operations.

4. Security

The Company will take appropriate measures to protect Personal Information that are consistent with applicable privacy and data security laws and regulations, including requiring service providers to use appropriate measures to protect the confidentiality and security of Personal Information.

5. Data Integrity and Retention

The Company will take reasonable steps to ensure that the Personal Information processed is reliable for its intended use, and is accurate and complete for carrying out the purposes described in this Notice. The Company will retain Personal Information for the period necessary to fulfill the purposes outlined in this Notice unless a longer retention period is required or permitted by law. For more information on the criteria used see the end of this Notice.

6. Access And Correction Requests, Questions And Complaints

Please complete this form at <https://www.nytimes.com/data-subject-request> if you have any questions or concerns about how the Company processes Personal Information; if you would like to request to access, correct, suppress or delete Personal Information about you or request that we cease using it as permitted by applicable law; or if you would like to request a copy or portability of your Personal Information. We will respond to your request consistent with applicable law. Please note, however, that certain Personal Information may be exempt from requests pursuant to applicable data protection laws or other laws and regulations.

7. Non-Employee Worker's Obligations

Please keep Personal Information up to date and inform us of any significant changes to Personal Information. You agree to follow applicable law and both the Company's and The New York Times's policies, standards and procedures that are brought to your attention when handling any Personal Information to which you have access in the course of your relationship with the Company. In particular, you will not access or use any Personal Information for any purpose other than in connection with and to the extent necessary for your work with the Company. You understand that these obligations continue to exist after termination of your relationship with the Company.

8. Complaints for Non-Employees Located in the E.E.A.

You also may lodge a complaint with a Data Protection Authority for your country or region or in the place of the alleged misconduct.

Types Of Personal Information We Collect, Use, Transfer And Disclose:

- **Personal Details:** Name, byline, Company-assigned personnel identification number, work and home contact details (email, phone numbers, physical address) language(s) spoken, gender, date of birth, national identification number, social security number, marital/civil partnership status, domestic partners, dependents, disability status, emergency contact information and photograph.
- **Documentation Required under Immigration Laws:** Citizenship, passport data, and details of residency.
- **Compensation and Payroll:** Contractual compensation, currency, effective date of current contract, reviews, billing time records, banking details for direct deposits and contract termination date.
- **Services:** Description of services provided, branch/unit/department engaging services, location, services contract, contract start and termination date(s) and reason of termination.
- **Talent Management Information:** Professional and educational details contained in resume/CV (previous and current employment background, education history, professional qualifications, language and other relevant skills, certification, certification expiration dates), information necessary to complete a background and ethical check, and references.
- **System and Application Access Data:** Information required to access Company/The New York Times systems and applications such as System ID, LAN ID, email account, instant messaging account, mainframe ID, system passwords, non-employee worker status reason, branch state, country code, previous employment details, previous department details, and electronic content produced using Company/The New York Times systems.
- **Internet and Other Activity:** In monitoring compliance with our internal acceptable use policies and procedures, we may collect audio or visual information related to your use of the telephones and premises. We may also collect information regarding use of the internet and network activity.
- **Sensitive Information:** We may also collect certain types of sensitive information or protected classification characteristics, where permitted by applicable law, such as health/medical information, place of birth, religion, and race or ethnicity. We collect this information for specific purposes, such as health/medical information in order to accommodate a disability or illness or a security evacuation; religion or church affiliation in countries such as Germany where required for statutory tax deductions; and diversity-related Personal Information (such as race or ethnicity) in order to comply with legal obligations and internal policies relating to diversity and antidiscrimination. As explained in the following section, we will only use such sensitive information for the following purposes and as permitted by law.

The Purposes For Which We Collect, Use, Transfer And Disclose Personal Information:

We collect, use, transfer and disclose Personal Information for the purposes listed below based on one or more of the following reasons: (i) because we are required to do so by local applicable law; (ii) because such information is necessary to fulfill the contract with the Company; (iii) because such information is of particular importance to us and we have a specific legitimate interest or business purpose under law to process it; or (iv) where necessary to protect the vital interests of any person. Regarding (iii) above, we have a legitimate interest or business purpose in collecting and processing Personal Information, for example: (1) to ensure that our networks and information are secure; (2) to administer and generally conduct business within Company and across the organization; and (3) to prevent fraud.

- **Managing Workforce:** Managing the services and service providers generally, contract compliance, royalties and payment administration, training, honoring contractual benefits, performing contingent workforce analysis and planning, performing background checks, managing contractual disputes, breaches of service obligations and termination of services, making business travel arrangements, managing business expenses and reimbursements, contingent workforce reporting and data analytics/ trend analysis, and creating and maintaining one or more internal non-employee worker directories. We will engage in these activities to manage our contractual relationship with you, based on our legitimate interests, business purposes, or to comply with a legal obligation.
- **Communications, Facilities and Emergencies:** Facilitating communication with you, ensuring business continuity and crisis management, protecting the health and safety of non-employee workers and others, safeguarding and maintaining IT infrastructure, office equipment, facilities and other property, facilitating communication with you and your nominated contacts in an emergency. We will engage in these activities to manage our contractual relationship with you, based on our legitimate interests, business purposes, or to comply with a legal obligation.
- **Business Operations:** Operating and managing IT, communications systems and facilities, managing product and service development, improving products and services, managing Company/The New York Times assets, allocating assets and human resources, strategic planning, project management, business continuity, compilation of audit trails and other reporting tools, maintaining records relating to business activities, budgeting, financial management and reporting, communications, managing mergers, acquisitions, sales, re-organizations or disposals and integration with purchaser. We will engage in these activities based on our legitimate interests, business purposes, or to comply with a legal obligation.
- **Compliance:** Complying with legal and other requirements applicable to our businesses in all countries in which we operate, such as tax deductions, record-keeping and reporting obligations, conducting audits, compliance with government inspections and other requests from government or other public authorities, responding to legal processes such as subpoenas, pursuing legal rights and remedies, defending litigation, and managing any internal complaints or claims (including those received through the hotline), conducting investigations including those arising from reporting of allegations of wrongdoing, policy violations, fraud, or financial reporting concerns, and complying with internal policies and procedures. We will engage in these activities to manage our contractual relationship with you, based on our legitimate interests, business purposes, or to comply with a legal obligation.
- **Monitoring:** Monitoring compliance with our internal policies, including pursuant to the Company's/The New York Times' policies and procedures with regard to monitoring of telephone, email, Internet and other resources, and other monitoring activities as permitted by local law. We will engage in these activities based on our legitimate interests, business purposes, or to comply with a legal obligation.

The Categories of Unaffiliated Third Parties With Whom The New York Times Shares Personal Information for Business Purposes

- **Professional Advisors:** Accountants, auditors, lawyers, insurers, bankers, and other outside professional advisors in all of the countries in which The New York Times operates.
- **Service Providers:** Companies that provide products and services to The New York Times such as payroll, human resources services, performance management, expense management, IT systems suppliers and support; credit card companies, trade bodies and associations, and other service providers.
- **Public and Governmental Authorities:** Entities that regulate or have jurisdiction over The New York Times, such as regulatory authorities, law enforcement and public and judicial bodies.
- **Unions / Guilds.**
- **Corporate Transaction:** A third party in connection with any proposed or actual reorganization, merger, sale, joint venture, assignment, transfer or other disposition of all or any portion of The New York Times business, assets or stock (including in connection with any bankruptcy or similar proceedings).

Other Sources From Whom We Receive Personal Information

- Colleagues;
- Managers;
- References you provide;
- Prior employers, clients or schools;
- Clients; and
- Background check provider
- Agencies

Transfers of Personal Information

- For a list of The New York Times Company's affiliates that jointly process and use Personal Information (and their locations), see the below list of affiliates. The Company and The New York Times Company will remain jointly responsible for Personal Information about you that is transferred and jointly used.

● <u>Entity Name</u>	<u>Location</u>
New York Times Limited	United Kingdom
New York Times (Zurich) GmbH	Switzerland
NYT B.V.	Netherlands
NYT France S.A.S.	France
NYT Germany GmbH	Germany

NYT Hong Kong Limited	Hong-Kong
Beijing Shixun Zhihua Consulting Co. LTD	China
NYT Japan GK	Japan
NYT Singapore PTE. LTD.	Singapore
Bureau in France	France
Rome Bureau S.r.l.	Italy
The New York Times Company Spółka akcyjna oddział w Polsce	Poland
Bureau in Berlin	Germany
Bureau in Cairo	Egypt
Bureau in Johannesburg	South Africa
Bureau in Brussels	Belgium
Bureau in Beirut	Lebanon
Bureau in Moscow	Russia
Bureau in Bagdad	Iraq
Bureau in Kabul	Afghanistan
Fake Love LLC	USA
Hello Society, LLC	USA
International Media Concepts, Inc.	USA
Listen In Audio Inc.	USA
Midtown insurance Company	USA
N.Y.T. Administradora de Bens e Servicos Ltda.	Brazil
NYT Building Company LLC	USA
NYT Capital, LLC	USA

NYT College Point LLC	USA
NYT Fitness Centers, Inc.	USA
NYT Group Services, LLC	USA
NYT International LLC	USA
NYT News Bureau (India) Private Limited	India
NYT Real Estate Company LLC	USA
NYT Shared Service Center, Inc.	USA
New York Times Canada Ltd.	Canada
New York Times Digital LLC	USA
New York Times France-Kathimerini Commercial S.A.	Greece
The Herald Tribune – Ha'aretz Partnership	Israel
The New York Times Building LLC	USA
The New York Times Company Pty Limited	Australia
The New York Times Distribution Corporation	USA
The New York Times Neediest Cases Fund	USA
The New York Times Sales Company	USA
The New York Times Syndication Sales Corporation	USA
Wirecutter, Inc.	USA
The New York Times Company Branch Office	Kenya
The New York Times Company Oficina De Representacion Sin Ingreso	Mexico
The New York Times Company Türkiye İrtibat Bürosu	Turkey
The New York Times Company	UAE

The New York Times	Senegal
NYT Hong Kong Ltd Liaison Office Korea	Korea

- Some of these countries are recognized by the European Commission as providing an adequate level of protection according to EEA standards (the full list of these countries is available at https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/adequacy-protection-personal-data-non-eu-countries_en). With regard to transfers from the EEA to other countries, we have put in place adequate measures, such as standard contractual clauses adopted by the European Commission to protect your information. Non-employee workers in the EEA may obtain a copy of these measures by going to <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004D0915&from=EN>.

Criteria Used To Determine Our Retention Periods

- The duration of your contract with the Company;
- As required by a legal obligation to which we are subject; and
- As advisable in light of our legal position (such as in regard of applicable statutes of limitations, litigation, or regulatory investigations).

American law recognizes that some critically important businesses must be subject to heightened legal duties of even-handedness because they are not easily or economically efficient to duplicate.

Railroads. Electricity lines. Telephones.

As Ohio's Attorney General, I went to court last month asking for a judicial declaration that Google has evolved into such an entity: a public utility in internet search.

Google is ubiquitous. It has become a verb. More web traffic goes to Google platforms than the other top-50 websites combined. It's not just internet traffic generally: Google dominates internet search, cornering 90% of the search market. The distance to Bing, the runner-up, could be measured in light-years.

Like most of the country's state attorneys general, Ohio is participating in a bipartisan antitrust action against Google, but Ohio is the only state so far to pursue Google under the common law of public utility.

Should Ohio prevail in its lawsuit, there will be no heavy-handed, "Mother-May-I?" governmental regulation, in which the government tells Google how to run its business, or how to write its algorithms. Unlike antitrust, Ohio's lawsuit does not seek to break up the profound network effects of this business. We are not even asking for monetary damages. Just a simple declaration that, under the law, Google is a public utility, or more generally, a common carrier.

As a common-law public utility, Google would then have a legal duty to act with consideration of the public interest, to provide equal access and to act without unreasonable bias. That's it. As legal touches go, this is a light one.

Depending on how Google chooses to meet its obligations, the average searcher would not see obvious changes. That's largely because, when you use Google to search, you're not the customer -- you're the product. Google sells your detailed personal information for targeting ads. The subtle changes you will see will be positive, such as showing you the results you requested instead of being steered to Google products.

Currently, Google prioritizes its own products and platforms in search results. About two out of three Google searches end as "captured click" transactions – that is, the consumer never leaves Google or one of its properties in reviewing results. So, a search, say for flights, first brings up integrated results from Google Flights -- and competitors such as Travelocity or Orbitz can't get that same treatment, for any amount of money.

As a public utility, Google search would have to give others a shot. Those searching would get results that are not skewed to Google, and the marketplace would be a bit more competitive.

Once a court declares Google a public utility, the marketplace itself would provide the guard rails. Those who felt they were not getting a fair shake could seek redress in court -- but current

public utilities largely honor their obligations under the law, and do not suffer an avalanche of litigation. Google will likely also conform to the duties of its status.

The idea of a higher duty for a public utility dates back to English common law, when key economic players such as ferry operators were required to deal with all customers without bias.

The duty of unbiased dealing is illustrated by Cornelius Vanderbilt. He owned the only railroad bridge over the Hudson River into New York City. In 1866, he closed the bridge to all other competing railroads, effectively shutting the rest of the country out of its largest port, and the city off from food supplies from the west. As the competing railroad's stock crashed, he quickly bought up a controlling position.

American law took a different tack than the common law in dealing with such Gilded Age predations, adopting the Sherman Antitrust Act. But the common law regarding public utilities remains in many places, including Ohio, and the two approaches will produce different results.

Critics of Ohio's lawsuit abound, of course. To knock down a few straw persons: Ohio's action is not chilling to Google's right of free speech. To the contrary, Google will remain free to say anything it pleases. What it may not do is restrain commerce of others by using its monopolistic powers in search to corner other markets.

Others object that this creates a Dormant Commerce Clause problem – that one state among 50 is using its law to attempt to control the others, a violation of sovereignty and federalism. But Google is a global company that already uses different business practices in different parts of the world. It can geo-fence Ohio if it chooses (and the other states that will most likely follow Ohio's lead).

The truth of the matter is that foreign governments already are regulating Ohioans' cyberspace, and with a far heavier hand. The European Union requires cookie warnings and privacy safeguards. Google just settled France's lawsuit about the way Google serves its ads.

Google's answer is due in the next few weeks. It could follow the advice of its own Code of Corporate Conduct: "Do the right thing – follow the law, act honorably, and treat each other with respect."

Perhaps it might confess judgment?

From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: Hello, from NYT Opinion
Date: Friday, July 30, 2021 4:14:38 PM

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Bethany McCorkle
Sent: Tuesday, June 29, 2021 3:50 PM
To: 'Siddhartha Mahanta' <siddhartha.mahanta@nytimes.com>
Subject: RE: Hello, from NYT Opinion

I'm on it.

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Sent: Tuesday, June 29, 2021 3:29 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Re: Hello, from NYT Opinion

Thanks so much! Just a few spots where we need to simplify the language and add links throughout; I think we should still be able to keep this right around the length you all refiled at.

Please do leave on track changes for this next round. Do you think you could have it back to me by tomorrow morning?

Cheers,

Sid

On Tue, Jun 29, 2021 at 11:28 AM Bethany McCorkle <Bethany.McCorkle@ohioago.gov> wrote:

Attached is the contract and the revised oped from Ohio AG Dave Yost. Please let me know if you need anything more from me right now. He does prefer Dave vs David for what its worth. Thank so much for the opportunity. I look forward to hearing from you. Take care!

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>

Sent: Thursday, June 24, 2021 10:28 AM

To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>

Subject: Re: Hello, from NYT Opinion

Thanks so much! I'd like to run this, with some edits.

Here are some macro notes that should be easy to address. One thing I forgot to note: can we mention any other significant actions that Republican state AGs have taken against Google? Also, would love to keep the next draft right around 900 words if we can (with track changes on). As far as timing, I'm looking to run this on July 8/9.

And: can I have the AG's office fill out this contributor agreement?

Cheers,

Sid

On Wed, Jun 23, 2021 at 2:06 PM Bethany McCorkle <Bethany.McCorkle@ohioago.gov> wrote:

I said I could turn something around quickly because we were writing something to shop around so your email was very timely. The thesis would be something like below. I've attached a draft of what it looks like but if you're interested in running it and would like some revisions by all means let me know.

Thesis is: common law common carrier designation is “light touch” regulation that simply establishes the general legal framework that will govern Google’s heightened duties to users and competitors (while reducing Google’s first amendment defenses). The precise scope of Google’s duties would develop on a case-by-case basis until Congress, federal regulators or state legislatures act to impose a regulatory regime.

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Sent: Wednesday, June 23, 2021 11:29 AM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Re: Hello, from NYT Opinion

Great! How about early next week?

Before you get to writing, I'd love to know exactly what sort of thesis statement you'd want to write to -- I imagine it's more or less what I suggested or close to it, but obviously would want to have a clear idea before greenlighting this.

Cheers,
Sid

On Wed, Jun 23, 2021 at 11:23 AM Bethany McCorkle <Bethany.McCorkle@ohioago.gov>
wrote:

Absolutely, we'd love to put a piece together for you. When do you think it would run? We can probably turn something around relatively quickly.

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Sent: Wednesday, June 23, 2021 9:30 AM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Hello, from NYT Opinion

Bethany,

I hope you're well! My name is Sid Mahanta, and I oversee tech and business coverage for the Times Opinion page.

I wondered if Attorney General Yost might be interested in penning an 800-word piece arguing for making Google a common carrier. I'd love to hear how this would improve competition and be better for consumers, and perhaps draw out the railroad analogy that, as I understand it, Mr. Yost is using to help illustrate his case (great, historical metaphors are always an asset!)

If anything, I think our readers will be fascinated to hear a case for *smart* government regulation, argued by a prominent Republican official. As you no doubt know, we're seeing interesting legal challenges against Google from Texas, too; there's something very interesting happening among state AGs and tech, and I'd love to explore this a bit if you all are game ...

Thanks so much,
Sid

--
Siddhartha Mahanta
Op-Ed Editor
The New York Times
620 Eighth Ave., New York, NY 10018
@sidhubaba

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Op-Ed Editor
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Siddhartha Mahanta
Op-Ed Editor
The New York Times
620 Eighth Ave., New York, NY 10018
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From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: Google revisions
Date: Friday, July 30, 2021 4:15:07 PM
Attachments: [Yost2a.docx](#)

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
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Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Bethany McCorkle
Sent: Wednesday, June 30, 2021 12:23 PM
To: 'Siddhartha Mahanta' <siddhartha.mahanta@nytimes.com>
Subject: Google revisions

Here are the revisions with links added and track changes left on. Let me know what else I can do to help. Thanks.

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
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American law recognizes that some critically important businesses must accept all customers and treat everyone fairly because they are not easily or economically efficient to duplicate – think railroads, electricity lines or telephones.

As Ohio's Attorney General, I went to court [[last month]][**as this will run in July, is this still correct?]/yes, June filing**] asking for a judicial declaration that Google has evolved into such an entity: a public utility of internet search.

Google is ubiquitous. More web traffic goes to Google platforms than the other top-50 websites combined. And it's not just internet traffic: Google dominates internet search, cornering nearly 90% of the US search market, and even more globally. The distance to Bing, the runner-up in internet search at a mere 5% in US and 2% globally, could be measured in light-years

US-<https://gs.statcounter.com/search-engine-market-share/all/united-states-of-america> ,

Global - <https://gs.statcounter.com/search-engine-market-share>

Like most of the country's state attorneys general, Ohio is participating in a [[bipartisan antitrust action against Google]] <https://www.ohioattorneygeneral.gov/Media/News-Releases/December-2020/Attorney-General-Dave-Yost-Joins-Lawsuit-Seeking-t>, but Ohio is the only state so far to pursue Google under the common law of public utility.

Should Ohio prevail in its lawsuit, there will be no heavy-handed, "Mother-May-I?" regulation, in which the government tells Google how to run its business or how to write its algorithms. Unlike with antitrust law, Ohio's suit does not seek to weaken the **benefits created by the huge numbers of users**. We are not even asking for monetary damages -- just a simple declaration that, under the law, Google is a public utility, or more generally, a common carrier.

As a common-law public utility, Google would then have a legal duty to act with consideration of the public interest, to provide equal access to all users and all information providers and to act without unreasonable bias against information providers, particularly Google's competitors in other business lines. That's it. As legal touches go, this is a light one.

Once Google is declared a common carrier / public utility, the average web user's experience of search would, for the most part, remain the same **[ok?]**. That's largely because, when you use Google to search, you're not the customer -- you're the product. [Google sells your detailed personal information for targeting ads]]| <https://www.cnbc.com/2021/05/18/how-does-google-make-money-advertising-business-breakdown-.html>]. The subtle common-carrier changes for users will be positive, such as showing you the results you requested instead of being steered to Google products.

Currently, Google prioritizes its own products and platforms in search results. [[About two out of three Google searches end as "captured click" transactions – that is, the consumer never leaves Google or one of its properties in reviewing results.]]| <https://sparktoro.com/blog/in-2020-two-thirds-of-google-searches-ended-without-a-click/>] So, a search, say for flights, brings up integrated results from Google Flights -- and competitors such as Travelocity or Orbitz can't get that same treatment, for any amount of money.

As a public utility, Google search would have to give others a shot. [[Those searching would get results that are not skewed to Google, and the marketplace would be a bit more competitive.]] [My guess is no, but: Do you all have any data/ways to quantify how much more competitive the marketplace might get?][Nothing quantified]

Once a court declares Google a public utility, the marketplace itself would provide the guard rails. Those who felt they were not getting a fair shake could seek redress in court – [[but current public utilities largely honor their obligations under the law, and do not suffer an avalanche of litigation]] [Just want to double check: it may not be an avalanche, but we do feel confident about this assertion, right?]/Very]. Google will likely also conform to the duties of its status.

[[The duty for a public utility to operate in the public interest]] dates back to English common law, when key economic players such as ferry operators were required to deal with all customers without bias.

The duty of unbiased dealing is illustrated by Cornelius Vanderbilt. He owned the only railroad bridge over the Hudson River into New York City. In 1866, in order to **squeeze competitors**, he closed the bridge to all other competing railroads, effectively shutting the rest of the country out of its largest port, and the city off from food supplies from the west. As the competing railroad's stock crashed, he quickly bought up a controlling position. As a result, Vanderbilt used his control of a chokepoint to establish a monopoly. [what, in a nutshell, happened?]

To curb such Gilded-Age predations, Congress enacted the Sherman Antitrust Act in 1890 and subsequently began codifying common-carrier and public-utility law. But the common law regarding public utilities remains in many places -- including Ohio -- and the two approaches will produce different results because while codification requires detailed regulations, the common law allows for case-by-case lawmaking.

[Let's please include some links in the next few paragraphs?]

Critics of Ohio's lawsuit abound, of course. To knock down a few straw persons: Ohio's action is not chilling to Google's right of free speech. <https://www.nationalreview.com/2021/06/why-ohios-attempt-to-regulate-google-as-a-common-carrier-is-a-terrible-idea/> and <http://feeds.mediapost.com/~r/search-marketing-daily/~3/JFyVHC3c35E/google-should-be-considered-a-common-carrier-oh.html> To the contrary, Google will remain free to say anything it pleases. What it may not do is restrain commerce of others by using its monopolistic powers in search to corner other markets.

Others object that this creates a Dormant Commerce Clause problem – that one state among 50 is using its law to attempt to control the others, a violation of sovereignty and federalism. <https://www.nationalreview.com/2021/06/why-ohios-attempt-to-regulate-google-as-a-common-carrier-is-a-terrible-idea/> or <https://fedsoc.org/events/limiting-the-right-to-exclude-common-carrier-and-market-dominance> But Google is a global company that already uses different business practices in different parts of the world. It can geo-fence Ohio if it chooses (and the other states that will most likely follow Ohio's lead).

The truth of the matter is that foreign governments already are regulating Ohioans' cyberspace, and with a far heavier hand. The European Union requires cookie warnings and privacy safeguards. <https://www.cookiebot.com/en/cookie-law/> Google just settled France's lawsuit about the way Google serves its ads. <https://www.nytimes.com/2021/06/07/technology/google-france-antitrust-ads.html>

[[Google's initial response in our case]][**Sorry – to what? And do we know what date? Asking largely for scheduling purposes...**]][*Currently due July 11, but likely early August, we can let you know* is due in the next few weeks. It could follow the advice of its own Code of Corporate Conduct: "Do the right thing – follow the law, act honorably, and treat each other with respect."

Perhaps it might confess judgment?

From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: Google revisions
Date: Friday, July 30, 2021 4:15:30 PM

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Bethany McCorkle
Sent: Wednesday, June 30, 2021 1:10 PM
To: 'Siddhartha Mahanta' <siddhartha.mahanta@nytimes.com>
Subject: RE: Google revisions

The sooner the better but yes that works for us.

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Sent: Wednesday, June 30, 2021 1:07 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Re: Google revisions

Thanks so much! Some last few things for you here.

Re: timing -- We'll go ahead and plan to publish on July 11, but if it looks like the date is getting

pushed back, we'll reassess. Does that work for you?

On Wed, Jun 30, 2021 at 12:23 PM Bethany McCorkle <Bethany.McCorkle@ohioago.gov> wrote:

Here are the revisions with links added and track changes left on. Let me know what else I can do to help. Thanks.

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840

Bethany.McCorkle@OhioAttorneyGeneral.gov

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--

Siddhartha Mahanta
Op-Ed Editor
The New York Times
620 Eighth Ave., New York, NY 10018
[@sidhubaba](https://twitter.com/sidhubaba)

From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: Google revisions
Date: Friday, July 30, 2021 4:15:39 PM

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
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Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Bethany McCorkle
Sent: Wednesday, June 30, 2021 1:35 PM
To: 'Siddhartha Mahanta' <siddhartha.mahanta@nytimes.com>
Subject: RE: Google revisions

That would be awesome, keep me posted. Thanks!

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Sent: Wednesday, June 30, 2021 1:16 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Re: Google revisions

Actually: I may have a slot for it on July 6th, depending on how overloaded the copy editing team is... let's plan for that for now.

On Wed, Jun 30, 2021 at 1:09 PM Bethany McCorkle <Bethany.McCorkle@ohioago.gov> wrote:

The sooner the better but yes that works for us.

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
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Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Sent: Wednesday, June 30, 2021 1:07 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Re: Google revisions

Thanks so much! Some last few things for you here.

Re: timing -- We'll go ahead and plan to publish on July 11, but if it looks like the date is getting pushed back, we'll reassess. Does that work for you?

On Wed, Jun 30, 2021 at 12:23 PM Bethany McCorkle <Bethany.McCorkle@ohioago.gov> wrote:

Here are the revisions with links added and track changes left on. Let me know what else I can do to help. Thanks.

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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--
Siddhartha Mahanta

Op-Ed Editor
The New York Times
620 Eighth Ave., New York, NY 10018
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--

Siddhartha Mahanta
Op-Ed Editor
The New York Times
620 Eighth Ave., New York, NY 10018
[@sidhubaba](#)

From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: Google revisions
Date: Friday, July 30, 2021 4:15:59 PM

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Bethany McCorkle
Sent: Wednesday, June 30, 2021 1:52 PM
To: 'Siddhartha Mahanta' <siddhartha.mahanta@nytimes.com>
Subject: RE: Google revisions

What do I still owe you? I sent the draft back to you. Let me know so I don't miss anything.

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Sent: Wednesday, June 30, 2021 1:43 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Re: Google revisions

No problem—if you could kick it back to me today that'd be great

On Wed, Jun 30, 2021 at 1:35 PM Bethany McCorkle <Bethany.McCorkle@ohioago.gov> wrote:

That would be awesome, keep me posted. Thanks!

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Sent: Wednesday, June 30, 2021 1:16 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Re: Google revisions

Actually: I may have a slot for it on July 6th, depending on how overloaded the copy editing team is... let's plan for that for now.

On Wed, Jun 30, 2021 at 1:09 PM Bethany McCorkle <Bethany.McCorkle@ohioago.gov> wrote:

The sooner the better but yes that works for us.

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Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
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From: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Sent: Wednesday, June 30, 2021 1:07 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Re: Google revisions

Thanks so much! Some last few things for you here.

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On Wed, Jun 30, 2021 at 12:23 PM Bethany McCorkle <Bethany.McCorkle@ohioago.gov> wrote:

Here are the revisions with links added and track changes left on. Let me know what else I can do to help. Thanks.

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Direct Office Number: 614-466-1339
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From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: Google revisions
Date: Friday, July 30, 2021 4:16:25 PM
Attachments: [Yost3a.docx](#)

Bethany McCorkle
Communications Director
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From: Bethany McCorkle
Sent: Wednesday, June 30, 2021 3:22 PM
To: 'Siddhartha Mahanta' <siddhartha.mahanta@nytimes.com>
Subject: RE: Google revisions

Here are the changes. Let me know if anything else is needed. Thanks for all your help!

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
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From: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Sent: Wednesday, June 30, 2021 2:09 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Fwd: Google revisions

Here you go -- just a few more things...

----- Forwarded message -----

From: **Siddhartha Mahanta** <siddhartha.mahanta@nytimes.com>
Date: Wed, Jun 30, 2021 at 1:06 PM
Subject: Re: Google revisions
To: Bethany McCorkle <Bethany.McCorkle@ohioago.gov>

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Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
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As Ohio's Attorney General, I went to court last month asking for a judicial declaration that Google has evolved into such an entity: a public utility of internet search.

Google is ubiquitous. More web traffic goes to Google owned platforms than the other top-50 websites combined. And it's not just internet traffic: Google, a subsidiary of Alphabet, dominates internet search, cornering nearly 90 percent of the US search market, and even more globally. Bing, the runner-up in internet search, claims a mere 5 percent of U.S. market share and 2 percent globally.

Like most of the country's state attorneys general, Ohio is participating in a bipartisan antitrust action against Google , but Ohio is the only state so far to pursue Google under the common law of public utility.

Should Ohio prevail in its lawsuit, there will be no heavy-handed, "Mother-May-I?" regulation, in which the government tells Google how to run its business or how to write its algorithms. Unlike with antitrust law, Ohio's suit does not seek to dilute the benefits created by the huge numbers of users. We are not even asking for monetary damages -- just a simple declaration that, under the law, Google is a public utility, or more generally, a common carrier.

As a common-law public utility, Google would then have a legal duty to act with consideration of the public interest, to provide equal access to all users and all information providers and to act without unreasonable bias against information providers, particularly Google's competitors in other business lines. That's it. As legal touches go, this is a light one.

Once Google is declared a common carrier, the average web user's experience of search would, for the most part, remain the same. That's largely because, when you use Google to search, you're not the customer -- you're the product. Google sells your detailed personal information for targeting ads.

The subtle common-carrier changes for users will be positive, such as showing you the results you requested instead of being steered to Google products. Currently, Google prioritizes its own products and platforms in search results. About two out of three Google searches end as "captured click" transactions – that is, the consumer never leaves Google or one of its properties when conducting a search. So: A search for, say,  lights, brings up integrated results from Google Flights -- and competitors such as Travelocity or Orbitz can't get that same treatment, for any amount of money.

As a public utility, Google search would have to give others a shot. Those searching would get results that are not skewed to Google, and the marketplace would be a bit more competitive.

Once a court declares Google a public utility, the marketplace itself would provide the guard rails. Those who felt they were not getting a fair shake could seek redress in court -- but modern

public utilities largely follow the rules, and do not face an avalanche of litigation. Google will likely also conform to the duties of its status.

The duty for a public utility to operate in the public interest dates back to English common law, when key economic players such as ferry operators were required to deal with all customers without bias. During the Gilded Age, Cornelius Vanderbilt, who owned the only railroad bridge over the Hudson River into New York City. In 1866, in order to squeeze competitors, he closed the bridge to all other competing railroads, effectively shutting the rest of the country out of its largest port, and the city off from food supplies from the west. As the competing railroad's stock crashed, he quickly bought up a controlling position. As a result, Vanderbilt used his control of a chokepoint to establish a monopoly

To curb such predations, Congress enacted the Sherman Antitrust Act in 1890 and subsequently began codifying common-carrier and public-utility law. But the common law regarding public utilities remains in many places -- including Ohio. Statutory regulation will produce different results than the common law because while codification requires detailed regulations addressing all issues upfront, the common law allows for nuanced case-by-case lawmaking tailored to each specific dispute.

Critics of Ohio's lawsuit abound, of course. To knock down a few straw persons: Ohio's action is not chilling Google's right of free speech. To the contrary, Google will remain free to say anything it pleases. What it may not do is restrain commerce of others by using its monopolistic powers in search to corner other markets.

Others object that this creates a Dormant Commerce Clause problem – that one state among 50 is using its law to attempt to control the others, a violation of sovereignty and federalism. But Google is a global company that already uses different business practices in different parts of the world. It can geo-fence Ohio if it chooses (and the other states that will most likely follow Ohio's lead).

The truth of the matter is that foreign governments already are regulating Ohioans' cyberspace, and with a far heavier hand. The European Union requires cookie warnings and privacy safeguards. Google just settled France's lawsuit about the way Google serves its ads.

Google's initial response in our case is due in the next few weeks. It could follow the advice of its own Code of Corporate Conduct: "Do the right thing – follow the law, act honorably, and treat each other with respect."

Perhaps it might confess judgment?



From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion
Date: Friday, July 30, 2021 4:17:59 PM

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Bethany McCorkle
Sent: Tuesday, July 06, 2021 11:04 AM
To: 'Glyn Peterson' <glyn.peterson@nytimes.com>
Subject: RE: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion

I'm on it. Let me see what I can do for the sources you requested.

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Glyn Peterson <glyn.peterson@nytimes.com>
Sent: Tuesday, July 06, 2021 10:35 AM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion

Good morning Bethany,

I hope this email finds you well. I'm reaching out because I'm fact-checking Dave Yost's piece on

Google as a public utility. There are a couple sources that would be very helpful to have during this process:

1. Can I get sourcing for everything Mr. Yost writes about Cornelius Vanderbilt?
2. It would also be helpful to have sourcing that I can use to better understand what Mr. Yost writes in the paragraph that begins with "To curb such predations..." especially what he writes about statutory regulation vs common law in Ohio.

And if there are any other sources that you think would be helpful aside from the ones that are already linked in the piece, please share them. I'll let you know if anything else comes up! Thank you in advance for your help— I'm looking forward to working with you on this.

My best,
Glyn
Staff Editor, New York Times Opinion
415-306-3202

From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion
Date: Friday, July 30, 2021 4:18:13 PM

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Bethany McCorkle
Sent: Tuesday, July 06, 2021 12:04 PM
To: 'Glyn Peterson' <glyn.peterson@nytimes.com>
Subject: RE: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion

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1. https://en.wikipedia.org/wiki/Livingston_Avenue_Bridge
<https://competesmarternotharder.wordpress.com/2013/10/03/the-story-of-vanderbilts-hudson-river-bridge/>
2. Antitrust Act https://en.wikipedia.org/wiki/Sherman_Act_of_1890
Common Law PU in Ohio <https://casetext.com/case/a-b-refuse-v-ravenna-twp>
Common law vs. regulatory law <https://common.laws.com/common-law/common-law-v-regulatory-law>

Bethany McCorkle
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From: Glyn Peterson <glyn.peterson@nytimes.com>
Sent: Tuesday, July 06, 2021 10:35 AM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion

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And if there are any other sources that you think would be helpful aside from the ones that are already linked in the piece, please share them. I'll let you know if anything else comes up! Thank you in advance for your help— I'm looking forward to working with you on this.

My best,
Glyn
Staff Editor, New York Times Opinion
415-306-3202

From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion
Date: Friday, July 30, 2021 4:18:30 PM

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Bethany McCorkle
Sent: Tuesday, July 06, 2021 1:55 PM
To: 'Glyn Peterson' <glyn.peterson@nytimes.com>
Subject: RE: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion

The example of that is the regulatory structures imposed by foreign governments mentioned at the end. Some of those issues have extraterritorial impact. Others do not.

the “top 50” statement: <https://www.visualcapitalist.com/the-50-most-visited-websites-in-the-world/>

global search engine ranking (Google 92.49%): <https://gs.statcounter.com/search-engine-market-share>

US search engine ranking (Google 88.45%): <https://gs.statcounter.com/search-engine-market-share/all/united-states-of-america>

US mobile search ranking (Google 94.3%): <https://gs.statcounter.com/search-engine-market-share/mobile/united-states-of-america>

Bethany McCorkle
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From: Glyn Peterson <glyn.peterson@nytimes.com>
Sent: Tuesday, July 06, 2021 1:13 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Re: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion

Hi Bethany, I have one more question for you, to add to the above question. For fact-checking purposes can you provide a couple examples of the way that Google's business practices vary: "But Google is a global company that already uses different business practices in different parts of the world."

On Tue, Jul 6, 2021 at 12:47 PM Glyn Peterson <glyn.peterson@nytimes.com> wrote:

Great, thank you Bethany. I have another question for you:

Can you share sourcing for the bolded portions of these lines? **More web traffic goes to Google owned platforms than the other top-50 websites combined.** And it's not just internet traffic: Google, a subsidiary of Alphabet, dominates internet search, cornering nearly 90 percent of the US search market, **and even more globally.**

On Tue, Jul 6, 2021 at 12:03 PM Bethany McCorkle <Bethany.McCorkle@ohioago.gov> wrote:

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1. https://en.wikipedia.org/wiki/Livingston_Avenue_Bridge
<https://competesmarternotharder.wordpress.com/2013/10/03/the-story-of-vanderbilts-hudson-river-bridge/>
2. Antitrust Act https://en.wikipedia.org/wiki/Sherman_Act_of_1890
Common Law PU in Ohio <https://casetext.com/case/a-b-refuse-v-ravenna-twp>
Common law vs. regulatory law <https://common.laws.com/common-law/common-law-v-regulatory-law>

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From: Glyn Peterson <glyn.peterson@nytimes.com>

Sent: Tuesday, July 06, 2021 10:35 AM

To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>

Subject: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion

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And if there are any other sources that you think would be helpful aside from the ones that are already linked in the piece, please share them. I'll let you know if anything else comes up! Thank you in advance for your help— I'm looking forward to working with you on this.

My best,

Glyn

Staff Editor, New York Times Opinion

415-306-3202

From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion
Date: Friday, July 30, 2021 4:18:58 PM

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Bethany McCorkle
Sent: Tuesday, July 06, 2021 5:34 PM
To: 'Glyn Peterson' <glyn.peterson@nytimes.com>
Subject: RE: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion

Any idea when this might run? Just trying to let my folks here know. Thanks.

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Glyn Peterson <glyn.peterson@nytimes.com>
Sent: Tuesday, July 06, 2021 1:13 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Re: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion

Hi Bethany, I have one more question for you, to add to the above question. For fact-checking purposes can you provide a couple examples of the way that Google's business practices vary: "But Google is a global company that already uses different business practices in different parts of the

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Great, thank you Bethany. I have another question for you:

Can you share sourcing for the bolded portions of these lines? **More web traffic goes to Google owned platforms than the other top-50 websites combined.** And it's not just internet traffic: Google, a subsidiary of Alphabet, dominates internet search, cornering nearly 90 percent of the US search market, **and even more globally.**

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1. https://en.wikipedia.org/wiki/Livingston_Avenue_Bridge
<https://competesmarternotharder.wordpress.com/2013/10/03/the-story-of-vanderbilts-hudson-river-bridge/>
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Common Law PU in Ohio <https://casetext.com/case/a-b-refuse-v-ravenna-twp>
Common law vs. regulatory law <https://common.laws.com/common-law/common-law-v-regulatory-law>

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From: Glyn Peterson <glyn.peterson@nytimes.com>
Sent: Tuesday, July 06, 2021 10:35 AM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion

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And if there are any other sources that you think would be helpful aside from the ones that are already linked in the piece, please share them. I'll let you know if anything else comes up! Thank you in advance for your help— I'm looking forward to working with you on this.

My best,
Glyn
Staff Editor, New York Times Opinion
415-306-3202

From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion
Date: Friday, July 30, 2021 4:19:13 PM

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Bethany McCorkle
Sent: Tuesday, July 06, 2021 6:51 PM
To: 'Glyn Peterson' <glyn.peterson@nytimes.com>
Subject: RE: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion

Ok thanks!

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Glyn Peterson <glyn.peterson@nytimes.com>
Sent: Tuesday, July 06, 2021 6:07 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Re: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion

We're aiming to publish this at 3pm tomorrow.

On Tue, Jul 6, 2021 at 5:34 PM Bethany McCorkle <Bethany.McCorkle@ohioago.gov> wrote:

Any idea when this might run? Just trying to let my folks here know. Thanks.

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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Sent: Tuesday, July 06, 2021 10:35 AM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Fact-Checking Inquiry Re: Mr. Yost's Piece for NYT Opinion

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My best,
Glyn
Staff Editor, New York Times Opinion
415-306-3202

From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: 07yost playback (attached)
Date: Friday, July 30, 2021 4:19:31 PM

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Bethany McCorkle
Sent: Wednesday, July 07, 2021 8:28 AM
To: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Subject: RE: 07yost playback (attached)

Is this up or for review?

Sent with BlackBerry Work
(www.blackberry.com)

From: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Date: Wednesday, Jul 07, 2021, 8:18 AM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: 07yost playback (attached)

Hi Bethany -- here it is, for a final look.

Guest Essay

Let's Make Google a Public Good

By Dave Yost

Mr. Yost is Ohio's attorney general.

July 7, 2021, 8:16 a.m. ET

American law recognizes that some critically important businesses must accept all customers and treat everyone fairly because they are not easily or economically efficient to duplicate — think railroads, electricity providers and telephone companies.

As Ohio's attorney general, I went to court last month asking for a judicial declaration that Google has evolved into such an entity: a public utility of internet search.

Google is ubiquitous. More web traffic goes to Google-owned platforms than the other top 50 websites combined. And it's not just internet traffic: Google dominates internet search, cornering nearly 90 percent of the U.S. search market, and even more globally. Bing, the runner-up in internet search, claims a mere [5 percent](#) of the U.S. market and [2 percent](#) globally.

Nearly 40 states, including my own, have joined in a bipartisan antitrust [action](#) against Google. But, separately, Ohio is pursuing Google under the common law of public utility — a smarter tactic that I urge other states to consider.

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From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: 07yost playback (attached)
Date: Friday, July 30, 2021 4:19:42 PM

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Bethany McCorkle
Sent: Wednesday, July 07, 2021 8:38 AM
To: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Subject: RE: 07yost playback (attached)

Ok thanks! I'll have it reviewed real quick.

Sent with BlackBerry Work
(www.blackberry.com)

From: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Date: Wednesday, Jul 07, 2021, 8:36 AM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Re: 07yost playback (attached)

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Sid

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|

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(www.blackberry.com)

From: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>

Date: Wednesday, Jul 07, 2021, 8:18 AM

To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>

Subject: 07yost playback (attached)

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Guest Essay

Let's Make Google a Public Good

By Dave Yost

Mr. Yost is Ohio's attorney general.

July 7, 2021, 8:16 a.m. ET

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Siddhartha Mahanta
Op-Ed Editor
The New York Times
620 Eighth Ave., New York, NY 10018
[@sidhubaba](#)

From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: 07yost playback (attached)
Date: Friday, July 30, 2021 4:19:55 PM

Bethany McCorkle
Communications Director
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Direct Office Number: 614-466-1339
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From: Bethany McCorkle
Sent: Wednesday, July 07, 2021 10:54 AM
To: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Subject: RE: 07yost playback (attached)

We went back and forth a bunch yesterday. What else needs checked? Will it still go up at 3pm?

Bethany
Sent with BlackBerry Work
(www.blackberry.com)

From: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Date: Wednesday, Jul 07, 2021, 10:32 AM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Re: 07yost playback (attached)

Bethany -- so sorry, but I'm afraid I sent you the review version too soon; our fact checker still has some questions for you. Will have those to you soon!

On Wed, Jul 7, 2021 at 8:39 AM Siddhartha Mahanta <siddhartha.mahanta@nytimes.com> wrote:

Thanks so much :)

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July 7, 2021, 8:16 a.m. ET

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From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: 07yost
Date: Friday, July 30, 2021 4:20:25 PM

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Bethany McCorkle
Sent: Wednesday, July 07, 2021 11:27 AM
To: 'Siddhartha Mahanta' <siddhartha.mahanta@nytimes.com>
Subject: RE: 07yost

Just to be clear I emailed him yesterday. Do I owe him anything else? I want to make sure I'm responding to all outstanding questions. Thanks.

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
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From: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Sent: Wednesday, July 07, 2021 11:21 AM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Re: 07yost

Thanks so much; let's incorporate these into the version that includes your responses to Glyn's outstanding queries?

All the best,

Sid

On Wed, Jul 7, 2021 at 11:09 AM Bethany McCorkle <Bethany.McCorkle@ohioago.gov> wrote:

Attached are track changes.

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
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Bethany.McCorkle@OhioAttorneyGeneral.gov

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Siddhartha Mahanta
Op-Ed Editor
The New York Times
620 Eighth Ave., New York, NY 10018
[@sidhubaba](https://twitter.com/sidhubaba)

From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: 07yost playback (attached)
Date: Friday, July 30, 2021 4:20:52 PM
Attachments: [image003.png](#)
[image004.png](#)

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
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From: Bethany McCorkle
Sent: Wednesday, July 07, 2021 1:23 PM
To: 'Glyn Peterson' <glyn.peterson@nytimes.com>; 'Siddhartha Mahanta' <siddhartha.mahanta@nytimes.com>
Subject: FW: 07yost playback (attached)

See below.

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Charles Miller
Sent: Wednesday, July 07, 2021 1:08 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: RE: 07yost playback (attached)

Re #8: <https://www.nytimes.com/2012/05/21/business/media/eugene-volokh-ucla-professor-makes-a-case-for-google-as-publisher.html>, but see:
<https://reason.com/volokh/2021/06/28/interpreting-47-u-s-c-%C2%A7-230c2/>
I'll also get a time stamp



Charles M Miller
Counsel to the Attorney General
Office of Ohio Attorney General Dave Yost
Columbus: **614-752-8237**
Cincinnati: **513-852-1565**
Office Cell: **513-607-0406**
Charles.Miller@OhioAGO.gov

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Sent: Wednesday, July 07, 2021 1:01 PM
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From: Bethany McCorkle
Sent: Wednesday, July 07, 2021 11:35 AM
To: Charles Miller <Charles.Miller@OhioAGO.gov>
Subject: FW: 07yost playback (attached)

ONE MORE TIME!

Sent with BlackBerry Work
(www.blackberry.com)

From: Glyn Peterson <glyn.peterson@nytimes.com>
Date: Wednesday, Jul 07, 2021, 11:31 AM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>, siddhartha.mahanta@nytimes.com
<siddhartha.mahanta@nytimes.com>
Subject: 07yost playback (attached)

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Thank you,

Glyn

Guest Essay

Let's Make Google a Public Good

By Dave Yost

Mr. Yost is Ohio's attorney general.

July 7, 2021, 11:27 a.m. ET

American law recognizes that some critically important businesses must accept all customers and treat everyone fairly because they are not easily or economically efficient to duplicate — think railroads, electricity providers and telephone companies.

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Google is ubiquitous. More web traffic goes to ~~Google~~Alphabet-owned platforms than the other top 50 websites combined.¹ And it's not just internet traffic: Google dominates internet search, cornering nearly 90 percent of the U.S. search market, and even more globally. Bing, the runner-up in internet search, claims a mere ~~56~~²percent of the U.S. market and 2 percent globally.

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Should Ohio prevail in its lawsuit, there will be no heavy-handed "Mother May I?" antitrust regulation in which the government tells Google how to run its business or how to write its algorithms. Nor, unlike antitrust law, does Ohio's suit seek to reduce the number of Google users. We are not even asking for monetary damages — just a simple declaration that, under the law, Google is a public utility, or more generally, a common carrier.

As a common-law public utility, Google would then have a legal duty to act with consideration of the public interest, to provide equal access to all users³and all information providers and to act without unreasonable bias against information providers, particularly Google's competitors in other business lines. That's it. As legal touches go, it's a lot lighter than what antitrust law would demand. ([Google has said](#) the lawsuit "has no basis in fact or law" and that it will defend itself against it in court.)

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Others [object](#) that⁸ this creates a “dormant Commerce Clause” problem — that one state among 50 is using its law to attempt to control the others,⁹ a violation of sovereignty and federalism. But Google is a global company that already uses different business practices in different parts of the world.¹⁰ It can geo-fence Ohio if it chooses (and the other states that will most likely follow Ohio's lead).

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The video you link to is quite long. Can you provide a timestamp for when the speakers bring up your lawsuit and the Dormant Commerce Clause?

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Let me know if I'm missing something but it seems like it targets legislation that places a burden on or controls interstate commerce vs other states themselves? Can we tweak this? "The Dormant Commerce Clause refers to the prohibition, implicit in the Commerce Clause, against states passing legislation that discriminates against or excessively burdens interstate commerce." https://www.law.cornell.edu/wex/commerce_clause

10

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The truth of the matter is that foreign governments already are regulating [Ohioans'](#) cyberspaces [around the world](#), and with a far heavier hand. The European Union [requires](#) cookie warnings and privacy safeguards. Google just [settled](#) France's lawsuit about ~~the way Google serves its ads~~ Google's advertising infrastructure.

Google's initial response in our case is due in the next few weeks.¹¹ The [company Alphabet's code of conduct](#) says, “Do the right thing — follow the law, act honorably and treat [each other with respect](#). co-workers with courtesy, support, and

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11

Glyn Peterson • 1 hrs

Can you provide some information on this? I have not seen this deadline referenced anywhere.

12

Glyn Peterson • 10 mins

The words have been updated slightly: <https://abc.xyz/investor/other/code-of-conduct/>

Dave Yost, a Republican, is Ohio’s attorney general.

The Times is committed to publishing [a diversity of letters](#) to the editor. We’d like to hear what you think about this or any of our articles. Here are some [tips](#). And here’s our email: letters@nytimes.com.

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From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: 07yost
Date: Friday, July 30, 2021 4:20:09 PM
Attachments: [07yost.docx](#)

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Bethany McCorkle
Sent: Wednesday, July 07, 2021 11:09 AM
To: 'Siddhartha Mahanta' <siddhartha.mahanta@nytimes.com>
Subject: 07yost

Attached are track changes.

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From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: FW: 07yost playback (attached)
Date: Friday, July 30, 2021 4:21:04 PM
Attachments: [07yost.html](#)
[image001.png](#)
[image003.png](#)

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From: Bethany McCorkle
Sent: Wednesday, July 07, 2021 1:29 PM
To: 'Glyn Peterson' <glyn.peterson@nytimes.com>
Cc: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Subject: RE: FW: 07yost playback (attached)

Let me know if this comes through.

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From: Glyn Peterson <glyn.peterson@nytimes.com>
Sent: Wednesday, July 07, 2021 1:26 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Cc: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Subject: Re: FW: 07yost playback (attached)

Thank you, Bethany! I think I might be missing an attachment? Could you resend?

On Wed, Jul 7, 2021 at 1:23 PM Bethany McCorkle <Bethany.McCorkle@ohioago.gov> wrote:

See below.

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I'll also get a time stamp



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1

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Mr. Yost is Ohio's attorney general.

July 7, 2021, 11:27 a.m. ET

American law recognizes that some critically important businesses must accept all customers and treat everyone fairly because they are not easily or economically efficient to duplicate — think railroads, electricity providers and telephone companies.

As Ohio's attorney general, I went to court last month asking for a judicial declaration that Google has evolved into such an entity: a public utility of internet search.

Google is ubiquitous. More web traffic goes to [Google Alphabet \[CM1\]](#)-owned platforms than the other top 50 websites combined.¹ And it's not just internet traffic: Google dominates internet search, cornering nearly 90 percent of the U.S. search market, and even more globally. Bing, the runner-up in internet search, claims a mere [56](#)²[percent](#) of the U.S. market and [2 percent](#) globally.

Glyn Peterson • 1 hrs

How did you calculate this using the Visual Capitalist source you provided? This source just writes, "Together, the top three websites rake in 152 billion visits monthly, outpacing the next 47 websites combined." Two of the top three are Alphabet but the third is not. And four of the websites in the top 50 listed by your source belong to Alphabet, so your source only provides 46 non-Alphabet sources, not 50. <https://www.visualcapitalist.com/the-50-most-visited-websites-in-the-world/>

Attached is a photo of the spot on the linked page that says "Together, Google and subsidiary YouTube attract over 127 billion visits monthly—more than the next 48 websites combined."

Glyn Peterson • 1 hrs

2 It's 5.67 percent so we should round up to 6. ok

~~Nearly 40~~More than 30 states, including my own, have joined in a bipartisan antitrust [action](#) against Google. But, separately, Ohio is pursuing Google under the common law of public utility — a smarter tactic that I urge other states to consider.

Should Ohio prevail in its lawsuit, there will be no heavy-handed "Mother May I?" antitrust regulation in which the government tells Google how to run its business or

how to write its algorithms. Nor, unlike antitrust law, does Ohio's suit seek to reduce the number of Google users. We are not even asking for monetary damages — just a simple declaration that, under the law, Google is a public utility, or more generally, a common carrier.

As a common-law public utility, Google would then have a legal duty to act with consideration of the public interest, to provide equal access to all users³ and all information providers and to act without unreasonable bias against information providers, particularly Google's competitors in other business lines. That's it. As legal touches go, it's a lot lighter than what antitrust law would demand. (Google has said the lawsuit "has no basis in fact or law" and that it will defend itself against it in court.)

Glyn Peterson • 24 mins

What does "equal access" mean in the context of users instead of information providers? Since, like you write below, users are the product, not the customer. Should we cut "to all users" here and just leave it with information providers?

Fair, but the point here is that equal access would apply to both sides of the search. Also, simply because Google is already meeting its duty to users – eg, equal cost, doesn't deny access, etc.

³ —doesn't mean the duty will not exist.

Once Google is declared a common carrier, the average web user's experience of search would, for the most part, remain the same. That's largely because, when you use Google to search, you're not the customer — you're the product. Google sells uses⁴ your detailed personal information for targeting ads.

Glyn Peterson • 1 hrs

Per your source and many others (including Google), Google uses personal information for adds, but does not sell it.

Good catch. How about "monetizes"? if so, then the sentence would read "Google monetizes

⁴ you detailed personal information by selling targeted ads"

The subtle common-carrier changes for users will be positive, such as showing you the results you requested instead of being steered to Google products. Currently, My lawsuit alleges that Google prioritizes its own products and platforms in search results. About two out of three according to the market research company SparkToro, at least 65 percent of Google searches end as in 2020 were "captured click" transactions "zero-click searches" — that is, the consumer never leaves Google or one of its properties when conducting a search. So a search for, say, An investigation by The Markup found that a search for, say, flights, often first brings up integrated results from Google Flights — and competitors such as Travelocity and Orbitz can't get that same treatment, for any amount of money are shut out.

As a public utility, Google search would have to give others a better shot. Those searching would get results that are not skewed to Google, and the marketplace would be a bit more competitive.

Once a court declares Google a public utility, the marketplace itself would provide the guard rails. Those who felt they were not getting a fair shake could seek redress in court, though modern public utilities largely follow the rules, and do not face an avalanche of litigation.⁵ Google will likely also conform to the duties of its status.

Glyn Peterson • 1 hrs

Is this really accurate? I'm thinking of cases like these and others: <https://apnews.com/article/ohio-lawsuits-us-news-board-of-directors-cleveland-98580ed200fa373badbe183eff876209>; <https://www.tampabay.com/news/business/2020/09/22/florida-power-companies-face-legal-challenge-on-disconnections-during-pandemic/>; <https://www.npr.org/2019/01/29/689591066/california-power-provider-pg-e-files-for-bankruptcy-in-wake-of-fire-lawsuits>

We didn't say that there would not be any litigation. The point is that when the general parameters are known, we expect Google to conform to what it understands the duties to be. There will be cases defining those limits, but not an avalanche of them is our prediction.

The duty for a public utility to operate in the public interest dates back to English common law, when key economic players such as ferry operators ~~were required to deal with all customers without bias~~ had to fulfill certain obligations to the public. During the Gilded Age, the railroad magnate Cornelius Vanderbilt ~~owned the only train~~ controlled a bridge ~~over the Hudson into~~ that was key to accessing New York City by train.⁶ In the late 186~~6~~os,⁷ he closed the bridge to rivals, effectively shutting the rest of the country out of its largest port, and the city off from food supplies from the west.

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Glyn Peterson • 1 hrs

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To curb such predations, Congress passed the Sherman Antitrust Act in 1890 and subsequently began codifying common-carrier and public-utility law. But the common law regarding public utilities remains in many places — including Ohio. Statutory regulation will produce different results from the common law because while

codification requires detailed regulations addressing all issues upfront, the common law allows for nuanced lawmaking tailored to each specific dispute.

Critics of Ohio's lawsuit abound, of course. To knock down a few straw men: Ohio's action is not chilling Google's right to free speech. To the contrary, Google will remain free to say anything it pleases. What it may not do is restrain the commerce of others by using its monopolistic powers in search to corner other markets.

Others object that⁸ this creates a "dormant Commerce Clause" problem — that one state among 50 is using its law to ~~attempt to control the others~~cause impermissible constraints on businesses in other states,⁹ a violation of sovereignty and federalism. But Google is a global company that already uses different business practices in different parts of the world.¹⁰ It can geo-fence Ohio if it chooses (and the other states that will most likely follow Ohio's lead).

Glyn Peterson • 43 mins

The video you link to is quite long. Can you provide a timestamp for when the speakers bring up 8 your lawsuit and the Dormant Commerce Clause?

Glyn Peterson • 42 mins

Let me know if I'm missing something but it seems like it targets legislation that places a burden on or controls interstate commerce vs other states themselves? Can we tweak this? "The Dormant Commerce Clause refers to the prohibition, implicit in the Commerce Clause, against states passing legislation that discriminates against or excessively burdens interstate commerce." https://www.law.cornell.edu/wex/commerce_clause

10

Glyn Peterson • 1 hrs

This sentence seems at odds with the next paragraph. When I asked for examples of instances where Google uses different business practices in different regions, you cited the EU cookie consent/notification policy. But you also cited this as an example that other governments are influencing Ohio's cyberspace.

~~Another example is that google has search engines specific for each country.~~

~~<http://www.genealogyintime.com/articles/country-guide-to-google-search-engines-page3.html>~~

~~Another is that it already uses geolocation to provide different search results to different users even within the same state: <https://support.google.com/websearch/answer/179386>~~

The truth of the matter is that foreign governments already are regulating ~~Ohioans'~~ cyberspaces ~~around the world~~, and with a far heavier hand. The European Union requires cookie warnings and privacy safeguards. Google just settled France's lawsuit about ~~the way Google serves its ads~~ Google's advertising infrastructure.

Google's initial response in our case is due in the next few weeks. ¹¹The ~~company~~Alphabet's code of conduct says, "Do the right thing — follow the law, act honorably and treat ~~each other with respect~~co-workers with courtesy, support, and respect."

¹²Google could do that by acknowledging what is obvious: It's so dominant that the rules of private companies no longer apply to it.

11

Glyn Peterson • 1 hrs

Can you provide some information on this? I have not seen this deadline referenced anywhere.

Because of the date the case was filed and served, the answer was due July 11. Today, we just agreed to an extension to Aug 6.

12

Glyn Peterson • 10 mins

The words have been updated slightly: <https://abc.xyz/investor/other/code-of-conduct/>

Dave Yost, a Republican, is Ohio's attorney general.

The Times is committed to publishing [a diversity of letters](#) to the editor. We'd like to hear what you think about this or any of our articles. Here are some [tips](#). And here's our email: letters@nytimes.com.

Follow The New York Times Opinion section on [Facebook](#), [Twitter \(@NYTopinion\)](#) and [Instagram](#).

[CM1]Google owns YouTube, so the original was also correct. Could also read “More web traffic does to Google and its subsidiary YouTube than..:

From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: FW: 07yost playback (attached)
Date: Friday, July 30, 2021 4:21:25 PM
Attachments: [image003.png](#)
[image004.png](#)

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Bethany McCorkle
Sent: Wednesday, July 07, 2021 1:45 PM
To: 'Glyn Peterson' <glyn.peterson@nytimes.com>
Cc: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Subject: RE: FW: 07yost playback (attached)

Here is a link to commentary that discusses the impact on interstate commerce.

https://cei.org/opeds_articles/why-ohios-attempt-to-regulate-google-as-a-common-carrier-is-a-terrible-idea/

Bethany McCorkle
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From: Glyn Peterson <glyn.peterson@nytimes.com>
Sent: Wednesday, July 07, 2021 1:31 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>

Cc: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>

Subject: Re: FW: 07yost playback (attached)

Got it, thanks!

On Wed, Jul 7, 2021 at 1:29 PM Bethany McCorkle <Bethany.McCorkle@ohioago.gov> wrote:

Let me know if this comes through.

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840

Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Glyn Peterson <glyn.peterson@nytimes.com>

Sent: Wednesday, July 07, 2021 1:26 PM

To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>

Cc: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>

Subject: Re: FW: 07yost playback (attached)

Thank you, Bethany! I think I might be missing an attachment? Could you resend?

On Wed, Jul 7, 2021 at 1:23 PM Bethany McCorkle <Bethany.McCorkle@ohioago.gov> wrote:

See below.

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840

Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Charles Miller

Sent: Wednesday, July 07, 2021 1:08 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: RE: 07yost playback (attached)

Re #8: <https://www.nytimes.com/2012/05/21/business/media/eugene-volokh-ucla-professor-makes-a-case-for-google-as-publisher.html>, but see:

<https://reason.com/volokh/2021/06/28/interpreting-47-u-s-c-%C2%A7-230c2/>

I'll also get a time stamp



Charles M Miller
Counsel to the Attorney General
Office of Ohio Attorney General Dave Yost
Columbus: **614-752-8237**
Cincinnati: **513-852-1565**
Office Cell: **513-607-0406**
Charles.Miller@OhioAGO.gov

* Please note that, in adherence to best practices brought about in response to COVID-19, the Ohio Attorney General's Office moved to a "remote work" status effective March 18, 2020. All members of the office remain available remotely during normal business hours. Thank you for your patience

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From: Charles Miller
Sent: Wednesday, July 07, 2021 1:01 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: RE: 07yost playback (attached)

Here are the responses. I am still working on #8.



Charles M Miller
Counsel to the Attorney General
Office of Ohio Attorney General Dave Yost
Columbus: **614-752-8237**
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From: Bethany McCorkle
Sent: Wednesday, July 07, 2021 11:35 AM
To: Charles Miller <Charles.Miller@OhioAGO.gov>
Subject: FW: 07yost playback (attached)

ONE MORE TIME!

Sent with BlackBerry Work
(www.blackberry.com)

From: Glyn Peterson <glyn.peterson@nytimes.com>
Date: Wednesday, Jul 07, 2021, 11:31 AM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>, siddhartha.mahanta@nytimes.com
<siddhartha.mahanta@nytimes.com>
Subject: 07yost playback (attached)

Hi Bethany,

Here is the latest draft, with a few queries and suggested edits. If you could get back to us in the next couple hours, that would be great as we want publish this at 3pm ET.

Thank you,

Glyn

Guest Essay

Let's Make Google a Public Good

By Dave Yost

Mr. Yost is Ohio's attorney general.

July 7, 2021, 11:27 a.m. ET

American law recognizes that some critically important businesses must accept all customers and treat everyone fairly because they are not easily or economically

efficient to duplicate — think railroads, electricity providers and telephone companies.

As Ohio's attorney general, I went to court last month asking for a judicial declaration that Google has evolved into such an entity: a public utility of internet search.

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1

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Should Ohio prevail in its lawsuit, there will be no heavy-handed "Mother May I?" antitrust regulation in which the government tells Google how to run its business or how to write its algorithms. Nor, unlike antitrust law, does Ohio's suit seek to reduce the number of Google users. We are not even asking for monetary damages — just a simple declaration that, under the law, Google is a public utility, or more generally, a common carrier.

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3

Glyn Peterson • 24 mins

What does "equal access" mean in the context of users instead of information providers? Since, like you write below, users are the product, not the customer. Should we cut "to all users" here and just leave it with information providers?

Once Google is declared a common carrier, the average web user's experience of search would, for the most part, remain the same. That's largely because, when you use Google to search, you're not the customer — you're the product. Google ~~sells~~uses⁴ your detailed personal information for targeting ads.

4

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5

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The duty for a public utility to operate in the public interest dates back to English common law, when key economic players such as ferry operators ~~were required to deal with all customers without bias~~ had to fulfill certain obligations to the public. During the Gilded Age, the railroad magnate Cornelius Vanderbilt ~~owned the only train~~ controlled a bridge ~~over the Hudson into~~ that was key to accessing New York City ~~by train~~.⁶ In the late 1860s,⁷ he closed the bridge to rivals, effectively shutting the rest of the country out of its largest port, and the city off from food supplies from the west.

6

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7

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Others object that⁸ this creates a "dormant Commerce Clause" problem — that one state among 50 is using its law to attempt to control the others,⁹ a violation of sovereignty and federalism. But Google is a global company that already uses different business practices in different parts of the world.¹⁰ It can geo-fence Ohio if it chooses (and the other states that will most likely follow Ohio's lead).

8

Glyn Peterson • 43 mins

The video you link to is quite long. Can you provide a timestamp for when the speakers bring up your lawsuit and the Dormant Commerce Clause?

9

Glyn Peterson • 42 mins

Let me know if I'm missing something but it seems like it targets legislation that places a burden on or controls interstate commerce vs other states themselves? Can we tweak this? "The Dormant Commerce Clause refers to the prohibition, implicit in the Commerce Clause, against states passing legislation that discriminates against or excessively burdens interstate commerce." https://www.law.cornell.edu/wex/commerce_clause

10

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~~company~~Alphabet's [code of conduct](#) says, "Do the right thing — follow the law, act honorably and treat ~~each other with respect~~co-workers with courtesy, support, and respect." ¹²Google could do that by acknowledging what is obvious: It's so dominant that the rules of private companies no longer apply to it.

11

Glyn Peterson • 1 hrs

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12

Glyn Peterson • 10 mins

The words have been updated slightly: <https://abc.xyz/investor/other/code-of-conduct/>

Dave Yost, a Republican, is Ohio's attorney general.

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From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW:
Date: Friday, July 30, 2021 4:21:54 PM
Attachments: [JMC_294.PNG](#)
[imba407.txt](#)

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov
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From: Bethany McCorkle
Sent: Wednesday, July 07, 2021 2:09 PM
To: 'Glyn Peterson' <glyn.peterson@nytimes.com>
Cc: Siddhartha Mahanta <siddhartha.mahanta@nytimes.com>
Subject: FW:

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov
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From: Charles Miller
Sent: Wednesday, July 07, 2021 1:58 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: FW:

I forgot to include this before..

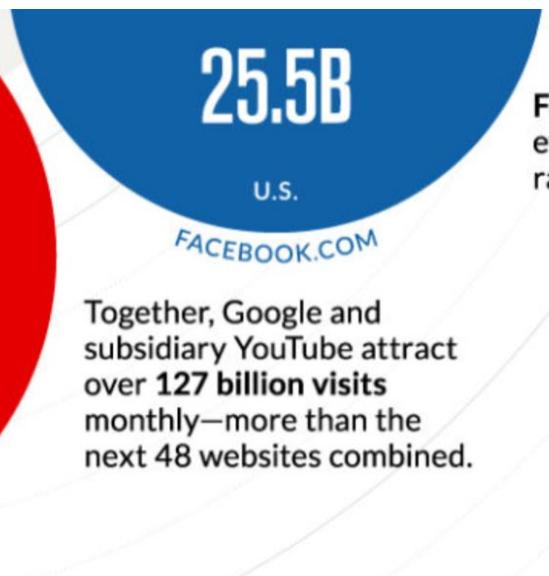
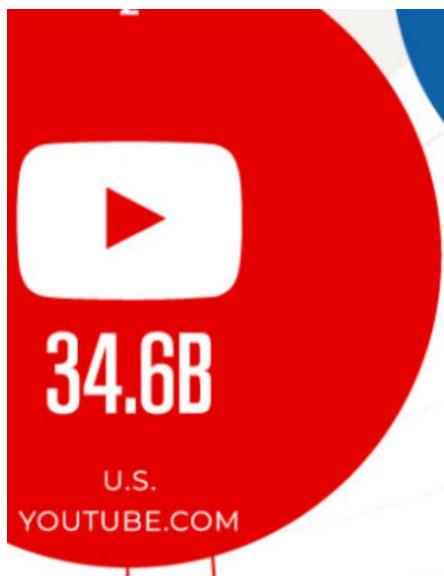


Charles M Miller
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From: Charles Miller <chipmiller76@icloud.com>
Sent: Wednesday, July 07, 2021 12:29 PM
To: Charles Miller <Charles.Miller@OhioAGO.gov>
Subject:



Facebook, along with nearly every Big Tech company, rank in the top 20.

Sent from my iPhone

From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: FW: 07yost playback (attached)
Date: Friday, July 30, 2021 4:22:06 PM
Attachments: [image004.png](#)
 [image005.png](#)
 [image006.png](#)

Bethany McCorkle
Communications Director
Office of Ohio Attorney General Dave Yost
Direct Office Number: 614-466-1339
Media Line: 614-466-3840
Bethany.McCorkle@OhioAttorneyGeneral.gov

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From: Bethany McCorkle
Sent: Wednesday, July 07, 2021 2:38 PM
To: 'Glyn Peterson' <glyn.peterson@nytimes.com>
Subject: RE: FW: 07yost playback (attached)

Yes we are ok with that.

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Sent: Wednesday, July 07, 2021 2:01 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: Re: FW: 07yost playback (attached)

Got it, thank you. Are you okay with the below change? And can you send me the screenshot you mentioned re: the global capitalist link? I've only been able to find this sentence, which doesn't quite confirm the relevant line: "Together, the top three websites rake in 152 billion visits monthly, outpacing

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Others object that this creates a "dormant Commerce Clause" problem — that one state among 50 is using its law **to attempt to control the others** in manner that burdens interstate commerce, a violation of sovereignty and federalism. But Google is a global

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Sent: Wednesday, July 07, 2021 1:31 PM
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From: Charles Miller
Sent: Wednesday, July 07, 2021 1:08 PM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>
Subject: RE: 07yost playback (attached)

Re #8: <https://www.nytimes.com/2012/05/21/business/media/eugene-volokh-ucla-professor-makes-a-case-for-google-as-publisher.html>, but see:

<https://reason.com/volokh/2021/06/28/interpreting-47-u-s-c-%C2%A7-230c2/>

I'll also get a time stamp



Charles M Miller
Counsel to the Attorney General
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Office Cell: **513-607-0406**
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Sent: Wednesday, July 07, 2021 11:35 AM
To: Charles Miller <Charles.Miller@OhioAGO.gov>
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ONE MORE TIME!

Sent with BlackBerry Work
(www.blackberry.com)

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Date: Wednesday, Jul 07, 2021, 11:31 AM
To: Bethany McCorkle <Bethany.McCorkle@OhioAGO.gov>, siddhartha.mahanta@nytimes.com

<siddhartha.mahanta@nytimes.com>

Subject: 07yost playback (attached)

Hi Bethany,

Here is the latest draft, with a few queries and suggested edits. If you could get back to us in the next couple hours, that would be great as we want publish this at 3pm ET.

Thank you,

Glyn

Guest Essay

Let's Make Google a Public Good

By Dave Yost

Mr. Yost is Ohio's attorney general.

July 7, 2021, 11:27 a.m. ET

American law recognizes that some critically important businesses must accept all customers and treat everyone fairly because they are not easily or economically efficient to duplicate — think railroads, electricity providers and telephone companies.

As Ohio's attorney general, I went to court last month asking for a judicial declaration that Google has evolved into such an entity: a public utility of internet search.

Google is ubiquitous. More web traffic goes to [GoogleAlphabet](#)-owned platforms than the other top 50 websites combined.¹ And it's not just internet traffic: Google dominates internet search, cornering nearly 90 percent of the U.S. search market, and even more globally. Bing, the runner-up in internet search, claims a mere [56 percent](#) of the U.S. market and [2 percent](#) globally.

1

Glyn Peterson • 1 hrs

How did you calculate this using the Visual Capitalist source you provided? This source just writes, "Together, the top three websites rake in 152 billion visits monthly, outpacing the next 47 websites combined." Two of the top three are Alphabet but the third is not. And four of the websites in the top 50 listed by your source belong to Alphabet, so your source only provides 46 non-Alphabet sources, not 50. <https://www.visualcapitalist.com/the-50-most-visited-websites-in-the-world/>

2

Glyn Peterson • 1 hrs

It's 5.67 percent so we should round up to 6.

Nearly 40 More than 30 states, including my own, have joined in a bipartisan antitrust [action](#) against Google. But, separately, Ohio is pursuing Google under the common law of public utility — a smarter tactic that I urge other states to consider.

Should Ohio prevail in its lawsuit, there will be no heavy-handed “Mother May I?” antitrust regulation in which the government tells Google how to run its business or how to write its algorithms. Nor, unlike antitrust law, does Ohio’s suit seek to reduce the number of Google users. We are not even asking for monetary damages — just a simple declaration that, under the law, Google is a public utility, or more generally, a common carrier.

As a common-law public utility, Google would then have a legal duty to act with consideration of the public interest, to provide equal access to all users³ and all information providers and to act without unreasonable bias against information providers, particularly Google’s competitors in other business lines. That’s it. As legal touches go, it’s a lot lighter than what antitrust law would demand. (Google [has said](#) the lawsuit “has no basis in fact or law” and that it will defend itself against it in court.)

3

Glyn Peterson • 24 mins

What does “equal access” mean in the context of users instead of information providers? Since, like you write below, users are the product, not the customer. Should we cut “to all users” here and just leave it with information providers?

Once Google is declared a common carrier, the average web user’s experience of search would, for the most part, remain the same. That’s largely because, when you use Google to search, you’re not the customer — you’re the product. Google [sells](#) [uses](#)⁴ your detailed personal information for targeting ads.

4

Glyn Peterson • 1 hrs

Per your source and many others (including Google), Google uses personal information for ads, but does not sell it.

The subtle common-carrier changes for users will be positive, such as showing you the results you requested instead of being steered to Google products. [Currently, My lawsuit alleges that](#) Google prioritizes its own products and platforms in search results. [About two out of three](#) according to the market research company SparkToro, at least 65 percent of Google searches ~~end as in 2020 were “captured click transactions”~~ “zero-click searches” — that is, the consumer [never leaves](#) Google or one of its properties when conducting a search. [So a search for, say, An investigation by The Markup found that a search for, say, flights, often first](#) brings up integrated results from Google Flights — and competitors such as Travelocity and Orbitz ~~can’t get that same treatment, for any amount of money~~ are shut out.

As a public utility, Google search would have to give others a better shot. Those searching would get results that are not skewed to Google, and the marketplace would be a bit more competitive.

Once a court declares Google a public utility, the marketplace itself would provide the guard rails. Those who felt they were not getting a fair shake could seek redress in court, though modern public utilities largely follow the rules, and do not face an avalanche of litigation.⁵ Google will likely also conform to the duties of its status.

5

Glyn Peterson • 1 hrs

Is this really accurate? I'm thinking of cases like these and others: <https://apnews.com/article/ohio-lawsuits-us-news-board-of-directors-cleveland-98580ed200fa373badbe183eff876209>; <https://www.tampabay.com/news/business/2020/09/22/florida-power-companies-face-legal-challenge-on-disconnections-during-pandemic/>; <https://www.npr.org/2019/01/29/689591066/california-power-provider-pg-e-files-for-bankruptcy-in-wake-of-fire-lawsuits>

The duty for a public utility to operate in the public interest dates back to English common law, when key economic players such as ferry operators ~~were required to deal with all customers without bias~~ had to fulfill certain obligations to the public. During the Gilded Age, the railroad magnate Cornelius Vanderbilt ~~owned the only train~~ controlled a bridge ~~over the Hudson into~~ that was key to accessing New York City by train.⁶ In the late 1860s,⁷ he closed the bridge to rivals, effectively shutting the rest of the country out of its largest port, and the city off from food supplies from the west.

6

Glyn Peterson • 1 hrs

According to the source you shared with me as well as other sources I found on this, the bridge was from Rensselaer to Albany, but it was key to accessing NYC, so I tweaked this language.

7

Glyn Peterson • 1 hrs

I think this actually happened in 1867 but I've seen mixed reporting on it, so I hedged this.

As the competing railroads' stock crashed, he quickly bought up a controlling position. As a result, Vanderbilt used his control of a chokepoint to help establish a monopoly.

To curb such predations, Congress passed the Sherman Antitrust Act in 1890 and subsequently began codifying common-carrier and public-utility law. But the common law regarding public utilities remains in many places — including Ohio. Statutory regulation will produce different results from the common law because while codification requires detailed regulations addressing all issues upfront, the common law allows for nuanced lawmaking tailored to each specific dispute.

Critics of Ohio's lawsuit abound, of course. To knock down a few straw men: Ohio's action is not chilling Google's right to free speech. To the contrary, Google will remain free to say anything it pleases. What it may not do is restrain the commerce of others by using its monopolistic powers in search to corner other markets.

Others object that⁸ this creates a "dormant Commerce Clause" problem — that one state among 50 is using its law to attempt to control the others,⁹ a violation of sovereignty and federalism. But Google is a global company that already uses different business practices in different parts of the world.¹⁰ It can geo-fence Ohio

if it chooses (and the other states that will most likely follow Ohio's lead).

8

Glyn Peterson • 43 mins

The video you link to is quite long. Can you provide a timestamp for when the speakers bring up your lawsuit and the Dormant Commerce Clause?

9

Glyn Peterson • 42 mins

Let me know if I'm missing something but it seems like it targets legislation that places a burden on or controls interstate commerce vs other states themselves? Can we tweak this? "The Dormant Commerce Clause refers to the prohibition, implicit in the Commerce Clause, against states passing legislation that discriminates against or excessively burdens interstate commerce." https://www.law.cornell.edu/wex/commerce_clause

10

Glyn Peterson • 1 hrs

This sentence seems at odds with the next paragraph. When I asked for examples of instances where Google uses different business practices in different regions, you cited the EU cookie consent/notification policy. But you also cited this as an example that other governments are influencing Ohio's cyberspace.

The truth of the matter is that foreign governments already are regulating ~~Ohioans'~~ cyberspaces ~~around the world~~, and with a far heavier hand. The European Union requires cookie warnings and privacy safeguards. Google just settled France's lawsuit about ~~the way Google serves its ads~~ Google's advertising infrastructure.

Google's initial response in our case is due in the next few weeks.¹¹ The company Alphabet's code of conduct says, "Do the right thing — follow the law, act honorably and treat ~~each other with respect~~ co-workers with courtesy, support, and respect."¹² Google could do that by acknowledging what is obvious: It's so dominant that the rules of private companies no longer apply to it.

11

Glyn Peterson • 1 hrs

Can you provide some information on this? I have not seen this deadline referenced anywhere.

12

Glyn Peterson • 10 mins

The words have been updated slightly: <https://abc.xyz/investor/other/code-of-conduct/>

Dave Yost, a Republican, is Ohio's attorney general.

The Times is committed to publishing a diversity of letters to the editor. We'd like to hear what you think about this or any of our articles. Here are some tips. And here's our email: letters@nytimes.com.

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From: [Bethany McCorkle](#)
To: [MacKenzie Clayton](#)
Subject: FW: 07yost playback (attached)
Date: Friday, July 30, 2021 4:22:16 PM
Attachments: [image001.png](#)
 [image002.png](#)
 [image003.png](#)

Bethany McCorkle
Communications Director
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Direct Office Number: 614-466-1339
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From: Bethany McCorkle
Sent: Wednesday, July 07, 2021 3:10 PM
To: Glyn Peterson <glyn.peterson@nytimes.com>
Subject: RE: 07yost playback (attached)

Is it going up today?

Sent with BlackBerry Work
(www.blackberry.com)

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By Dave Yost

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Glyn Peterson • 24 mins

What does "equal access" mean in the context of users instead of information providers? Since, like you write below, users are the product, not the customer. Should we cut "to all users" here and just leave it with information providers?

Once Google is declared a common carrier, the average web user's experience of search would, for the most part, remain the same. That's largely because, when you use Google to search, you're not the customer — you're the product. Google sellsuses⁴ your detailed personal information for targeting ads.

4

Glyn Peterson • 1 hrs

Per your source and many others (including Google), Google uses personal information for ads, but does not sell it.

The subtle common-carrier changes for users will be positive, such as showing you the results you requested instead of being steered to Google products. Currently, My lawsuit alleges that Google prioritizes its own products and platforms in search results. About two out of three according to the market research company SparkToro, at least 65 percent of Google searches end as in 2020 were "captured click" transactions "zero-click searches" — that is, the consumer never leaves Google or one of its properties when conducting a search. So a search for, say, An investigation by The Markup found that a search for, say, flights, often first brings up integrated results from Google Flights — and competitors such as Travelocity and Orbitz can't get that same treatment, for any amount of money are shut out.

As a public utility, Google search would have to give others a better shot. Those searching would get results that are not skewed to Google, and the marketplace would be a bit more competitive.

Once a court declares Google a public utility, the marketplace itself would provide the guard rails. Those who felt they were not getting a fair shake could seek redress in court, though modern public utilities largely follow the rules, and do not face an avalanche of litigation.⁵ Google will likely also conform to the duties of its status.

5

Glyn Peterson • 1 hrs

Is this really accurate? I'm thinking of cases like these and others: <https://apnews.com/article/ohio-lawsuits-us-news-board-of-directors-cleveland-98580ed200fa373badbe183eff876209>; <https://www.tampabay.com/news/business/2020/09/22/florida-power-companies-face-legal-challenge-on-disconnections-during-pandemic/>; <https://www.npr.org/2019/01/29/689591066/california-power-provider-peg-e-files-for-bankruptcy-in-wake-of-fire-lawsuits>

The duty for a public utility to operate in the public interest dates back to English common law, when key economic players such as ferry operators ~~were required to deal with all customers without bias~~ had to fulfill certain obligations to the public. During the Gilded Age, the railroad magnate Cornelius Vanderbilt ~~owned the only train~~ controlled a bridge ~~over the Hudson into~~ that was key to accessing New York City by train.⁶ In the late 1860s,⁷ he closed the bridge to rivals, effectively shutting the rest of the country out of its largest port, and the city off from food supplies from the west.

6

Glyn Peterson • 1 hrs

According to the source you shared with me as well as other sources I found on this, the bridge was from Rensselaer to Albany, but it was key to accessing NYC, so I tweaked this language.

7

Glyn Peterson • 1 hrs

I think this actually happened in 1867 but I've seen mixed reporting on it, so I hedged this.

As the competing railroads' stock crashed, he quickly bought up a controlling position. As a result, Vanderbilt used his control of a chokepoint to help establish a monopoly.

To curb such predations, Congress passed the Sherman Antitrust Act in 1890 and subsequently began codifying common-carrier and public-utility law. But the common law regarding public utilities remains in many places — including Ohio. Statutory regulation will produce different results from the common law because while codification requires detailed regulations addressing all issues upfront, the common law allows for nuanced lawmaking tailored to each specific dispute.

Critics of Ohio's lawsuit abound, of course. To knock down a few straw men: Ohio's action is not chilling Google's right to free speech. To the contrary, Google will remain free to say anything it pleases. What it may not do is restrain the commerce of others by using its monopolistic powers in search to corner other markets.

Others object that⁸ this creates a "dormant Commerce Clause" problem — that one state among 50 is using its law to attempt to control the others,⁹ a violation of sovereignty and federalism. But Google is a global company that already uses different business practices in different parts of the world.¹⁰ It can geo-fence Ohio if it chooses (and the other states that will most likely follow Ohio's lead).

8

Glyn Peterson • 43 mins

The video you link to is quite long. Can you provide a timestamp for when the speakers bring up your lawsuit and the Dormant Commerce Clause?

9

Glyn Peterson • 42 mins

Let me know if I'm missing something but it seems like it targets legislation that places a burden on or controls interstate commerce vs other states themselves? Can we tweak this? "The Dormant Commerce Clause refers to the prohibition, implicit in the Commerce Clause, against states passing legislation that discriminates against or excessively burdens interstate commerce." https://www.law.cornell.edu/wex/commerce_clause

10

Glyn Peterson • 1 hrs

This sentence seems at odds with the next paragraph. When I asked for examples of instances where Google uses different business practices in different regions, you cited the EU cookie consent/notification policy. But you also cited this as an example that other governments are influencing Ohio's cyberspace.

The truth of the matter is that foreign governments already are regulating ~~Ohioans'~~ cyberspaces ~~around the world~~, and with a far heavier hand. The European Union requires cookie warnings and privacy safeguards. Google just settled France's lawsuit about ~~the way Google serves its ads~~ Google's advertising infrastructure.

Google's initial response in our case is due in the next few weeks.¹¹ The ~~company~~Alphabet's code of conduct says, "Do the right thing — follow the law, act honorably and treat ~~each other with respect~~~~co-workers with courtesy, support, and respect~~."¹² Google could do that by acknowledging what is obvious: It's so dominant that the rules of private companies no longer apply to it.

11

Glyn Peterson • 1 hrs

Can you provide some information on this? I have not seen this deadline referenced anywhere.

12

Glyn Peterson • 10 mins

The words have been updated slightly: <https://abc.xyz/investor/other/code-of-conduct/>

Dave Yost, a Republican, is Ohio's attorney general.

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